

BOUNTIFUL CITY
PLANNING COMMISSION AGENDA
Tuesday, March 1, 2016
6:30 p.m.

NOTICE IS HEREBY GIVEN that the Bountiful City Planning Commission will hold a meeting in the Conference Room at City Hall, 790 South 100 East, Bountiful, Utah, at the time and on the date given above. The public is invited. Persons who are disabled as defined by the American with Disabilities Act may request an accommodation by contacting the Bountiful Planning Office at 298-6190. Notification at least 24 hours prior to the meeting would be appreciated.

1. Welcome and Introductions.
2. Approval of the minutes for February 16, 2016.
3. Further consideration and adoption of Findings of Facts for denial of an expansion of a non-conforming use daycare at 130 E 100 N, Stacey Nerdin, applicant.
4. **PUBLIC HEARING** - Consider approval of a variance to allow disturbance of areas with slopes greater than 30 percent located at 565 Hidden Hollow Ct, Jason Orvis, applicant.
5. Planning Director's report, review of pending applications and miscellaneous business.



Chad Wilkinson, City Planner

**Bountiful City
Planning Commission Minutes
February 16, 2016
6:30 P.M.**

Present: Chairman – Sean Monson; Vice Chairman – Mike Allen; City Council Representation - Richard Higginson; Planning Commission Members – Mike Allen, Von Hill, Sean Monson and Sharon Spratley; City Attorney – Russell Mahan; City Planner – Chad Wilkinson; City Engineer – Paul Rowland; and Recording Secretary – Darlene Baetz

Excused: Planning Commission Member – Tom Smith

1. Welcome and Introductions.

Chairman Monson opened the meeting at 6:30 pm and welcomed all those present.

2. Approval of the minutes for January 5, 2015.

Sharon Spratley made a motion to approve the minutes for January 5, 2015 with the change in paragraph 1 on page 3 and the correction of adjournment on page 4. Richard Higginson seconded the motion.

Voting passed 6-0 in favor with Commission Members Allen, Badham, Higginson, Hill, Monson, and Sharon Spratley voting aye.

3. PUBLIC HEARING – Consider approval of an expansion of a non-conforming use daycare at 130 E 100 N, Stacey Nerdin, applicant.

Stacey Nerdin owner of Snowy Owl Daycare was present. Chad Wilkinson presented the staff report.

The applicant, Stacey Nerdin, requests planning commission approval in order to allow for expansion of an existing day care use located at 130 E. 100 North and identified as Parcel Number 03-030-0034. The property is located within the Single Family Residential (R-4) Zoning District.

The day care operation is a non-conforming use because it is located in an R-4 single family residential zone. The building has housed the Bountiful Office of the Family Connection Center since 2001. The Family Connection Center recently vacated the property and the applicant wishes to continue the day care use. The property is currently zoned R-4 which is a single family residential zone. The property has a long history of nonresidential use and has been the location of various healthcare and nonprofit uses dating back to 1970's when the property was used as a nursing home. Based on business license records it appears that over the years, uses have included other nursing related/ health care services prior to the Family Connection Center. These historic uses have all been low intensity and low traffic generating uses without significant impacts to adjoining properties. The Family Connection Center included a crisis daycare

component as a part of their operation in Bountiful and the property includes a fenced playground and other amenities normally associated with a daycare. The daycare was available only at certain hours and days of the week. Hours posted for the Bountiful location on social media indicate that the hours were Tuesdays and Wednesdays 10 AM to 3 PM and Thursdays 11 AM to 5 PM (as most recently posted in 2012).

The current proposal is an expansion of the hours of operation and the number of children served by the day care on a weekly basis. The applicant has indicated that they would operate the daycare Monday through Friday from 6:30 am to 5:30 pm. Based on the size of the structure the applicant anticipates that, under State Law, the building could accommodate up to 80 children per day. Based on a ratio of one teacher per 10 students, the anticipated number of employees would be up to eight. The applicant has submitted a site plan with an expanded parking area and the construction of a circle drive in order to facilitate drop-off and pick-up of children.

The Land Use Ordinance authorizes the Planning Commission as the review body for expansions of nonconforming uses and structures. The ordinance does not provide specific review criteria for expansions of nonconforming uses. Applicable local and state codes related to expansion are included as follows:

Bountiful Land Use Ordinance Section 14-2-402 states that any expansion of a nonconformity that increases the degree of nonconformance is prohibited except as provided in (the Land Use Ordinance) or as may be required by law.

Utah Code Section 10-9a-511 (1) (a) states that a nonconforming use or noncomplying structure may be continued by the present or a future property owner.

Utah Code Section 10-9a-511 (1) (b) states that a nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made the purpose of the extension.

While it is clear that a daycare has been operated for a number of years at the property, it appears that the previous daycare use was limited in scope and intensity. The conversion of the property to a commercial daycare would constitute an intensification or expansion of the existing nonconforming use. From a land use perspective significant impacts include increases in traffic for the neighborhood along with general impacts from expansion of the use including additional noise, hours of operation and signage for the site. Daycare facilities in residential zones are normally limited to no more than 12 children and are allowed as home occupations only.

While reasonable expansions of existing legal nonconforming uses should be considered, impacts to neighboring properties should be also be carefully considered. State law discusses extension of uses within buildings without structural alteration. This same principle could be applied to the current application. An expansion that does not require modifications to the property that would not otherwise be allowed in the residential zone seem appropriate. The zoning standards for the R-4 residential zone would not allow the expansion of the parking area within the front yard in order to allow for additional employees. Therefore this part of the proposal does not comply with the underlying zone standards and should not be approved. On

the other hand, the circle drive proposed is allowed for any property in the residential zone and will also facilitate safe pick up and drop off of students and should be considered with some slight modifications.

Based on the application materials and a review of existing conditions at the property, staff proposes the following findings:

- The use of the building as a day care is an established legal nonconforming use.
- The Land Use Ordinance authorizes the Planning Commission as the review body for requests for expansion of a nonconforming use.
- An expansion of the nonconforming use is appropriate provided impacts to adjoining properties are mitigated.
- To minimize impacts to the adjoining properties all employee parking should be limited to the existing off-street parking area.
- The proposed expansion of the parking lot is not consistent with the underlying zone and should not be approved. The R-4 zone does not allow parking within the front setback area.
- The existing parking area is approximately 50 feet in width, which would accommodate 5 standard parking spaces.
- Based on the student to teacher ratio of 10:1 provided in the application materials, the day care should be limited to the number of teachers that could be accommodated in the existing parking lot. This would mean a maximum of 5 teachers.
- Based on the student to teacher ratio of 10:1 the number of students/children should be no more than 50.
- The circle drive is allowed in the residential zone (subject to compliance with dimensional standards) and should be allowed with minor modifications in order to use the existing drive approach.
- No structural modifications should be approved that would increase the size of the existing building.

