

Minutes of the Hearing Officer meeting held on Wednesday, April 11, 2018 at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Jim Harland, Hearing Officer  
Jared Hall, Community & Economic Development Supervisor  
Susan Nixon, Associate Planner  
Briant Farnsworth, Deputy City Attorney  
Tim Tingey, Director Administrative & Dev Services  
Applicant

Mr. Harland opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures.

#### CONFLICT OF INTEREST

Mr. Harland stated that he has no conflicts of interest for this agenda.

#### CASE #1548 – DAVID L. SAWYER – 5922 South Wahlquist Lane – Project #18-02

David L. Sawyer was the applicant present. Susan Nixon reviewed the location and request to appeal a Zoning Determination Letter dated November 29, 2017, for the property addressed 5922 South Wahlquist Lane. Ms. Nixon stated the Community Development office periodically receives zoning requests to verify the status of property or structures on a property. On November 21, 2017 the Community and Economic Development office received a request from Kathleen Sawyer to verify the status of the detached garage at the rear of the property. As part of the City's due diligence Staff gathered information from Salt Lake County Recorder's Office, Salt Lake County Assessor's Office, Salt Lake County Archives, Murray City historical zoning ordinances, Utilities, Maps, Building Permit Division, and any information provided by the applicant. Ms. Nixon explained that a non-conforming use is "the use of any building structure or land which is prohibited by zoning, building, sign or any other regulatory ordinances but which existed lawfully before the establishment of said ordinances." Ms. Nixon explained that the Murray Municipal Code Section 17.52.060(B) states: "Legal nonconforming single-family and multiple-family dwellings may be reconstructed and the use continued as a legal non-conforming use." Ms. Nixon emphasized that the main goal is to show if the structures existed lawfully before the change of code. Ms. Nixon explained that in any request to establish the nonconforming status situation, the burden of proof is the responsibility of the applicant/property owner to prove to the City the non-conformity of the property. In this situation Ms. Sawyer provided documentation noted as Exhibit 5 in the Staff Report.

Ms. Nixon reviewed the history of the property and stated the original home was built in 1901, but the first recorded zoning applied to this property was in 1946, which was Residential B-2. From 1946 to 1957 the property was zoned Residential B-2. In 1975 the property was re-zoned Residential R-2. In 1975 the property was re-zoned to R-1-8 and that zoning still remains. In 1963 a mobile home was brought onto the property. In 1971 to 1973 a detached garage was constructed at the rear of the property.

Ms. Nixon stated the detached garage in question was constructed during the time the property was zoned R-2. The Murray City R-2 Zoning in 1957 (and also in a revised 1963 ordinance), Section 2-11 states, Accessory Buildings, "no building accessory to a one-family dwelling shall be erected to a height greater than one-story or twenty (20) feet." This finding is the basis for the determination issued to Ms. Sawyer.

Ms. Nixon explained that the County Assessor's Office had an historical appraisal card that states "a new 32 x 24-foot garage with 2 rooms above the first floor and was constructed without a building permit". The applicant submitted a Zoning determination application and historical documentation showing a Murray City Building Permit #1377 for a footing inspection on a private garage/shop. Murray City was unable to locate the permit, possibly due to many historical files having been destroyed in a fire at city hall in the 1970's. The applicant also provided receipts and a contract from the building contractor for the garage which verified that structure was constructed with a 2<sup>nd</sup> level and included plumbing.

Ms. Nixon summarized the findings and stated the City concluded that the detached garage at the rear of the property is not legal from at least 1957 to the current date and at no time has the zoning ever allowed for a two-story accessory structure. A computer software program called "Pictometry" was used to measure the height of the garage at a height of approximately 17.5 feet tall. Mr. Sawyer later verified that the garage is actually 18 feet tall. The Murray City zoning has never allowed a detached garage with a second floor. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code, the Community and Economic Development Staff recommends denial of the appeal for the non-conforming structure for the property located at 5922 South Wahlquist Lane.

Mr. Harland asked if this issue came about when the property owner made a request of the Planning and Zoning Staff to provide a zoning determination. Ms. Nixon answered, yes. Mr. Harland asked if the footing inspection card dated from 1971 was only for a footing inspection and not for the building. Ms. Nixon replied, that is correct, the card only specified the footing. Mr. Harland asked if the process for a building permit would also include a permit for the structure as well. Ms. Nixon stated that is the policy now, but was unsure what the policy would have been in 1971 and added there is no indication if the inspector noticed the garage, or if it was planned to be a two-story structure or not. The code has never allowed two-story accessory structures since 1957.

Mr. Harland asked if anybody was living in the facility. Ms. Nixon answered that Ms. Sawyer indicated that from time to time a relative had occasionally stayed out there and the facility does have a bathroom, kitchen sink and a small fridge. It is unclear if it was used as a permanent residence, but the facility would support it.

Mr. Harland asked if the City were to find out that a property had an illegal structure how would they handle it. Ms. Nixon answered that the Determination Letter did not address that concern, but it would typically be turned over to our Zoning Enforcement Officer to handle. The City may give the options the property owner of submitting for a Building Permit to try to bring the structure into compliance; file a non-compliance record against the property; or ask that the structure be removed or retrofitted. Mr. Harland asked if they attempted to bring it into compliance would they have to possibly remove the second level. Ms. Nixon answered yes.

