

Planning & Zoning Minutes

June 6, 2013



CITY OF
REXBURG
America's Family Community

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Commissioners Attending:

Winston Dyer – Chairman
Dan Hanna
Jedd Walker
Mark Rudd
W.C. Porter
Gil Shirley
Richie Webb
Cory Sorensen
Melanie Davenport

City Staff and Others:

Bruce Sutherland – City Council Liaison
Val Christensen- Community Development Director
Darrik Farmer – Community Development Intern
Elaine McFerrin – P&Z Coordinator

Commissioner Dan Hanna acted as chairman and opened the meeting at 7:03 pm. He welcomed everyone. Chairman Winston Dyer will arrive later.

Roll Call of Planning and Zoning Commissioners:

Jedd Walker, Cory Sorensen, Dan Hanna, Richie Webb, Gil Shirley, Chuck Porter, Mark Rudd, Melanie Davenport

Mary Ann Mounts and Thaine Robinson were excused.

Welcome:

Melanie Davenport - New Planning & Zoning Commissioner

Chairman Hanna welcomed Melanie Davenport to the Commission. She is replacing Scott Ferguson.

Melanie Davenport stated she is originally from the Bryce Canyon area of Southern Utah. She went to Ricks College, where she met her husband. They got into investment properties as a way to stay in Rexburg and raise their family here. It has been great. They have owned property for 30 years. It is exciting to see how the City and the University have grown.

Minutes:

1. Planning and Zoning meeting - May 16, 2013

Cory Sorensen motioned to approve the Planning & Zoning minutes of May 16, 2013. **Gil Shirley** seconded the motion.

Richie Webb, Jedd Walker, Mark Rudd, and Chuck Porter abstained for having not been present. None opposed. **Motion carried.**

Public Hearings:

1. 7:05 pm – Conditional Use Permit – Approximately 55 East 1st North – to allow a duplex in an existing home

Laura Hepworth, 299 North 2100 East, St. Anthony. She is an owner of the property, along with her husband, her daughter, and her son-in-law. She is requesting a Conditional Use Permit (CUP) for a duplex in an existing home at approximately 55 East 1st North. The property was shown on the overhead screen map. The duplex is already present in the existing building. There are currently 2

parcels. The Hepworths may combine the parcels or they may make a 24-foot wide easement to the back part of the property if they do not combine the parcels. In the future, they want to build another duplex on the rear of the property.

The site plan was shown on the screen. They are going to be adding 3 parking spaces at the rear of the property. There is one existing parking spot in the front to the east. The other tenant is parking on the west side of the building. 2 spaces per unit are required.

The Chairman asked the size of the subject lots.

Val Christensen stated the combined square footage of the 2 parcels is about 22, 480 square feet. A duplex requires 10,000 square feet in the LDR2 zone.

Melanie Davenport asked for clarification on who will be living in the apartments, as Mrs. Hepworth was not specific on her CUP application.

Chairman Hanna said the current zoning is Low Density Residential 2 (LDR2). The tenants need to be single family. This would exclude multiple single people. Who currently occupies the units?

Laura Hepworth said that currently a divorced man and a married couple live in the 2 units on the subject property.

Gil Shirley asked how long the property has operated as a duplex.

Mrs. Hepworth said it has been since February of this year.

Richie Webb asked if the home was remodeled to make it into a duplex.

Mrs. Hepworth said yes. Only the inside of the home was changed.

Chairman Hanna asked if there is a building permit.

Laura Hepworth stated there is a building permit. The duplex has been inspected, and some things still need to be re-inspected.

Jedd Walker asked for clarification on this property being in the building permit process for the remodel.

Val Christensen said the City found out about the situation when an electrical permit was requested by an electrician, and the house was already in the process of being remodeled. The owners did not know a CUP was required for the home to become a duplex.

Laura Hepworth said they did this backwards. They did not realize at the time what was needed.

Mark Rudd clarified that the owners bought the property with the intention of turning it into a duplex but did not realize a CUP was needed for a duplex.

