

Planning and Zoning Board

Study Session Minutes

Virtual Platform

Date: April 14, 2021 Time: 3:00 p.m.

MEMBERS PRESENT:

*Chair Dane Astle
*Tim Boyle
*Jeffrey Crockett
*Deanna Villanueva-Saucedo

MEMBERS ABSENT:

Vice Chair Jessica Sarkissian
Ben Ayers
Shelly Allen

(*Boardmembers and staff participated in the meeting through the use of telephonic and audio conference equipment)

STAFF PRESENT:

Nana Appiah
Tom Ellsworth
Lesley Davis
Rachel Prelog
Kellie Rorex
Cassidy Welch
Charlotte McDermott

OTHERS PRESENT:

None

1. Call meeting to order.

Chair Astle declared a quorum present and the meeting was called to order at 3:00 p.m.

2. Review items on the agenda for the April 14, 2021 regular Planning and Zoning Board Hearing.

Staffmember Kellie Rorex presented case ZON21-00087, Val Vista Condominiums Preliminary Plat. The subject site is located north of Southern Avenue on the west side of Val Vista Drive. The General Plan Character Area is Mixed Use Activity District with a Community Scale subtype and the focus of this area is to create community and regional activity areas that serve the population within a four-mile radius. Some of the primary uses within this Character Area designation include medical and professional offices. The zoning on the site is Office Commercial. The request before the Board tonight is a preliminary plat to create a three-unit office condominium for an existing medical office development. Building one will be Suite 101 and 102 and building two will be Suite 3. The existing parking, landscaping, and open space will all be held in common ownership. The request complies with the 2040 Mesa General Plan and complies with the Mesa Subdivision Guidelines section 9-6-2. Staff recommends approval with conditions.

Boardmember Crockett asked if this change requires any construction on the site. Ms. Rorex responded this is a paper change and there will be no construction on the site.

There was no further questions or discussion by the Board.

Staffmember Cassidy Welch presented case ZON21-000148, Preliminary plat for

Mesa Mercado. This is an existing commercial complex located south of Southern Avenue and west of Alma School Road on the east side of Longmore, north of Fiesta Mall. The General Plan designation is Mixed Use Activity District and is also located within the Fiesta District Sub-Area. The zoning on the site is currently Limited Commercial which does permit for retail offices and restaurants. The request before you today for a preliminary plat to create a five-unit commercial condominium plat and is an amendment to a previously approved preliminary plat. The applicant is requesting a new preliminary condominium plat to reflect the current configuration of the site. It will allow for individual ownership of those buildings with common ownership of the shared parking and landscaping. In summary, we find that the request complies with the 2040 Mesa General Plan and the Mesa Subdivision Guidelines Section 9-6-2. Staff is recommending approval with conditions.

Boardmember Crockett asked if there will be any construction on the site or is this simply a preliminary plat to change the document. Staffmember Welch responded there will be no construction on the site and this is a request to allow individual ownership of the existing buildings.

Boardmember Boyle recalls this was approved a while back and confirmed the request is to separate the parcel in order to sell them individually. Ms. Welch confirmed this is a preliminary plat in order to allow individual ownership of the existing buildings. The applicant has made the decision to continue with the site as is with the possibility of modifying the site plan at a later time. The preliminary plat is to reflect the current configuration on this on the site.

Mr. Boyle stated if these are held by individual owners, are we going to be asking for it later on if the entire Fiesta Mall site gets sold or is this not something that we're really allowed to talk about. Perhaps it is related to the Economic Development Department part of the City.

Planning Director Nana Appiah responded this is a Planning function and not an Economic Development function. We cannot require the separate ownership, however, most of the time when there are separate ownerships, they come in to plat and show individual ownership to the lots, but we cannot require them to have those lots platted individually.

There was no other discussion or questions by the Board.

3. Hear a presentation, discuss, and provide recommendation on proposed text amendments, including, but not limited to, Chapter 31 and 86 of Title 11 of the Mesa Zoning Ordinance relating to Recreational Marijuana establishments.

Planning Director, Nana Appiah, stated that Senior Planner, Rachel Prelog, has been working on certain code amendments and that due to an item on the ballot this past November, we need to make certain changes to our Zoning Ordinance to reflect those changes.

