

Minutes of the Hearing Officer meeting held on Wednesday, May 11, 2022, at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Scott Finlinson – Hearing Officer
Briant Farnsworth – Deputy City Attorney
Zac Smallwood – Senior Planner
Seth Rios – Planner I
Christian Michaelson, Galloway & Company
Citizens: Riley Welch, Robin Kirkham, Nate Kirkham, Sterling Hanson, Mark Noble, Diane Dykman, Jim Harland, Kipp Simms

BUSINESS ITEM

Scott Finlinson noted that he is a resident of Murray City and grew up here as well, therefore he is very aware of both locations being discussed today. He does not have any conflicts with any of the cases being discussed today.

CASE # 1589 – Nathan Kirkham – 751 East Silver Shadows Drive - Project #22-066

Seth Rios introduced this item. Nathan and Robin Kirkham are seeking expansion of a nonconforming unit at the address 751 East Silver Shadows Drive. He showed an aerial view of the neighborhood in Silver Shadows. This is zoned R-1.8, surrounded by a bunch of single-family homes in an older neighborhood built in the early 1960s. He presented pictures where the red line shows where they are seeking to expand their house, and the black dotted lines around the house show the current R-1.8 setback regulations. The house, as it currently exists, does not meet those regulations; however, the proposal will not expand anymore into the nonconforming setback and continues along the same line. He showed a picture of the home now, as well as what it will look like if this is approved. In the Land Use Ordinance, they look for two things when expanding a nonconforming use, the first one is that it will be in harmony with the purpose of the land use ordinance; staff feels like this is in harmony with the three things listed. The second thing they look for is that it doesn't put an unreasonable burden the neighbors or anyone close by; staff does not have any concerns, they don't believe it will be a problem. They had two neighbors reach out to staff as well, who told them they were in support of this expansion. Staff is recommending approval, subject to the conditions listed.

Scott Finlinson noted that they were already nonconforming and asked if this was built prior to the current setbacks.

Mr. Rios said yes, the setbacks were different when this was built. Any home built before 1987 is allowed to have a 15-foot setback, which this is currently not in compliance with either; however, the addition doesn't add on to that at all.

Mr. Finlinson invited the property owner to come up and speak.

Nathan Kirkham – Applicant/Designer

Mr. Kirkham said they are excited for the design and think it will be a valuable addition to the neighborhood. They like to think that this is improving and elevating the neighborhood.

Mr. Finlinson said he has no additional questions; everything looks good to him. He noted that he will take this and review it, by next Wednesday the decision will be posted at the Public Works Building.

Briant Farnsworth noted that when the results are received by staff, they typically email them to the applicants as well.

APPEALS

CASES #1585, 1586, 1587, 1588 – Appeal to a Conditional Use Permit for the Kum & Go Convenience Store at 6029 South 900 East – Projects #22-059, 22-068, 22-069, 22-070a

Zach Smallwood introduced these appeals for actions by the planning commission for the Kum & Go Gas Station at 6029 South 900 East, located on the corner of Vine Street and 900 East. It is in the CN Zone, which is neighborhood commercial, which does allow for gas stations and convenience stores as part of a conditional use.

Briant Farnsworth is the Deputy City Attorney, he is representing the planning commission and their decision; he does not represent the applicant or their project. He submitted a brief that was included in the Hearing Officer Meeting packet. An appeal of a land use decision is limited in scope. A review by the hearing officer is a review of the factual matters on the record to determine whether there is substantial evidence for each finding of fact that the planning commission made. There is a number of issues that are not within the scope of the appeal, those include:

- Any evidence that was not presented prior to, or at the planning commission meeting.
- Whether concerns were resolved by the planning commission to the satisfaction of the public.
- What the appellants think the law should be.
- Whether there was evidence to support an alternative conclusion.

All of those are not considerations as to whether there was substantial evidence to support that decision by the planning commission. The state code and city ordinances require that there be a written appeal, which specifically alleges an error in the order or decision of the planning commission as the land use authority (defined otherwise as the planning commission for this purpose), in their administration or interpretation of a land use ordinance. There was no allegation of an actual error in any of the four written appeals that were given, rather it appeared to the city that these were complaints, certainly concerns, definitely that people would have with a project like this. However, formally there was no allegation of error. As such, the city believes that the appeals should be denied. Unlike a small claims court where the rules of evidence are a little bit loosened because of the parties involved, state law has made land use appeals a strict process with a strict standard of review that has to be met. It is similar to traffic rules, rather than small claims court you are expected to know the traffic laws and follow them, those offenses are strict liability offenses regardless of whether you knew them or not. These land use appeals are the same, you have to do the due diligence to know what can be appealed and how the appeal is going forth; the city does not believe that happened in this case. Even if there were specific written allegations of error, the city's position is that there was substantial evidence in the record for each of the findings of fact. That substantial evidence sounds like a high standard, but in reality it's simply the minimum level that would be sufficient to convince a reasonable person to

