



Board of Adjustment Variance Staff Report Hearing Date: Nov. 19, 2020

ITEM 3 Ben Kjar requests rear yard and lot width variances for two lots located at 1590 N Jordan Ave. Grandview North neighborhood. Robert Mills (801) 852-6407
rmills@provo.org PLVAR20200382

Applicant: Ben Kjar

Staff Coordinator: Robert Mills

Property Owner: Primo Luxury Investments LLC

Parcel ID#: 19:064:0019

Acreage: 0.54 acres

Number of Properties: 1

Number of Lots: 2

ALTERNATIVE ACTIONS

1. **Deny** the requested appeal. *This action would not be consistent with the recommendations of the Staff Report. The Board of Adjustment should state new findings.*
2. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is December 17, 5:00 P.M.*

Current Legal Use: Single-family detached dwelling

Relevant History: A building permit for the original building was approved in November 1956 and several building permits for subsequent remodels and additions have been approved. Additionally, there are several enforcement case records, including some current ones. County records indicate the lots were created in 1980; although there is no formal subdivision record. There is a 20-foot access easement over the adjacent property in favor of the "Lane Property" which provides frontage along Jordan Avenue.

Neighborhood Issues: No neighborhood concerns have been raised.

Summary of Key Issues: The applicant would like to create two legal lots that conform to the required lot area of the zone. In order to do that, the applicant is requesting a variance to the lot width and frontage requirements of the zone.

Staff Recommendation: Staff recommends the Board of Adjustment approve the requested variance with the condition that the applicant submit a subdivision application with the Development Services Department.

OVERVIEW

The applicant owns the subject property in the Grandview Neighborhood. The property is approximately 23,522 square feet in size; well in excess of required 20,000 square feet of lot area for two lots in the R1.10 Zone. However, the lots are extremely irregular in size and shape. The applicant wishes to revise the lot boundaries to create two conforming

lots as to lot area, but is requesting a variance to the lot width and frontage requirements of the zone. Creating the two conforming lots will allow the construction of an additional dwelling on the property which fronts Columbia Lane. This lot also has a dedicated 20-foot easement to Jordan Avenue, which will be used for access for the proposed future dwelling.

RELEVANT HISTORY

A building permit for the existing dwelling was approved in November 1956 and conforms to the requirements of the zone. It appears that sometime after 1980 the property was split into two lots even though the lots do not conform to the lot standards of the R1.10 zone as to lot width and lot area.

In April of 2005, a 20-foot easement was granted over the “Melton Property” in favor of the “Lane Property” in order to provide access to Jordan Avenue for the “Lane Property” lot that has frontage along Columbia Lane.

FINDINGS OF FACT

- The subject consists of two separate, but non-conforming lots.
- The total lot area for the two lots is approximately 23,522 square feet.
- The lots are in the R1.10 Zone which requires a minimum of 10,000 square feet of lot area.
- The lots do not comply with the zone requirements for lot width or frontage.
- There is a 20-foot easement in favor of the “Lane Property” over the “Melton Property” which provides access to Jordan Avenue.
- The applicant has submitted plans and drawings showing an additional dwelling could reasonably be constructed on the property.

ANALYSIS

1. Section 14.05.030(9), Variances, paragraph (b) of the Provo Municipal Code states that the Board of Adjustment may grant variances if the following criteria are met:

- (i) Literal enforcement of this Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Title;

Literal enforcement of the Title could cause unreasonable hardship because the applicant clearly has a property that has sufficient size to be divided into two separate lots. The applicant has provided documentation showing that an additional dwelling could be constructed that complies with

the zone standards relating to setbacks; however, the lot would not comply with the zone requirements relating to lot width and lot frontage. The allowance of an additional lot for a dwelling would actually help with the City's goal to provide additional housing opportunities.

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

The property is very irregular in size and shape. Additionally, there are topographical concerns with the slope that would make it difficult to access the lot from Columbia Lane. The property also has an access easement to allow access to Jordan Avenue. These specific circumstances are not generally typical of other properties and help justify the need for a variance.

