



JAMES SORENSEN COMMUNITY DEVELOPMENT DIRECTOR

MONICA ZOLTANSKI MAYOR

SHANE E. PACE CHIEF ADMINISTRATIVE OFFICER

Staff Report Memorandum
May 23, 2024

To: Board of Adjustment
From: Community Development Department
Subject: Appeal to Review Alleged Error of the Planning Commission Interpretation of the Term "Mixed Use Development" 10165 S. 1300 E. (Community #17, Willow Canyon)

BOA041 12024-006746
CN Zone
Approx. 6.2 Acres

Public Meeting Notice: This item has been noticed to property owners within 500 feet of the subject area, posted on public websites and at public locations.

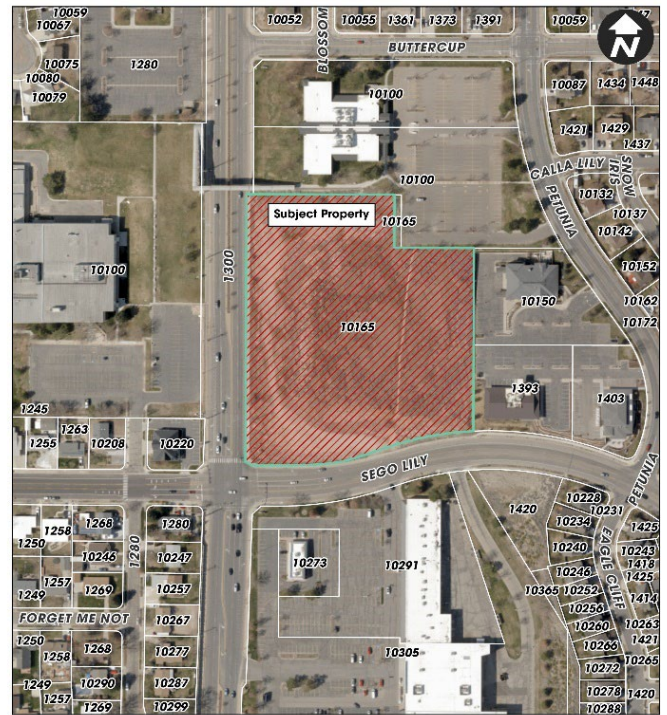
Request

The appellant, Wade Budge of Snell & Wilmer, LLP (representing the property owner Magna Investment & Development, LTD), has requested the review of an alleged error in the Planning Commission's decision on the interpretation of the term "Mixed Use Development" as shown in the Appellant's Application Materials (see the attached Exhibit "A").

Background

Sandy Community Development Department received a conditional use permit application for a mixed use development land use in the Neighborhood Commercial (CN) zone district. The CN zone generally only allows commercial uses and does not allow for residential uses.

After reviewing the application, staff had concerns that the proposed development did not meet the definitional standard of "mixed use development" as outlined in the Sandy City Land Development Code (LDC). After multiple conversations with the applicant, staff continued to have concerns that the proposal was not a mixed use development.



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Alleged Error Appeal
10165 South 1300 East

Sandy City, UT
Community Development Department

“mixed use development,” in accordance with the interpretive authority granted to the Planning Commission under [Section 21-1-6](#) of the LDC, prior to proceeding with review of the conditional use permit application.

The request for an interpretation was originally scheduled for determination by the Planning Commission on [April 20, 2023](#). That meeting was cancelled at the applicant’s request. The applicant then submitted a request for an [advisory opinion](#) from the [Office of the Property Rights Ombudsman](#) (OPRO). It was later rescheduled for a public meeting at the request of the applicant for [August 3, 2023](#). The Planning Commission did not come to a conclusive decision on the question but did table the item to allow the applicant to work with surrounding property owners to further develop their plan. As part of that effort, a neighborhood meeting was held on [August 9, 2023](#) [passcode: w9W0yp!6], to present their application and receive feedback from the neighborhood. A work session was held with the Planning Commission on [October 5, 2023](#), to review the proposed revisions that the applicant had made to their request.

