

**MINUTES OF THE CITY OF HOLLADAY
PLANNING COMMISSION MEETING**

Tuesday, October 10, 2023

6:00 p.m.

City Council Chambers

4580 South 2300 East

Holladay, Utah

ATTENDANCE:

Planning Commission Members:

Dennis Roach, Chair

Ginger Vilchinsky

Paul Cunningham

Angela Gong

City Staff:

Carrie Marsh, City Planner

Brad Christopherson, Legal Counsel

WORK SESSION

Chair Dennis Roach called the Work Session to order at approximately 5:45 p.m. The agenda items were reviewed and discussed. Chair Roach reported that there were two Public Hearing Items on the agenda, including a Conditional Use Permit and a PUD Plat Amendment. City Planner, Carrie Marsh, shared information about the Regular Meeting agenda items. The first was a Conditional Use Permit for property located at 5176 Cottonwood Lane. There would be a public hearing for a Conditional Use Permit for an Accessory Building Footprint Size. She explained that the Holladay City Code allows for guesthouses on properties that are one-half acre or larger. The subject property is 1.22 acres in size. It would be eligible for a permitted guesthouse of 2,000 square feet but the proposed guesthouse footprint size was 3,016 square feet. The footprint included the front porch and back patio. They were measured and included in the square footage in the Staff Report. Since that was larger than the permitted size, it was a Conditional Use. The Planning Commission could determine whether conditions were necessary.

Chair Roach asked about the square footage without the front porch and back patio being considered. He asked if it was still in excess of the permitted 2,000 square feet. This was confirmed. Ms. Marsh reported that the interior living space is 2,100 square feet and the garage is 622 square feet. Commissioner Gong questioned whether it is standard to include the covered porches and patios as part of the square footage. Ms. Marsh confirmed that was the case. She noted that there is an updated Tree Removal Plan that could be discussed with the applicant.

The second public hearing was a revision to The Woods Planned Unit Development (“PUD”). It involved modifying the Conditional Use language to expand the building area identified in the PUD. It would then be recorded onto the plat. Ms. Marsh reported that PUDs are Conditional Uses and building areas must be designated on the plat.

Commissioner Cunningham asked about the role of the Homeowners Association (“HOA”) in this application. He understood the Commission could not get involved with design issues but

wondered if the HOA has any standing to object to the plat amendment. Ms. Marsh explained that HOAs cannot override the City Code. Accessory buildings are an allowed land use and the lot area is large enough to allow an accessory building. The request was to amend the plat to identify that space within the PUD. No buildable area would be placed within public utility easements, which was standard for any lot as structures could not be built there.

Commissioner Gong referenced the letter from the owner that was submitted. It states that the accessory unit would be built and then the current home would be vacated and demolished. She wondered if there would eventually be two homes on the property again or if the intention was to live in the accessory building long-term. Ms. Marsh explained that the proposal was to have an Accessory Dwelling Unit (“ADU”). A dwelling unit would be created within that accessory structure and the owners would live there. A new home would then be built. There would not be two separate single-family dwellings but a main house and an ADU. That is a fairly common scenario where the ADU is constructed and lived in temporarily.

Commissioner Gong asked about the easement. Ms. Marsh identified the area down the middle of Lot 1. There is a ditch across the middle of the lot but it is not a boundary. There is an easement there and it is not possible to build within the irrigation ditch easement. She showed the Commission where the ADU was proposed to be located. All setback standards and height restrictions for accessory buildings would need to be met. Chair Roach believed the applicants were looking for an amendment to the existing PUD to build the accessory structure. This was confirmed. Commissioner Cunningham asked about the trailers that are currently on the property. Ms. Marsh reported that there are two shipping containers housing construction materials and equipment. They are temporary uses that are incidental to the construction.

Commissioner Gong wondered if approving the PUD Plat Amendment would automatically approve future uses. Ms. Marsh denied this. What the Commission was considering was a change to the conditions of the PUD, specifically the buildable area identified on the plat. The approval would create a building envelope where an accessory structure could be built in the future.

