



# Sandy City, Utah

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## Minutes Summary

### Board of Adjustment

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Thursday, May 23, 2024

6:30 PM

Council Chambers and Online

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Meeting procedures are found at the end of this agenda.

This Board of Adjustment meeting will be conducted both in-person, in the Sandy City Council Chambers at City Hall, and via Zoom Webinar. Residents may attend and participate in the meeting either in-person or via the webinar link below. Register in advance for this webinar:

[https://us02web.zoom.us/webinar/register/WN\\_LKgZGp9xSJ24co4wHFcVWg](https://us02web.zoom.us/webinar/register/WN_LKgZGp9xSJ24co4wHFcVWg)

After registering, you will receive a confirmation email containing information about joining the webinar.

You can join the meeting with the following link:

<https://us02web.zoom.us/j/87530675917>

Or join via phone by dialing:

US: 253 215 8782 or 346 248 7799 or 669 900 6833 or 301 715 8592 or 312 626 6799 or 929 436 2866  
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International numbers available: <https://us02web.zoom.us/j/87530675917>

Webinar ID: 875 3067 5917

Passcode: 426990

#### 4:30 PM FIELD TRIP

1. [24-187](#) Field Trip will depart from the west steps of City Hall.

#### 5:00 PM EXECUTIVE SESSION

2. [24-188](#) Training on Open and Public Meetings Act held in the Community Development Conference Room

#### 6:30 PM REGULAR SESSION

Welcome

Pledge of Allegiance

Introductions

#### Public Meeting Items

3. [BOA0411202](#) Appeal to Review Alleged Error of the Planning Commission Interpretation  
[4-006746](#) of the Term "Mixed Use Development"  
10165 South 1300 East  
[Community #17, Willow Canyon]

Brian Jones, Board of Adjustment Chairperson, opened the meeting by introducing board members and city staff.

Ryan Loose, South Jordan City Attorney, introduced himself as the attorney representing the Board of Adjustment. He stated that the Board of Adjustment's role is to judge and review with the record provided. It cannot hear any new evidence and therefore hearing public comment may possibly be considered new evidence.

Wade Budge, attorney representing land owner, does agree that the record is complete.

Darien Alcorn, Sandy City Senior Civil Attorney, agrees that the record is complete and no new information has been presented.

**Jim Edwards, Board of Adjustment member, made a motion that the record is complete. Tyler Brown, Board of Adjustment member, seconded the motion. The Board voted unanimously that the record was complete.**

Wade Budge presented his appeal to the Board of Adjustment.

The appellant made a statement that the applicant and the city had come to "loggerheads" at some point regarding this project. Jim Edwards asked the appellant what caused the discord between appellant and city and when did it begin.

Mr. Budge stated that he speculates that a change happened somewhere within the city where they determined it was not an appropriate use that far east. He believed that started in the late 2022 time frame.

The appellant presented a slide showing "Summary of Coordination". A comment was made about using the bridge for connectivity to the hospital.

Jim Edwards stated he had concerns regarding the bridge. He stated that was a bridge that empties into the school playground. It was intended for school use only. He asked if the applicant had any conversations with the school district regarding use of the bridge.

Wade Budge stated that they had not talked to the school district but the sidewalks could be used for connectivity as well. He continued with his presentation.

Jim Edwards asked regarding about the "walkability" portion of their proposal. He is concerned about the bridge into the school playground, the office complex that doesn't want to be connected to them and the retail business that have no plans to redevelop at this time.

Wade Budge said that walkable is realized by having the residents being able to walk to the retail within the complex and to be able to cross the street. He stated that there was a traffic study done and that the applicant's plan is that the neighboring retail center can be reached using the existing crosswalk. He continued with his presentation.

Tyler Brown asked what the standard for a mixed use ratio is and where does it come

from.

Wade Budge stated that the city does not have a standard and that would be helpful for development.