On December 28, 2023, the OPRO released their advisory opinion on the matter (see Exhibit A pg. 297-304 for Advisory Opinion of OPRO). Staff provided a response and analysis of this letter in our [Supplemental Report](#) provided to the Planning Commission during the [March 7, 2024 meeting](#). As stated in the OPRO advisory opinion, it is a non-binding opinion that does not constitute legal advice, nor does it reflect the opinions of the State of Utah. It is not binding on either party but it’s solely advice.

On March 7, 2024, the Planning Commission held a public meeting and determined that the proposed project was not a “mixed use development” as defined in the LDC. The applicant asserts that the Planning Commission erred in their determination that the proposed project is not a mixed use development, and they are appealing this decision to the Board of Adjustment. See all references and exhibits at the end of this report for the full record of the Planning Commission’s decision on this matter and the applicant’s submittal for this appeal.

Relevant Case History	
Case Number	Case Summary
CUP12282021-006239	Conditional use permit for a “mixed use development” at 10165 South 1300 East.
MSC03202023-006505	Request by the Sandy Community Development Director to the Planning Commission to provide an interpretation of the term “mixed use development” as applied in the context of a conditional use permit application on a property located at 10165 South 1300 East.

Public Notice

The city issued notice of this public meeting on public websites, posted in three public locations, and mailed to property owners within 500 feet of the subject property prior to the Board of Adjustment meeting in accordance with the LDC Sec. 21-36-1 and -2 and the Utah State Code § 10-9a-205.

Analysis

Planning Commission Decision

The Planning Commission interpreted the term “mixed-use development” and determined the applicant’s project, as proposed, is not a “mixed-use development.” Specifically, the Planning Commission determined that the request did not meet the definitional standard of a “mixed use development” as outlined in the LDC, based on the findings stated below:

1. A mixed use development must consist of more than just a collection of types of uses that are adjacent (vertically or horizontally) to one another. It requires that they be designed to function as a walkable village center providing a variety of housing, employment opportunities, goods and services that support the existing and proposed residents of a given area (see Sec. [21-37-14\(10-14\)](#) & [21-23-24](#)). The proposal does not meet this requirement.

2. A mixed use development is required to function as a walkable village center, providing a mix of uses within close proximity, and uninterrupted pedestrian connections, thereby reducing traffic and parking impacts (see Sec. [21-37-14\(10-14\)](#) & [21-23-24](#)). The proposal does not meet this requirement.
3. A mixed use development requires coordination and master planning to successfully create a walkable community (see Sec. [21-37-14\(10-14\)](#) & [21-23-24](#)). The proposal does not meet this requirement.
4. The development proposal does not meet the definition of a “Mixed Use Development” as found in [section 21-37-14\(10-14\)](#).
 - a. The proposal shows that there has been no effort to coordinate and master plan with surrounding property owners and integrate those existing uses or future development. After evaluating this proposal within its development area only, and not including the surrounding existing properties and uses, and finds there is not a sufficient mix of uses.
 - b. The proposal is not of sufficient size and physical improvement to protect surrounding areas and the general community, and to ensure a harmonious integration into the neighborhood.
 - c. The proposal does not integrate critical massing of physical and functional components into a coherent plan that promotes walkability through uninterrupted pedestrian connections and reduces traffic and parking impacts.
 - d. The proposal is not designed in a walkable village manner.
 - e. The proposal shows “live/work units” that are not designed to function as such because the spaces are disconnected. The amount of area designated for “work” within these buildings is too small to function as standalone office space and will likely be utilized for storage and maintenance spaces.
 - f. The amount of proposed retail uses represents only 6% of the overall building square footage (not including the structured parking areas).
 - g. The amount of live/work “office” space represents only 1% of the overall building square footage (not including the structured parking areas).
5. This development proposal is focused on creating a multi-unit dwelling development, which is a use that is not permitted as a standalone use in the CN Zone (see [Sec. 21-8-2](#)). It does not provide sufficient office/retail elements to serve the purpose of the CN zone (see [Sec. 21-2-11\(6\)](#)).
6. A development that is focused on commercial retail and office uses that harmoniously integrates a residential element into the overall development scope to create a village center would be an appropriate application of a mixed use development (see [Sec. 21-2-11\(6\)](#) & [21-23-24](#)).

