



AMERICAN FORK CITY  
BOARD OF ADJUSTMENT AGENDA  
December 14, 2022

**NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF ADJUSTMENT**

**NOTICE is hereby given that the Board of Adjustment of American Fork City, Utah will meet on Wednesday, December 14, 2022 at the American Fork City Public Works Complex, 275 East 200 North, American Fork, at 6:00 p.m.** The items listed below will be discussed, and anyone interested is invited to participate and provide a comment.

BOARD OF ADJUSTMENT MEETING

1. Call to Order
2. Approve Minutes from the last two meetings (09.14.2022 and 03.13.2019)
3. Vote for the New Chairperson
4. SCHEDULED ITEMS

Jaime Ostler has submitted an application for a review and action on a request for a variance on a proposed nonconforming lot of record for a property at 235 West Pacific Drive.

5. Other Business

ADJOURNMENT

6. Adjourn

To send public comments to Board of Adjustments members, email [mwhite@americanfork.gov](mailto:mwhite@americanfork.gov).

Melissa White  
Administrative Assistant  
Development Services  
American Fork City

1 BOARD OF ADJUSTMENT  
2 American Fork City  
3 March 13, 2019 • 6:30 PM  
4 American Fork Public Works • 275 East 200 North • American Fork UT 84003  
5

6 Board Members Present: Michael Privett, Scott Olson, Karen Tiberius and Ron Morrill

7 Absent:

8 City Staff Present: Dan Rojas, Chief Building Official  
9 Lisa Halversen, Public Works Administrative Assistant  
10 Cherylyn Egner, Legal Counsel  
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12 Others present: David and Jeanette Albers, applicants  
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14 BOARD OF ADJUSTMENT MEETING  
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16 1. Call to Order  
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18 This meeting of the Board of Adjustment of American Fork City, having been properly noticed,  
19 was called to order at 6:34 p.m.  
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21 2. Approval of minutes from October 12, 2016.  
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23 **MOTION: Scott Olson moved to approve the minutes from October 12, 2016. Seconded by Ron**  
24 **Morrill.**  
25

26 Yes - Michael Privett  
27 Ron Morrill  
28 Scott Olson  
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30 Abstain - Karen Tiberius  
31

32 Motion passes.  
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34 SCHEDULED ITEMS  
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36 3. #19-001 Request for a special exception to the setback requirements for an existing non-  
37 conforming building for the David and Jeanette Albers property located at 479 East 200 North  
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40 **Applicant Presentation:**  
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42 The applicants David and Jeanette Albers requested a special exception to the setback ordinance  
43 17.4.205.E.1.d. The applicants are requesting an exception in order to add on to their home at 479 East 200  
44 North along the east side of the property. Although the property has enough depth to meet the current  
45 ordinance of the required 30 ft setback, the applicants want their home setback at 25 ft to match the existing  
46 structure. The home is currently considered an existing non-conforming building with a 25 ft rear setback.  
47 They are asking for a 4ft exception to make the existing home line up with the addition. The rear setback  
48 will be at 25.6 ft instead of 30 ft.  
49

50 Mr. Olson asked Mr. Rojas if he has any issues with the setbacks on the garage side. Mr. Rojas replied that  
51 the proposal falls within the range of required side setbacks. The issue is the rear setbacks. He said the  
52 property owners have room to make the addition within that rear range also, but they don't want to.

Mr. Olson started the discussion by saying that since it's an old home with a non-conforming setback, he doesn't see any harm in allowing the rest of the home to be at the same rear line. Ms. Egner says that from a legal standpoint, a variance has to meet definition of hardship in order to be approved.

Ms. Tiberius referred to question 3- does it meet a hardship requirement- she said her personal view doesn't necessarily override the legal restrictions. She understands why they don't want to put the addition in the front, she has many years of building experience, but she can't think of a hardship reason that is not economic, aesthetic or self-imposed.

Mr. Albers indicated that the cost of doing the addition while allowing for 30 ft setbacks would be prohibitive, it would require a new roof and many other costs. He doesn't think that 4 ft would make a difference to the city.

Mr. Olson said that he thinks it would be an unreasonable hardship to deny this application. They would merely be making the rest of the home match up to the existing non-conforming status. Mike Privett also agreed that he thinks he could find that there is an unreasonable hardship. Ms. Egner instructed commissioners to make sure the minutes and the record reflect what the hardship is. The variance may not legally be approved for economic, self-imposed, or aesthetic reasons.

Ms. Tiberius felt like this is an aesthetic situation and that words, laws and zoning code have meaning. She said that the board's instructions are that they must meet certain criteria, they can't make decisions just to make people happy. Mr. Olson repeated that the existing home is non-conforming and he feels like that is a good reason for granting a variance.

Mr. Albers asked what the purpose of setbacks are, he's building in Lehi and the older properties have a 16 ft setback requirement. Why do the American Fork setbacks need to be 30 ft? Even with the approved variance, he would have a 25 ft setback. The commissioners gave setback reasons of density, water retention, buffering, and conformance with a city's master plan.

Mr. Privett responded that he feels it is the board's duty to grant variances if they feel it's proper. Ms. Tiberius said that a variance could only be granted if the reason was found to be hardship that is not aesthetic, economic or self-imposed.

Mr. Albers stated that he doesn't want to move, they want to stay in the neighborhood. The neighbors are ok with the addition, one neighbor wants to do something similar. He doesn't feel there are any good reasons to require the 30 ft setbacks. How would those extra 4 ft benefit the city in any way?

Ms. Tiberius suggested that maybe this isn't the appropriate body, maybe the city council needs to look at reducing the setback requirements. Ms. Egner asked that a decision be made by using the criteria given. Mr. Rojas said that code requirements have changed over the years, they are not set in stone.

