



VARIANCE REQUEST: APPLICATION & REQUIRED SUBMITTALS

Utah State law grants the Appeals Officer their authority. Very specific guidelines are established by State law which restricts an Officers' power and authority. [References of applicable regulations from the City of Holladay Ordinance.](#)

NOTE: If you do not understand any portion of this process, please seek your own legal counsel.

CITY EMPLOYEES CANNOT PROVIDE LEGAL ADVICE OR PROVIDE INPUT ON YOUR CHANCES OF SUCCESS.

The following provides the framework under which the Officer must consider a variance request:

- I. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;
- II. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
- III. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
- IV. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
- V. The spirit of the zoning ordinance is observed and substantial justice done.

Following Documents are Required for a Complete Submittal:

1. The following information shall be submitted to the Community Development Department:

Completed General Appeal Application Form
 Pay Applicable fee as per 03.35 (nonrefundable) fee Waived by Jonathan Teerlink 02-11-2025 (self attached email)
 Property Owner Affidavit
 Site plan showing; lot dimension, size & location of all structures and distances to property lines.
 Building elevations, floor plans and any other structural dimensions pertinent to the application (if applicable).
 Narrative outlining, as detailed as possible all relevant information that will support your position;

- a. What type of Variance are you seeking?
- b. Quote the section of the Code where the requirement you want varied is found.
- c. State why you desire to obtain and/or the purpose of the variance described above.
- d. Describe the following points: If you desire assistance, please seek your own legal counsel
 1. Describe the hardship you will incur if the variance is not granted. (Economic hardship is not a lawful reason under state law)
 2. Describe how this property is different from other properties within the vicinity.
 3. Describe what benefit other properties in the vicinity, with the same zoning, enjoy that this property will not without a variance.
 4. Describe why a variance will not deviate from the general purposes of the City of Holladay development code
 5. Describe how a variance conforms to the overall intent of the zoning laws and why it is fair that the variance be granted.
- e. A brief statement of any previous variance requests on the subject property, the nature of the variance (either granted or denied)
- f. State any other details about this appeal of which you want to make the officer aware.

2. The application should be filed no later than **4 weeks** prior to the desired meeting date before the Appeal Hearing Officer.

Application Procedure and Process as per 13.09.020

1. After the application is determined to be complete, the community development director shall forward the application to the TRC for its review and recommendation.
2. Upon receipt of a recommendation from the technical review committee, the community development director shall forward the application to the administrative appeals officer.
3. You will be notified as to the scheduled hearing date
4. Notice of the public hearing shall be posted on the property (no not remove this notice)
5. The city shall send notice of the date, time at least ten (10) calendar days prior to the meeting to the record owner of:
 - a. Land directly affected by the proposed variance request; and
 - b. All lots within five hundred feet (500') of the subject property.
6. After due consideration the administrative appeals officer shall approve, approve with mitigation measures, or deny the application. Standards for approval are set forth 13.09.020E
7. A copy of an affidavit of each variance granted shall be recorded with the Salt Lake County recorder

NOTE: It is required that each case up for hearing be presented and argued before the Appeal Hearing Officer either by the petitioner or an authorized agent. If no one appears to argue your application, the Hearing Officer may still hear the case and act in your absence.

If for some reason you are unable to attend the meeting due to a personal emergency, you must call the Community Development Department. If no arrangements are made, the Hearing Officer will hear and decide your case with or without your presence.

Appealing an Hearing Officer's Decision

Any appeal of the decision of the Board of Adjustment must be made **within thirty [30] days** to the appropriate District Court of the State of Utah. The proper forms and procedure for filing such an appeal may be obtained from the District Court or the attorney of your choice. The City of Holladay DOES NOT have this information and cannot assist you in any way with the filing this appeal. Copies of the case file, including all evidence submitted will be made available to interested parties.



City of Holladay

COMMUNITY ECONOMIC DEVELOPMENT DEPARTMENT
4580 S 2300 E, Holladay, Utah 84117
Phone: 801-527-3890

GENERAL APPEAL APPLICATION

Name of Project:	Wheatley Residence Addition
Address of Project:	1876 E. Osage Orange Ave., Holladay, UT 84124

TYPE OF APPEAL	
APPEAL AUTHORITY: ADMINISTRATIVE APPEALS OFFICER (ORD. 13.09)	
<input checked="" type="checkbox"/> VARIANCE – WAIVER/MODIFICATION to ZONE ORDINANCE	APPEAL AUTHORITY: CITY COUNCIL (ORD. 13.07)
ADMINISTRATIVE DECISION – 10 days from date decision	PLANNING COMMISSION ACTION – 10 days from date decision

Appellant Name: (Please Print) <small>**ATTACH PROPERTY OWNER AFFIDAVIT**</small>	Appellant's Agent: (Please Print)
Justin Wheatley	
Appellant's Mailing: 1876 E. Osage Orange Ave.	
Address:	City: Holladay
	State: UT Zip: 84124
Appellant's Phone: (801) 867-3016	Appellant's Email Address: justwheat@gmail.com
Main Contact Person (Please Print): Name: Camille Wheatley	Phone: 801.209.6334 email: dotdotarchitecture@gmail.com
Brief description of decision being appealed: (attach written, detailed ground for the appeal to this application) See attached written description	

FILING FEES: (ORD 3.35)			OFFICE USE ONLY
VARIANCE - RESIDENTIAL	\$500.00	APPEAL TO CITY COUNCIL	\$150.00
VARIANCE - COMMERCIAL	\$750.00		
APPEAL of ADMINISTRATIVE DECISION	\$300.00		
		FINAL TOTAL DUE: \$0.00	
		Fee Waived by Jonathan Teerlink 02.11.2025	
			FILE NUMBER _____
			PARCEL NUMBER _____
			GENERAL PLAN: _____
			ZONE: _____
			PC ACTION: _____ DATE: _____
			CC ACTION: _____ DATE: _____
			FILE DATE: _____

NEXT STEPS:

1. To be considered COMPLETE, this form must be accompanied by required appeal checklist and submittals or it will not be accepted.
2. The Community Development Director will schedule a public meeting within 3 weeks of application and will notify you and other affected parties
3. The Appeal Officer will receive this application as well as any back up materials at least 1 week prior to the meeting date.
3. Attendance at the scheduled hearing is required by the applicant or a representative of the applicant.

CITY OF HOLLADAY
AFFIDAVIT OF PROPERTY OWNERSHIP
FOR PROPERTY LOCATED AT

ADDRESS: 1876 E. Osage Orange Ave., Holladay, UT 84124

SUBDIVISION _____ PLAT _____ LOT Parcel 22-04-280-012-0000

PROPERTY OWNER

I (WE), Justin Wheatley BEING DULY SWORN, DEPOSE AND SAY THAT I (WE) AM (ARE) THE OWNER(S) OF THE PROPERTY IDENTIFIED IN THE ATTACHED APPLICATION AND THAT THE STATEMENT HEREIN CONTAINED AND THE INFORMATION PROVIDED IN THE ATTACHED PLANS AND OTHER EXHIBITS ARE IN ALL RESPECTS TRUE AND CORRECT TO THE BEST OF MY (OUR) KNOWLEDGE.

