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3330 S 1300 E
Millcreek UT
84106
801-214-2700

File # LUHO-23-007

Land Use Hearing Officer Summary, Analysis, and Recommendation

Request Type: Variance Pursuant to MKZ 19.76.080
Parcel ID: 16-32-206-040
Property Address: 3564 S 1100 E
Zone: R-1-5, RCOZ
Applicant: Austin Dent
Prepared By: Katie Larsen, Planner I

SUMMARY DESCRIPTION

The applicant is seeking a variance to; 1) reduce the minimum ½ acre lot size, 2) reduce the minimum 50-foot setback requirement, as measured from center of a private right of way and, 3) to develop a lot which has access onto a private right of way less than 42 feet wide, all of which are requirements per the Millcreek City Zoning Code. The subject property currently comprises of .72 acres as one lot, located at approximately 3564 S 1100 E. The applicant recently rezoned their property from R-1-8 to R-1-5 to accommodate a 3-lot subdivision. The proposed 'Lot 3' and an existing access easement is the subject of the request.

BACKGROUND & PROPOSAL

The applicant has rezoned the subject property from R-1-8 to R-1-5. The property was rezoned to facilitate a three-lot subdivision. Lots one and two will be subdivided under the flag lot standards found in Title 18 of Millcreek Municipal code. Lot three will be subdivided separately and accessed from an existing access easement; this easement is the subject of the variance request. The easement has shared access with an adjoining property to the north (3558 S 1100 E) currently owned by David Fantile. The easement is 20 feet in width. Additionally, the project is subject to a development agreement, which binds the applicant to the proposed three-lot configuration as well as the following technical guidelines.

- a. Screening. The Project shall include privacy fence along abutting residential property lines.
- b. Density. The project shall be limited to a maximum of three residential lots, as depicted within the concept plan. Density is also limited by a zone condition attached to the overall property.

c. Accessory Dwelling Units. Detached accessory dwelling units shall not be allowed on the proposed lot two.

d. Approval. All driveway and access widths and improvements are subject to Fire, Engineering, and Land Use Hearing Officer Approval.

The applicant is seeking a variance to Section **19.76.080** and Section **14.12.100** of Millcreek's Zoning Code. Millcreek Code Section **19.76.080** states:

Except where the requirements of this section are reduced by permit of the land use hearing officer, the minimum area for any lot fronting on a private right-of-way, at least twenty feet wide, shall be one-half acre, and the minimum distance from the center of the right-of-way to the front line of the building shall be fifty feet; except that property that cannot be subdivided as outlined in the subdivision ordinance may be developed on a private street or right-of-way in any R zone upon approval of the development services division director. Such approval shall be governed by the official policies regulating such development, as adopted by the planning commission and on file at the planning commission office.

The applicant is requesting a variance through the Land Use Hearing Officer for the above-mentioned reductions. Section **19.92.050** of Millcreek's zoning code, pertaining to variances, states: The authority shall have the following powers to authorize on appeal in specific cases a variance from the terms of this title.

As per MKZ **19.92.050** The authority may grant a variance only if:

1. 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;
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
5. The spirit of this title is observed, and substantial justice is done.

(Answers to questions are attached to document).

PLANNING STAFF FINDINGS & ANALYSIS

1. City Staff has thoroughly made it clear that the burden of justifying a request for a variance rest upon the applicant. Utah Code §10-9a-702(3) and Millcreek Code §19.92.05
2. Per State Code, a "Lot" means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder. Utah Code §10-9a-103 (37)
3. The existing ingress and egress right of way easement is shared between the existing lot and a parcel directly to the North which is located generally in the middle of the U-shaped lot.
4. The shared access easement does not seem to limit the use of the easement as it "enable[s] the owner, the owner's invitees and guests to use the right-of-way" easement.

5. Lot three is proposed to be 11,245 square feet in size, whereas a lot fronting a private right of way would ordinarily have to be a ½ acre in size.
6. The front setback for lot three is proposed to be 20 feet from property lines, whereas a lot fronting a private right of way would ordinarily have to be setback 50 feet from the center of the private right of way.
7. The private right of way to access lot three is approximately 20 feet wide, whereas a 42 foot right of way would ordinarily be required as per the Transportation Master Plan.
8. The proposed lot sizes, setbacks and coverage meet the underlying requirements of the R-1-5 and RCOZ zones.
9. Unified Fire has preliminarily signed off on the subdivision, requiring certain fire suppression design standards due to the narrowness of the private lane.
10. If approved, the initial portion of the access will be required to have “no parking” signage.

