



Public Works
Planning & Development Services Division
<http://www.utah.gov/pmn/index.html>

Board of Adjustment

Public Meeting Agenda

May 14, 2012

1:00 P.M.

REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE, PLEASE CALL 468-2120 OR 468-2351: TDD 468-3600.

The purpose of the Board of Adjustment Meeting is to allow the Board to hear applicant and public comment, as well as agency and staff recommendations, prior to making a decision on BOA applications filed with Salt Lake County.

The Board of Adjustment shall: act as an appeal authority for zoning decisions applying this title as provided in Section 19.92.050 and conditional use decisions by a planning commission; hear and decide the special exceptions to the terms of the zoning ordinance set forth in Section 19.92.060; hear and decide variances from the terms of the zoning ordinance; and, hear and decide applications for the expansion or modification of nonconforming uses.

Business Items – 1:00 P.M.

- 1) Welcome of Gary Sackett to the BOA
- 2) Election of Chair and Co-Chair for 2012
- 3) Adoption of Minutes from the August 10, 2011 Meeting
- 4) Adoption of Minutes from the December 14, 2011 Meeting
- 5) Recognition of Brian Jay Stone-Daly and Bob Frey for their dedication to the Salt Lake County Board of Adjustment during their respective years of service.
- 6) Other Business

Public Hearing Items – 1:30 P.M.

27679 – Grant Kessler – Request for an Area Variance to allow for a subdivision to contain a 15.36 acre lot in a FR-20 zone (Forestry and Recreation, 20 acre minimum lot size) – Address: 9361 S. North Little Cottonwood Road – Zone: FR-20 - Planner: Todd A. Draper

27821 – Susan Anderson – Request for a Special Exception for expansion of a non-complying building to add to the existing deck. The property is located at 4170 E. Emigration Canyon Road Zone: C-2 (ZC) – Commercial with Zoning Restrictions – Planner: David J. Gellner, AICP

Meeting Adjournment

Rules of Conduct for the Board of Adjustment Meeting

First: Applications will be introduced by a Staff Member.

Second: The applicant will be allowed up to 15 minutes to make their presentation.

Third: Person's in favor of the application will be invited to speak.

Fourth: Person's opposed to the application will be invited to speak.

Fifth: The applicant will be allowed 5 minutes to provide concluding statements.

- Speakers will be called to the podium by the Chairman.
- Because the meeting minutes are recorded it is important for each speaker to state their name and address prior to making any comments.
- All comments should be directed to the Board Members, not to the Staff or to members of the audience.
- For items where there are several people wishing to speak, the Chairman may impose a time limit, usually 2 minutes per person, or 5 minutes for a group spokesperson.
- After the hearing is closed, the discussion will be limited to the Board Members and the Staff.



STAFF REPORT

Executive Summary									
Hearing Body:	Board of Adjustment								
Meeting Date and Time:	Monday, May 14, 2012	01:00 PM	File No:	2	7	6	7	9	
Applicant Name:	Grant Kesler/ Irv Eastham	Request:	Variance						
Description:	Area Variance								
Location:	9361 S. North Little Cottonwood Canyon Road								
Zone:	FR-20 Forestry & Recreation	Any Zoning Conditions?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>			
Staff Recommendation:	Denial								
Planner:	Todd A. Draper								

1.0 BACKGROUND

1.1 Summary

In June of 2005, Irv Eastham, on behalf of the owners at that time brought a rezone application before the County Council requesting to rezone 3 acres of the subject property from the FR-20 zone to the FR-2.5 zone in order to allow for the construction of one home upon the subject property. That rezone request was ultimately denied by the County Council in November of that same year. L.C. Canyon partners, represented by Mr. Eastham then appealed this decision through the court system, ultimately resulting in a ruling by the Utah Supreme Court upholding the decision of the County Council.

In late December of 2005, Mr. Eastham separately submitted a request for an area variance to the Board of Adjustment to allow for the construction of a single home on the subject property. That request was denied by the Board of Adjustment in January of 2006 for failure to meet the five criteria required for a variance.

The applicants are returning to the County at this time to again pursue their options for development of the property. The request at this time is substantially identical to the previous request for an area variance to allow for a Single Family Dwelling to be built on the property. If approved the requested area variance would allow for a reduction from the minimum required 20 acres in the zone needed to develop a single lot, to allow for a single lot subdivision that contained only 15.359 acres.

1.2 Board of Adjustment Action

See attached information regarding previous BOA information and actions on related file # 22834.

1.3 Neighborhood Response

None received to date regarding this application

2.0 ANALYSIS

2.1 Applicable Ordinances

Section 19.92.040.B.1. of the Zoning Ordinance establishes five criteria to be used in evaluating requests for variances. The Board of Adjustment must find that all five of these criteria have been met before granting approval of a variance. Staff suggests the following analysis based upon a review of the five criteria:

Criteria Met		Variance Criteria and Evaluation
YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	<i>a. 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.</i>
		<p>Discussion: Section 19.92.040.B.2. of the Zoning Ordinance clarifies what is meant by “hardship” by stating that a hardship must be located on or associated with the property and is a result of circumstances peculiar to the property and not general to the neighborhood (or zone). Also in determining if a hardship is unreasonable the board may not find an unreasonable hardship exists if the hardship is self-imposed or economic.</p> <p>Staff has reviewed this request and believes that the hardship of having insufficient area to develop within the zone is not peculiar to this property and not general to the immediate neighborhood. The immediately adjacent 11.518 acre parcel of ground from which this parcel was divided also shares these same circumstances of having insufficient area to develop within the zone. These circumstances were created through the division of a larger parcel that was previously in compliance with zoning requirements (and would have allowed for the construction of only one single family home on the total 26.877 acre parcel) into the two currently existing parcels which was done in violation of County Subdivision and Zoning requirements at the time the division occurred.</p> <p>Staff further believes that the hardship is not unreasonable as it was self-imposed, in the current property owners and applicants purchased the subject property with full knowledge that this parcel did not meet the current zoning ordinance minimums necessary for development. Also the hardship could be construed as economic as the inability to develop the property represents a significant hindrance to the current property owners ability to realize a profit or return on their investment in the property.</p> <p>The applicants have provided several reasons why they believe that they meet the criteria for granting a variance, the document outlining these is attached in its entirety to this staff report. With regards to the question of literal enforcement of the ordinance the applicant has responded that, "<i>Literal enforcement of the conditions of FR-20 zoning would mean that the applicant could not build a home on its property even though there are approximately 2.5 acres that are otherwise perfectly developable. Any property in excess of 2.5 acres is not suitable for a home site whether it is a total of 20 acres, or for that matter, 100 acres. Whether the applicant owned 15.36 acres or 20 acres the amount of developable area would not change. The purpose of the ordinance would be met in either case. The purpose of the ordinance is not to preclude development but permit development and a literal interpretation of the ordinance would preclude rather than permit.</i>"</p> <p>Staff Summary: This criterion has not been met as the hardship complained of is self-imposed, has economic underpinnings, and arises out of circumstances that apply to other properties in the same zone and neighborhood, and are not otherwise peculiar to this property.</p>

