

Mapleton City Board of Adjustment Staff Report

Meeting Date: September 29, 2011

Item: 1

Applicant: Lynn Bateman

Prepared by: Matt Brady

Public Hearing Item: Yes

Council Action Required: No

REQUEST

Lynn Bateman requests a variance from Mapleton City Code 18.28.050: LOTS, YARDS, AND OPEN SPACES on parcel # 27:034:0053 in order to have a frontage width of less than 200 feet in the A-2 (Agricultural-Residential) Zone. The subject parcel is located east of 866 East 1600 South.

FINDINGS OF FACT:

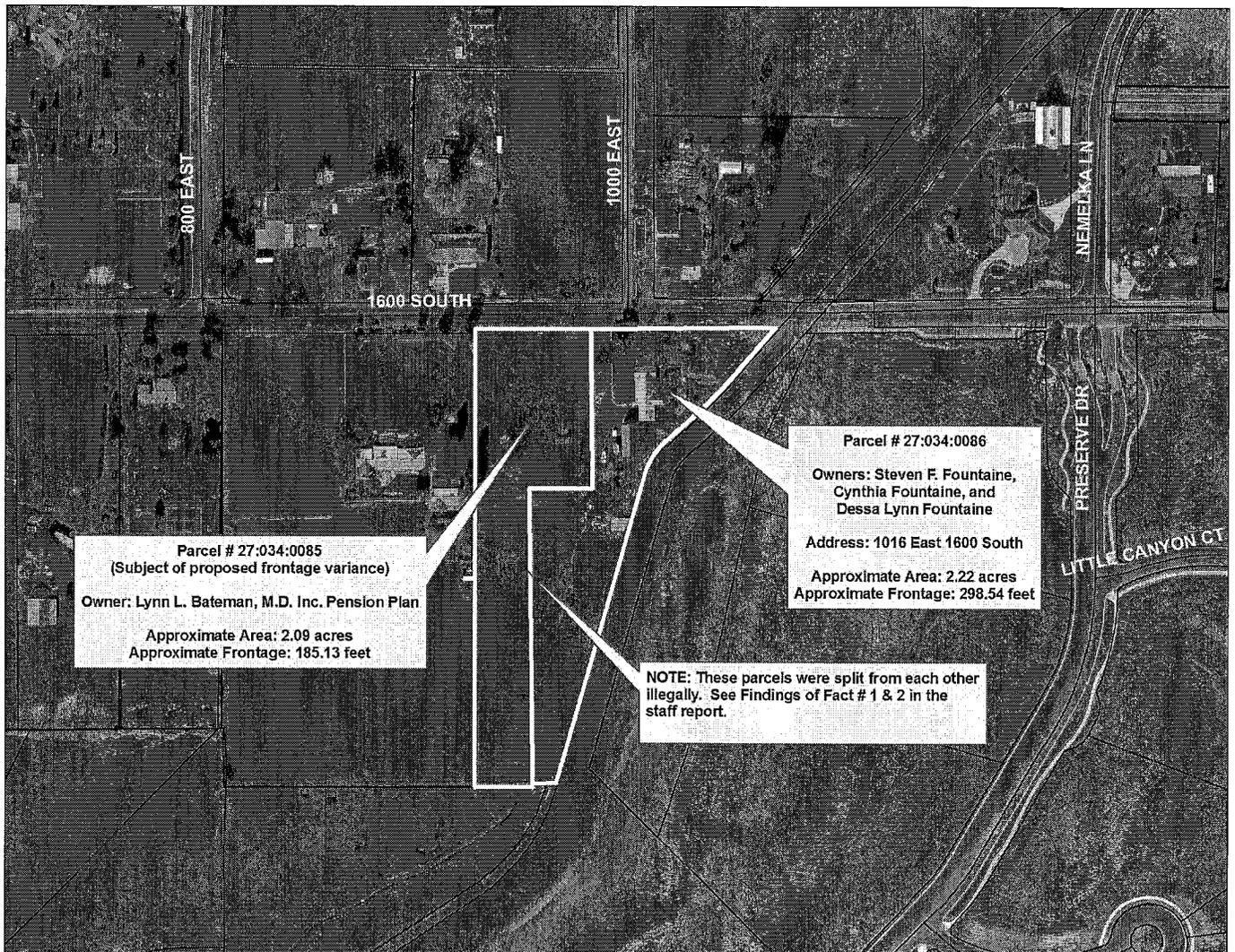
1. The subject parcel (# 27:034:0053, owned by the Lynn L. Bateman, M.D. Inc. Pension Plan) and the parcel directly to the east (# 27:034:0054, owned by Steven F. Fountaine, Cynthia Fountaine, and Dessa Lynn Fountaine) were determined to be illegally split lots in a zoning verification issued to Lynn Bateman on May 25, 2011. See Attachment #1 for the zoning verification. It was determined in the zoning verification that these parcels are illegal "*due to the fact that they were split by Warranty Deed, and not by a subdivision plat approved by Mapleton City, and because parcel # 27:034:0053 does not meet the minimum frontage requirements for the A-2 zone, and parcel # 27:034:0054 does not meet the minimum acreage requirements for the A-2 zone*". These two parcels were split by a Warranty Deed recorded on May 30, 2003 (not by a recorded subdivision plat, as required by Mapleton City Code 17.02.010: SUBDIVISION PLATS REQUIRED; TO BE RECORDED). The parent parcel from which the two parcels were split was parcel # 27:034:0004, and it was approximately 3.82 acres in size, with approximately 470 feet of frontage on 1600 South Street.
2. While doing the research for this staff report, Staff discovered that parcels # 27:034:0053 and 27:034:0054 were recently modified by Boundary Line Agreement (Utah County Entry # 42173-2011, recorded on June 7, 2011) between Steven F. Fountaine, Cynthia Fountaine, and Dessa Lynn Fountaine and the Lynn L. Bateman, M.D. Inc. Pension Plan. As a result of the Boundary Line Agreement, parcel #27:034:0053 (which was approximately 2.001 acres with approximately 185 feet of frontage on 1600 South) has been renumbered as parcel # 27:034:0085 (approximately 2.09 acres with approximately 185.13 feet of frontage on 1600 South). Parcel #27:034:0054 (which was approximately 1.82 acres with approximately 285 feet of frontage on 1600 South) has been renumbered as parcel # 27:034:0086 (approximately 2.22 acres with approximately 298.54 feet of frontage on 1600 South).
3. As per findings of fact #2 above, the subject parcel (# 27:034:0085) currently has approximately 185.13 feet of frontage on 1600 South Street. The Applicant (Lynn Bateman) is requesting a variance from the 200' minimum frontage requirement in the A-2 Zone, as required in Mapleton City Code 18.28.050: LOTS, YARDS, AND OPEN SPACES. See Attachment #2 for information submitted by the Applicant.
4. See Attachment #3 for Utah State Code 10-9a-702: Variances. This section of state code contains the requirements for granting variances. Staff's analysis of the code requirements is also included (underlined) in the attachment.