Staff Analysis

1. 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;

Staff Response: Staff agrees with the applicant in that literal enforcement would cause an unreasonable hardship for the applicant. The existing access easement was to be used to serve both the adjoining property and the existing lot. The applicant is proposing for the easement to be accessing only one lot. The square footage of the lot it will access will be reduced, but will still be 11,000 square feet in size, which generally exceeds the nearby lot size. Direct enforcement of Millcreek City Code Section 19.76.080 and the adopted Millcreek Transportation Master Plan would require a 42-foot wide right of way, which is approximately 22 feet wider than what currently exists. In order to meet this requirement, the applicant would either need to acquire additional property, or secure additional easement right of way width.

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

Staff Response: The existing property is uniquely shaped and is bound to an access agreement shared with an adjoining property owner. Due to the shape of the lot, the proposed ‘lot three’ is deep into the lot with no frontage on 1100 East. The easement cannot be widened either to the North or South due to the proximity of adjacent homes and detached structures.

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

Staff Response: The creation of a new 11,000 square foot lot is in line with the general size of nearby lots. Due to the lot being relatively landlocked, the access easement is the only way to access the property without throwing lots one and two out of compliance with flag lot standards.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and

Staff Response: The property is located in the 'Neighborhood one' designation as per the future land use map; neighborhood one calls out for single-family detached homes with an allowable density of six units per acre. The applicant is proposing larger lots than what would be allowed per the general plan designation. The item has gone through the rezone process, which requires being presented and voted on in three public meetings – the item was unanimously approved by the community council, planning commission and city council.

5. The spirit of this title is observed, and substantial justice is done.

Staff Response: The lot currently has access to the private access easement, whereas the applicant is proposing a subdivision of the overall property to three lots, but the easement will still only have access to one lot. The subdivision was widely accepted by the community and will contribute to more home ownership opportunity in Millcreek. Reducing the minimum half acre lot size to 11,000 square feet is in harmony with surrounding lot sizes. Reducing the 50-foot setback to 20 feet from property lines will allow the applicant to build a home that has similar lot coverage as surrounding homes. Allowing for the private right of way to be reduced from 42 feet to 20 feet will allow for the lot to be accessed from the existing access easement from 1100 east.

PLANNING STAFF RECOMMENDATION

- Planning staff is recommending approval of the variance pursuant to MKZ 19.76.080 and 19.92.050 file number LUHO-23-007, subject to:
 - Unified Fire's requirements.
 - Placing no parking signage on the existing access.
 - Planning and Engineering approval.

Attached Documents:

- **Applicants Supporting Documents**
- **Subdivision Map**
- **Access Easement Information**
- **Site Plan and Design Information**

**Planning Services**

3330 South 1300 East • Millcreek, Utah 84106

Phone: (801) 214-2750

Millcreek.us**File #**

Variance/Appeal Hearing Application before the Appeal Authority

Zone: _____ **Community Council:** _____ **Planner:** _____
Parent File #: _____ **Date:** _____

Name(s): Austin Dent

Address per tax rolls: 3564 S 1100 East

City/County: Millcreek / SL County **State:** Utah **Zip:** 84106

Office/home phone: 801-382-8480 **Fax:** _____

Mobile phone: 801-382-8480 **Message phone:** _____

Email address: austin@jdevutah.com

Application is made for:

**Variance from the terms of the
zoning ordinance
(See Section A, Page 2)**



**Appeal of an administrative decision in
interpretation of the zoning ordinance
(See Section B, Page 3)**

ANSWER THE QUESTIONS COMPLETELY

Section A Application for a variance from the terms of the zoning ordinance

10-9a-702. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance. These conditions are set forth in the following five questions:

- 1. State how the literal enforcement of the zoning ordinance would cause an unreasonable hardship that is not necessary to carry out the general purpose of the land use ordinance. (NOTE: A hardship must be associated with the property for which the variance is sought, comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood, and cannot be self-imposed or economic, 10-9a-702 (b)).**

By seeking a lot off of a private right-of-way, given the existing 20' access, literal enforcement of the code requires a 1/2 acre lot. The code requiring 1/2 acre lots off of a private right-of-way was inherited by Millcreek City from Salt Lake County. The aspect that is unique to this property is that this lot was subdivided in a way to intentionally create access that is now too narrow to meet the 22' width in the flag lot code that was adopted in March 2023.

