

Minutes of the Hearing Officer meeting held on Wednesday, January 13, 2021 at 12:30 p.m. electronically without an anchor location in accordance with Utah Code 52-4-207(4), due to infectious disease COVID-19 Novel Coronavirus. The Hearing Officer has determined that conducting a meeting with an anchor location presents substantial risk to the health and safety of those who may be present at the anchor location because physical distancing measures may be difficult to maintain.

Present: Scott Finlinson, Hearing Officer  
Jared Hall, Community and Economic Development Division Supervisor  
Zac Smallwood, Associate Planner  
Bryant Farnsworth, Deputy City Attorney  
Ryan Bierman, Applicant  
Nick Bierman, Applicant

Scott Finlinson opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures.

### CONFLICT OF INTEREST

Mr. Finlinson stated that he has no conflicts of interest for this agenda.

### CASE #1576 – B&B Motors – 4335 South Main Street – Project #21-005

Ryan and Nick Bierman were online to represent this request. Jared Hall reviewed the location and request for an appeal of a specific requirement for the installation of sidewalk improvements imposed by the Planning Commission as a condition of approval for the appellant's land use application (B&B Auto), reviewed at a public meeting on December 3, 2020.

Mr. Hall stated the appealed condition is :

1. Installation of curb, gutter and sidewalk along the Edison Avenue property frontage are required.

The application is appealing the condition of the Planning Commission decision to include a requirement for the installation of sidewalk improvements along the property frontage of Edison Avenue. The appellant's written statement includes four points of contention as a basis for the appeal. Mr. Hall reviewed the appeal.

- 1) *City standard requires the addition of sidewalk with an improvement value of \$5,000 or greater. Our total improvements will not exceed \$1,000 because we are a new business with only 2 employees.*

The original condition of approval (condition #1) stated:

*"If building and site improvement costs exceed \$5,000, installation of curb, gutter and sidewalk along the Edison Avenue property frontage are required."*

The appellant notes that this recommended condition came from the City Engineer, and that it is a standard of the Engineering Division which does not change. During the course of the meeting, Commissioner Travis Nay identified

this first condition, and stated that in his opinion, the sidewalk improvements should be required. After some discussion on the issue, the motion to approve included a modification of the first condition to read:

*“Installation of curb, gutter and sidewalk along the Edison Avenue property frontage are required.”*

The Planning Commission’s vote was 5 to 1 in favor of the approval, including the modified language for the first condition.

While the Engineering Division’s standard to require the installation of sidewalk improvements is only when a project’s building or site improvements will exceed \$5,000, the Planning Commission’s discussion and findings revolved not around the standard inclusion from the Engineering Division, but rather the application of the standards of Utah State Code which considers conditional uses to be uses which are otherwise permitted, but which may require the application of specific conditions to mitigate the “reasonably anticipated detrimental effects of the proposed use” to surrounding properties.

The commissioners specifically pointed to the large number of additional residential units that have recently been added to the area, and how all the sidewalk improvements in the area, and including on Edison Avenue, have been installed recently with the exception of this frontage of about eighty-eight feet. The commissioners considered how the larger area was intentionally becoming more pedestrian-oriented, and how those pedestrians need the facilities to get from the area to State Street and other locations as the basis for the requirement.

- 2) *The building may be redeveloped in the near future (see excerpt from Planning Commission Meeting November 5<sup>th</sup>, 2020 page 2.)*
- 3) *Even with the absence of sidewalk, pedestrians are still able to easily walk past without entering the roadway (see excerpt from Planning Commission Meeting November 5<sup>th</sup>, 2020 page 2.)*
- 4) *Previous precedent in Murray City has allowed CUP application approval without the addition of sidewalk (see excerpt from Planning Commission Meeting November 5<sup>th</sup>, 2020 page 2.)*

Note that the above three statements all involve the Planning Commission’s review of a different application for Conditional Use Permit on November 5, 2020. That particular meeting and item was mentioned by some of the commissioner’s during the discussion of the appellant’s application as a comparison (see page 19, lines 20 – 22, page 20, lines 19 – 25, and page 21, lines 1 – 13 of the audio transcription, Attachment A.) The excerpt cited by the appellant is taken from the meeting minutes of November 5, 2020. It is a summary of statements made by staff during the presentation, and reads:

*“Staff is recommending that the applicant be allowed to forego the landscaping*

*and public improvement requirements on this site because it is anticipated that this site will be redeveloped in the near future. The Murray School District building located across the street, has the street improvements that staff believe are adequate and provide a safe walking environment for pedestrians walking along Vine Street.”*

During the commissioner’s discussion of the application for B&B Motors, Commissioners Lisa Milkavich and Maren Patterson expressed concern that requiring the public improvements in the present case and not having required the addition of landscaping and public improvements in a previous case could be problematic because the cases were similar. Commissioner Ned Hacker commented that while the cases were similar, there were important distinctions. He noted that in the previous case, while the full improvements were not present, pedestrian activity was still possible, but that in the present case he observed that it was not possible to pass the subject property without walking in the road (See page 24, line 18 – 25, and page 25, line 1 – 10 of the audio transcription, Attachment A.)