STAFF ANALYSIS:

See Attachment #3 for Staff's analysis of the requirements of Utah Code 10-9a-702: Variances.

	<p><u>RECOMMENDED ACTION:</u></p> <p>Staff recommends that the Board of Adjustment deny the proposed variance due to the reasons outlined in Attachment #3.</p> <p><u>ALTERNATIVE ACTIONS:</u></p> <ol style="list-style-type: none">1. The Board of Adjustment may approve the variance. Reasons for approval should be stated specifically in the motion.2. Continue to a Future Meeting Date: This action could be based upon findings that additional information is required prior to rendering a decision or to further consider information. <p><u>ATTACHMENTS:</u></p> <ol style="list-style-type: none">1. Zoning Verification letter issued to Lynn Bateman – May 25, 20112. Information submitted by the Applicant3. Utah State Code <u>10-9a-702: Variances</u> with Staff Analysis (Underlines)
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VICINITY MAP:





MAPLETON CITY CORPORATION

May 25, 2011

Lynn Bateman
866 East 1600 South
Mapleton, UT 84664
(801) 376-3444

RE: Zoning Verification
Utah County Parcel #: 27:034:0053
Also Concerning Utah County Parcel #: 27:034:0054

Dear Mr. Bateman,

As per your request, I am writing you concerning the above-mentioned parcels. We have compiled the following information:

1. According to Mapleton City records, the subject parcels are located in the A-2 (Agricultural-Residential) Zone. The minimum lot size for the A-2 Zone is 2 acres, with a minimum 200 feet of street frontage. According to Mapleton City zoning maps, the subject parcels have been zoned A-2 since approximately 1970. Prior to that time, from approximately 1950-1970, the parcel was zoned RA-1, which required a minimum lot size of 6,000 square feet, with a minimum 60 feet of frontage. Prior to 1950, Mapleton City did not have any zoning ordinances.
2. Mapleton City's Subdivision Code requires land splits to go through subdivision plat approval process with Mapleton City (See Mapleton City Code Title 17: DEVELOPMENT CODE, PART II: SUBDIVISIONS). Mapleton City's subdivision code was originally passed in 1971. The intent of the subdivision code is stated in Mapleton City Code 17.01.020: INENT:

