

Canopy/Marquee License Agreement

Zions Bank Financial Center - 180 North University Avenue

Recitals

WHEREAS, on February 27, 2008, Block 29 Developers, L.L.C. was granted a conditional use permit to extend a canopy/marquee over a portion of the public sidewalk along University Avenue, which canopy/marquee is illustrated in Attachment "C" as part of the west elevation of the Zions Bank Financial Center and located on the property described in Attachment "A".

WHEREAS, the canopy or marquee will tend to improve the visual environment of the City, will not be harmful to any existing tree or landscaping element, will increase downtown property values, and will promote the objectives and characteristics of the Central Business District zone as approved by the Planning Commission on February 27, 2008.

WHEREAS, all Conditional Use Permit and CBD code requirements have been met.

License Approval

In conformance with the provisions of Section 14.21.150(4) & 14.02.040 of the Provo City Code and as granted by the Planning Commission through the approval of a conditional use permit on February 27, 2008, Provo City Corporation hereby grants a license to Block 29 Developers, LLC (hereafter referred to as "Licensee") to extend a canopy/marquee over a portion of the public sidewalk along University Avenue. This approval is based upon assurances by the Community Development Director that all Conditional Use Permit and CBD code requirements for such canopies/marquees have been met, and that building permits have been or will be obtained. Said assurances were provided in a Planning Commission Report of Action dated February 27, 2008, which is attached hereto as Attachment "B" and incorporated into this License.

Conditions of Approval

The following conditions shall apply to this license to extend a canopy/marquee over a portion of the public sidewalk:

1. The Licensee or Licensee's designee shall assume and pay all costs of installation, maintenance, and removal of said canopy or marquee. The Licensee or Licensee's designee shall agree to repair and/or replace any public sidewalk, landscaping, street furnishings, or other public fixtures that are damaged during the construction of the canopy or marquee.
2. The Licensee or Licensee's designee shall agree to save and hold harmless the City on any and all damage to any property or persons arising from the construction and maintenance of such canopies or marquees.
3. The Licensee or Licensee's designee shall agree to pay damages and hold the City harmless from any claim that may arise through the Licensee's or designee's use of public property for the purpose of installation, maintenance or continuance of use of the canopy or marquee.
4. Said License may be revoked after ninety (90) days of written notice to the Licensee or Licensee's designee, at which time all improvements must be removed from the public right-of-way at the full expense of said Licensee or Licensee's designee. The City right-of-way shall be restored by the Licensee or Licensee's designee at his own expense to a condition equivalent or better than that existing in the remainder of the block face, and to a condition satisfactory and acceptable to the Mayor. Canopies or marquees shall remain open and unencumbered

on three (3) sides except for required supporting columns, stanchions, or architectural features approved by the Planning Commission and Design Review Committee.

5. Except for the canopy/marquee itself and any signage located thereon, in no event shall any portion of the public right-of-way be used for commercial storage, display, or other private use.

6. The construction of any canopy or marquee shall in no way deprive the public of use of the public right-of-way, except for those locations where the supporting columns, stanchions or other architectural features are located as approved by the Planning Commission and Design Review Committee. In addition, the location of supporting columns or stanchions will not obstruct pedestrian traffic on the sidewalk, and will not materially affect existing landscaping or street furniture installations in the public right-of way.

7. The provisions of this License are not intended to any way nullify or repeal any portions of the International Building Code provisions. All canopy or marquee installations shall be in full conformance with the provisions of the latest edition of the International Building Code as adopted by Provo City.

8. The canopy/marquee shall comply with the existing CBD code requirements for canopies/marquees. In the event Licensee shall seek to alter or modify the canopy/marquee, such altered or modified canopy/marquee shall comply with the then current CBD code requirements for canopies/marquees.

9. The canopy or marquee shall be harmonious in design and appearance with the building upon which it is being located, and with the general architectural and visual theme of the CBD zone, as approved by the Planning Commission on February 27, 2008.

