



PLANNING COMMISSION

Minutes of Meeting

September 2, 2021

1. CALL THE MEETING TO ORDER

The meeting was called to order by Chair LARSON at 7:01 p.m. This meeting was held in person and virtually, using Zoom video-teleconferencing technology. As duly announced and publicly noticed, the City previously approved this meeting format in order to continue with normal business amid the COVID-19 pandemic and the related public emergency orders promulgated by the State of Colorado and the Wheat Ridge City Council. Before calling the meeting to order, the Chair stated the rules and procedures necessitated by this virtual meeting format.

2. ROLL CALL OF MEMBERS

Commission Members Present: Melissa Antol
 Kristine Disney
 Daniel Larson
 Janet Leo
 Scott Ohm
 Jahi Simbai

Commission Members Absent: Will Kerns
 Ari Krichiver

Staff Members Present: Lauren Mikulak, Planning Manager
 Scott Cutler, Senior Planner
 Jordan Jefferies, Civil Engineer II
 Tammy Odean, Recording Secretary

3. PLEDGE OF ALLEGIANCE

4. APPROVE ORDER OF THE AGENDA

It was moved by Commissioner ANTOL and seconded by Commissioner DISNEY to approve the order of the agenda. Motion carried 6-0.

5. APPROVAL OF MINUTES – June 17, 2021 and August 19, 2021

It was moved by Commissioner DISNEY and seconded by Commissioner OHM to approve the minutes of June 17, 2021, as written. Motion carried 5-0-1 with Commissioner ANTOL abstaining.

It was moved by Commissioner SIMBAI and seconded by Commissioner DISNEY to approve the minutes of August 19, 2021, as written. Motion carried 5-0-1 with Commissioner LEO abstaining.

6. PUBLIC FORUM (This is the time for any person to speak on any subject not appearing on the agenda.)

No one wished to speak at this time.

7. PUBLIC HEARING

- A. Case No. WS-21-03:** an application filed by Storybuilt for approval of a major subdivision with 26 townhome lots in the Mixed Use-Neighborhood (MU-N) zone district and located at 5725-5785 West 38th Avenue.

Mr. Cutler gave a short presentation regarding the subdivision and the application. He entered into the record the contents of the case file, packet materials, the zoning ordinance, and the contents of the digital presentation. He stated the public notice and posting requirements have been met, therefore the Planning Commission has jurisdiction to hear this case.

Chris Auxier, Storybuilt Applicant
1882 W 137th Dr.

Mr. Auxier gave a brief background about Storybuilt and how they like developing small boutique projects and given the opportunity the development would be cottage style townhomes. He explained that the area is perfect for their vision with the great amenities that are close to the property.

Commissioner SIMBAI asked staff to clarify how the site exceeds the minimum setback requirements on the north side for townhomes that are adjacent to single family homes.

Mr. Cutler explained that there is a requirement of a 15-foot setback on the north side of the property, but the applicant is proposing a 20-foot setback so there will be a larger green space.

Commissioner SIMBAI asked how the parkland dedication and the credit for the two homes currently on the property works.

Mr. Cutler clarified that the two homes on the property will be demolished, but for purposes of parkland dedication the applicant will get credit for the existing homes. Ms. Mikulak added that the purpose of the parkland dedication is to acknowledge the net increase of dwelling units for the demand on parks.

In response to a question from Commissioner OHM, Mr. Jefferies explained there are no crosswalks between Harlan Street and Depew Street on 38th Avenue and if one is warranted then a study would be done depending on the pedestrian traffic in the area. Ms. Mikulak added that there is a signalized intersection at Depew Street, so there is cross walk there.

Commissioner OHM asked for concerns on Wheat Ridge Speaks about construction traffic to be answered.

Mr. Cutler clarified that protections are in place for residents during construction including on-site construction hours limited to 7am to 7pm. He added that if construction is in the right-of way then construction hours are further limited to 7am to 5pm and does not include weekends. Mr. Cutler also confirmed there will be a pre-construction meeting with the applicant to go over requirements related to construction staging and parking.

In response to a question about building orientation, Mr. Cutler also confirmed that Lot 18 will have a front door facing Eaton.

Commissioner OHM inquired if there is adequate space for the streetscape to be detached and allow for trees.

Mr. Cutler said the streetscape on Eaton is partially detached along with an Xcel easement for a transformer which the sidewalk will go around and transition to an attached sidewalk. An attached sidewalk is the standard for a local street such as Eaton.

Commissioner OHM asked if there will be pedestrian connection to the trail on the west side of the site and if there will be an HOA.

Mr. Cutler confirmed there will be a pedestrian connection and said that an HOA is required, and the maintenance obligations in the covenants will be reviewed by the City, but the City will not manage the HOA.