Jim Edwards asked the appellant if he felt that it was challenging to attach one ratio when different properties are different sizes. And isn't that the role of the Planning Commission to decide what is best for the property.

Wade Budge stated that Planning Commission's job is to apply the code. He feels that the ratio needs to be made with a land use regulation under Utah law.

Tyler Brown asked the appellant if it is their legal position that because there is not a specific commercial/residential mixed use ratio requirement, then the ratio is irrelevant?

Mr. Budge stated it wasn't irrelevant but that there should be a reasonableness standard for interpretation.

Burke Staker referenced Slide 12 in the appellants presentation. He asked if any of those are located in a neighborhood commercial zone, and require a conditional use.

Wade Budge stated that they were not but are the same land use category of mixed use development which is a land use category that does exist in neighborhood commercial.

Tyler Brown asked if the appellant had any problems with trying to draw comparisons or parallels with these other mixed use zone when the basis of the argument is that they are governed by a different definition of what is mixed use than what the commercial neighborhood zones are.

Wade Budge responded that would apply for mixed use zone but wouldn't apply for the first two which are non mixed use zone which is a mixed use development.

Mr. Budge reviewed a slide that showed the mixed use development zones.

Jim Edwards asked the appellant if he agreed that Sec. 21-1-6 was valid code.

Wade Budge said that it is valid code but was applied incorrectly to them because they did not seek the interpretation. The interpretation was forced upon them by someone who, in their view, doesn't, under state law, meet the definition of a land use applicant.

Jim Edwards asked Ryan Loose for more information regarding the State Law 10-9-A-103, which Mr. Budge referenced. Ryan Loose land use applicant means property or the property owners designee who submits a land use application regarding the property owners land.

Mr. Edwards asked if it is his position that James Sorensen, Community Development Director, had no right to do what he did. Mr. Budge agreed with that statement.

Darien Alcorn, Sandy City Senior Civil Attorney, presented her rebuttal.

Ms. Alcorn commented in rebuttal to a statement by Mr. Budge that Mr. Sorensen is authorized to interpret the code and if he has questions he is authorized to submit that to the Planning Commission under Sec 21-1-6. It was submitted in order for interpretation to be made of the Sandy City Code.

She stated that the Planning Commission had determined that this project was not mixed use by using the collection of definitions and cited to them in their findings. She also stated that the Planning Commission had determined that the critical massing requirements weren't met.

Jim Edwards asked when critical massing is reached.

Ms. Alcorn stated that the Planning Commission reviews it and determines what the ratio should be which is within their authority under Sandy City Code.

Mike Wilcox, Planning Director, stated that the massing leads to the other elements of walkability, connectivity and reaching the other uses within that walkable framework which is included in the overall area of the mixed use development.

Mr. Edwards asked Ms. Alcorn if she considered the project walkable. Ms. Alcorn stated that the Planning Commission determines walkability strictly based on the application only. This project is not in a master plan area and the Planning Commission can only determine on this application only. Sandy City does not have an area master plan on this property at this time.

Tyler Brown asked if that was one of the primary distinctions between the examples shown for conditional mixed use due to the other projects were part of a larger master plan.

Darien Alcorn stated that was correct.

Mike Wilcox stated that the appellant did not include the broader master plan data in their presentation and therefore did not tell the whole story.

Ms. Alcorn continued with her presentation.

Tyler Brown asked if the definition the appellant has relied on for mixed use is specific to neighborhood commercial.

Darien Alcorn stated it is not and is determined by the Planning Commission based on what is submitted by the applicant.

Jim Edwards stated that the arguments seems to come down to the appellant stating that only definition number eleven is applicable but the Planning Commission determined that all five definitions are relevant.

Ms. Alcorn stated it will either be #10 mixed use residential/commercial or #13 mixed use residential/office because it won't meet the general definition of mixed use development if there is not another use combined with the residential.

Brian Jones asked Ms. Alcorn regarding the city's reaction to the ombudsman report that the appellant relies on so heavily.

