

Minutes of the Hearing Officer meeting held on Wednesday, April 8, 2020 at 12:30 p.m. electronically in accordance with Executive Order 202-05 Suspending the Enforcement of Provision of Utah Code 52-4-202 and 52-4-207 due to Infectious Disease COVID-19. The meeting was held virtually. No physical location was held for this meeting in the Murray City, Murray, Utah.

Present: Mr. Harland, Hearing Officer
 Jared Hall, Community Development Manager
 Raymond Poole, Applicant

Mr. Harland opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures. He stated that he will hear the comments and prepare a written summary and decision by next Wednesday, April 15th.

CONFLICT OF INTEREST

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

CASE #1570 – RAYMOND POOLE - 349 East Wilford Avenue – Project #20-045

Raymond Poole was online to represent this request. Jared Hall reviewed the location and request for a variance to the minimum 8,000 square foot lot area requirement of the R-1-8 Zone. The property owner and applicant, Raymond Poole, wishes to purchase property from an adjacent lot, increasing the size of the subject property in order to make it viable for building a new home. The variance has been requested because even with the additional property available the lot will not meet the minimum required lot area of 8,000 square feet in the R-1-8 Zone. Section 17.100.040 states that “the minimum lot area of any lot or parcel of land shall be eight thousand (8,000) square feet.” The subject property is 5,227 ft². The applicant plans to increase the lot size to 7,394 ft² by purchasing property from an adjacent owner and adjusting the rear lot lines between them. With less than 8,000 ft², the lot cannot be considered buildable. Section 17.100.070 allows building on “prior created lots”, but and only be applied to lots that were created through the subdivision process; the subject property is not eligible. The applicant owns and occupies the property at 341 East Wilford, next door to the subject property. In 2000, he purchased land from the property addressed 412 East Afton Avenue and constructed a sports court on it which he used in conjunction with his existing home. At this time, he has sought a lot line adjustment in order to buy additional property from the current owner of 412 East Afton. The additional property would make it possible to construct a home on the lot. Planning Division Staff advised him that even with the lot line adjustment, the lot could not be considered buildable because it would be less than 8,000 ft². Subsequently the owner filed the application for a variance like those that had been granted previously.

The applicant proposes to adjust the shared rear lot line between the subject property and the property at 412 East Afton Avenue 38.90 feet to the north, adding approximately 2,723 ft² to the subject property. After the lot line adjustment, the subject property would be approximately 7394 ft², and the lot at 412 East Afton would be 8,050 ft². There are six additional properties in the Burton Acres Subdivision that were previously granted

variances by the Board of Adjustment. The minutes from those meetings were included as an attachment to the staff report. Notices were sent to all property owners within the prescribed 300-foot distance of the subject property. In the analysis of the standards for granting a variance, Staff found that there are not special circumstances associated with the subject property that should be considered to fully meet the second test of hardship. However, given the number of variances that were granted not only in this area but in the Burton Acres Subdivision itself, Staff is inclined that it is inadvisable to rely on that test of hardship in this case. The application meets the other tests of hardship, and the requested variance will allow the applicant to adjust the lot lines, resulting in a lot upon which a new residential home can be built and meet the other requirements of the zoning.

The purpose of the R-1-8 Zone is to “provide areas for the encouragement and promotion of an environment for family life by providing for the establishment of one-family detached dwellings on individual lots”. As demonstrated by the attached minutes from hearings of the Board of Adjustments in the past, many lots in the surrounding Burton Acres Subdivision have been subdivided into less than 8,000 square feet. The proposed variance will result in a lot which is slightly less than the required 8,000 square feet but conforms to the average lot sizes in the area. Literal enforcement is not necessary to carry out the general purposes of the R-1-8 Zone or the Land Use Ordinance. Because the requested variance is not to allow subdivision, but rather to allow building on an existing parcel, Staff finds that the literal enforcement would cause an unreasonable hardship by prohibiting a residential use of the parcel. Staff finds that the application meets this requirement for granting a variance. The applicant asserts essentially that the history of granting variances to other properties in the area but no variance having been sought for the subject property is a special circumstance. The variance request is driven not by physical constraints derived from the property itself but from the requirements of the Land Use Ordinance vis a vis the area of the parcel. Those circumstances do apply generally to other properties in the district, however; those properties sought and obtained variances in the past before the tests of hardship were well established in the administering and consideration of variances. Staff finds that the application does not fully meet this requirement for granting a variance. The applicant and staff research have established that other properties in the area have been allowed (by variance) to subdivide into lots which did not meet the minimum area requirements of the zoning. Because the subject property is an existing lot, and the variance is sought not to create a new non-conforming lot but rather increase the lot's size to make it similar in area to the other nearby lots and more viable for the construction of a new home, Staff finds that the

Based on review and analysis of the application materials, the subject property, surrounding area, and applicable sections of the Murray City Land Use Ordinance, Staff finds that the application meets the applicable standards for a variance, and recommends approval of the requested variance to the requirements of Section 17.100 with the following conditions:

1. The variance is intended to allow the consideration of the subject property, 349 East Wilford Avenue, to be a buildable, residential property with a lot area not less than 7,300 square feet.
2. Residential structures constructed on the property must meet all height and setback requirements of the R-1-8 Zone.

