

**PAYSON CITY PLANNING COMMISSION
MEETING MINUTES**

March 27, 2013

REGULAR SESSION – CITY COUNCIL CHAMBERS

CALL TO ORDER: 7:00 p.m.

ROLL CALL: Acting Chairman Blair Warner; Commissioners Ted Fitzgerald, Rob Baird and George Van Nosedol; City Councilmen Hancock and Mike Hardy; Planner Jill Spencer; Administrative Secretary Cheryl Hobbs. Chairman John Cowan, Commissioners Todd Cannon and Harold Nichols excused.

INVOCATION: Commissioner Baird

PUBLIC FORUM

No public comment.

CONSENT AGENDA

- **APPROVAL OF MINUTES** – February 13 and March 13, 2013

MOTION by Commissioner Fitzgerald to approve the consent agenda. Motion seconded by Commissioner Van Nosedol. Motion carries.

Commissioner Fitzgerald asked if approving the minutes on the consent agenda is working for the other Planning Commissioners or should we go back to the way it was. He doesn't feel that he reads the minutes as closely as he did before. The consensus was to keep it the same until he could ask the full quorum.

REVIEW ITEMS

PUBLIC HEARING – REQUEST BY TROY PAXTON FOR APPROVAL OF AN OVERLAY ZONE TO CONSTRUCT A DUPLEX ON A VACANT PARCEL LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF 400 SOUTH 300 EAST IN THE R-1-9, RESIDENTIAL ZONE.

Motion by Commissioner Baird to open the public hearing. Seconded by Commissioner Van Nosedol. Motion carries.

Planner Spencer presented information from the following staff report.

Background

The applicant, Troy Paxton, is requesting a recommendation of approval from the Planning Commission and approval from the City Council for use of the RMO-1, Residential Multi-Family Overlay Zone to construct a duplex on a vacant parcel located on the southeast corner of the intersection of 400 South 300 East in the R-1-9, Residential Zone. Up until last year, a single family dwelling existed on the site. The owner of the property (Greenhalgh) obtained a permit to demolish the existing single family dwelling and it now interested in selling the property. The applicant owns the duplex located at 436 East 300 South in Payson and is proposing the design and materials for the new construction be similar to the existing duplex on 300 South. The applicant intends to maintain ownership of the duplex to ensure the site is properly maintained and the occupants of the units are a positive influence to the neighborhood. The parcel is located in the R-1-9, Residential Zone. This zone was established as an area with primarily single family dwellings located on lots with at least nine thousand (9,000) square feet and a minimum of ninety (90) feet of frontage. The Zoning Ordinance allows the construction of multi-family structures within various residential zoning districts. A duplex or twin home

structure is allowed in the R-1-9, Residential Zone, provided the regulations of the ordinance are satisfied and the City Council grants approval for use of the overlay zone. In order to obtain approval of the RMO-1, Residential Multi-Family Overlay Zone, the applicant must receive a recommendation from the Planning Commission and the City Council must grant approval. Prior to forwarding a recommendation to the City Council, the Planning Commission is required to hold a public hearing in order to receive input from the public in relation to the proposal of the applicant. The public hearing has been properly noticed and courtesy notices have been mailed to the appropriate property owners.

Analysis

Approval of the RMO-1 Overlay Zone is similar to a zone change request. The Planning Commission is under no obligation to recommend approval and the City Council is under no obligation to approve the use of the overlay zone. The applicant is entitled to use the property consistent with the requirements of the underlying zone, R-1-9, that would allow single family dwellings on 9,000 square foot lots with at least ninety (90) feet of frontage. The applicant must understand that the development rights on the subject parcel are those found in the underlying zone until, and unless, approval to use the RMO-1 Overlay Zone is granted by the City Council. Furthermore, denial for the use of the overlay zone shall not constitute a takings claim because the applicant will not be denied the ability to use the property in accordance with the underlying zone.

The decision of whether to allow the use of an overlay zone is based on the benefit that will be derived by the neighborhood and community as a whole. In the formulation of their recommendation, staff would suggest that the Planning Commission consider the following factors.