Laura Hepworth said that was correct.

Chairman Hanna asked if the possibility of a future zone change was discussed.

Mrs. Hepworth did not think so.

The Comprehensive Plan land use designation of the property is Neighborhood Commercial/Mixed use.

Val Christensen said he did ask if the applicants wanted to change the zone but they did not wish to do so and just wanted to do the CUP.

He clarified that a rezone to a mixed use zone could be considered, but not a zone change to an MDR zone, unless the Comprehensive Plan map is changed.

Richie Webb asked if any of the neighboring lots are duplexes.

Laura Hepworth said there are some duplexes.

Val Christensen said for clarification, the owners did not understand the process. The Hepworths have been great to work with. He reiterated that the Hepworths were asked if they were interested in pursuing a zone change to a mixed use zone but they were not. They want this duplex and may do a second duplex in the back. Tonight, the Commission is looking at the parking spaces for the unit that already exists. Nothing was reviewed about a second duplex other than the fact that the lot is big enough to have it.

Val Christensen clarified that the two lots would need to be combined to do 2 duplexes.

For now, if the driveway is put on the smaller lot, the property line would have to be moved or there would have to be an easement. Basically, there is no reason to keep the lot line.

He stated there is no Certificate of Occupancy yet. The first step is this CUP process, and then there are some other inspection requirements.

All parking should be buffered from the residential – therefore, there is the staff recommendation to have a 6-foot high privacy fence along the west side of the subject property.

The **Chairman** asked if there were any questions from the audience.

1) Tonight, the Commission is looking at approving what is already there, and the zoning is not changing.

That is correct.

2) Will the LDR2 zoning allow a 2nd duplex?

Yes, with a 2nd CUP.

Chairman Hanna opened the public input portion of the hearing.

In Favor: None

Neutral:

Steve Klingler, 45 East 1st North. He lives just west of the subject property. He came tonight to get more information on what was being done. He was not aware that there would be a fence there, which he likes and does not like at the same time. Right now the only access they have to the rear of their property is down the easement, which he realizes is not really an easement, on the west side of the subject property. He realizes it is on the Hepworth property, and he is concerned, because it could cut off all access to the rear of their home. All the former owners of the property said to go ahead and use the drive. That is what they have been doing for 12 years. The owners have had this as a duplex the last few months; it has not been a problem. He is not sure what a fence would do other than making it impossible to get into their back yard. He wondered if there were any options on that. A fence is a pro and a con. It keeps the parking away from his kids. (It was clarified that a fence could have a gate).

Opposed: None

Written Input: None

Winston Dyer arrived at 7:40 pm.

Chairman Hanna closed the public input portion and asked for the staff review.

Val Christensen said most of the staff report has been covered. He reiterated there was a misunderstanding on the owners' part in getting as far along as they got before they realized what was needed. The duplex is in the building permit process; there have been some inspections. One thing the City does not like to do is punish the folks who already have moved in, because that would be problematic, especially as hard as it is to find apartments here in Rexburg. He is not saying the City is not concerned, but the Hepworths are working towards what is required and are showing good faith.

Mr. Christensen reiterated the property size is 22, 840 square feet. A CUP is required for a duplex in the Low Density Residential 2 (LDR2) zone. The Comprehensive Plan land use designation is Neighborhood Commercial/Mixed Use. Mr. Christensen did talk to the applicants about the potential to rezone, but they are not interested at this time. The ordinance actually requires a fence.

Two conditions were recommended in the staff report: 1) Provide a 6 foot high privacy fence along the west side of the property; 2) All parking to be on asphalt or concrete surface.

Cory Sorensen said if there are two neighbors who would rather not have a fence but want an area to remain open, could the fencing requirements be waived.

Val Christensen said that is possible. The City would want a letter signed by both parties agreeing that they do not want a fence; that letter would become part of the permit file.

It was clarified that the P&Z Commission has the authority to grant a conditional use permit for a development with 4 or less dwelling units, per the Development Code, Section 6.12f.