"The intent of this title is as follows:

- A. To facilitate the orderly development of the city.*
- B. To implement the city's transportation and circulation element of the general plan.*
- C. To facilitate the development of a safe and efficient street system.*
- D. To facilitate the orderly transfer of the ownership of building sites in a manner consistent with state law.*
- E. To ensure adequate water, sewer, drainage, utilities, and other services to developing areas of the city.*

F. To establish the rights, duties, and responsibilities of subdividers with respect to the development of subdivisions within the city.

G. To facilitate the development of a trail system.”

3. Mapleton City Code 17.02.010: SUBDIVISION PLATS REQUIRED; TO BE RECORDED states: *“No person shall subdivide, as defined by section 17.32.010 of this title, any tract of land within the incorporated limits of the city; nor shall any person sell, exchange, purchase or otherwise convey a parcel of land which is part of a larger tract, if such sale or agreement would have the effect of creating a "subdivision" as defined by this title, unless and until a final plat, prepared in accordance with the provisions of this title, shall have been first considered by the planning commission and approved by the city council and recorded in the office of the county recorder.”*
4. The following information applies to parcel # 27:034:0053:
 - a. According to Utah County records, the parcel is currently owned by the Lynn L. Bateman, M.D. Inc. Pension Plan.
 - b. According to Utah County records, the parcel is approximately 2.001 acres in size, with approximately 185 feet of frontage on 1600 South Street.
 - c. According to Utah County records, the property is currently vacant (there is no home on the property).
 - d. According to Utah County records, the parcel was created by Warranty Deed (Entry # 81763 – 2003) from Clyde L. Willard & Dorothy S. Willard to the Lynn L. Bateman, M.D., Inc. Pension Plan, recorded May 30, 2003. This Warranty Deed also created current parcel # 27:034:0054 (see # 5 below for more information). Mapleton City has no record of approving this Warranty Deed. The parent parcel was parcel # 27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system.
 - e. According to Utah County records, the parent parcel (parcel # 27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system) was approximately 3.82 acres in size, with approximately 470 feet of frontage on 1600 South Street, and was created by Warranty Deed Entry #13222-1970 from Calvin W. Monk & Norma B. Monk to Ferris D. Earley & Afton Kay Earley, recorded December 16, 1970.
5. The following information applies to parcel # 27:034:0054:
 - a. According to Utah County records, the parcel is currently owned by Steven F. Fountaine, Cynthia Fountaine, and Dessa Lynn Fountaine.
 - b. According to Utah County records, the parcel is approximately 1.82 acres in size, with approximately 285 feet of frontage on 1600 South Street.
 - c. According to Utah County records, there is a single family home on the parcel (1016 East 1600 South) that was built in 1939, with an effective year built (i.e. addition or remodel) of 1980. According to Mapleton City records, a building permit (# 1843) for a carport was issued to Clyde L. Willard in November 1978. The legal description / site plan / parcel # submitted with the permit matches the legal description for former parcel # 27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system. A special inspection for an electrical service change was approved for Clyde Willard on July 18, 2005. Mapleton City has no record of any other building permits being issued for the property. Prior to 1948, Mapleton City did not have an adopted building code, and did require building permits.
 - d. According to Utah County records, the parcel was created by Warranty Deed (Entry # 81763 – 2003) from Clyde L. Willard & Dorothy S. Willard to the Lynn L. Bateman, M.D., Inc. Pension Plan, recorded May 30, 2003. This Warranty Deed also created

current parcel # 27:034:0053 (see #4 above for more information). Mapleton City has no record of approving this Warranty Deed. The parent parcel was parcel # 27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system.

