



Board of Adjustment Variance Staff Report Hearing Date: February 18, 2021

ITEM 1 Tate Murphey requests a Variance to the side yard setback to allow for subdivision of the existing property to create a flag lot at 963 W 500 N in the R1.6A zone. Dixon Neighborhood. Melissa McNalley (801) 852-6164 mmcnalley@provo.org
PLVAR20210029

Applicant: Tate Murphey Staff Coordinator: Melissa McNalley Property Owner: Murphey, Tate and Jessica Parcel ID#: 04:114:0001 Acreage: .44 acres Number of Properties: 1 Number of Lots: 1 <u>ALTERNATIVE ACTIONS</u> 1. Deny the requested appeal. <i>This action <u>would not be consistent with the recommendations of the Staff Report. The Board of Adjustment should <u>state new findings.</u></u></i> 2. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is March 18, 5:00 P.M.</i>	Current Legal Use: Single family residence Relevant History: The existing single-family detached home has existed on the site for more than 40 years and has a nonconforming shed attached to the existing two-car garage. Neighborhood Issues: Staff is not aware of any issues from the neighborhood. Summary of Key Issues: - The applicant would like to subdivide their property and construct a second house on a flag lot. - The property has an existing house. - Flag lots require a 20-foot pole portion. - The R1 zone requires a ten-foot side yard; the applicant is requesting a variance to allow a six-foot side yard. Staff Recommendation: Staff recommends the Board of Adjustment approve the requested variance.
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OVERVIEW

The applicant requests a variance to the side yard setback requirements of the R1 zone from ten feet to six feet to allow for a subdivision of the existing 19,166-foot parcel. The proposed second lot is 12,728 square feet.

RELEVANT HISTORY

The subject 19,199-square foot property includes an existing single-family detached house and attached two-car garage. The existing structures are constructed toward the north end of the lot, with a large rear yard. The lot is approximately 94 feet wide and 203 feet in depth. There is a garage on the east side of the house with utility lines for the dwelling located underneath the current driveway. There is a direct accessway to the back of the property on the west side of the home.

The applicant wishes to subdivide the property to create a flag lot of approximately 12,726 square feet leaving the lot containing the existing home with 7,327 square feet. The applicant proposes placing the pole for the flag lot on the west side of the property. There are no accessory buildings located on the proposed site for the pole.

Currently, the existing home is approximately 26 feet from the west property line. Creating a flag lot will reduce the distance from the existing structure to the new property line to only six feet, falling short of the ten-foot requirement. Placing the pole on the opposite side of the property would require demolition of the existing garage and relocating utilities.

FINDINGS OF FACT

- The property is located in a R1 zone, which allows flag lots;
- The property has an accessway on the west side of the property that allows for the 20-foot pole requirement in City Code 14.34.140 (3)(b);
- The west side access does not allow for setback requirements in Provo City Code 14.34.140 (3)(e);
- The Provo City Code currently allows for flag lots so long as they result in a more efficient use of land, the lot is compatible with the configuration of the overall subdivision and adjacent property;
- The proposed pole location has no accessory dwellings or other features as outline in Provo City Code 14.34.140 (3)(f).

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 (Staff responses are in **bold**):

- (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 this Title would not cause an unreasonable hardship as the property has a single-family dwelling and will remain as such without a subdivision of the property. However, granting a variance to allow the existing dwelling to encroach approximately four feet into the required side yard will not negatively impact the adjacent neighbor because the actual physical distance between the existing structures is not being reduced. The “pole” portion of the flag lot will not include any new development, other than a paved driveway.

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

This property has a deeper rear yard than other properties in the neighborhood and has more than triple the required minimum lot area for a lot in the R1.6A Zone. This is uncharacteristic of other lots and creates the opportunity to add housing through infill.