This lot possesses some unique physical characteristics with its shape that would create an unreasonable hardship that are otherwise very manageable with an exception. This is demonstrated in the fact that the city planning, engineering and fire departments have all reviewed and approved of the plan approved by the city council. Additionally, it would create a great deal of unnecessary 'surplus land'.

- 2. What special circumstances are attached to the property that does not generally apply to other properties in the same land use zone?**

The 20' width of the lot in this area is unique to this lot. Typically, if a lot is being created behind another lot (flag lot), it is being subdivided off of that main lot in the front and means can be taken by the owner of the unsubdivided lot to mitigate depth and easement width issues. This lot has a unique shape and was created with the intention of allowing access to the back portion. This strip was created with a 20' width before the 22' flag lot requirement was placed in the code in March of this year with no variance language.

3. How would the granting of a variance be essential to the enjoyment of a substantial property right possessed by other property in the same land use zone?

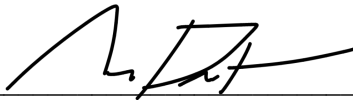
The property was established to create access through the 20' strip. This lot was done this way intentionally before the enactment of the most recent flag lot zone. By being designated as a private right-of-way, it maintains this purpose that is uniquely possessed by this property and allows the creation of a lot that is in harmony with the same land use zone.

4. How will this variance affect the General Plan for Millcreek City?

This variance allows for lots to be created on an empty parcel that are in harmony and consistent with the General Plan for Millcreek City. The proposed lots have been demonstrated to be consistent as it has been reviewed and approved for rezone by the city council approving the rezone and associated Developer Agreement that would allow three lots to be platted and three homes built.

5. How will the spirit of the land use ordinance be observed and substantial justice done?

In some situations strict adherence to code may impose undue hardships depending on the circumstances of the property. In this case, there are limitations that prevent reasonable use of the property. Approval of the exception to the code permits lots to be created that are in harmony with the land use zoning and the intentions of the general plan. The general plan calls for single family housing and the specific zone is R-1-8. The average lot size will still be larger than the zoning minimum and larger than the average lot within the block and neighborhood.



07/06/23

SIGNATURE – SECTION A ONLY

DATE

Dear Land Use Hearing Officer:

This letter is provided for receiving approval of a lot size exception from the Land Use Hearing Officer, as specified in 19.76.080.

The parcel 16-32-206-040 at 3564 S 1100 E, Parcel A, has a unique shape that is exhibited by the red line approximating the border in Illustration 1. Parcel A has a width of 20' for approximately 118' from the southeast corner, adjoining Parcel C to the south (16-32-206-029). The highlighted yellow area in Illustration 1 represents this portion of Parcel A.

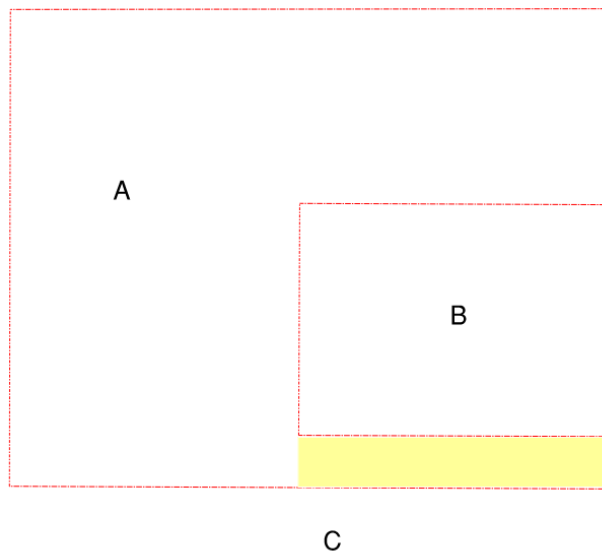


Illustration 1

Furthermore, Parcel B (16-32-206-026) at 3558 S 1100 E is surrounded on three sides by Parcel A. There is a recorded Ingress & Egress Right of Way in favor of this Parcel B specifically and exclusively within the highlighted area. Although this right of way was recorded on June 10, 2011, Parcel B had been utilizing this access prior to its recording. It is important to clarify that while Parcel B possesses rights to access this section, ownership remains with Parcel A. The rights to access for Parcel B would not change and would continue as recorded.