<p>YES <input type="checkbox"/></p>	<p>NO <input checked="" type="checkbox"/></p>	<p><i>b. There are special circumstances attached to the property that do not generally apply to other properties in the same district.</i></p> <p>Discussion: As discussed above by staff, this parcel does not have special circumstances that are attached to the property that do not generally apply to other properties in the zoning district. The intent of the FR-20 zoning district is to significantly limit development in order to protect the natural and scenic resources of the area. The circumstances are identical those that are applicable to another piece of adjacent land which is also located in the same zoning district. The circumstances related to the requested area variance would also apply generally to any other property or parcels within the FR-20 zone, (or any other zoning district within the County for that matter) that lacked sufficient land area to develop as a result of a land division that was done in violation of County Subdivision and Zoning requirements.</p> <p>The applicant has provided the following responses relating to this criterion: <i>"Most of the properties zoned FR are in the forest or foothills or canyons. Water is sometimes scarce or non-existent and other utilities such as sewer may not be in place thus requiring large land areas for drainage fields and the like. Development in these area is meant to be limited because of the sensitivity these areas have to human impact.</i></p> <p><i>The subject property has about 2.5 acres that are clearly developable, have frontage and access to a state highway that runs in front of the property, have immediate access to sewer, water, and all utilities without the need for drain fields. It is directly across the street from an existing subdivision developed in 2006 by the same developer. ...</i></p> <p><i>No other property in the area suffers the hardship of this property. The special circumstance of this property will in no way affect the rights and privileges of other property owners in the area. Indeed the original intent of the ordinance permitting one dwelling unity per twenty acres can only be met by the granting of the requested variance. "</i></p> <p>Staff Summary: This criterion has not been met. Development in FR-20 zones is meant to be limited. The purpose of the zone is to permit development to the extent that such development is compatible with the protection of the natural and scenic resources of the area. Although the applicant is correct in stating that, due to its proximity to water, sewer and other utilities, the property may have advantages that render it more economically suitable for development, these advantages are are not specifically attached to the property and are not related to the property itself. Other properties in the zone have similar circumstances, most notably the immediately adjacent parcels.</p>
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<p>YES <input type="checkbox"/></p>	<p>NO <input checked="" type="checkbox"/></p>	<p><i>c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same district.</i></p> <p>Discussion: Under Utah State law, the term "same district " refers to other properties in the same zone. Each parcel of land in the FR-20 zone that was legally established in compliance with all laws applicable at the time of its creation is allowed the rights of development under the FR-20 zone, regardless of compliance with lot size and width requirements.</p> <p>Section 19.76.050 of County ordinance states: "The requirements of this title as to minimum lot area or lot width shall not be construed to prevent the use for a single-family dwelling of any lot or parcel of land, provided that such lot or parcel of land is located in a zone which permits single-family dwellings, and is a legally divided lot held in separate ownership at the time such requirements became effective for such lot or parcel of land."</p> <p>At the time the subject parcel was created through a land division that was in violation of applicable County Subdivision and Zoning requirements, the property right to construct a single-family home was otherwise forfeited by the property owner at that time.</p> <p>The applicant's response to this criterion is, <i>" Every other property owner having property in the Forestry Reserve has the right to build one dwelling unit on his property so long as the other building restrictions such as slope constraints are met. Most of the Forestry Reserve zoned property in the area is un-developable for reasons of access, utilities, and slope constraints. But to the extent that any of them have at least an acre within twenty acres that meets all the remaining requirements they have the right to develop a unit. The subject property has about 2.5 acres that are clearly developable and meet all requirements for slope, access utilities , and the like. But the present applicant will be unable to develop without a variance. Without the requested variance the applicant will be unable to enjoy the right to develop enjoyed by others even those those other may have less developable property and less desirable conditions for development such as access and utilities at the site."</i></p> <p>Staff Summary: Other similar properties and parcels in the FR zones that were also created in violation of Subdivision and Zoning regulations also do not possess the property right to build a single family dwelling, regardless of their physical proximity to utilities or accessibility. Therefore this criterion has not been met.</p> <p>Additionally, claims regarding the ability of this property to meet certain other requirements of the Foothills and Canyons Overlay Zone (FCOZ) and/or the underlying FR-20 zone have not been substantiated and are not germane to this criterion regarding property rights.</p>
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YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	<i>d. The variance will not substantially affect the general plan and will not be contrary to the public interest.</i>
		<p>Discussion: The general plan, although noting that there are severe soils constrains in the area that may be problematic for development, does specifically recommend the lower lying areas of this property and the adjacent parcel be used for residential development at densities that are more intense than the current FR-20 zone.</p> <p>The response of the applicant is as follows: <i>"The variance propose will not in any way affect the general plan which presently calls for low density residential development. Indeed the variance requested will allow the property owner and applicant to construct a single dwelling unit within 15.36 acres which is completely consistent with the general plan and reflective of the public interest."</i></p> <p>Staff Summary: Staff agrees that this criterion is met.</p>
YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	<i>e. The spirit of the zoning ordinance is observed and substantial justice done.</i>
		<p>Discussion: Granting of the variance would not be in the spirit of the zoning ordinance, in that the hardship was created through personal actions of a property owner (although an owner previous to the current owner) and is not a hardship arising out of the land itself. The action of that particular property owner had the effect of removing or relinquishing the property right to build a single family dwelling on either of the two parcels that were created as the division was not in compliance with all laws and ordinances at the time it was done.</p> <p>Granting of the variance would give a substantial property right to this owner that would not be possessed by the owner(s) of the adjacent parcel, for which identical circumstances exist. The spirit of the zoning ordinance is to limit development. If the variance were granted to this owner the adjacent owner would likely request the same based upon the precedent this variance would set. The effect would likely be variance requests for 2 homes rather than the 1 allotted to the original parcel that they were split from, thus increasing development, not limiting it. This would be an injustice as well to all applicants who have have been required to meet the requirements and development standards of the zone in order to develop their property, especially current owners within FR-20 zones who only posses the right to develop one single family home on their property. Allowing a property owner to assert control over property rights that were previously relinquish or abandoned is an injustice to the public at large that expects the rule of law to prevail.</p> <p>The applicant response is as follows: <i>" To grant the requested variance would enable the property owner and applicant to enjoy the benefit of the ordinance which benefit will otherwise be lost. The purpose and intent of the ordinance was to limit the number of dwelling units in sensitive Forest areas. The physical constrains of the property are self-limiting and one dwelling unit is certainly justified by the spirit of the ordinance since there would be only one whether there were twenty acres owned or not. Granting of the variance requested is required for justice to be done."</i></p>

(e. continued)

Summary: Staff believes that this criterion has not been met and that granting of the variance would not be in the spirit of the zoning ordinance and would be unjust to neighboring property owners. Indeed the property right to build a single family dwelling on either of the two related parcels was lost from the minute they were divided.

3.0 STAFF RECOMMENDATION

3.1 Staff recommends DENIAL of the proposed Variance.

3.2 Reasons for Recommendation

- 1) The hardship complained of has been self-imposed, and the five criteria necessary for granting a variance have not been met
- 2) Other less drastic options exist outside of the variance process that could potentially restore a property right to build upon this property. For example, re-applying for a zone change to the County Council or the acquisition and re-incorporation of the adjacent substandard parcel into a lot that complies with current zoning requirements.