Sandy City Code recognizes that mixed use may be a mixture of commercial and/or office uses combined with residential uses that may be vertical, horizontal or both. Definitions of the various types of mixed uses are listed under [Sec. 21-37-14\(10-14\)](#) of the LDC. These are copied here, with emphasis added, for convenient reference:

- (10) *Mixed use, commercial and residential development*, means a development consisting of a *mixture of residential and commercial uses with an approved ratio, developed according to a master site plan*. The development of the uses is of sufficient size and physical improvement to protect surrounding areas and the general community, and to ensure a harmonious integration into the neighborhood.
- (11) *Mixed use development* means a development project that includes residential and one or more of the following land uses: retail, service, commercial, or office; and which, vertically or horizontally, *integrates critical massing of physical and functional components into a coherent plan* that promotes walkability through uninterrupted pedestrian connections, and reduces traffic and parking impacts.

- (12) *Mixed use, horizontal*, means commercial and residential uses, etc., which are in close proximity to each other and *designed in a village manner*, but not necessarily within the same building structures.
- (13) *Mixed use, residential and office use*, means a development consisting of a *mixture of residential and office uses with an approved ratio*, developed according to a master site plan. The development of the uses is of sufficient size and physical improvement to protect surrounding areas and the general community, and to ensure a harmonious integration into the neighborhood.
- (14) *Mixed use, vertical*, means commercial, office, or residential uses, etc., *designed in a village manner* which are within close proximity to each other within the same building structure.

The applicant argues that only one of the mixed use definitions listed above (#11) is applicable to their proposed development and claims the characteristics of the other four mixed use definitions (#10, #12 – #14) are not relevant. Because they ignore the other definitions of mixed use, they also fail to apply other definitional characteristics that include, among other elements, a “*mixture of residential and commercial (or office) uses with an approved ratio*,” and “critical massing.” Staff reports presented to the Planning Commission included and applied all appropriate definitions, and the Planning Commission findings and decision reflect that the Planning Commission applied all the definitional characteristics found in #10 - #14.

Furthermore, because the applicant describes their proposed project as containing *residential units with retail and office uses that are vertically integrated* (see page 4, Exhibit A), it would be unreasonable to preclude consideration of, and ignore the existence of the definitional characteristics of #10, #13, and #14 (above). The Planning Commission findings support their ultimate decision that the applicant’s proposal fails to meet relevant definitional standards. These include:

- a. “*mixture of residential and commercial (or office) uses with an approved ratio;*”
- b. “*developed according to a master site plan;*”
- c. “*integrates critical massing of physical and functional components into a coherent plan;*”
- d. “*of sufficient size and physical improvement to protect surrounding areas and the general community, and to ensure a harmonious integration into the neighborhood;*” and
- e. “*designed in a village manner.*”

In sum, the Planning Commission interpreted the term ‘mixed use development’ by applying the plain language of the LDC to the proposed project. The interpretation is supported by findings and is correct and sufficient. The Planning Commission did not err in their determination that the applicant’s proposed project is not a “mixed use development.”

Applicant’s Arguments on Appeal

The applicant raises several other points outlined in their appeal, but these points are ancillary and not dispositive. The only matter of issue in this appeal is whether the proposal meets the definition of a mixed use development.

Applicant’s Argument #1

The applicant argues that the Planning Commission’s interpretation is contrary to the applicable ordinance’s plain language because it is wrong to apply the mixed-use development standards when the proposed project is not located in a mixed use zone (see page 3 of Appellant Letter, Exhibit A).

The Planning Commission’s decision was based on the definitions of the LDC. The application of the Mixed Use Development standards is supplemental. The LDC contemplates different types and configurations of a mixed use development (horizontal, vertical, etc.) through various definitions listed under [Sec. 21-37-14\(10-14\)](#). Applying the LDC as a whole, the commonalities among all of them are that the same Mixed Use Development Standards, under [Sec. 21-23-24](#), are applied consistently to all mixed use development.

Applicant’s Argument #2

The applicant argues that the Planning Commission erred by imposing requirements for a ratio of commercial to residential units that are not expressed in the City Code (see page 4 of Appellant Letter, Exhibit A).

The definition of a mixed use project refers to an “approved ratio” as determined by the Planning Commission. As discussed above the Planning Commission determined that this proposal does not meet the requirements of that definition.