- e. According to Utah County records, the parent parcel (27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system) was approximately 3.82 acres in size, with approximately 470 feet of frontage on 1600 South Street, and was created by Warranty Deed Entry #13222-1970 from Calvin W. Monk & Norma B. Monk to Ferris D. Earley & Afton Kay Earley, recorded December 16, 1970.
6. Mapleton City Code 18.20.060(E): Illegal Lots states, in part: *“Any lot that does not meet the strict definition of a “zoning lot” as described in section 18.08.475 of this title, and has been created illegally, shall not be issued a building permit. Any home located on a lot that was created illegally, shall not be issued a building permit to expand, enlarge, or rebuild the home, or a building permit to construct an accessory building or structure.”*

Conclusion:

From the above facts, it is the opinion of Staff that parcels # 27:034:0053 and 27:034:0054 are illegal lots, due to the fact that they were split by Warranty Deed, and not by a subdivision plat approved by Mapleton City, and because parcel # 27:034:0053 does not meet the minimum frontage requirements for the A-2 zone, and parcel # 27:034:0054 does not meet the minimum acreage requirements for the A-2 zone. These lots shall not be issued any building permits until the situation is remedied by recombining the lots into the originally approved configuration (the configuration of former parcel # 27:034:0004), or by receiving subdivision approval from Mapleton City and recording a subdivision plat to subdivide the property. Any subdivision application must meet all of the requirements of Mapleton City’s zoning and subdivision ordinances, including, but not limited to: rezoning, right of way dedication, required improvements, Transferable Development Rights (TDR) usage, payment of impact fees, bonding, dedication of water shares, etc.

Severability & Appeals:

The statements and interpretations of Mapleton City Code sections given in this letter are hereby declared severable, and the invalidity of any statements in this letter shall not affect the validity or enforceability of any other statements or parts thereof (see Mapleton City Code 1.01.060: PROVISIONS SEVERABLE).

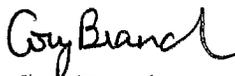
If you have any additional information that may affect the conclusions of this letter, please contact Mapleton City Community Development Department. Also, please keep in mind that you do have the right to appeal the above decisions to the Board of Adjustment by filing an application with the Board within a period not to exceed forty-five (45) days from the above date, as per Mapleton City Code 16.04.050: APPEALS TO BOARD; TIME; PERSONS ENTITLED; TRANSMISSION OF RECORDS.

If you have any questions about this determination, please call me at (801) 806-9108 or e-mail me at mbrady@mapleton.org.

Sincerely,



Matt Brady
Planner I



Cory Branch
Planning Director

Ken + Joan Bateman
866 East 1600 South
Mapleton, Utah 84664
6-30-11

Attachment #2
RECEIVED
JUL 1 2011
MAPLETON CITY

To: Mapleton City Planners, Planning Commission,
Cory Branch and Matt Brady.

Re: Property, 2 acres, at 900 E. 1600 So. and
requesting a reconsideration of decision
and or variance.

Cory and Matt:

I begin this appeal realizing my mistake
and error. However, I extend this appeal
to you with the feeling that an affirmative
decision would not only help me but
would benefit the neighborhood and the
city of Mapleton. My error occurred when
the elder Clyde Willard came to me in
2003 and said he was going to sell the
2 acres immediately East of my property. Since
my main entrance is on that side, and
not knowing what type of Barn or animal
structure someone else might build, at that
point I defensively purchased the two acres.
I knew not that I needed to OK this
purchase through Mapleton City planning. I
now realize my mistake, but at that
point it was an honest but unknowingly
protective action of mine.

1

Joan Bateman

866 East 1600 South

Mapleton, Utah 84664

I would like to get a legal lot decision or variance for building permission as children are now considering it.

I feel that a positive decision would also benefit the city and neighborhood even though the 2 acres only has a frontage of 185' (or 15' short of the 200 required) for several reasons.

1. It is a standard appearing lot on a main road with gas, elec, Sewer already at hand.
2. It would benefit the city through taxes increased and appearance. (The lot has no irrigation abilities at present so I can't put it in alfalfa as the rest of my ground thus as a pasture would be more unkempt and weedy - detracting from our neighborhood and city appearance)
3. Buying an additional 15' (which I'd be happy to do) is not possible as the seller has moved to an assisted care facility in Oregon and has already sold the other piece to a third party.