4.0 PROJECT PHOTOS



Image 1 View to the Northwest along North Little Cottonwood Canyon Road



Image 2 View to the Southeast along North Little Cottonwood Canyon Road



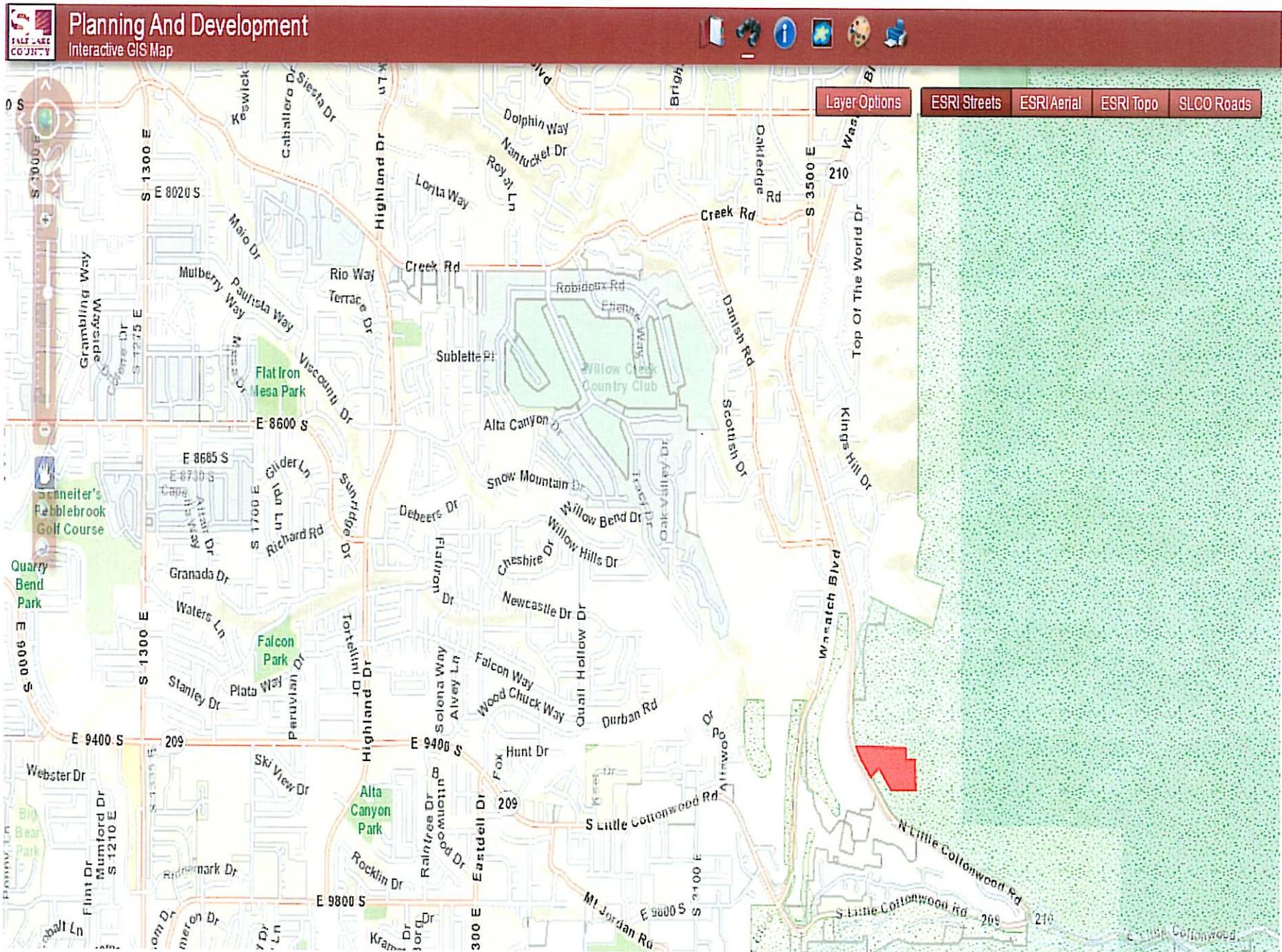
Image 3 Aproximate View of the subject property towards the Southeast. Note slope and soils.



Image 4 Approximate View of the property towards the North



Image 5 2005 View of the property from South Little Cottonwood Canyon Road.



ADDENDUM TO APPLICATION FOR VARIANCE

FACTUAL SUMMARY

Applicant consists of both the owner L.C. Canyon Partners, LLC.

The subject property is presently zoned FR-20 which permits one home per twenty acres.

Applicant requests a variance from the twenty acre requirement to 15.36 acres which is the amount of property owned by applicant.

There are approximately 2.5 acres of applicant's property that are developable under the current Foothill and Canyons Overlay Zone (FCOZ) requirements.

CRITERIA FOR VARIANCE AND SUPPORTIVE ARGUMENTS

1. 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 ordinance.

Literal enforcement of the conditions of FR-20 zoning would mean that applicant could not build a home on its property even though there are approximately 2.5 acres that are otherwise perfectly developable. Any property in excess of 2.5 acres is not suitable for a homesite whether it is a total of 20 acres or, for that matter, 100 acres.

County Ordinance 19.12.010 Purpose of Provisions, reads:

The purpose of the forestry and recreation zones is to **permit** the development of the foothill and canyon areas of the county for forestry, recreation, and other specified uses to the extent such development is compatible with the protection of the natural and scenic resources of these areas for the continued benefit of future generations. (Emphasis added)

County Ordinance 19.12.020 Permitted uses, reads in pertinent part:

...
H. Single-family dwellings.

...

Whether applicant owned 15.36 acres or 20 acres the amount of developable area would not change. The purpose of the ordinance will be met in either case. The purpose of the ordinance is not to preclude development but permit development and a literal interpretation of the ordinance would preclude rather than permit.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.

Most of the properties zoned FR are in the forest or foothills or canyons. Water is sometimes scarce or non-existent and other utilities such as sewer may not be in place thus requiring large land areas for drainage fields and the like. Development in these areas is meant to be limited because of the sensitivity these areas have to human impact.

The subject property has about 2.5 acres that are clearly developable, have frontage and access to a state highway that runs in front of the property, have immediate access to sewer, water, and all utilities without the need for drain fields. It is directly across the street from an existing subdivision developed in 2006 by the same developer.

The applicant's intention is to make this one lot and one home a practical part (if not legal part) of the subdivision across the street and require the same limitations on the type of home built, the architectural style employed, and virtually all of the same conditions, covenants, and restrictions required of homeowners across the street.

This is the one and only time that restrictions can be made to match the property across the street and integrate the style, quality, and architecture to match the subdivision being built.

No other property in the area suffers the hardship of this property. The special circumstances of this property will no way affect the rights and privileges of other property owners in the area. Indeed the original intent of the ordinance permitting one dwelling unit per twenty acres can **only** be met by the granting of the requested variance.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

Every other property owner having property in the Forestry Reserve has the right to build one dwelling unit on his property so long as the other building restrictions such as slope constraints are met. Most of the Forestry Reserve zoned property in the area is un-developable for reasons of access, utilities, and slope constraints. But to the extent that any of them have at least an acre within twenty acres that meets all the remaining requirements they have the right to develop a dwelling unit. The subject property has about 2.5 acres that are clearly developable and meet all requirements for slope, access, utilities, and the like. But the present applicant will be unable to develop without a variance. Without the requested variance the applicant will be unable to enjoy the right to develop enjoyed by others even though those others may have less developable property and less desirable conditions for development such as access and utilities at the site.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

The variance proposed will not in any way affect the general plan which presently calls for low density residential development. Indeed the variance requested will allow the property owner and applicant to construct a single dwelling unit within 15.36 acres which is completely consistent with the general plan and reflective of the public interest.

5. The spirit of the ordinance is observed and substantial justice is done.

To grant the requested variance would enable the property owner and applicant to enjoy the benefit of the ordinance which benefit will otherwise be lost. The purpose and intent of the ordinance was to limit the number of dwelling units in sensitive Forest areas. The physical constraints of the property are self-limiting and one dwelling unit is certainly justified by the spirit of the ordinance since there would be only one whether there were twenty acres owned or not. Granting of the variance requested is required for justice to be done.

Indeed, the Utah Supreme Court, in a case involving this property (L.C. Canyon Partners, L.L.C. vs. Salt Lake County (2011 Utah 63) has said that the action of Salt Lake County in reversing a zoning approval was not sufficient to cause the court to rule the zoning unconstitutionally arbitrary,

precisely because of the currently adopted regime which, "...allow aggrieved property owners to seek a variance from the application of general zoning rules from the Board of Adjustment."

Significantly, when discussing the prior action of the Board of Adjustment regarding this property, the court pointed out that L.C. Canyon had not appealed from the Board of Adjustment. The clear implication is that had there been such an appeal the ruling of the court would have been different.

