

**V. PUBLIC HEARINGS AND POTENTIAL \*\*ADMINISTRATIVE ACTION ITEMS**

**\*\*Administrative Action = Less Discretion, Substantial Evidence (Objective Standard)**

**D.1. Issue: WENZEL ACCESSORY LIVING UNIT  
GUESTHOUSE WITH A FLOOR AREA EXCEEDING 35% OF THE  
PRIMARY DWELLING**  
**Address:** 2084 W. Lawrence Circle  
**File No:** ALU-2012.05  
**Applicant:** Gavin Wenzel

Community Development Director George Shaw reviewed the background information from the staff report on this item. When the City adopted our General Plan a couple of years ago, one of the issues was, what do we do about housing in the community. We have a need for transitional housing, we have a need for multi-generational families to be accommodated and we have a need for more affordable housing. We sent out a survey, we did workshops, we had public meetings on this issue and what the Planning Commission and City Council came up with was the idea of allowing under strict guidelines to allow what we call accessory units to be built in single family neighborhoods. The ordinance that we have created to address that need is very specific and highly regulated. There are actually two issues we are trying to address. One is we have a plethora of basement apartments in our City and the way our ordinance is written, if you have a separate contained area in your home that has a bathroom, kitchen and sleeping areas, you have a separate dwelling unit. By definition, we have a lot of homes in our community that technically did not meet our zoning ordinance. A secondary issue was, a lot of those units are being finished off without building permits and there are some issues about whether or not those finished basements were meeting life safety codes. This ordinance was adopted to try to address those issues. The intent being that as you drive by a home that may have one of these accessory living units approved, which if they are a guest house that is detached from the existing dwelling, or if they are doing any type of modification to the existing dwelling exterior, it requires the applicant to come to the Planning Commission. That is why this item is before you tonight. It requires the applicant to meet certain guidelines so that when you drive through the community or through a subdivision, you really don't have any indication that there may be an accessory unit on the property. There would not be separate mail boxes, not separate utility meters, not separate visibly entrances that are highly visible. As you go through the neighborhood you would think that it is a single family neighborhood. This is a great need in our community where you need to have a mother-in-law come stay for a period of time or a boomerang kid needs to come live with you and we just didn't have the provisions in our ordinance to make that legal; now we do. This one tonight is a guest house proposed to be located at 2084 West on Lawrence Circle. It is on a 1/2 acre lot and they are proposing to construct a detached garage in the rear of the property and proposing to install a guest house above that garage. One of the many requirements in the zone in order to qualify for one of these uses is that the square footage of the proposed accessory unit cannot exceed 35% of the livable area of the dwelling. The reason for that is to keep the unit as an accessory use not a primary use. We are not comfortable with exceeding the 35% for a number of reasons. One has to do with the elevations of the structure and it has an appearance of a dwelling than it does an accessory structure. We are recommending approval of the guest house accessory living unit with the five (5) requirements listed in the staff report.

Chairman Naylor said in the ordinance is specifies they can't be more than 35% of the dwelling unit or 1,500 square feet; is that correct.

Director Shaw said yes. It is 35% of the livable area of the primary dwelling, which could include multiple floors. If you consider that it includes the basement then the issue with primary vs. accessory becomes even more apparent. If you choose to limit the square footage, that would cut the square footage of the unit area above the garage down to closer to 1,000 sq. ft.

**Gavin Wenzel**, 2084 W. Lawrence Circle, South Jordan (Applicant) – Nothing to add.

Commissioner Auger said we have been informed that your basement has been used as an accessory living unit; why are you building another one.

Mr. Wenzel said right now we mostly live in the upstairs. There are five of us and one of my three upstairs bedrooms I use as an office, so there are five of us living in two bedrooms. We would like to expand and have our entire house basically.

Commissioner Auger said so you are going to do away with the accessory unit in the basement and then you will do what with the other unit above the garage.

Mr. Wenzel said right now we only have one single gentleman that lives in one bedroom in the downstairs. Basically we will have him move out there.

Chairman Naylor opened the Public Hearing. None. He closed the Public Hearing.

Director Shaw said we have had a few phone calls on this issue and one in particular was involved with a neighbor that is concerned about covenants. Cities have ordinances and residential developments have restrictive covenants that run with the land. When we wrote this ordinance we knew that there was a potential conflict with what the City ordinance may allow and what private covenants may allow. We do not enforce restrictive covenants. There could be an issue with this gentleman and his restrictive covenants. For the record, whatever motion the Planning Commission makes tonight if you approve this it could be held up in court. I wanted to enter this information into the record for tonight that we did receive information from at least one property owner that was opposed to what is being proposed here on this item tonight.

