

**MINUTES OF THE COTTONWOOD HEIGHTS CITY
PLANNING COMMISSION WORK MEETING**

Wednesday, August 6, 2025

5:00 p.m.

2277 East Bengal Boulevard

City Council Chambers

ATTENDANCE

Members Present: Chair Lucy Anderson, Commissioner Mike Shelton (via Zoom), Commissioner Dan Poulson, Commissioner Dan Mills, Commissioner Mike Smith, Commissioner Garry Barnes, Commissioner Rusty Lugo-Alternate

Staff Present: City Manager, Jared Gerber; Deputy City Recorder, Cienna Brummel; Planner III, Maverick Yeh; System Administrator, Alex Earl

Absent: Vice-Chair Sean Steinman

WORK SESSION

Chair Lucy Anderson called the Planning Commission Work Session to order at 5:04 p.m.

1.0 Review Business Session Agenda.

Chair Andersen reviewed the Business Session Agenda and reported that Item 3.1 would be a continuation of the discussion regarding Project CUP-25-011 to amend the Giverny Community Planned Unit Development (“PUD”) rules regarding accessory structure setbacks.

Planner III, Maverick Yeh stated that Project CUP-25-011 requested approval of a Conditional Use Permit (“CUP”) to amend the Giverny PUD located at approximately 3505 East Giverny Parkway in the R-1-8 zone. The item was continued from the July 16, 2025, Planning Commission meeting. Staff was asked to research concerns raised at the meeting and follow up with the Building and Fire Departments to ensure that the setbacks meet Building and Fire Codes.

Mr. Yeh then reviewed the Commissioners’ concerns and Staff responses.

1. The inclusion of sheds in the proposed amendment could pose an elevated fire safety risk.

During a meeting between the applicant and relevant departments, sheds were removed from the proposed amendment. The revised proposal applied only to open-air structures like pergolas and gazebos.

2. The reduced setbacks could pose an elevated fire safety risk.

The Fire Department indicated that the proposed setback of zero feet from the primary structure is adequate as long as footings, foundations, and walls are not permitted within the side yard setback. Per Fire Code, fire pits and gas features are not allowed under gazebos or pergolas. The Building Department had no objections to the reduced setbacks but noted that firewall standards must be met.

In response to a question raised by Chair Anderson, Mr. Yeh confirmed that structures taller than eight feet would require a five-foot setback from side and rear property lines, but the proposed modification would not specify a minimum distance from the primary structure. Current code requires a three-foot setback for side and rear property lines and six feet from the primary structure.

3. Allowing reduced setbacks could be unfair to property owners in the R-1-8 zone but outside of the Giverny PUD.

Mr. Yeh reported that lots in the Giverny PUD average 5,000 to 6,000 square feet and are smaller than the 8,000-square-foot standard lot size in the R-1-8 zone. The applicant's justification for the request included the unique spatial limitations in the PUD.

Chair Anderson expressed concern about allowing the deviation based solely on the smaller lot size as it could set a precedent for other small lots in the R-1-8 zone. Mr. Yeh stated that because lot coverage requirements must still be met, Staff believed the request for reduced setbacks was reasonable. In response to a question, Mr. Yeh clarified that owners of other smaller-than-average lots in the R-1-8 zone would not be eligible for reduced setbacks.

City Manager, Jared Gerber agreed with Chair Anderson that the decision could set a precedent but noted that the Planning Commission should also consider the fact that the subdivision is in a PUD.

Staff recommended that the Planning Commission approve the request with no additional conditions.

Commissioner Mills asked if there was a reason the reduced setbacks for open-air structures should not be applied to all properties in the zone. In his opinion, the City should be more inclined to enforce setbacks on smaller lots, not less. If it was concluded that the reduced setbacks were safe, he believed they should be applied citywide rather than giving one community preferential treatment. Chair Anderson agreed.

Commissioner Shelton agreed that if there was no problem with the proximity of the structures, rather than granting the request of a select group of homes, it should be applied to all residential zones in the City. He saw no reason to first grant an exception to the R-1-8 zone to create smaller lots within the PUD and then grant an additional exception for smaller setbacks.

Commissioner Poulsen referred to page 4 of the Modification of Giverny Accessory Building Setbacks document. The proposal was to allow posts three feet from the property line. However, no changes were proposed to the roof structure overhang. As written, if the posts were moved to three feet, the overhang would be on the property line. The roof structure overhang would need to be changed to 12 or 24 inches because otherwise, the drip line would be on the property line.