Staff recommends approval of the proposed expansion of a nonconforming day care use with the following conditions:

1. All employee parking shall be off-street in the existing parking lot on the west of the property.
2. The use shall be limited to no more than 50 children per day and/or 5 employees and shall use the existing off-street parking spaces without expansion of the parking area.
3. The proposed circle drive shall be constructed in accordance with minimum dimensions found in Section 14-18-109 and shall be modified to use existing driveway approach on the west side of the property.
4. The existing driveway approach on the west side of the property shall be replaced with a standard drive approach.
5. The location of eastern drive access for the circle drive shall be in a location to be approved by the City engineer.
6. Any unused driveway approaches shall be properly abandoned and replaced with sidewalk to City standards.

7. Signage for the site should be limited to the size and number previously approved for the Family Connection Center.
8. The applicant shall provide evidence of required permits from the State of Utah prior to issuance of business license.

Mike Allen asked staff if there is a time limit for this legal non-conforming use regardless of unused status. Mr. Wilkinson stated that Bountiful Code requires the use be reestablished with 1 year. The previous use was vacated/abandoned the first part of 2015. The request for this agenda item was brought to us in November of 2015. There was time between November and tonight's hearing that was used in our office to gather information and bring the application forward for review.

Mr. Higginson asked for clarification of the Family Connection last day at this property. Mr. Wilkinson stated that it was last used at the end of the 2014 beginning of 2015.

Mr. Monson cited Bountiful Code 14-2-402 "Expansion and Enlargement. Any expansion of a nonconformity that increases the degree of nonconformance is prohibited except as provided in this Title or as may be required by law." Mr. Monson asked Mr. Mahan if this type of application would be prohibited unless we can find something in the Land Use Ordinance to allow it or if it required by Utah Law. Mr. Mahan stated that there is one exception required by law and that is that a non-conforming use can expand through an existing building as long as there is no structure change. There is nothing in the Land Use Ordinance that allows anything else. Bountiful City did not previously place a maximum number of hours or students on the previous daycare operation.

Mrs. Nerdin addressed the Planning Commission Members with the request of her daycare, mentioning the driveway, number of children, ratio of teachers and students. She would request that Commission Members consider 60 students instead of the staff recommendation of 50.

Mrs. Nerdin presented information showing the characteristics of the day care.

Mrs. Spratley asked for clarification from Mrs. Nerdin about the ratio of teachers to students. Mrs. Nerdin stated that the state made a recommendation of 80 children and she has made a request for 60 students at this location. Her current home daycare is 2 teachers to 12 students.

Mrs. Nerdin stated that the remodel would include drywall, paint, kitchen and circular driveway.

Mr. Wilkinson clarified that Bountiful City code allows up to 12 students in residential areas for in home day care.

Chairman Monson opened the Public Hearing at 7:00 p.m.

Jim Cobb resides at 138 N 100 E. Mr. Cobb would like to have the Commission members pursue that this property be considered abandonment. Mr. Cobb continued by giving handouts to the Committee members and staff. He turned the time over to Andrea Harrison.

Andrea Harrison resides at 141 E Center St. Ms. Harrison asked for information from Sally at the Family Connection Center. She stated that she has not seen any nursery care since Dec 2014.

Mr. Cobb resumed and requested that the Commission Members consider this property as abandoned.

Robin Haywood resides at 64 N 200 E. Ms. Haywood had concerns about the impact that this business would place in this quiet neighborhood as a commercial business.

Megan Triplett resides at 246 E 100 N. Ms. Triplett stated that the previous business, Family Connection, was very quiet and is concerned about the increase of traffic with the proposed new daycare would bring to this area. She would like to request a traffic study be done prior to the Commission's decision.

Tommy Triplett resides at 246 E 100 N. Mr. Triplett stated that there is interest for this home as a residential property and would love to see this left as a single family home. He indicated that he had offered to purchase the property.

Rob Christensen resides at 272 N 100 E. Mr. Christensen requested information about the enforcement of the parking areas, required signage, possible landscaping in the rear yard in order to maintain the integrity of this property for the neighbors.

Roger Curtis resides at 255 E 200 N. Mr. Curtis would like to stay in this area but is concerned about the traffic and noise from the business.

Terry Vandawalker resides at 96 N 100 E. Mr. Vandawalker is concerned about the noise, traffic and the impact of the business in this area.

Cassie Metcalfe resides at 207 E 100 N. Ms. Metcalfe is concerned about the extra traffic in this neighborhood.

Richard Peterson resides at 131 N 100 E. Mr. Peterson is concerned about the large number of children and the available parking for this property.

Sarah Bolander resides at 147 E Center St. Ms. Bolander is concerned about the commercial business in a residential neighborhood.

Nick Gilson resides at 305 N 100 E. Mr. Olsen requested the Commission members make a decision if this will be a residential area or commercial area.

Kim Bushnell resides at 265 E Center St. Mr. Bushnell would like to share his concern for the growth of commercial businesses in the residential areas.

Jim Cobb resides at 135 E 100 N. Mr. Cobb stated that he has rarely seen anybody at this location and is concerned for the increase in traffic.

Dave Montgomery resides at 392 E 200 N. He is concerned about the early hours of occupation with the noise of the children being dropped off.

Spencer Anderson resides at 106 N 100 E. Mr. Anderson is concerned about the number of kids at this location.

Natalie Kattelman resides at 290 N 200 E. Ms. Kattelman is concerned about traffic and the possibility of a future sale of the daycare location to other commercial businesses.

Alisa Pascoe resides at 388 N 700 E. Ms. Pascoe is concerned about the commercial businesses creeping into the residential neighborhood. She would like to request that the area be zoned as a residential only and not allow a commercial business in this area.

Jason Wilde is the owner of the current property of 130 E 100 N. Mr. Wilde shared some history about the Family Connection as a day care facility. The business would take children in as a day care facility when families were in need. Most of the years thru 2014 the business was busy with families in need. In 2014 the business had reduced the available days for care to 3 days a week and had children in the property 2 days prior to the flood from the fire suppression system.