Included in the application is 'Appendix B - Site Plan'. It has been shown in a neighborhood meeting, a community council meeting, in planning commission meetings, and presented to the City Council regarding a separate rezone application. There has been support for the proposed layout throughout these meetings.

The objective of this application is to designate the yellow highlighted area as a Private Right of Way. This is to provide access to the portion of land that is owned by Parcel A west of this portion of the property.

A new flag lot code was adopted by Millcreek City in March 2023 and has no variance or exception to a width requirement of 22'. Therefore, a Private Right of Way which allows a width of 20' is the most feasible option to be able to utilize this land. Since this is an established area of 20' width, the utility and rights of Parcel A would be greatly diminished if this is not designated as a Private Right of Way, creating significant 'surplus land' for Parcel A in the current zoning. The exception being sought is not for the width since 20' is wide enough for a Private Right of Way, but rather for the size of the lot adjacent to the Private Right of Way. The size of Lot 3 of the Site Plan fits within the makeup and form of the neighborhood and would actually be a larger lot than the average lot in the neighborhood. Again, the site plan for this lot has been supported by the city planning staff, and has not received any opposition in the meetings it has been presented in to the neighborhood and the city.

The concrete driveway that currently exists in the highlighted area does not extend all the way through to the west. It will be expanded to the full distance and would also be properly widened to 12' width to meet applicable code.

Thank you in advance for your attention to this matter. I am confident that we can achieve a positive outcome that serves the best interests of this property as well as the neighborhood.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Dent'.

Austin Dent

11196578

When Recorded Mail To:
David M. Fantle
3558 South 1100 East
Salt Lake City, Utah 84106

11196578
6/10/2011 12:40:00 PM \$13.00
Book - 9930 Pg - 1171-1172
Gary W. Ott
Recorder, Salt Lake County, UT
BONNEVILLE SUPERIOR TITLE
BY: eCASH, DEPUTY - EF 2 P.

Order No. 157538

Tax ID No. 16-32-206-026

Space above this line for Recorder's use

Warranty Deed

Daniel R. Atkinson and Heather Marie Atkinson, husband and wife as joint tenants, **GRANTOR(S)**

hereby CONVEYS AND WARRANTS TO

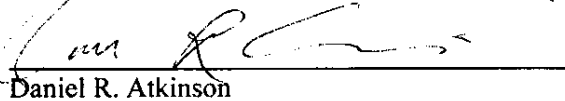
David M. Fantle, a single man, **GRANTEE(S)**

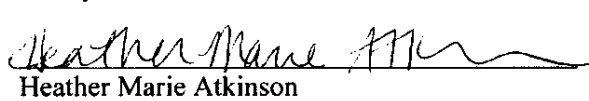
for the sum of (\$10.00) Ten Dollars and other good and valuable considerations the following described tract of land in Salt Lake County, State of Utah, to-wit:

See "Exhibit A" attached hereto

SUBJECT TO taxes and assessments not delinquent, reservations, restrictions, easements and rights of way of record.

WITNESS the hand of said Grantor(s) this 16th day of June, 2011.

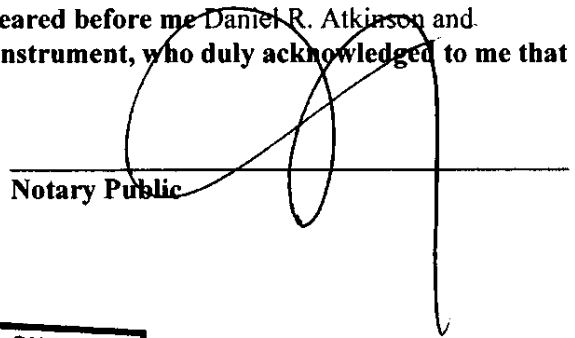

Daniel R. Atkinson

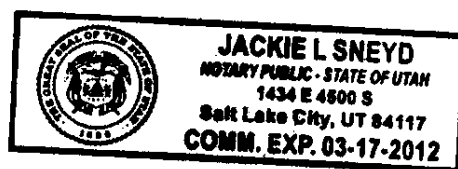

Heather Marie Atkinson

State of Utah }
 }ss.
County of Salt Lake }

On the 16th day of June, 2011, personally appeared before me Daniel R. Atkinson and Heather Marie Atkinson, the signer(s) of the above instrument, who duly acknowledged to me that such person(s), executed the same.