#### **Board Discussion:**

In order to grant a variance, the Board must find that all conditions for approval are met as stipulated by Utah State law. The board reviewed the following conditions:

1. Would granting the variance change the intended use of the property? The consensus was no
2. Are there special circumstances attached to the property that do not generally apply to other properties in the same district? Yes, the existing non-conforming home is the special circumstance

3. Do circumstances in condition (2) cause an unreasonable hardship on the applicant, denying use of the property, that others in the same district enjoy or that he/she has a right to expect? This question was the one where there were the most differences and mixed opinions. Ms. Tiberius couldn't get to yes because of the economic, aesthetic and self-imposed rule. She asked for objective standards, not subjective reasoning. Others felt that the hardship rule would be justifiable because of the existing non-conforming status.

4. Is the variance essential to a substantial property right? No

5. Will granting the variance substantially affect the goal of the General Plan or be contrary to the public interest? No

6. Is the 'spirit' of the zoning ordinance observed and is the Board being fair to all involved? Yes

After discussion, the board was not comfortable with approving this special exception. There was further discussion about the legal ramifications of tabling this application. It was suggested that applicants argue their case in front of the city council and ask for a change in setback requirements for existing non-conforming properties.

**MOTION: Ms. Tiberius moved to table this request for a special exception to the setback requirements for the Albers property located at 479 East 200 North. Seconded by Mr. Olson.**

Yes - Michael Privett  
Ron Morrill  
Scott Olson  
Karen Tiberius

Motion passes.

#### Other Business

None

#### ADJOURNMENT

#### 5. Adjourn.

A motion was made by Ms. Tiberius to adjourn. Mr. Olson seconded the motion. It was unanimously approved. The meeting was adjourned at 7:35p.m.

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Lisa Halversen  
Public Works Administrative Assistant

1 BOARD OF ADJUSTMENT

2 American Fork City

3 September 14, 2022 • 6:00 PM

4 American Fork Public Works • 275 East 200 North • American Fork UT 84003

5  
6 Board Members Present: Michael Privett, Scott Williamson, Mary Street, and Bridgette Nelson

7 Absent: Reid Shelley

8 City Staff Present: Dan Loveland, Chief Building Official

9 Melissa White, Public Works Administrative Assistant

10 Cherylyn Egner, Legal Counsel

11  
12 Others present: Joshua Draper, Applicant

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14 BOARD OF ADJUSTMENT MEETING

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16 1. Call to Order

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18 This meeting of the Board of Adjustment of American Fork City, having been properly noticed,  
19 was called to order at 6:00 p.m.

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22 Aye - Michael Privett  
23 Scott Williamson  
24 Mary Street  
25 Bridgette Nelson

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27 Motion passes.

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29 2. Annual Open and Public Meetings Training

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31 Cherylyn Egner led the board members on Open and Public Meetings training.



**AMERICAN FORK**

## Open Meetings Training

August 2, 2022

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### Why are we here?

- ▶ “The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of [the Open and Public Meetings Act].” Utah Code 52-4-104.
- ▶ Auditor checks whether or not we have provided the training.

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## Who must comply?

- ▶ Any "administrative, advisory, executive, or legislative body of the state or its political subdivisions that...is vested with the authority to make decisions regarding the public's business."
- ▶ Examples:
  - ▶ City/County Councils
  - ▶ City Council Advisory Boards
  - ▶ Planning and Zoning Commissions
  - ▶ Boards of Adjustment
  - ▶ Boards of Special Service Districts

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## Recent cases finding potential failure to comply with OPMA

- ▶ Southern Utah Wilderness Alliance v. San Juan County Commission, 2021 UT 6
- ▶ Southern Utah Wilderness Alliance v. Kane County Commission, 2021 UT 7

Both of these cases involved the question of whether or not SUWA had standing to object to the failure of county commissioners to comply with OPMA prior to and during meetings with federal land administrators within Utah counties. The Utah Supreme Court concluded that SUWA had standing to challenge the counties' compliance with OPMA and maintain litigation to review whether (1) compliance with OPMA was required; and (2) if so, whether adequate notice and openness to the public was provided.

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## Open Meetings

- ▶ All “meetings” must be open to the public unless specifically allowed to be closed under the Act

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## What is a “meeting”?

- ▶ The convening of a public body, with a quorum present,
- ▶ whether the meeting is held in person or by means of electronic communications (or even informally on federal public lands, apparently),
- ▶ for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power (such as in recent Utah Supreme Court cases in which county commissioners met with federal land use managers, discussed in a previous slide)
- ▶ Examples
  - ▶ Regular meetings
  - ▶ Special meetings
  - ▶ Workshops
  - ▶ Executive Sessions
  - ▶ Site Visits
  - ▶ Traveling Tours

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3.



## Definition of “convening”

“Convening” means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which the body has jurisdiction.

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## What is not a “meeting”?

- ▶ A chance meeting
- ▶ A social meeting
- ▶ A convening solely for discussion or implementation of administrative or operational matters if:
  - ▶ No formal action is taken OR
  - ▶ The matters would not come before the body for discussion or action

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## Electronic Meetings Requirements

- ▶ A public meeting convened or conducted by means of a conference using electronic communications
- ▶ A public body may not hold an electronic meeting unless it has adopted specific procedures for conducting it:
  - ▶ These may include consideration of budget, logistics, presence of a quorum at an anchor location, vote to establish an electronic meeting, notice requirements, etc.
  - ▶ Requirement of anchor location may be suspended under emergency orders

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## Closed Meetings Requirements

- ▶ For what purpose?
  - ▶ A closed meeting may only be held:
    - ▶ To discuss the character, professional competence, or physical or mental health of an individual
    - ▶ Strategy sessions for:
      - ▶ collective bargaining
      - ▶ pending or reasonably imminent litigation
      - ▶ purchase, exchange, or lease of real property or water rights/shares
      - ▶ sale of real property or water rights/shares
    - ▶ To discuss the deployment of security personnel, devices, or systems
    - ▶ To investigate proceedings regarding allegations of criminal conduct
- ▶ May not do the following in a closed meeting:
  - ▶ Approve any ordinance, resolution, rule, regulation, contract or appointment
  - ▶ Interview a person to fill an elected position
  - ▶ Take final action (final votes must generally be open and on the record)