TITLE HISTORY – ERMA E. DESPAIN PROPERTY

Date	Entry Number	Document Type	Grantor	Grantee	Comments
8/10/1978	3188794	Quit-Claim Deed	Erma E. Despain	Richard R. Despain, & Robert V. Despain, Co Trustees of the Erma E. Despain Revocable Trust	Parcel conveyed contained “26.88 acres, more or less” and was identified by Assessor’s Parcel Number (APN) 28-12-126-001 Property was Zoned A-1.
7/10/1980	Property rezoned from A-1 to FR-20				
6/6/83	Erma E. Despain passed away				
7/10/1986	4276420	Quit-Claim Deed	Richard Riego Despain & Robert Verne Despain, as trustees of the Erma E. Despain Revocable Trust	Lewis Gail Despain, Bruce Elbert Despain, Richard Riego Despain, and Michael John Despain as tenants in common	This deed divided APN 28-12-126-001 into two new parcels, 28-12-126-003 (15.36 acres) and 28-12-126-004 (11.57 acres). The property was zoned FR-20.
2/8/1996	6276521	Special Warranty Deed	Robert V. Despain	Rola V, Ltd. A Utah limited partnership	APN 28-12-126-004, 1/3 interested.
2/20/2001	7823413	Quit-Claim Deed	Kjerstie A. Olsen	Olson Family Limited Partnership	APN 28-12-126-004, 1/3 interested.
4/30/04	9049296	Affidavit	“Robert V. Despain and Richard R. Despain are surviving nephews and legal signers for the Erma E. Despain Estate. They are trustees for the Erma E. Despain Trust.”		
5/16/2006	9724792	Personal Representatives Deed	Estate of Lewis Gail Despain	Beverly Despain	Conveyed APN 28-12-126-003 as well as the proposed Granite Oaks Subdivision.
5/16/2006	9725619	Special Warranty Deed	The Despain Family Limited Partnership (Bruce E. Despain, Richard R. Despain, & Michael J. Despain)	L.C. Canyon Partners, LLC, a Utah Limited Liability Company	Conveyed APN 28-12-126-003 as well as the proposed Granite Oaks Subdivision.
5/16/2006	9725620	Special Warranty Deed	Beverly Despain	L.C. Canyon Partners, LLC, a Utah Limited Liability Company	Conveyed APN 28-12-126-003 as well as the proposed Granite Oaks Subdivision.
6/6/2006	9744860	Affidavit	N/A	N/A	Recorded by Gary H. Gurr. corrected the legal description of APN 28-12-126-003

APN 28-12-126-003: Current Owner - L.C. Canyon Partners, LLC

APN 28-12-126-004: Current Owner – Rola V, Ltd (1/3), David L. Despain (1/3), Olson Family Limited Partnership (1/3)

This copy of staff report from the previous application is provided for informational purposes only.

SALT LAKE COUNTY PLANNING & DEVELOPMENT SERVICES DIVISION STAFF REPORT

Hearing Body:	Board of Adjustment	Agenda Item: 2.1
Hearing Date:	January 19, 2006	File Number: 22834
Applicant	Irv Eastham representing Richard R. Despain, etal	
Location / Zone	9361 South North Little Cottonwood Canyon Road / FR-20 Zone	
Request:	The Applicant is requesting approval of a variance from the minimum lot area required in an FR-20 Zone. Reduction from 20 acres to 15.36 acres.	
Community Council	Granite Community Council	
Planner	Craig A. Hinckley, AICP	

INTRODUCTION.

The subject property has been in the Despain Family for several decades. It is located near the mouth of Little Cottonwood Canyon on the North side of North Little Cottonwood Canyon Road. Surrounding land uses include National Forest lands to the North and East (zoned FR-20), property owned by other members of the Despain Family to the South (zoned FR-20), and private property to the West/Southwest (zoned R-1-15 and R-1-43). The subject property is also located in the Foothills and Canyons Overlay Zone (FCOZ).

Section 19.92.040.C. of the Zoning Ordinance states that “the Applicant shall bear the burden of proving that all of the conditions justifying a variance have been met”. The Applicant has prepared a justification for the requested variance (“Addendum to Application for Variance”, attached) which will serve as the primary focus of the Staff analysis.

FINDINGS OF FACT

Section 19.92.040.B.1. of the Zoning Ordinances establishes five criteria to be used in evaluating requests for variances. The Board of Adjustment must find that all five of these criteria have been met before granting approval of a variance. Staff suggests the following findings based on these five criteria.

Criteria Met		VARIANCE CRITERIA AND FINDINGS OF FACT
Yes	No	
	X	<p><i>a. 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.</i></p> <p>Discussion: Section 19.92.040.B.2. of the Zoning Ordinance clarifies what is meant by “hardship” by stating that a hardship must be located on or associated with the property, is a result of circumstances peculiar to the property, and the hardship may not be either self-imposed or economic. The applicants have provided several reasons why they believe that there is a hardship associated with the property. Rather than debating all of these, Staff will focus on whether or not the alleged hardship is self-imposed.</p> <p>According to the Applicant’s statement, prior to obtaining the subject property it was owned by an aunt, Erma Despain, who owned it at the time it was rezoned to FR-20. The FR-20 zone requires a minimum lot size of 20 acres. The Applicants further state that Erma Despain was probably not aware of the need for subdivision approval and that she divided the property in order to distribute it equally among her nieces and nephews. Erma</p>

This copy of staff report from the previous application is provided for informational purposes only.

Criteria Met		VARIANCE CRITERIA AND FINDINGS OF FACT
Yes	No	
		<p>Despain subsequently passed away in approximately 1982.</p> <p>In order to determine if the subject property may have been in compliance with zoning standards in effect at the time it was created as well as to verify the timeline of events as outlined by the applicants, Staff has completed preliminary research relating to the subject property. This research establishes the following facts.</p> <p>On October 27, 1978, Erma Despain transferred two pieces of property by quit-claim deed to Richard R. Despain and Robert V. Despain who were co-trustees of the Erma E. Despain Revocable Trust (Book 4762, Pages 157 and 158, Record of Deeds, Salt Lake County Recorder’s Office). The property that is the subject of this application was part of one of those properties. At the time the property was transferred it was zoned FR-20 and was 26.88 acres in size.</p> <p>Erma Despain passed away in approximately 1982.</p> <p>The Zoning designation for the subject property in 1985 was FR-20. (Zoning Map of Salt Lake County, Utah, 1985)</p> <p>On July 10, 1986, Richard R. Despain and Robert V. Despain transferred, by quit-claim deed, part of the original property to Robert V. Despain, David L. Despain, and Kjerstie Ann Olsen (Book 5789, Pages 376 and 377, Record of Deeds, Salt Lake County Recorder’s Office). At the time the property was transferred it was still zoned FR-20 and the transfer of property resulted in two lots, one 11.518 acres in size and the other 15.359 acres in size. Richard R. Despain, etal, retained ownership of the 15.359 acre lot which is the subject of this application.</p> <p>Based on facts and documents listed above, it is Staff’s conclusion that the hardship claimed is self-imposed since the current owner of the property was one of those individuals who is responsible for improperly subdividing the original lot, which conformed to the zoning, and creating two lots that are less than the minimum size required by the standards of the FR-20 Zone.</p> <p>Finding: This criteria has not been met since the alleged hardship is self-imposed.</p>
	X	<p><i>b. There are special circumstances attached to the property that do not generally apply to other properties in the same district.</i></p> <p>Discussion: Section 19.92.040.B.3. of the Zoning Ordinance clarifies what is meant by “special circumstances” by stating that a special circumstance exists only if it relates to the hardship complained of <u>and</u> deprives the property of privileges granted to other property in the same district. Since the hardship complained of was self-imposed, a special circumstances does not exist in that regard. Other property owners in the same (FR-20) district are required to go through a subdivision process to create lots that are not less than 20 acres in size before development may occur. Permitting development of lot that is less than 20 acres in size would constitute a privilege to the Applicant that is not enjoyed by other properties in FR-20 Districts. Furthermore, it is not unusual for land in FR-20 Districts to have steep terrain and to have limited buildable area.</p>

This copy of staff report from the previous application is provided for informational purposes only.