Mr. Sawyer, 5922 South Wahlquist Lane, stated his said his wife's uncle, Ken Peterson who is very detail oriented and honorable was the person who initially started to build the facility. Mr. Sawyer added that he personally felt that Mr. Peterson nor the building contractor that finished the facility would not have built the facility without checking to see if it would be legal first. Mr. Sawyer additionally stated that the City originally had a

Building Permit for the footing assigned to the structure and believes there was most likely also a Building Permit and inspection for the structure and that the City was well aware that this structure was meant to be a two-story facility. Mr. Sawyer added that in 1978 his in-laws filed for a variance to add an addition to the double-wide mobile home already located on the property. He stated that his in-laws would have gone to the City, gone through the entire process and received an approval to add onto the mobile home. On the same plans submitted to the City for the variance for the mobile home addition, the plans clearly show the existing garage. Mr. Sawyer inferred that this is proof that his in-laws were trying to disclose the fact that the garage was in existence and had intentions about getting approval in a legal way. Mr. Sawyer stated that they had fully disclosed the garage to the City and that the City had a chance to address the two-story garage at that time and did not. Mr. Sawyer stated based off his prior testimony he has come to the conclusion that he believes the City did and should consider this a legal structure and grant his appeal.

Mr. Harland asked Mr. Sawyer why his wife applied for the Zoning Determination to begin with. Mr. Sawyer stated they were trying to refinance the property and the appraiser could grant the maximum value allowed by verifying the zoning and legality of the structures on the property. Mr. Harland stated the Murray City inspection card does have a permit # on it and asked Mr. Sawyer if he has a copy of the permit. Mr. Sawyer answered no, but they did search for it and found only the original inspection card for the footing. Mr. Sawyer added that Mr. Peterson who built the structure was very organized and kept very good records of the project and did not feel he would have even built the structure without making sure it was allowed.

Mr. Harland asked Ms. Nixon if she was able to find the permit that Mr. Sawyer believes exists. Ms. Nixon stated she searched and was not able to find a permit # 1377, only the electrical permit in 2003 for temporary power. Ms. Nixon added if there were a building permit taken out for this property there is not record of it. The absence of the permit could mean numerous things such as the permit was never obtained, the permit was not followed through, or the inspector was not able to approve the structure. Ms. Nixon stated that it was interesting that the footing inspection was conducted in September of 1971, but the building contract that was signed with Mr. Hedburg as a contractor was actually dated in October 10, 1971. Mr. Harland asked for clarification that the contract for construction was signed after the footing inspection. Ms. Nixon answered yes, and speculated that it was possible the homeowner constructed the footing and then hired a contractor to build the structure after and maybe the contractor found out the two-story structure was not allowed. Ms. Nixon commented that the City gathers information, and we are only allowed to base our decision off of the information and documents that can be produced and Staff tries to stay totally unbiased on the conclusion of what may or may not have been. Ms. Nixon added that there is notation on the tax assessor's envelope card that specifically states that there is "no permit, new garage under construction" dated November 19, 1971. This could mean the tax assessors checked for a permit and there was not one issued, otherwise how would they know.

Mr. Harland asked Ms. Nixon to address the concern that there would have been a site inspection by the Board of Adjustments for the addition to the mobile home and the City should have done something about the detached garage in question at that time as asserted by Mr. Sawyer. Ms. Nixon stated the site plan does show the garage at the rear of the property however, when an individual is assigned to the case and they visit the site

they are typically looking only at what the variance is for. The detached garage is not noted on this variance application as it was not part of the variance request for the mobile home. Ms. Nixon added that the duty of the Board of Adjustments is to act strictly on what the request was for, being the mobile home.

Mr. Harland asked Staff to address what the follow up action might be if the property is deemed non-legal. Mr. Hall stated he would work with the City's Code Enforcement Officer and that the City has several options to deal with this issue. Mr. Hall explained that first, the City would work with the property owner to bring the property into compliance. If the property owner is not able to bring the property into compliance within the preset time line, then the City would give a 30-day warning that a Certificate of Non-Compliance will be filed with the County. The Certificate of Non-Compliance records on the property so that if someone files for title, refinance or sale it will come up. This is a common procedure that the City performs about half a dozen times a year. Mr. Harland asked if in addition to the Certificate of Non-Compliance would there be an order to remove or modify the structure. Mr. Hall answered often times no, but it depends on the severity of the issue, safety issues or impact on other properties. Usually we only file the Certificate of Non-Compliance or we could issue a citation if necessary.

Mr. Sawyer stated that there is sewer, power, and a gas line attached to this structure and wondered how these utilities would have been granted without permits. Mr. Sawyer added that because the structure has all of these utilities it would be his belief that they would only have been allowed to be installed on a legal structure. Mr. Harland replied that the record indicates that the building was built without a permit.

Mr. Harland opened the public comment portion. Seeing there were no citizens present Mr. Harland closed the public comment portion.

Mr. Harland thanked Staff and the applicant for their participation in this process.

Mr. Harland stated he will forward his written decision to the Community Development Office at 4646 South 500 West, by noon on Wednesday, April 18, 2018.

There was no other business.

The meeting was adjourned at 12:45 p.m.

  
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Jared Hall, Community & Economic  
Development Supervisor