The Chair reiterated that staff has recommended two conditions.

Richie Webb said he is not sure that conditions are needed. The Development Code Ordinance requires those things (privacy fence, parking to be on asphalt or concrete surface). Have them comply by the ordinance. If the owners want to put together an agreement with their neighbors that does not comply with that piece of the ordinance regarding a fence, they could do that.

Richie Webb motioned to approve the request for a Conditional Use Permit(CUP) to allow a duplex in an existing home, to include the standard CUP requirements stated in the Development Code No.1026("Standards Applicable to Conditional Use Permits" Section 6.12B), for the property located at approximately 55 East 1st North. **Cory Sorensen** seconded the motion.

Jedd Walker asked is there any way that the City can waive the requirements of the ordinance unless it is put in as a condition? Val Christensen said when it comes to buffering for the neighbor that is adjacent to the subject property, in the past the City Attorney has said the waiving can be done, but it needs to be documented with a required signed document for the permanent file stating the issue. A CUP condition regarding this issue would clarify the matter.

Richie Webb amended his motion to include the condition (Condition #1) that the property owners and the neighbors may work out an agreement regarding whether or not to have a fence on the west side of the subject property. **Cory Sorensen** seconded the amended motion.

None opposed. **Motion carried.**

Winston Dyer abstained for having not been present during presentation of the proposal and public testimony.

Winston Dyer took over as Chairman of the meeting.

Recognition of Service - for P&Z Commissioner Scott Ferguson

Chairman Dyer said he wanted to publicly recognize the service of Commissioner Scott Ferguson. Mr. Ferguson served on the Commission for several years. His term of service had expired, and he made the decision to step down and requested to be able to slip off into the sunset without any fanfare, but the Chair would not sit still for that. Chairman Dyer wanted to go on record in expressing appreciation and recognizing Scott Ferguson for his great contribution to the work of the Commission. He was very good at exploring both sides of an issue, playing the advocate when necessary and always asking challenging questions to stimulate the Commissioners' thinking, making sure that alternatives were thoroughly evaluated. We will miss his approach and style. We recognize his great contribution to the improvement of the quality of life in Rexburg. The Chair encouraged the Commissioners to express their appreciation to Scott Ferguson for his service.

Chairmen Dyer welcomed Melanie Davenport. The Commission looks forward to her perspective from the community and to her contributions to the Commission's responsibilities.

New Business: None

Compliance: None

Non controversial Items Added to the Agenda:

1. Fence question – Arctic Willow – Susie Pugh

From Development Code 1026 Section. 3.12.150 b. Fences, under the Rural Residential 2 (RR2) zone: *“The maximum height of any fence, wall, or sight obscuring objects within fifteen (15) feet of the public right-of-way shall be three (3) feet. Fences will be allowed in excess of three (3) feet and up to six (6) feet if constructed out of rigid materials and are fifty (50) percent or more see through per lineal foot. ..”*

Susie Pugh, 1058 Arctic Willow Drive. The property location was shown on the overhead screen. The Pughs would like permission to install a 6 foot high privacy fence on the property's back (north) border that would connect with their neighbor's fence. The fence would stop 5 feet from the sidewalk. The Development Code says the maximum privacy fence height is 3 feet. They live in a subdivision that has half acre and three-quarter acre lots. No fence was here because of the utilities. Their driveway would be 70 feet from the requested fence. They would like to ask if the Commission sees such a fence as a safety concern or a problem with them installing a 6-foot high privacy fence. This is a corner lot. Neighbors will be building fences also.

The Willowbrook subdivision is undeveloped to the north of the subject property. Currently, the plat is being reviewed in order to move forward.

Val Christensen explained that the Pughs came to staff with this fence issue. They were told that the Ordinance states the requirements in black and white. The Pughs felt their situation may be different. It was suggested they come before the Commission with the issue. He clarified that the subject property has 2 side yards, 2 front yards, and no rear yard.