Darien Alcorn stated that the ombudsman based their decision almost entirely on their opinion that Section 21-23-24 was not applicable. The city staff did not agree. Planning Commission referenced that opinion in their findings and did not agree as well.

Mike Wilcox stated that the general term of mixed use development references vertical

and horizontal which are further defined in definitions of #12 and #14 which why those are also applicable.

Tyler Brown asked why the city has so many definitions that share so much in common but are different.

Ms. Alcorn stated that, while the definitions do have a lot in common, it is so that the definitions could be used correctly and applied appropriately.

Tyler Brown asked a question regarding the Vineyard case which had been referenced by the appellant. He believes it states that if there is a definition for a term in ordinance that definition must be used to the exclusion of other definitions. He asked Ms. Alcorn if that is correct.

Ms. Alcorn stated that her interpretation of that case was that if there was a specific definition then it should be applied. The sole purpose of interpretation is to determine the legislative intent. It is used to determine a harmonious whole.

Mr. Brown asked if Ms. Alcorn believed they had arrived at a harmonious whole.

Ms. Alcorn stated her opinion is that bringing an application that has a de minimis amount of some additional use in order to claim that you fall within the general definition of mixed use development is incorrect. The entirety of the land use development code should be considered when making a determination. She believes all the definitions are in harmony.

Darien Alcorn finished her presentation.

Wade Budge presented his rebuttal.

Burke Staker asked the appellant regarding definition #11, which he referenced, which states "integrates critical massing" then isn't that the role of Planning Commission to determine who is integrating critical massing?

Mr. Budge stated that they need to apply this definition and make sure they contain that type of massing. The Planning Commission should have a "check box" to determine that the appellant has all the requirements and not cherry pick different definitions. He also stated that definition #11 doesn't reference a master plan which the other definitions do.

Mr. Brown asked the appellant what his response is to the city's argument that the table referenced is an ordered nesting of rules.

Mr. Budge responded that the city is trying to pull words from other definitions and trying to apply it to this use.

Mr. Brown asked the appellant about sections of the Ombudsmans report that had glossed over such things as walkability and critical massing and asked him to show how their proposal meets those requirements.

Wade Budge stated that they do have walkability in terms of being able to walk within in the uses and the surrounding retail areas.

Mr. Edwards stated that they can do that now with the existing sidewalks. He stated that the appellant is adding nothing new in terms of walkability.

Mr. Budge says if more is required in terms of walkability it can be found in the mixed use area. He also stated that subsection 11 doesn't not have a master plan requirement.

Mr. Edwards stated that the appellant seems to be trying to find a "loophole" with the ratio issue in question.

Mr. Budge stated that this was not about a loophole it is about property rights. The property rights that apply to a property are those that are purchased or owned. This case is about making use of land that is consistent with the rules as described by elected officials. And if those elected officials use words that now on retrospect should have been different the appellant should not be penalized.

Brian Jones concluded the argument portion of the meeting and opened discussion among board members.

Tyler Brown asked Ryan Loose for clarification should the Planning Commission have used the legal definition instead of incorporating the entire land use code.

Mr. Loose stated he can only give general legal advice and cannot give specific advice that would affect their determination.

The Board members discussed the case amongst themselves.

The board members had a concern regarding whether the Planning Commission had used the one definition standard or the collection of definitions to make their determination.

Mr. Loose stated that the actual findings of the Planning Commission does address what was determined regarding walkability, etc.

Mr. Budge stated that the appellant was not allowed to put forth evidence in regards to those findings. He does not want to put undo weight on those findings.

Ms. Alcorn stated that the Planning Commission has an extensive record that was received before its making a decision. The Board also have the same information that was presented by the applicant in the Planning Commission meeting.

Mike Wilcox added that a work session was also held with the Planning Commission and the applicant. The Planning Commission gave the applicant time and many meetings to revise their application to meet the requirements of the definitions and the code prior to making their interpretation determination.