support a conclusion. That would be the case whether someone else could come to a different conclusion, that is not the issue. The issue is whether the evidence shows enough to say that a planning commission could have made that decision based on that evidence. They do not think any of the appellants can show that there is not that substantial evidence on the record. In the alternative, appellants could argue that the planning commission's decision was illegal. However, in this case they can't do so as the record shows that the decision was consistent with the plain language of the state statutes, city ordinances, and with the intent of land use law which is that as much as possible the state seeks to allow landowners to do with their property what they would like within the constraints of zoning regulations. The planning commission here made findings of fact which included 16 conditions to help mitigate the potential detrimental effects that this type of a use would bring.

Mr. Finlinson has no questions. He assumed the appellants were present and he proceeded to identify those who were appealing. He wants to make sure everyone has a chance to share their feelings, and the opportunity to present their thoughts and what they want to say. He wanted to make it clear that he is not the planning commission, that is not his authority. He is not here today to second-guess them or try to impose his judgment and decision over them, whether he agrees with them or not is irrelevant. His job is pretty limited today, to decide based on the information presented at the hearing, whether or not the planning commission's decision was arbitrary, capricious or illegal; that is a fairly narrow box that he needs to work within. He also has to say that because this is a review of the decision that was already done, he is limited to review of what happened at that planning commission meeting; that means what is on the record including discussions, information presented is what he is required to look at. Any new information presented today has to be declined, as that is not the role he is here to play.

Sterling Hanson – Appellant

Sterling Hanson disagrees with some of the things that were said as a matter of fact, and they are not. First of all, the decision from the planning commission seemed to those in his group to have already been decided before the meeting. It seems odd to him that they would come to a meeting like that where everything was already down the road and decided. He doesn't agree with that process and probably can't do anything about it, but he thinks in the future it would be nice to be able to say things sooner. There are allegations of error. First of all, they haven't done an EPA study. The study done was by Kum & Go and they said everything is fine, there is no environmental impact. That's their opinion and he asked for an official EPA study by the government, and nothing was done after that as far as he knows; he doesn't trust their study. They actually have a neighbor who owned a gas station and he talked about the negative consequences of gas leakage and fumes, and how in his opinion as a previous gas station owner, these things shouldn't be allowed so close to a residential area. Again, that's not a law that is in effect in Murray. In many cities that is a law, that you can't have a gas station within 500 feet of a residential area, and that would affect all their homes. He would like that law changed, but that is beyond his control right now. He thinks there was an error made in the traffic study, because that intersection on Vine and 900 East is extremely busy, there are a lot of accidents there with one just the other day. Their traffic experts said it would be okay to turn left out of Kum & Go on to Vine Street, but there is no room to turn left; that would just create more potential traffic accidents and he disagrees and thinks there was an error in that study. He thinks it was just pushed through quickly and he doesn't know why. Other things they brought up in the

meeting were odor, sound, traffic, etc. Also, he knows this meeting hinges on what's legal and right. That was brought up, and that's fine, but what about the prudent manner rule and doing the right thing. Why couldn't Murray City mention other places they could build to Kum & Go, they haven't even paid for anything yet. Why couldn't they find a place that wasn't right next to a residential area. If this was your house, you'd probably feel the same way, and that's the prudent manner rule; he thinks that should also have some weight other than just the legality of the issue.