This is a front yard situation. Within 15 feet of the right-of-way, the maximum fence height is 3 feet, or the fence could be up to 6 feet if it is made of 50% see through materials.

It was reiterated that the request is for a 6 foot high privacy fence, stopping at 5 feet from the sidewalk because of utilities.

Dan Hanna asked if they would be putting a fence back closer toward the house.

Susie Pugh said not at this time. They are just finishing the landscaping of their back yard. There is a lot of activity there, and they feel a 6 foot privacy fence would be best. A part-lattice fence is not sturdy. Where this is 70 feet from their driveway, they wanted to come in and discuss the matter because they do not see any safety concerns at all. The lots are oversized. It is not the typical subdivision where the 15 feet from the right of way needs to be clear for any children, etc.

Jedd Walker asked for clarification of the intent of the ordinance. Is it so if the driveway is close to the fence, as one is pulling out they will be able to see, or is it for the traffic on the corner, or both?

Val Christensen said if the fence is close to the driveway or if a child runs out after a ball, it makes sense.

Chairman Dyer said the visual corridor needs to be preserved, and there is also a safety concern. This circumstance may be a little different in that this property is in the Rural Residential 2 (RR2) zone. Because of that, there is a requirement for a wider barrow pit area than other City streets that have curb and gutter.

Mr. Walker said if the fence is put up, someone could put a drive way right next to it when the property to the north is developed. If the ordinance exists partly because of the pulling in and out of the driveway, then it would be a potential safety issue in the future.

The distance from the property line out to the road is about 17 feet.

Gil Shirley asked the type of fence they want to put up.

Susie Pugh clarified the fence would be vinyl. All the neighbors want to do vinyl fencing.

Gil Shirley said fences are done sectionally. If it becomes a problem in the future, such as if a driveway is put next to this fence, the fence could be changed.

Mark Pugh said most likely the house that would be built to the north of their property would face the cul-de-sac that is going to be there, so the back of the home would be toward the Pugh property.

Fences along South 12th West were viewed on the overhead screen map and appeared to be at full height. **Val Christensen** said because of the ditch that is present, the fence likely was approved as part of the plat.

The **Chair** said the idea was protection from the ditch and protection of the subdivision from the higher traffic volume along 12th West.

Val Christensen added that the ordinance states that one of the reasons for putting the fence further back rather than close to the road is the concern during winter of a snowplow.

Dan Hanna wondered if the code needs to be changed.

Chairman Dyer said are we prepared to do this everywhere for every request that comes in? The proper approach may be to modify the Rural Residential zone language. Rural Residential has some unique requirements in it because of the rural setting, no curb and gutter, etc. It is what it is right now as a matter of policy.

Dan Hanna said one of the things that make this issue unique is the size of the lots and the location of the homes and the driveways. The 15 feet from the public right of way distance is a good practice except where it does not seem logical.

Susie Pugh said it does not seem logical here. Maybe corner lots should be addressed under the code's Fencing section.

Chairman Dyer said the code accommodates that issue by eliminating the back yard and treating a corner lot as two front yards and two side yards.

Cory Sorensen said a risk he sees is if the owners place a shop behind their home with an RV pad.

There was discussion of a variance. Chairman Dyer said few variances have been granted in the past. Variance criteria were read by Val Christensen from the Development Code.

To approve a variance, the Commission must find... that the application for a variance fulfills all of the following conditions:

- i. The need for a variance results from physical limitations of the lot upon which the variance is requested which are not generally applicable to other properties in the same zone;*
- ii. Failure to approve a variance will result in undue hardship;*
- iii. The alleged hardship has not been created by the action of the applicant or the property owner; and*
- iv. Approval of the variance is not in conflict with public interest.*

This request does not meet the criteria for a variance.

Val Christensen clarified there was nothing that staff could do on the issue because of the ordinance that is in place. Mrs. Pugh felt she had a very different situation.

Chairman Dyer said these people have the integrity to come here and talk to the Commission about the issue and to try to do it right. Some have just gone and done it. The Commission acknowledges and appreciates Mr. and Mrs. Pugh coming before them. They want to do things right.

