

**Parowan Planning and Zoning Minutes  
February 1, 2023 – 6:00 P.M.  
35 East 100 North – Parowan City Office**

**MEMBERS PRESENT:** Larry Zajac (Chair), Jerry Vesely, Heather Peet, Jamie Bonnett, Jake Hulet, Weston Reese (Alternate), David Burton (Council Representative)

**MEMBERS ABSENT:** Tony Leydsman

**STAFF AND COUNCIL PRESENT:** Mollie Halterman (Mayor), Dan Jessen (City Manager), Christian Jones (Attorney), Judy Schiers (Secretary), Matt Gale (City Council), Rochelle Topham (City Council), Stacy Gale (City Deputy Recorder)

**PUBLIC PRESENT:** Cyndi Hanley, Mary Hanley, Laura Fernandez, Dennis Fernandez, Kylvonne Huber, Kirstyn Blair, Sarah Lanier, Kade Bryant, Ashley Austin, Rebecca Austin, Christy Collins, Kathryn Allen, Dave Gibb, Sherri Carlson

**CALL TO ORDER:** Larry Zajac called the meeting to order at 6:01 P.M.

**ANY CONFLICTS WITH ITEMS ON THE AGENDA:** Jamie declared a conflict with item number 6 "Home Occupation Permit – Personal Trainer – Icebox Training – Laura Fernandez at 72 South 300 East". She said that she currently goes to Laura Fernandez for personal training. She will participate in the discussion but will not vote.

**APPROVAL OF MINUTES (JANUARY 18, 2023):** Jamie Bonnett made a motion to approve the minutes from January 18, 2023. Jerry Vesely seconded the motion. All members present voted in favor of this motion.

**SUBDIVISION DEVELOPMENT – LOT 3, PAROWAN PARKWAY COMMERCIAL SUBDIVISION – BANKS GROUP:** This item will need to be removed from the agenda. They are not ready.

**APPROVAL OF BUIDLING A FOUR PLEX AT 259 WEST 200 SOUTH – DAVID GIBB:** Dave Gibb presented a conceptual depiction of what he would like to build on this property.

Heather asked how many units will this be at this location. Dave said it is four units, with no garages. The buildings will be faced west with a driveway in front.

Larry asked Mr. Gibb how he was submitting the application. Dave said that he is submitting it as townhomes. Larry said those are not allowed in this district. They can be apartments with single ownership, but they cannot be sold off into individual ownership. Dave said to begin with he will own the properties and then when they are finished, each individual unit will have separate title and separate ownership. Larry said that is not allowed in this zone, you cannot transfer to separate ownership.

Dan said that this has been to Historic Preservation because this development would be in that zone. The Historic Preservation committee looked at the plans for aesthetics only and they have no concerns with that, however, there are some other issues with the plans presented to Planning and Zoning. He said this is a residential in a commercial zone and the code does not provide a lot of clarification. Some

of the only clarification is that residential is allowed, however, in the modifying regulations it says that the area width and location shall be the same as the R-1 Zone for dwellings.

He said this also applies to density lot size restrictions, which says that each lot must be 10,000 square feet and you can't put multi-family in a R1 zone. In a R2 zone you can add a second residence but you have to have 3,000 square feet for each additional unit. In a R3 Zone that changes to a minimum of 10,000 square feet and 1,000 square feet for each additional unit. The ordinance says in a commercial zone you need to refer to the R1 restrictions. The question is, do we allow multi-family high density in a commercial district. On the face of it you would say no, however, it gets confusing because apartment houses are a permitted use. It comes down to density, and interpretation of the code. If there becomes a new lot zoned commercial, the code will not allow residential on newly zoned commercial lots. This lot predates that, but the purpose of the code is to have commercial in the commercial district. We need to look at this this plan and see if this is functional on this small of a lot and does it meet all the set-back requirements. The set-backs on commercial property are clear and are not the same for residential in a commercial zone.

Larry said he wants to address density. He said he has done a lot of research on this and has prepared a document that he read from.