Criteria Met		VARIANCE CRITERIA AND FINDINGS OF FACT
Yes	No	
		<p>Finding: There are no special circumstances attached to this property that do not generally apply to other properties in the same district.</p>
	X	<p>c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same district.</p> <p>Discussion: Other property owners in the same (FR-20) district are required to go through a subdivision process to create lots that are not less than 20 acres in size before development may occur. Permitting development of lot that is less than 20 acres in size would constitute a privilege enjoyed by the Applicant that is not possessed by other properties in FR-20 Districts.</p> <p>Finding: Granting the variance is not essential to the enjoyment of a substantial property right possessed by other properties in the same district.</p>
X		<p>d. The variance will not substantially affect the general plan and will not be contrary to the public interest.</p> <p>Discussion: The Granite Community Master Plan recommends that low density residential development occur in the vicinity of the subject property. Development of a lot that is ±15 acres in size would not be inconsistent with this recommendation.</p> <p>Finding: The variance will not substantially affect the general plan.</p>
	X	<p>e. The spirit of the zoning ordinance is observed and substantial justice done.</p> <p>Discussion: One of the purposes of the Zoning Ordinance is to provide consistent standards for the development of property in each zoning district. It is Staff’s understanding that the primary intent of the FR-20 Zone with FCOZ overlay is to protect the natural and scenic resources of Salt Lake County by requiring development of large lots which results in very low density which, in turn, minimizes negative impacts on the environment.</p> <p>Approving this variance as requested may be interpreted as doing an injustice to other property owners who have gone through the process of having a development reviewed and approved based on the requirements and development standards of the zone in which their property is located</p> <p>Finding: Approval of this variance would not be in keeping with the spirit of the zoning ordinance and may be interpreted as doing a substantial injustice to other property owners in the same district.</p>

In Staff’s opinion, a request for variance, in this case, is not the best solution for this situation. The better solution might be to apply for a change of zoning to a classification in which the lots in question would meet minimum standards and to then complete the FCOZ subdivision review process to establish legal, recorded, lots.

STAFF RECOMMENDATION.

Based on the findings of fact outlined above, Staff recommends denial of this application.



STAFF REPORT

Executive Summary									
Hearing Body:	Board of Adjustment								
Meeting Date and Time:	Monday, May 14, 2012	01:00 PM	File No:	2	7	8	2	1	
Applicant Name:	Santa Fe Properties LLC	Request:	Special Exception						
Description:	Non-conforming Use Change								
Location:	4170 E. Emigration Canyon Road ("old Santa Fe Restaurant")								
Zone:	C-2 Community Commercial	Any Zoning Conditions?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>			
Zoning Condition:	All uses are subject to the Conditional Use review and approval process.								
Planning Commission Rec:	Not Applicable								
Community Council Rec:	Not Applicable								
Staff Recommendation:	Approval with Conditions								
Planner:	David J. Gellner, AICP								

1.0 BACKGROUND

1.1 Summary

The applicant is requesting a Special Exception to add an additional deck area to expand the "old Santa Fe Restaurant" (a non-complying structure). The proposed deck expansion is 380 square feet and it is located within 100 feet of a perennial stream channel.

1.2 Hearing Body Action

The Salt Lake County Board of Adjustment makes decisions on Special Exception requests as authorized by Chapter 19.92 of the Salt Lake County Code of Ordinances.

1.3 Neighborhood Response

Notice of this request was mailed out to property owners within 300 feet of the subject property. It should be noted that in this case, property owners within 300 feet of this site are limited. They include Susan and Richard Anderson (owners of the subject property/Santa Fe LLC who also reside on a neighboring property), Erik and Tracy Nelson (owners of Ruth's Diner who share the parking for this property), the Kostopulos Dream Foundation (Camp K), Salt Lake City Corporation and a limited number of others. As of the date of this staff report, no neighboring property owners had expressed any concerns about this application and potential action.

2.0 ANALYSIS

2.1 Applicable Ordinances

Section 19.92.060 of the Zoning Ordinance allows the Board of Adjustment to approve any of the following special exceptions to the zoning ordinance where it determines the exception is consistent with the purposes of the zoning ordinance and will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the

vicinity:

A. Where a zone boundary line divides a lot in single ownership at the time of the passage of the ordinance codified in this title, the board may permit a use authorized on either portion of such lot to extend not more than fifty feet into the other portion of the lot.

B. The board may permit the enlargement of or addition to a noncomplying structure or a building or structure occupied by a nonconforming use.

C. The board may permit the relocation on a lot of a noncomplying structure or a building or structure occupied by a nonconforming use; or the board may permit the reconstruction on a lot of a noncomplying structure or a building occupied by a nonconforming use.

The applicable provision of the Zoning Ordinance in this case is Section 19.92.060.B. This request is related to a noncomplying structure.

2.2 Exception Request

The applicant is requesting a Special Exception to add an additional 380 square foot deck area on the front (West side) of the existing structure in order to make it more usable for their future plans to open a restaurant/coffee shop/reception center in this building.

The building on this site was originally constructed for use as a restaurant (the Santa Fe) but it has been vacant for quite some time. Current FCOZ regulations require a 100 foot setback from any perennial stream channel. At the time this building was constructed, those regulations had not been adopted. The existing building is now considered "noncomplying" as it sits within 100 feet of Emigration Creek, a perennial stream channel. The stream channel in fact passes under part of the building and the stream channel itself has been improved and stabilized over the years to address possible flooding issues and improve aesthetics. Given the location of the building, a Special Exception through the Board of Adjustment is needed for any expansion or change to this existing noncomplying building. Any expansion to the building is difficult given this stream proximity in the front and steep hillside terrain immediately behind this structure. The proposed deck expansion will not required footings to be sunk into the creek and will be cantilevered off the existing building.

2.3 Other Agency Recommendations or Requirements

Staff has consulted with other agencies that could be involved with such a request within the Foothills and Canyons Overlay Zone such as the Salt Lake City Department of Public Utilities and the Salt Lake Valley Health Department. This property is outside of protected SLCPU watershed boundaries and is not within their oversight area. The SLVHD did not oppose the deck expansion and identified no concerns with this expansion. Therefore, the issues relate largely to the Building Code and the deck being engineered and constructed in a way that would be safe for users. These items will be reviewed and monitored as part of the Building Permit application and in compliance with all applicable Building and Fire Code provisions.

3.0 STAFF RECOMMENDATION

3.1 Staff recommends APPROVAL of the proposed Special Exception with the following conditions:

- 1) A Salt Lake County Building Permit is required for installation of the deck before construction can begin.
- 2) The applicant must comply with all requirements of the Building Permit and Building Department and any applicable codes to ensure that new construction will not create health, building or safety code violations to the main building or to surrounding properties.

3.2 Reasons for Recommendation

- 1) The building is existing and has been located at this site, within the stream setback since it was originally constructed. The proposed deck will be constructed in a way that will not require footings to be sunk into the creek. This small addition to an already existing building in order to make it more usable for the owners will have a negligible impact on the creek.
- 2) The request is consistent with the purposes of the zoning ordinance.
- 3) The proposed expansion will not be detrimental to property or improvements in the vicinity.
- 4) Appropriate engineering and construction will be required in order to protect the health, safety and general welfare of persons residing or working in the vicinity.

4.0 PROJECT PHOTOS



Image 1 :Building Entrance - faces west



Image 2 :Looking toward SW corner



Image 3 :SW side where deck is proposed.