City Attorney, Brad Christopherson, noted that there were only four members of the Planning Commission present. For there to be a successful vote, the vote must be unanimous. The majority of the Planning Commission needs to vote in favor of an item, not just the majority of the Commissioners present.

CONVENE REGULAR MEETING – Public Welcome and Opening Statement by Commission Chair.

Chair Roach called the Regular Meeting to order at approximately 6:00 p.m. and introduced the Commissioners. The Commission Statement was read for the benefit of those present.

PUBLIC HEARING

- 1. Conditional Use Permit – Accessory Building Footprint Size – 5176 Cottonwood Lane (R-1-43). Review and Consideration of a Request by Applicant, Mike Spainhower, for a Conditional Permit Allowing Construction of a Detached Guesthouse with a Footprint Size Larger than Normally Permitted. Item Reviewed as an**

**Administrative Application as per Provisions stated in Holladay Ordinance
§13.14.030 & 13.08.040 13.14.030 & 13.08.040. File #23-2-10.**

Ms. Marsh presented the Staff Report and stated that the applicant is requesting permission to construct a guesthouse that exceeds the maximum allowed footprint size of 2,000 square feet. The property is 1.22 acres in size. The proposed guesthouse footprint is 3,016 square feet, which includes the living area and garage as well as a covered porch and patio. Ms. Marsh explained that Conditions of Approval could be based on the size of the property, the Site Plan, proposed tree removal, etc. The City Engineer looked at the site and found that the location of the driveway and setbacks were appropriate for an accessory building. She noted that the minimum setback for an accessory building is 13 feet but 15-foot setbacks were proposed with this particular application.

The applicant, Mike Spainhower was present representing property owner, Bruce Hebdon. He reported that the livable space in the guesthouse will be 2,100 square feet but with the garage, porch, and back patio, the total was 3,016 square feet. As a result, there would need to be a Conditional Use Permit to allow the size. Commissioner Cunningham asked about the configuration of the site and if there were concerns regarding addressing. Ms. Marsh explained that whenever there is an ADU, it is addressed the same as the main living unit but with the addition of Unit B. She noted that there were no current concerns with addressing.

Chair Roach inquired about the trees and the canopy sustainability. He noticed during an earlier site visit that the main tree proposed for removal along the driveway is a large cottonwood. It appeared to still be in good health. He wondered if there was a reason the ADU could not be moved to the northeast corner of the property. Mr. Spainhower explained that there had been discussions about that. The primary reason for the location of the guesthouse was so the view from the primary residence still includes the mountains. The guesthouse was pushed south so the view corridor would be maintained. It was located away from most of the traffic as well. The proposed layout would hide the ADU in that corner a bit more, which he felt made sense. Chair Roach asked if there was a plan to replace the lost trees. Mr. Spainhower reported that new trees were proposed. It was estimated that five trees would need to be removed.

Chair Roach opened the public hearing. There were no comments. The public hearing was closed.

Commissioner Cunningham had concerns about the driveway and the tree canopy. Commissioner Vilchinsky did not believe there was anything that would prevent the Planning Commission from moving forward with the Conditional Use Permit. Commissioner Gong questioned why the guesthouse was proposed to be larger than the maximum and if there was a reason the structure could not stay within the 2,000 square feet that is permitted. Ms. Marsh explained that the idea behind the Conditions of Approval was to reduce the impact on neighboring properties. With this particular proposal, the setbacks had already been increased beyond what is required. The Commission could take that into account and discuss whether any other Conditions of Approval might reasonably be imposed.

Chair Roach expressed concerns with the removal of the large cottonwood tree. He understood why the property owner wanted to maintain the mountain views and wanted to understand why the location could not be shifted 10 feet to the west. The guesthouse could face the north and the

driveway could shoot out of the existing gate that had an egress to the road there. At the same time, he recognized that trees have a lifespan and when a lot of construction takes place around them, the long-term viability of larger trees is impacted. He was not sure it was worth putting constraints on the applicant to protect trees that might not be there in five years. As long as there is adherence to the Tree Canopy Ordinance and the trees planted eventually replace the tree canopy, he felt it made sense to approve the request.

