

SALT LAKE CITY LAND USE APPEALS HEARING OFFICER
APPEAL OF PLANNING COMMISSION
DENIAL OF DESIGN REVIEW PETITION
PETITION NO. PLNPCM 2023-00707
220 AND 250 South 200 East
HEARING HELD FEBRUARY 15, 2024
DECISION ISSUED March 4, 2024

On December 13, 2023, the Salt Lake City Planning Commission heard a request for Design Review of a project (“the project”) proposed to be built at 220 and 250 South, 200 East in the Downtown D1 zoning district. The Planning Commission rejected the application, and the applicants now appeal. A hearing on this matter was held before the Salt Lake City Land Use Appeals Hearing Officer on February 15, 2024. JF Luxe Partners II QOZB, LLC and J. Fisher Companies (collectively, the Applicant) were represented by attorney Bruce Baird. Salt Lake City was represented by Paul C. Nielson, Senior City Attorney. The record in this matter consists of the record before the Planning Commission, the video recording of the Planning Commission meeting on December 13, 2023, written submissions and briefs directed to the Hearing Officer and oral argument presented at the hearing. The video recording can be found at: <https://www.youtube.com/watch?v=O1geHGiMa80>.

While the Decision of the Planning Commission should be affirmed unless it is not supported by substantial evidence in the record or violates a statute, ordinance or law in effect when the decision was made, the applicant argues that the decision below was both illegal and illogical. In prosecuting this appeal, the burden is on the Applicant to marshal the evidence in support of the Planning Commission’s decision and to prove that the Commission acted in derogation of the law and the evidence. Because the Planning Commission did not comply with the City’s Design Review ordinance and because no evidence on the record supports the motion to deny the application, the decision below is reversed.

The City Design Review Process allows for construction of a building below the minimum height in the downtown D1 District as a specifically designated exception if the project meets other standards as set forth in the ordinance. The Planning Commission denied the project on the basis that the failure to meet the minimum height requirement in itself resulted in a lack of required density as advocated by the Master Plan. The Commission did not voice any objections to any of the other exceptions sought by the applicant. Because the Commission did not follow the method of analysis set forth in the ordinance, the denial of the application failed to give the property owner the benefit of the law as written.

The applicants’ request before the Planning Commission was to approve a design that deviated from the Central Business District Standards by the following criteria:

- A reduction in the minimum building height from 100 feet to approximately 78 feet, 6 inches.
- An increase in the maximum street facing façade length from 150 feet to approximately 307 feet 4 inches along 200 East

- A decrease in the required glass percentages on both the ground floor and upper floors
- Modifications to the upper setbacks required for buildings between 78-104 feet within the D-1 Zone.

Prior to its public hearing, the Planning Commission was presented with a staff report documenting the manner in which the project complied with the City's ordinance and proposing approval of the project. During the hearing, the applicant made an oral presentation and submitted substantial written materials in support of the proposed design.

Salt Lake City Ordinance 21A.59 provides a process whereby the Planning Commission reviews modifications to the Zoning Rules to determine if a project meets the established Design Review standards and is compatible with the city's various general plans. "The intent of the process is to review applications for minor modifications to applicable design standards is to allow some flexibility in how the design standards are administered by recognizing that this title cannot anticipate all development issues that may arise." 21A.59.010.

The Design Review Process is not to determine strict compliance with the Master Plans and other zoning rules but rather to allow consideration if a project should go forward even though it is non-complaint in some ways. By specifically providing that buildings below the minimum building height in the D1 District are subject to Planning Commission review, the City's ordinance anticipates that a lower height building might be approved if it is otherwise consistent with the applicable master plans and provides other design benefits as set forth in the ordinance. Salt Lake City ordinance states that buildings approved through the design review process constitute an exception to the minimum height requirement. Salt Lake City Code 21A.30.020(D)(2)(e).

As set forth in the Staff Report, Salt Lake City ordinance requires that the Planning Commission look to a number of factors in order to determine if a project qualifies for the reduction in height. By providing the Design Review as a specific exception to the minimum height requirement, the Planning Commission is required to assess the project based on the standards enumerated in the ordinance. The standards, as set forth in 21A.59.050 are:

- A. Any new development shall comply with the intent of the purpose statement of the zoning district and specific design regulations found within the zoning district in which the project is located as well as the City's adopted "urban design element" and adopted master plan policies and design guidelines governing the specific area of the proposed development.
- B. Development shall be primarily oriented to the sidewalk, not an interior courtyard or parking lot.
- C. Building facades shall include detailing and glass in sufficient quantities to facilitate pedestrian interest and interaction.