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

Other properties in the area, similar in size and shape, would likely be allowed to enjoy the benefits of subdivision. Subdivision is customarily an administrative decision if the applicant can meet all the regulatory requirements. In this case, the applicant can meet all of the requirements for subdivision, except a small nonconformity will be created with the existing structure if the subdivision was approved. Granting the variance takes advantage of the opportunity to add to the housing stock through infill without negative impact to the current home.

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

The variance will allow plenty of open space between the existing houses. The pole location will provide 26’ of space between the

existing houses. This will not compromise the spirit of the General Plan and is not contrary to public interest.

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

Granting the variance will be in keeping with the spirit of this Title in that there are special circumstances which warrant the variance. Substantial justice is done for the applicant by allowing the full utilization of the property within the bounds of the current zoning code. The community also benefits by adding potentially more housing infill opportunity.

APPLICABLE ZONING CODES

14.10.080 (2) Side Yard. Except as provided in Subsections (3), (4), (5) and (6) of this Section, each lot or parcel of land in the R1 zone shall have a side yard of not less than ten (10) feet; the combined sum shall be a minimum of twenty (20) feet. Buildings exceeding thirty-five (35) feet in height pursuant to a conditional use permit shall have side yards of at least ten (10) feet per side plus an additional one (1) foot of setback for each two (2) feet of building height over thirty-five (35) feet. Section 14.36.050 (3), relating to noncomplying structures also applies.

CONCLUSIONS

This variance request meets most of the criteria established by Section 14.34.140. Specifically, denial would restrict the property owner from subdividing the property and providing a housing opportunity for another family in Provo. In addition, the variance will not substantially negatively affect the general plan.

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.

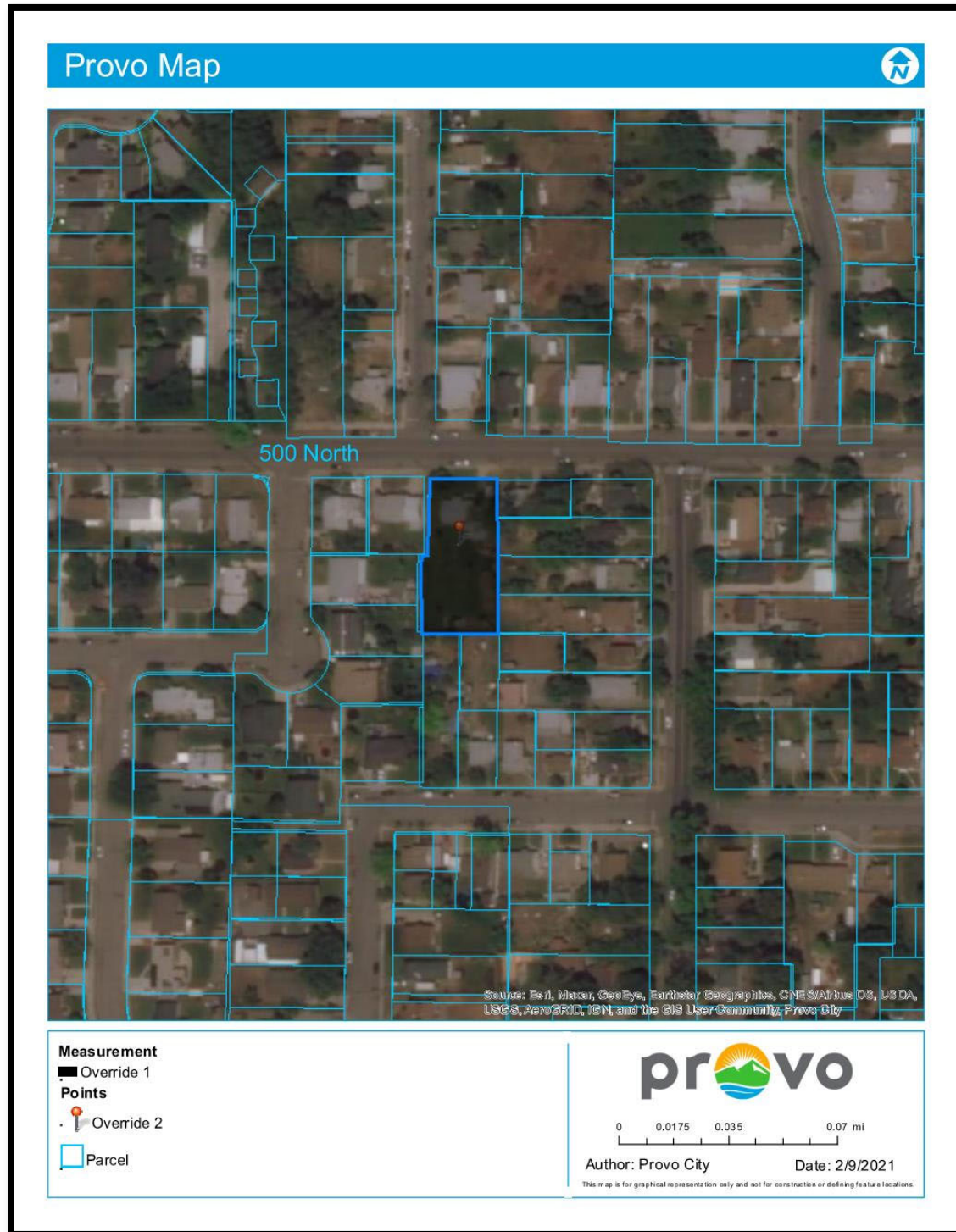
- (i) Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is