Larry said that properties that qualify for mixed use, which an example of that is Commercial/Residential, are somewhat an anomaly in Parowan. He then read from PCC 15.04.20.33:

"Definition states Dwelling, Single-Family and Two-Family General Commercial District – The right to construct, renovate, enlarge, or otherwise maintain a residential dwelling on any lot currently zoned General Commercial. No single or two-family dwellings shall be permitted on any future property zoned General Commercial which has not already been established on the effective date of this ordinance (June 23, 2005). "

This property was in place, zoned Commercial/Residential before 2005. The stated purpose in another Parowan Code GC1 does not include a provision for residential use. When you read the code all the codes have a purpose. The use table in the same code allows apartments, but it doesn't address density. It seems clear that the intent is to encourage commercial development in the Commercial District and that residential in a Commercial District is an artifact that dates back to pre-2005.

This application meets the 2005 requirement for the approved use of apartments in the commercial district. We as a commission needs to consider this property as a mixed-use property. The code that directly addresses mixed-use, outside a Master Planned Community and a Planned Unit Development and that is the Future Land Use Plan. This plan is an attachment to the Parowan General Plan and is not a mandatory document but is a baseline document and serves as a guide to the intended direction of growth and development in the City.

The General Plan says that Utah Code 10-9a-4 authorizes communities to adopt a General Plan and to require that all streets, parks, public buildings, and utilities be constructed in conformance with the General Plan. Applications for land use that are inconsistent with the General Plan, and its associated mapping and other materials, will not be approved until the intended land use complies with the General Plan and any amendments. Ideally the General Plan is the first level in a three-level process of regulating land uses:

1. The General Plan guides broad decisions regarding Land Use (such as rezoning)
2. The Zoning Map Plan, flowing the basic land use pattern established in the General Plan, assigns specific densities and uses to individual parcels of land.
3. The Subdivision Regulations and Building Permit process implement the requirements of the Zoning Plan.

Larry said that when there is not a clear municipal code to interpret development requirements, the General Plan guides the intent of the City. The application before us does not meet the residential building densities cited in the Future Land Use Map. As presented today, the lot would exceed the unit density recommended in the Future Land Use Map.

Larry said this piece of property is .35 acre and it is being proposed as four (4) units. The Future Land Use Map says the unit density is 4 and 8 per acre. With those densities, this property would allow 1.4 units on the lower end and could be rounded up or down and at the high end would allow 2.8 units, and could be rounded up or down. The density is too high with this application. There are other issues with potential parking and flow of parking, but he would rather not go into those issues.

Heather said that in this area apartment houses and dwelling units are permitted. Larry said yes, but with the density four units would not be applicable, but possibly three could. She said that they would always have to be apartments and never be rent-to-own. Larry said that could be correct, but it would be up to the Planning Commission to make that determination.

Larry said that nowhere in the R1 Code does it address townhomes or condos and it doesn't address density for apartments. According to the Future Land Use Map, if you want to have residential in a commercial zone, it would be at low density.

Dan said that the R3 zone permitted uses includes condos, townhomes and other multiple dwellings.

Dave Gibb said he was trying to beautify the neighborhood, there is a great demand for rentals and believes that the parking and units he presented would do that.

Jamie said she would love to see this type of development, but the location just doesn't work for what is being presented.

Dave Gibb said he has talked to the neighboring lot owner about possibly purchasing the lot and combining the two. He asked if that would then make this application better to be approved. Larry said that this commission would look at that, but there are other things that need to be done before another application is submitted.

Dan said that he is glad that Mr. Gibb brought this up. The adjacent property has history with this board. It is under 10,000 square feet and brought before this board for some sort of building and it was denied. It went to the Board of Adjustment, where it was also denied. If you were to combine those two lots, a lot of issues would be addressed. Dan said that building permits are usually administrative, but because of the zone, density, and parking issues, that is why it is being brought before this commission. There is also the issue of backing onto a UDOT road, which would have to be taken up with UDOT. Our code also requires plans that are designed and on a surveyed plat, which would need to be addressed also.

Dave Gibb asked if a duplex would be allowed. Larry said that would be likely but again, other issues would need to be addressed and wanted to make it clear that separate ownership would not be allowed.

Heather Peet made a motion to deny the building of a fourplex at 259 West 200 South as submitted. Jamie Bonnett seconded the motion. All members present voted to deny the building permit as submitted.

*(Jake had to leave the meeting at 6:35 P.M. Weston took his spot on the commission.)*

**HOME OCCUPATION PERMIT – PERSONAL TRAINER – ICEBOX TRAINING/LAURA FERNANDEZ AT 72**

**SOUTH 300 EAST:** Dan gave a background on the process the city follows when issuing Home Occupation Permits. In 15.60.10 of the Parowan City Code, “To assure compliance with provisions of the Zoning Ordinance and to protect the character of residential neighborhoods in the City of Parowan, a Home Occupation application shall be obtained from the office of the City administration before a dwelling unit in a residential zone may be used for business purposes.” He said that home occupations are mostly administrative with most of the work being done by the building administrator.