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

Granting the variance will allow an additional dwelling on a property that has more than sufficient lot area to accommodate two dwellings.

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

This variance would not substantially affect the general plan, rather the variance would allow for another dwelling which supports the general plan goal to provide additional single-family housing opportunities. Additional housing can support neighborhood stability. Furthermore, the property has been cited several times over the years for various violations relating to junk and weeds. These actions can be detrimental to surrounding properties. Development of the property with another dwelling will help to advance the public interest and beautify the neighborhood.

- (v) The spirit of this Title is observed and substantial justice done.

Approving the requested variance is not required to observe the spirit of this Title; however, it provides a convenient way to allow the additional lot to conform to the zoning requirements and make way for an additional dwelling unit. Granting the variance would serve justice well at the expense of no one.

CONCLUSIONS

This variance request does meet the criteria established by Section 14.05.030(9) needed in order to justify granting a variance. There are irregularities in lot size, lot shape, and topography that prevent the applicant from the full use of the property. Additionally, approving the variance would allow an additional single-family dwelling in the neighborhood and will contribute to the public interest.

For the reasons noted above, Staff recommends the Board of Adjustment approve the subject variance request with the condition that the applicant submit a subdivision application to the Development Services Division in order to formally recognize the lot.

JUDICIAL APPEAL OF BOARD OF ADJUSTMENT ACTION

Chapter 14.05 provides a process for appeal of a determination by the Board of Adjustment (quoted in part):

04.05.050. Judicial Appeal.

- (i) Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder.