10. The canopy/marquee design and materials shall be approved by the Provo City Design Review Committee prior to the issuance of any permit for the construction of said canopy/marquee.

11. This License is conditioned upon the issuance of a building permit for the Zions Bank Financial Center.

In WITNESS WHEREOF, the authorized representatives of Block 29 Developers, LLC, a Utah limited liability company, agree to the above terms of this License on this 9th day of July, 2008.

Block 29 Developers, LLC, a Utah limited liability company

By: P.E.G. Development, LLC, a Utah limited liability company, its manager

By: [Signature]
Cameron Gunter, Manager

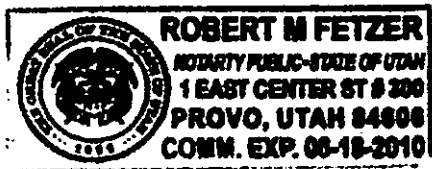
By: Earl Corporation, a Utah corporation, its manager

By: [Signature]
Bruce T. Earl, President

State of Utah)
 :SS
County of Utah)

The foregoing instrument was acknowledged before me on this 9th day of July, 2008, by Cameron Gunter as Manager of P.E.G. Development, LLC, a Manager of Block 29 Developers, LLC.

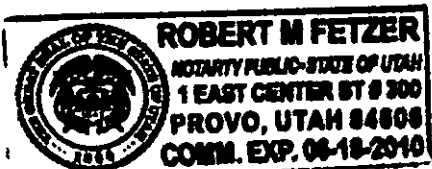
[Signature]
Notary Public



State of Utah)
 :SS
County of Utah)

The foregoing instrument was acknowledged before me on this 8th day of July, 2008, by Bruce T. Earl as President of Earl Corporation, a Manager of Block 29 Developers, LLC.

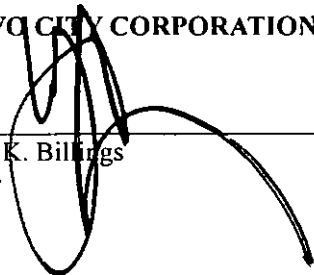
[Signature]
Notary Public



The Mayor of Provo City Corporation hereby licenses this _____ day of _____, 2008, the construction of the Zions Bank Financial Center Canopy/Marquee on the conditions and the terms listed above and in the incorporated attachments, and agreed to by the authorized representatives of Block 29 Developers, LLC, a Utah limited liability company.

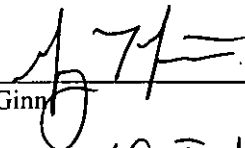
PROVO CITY CORPORATION

Lewis K. Billings
Mayor



COMMUNITY DEVELOPMENT DEPARTMENT

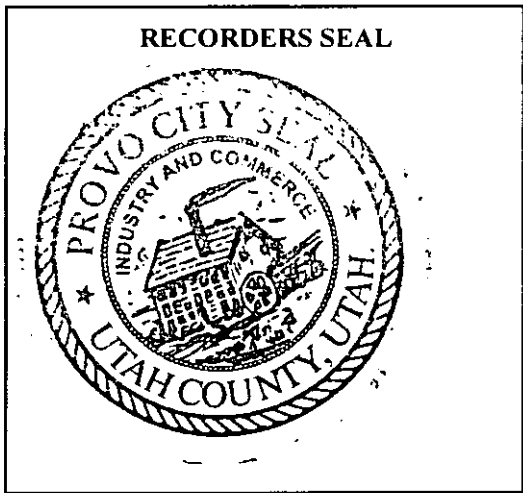
Gary McGinn
Director



Date Signed: 10 July 2008

ATTEST:

LaNice Groesbeck
LaNice Groesbeck, City Recorder
Dated this 17 day of July, 2008.