Justin Wheatley

PROPERTY OWNER

PROPERTY OWNER

ACKNOWLEDGMENT

STATE OF UTAH _____)
COUNTY OF _____) SS.

THE FOREGOING AFFIDAVIT WAS ACKNOWLEDGED BEFORE ME THIS ____ DAY OF _____, ____ WHO DULY
ACKNOWLEDGED TO ME THAT HE DID EXECUTE THE SAME.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC

PROPERTY OWNER'S
AGENT AUTHORIZATION

I (WE), _____, THE OWNER(S) OF THE REAL PROPERTY DESCRIBED ABOVE, DO AUTHORIZE AS MY AGENT(S) _____
TO REPRESENT ME (US) REGARDING THE ATTACHED APPLICATION AND TO APPEAR ON MY
(OUR) BEHALF BEFORE ANY ADMINISTRATIVE OR LEGISLATIVE BODY IN THE CITY OF HOLLADAY CONSIDERING THIS APPLICATION AND TO ACT
IN ALL RESPECTS AS OUR AGENT IN MATTERS PERTAINING TO THE ATTACHED APPLICATION.

ACKNOWLEDGMENT

STATE OF UTAH _____)
COUNTY OF _____) SS.

THE FOREGOING AFFIDAVIT WAS ACKNOWLEDGED BEFORE ME THIS ____ DAY OF _____, ____ WHO DULY
ACKNOWLEDGED TO ME THAT HE DID EXECUTE THE SAME.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC



Camille Wheatley <dotdotarchitecture@gmail.com>

Hoping to resolve setback issues for Permit 24000022

Jonathan Teerlink <jteerlink@holladayut.gov>

Tue, Feb 11, 2025 at 4:09 PM

To: Camille Wheatley <dotdotarchitecture@gmail.com>

Cc: Carrie Marsh <cmarsh@holladayut.gov>, Justice Tuffour <jtuffour@holladayut.gov>, Rob Sears <rsears@holladayut.gov>

Camille,

For either application, we will waive the application fee noted.

**Jonathan Teerlink**Community & Economic
Development, Director

From: Camille Wheatley <dotdotarchitecture@gmail.com>**Sent:** Tuesday, February 11, 2025 3:35 PM

[Quoted text hidden]

[Quoted text hidden]

2 attachments

APPEAL_Administrative Decision_Required Submittals_PACKET.pdf
383K **VARIANCE_Required Submittals_PACKET.pdf**
444K

26 FEBRUARY 2025 / VARIANCE REQUEST NARRATIVE FOR THE WHEATLEY RESIDENCE

CAMILLE WHEATLEY, Licensed Architect / 1876 E. OSAGE ORANGE AVE. / HOLLADAY / UT / 84124

Dear Appeal Hearing Officers Richard Catten and Frank Nakamura, and others to whom this pertains,

My name is Camille Wheatley, and my husband Justin and I are seeking a variance for our property located at 1876 E. Osage Orange Ave., Holladay, UT 84124. Since purchasing and moving to our little Osage Orange Ave. home in 2016, we have developed a deep love for our neighbors and community in Holladay. With our family outgrowing the available square footage in our home, my husband and I dreamed up plans to add on to our house, since we have room on our lot, and since we absolutely love where we live and want to raise our children in this beloved community. Since I am a licensed architect in the state of Utah and have my own architectural practice (located right here in Holladay), I decided to draw up plans for our home expansion dream to become a reality. That dream came to fruition in 2024, when Holladay City granted us a building permit to begin construction. Construction began in September 2024 and is currently underway.

During construction and during a routine building inspection in January 2025, one of Holladay City's building inspectors noticed a cantilevered portion of the second story of the addition that is potentially too close to the west-side setback of the property. However, this cantilevered portion of the addition has always been in the plans approved by Holladay City in 2024, and the contractor has built the addition according to the approved plans. This notification of a potential setback issue when all construction has proceeded with compliance has caused the contractor, Justin and myself confusion about why there would be a potential setback issue. The building inspector didn't issue a stop-work notice, so construction has continued. Justin and I would love to find a workable solution to our potential dilemma, which is why we are submitting this application for a variance.

To address the points listed under the "Narrative" portion of the Variance Request, please refer to the following information:

a. *What type of Variance are you seeking?*

Justin and I are seeking a variance on the west side setback/side yard setback or on the interpretation of “ordinary window projection”, in order to allow the entire cantilevered portion of our addition.

b. Quote the section of the Code where the requirement you want varied is found.

From City Code of Holladay, Utah:

(https://codelibrary.amlegal.com/codes/holladayut/latest/holladay_ut/0-0-0-1)

YARD: A space on a lot, unoccupied and unobstructed from the ground upward by buildings or structures, except as follows:

- A. Fences;*
- B. Canopies allowed under chapter 13.82 of this title;*
- C. Accessory buildings in a rear yard;*
- D. The ordinary projections of windows where the projection is at least eighteen inches (18") above floor level, roofs, cornices, chimneys, flues, and other ornamental features which project into a yard not more than three feet (3');*
- E. Open or lattice enclosed exterior stairways, located in a Commercial Zone, projecting into a yard not more than five feet (5'); and*
- F. Structures less than eighteen inches (18") in height from the finished ground surface.*

13.76.153: SETBACK AREAS TO BE UNOBSTRUCTED; EXCEPTIONS:

Every part of a required setback area shall be open to the sky, unobstructed except for permitted accessory buildings in a rear yard, the ordinary architectural projections of skylights, sills, belt courses, cornices, chimneys, flues, and other ornamental features that project into a yard not more than three feet (3'), and open or lattice enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers projecting into a setback area not more than five feet (5'). (Ord. 2012-15, 9-20-2012)

I am in favor of classifying this cantilevered portion of the second story of the addition as an “ordinary projection of windows”. Holladay City’s definitions in the code are vague about what exactly defines “ordinary”, “projection” and “windows”, so this portion of the code is left to interpretation. In fact, none of these terms are defined in the “Definitions” portion of the Holladay Code, 13.04.040 Definitions of Terms. Our cantilever is a projection, and it has three windows in it. Our cantilever is also compliant with fire code, as guided by Holladay City’s building inspector. Our cantilever’s westernmost wall is also about 4’-0” away from the west side setback.

c. State why you desire to obtain and/or the purpose of the variance described above.

Justin and I are hoping to retain the cantilevered portion of the addition so that our living situation can be greatly improved with our growing family. At this point, the addition and cantilevered portion are mostly constructed and were in a mostly constructed state when the building inspector noticed the potential setback issue. It would present an extreme hardship to remove the cantilevered portion, and removal of the cantilevered portion would require a redesign and reconstruction of the nearly finished interior space of the entire upper level of the addition, exhausting financial resources; burdening others with undue scheduling and logistical burdens; and adding extreme stress to Justin, the contractor, the subcontractors, my family, and me.

d. Describe the following points:

i. Describe the hardship you will incur if the variance is not granted.

Unless a variance is granted, removal or alteration of the existing cantilevered portion of the addition presents an extreme hardship. Removing the cantilevered portion of the addition significantly alters the design and intent of the project. Removing the cantilevered portion requires moving walls, windows, roof, plumbing, electrical, and insulation. Removal of the cantilevered portion would require a redesign and reconstruction of the nearly finished interior space of the entire upper level of the addition, exhausting financial resources; burdening others with undue scheduling and logistical burdens; and adding extreme stress to Justin, the contractor, the subcontractors, my family, and me.

ii. Describe how this property is different from other properties within the vicinity.