Mr. Harland asked Mr. Hall if the other lots along Wilford Avenue have 8,000 sq.ft. Mr. Hall responded the other lots do not have 8,000 sq.ft. but as the properties go further to the east, they get closer to 8,000 sq.ft.

Mr. Harland asked Mr. Poole if the adjacent property to the west (337 East Wilford Ave.) is 8,000 sq.ft. Mr. Poole responded that it is not quite 8,000 sq.ft. Mr. Harland stated in reviewing the past Planning Commission and Board of Adjustment minutes, it appears there are a lot of irregularities and probably some mistakes. He stated that we are looking at making another mistake in order to make things uniform. Mr. Hall stated there are not many instances where there has been this level of variances in an area.

Mr. Harland asked how this lot (349 East Wilford) was originally created. Mr. Poole explained that in 2000 it was done by way of a Warranty Deed from the original owner, Charles Tucker, at 412 East Afton Avenue. In 1998 or 1999 the Cahoon Maxfield irrigation ditch was removed and there was no longer good irrigation water to water Mr. Tucker's garden at the rear of his property. At that time Mr. Tucker decided he no longer wanted the large garden and wanted to sell off the back portion of his property. Mr. Tucker and Mr. Poole then split the property by way of a Deed and did not go through the city process.

Mr. Harland asked about the lot line adjustment approval process. Mr. Hall responded the original Murray Burton Acres was platted in 1947. Since that time there have been a few subdivision amendments but also lot line adjustments by way of recording a Deed and Quit Claim Deed. If this variance is granted, the applicant will need to apply for Lot Line Adjustment approval from the Land Use Authority which is the Planning Commission.

Mr. Harland asked if the zoning could be changed to allow for a smaller size lot. Mr. Hall responded that the property owner could apply to change the zoning from R-1-8 to R-1-6 and would then be able to meet the minimum size lot requirement of 6,000 sq.ft. Mr. Hall stated that it is his understanding that Mr. Poole did not wish to proceed with that option. That process takes a longer period of time than a variance and requires Planning Commission review and City Council approval.

Mr. Poole stated in researching the properties in this area, there are six other properties along Wilford Avenue that have the same situation where the original lots were 220 feet length and 70 feet width. Six of the lots received variances and have been split since the original plat into lots that are less than 8,000 sq.ft. The lot directly to the east (lot #17) was split into two lots with areas of 7,750 and 7,700 sq.ft. He stated if this property was able to get two variances, he should be able to get one variance. He stated if he is able

to obtain the variance, he intends to build a home on the existing lot and will remove the sport court. He stated the lot to the west has been vacant for 25 years and he has spent many hours trying to keep the weeds from spreading onto his lot. He stated his request is the same request as six other properties in the neighborhood that have received similar variances. He stated the property owner to the north is wanting to sell the property soon and he is desirous to purchase the property to build a home.

Mr. Harland asked about the detached structures in the rear yard at 412 East Afton Avenue if they will be removed. Mr. Poole responded the accessory structures in the rear yard at 412 East Afton Avenue will be removed and the existing sport court 349 East Wilford Avenue will be removed. Mr. Harland stated that he checked with the Building Division who indicated that there was no building permit for the sport court and asked how it was then constructed. Mr. Poole stated after he bought the lot from Mr. Tucker, he found there were 11 other properties that had basketball courts on the garage or on the driveway next to the street. He did not want to have his kids on the driveway next to the street playing basketball. He decided to build a basketball court and/or sport court on the lot. He stated if the tiles are removed from the sport court then it is simply a basketball court which is legal in Murray City. He had already installed the tiles on the sport court when this was discovered, and he did not wish to remove the tiles. He was going to present this case at the city and the night before he was to present his case, the city called him and said not to worry about it. He stated the reason it was an issue, was because other people in the city who had sport courts were using them after 11 p.m. He stated his sport court has always been shut down by 11 p.m. and has been a great spot for the neighborhood kids to play on. He stated that he and his wife are at an age in life where their children are grown and gone, and they no longer want to have the sport court and want to remove it and construct a new home. He stated that by obtaining a variance and building a new home it will improve the neighborhood. He stated that his neighbors have signed a petition in favor of the variance. He stated his liability for the property increases with having a sport court.

Mr. Harland asked Mr. Poole if he will build a home for himself or sell the property. Mr. Poole responded they are considering building a home, but he probably will not live in the new home. He stated his home at 341 East Wilford Avenue is on a 6,860 sq.ft. and his home is 4,100 sq.ft. with no problem meeting the setbacks.

Mr. Hall stated notices were mailed to surrounding residents and many of the neighbors signed the letter submitted by Mr. Poole indicating they are in favor of the variance. Additionally, staff did receive an email from Ms. William, next door neighbor, who indicated she was in favor of the variance and a new home on the lot.

Mr. Harland thanked staff for the complete staff report and Mr. Poole and his application and information. He stated he will forward his written decision to the Community Development Office at 4646 South 500 West, by noon on Wednesday, April 15, 2020.

There was no other business.

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The meeting was adjourned at 1:10 p.m.

A handwritten signature in black ink, appearing to read "Jared Hall".

Jared Hall, Manager

Community Development Planning Division