Commissioner Barnes asked about the consequences to the Giverny HOA if the application was denied and if the issue arose because the developer ignored building standards. Commissioner Mills stated that the Planning Commission could not consider whether an illegal structure was built by the developer or a homeowner, but citizen comments at the previous meeting indicated that many homeowners inherited the illegal structures.

In response to a follow-up question raised by Commissioner Barnes, Chair Anderson clarified that property owners are bound by current Cottonwood Heights standards. If the application is not approved and Code Enforcement becomes aware of violations, they will enforce City Code.

Commissioner Poulson asked if setbacks for sheds, pools, and other structures should also be considered. Chair Anderson indicated that setbacks can be differentiated by building type; for example, open-air structures versus closed-wall sheds.

Chair Anderson agreed with Commissioner Mills and Commissioner Shelton that if the City approved of the reduced setbacks, they should be approved for open-air structures in all residential zones.

Commissioner Smith asked if denial would mean that some structures would have to be removed. It was clarified that enforcement was outside of the Planning Commission's purview. Commissioner Smith stated that he believed the Commission should consider the fact that many of the affected property owners received building permits for the structures. Mr. Gerber reported that structures less than 200 square feet in size do not require a building permit but must comply with City Code, and pergolas are typically smaller than 200 square feet. Whether an illegal structure must be removed was at Code Enforcement's discretion. However, because they are not legal or approved, removal could be required.

Commissioner Poulson noted that one example provided by the applicant was an open-air pergola with bar seating and a gas grill. That is noncompliant with the Fire Code. He asked if the homeowner would be allowed to keep the grill if no one complained. Chair Anderson clarified that action would be taken if someone were to complain or Code Enforcement identified the violation. In response to his follow-up question, Commissioner Mills stated that Code Enforcement could identify all violations if there were enough officers, but the current staff was limited in what they could do. The current Code is enforced every time Code Enforcement is made aware of a violation. Sometimes, a nonconforming structure has been in place for decades but is still illegal.

Commissioner Poulson asked if denial would increase the burden on Code Enforcement. Chair Anderson stated that it is Code Enforcement's job to enforce City Code when they are aware of a violation. If Code Enforcement is not aware of a violation, the property could remain

noncompliant. Other violations that may go unnoticed include weeds, illegal Airbnbs, improperly stored flammables, etc. When Code Enforcement becomes aware of a violation, they take action.

Chair Anderson asked Staff for next steps if the Planning Commission recommended that the proposed setbacks be approved for all residential zones and not limited to the PUD. Mr. Gerber stated that the Commission could pass the amendment for the PUD and request that Staff draft a Text Amendment to revise setbacks for all zones. The amendment would then come back before the Planning Commission for a recommendation to the City Council. They could also table or deny the current application.

In response to a question from Commissioner Mills, Mr. Gerber reported that Text Amendments are initiated at the City Council's direction, but Staff could bring the matter before the Council. Chair Anderson noted that if the Planning Commission approved the application and the City Council chose not to move forward with a Text Amendment, it would create an exception for the PUD. Commissioner Mills stated that he would prefer to start with the Text Amendment. Commissioner Shelton agreed.

Commissioner Poulson reiterated that if the side setback is changed to three feet, the roof overhang discrepancy needs to be addressed. As written, the roof may overhang by up to 36 inches, which would place the drip line on the property line. Commissioner Mills indicated that the Staff needed to review the wording to correct any areas of conflict. Chair Anderson noted that a motion to approve could include the condition that runoff from the roof overhang cannot go into the neighbor's yard.

Commissioner Shelton indicated that some Commissioners were in favor of denying the application in favor of a later Text Amendment. He then offered a comparison between code enforcement and police officers issuing speeding tickets. Everyone who speeds is not given a speeding ticket, and laws are not changed to match the highest speed they drive. He believes the same is true for City Code; laws are not changed to accommodate those who do not obey them, but not everyone who violates Code receives a citation.

Mr. Gerber provided updates on the following City projects:

- The Letter of Intent had been signed for the Town Center, and they would now move into the Development Agreement phase of negotiations. He anticipates having design concepts ready to present in the Fall. Approximately \$20 million of the bond has been issued, and the sales tax bond used to purchase the property has been paid off. The remaining bond revenue is currently reserved for tenant relocation and additional property acquisition. Demolition is expected to begin in Spring 2026.
- No new applications had been received regarding the Dakota Pacific apartment project north of the future Town Center.
- New Community and Economic Development Director, Jim Spung, would be at the next Planning Commission meeting. Mr. Spung worked in Taylorsville for several years and was a consultant prior to taking that position. He will be a good addition to City Staff.

Maverick Yeh had been promoted to Planner III, and they are working to fill the Planner II position.