The Wheatley residence, located at 1876 E. Osage Orange Ave., is different from every other property in the vicinity, and is unique in that the backyard neighbor to this property is not a residence, but the Holliday Water Company. No other single-family residence on the street in the R-1-10 zone has a business as a backyard neighbor. Holliday Water's northernmost building also is built quite close (too close, according to Holladay City's zoning code) to the shared property line in between Holliday Water and the Wheatley property. In fact, according to the Salt Lake County Assessor's

interactive parcel map (see here: <https://apps.saltlakecounty.gov/assessor/new/ParcelViewer/index.html?query=Parcel+Viewer+external+3634+5.parcel+id,22042800120000&>), and according to measurements, Holliday Water Company's northernmost building is within 2'-0" of the shared property line in between Holliday Water Company and the Wheatley property. A precedent of potentially encroaching on a setback has already been set by municipal entity Holliday City Water.

iii. Describe what benefit other properties in the vicinity, with the same zoning, enjoy that this property will not without a variance.

Other properties in the vicinity, with the same zoning (R-1-10), unless stated otherwise, enjoy the maximum amount of living space in close proximity to the side yard setback. Without a variance, the Wheatley addition + residence will not be able to enjoy the same benefit. Please note the following properties that have been constructed very close to the site setback (all information comes directly from the Salt Lake County Assessor website):

- a. 1877 E. Osage Orange Ave. Residence/living space in the northwest corner of the lot directly abuts or encroaches on the west side setback and the north rear setback.
- b. 1911 E. Osage Orange Ave. Residence/living space directly abuts west side setback.
- c. 1925 E. Osage Orange Ave. Residence/living space directly abuts west side setback.
- d. 1928 E. Osage Orange Ave. Residence/living space very close to the east side setback (within 4'-0" of setback).
- e. 1929 E. Osage Orange Ave. Residence/living space very close to the west side setback (within 3'-0" of setback).
- f. 4462 S. Arcadia Ln. Residence/living space very close to the side yard setback on south (within 1'-0" of setback).
- g. 4155 S. Holloway Dr. (Zoning R-1-15) Residence/living space directly abuts the south side setback.
- h. 4671 Clearview St. (Zoning R-1-10) Newly constructed residence/living space in 2023. Residence/living space in rear of lot very close to north side setback (within 4'-0" to 5'-0" of side setback).

iv. *Describe why a variance will not deviate from the general purposes of the City of Holladay development code.*

1. The City of Holladay's development code aims to promote orderly growth and development while adhering to the city's General Plan. The City of Holladay is "rooted in community" (from Holladay City's website <https://holladayut.gov/index.php>). Likewise, Justin and I, as the owners of the property located at 1876 E. Osage Orange Ave., are rooted in this community - in our street, in our neighbors, and in Holladay City. Justin and I are investing substantial funds into improving our property in order to stay long term and improve the living conditions for our family. We are deeply invested in Osage Orange Ave., in our neighbors, in the vibrant neighborhood that we live in, and in Holladay City. Improving our property increases the value of our neighbors' properties and contributes to the value of the great community that Holladay City fosters.

v. *Describe how a variance conforms to the overall intent of the zoning laws and why it is fair that the variance be granted.*

1. A variance conforms to the overall intent of the zoning laws, especially in the context of the Wheatley residence on Osage Orange Ave, where so many of the neighboring properties are built on or very near to the side yard setbacks. A variance would be fair to grant in this situation where so many neighboring homes fall at or near the side setbacks.

e. *A brief statement of any previous variance requests on the subject property, the nature of the variance (either granted or denied).*

No other variance requests have been made on the subject property.

f. *State any other details about this appeal of which you want to make the officer aware.*

On May 1, 2024, Holladay City approved a building permit for an addition with a cantilevered portion of the west side of the upper story to be constructed at the residence located at 1876 E. Osage Orange Ave, Holladay, UT 84124. The application for the permit was initially submitted on January 8, 2024. Prior to Holladay City approving a building permit for the addition, communication regarding setbacks on the property between the zoning department and me (Camille, the architect) commenced, leading to a revised setback plan that the zoning department approved on March 7, 2024. The building department then approved the permit on May 1, 2024 after confirming that the project would meet the 2021 IRC requirement that Holladay City currently follows as its building code, but no other issues were

brought up about a potential problem with the cantilevered portion of the addition before issuing the permit.

Important to note is the fact that the Holladay City-approved and stamped set of architectural plans in the building permit portal did not (and still does not) include the March 6, 2024 revised setback plan. The revised setback plan remains a separate document not included in the official stamped plan set in the Holladay City permit portal. This separate revised setback plan is also not stamped with the official stamp of approval by Holladay City.

With the permit issued, Justin and I hired a contractor, Dave Koncar, to construct the project. Dave, who has decades of residential construction experience, printed off the set of architectural and structural plans approved and stamped by Holladay City, and construction subsequently commenced in September 2024. Dave followed the approved set of plans exactly, but, as mentioned above, the *approved and stamped* set of plans in the building permit portal didn't include the March 7, 2024 approved setback plan.

From our contractor Dave: "This whole thing is a little confusing. I am having a hard time seeing how Planning is saying that the bump out was never submitted, part of their review process is to verify the height of structures from the elevation pages. Which clearly have the bump out." Email 11 February 2025.

Thank you so much for reviewing this application. I really appreciate your time and expertise. Please let me know if you need any more information from me.

Sincerely,

A handwritten signature in black ink that reads "Camille Wheatley". The signature is fluid and cursive, with "Camille" on the top line and "Wheatley" on the bottom line.

Camille Wheatley



CITY OF HOLLADAY

VARIANCE APPLICATION REQUEST FOR APPEAL OFFICER ACTION

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MARCH 10, 2025

REQUEST: WHEATLEY ADDITION SIDE SETBACK VARIANCE  
ADDRESS: 1876 E OSAGE ORANGE AVE, HOLLADAY, UTAH - 84124  
APPLICANT: JUSTIN WHEATLEY  
FILE NO: 25-5-04  
STAFF: JUSTICE TUFFOUR, (*City Planner & GIS Manager*)  
APPEAL OFFICER: MR. FRANK NAKAMURA

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### PROPERTY INFORMATION

ACREAGE: 0.25 acres (10,890 square feet)  
GENERAL PLAN: Low Density Residential - Stable (LDR-S)  
ZONE: R-1-10  
CURRENT USE: Single Family Residential (SF-Residential)  
GOVERNING ORDINANCES: HCC §13.14.056: Side Setbacks; HCC §13.76.153: Exceptions: Setbacks  
Areas To Be Unobstructed; HCC §13.09.020: "Variance"

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### REQUEST

The applicant seeks an exception to the regulations outlined in the Holladay City Code §13.14.056 [*pertaining to side setbacks*] and §13.76.153 [*pertaining to exceptions to obstructing setback areas*]. The former regulates the minimum side yard distance between a property line and the location of any main structure and the latter provides interpretation on what features are allowed exceptions to obstructing setback areas. The appeal is based on two alternative requests: (1) a variance granting relief from the required 8.4-foot side yard setback, or (2) an interpretation that the upper-floor cantilevered portion of the addition qualifies as an architectural projection, in turn proposing to maintain a **7.4 ft** average side yard setback. The requested exception would effectively result in a **one-foot (1 ft)** side setback variance and a **one foot six inches (1' 6")** "no point closer than" setback variance, both of which would run with the land in perpetuity.