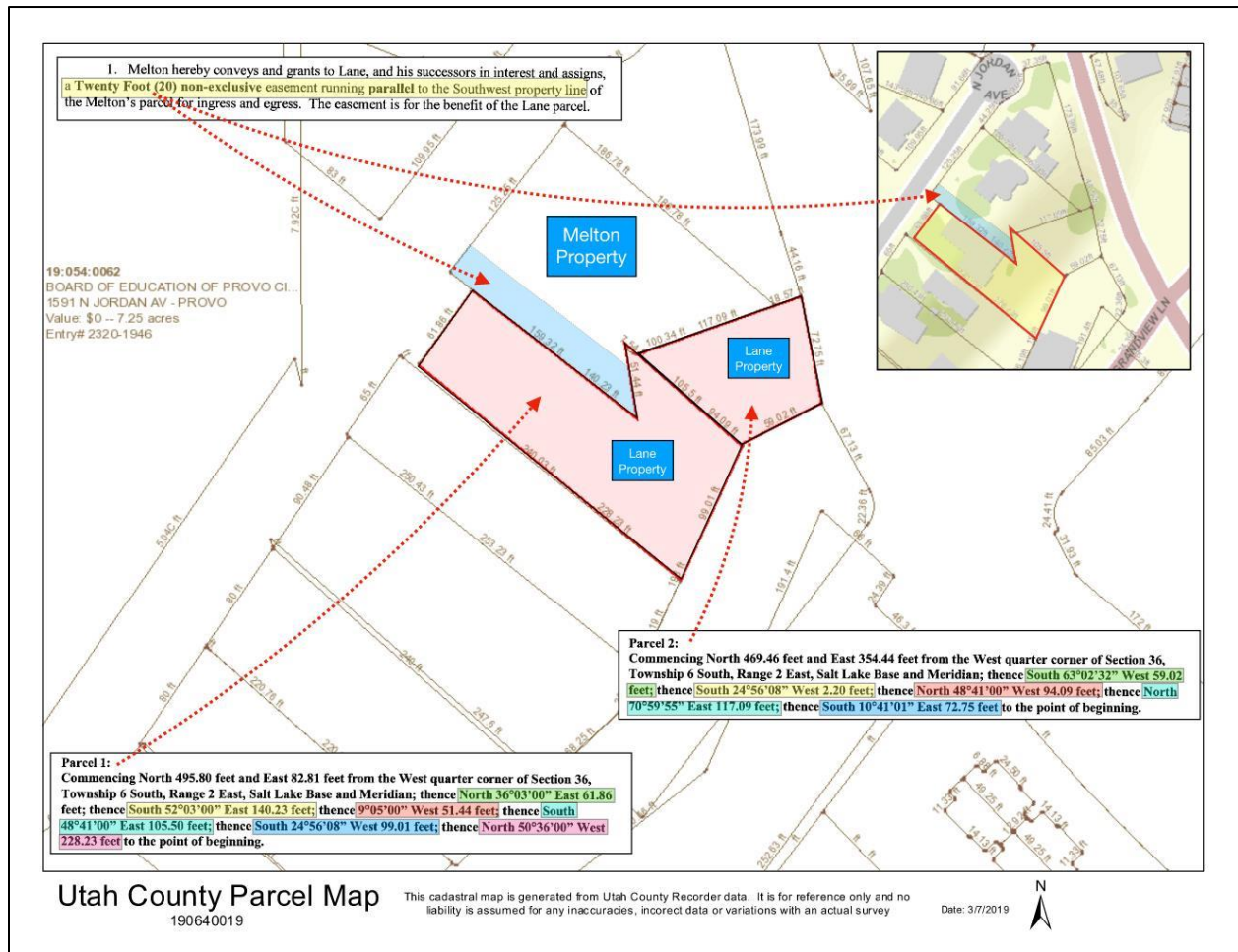
ATTACHMENTS

- 1. Location Map**
- 2. Existing Site Plan**
- 3. Proposed Site Plan**
- 4. Documentation Submitted by Applicant**

Attachment 1: Location Map



Attachment 2: Existing Site Plan



Attachment 3: Proposed Site Plan



Attachment 4: Documentation Submitted by the Applicant

GRANT OF EASEMENT
37307-2005

UT 37307-2005 is 1 of 1
RANDALL A. CONINGTON
UTAH COUNTY RECORDER
800 507-2438 P. 410 733-8140
RECORDS FOR THE LAST 1110 DAYS
ELECTRONICALLY RECORDED

GRANT OF EASEMENT

This Easement is granted this 4 day of April, 2005 by David Melton (hereinafter "Melton") in favor of Guy S. Lane, ("Lane").

WHEREAS, Melton owns a parcel of real property in the County of Utah, State of Utah which parcel is described as follows:

Lot 2, Plat "A", Paddock Subdivision, according to the official plat thereof recorded in the Utah County Recorder's Office, State of Utah.

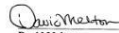
WHEREAS, Lane owns a parcel of real property which is contiguous to and immediately to the Southwest of the Melton parcel which parcel is described in the attached Exhibit "A"; and

WHEREAS, Lane desires Melton to grant Lane an easement across the Southwesterly portion of the Melton parcel for access to the Lane parcel; and

WHEREAS, Melton is willing to grant such an easement upon payment of adequate consideration and upon the terms and conditions set forth below.

NOW THEREFORE, for good and valuable consideration, the recitals above incorporated herein by this reference, the undersigned grants the following easement to Lane:

1. Melton hereby conveys and grants to Lane, and his successors in interest and assigns, a Twenty Foot (20) non-exclusive easement running parallel to the Southwest property line of the Melton's parcel for ingress and egress. The easement is for the benefit of the Lane parcel.
2. The Easement Parcel shall be the servient estate and the Lane parcel shall be the dominant estate. The easement granted herein shall run with the land.
3. Lane, his successors, assigns, and invitees shall not block or park in or upon the Easement Parcel.
4. The easement granted herein is not intended to be and shall not be construed to be a public easement and shall not and does not constitute a dedication of a grant for public use. It is granted specifically and exclusively to benefit only the Lane parcel.
5. Lane shall be solely responsible for any and all maintenance, including all costs and charges associated with such maintenance, that may be required. Melton has no obligation whatsoever to improve or maintain the easement parcel.


David Melton

COUNTY OF UTAH)
STATE OF UTAH) ss.

On the 4th day of April, 2005, personally appeared before me David Melton, the signor of the within instrument who duly acknowledged before me that he executed the same.