Diane Dykman – Appellant

Thanked them for listening to their concerns as a neighborhood. First of all, she wanted to make a comment about the notice received. She doesn't know if others impacted have this concern, but she doesn't believe there was enough time to really understand. She felt like she was blindsided and wasn't able to be at the first hearing where the planning commission made the decision. Then, their ability to appeal was when she came up with all the reasons why this development is a concern and none of that could be put into the record because the planning commission had made the decision. As far as the whole process and ability of residents to do what is required, it all needs to be clearly explained or written so those affected by the decisions understand when they go into that planning commission meeting and the decision is made, it's a done deal unless you feel they've missed something. She thinks the planning commission made a grave error, for many of the issues mentioned, but primarily the issue brought up by Yun Hahn. He is a neighbor in their subdivision who discussed that the gas vapors were always a smell the neighbors of his gas station were always complaining about. It wasn't the leaking tanks; it was the vapors being released when people fill up. That was a question that was brought up, but she doesn't feel that problem was really delved into regarding the health effects to their little community. These vapors are primarily Benzene, which is a cancer-causing chemical that will be prevalent in their area. Since Murray doesn't have zoning for gas stations to be 500 feet or further, it allows for 300 feet, there are studies that show the Benzene primarily is cancer causing. She knows none of this can be submitted, but she still continued discussing it. The longer you're in an area, you are exposed to that vapor and she feels like they made the capricious decision that there were no health effects to the community. She believes, and studies show, there are in fact health effects. They are going to be smelling the gas fumes 24/7 and she won't be surprised if down the road they have cancer, especially in children. She has other points but they were all brought up in her amended appeal, which cannot be put into the record. Yun Hahn had discussed that the vapors were a constant problem with his station that was taken down, and all the area around his gas station was contaminated. She feels that in order for a reasonable, competent decision to be made on whether a gas station can be placed in this area, an EPA study should be done by someone other than Murray City; it should be an independent study where they can feel comfortable knowing this has been discussed, they know the issues, but the EPA says this will be safe for your community.

Brittany Killian – Appellant

Brittany Killian was absent from the hearing.

Mark Noble – Appellant

This is the first time he has spoken on this; his wife spoke last time. Pretty much all of the concerns he has are the same as what has been said already. The first thing he thought when this was coming in was home values; he knows that's not a big concern for anyone unless they are in the neighborhood. Next, he thought about the creek right there. He knows they said they had done studies about that, saying that there is a cement barrier down in there and if gas runs down there it won't be a big deal and won't go into the ground; he disagrees with that. Another big concern he has is just the criminal activity that it could bring to the area. They already have a 7-11 across the street, he doesn't know why they need another gas station so close; there is one down on 1300 just down the road and then another by Cottonwood High School. He has concerns about the criminal activity and just how close it will be to their neighborhood. He is surprised Brittany Killian isn't here to speak. The way her house is situated, and having kids right there, she already said she has had her kids accosted numerous times since living there. Also, Mr. Hanson mentioned something that surprisingly is not on the books, that there should be 500 feet between gas stations and property; it blows his mind that it's allowed.

Mr. Finlinson noted that the nature of this meeting is different; it is limited to the city and the appellants. As such, they will not open this meeting to public comments as is done during the planning commission meetings. He asked Mr. Farnsworth if he had anything to add based on comments that were heard.

Mr. Farnsworth asked if the applicant, Kum & Go, was here.

Christian Michaelson – with Galloway, representing Kum & Go

Mr. Michaelson is representing Kum & Go with this project. It is good to hear what the neighbors have had to say. He thinks their approach as an engineering firm is to come in and look at the applicable laws and statutes, rules and regulations, and do their very best to not only comply with those but bring a product to the neighborhood that they feel will be beneficial. He knows different people have different opinions on what is beneficial and what's not, but he has visited the site many times while doing the engineering and entitlement work on the site and he thinks this will bring something to the neighborhood that hasn't been there before; this includes healthier choices of food and lighting the site better than it has been in the past. He also thinks it's important to point out to everyone, as they did during the planning commission meeting, that Kum & Go isn't a mom & pop store. They take the health & safety of not just their employees and patrons seriously, but also the general public seriously. They have a first-rate program for maintaining all of their fueling systems, including a stage 1 vapor recovery system which complies with all the EPA regulations and minimizes smells, odors and leaks. They want to come in and be a part of the community, give back to the community; they do give 10% of their profits to local community charitable organizations. Many of the arguments that have been made are fine, and that's how people feel, and he wants to be respectful of that, but there are good things as well that come with this project. He feels they have tried to maximize those and minimize the negative aspects of it, and to comply with all the codes and regulations. They are still excited to be part of the community, bring a good product here and do a good job with maintaining it in the future as well.

Mr. Finlinson made sure that everyone had a chance to speak and explained the process from this point. He will take everything under advisement, review the materials that are on the record. He will consider and reflect on the thoughts that have been shared here today and then his

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decision will be rendered by next week. That will be emailed out, as well as available at the Public Works Building.

Meeting was adjourned at 1:04 p.m.



Jared Hall, Director

Community Development Planning Division