Witness my hand and official seal.


Notary Public



Bonneville Superior Title Company

BK 9930 PG 1171

Legal Description
EXHIBIT "A"

Order No.: 157538

The land referred to in this exhibit is situated in the county of Salt Lake State of Utah, and is described as follows:

PARCEL 1

Beginning 115.9 feet North from the Southeast corner of Lot 13, Block 21, Ten Acre Plat "A", Big Field Survey, and running thence North 87.34 feet, thence West 118.16 feet, thence South 87.34 feet, thence East 118.16 feet to the point of beginning.

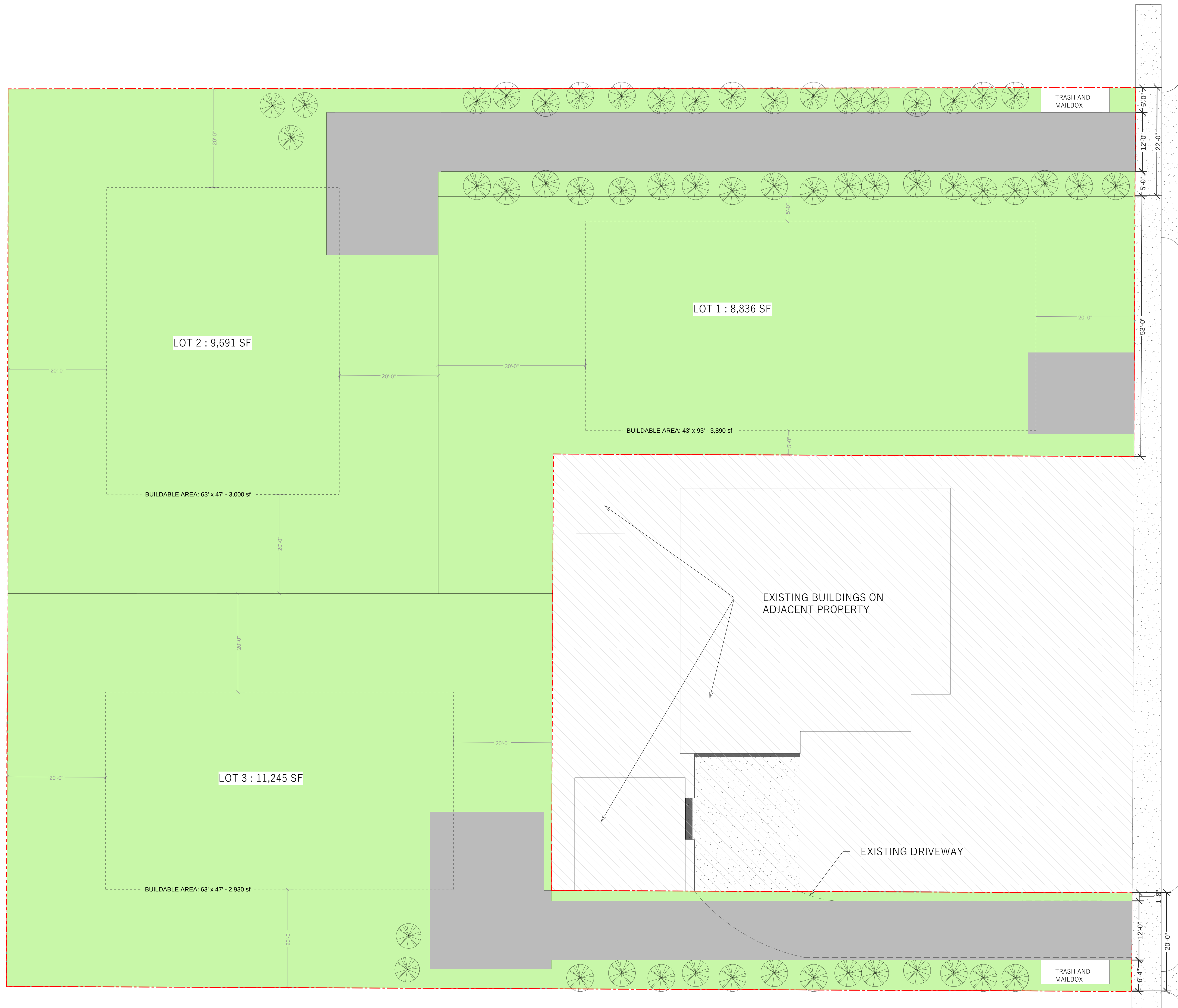
PARCEL 1A

Together with a joint use right of way for ingress and egress over the following described property: Beginning 95.9 feet North from the Southeast corner of said Lot 13, and running thence North 20 feet, thence West 118.16 feet, thence South 20 feet, thence East 118.16 feet to the point of beginning.



