COMMISSIONERS PRESENT:

Ryan Dickey, Chair
Thomas Cooke
Joel Fine

STAFF PRESENT:

Peter Barnes– Planning & Zoning Administrator
Jami Brackin– County Attorney
Ray Milliner– Principal Planner
Patrick Putt– Community Development Director
Canice Harte
John Kucera
Crystal Simons
Malena Stevens

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The meeting was called to order at 4:30 PM.

REGULAR SESSION

1. General Public Input

   The public input was opened.

   Jason Miller said he is the secretary/treasurer for the Mountain Top subdivision. He wanted to let everyone know he is present in case they have any questions. Chair Dickey said he will have a chance to address the Commission when that agenda item comes before the Commission.

   The public input was closed.

2. Public hearing and possible action regarding a proposed plat amendment to add a driveway easement to Lot PRE-60, located at 6244 N View Drive, Chad Lundstrom, Applicant– Jennifer Strader, Senior Planner

   Planner Strader said the application before the Commission is a request for a driveway easement to the subdivision plat for Lot 60 in the Park Ridge Estates subdivision. An
aerial map was shown. Planner Strader pointed to the existing residence and driveway. The applicant would like to extend that driveway to access an accessory structure that will be located to the rear of the property.

Planner Strader said the amendment is necessary because a driveway is required to be set back 10 feet from the side property line and be a minimum of 12 feet wide. The area between the existing residence and the side property line is approximately 15 feet wide. There is not enough room to meet both standards.

Planner Strader said if an easement is established on the subdivision plat, the easement supersedes the standard 10-foot setback. This situation is unique because the accessory building is currently under construction. The applicant originally applied for a LIP for the accessory building because it exceeded 2,000 square feet. It also contained an accessory dwelling unit. The applicants proposed a walkway, or pedestrian path, however the Engineering Department requires a driveway.

Because of the issue with the side yard setback, the applicant chose to forego the accessory dwelling unit. The building was reduced in size to approximately 1,600 square feet. That made the LIP no longer necessary. A building permit was issued for what was labeled as a storage shed, which was accessed by a walkway. Construction began on the structure.

During construction, the applicant added a second floor. Because this was not part of the approved plans, a stop-work order was issued. The applicant then informed Staff they wanted to add the accessory dwelling unit back into the plans. This meant a driveway would be required for access. Additionally, an LIP would be needed because the structure would exceed 2,000 square feet.

The Engineering Department informed the applicant they would need to have a driveway to access the structure. The applicant was also told that the existing driveway
needs to be brought into compliance. The existing driveway is approximately 5 feet from the side property line.

Planner Strader pointed to the site map. She said there appears to be enough property to meet the setback; however, there is an existing water line. This prevents the applicants from moving the driveway.

Planner Strader said due to the onsite conditions and the fact that both a residence and an accessory dwelling unit are allowed in the RR zone, Staff recommends the Commission conduct a public hearing and approve the amendment request.

The public hearing was opened.

Chris and Meredith Huegel said they live directly behind the home in question. They said it was a lot to follow about how the original permit was filed and then downgraded. They said it was after construction began that the applicants applied for a new permit. They don't understand how that can be allowed.

Mr. Huegel said he also would like to raise awareness about the HOA by-laws and CCRs of the Park Ridge Development. The accessory building and the garage don't comply with these rules. He noted this building is about twice the size of the actual residence. It will be the biggest structure in the entire neighborhood. It blocks their view of the mountains. Mr. Huegel used the vicinity map to point out where his residence is located. Their home is 12 feet directly behind the structure in question.

Marilee Riley lives on Park Ridge Drive behind the home, but up the hill by two lots. The site plan doesn't indicate the actual placement of the building. It extends to the area indicated as concrete. It is the size of their full backyard width.
Ms. Riley said the construction did not begin with what was permitted. She has an issue that someone, who does not comply with their permit, can then ask for a new permit. They call this a shed, but it is actually a very large garage. It is the biggest structure in the neighborhood. There appears to be an apartment on the second floor of the structure, along with a deck. The garage looks like a two or three car garage.

She said they are essentially building a second home on a lot that is allowed to have one home on it. She added that her neighbor, with a garage behind their home, was never permitted to have a driveway to their garage. This is setting a poor precedence. This is not a shed. It is a second home.

Chad Lundstrom is the applicant. He said this application goes back about one year. They had a permit for a structure with living quarters. They were told by a County employee to call it a storage shed. The size of the structure has not changed from the original permit they applied for.

Mr. Lundstrom said the concrete pad was approved by Summit County. Property lines were measured by Summit County building officials. They have not violated any height restrictions. He agreed that it is a large building.

Mr. Lundstrom said they have a small house. They have children. At some point, they would like to have room for them to live. He estimated there are 12 accessory buildings in the neighborhood, three of which have living quarters. These don’t necessarily comply with the driveway requirements either.

Mr. Lundstrom said what they are trying to accomplish at this meeting is to obtain approval on the plat amendment. The issue is the lack of five feet from the neighbor’s property line. There are no accessory buildings in the neighborhood that comply.
Mr. Lundstrom said the Engineering Department Director, Mike Kendall, said he believes there needs to be a Code amendment for accessory building in older neighborhoods. Mr. Lundstrom said they have various things, such as a boat, which needs to be stored. He said this neighborhood has a voluntary HOA. The CCRs were removed a few years ago. He said they have been shut down for several months. He said that Planner Strader is aware of all that has happened. She agrees this is the best way to resolve the various issues.

Chair Dickey said he didn’t realize that Mr. Lundstrom is the applicant. He will continue with the public hearing and then come back to Mr. Lundstrom.

The public hearing was continued.

Chris Huegel said the CCRs have not been voted down. Chair Dickey told him they will continue taking other comments, after which they will come back to the issue of the CCRs and the HOA.

Andy Keylander said he is also a homeowner in Park Ridge Estates. He wanted to echo what some of the others have said. The CCRs outline a 40-foot setback from the rear property line. It is more significant than just a few feet. He understands the Planning Commission doesn’t enforce CCRs. The Commission is being asked to approve a driveway easement, but this is to a building that may or may not be in compliance.

Natalie Stauffer said part of her view corridor has been impacted by this building. She has upheld all of the standards and requirements of the County and the HOA, even when putting in a tiny Tuff Shed in her yard. She reported seeing both the structure and the information on the permit for the structure. These don’t seem to match.

Ms. Stauffer said she doesn’t want to question anybody’s integrity. They have an awesome community. They need to communicate with one another. The standards
and laws for the community have been set. They need to hold each other accountable for these laws until they are changed. If they need to be changed, that is a discussion for down the road. She doesn’t want to see a huge garage being built. She ended by saying the Commission should not set a bad precedence.

Carol Querry asked for clarification on what the structure will look like when completed. She has heard that an addition to the north end of the building is planned. She would like to know if they are planning on making it even bigger.

Barbara Navin is concerned about the shape of the roof line. What kind of roofing materials will be applied? It is slanted towards her property and the property next to her. She is concerned about snow hitting their fences. The snow will land in an area that is supposed to be an easement on their streets. She is concerned that it won’t be.

Ms. Navin said since they began construction, they have had a lot of trouble with their phone lines. She is concerned about the safety the project presents. It was her understanding this was supposed to be a one-story building. It is not right to build a building, but then add a second story. If this was one story, it wouldn’t be a problem. As it is, the building is way too large for the neighborhood.