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## Public Meeting Requirements

- ▶ **Public body must give notice**
  - ▶ **Public body must give not less than 24 hours notice of each meeting**
  - ▶ Must also give notice of annual meetings scheduled in advance over the course of a year
- ▶ **Exceptions:**
  - ▶ Regular notice requirements may be disregarded if:
    - ▶ Because of unforeseen circumstances it is necessary to hold an emergency meeting to consider matters of an emergency or urgent nature
  - ▶ Still required to give the best notice practicable
  - ▶ May not hold an emergency meeting unless:
    - ▶ An attempt has been made to notify all the members of the public body; and
    - ▶ A majority of the members approve the meeting

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## Penalties

- ▶ Any member of a public body who intentionally violates the closed meeting provisions is guilty of a class B misdemeanor
- ▶ A court can void any action taken in violation of the open meetings laws
- ▶ The public body may have to pay court costs and attorney fees if successfully challenged in court on a violation

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## Executive Sessions

- ▶ ~~The information discussed in executive sessions is~~ confidential and may not be discussed outside of the meeting, including with:
  - ▶ Members of the public
  - ▶ Spouses, family members or significant others

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## 2021 Amendments to OPMA

### S.B. 77 "Open and Public Meeting Amendments"

Previously, a public body could not vote in a closed session, so they would have to return to the public meeting, then vote to close the closed session and open the public meeting again. A new amendment allows the body to vote in the closed session to adjourn the closed portion of the meeting and return to the open meeting.

### S.B. 125 "Open and Public Meetings Act Amendments"

This bill revoked and recodified the ability for public bodies to meet electronically without an anchor location, without having to already have an ordinance in place, as long as certain findings were made. Those required findings are codified at U.C. 52-4-207(4).

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## Other amendments:

H.B. 293 "Open Meeting Minutes Amendments" - deals with the posting of minutes by public bodies that are not state public bodies or specified local bodies who already have to have their minutes on the state website. (The body must have a link to the body's website or minutes stated in the notice posted on the state website so the public can easily access and review minutes of non-state public bodies.)

H.B. 297 "Colorado River Amendments" - deals with meetings relating to the Colorado River Compact to adjust allocation of water according to varying availability of water in the drainage, in correlation with the new Colorado River Authority. The use, lease or sale of water shares or water rights may be a reason to close a meeting.

Ms. Egner provided Variance Request Training and discussed the worksheet items with the board members:

In order to grant a variance, the Board must find that all conditions for approval are met as stipulated by Utah State law. The board reviewed the following conditions:

1. Would granting the variance change the intended use of the property?
2. Are there special circumstances attached to the property that do not generally apply to other properties in the same zone?
3. Do those circumstances in (2) cause an unreasonable hardship on the applicant, denying use of the property, that others in the same zone enjoy or that he/she has a right to expect?
4. Is the variance essential to a substantial property right possessed by other property owners?
5. Will granting the variance substantially affect the goals of the general plan or be contrary to the public interest?
6. Is the spirit of the land use zoning ordinance observed and is the Board being fair to all involved?

### 3. Scheduled Items

#### **Applicant Presentation:**

The applicant, Joshua Draper, has submitted an application for a review and action on a request for a variance on a proposed addition as an accessory apartment for a property located at 322 West 1300 North in the R1-9000 Zone.

As noted in a letter included in the application:

The Drapers stated that the reason for their application to the Board of Adjustments is to ask for an exception to Building Code 17.5.134.B.10 Accessory Apartments. In pursuing an independent living space for a family member, the least expensive option they were able to come up with is adding an accessory apartment to their home. The Drapers feel that in today's market, rentable spaces are out of reach for those on a very



limited income. Therefore, they feel the most economical option would be to add a living space to their home.

In exploring their options, the Drapers determined that adding a living space above their existing garage would be the best fit. They noted that they misinterpreted ordinance 17.5.134.B.10 which states, "10. Interior access. An interior access between the main living area and an accessory apartment must be maintained." They noted that they were thankful that the American Fork Building Official flagged the oversight during the plan review phase. They noted that, in their opinion, to meet this ordinance a dedicated set of stairs to the accessory apartment would need to be built in their already cramped living room which would effectively render their living room unusable and add unnecessary expense to their project.

The Drapers note that they understand the reasoning behind the ordinance which is to allow the homeowner access to the living space without having to enter from the exterior, thus extending the usable living space of a single-family home without creating a separate apartment in an otherwise single-family home area. They note that, in their opinion, the attached drawings show that the addition would not detract from the single-family home intent of the building ordinance but would add beauty and value to their community. It is their opinion that the current design meets all the other requirements of an accessory apartment.

The Drapers noted that they feel that in today's market, limited homes to single-family units are near impossible and stated the following, "Adult children are having to return home, retired in-laws are moving in with their children. Occupied RVs are a common site throughout residential neighborhoods. Everyone is looking for a reasonable and affordable place to live. My wife and I were extremely lucky to purchase this home when interest rates and home prices were reasonable, although we didn't think so at the time. In researching other housing options for my mother-in-law, I do not know how anyone can afford a home or apartment."