Burke Staker stated that there is plenty of evidence in the record that the decision was not arbitrary or capricious.

Mr. Loose clarified the conversation regarding the threshold of the correctness standard, whether to apply the one definition standard or the many definitions and the whole of the code. Once its determined on the correctness standard, the you would apply the arbitrary or capricious standard as applicable.

Burke Staker added that he is not convinced that only definition 11 is applicable. Its the combination of all of them and the whole of the ordinance to interpret the definition here.

Jim Edwards added that the definitions were not intended to be singled out but applied as

a whole.

**A motion was made by Jim Edwards, seconded by Burke Staker, that the Planning Commission was correct in using the different definitions including numbers 10, 11, 12 and 13 and that they did not act in a manner that was arbitrary and capricious. And that they acted according with what they thought a proper method in applying the five definitions.**

**The motion carried by the following vote:**

**Yes:** 3 - Brian Jones  
Burke Staker  
Jim Edwards

**No:** 1 - Tyler Brown

**Absent:** 2 - Bruce Bryner  
Matt Hale (Alternate)

**Tyler Brown stated that he voted "No" because it needed to be more robust and add more findings.**

**Jim Edwards agreed to allow amendments to his motion.**

**Jim Edwards, Burke Staker and Brian Jones withdrew their votes for the motion upon receiving a substitute motion.**

**A substitute motion was made by Tyler Brown, seconded by Burke Staker, that 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 appellants have not shown that there was no reasonable basis to justify the action taken, and therefore that the determinations made were so unreasonable as to be arbitrary and capricious.**
- 2. The Planning Commission's decision was correct in its interpretation and application of the Land Development Code.**
- 3. The Planning Commission's decision was reasonable and based upon substantial evidence including materials referenced by attorney Darien Alcorn in her rebuttal, including the full and complete record that has been reviewed in this case and that was available to the Planning Commission, including images, studies, scale drawings etc.**

**The motion carried by the following vote:**

**Yes:** 4 - Brian Jones  
Burke Staker  
Tyler Brown  
Jim Edwards

**Absent:** 2 - Bruce Bryner  
Matt Hale (Alternate)

## **Administrative Business**

### 1. Election of Chair and Vice Chair

**A motion was made by Jim Edwards, seconded by Burke Staker, that this Board of Adjustment continue with the current chairperson, Brian Jones, and vice chairperson, Jim Edwards, for another year. The motion carried by the following vote:**

**Yes:** 4 - Brian Jones  
Burke Staker  
Tyler Brown  
Jim Edwards

**Absent:** 2 - Bruce Bryner  
Matt Hale (Alternate)

### 2. Director's Report

## **Adjournment**

**An all in favor motion was made to adjourn.**

**The vote was unanimous.**



## Meeting Procedure

1. Staff Introduction
2. Presentation by the petitioner or appellant
3. Staff Presentation
4. Public comment related to the petition, appeal or request
5. Close Public Comment
6. Response by petitioner or appellant
7. Questions of the applicant, staff, and others by the Board
8. Discussion of the issue by the Board
9. Motions and decision by the Board

In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comments will be limited to 2 minutes per person per item. A spokesperson who has been asked by a group to summarize their concerns will be allowed 5 minutes to speak. Comments which cannot be made within these time limits should be submitted in writing to the Community Development Department prior to noon the day before the scheduled meeting.

Board of Adjustment applications may be tabled if: 1) Additional information is needed in order to take action on the item; OR 2) The Board of Adjustment feels there are unresolved issues that may need further attention before the Board is ready to make a motion. No agenda item will begin after 11 pm without a unanimous vote of the Board. The Board may carry over agenda items, scheduled late in the evening and not heard, to the next regular scheduled meeting.

In compliance with the Americans With Disabilities Act, reasonable accommodations for individuals with disabilities will be provided upon request. For assistance, or if you have any questions regarding the Board of Adjustment Agenda or any of the items, please call the Sandy City Planning Department at (801) 568-7256.