In summary of the appellant’s statements 2-4 and the comparisons made to the previous application, Staff responds with the following: The appellant incorrectly conflates the usual imposition of the City Engineer’s standard requirement (that the installation of missing improvements be required only when a project’s costs exceed \$5,000) with a precedent that must override any other consideration, requirement, or condition by staff or the commission members. Staff disagrees and finds that the Planning Commission was deliberate in their consideration of the requirement and followed State Code in applying a condition to mitigate the reasonably anticipated impact of a proposed use.

Mr. Hall reviewed the findings. Based on the review of the appellant’s narrative arguments and the record, staff finds the following:

- A. In the process of reviewing applications for conditional use, Utah State Code allows the Planning Commission to impose conditions in order to mitigate reasonably anticipated impacts of a proposed use.
- B. The Planning Commission identified concerns related to the continued impediment of pedestrian activity in the surrounding area and imposed the disputed condition with the intent to mitigate the concern.
- C. The Planning Commission considered the impact of the disputed condition and found that it was reasonable in relation to the property’s condition and to other requirements that were not imposed such as landscaping that would normally be required.

Mr. Hall stated staff recommendation based on the findings as stated and upon review and analysis of the appellant’s narrative argument and the record presented, Staff recommends denial of the appeal.

Mr. Finlinson asked the length of the property in question. Mr. Hall stated it is roughly 88 ft. Mr. Finlinson clarified that there is only asphalt. Ryan Bierman stated there is some pavement and a driveway between the foliage as well as some fencing.

Mr. Finlinson wanted to know if there was any other information the applicants would like to add. Mr. Hall responded that this meeting is de novo and is based on the record. Mr. Hall said it is just to review the record alone and the ruling on the appropriateness of their action. Mr. Bierman mentioned that one of the planning commissioners commented in the meeting that for Big Dog Stitch and Screen, one of the reasons they didn't require them to put in sidewalk is because pedestrians were still able to cross one end of the property to the other without going into the road. He said the condition is the same on this property where there is gravel, some concrete, no sidewalk per se but there is a passageway without having to go into Edison Avenue. Mr. Hall explained how Edison Ave connects and where it leads, it isn't a high traffic street, but Parris RV uses it a lot. Mr. Bierman wanted to emphasize that Parris RV drives a forklift in and out of their property about 50 times per day and there isn't much pedestrian traffic there because of that. Mr. Finlinson stated this is an interesting scenario. He commented that this is the first time he has had an appeal in 6 years of being a Hearing Officer. He said part of his review is to determine whether Planning Commission made a reasonable decision. Mr. Hall concurred.

Mr. Bierman reiterated some information from the meeting, saying Commissioner Milkavich completely agreed with the addition of the sidewalk but wondered about the numbers and what kind of burden this will put on the applicant and landowner. Mr. Bierman estimated the cost would be in excess of \$10,000. Additionally, when the commissioners changed the condition, there was a bit of confusion because Lisa Milkavich didn't know which way to go, but it still went to vote. Mr. Finlinson appreciated this information and he will look at the transcript as part of his review. He thanked the applicants and asked if they had anything else to add. Mr. Bierman added how similar this is to the other property, Big Dog Stitch and Screen and consistent with what the city has allowed in the past. Mr. Bierman stated he supports the \$5000 limit and added that they are a small business where he and his brother are the only employees. Nick Bierman referenced page 9 line 2 of the transcript where Commissioner Markham states that "it's a reasonable accommodation to require this of other property owners in this area and to not require it of this one doesn't seem fair". Mr. Bierman commented that have required sidewalk but haven't required sidewalk if the \$5000 wasn't met. Ryan Bierman clarified that all the buildings that were required to add sidewalks have been re-development projects. He also mentioned that this building is not the nicest building on the street and is 70 years old. The building is old, and it will eventually be redeveloped and most likely be sold to Parris RV. Mr. Finlinson said he takes all this under advisement and renders a decision in a week. Mr. Hall added that the applicant will be called once there is a decision.

There was no other business.

The meeting was adjourned at 1:12 p.m.

A handwritten signature in black ink, appearing to read "Jared Hall", is written over a horizontal line.

Jared Hall, Manager

Community Development Planning Division