Commissioner DISNEY asked how the requirement of units per acre is determined and if the density of the neighborhood is taken into consideration.

Mr. Cutler explained that this site, in the MU-N zone district, is bound by the City's Charter which limits development to 21 units per acre or fewer. He added that this property's size allows up to 26 units. Ms. Mikulak added that in a Planned Development the character of the neighborhood might be taken into consideration

for density on the site but in the Mixed-Use zone district the maximum 21 units per acre is a use by right. They only things that can limit the number of units is the ability of the site to also meet other zoning requirements such as parking and open space.

Commissioner ANTOL asked what the average width of the units on 38th Avenue will be and if there are requirements.

Mr. Mikulak explained that the width of the townhome lot is going to depend on the market and the product, but it is not determined by the Code. Mr. Cutler added the range of the width for townhomes in this project is from 16 feet to about 28 feet and it is based on the garage size.

In response to a question from Commissioner LARSON, Mr. Cutler confirmed that the purpose of this case is to make sure the development is following all applicable regulations; he also confirmed the site conforms to MU-N regulations and that the parkland fees are \$48,000. He also clarified that the easement on the west side of the property was originally for vehicular access for a couple properties on Eaton Street and was kept in place for the Incarnation Development and will remain in place.

Commissioner SIMBAI asked the applicant how the lot sizes were determined.

Mr. Auxier explained they are trying to hit certain price points; this project includes both 2 and 3 bedrooms so the range will be \$550-570k per unit.

Commissioner DISNEY asked why this project seems to be denser than Incarnation and if these townhomes can be used as an Airbnb.

Mr. Auxier explained that the Residential-Three (R-3) and MU-N zone districts have different regulations. He added that the market in 2013 was also different and the demand for townhomes was less when Incarnation was developed than it is today. Mr. Cutler clarified that City Code does allow short-term rental, but they are limited.

Public Comment

John Conway, resident
3901 Eaton Street

Mr. Conway mentioned he is a longtime resident in the City of Wheat Ridge and has concerns about traffic on Eaton Street and is wondering who will maintain the street. He also wondered if there will be any landscaping put in place for privacy and asked how many parking places will be on site.

Vivian Vos, resident

6920 W 47th Place

Ms. Vos talked about some of the concerns posted on Wheat Ridge Speaks: 38th Avenue is not a main street for the City; density; and construction dirt/dust, adding that there should be a water tanker on site. She also mentioned her concerns about the multiple developments happening throughout the City.

**Karen Case, resident
3871 Eaton St (rental), 6324 DeFrame Way, Arvada**

Ms. Case mentioned she is a longtime resident in the Wheat Ridge as well and feels Eaton Street is a little oasis in the City and is worried about a loss in property values due to the density of this project. She also has concerns about privacy for the existing properties and is worried about traffic and parking issues.

**Ross Carpenter, resident
3825 Depew Street**

Mr. Carpenter mentioned the deed covenant restriction for the Stuart Gardens Subdivision which states there should be no commercial development in the area, which included a lawsuit recently between neighbors and potential developers. Overall, he is in support of the project, but has concerns about density and height of the buildings.

**Patricia Allen, resident
3945 Eaton Street**

Ms. Allen mentioned she has been in the community for 20 years and she has concerns about height of the building, traffic on Eaton and would like to see speed bumps installed.

**Jill Folwell, resident/business owner
5885 W 38th Avenue**

Ms. Folwell said she is in favor of this project but has concerns about parking and thinks a speed bump would be ideal on Eaton Street.

**Susan Hartley, resident
4015 Eaton Street**

Ms. Hartley is concerned about the density and thought it was going to be fewer units based on a previous neighborhood meeting at her house. She also would like to see access only onto 38th Avenue and not Eaton Street. She is very concerned about parking and traffic on Eaton Street.

Kayla Maranjian, resident

3880 Eaton Street

Ms. Maranjian also said she is overall in favor of this project but has concerns about parking and is wondering if Eaton Street will be improved with sidewalks and gutters and is also concerned about the density. She acknowledged that MU-N zoning is appropriate for 38th but questioned how far back it extends into the neighborhood.

Commissioner LARSON closed the Public Comment.

Mr. Jefferies addressed the traffic concerns on Eaton Street and mentioned the Neighborhood Traffic Management Program that is resident-driven with regards to traffic speed bumps. He said most of the traffic will use 38th Avenue and the frontage to this development will be improved.

Ms. Mikulak clarified that the City was not part of the lawsuits and the City does not enforce covenants. She added the site designs are available for the public to view and can email zoning@ci.wheatridge.co.us for more information. Ms. Mikulak mentioned that it is the zoning that dictates the density not the subdivision. She explained the irregular boundary of the MU-N zoning and the depth of the MU-N zoning on the subject property; the zone change to mixed use zoning was a legislative zone change and it was created to follow the Urban Renewal Boundary.

