

**Bountiful City
Planning Commission Minutes
December 4, 2018
6:30 P.M.**

Present: Chair – Sean Monson; Planning Commission Members – Jesse Bell, Tom Smith and Sharon Spratley; City Council Representation – Richard Higginson; City Planner – Chad Wilkinson; City Engineer – Lloyd Cheney; City Attorney – Clint Drake; Asst. Planner – Curtis Poole; and Recording Secretary – Darlene Baetz

Excused: Vice Chair – Von Hill and Planning Commission Member – Jim Clark

1. Welcome and Introductions.

Chair Monson opened the meeting at 6:31 pm and welcomed all those present.

2. Approval of the minutes for November 20, 2018.

Tom Smith made a motion to approve the minutes for November 20, 2018 with the three corrections as noted. Correction 1 on Page 2 Paragraph 8 “Mr. Bell discussed the possibility of extra windows *on all floors.*” Correction 2 on Page 3, Line 1 “...code for the *windows on* the ground floor...” Correction 3 on Page 3, paragraph 6 “Sharon Spratley made a motion that the Planning Commission *approved* the Conditional...”

Sharon Spratley seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Monson, Spratley and Smith voting aye.

3. Consider preliminary subdivision approval for Seifert Subdivision located at 3332 South 725 West, Roger Seifert, applicant.

Roger Seifert was present. Lloyd Cheney presented the staff report.

Mr. Roger Seifert is requesting preliminary approval of the Seifert Subdivision. This three lot subdivision proposes to include the existing single family home at 3332 S 725 W and the vacant parcel at the end of the street into a three lot subdivision. It is proposed that a new cul-de-sac be created in the existing vacant parcel, resulting in a new lot on the east and west sides of the cul-de-sac. The existing vacant parcel slopes from east to west at approximately 5% on the north property line and increases to approximately 20 % towards the south-east corner of the parcel which abuts the Jenkins property. The existing parcels are located in the R-4 zone and combine to form a 1.384 acre parcel from which three lots will be created. The proposed area of each lot is more than twice the 8,000 sq.ft. minimum lot size requirement for this zone. Lot 1, which will include the existing home on the west side of 725 West, will have 90 ft. of frontage. Lots 2 and 3 will have widths of 109 ft. and 112 ft. respectively (measured at the 25 ft. setback).

Utilities are already serving the four lots which front onto 725 West, north of the proposed subdivision. A South Davis Water District 6” culinary water main is located behind the west curb. This line will need to be extended approximately 145 feet to the south side of the cul-de-sac and have a fire hydrant installed at the termination of the line. An existing 8” sewer main extends to the south through the property, so the installation of 2 new sewer laterals to serve the lots which front the cul-de-

sac are all that is necessary to provide sewer service. Overhead power lines are located on the south side of the vacant parcel.

The street improvements as proposed deviate slightly from the standard right of way requirements because of the limited north-to-south dimension of the vacant parcel and the width of the adjacent parcel 3333 S 725 W. Because of these conditions, the cul-de-sac is proposed with a 50 ft. radius (measured at the property line). Since there is no sidewalk on 725 W, sidewalk is not proposed to be installed at this time, however, the 8 ft. separation between the curb and gutter and the proposed property line would accommodate a 4 ft. wide park strip and a 4 ft. wide sidewalk.

It should be noted that the extension of the culinary water line as shown will require that the existing curb and gutter on the west side of 725 W be removed and replaced. A 3 ft wide asphalt patch will be required in the existing pavement.

Recommend preliminary approval of the Seifert Subdivision with the following conditions:

1. Provide a current title report.
2. Make all necessary red line corrections.
3. Pay all required fees (Storm Water Impact Fee).

Richard Higginson made a motion that the Planning Commission forward to the City Council a recommendation of approval for a preliminary subdivision approval for Seifert Subdivision located at 3332 South 725 West with the three conditions outlined by staff. Sharon Spratley seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Monson, Smith, and Spratley voting aye.

4. PUBLIC HEARING - Consider approval of a variance to section 14-6-109 of the Bountiful City Land Use Ordinance to allow for the required landscaping in the parkstrip and the required 10 foot landscape buffer along the street frontage to be removed and replaced with asphalt at Antion Auto located at 633 S 500 West, Stephen Sandberg representing Antion Auto, applicant.

Stephen Sandberg was present. Curtis Poole presented the staff report.

The applicant, Durbano Law Firm, is requesting a variance to allow for the standards of section 14-6-109 of the Bountiful City Land Use Ordinance to allow for the required landscaping in the parkstrip and the required 10 foot landscape buffer along the street frontage to be removed and replaced with asphalt. The purpose of the variance is to allow the applicant additional room for cars to be displayed. The property is located in the C-H zone.

On May 25, 2018, the City received a code enforcement complaint explaining the applicant had removed the parkstrip and landscaping buffer of their property and replaced it with asphalt. Case #76-2018 was opened and notifications were sent on June 7 and 19, 2018. After no response from the applicant a final certified letter was mailed on July 12, 2018. On July 25, 2018, Jake Fordham, the City Prosecutor, and Curtis Poole met with Stephen Sandberg, attorney with the Durbano Law Firm, on-site to discuss the violation and what was needed to bring the property into compliance.

Mr. Sandberg agreed to submit a landscaping plan to be approved by the Planning Department by August 20, 2018. On August 20, 2018, Mr. Sandberg requested additional time to submit the landscaping plan, and a new deadline of August 31, 2018 was given. Mr. Sandberg emailed on August

31, 2018 indicating the applicant would be considering other options.