*The public hearing was closed.*

**Chair Dickey** asked Planner Strader to give a brief history of the project and how it changed. He asked her to explain how the County works with the HOA as part of the construction process.

Planner Strader said the applicants submitted an application for a Low Impact Permit (LIP) to build a structure that exceeds 2,000 square feet. That is the LIP was required. The application included an accessory dwelling unit. Because the Engineering Department required them to put in a driveway, rather than just a pedestrian
walkway, the side yard setback could not be met. At that time, they decided not to build the accessory dwelling unit and decrease the size of the building.

The applicants then received a building permit for a ~1600 square foot storage shed. A pedestrian walkway was approved because it was only a storage shed. When the building was constructed, a second floor was added without approval. That is when they got the stop-work order.

After the applicants spoke with County Officials, they decided to put the accessory dwelling unit back into the structure. This made the structure exceed 2,000 square feet which created the need for an LIP.

Planner Strader said because they can't meet the side yard setback and the minimum driveway width, this request is being made. If this easement is added to the subdivision plat, it would supersede the setbacks. If the application is approved, a building permit will be required and it will require approval by the building department. All building code requirements must be met.

Planner Strader added that the County does not get involved with HOA regulations or enforcing CC&Rs. Those things are not taken into consideration when processing an application. The Development Code requirements are what the Commission takes into consideration.

**APPLICANT’S COMMENTS**

Mr. Lundstrom said the size of the structure has not changed from the original permit. If needed, he can name the County employee that instructed them to go this direction. He was told to call it a storage shed, have a walking path, and other such items. He has been working with an architect and designer, including what this should be called. He said this has been a “mess” for the last year. He has a three-ring binder of documents supporting his case.
Mr. Lundstrom said the size of the structure has not changed. The thing that did change was the addition of the second floor. He explained the reason a second floor was added. His builder was not comfortable building the structure without the second floor. He asked a County Engineer why the building was approved to be 30 feet high without a second story. The County Engineer agreed that a second story would stabilize the building.

Mr. Lundstrom said the point of this meeting is about the plat amendment and the driveway issue. The concrete has been approved by the County. He repeated the size of the structure has not changed from the original application. The fire department has approved the driveway three different times.

Gina Lundstrom said they are not trying to make enemies in the neighborhood. She said there are 15 accessory units in their neighborhood with living spaces. Three of which have very narrow driveways. They are trying to avoid parking trailers and other things in their backyard. She said they have a small home. There isn’t space for family to come and stay.

**Commission Comments and Questions**

Commissioner Kucera said he appreciates the challenges and frustration on all sides. He asked Planner Strader if all requirements, other than the driveway, have been met. Planner Strader said that is correct. The structure complies with the setbacks and height requirements. She clarified that the footprint of the structure has not changed from the original application; however, the overall square-footage will increase due to the addition of the second floor.

Commissioner Kucera asked why a full driveway is required with an ADU. They are trying to promote ADUs as an alternative style of living. A full driveway with setbacks may be prohibitive. Planner Strader said the driveway is an Engineering Department requirement. If an accessory dwelling unit contains garage doors, a driveway is
required. Commissioner Kucera said this is a subject he would like to have the Commission consider at a later time.

Commissioner Kucera asked that Planner Strader explain the need for an easement amendment. Is the driveway contained entirely on the applicant’s property? He asked Planner Strader to describe what would take place if the application is denied. Planner Strader said it is entirely on the owner’s property. She hasn’t heard from the property owner to the north. Should this application be denied, the applicant can appeal the decision to the County Council. If the County Council upholds the Commission’s decision the applicant would have to revisit the idea of a second floor. She said the fire district has confirmed they are able to access the structure.

Commissioner Fine said he has no comments at this time.

Commissioner Harte asked if the neighbor to the north has given any input. It will be the property receiving the greatest impact. Planner Strader said she isn’t aware of who they are. She added that Staff was concerned about the applicant pushing snow onto the neighbor’s property. The applicant’s have since identified a location for snow storage on the plat amendment.

Mr. Lundstrom said they have been in communication with the neighbor to the north. They are perfectly fine with the proposal. He said that Planner Strader can make a call to confirm this is true. He said they have been neighbors for 20 years.

Commissioner Harte said that generally, he is not inclined to approve an amendment that will impact a neighbor. It would be helpful to hear from the northern neighbor. He would need to know that neighbor is okay with what is being proposed before he would agree to move the application forward.
Commissioner Harte asked if the applicants are currently in violation. Is the stop-work order still being enforced? Planner Strader said that is correct. They are unable to do any work on the house until this situation is remedied.

Ms. Lundstrom said there have been a number of accessory dwelling units built. They are the first ones that have to get a plat amendment. She added that neighbor to the north just arrived at their home. The neighbor is willing to talk with the Commission and tell what their feelings are about the proposed project.

Teresa Hall said neither the driveway nor the height of the garage have any impact on their property. The applicants have been driving on this area for the past 20 years. Commissioner Harte said because the neighbors have no problem with the setback, he has would be in favor of granting an approval.

Commissioner Harte said if this is approved, who the concerned neighbors should talk to about their worries. Planner Strader said a Low Impact Permit is issued by the Community Development Department. The building permit comes from the Building Department. The easiest thing for the neighbors to do would be to reach out to her.

Commissioner Simons said the Commission is not looking at the building itself. She appreciates the questions asked by Commissioner Kucera about the conformance of the ADU. She shares his concerns about driveways attached to ADUs. There seems to be roadblocks in certain zones to have an ADU.

She would like to honor the neighbor behind the property who also has an adjacent lot. The height will have an impact to this property; however, the building complies with height restrictions. Because of this, she feels inclined to approve.

Commissioner Simons asked if there will an area of the driveway that will not be made of concrete. Will there be a rock permeable surface so the water district will
have access? Mr. Lundstrom said there will be concrete up to the corner of the house. Beyond that point, there will be gravel.

**Commissioner Simons** said the action of adding a second story when the permit didn’t allow it is a red flag. They are doing the right thing now by bringing this before the Commission. Ms. Lundstrom said they brought in a second builder because there was so much confusion from the beginning of the project.

**Commissioner Cooke** said it is clear this application is for a plat amendment for the driveway, not necessarily the structure, but he is having a hard time getting past the inaccuracies in the drawings. He asked what the side setback is in the Rural Residential zone. Planner Strader answered the side yard setback for a driveway is 10 feet; the driveway is required to be 12 feet wide. She explained the hatched area on the site plan is the area of the driveway that doesn’t meet the setback.

**Commissioner Stevens** said it is important to consider that there are other properties with driveways that are closer to the lot line and does not meet the required setbacks. **Commissioner Fine** asked if the owners of Lot 61 might be willing to adjust their property line so that the Lundstrom’s driveway could comply with the Code.

Planner Strader answered if Lot 61 were to adjust their property line that would move the lot line closer to their home. That act may render their home in violation of the required setbacks. **Commissioner Fine** said he is trying to work out a solution that will make everybody happy. He is willing to delay a Commission decision until this question can be answered. A discussion took place about his suggestion.

**Commissioner Cooke** said even though he respects **Commissioner Fine**’s desire to create a scenario where everybody wins, what the Commission is discussing is if there is good cause. He said the applicants can’t place the driveway where it needs to be
because of a water line. That is the issue at hand. The Commission needs to decide if that situation constitutes good cause.