Melanie Davenport said these are larger lots in this location. Fencing is not fully established yet.

Dan Hanna wondered what the covenants allowed as far as outbuildings and shops. The fence could become problematic if a driveway is needed to a shop. The ordinance has value.

Cory Sorensen said the issue may be does the ordinance need to be changed or not. It is problematic because we do not want long tall fences everywhere in the community.

Richie Webb asked if this an aesthetic question. What is driving the decision to try to do this versus just compliance to the code?

Susie Pugh said yes; it is an aesthetic issue. They have seen where half the fence is see-through, and it falls apart all the time. Also, there is a back field that has turned into everyone's dumping area. They do not want to see that. They feel the vinyl privacy fence would look the best. They are the last cul-de-sac to even have a fence. They wanted to come in and make sure it would be approved before they built the fence. They did not want to do it illegally or incorrectly. The Chair thanked them.

Dan Hanna asked if a couple of pine trees might do the same kind of barrier/buffer.

Mr. Pugh said they could probably landscape.

There was discussion.

Cory Sorensen wondered if it made sense to look at verbage in the ordinance that allows for if there are driveways on both sides of a fence.

Chairman Dyer said at the time the ordinance was put in place, the setbacks from the street for the houses were looked at to create a visual corridor. By creating a wider boulevard strip, a narrowing of the street was allowed. There is always a balance and a tradeoff.

Melanie Davenport said what if the ordinance gets changed so a shop and driveway could not be right by such a property line, and then the new homes would have to comply with the new ordinance. The Chair said that may be possible; he clarified that changing of the ordinance would be a recommendation to City Council.

Jedd Walker said he does not see a way out, other than rewriting the ordinance, which it does not make sense to do. **Mark Rudd** agreed.

Jedd Walker suggested a possible change: the ordinance would stand as it is except that in the Rural Residential 2 Zone a fence may be closer than the 15 feet with a Conditional Use Permit.

Richie Webb said that would give the opportunity to look at each case individually.

Cory Sorensen said the CUP fee could be more than the fence cost.

Chuck Porter wondered if we are creating a situation by allowing a distance of 70 feet - when someone buys property on the other side of the fence, if in rewriting the ordinance, would that be restricting what is going on with the rest of property?

Dan Hanna said this proposal sounds great, but the next house, the next shop, the next addition, the next owner - that changes the dynamics so much. If someone were to get hurt, it would be up a creek without a paddle. The ordinance really does make sense as it is written; it just does not fit with your property at this time. He asked when the Pughs planned to build the fence.

Mr. Pugh said they would like to start building the fence within the next couple of weeks.

Val Christensen clarified that right now the way the ordinance is written, there is not a distinction regarding the two front yards - the new house could face the other way and have the same situation.

Jedd Walker said if the people who buy the lot face their house a certain way it would put the subject fence in their front yard.

Dan Hanna motioned to enforce the existing fence ordinance as written in Development Code No. 1026 regarding this request from the Pughs. **Jedd Walker** seconded the motion.

Those in Favor:

Melanie Davenport
Mark Rudd
Chuck Porter
Winston Dyer
Dan Hanna
Cory Sorensen
Jedd Walker.

Those Opposed:

Richie Webb
Gil Shirley

Motion carried.

Chairman Dyer said as there is some interest in looking at the ordinance, the Commission would be working with staff in the near future. For the Pughs' information, it could take at least a couple of months or more for the ordinance to be changed and adopted.

The Commission compliments the Pughs for their interest in the community and their integrity to do things right.

Unfinished/Old Business:

1. Lighting Standards – Bret Stoddard

The document previously came before the Commission for discussion on April 18, 2013.

Bret Stoddard, City Electrical Inspector, reviewed the Commercial Lighting Standards document with the proposed minor changes the Commission suggested at that meeting, which he compiled as per the Commission's direction. He did not receive any additional input.

Staff is asking for a yay or nay on the changes.