Mark Shephard is a realtor for ReMax and currently the realtor for the property. Mr. Shephard stated that the property has been advertised as residential, multi-family, and as a day care. This property has had interest as a day care, multi-family, and half-way house.

John Rupp resides at 547 E 550 N. Mr. Rupp cites code 14-2-403 which prohibits expanding the non-conforming use and discussed that the property was abandoned within a year.

Chairman Monson asks Mr. Rupp what he thinks the difference of Expanding vs. Extending Use. Mr. Rupp states that extension means to continue the same use for a longer period of time and an expansion is using to a greater extent. The statute makes no reference to any application. Administrative code says that "abandonment automatically occurs if the non-conforming use of the land ceases for any reason for a period of one year or longer". Utah code 10-9a-511 says that "abandonment may be presumed to occur if....the use has been discontinued for a minimum of one year or the primary structure associated with the non-conforming use remains vacant for a period of one year".

Mr. Mahan discussed Bountiful Code 14-2-403 about the abandonment of the business and concludes that the law can be reputed by the applicant and that there is room for interpretation for real property rights.

Matt Harrison resides at 141 E Center St. Mr. Harrison states that he opposed the amount of children in this day care.

Danene Adams is with the Family Connection Center. She wanted to clarify to the Commission members that The Family Connection Center has not abandoned the center and thanked the neighbors for their support.

Myron Balise, president of the Board of The Family Connection Center. Mr. Balise stated that development has a personal impact for a number of people.

Carol Johnson resides at 125 E 100 N. She is concerned about the road in the winter time. The road becomes very narrow with the snow banks and doesn't have enough room for extra cars in that area on the road.

Lynn Bascom resides at 195 N 100 E. Mr. Bascom is concerned about the location of this day care in this neighborhood.

Ashley McGrath is an employee of The Snowy Owl Preschool at 640 E Center St. Ms. McGrath is excited to see the growth of the present day care.

Blake Haywood resides at 64 N 200 E. Mr. Haywood is concerned about the extra traffic flow with an already tight traffic

Adriann Chapman resides at 160 E 100 N. Ms. Chapman wanted to know how the business conditions will be regulated or enforced at this business.

Mr. Wilkinson clarified the conditions placed on businesses are reviewed and enforced at the time of business license renewal.

Wayne Gray resides at 140 N 200 E. Mr. Gray would like to give his agreement with the other neighbors' concerns.

John McLean resides at 175 N 300 E. Mr. McClain understands the need for a day care but is concerned about the increase in traffic.

Sharon Parkin resides at 144 N 300 E. Ms. Parkin moved to this older established area of Bountiful and is concerned about the encroachment of this business to this area.

Barbara Bushnell resides at 165 E Center St. Mrs. Bushnell is concerned about the increase in traffic and snow removal when cars are not able to park on site. She asked about the square footage per student at this facility.

Mrs. Nerdin responded to the question about the square footage per student. The state has estimated 80 students could be at this location The state licensing regulation is 35 Sq feet per student. She wants to keep the number at 50-60 students at this location. She stated that they have looked for other locations to have this daycare and have not found anything suitable in other zones. She stated that there are public schools in the residential area with a large number of students and have small circular drives as well. She believes that this business will be a good fit and would invite that if there were any concerns that the individual come directly to the business so that they may solve the problem. The rear yard would only have 1/3 of the students out at one time and this percentage would go down depending on the number of infants enrolled at this location.

Steve Sharp resides at 315 N 400 E. Mr. Sharp is concerned about the number of teachers on site when other teachers are transporting students to other schools.

Tommy Triplett resides at 246 E 100 N. Mr. Triplett spoke about the commercial business and the number of potential cars for this location.

Chairman Monson closed the Public Hearing at 8:31 p.m.

Mr. Badham thanked Mrs. Nerdin for her poise and articulate communication in this pressure. He asked questions about the non-conforming use for this location, possibility of a half-way house, and wanted clarification on the date of the last business license. Mr. Wilkinson stated that the non-conforming use is not specific to an owner. He stated that there is a possibility that this property could be a residential facility for the disabled which is allowed in all zones. The Family Connection had an active business license until December 31, 2014. The administrative process to go forward does take some time to research. The applicant approached us in November 2015 and we moved forward with our research to bring this agenda item to this meeting.

There was discussion about the dates of the business license with the Commission members and staff.

Mr. Higginson recited Bountiful Land Use code 14-2-402 section E – General Provisions-Restoration and code 14-2-403.A.3 - Abandonment of Nonconforming Use.

Mr. Higginson made a motion based on the two codes Bountiful Land Use code 14-2-402 section E - Restoration and code 14-2-403.A.3 - Abandonment of Nonconforming Use. Mr. Higginson made a motion to deny an expansion of a non-conforming use daycare at 130 E 100 N and find that the facility has been abandoned and not continue a non-conforming use and revert back to uses allowed in the R-4 zone.

Von Hill seconded the motion. Voting passed 5-1 in favor with Commission Members Allen, Badham, Hill, Higginson, and Sharon Spratley voting aye and Monson voting nay. Mr. Monson stated he was voting nay for different reasons.

Chairman Monson thanked the audience and staff.

4. PUBLIC HEARING - Consider approval of a Zone Map amendment from R-4 and R-3 to R-1 for properties addressed 3286 South 200 West and 12 & 24 West 3300 South and 12 & 22 East 3100 South.

Chad Wilkinson presented staff report.

On July 28, 2015, the Bountiful City Council held a work session to discuss land use in the Val Verda area. Prior to the work session, the city had been involved in a public input process for the Val Verda area that included an online survey and a public open house. The results of the survey and open house revealed that lot size and density of new development were the biggest concerns of the respondents. During the public input process, some owners of one acre or larger

properties not currently zoned R-1 requested that their properties be rezoned to R-1. As a result of their request, the City Council directed staff to initiate a zone map amendment of one acre or larger parcels in Val Verda for any property owner who desired to rezone from R-3 or R-4 (Residential Single Family) to R-1 (one acre minimum residential single family with limited domestic farm animal rights). Notice was sent to each of the owners of 1 acre parcels in the Val Verda area not currently zoned R-1. Out of the 13 notices sent, four property owners elected to participate in the zone change. In addition, a property owner with a lot that is less than one acre has requested that his property be included in the R-1 zone.