1. Approval for the use of the RMO-1 Overlay Zone indicates the proposed use can be compatible with surrounding uses. Therefore, the Planning Commission and City Council may require certain design guidelines be implemented to ensure the project is compatible with the surrounding uses.
2. A current title report will need to be provided to the City indicating any liens or encumbrances associated with the property. All easements, right-of-ways and other dedications must be indicated on the project drawings.
3. The applicant must provide two (2) off-street parking stalls for the dwelling unit, one of which must be covered. The applicant is proposing a covered carport (single car) for each unit with extra parking adjacent to each carport. The parking stalls must satisfy the requirements of Chapter 19.4 of the City Zoning Ordinance.
4. The landscaping standard for multi-family dwelling units is different than those for single family dwellings. The applicant will need to be aware that all areas not used for buildings or parking must be completely landscaped prior to the issuance of a Certificate of Occupancy, not just the front yard areas of each unit. A landscaping plan indicating the types and sizes of all planting materials and an underground sprinkling system will need to be submitted for review and approval by staff.
5. The applicant will need to prepare construction drawings for all work completed in the public right-of-way. At a minimum, the drawings will need to include the following:
 1. The detail of utility services (drinking water, pressurized irrigation, power, and sewer) for each dwelling unit. The plans must include the location, size and type of material for each utility lateral.
 2. The installation of sidewalk, curb and gutter along the entire frontage of the parcel.
 3. The electrical service for each unit must be provided underground.
 4. All development improvements must be completed in accordance with the Design Guidelines and Standard Specifications of Payson City.
6. The applicant will need to work with the Payson Power Department on the layout of electrical facilities for the proposed project. Payment of all fees associated with labor and materials provided by the Payson Power Department are the responsibility of the applicant and will need to be submitted prior to issuance of a building permit.
7. Letters from all private utility providers (i.e. Questar Gas, CenturyLink, Comcast, UTOPIA) indicating knowledge of the project and a willingness to provide service to the development will need to be provided.

Furthermore, the applicant will need to contact the Post Office to determine the method of mail delivery for the proposed units. The applicant will be responsible to satisfy the conditions indicated on the acknowledgment letters from the private utility service providers.

8. A public utility easement will need to be indicated around the perimeter of the parcel. The easement will need to be a five (5) foot easement around the perimeter of the parcel and ten (10) feet along any public right-of-way. Because the Site Plan will not be recorded, the public utility easement documentation will need to be prepared and submitted to Payson City for recordation in the office of the Utah County Recorder.

9. If the overlay zone is approved, the following items will need to be addressed before a building permit is issued for the duplex:

- a. Transfer of adequate water to serve the proposed development with both drinking and irrigation water in accordance with Title 10, Water Ordinance. The applicant will need to provide a documented estimate for monthly culinary usage for the structure and the amount of irrigable acreage on the development site.
- b. A performance guarantee will need to be submitted to ensure that public improvements and project landscaping are completed in accordance with the regulations of Payson City. The performance guarantee shall be equal to one hundred twenty (120) percent of the approved engineer's estimate. Submission of public works inspections fees, in cash, will be calculated by staff and must be submitted prior to issuance of a building permit.
- c. A pre-construction meeting will need to be scheduled with the City Engineer to discuss construction details, inspection requirements and project timelines.

These items represent the issues staff found to be inconsistent with the development ordinances of Payson City. The Planning Commission is under no obligation to recommend approval for use of the RMO-1 Overlay Zone even if all requirements of the development ordinances can or will be satisfied by the applicant. The staff, Planning Commission or City Council may require additional information in order to make a well-informed decision.

