

MINUTES OF THE DRAPER CITY APPEALS AND VARIANCE ELECTRONIC HEARING HELD ON THURSDAY, NOVEMBER 5, 2020 IN THE DRAPER CITY COUNCIL CHAMBERS

PARTICIPATING

ELECTRONICALLY: Mark Kleinfield, J Michael Burrows

STAFF PRESENT: Jennifer Jastremsky, Christina Oliver, Laura Oscarson, and Amie Salazar

STAFF PRESENT

ELECTRONICALLY: Spencer DuShane

2:00 PM Business Meeting:

Mark Kleinfield called the meeting to order at 2:04 p.m.

1. Electronic Meeting

To participate, please see the options below:

- Listen through the Draper City website – <http://www.draper.ut.us/95/Agendas-Minutes>

2. Written Determination 2020-22, pursuant to Utah Code Annotated 52-4-207(4)

A. I, Mark Kleinfield the Draper City Appeals and Variance Hearing Officer, do hereby determine conducting an electronic meeting of the Draper City Planning Commission with an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location and hereby authorize the Draper City Planning Commission to conduct electronic meetings without an anchor location.

B. The foregoing determination is based on the following facts:

- Federal, state and local leaders, including the Draper City Mayor and City Council, have all recognized a global pandemic caused by the spread of the COVID-19 virus.
- Under Governor Herbert's COVID-19 Transmission Index, Salt Lake and Utah Counties are classified as "high" level meaning both counties meets "high" level criteria in at least two of the three following criteria: 7-day average positivity rate, 14-day case rate per 100,000 people, and statewide ICU utilization.
- It is difficult, if not impossible, to predict the number of attendees at any meeting and to manage issues regarding social distancing in order to comply with COVID-19 Transmission Index guidelines and Salt Lake and Utah County Public Health Orders.
- COVID-19 poses a continuing and immediate threat to the health, safety, and welfare of Draper City residents and the public in general.
- The City has the technological capability to provide means by which the public may hear, or view and hear, the open portions of the meeting and to participate in public hearings.

C. This written determination shall be included in the public notice of the Draper City Appeals and Variance Hearing Officer meetings and shall be read at the beginning of an electronic meeting held without an anchor location.

D. The public notice of any meeting conducted pursuant to this written determination shall include information on how the public may hear, or view and hear, or make a comment at the meeting.

E. This written determination shall take effect immediately and will expire thirty (30) days after the date written below or until revoked, whichever is earlier.

F. This written determination shall be filed promptly with the office of the city recorder

3. Burrows Addition Appeal

Mr. Kleinfield requested that those participating introduce themselves and indicate who they were representing.

J. Michael Burrows, 1191 East 13200 South, identified himself as the applicant.

Jennifer Jastremsky stated she was the Zoning Administrator.

Spencer DuShane, Assistant City Attorney, indicated he was also participating online.

Jennifer Jastremsky announced that Christina Oliver – Community Development Director, Laura Oscarson – City Recorder, and Amie Salazar – Office Manager were also listening but did not plan to make any comments.

Mr. Kleinfield introduced the Item and indicated it was an appeal of an administrative interpretation dated September 25, 2020 issued by the Zoning Administrator. He clarified that around October 5, 2020 Mr. Burrows filed an appeal. He clarified that he would like to hear presentations from both the applicant and the City followed by a question period. He stated that he would not be taking new evidence or testimonies for the appeal. He asked if the photos submitted earlier that day were part of the original application.

Ms. Jastremsky indicated they were emailed to the City last night and received this morning.

Mr. Burrows explained he was nervous and felt this was attacking him personally. He added that he was not familiar with legal matters and requested his naiveté on the topic be taken into consideration. He clarified that he submitted the new photos since he recently came across other buildings in Draper that encroach the property lines and were built after the ten-foot code.

Mr. Kleinfield stated he would not consider the photos since they were not what considered at the time the Zoning Administrator made her decision.

Mr. Burrows shared that the original structure was built under an old code which allowed the structure to be two feet from the property line. He stated he believed that he was grandfathered into the original footprint and did not need a permit for anything under 200 square feet. He shared that he extended out eight feet on the roof above the garage to create additional storage and later found out he needed to go through the permit process at which point planning and zoning indicated to him that the new portion of the building encroached on the ten-foot setback which he did not believe to be a correct interpretation of the Code and did not believe expanding onto the roof area should be considered non-conforming.

Mr. DuShane pointed out under Section 9-5-180(D)(1) of the Draper City Municipal Code it addressed the requirements for an appeal, which they believed were not all met by the applicant. He added that the default position of the Appeals and Variance Hearing Officer should be to uphold the Zoning Administrators interpretation on the matter unless the Zoning Administer rendered an incorrect interpretation using substantial evidence. He clarified that they concede that the legal non-conforming set back was two feet at the first level and nine feet at the second level. He argued that the property line extended up into the sky and down into the earth. He clarified that because the definition of setback relied on the term building that definition had to be used as well, which included second story and first story walls. He added that the proposed addition encroaches into the setback and expands the non-conformity of the use, which is why the City found it non-permissible.

Mr. Burrows stated it did not make sense to him that 0-10 feet of the building was grandfathered in but not from 10 feet on up.

Mr. Kleinfield thanked everyone for their concise arguments and indicated he would go back over the materials and arguments and would have a response by around Thursday next week.

Mr. Burrows asked if he would hear a variance at that time. He stated that Ms. Jastremsky informed him the hearing would be for both the appeal and the variance.

Mr. Kleinfield replied that he only had the appeal in front of him.

Ms. Jastremsky indicated she sent Mr. Burrows an application for both an appeal and a variance since both avenues were available to the applicant, but the City only received an application for an appeal. She noted the applicant could still apply for the variance if the appeal did not turn out in his favor.

Mr. Burrows remarked that he specifically asked Ms. Jastremsky on the phone if he needed to fill out both applications to which she indicated he did not need to fill out both and that the variance would fall under the appeal application.

Mr. Kleinfield clarified he did not have the jurisdiction to rule on a variance without the proper paperwork. He empathized with Mr. Burrows on his feelings about bureaucracy but indicated he was certain the City did not intend to misdirect him.

4. Adjournment

Mr. Kleinfield concluded the meeting at 2:34 p.m. on Thursday, November 5, 2020.