Mr. Lundstrom said both the existing and the proposed driveway will meet the 12’ width. He stated that Engineer Mike Kendall said the Engineering Department would like to see a Code amendment for some of the older neighborhoods.

**Commissioner Stevens** said having the neighbors adjust lot lines may create additional problems. She doesn’t think that asking a neighbor to adjust their lot-line will create a good scenario. She agrees with **Commissioner Cooke** the Commission needs to look at the good cause.

**Chair Dickey** asked if the Commission has the authority to grant this request. Can they change a plat by altering the setback? His understanding of Section 10-2-4(E) is that other than the outlined exceptions, driveways can never violate the 10’ setback. He read the Code language about setbacks for the Rural Residential zone. Planner Strader said her understanding of the language is that setbacks on a recorded plat can be altered.

Attorney Brackin said the Commission needs to focus on the application before them. She said the members of an HOA are at liberty to enforce its rules, but that would be a private action would be between the HOA and the applicant. It is not for Summit County to enforce.

There was a discussion between Attorney Brackin and Chair Dickey about the meaning of Section 10-2-4(E). She said there are a few Oxford commas that are missing in the language. She read the section with the commas in place. If there is a recorded plat, the language allows the setbacks to be changed. There are many instances in Summit County where that that has occurred. Usually, good cause must be shown. An amended plat is recorded to show the specific changes on the plat. An
alternative route is to get a variance. A plat amendment would still be required.

Chair Dickey said he would like to discuss the language further at another time.

Attorney Brackin said the commas are critical. The courts expect the Code language to use commas correctly. The precedence of how this has been understood helps to define the meaning. She said this section applies to driveways.

Commissioner Cooke asked which standard the Commission should be trying to meet. Is it the Engineering ordinance or the Development Code? Planner Strader said the Staff Report requires a 10 foot setback, which is an Engineering Department requirement.

**Motion**

Commissioner Simons made a motion to approve the plat amendment as outlined in the Staff Report and below. Commissioner Cooke seconded the motion. All voted in approval.

**Findings of Fact**

1. Lot PRE-60 is located at 6244 North View Drive.
2. Lot PRE-60 contains 0.63 acres.
3. Lot PRE-60 is zoned Rural Residential.
4. Lot PRE-60 is owned by Chad and Gina Lundstrom.
5. Lot PRE-60 contains an existing single-family residence.
6. In April 2019, Chad and Gina Lundstrom submitted a Low Impact Permit to construct an accessory structure exceeding 2,000 square feet.
7. The accessory structure included an accessory dwelling unit.
8. Access to the structure was proposed by way of a “pedestrian walk” that extended off the existing driveway.
9. The Engineering Department stated they could not approve the Permit as they required the access to be a driveway rather than a “pedestrian walk”; this was
because the structure contained an accessory dwelling unit and was designed with garage doors.

10. A driveway is required to be setback ten feet (10’) from the side property line and be a minimum of twelve feet (12”) wide.

11. The area between the existing residence and the side property line (where the driveway would wrap around the house) is approximately fifteen feet (15’).

12. The applicant decided to reduce the size of the building to less than 2,000 square feet and forego building the accessory dwelling unit.

13. A Low Impact Permit was no longer necessary and the file was closed.

14. In July 2019, a building permit was issued for the subject property for what the applicant described as a single-story storage shed containing 1,620 square feet with a “pedestrian walk” providing access to the structure.

15. During construction, the applicant added a second floor to the accessory structure that was not approved as part of the building plans.

16. A Stop Work Order was issued.

17. The applicant informed Staff that they wanted to add the accessory dwelling unit back into the structure, thus making the building larger than 2,000 square feet, again resulting in the need for a Low Impact Permit.

18. Chad and Gina Lundstrom submitted a Low Impact Permit for an accessory structure exceeding 2,000 square feet. The structure also included an accessory dwelling unit.

19. The applicants were informed by the Engineering Department that a driveway was necessary to access the structure.

20. Engineering requested that the existing driveway that provided access to the existing residence be brought into compliance with the ten-foot (10’) side-yard setback.

21. The existing driveway is approximately five feet (5’) from the side property line.

22. There is an existing water line that prevents the existing driveway from being moved.
23. **Section 10-2-4(E) of the Snyderville Basin Development Code (Code) which refers to building setbacks states:**

   “Setbacks: Unless otherwise indicated below, on a recorded plat or and approved site plan, the minimum setbacks shall be...”

24. **The applicant is applying for a plat amendment to identify the driveway on Lot PRE-60 because the location of the existing driveway and proposed driveway to the accessory structure does not meet the required setback.**

25. **An accessory structure is allowed use in the zone district.**

**Conclusions of Law**

1. *Neither the public nor any person will be materially injured by the proposed amendment and there is good cause for the amendment.*

- **MOTION CARRIED (6-1)** Commissioner Fine voted nay.

3. **Public hearing and possible action regarding a plat amendment to remove and/or record various utility and shared access easements and to consolidate previous plat amendments as an amended and restated Mountain Top Subdivision plat, Mountain Top HOA, Applicant- Kirsten Whetstone, ACIP, County Planner**

   Planner Whetstone said that joining her on this item are the applicants, Jason Miller, George Pantazelo. Both are from the Mountain Top HOA. Marshall King and Michael Demkowicz are from Alliance Engineering. This item is a request to amend the Mountain Top Subdivision, including all 12 lots and the private Mountain Top Drive.

   Planner Whetstone said this request is basically an accounting exercise. Over the years there have been several plat amendments. The original plat was recorded in 1979. There have been a lot of plat changes including utility easements, easement vacations and driveway easement changes. The last plat amendment was recorded in 2017. This request is to remove previously vacated utility easements, to show all of the existing recorded easements, and to consolidate the amended plat with the 2017 plat amendment.
A slide of the plat map was shared. Planner Whetstone pointed out some of the discrepancies on the plat. She said there are no proposed changes in any of the lot-lines, no change to the 60‘wide private road, or to the public utility easements.

Staff has reviewed this and found that it complies with the requirements of Section 10-3-18 of the Code, which is about plat amendments. The request is to create an amended and restated subdivision plat. There is no material injury to the public or any person. There are findings of good cause due to clarifying the plat. The density is not increased. There is no increase of the number of lots or units. Staff is recommending the Planning Commission hold a public hearing and consider finding in favor of the applicant as outlined in the Staff Report.

Planner Whetstone said an issue was raised since the notice went out. The owner of record of lot #8 has requested to vacate an easement that was dedicated to Summit County. That easement has to do with the Mountain Top Road. The road is now located within the originally platted 60' easement. The roadway easement is shown on this current plat amendment. It is not shown on the original plat because it was dedicated later, after the original plat was recorded. Because of the issue raised to request vacation of the roadway easement on Lot 8, Staff has a recommended a new finding and a condition should the Commission decide to entertain approval of this action.

She suggested the following as the additional finding of facts

"The owner of record of Lot #8 has requested a vacation of an easement granted to Summit County. The granted easement was recorded in 1980. This easement is not on the recorded Mountain Top subdivision plat but it shown on this amended and restated Mountain Top Subdivision plat."

The additional condition of approval:

"If the easement of Lot #8 (entry #168498) is vacated by Summit County prior to final recordation of this amended and restated Mountain Top
Subdivision plat, then this easement can be removed from the amended plat prior to final signatures and recordation. Any information related to the vacation of that easement would need to be included on the final subdivision plat.”