Joan Bateman
866 East 1600 South
Mapleton, Utah 84664

4. If you would just visit the ground and see the home possibilities I feel that you would agree that the 15' variance from ordinances would better serve the City than the situation at present.
5. Also, using the ordinances of the City and rules of variances from the state, this would facilitate orderly development of this neighborhood.
6. And, literal interpretation of the lacking 15' does put an unnecessary hardship upon my family and me (I am 74 and this was purchased thru my pensions plan.)
7. Also, Although it was my mistake as mentioned, there are here some special circumstances that are very difficult for me to rectify.
8. And, granting this variance would substantially improve the enjoyment and appearance for the surrounding four homes to have a nicely landscaped home on this lot. 3

Joan Bateman

866 East 1600 South

Mapleton, Utah 84664

9. Lastly, Granting this variance would not
substantially not adversely affect the
general plan not be contrary to public interests

I Thank you for allowing me to present
my case and hope is sound, reasonable
and is non offensive. I've tried to
utilize the rules and ordinances you've
provided me for its appeal and request
I look forward to discussing this case with
you.

Respectfully
Joan Bateman

**ATTACHMENT #3 – Utah State Code 10-9a-702: Variances (State Code
Bolded / Staff Analysis Underlined)**

Utah Code 10-9a-702. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.

(2) (a) The appeal authority may grant a variance only if:

(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;

It is the opinion of Staff that the proposed variance does not qualify as an unreasonable hardship because it is a self-imposed hardship as well as an economic hardship (see analysis under Utah Code 10-9a-702(2)(b)(ii) below).

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

All other property owners subdividing land in the A-2 Zone are required to have a minimum frontage of 200 feet, and to receive subdivision approval from Mapleton City to split land. Thus, it is the opinion of Staff that there are not “special circumstances attached to the property that do not generally apply to other properties in the same zone”.

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

It is the opinion of Staff that other land owners in the A-2 Zone are subject to the same minimum frontage requirement that apply to the Applicant, and they do not have the right to create lots under 2 acres and 200 feet of frontage within the A-2 Zone.

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

The Mapleton City general plan encourages the use of TDRs in the Rural Residential / A-2 Zone areas. It is the opinion of Staff that approving the proposed variance would substantially undermine the goal of encouraging the usage of TDRs, which would have a tangible economic impact on owners of TDRs, and thus would be contrary to the public interest. Approving the proposed variance would also possibly send a message that as long as one splits land without going through the proper subdivision process, a variance could be used to exempt someone from following the zoning requirements. It is the opinion of Staff that this would be contrary to the public interest.

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

It is the opinion of Staff that the spirit of the ordinance would be broken by granting the proposed variance, because it would undermine the purposes of the TDR ordinance, and would not be just compared to other property owners who go through the proper subdivision process and follow Mapleton City’s zoning and subdivision ordinances.

(b) (i) In determining whether or not enforcement of the land use ordinance would

cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

It is the opinion of Staff that the hardship is not “located on or associated with the property for which the variance is sought” (i.e. a condition relating to the land itself). Rather, it is the opinion of Staff that the hardship comes from a self-imposed situation created by the Applicant.

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

Staff frequently issues zoning verifications which recognize parcels as being illegally split and not meeting zoning requirements, including minimum frontage requirements. Thus, it is the opinion of Staff that the problem of land being split illegally and not meeting zoning requirements is not “peculiar to the property”.

(ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

It is the opinion of Staff that this problem is both a self-imposed and an economic problem. This lot split was created without going through the subdivision process as required under Mapleton City Code; thus, it is the opinion of Staff that the lot split was self-imposed. Regarding the economic problem, the Mapleton City General Plan encourages the purchasing and usage of transferable development rights (TDRs) in the A-2 Zone to lower minimum lot sizes to 1 acre with a minimum 125 feet of frontage. The Applicant could apply for a rezone to an A-2 (TDR-Receiving Site Overlay) Zone and go through the subdivision process with the Planning Commission and City Council. Thus, it is the opinion of Staff that this is also an economic problem.

(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

As stated under Subsection (2)(a) above, it is the opinion of Staff that there are not “special circumstances” attached to this property.

(ii) deprive the property of privileges granted to other properties in the same zone.

As stated under Subsection (2)(a) above, it is the opinion of Staff that there are not “special circumstances” attached to this property.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

It is the opinion of Staff that the Applicant has not proven “that all of the conditions justifying a variance have been met”.

(4) Variances run with the land.

Staff is recommending denial of the proposed variance, due to the other comments stated in this

analysis.

(5) The appeal authority may not grant a use variance.

The Applicant is proposing a frontage variance, not a use variance.

(6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:

(a) mitigate any harmful affects of the variance; or

Staff is recommending denial of the proposed variance, due to the other comments stated in this analysis.

(b) serve the purpose of the standard or requirement that is waived or modified.

Staff is recommending denial of the proposed variance, due to the other comments stated in this analysis.