Recommendation

This staff report identifies items that are not in compliance with the Payson City Development Code. It was the intent of the staff to complete a thorough review and identify all items that do not satisfy the requirements of Title 10, Water Ordinance; Title 19, Zoning Ordinance; Title 20, Subdivision Ordinance; the Design Guidelines and Standard Specifications; and any and all other development requirements of the City. However, failure of the staff to identify an inconsistency with any City requirement does not release the applicant of the obligation to satisfy all development requirements of the City. If an item is identified at a later date, the applicant will be responsible to satisfy the relevant development requirements. The applicant is seeking approval for use of the RMO-1 Multi-Family Overlay Zone that would allow the construction of a duplex in the R-1-9, Residential Zone. The Planning Commission, following a public hearing, may:

1. Remand the request for use of the overlay zone back to staff for further review or with direction to provide additional information. This action should be taken by the Planning Commission if it is determined that there is not enough information provided by the applicant in order for the Planning Commission to make a well informed recommendation.
2. Recommend approval of the request for use of the overlay zone as proposed. If the Planning Commission chooses to recommend approval of the request as proposed, staff would suggest than an opportunity to require the applicant to modify the request in a manner that will be more consistent with the land use goals of the City will be missed.
3. Recommend approval of the request contingent upon the satisfaction of conditions. If the Planning Commission recommends approval of the use of the overlay zone, staff would suggest the conditions proposed by staff would lead to satisfaction of the goals and objectives of the land use goals of the City Council.

4. Recommend denial of the proposed request for use of the overlay zone. This action should be taken if the Planning Commission determines that use of the overlay zone is not appropriate or that the applicant is unwilling or unable to satisfy the regulations of the Payson City development ordinances and the land use goals of the City Council.

Because the action of the City Council will be legislative in relation to the request for use of the RMO-1 Overlay Zone, approval or denial of the request must be reasonably debatable. Therefore, the inclusion of findings, as always, is important. Any recommendation of the Planning Commission should include findings that indicate the foundation upon which the recommendation to the City Council is based.

Planner Spencer explained that the applicant will be credited one set of the two impact fee requirements for the duplex because of the single family home that was demolished. The applicant will have to pay the connection fees for both units.

Troy Paxton, the applicant, said he is looking for any suggestions the Planning Commission might have to make this work.

Commissioner Fitzgerald asked how close the other duplex in the neighborhood is to the one the applicant is proposing. Mr. Paxton said it is located at 438 East 300 South.

Planner Spencer noted that before the meeting started, the Fullmers asked if more than two units are allowed in the R-1-9 Zone. She explained that, under the current ordinance, only two units are allowed at this time. The Fullmers are in favor of moving forward with the request.

Planner Spencer read into the minutes an email from Kerry Diamond and a letter from Charlotte Pace.

From: Kerry DIAMOND <kdiamond_@msn.com>

Sent: Thursday, March 21, 2013 3:52 PM

To: Jill Spencer

Subject: Overlay Zone Request

I DO NOT want a duplex in my neighborhood. The address of this suppose site is 400 South 300 East. I do not like the idea of a duplex that close to a school and it seems to me they don't take care of them they always look trashy and dirty and I don't want one that close to my house. I can only guess how much my house would depreciate if one was built that close to my home.

Thanks,

Kerry Diamond

*515 South 300 East
Payson, Utah 84651*

*Jill Spencer
439 West Utah Avenue
Payson, Utah
March 20, 2013*

Dear Jill,

I will be out of town for the Payson City Planning Meeting on Wednesday, March 27, 2013. I would like to express my view on the change proposed in the R-1-9 Residential zone located on the southeast corner of the intersection of 400 South and 300 East. I'm against the RMO-1, Residential Multi-Family Overlay Zone. This property has been a Single-Family dwelling for many years and should remain such. Given the currant economic situation property values have

already been decreased. I feel allowing this zoning change would reduce property values even more.

Respectfully yours,

*Charlotte Pace
344 East 400 South
Payson, Utah 84651
Home phone: 801-465-2758
Cell phone: 801-471-1962
charlp43@msn.com*

Commissioner Fitzgerald said there are other rental units in the area and the homes in the neighborhood are mostly older homes in various states of repair/disrepair. He thinks a newer structure would benefit the neighborhood rather than lower the property values. It would be difficult to see a new \$250,000 home being built here because of the state of the neighborhood. He noted that the Planning Commission and City Council are constantly looking for ways to attract people to the downtown area. He feels that quality duplexes are one way to do that.