Planner Whetstone said the reason for adding this condition is because if this plat is recorded with the easement as now shown on Lot #8, another plat amendment would be needed to remove it in the future, should it be vacated.

Planner Whetstone explained that at one time, Mountain Top Road was located within the easement located on Lot #8. When the new water line went in, the road was moved to the recorded 60’ easement, which is on top of the water line. The easement on Lot #8 is no longer necessary; however, the full review of the petition has yet to happen. The request to remove this easement may come back to the Planning Commission.

Mr. Pantazelos said he is the president of the Mountain Top HOA. He thinks that Planner Whetstone did a good job of explaining the situation. The easements have been vacated, but have not yet been recorded.

The public hearing was opened. No comments were made and the public hearing was closed. The Commission had no additional questions or comments.

Motion

Commissioner Cooke made a motion to approve the application as outlined in the Staff Report with the addition of condition #4 and below. Commissioner Simons seconded the motion.

Findings of Fact

1. Mountain Top Subdivision, consisting of twelve single family lots on 20.62 acres, was approved by the Summit County Board of Commissioners. (BCC) ON May 21, 1978 and recorded on September 28, 1979 as Entry No. 159772.
2. *The subdivision plat was subsequently amended, as a First and then a Second Amended Mountain Top Subdivision*, adjusting lot lines private roadway and driveway easements, and utility easements for Lots 10 and 11. The Second Amended plat was approved on September 22, 2017, and recorded on Sept. 25, 2017 as 1078183.

3. **The Second Amended plat supersedes the First Amended plat for Lots 10 and 11.**

4. *There is not an active Specially Planned Area plan, or a Development Agreement for this property.*

5. **On May 15, 2020, the Mountain Top Owners Association, on behalf of all twelve lot owners, applied for an Amended and Restated Mountain Top Subdivision plat amendment, inclusive of all twelve lots.**

6. **The lots are located at 143-370 Mountain Top Drive within the Hillside Stewardship (HS) zoning distinct, with identifying tax id number of MT-1, MT-2, MT-3, MT-4, MT-5, MT-6, MT-7, MT-8, MT-9, MT-10-2AM, MT-11-2AM, and MT-12.**

7. **Ten lots are development with single family homes. Lots 3 and 4 are currently vacant.**

8. *Property owners are represented by the president of Mountain Top Owners Association, per an approved consent resolution, signed by all twelve property owners and executed on March 10, 2020.*

9. **Mountain Top Drive, within the subdivision, is a private road located within a 60’ wide private road and utility easement.**

10. **Access to this subdivision is via Mountain Top Lane, a public street, within incorporated Park City.**

11. **Number private and public utility, access and driveway easements have been recorded on these lots, as noted in the title report submitted with the plat amendment application. These easements are documented on this Amended and Restated plat unless they have been properly vacated, as noted on the plat.**

12. **Several easements have been properly vacated over time and those easements are no longer shown on this plat. Vacated easements are noted on the plat.**
13. A shared driveway easement on Lot 6 for the benefit of Lot 7 is shown conforming to the easement described and recorded as Entry No 274738 on July 30, 1987. This driveway easement is shown as 12’ wide to allow expansion, if required in the future, to comply with driveway width requirements.

14. Summit County service providers reviewed this application and comments received have been incorporated into this plat amendment.

15. The lots are served by Snyderville Basin Water Reclamation District for wastewater and were annexed by the Park City Water District for water service (Recorded survey S-9538.)

16. Snyderville Basin Water Reclamation District commended that they have coordinated with the Owners Association to ensure that necessary easements for sewer are in place.

17. Park City Fire District indicated no concerns with this plat amendment.

18. No changes are proposed to any platted lot lines or the private road.

19. No increase in density, in terms of number of lots or units, results from this plat amendment.

20. This Amended and Restated Mountain Top Subdivision plat amendment supersedes Mountain Top Subdivision (Entry No. 159772) as well as Mountain Top second Amendment to Lots 10 and 11. (Entry No. 1078183.)

21. The owner of record of Lot #8 has requested a vacation of an easement granted to Summit County. The granted easement was recorded in 1980. This easement is not on the recorded Mountain Top subdivision plat but it shown on this amended and restated Mountain Top Subdivision plat.

Conclusions of Law

1. The plat amendment application complies with Section 10-3-18 of the Snyderville Basin Development Code and in particular, with Standards 1 and 2 of Section 10-3-18(I), in that:
a. There is good cause for the plat amendment to accurately reflect recorded and vacated easements, to record a shared driveway easement for Lots 6 and 7, and to consolidate previous plat amendments;
b. There are no changes to existing lot lines or the private road
c. There is no increase in density in terms of lots or number of units.

2. The application is consistent with the Mountain Top Subdivision, as previously amended.

CONDITIONS OF APPROVAL

1. The final plat shall be recorded within one year of approval or this approval shall expire.

2. Power of attorney agreements shall be recorded prior to recordation of the final plat to use power of attorney to sign the final mylar.

3. All plat notes and restriction on the Mountain Top Subdivision plat, as amended with the recorded plat amendments for Lots 10 and 11, shall remain in effect with this amended plat.

4. If the easement on Lot #8 (entry #168498) is vacated by Summit County prior to final recordation of this amended and restated Mountain Top Subdivision plat, then this easement can be removed from the amended plat prior to final signatures and recordation. Any information related to the vacation of that easement would need to be included on the final subdivision plat.

- MOTION CARRIED (7-0) All voted in approval.

4. Public hearing and possible action regarding a proposed amendment to the Development Activity Envelope located at 663 West Deer Hill Road, Parcel PRESRV-2-37M Rich Pittam, Applicant- Ray Milliner, Senior Planner

Planner Milliner said the application is to modify a building pad on a parcel located in the Preserve. It is a square-foot for square-foot exchange. A slide was shared of the site
plan. It indicated the desired adjustment. Staff’s review finds that it meets the minimum standard required for approval; therefore, it is recommended that following a public hearing the Commission vote in favor of the proposed amendment as outlined in the Staff Report. The applicant, Rich Pittam, said he had nothing to add at this time.

The public hearing was opened. No comments were made and the public hearing was closed.

The Commission had no questions.

**MOTION**

Commissioner Simons made a motion to approve the amendment to Lot 37 of the Preserve Phase II as outlined in the Staff Report and below. Commissioner Fine seconded the motion. All voted in approval.

**FINDINGS OF FACT**

1. Scott Bolz & Jennifer Lemaster are the listed fee title owners of Parcel PRESRV-2-37.
2. Parcel PRESRV-2-37 is 11.51 acres in size.
3. Parcel PRESRV-2-37 is located at 663 W Deer Hill Road.
4. Parcel PRESRV-2-37 is located in the Hillside Stewardship Zoning District.
5. The Preserve Phase 2 Subdivision plat was originally platted in 2004.
6. The applicant is requesting the amendment to modify the approved building envelope for construction of a single family home.
7. No increase in the size of the development activity envelope is proposed, only a modification of its configuration.
8. The proposed development area is not within any critical lands, including wetlands, slopes, or ridgelines.
9. There is no evidence that the proposed plat amendment will materially harm the public or any individual person.
10. Staffs review of the proposal; including review from applicable service providers did not raise any issues or concerns that would warrant special conditions of approval, or a denial of the application.