The R-1 zone was created in 2011 specifically for the Val Verda area in order to provide a zone that allowed the keeping of certain domestic farm animals on properties that are at least one acre in size. Some residents decided to rezone their properties to R-1 at that time, but others elected to remain R-3 or R-4. At this time four property owners of 1 acre parcels that are currently zoned R-3 have requested that their properties be zoned R-1. Changing the zoning for these properties is consistent with the 2009 General Plan. The General Plan specifically calls for a uniform policy for agricultural use within this area of Bountiful. The R-1 zoning designation was adopted to address this goal from the General Plan.

One additional property owner with a property that is less than an acre (approximately .62 acres) has requested that his lot be rezoned to R-1. While there are examples throughout the City of lots that are smaller than the minimum lot size for their zoning district, there are several issues that need to be considered in determining whether a less than 1 acre lot should be included in the R-1 zone. First, the right to keep farm animals in the R-1 zone anticipated that the properties where animals were kept would be at least an acre in size. Current R-1 standards determine the number and type of animals allowed on a property based on a formula. Properties are given points based on their size and those points determine the number and type of farm animals allowed. A copy of the domestic farm animal standards is attached to this report. In the case of the property under consideration, the size would allow for up to one horse or one sheep, goat or llama. The Code already allows for up to eight chickens on any residential lot in the City. The R-1 designation would also allow for other types of fowl (geese, ducks, pigeons, etc) and rabbits.

A second issue is the issue of nonconformity for the lot itself. Lenders are sometimes hesitant to finance purchases of lots that do not comply with the minimum standards of the zone. This could impact the ability to obtain loans on properties not meeting the minimum size standards. Lenders often require a certification that homes on lots not meeting the minimum lot size standards for their zone can be rebuilt if destroyed by calamity or if removed voluntarily by a property owner. While the zoning code provides for replacement of structures on nonconforming lots, this condition is not ideal.

As a matter of procedure, whenever the Planning Commission considers a request for a rezone (zone map amendment), it shall review it in accordance with the provisions of 14-2-205 AMENDMENTS TO ORDINANCE AND MAP, which are as follows:

- B. For the purpose of establishing and maintaining sound, stable, and desirable development within the City, it is declared to be the public policy that amendments should not be made to the Bountiful City Land Use Ordinance or Zoning Map except to promote the objectives and

purpose of this Title, the Bountiful City General Plan, or to correct manifest errors.

Staff recommends that the Planning Commission recommend approval of the proposed zone map amendments for the parcels greater than 1 acre. If the Planning Commission determines that the request to amend the less than 1 acre lot to R-1 is appropriate, staff recommends that changes to the farm animal standards be considered to create a minimum lot size for certain large animals (such as horses). If the planning commission feels that the R-1 zoning designation is appropriate for properties less than 1 acre, staff recommends that the item be continued to a future meeting to allow other properties less than 1 acre in size the opportunity to voluntarily request a change in their zoning.

Mr. Higginson asked about clarification about the point system for the R-1 zone. Mr. Wilkinson discussed the point system to the Commission members. Mr. Mahan stated that the current code would need to be revisited if the Commission members approve the zone change for 3286 S 200 W. Mr. Mahan stated that staff could bring a suggestion forward.

Mr. Badham asked about the direction of the Val Verda zoning. Mr. Wilkinson stated that staff is looking for specific direction from the Commission members.

Mr. Higginson asked for clarification about what the council's direction before the moratorium expired. Mr. Wilkinson stated that the direction that was given to staff was to allow those who desired to change their zoning voluntarily to move forward. No further direction for additional changes was given.

Chairman Monson opened the Public Hearing at 8:59 p.m.

Bobbie Kristie resides at 1200 E 3100 S. Mrs. Kristie is concerned about the increase of traffic on an already busy road.

Don Kristie resides at 1200 E 3100 S. Mr. Kristie is concerned about the number of homes placed in these acre lots.

Maury Smith resides at 3300 S 240 W. Mr. Smith would like to keep the area unchanged.

Josh Holdstock resides at 3286 South 200 W. Mr. Holdstock would like to have his property an R-1 zone. He states that the size of the property should not be the determining factor that property owners aren't allowed to have farm animals if the property size is not sufficient. He is concerned about the current traffic on 3100 South.

Stephanie Holdstock resides at 3286 S 200 W. Mrs. Holdstock would like to have the City Council and Planning Commission consider the point system for all lots. She is concerned that the moratorium expired.

Jan Peterson resides at 187 W 3100 S. Ms. Peterson expressed concern for the expiration of the moratorium and would not like to see any other building development.

Chairman Monson closed the Public Hearing at 9:14 p.m.

Mr. Higginson expressed concern about the expiration of the moratorium.

Mr. Badham asked Mr. Holdstock what the motive would be to rezone his property. Mr. Holdstock expressed his desire to have freedom.

Commission members discussed the point system and reduction of minimum lot size.

Mr. Hill made a motion to recommend to City Council approval of the 4 one acre lots zone change and table the 3286 S 200 W lot for further discussion and study. Dave Badham seconded the motion. Voting passed 6-0 in favor with Commission Members Allen, Badham, Hill, Higginson, Monson, and Sharon Spratley voting aye.

Mr. Wilkinson stated that this Val Verda rezone will be on the City Council agenda on March 15, 2016. He also stated that staff has received direction in other areas and the Val Verda study has not been ignored. Staff sent out 13 notices for a rezone and only 4 property owners came forward with interest to rezone. The Val Verda area is important and we will continue to work on this item.

5. Planning Director's report, review of pending applications and miscellaneous business.

1. Next Planning Commission meeting to be held on March 1, 2016.
2. Next City Council meeting to be held on February 23, 2016.
3. Upcoming agenda items.

Chairman Smith ascertained there were no other items to discuss. The meeting was adjourned at 9:22 p.m.

Chad Wilkinson, City Planner

**BOUNTIFUL CITY PLANNING COMMISSION
FINDINGS OF FACT AND CONCLUSIONS**

APPLICANT: Stacy Nerdin

APPLICATION TYPE: Expansion of Nonconforming Use

I. DESCRIPTION OF REQUEST:

The applicant, Stacey Nerdin, requests planning commission approval in order to allow for expansion of an existing day care use located at 130 E. 100 North and identified as Parcel Number 03-030-0034. The property is located within the Single Family Residential (R-4) Zoning District.

II. LAND USE ORDINANCE AUTHORITY:

Bountiful Land Use Ordinance Section 14-2-111 authorizes the Planning Commission as the review and approval authority for an expansion of a non-conforming use.