Senior Planner, Rachel Prelog, stated the first proposed amendment that we want to discuss with you is Recreational Marijuana. These would be amendments to Chapter 31 of the Zoning Ordinance. As Nana was mentioning, back in November, the voters passed Proposition 207, also known as the Smart and Safe Arizona act, that legalized the consumption of marijuana for recreational use.

Proposition 207 became effective December 1, 2020, and the Department of Health has already started issuing those licenses for marijuana establishments. In December of 2020, the City amended the Police Ordinance to try to get ahead of this issue and set up some regulations before they started issuing license. What the Police Ordinance did was it limited recreational marijuana facilities to dual licensed facilities. When I say dual licensed facilities that means that it has to be operated as both a recreational and medical marijuana dispensary in order to have that recreational marijuana sales component of it. It did not allow for standalone recreational sales. The Ordinance also prohibited home delivery of recreational marijuana and prohibited marijuana testing facilities and various kinds of consumption on City properties but also while driving or operating a vehicle.

Currently, our Zoning regulations just regulate medical marijuana dispensaries, cultivation and infusion facilities. They are allowed in the Light Industrial and General Industrial zoning districts. They have permissible hours that they are allowed to operate which are 8am to 9pm and there are also limits on the size of these facilities. The most important one I would say is the size of the dispensaries which is 2,500 square feet, of which no more than 500 square feet of it can be used for storage of products. There are also several different separation requirements with these facilities which are provided in the presentation.

The presentation shows our current map of all the various dispensaries, cultivation, and infusion facilities in the City. The various green icons on the map are the indicators of the locations of those facilities. The gray circles show the separation or the buffer distance from the various uses, so those larger ones are those mile buffers. You can see some of the smaller ones are either the 500 or the 1,200-foot buffers and then underneath that you can see little glimpses of blue areas. Those are indicating the LI and GI zoning districts. What this map is really representing are the areas inside Mesa that would still be able to accommodate additional facilities. While we do have a couple of spaces that additional dispensaries or dual licensee facilities might be located, but they are very limited.

Staff is recommending, as far as amendments to the Zoning Ordinance, to follow what the Police Ordinance has already established and to only allow dual licensees facilities to have sales of recreational marijuana. As explained earlier, a dual licensee facility will have to have both the marijuana dispensary and the recreational sales together at the same location. We are not recommending substantial changes to any of the other requirements. The Zoning districts would still be limited to the LI and GI zoning districts. We are recommending that the hours operation remain the same from 8am to 9pm and that the size limits for those facilities stay the same so 2,500 square feet for dispensaries or the dual licensee facility; 2,500 square feet for a cultivation facility; and 10,000 square feet for an infusion facility. The separation requirements that were discussed earlier between the various uses would also remain the same.

We have had a lot of informal discussions with the various operators. Because we do know they are getting licensed through the State already for those dual licensee facilities. They have reached out to the City, inquiring about what we are going to be pursuing as far as zoning amendments. The biggest feedback we have heard from the operators so far has been the interest in having an increased size for the facilities and extended hours of operation because per the State, they allow sales above what the City has for their requirements.

We are anticipating coming back to you with the actual specifics of these amendments in May, aiming for May 12, for a Planning and Zoning hearing. And then we are trying

to get to City Council for further action before Council break, in June and July for the introduction and the actual action hearing date.

Boardmember Boyle stated he wants to be sure he understands this correctly. On the map, he is seeing the plus signs and some sort of marker tabs and seeing a bunch of somewhat circular shapes. Are the circular shapes where there are smaller dispensaries or are they the little green dots? Mrs. Prelog explained the green crosses with the white background are just medical marijuana dispensaries. The box with the white plus sign is just cultivation facilities. The green circle with the white outline is both cultivation and infusion facility combined. Then the place marker icon is the combination of a dispensary cultivation and infusion facility. Mr. Boyle stated in the background there is some kind of gray shapes. Mrs. Prelog started that these indicate what are described as those separation buffers when we talked about of the various distancing requirements between uses. Those separation distances are indicated on the maps.