11. There will be no increase in density as a result of this plat amendment.

Conclusions of Law

1. The proposed Plat Amendment as conditioned complies with all requirements of the Development Code.

- MOTION CARRIED (7-0)

5. Continued discussion and possible action regarding a Conditional Use Permit for a Bed and Breakfast Inn at 3770 N. HWY 224 Rural Residential (RR) Zone, Parcel PP-102-A-3, Hoffvest LLC, Applicant- Ray Milliner, Senior Planner

Blaine Thomas said he is filling in for Attorney Brackin while she had to step away. Brook Hontz and Robert McConnell are representing the applicant. Planner Milliner said this application is for the ongoing discussion of the Colby School bed and breakfast. At the May 26, 2020 meeting, a public hearing was conducted. At its completion, the public hearing was closed. The Commission requested to have more details about owner-occupation along with possible conditions.

Planner Milliner shared a screen about the definition of owner occupied. He said in previous meetings, the Commission a similar case (Silver Moose) was referenced. It was heard in 2013. That case was being used as a guide. Since the last meeting, he found definitions in Title 1-3-2 of the Summit County General Code for “owner” and “occupant.” He said these definitions were used to create conditions of approval. The applicant will be required to show they meet the definitions prior to business licensing.

Planner Milliner said Staff is requesting a discussion between the Commission and the applicants about the conditions of approval that would be appropriate if the Commission decides to approve the application.
**APPLICANT’S PRESENTATION**

Ms. Hontz said because of the additional information the Staff Report was able to provide from the existing Code definitions, they have created conditions of approval they would like to review with the Commission. They have added language which strengthen and clarify the conditions found in the Staff Report. They hope they can get through the conditions fairly quickly and receive an approval at this meeting. She suggested that each of the Commissioners pull up the conditions of approval as these are being discussed. She said that Mr. McConnell, attorney for the applicant, will go through their suggested modifications to the conditions.

Mr. McConnell said the changes they propose are:

- Conditions 1 & 2: no additional proposals
- Conditions 3 & 9 are duplicative. One should be deleted.
- Conditions 4: they propose the language would read as such:
  - *To reduce the likelihood of impact from noise, the project shall comply with the hours of operation and noise restrictions set forth by the County Code.*
- Conditions 5 & 6 are deleted

Mr. McConnell said the Summit County noise ordinance has restrictions with respect to hours of operation, including the collection of garbage. The condition of restraining outdoor activities by 9:00 p.m. creates an issue for the applicant. What constitutes an outdoor activity? Is it the arrival of a guest after 9:00 p.m., or four or five people sitting outside having a conversation until 10 p.m.? They believe the appropriate condition is to require them to abide by the conditions of the Code.

Mr. McConnell noted there is a requirement for landscaping to comply with the attached landscape plan, but there isn’t an attached landscape plan. They propose to maintain the existing landscaping subject to typical maintenance including the planting of shrubs and trees when needed as replacements. Mr. McConnell said this ends the proposed changes that the applicants requests.
COMMISSION COMMENTS AND QUESTIONS

Chair Dickey said he would like to revisit the question of owner-occupancy that was discussed at the previous meeting before they move to the conditions of approval.

Commissioner Harte said it is obvious that a bed and breakfast is an allowed use in this zone. He doesn’t believe the threshold question of owner-occupant has been met. Once the Commission finds that it is owner operated, they can begin talking about mitigations. He thinks that a bed and breakfast at the Colby School would be a great fit.

Commissioner Harte said there is the condition of approval to allow Staff to make the determination that the owner-occupancy threshold has been met. He isn’t inclined to allow that as that is the role and responsibility of the Commission.

Commissioner Harte said if the Commission, as a whole, decides to move forward that would be the time to talk about mitigations and what conditions would be fair. At the last meeting, a point was made that the mitigations should not be different than what is imposed on the neighbors. When someone asks for a Conditional Use Permit, they are subject to the mitigations imposed by the Planning Commission. He gave examples of the conditions he would look for. One would be no amplified noise or music. Other examples were given. He hasn’t seen any new information about the threshold issue.

Commissioner Fine said he agrees with Commissioner Harte and what he has said. He too is concerned about the owner-occupancy issue.

Commissioner Kucera asked Planner Milliner to repeat where the definitions of owner and occupant are found in the Code. Planner Milliner said there are existing definitions found in Title 1 of the County Code. The Snyderville Basin Development Code is Title 11. The Title 1 Code states it applies to the entire document.
**Commissioner Kucera** asked Attorney Blaine Thomas if it is his interpretation that these definitions are applicable to this case. Attorney Thomas said that Title 1 of the County Code applies to both planning jurisdictions. **Commissioner Kucera** said to him, it seems that the threshold has been met. He is in support of stronger conditions of approval with respect to noise, amplification, and events.

**Chair Dickey** asked Attorney Thomas about a caveat found in Title 1. It gives the definition and then states, “…unless the context makes such meaning repugnant thereto.” He asked Attorney Thomas to explain what that means. Attorney Thomas said it means that it wouldn’t fit with the context of what is being stated. He thinks the word “repugnant” implies a large difference. It would not be a simple mistake.

**Commissioner Cooke** said he has stated from the first meeting that a bed and breakfast would be a desirable use of this property. If approved, the building and the property will be rehabilitated and renovated. That would create a win-win situation. However, he agrees with **Commissioner Harte** that this is has not meet the definition of owner occupant. He believes they are playing word games with the Code.

**Commissioner Harte** said that several members of this Commission worked with Staff on Code amendments. The idea of allowing a bed and breakfast in the Rural Residential zone was discussed at great length. He described the discussion that took place. Ultimately, it was decided to leave the use in the Code.

**Commissioner Cooke** said the term “owner-occupant” was not defined because it seemed to be a term that didn’t need a definition. They are now looking at the definition of the individual words. The meaning of “owner”, “occupant” and “operator” means something different when looked at individually than when they are grouped together. He said the Code review committee wanted to have it be an owner who is renting out rooms. If it that threshold isn’t met, it is a small hotel. Playing games with the words has not brought them any closer to an understanding.
Commissioner Cooke said the County Council ruling on the precedence case with the Silver Moose Bed and Breakfast seems clear that an owner-occupant could not be just a manager. He has an open mind and hopes the other Commissioners can sway his opinion because he thinks this would be a good use under the right conditions. It is up to the applicant to demonstrate they have met the requirements. That hasn’t been done to this point.

Commissioner Cooke said he is troubled by an earlier statement. It was said that currently the applicant has no plans to hold events; therefore, it would be unreasonable for the Commission to establish mitigating conditions for events. However, they want to reserve the right to hold events in the future. It is true, the Commission has no right to propose mitigations if events are not planned. If the Commission votes to approve the CUP, he will propose that events are not allowed until such time that the applicant wants to talk about the events. If events are proposed at some time in the future, the Commission can revisit and amend the CUP if necessary.

Commissioner Stevens said she also has concerns about what this definition means. The discussion seems to be in the same place. They have had discussions about the “plain language” meaning of “owner occupied.” If there is a “plain language” definition of owner occupied, why are there disagreements about what that means? If the Commission can’t give direct guidance to the applicant, how can they ever comply? On the other hand, the onus is on the applicant to supply the information the Commission needs. With these two situations, how will they ever get past this point? The Commission seems to be at a standstill.