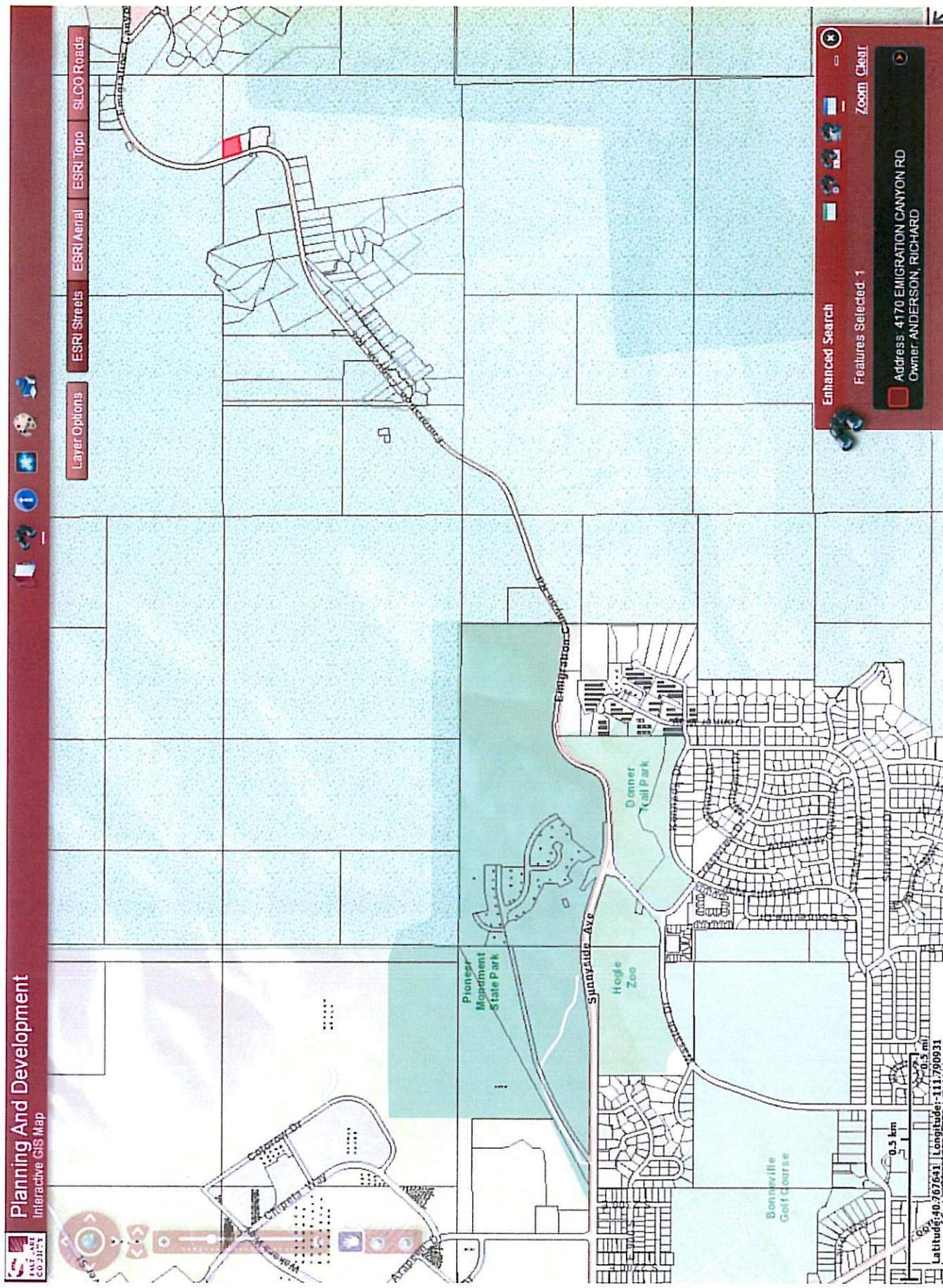
Image 4 :Existing NW lower deck by creek.



Image 5 :Stair to upper deck in creek setback



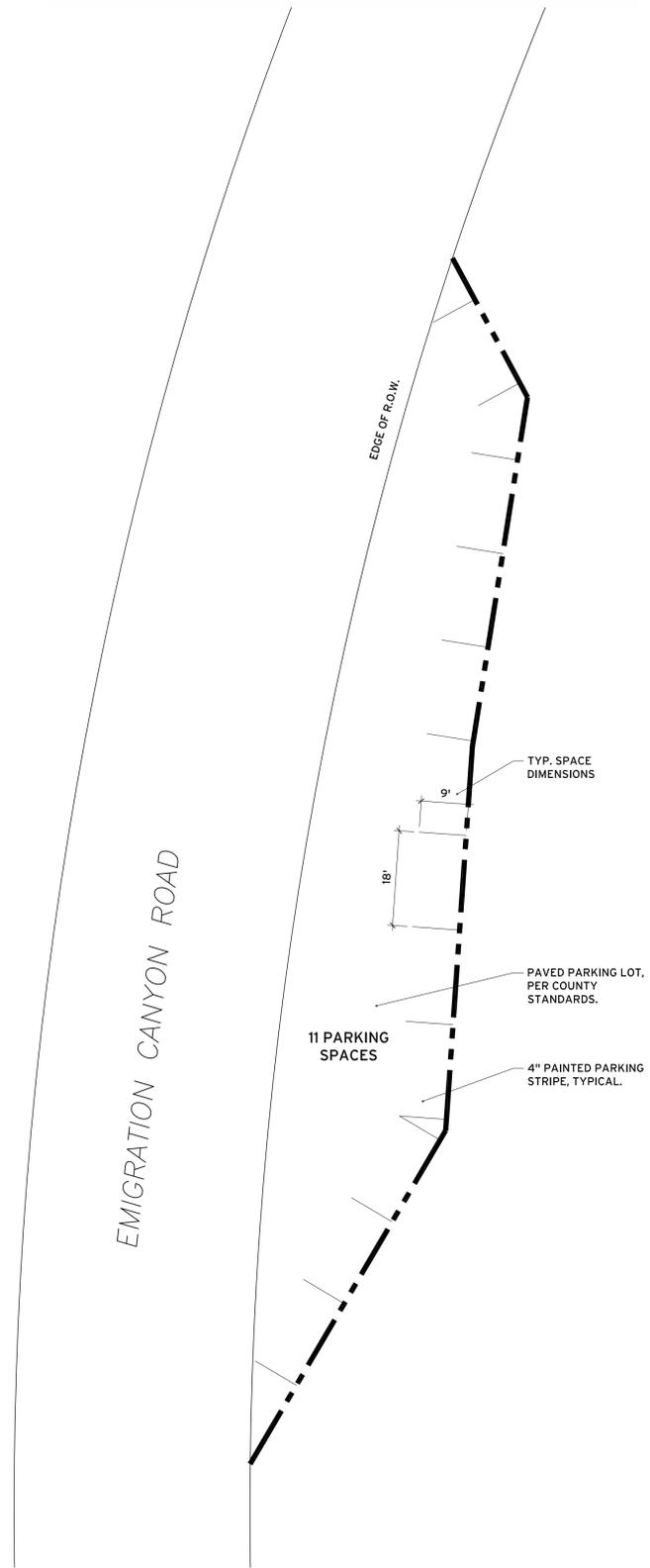
Image 6 :Facing South toward Ruth's Diner



North Parcel: *Gravel Lot*

Beginning at a point of the East right of way line of Emigration Canyon Road, and on the West bank of Emigration Creek, said point being North 381.68 feet and West 1041.35 feet from the East Quarter Corner of Section 1, Township 1 South, Range 1 East, Salt Lake Base and Meridian, said point is also on a 786.02 foot radius curve to the right whose radius point bears South 89°06'16" East and running thence, Northeasterly along said East right-of-way line and arc of said curve 227.68 feet and thru a central angle of 16°35'46"; thence South 28°45'14" East 29.99 feet to a point on the West bank of Emigration Creek; thence South 09°02'52" West said bank 67.20 feet; thence South 04°01'27" West along said bank 72.98 feet; thence South 30°52'32" West 68.17 feet to the point of beginning.