Boardmember Boyle stated there was a vote legalizing marijuana and asked if this is based off of that election. As he understands, there has been some city Council discussions about limiting where it is going to be and is that what we are looking at now. Mrs. Prelog responded when they passed Proposition 207, it allowed municipalities to put reasonable limitations on the locations of those facilities. So, we need to come back as a City and specifically amend our Ordinance to include this new use type. To include the provision for recreational marijuana or to limit those facilities or to restrict them outright. that the ordinance that went through in December was for the Police Ordinance and we are coming back now for the Zoning Ordinance to amend our land use classifications and our development standards.

4. Hear a presentation, discuss, and provide recommendation on proposed text amendments, including, but not limited to, Chapters 4, 5, 6, 8, 32, 58, 64, 86, and 87 of Title 11 of the Mesa Zoning Ordinance relating to Community Residences (i.e., currently known as Group Homes or Group Homes for the Handicapped in the Zoning Ordinance).

Planning Director Nana Appiah stated before we move on to the second item on the study session, City Attorney, Charlotte McDermott has a statement that she wants to read. Ms. McDermott stated, I just want to remind the Board that Community Residence, which are under the current Zoning Ordinance as Group Homes for the Handicap, are a protected class under the State and Federal Fair Housing Laws, including the Federal Fair Housing Act and the Americans with Disability Act. These laws prohibit discrimination based on a person's disability. And as it is well established under these laws that a person who is recovering from substance abuse is considered disabled. And while some people may want to dispute this, it is not disputable under the law. And the Fair Housing laws prohibit discriminatory legislation that prevents, eliminates or prohibits the community residents. So, when the City decided to amend its Zoning Ordinance, regulations for Community Residence, the City hired a consultant that is a national expert in this area of the law to assist in updating our Zoning Ordinance regulations. This is the same expert that the City of Prescott used when they were having an issue with the constant over concentration of Community residents, especially sober living homes, and they were receiving complaints that there were some operators that are did not have development standards and quality of care standards and said they were getting complaints about some bad operators. We are adopting or proposing to adopt some regulations that are as restrictive as the City of Prescott. Before Rachel goes over those proposed text amendments, I just wanted to explain the City's purpose and goals of the proposed text amendments.

One of the purposes of these text amendments is really to protect the health and safety of the residents that are living in those homes, and to protect them from some of the bad operators that do not have any quality of care standards. One of the ways that we are doing that is to require all community residents that will be operating in the City of Mesa to be licensed by the State. If there is no State licensing, they will require them to get a certification from a nationally recognized organization. And then one of the other goals is also to prevent clustering or an over concentration of these homes in areas. One of the reasons for this is to for the benefit of the residents that live in these homes, because we want to make sure that they can integrate into the neighborhoods and that they can socialize with the neighbors that are in the area and interact with non-disabled neighbors.

To do this, we are looking at maintaining our current spacing requirement that we have for Community Residents. We are also adding annual registration requirements so that we can maintain those maps to show where the locations are and can prevent some of that overconcentration. We want to make sure that we are not creating any type of social de facto, social service district in a residential area. These regulations, while they help protect the residents, it also protects the neighborhoods in which these homes are located. So, before we discuss the Community Residence and the regulations, I just wanted to note that it's important when discussing the community residents and the proposed text amendments that we just be thoughtful in our process.

Senior Planner, Rachel Prelog stated as Charlotte McDermott mentioned, the intent of these facilities is to allow equal access to housing and for people with disabilities to have the opportunity to live in family-like settings and integrate into the surrounding community. So, with this, we are reviewing our current requirements for compliance with State and Federal Laws. We are also looking at ways to strengthen the City's registration process so that we know that our database is up to date, that it is being renewed every year to prevent the overconcentration of facilities that might result in a de facto social service district.

Currently, the definition of Group Home for the Handicap is a dwelling that's shared as a primary residence by handicapped persons living together as a single housekeeping unit in which staff people or persons provide on-site care, training or support. Oftentimes, this category gets confused with other land use classifications and services. They are not correctional transitional housing, which I had mentioned in my last presentation, where people are serving the remainder of their sentence in a residential setting. They are not nursing or convalescent homes, and not assisted living facilities or social service facilities.