#### **Board Discussion:**

In order to grant a variance, the Board must find that all conditions for approval are met as stipulated by Utah State law. The board reviewed the following conditions:

1. Would granting the variance change the intended use of the property? ***Yes, it would be a two-family dwelling as shown on the plans, not an accessory apartment which is allowed in the municipal code R-1, 9000 only allows one family dwelling.***
2. Are there special circumstances attached to the property that do not generally apply to other properties in the same zone? ***No, the request is not a property circumstance.***
3. Do those circumstances in (2) cause an unreasonable hardship on the applicant, denying use of the property, that others in the same zone enjoy or that he/she has a right to expect? ***No, this is a self-imposed hardship.***
4. Is the variance essential to a substantial property right possessed by other property owners? ***No, an accessory apartment is allowed as long as all conditions are met. See American Fork Municipal Code 17.5.134.***
5. Will granting the variance substantially affect the goals of the general plan or be contrary to the public interest? ***Yes, the City allows accessory apartments as long as all conditions are met which keeps everything consistent and fair for all.***

- 141 6. Is the spirit of the land use zoning ordinance observed and is the Board being fair to all involved?  
142 *No, the request is for a two-family dwelling, not an accessory apartment.*  
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144 Mr. Draper asked the board members if they had any questions.  
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146 Mr. Privett stated that the difficulty Mr. Draper's plan had was that it had an exterior access but not an  
147 interior access.  
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149 Mr. Draper stated he had misinterpreted what an interior access meant when creating his plans and asked  
150 the Board to redefine what that access means within the ordinance as it was unclear.  
151

152 Mr. Privett agreed and stated that changing the ordinance would have to go through the Planning  
153 Commission and then to City Council.  
154

155 Mr. Draper introduced his father, Boyd Draper, who is the former owner of the property.  
156

157 Mr. Boyd Draper noted the number of basement apartments being built in American Fork City, and his  
158 thoughts that many of them are not necessarily being approved by the city as many people can not afford  
159 rent and are trying to come up with solutions for housing. He stated he felt the plans for Mr. Draper's home  
160 would enhance the home and neighborhood. He stated his hopes that the Board would look at the plans as  
161 an improvement even though it does not meet one part of the ordinance.  
162

163 Mr. Josh Draper stated his understanding that a duplex was not allowed in the zone that affects his property.  
164 He stated his feelings that the changes he proposes will technically make it a duplex, but it will not be a  
165 rentable space. He quoted what he read on the City's website that the Board "can impose additional  
166 requirements on the applicant to mitigate harmful effects of the variance in certain purposes that the  
167 standard requirement is waived." Mr. Draper proposed that the variance state that his addition would not  
168 be considered a rentable space.

169 Mr. Boyd Draper likened the situation to those who were renting a basement apartment and reiterated his  
170 hopes that the Board would grant the variance due to Mr. Josh Draper's approach of seeking approval  
171 through the Board and going about it in "the right way."  
172

173 Ms. Egner noted that during her Variance Request Training she used a duplex as an example. She noted  
174 that her example was purely coincidental and was not meant to be directed to Mr. Josh Draper's variance  
175 request.  
176

177 Mr. Williamson asked what the garage type will be when Mr. Josh Draper's project is done and inquired as  
178 to why Mr. Josh Draper couldn't put the stairs in an interior location within the home or garage.  
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180 Mr. Josh Draper stated that the garage type would not be changing and would be a standard 9 by 9.5 feet  
181 from the top of the concrete. He stated that adding stairs within the home or garage would increase the  
182 amount of construction required, add a significant amount of cost to the project, and negatively impact the  
183 space needed in their living room. He feels it would not be a feasible solution.  
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185 Mr. Williamson reiterated his thoughts of putting the stairs in the garage and having the doorway flush with  
186 the garage. He stated his hopes of finding a solution that would work for the applicant. He noted there were  
187 other ordinances he felt the applicant did not comply with.  
188

189 Josh Draper inquired about the other ordinance Mr. Williamson was referring to. Mr. Loveland replied that  
190 they were not in compliance with the R1-9000 zoning ordinance.  
191

192 Mr. Williamson noted that he had to adhere to the requirements needed to grant a variance as instructed in

the training as well as represent those in the community when making his decision.

Ms. Egner introduced the applicant's neighbor, Jordan Fong, who came to state his support. Mr. Fong stated he has been in the neighborhood at 334 West and 200 North for 19 years and feels that the Draper's are wonderful neighbors. Mr. Fong stated his thoughts that the Draper's updates to their home would not negatively impact the neighborhood.

Mr. Williamson stated that the ordinances are put in place by City Council for a reason.

Mr. Boyd Draper stated he understood Mr. Williamson's concern. He reiterated his thoughts that although the plans do not meet a part of the ordinance, he feels that they will not negatively impact the city, and his hopes that the Board will grant the variance to Mr. Josh Draper.

Mr. Privett stated his understanding and noted his agreement with Mr. Williamson that Mr. Josh Draper has alternative ways to meet the ordinance to be in compliance with the zone.

Mr. Boyd Draper noted that the required interior access would not be used.

Mr. Privett reiterated the question, "Would granting the variance change the intended use of the property?" and that the Board is required to answer honestly and that the answer must be no. He stated that he feels that they would be changing the intent of the property by adding an apartment that has not been zoned for that purpose.

Mr. Boyd Draper stated that the purpose of the Board of Adjustments was for the applicant's situation.

Mr. Privett reiterated the Board was in place in case there were unusual circumstances and suggested Mr. Joshua Draper discuss other options with his architect to find a way to meet the ordinance.

Mr. Josh Draper reiterated the difficulties adjusting the plans would create, such as decreasing the living area of the apartment, decreasing the space in the living room, and adding cost to the project.

Ms. Street noted that the ordinance required by American Fork was not unusual, and the ordinance requirements are often used in other cities. She noted that the Board was required to question why the variance exists and the necessity of staying consistent with the ordinance in the interest of fairness for all residents of American Fork. It was her opinion that because the applicant has a way to comply with the ordinance that the Board could not grant the variance.

Ms. Nelson stated her agreement and noted her concern that it would be difficult to enforce any parameters put on a variance.

Ms. Street noted the difficulties associated with adding a restriction that would state it could not be rented as the applicant's situation and the homeownership itself may change.

Mr. Boyd Draper mentioned again the illegal apartments in American Fork and asked the Board what their thoughts were about handling illegal apartments as so many people have them due to the housing crisis.