The applicant's property is in the C-H zone and the existing business, Antion Auto, has been operating from this location since 2012. City Code 14-6-109 requires there shall be a 10 foot wide landscape buffer installed along all frontage areas except for drive approaches. It further states landscaping shall be installed in all parkstrips, and prohibits any non-vegetative material in the parkstrip. This part of the City Code has been in force since it was adopted in 1982. Aerial photos show that through at least June of 2017 the applicant was meeting the landscape area requirement for the setback buffer and the parkstrip. Landscaping was required as a part of the original approval of the site in 1988 and removal of the landscaping makes the site noncompliant with the original approval. It appears from aerial photos the landscaping on site has been slowly allowed to deteriorate up and until the landscaping was removed sometime after June 2017. City Code requires continuous maintenance of landscape areas in accordance with approved plans.

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: City records show the landscaping of the property was originally installed in 1988. Since then property owners have continued to maintain the landscaping until at least June of 2017. The landscaping was removed voluntarily by the applicant to increase their vehicle inventory and parking. State Law 10-9a-702 § (b) states "the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic." The fact the applicant removed the landscaping voluntarily should be considered a self-imposed event. Also, any potential economic impact alleged by the applicant cannot be considered an unreasonable hardship by State Law.

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

Staff Response: The applicant's property is located in the C-H zone. It is a middle lot with frontage on 500 West. The City Code adopted in 1982 required all new commercial developments in the zone to submit a landscaping plan as part of their site development plan. If other properties involving auto-sales or similar businesses were to develop in the C-H zone they would be required to keep and maintain the current landscaping required by the ordinance. There are no unique circumstances which would allow this property to be considered for a variance to the landscaping ordinance.

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

Staff Response: All commercial development which occurred after the 1982 Code was adopted have been required to install and maintain landscaping according to this ordinance. Within the C-H zone the properties which were developed prior to the adoption of the 1982 Code were not required to meet the landscaping code and are considered legal non-conforming, as in the case of properties such as Bountiful Bowl, Flower Patch, and Robintino's. As these legal non-conforming properties have been developed, they have been and will be required to meet the current landscaping requirements, as in the case of the current Culver's and Stout business developments as well as the recent development of the Fordham Commercial Park. There are also circumstances where a property was forced to remove their

landscaping by UDOT as expansions to the intersection of 500 West and 500 South occurred, as in the case of Walgreen's, McDonald's, Sherwin Williams and KFC. These properties are now considered legal non-conforming. If these properties were to redevelop in the future they would be required to meet the current landscaping code. Properties which have removed their landscaping voluntarily and do not comply with the current landscaping code have been and will be subject to code enforcement proceedings.

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

Staff Response: As the property is located in the high traffic corridor of 500 West, it is a very visible part of the city and maintaining the landscaping code is a public interest.

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

Staff Response: Granting a variance would be contrary to the spirit of the land use ordinance. Landscaping required by ordinance serves as an aesthetic benefit to the City and also provides valuable pervious space to assist in capture of storm water runoff. Granting the variance to the landscaping ordinance is not in keeping with the spirit of the ordinance.

Staff recommends denial of the requested variance to allow for the landscaping in the parkstrip and setback buffer to be removed and replaced with non-vegetative material. Landscaping shall be restored in order to comply with the originally approved landscape plan for the property.

Chair Monson opened and closed the **PUBLIC HEARING** at 6:50 p.m. without comment.

Mr. Sandberg asked about the code enforcement process the City has for properties that are in violation. He also disagreed with the comments given in the staff report about the substantial impact to the aesthetics in this zone.

Mr. Wilkinson stated that the City has limited staff and that staff are not able to drive around the city conducting proactive enforcement. The City receives complaints from City citizens and also will enforce the code when a request for building permit is received at the City office.

There was discussion about the reduction of inventory if the landscape was restored. Commission members commented that there is strict criteria that needs to be met for variances to be approved and noted that this property did not have anything unique about it and that the commission cannot consider financial hardship.

Sharon Spratley made a motion to deny the variance to section 14-6-109 of the Bountiful City Land Use Ordinance to allow for the required landscaping in the parkstrip and the required 10 foot landscape buffer along the street frontage to be removed and replaced with asphalt at Antion Auto located at 633 S 500 West. Richard Higginson seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Monson, Smith and Spratley voting aye.

Mr. Wilkinson stated the appeal process. Bountiful City Land Use Ordinance section 14-2-108 states 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 the decision to the Appeal Authority. No other appeals may be made to the Appeal Authority.

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

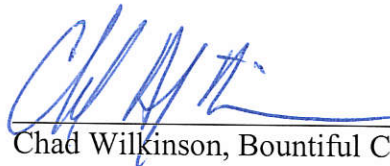
5. Consider approval of a Conditional Use Permit letter in written form for a 6-unit multi-family development located at 55 W 400 South, Brian Knowlton, applicant.

Sharon Spratley made a motion to approve the Conditional Use Permit letter in written form for a 6-unit multi-family development located at 55 W 400 South as written. Jesse Bell seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Monson, Smith and Spratley voting aye.

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

1. Next Planning Commission meeting will be December 18, 2018 and will include a subdivision review and Variance.
2. Election of Planning Commission Chairman and Vice Chairman for 2019 will be on the agenda in January 2019.

Chair Monson ascertained there were no other items to discuss. The meeting was adjourned at 6:59 p.m.


Chad Wilkinson, Bountiful City Planner