Applicant’s Argument #3

The applicant argues that the Planning Commission erred in basing its interpretation on the zoning code’s purpose statement, which should have only been employed if it was needed to clarify ambiguity (see page 5 of Appellant Letter, Exhibit A).

As the applicant has pointed out, this property is zoned Neighborhood Commercial (CN), not Mixed Use (MU). For that reason, the Planning Commission correctly considered all applicable provisions of the CN zone, including the purpose statement. Although the purpose statement supports the Planning Commission determination, they did not base their decision on the purpose statement; the decision was based on the definition.

Applicant’s Argument #4

The applicant argues that the Planning Commission wrongly denied the application based on public clamor, and the City refuses to take any further action on the application (see page 5 of Appellant Letter, Exhibit A).

The Planning Commission did not deny anything. This was an interpretation of the LDC. The applicant may revise and resubmit their application.

The appellant asserts but provides no evidence that the Planning Commission’s decision was driven by public clamor. The Planning Commission conducted the public meeting in accordance with the Utah Code and their standard procedure and based their decision on the LDC as demonstrated in their adopted findings. There is no evidence that the Planning Commission’s decision was swayed by public clamor nor influenced by the public comment. *See, Six Blue Bison, LLC v. Alpine City*, 2023 UT App 89.

Applicant’s Argument #5

The applicant argues that the Planning Commission’s interpretation constitutes an unlawful regulatory taking by effectively denying the application and thus interfered with reasonable investment-backed expectations (see page 6 of Appellant Letter, Exhibit A).

As explained previously, the Planning Commission decision was an interpretation and not a denial. That decision did not deny the applicant all economic use of the property nor damage the property. The applicant’s application may be revised and re-submitted with a proposal that meets the definitional standards of a mixed-use development.

Applicant’s Argument #6

The applicant argues that Sandy violated the property owner’s procedural due process rights because the Planning Commission did not review the conditional use application, but rather made a code interpretation of “mixed use development” in relation to the development proposal (see page 7 of Appellant Letter, Exhibit A).

The City followed all applicable requirements of the City Code. The applicant was given notice of and an opportunity to be heard at every stage of the proceedings. Accordingly, their procedural due process rights have not been violated.

Applicant’s Argument #7

The applicant argues that Sandy arbitrarily denied the application while approving other similarly situated properties (see page 8 of Appellant Letter, Exhibit A).

The applicant contends that their proposal should be compared to a number of existing developments in Sandy City. However, all of those developments approved by Sandy City were subject to and part of a mixed use master plan that was approved by the City. The mixed use master plan was the basis for determining that the project met the definition of mixed use by providing a mix of uses with an approved ratio. Although individual properties within each master plan area may have had differing ratios of uses, the overall master plan area was considered in the approval. In contrast, this applicant proposed a mixed use project on one property alone. Therefore, as discussed above, the definition of a mixed use project requires that their project contain an appropriate “mixture of residential and commercial uses with an approved ratio.”

Since these developments were subject to and part of a mixed use master plan, they are not comparable to the applicant’s single property proposal.

Legal Standards for an Appeal

The LDC, Section 21-35-1 sets the standards for reviewing an appeal. The following excerpt of this section establishes the proper standards and procedures for reviewing an appeal:

Sec. 21-35-1. Appeals**(e) Information to be Presented.**

- (1) An appellant must first present any and all information to the land use authority which it intends to raise before the appeal authority. The appellant may not bring new information for consideration before the appeal authority that had not been previously presented to the land use authority during its consideration of the matter.
- (2) An appellant must present to the designated appeal authority every theory of relief that it can raise in District Court.
- (3) No new information that was not previously presented to the land use authority may be presented on appeal.

(f) Review of the Record of the Land Use Authority.

- (1) The appeal authority's review of decisions of a land use authority shall be confined to the administrative record developed by the land use authority unless the appeal authority determines that the record is incomplete or deficient.
- (2) If the appeal authority determines that the record is incomplete or deficient, it may review the matter de novo.