Bonneville Superior Title Company

APPENDIX B



PROJECT BREAKDOWN:

SITE AREA: 0.72 ACRES (31,461 SF)

ZONING: R-1-8 (CURRENT ZONE)
R-1-5 (RE-ZONE)

INTERIM TRANSIT ORIENTED DEVELOPMENT ZONE (ITOD)

PERMITTED USES: (AS PER 19.14.020-030)
(2.1.0)

(R-1-8) SINGLE-FAMILY DWELLING

SINGLE-FAMILY PROJECT DEVELOPMENTS, THE PLANNING COMMISSION MAY APPROVE A DETAILED DEVELOPMENT PLAN FOR THE ENTIRE SINGLE-FAMILY PROJECT IN AN R-1-3, R-1-4, R-1-5 ZONE, PURSUANT TO MKZ 19.84. THEREAFTER, THE DEVELOPMENT SERVICES DIVISION DIRECTOR MAY, AS AUTHORIZED BY THE PLANNING COMMISSION, APPROVE USE PERMITS FOR INDIVIDUAL RESIDENTIAL USES, PROVIDED THAT THE PLANS COMPLY WITH ALL REQUIREMENTS AND CONDITIONS OF THE APPROVED DEVELOPMENT PLAN.

LOT AREA AND WIDTHS (AS PER 19.14.040)
(5.1.2)

8,000 SF; 65 FEET AT A DISTANCE 25 FEET FROM THE FRONT LOT LINE

5,000 SF; 25 FEET AT A DISTANCE 20 FEET FROM THE FRONT LOT LINE

YARD REQUIREMENTS: (AS PER 19.14.050)

- FRONT = 20'
- INTERIOR SIDE = 5'

- CORNER SIDE= 20'
- REAR= 15' (WITH GARAGE)

DENSITY (AS PER 19.14.055)

(R-1-5) 7.0 UNITS PER ACRE

LOADING HEIGHT: (AS PER 19.1

BUILDING HEIGHT: (AS PER 19.14.060)

1. THIRTY FEET ON PROPERTY WHERE THE SLOPE OF THE ORIGINAL GROUND SURFACE EXCEEDS FIFTEEN PERCENT OR THE PROPERTY IS LOCATED IN THE HILLSIDE PROTECTION ZONE. THE SLOPE SHALL BE DETERMINED USING A LINE DRAWN FROM THE HIGHEST POINT OF ELEVATION TO THE LOWEST POINT OF ELEVATION ON THE PERIMETER OF A BOX WHICH ENCLOSES THE FOUNDATION LINE OF THE BUILDING OR STRUCTURE. SAID BOX SHALL EXTEND FOR A DISTANCE OF FIFTEEN FEET OR TO THE PROPERTY LINE, WHICHEVER IS LESS, AROUND THE FOUNDATION LINE OF THE BUILDING OR STRUCTURE. THE ELEVATION SHALL BE DETERMINED USING A CERTIFIED TOPOGRAPHIC SURVEY WITH A MAXIMUM CONTOUR INTERVAL OF TWO FEET.

2. THIRTY-FIVE FEET ON PROPERTIES OTHER THAN THOSE LISTED IN NUMBER ONE OF THIS SUBSECTION.

VICINITY MAP



1100 E MILLCREEK NEIGHBORHOOD

(801) 936-1343

MARCH 31, 2023

The logo for JZW ARCHITECTS features the letters 'JZW' in a large, bold, sans-serif font. The 'J' and 'Z' are dark grey, while the 'W' is orange. Below this, the word 'ARCHITECTS' is written in a smaller, all-caps, sans-serif font, with the 'A' in orange and the remaining letters in grey.



**Viewed from
above northeast
corner of
property**





**Viewed from
above northwest
corner of
property**





**View from above
southwest corner
of lot**