### PROPOSAL BACKGROUND

The appellant, Justin and Camille Wheatley, have filed an appeal with the Administrative Hearing Officer seeking a variance from the above portions of Chapter 13 of the City of Holladay Zoning Ordinance, specifically pertaining to the minimum side yard setback distance required for any main structure. The Wheatleys submitted a building permit to the Planning Department, proposing an expansion to west side of their main residence. Upon review of the original submission on January 8, 2024, it was determined that the cantilevered portion of the upper floor on the west side of the proposed addition encroached into the required minimum side setback. Consequently, on January 11, 2024, the Zoning Department notified the applicants that this cantilevered extension of the upper floor



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was non-compliant and requested a revised site plan that adhered to the setback regulations. Following this correspondence, the Applicant, Camille Wheatley, who is also the Architect, acknowledged this non-compliant issue in writing (3/6/2024) and submitted a revised site plan that eliminated the cantilevered portion projecting into the minimum side setback (3/7/2024).

Following subsequent reviews by other departments, the permit was approved and issued for construction to commence. However, the approved and stamped city plans had inadvertently included the previously submitted non-compliant site plan with the cantilevered projection and architectural plans, rather than the revised compliant version. The applicant and their contractors proceeded with construction according to these stamped plans and were later called out by the City's Building Official (B.O.) during a routine building inspection in January, 2025. The B.O. brought to the attention of the Community and Economic Development Department that the cantilevered portion of the upper level of the addition is potentially too close to the west-side setback. Upon further investigation, it was determined that the construction had followed the originally submitted non-compliant plans from January, 2024 and not according to the revised compliant site plan in March, 2024 – without the cantilevered extension of the second level.

In response, the applicants have submitted a variance application to retain the cantilevered upper level extension as constructed. Mr. Wheatley is of the opinion that enforcing the city ordinance governing minimum side setback – to remove the cantilevered portion would impose an extreme hardship, necessitating a redesign and reconstruction of the nearly completed upper-level interior space. Additional information regarding the applicants' narrative, site plan, and proposed side yard setbacks is attached herewith.

### **HOLLADAY CITY CODE**

#### **Per Holladay City Ordinance §13.14.050: SETBACKS:**

1. A. Purpose: The spacing of buildings and structures away from property lines, rights-of-way, physical hazards and natural features such as streams and other buildings, are essential elements of land use planning and of urban design. In particular, setbacks may provide for privacy, light, shadow, air movement, passive and active space, vegetation and also contribute directly to physical and psychological wellbeing. Setbacks should vary proportionally depending upon the size and shape of the properties and also upon the type of the existing and proposed land use. In some instances setbacks should be uniform assuming there is a specific desired outcome for the setback, such as protection of views, public safety, economic development, etc. In other instances, variability and flexibility of setback may produce equally important outcomes such as the protection of natural features, aesthetically pleasing streetscapes, creativity in architectural design, and retention of fragile housing stock or other important goals. Due to the evolution of housing styles over the last few decades, the relative high value of land within the community, the desire for architectural creativity, and especially the dramatic increase in average house size, setbacks shall be applied within a flexible envelope.
- B. Implementation: Averaging of setbacks in all yard areas shall be allowed as shown below. Variations across the setback line may not exceed fifteen percent (15%) of the minimums required. Calculation of the average shall require at least ten (10) equally spaced measurements across any one "building line", as defined in section 13.04.040 of this title, and shown in figure 13.14.051 of this subsection.



## Per Holladay City Ordinance §13.14.056: SIDE SETBACKS:

- A. The combined setbacks for any main structure on a lot in any R-1 zone shall be a minimum of twenty five percent (25%) of the "lot width" (see chapter 13.04, "Definitions", of this title) with no one side setback less than ten percent (10%) of the lot width.
- B. The combined setback for any main structure on a lot measuring twice or more the minimum lot size required by the zone in which it is located shall be a minimum thirty percent (30%) of the "lot width" (see chapter 13.04, "Definitions", of this title) with no one side setback less than fifteen percent (15%) of the lot width. (Ord. 2018-05, 5-17-2018)

## Per Holladay City Ordinance §13.76.153: SETBACK AREAS TO BE UNOBSTRUCTED; EXCEPTIONS:

Every part of a required setback area shall be open to the sky, unobstructed except for permitted accessory buildings in a rear yard, the ordinary architectural projections of skylights, sills, belt courses, cornices, chimneys, flues, and other ornamental features that project into a yard not more than three feet (3'), and open or lattice enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers projecting into a setback area not more than five feet (5'). (Ord. 2012-15, 9-20-2012)

## APPROVAL STANDARDS

### FIVE-PART TEST FOR VARIANCE:

The Hearing Officer may grant a variance only if:

1. **Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.** In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship, the board of adjustment may not find an unreasonable hardship unless the alleged hardship: 1) is located on or associated with the property for which the variance is sought; and 2) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood. The hardship cannot be self-imposed or economic.
2. **There are special circumstances attached to the property that do not generally apply to other properties in the same zone.** The Hearing Officer may find that special circumstances exist only if the special circumstances: 1) relate to the hardship complained of; and 2) deprive the property of privileges granted to other properties in the same zone.
3. **Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.**
4. **The variance will not substantially affect the development code and will not be contrary to the public interest.**
5. **The spirit of the zoning ordinance is observed and substantial justice is done.**

## STAFF FINDINGS (ANAYLSIS)

*(Staff does not vote on these matters and acts only in an advisory position on the technical aspects of the application)*  
Generally, these findings and observations were made in relation to the variance request;

- Pursuant to Holladay City regulations on side setbacks as defined in section §13.14.056 of the City Code, the minimum side yard setback distance for any main structure on a lot in any R-1 zone shall be 25% with no one side setback less than 10% of the lot width. The Planning Department assesses the lot width for the



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subject property to be approximately 83.5 ft. (See Figure 1 below). In this case, the required side setback would be a combined 20 ft 9 inches (25%) with no one side less than 8 ft 4 inches (10%). Per Holladay city code §13.14.056 (1.B) the implementation of setbacks allows variations for parts of a structure to extend into the determined setbacks. However, the variations across the setback line may not exceed fifteen percent (15%) of the minimums required. What this means is that, while the city required west side setback is 8 ft 4 inches, no point of the building can go closer than 7 ft 2 inches. The applicant's initial site plan submission showed the cantilevered extension encroaching into the required average side setback of 8 ft 4 inches (*blue dotted line on site plan below*) while the closest point of the building to the property line is 5 ft 8 inches – exceeding the no point closer than distance (*red dotted line on site plan below*). Based on these assessments, the initial site plan was determined as non-compliant and sent back to the applicant to provide corrections (1/11/2024).