(g) Burden of Proof. The appellant has the burden of proving that the land use authority erred.**(h) Standard of Review.**

- (1) **Legal Issues; Correctness Standard.** The appeal authority shall determine the correctness of a decision of the land use authority or administrative official in its interpretation and application of a land use ordinance. Because no specialized knowledge is necessary to make such a determination, no deference is given to the land use authority or administrative official; provided, however, the appeal authority shall not overrule that decision as a matter of law without the advice of its legal counsel.
- (2) **Factual Issues and Other Issues; Arbitrary and Capricious Standard.** Land use authorities and administrative officials have specialized knowledge in the field of planning and land use and are charged with and are experienced in implementing the goals and policies of the community as adopted by and under the supervision of elected representatives of the public. Accordingly, they should be allowed a comparatively wide latitude of discretion; and their actions endowed with a presumption of correctness and validity which an

appeal authority should not interfere with unless it is shown that there is no reasonable basis to justify the action taken, and that, therefore, the determinations made were so unreasonable as to be arbitrary and capricious. It is not the appeal authority's prerogative to substitute its judgment for that of the land use authority where the record discloses a reasonable basis for the land use authority' determination.

- (i) **Scope of Authority.** Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

The Board's review of the Planning Commission's decision is to determine whether a reasonable mind could reach the same conclusion as the Planning Commission did, in light of the evidence the Planning Commission had before it. The Appellant must marshal all the evidence in support of their claim that the Planning Commission decision was made in error and show that in spite of the facts which support the decision, and in light of conflicting or contradictory evidence, the decision is not supported by substantial evidence. Substantial evidence is evidence which is adequate to convince a reasonable mind to support a conclusion. *See Carlsen v. Board of Adjustment of City of Smithfield* 2012 UT App 260 ¶¶ 4, 5, 7.

Conclusion and Recommendation

The applicant has not met their burden of proving that the Planning Commission decision was so unreasonable as to be arbitrary and capricious. As stated in the ordinance cited, the appellant bears the burden of proving that the land use authority erred. It is not enough to show that one could reasonably reach a different conclusion on the facts if there is a reasonable basis for the decision reached by the Planning Commission.

Based upon the foregoing the Board of Adjustment should conclude that the Planning Commission did not err in making their determination that the applicant's proposed project does not meet the definitional standard of a “mixed-use development” as outlined in the Land Development Code, and adopt the following findings:

Findings:

1. The record of this decision is sufficient and not deficient as demonstrated in the referenced staff reports and associated exhibits and other information in the record; therefore, this matter can be reviewed on the record, and not de novo.
2. The appellants have not shown that there was no reasonable basis to justify the action taken, and the determinations made were so unreasonable as to be arbitrary and capricious.
3. Based on the findings cited in their motion and evidence cited in the record, the Planning Commission determination was processed as required by the Sandy Land Development Code.
4. Therefore, the Planning Commission's decision was correct in its interpretation and application of the Land Development Code.

Planner:



Melissa Anderson
Zoning Administrator

References

The record of the Planning Commission meetings is accessible at <https://sandyutah.legistar.com> and includes all application materials, staff reports, meeting minutes, and meeting recordings. The links below provide direct reference to the meetings held related to this appeal:

1. Planning Commission meeting for [March 7, 2024](#) under [MSC03202023-006505_3rd](#)
2. Planning Commission work session on [October 5, 2023](#) under [CUP12282021-006239 \(WS\)](#)

3. Neighborhood meeting on [August 9, 2023](#) [passcode: w9W0yp!6]
4. Planning Commission meeting on [August 3, 2023](#) under [MSC03202023-006505 2nd](#)
5. Planning Commission meeting on [April 20, 2023](#) (note that meeting was cancelled) under [MSC03202023-006505](#)

Exhibits

A. Appellant’s Application Materials

– Contents of Exhibit

- Appeal Application Form (pg. 1-5)
- Appellant Letter (pg. 5-13)
- CUP Application - Feb 21, 2023, Supplement (pg. 14-163)
- CUP Application – Sept 27, 2022, Supplement (pg. 164-257)
- Original CUP Application – Dec 28, 2021, Supplement (pg. 258-295)
- Advisory Opinion of OPRO (pg. 297-304)
- Presentation to PC – Mar 7, 2024 (pg. 305-357)
- Property Plat (pg. 358)
- Aerial Images (pg. 359-360)

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