Mr. Cutler added that parking is a part of the site plan and this development is meeting all zoning requirements including the 35-foot height limit.

Mr. Auxier anticipates there will be fencing along the single-family property lines as well as buffers and he added there will be sidewalks and improvements to the project's street frontages. He also clarified that the earlier neighborhood meeting that was mentioned was with a different developer not Storybuilt.

Commissioner OHM asked if the City maintains Eaton Street and if access to the project can be explained. Mr. Jefferies clarified that the City does maintain Eaton Street and Mr. Cutler explained that the access to the development is dictated by the Fire Department as well as the City, and that the two access points was the most logical design to meet fire and utility requirements.

Commissioner OHM asked about no parking signs and Mr. Jefferies said the Engineering Department would look at that on a complaint basis.

Commissioner SIMBAI said he is taking both sides into consideration and understands the concerns of the neighbors but also is aware there is a need for townhomes for those people just starting out in property ownership. He feels the developer has met all the requirements and would like them to listen to the neighbors concerns and work with them.

Commissioner ANTOL thanked all for their thoughts and comments from the community and the hard work done by staff and the developer, but she is concerned about the density. She hopes the developer will listen to those concerns because she understands the reasons for different types of housing needed in the City.

In response to a question from Commissioner OHM, Ms. Mikulak explained that the setback for this subdivision is more restrictive at 15 feet than some of the residential zone districts, but as all residential zone districts, the height is the same at 35 feet.

Commissioner OHM feels the developer has met all the requirements and would like them to listen to the concerns of the neighbors. He mentioned he would also like to see a crosswalk mid-block on 38th Avenue.

Commissioner DISNEY shares the density concerns of the community and doesn't feel like it fits in with the neighborhood. She understands the City is evolving and agrees the development standards have been met and encouraged Storybuilt to step up and work with the neighborhood so the character of the area can be maintained.

Commissioner LEO thanked the citizens for participating; she noted she did not hear that citizens are against the project but had concerns about construction, traffic and privacy.

Commissioner LARSON said he understands the concerns about the density and wants the developer to not only look at the parameters for the development, but also listen to the neighborhood.

It was moved by Commissioner LEO and seconded by Commissioner OHM to recommend APPROVAL of Case No. WS-21-03, a request for approval of a major subdivision on property located at 5725 and 5785 West 38th Avenue and zoned Mixed Use-Neighborhood (MU-N) for the following reasons:

- 1. All requirements of the subdivision regulations (Article IV) of the zoning and development code has been met.**
- 2. All agencies can provide services to the property with improvements installed at the developer's expense.**

With the following conditions:

- 1. The applicant shall pay the required fees-in-lieu of parkland dedication at time of building permit.**
- 2. The developer shall enter into a Subdivision Improvement Agreement and a Lot Sale Restriction Covenant Agreement with the City at the time of recordation of the subdivision plat.**

Motion carried 5-1 with Commissioner ANTOL voting against.

- B. Case No. ZOA-21-02:** an ordinance amending Chapter 26 of the Wheat Ridge Code of Laws regarding outdoor recreational equipment on private property.

Ms. Mikulak gave a short presentation regarding outdoor recreational equipment on private property in the City of Wheat Ridge.

Public Comment

Kathleen Baccarini

11065 Linda Vista Dr., Lakewood, Residence

10745 W. 35th Avenue, Wheat Ridge, Rental Property

Ms. Baccarini explained that her renters abruptly moved out due to the halfpipe in their neighbor's back yard due to the excessive noise that comes from the adults and the skateboards and the loss of privacy. She inquired why the ordinance was only limiting the structures to 12 feet and if there can still be a person on top. She appreciates the consideration from the Commissioners and City Council members.

Amanda Weaver, District III Council Member

11100 W. 38th Ave., Wheat Ridge

Ms. Mikulak stated that Ms. Weaver was present to read statements from constituents who wish to remain anonymous. The City Attorney has confirmed this is permitted because this case is legislative in nature and because Council Rules specifically allow City Council Members to read comments from constituents who cannot be present at the meeting.

The 1st statement explained that they are neighbors concerned about the use of the skate ramp regarding privacy, safety, and property values. They also mentioned the noise level is very loud coming from the skateboards and the adults riding in the halfpipe.

The 2nd statement is from another concerned neighbor who is directly affected by the halfpipe in their neighbor's yard and is upset at the loss of privacy and the increase of noise. They are voicing their concerns no matter the outcome so other neighbors in the City of Wheat Ridge do not have to deal with the similar issues in the future.

The 3rd statement stated they support the ordinance to limit the size and height of outdoor recreational structures on private property and reiterated their privacy has

been lost. They added the property owner has not taken into consideration the impact of the halfpipe on the neighborhood or the quality or their quality of life.