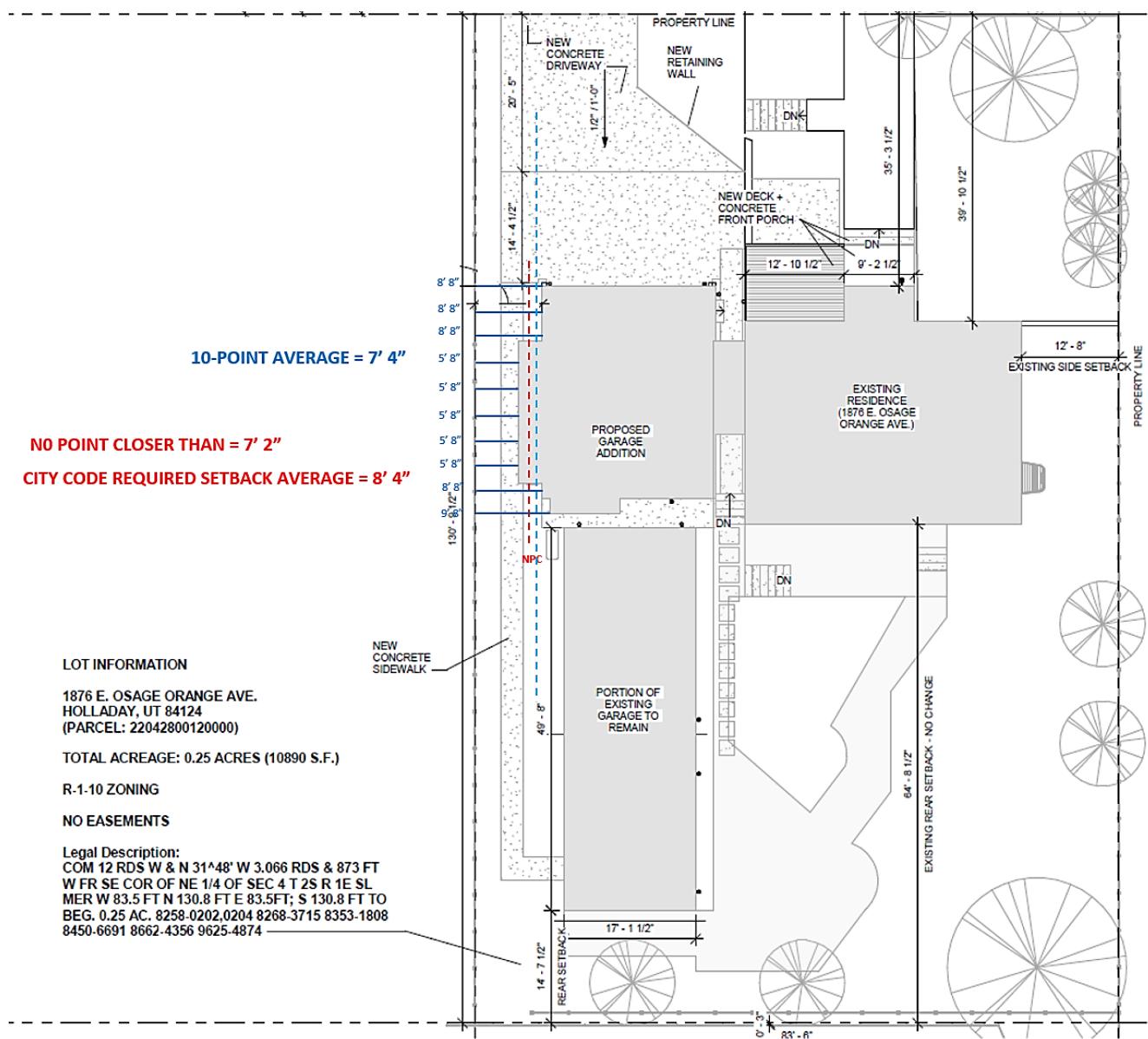


Figure 1: City Staff's Assessment of Side Setback Compliance



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- Figure 2 below shows the revised site plan submitted by the applicant (3/6/2024) that eliminated the “bump-out” on the west side – with a new compliant side setback of 8 ft 6 inches. The applicant, Camille Wheatley notified the Planning Department on 3/6/2024 (*See email exhibit attached below*) duly acknowledging that they have revised the initial submission to comply with the city required side setbacks.

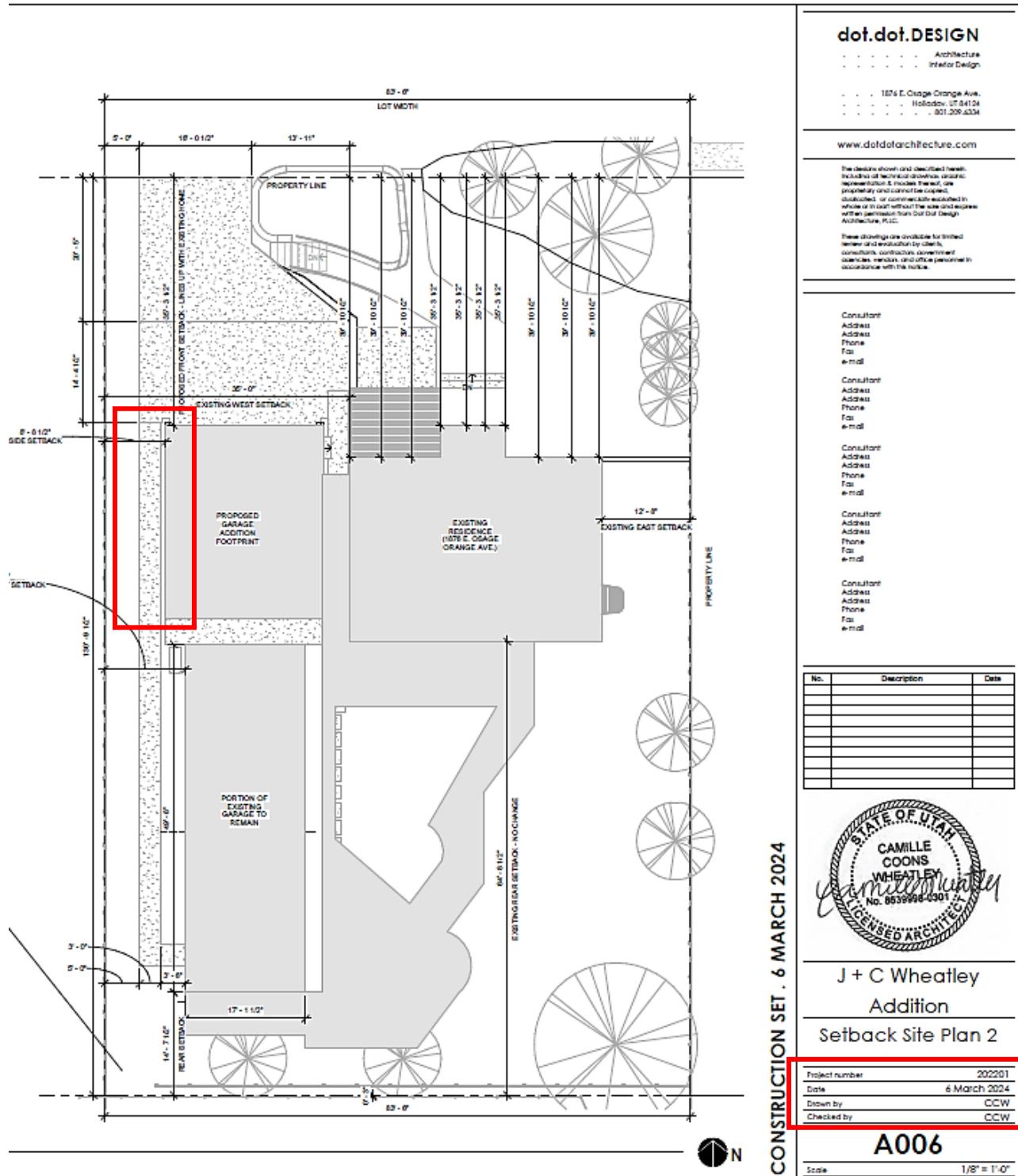


Figure 2: Revised Compliant Site Plan Submitted by Applicant (3/6/2024)