- Butlerville Days was very successful. It was Mr. Gerber's first time at the event.
- The water project behind Fort Union is behind schedule. The City Council has allocated funding to finish the road, sidewalk, curb, and gutter in the area. In response to a question from Commissioner Mills, Mr. Gerber clarified that the north side was not included.
- The first building permit review had been completed for the Rockworth project at the Gravel Pit. It passed Fire Department review, but the Public Works, Zoning, Building, and Engineering Departments required corrections. Staff is waiting for the resubmittal for second review.
- The Fort Union property was on the August 5, 2025, City Council Meeting agenda, but the applicant, Adam Nash, was unable to attend. The item was continued to the August 19, 2025, meeting.
- The City Council selected three names for the new park across from the dog park: Brighton Point, Summer Hill, and Doverhill. A form will be posted online, and residents are encouraged to vote on the name. The Council will then choose the final name at a September meeting.
- A walkthrough of the new Ivory Homes development was scheduled for the following week. Commissioner Mills noted some residents were very sensitive to the development, but Ivory Homes did not get everything they wanted. The property was an anchor area for the Valley and very sought after, and he believed the development was a great addition to the area. Mr. Gerber noted that some young families are moving into the development.
- No new information had been provided by the Utah Department of Transportation ("UDOT") regarding the Wasatch Boulevard and Fort Union Boulevard interchange. Staff has met with UDOT on the matter and voiced their concerns, but UDOT has not made any written commitments.
- UDOT is still working with the property owner regarding the transit hub at the Gravel Pit. Some studies have been completed, but no decision has been made.
- A Conditional Use Permit ("CUP") application was submitted for demolition of the Old Mill, but it was not complete. The one-year review period will not begin until a complete application is submitted.

Mr. Yeh asked for direction on CUP applications for home businesses with clients. In the past, the Community and Economic Development director reviewed those applications. However, Mr. Sprung asked that he verify whether those cases should still be reviewed at the Staff level or if the Planning Commission would like to review them.

Commissioner Mills stated that whether those applications came before the Commission was historically based on the nature of the business. Chair Anderson agreed that it was previously based on the business type and number of clients. It was her opinion that the applications should come before the Planning Commission, and they could then reevaluate at a later date. Commissioner Smith stated that if people are making exceptions to the neighborhood, it should be reviewed by the Commission. The Commissioners agreed.

Mr. Yeh invited the Planning Commission to attend the American Planning Association (“APA”) Utah conference. Chair Anderson asked that the Commission be notified of the conference dates. She has attended them in the past and found them to be very valuable. If it is appropriate for the Commission to attend, they should do so. Mr. Gerber stated that the Fall conference will be October 9 through October 10, 2025, at The Depot and Megaplex Theater. The Spring conference usually requires travel to a different part of the state. Chair Anderson stated that when Commissioners attend conferences, they should return with a synopsis to share with those who could not attend.

Mr. Yeh noted that Planning Commission-specific training is always offered at APA conferences. Chair Anderson reminded the Commission that they are required to complete training by the end of the year, and the conference could count toward that requirement. In response to a question from Commissioner Smith, Mr. Gerber asked that the Commissioners send an email to Staff when they complete training so it can be tracked.

2.0 Adjourn.

Commissioner Mills moved to ADJOURN the Work Session. Commissioner Smith seconded the motion. The motion passed with the unanimous consent of the Commission.

The Work Session adjourned at 5:50 p.m.

**MINUTES OF THE COTTONWOOD HEIGHTS CITY
PLANNING COMMISSION BUSINESS MEETING**

**Wednesday, 6, 2025
6:00 p.m.
2277 East Bengal Boulevard
City Council Chambers**

Members Present: Chair Lucy Anderson, Commissioner Mike Shelton (via Zoom), Commissioner Dan Poulson, Commissioner Dan Mills, Commissioner Mike Smith, Commissioner Garry Barnes, Commissioner Rusty Lugo-Alternate

Staff Present: City Manager, Jared Gerber; Deputy City Recorder, Cienna Brummel; Planner III, Maverick Yeh; System Administrator, Alex Earl

Public Attendees: Richard Herr, Brent Johnson

Absent: Vice-Chair Sean Steinman

BUSINESS SESSION

Chair Lucy Anderson called the Planning Commission Business Session to order at 6:00 p.m.

1.0 Welcome and Acknowledgements.

1.1 Ex Parte Communications or Conflicts of Interest to Disclose.

There were no Ex Parte Communications or Conflicts of Interest disclosed.

2.0 General Public Comment.

There were no public comments.