III. APPEAL PROCEDURE:

Bountiful City Land Use Ordinance section 14-2-108 states that an applicant, board or officer of the City, or any person adversely affected by a Land Use Authority's decision administering or interpreting a land use ordinance or ruling on a request for a variance may, within fourteen calendar days of the written decision, appeal that decision to the Appeal Authority. No other appeals may be made to the Appeal Authority.

The appeal must be in writing and specifically allege that there is an error in an order, requirement, decision or determination by the Land Use Authority. The appellant shall state every theory of relief that it can raise in District Court.

IV. SUMMARY OF EVIDENCE:

- A.** The basic facts and criteria regarding this application are contained in the staff report, which is attached as **Exhibit A** and is incorporated herein.
- B.** The minutes of the public meeting held by the Planning Commission on **Tuesday, February 16, 2016** which are attached as **Exhibit B** summarize the oral testimony presented and are hereby incorporated herein.

V. FINDINGS OF FACT:

Based upon the information presented and oral testimony given at the public hearing the Planning Commission made the following findings:

1. Bountiful Land Use Ordinance Section 14-2-111 authorizes the Planning Commission as the review and approval authority for an expansion of a non-conforming use.
2. Utah Code Section 10-9a-511 (1) (a) states that a nonconforming use or noncomplying structure may be continued by the present or a future property owner.
3. Bountiful Land Use Ordinance Section 14-2-402 states that any expansion of a nonconformity that increases the degree of nonconformance is prohibited except as provided in (the Land Use Ordinance) or as may be required by law.
4. A daycare use has been operated at the property since 2001 and is considered to be a legal nonconforming use.
5. The daycare was operated in conjunction with a nonprofit and had previously operated three days per week.
6. The daycare operated until late December 2014 when a water line break in the building forced the use to close. The current owner of the property decided not to reopen the use and did not renew their business license. The license expired in December 2014.
7. The applicant proposed to increase the number of days per week the day care was operated from three days per week to five days per week and to extend the hours of operation to 6:30 am through 5:30 pm Monday through Friday.
8. The applicant originally proposed to increase the number of children served by the daycare per day to 80 and to expand the parking lot to accommodate up to 10 cars.
9. At the hearing the applicant proposed to modify the number of children served by the daycare to 60 children per day.
10. The Planning Commission found that an increase in the hours of operation and number of children per day constituted an increase in the degree of nonconformance for the use.

11. The Planning Commission found that the proposed expansion of the parking lot increased the degree of nonconformance for the property.
12. The Planning Commission found that since the owner had not renewed their business license and the building had remained in a state of disrepair since December 2014, the nonconforming use was considered to be abandoned based on Section 14-2-402 E and Sections 14-2-403 A. 3 of the Bountiful Land Use Ordinance.

VI. DECISION AND SUMMARY

The Planning Commission **denied** the requested expansion of a nonconforming use by a vote of 5-1. The approval is subject to the following conditions:

VII. FINDINGS OF FACT APPROVED BY THE Bountiful City Planning Commission this 1st day of March, 2016.

Sean Monson, Chair
Bountiful City Planning Commission

Commission Staff Report

Item # 4

Item: PUBLIC HEARING – Request for a variance to allow for encroachments on slopes exceeding 30 percent.
Address: 675 E Hidden Hollow Circle
Author: Chad Wilkinson, Planning Director
Date: March 1, 2016



Description of Request

The applicant, Jayson Orvis, has requested a variance to allow for encroachments on slopes greater than 30 percent in order to authorize a recently constructed pole barn and retaining wall constructed in the R-F (Residential Foothill) zone.

Authority

Section 14-2-111 authorizes the Administrative Committee as the review body for variance requests within the R-F zone related to disturbance of slopes exceeding 30 percent and retaining walls and cuts and fills exceeding 10 feet in height. Section 14-2-104 authorizes the chairman of the administrative committee to assign any item designated for administrative committee review to the Planning Commission, in which case the Planning Commission acts under the same authority granted to the Administrative Committee. This item has been assigned to the Planning Commission for review.

Background and Analysis:

In September 2015, the City received an application for a variance to allow the installation of a solar array on slopes exceeding 30 percent on the applicant's property located above Hidden Hollow Circle. During the review of the application, staff conducted a site visit and discovered that a large pole barn (approximately 1,800 square feet) had been constructed on areas that were previously shown to be over 30 percent slope. Based on aerial photography, the pole barn was constructed sometime between June 2013 and June 2015 (See Attachments 1 and 2). The applicant has indicated that he believed at the time of construction that he was not required to obtain a building permit for the structure and has cited state code which exempts certain agricultural buildings from building permit requirements. State law exempts certain agricultural buildings from the requirement to obtain a permit under a very specific set of circumstances but does not exempt these buildings from complying with the zoning ordinance. Section 14-1-105 of the Bountiful Land Use Ordinance states that activities that do not require a building permit are still subject to the provisions of the zoning ordinance.

The building must still comply with the zoning ordinance which prohibits construction on slopes greater than 30 percent without first obtaining authorization from the City (See Bountiful Code Section 4-5-106). The only way that the City may authorize construction on slopes exceeding 30 percent within the R-F zone is to grant a variance to the standards of the land use ordinance.

The pole barn included construction of a retaining wall. While state law may exempt the pole barn from building permits, state law does not exempt retaining walls from permit requirements. Should the commission approve the requested variance, a building permit will be required for the existing retaining wall in order to verify the structural integrity of the wall, particularly since the wall is retaining slopes exceeding 30 percent. Although not explicitly stated in the application, any variance allowing the pole barn must also include a variance for the retaining wall since the wall supports the pole barn roof structure.

In a letter dated September 30, 2015, staff outlined several compliance issues that would be required to be resolved prior to the processing a variance for solar panels to be installed on slopes exceeding 30 percent. A copy of the letter is attached to this report. Besides the need to resolve the issues surrounding the construction of the pole barn, the applicant will be required to resolve the other issues, including lot consolidation, prior to processing of any variance or conditional use permit request for solar panels on the property.

Variance Findings

Utah Code 10-9a-702 establishes the criteria for review of a variance request. In order to grant a variance each of the following criteria must be met:

(i) *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;*

Staff Response: The pole barn is constructed in a location that was previously shown to be over 30 percent slope. The applicant owns a large property with several areas that are less than 30 percent slope. Since there are adequate areas where a pole barn could be constructed without disturbance of 30 percent slopes, literal enforcement of the ordinance does not create an unreasonable hardship.

