

Minutes of the Hearing Officer meeting held on Wednesday, November 18, 2020 at 12:30 p.m. electronically without an anchor location in accordance with Utah Code 52-4-207(4), due to infectious disease COVID-19 Novel Coronavirus. The Hearing Officer has determined that conducting a meeting with an anchor location presents substantial risk to the health and safety of those who may be present at the anchor location because physical distancing measures may be difficult to maintain.

Present: Jim Harland, Hearing Officer  
Jared Hall, Community and Economic Development Division Supervisor  
Zac Smallwood, Associate Planner  
Brandon Bacon, Applicant

Jim 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 #1574 – BRANDON BACON & GINGER OROZCO-BACON – 1286 West Sophia Circle – Project #20-113

Brandon Bacon was online to represent this request. Zac Smallwood reviewed the location and request for a rear yard setback variance for a balcony at the property located at 1286 West Sophia Circle. The property is located in the R-1-10 Zone. The R-1-10 Zone has a rear yard setback of 25 feet from the property line to the structure of the home.

The applicants own this property. In August 2018 a “report a concern” was received on this property stating a deck had been built that was within the 25-foot setback. After a review was done by the City’s Building Division, it was determined that the deck did in fact encroach the rear yard setback. The deck is about 15 feet from the property line. A Certificate of Non-Compliance was issued and recorded on September 14, 2018. To this date, that has not been resolved.

Mr. Smallwood said he measured the rear yard from the back of the house to the property line and it was approximately 29 feet, which would allow 4 feet of deck without any stipulation. According to Salt Lake County, there was a 4-foot balcony on the property. At some point, the applicant increased that. The City’s Code allows a balcony to go an additional 4 feet into the rear yard setback. The applicant could have up to an 8-foot balcony area in their backyard. The request would be to allow an additional 6 feet variance to encroach into the rear yard setback.

The plat map of the property shows the building envelope and exactly where someone can build to.

Mr. Smallwood went over the criteria that the State lays out for variances to be reviewed.

1. 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.

The subject property is located in the R-1-10 Zone. The purpose of the R-1-10 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”. The setbacks have been developed and implemented in such a way to facilitate that type of environment.

Section 17.104.100 of the Murray City Code allows for encroachment into the setback for balconies. The applicant built a balcony that extends an additional six feet. Staff does not find the allowed balcony size to be unreasonable and finds that the application does not meet this requirement for granting a variance.

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

The lot is narrower than most at approximately eighty feet wide at its narrowest. The recorded plat shows the buildable area for this property because of its narrowness. Because of this detail on the plat, staff cannot find that there are special circumstances attached to the property that do not apply to others in the district. Staff finds that the application does not meet this requirement for granting a variance.

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

The applicant is able to have a balcony in the rear yard just not one as large as has been built. Other properties nearby have had balconies installed that meet the rear yard setback regulations. Because the applicant is able to have a balcony, Staff finds that the application does not meet this requirement for granting a variance.

4. The variance will not substantially affect the General Plan and will not be contrary to the public interest.

The purpose of the General Plan is to provide quality residential housing and stable neighborhoods. The balcony, as built, would not undermine the stated goals of the General Plan or be contrary to the public interest by the requested variance. Staff finds that the application meets this requirement for granting a variance.

5. The spirit of the Land Use Ordinance is observed, and substantial justice done.

The surrounding area is predominantly single-family residential homes. Neighboring properties have constructed balconies that meet the setback requirements for rear yard areas. The applicant has built a balcony that does not meet the requirements of the Land Use Ordinance and the intent is to use it as outdoor space. This can be achieved while still meeting the regulations in the Ordinance. Granting the variance would violate the spirit of the Land Use Ordinance. Staff finds that the application does not meet this requirement for granting a variance. Staff recommends denial of this request.

Mr. Harland asked Mr. Smallwood to go over the Variance Analysis Form. Mr. Smallwood went over the Variance Analysis Form that was submitted by the applicant.

1. Is the applicant being deprived of property rights possessed by other property owners in the area?

Staff does not believe the applicant is being deprived. He is able to have a balcony, just not one of the size that it currently is.

2. Is the problem caused by actions of the land owner?

Unfortunately, yes. The applicant built the balcony without a building permit. If a building permit had been sought, this could have been addressed at that time.

3. What special circumstances are associated with your property that is different from other properties in your zoning district?

This is a narrower property and the 25-foot setback can be a hindrance to some people. However, the properties around the applicant's property have been able to conform with the extra 4-foot encroachment area that the City allows.

4. What special conditions associated with this application constitute a hardship?

Staff cannot say that this is a hardship. If a hardship exists, it is potentially self-imposed because the applicant built the balcony before obtaining a building permit.

Mr. Bacon said he made a mistake and he should have got a permit before he built the deck. He assumes the setbacks are designed for safety and privacy. His property has a canal behind it and the next closest neighbor is over 100 feet away. He obtained statements from all his surrounding neighbors that the deck is acceptable and it is not bothering anyone. He would like the variance to be granted so he can move forward with obtaining a permit and getting everything legitimized.

Mr. Bacon said he looked at removing 6 feet of the deck which would leave him with 8 feet of deck. That would involve reinstalling the vertical supports and would basically cut the deck in half.

Mr. Harland said this is a perfect example of why people should get building permits. He asked Mr. Bacon if he would be willing to reduce the size of the deck.

Mr. Bacon said if the deck supports were further out, it wouldn't be as involved. It would be a substantial cost for him to reduce the size of the deck.

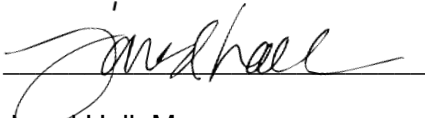
Mr. Harland noted five comments were received prior to this meeting as part of the public comment. All of them supported Mr. Bacon's request for a variance.

Mr. Harland said it is going to be hard for him to approve this. He said he would review everything again before his final report. He stated he will forward his written decision to the

Community Development Office at 4646 South 500 West, within one week.

There was no other business.

The meeting was adjourned at 12:55 p.m.

A handwritten signature in cursive script, appearing to read "Jared Hall", is written over a horizontal line.

Jared Hall, Manager

Community Development Planning Division