Commissioner Fitzgerald asked about the water requirement; how much does he have to provide and how does he get it? Planner Spencer explained that she doesn't know the exact requirement right now. There is a formula that needs to be done. The applicant does have a credit because of the single family home that was on the parcel. Usually, the applicant will pay money in lieu of water shares. Mr. Paxton can turn over water shares, but usually, applicants just pay money in lieu of water shares. Commissioner Fitzgerald asked if the cost of the water shares would be included in the building permit. Planner Spencer said it is not. The applicant would have to pay the money in lieu of the water shares prior to the building permit.

Commissioner Baird pointed out that there is currently no curb, gutter and sidewalk on the parcel, so this project would provide that improvement to the neighborhood.

Commissioner Warner said a brick structure would also be a positive. Structures built to a higher standard bring in a higher class of tenants.

Commissioner Van Nosdol asked if the owner is required to live in one of the units of the duplex. Planner Spencer said we currently don't have an occupancy requirement. When we were looking at the Accessory Living Overlay Zone, owner occupancy was part of the discussion but it wasn't included in the motion of the City Council.

***Motion** by Commissioner Fitzgerald to close the public hearing. Seconded by Commissioner Baird. Motion carries.*

***Motion** by Commissioner Fitzgerald to recommend that the City Council approve the I-O Overlay Zone to construct a duplex in the R-1-9 Residential Zone as proposed contingent upon the changes and modifications recommended by staff. Based on the findings that the proposed duplex will be a benefit to the area and will provide additional high quality rental units in the city.*

Commissioner Baird added additional findings: the proposal will improve the infrastructure in the neighborhood and the building materials and landscape requirements will also improve the neighborhood.

Seconded by Commissioner Van Nosdol. Motion carries.

PUBLIC HEARING – REQUEST BY ELIZABETH FULLMER TO AMEND TITLE 19, ZONING ORDINANCE TO ALLOW RETAIL SALES IN CONNECTION WITH A HOME OCCUPATION LICENSE.

Planner Spencer presented information from the following staff report.

Background

In accordance with Section 19.2.8 of the Payson City Zoning Ordinance (February 20, 2013), the applicant, Elizabeth Fullmer, is requesting a recommendation of approval from the Planning Commission and approval by the City Council to amend sections of Title 19, Zoning Ordinance to permit home occupations in the CC-1 Zone and to allow retail sales within a home occupation business.

The applicant owns the parcel located at 165 S. Main Street in the CC-1, Central Commercial Zone. There is an existing single family dwelling on the site and the remaining portions of the parcel contain typical residential improvements. Because the parcel is located in a commercial zone, the residential use, as a single family dwelling, is non-conforming which limits the expansion of residential uses. In accordance with Chapter 19.14, Non-Conforming Uses of the Zoning Ordinance, a use that legally existed prior to a change in the land use regulations (i.e. zoning district) may continue as a non-conforming use unless the structure is vacated or the use is ceased for a continuous period in excess of one (1) year.

The applicant resides in the dwelling and would like to conduct a retail business in a portion of the structure. The applicant owns Legion Custom Shop, a business that specializes in skateboards, long boards and snow boards along with product customization and airbrush artwork. Retail uses in the CC-1 Zone within structures that contain residential uses is rare, although not unique. Second story and basement residential uses are an allowed use (with approval of an overlay zone) in the zone, but are physically separated and on different stories of the structure. The current proposal presents two distinct inconsistencies with the provisions of the Zoning Ordinance.

As currently adopted, the Zoning Ordinance does not contemplate home occupation businesses in non-residential zones (commercial and industrial) because structures that would accommodate single family dwelling are not permitted in those areas. Secondly, because home occupations typically occur in residential zones, retail sales are not currently allowed in association with home occupations. Therefore, staff is unable to approve the request unless the provisions of the ordinance are modified by the City Council.

Approval of a text amendment requires a recommendation from the Planning Commission, following a public hearing, and approval by the City Council, again following a public hearing. Because an amendment to the Zoning Ordinance affects many parcels rather than just the property owned by the applicant, mailing notice to all property owners potentially affected by these amendments is impractical. However, in accordance with State statute, notice of the public hearing has been posted in appropriate locations and the public hearing was advertised in the newspaper for a minimum of fourteen (14) days.