Chair Dickey said however the term of owner occupied is defined, it relates back to having an owner occupant in the bed and breakfast. There are two aspects of this. The first is a person with an interest in the property. The second is someone who has control over the business. He doesn’t see either of those factors at play.
Chair Dickey said the definitions in Title 1 are a good find by Planner Milliner, but the context of using the words individually makes a difference. There is no evidence that the owner occupant requirement has been met.

Commissioner Stevens said at this and past meetings, they have talked a lot about how this feels and the intention behind the term of owner-occupant. Whether the Commission approves or denies, they have to have something concrete. They cannot deny or approve this application based on what the Commission is feeling.

Chair Dickey said he doesn’t think that is about what the Commissioner feels. It is about a person who has an interest in and control of the business. Those are very concrete factors. It is incumbent upon the applicant to show they have cleared that bar. This information has not been provided. That is the reason he thinks the application has not met the threshold question.

Commissioner Stevens asked what would be enough percentage or control to show that this requirement has been met. The applicant could come back multiple times without the Commission ever being satisfied.

Commissioner Simons said that the owner occupied threshold is the first thing they need to talk about. The Commission also has the question of what “plain language” means? The Commission wants to have the owner occupant be someone who can conduct the business in a neighborly way.

Commissioner Simons said she likes Chair Dickey’s definition of someone who has control in the business and an interest in the property. She thinks that meets the definition of owner occupant. She also agrees this is a good use for the site.

Commissioner Simons referred to Condition of Approval #1 found in the May 26, 2020 Staff Report. If that is combined with the definition of owner, she believes the
Commission might feel comfortable in trusting the County Staff to determine this condition had been met. She said this would read as:

“Prior to the issue of a business license by the Summit County Clerk’s Office, the applicant must demonstrate that the occupant of the bed and breakfast inn has a deeded ownership in the property which cannot be simply a lease-hold interest. The applicant may not operate the bed and breakfast inn until this interest has been satisfied.”

Commissioner Simons said that would put the onus on the applicant to bring forth an owner occupant. It would also remove the “loophole” of lessee.

**Commissioner Simons** said as for other mitigations, she agrees with Commissioners Harte and Cooke. They should give consideration to the after hour activities. This is because this bed and breakfast would be situated in a residential neighborhood. She is open to discussion about what form that would take.

**Commissioner Fine** asked if the Commission is holding this applicant to a higher standard than other applicants. Are they asking too much of the applicant? Should they rely more upon Staff to mitigate these circumstances?

**Commissioner Harte** responded to **Commissioner Fine**’s question. He said it cannot be said that the Commission is holding this applicant to a higher standard because they haven’t had this type of application before. If this was a CUP similar to others they had done and the Commission acted differently then in most of those cases, then that argument could be made.

**Commissioner Harte** added if a caretaker is on the property, it doesn’t necessarily mean that person would do a bad job. He said the Commission doesn’t seem to have reached an agreement of what owner-occupant is. The ambiguity is being created because the applicant hasn’t given the Commission the information they have asked for.
**Commissioner Harte** summarized by saying that in answer to **Commissioner Fine**’s question; this is the first time the Commission has had to deal with this. They have nothing else to compare it to. They are not being given the information they need regarding the question of ownership. **Chair Dickey** asked that Attorney Brackin respond to **Commissioner Fine**’s question.

Attorney Brackin said it is the job of the Commission to apply the Code to decide if this application meets the Code. This is an administrative application. A Staff Report was provided to help the Commission reach a decision. It is up to them to determine if the application meets the Code. If it does meet all of the requirements of the Code, then State law says the applicant is entitled to an approval. With a CUP application, conditions are applied that mitigate the negative impacts.

Attorney Brackin said that one requirement of a bed and breakfast is that it must be owner occupied. The owner is this case is an LLC, which is allowed to occupy the building. She said that is not the issue. The issue is how the LLC occupies the building. Staff is recommending that Staff is left to make that determination at a later date; however, it is in the Commission’s prerogative to require that information prior to approval. How the LLC occupies the building as an owner occupant is the question before the Commission and additionally, when that question should be answered.

Attorney Brackin said in the Silver Moose case, a lessee was not sufficient for the County Council at that time. They wanted the occupant to have an ownership interest. **Commissioner Simons** restated her proposal to combine the previous condition of approval with the definition of owner. This could be a path forward for the applicant.

**Chair Dickey** turned the time over to Mr. McConnell to respond to the ideas that have been expressed. Mr. McConnell asked if the Commission received his latest letter. That letter went through the newly supplied definitions. The letter provides evidence that they have satisfied the requirements of the Summit County Code. Hoffvest LLC is the
owner of the property. It will occupy the property as its principal place of business. There will be an onsite manager/caretaker that will reside on the premises as their principal residency. The Commission answered Mr. McConnell by saying they had not received this letter until after the meeting had commenced.

Mr. McConnell said it is the job of the Planning Commission to make a determination about applications. They must use the standard of correctness, not the standard of reasonableness. He said in the Summit County Code, “owner” and “occupant” has been defined; however, they don’t like the results when applying those definitions. Because of that, the Commission has decided to go back to the intent of the Code. He said that since the Silver Moose application, the County has known there is a problem with the definitions within the Code. They could have established what is meant by owner occupied residence. The fact is that was not done.

Mr. McConnell said that in interpreting the meaning of ordinances, they are to be guided by the standard rules of statutory construction. He read the following:

> Because zoning ordinances are in derogation of a property owner’s common law rights on restricted use of his or hers property, provisions therein restricting property uses should be strictly construed and provisions permitting property uses should be liberally construed in favor of the property owner.”

Mr. McConnell said he believes the Commission is creating a definition ad-hoc because they failed to do it on a timely basis when they established the ordinance. He believes his letter shows that they have met every articulated standard. They don’t like the outcome so they are creating a new definition for this application.

Mr. McConnell said the Planning Commission can only impose conditions to mitigate any negative impacts according to the standards found in the Summit County Code. They seem to be saying that noise from this applicant is different than the noise from an adjoining neighbor and so they want to impose a condition. The Staff Report goes
through all of the standards that are set forth in the Summit County Code. With each of the standards, it has been indicated that the applicant complies. Any mitigation that is imposed must be related to the standards found in the Code.

Mr. McConnell said this building is technically not within a subdivision, but is adjacent to it. It is on the busiest highway that goes through Summit County. If this business is not more noisy than is anticipated by the noise ordinance, than it is not a reasonably anticipate detrimental effect. If the people are allowed to come to their homes or to visit businesses across the street after 9:00 p.m., they can’t impose a condition on them.

Mr. McConnell said they will have a fulltime manager occupying the house. It will be their fulltime residence. That satisfies the Code. If the Planning Commission wants to impose a condition, they are willing to give that person an undivided interest in the property of 1%-10%. The percentage will be based upon their experience. Another alternative is to also give a membership interest.

Mr. McConnell said he will challenge either one of those conditions because they are contrary to what the Code allows. He would rather move forward with an approval tonight and challenge the conditions at a later time.

Mr. McConnell said he thinks he has correctly stated what the law is. He referred to a case of “Brown vs. the Sandy City Board of Adjustment.” He described the case and its outcome. The court said the standard that needs to be applied is the standard of correctness. He added that as applicants, they can live with Condition #1, but if the other conditions are imposed, they will appeal because it is inconsistent with the language of the Summit County Code.