"Attachment A"
Legal Description of Property
Zions Bank Tower
180 North University Avenue

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SURVEYOR'S NARRATIVE

I, Dusty L. Bishop do hereby state that I am a Registered Professional Land Surveyor and that I hold certificate no. 4938720 as prescribed by the laws of the State of Utah and represent that I have made a survey of the following described property. The Purpose of this survey is to provide an ALTA/ACSM Land Title Survey with topography for use by the client. The Basis of Bearing is the line between the Southeast Corner and the East Quarter Corner of Section 1, Township 7 South, Range 2 East, Salt Lake Base and Meridian, which bears North 0°59'03" West 2652.43 feet (Record bearing on Subdivision Plat is North 0°19'49" West).d

BOUNDARY DESCRIPTION
Combined Parcel

A parcel of land, situate in the Southeast Quarter of Section 1, Township 7 South, Range 2 East, Salt Lake Base and Meridian, being a portion of Block 29, Plat "B", Provo City Survey, more particularly described as follows:

Beginning at a point on the south line of 200 North Street, which is located North 0°59'03" West 1615.14 feet along the Section line and West 164.11 feet to the Northeast Corner of said Block 29, and North 89°40'19" West 147.62 feet along the south line of said 200 North Street from the Southeast Corner of Section 1, Township 7 South, Range 2 East, Salt Lake Base and Meridian, and running:

thence South 0°17'52" West 81.21 feet to a found rebar and cap marked A.F.J. L.S. 3373;
thence North 89°47'22" West 52.53 feet to another found rebar and cap, so marked;
thence South 0°12'52" West 186.01 feet;
thence North 89°38'32" West 32.91 feet;
thence South 0°19'41" West 31.00 feet;
thence North 89°39'51" West 166.87 feet to the east line of University Avenue;
thence North 0°24'37" East 298.29 feet along said east line to the Northwest Corner of said Block 29;
thence South 89°40'19" East 251.47 feet along the south line of 200 North Street to the Point of

Beginning.

Parcel contains: 62,714 square feet or 1.44 acres.

"Attachment B"
Planning Commission Report of Action
February 27, 2008
180 North University Avenue

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Provo City Planning Commission

Report of Action

February 27, 2008

REQUEST FOR COUNCIL ACTION

Type of Action Requested: X

Resolution _____

Ordinance _____

Formal Action/Motion _____

Review at Study Session _____

Administrative; No Action X

ITEM 1 Block 29 Developers request approval for the Zions Financial Center, a 10 story office building generally located at 200 North University Avenue within the CBD (Central Business District Commercial) zone. *CBD Neighborhood. Continued from the February 13, 2008 meeting.* The following actions are requested:

- (a) Final plan approval for a 141,764 sq. ft. office building on approximately 1.35 acres of property (07-0061PPA).
- (b) Conditional use permit approval to allow an awning to encroach into the public right-of-way along University Avenue (08-0002CUP).
- (c) Conditional use permit approval to allow a reduction in the number of required off-street parking stalls (08-0003CUP).

The following action was taken by the Planning Commission on the above described project plan application at its regular meeting of February 27, 2008:

(a) CONDITIONAL APPROVAL

On a vote of 5:0, the Planning Commission approved the above noted project plan application, with the following conditions:

Conditions of Approval:

1. That the project plans comply with all code requirements identified by the departmental review before issuance of a building permit.
2. That the applicant comply with all traffic mitigation measures required by the Engineering Division before issuance of a building permit.
3. That the applicant return to the Design Review Committee to resolve design issues identified in the Design Review Committee Report of Action (including concerns with the parking garage design) and receive final design approval before issuance of a building permit.
4. That the associated plat be signed and recorded before issuance of a building permit.
5. That a condo plat be approved and recorded before issuance of a certificate of occupancy.
6. That the applicant obtain a sign permit from Provo City Community Development before installation of any signs.

Motion By: Roy Peterman

Second By: Pam Boshard

Votes in Favor of Motion: Roy Peterman, Pam Boshard, Ron Madsen, Coy Porter, Ron Phillips

Votes Opposed to Motion: None

Leonard Mackay was present as Chair.