Amendments to the Zoning Ordinance are legislative decisions and significant discretion is given to the City Council which is not obligated to approve the request. As a final note, it is important to recognize that an amendment is not specific to the request, but rather is applied in a comprehensive nature to all properties in the zoning district. Although there is a tendency to limit consideration to the request of the applicant, the impact of an amendment is farther reaching.

Analysis

As noted, once an amendment has been approved by the City Council, the provisions may be applied to all applicable parcels throughout the zone or the community, as predicated in the revised ordinance. In this instance, the application includes an amendment to Section 19.16.3 of the Zoning Ordinance to allow retail sales for home occupations within a non-conforming residential structure. Following a review of the request, staff has determined that more precise amendments affecting additional sections of the ordinance may need to be completed to approve, but retain the necessary protections to avoid inappropriate retail sales in residential areas. The issues pertaining to allowable uses in the CC-1 Zone and regulation of home

occupations warrant independent consideration; therefore the analysis portion of this staff report has been divided into two sections to properly address each item.

Home Occupations in Non-Residential Zones

As currently adopted, the regulations of Chapter 19.16, Home Occupations do not contemplate home occupations within structures in non-residential zones, because single family dwelling are not allowed in those districts. Regulations have been established that provide minimum standards for establishment and operation of home occupations within residential zones, but not in the commercial and industrial zones of the city. The applicant's request is unique because the residential use is a non-conforming use in a commercial zone. Obviously, without amendment, the application would be denied because the structure is located in a commercial district. Even though the commercial zones were created to provide areas in the community for commercial uses and retail trade, when the districts were approved, there were a number of residential dwellings within the confines of the zone. It is contemplated that over time, the non-conforming uses will be eliminated and replaced with conforming, commercial structures.

The CC-1 Zone differs from the other commercial zones in the City. It is rather limited in terms of geography and contains a much wider variety of structures and uses than any other district in the community. Admittedly, there are existing mixed uses (residential and commercial) in the district, but they are generally in conformance with the provisions of the regulations. For instance, Wild Child Cycles conducts retail sales in the structure that contains a dwelling unit, but the dwelling unit is a conforming second story dwelling. Staff would suggest that any consideration of an amendment to the home occupation regulations be limited to the CC-1 Zone to avoid the proliferation of retail sales in more traditional residential areas.

Retail Sales Associated with Home Occupations

The provisions of Chapter 19.16 were created to allow home occupations in residential areas in a manner that does not negatively impact residential uses or affect the residential atmosphere of the neighborhood. Commercial uses necessitate off-street parking, safety lighting, loading and unloading, hours of operation, signage and many other uses incompatible with residential uses. Careful consideration needs to be taken to avoid making any modification that would inadvertently impact residential neighborhoods.

Before purchasing this property, the applicant was operating Legion Custom Shop in a commercial structure also located in the CC-1 Zone. The business was a permitted use in a commercial zone and operated in compliance with City ordinance. Staff is concerned the transition of a commercial business to a home occupation could result in a much larger business than is anticipated in the home occupation ordinance. Payson City supports a variety of business activities in the community. The very essence of the Zoning Ordinance is to allow the Planning Commission and City Council to determine the appropriate location for these uses. The applicant recognizes the concern with allowing retail sales in a residential setting. Therefore, the application is suggesting the amendment be limited to non-conforming residential uses in the CC-1 Zone.

Staff has explored numerous options to assist the applicant, including the use of the AD-O, Accessory Dwelling Overlay Zone which would accommodate mixed use development. Use of the overlay zone would require the commercial and residential uses to be completely separated, with commercial on the main level and the residential uses on the second story of the structure. The applicant has indicated this is impracticable with the floor plan of the dwelling and the location of essential facilities such as the kitchen and heating source being located on the main floor. Moreover, the applicant does not need the entire main level to conduct business.