## CITY OF HOLLADAY

- City Staff has attached additional correspondence and plan reviews dating back to 202, which consistently identify the setback issue and direct the applicant to address it (*see attached exhibits*). These renditions of plan reviews and records of correspondence with the applicant, Camille Wheatley, clearly demonstrate that the Planning Department maintained its intent to enforce the setback requirement by requiring the removal of the non-compliant bump-out extension. However, City Staff finds it unnerving to know that despite an administrative error in stamping the non-compliant plans, the applicant did not notify the Department about this oversight and proceeded with construction with the bump-out – especially, with the applicant being the same architect who was aware of the requirement and redesigned the site plan to comply with the setback regulations by eliminating the bump-out.

*Below is an extract of the Findings from CED Director*

Camille,

Here is what I am seeing.

It looks like this issue dates back the original 2023 permit submittal. In April 2023 this setback concern was raised and subsequently addressed by you in a written response to Justice Tuffour. That permit was approved, but then abandoned.

January 2024 a new submittal was created. The setback concern was again raised by city zoning review to which you provided a response in March 2024. This response was in the form a site plan with a date of prep of March 6th 2024. This site plan was approved on March 7th.

The project was approved by zoning without the upper-level bump out and I am wondering why this March 6th page, was replaced by January 1 dated site plan and included in the building set.

I doubt amendments to the building could have been address had the city raised a concern. But, according to these two permit files, there was every intent to construct the upper level without the bumpout. Here are your options to move forward;

- ❖ Appeal this interpretation of encroachment of a structure into a yard area
- ❖ Apply for a variance through our hearing officer
- ❖ Amend the planset according to the March 6th approval

- Regarding the applicant's request to classify or interpret the upper-floor cantilevered portion of the addition as an architectural projection, under the provisions of Holladay City Code §13.76.153, City Staff is of the view that such interpretation cannot be likewise given. Contrary to the applicant's opinion expressed in their narrative that the City Code is very vague in its definition of "ordinary projections", City Staff believes otherwise. In fact, HCC §13.76.153 expressly states that "*Every part of a required setback area shall be open to the sky, unobstructed except for permitted accessory buildings in a rear yard, the ordinary architectural projections of skylights, sills, belt courses, cornices, chimneys, flues, and other ornamental features that project into a yard not more than three feet (3'), and open or lattice enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers projecting into a setback area not more than five feet (5').*" It can be noted from the extract above that the City Code clearly defines "ordinary



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architectural projections" with examples and limitations regarding setback encroachments. Since the intent of this ordinance is to make room for architectural overhangs and non-habitable design elements of a building to encroach into setbacks, the 3 ft bump-out does not qualify as an ordinary architectural feature. This determination is based on the applicant's floor plan, which identifies the bump-out as a functional and usable floor space rather than a purely decorative or non-usable design element.

### STAFF COMMENTARY & RECOMMENDATION

Pursuant to State Law and Holladay City's Quasi-Judicial Procedures regarding variance requests, the burden of proof lies with the applicant to convincingly argue before the Administrative Appeals Officer that one or more conditions related to the property they represent hinders the applicant's reasonable use of their land in a manner and form comparable with that enjoyed by their neighbors or other properties in a similar situation and zoning district. Each variance application is reviewed on a case-by-case basis and the merits of the matter are assessed in a public forum. Any public testimony received in response to notifications provided via public notice, the City's websites, and any comments or recommendations by City Departments or external agencies have been presented to the Administrative Appeals Officer for their consideration. Below, the City staff assigned to this case provides commentary and recommendations on each of the five-part approval standards for this variance application.

#### *Describing what hardship will occur if variance is not granted.*

Concerning the appellant's demonstration of the existence of unique circumstances or an unreasonable hardship making it exceptionally difficult to comply with the zoning regulations, the applicant outlined hardship conditions related mainly related to redesigning the upper floor level and financial constraints as their burden of proof. While economic hardships do not satisfy the burden of proof under State Law, it would reasonable to accommodate this extension under the assessment of impacts to neighboring property and height restrictions. An independent assessment of applicable zoning laws by the City's Technical Review Committee indicates that although the "no point closer than" setback requirement has been violated by 1 ft and 6 inches, the structure compliance with the massing regulations pertaining to graduated height restrictions. Moreover, the floor plan identifies the use of the 3 ft bump-out space as washroom extension – suggesting non-regular active use of the space. Decisions regarding accommodating the hardship condition presented by the applicant should be moderated by weighing the cost and benefit of allowing the 1 ft 6 inches encroachment versus requiring a redesign of the upper floor level (including the moving of walls, windows, roof, plumbing, electrical, and insulation elements). Given that an administrative error led to the stamping of the non-compliant plans, City Staff is of the opinion that the hardship condition presented by the applicant is not self-imposed. City Staff suggests that accommodating these hardships would be reasonable and justified, comparative to requiring compliance with the existing City Code on setback standards §13.14.056.

#### *Describing how the property is different from other properties within the vicinity.*

Regarding special circumstances attached to the property making it different from others within the vicinity, City Staff disagrees with the applicant's assertion that the property distinguishes itself from other properties in the vicinity. Like other regularly shaped neighboring properties on Osage Orange Avenue, the Wheatley's property does not exhibit any unique characteristics or special circumstances that distinguish it from others in the vicinity. While the applicant maintains that "*no other single-family residence on the street in R-1-10 zone has a business as a backyard*", this land use comparison is not relevant to the current variance request, as the request does not pertain to the backyard nor does it directly impact the Holladay Water property. Applicant further cites their backyard



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neighbor (*the said Holladay Water entity*) as a precedent for potential setback encroachment to support their case. However, it is important to clarify that Salt Lake County Records indicate the structure on the neighboring lot was constructed in 1976, prior to Holladay's incorporation as a city. As a result, that structure was developed under different municipal zoning codes and setback regulations, rendering it an inappropriate precedent for this variance request.