- Additional Report of Action for item previously continued after a public hearing or other discussion: February 13, 2008.
- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination *is generally consistent* with the Staff analysis and determination.

The following action was taken by the Planning Commission on the above described conditional use permit application at its regular meeting of February 27, 2008:

(b) CONDITIONAL APPROVAL

On a vote of 5:0, the Planning Commission approved the above noted conditional use permit application, with the following conditions:

Conditions of Approval:

1. That the applicant enter into a hold harmless agreement with the city as outlined in 14.21.150(4) of the Provo City Code before issuance of a building permit.
2. That the proposed awning maintain compliance at all times with the code requirements outlined in 14.21.150(4) of the Provo City.

Motion By: Ron Madsen

Second By: Roy Peterman

Votes in Favor of Motion: Roy Peterman, Pam Boshard, Ron Madsen, Coy Porter, Ron Phillips

Votes Opposed to Motion: None

Leonard Mackay was present as Chair.

- Additional Report of Action for item previously continued after a public hearing or other discussion: February 13, 2008.
- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination *is generally consistent* with the Staff analysis and determination.

The following action was taken by the Planning Commission on the above described conditional use permit application at its regular meeting of February 27, 2008:

(c) CONDITIONAL APPROVAL

On a vote of 4:1, the Planning Commission approved the above noted conditional use permit application, with the following conditions:

Conditions of Approval:

1. That, according to 14.37.050(3)(c), a development agreement be recorded between the property owner and Provo City governing the provision of parking on the subject lot. Such agreement shall include provisions for:
 - a. Monitoring of parking lot adequacy on at least an annual basis.
 - b. Construction of additional parking spaces, implementation of parking demand mitigation measures, or compliance with the usual Provo City Code parking standards if trip generation rates for uses within the development change from that set forth in the parking count justification study.
2. That, according to 14.37.050(3)(d), if the Planning Commission reasonably determines at a future date that parking on the lot is insufficient, or that demand exceeds ninety percent (90%) of the parking lot capacity as measured over a (2) two week period, the property owner shall provide additional parking spaces to meet the then required parking standard or shall take other mitigating actions as reasonably determined by the Planning Commission to meet the purpose of Section 14.37.050 of Provo City Code.

Motion By: Ron Madsen

Second By: Roy Peterman

Votes in Favor of Motion: Roy Peterman, Pam Boshard, Ron Madsen, Ron Phillips

Votes Opposed to Motion: Coy Porter

Leonard Mackay was present as Chair.

- Additional Report of Action for item previously continued after a public hearing or other discussion: February 13, 2008.
- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination *is generally consistent* with the Staff analysis and determination.

RELATED ACTIONS

Administrative Hearing approval of the project's associate one-lot (casefile # 07-0043SF, January 22, 2008).

DEVELOPMENT AGREEMENT

- Applies to parking reduction request - referred applicant to City Administration.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- If the conditions of approval listed in the staff report are included in the Planning Commission's motion, the project plan application will comply with all applicable city codes before issuance of a building permit.
- If the conditions of approval listed in the staff report are included in the Planning Commission's motion, the awning CUP request will comply with all applicable city codes before issuance of a building permit.
- The parking justification study reasonably reflects expected parking demand and the parking reduction request meets the CUP requirements of 14.02.040(2) of the Provo City code.
- In response to concerns voiced about the parking reduction, staff indicated that in a downtown area it was not only important to not under build parking but that it was equally important not to over build parking. Typically a generous amount of parking for a downtown development is 3 stalls per 1,000 sq. ft. of floor space, and in this instance the developer was proposing more than enough parking to satisfy this standard. Staff also mentioned that as commuter rail and bus rapid transit become viable transportation alternatives in the near future that parking demand should decrease in the downtown area.
- Paul Glauser of the Provo City Redevelopment agency also made a few comments about the project. He mentioned that the Redevelopment agency was supporting this project by assisting in land acquisition and providing tax increment financing for the parking garage. He mentioned that downtown parking was much different than suburban parking because it costs so much more to build, and therefore can affect lease rates in the building. He also indicated that downtown parking should not be overbuilt because of the potential of a tall parking garage to block views and be an eye sore in the neighborhood.