Commissioner Auger asked to view the aerial map on this again to see where the proposed garage would be located. It was shown on the overhead that the garage is proposed to be located on the very back portion of the lot.

Commissioner Mabey said just for clarification it is not to exceed 35% but yet it says they are proposing a 1,500 sq. ft., so what we are saying is the most that they could do is 1,080 sq. ft. as the max.

Director Shaw said the code gives the Planning Commission the ability to modify the 35% and you can put whatever number you want on there. As garages go, the square root of that footprint is 38 feet by 38 feet and that is a pretty big garage. When you put another unit on top it concerns staff. We want to make sure that we are not unduly impacting the neighbors and yet we still want to have folks to have the ability to this in a responsible way to meet the housing needs that we have in our community.

Mr. Wenzel said the accessory garage at the end of the cul-de-sac is 50' x 40' and I am proposing 30' x 50.' I would be surprised if it was anything less than the maximum height requirement. He said there are a variety of garage structures in the area and everyone has a minimum of ½ acre.

Chairman Naylor said my concern is the 1500 sq. feet. This floor plan shows 3 bedrooms.

Commissioner Haymore said I am a bit torn on this because even though it is big, if you don't build the living space into the building it meets code in all aspects and we are not changing the exterior look of the building by building a living space inside. It is going to look the same to all the neighbors and everyone

else around. The only difference is that when you walk inside there will be an upstairs apartment. Could it be built to the same height even without the accessory unit inside.

City Planner Schindler said the maximum height for accessory buildings is 25 feet and I believe he is proposing that height.

Commissioner Mabey said a 35 foot building that is one story looks a lot different than a 35 foot building that is two stories.

City Planner Schindler said it will meet the building codes and it is 25 feet for this building. The only reason he is coming here before you tonight is not to get approval to build a building, it is to have it as a guest house on that second floor. If you don't approve the guest house at the size he wants, he can still build a 30' x 50' two story garage that is 25' tall and just not have anyone living up there; there is nothing you could do about that.

Assistant City Attorney Loose said the ordinance says when dealing the accessory living unit itself, not with the building but the unit says: "the floor space of the accessory living unit shall comprise no more than 35% of the living area of the primary dwelling or be greater than 1,500 sq. ft., whichever is less, unless in the opinion of the Planning Commission a greater amount of floor area is warranted. In all cases an accessory living unit shall remain subordinate and incidental to the primary dwelling. Not accessory living unit shall have more than 3 bedrooms." The hard and fast rule you have is three bedrooms and subordinate. You can allow if it is warranted and express why you think it is warranted if you decide to do that.

Commissioner Mabey said with the main home having just over 1500 sq. ft. on its main level on a rambler and the accessory building having 1500 sq. ft. on one floor, it does not feel subordinate to me. It is the same size as the home without a basement.

Chairman Naylor said looking at the lot and how the building is located there is plenty of property back there in the back.

Commissioner Auger said the code says not more than 1500 and the square footage is 1526 of the main home. Can't we reduce that a bit so we can keep it subordinate to the home and still allow him to build it and keep it at a maximum of 25 feet high. A 1080 place to live is kind of small.

Commissioner Johnson said it is an accessory building. It is supposed to be meant as more of a temporary use. I think we should stick with the code.

Commissioner Winder said I think 1080 is plenty big. I think we should stick with the code.

Chairman Naylor said this doesn't feel like an accessory use to me; it's as big as the house. I am inclined to approve something less than 1500 sq. ft.

Assistant City Attorney Loose said we cannot deny any application on the basis of CC&R's. Whether he has entered into a contract that says he can do this on his property or not is irrelevant to the Land Use question you are answering to.

Commissioner Mabey said this is one of the first ones we've done and I would like to keep to the 35%. I know that when we are talking accessory buildings, I've got three married kids and all three of them live in less than 1000 sq. feet and one of them is a house. I know for accessory living it may not be a large

spread with three bedrooms but that is not what the intent of our ordinance is. It is to allow small accessory buildings that won't impact the neighborhood.

Assistant City Attorney Loose said I am just thinking here how I would defend this if were challenged. The size of this lot, the type of accessory units already permitted at the other homes in the area, further that he could build the same building and he just has to make the accessory living part of that same building smaller, because either way you go he is allowed by ordinance to build a 30' x 50' accessory building. You are just deciding whether the living portion is the 1080 sq. ft. or up to 1500. It is going to have the same outside dimensions either way. Those could be the things that in your opinion warrant allowing you to go higher up to the 1500 sq. feet for living space.