Contains 0.117 acres



SEE ENLARGED SHARED PARKING AREA



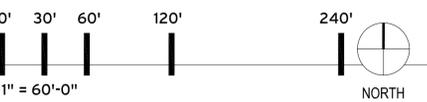
1 04.18.2012 COUNTY COMMENTS REVISIONS

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DATE: APRIL 17, 2012
 ISSUE: PERMIT
 PROJECT: 2011-55
 DESIGNED BY: hh
 DRAWN BY: STAFF
 REVIEWED BY: hh

building renovation

EMIGRATION GALLERIES
 4170 EMIGRATION CANYONS ROAD
 SALT LAKE CITY, UTAH 84108

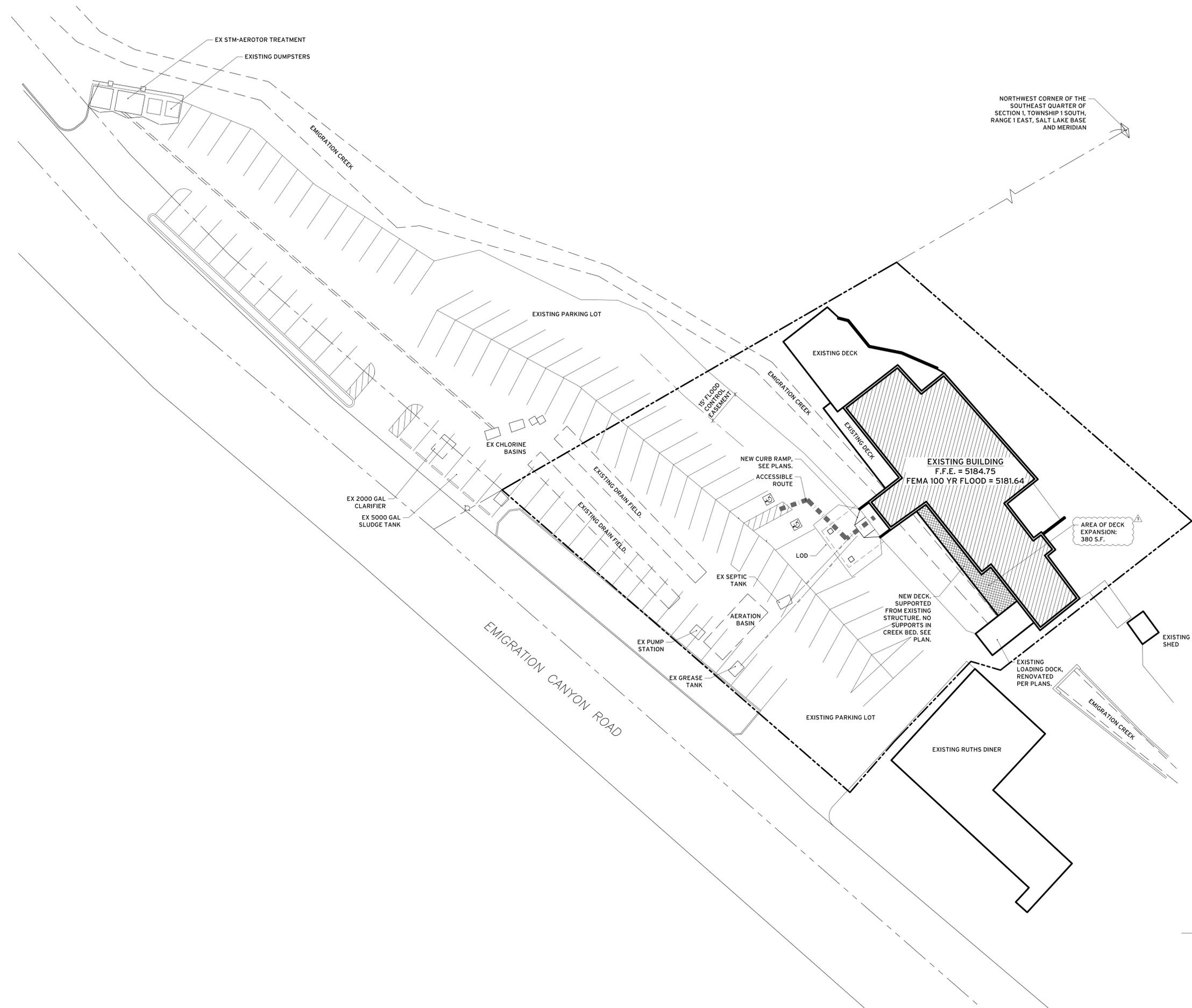


PARKING PLAN **A000**

C:\01 hoffman architects\projects\1155 Emigration Renovation\drawings\1155 A000.dwg | plot date: April 18 2012

enlarged shared parking area
 SCALE: 1/4" = 1'-0"

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DEED DESCRIPTIONS:

PARCEL 1, ID NO: 16-01-427-001
 BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF EMIGRATION CANYON ROAD, SAID POINT BEING WEST 960.32 FEET FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE, SOUTH 18°38'30" EAST ALONG SAID EASTERLY RIGHT-OF-WAY LINE 202.08 FEET; THENCE NORTH 80°02'00" EAST 31.21 FEET; THENCE NORTH 72°40'09" EAST 47.52 FEET; THENCE SOUTH 52°47'21" EAST 8.30 FEET; THENCE NORTH 81°44'16" EAST 108.26 FEET; THENCE NORTH 18°38'30" WEST 170.33 FEET; THENCE WEST 200.00 FEET TO THE POINT OF BEGINNING. CONTAINS: 0.803 AC.

site statistics :

PROPERTY AREA: 34,981 S.F.
 EXISTING BUILDING AREA: 6,657 S.F.
 BUILDING AREA INCREASE: 0.0 S.F.
 EXISTING PARKING: 95 SPACES*

SEE PARKING PLAN FOR OFFSITE PARKING PLAN.

OVERLAY ZONE: FCOZ
 LIMITS OF DISTURBANCE: 500 S.F.

general notes :

- A. SITE PLAN, AND BUILDING ARE EXISTING TO REMAIN. IMPROVEMENTS OUTSIDE OF THE BUILDING FOOTPRINT ARE LIMITED TO A NEW CURB RAMP AT THE MAIN ENTRY, AND A NEW DECK SUPPORTED FROM THE EXISTING STRUCTURE TO CONNECT TO THE EXISTING LOADING DOCK.
- B. SEE ARCHITECTURAL AND STRUCTURAL PLANS FOR RENOVATION DETAILS AND STRUCTURAL DECK DETAILS.
- C. VERIFY ALL CONDITIONS PRIOR TO WORK, NOTIFY THE ARCHITECT OF ANY DISCREPANCIES.
- D. SEE OWNER'S PARKING PLAN AND OPERATIONAL PLAN FOR ADDITIONAL INFORMATION.
- E. ALL UTILITIES TO THE BUILDING ARE EXISTING.
- F. SITE DRAINAGE IS EXISTING. MAINTAIN POSITIVE DRAINAGE AWAY FROM BUILDING.
- G. SEPTIC SYSTEM INFORMATION IS EXISTING, PROVIDED BY OWNER.