Commissioner Cunningham moved to APPROVE the application for a detached guesthouse sized at 3,016 square feet, located at 5176 Cottonwood Lane, subject to the following:

Findings:

1. *The desired structure meets the conditions included in 13.08.040.*
2. *The proposed building will meet standards and regulations for use as an external dwelling unit.*
3. *The proposed guesthouse location does not violate setback or lot coverage standards for the property.*
4. *Staff has not received objections or concerns (written or verbally expressed) to date concerning the CUP request.*

Conditions:

1. *The owner/applicant shall obtain a Building Permit for the proposed guesthouse.*
2. *The owner/applicant will comply with all engineering, landscaping, geotechnical report, and utility availability letter submission requirements before the issuance of a Building Permit.*

Commissioner Vilchinsky seconded the motion. Vote on Motion: Commissioner Gong-Aye; Commissioner Vilchinsky-Aye; Commissioner Cunningham-Aye; Chair Roach-Aye. The motion passed unanimously.

2. **The Woods” PUD – Plat Amendment – 6235 South 2710 East (R-1-43). Review and Consideration of an Application by the Property Owner, Curtis Calder, to Amend the Conditional Restriction on Lot 1 of the “The Woods” PUD. Item Reviewed as an Administrative Action for Permitted Uses in Accordance with Zone and Subdivision Standards Required by Holladay Ord §13.10. File #04-1-20-Z.**

Ms. Marsh presented the Staff Report and stated that the application was submitted by the property owner and was to amend the Conditions of Approval for a PUD that identify the building area associated with Lot 1. The Woods PUD is a four-lot subdivision that was created in 2005. Lot 1 is unique because a drainage easement bisects the lot. On the original plat and in the conditions of the original PUD, the building area did not include an area on one side of the drainage easement. Accessory buildings are a permitted right in the R-1-43 Zone. Lot 1 was created with a deed restriction to prevent further subdivision and the creation of a new building lot for another dwelling

unit. The amendment to the PUD would extend the building area to allow for an accessory building there.

An HOA exists within the development. Ms. Marsh reported that there are specific regulations within their Covenants, Conditions, and Restrictions (“CC&Rs”). It was the personal responsibility of the property owner to maintain the legal restrictions but the HOA does not control permitted land use rights, which includes an accessory building right. There was a similar application in 2020 for Lot 4 where the building area for an accessory building on the parcel was identified.

The applicant, Curtis Calder, reported that there was a desire to have a detached unit as a guesthouse and garage. That had always been the plan for the property and there had been clear communication with all members of the HOA. Approval was granted by the Architectural Review Committee and all processes had been followed.

Chair Roach believed the applicant was seeking an amendment within their legal rights, which would supersede anything the HOA has in place. Mr. Calder clarified that the HOA will not approve the request but the Architectural Review Committee would. That committee had already approved the amendment. He noted that the comments in the two attached emails from members of the HOA contained some misrepresentations. It would be possible to review them, if desired but the City allows the use, and the HOA cannot legally prohibit it.

Chair Roach opened the public hearing.

Robert Schafer gave his address as 6325 South 2710 East, which was Lot 3 in The Woods PUD, and stated that he is The Woods HOA President. Mr. Schafer was pleased that the Calder Family had started their plans for construction as it had been a long time coming but the members of the HOA were opposed to the proposed restructuring of the lot. The location of the planned building would destroy the ambiance of the HOA. The 4,200-square-foot building would come within 15 feet of the entry to the HOA. As a result, the first thing those entering the project would see would be a blank wall. The proposal would impact the overall look and feel of the area. Mr. Schafer explained that a request was made to reduce the size of the building or relocate the building so that it would fit better within the HOA. He hoped the applicant would think of a different solution because the proposal would impact the area.