**D.2. Potential Action Item – (See V. D.1.)**

**Commissioner Mabey made a motion to approve File ALU-2012.05, allowing a guesthouse on property located at 2084 W. Lawrence Circle while owned by Gavin Wenzel with the five (5) requirements listed in the staff report:**

- 1. The floor area of the guesthouse is not to exceed 35% of the floor area of the primary dwelling.**
- 2. Canon Park Lane is not to be used as vehicular or pedestrian access for the guesthouse.**
- 3. All vehicles owned by occupants of the guesthouse are to be parked off the street.**
- 4. Exterior colors to be consistent with the primary dwelling.**
- 5. The basement is to be converted to an 'extended living area' by maintaining free-flow access with the rest of the primary dwelling (i.e.- the door to the basement apartment is removed).**

**Commissioner Johnson seconded the motion.**

Assistant City Attorney Loose said one point to consider. Since he can build a building that is bigger than what you are allowing for accessory use, that he not allow doors or internal doors from one area to another. There needs to be a way for enforcement to know whether it is being used or not.

Commissioner Mabey said are you saying that the living area needs to be separate from any other area that may be there?

Assistant City Attorney Loose said yes. Because it could be rented out to others that would require a license procedure for it, the City needs some way to inspect to know how much is supposed to be living area and how much is not.

City Planner Schindler the living area has to have a separate access to it. One access for the living unit and a separate exterior access for the storage.

Commissioner Mabey said does that need to be part of my motion or is that part of the ordinance that should be in there saying if you have a living unit this is what defines it.

Assistant City Attorney Loose said it wasn't pre thought of in the ordinance, but it might be something you want to add to those five required items.

**Commissioner Johnson said I would like to make a substitute motion that we add item number six (6) which says that an accessory unit doesn't have direct access to any excess space, that they are separate areas and have separate entrances. Commissioner Haymore seconded the substitute motion.**

**Roll Call Vote was unanimous 6-0 in favor. Commissioner Beverly Evans absent.**

**E.1. Issue: EDDINGTON ACCESSORY LIVING UNIT  
ACCESSORY APARTMENT WITH EXTERIOR MODIFICATIONS  
Address: 2582 W. Singletree Lane  
File No: ALU-2012.06  
Applicant: Richard Luce in behalf of Richard & Karanina Eddington**

City Planner Greg Schindler reviewed the background information from the staff report on this item.

**Richard Eddington**, (Applicant) along with my wife here, we are the property owners. Richard Luce could not make it tonight. This is to create an accessory unit for my parents to assist them. We are trying to bring it into compliance. Things got ahead of us and we hired Richard Luce as our General Contractor to try and make sure everything was properly followed and done according to City ordinance and building codes.

Chairman Naylor asked the applicant if he understood the requirements he would need to meet to have this approved.

Mr. Eddington said yes. Since everything has been on hold we have not been able to add any landscaping so that is not showing in the front area. As outlined in the letter I submitted to the Commission it is our intent to comply fully with each and every condition listed.

Chairman Naylor opened the Public Hearing. None. He closed the Public Hearing.

**E.2. Potential Action Item – (See V. E.1.)**

**Commissioner Auger made a motion to approve File ALU-2012.06, establishing an accessory living unit permit for an accessory apartment, including approval of the exterior modifications, at 2582 W. singletree Lane while owned by Richard and Karanina Eddington, with the following requirements:**

- 1. That landscaping (berms, shrubs, etc.) be provided to entirely screen the front walk-out entrance from visibility from the street, and**
- 2. That no signage, addressing, mailbox, or any other indication is provided, exterior to the home, as evidence of an accessory apartment.**
- 3. Obtain a building permit and a certificate of occupancy from the Building Department.**

**Commissioner Johnson seconded the motion. Roll Call Vote was unanimous 6-0 in favor. Commissioner Beverly Evans absent.**

**F.1. Issue: SITE PLAN AND CONDITIONAL USE PERMIT  
CENTENNIAL CAR WASH (AUTOMATIC CAR WASH)  
Address: 1026 W. South Jordan Parkway  
File No: SP-2012.25  
Applicant: Nichols-Naylor Architects**

Chairman Naylor said I have interest in this item so I will recuse myself at this time.

City Planner Greg Schindler reviewed the background information from the staff report on this item.