**Commissioner Simons** said she believes the Commission would like to move forward. It is very helpful that the applicant have identified 1% to 10% will be given as a part owner. This gives the Commission something to think about. For her, giving a
percentage of ownership helps to bridge the gap of the owner occupancy component. Mr. McConnell said they are not walking away from the residency requirement. They believe the manager’s occupancy will satisfy this requirement. They don’t want to have a revolving staff.

**Commissioner Simons** said she doesn’t think there is a debate that the LLC is the owner of the property. She believes it is the Commission’s duty to interpret the Code while approving an administrative CUP. In this circumstance, there is a question of intent within the wording of the Code.

**Commissioner Simons** said the definitions of “owner” and “occupant” was not in previous Staff Reports. As a group, the Commission needed that for their deliberation. She thinks the former Condition #1 helps to bridge the gap between caretaker and owner-occupant. The Commission needs to ensure that some form of ownership is granted to the individual that will be the caretaker or manager.

Attorney Brackin said she appreciates Mr. McConnell’s arguments, but she wants to clarify that the requirement of owner occupancy is not a condition of approval. It is a threshold question. It is a criterion found in the Code that this will be an owner-occupied residence. These are not two separated words.

Attorney Brackin said in the letter referenced by Mr. McConnell, it was stated this will be the primary locus of the LLC. She noted if that is the case, it would change the use to a commercial business. The current question to be answered is how an LLC becomes a resident. Having a caretaker/manager/employee does not meet that requirement. There is precedence for that. She told this to Mr. McConnell’s clients at an earlier meeting. This gives the Commission a basis for denial because it doesn’t meet the requirements of the Code. This is not a condition of approval, but it is a fundamental threshold question that needs to be answered. Mr. McConnell said he agrees this is a threshold question; however, he doesn’t believe that an owner occupied residence is a
defined term in the Summit County Code. He said there is a definition for “owner” and for “occupant.”

A discussion ensued about when this threshold question has to be met. Attorney Brackin said that at the last meeting, Ms. Hontz stated they cannot pull a building permit to do renovations without having the CUP approval. She asked Director Putt if a single-family residence can pull a modeling permit prior to a required CUP being issued. Does the CUP have to be established first?

Director Putt answered that he doesn’t want to make that determination on the spot. He said this is a structure that was originally constructed to be a small hotel. It was then converted to a school and now there is an application for a bed and breakfast. This is not the typical house. Mr. McConnell said it would be nice to know that they have the CUP before they go through the expense of a remodel.

Ms. Hontz said there are two components mentioned in this conversation. One is the investment. To make a sensible investment in the property, the applicants need to know that the CUP has been granted. Secondarily, the building itself has some characteristics that will lend itself very well to the use of a bed and breakfast. She explained there are entities, such as the Fire District, that will not accept the building without the CUP in place. Attorney Brackin advised the Planning Commission that they know what their job is and what they need to do.

Chair Dickey asked the applicant if they are comfortable with the conditions proposed in the letter. Mr. McConnell said they believe they have satisfied the requirements of the Code. If the Commission is going to state that a deeded ownership is a requirement based on a previous decision by the County Council, they have proposed to have either condition A or B.
Mr. McConnell said they have no issue with establishing a single family residence for the person who would operate the business. He asked if that person needs to be an owner of the property, or can they simply be an owner in the LLC. He thinks it would make more sense for it to be in the operating entity, which is the LLC. Potentially, that person’s compensation would be tied to the performance of the LLC.

Chair Dickey asked if the ownership will have a condition tied to it. If the contract is defaulted, will the ownership revert back to the LLC? Mr. McConnell explained that if this person isn’t performing up to standards, they want to have the ability to terminate them. They would require the interest in the LLC or in the property to be returned.

Chair Dickey said that is where he has a problem. If the ownership can be revoked, that does not meet the standards of “owner occupied.” That person would be an employee of a small hotel. Mr. McConnell responded they would be an employee of an entity operating a bed and breakfast, which is a conditional use allowed in the Summit County Code. There are definitions of ownership, occupancy, and for residency. He believes the Commission is choosing to put them together in their own way. Whatever the Commission decides will be appealed if there are grounds to do so.

Chair Dickey said he thinks the definitions are context sensitive. He looks at owner-occupant as a compound of two words with its own definitions. He said this word doesn’t have a specific definition in the Code. Mr. McConnell said the Commission will have to articulate the reasons why they made a certain finding.

Attorney Brackin said because the Commission was not able to look at his letter before the meeting, and in light of the litigation mentioned by Mr. McConnell, it may be incumbent to allow the Commission and the legal department to look at his letter before making a finding. She finds he has made some legitimate arguments. She would like to review the letter and then advise the Commission. Mr. McConnell said before anything went to litigation they would begin with an appeal to the County Council.
Ms. Hontz asked the Commission to take a five minute recess, so the applicants can discuss the case with Mr. McConnell. They may come back with something very specific. A brief recess was declared.

After the recess, Mr. McConnell said because of their discussion, he requests that they are included on the next regularly scheduled meeting. Director Putt said if a decision is not made at this meeting, he recommends this item to be added to the June 23rd agenda. Mr. McConnell said he thinks this will move quickly at the next meeting. **Chair Dickey** said the Commission respects his arguments. The Commission needs some time to thoroughly read and contemplate his letter. He appreciates their willingness to wait until the next meeting.

**Commissioner Stevens made a motion to continue this discussion and possible decision to the June 23, 2020 meeting. The motion was seconded by Commissioner Fine. All voted in favor.**

- **MOTION CARRIED (7-0)**

**Commissioner Kucera** said because the threshold question has not been met, could they start with articulating if there are grounds that wouldn't warrant an approval. It would also be helpful to see the argument in writing that it doesn’t meet the threshold.

**Chair Dickey** asked Attorney Brackin to describe how the Commission needs to handle a denial. Are findings of fact and conclusions of law listed by Staff for a denial? Attorney Brackin answered if they find it does meet the standards of the Code, but they want to deny it because they don't like the proposal, they will need to specify a countervailing public interest. If the Commission finds that it does not meet the standards of the Code, there would be different findings and conclusions. She said Staff can create some alternative findings and conditions.
**Commissioner Simons** asked if the Commission might see a legal response from Attorney Brackin before the next meeting. Attorney Brackin said they will do a legal analysis. She doesn’t know what form that would take. It might be a confidential and GRAMA protected document. She suggested the Commission may want to schedule an executive session to discuss the case before the next meeting.

6. **Public hearing and possible action regarding amendments to Section 10-2-8 Service Commercial Zone creating exceptions to the maximum height limit for mechanical equipment and Section 10-2-10 Use Table creating a “Art Spaces with Limited Public Performances” use- Ray Milliner, Senior Planner**

Planner Milliner said the Commission reviewed this item a while ago in a Work Session. This is an application for amendments to be made to the Service Commercial (SC) zone. There are three components of the amendment:

1. **To create an exception to the height allowance in the SC zone for mechanical equipment.**
   The exception the applicant is proposing is an 8’ exception above the 32’. There would be a 2-to-1 ratio setback from the edge of the building. If the mechanical equipment is 8’ tall it would need to be 16’ back from the edge of the building.

2. **An amendment to the use table to create an art space with limited public performance.** This would be a low impact permit in the service commercial zone. This would give an opportunity for a violin teacher (as an example) to have performances by their students.

3. **An amendment to create a definition of “Artist’, “Art Space” and “Limited Performance” definition.** This would ensure that what the Commission has approved in the Code is what would be permitted on the site.