Dan read from 15.60.20, “The Parowan City Building Administrator shall review each home occupation application for a home occupation permit and determine if it complies with all City criteria. Upon review of the same, the Building Administrator may approve of said home occupation permit, without further review, if (1) the Building Administrator determines that the application complies with all City requirements, (2) the application is not protested by any party within 300 feet of the applicant’s property and (3) the Administrator does not have any concern with the permit.

Dan said that Stacy Gale, Deputy Treasurer, manages the home occupation permits and they don’t come to me until the application is returned with all required information. In this case 18 properties within 300 feet of this property were mailed notification and nature of the business. Of the 18 properties, nine letters were returned with seven either saying it was okay with them, or no protest, but two were returned with a protest.

He continued to read 15.60-020 “In the event that that the home occupation permit is denied or referred to the Parowan City Planning Commission by the Building Administrator, requires restrictions imposed upon the home occupation permit which the applicant disputes, or is protested by any property owner within 300 feet of the applicant, then the applicant shall be referred to the Parowan City Planning and Zoning Commission for approval or disapproval of the home occupation permit. After review of the same, the Parowan City Planning and Zoning Commission shall approve or deny a Home Occupation Permit in accordance with the terms of this Ordinance. The Planning Commission may issue a Home Occupation Permit which shall state the home occupation is permitted subject to any conditions attached thereto, and any time limitations imposed thereon. The permit shall not be issued unless the applicant is willing to meet all of the conditions required, and that the applicant has agreed to comply with all conditions issued in the permit”.

This is why the Planning and Zoning is seeing this. There were two residents who filed a complaint. He said if there are legitimate concerns or protests, Planning and Zoning will look at this and determine if it

can be approved with conditions to mitigate the concerns, or deny it if nothing can mitigate the problems.

He said there are other issues that need to be met, such as amount of floor space that can be used is only up to 25% of the total dwelling and business can only be conducted by family members who reside at the residence and the signage that can be placed.

Heather asked if this had already been approved for fire codes, building, electrical, health codes and if they comply with all State and City codes.

Dan said this permit has not made it that far. The notifications had been sent out with protests so it stopped there.

Kade Bryant asked the Chair if he would read the two protests, so they could understand the conditions that may be placed upon the home occupation permit.

Larry read the letter from one of the protestors (See attached)

Kathy Allen asked if she could speak. She said she was the one who sent in the letter. She said that she is a long-time resident and when she received the letter from Laura stating she wanted to conduct a business in her home, there was no explanation, so Kathy said she started to do some research. She saw an advertisement that said she was opening a fully equipped gym, with small groups and classes. Kathy said that was taking place in a shed that is an outbuilding that has been remodeled, not in the home. She said that when you take a shed or a garage and turn it into a commercial building in a residential area, you lose all control of the zoning. She said that she has put her heart and soul into making commercial buildings available to businesses and there are commercial buildings that people can occupy and use for this type of business.

Laura Fernandez, the owner of the property said that the shed is 440 square feet, which is a small and intimate space. She said that she is not doing group training, and when she talks about groups it is maybe 2 to 4 people at the most. There will not be any classes, only personal training. She said she works on rehab, injury prevention and strength training, and this is not a commercial gym. It is for the comfort of people that don't want to step into a large space. She said she wanted a small area that she does not have to travel and keep it close to home and her house is 1980 square feet, which meets the 25% of the home requirement. The maximum people she would take at one time would be four.

Larry read the other objection. (See attached)

Dan said our code does a good job of listing conditions that address most of these concerns such as parking, light, noise, and traffic. He said in 15.60.030 it says that a home occupation shall be constructed wholly within the structures on the premises and shall not exceed twenty-five (25) percent of the total ground floor area of the home. I think the way you interpret that is within the structures and the home. The home occupation shall not occupy any area within said structures which is required for off-street parking. There is a limit on signage and shall not generate pedestrian or commercial traffic in excess of that customarily associated with the zone in which the use is located. It also shall not cause a demand on municipal services in excess those usually provided for residential uses.