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.

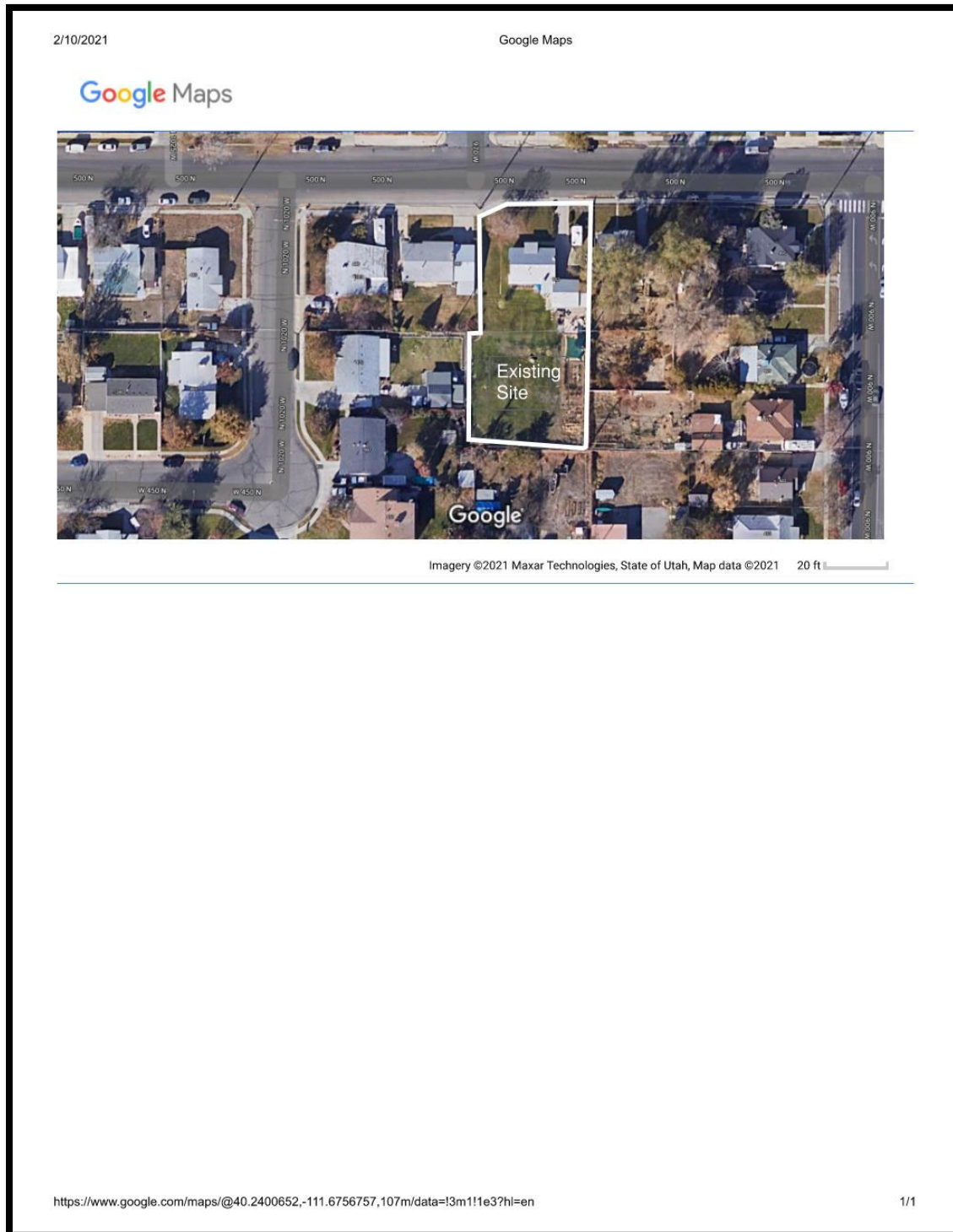
ATTACHMENTS

- 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



[illegible]

Attachment 4: Documentation Submitted by the Applicant

Board of Adjustment Variance

963 W 500 N, Provo UT 84601



SUMMARY

I am looking to subdivide the lot located at 963 W 500 N in Provo UT. The lot is a deep lot consisting of 20,055 feet. I am trying to subdivide to add a flag lot. Currently there is 30' on the east side of the house (if you tear down the existing garage) and 26' on the west side of the house. Given the 20' width requirement for the stem portion of the flag lot and the 10' side yard set back there is a need for 30' in order to put in the access for the flag lot. In order to satisfy the 30', I would need to demolish the original 2-car garage that is attached to the house. While working with Chad Hill on the new lot, he suggested that the best route going forward would be to try to apply for a variance to allow the lot on the existing accessway rather than tear down the garage.

I am asking the Board of Variance to grant me a variance on the west side of the property so I can have a 6-foot setback instead of the required 10-foot setback. The 6-foot setback would allow for me to get the 20-foot-wide stem portion of the flag lot. Granting this variance would allow me to use the portion of the lot that is currently being used to access the back of the property as well as allow me to maintain the current garage.

Pictures



Pictures



Variance Requirements

- (i) 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;**

Explanation:

Provo allows flag lots to better use underutilized land. Creating an infill lot where a brand-new home will be built will better the neighborhood. Some utility lines sit underneath the current driveway. Tearing down the garage would cost money and so would moving utilities. The aesthetics of the house would also be impacted as it would lose the brick two car garage, and the exposed portion of the house when the garage is torn down is not brick.

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

Explanation:

The lot currently has an accessway with a curb-cut to access the back of the house. If it weren't for being 4-feet shy of the 30-foot requirement this driveway makes natural sense to access the lot. Most other properties in the area don't have as deep of lots with accessways just shy of the code requirements.



Variance Requirements

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

Explanation:

Granting this variance would allow the property to be used to be another home without hurting any of the integrity of the current home.

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

Explanation:

The current house will be over 26' from the next house as the driveway will maintain a lot of distance. Since no structures can be place on a flag stem the houses will still be spaced far apart and it won't substantially affect the general plan or be contrary to public interest.

- (v) The spirit of the zoning ordinance is observed and substantial justice done**

Explanation:

As mentioned above the house will still be a good distance from the next house. Setbacks help to space out houses. From a land use perspective this would allow for the best use of the deep lot while still maintaining the spirit of setbacks would still be maintained as distance between buildings will be maintained.