### ***Describing benefits other properties in the vicinity will enjoy at the expense of Applicant without a variance.***

In justifying how granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district, the applicant references eight (8) different properties – inferring that these properties currently enjoy closer setback than the Wheatleys. The applicant indicates that granting them the variance will ensure they enjoy similar benefits these other properties in the vicinity enjoy. City Staff's verification analysis shows that while these properties referenced in the narrative are not recently constructed homes, their average side setbacks from property line to building ranged from as close as 2.1 ft (1929 E Osage Orange Ave), 3 ft (1925 E Osage Orange Ave), 3.5 ft (1928 E Osage Orange Ave) to 7 ft (1911 E Osage Orange Ave). Given that the side setbacks for these neighboring properties are currently closer than the applicant's requested 7 ft 4 inches average setback (*a 5.3 to 0.4 ft difference in enjoying similar property rights*), City Staff believes granting the variance to the applicant will be essential to the substantial enjoyment of common privileges enjoyed by other properties in the vicinity.

### ***Describing why the variance will not deviate from the general purposes of the City of Holladay development code***

Regarding deviations from the City's development code that are not contrary to the public interest, the ordinance provisions as pertaining to setbacks §13.14.050 are explicit in their intent to ensure uniform setbacks to achieve specific desired outcomes, and in other instances, accommodate variability and flexibility to produce equally important outcomes. In light of the circumstances presented in this case, City staff agrees with the applicant that ensuring uniform neighborhood side setbacks does not deviate from the general purpose of the development code. The applicant also believes that improving their property increases the value of their neighbors' properties and does go not contrary to the public interest.

### ***Describing how the variance is fair and conforms to the overall intent of the zoning laws***

In conforming to the general intent of zoning laws and fairness, the submissions provided by the applicant, along with City Staff's analysis, indicate that granting the requested variance would be reasonable. This is supported by the fact that neighboring properties in the vicinity already maintain closer side setbacks than the Wheatleys. Although City Staff must express that the applicant's refusal to notify the City about the erroneously stamped and issued plans despite having direct knowledge of the intended zoning reviews and requirements [*particularly given their role as the project architect*] does not uphold the spirit of zoning. Nevertheless, the broader purpose of the setback regulation's intent to produce equal outcomes under certain circumstances, aligns with the applicant's request.

## **RECOMMENDATION**

Concluding from the City Staff's technical review of City Code and analysis of the case context, granting the 1 ft 6 inches variance request appears to be the least intrusive solution to upholding the spirit of zoning as outlined in section §13.14.050(A). Generally, discussions regarding denials or approval should be moderated by examination of the language of City Code (*on sections §13.14.050 and §13.14.056*), the applicant's narrative and proceedings



## CITY OF HOLLADAY

from the public hearing, as well as other submissions received herein. From the City Staff's perspective, this variance request passes the test for variance approval standards. Approval is Recommended.

### POSSIBLE MOTIONS

- ❖ Deny the variance request.
- ❖ Approve variance as requested.
- ❖ Approve variances with revised/alternative mitigation methods.
- ❖ Remand the request back to CED for consideration (*reschedule date should be set during this meeting*)

### SUPPORTING DOCUMENTS

- Affidavit of Property Ownership
- General Appeal Application
- Variance Request
- Applicant's Narrative
- Review Site Plans and Exhibits



## CITY OF HOLLADAY

Exhibit 1 – Email Correspondence between City Staff and Applicant on Setbacks

### **Justice Tuffour**

---

**From:** Camille Wheatley <dotdotarchitecture@gmail.com>  
**Sent:** Monday, April 17, 2023 12:47 PM  
**To:** Justice Tuffour  
**Subject:** Re: Holladay Permit # 23000302

**[External Email - Use Caution]**

Hello Justice!

In response to your email, I just uploaded updated architectural plans with notes to reflect the following (my responses are in bold italics):

1) The maximum you can build closer to the side yard is 8.4' (10% of lot width). The 7' feet indicated encroaches into the side setback requirements.

*Proposed addition has been adjusted to comply with side setback requirements. See updated site plans uploaded to the Holladay Building Permit portal.*

2) The final 3D drawing shows there will be an extended patio on the east side of the main building. The patio should be within the side setback requirements.

*Patio on the east of the existing main building is not part of this proposed project and is not going to be constructed. See updated site plans uploaded to the Holladay Building Permit portal.*

3) Engineering permit/ public right of way improvements/ bonds may be required.

*No streetside sidewalk shall be constructed for this proposed project. See updated site plans uploaded to the Holladay Building Permit portal.*

4) Proposed impervious coverage, building footprint, and height maximums meet the acceptable required provisions in the city code.

*Thank you!*

Thanks!

Camille Wheatley  
**CAMILLE COONS WHEATLEY**  
LICENSED ARCHITECT / LEED Green Associate

**dot.dot.DESIGN STUDIO**  
801.209.6334  
[dotdotarchitecture@gmail.com](mailto:dotdotarchitecture@gmail.com)  
[www.dotdotarchitecture.com](http://www.dotdotarchitecture.com)



Exhibit 2 – Email Correspondence between City Staff and Applicant on Revised Setbacks

**Justice Tuffour**

---

**From:** Camille Wheatley <dotdotarchitecture@gmail.com>  
**Sent:** Wednesday, March 6, 2024 11:32 AM  
**To:** Justice Tuffour  
**Subject:** Re: City of Holladay Permit Status Update for 24000022

**[External Email - Use Caution]**

Hello Justice!

I am checking in on the status of my building permit. I just uploaded an updated site plan with the requested setback information. The addition complies with the setback requirements. The driveway has been updated to reflect the 5 feet distance requirement from the property line. In addition, here is the same setback information included on the site plan, printed here for reference:

**APPLICANT FRONT SETBACK**

AVG. FRONT SETBACK =  $(39'-10.5"+39'-10.5"+39'-10.5"+39'-10.5"+39'-10.5"+39'-10.5"+35'-3.5"+35'-3.5"+35'-3.5"+35'-3.5")/10 = 38'-0"$

**APPLICANT SIDE SETBACK**

SIDE SETBACK = 10% OF LOT WIDTH FOR ONE SIDE (BOTH SIDES SHALL NOT BE LESS THAN 25% OF LOT WIDTH)

LOT WIDTH = 83'-6"

25% OF LOT WIDTH =  $25\% \times 83'-6" = 20'-10"$

EXISTING EAST SETBACK = 12'-8"

PROPOSED WEST SETBACK = 11'-6"

TOTAL OF EXISTING + PROPOSED SIDE SETBACKS = 24'-2" (WITHIN THE REQUIRED MINIMUM 25% OF LOT WIDTH)

Please let me know if there is any additional information that you need.

Thank you,

Camille

**CAMILLE COONS WHEATLEY**

LICENSED ARCHITECT / LEED Green Associate

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## CITY OF HOLLADAY

Exhibit 3 – [2024] Zoning Plan Calling Out Setback Non-Compliance



CITY of HOLLADAY

Date: 03/10/2025

Permit #: 24000022

Permit Date: 01/06/2024

Review Date: 01/11/2024

Permit Type:

Review Type: Zoning

Target Date:

Scheduled Time: 00:00

Completed Date: 01/11/2024

Description: 1) Setback between driveway approach and property line must meet the 5 feet distance requirement. 2) Show 10-point setback average from the proposed garage to the property line on the west and compliance with the 8.4 feet setback requirement. (see example below)

Review Status: Approved

Assigned To: Justice Tuffour

Time In: 00:00

Time Out: 00:00

Hours: 0.0

### Notes

Previous Clarifying Email Correspondence:

Hello Justice!