Heather said that she drove by the property and said her understanding is once you try and switch this to a business it is going to require different setbacks. Dan said he thinks Heather is talking about non-

conforming use of the building and so we would need to look at that and see if this designates a change in use. Larry said this is for a home occupation, and not for a change in zoning because they are not turning it into a commercial property. The issue is not a zoning change, just a home occupation permit, but a lot of these are treated by a lot of other municipalities as if you were trying to issue a conditional use permit. We can apply conditions and restrictions to the home occupation permit, and also revoke if there are complaints.

Larry said typically someone buys a home already existing with accessory structures and wants to run a business out of the home. They come in and apply for a home occupation permit but do not build a building to put in a commercial business, just use the existing structures on the property.

Jamie said she said she would think Heather would understand as she runs a home occupation. She said that 150 business permits are issued from Parowan City and 80 percent of those are in homes.

Heather said the only difference is that she (Heather) is in a commercial zone.

*(Dan asked to be excused from the meeting)*

Larry said he would like to look at the objections to the business and try and mitigate those. Then if the permit was approved, the list of conditions would be attached and those would be the rules for that business.

Jerry asked if the term home occupation includes out buildings. Larry said by our code it does. Heather said that it says structure(s). If it did not have the (s), it would be within the home.

David asked if we are approving a conditional use permit?

Larry said no. We are using the same type of considerations that go into a conditional use permit. We look at potential negative impacts to the neighbors and try and mitigate that with conditions. He said the Planning and Zoning does have authority to put conditions on a home occupation permit.

Jerry said one of his conditions would be to limit the amount of people in the building at one time. He said yes, we do want businesses to thrive, but also want to consider the complaints of the neighbors, such as noise, and driving in and out. If there is only one client at a time, he sees no harm, no foul, but multiple people at a time could be an issue. Also, from a business stand point, there are a couple of store fronts that are available that she could use. But he said he heard Laura say that there are children at home and she needs to watch the children.

Christy Collins, a client of Miss Laura, said that she does not like to go to the gym because she does not like to be watched when she is working out. She said she has lost pounds and strengthened her lower back by working with Laura.

David Burton said that it may be important for the commission to do an on-site visit.

Jamie said that she goes to her for training along with her husband. She said they are not walking close to the neighbors, and she also doesn't want to have people watching her. As far as the noise, Laura doesn't start taking people until 7:30 am. It is quiet and you can't hear us working out. We are quieter than the pool was.

The Planning and Zoning went through the pictures provided and where the property line is and where the clients walk to get to the shed.

Kade Bryant said state code 13.23.2 has a definition as health, spa, gym. It should be considered the same as if someone wanted to cut hair out of a home office, it falls under the same act.

Heather said she thinks the permit may have problems by not having water available. She is not sure if a gym is required to have water, that Dan may need to look at this.

Weston said he thinks the traffic or noise would be the biggest concern.

Larry asked the members to put together a list of conditions that they think would mitigate issues that might apply in this case and then vote on whether it should be approved with these issues or not at all. Jerry asked how these mitigations would be enforced and Larry said by complaints. If there were complaints, then this would be brought back to Planning and Zoning and the permit could be revoked if they are not following the conditions. The commission went through the complaints and a list was prepared for the conditions.

Larry asked Laura about the music at the shed.

Laura said that the music is very minimal. Each client needs to hear her instruction, so the music is not loud. There will be music played, but when we turned up the music and had someone stand outside, they could not hear it. She said I take customers starting at 7:30 A.M. to 6:30 P.M.

Condition – Parking

Mitigate – Limit to four (4) clients, two (2) cars per session, off street parking will be provided

Condition – Noise

Mitigate – No outside classes will be held and complies with the City Noise Ordinance

Condition – Health and Safety

Mitigate – Inspections will need to be conducted and deficiencies need to be complied with in 15.60.30

Condition – People walking by the neighbor's property

Mitigate – Put in a six (6) foot high sight obscuring fence on the south side of the property

Heather Peet made a motion to approve the Home Occupation Permit contingent on each session being limited to 4 clients, 2 cars per session, that there will be no outside classes held provide on-site parking complies with 15.60.30 and homeowner will be required to put in a 6-foot sight obscuring fence on the south side of property and comply with city noise ordinance hours.

Heather restated the motion.

Heather Peet made a motion to approve the Home Occupation Permit for Icebox Training at 72 South 300 East contingent upon it complies with Parowan City Code 15.60.30(g) and the attached conditions are complied with and they are:

Limit to four (4) clients, two (2) cars per session

No classes outside

Onsite parking will be provided

A six (6) foot high sight obscuring fence will be constructed on the south side of the property

Will comply with City Noise Ordinance

Weston seconded the motion. Jamie Bonnett abstained. All other members present voted in favor of this motion.