NOTARY PUBLIC

Legal Description
Exhibit "A"

Parcel 1:

Commencing North 495.80 feet and East 82.81 feet from the West quarter corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 36°03'00" East 61.86 feet; thence South 52°03'00" East 140.23 feet; thence 9°05'00" West 51.44 feet; thence South 48°41'00" East 105.50 feet; thence South 24°56'08" West 99.01 feet; thence North 50°36'00" West 228.23 feet to the point of beginning.

Parcel 2:

Commencing North 469.46 feet and East 354.44 feet from the West quarter corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 63°02'32" West 59.02 feet; thence South 24°56'08" West 2.20 feet; thence North 48°41'00" West 94.09 feet; thence North 70°59'55" East 117.09 feet; thence South 10°41'01" East 72.75 feet to the point of beginning.

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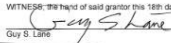
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Parcel 2:

Commencing North 469.46 feet and East 354.44 feet from the West quarter corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 63°02'32" West 59.02 feet; thence South 24°56'08" West 2.20 feet; thence North 48°41'00" West 94.09 feet; thence North 70°59'55" East 117.09 feet; thence South 10°41'01" East 72.75 feet to the point of beginning.

1590 WD 77174-2019			
[W 77174-2019 PG 1 of 1] Jeffrey Smith Utah County Recorder 2019 Aug 11 10:58 PM TUE 40.00 BY CS RECORDED FOR SUTTING TITLS, LLC ELECTRONICALLY RECORDED After Recording Return To: Primo Luxury Investments, LLC 1280 South 1300 West Street Pleasant Grove, UT 84062 File Number: 2019-463 Warranty Deed Guy S. Lane, (henceforth referred to as "Grantor") for the sum of TEN DOLLARS (\$10) and other good and valuable consideration, hereby conveys and warrants to Primo Luxury Investments, LLC, (henceforth referred to as "Grantee") the following tract of land in Utah County, State of UTAH, more particularly described as follows: That certain real property located in Utah County, State of Utah, described as follows: Commencing at a point North 469.46 feet and East 354.44 feet from the West Quarter Corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian, said point being located on the Westerly right-of-way of Columbia Lane and being the Northernmost point of the Donald F. Moench property as per deed 11385-85 recorded in book 2217, page 227, in the office of the Utah County Recorder; thence South 63°02'32" West 59.02 feet; thence South 24°50'08" West 2.20 feet to a point of intersection with the Keith J. and Lea N. Lane property as per deed 17007-72 recorded in book 1299, page 245, in the office of the Utah County Recorder; thence along said property North 48°41'00" West 94.09 feet to a point of intersection with the Jerin W. Paddock property as per deed 32590-89 recorded in book 2638, page 560, in the office of the Utah County Recorder; thence along said property North 70°59'55" East 117.09 feet to the Westerly right-of-way of Columbia Lane; thence South 10°41'01" East 72.75 feet to the point of beginning. Also Commencing at a point which is East 78.24 feet and North 590.51 feet from the West Quarter Corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 35°41' East 102.89 feet; thence South 48°41' East 224.10 feet; thence South 24°55' West 98.76 feet; thence North 50°25' West 241.55 feet to the point of beginning. Less and excepting therefrom: Commencing 576.80 feet North along the section line and 124.70 feet East from	the West Quarter Corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 29°08' West 25.00 feet; thence South 51°22' East partially along a fence line 157.28 feet; thence North 08°24' West 45.89 feet; thence North 54°20' West 128.00 feet to the point of beginning. Also less and excepting therefrom: Commencing 584.88 feet North along the section line and 136.62 feet East from the West Quarter Corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 48°41' East 122.59 feet; thence South 1.77 feet thence North 54°20' West 122.82 feet; thence North 34°41' East 13.50 feet to the point of beginning. Also less and excepting therefrom any portion lying within the following: Commencing at a point on the southeast line of Grandview Lane, said point being North 191.30 feet and East 233.63 feet from the West Quarter Corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 37°55'25" East, 248.55 feet along said Grandview Lane; thence 23.73 feet along the arc of a 20 foot radius curve to the left (chord bearing North 03°35'56" East 22.36 feet central angle 67°58'58"); thence 67.14 feet along the arc of a 1120 foot radius curve to the right (chord bearing North 28°40'31" West 67.13 feet central angle 63°20'05") along the Southwest line of Columbia Lane; thence South 63°02'32" West 59.02 feet; thence South 24°56'08" West 198.00 feet; thence South 47°20'08" West 45.89 feet; thence South 50°15'26" East 63.75 feet to the point of beginning. Together with an easement for ingress and egress, as referenced in that certain Grant of Easement, recorded April 8, 2005, as Entry No. 37307:2005, of the Official Records. The following is shown for information purposes only: Tax ID No. 19-064-0019. Subject to all restrictions, easements, and rights-of-way of record and current property taxes	IN WITNESS WHEREOF, grantor has executed this Warranty Deed on the <u>8</u> day of August, 2019. Guy S. Lane COUNTY OF Utah) STATE OF Utah) 388 The foregoing instrument was acknowledged before me on the August <u>8</u>, 2019 by Guy S. Lane RYAN M. OSTLER Notary Public, State of Utah Commission #775942 Expires January 21, 2023 NOTARY PUBLIC	
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	WARRANTY DEED	Page 3 of 3	