In summary, the applicant is seeking amendments that would allow retail sales in home occupations and within non-conforming uses in the CC-1, Central Commercial Zone. The Planning Commission and City Council are under no obligation to recommend approval or approve the request. It is the burden of the applicant to convince the Planning Commission and City Council that the proposed text amendment would be beneficial to the applicable areas of the community.

Recommendation

Development regulations are enacted to ensure that all property owners are treated equitably and to protect the health, safety, and general welfare of the residents. It is important to reiterate that amending the Zoning Ordinance will affect a number of parcels throughout the community, not just the subject property. Therefore, review of the applicant's request should be expanded to how these regulations would affect other parcels located in the same zoning district.

The Planning Commission, following a public hearing, must decide whether or not the proposed amendments are consistent with the development goals and objectives of Payson City. The Planning Commission will need to forward a recommendation to the City Council to approve, amend and approve, or deny the request of the applicant to amend Chapter 19.16 of the Payson City Zoning Ordinance. The recommendation will be forwarded to the City Council for consideration.

Staff recommends that if the Planning Commission is inclined to recommend approval of the proposed amendments, that the following provisions be considered:

1. Retail sales in home occupations are strictly limited to the CC-1, Central Commercial Zone.
2. Retail sales in single family dwellings in the CC-1 Zone are limited to dwellings in existence at the time of the effective date of the ordinance and that no additional structures are converted to single family dwellings.
3. All business activities must be conducted within the dwelling; there shall be no outdoor storage and no areas for product testing or loitering.

Any recommendation of the Planning Commission and decision of the City Council should include findings that indicate reasonable conclusions for the recommendation or decision. If the City Council chooses to amend the Ordinance, the amendment shall be completed by ordinance.

Commissioner Fitzgerald said that paragraph 5 of section 19.16.1 of the Zoning Ordinance says "business activities may be conducted within residences located in any zone in the City..." Planner Spencer said the intent is only in residential zones. Commissioner Fitzgerald said it does not specify residential zones. Planner Spencer said there are several sections in 19.6 Home Occupations that refer to residential zones. We do not allow single family homes in non-residential zones in the city, so why would we allow home occupations in commercial and industrial zones. Commissioner Fitzgerald said if there is a conflict, it needs to be corrected.

Commissioner Fitzgerald wondered why we are looking at Home Occupation instead of the CC-1 requirements. Planner Spencer said it is because the home was built as a single family dwelling not a commercial building that has an accessory unit on the second story or in the basement. The applicant is requesting a home occupation because they don't need much room for the business and don't want to meet the minimum requirements of a commercial business. Planner Spencer explained that the applicants are asking to change the Home Occupation Ordinance so that home occupations in non-conforming uses in non-residential zones could be considered.

Commissioner Baird asked about the parking and traffic considerations that bump them out of the home occupation classification. Planner Spencer replied that there is increased traffic with retail sales which is why they aren't allowed in residential areas. The Home Occupation Ordinance specifies that if there is an increased demand on municipal services in an area, it may be cause for the City to work with the business to identify another location in the community where it may be more appropriate. We need to be very careful about the unintended consequences of introducing changes in the residential areas, even though they are zoned commercial, and the impact they could have on the residential properties.

Commissioner Warner wondered if it would be easier to change the classification of the structure from residential to commercial with accessory residential use since that is already allowed in the CC-1 Zone, and change the language to allow both uses to share the space. Planner Spencer said she would need to talk with the

Building Inspector and Fire Marshall to see if there would be additional code requirements if this were classified as a commercial building. As she was reviewing the application, she talked to other cities and Spanish Fork has a Residential Office Zone where mixed uses are allowed, but they do not allow retail sales in that zone.

Commissioner Fitzgerald noted that staff usually provides proposed verbiage for an ordinance amendment. Planner Spencer said that staff hasn't prepared anything yet because they were waiting for direction from the Planning Commission. The Commission could remand the request back to staff to prepare the verbiage.

Commission Fitzgerald said that under paragraph K in section 16.3.1 under residential home occupancy, it says interior alterations that eliminate specific areas of the home are not permitted and yet it looks like the living room has been taken up with the commercial activity. Planner Spencer said that is one more thing that may need to be changed. She said that it was very hard to provide specific language because if the Planning Commission recommends approval and the City Council approves the ordinance amendment, there will need to be significant changes throughout this chapter, not just changing one line.