Enzo Perri, Resident
10750 W. 35th Avenue

Mr. Perri explained the noise of the skateboard is constant and the property owner is very aggressive and unapproachable.

Peter Baccarini,
11065 Linda Vista Dr., Lakewood, Residence
10745 W. 35th Avenue, Wheat Ridge, Rental Property

Mr. Baccarini reiterated the comments of previous speakers and agrees there needs to be a code amendment for outdoor recreation equipment but is worried that 12 feet is still too high.

Commissioner LARSON closed the public comment.

Commissioner LEO thinks most of the comments had to do with noise and privacy and most of the structures pictured in the report do not usually have adults associated with them. She asked if there is a percentage of a yard that obstacle courses can be allowed on larger properties. Also, she asked what the amortization date is.

Ms. Mikulak commented that smaller obstacle courses will be allowed if they comply with setbacks, size, and height. She added that variances are an option for larger yards, but percentage of lot areawas not explored as a maximum size limit. Ms. Mikulak also clarified that noise is not a part of the zoning code, but part of the nuisance code and is regulated by the police department which can be challenging to enforce. She mentioned that the amortization date for non-conforming equipment existing prior to the effective date of this ordinance is mid-April 2022, meaning equipment shall be brought into conformance by then. She added that enforcement is complaint driven.

Commissioner DISNEY asked if the structure is 12 feet in height will this stop people from installing these types of equipment.

Ms. Mikulak explained a code is not written for one specific issue, but there will need to be some modification to bring the existing halfpipe into compliance because it exceeds multiple development standards. She added the 12-foot regulation is a balance between minor and major accessory structures.

Commissioner OHM asked if the height and setback is a typical structure height and understands the citizens complaints. He also commented that a property

owner's house can be 35 feet in height and a balcony can be up high. He then asked if there is a way to measure the noise.

Ms. Mikulak explained that setback differs depending on the zone district and can range from 5 to 15 feet. She also clarified that the City's noise regulations do not include a decibel limit on residential properties.

In response to a question from Commissioner OHM, Ms. Mikulak said that structures in a front yard must follow front yard setbacks. Commissioner OHM feels that kiddie pools should be in a back yard for safety and to avoid accidental drowning.

Commissioner SIMBAI inquired if the Community Development Director has the power to determine if the equipment is permanent or not. He also mentioned that this Code Amendment feels like it is due to one piece of equipment.

Ms. Mikulak explained that the decision maker is the Director and if not agreed with, then the Board of Adjustment can make a final decision on the interpretation of whether something is permanent or temporary; the board also decides on variances that exceed 50% of the standard. She also mentioned this is not the typical path for a Code to be written based on specific issue, but it is the way it happens sometimes.

Commissioner LARSON asked staff to explain the permitting process for a property owner that wants a permanent structure on their property. He also asked how these structures will come into compliance.

Ms. Mikulak explained that this will be similar to the rules that apply to a fence which does not need a building permit, but it needs to follow the development standards. She added that enforcement of these structures will be complaint based. With the current code, it is basically impossible for the PD to enforce because there is not a specific code section to refer to.

Ms. Mikulak mentioned that the Public Hearing for City Council is September 27.

In response to a comment from Commissioner SIMBAI, Ms. Mikulak mentioned that paid mediation has been offered to the neighborhood with the halfpipe.

It was moved by Commissioner DISNEY and seconded by Commissioner OHM to recommend approval of a code amendment modifying Chapter 26 of the Wheat Ridge Code of Laws regarding outdoor recreational equipment on private property

Motion carried 6-0.

8. OLD BUSINESS

9. NEW BUSINESS

A. Upcoming Dates

Ms. Mikulak mentioned that there will be Planning Commission meetings on September 16, October 7, and October 21.

B. Project and Development Updates

Ms. Mikulak updated the Commissioner on Let's Talk which is now focusing on the Leppla Manor and Applewood neighborhoods. She mentioned that the first round of engagement has been completed and that report can be found on the What's Up Wheat Ridge project page. Currently, we're in the second phase and are waiting for each neighborhood to weigh in on specific action items, which is done by a survey. Ms. Mikulak said there will also be an open house on September 8 at the Rec Center which will duplicate the survey, but there will be representatives in attendance from Engineering, Planning and Parks & Rec to answer any questions. A summary of input from these 2 neighborhoods will be brought to City Council on the October 4 Study Session. Currently we are focusing on the 3rd and 4th of 10 neighborhoods.

10. ADJOURNMENT

It was moved by Commissioner LEO and seconded by Commissioner OHM to adjourn the meeting at 9:50 p.m. Motion carried 6-0.


Dan Larson, Chair


Tammy Odean, Recording Secretary