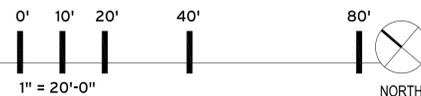
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building renovation

EMIGRATION GALLERIES
 4170 EMIGRATION CANYONS ROAD
 SALT LAKE CITY, UTAH 84108

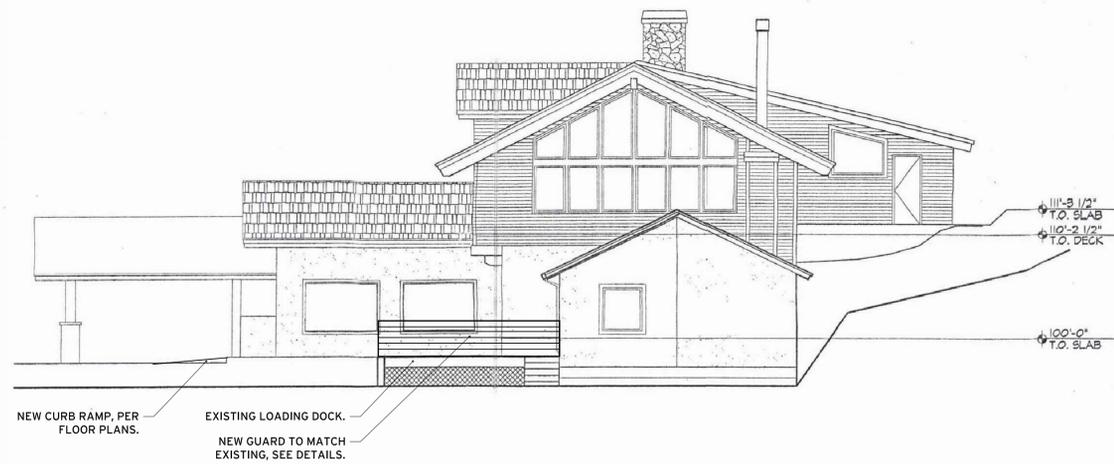
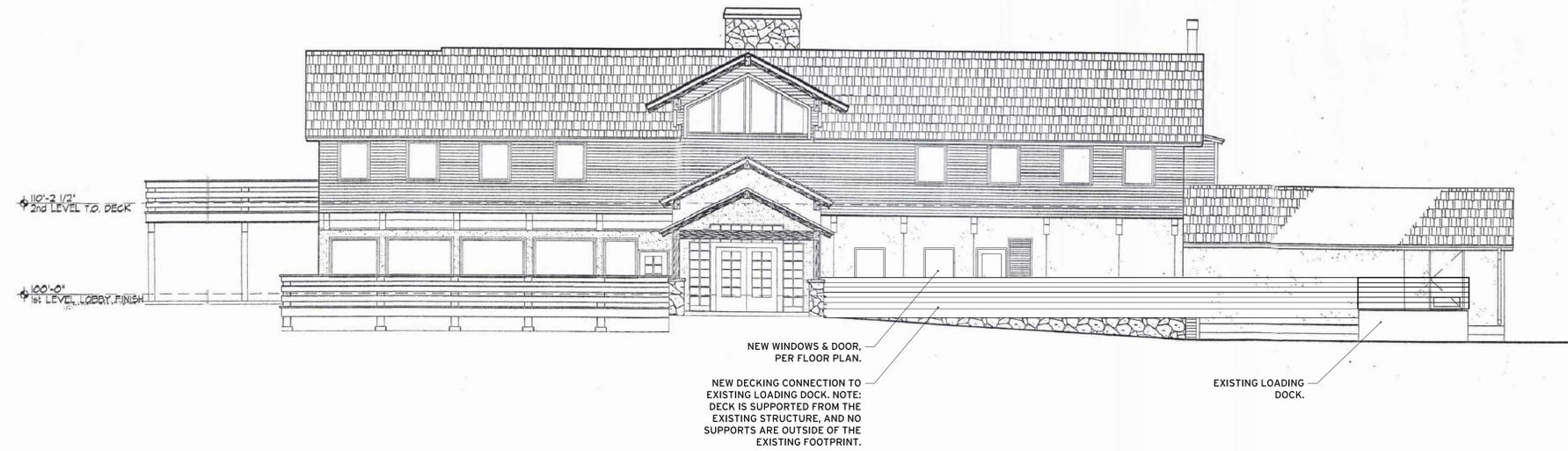


SITE PLAN

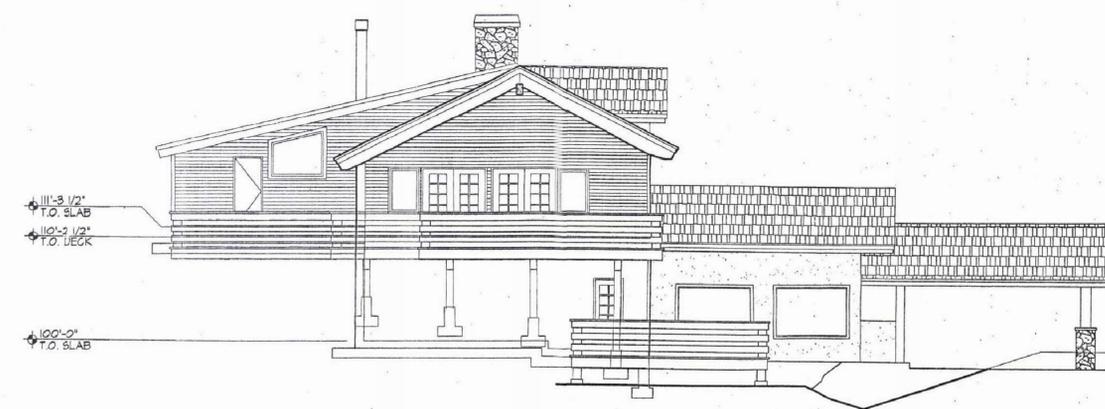
A001

general notes:

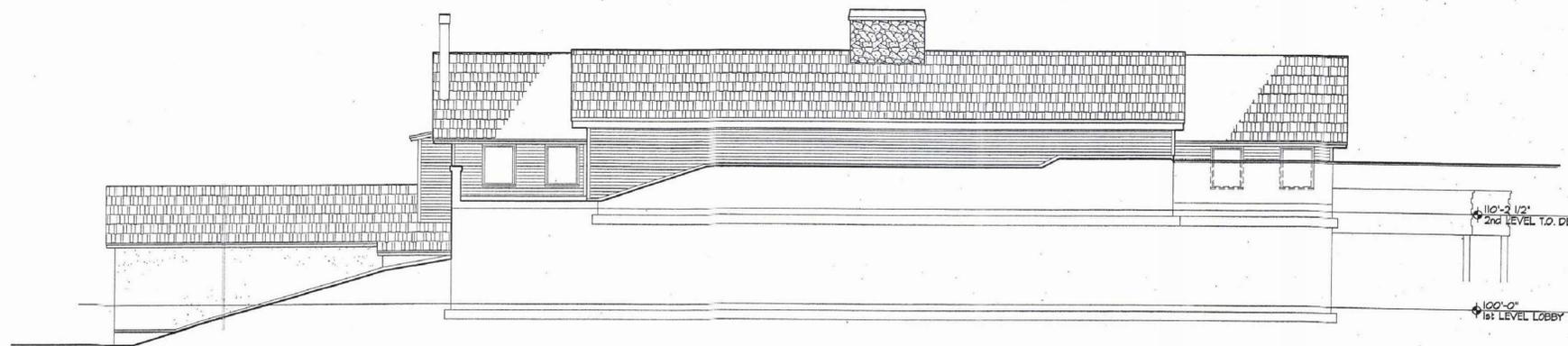
- A. EXISTING ELEVATION DRAWINGS PROVIDED BY BUILDING OWNER.
EXISTING BUILDING DRAWINGS BY GARY HUNT, ARCHITECT PC.



EXISTING SOUTH ELEVATION



EXISTING NORTH ELEVATION



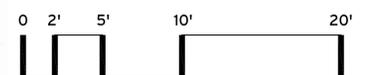
EXISTING EAST ELEVATION

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building renovation

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EXISTING ELEVATIONS **A201**

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