Ms. Street stated that it would be better if they were legal to ensure they were safe apartments that had gone through the correct inspection process.

Mr. Josh Draper stated his understanding and agreed that zoning ordinances may change over time.

Mr. Fong asked if it was illegal to have a basement apartment and to rent it out. Ms. Egner stated that it was not illegal. Mr. Fong clarified that the Draper's having an outside entrance and not an inside entrance was



what was illegal.

Ms. Egner stated that that was correct and clarified that it would become a duplex at that point. She clarified that the apartment would be an accessory dwelling unit and is not classified as an apartment.

Ms. Street questioned if the apartment could be considered a bonus room if the kitchen were removed.

Mr. Loveland clarified that it would still need to have an internal access point. Ms. Egner stated it was her understanding that there must be internal access and if there is not it is considered a separate unit.

Ms. Street questioned whether it was an International Building Code requirement to have interior access or if it was a city-by-city ordinance.

Mr. Loveland stated that the municipal code addresses accessory apartments and was intended as a solution to help provide economical relief.

Ms. Egner defined a duplex as being two living spaces connected with one wall and reiterated the zoning issue that states there can not be a duplex in Mr. Draper's zone. She noted that in order for Mr. Draper's home not to be considered a duplex it must have an interior access.

A brief discussion was held between the Board members and Ms. Egner regarding the best way to state the motion.

**MOTION: Scott Williamson moved to deny this variance for property located at 322 West 1300 North in the R1-9000 zone because it does not meet the criteria outlined by American Fork City. Seconded by Mary Street.**

Aye - Michael Privett  
Scott Williamson  
Mary Street  
Bridgette Nelson

Nay -

The motion was denied.

Mr. Fong asked if the interior access must be a stairwell. Ms. Egner noted that it must be a usable access that meets the code. Mr. Loveland noted that a spiral staircase could work as long as it meets code.

Mr. Privett notes that there is no way to tell what the future of the home will be, despite the current intention of the owner which is why they must make a decision based on the current ordinances.

Mr. Boyd Draper asked if someone has a basement apartment and if somebody lives upstairs if it is considered a duplex. Ms. Egner stated that it is not considered a duplex if there is an interior access and if there's no interior access, then it's a duplex. She noted that some areas are zoned for a single-family and duplex.

Mr. Loveland noted that it is defined as a two-family in the code and, additionally, there are other requirements that must be met as well.

A brief discussion is held regarding Ms. Street's experience with her rental property in Orem and the requirements needed in Orem City.

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298 The Board commended Mr. Josh Draper for going about his project in the correct way to get approved by  
299 the city.  
300

301 Mr. Josh Draper asked for confirmation that his request was denied. Ms. Egner confirmed that Mr. Josh  
302 Draper's request was denied as the Board did not find that his request met the six criteria set forth.  
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304 4. Other Business  
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306 None  
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309 5. Adjourn.  
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311 A motion was made by to adjourn Michael Privett. Bridgette Nelson seconded the motion. It was  
312 unanimously approved. The meeting was adjourned at 6:57 p.m.

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Melissa White  
Public Works Administrative Assistant

**AMERICAN FORK CITY  
BOARD OF ADJUSTMENT**

**MEETING DATE:** December 14, 2022  
**STAFF:** Dan Loveland

**AGENDA TOPIC:** Review and action on a variance for property located at 235 West Pacific Drive in the R4-7500 zone.

| BACKGROUND INFORMATION     |       |                            |  |  |
|----------------------------|-------|----------------------------|--|--|
| Location:                  |       | 235 West Pacific Drive     |  |  |
| Applicants:                |       | Jaime Ostler               |  |  |
| Existing Land Use:         |       | Residential High Density   |  |  |
| Proposed Land Use:         |       |                            |  |  |
| Surrounding Land Use:      | North | Residential Medium Density |  |  |
|                            | South | Residential Medium Density |  |  |
|                            | East  | General Commercial         |  |  |
|                            | West  | Design Commercial          |  |  |
| Existing Zoning:           |       | R4-7500                    |  |  |
| Proposed Zoning:           |       |                            |  |  |
| Surrounding Zoning:        | North | R2-7500                    |  |  |
|                            | South | CC-2                       |  |  |
|                            | East  | R1-7500                    |  |  |
|                            | West  | R3-7500                    |  |  |
| Land Use Plan Designation: |       | Residential High Density   |  |  |
|                            |       |                            |  |  |

Background

To grant a variance, all conditions must be met. To deny a variance, you only need to be lacking on one condition.

1. Would granting the variance change the intended use of the property? **Yes, a variance was granted on March 12, 2014, for a single-family dwelling.**
2. Are there special circumstances attached to the property that do not generally apply to other properties in the same zone? **Yes, it's a non-conforming lot.**

3. Do those circumstances in (2) cause an unreasonable hardship on the applicant, denying use of the property, that others in the same zone enjoy or that he/she has a right to expect? **No, this has been approved for a single-family dwelling on a non-conforming lot.**
4. Is the variance essential to a substantial property right possessed by other property owners? **No, a variance has already been granted.**
5. Will granting the variance substantially affect the goals of the general plan or be contrary to the public interest? **Yes, this lot does not meet the requirements for a two-family dwelling.**
6. Is the spirit of the land use zoning ordinance observed and is the Board being fair to all involved? **No, it would be a violation of the municipal code. R4-7500 requires a minimum of 12,000 square feet and a minimum of 90 feet width. See Findings of Fact for more information.**

#### Section 17.2.303 Powers of Board

The Board of Adjustment shall have the following powers:

- A. The power to grant variances from the terms of the land use ordinances, subject to compliance with the terms and conditions set forth herein and the provisions of Section 10-9a-702, Utah Code.
- B. The power to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the administrative official in the enforcement of this code, subject to compliance with the terms and conditions of this code and the provisions of Sections 10-9a-703 through 10-9a-708, Utah Code Annotated, 1953, as amended.