Planner Milliner shared his screen with pictorial examples of screening for the height exceptions. Additionally, he had information about how this is handled in other districts. He found that height exceptions for mechanical equipment are very common.
Commissioner Harte asked if the buildings in the examples are in compliance with the height requirements. Planner Milliner said because of the quarantine, he doesn’t have access to those records at this time. He added that a lot of times mechanical equipment is built to be placed on the roof in order to avoid the unsightly view of mechanical equipment on the ground.

Planner Milliner said that every Code he researched from different municipalities had this exception. He listed the cities that he looked at. He said Park City allows 5’ above the height limit if it is screened. He thinks this is appropriate in a commercial zone. Jason Haddock said he is from the Gordon Law Group representing the applicant. He is happy to answer any questions the Commission may have.

COMMISSION COMMENTS AND QUESTIONS

Chair Dickey noted there were good and bad examples of screening shown in the pictures. He asked Planner Milliner if the proposed Code changes will identify the different types of screening. Planner Milliner said the language only requires the mechanical equipment to be screened. This gives the applicant flexibility to choose.

Mr. Haddock said the examples of bad screening were mostly where there wasn’t screening on the rooftop. The “good” examples were where there was screening. Chair Dickey said there were also examples of insufficient screening. The screening was short and the building permit process didn’t catch it.

Chair Dickey asked Planner Milliner if this exception always require a Conditional Use Permit. Planner Milliner said the Park City Business Center takes up a big chunk of the SC zone. Each building is a Low Impact Permit per the Development Agreement. If this is allowed as a permitted use, it would be looked at during the building permit stage. Therefore, they want to be sure that the language in the Code is solid. He said there are times that painting the equipment is a better choice. This should be reviewed on a case-by-case basis.
The public hearing was opened. No comments were made and the public hearing was closed.

COMMISSION COMMENTS AND QUESTIONS

Commissioner Simons said that she think Staff’s suggestion to match the language of the Canyon’s SPA makes a lot of sense. The height of the equipment should be considered. She appreciates the 2-to-1 setback. She asked if 8’ is enough additional height. Should they go to 10 feet to be safe?

Commissioner Harte said in the past, whenever a height exception has been brought up, the Planning Commission has always held to the 32’ height. The applicant had to find a way to put the mechanical equipment within the 32’ limit. The Canyons is unique because it is a Specially Planned Area. Its language should not be used as an example.

Commissioner Harte asked if anyone knows why the 32’ height limit was established. Director Putt said this number was arrived at to allow commercial floors, plus a minimal parapet. He encouraged the Commission to not be overly concerned with that number. Today a consideration is if design flexibility is needed.

Director Putt said sometimes there will be a lot of external mechanical equipment. They want to create a better pedestrian space around the areas where people are. If people are not allowed to be put screened equipment on the buildings, they will be in the area where people are. They have seen mechanical equipment placed in the middle of walkways. Staff does not believe this language will create unreasonably tall buildings that would be a detriment to the public.

Commissioner Fine said that a consideration should be what is coming to the Silver Creek area. Does 8’ make sense? Should it be more or less? He wants to be sure that it looks good. Commissioner Cooke had no questions.
Commissioner Kucera asked if there is any way to add language that will minimize the visual impact without taking away from the design flexibility. Planner Milliner read the proposed language. Could wording be added to say “screened to minimize the visual impact”? Planner Milliner said there is language in the architectural guidelines that addresses those concerns, but it wouldn’t hurt to add the additional language.

Commissioner Stevens thanked Planner Milliner for the photos. It was helpful to see the examples. She appreciates the limit on the gatherings. It is well defined in the Code, so there should be no questions later on. She is supportive of decreasing the utilities in public spaces and placing them on rooftop.

Chair Dickey asked if there are any questions from the Commission about the art space use. Commissioner Stevens said she thinks it is appropriate and could add additional vibrancy to the zone. She is in favor. None of the Commissioners had concerns.

A discussion ensued about if additional wording on the screening would be helpful. Planner Milliner said he can work on language that meets the desired intent before taking it to the County Council. Commissioner Fine asked if the 32’ height is sacrosanct. What projects are coming down the pike? Planner Milliner said the County isn’t opposed to increasing the height if the result is a better design.

Mr. Haddock said they are not asking to increase the height limit on this application. They would be in favor if that should happen. Whatever the height limit is, they would like to have an exception for mechanical equipment on top of the building.

Chair Dickey asked Commissioner Kucera if he is comfortable with allowing Staff to draft language about the screening before taking it to the County Council. Commissioner Kucera said that would be fine.

**MOTION**
Commissioner Kucera made a motion to approve the application as outlined in the Staff Report and below with additional language outlined by Staff about minimizing the visual impact of the screening. Commissioner Fine seconded the motion. All voted in approval.

FINDINGS OF FACT

1. **In the Snyderville Basin Development Code, exceptions to the standard height limit for all zones are in section 10-4-22.**
2. **There are no exceptions to the height for mechanical equipment in Section 10-4-22.**
3. **Therefore, in any construction project mechanical equipment must either meet the height limit or be placed within the building or somewhere on the lot.**
4. **The applicant is requesting that the Commission create an exception for mechanical equipment in the SC zone.**
5. **The intent of the SC zone is to “provide appropriate locations within the Snyderville Basin for service commercial and light industrial uses.”**
6. **Granting a height exception between 5 and 10 feet is common practice in many cities and counties, including Park City, Ketchum, Vail, Salt Lake City, and Sedona.**
7. **The applicant is also proposing an “Art Space with Limited Public Performances” use in the SC zone.**
8. **The purpose of this use would be to allow an artist to conduct limited performances on site.**
9. **The Planning Commission conducted a public hearing on June 9, 2020.**

CONCLUSIONS OF LAW

1. **The amendment is consistent with the goals, objectives, and policies of the General Plan.**
2. **The amendment will not permit the use of land that is not consistent with the uses of properties nearby.**
3. **The amendment will not permit suitability of the properties affected by the proposed amendment for the uses to which they have been restricted.**

4. **The amendment will not permit the removal of the then existing restrictions which will unduly affect nearby property.**

5. **The amendment will not grant special favors or circumstances solely for the one property owner of development.**

6. **The amendment will promote the public health, safety and welfare better than the existing regulations for which the amendment is intended to change.**

- **MOTION CARRIED (7-0)**

  *Mr. Haddock asked if this motion includes passing the amendment to the Use Table. He was told that is correct.*

7. **Approval Of Minutes**

   February 25, 2020:

   *Commissioner Stevens made a motion to approve the minutes as written. Commissioner Cooke seconded the motion. All voted in approval.*

- **MOTION CARRIED (7-0)**

**DRC UPDATES**

*Commissioner Cooke* said there has been talk about adding another Planning Commission to the DRC. Director Putt said he doesn’t see any DRC needs in the near future, other than Silver Creek.

**COMMISSION ITEMS**

*Chair Dickey* said there are zoom issues still being worked out. He thanked the Commission for their patience. *Commissioner Harte* advised the Commission that when they are Chair, they can govern the meeting in whatever they want to. It is at their discretion.
**DIRECTOR ITEMS**

The upcoming agenda items were reviewed. Because of the number of items on the agenda, starting the meeting at an earlier time was considered. It was decided to hold an executive session at 2:30 p.m., with the regular meeting beginning at 3:30.

**ADJOURN**

At 8:37 p.m., the meeting was adjourned.

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Approval Signature