Our current requirements can really be broken down in to three categories. The first is a Group Home for the Handicap that has less than five residents. They are not required to register with the City and do not have to adhere to any separation requirements. In essence, they are treated just like a family and have all the rights of any other family living in a residential zoning district.

The second one is when you get to the 5 to 10 residents. They are required to register with the City and at that point, the separation requirements come into effect. Those are 1,200 feet from another Group Home for the Handicapped; 1,200 feet from an Assisted Living Facility and are only allowed in specific zoning categories with the AG, RS, RSL, RM, MX, DR-1, DR-2, DR-3 and DB-1.

And then when you get to the larger facilities where you're looking at greater than 10 residents, once again, they are still required to register with the City and to have the same separation requirements from other Group Homes for the Handicap or Assisted Living Facilities, but in this case, they are required to get a Special Use Permit through the Board of Adjustment. With the larger facilities, the allowed zoning districts are a little different. They are intended to be more for multiple residents, our higher intensity uses. They're allowed in the RM and some of the Commercial districts.

We are proposing to make changes to strengthen the registration process with one modification we have been mentioning is to require an annual renewal. Currently, we have a database of all of the Group Homes of the Handicap but we have not required an annual renewal. This has resulted in not having the most accurate data. We are in the process right now of verifying all the operations of those group homes and then they will be required to renew on an annual basis so that we have an accurate idea of where these are located. We are also going to be including a revocation process, so, if there is any chance that their State license gets revoked, or if there is any other circumstances arises that we may revoke their registration.

With this we are going to be defining family and updating various other definitions, updating the development standards specific to Group Home for the Handicap, which will now be called Community Residences, and then we are also strengthening our reasonable accommodation process.

There are quite a few definitions that are going to be affected with this amendment. Several of them are going to be removed and replaced by terminology such as Community Residence, Recovery Community, and disability. As I mentioned, we are also adding a definition of family, single family, single housekeeping unit, group foster homes, and modifying boarding houses and social service facility definitions.

Some of the most pertinent and relevant definitions are the new definition of a family. Previously, when I talked about the Group Home for the Handicap with less than five people, in essence, the City was treating them as a family with the same equal rights that any family would enjoy. With this, we are specifically defining what family constitutes. We are recommending this is no more than four unrelated individuals. When this relates to the new terminology for Community Residence, those cut offs for the registration requirements, where it used to be 6 to 10, and over 10, those are going to change slightly now because we introduced this definition of family. Now a Community Residence with 5 to 10 individuals would be required to register.

And this gets further broken down into 2 sub-categories. One being a Family Community Residence, which is really intended for the long-term stay of individuals, generally a year or more. And then Transitional Community Residence, which is really intended for limited tenancy, generally less than a year.

For the development standards, once again, we are requiring the annual renewal and revocation process. As I was mentioning, the introduction of these new definitions changes the occupancy limits and registration requirements from being 6 to 10 residents in a home down to 5 to 10 residents. The 1,200 foot separation from another Community Residence, Assisted Living Center or Correctional Transitional Housing Facility will remain intact. We will also be strengthening our

reasonable accommodation process. A reasonable accommodation can be requested from the spacing requirements, from the occupancy limits, or from the licensing requirements. With each one of these, this would require a Special Use Permit that have specific criteria for each of them to make sure that they are not detrimental to the community and are topic specific.

The distinguishment between having a long-term residence versus a limited residence with these two categories is that we are able to require an additional level of review with the Transitional Community Residences. So, in those circumstances, instead of being permitted by right for the 5 to 10 individuals in a home, they would be required to obtain a Special Use Permit. If they have people rotating in and out of the house and not staying there on a long-term basis.

So once again, these would be coming to the Board, most likely on the same day as the Recreational Marijuana amendments, anticipating on May 12 for Planning and Zoning hearing for your recommendation to City Council. We're wanting to get to City Council before their break sometime at the end of June and early July. And with that, I'd be happy to take any questions or comments.

Boardmember Villanueva-Saucedo appreciates the required annual renewal and that it is really critical to ensuring a clean and transparent process where the City knows what is happening within its own boundary. Also, updating the definition, some of the definitions utilized some outdated terminology, and so she really appreciates the sensitivity and how that has been updated.

