

Minutes of the Hearing Officer meeting held on Wednesday, December 11, 2019 at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Lesley Burns, Hearing Officer
Jared Hall, Associate Planner
Zac Smallwood, Associate Planner
Briant Farnsworth, Deputy City Attorney
Applicant

Ms. Burns opened the meeting and welcomed those present. She reviewed the public meeting rules and procedures.

CONFLICT OF INTEREST

Ms. Burns stated that she has no conflicts of interest for this agenda.

CASE # 19-1569 – KATHLEEN STANFORD – 487 East Vine Street – Project #19-153

Kathleen Stanford was the applicant present. Jared Hall reviewed the location and request for a variance to a side-yard setback. The request is specifically for the requirement that all residential dwellings must be located at least eight feet from the side-yard and the total of the two required side-yards shall be not less than twenty feet. The property is addressed 487 East Vine Street in the R-1-8 Zone. The home currently meets all setbacks. Mr. Hall stated that the applicant has proposed to construct a new attached garage within one foot of the property line. The literal enforcement of the Land Use Ordinance would cause an unreasonable hardship for the applicant because the proposed garage must be reviewed by the standards applied to primary dwellings because it is connected to the home by a five-foot breezeway. As such, even if it were not connected to the primary structure by a breezeway it would be subject to the same side-yard setbacks because only detached rear-yard accessory structures may be located closer to property lines than the main dwelling. Staff finds that there are special circumstances attached to the property because the lot is, gore shaped, and the rear property line is adjacent to a private, shared access, so the lot is not directly adjacent to any other property in this area. The lot's shape limits the property owner's potential use of the rear yard for detached accessory structures. Staff finds that granting the variance is not essential to the enjoyment of the property right because the proposed garage could be located on the property in another way and meet all required setbacks without variances. Staff finds that granting the variance will not substantially affect the General Plan and will not be contrary to the public interest. Because of the unique nature of the property itself and its adjacency to the private access the requested variance would not negatively impact the General Plan or public interest. Lastly, Staff finds that the property's adjacency to the private access allows the intent of the Land Use Ordinance to be met even with the reduced setback as it is requested. In conclusion Staff finds that the application meets only four of the five tests of hardship. Based on review and analysis of the application materials, subject property and surrounding area, and applicable sections of the Murray City Land Use Ordinance,

Staff finds that the application does not meet all standards for a variance, and must recommend denial of the requested variance to the requirements of Section 17.100.080(B) to allow the placement of the proposed garage one foot from the property line.

Ms. Burns clarified that the detached accessory structure could be located in the side yard without a need for a variance, and that it is not required to be located only in the rear yard, behind the home. Mr. Hall answered that it is correct, the accessory structure could be located in the rear yard without any need for a variance. Because the request is specifically for an attached side yard structure it must meet the same setbacks as the primary dwelling.

Ms. Burns asked hypothetically, if the proposed structure were to be located in the rear yard, only one foot from the rear property line would it create any additional issues with building code. Mr. Hall answered that building code would have some additional requirements with the way the structure is built but it could meet those standards. It is Staff's knowledge that Ms. Stanford has spoken to the Building Department and was told that she could easily meet any requirements they have. Ms. Stanford would also have to get waivers from the easement holders, which she states she could obtain. Ms. Burns asked if the proposed footprint of the building on the site plan indicates the placement of the building walls or the eaves. Mr. Hall replied that he believes it is the eaves of the building.

Ms. Stanford stated she wanted to respond to Staff's findings and explained that she believes the picture shows the footprint of the building and not the eaves of the building. Ms. Burns asked if there are any proposed eaves on the structure. Ms. Burns stated that the home is a prairie style bungalow and that the eaves are almost three feet. Ms. Burns clarified if the building that is being spoken about is that home or the proposed garage. Ms. Stanford stated that the eaves she was just referring to are on the home and not the proposed garage. Ms. Stanford stated that she has spent much time restoring the home so that people can walk by and admire it and that putting the garage in the recommended area would detract from the home and make it be less accessible. Also, if the proposed garage was moved into the recommended area then six trees would have to be removed. Ms. Stanford disagreed with staff's findings that she is not missing a substantial property right that other property owners have because she believes that every other property owner has the ability to have a rear yard accessory structure and this property has no way to have one because of the shape of the lot because she has a smaller lot than others around her.

Ms. Burns asked for clarification about which trees on the property are problematic. Ms. Stanford stated that all trees along the driveway are problematic because moving the garage to the west would necessitate moving the driveway to the west as well. The three trees would have to be taken down. Also, if the garage is placed to the west of the home it would block the view from the kitchen window and that would be the reason to push the

proposed structure towards the rear of the property. Ms. Stanford stated that that the advantage of the breezeway is to be able to push the proposed structure to the rear of the home, but the breezeway is really not needed.

Ms. Burns opened the meeting for public comment.

Mark Gregory, 468 East Vine Street, stated he lives across the street and believes the reason for city ordinances are to protect the public. He added that there is nothing to protect and that nobody, including the city, should care where the garage is placed and that he does not see any issue with the placement of the proposed structure or the request for the variance.

Brent Barnett, 491 East Vine Street, stated that he lives adjacent to the subject property and asked if the Stanford's would be allowed to build a fence on the line. He also agreed with Mr. Gregory that there is no public good to have them restricted. Mr. Barnett added that his adjacent property once had a shed along the rear property line that was only one foot from the property line until it fell due to decay.

The public comment portion was closed.

Mr. Hall responded to the public comment and stated, regarding the allowance of a fence would be dependent on meeting the clear view area. If the fence were a tall fence, we would be concerned about having visibility as you are exiting onto Vine Street. If it were a short fence, it may be allowed. Mr. Hall responded to the comments about the public good and referred to the "Tests of Hardship" and explained that they are a requirement from State Code and not a planning code. Setbacks are necessary to create appropriate space between buildings and property lines and appropriate space between buildings on adjacent properties. There is not a necessity to require that the garage be kept eight feet off the property line, that is why the variance findings dealing with public good are found to be all positive. The four positive findings are: for the literal enforcement of the Land Use Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance, special circumstances attached to the property that do not generally apply, the variance will not substantially affect the General Plan and will not be contrary to the public interest and the spirit of the Land Use Ordinance is observed, and substantial justice done. The only negative finding is in relation to the test for granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the district. This test cannot be supported because the kitchen window would be more open, or the trees don't have to be moved. Cities are given these tests by the state because in the past cities were overusing their variance powers and not enforcing their zoning codes. The state essentially stepped in and said zoning codes must be enforced, unless there are very specific circumstances, and they provided an outline by which to review each request. Staff reviewed this request by the guidelines and found that it only meets four of the five tests.

Ms. Burns stated she will forward her written decision to the Community Development

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Office at 4646 South 500 West, by noon on Wednesday, December 18, 2019.

Mr. Hall added that as soon as the decision comes in, he will call and inform the applicant.

The meeting was adjourned at 12:54 p.m.


Jared Hall, Community & Economic
Development Supervisor