In response to your email, I just uploaded updated architectural plans with notes to reflect the following (my responses are in bold italics):

1) The maximum you can build closer to the side yard is 8.4' (10% of lot width). The 7' feet indicated encroaches into the side setback requirements.

Proposed addition has been adjusted to comply with side setback requirements. See updated site plans uploaded to the Holladay Building Permit portal.

01/08/2024

2) The final 3D drawing shows there will be an extended patio on the east side of the main building. The patio should be within the side setback requirements.

Patio on the east of the existing main building is not part of this proposed project and is not going to be constructed. See updated site plans uploaded to the Holladay Building Permit portal.

3) Engineering permit/ public right of way improvements/ bonds may be required.

No streetside sidewalk shall be constructed for this proposed project. See updated site plans uploaded to the Holladay Building Permit portal.

4) Proposed impervious coverage, building footprint, and height maximums meet the acceptable required provisions in the city code.

Thank you!

01/08/2024

Graduated height requirement (exception on vertical walls) was very close but meets the 1.4(x) requirement

### Property Information

Parcel#: 22042800120000

JUSTIN WHEATLEY

JUSTIN WHEATLEY

1876 E OSAGE ORANGE AVE



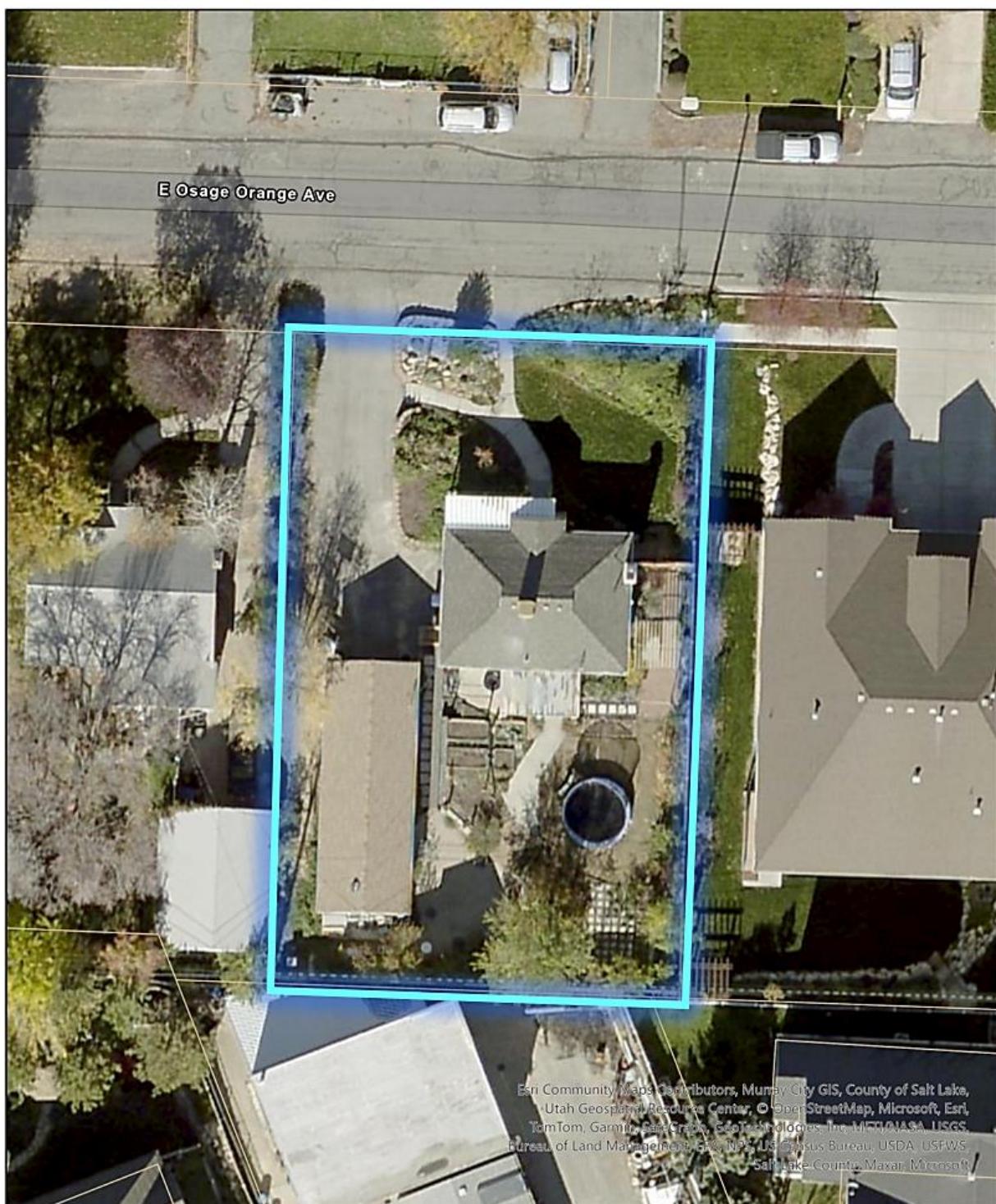
## CITY OF HOLLADAY

Exhibit 4 – [2023] Zoning Plan Calling Out Same Setback Non-Compliance [Permit Abandoned]

| Plan Reviews |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                 |                                     |
|--------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-------------------------------------|
| Date         | Review Type | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Assigned To     | Review Status                       |
| 04/07/2023   | Zoning      | <p>1- Provide cross section of both pavers from manufacturer on site plan.</p> <p>2- Include details from "permeable paver requirements" sheet (attached) on site plan. Note that 3rd party inspection is required.</p> <p>3- \$1000 bond required for permeable paver installation</p> <p>4- Label distances from property line to accessory structures and existing home.</p> <p>5- Include height of pergolas in an architectural elevation detail.</p> <p>6-Include full impervious surfaces table detailing footprint of home, footprint of accessory structures, square footage of impervious surfaces (ie concrete), square footage of each area of pavers</p> <p>7) Include project name, address, and north arrow.</p> <p>8) Detail any trees being removed. If trees are being removed, they must be replaced 1:1. Show replacement trees on plan. If no trees removed, include a note on the plan that no trees are being removed.</p> <p>1) The closest you can build to the side yard is 8.4' (10% of lot width). The 7' feet indicated encroaches into the side setback requirements.</p> <p>2) The final 3D drawing shows there will be an extended patio on the east side of the main building. The patio should be within the side setback requirements.</p> <p>3) Engineering permit may be required for new retaining walls/ public right of way improvements/ bonds may be required.</p> <p>4) Proposed impervious coverage, building footprint, and height maximums meet the acceptable required provisions in the city code.</p> | Carrie Marsh    | Review Complete/<br>Action Required |
| 04/11/2023   | Zoning      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Justice Tuffour | Review Complete/<br>Action Required |
| 05/05/2023   | Building    | Plan review approved                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Greg Kennard    | Approved                            |



CITY OF HOLLADAY



City of Holladay  
1876 E Osage Orange Avenue  
SETBACK VARIANCE



0 0.15 0.3  
0 0.3 0.6  
Mi Km



City of Holladay  
1876 E Osage Orange Avenue  
**SETBACK VARIANCE**



0 0.15 0.3  
Mi Km  
0 0.3 0.6  
Mi Km



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