Boardmember Boyle asked what the definition of related family members, such as first cousins, etc. Mrs. Prelog responded we do not have a definition of related. City Attorney Charlotte McDermott stated the definition does not go down to the family levels such as domestic partners, children of those and foster children in the home specifically. It also does not go into the different levels as brother and sister and grandparents.

Boardmember Boyle asked if there will be an existing map for the location of the Community Residence as there is for the Medical Marijuana locations. Planning Director Nana Appiah stated we do have the separation distance and unlike Medical Marijuana, the separation reasons are basically determining two things; one is to make it clear that the properties that have already received those licenses in the past will be vested; and the second part is establishing and maintaining the separation distance and will show those zoning districts that allows for them. I am not sure specifically how a new map showing their locations is going to affect what we are proposing unless there is a specific question behind it, which I'll be very happy to answer.

Boardmember Boyle stated as he understood that the purpose of the marijuana map was to ensure that these are not clustered too closely together. And, in keeping the needs of the residents of these homes in mind, I believe that the purpose is to prevent clustering to not create a de facto social service district. With a map like this to aid us in that process of making sure that that the people in these homes are taken care of properly.

Ms. McDermott stated the map that you saw for the marijuana dispensaries is a map that shows a dot on the map. With Community Residences, that will be the similar type of map that we keep. When it becomes a question of disclosure of some of those things, we would not provide a map to the public that shows the address of these specific locations. So, the locations will be a dot on the map

because we do not want to disclose the address of these locations. One of the reasons for that is that the State has a licensing requirement for structured sober living homes and as part of that, they have said that the address for these homes, because of the sensitive nature of knowing the locations of these homes, they have said that that is not a public record. So, it is not subject to disclosure. The City would take the same position for all community residents. If requested, we would show a map that has the just a dot on it to show the general location so that no one could not figure out the exact address, but staff would know the addresses and locations of those facilities.

Boardmember Boyle stated I totally understand the need to be discreet about these things. But there could be something available for staff which aids them should someone come in to request to create a new home. Then the distances would have to be checked, and so is there a process for this.

Rachel Prelog responded we do have a map and just as you say, we know the locations of the ones that we have registered. When we have a request for a new group home for the handicapped, we use that map to ensure those separation requirements. But as Charlotte was saying, these are a protected class, so it is not publicly available. Even staff has limited access to the maps and I cannot see that information myself.

5. Planning Director's Updates.

- Decisions of the City Council's April 5, 2021 land use hearings.

Planning Director Nana Appiah stated starting next month, the Planning and Zoning Board members will be coming back to meet in person. As you are aware, the City Council started coming for in person meetings two weeks ago. We have talked to all the other boards and they are willing to come back to in person meetings. Starting in May, we are asking you to come back in person. However, there is going to be the opportunity to do a hybrid meeting and those that wants to attend through Zoom from other locations, you will have that opportunity. Those members that want to come to the building in the Council Chambers will be able to do so.

Boardmember Boyle inquired how that would work if we choose to not come in. Dr. Appiah stated you will be on screen and City Council actually did a little bit of that last Thursday where there was a hybrid. A couple of the Council members participated through Zoom and some were in the Council Chambers. There will be that option.

In terms of land use decisions, since the last time we met there has not been any major land use decisions that the City Council has made with the exception of Legacy Sports Park which was made on April 15.

6. Adjournment.

Boardmember Villanueva-Saucedo motioned to adjourn the meeting at 3:56 pm. The motion was seconded by Boardmember Crockett.

Vote: 4-0 Approved (Vice Chair Sarkissian and Boardmember Allen and Ayers, absent)

Upon tabulation of vote, it showed:

AYES – Astle, Boyle, Crockett, and Villanueva-Saucedo

NAYS – None

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nana K. Appiah', with a stylized flourish at the end.

Nana K. Appiah, AICP, Secretary
Planning Director

Note: Audio recordings of the Planning & Zoning Board study sessions are available in the Planning Division Office for review. The regular Planning & Zoning Board meeting is “live broadcasted” through the City of Mesa’s website at www.mesaaz.gov.