CITY DEPARTMENTAL ISSUES

- Environmental thresholds or physical capacities of impacted roadway(s) will not exceeded if the traffic engineering mitigation measures are implemented.
- Traffic study required and reviewed at this stage of project review or approval.
- Important issues raised by other departments – addressed in Staff Report to Planning Commission.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on January 10, 2008.

NEIGHBORHOOD AND PUBLIC COMMENT

- Multiple Neighborhood Chair(s) were present and addressed the Planning Commission.
- Neighbors or other interested parties were present and addressed the Planning Commission.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- Judy Kelsch, Area Representative, mentioned that she was excited about this project and felt that it should set the bar for future downtown redevelopment. Judy also indicated that the neighborhood had expressed concerns over traffic and that neighbors had suggested that no right turns be allowed out of the bank drive through lanes. In addition, Judy mentioned that signage should be posted in the parking garage indicating that drivers could exit the parking garage onto 100 North. She also expressed concern over the design of the parking garage because it did not reflect the architecture of the main tower. Lastly, Judy asked if the retail parking stalls would be marked as such and suggested that the developer build enough parking in the garage to incorporate any future building expansion. In response to this last concern, staff indicated that future building projects were beyond the scope of tonight's hearing, but that any future building would be required to provide adequate parking and be reviewed through a separate project plan application.
- Kirk Peterson, Joaquin Neighborhood Chair, said that he liked the project generally, but had a specific concern about the requested parking reduction. He questioned the comparability of the proposed development and the buildings used in the parking study and suggested that the Utah Community Credit Union building was a more comparable building for the parking study. He also expressed concern that the design of the parking garage was not compatible with the historic architecture of downtown and suggested that landscaping or other architectural elements be used to improve its appearance. In response to his concern about the applicant's parking study, staff indicated that the buildings were chosen because of their suburban location and because of the land uses that occupied the buildings. Since the buildings used in the study were located in a suburban, car-dominated setting, staff had determined that such locations would yield a more conservative parking reduction request than a study conducted on buildings in downtown Salt Lake. In addition, staff considered the land uses within these buildings, such as an HR management company, marketing firm, lawyers office, and financial investment company, to be comparable to the land uses that are likely to occupy the proposed Zions Bank tower.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- In response to the concerns voiced about the design of the parking garage, the applicant indicated that he had revised the design of the garage and that he now planned to stucco or hard surface the parking structure to match the color of the main tower. In response to concerns raised about the parking reduction, the applicant mentioned that the proposed development was just across the street from the core CBD parking area where he could request up to a 50% reduction with no study. He indicated that since the project was in the center of downtown that the parking requirement should match that of a typical downtown development, such as buildings in downtown Salt Lake City that only park 2.4 stalls per 1000 sq. ft. of floor space. Staff indicated that a suburban setting had been required for the applicant's parking study because at the current time these higher parking counts were more appropriate for Provo City than national parking figures or parking counts from downtown Salt Lake City. Moreover, despite the higher parking counts that the study obtained because of its suburban setting, the study still indicated that the applicant was providing adequate parking for the development.
- Kelly Ward, Area President of Zions Bank, made several comments about the project. First, he said that over the past 8 years of planning, Zions Bank has tried to be a good corporate partner in the process. He mentioned that although his regional Zions Bank organization was the 4th largest bank in Utah, they have never had an aesthetically pleasing headquarter facility. Kelly also mentioned that it is difficult to do a downtown project like this because of challenges with land acquisition and consolidation. Kelly also indicated that parking is a difficult issue in a downtown area because of the high cost of stall construction. However, despite the high cost of building downtown parking, Kelly indicated that enough parking was being proposed to satisfy the parking demand that the bank's 40,000 sq. ft. of office space would generate.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Ron Madsen asked how public parking would work in the parking garage. In response, the applicant mentioned that the parking garage would be open to the public after 6pm and on certain holidays and that the parking located in the drive through lanes will be limited 30 minute parking. Ron also indicated that planners today would encourage less parking