#### Section 17.4.302 R4-7500 Residential Zone

- A. Intent. The R4-7500 residential zone has been established for the purpose of providing a place where apartment houses can be constructed on individual lots as well as one, two, three and four-family dwellings and planned unit developments. Commercial and industrial uses are not permitted.

B. Permitted uses. The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirements of this code:

1. One-family dwellings (conventional, construction and manufactured housing), and two-family dwellings (conventional construction only), all subject to the provisions of Section 17.5.129.
2. Multiple family dwellings (more than three dwelling units)-conventional construction only, all subject to the provisions of Section 17.5.129. Provided however, that no structure shall contain more than twelve dwelling units.
3. Customary residential accessory buildings and structures.
4. The growing of field crops and fruit.
5. Machinery sheds used for storing equipment and supplies used in connection with agricultural and construction activities permitted on the premises.
6. Utility lines.
7. Home occupations subject to provision of Section 17.5.123 of this code.
8. Accessory signs in accordance with the applicable provisions of Section 17.5.128.
9. Public and parochial schools and grounds.
10. Public agency and parks and playgrounds.
11. Public buildings and grounds not including storage yards, repair shops, or hospitals.
12. Churches; not including temporary revival tents or buildings.
13. Household pets.
14. Fences, walls, and hedges.
15. Accessory apartments subject to the requirements of Section 17.5.134 of this code.

D. Lot area, depth, and width requirements. The minimum area, width, and depth requirements for a zoning lot within the zone shall be as follows:

| Use                       | Minimum Area (in sq ft)                                                 | Minimum Width (at minimum setback line                            | Depth of Lot (in ft.) |
|---------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------|
| One-family dwellings      | 7,500                                                                   | 75                                                                | 100                   |
| Two-family dwellings      | 12,000                                                                  | 90                                                                | 100                   |
| Three-family dwellings    | 17,000                                                                  | 100                                                               | 100                   |
| Four-family dwellings     | 20,000                                                                  | 110                                                               | 100                   |
| Multiple family dwellings | 20,000 for first four units, plus 3,000 sq.ft. for each unit above four | 110 ft. for first four units plus 10 ft. for each unit above four | 100                   |
| Churches                  | 2 acres                                                                 | 250                                                               | None                  |

## Section 17.1.508 Nonconforming Lots of Record

- A. In all zones wherein one-family dwelling are listed as a permitted use, a one-family dwelling may be constructed on any lot or parcel of land, even though such lot or parcel does not comply with the area, width, or depth requirements for one-family dwellings within the zone, subject to a determination by the zoning administrator that the lot complies with all of the following:
  - 1. The lot or parcel qualifies as a nonconforming lot of record (existed as a separately described parcel on the records of the county recorder prior to the effective date of the ordinance) and the parcel does not constitute an illegal subdivision lot. Except that any nonconforming lot having a width of less than sixty feet (as measured at the minimum front setback line) or a depth less than ninety feet shall require prior approval by the board of adjustment before issuance of a building permit.
  - 2. One-family dwellings are listed as a permitted use in the present zone; and
  - 3. All setbacks, height, access, building size, utility and special provision requirements of the existing zone and all applicable supplementary regulations can be met.
- B. The authorization in this paragraph B shall be applicable only in the instance of one-family dwellings. The Board of Adjustment shall not have the authority to approve a dwelling having two or more dwelling units on a parcel which does not fully comply with the requirements applicable thereto.

## FINDINGS OF FACT

The board cannot approve this request for a variance. Section 17.1.508, non-conforming lots of record is for a single-family residence only. Paragraph B of 17.1.508 clearly shows that it is for single-family dwellings, and that the Board shall not have the authority to approve a dwelling having two or more dwelling units on a parcel which does not fully comply with the requirements applicable. The minutes from the previous Board of Adjustment meeting dated April 12, 2014, regarding this property have been included in this packet.



## APPLICATION TO APPEAR BEFORE THE BOARD OF ADJUSTMENT

Date: 11/10/22

Phone Number: 801-637-2333

Property Owner: Jaime Ostler - Angel Trust

Mailing Address: 1157 W. 1500 N.

Lehi Utah, 84043

Address of Subject Property: 235 W. Pacific Drive. AF 84003

Zone of Property: R4

Signature of Property Owner: Jaime Ostler

email: jaimie.ostler@gmail.com  
801-637-2333

### TYPE OF REQUEST:

I (We), the above-stated applicant(s), hereby make application to the Board of Adjustment of American Fork City, Utah, for one of the following: (Check the provision that describes the type of request).

- ☐ 1. An error in an order, requirement, decision or determination made in the enforcement of the Land Use Ordinance.
- ☐ 2. An interpretation of the Land Use Ordinance text or boundary line.
- ☐ 3. A variance in the specific terms of the ordinance (requests for variance are generally limited to requirements relating to lot dimensions, building setbacks, lot area and/or size of building). The Board is not authorized to issue use variances.
- ☒ 4. A special exception to the ordinance (a use which the terms of the ordinance specifically authorizes or requires the action of the Board).

### SUMMARY OF REQUEST:

Please attach a sheet describing in detail the specific action requested under this application including reasons you feel qualify for granting your request. Please identify the specific section(s) of the Ordinance applicable to the issue.

### EXPLANATION AND SUPPORTING DOCUMENTATION:

*State the facts fully.* A plot plan, to scale, must be attached showing the location of the property with existing and proposed buildings on the lot/parcel (please indicate what is existing and what is proposed). You should also include the buildings on adjacent lots that may be affected by the variance.