It was clarified that the section on Residential Lighting Standards will be moved out of this document and will be put into the Subdivision Ordinance document, which is being worked on currently by staff. That document will come before the Commission at another time.

The subject document before the Commission tonight addresses Commercial Lighting Standards.

Val Christensen clarified that the Subdivision Ordinance will eventually be put into the Development Code.

Chairman Dyer asked why Lighting would not just be a chapter in the code. Why tie residential lighting to a subdivision. There could be a section on residential lighting. Or, a Lighting section could address both residential and commercial to be applied across the board.

Val Christensen explained the City Engineer felt certain things are specifically looked at for a subdivision; rather than having to go to a different section of the code for information, the issue of residential lighting would be in the Subdivision Ordinance.

Melanie Davenport had three concerns. First, she did not see where bistro lighting (a string of outdoor lights kept up all year) is addressed. Second, regarding security lighting – the phrase “reasonable increment of time” can mean different things. Why not sunrise to sunset? Third, under prohibited lighting: building mounted lights- “Luminaires may not be affixed to buildings for the purpose of lighting parking lots or sales display lot areas...” . Mrs. Davenport said there are many apartments in the PEZ zone overlay where lights mounted on buildings are the most reasonable thing to do.

It was clarified that existing building mounted lights are grandfathered in (presently existing non-conforming use).

Chairman Dyer clarified that building mounted lights are not as effective or efficient in covering an entire lot. A pole light is better. It gives a certain level of illumination with uniformity.

It is a valid point that building mounted lights could be used under the right circumstances.

Mrs. Davenport has seen such lighting in several smaller parking lots.

It was suggested that language could be added that states that building mounted lights are prohibited unless it is demonstrated that they are part of an overall system where such building mounted lights were contributory and do not violate uniformity, etc.

Under Prohibited Lighting, the document states that unshielded lighting for any purpose is prohibited.

A provision could be added saying bistro lights are permissible in commercial areas.

Val Christensen said bistro lights are more aesthetic (decorative) than for actual lighting.

Security lighting – “reasonable amount of time”: this could be addressed in residential and commercial.

Melanie Davenport said what she thinks is a reasonable amount of time may be different than what someone else thinks.

Motion sensor lights in residential and commercial were discussed.

Cory Sorensen said it should be left up to the businesses to decide what is best for their business. He feels the existing ordinance is sufficient. Every business is so different and unique.

Chuck Porter expressed, do we need to define everything for everyone? These are business decisions.

It was decided that under Vehicle Dealerships, take out “All bright non-security lighting shall be turned off after 11:00 pm.”

Richie Webb thought there should not be a section that specifically addresses service stations and vehicle dealerships.

Chairman Dyer suggested a phrase that could be added – “Encouragement is given toward conservation of energy and for safety”.

Dan Hanna motioned to recommend these modifications to the City Council for their consideration in changing the lighting standards in the Development Code, to include what the Commission discussed tonight. **Jedd Walker** seconded the motion.

None opposed. **Motion carried.**

Val Christensen stated he has been working on cleaning up the Development Code and will soon be ready to bring the issue back before the Commission. At that time, he will include the proposed changes to the Lighting ordinance that were made tonight, so that all changes can move forward in one time.

Report on Projects: None

Tabled Requests: None

Building Permit Application Report: None

Heads Up:

June 20th – P&Z Meeting Cancelled.

The Commission made the decision to cancel the June 20, 2013 meeting. There are no agenda items for hearing or action. After considering the possibility of that date being a work meeting for the Development Code changes to be discussed, it was suggested by Jedd Walker and decided by the Commission that instead the Commissioners would focus their attention on Envision Madison.

Envision Madison has their kick-off event on June 13th and their workshops on June 18th, 19th, and 20th. The Commissioners were encouraged to each invite a number of people to attend.

July 4th – Independence Day Holiday – P&Z Meeting Cancelled

The next P&Z Commission meeting will be on July 18th.

Chairman Dyer adjourned the meeting at 9:40 pm.