Elizabeth Fullmer, the applicant, said there are many homes in the commercial zone that have home occupations. She feels their business does meet all the requirements for home occupation. She explained that they moved their business from a commercial building with 500 sq ft, where it was hard to make the rent, to the 380 sq ft in the living room with one of the four bedrooms being used for storage. She noted that it was only in 2004 that the ordinance was changed to prohibit retail sales in home occupations.

Mrs. Fullmer doesn't want the business to stay in their home forever. They plan to move the business out of their home once it is strong enough. Most businesses close by 8:00 pm, but they close at 6:00 pm so it shouldn't have a negative effect on the neighborhood. She has a copy of the Provo ordinance for home occupations that allows retail sales. The difference between Provo and Payson is that in Provo, a home occupation cannot have any signage but can use 50% of the home, and in Payson, you can have signage but only 25 % of the home can be used for the business. She says that they meet all the requirements of the Home Occupation Ordinance except the retail sales. She doesn't want the business to take over their home. Eventually they want it to go to a commercial building in a commercial zone, but right now; they need to have their business in their home legally with a business license. The staff report also said there is anticipation that the business might be too large for home occupation. The ability to grow is a good thing and if it grows, she won't need a home occupation. There are 48 homes in the CC-1 Zone. There are enough safeguards in place to protect the residents and the property values in neighborhood. The home is 2030 sq ft and the retail space, including the storage area, is 380 sq ft.

Commissioner Fitzgerald asked about the location of the two bathrooms in the home. Mrs. Fullmer said there is a bathroom on the main floor behind the kitchen and a second bathroom upstairs. He asked if the customers would be able to use the bathroom. She said so far, they haven't had anyone ask to use it, but they have no problem allowing patrons to use the main floor bathroom. She doesn't think there is a requirement for a public restroom in a home occupation. Commissioner Fitzgerald asked if they have a separate living room. Mrs. Fullmer said they do.

Commissioner Fitzgerald clarified that the only part of the ordinance they don't meet is the display of goods. Mrs. Fullmer said yes and the intent to sell the goods. Commissioner Fitzgerald said a lot of beauty shops have products to sell to their clients. She said she asked about that and was told that it is incidental to the business.

Commissioner Fitzgerald said he looked at their property from the lot to the south and noticed two sheds in the back yard. He asked what they are being used for right now. Mrs. Fullmer said they are storing a large display rack that is too big to use in the home and three clothing racks, all of which they are going to try to sell on KSL. They are not storing any product in the shed because the wood used to make the skateboards and longboards doesn't like temperature change.

Motion by Commissioner Baird to open the public hearing. *Seconded by Commissioner Fitzgerald. Motion carries.*

Gerald Buffum has known Ryan Fullmer for over 10 years and his skate shop is the only place he has ever felt safe. Ryan helps kids who are having trouble at home and with drug addiction. Mr. Buffum hopes the Planning Commission will recommend approval of the Fullmer's request.

Christi Petrucka, a teacher at Payson Junior High School, has a son that frequents the skate shop. She understands that the Fullmers' family is growing and they want to keep the shop close to home. She encouraged the Planning Commission to come up with wording to accommodate the shop. It is an asset to the community. She noted that there isn't much traffic generated because of the skate shop because the kids use skateboards to get there. Ryan helped her son with his Eagle Scout project. The Fullmers are a good influence on the young men in our community. She understands that skateboarding can have negative influence on the community but not this shop.

Casey Pomeroy Bryson helped raised money for the Payson skate park. He expressed his support for the Fullmers and said they are mentors for the youth in the community.

Jonathan Bauer, Elizabeth's brother, met Ryan when he was going through a tough time. Ryan helped him get out of trouble and go on a mission. He expressed his support for the business and hopes the City is willing to change the ordinance to keep this business in town.