FOR OFFICIAL USE

DATE RECEIVED: 11-10-2022

BY: unlute

Request #: \_\_\_\_\_



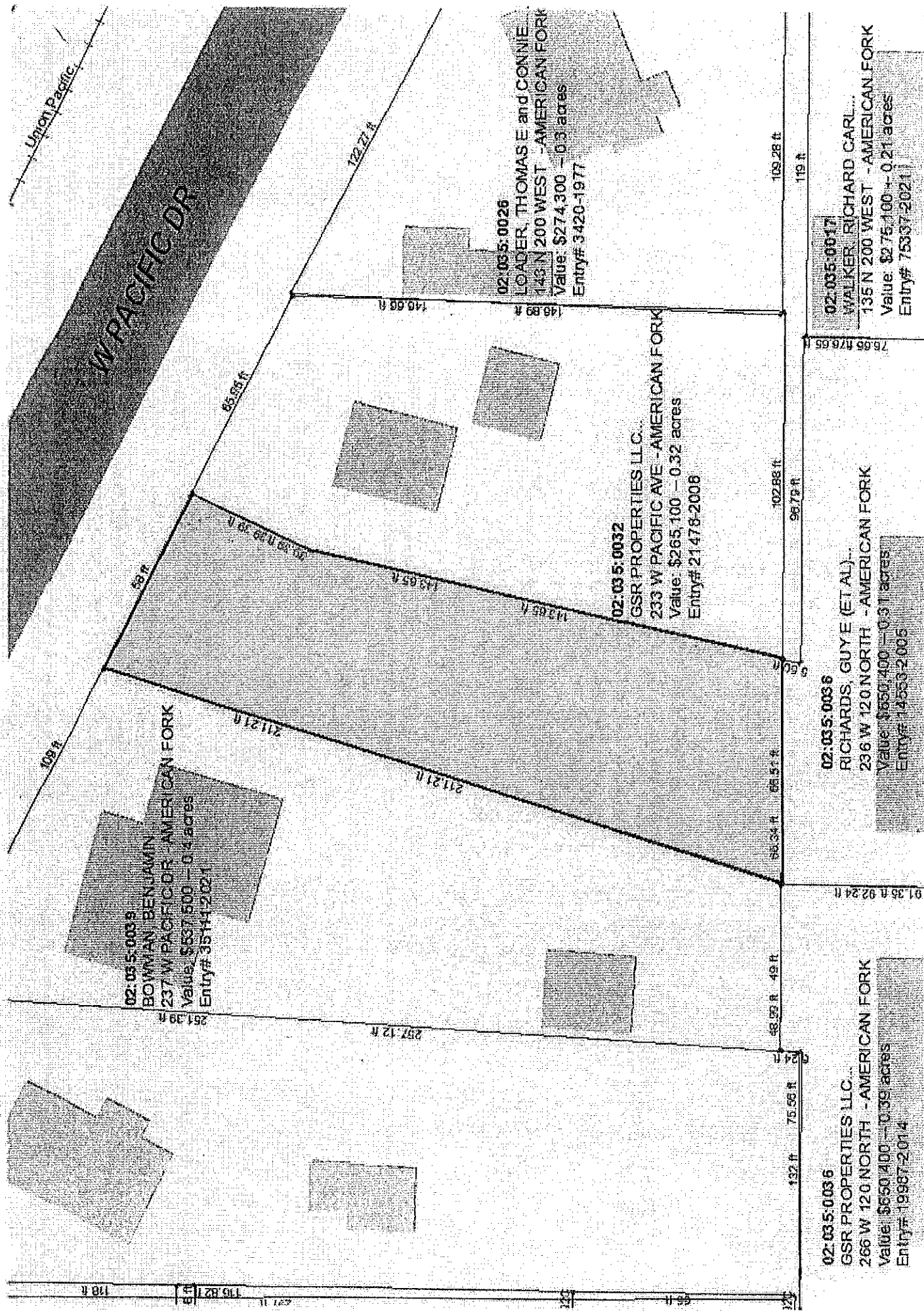
The Lot is currently zoned R4. It was approved to be a conforming lot of record in order to be a buildable lot. I want to ask the board to allow a duplex to be built and used as its intended zoning. I submitted a survey to the city in 2014.

Thank you

My name is Jaime Ostler, owner of 235 West Pacific Drive.

The lot is R4 zoned and I will be asking the city to approve a duplex to be used as it's intended zoned use.

Thank you,  
Jaime Ostler



# Utah County Parcel Map

This cadastral map is generated from Utah County Recorder data. It is for reference only and no liability is assumed for any inaccuracies, incorrect data or variations with an actual survey

Date: 12/15/2021



235 west north drive American Fork

BOARD OF ADJUSTMENT

American Fork City

March 12, 2014 • 6:30 PM

American Fork Public Works • 275 East 200 North • American Fork UT 84003

May 14, 2014  
APPROVED

Present: Wayne Christensen, Chairman, Presiding  
Board Members: Michael Privett, Ron Morrill, Rebecca Albiston, Richard Harwood  
Dan Rojas, Chief Building Official  
Kim E. Holindrake, Public Works Administrative Assistant  
Tim Merrill, Legal Counsel  
Other: Chris Seitzinger, Jaime Ostler

BOARD OF ADJUSTMENT MEETING

1. Call to Order

This meeting of the Board of Adjustment of American Fork City, having been properly noticed, was called to order at 6:37 p.m. by Chairman Wayne Christensen.

2. Approval of minutes from June 12, 2013

**MOTION: Richard Harwood – To approve the minutes from June 12, 2013.** Seconded by Michael Privett.

Yes - Rebecca Albiston  
Wayne Christensen  
Richard Harwood  
Ron Morrill  
Michael Privett

Motion passes.

SCHEDULED ITEMS

3. #14-001 Variance request to the minimum lot width for a lot of record by Chris Seitzinger for the property located at 235 West Pacific Drive.

Wayne Christensen stated the first question is whether the Board can hear this appeal. Is this lot a lot of record and when did it become a lot of record?