(ii) *There are special circumstances attached to the property that do not generally apply to other properties in the same zone;*

Staff Response: The property is located in the R-F zone on a sloping property. Steep slopes are a common circumstance in the zone.

(iii) *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*

Staff Response: The applicant owns a large property with several locations where a pole barn of this size could be constructed on slopes not exceeding 30 percent. The applicant has already constructed a number of accessory structures, including an additional barn structure on areas that do not exceed 30 percent slope. Therefore, the variance is not necessary in order to protect a property right possessed by other property owners in the same zone.

(iv) *The variance will not substantially affect the general plan and will not be contrary to the public interest;*

Staff Response: The standards of the R-F zone implement the goals and policies of the general plan. The general plan encourages the preservation of the hillside areas in Bountiful. In order to protect the hillside areas the Code prohibits disturbances on slopes greater than 30 percent.

(v) *The spirit of the land use ordinance is observed and substantial justice done*

Staff Response: The purpose of the Residential foothill zone is to provide standards, guidelines, and criteria which permit reasonable development of private property while minimizing flooding, erosion, and other environmental hazards, and which protect the natural scenic character of the foothill areas. The requested variance is not consistent with the goals and policies for the zone.

Department Review

City Planner, City Engineer

Recommended Action

Staff recommends denial of the requested variance for encroachments into the 30 percent slopes for construction of the pole barn and retaining wall.

Note: If the Planning Commission chooses to approve the requested variance, it should be contingent on the applicant obtaining a building permit for the retaining wall that was constructed in conjunction with the pole barn.

Attachments

1. 2015 Aerial Photo
2. 2013 Aerial Photo
3. Aerial Photo with contour lines at 5' intervals
4. Applicant's Narrative
5. Photographs of existing pole barn structure

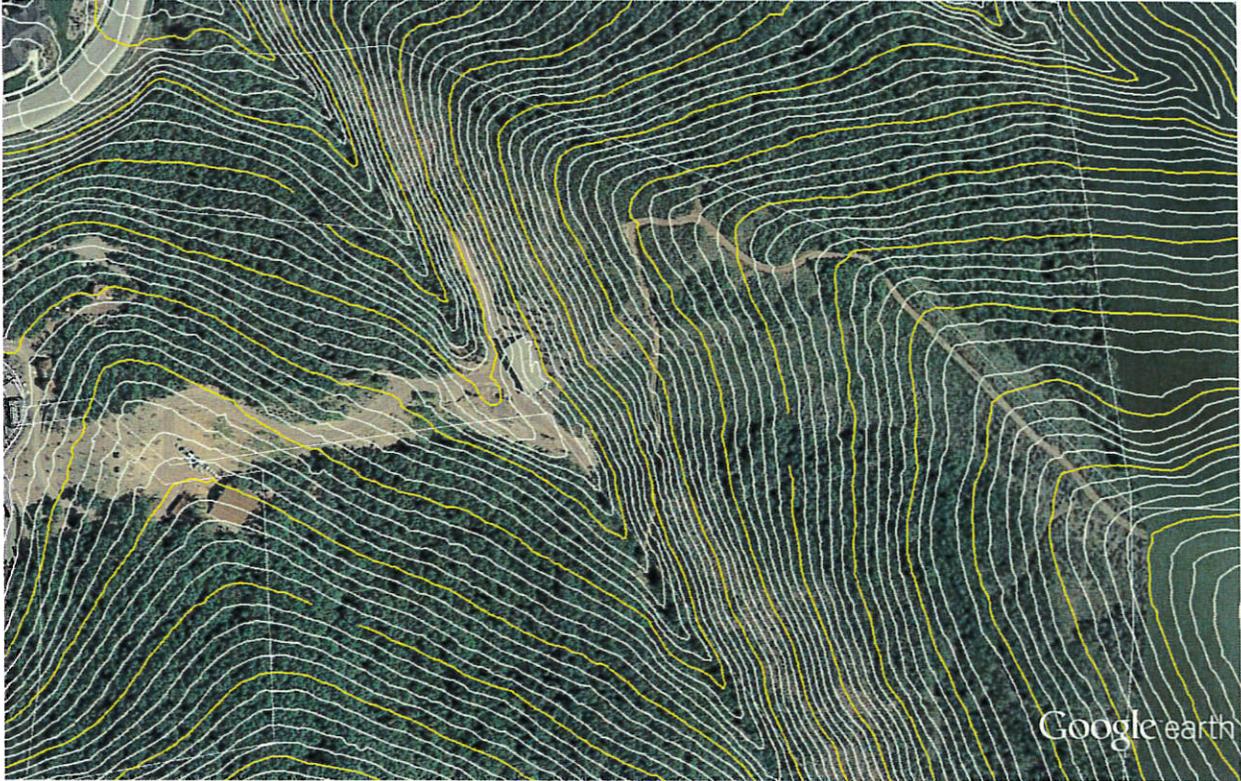
Aerial Photo-2015



Aerial Photo 2013



Aerial Photo with Contours

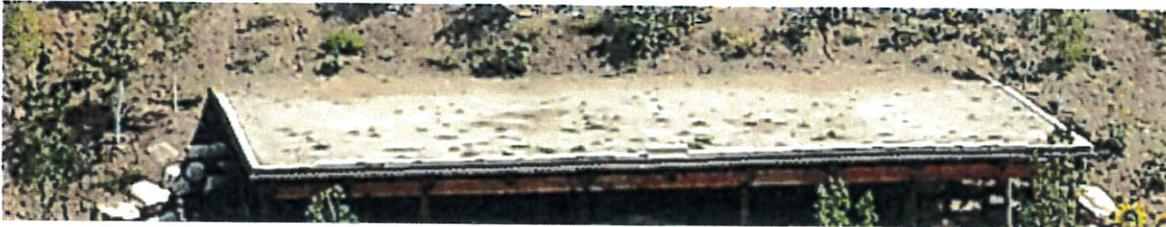


Bountiful Building- Variance Application

1. Items to be included with any Variance Application

- a. Cover Sheet [**Attached**]
- b. Payment of filling fee (\$200) [**Paid by Phone**]
- c. Mailing list of all property owners within 300 ft of property boundaries
[**DON F SCHULTHIES & ROSANNE R SCHULTHIES -- 4380 S Hidden Lake Drive**]
- d. One (1) PDF file of the proposed site plan

This variance applications is in regards to a lean-to pole barn touching land that is 30% slope.