3.0 Business Items.

3.1 Project CUP-25-011 (PUD-25-001) - A Public Hearing and Potential Action on a Request by Brent Johnson on behalf of the Giverny Master Association (the Giverny Community HOA) to Amend the Giverny Community Planned Unit Development's Rules regarding some Accessory Structure Setbacks. Although this application was noticed as PUD-25-001, the application type is technically a Conditional Use Permit. As such, the application has been renamed CUP-25-011.

Planner III, Maverick Yeh, presented the Staff Report and indicated that the application was to amend the original Giverny Planned Unit Development ("PUD"), which did not address accessory

structure setbacks. Many property owners in the PUD have constructed pergolas or other accessory structures that do not meet current requirements. A building permit is not required for structures smaller than 200 square feet in size, but City Code must still be followed. After complaints were received and Code Enforcement became involved, the Giverny Master Association approached the City about a potential amendment to change setback requirements for those structures.

At the July 16, 2025, Planning Commission Meeting, concerns were expressed regarding Building and Fire Codes. The item was tabled to provide time for the applicant to meet with relevant departments and for those concerns to be addressed.

Mr. Yeh then reviewed the Commissioners' concerns and Staff responses.

1. The inclusion of sheds in the proposed amendment could pose an elevated fire safety risk.

Sheds were removed from the proposed amendment. The revised proposal applied only to open-air structures like pergolas and gazebos.

2. The reduced setbacks could pose an elevated fire safety risk.

The Fire Department approved of the reduced setback from the primary structure as long as footings, foundations, and walls are not permitted within the side yard setback. Per Fire Code, fire pits and gas features are not allowed under accessory structures. The Building Department also approved of the reduced setbacks but noted that firewall standards must be met.

3. Allowing reduced setbacks could be unfair to property owners in the R-1-8 zone but outside of the Giverny PUD.

Mr. Yeh reported that lots in the Giverny PUD average 5,000 to 6,000 square feet and are smaller than the 8,000-square-foot standard lot size in the R-1-8 zone. Due to this, Staff found the request for reduced setbacks to be reasonable and recommended approval.

Mr. Yeh summarized that the revised proposal applied only to open-air structures like gazebos and pergolas; sheds and other structures were excluded. The amendment would increase side and rear setbacks from three feet to five feet and decrease the required minimum distance from the primary structures from six feet to zero feet. City Staff recommended approval of the application with no additional conditions.

The applicant, Brent Johnson, stated that there had been some turnover with City Staff. He originally worked with former Community and Economic Development Director, Michael Johnson, and Planner III, Ian Harris, toward the goal of ensuring that the amendment is closely aligned with other City requirements. They were very concerned that structures in the community were not in compliance. The intent of the amendment was not to deviate greatly from what is

already allowed but to define and streamline the accessory structure setbacks for the PUD's smaller lot sizes.

Mr. Johnson referred to the diagram on page 5 of the application. Based on that diagram, most property owners in the community thought that they did not need a building permit if the structure was under 120 square feet, did not exceed 11 feet in height, and did not have electricity. They also believed that the structure only needed to be three feet from the rear property line to be in compliance.

Some property owners have accessory structures that are six feet from the house and three feet from the rear fence line. A document that was provided to him by City Staff indicates that walls that are five feet or less from the property line must have a minimum one-hour fire resistance rating. Mr. Johnson stated that the note was not previously included on the same document on the City website, but it was replaced with the correct document after he brought it to Staff attention. He believes people were not previously aware of the fire resistance rating because it was not on the website. He was told that a three-foot fire resistance wall would be required with a three-foot setback, which is why they recommended increasing it to five feet.

Regarding the roof line discrepancy pointed out by Commissioner Poulson in the Work Session, Mr. Johnson stated that it was added based on a conversation with Mr. Johnson, but he did not consider the fact that a structure within three feet of the property line would have a drip line at the property line. In that case, he proposed only allowing a one-foot extension.

Mr. Johnson reported that they were trying to comply with City requirements while saving as many existing structures as possible. However, they did not expect that noncompliant structures be grandfathered. They understood that Code Enforcement could require those structures to be removed. Many of the structures do not have permits, and he sympathizes with homeowners who thought they were compliant. He has had multiple meetings with City Staff to ensure that the amendment will protect the community and be compliant with Fire Code. Their request was for a closer setback to the house, but the 50% lot coverage maximum would still apply.

Mr. Johnson stated that he understood the Commission's concerns regarding allowing an exception for the Giverny Community but stressed that all City departments had signed off on the amendment and mentioned that Fire Marshall, Bradley Larson, had indicated that some fire elements could be allowed on a case-by-case basis. If the amendment were approved, he suggested that affected property owners be required to submit an application for Fire Department review to ensure that the structure is safe.