in down towns and that he felt comfortable with the amount of parking the applicant was proposing. Ron said that to keep downtown healthy, economic development is needed and that this project is balancing the need for new economic activity with the need to maintain the historic nature of downtown.

- Leonard Mackay said he liked the look and feel of the proposed building.
- Pam Boshard asked why the Wells Fargo building was not used in the parking study. In response, staff indicated that the Wells Fargo tower was not incorporated into the parking study because of incomplete information regarding the parking structure's lease agreements. Pam also said that she appreciated the parking discussion and that she hesitates to ever reduce parking standards because she wants to ensure that there is enough parking for workers and customers traveling to the building. In addition, Pam mentioned that she wanted to ensure that the retail parking stalls were protected for retail customers.
- Roy Peterman asked what offices uses would occupy the building. In response, the applicant mentioned that likely land uses for the office tower excluded corporate offices, but included uses such as law offices, a data center, and other types of professional office uses. Roy also mentioned that since the project was only a block away from the core CBD parking area that he could see a valid argument for including this project within the core CBD parking area.
- Ron Philips agreed that the facade of the parking structure needed to match the architecture of the main tower. He also questioned whether the applicant was planning to charge for parking. To this question the applicant responded that he wasn't planning to charge for parking at the current time. Ron also mentioned that, although in general he didn't support parking reductions in office towers where uses can easily change, with this project he felt comfortable with the requested parking reduction because the developer's experience, willingness to provide 100% of the retail parking stalls, and the project's close proximity to the core CBD parking area.
- Coy Porter congratulated the developer on creating a nice project and investing in downtown Provo.

FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION

The Planning Commission identified the following findings as the basis of there decision regarding the parking reduction request:

- The Planning Commission found that the parking justification study reasonably reflected expected parking demand and that the parking reduction request met the CUP criteria outlined in 14.02.040(2) of the Provo City code. However, the Planning Commission also found that in order to ensure that the proposed development would maintain adequate parking that the procedures outlined in 14.37.050(3)(c-d) should be adhered to by the applicant, including the requirement to enter into a development agreement with Provo City to govern the provision of adequate parking.



 Planning Commission Chair

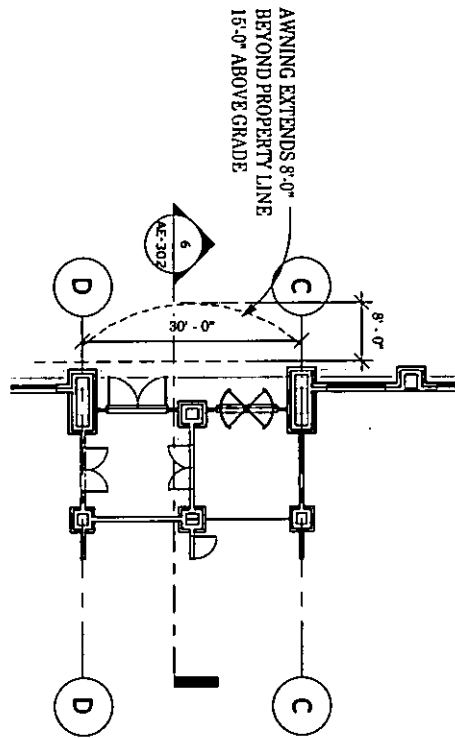
See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

"Attachment C"
Approved Awning Illustrations
Zions Bank Financial Center
180 North University Avenue



1 AWNING
SCALE: 1/16" = 1'-0"