Steve Luczak gave his address as 2185 East 3085 South in Millcreek. He was with Kodiak America Homes and had been involved in the development. It began in 2005 and it had been a long process to get the four lots built out. When the work started, approximately 40 feet of the frontage of Lot 1 was given, which reduced it from almost a two-acre lot to a 1.6-acre lot. There was also an easement that essentially split the property in half. The plan was always to add a guesthouse on Lot 1. All of the utilities were stubbed in for Lot 1, which included water, sewer, and electrical. When the engineer prepared the final drafting, part of the Lot 1 information was left blank and did not show the guesthouse on the other side. It did not state that the lot is not buildable but it did not show anything there. The intention was to amend that. All four lots in the HOA can have a guesthouse or accessory building due to the size of the lots. The HOA language states that an

accessory dwelling is permitted, which had been done on Lot 4. Other issues were to be discussed during the planning phase but the amendment was needed first. He noted that the back access into the subdivision is owned. Once all of the building there is complete it will be turned over to the HOA so there will be two potential access points. Mr. Luczak understood the concerns expressed about the building location but assured those present that it would be adequately hidden by the trees.

There were no further questions. The public hearing was closed.

Commissioner Cunningham pointed out that regardless of the position of the HOA, the property owner has a certain right. Mr. Christopherson pointed out that something that is often mentioned during Planning Commission Meetings is the right to a view or certain appearances on a neighboring property. He clarified that those are not rights recognized in the State of Utah. There are places in other states where it is possible to purchase viewsheds but in Utah, that right is not recognized. If someone lives in an HOA that has design restrictions, it is up to the HOA to enforce those. He was not aware of any City design standards that apply in this particular situation. The issue would be discussed later in the process. Currently, the Commission was looking at the building envelope and buildable area.

Commissioner Gong asked if changing the building envelope would impact water quality. Ms. Marsh explained that those types of issues are looked at with the City Engineer. There are Water Management or Irrigation Agreements whenever a building is proposed within a certain distance of an irrigation area. Those plans are reviewed with the irrigation or ditch management company and need to be signed off on. She clarified that the process would occur at a later phase. The Commission was only considering the total buildable area now.

Chair Roach reopened the public hearing to allow an additional comment.

Mr. Schafer explained that the location of the building was of concern to the HOA. He noted that it is close to the road. There could be discussions about the design itself at a later date but it was the proposed location that bothered everyone on the HOA.

There were no further comments. Chair Roach closed the public hearing.

Chair Roach noted that based on the background information received and the City Staff updates, the lot was intended to have a building footprint there. He understood the concerns expressed about aesthetics but stated that the PUD was originally written with setbacks in mind. That means the distance from the roads had been taken into consideration. This decision would simply amend the original agreement to make sure the footprint is allowed.

Commissioner Vilchinsky moved to APPROVE the Amended Plat for “The Woods Subdivision Amendment #2,” a residential subdivision in the R-1-43 Zone, upon finding that:

- 1. All properties considered part of this application and plat amendment currently comply with the R-1-43 Zone.***

2. *No new property/lots or right-of-way will be created by the amendment.*
3. *The area is not considered open space within the PUD.*
4. *The buildable area for an accessory building is located outside of all utility and common area easements.*

Commissioner Cunningham seconded the motion. Vote on Motion: Commissioner Cunningham-Aye; Commissioner Vilchinsky-Aye; Commissioner Gong-Aye; Chair Roach-Aye. The motion passed unanimously.

ADJOURN

Chair Roach moved to ADJOURN. Commissioner Vilchinsky seconded the motion. The motion passed with the unanimous consent of the Commission.

The Planning Commission Meeting adjourned at approximately 6:34 p.m.

I hereby certify that the foregoing represents a true, accurate, and complete record of the City of Holladay Planning Commission Meeting held Tuesday, October 10, 2023.

Teri Forbes

Teri Forbes
T Forbes Group
Minutes Secretary

Minutes Approved: _December 5, 2023