Ryan Fullmer thanked all those who came to support them. He said he and his wife have talked with many of the neighbors and they are in support of the business. There are many empty buildings on Main Street and he would like to move there one day but his business isn't strong enough right now. He is a hard worker and a fighter. He feels they are an asset to the community and they want to be a part of the community and help it grow.

Commissioner Fitzgerald said we have heard many comments and endorsements for the Fullmers. Obviously they are a great asset to the community. However, this request is not just for them; it is a modification to the ordinance that would apply to any other nonconforming use in the CC-1 Zone, so we have to be very careful. There are things we don't want to see happen in the CC-1 Zone. We are constantly trying to increase business in the CC-1 Zone. He sees this as an opportunity to transition from a residential use in a nonconforming manner in the CC-1 Zone to a commercial activity. He has reviewed the ordinance and found very little conflict, but there is no authorization in the ordinance to allow this type of activity in the CC-1 Zone. He feels there are too many restrictions on residential properties in the CC-1 Zone. Home owners should have the opportunity to improve their homes and make their property nicer. He would like to see commercial activity in nonconforming residential areas permitted in the commercial zone. He wants to see us work towards that goal.

Commissioner Fitzgerald asked Councilmen Hardy and Hancock if they would prefer to see the proposed language before it comes to the City Council. They both said yes. Planner Spencer explained that if the Planning Commission wants to see the language, they could remand it back to staff. Councilman Hardy would like to see the Fullmers continue to operate their business while this process is moving forward. Planner Spencer said they cannot operate without a business license. She also said that, based on the discussion tonight, we have to make sure that by providing flexibility for these residents, we aren't doing it in a manner that adds additional requirements from the building and fire codes that would apply to businesses in the commercial zone.

Commissioner Warner complemented the applicants on their willingness to go through this difficult process.

Commissioner Baird also complimented the Fullmers on their diligence in knowing the ordinances and for their contributions which help to build the community. It is the Planning Commission's responsibility to weed through this to proposal and simplify it to help the City Council in their decision making process. He agrees with Commissioner Fitzgerald that amending the ordinance makes sense to help develop commercial activity in the CC-1 Zone. He wonders if it would it be simpler to just relax the restrictions in the ordinance. He would like to have staff do more research to determine what would increase the commercial activity and minimize the negative impacts.

Motion by Commissioner Fitzgerald to close the public hearing. *Seconded by Commissioner Baird. Motion carries.*

Motion by Commissioner Fitzgerald to remand the request back to staff to look at ways the ordinances can be amended to allow for commercial activity in nonconforming residential properties within the CC-1 Zone only, that the language be specifically for the CC-1 Zone and that it tie back to the Home Occupation Ordinance so that all the requirements must be met; and that it be done in such a manner that it looks at an all encompassing position of the CC-1 Zone and all of the potential nonconforming properties and the commercial activities that might take place in that zone. Based on the findings that we have good requirements for limitations on space, types of use and parking, etc, it is just a matter of making it a part of the ordinance that we can accommodate this type of commercial use in a residential property in a commercial zone. He added that it should be done in an expedient manner, because we have people who are dependent on an income from a business we want to see continued.

Councilman Hardy asked if there would need to be another public hearing when the staff brings the verbiage back to the Planning Commission. Planner Spencer said no; this public hearing has been held and closed tonight. It would need to come back to the Planning Commission at a future meeting for a recommendation to the City Council. The City Council will have to hold a public hearing.

Commissioner Baird seconds. Motion carries.

COMMISSION AND STAFF REPORTS

Commissioner Fitzgerald is delighted by the support and expertise of staff in preparing the documents and making it easy for the Planning Commission to conduct business.

Commissioner Baird also complimented staff for working outside the box with limited resources.

Planner Spencer gave an update on the upcoming Planning Commission meeting, and reported that seven people were interviewed for Commissioner Cannon's position on the Commission. She also reminded the Commissioners that she sent an email for an R.S.V.P. for the LDS Temple tour on April 11th 4:00pm. We need to know how many are coming so we know if we need one group or two. Commissioner Baird how long the tour will take. Councilman Hardy said at least an hour.

Motion by Commissioner Fitzgerald to adjourn.

Meeting adjourned at 8:42 p.m.