- e. Typed responses to the following questions:
 - i. What City Ordinance(s) do you want a variance from? (Please site the chapter & section)
The City Ordinance that we are seeking a variance from pertains to 4-5-106 (a)
"It is unlawful to erect or construct a building or structure, to do any kind of excavation work, or to disturb any land with a slope of 30% or greater,

without first obtaining any and all permit(s) and/or approvals required by City of State law.”

Response: We are requesting permission for the installation of a lean-to pole barn on an area that is steeper than 30% (as shown in the Survey). The request is a reasonable one as the base of the hillside is the ideal location for the lean-to pole barn. The land has already been disturbed when the natural gas pipeline was installed. The land remains cleared of vegetation and in its disturbed state. A benefit of putting the lean-to pole barn here is the topography enables the existing ridges to shield the building from sight of City residents.

ii. By Law, any government body granting a variance must find that the proposal meets all of the requirements of Utah Code 10-9a-702 (below). How does the proposed variance meet all of these criteria?

- 1) Jayson Orvis owns the land for which he is desiring approval from the City for installing solar pole mounts on 30% slope or greater.
- 2) (a) (i) The enforcement of the ordinance would cause unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance. By not allowing the installation of the pole barn at the bottom of the hillside hidden by a ridge, it would not allow the applicant to install the pole barn on any eligible land. When evaluating the property, the already disturbed hillside is the only cleared area that a pole barn could function properly.
 - (ii) As noted in the survey for the solar, the hillside is in not in a Planned Unit Development (PUD) and should not be treated as PUD land.
 - (iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. All land that has been disturbed by the natural gas pipeline would be in violation as there are slopes greater than 30% and yet they received approval to be disturbed. What we are requesting is only fair to approve the variance to install solar pole mounts on already disturbed land.
 - (iv)The variance will not affect the general plan and will not be contrary to the public interest.
 - (v) By using the already disturbed land the spirit of the land use ordinance is observed and justice is done by enabling that same land (disturbed to the point of never returning to its original state) can be productive again by enabling this lean-to pole barn to house solar arrays which will produce clean, renewable energy.
- (b)
 - (i)(A) The hardship of not being able to place the pole barn on any other location outside the hillside is located on the associated property for which the variance is requested.
 - (B) The property is covered with native vegetation and the natural gas pipeline disturbed area is peculiar to this property.
 - (ii) The hardship is not self-imposed or economic, rather based on topographic and geographic properties of the land.

(c)

(i) The special circumstances relate to the hardships described above we request the City approve the request to install the pole barn and subsequent solar pv on the roof mounts on areas greater than 30% slope.

(ii) The applicant would be deprived of property privileges granted to the natural gas company as well as other properties in the zone that have been able to disturb the land and vegetation that is on slopes greater than 30%.

(3) The applicant shall bear the burden to prove that the conditions above have been met.



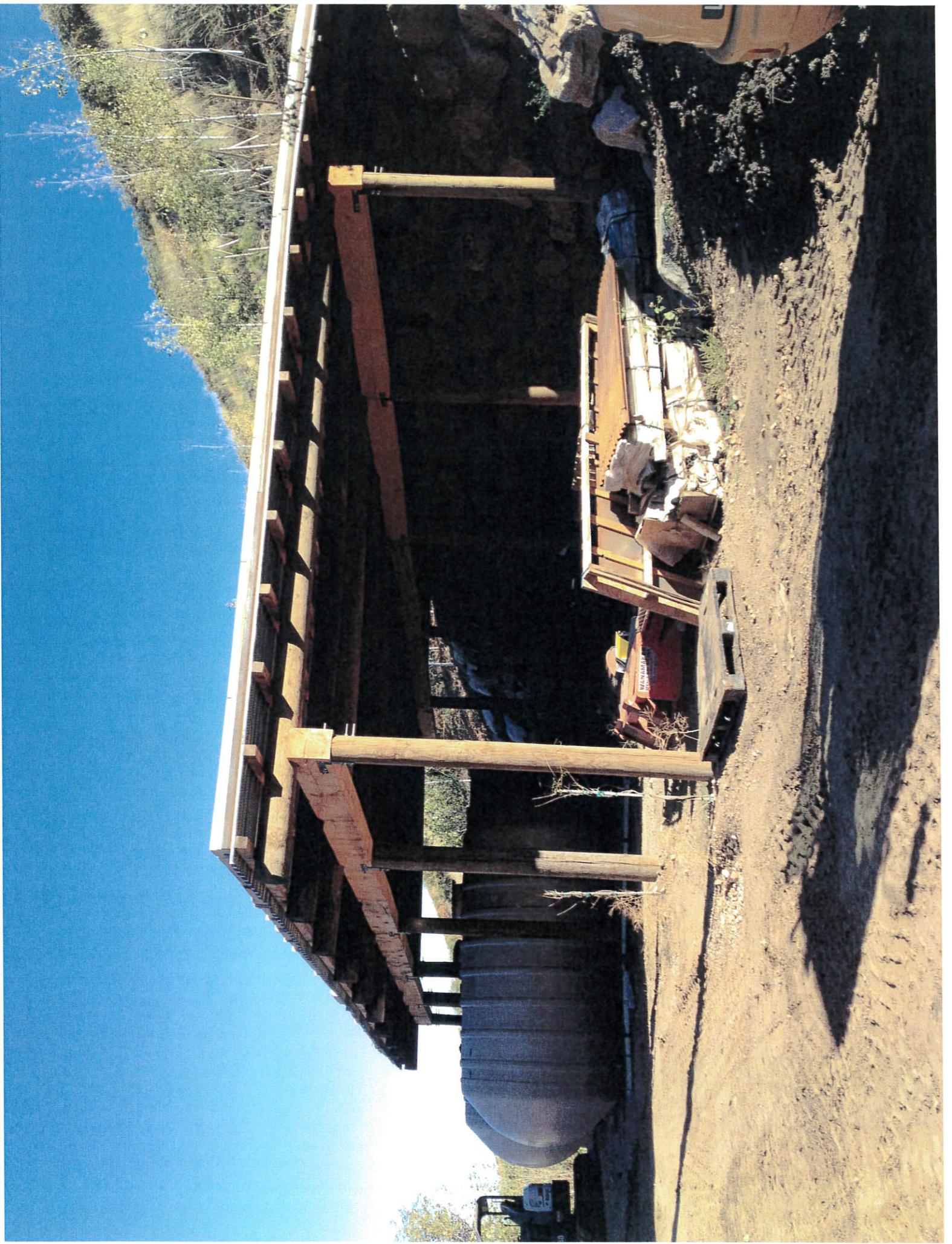
900

200

feet
meters

Google earth







BOUNTIFUL

City of Beautiful Homes and Gardens

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RICHARD HIGGINSON
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JOHN MARC KNIGHT
JOHN PITT