- D. Large building masses shall be divided into heights and sizes that relate to human scale.
- E. Building facades that exceed a combined contiguous building length of two hundred feet (200') shall include: 1. Changes in vertical plane (breaks in facade) 2. Material changes; and 3. Massing changes.
- F. If provided, privately-owned public spaces shall include at least three (3) of the six (6) following elements:
 - 1. Sitting space of at least one sitting space for each two hundred fifty (250) square feet shall be included in the plaza. Seating shall be a minimum of sixteen inches (16") in height and thirty inches (30") in width. Ledge benches shall have a minimum depth of thirty inches (30");
 - 2. A mixture of areas that provide seasonal shade;
 - 3. Trees in proportion to the space at a minimum of one tree per eight hundred (800) square feet, at least two inch (2") caliper when planted;
 - 4. Water features or public art;
 - 5. Outdoor dining areas; and
 - 6. Other amenities not listed above that provide a public benefit.
- G. Building height shall be modified to relate to human scale and minimize negative impacts. In downtown and in the CSHBD Sugar House Business District, building height shall contribute to a distinctive City skyline.
- H. Parking and on site circulation shall be provided with an emphasis on making safe pedestrian connections to the sidewalk, transit facilities, or midblock walkway.
- I. Waste and recycling containers, mechanical equipment, storage areas, and loading docks shall be fully screened from public view and shall incorporate building materials and detailing compatible with the building being served. Service uses shall be set back from the front line of building being served. Service uses shall be set back from the front line of the building or located within the structure.
- J. Signage shall emphasize the pedestrian/mass transit orientation.
- K. Lighting shall support pedestrian comfort and safety, neighborhood image, and dark sky goals.
- L. Streetscape improvements shall be provided [as required].

The Staff Report found that the project complied with each of these standards and no Planning Commissioner asserted or moved that the findings were incorrect except with regard to Standard A, which required the project to meet the density and height requirements set forth in the Downtown Master Plan, where the 100 foot requirement originated.

During discussion, Commissioners repeatedly voiced concern about approving any building below the 100 foot minimum. Despite the standards set forth in the ordinance, one commissioner asserted that a decision to allow the deviation would set a precedent with no way to enforce the minimum in the future. Video Recording, time stamp 1:31. Another commissioner stated that the purpose of the minimum height requirement is to create more density downtown and more activation at the street level thus suggesting that the density requirement could never be met by a building below the minimum height requirement. Video Recording, time stamp 1:17. The commissioners repeatedly cited to the changes to downtown zoning requiring more height as sacrosanct to complying with the purpose of the downtown zoning district. At no time did the commissioners voicing disapproval of the proposed plan acknowledge the manner in which the City's ordinances specifically allowed for a lower height in the Downtown District if certain conditions were met, in spite of the language favoring density and intensity in the downtown plan. The Commission's disposition of the application had the effect of nullifying the language in the ordinance creating a Design Review exception to the minimum height requirement in the D1 District. 21A.30.020 (D) (2)(e).

The Commission voted to deny the application by approving a motion stating: "Based on the information presented and discussion, I move that the Commission deny this Design Review application because evidence has not been presented that demonstrates the proposal complies with the following standards: Standard 21A.59.50, part A, Which is the intent of the downtown district to provide use, bulk, efficient use of space, high urban density, and very intensiveness." The Motion passed with no discussion.

At no time did the Commission work through the balancing test set forth in the ordinance as a precondition to approving the height deviation. This was the case throughout the hearing until one Commissioner proposed a Motion approving the plan and citing the manner in which the project's benefits complied with the ordinance. That Motion was not seconded and no discussion ensued. Instead, the successful motion to deny the project was made and passed; again without discussion.

Moreover, the Commission did not express any disagreement with the individual findings in the staff report or evidence presented by the applicant; that for example the proposed project was consistent in size with other buildings on the surrounding block, that it provided a mid-block walkway with connectivity to Edison Street, that the design created street frontage and was broken-up to avoided excess massing. Several of the commissioners who voted against the project stated that the developer had done a good job complying with other elements of the ordinance and that the design itself worked well with the neighborhood as it currently exists. Nothing in the record or discussion provides any counterweight to the Staff Report finding that the project met every requirement of the Design Review ordinance, other than being below the minimum height. And no evidence or argument was deduced that the project lacked sufficient density or intensity except by being two floors lower than the minimum.

No evidence exists in the record to provide a basis for denying the application for Design Review. Rather the evidence demonstrates that the applicants met every standard set

forth in the ordinance required for approval. The Commission never analyzed the project as a possibly legitimate exception to the minimum height requirement as the Downtown zoning ordinance anticipated. Because the Planning Commission failed to comply with the analysis set forth in the Downtown zoning ordinance, and because the record demonstrates design compliance by the applicant, the decision of the Planning Commission is reversed.

Dated this 4th day of March, 2024.

/s/Mary J. Woodhead
MARY J. WOODHEAD