Kim Holindrake reported that she spoke to the County Recorder's Office today. In February 2005 a Boundary Line Agreement was recorded between this lot and the lot to the west. The Agreement shifted the property line a few feet to the east at the front and to the west at the rear. At that time new parcel numbers were given. The County can track the lot back to 1983 as being a lot of record. Prior to 1983 the County, the County is unsure as to whether this lot and the lot to the west were one lot or if there was another Boundary Line Agreement. The County would have to manually pull the deeds and manually plat them.

Wayne Christensen questioned whether there is sufficient square footage (17,000 square feet) in the parcel to the west to have the three units or whether those who built the triplex subdivided the parcel.



APPROVED

Ron Morrill stated he remembers some of the issues with the triplex trying to get some of the fire walls between the units. He doesn't remember much about the parcel, but they did get a permit to do the triplex. In 1976, the City changed to the new Development Code and several changes have occurred since that time but may not have affected this property.

Jaime Ostler stated that when she purchased the property (triplex) in 2006 and it was zoned R4, rental property. She did not have it surveyed because the County had the lot dimensions.

Dan Rojas stated that the property (triplex) was most likely a non-conforming parcel because of grandfathering. It probably doesn't have the required square footage. The question is when did it become a triplex and what were the boundaries at that time. We know, per the County, that there were two lots back to 1983.

Jaime Ostler stated that they are not interested in the R4 zoning. They just want to build a single-family home.

Wayne Christensen stated that the real question on whether the Board can act on it comes down to was the whole piece of property used to get the permit to build the triplex. If it wasn't and there looks to be sufficient property for the triplex, then the Board can proceed. He asked legal counsel to comment.

Tim Merrill stated as far as a lot of record, the lot goes back to 1983 and is far enough in his opinion. He would recommend that if the residents qualify except for the two-foot setback, he doesn't see any reason preventing the Board moving forward tonight.

Jaime Ostler stated that she measured the property at the 30-foot front setback, and it was 54 feet. The property gets wider the further back it goes. A home should go back further anyway and leave the front open.

Dan Rojas stated that the County went back to 1983 showing this as two lots. It is up to the Board to decide if it is a legal, non-conforming lot of record. As far as the required square footage for the existing triplex, it would need to be surveyed. Additional research would have to be done to see if this was a legal, non-conforming lot of record prior to 1983. It is up to the Board if 1983 is good enough.

Richard Harwood stated that he read somewhere in a code that after 20 years if the lot boundaries have been set, a lot becomes official as a lot of record. He remembers this from the cottage area that was put next to the canal and it went to an attorney.

Tim Merrill stated it is adverse possession.

**MOTION: Richard Harwood – To accept this as an existing non-conforming lot of record based on the information provided by the County going back to 1983 and act upon the request for a variance.** Seconded by Rebecca Albiston.

Yes - Rebecca Albiston  
Wayne Christensen  
Richard Harwood  
Ron Morrill

Michael Privett

Motion passes.

Tim Merrill stated that Mrs. Albiston wants on the record that she knows and has a friendship with applicant. He doesn't believe it is a conflict of interest. It is just for the utmost transparency.

Rebecca Albiston stated this is just to make sure everything is on the board.

**Applicant Presentation:**

Jaime Ostler stated that this lot has been sitting for so long, and she received it in her divorce. Her husband owns the triplex next door. She wants approval to make it all legal to build. This will make it so much nicer for the City. It is just a parking lot right now. It would be nice to have something new on it. Currently people are dumping on it, such as luggage and junk. She wants it to be valuable.

**Board discussion:**

Wayne Christensen stated the application is for a single dwelling on this lot. The Board needs to address the five criteria for a variance and why.

1 - Literal enforcement would cause unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance.

Richard Hardwood stated that it couldn't be used for anything else than what it is zoned.

Ron Morrill stated the properties around this lot are currently developed. Without it being incorporated into one of the developed lots, it wouldn't be useable otherwise.

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

Ron Morrill stated that this lot is less than 60 feet in width. The property is relatively deep from the existing road to the back property line.

Michael Privett stated the property dimensions don't allow the owner to use property in a desired way.

Wayne Christensen stated that the special circumstances are the shape and angles of the property.

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

Richard Harwood stated all the rest of the lots are developed. She has a right to develop her lot.

4 – The variance will not substantially affect the General Plan and will not be contrary to public interest.

Michael Privett stated that people there will be happy to see a home and the lot cleaned up.

Rebecca Albiston stated that a home will be a huge improvement.

5 – The spirit of the Land Use Ordinance is observed and justice is done.



APPROVED

Michael Privett stated absolutely.

Wayne Christensen stated then the Board can act on the variance and the terms of the variance.

Ron Morrill stated the terms of the variance are spelled out in the Development Code, Section 17.1.508 because it limits it to one-family only. The variance will need to be at the 30-foot front setback line and will be approximately a six-foot variance. Currently the street frontage is 58 feet. Thirty feet is the minimum setback for the front. It could go back further as long as it meets the side and rear setbacks.

Jaime Ostler stated she doesn't have a problem setting the home back further than 30 feet.

Dan Rojas stated that he suspects this lot has no services. There are no improvements, i.e. curb, gutter, sidewalk, and laterals for sewer, water, or pressurized irrigation. There is a ditch and possible road expansion by the City to consider. This is all above and beyond the building permit. This is a large lot that will have a high pressurized irrigation impact fee.

**MOTION: Ron Morrill – To grant a variance for a single-lot dwelling on this particular lot. The variance entails a 6-foot variance at the front setback line as well as all other setback and building requirements as per the American Fork City ordinances.** Seconded by Michael Privett.

Yes - Rebecca Albiston  
Wayne Christensen  
Richard Harwood  
Ron Morrill  
Michael Privett

Motion passes.

4. Other Business

ADJOURNMENT

5. Adjourn

This meeting was adjourned at 7:12 p.m. on a motion by Rebecca Albiston, seconded by Richard Harwood, and unanimously approved.

/s/ Kim E. Holindrake  
Kim E. Holindrake, MMC  
Public Works Administrative Assistant