CITY MANAGER
GARY HILL

September 30, 2015

Mr. Jayson Orvis
565 East Hidden Hollow Court
Bountiful, UT 84010

Dear Mr. Orvis,

On September 24, 2015 I visited your property with Marty Thurgood, City Building Inspector, in order to conduct an onsite inspection of the area where you propose to install a large solar array. The area where the solar array is proposed to be located is situated on slopes that exceed 30 percent and you have applied for a variance in order to authorize construction on these steep slope areas. During my visit to the site I noted a number of items that are in violation of the Bountiful City Land Use Ordinance. I have included photos of the violations for your reference. The following violations were observed:

Construction on Slopes exceeding 30 percent

A large accessory structure has been constructed on the same parcel as the proposed solar array. The structure is approximately 1,900 square feet in size and has been constructed into the hillside area exceeding 30 percent slope. Bountiful Land Use Ordinance Section 14-4-104 states that all structures and all other site improvements shall be located only upon areas constituting useable land. The ordinance further defines useable land as "any portion of a property that is not encumbered by physical constraints such as flood plain, geologic fault escarpment, or similar feature. In the Residential Foothill zone (R-F) this definition shall also include any portion of the property that is less than 30 percent slope."

It is evident that the building was constructed partially on land exceeding 30 percent slopes. An area above the building exceeding 30 percent slopes was also disturbed and has been revegetated. Construction of the building may also have included cuts or fills that exceeded 10 feet which is also prohibited. Additional information is necessary regarding the height of the retaining wall built in conjunction with the building (shown in the attached photo) in order to ascertain the height of the wall. In any case, any retaining wall exceeding 4 feet in height must be designed by a licensed engineer and approved by the Bountiful City Engineer. You had mentioned in previous e-mails to me that you felt that the building was exempt from obtaining building permits because it is an agricultural building. State law exempts certain agricultural buildings from the requirement to obtain a permit. However, State law does not exempt these buildings from the zoning ordinance. Please note that Section 14-1-105 states that activities that do not require a building permit are not exempt from the provisions of the zoning ordinance. I have not made a determination whether this building is "a structure used solely in conjunction

with agriculture use" as defined in State Code (See Utah Code Section 15A-1-204 7a) and therefore exempt from building permits. However, even if this building is exempt from building permit requirements, the building must still comply with the zoning ordinance which prohibits construction on slopes greater than 30 percent without first obtaining authorization from the City (See Bountiful Code Section 4-5-106).

Cuts and Fills exceeding 10 feet in height

In addition to the cuts necessary to construct the shed mentioned above, the area near the shed mentioned appears to have had fill placed that exceeds the ten-foot limits described in section 14-4-117 D. The access road crosses a natural ravine that appears to have been filled to a depth greater than 10 feet. The height of this fill will need to be verified and will require additional information to be submitted by you prior to a determination.

Accessory Structures with Electrical Improvements

There are a number of accessory buildings that have been constructed without permits. While structures less than 200 square feet are exempt from the requirement to obtain building permits, this exemption does not apply to structures with electricity. The attached photographs show at least three instances of power facilities constructed without the benefit of permits. Note that the exemption for "agricultural structures" does not exempt buildings from obtaining electrical permits where power is installed (See Utah Code Section 15A-1-204 7 b). Local ordinance also does not exempt accessory structures from the requirement to obtain an electrical permit regardless of size. These structures are also subject to all zoning ordinance requirements regardless of size.

Accessory structures on lots or parcels without a primary use

Your property consists of a number of parcels, several of which are a part of the Hidden Hollow Circle PUD. Section 14-4-105 J. states that "an accessory structure shall not be permitted on any lot or parcel of land unless a primary structure is first constructed." Additionally a lot or parcel shall not be subdivided such that an accessory structure is located on a lot or parcel without a primary structure. In order to comply with this provision of Code, the lots and parcels will need to be combined so that all accessory structures are on the same lot or parcel as the primary use of the property, which is your dwelling. No further construction of accessory structures regardless of size (including the solar array) will be allowed until the property has been consolidated.

Conclusion

Bountiful City Land Use Ordinance Section 14-2-110 states that any land use authority may postpone deliberation of any application until such time that any unlawful nonconformity or unlawful noncompliance associated with the property, structure, site or entity is remedied. Based on the violations observed, the Planning Commission will not at this time consider your request for variance for the solar array until the items listed in this letter have been resolved either by compliance with the ordinance or further explanation or additional information provided by you for my review. Please note that I have not conducted a comprehensive review of the

property for compliance with the ordinance. The ordinance violations noted above were observed as we walked from the entrance driveway of the property to the area where the solar panels are proposed to be installed. It may be helpful to conduct a thorough inspection of the site to discover all items which will require remedy so that compliance may be obtained for the entire property. If there are any other violations of the Land Use Ordinance on your properties, they must also be brought into compliance.

With regard to the accessory structure constructed on slopes exceeding 30 percent and the cuts and fills exceeding 10 feet in height, the following must occur in order to obtain compliance:

- Removal of the structure and restoration of the hillside or application for a variance to allow construction on slopes exceeding 30 percent. Any application, including plans for restoration should be accompanied by a detailed slope analysis prepared by an engineer licensed to practice in the state of Utah showing contours and location and extent of proposed cuts and fills and any other information required by Section 14-4-117 for construction in the R-F Zone.

With regard to the other accessory structures on site, an application for vacation of the Hidden Hollow Circle PUD must be filed in order to combine the lots along with any other parcel combinations required in order to bring all accessory structures onto the same parcel as the primary use (in this case your single family residence). In addition, permits must be obtained for any of the structures requiring permits, including electrical permits if applicable.

The public hearing for your variance request previously scheduled for October 6, 2015 will be indefinitely postponed until these items have been resolved.

Respectfully,



Chad Wilkinson, Planning Director

CC:

Gary Hill, City Manager

Russell Mahan, City Attorney