Larry suggested that the members look at South Jordan and Provo Home Occupation Permit requirements.

**REGULATING ARCHITECTURAL FEATURES:** Larry said that Jamie alerted us to this some time back and he wants to run through this. There are a couple of things coming before us, such as the next item Conex Containers, that has a direct bearing on this.

He asked the members to look at handout State Code 10-9a-534 "Regulation of Building Design Elements Prohibited – Exceptions":

Larry said this handout says what a building design element is and that a municipality may not impose a design element on one- or two-family dwellings. It does not apply to bigger buildings or commercial buildings. Larry said in his research he cannot find any regulation on bigger buildings or commercial buildings. We are talking about one- or two-family dwellings and we can't dictate:

- Exterior color;

- type of style of exterior cladding material;

- style, dimensions, or materials of a roof structure, roof pitch, or porch;

- exterior nonstructural architectural ornamentation;

- location, design, placement, or architectural styling of a window or door;

- location, design, placement, or architectural styling of a garage door, not including a rear-loading garage door;

- number of type of rooms;

- interior layout of a room;

- minimum square footage over 1,000 square feet, not including a garage (although we can dictate is must be at least 1,00 square feet);

- rear yard landscaping requirements;

- minimum building dimensions or;

- a requirement to install front yard fencing.



Larry told members that this is just for their information and there are some exceptions, such as in the historic district. Just to reiterate, this is for single family dwellings or duplexes.

He said someone in a Salt Lake Planning and Zoning Group made some extensive comments on how to administer this code. This will be helpful for us in the future. He advised the members to keep it for further reference.

**CONEX CONTAINERS:** Larry said that at the City Council meeting when it was asked if the Council wanted to continue with changing our Conex Ordinance, one Councilmember said yes, one said no and since that time one more Councilmember has said no. He said that the other Councilmember is here and asked David Burton his opinion. David said that at this time, he is not willing to address this issue.

Larry said that after doing some research on the architectural code on single and dual family residences, if we as a commission were to approve Conex boxes as dwellings, we would be unable to impose any code as to cladding, painting, etc., and in effect would not have control over what is put on a lot. He said he thinks that this defeats the intent of the existing code. It would be uncontrollable if we were to allow these as dwellings.

There was more discussion regarding the Council meeting. Larry said that the reason we, as a commission, were looking at this issue, was an application was brought before us. We needed to address that application. That application was denied because it did not comply with current code. The Council is not willing, at this time, to revisit this issue.

Heather Peet made a motion that we abandon the concept of using Conex Boxes as structural components or dwellings. Weston seconded the motion. All members present voted in favor of this motion.

**MEMBER REPORTS:** Larry thanked the members who were at the last City Council meeting. He also thanked Mayor Halterman for giving the Planning and Zoning members a thank you at the City Council meeting.

Heather said that following the last City Council meeting she has some questions she would like answered. The City Manager brought up the Conex Box Ordinance, after the Planning and Zoning Commission said it would put together a presentation for the Council. That made her question some things in regards to the City Manager and the Planning and Zoning Chair and what authority they had over Planning and Zoning. In our code it says that the City Manager shall not have authority over the Planning and Zoning. She said that when Cleve was here, he didn't sit up on the stand with the Commission, but in the audience and would answer questions if we needed clarification. Larry said that wasn't always the case. He used to sit on the stand and when the meetings were in the conference room, he would sit at the table. He would bring things forward and participate just as Dan has been doing. Larry said you are correct in that we do not work for the City Manager. He said he apologizes that the Conex Box was brought up at the City Council meeting when the commission wanted to prepare first. He said that Dan had called him that day and said he realized he made a mistake and put it on the agenda. Larry said he told Dan that he didn't think it would hurt to go ahead and talk about it. He said he did not mean to usurp the commission in anyway.

Larry said that the Council also talked about the water code at their meeting. It was approved with one small change that David Burton identified. He said the RV Park Code also moved forward with

conditional use requirements left in, but a provision that allowed for longer stays of 29 days or less, that would not need to be approved by this commission.

**ADJOURN:** Jerry Vesely made a motion to adjourn the meeting at 8:28 p.m. Heather Peet seconded the motion. The meeting was adjourned.