Reference to
"GRANT OF EASEMENT" (37307-2005)

1610 WD 37308-2005	1610 WD 119400-2018
BT 37308-2005 PG 1 of 1 RANDALL A. COVINGTON UTAH COUNTY RECORDER 2018 Dec 18 04:34 PM FEE \$4.98 BY SS RECORDED FOR GRANT TITLE TRANSFER ELECTRONICALLY RECORDED TW280324877 WHEN RECORDED RETURN TO: Name: Return to Grantee at address below Address: WARRANTY DEED David Melton, a married man, GRANTOR hereby CONVEYS AND WARRANTS TO David L. Lane, A RESIDUED PERSON GRANTEE OF 1010 North Jordan Avenue, Provo, Utah, 84604 for the sum of (\$10.00) Ten Dollars and other good and valuable considerations the following described tract of land in Utah County, State of Utah, to-wit: Lot 2 Plat "A" Paddock Subdivision, according to the official plat thereof recorded in the Utah County Recorder's office, State of Utah. Subject to all restrictions, easements, and rights-of-way of record and current property taxes. WITNESS the hand of said Grantor this 4th day of April, 2005.  David Melton COUNTY OF UTAH) STATE OF UTAH) SS. On the 4th day of April, 2005, personally appeared before me David Melton, the signor of the within instrument who duly acknowledged before me that he executed the same.   File Number: 01409-40208 Warranty Deed UT	BT 119400-2018 PG 1 of 2 Jeffery Smith Utah County Recorder 2018 Dec 18 04:34 PM FEE \$4.98 BY SS RECORDED FOR GRANT TITLE Insurance Agency of Utah ELECTRONICALLY RECORDED WARRANTY DEED Guy S. Lane, GRANTOR, hereby CONVEY(S) AND WARRANT(S) to Denise Dutsch and Jaimee Dutsch, husband and wife, GRANTEE, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the following tract(s) of land in Utah County, State of Utah described as follows: SEE EXHIBIT "A" ATTACHED HERETO Subject to City and/or County taxes and assessments, not delinquent, Easements, Rights-of-Way, Covenants, Conditions and Restrictions now of record. WITNESS the hand of said grantor this 18th day of December, 2018.  Guy S. Lane State of Utah County of Utah On this 18th day of December, 2018, personally appeared before me, the undersigned Notary Public, personally appeared Guy S. Lane, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged before me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.  Notary Public My commission expires: 1/21/19  Lot 2, Plat "A", PADDOCK SUBDIVISION, according to the Official Plat thereof as recorded in the Office of the Utah County Recorder, State of Utah. Reserving unto the Grantor the rights as set forth in that certain Grant of Easement recorded April 8, 2005, Entry No. 37307-2005, in the office of the Utah County Recorder. Reference to "GRANT OF EASEMENT" (37307-2005) Page 1 of 2 File Number: 01409-40208 Warranty Deed UT