Regarding how the problem arose, Mr. Johnson stated that Regal Homes added accessory structures to their three model homes while the community was in development and being regularly inspected by the City. There were now 36 accessory structures, some with valid building permits and others that would be brought into compliance if the amendment were approved. He sympathizes with homeowners who purchased a property with an existing structure but understands that it is the homebuyer's responsibility to ensure that the structure was permitted. Some structures will need to be removed. The issue was originally brought to his attention because a complaint was made to Code Enforcement about all accessory structures in the community. One

homeowner was required to remove his structure at that time, and then a reprieve was granted to the community while they worked on the amendment.

Chair Anderson opened the public hearing.

Richard Herr stated that he spoke at the July meeting as well. After reviewing the R-1-8 setback requirements and speaking with the Fire Department, he determined that his gazebo was in compliance with current City Code. However, it would not be in compliance with the proposed maximum height of eight feet, which is stricter than the current 14-foot maximum. He requested that any structures that are in compliance with R-1-8 zone be granted an exemption from the more restrictive requirements proposed by the HOA.

There were no further public comments. The public hearing was closed.

Commissioner Smith indicated that the Commission had a productive discussion during the Work Session. He was in favor of the proposed changes but appreciated the concern about making exceptions and applying different rules to different neighborhoods.

Chair Anderson noted that HOAs can make their own rules, but City Code will always take precedence. City Manager, Jared Gerber clarified that HOAs can apply additional, more restrictive covenants to their property, but they must be recorded as part of the Covenants, Conditions, and Restrictions (“CC&Rs”) for those properties and are privately enforced.

In response to a question from Chair Anderson, Mr. Yeh clarified that setbacks for open-air structures are measured from the footing or post to the property line.

Commissioner Mills expressed gratitude for the discussion. He believed the issue warranted exceptional treatment but believed that it required a Text Amendment. Based on the public comment and the overhang issue identified by Commissioner Poulson, some additional cleanup may be necessary. He agreed that the rules could be changed for gazebos and pergolas but believed that the change should be applied citywide. He was not in favor of providing a different set of rules for the smaller lots. Chair Anderson agreed.

Mr. Gerber clarified that, per City Code, the purpose of a PUD is “to provide for innovative residential developments having harmony of design and variety of function by providing for greater flexibility in the design and buildings, yards, courts, and circulation than would otherwise be possible through the strict application of zoning district regulations.” A PUD has separate setbacks and other exceptions to R-1-8 zone requirements.

Commissioner Poulson noted that if the application were approved for the PUD, it would not apply to others in the R-1-8 zone with lots smaller than 8,000 square feet. He believed it could cause confusion for those property owners. In response to a follow-up question from Commissioner Poulson, Mr. Gerber confirmed that a standard lot in the R-1-8 zone must be a minimum of 8,000 square feet in size. Lots in the Giverny community are smaller because they went through the PUD process.

Commissioner Mills stated that PUDs were not designed as a way to circumvent City Code. They are intended to allow creativity and flexibility, but not to skirt safety requirements or property rights. PUDs can be complicated and messy at times. He believed it was prudent to be circumspect about the change because it would set a precedent.

After further discussion, the Commission agreed that the matter should be addressed through a Text Amendment.

Commissioner Mills moved to DENY Project CUP-25-011 based on the following:

Findings:

- 1. Approval would set a precedent.***
- 2. The issue would be better addressed with a Text Amendment to City Code.***

Commissioner Poulson seconded the motion. Vote on Motion: Commissioner Poulson-Yes; Commissioner Mills-Yes; Commissioner Shelton-Yes; Commissioner Barnes-Yes; Commissioner Smith-Yes; Chair Anderson-Yes. The motion passed with the unanimous consent of the Commission.

Mr. Gerber reported that he would present the request to the City Council at the August 19, 2025, City Council meeting.

4.0 Consent Agenda

4.1 Approval of June 16, 2025, Planning Commission Meeting Minutes.

Commissioner Poulson moved to APPROVE the Consent Agenda. Commissioner Smith seconded the motion. The motion passed with the unanimous consent of the Commission.

The next Planning Commission meeting was scheduled for September 3, 2025.

5.0 Adjourn.

Commissioner Smith moved to the Business Session. Commissioner Poulson seconded the motion. The motion passed with the unanimous consent of the Commission.

The Business Session adjourned at approximately 6:29 p.m.

I hereby certify that the foregoing represents a true, accurate, and complete record of the Cottonwood Heights City Planning Commission Work Session and Business Session held on Wednesday, August 6, 2025.

Teri Forbes

Teri Forbes
T Forbes Group
Minutes Secretary

Minutes Approved: _____