

Minutes of the Hearing Officer meeting held on Wednesday, August 11, 2021 at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Jim Harland, Hearing Officer
Zachary Smallwood, Associate Planner
Jared Hall, Planning Division Manager
Briant Farnsworth, Deputy City Attorney
Alex Butterfield, 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 #1579 – Alex Butterfield – 1776 East Vine Street – Project #21-083

Alex Butterfield was present to represent this request. Jared Hall reviewed the location and request for a variance to the required Flag Lot Access Width at 1776 East Vine Street. The variance request related to flag lot regulations, not the R-1-10 Zone requirements. The property is in R-1-10 Zone with an existing home facing Vine Street, and a 20' access strip that extends southeast to Carriage Park Circle. There is no change in zoning being requested as part of this variance application only a variance to the access width that is required for flag lots. This variance request is intended to facilitate a flag lot subdivision that would keep the remaining home on Vine Street and add an additional home to a rear lot. Flag lots are allowed in single-family zones in Murray by Chapter 17.76 of the Land Use Ordinance. Section 17.76.140(H)(1) states that the access strip portion of the flag lot: "Shall be at least twenty-eight (28') wide for its entire length from the street to the point where the access strip adjoins the main body of the flag lot". Mr. Hall explained that we usually refer to a flag lot in two parts: the "flag" is the bulk of the lot is not connected to the public right of way, and the "pole" or "stem" is a narrow physical access or an access easement that extends from the "flag" to the public right-of-way. The only way that Murray's ordinances allow the subdivision of residential property into lots that do not front a public street for a certain width is under the ordinance for flag lots. The reduced width allows that 28' width to lead to the main part of the lot. The lot in every other way needs to meet regulations. For example, a home built on this lot would have to meet setback requirements for front, rear, and side yards, and have a garage, etc. The only difference would be that the driveway leading from Carriage Park Circle to the flag lot and would only be 20' wide, not 28' wide.

The flag lot access parcel was created as a part of the Carriage Park Subdivision in 1991 in order to meet County requirements at the time. It is labelled as a 20' access on the plat. The property is part of an area that was annexed into Murray City on October 29, 2002. A flag lot subdivision was approved for this property under previous regulations in February of 2003. The Community Development Director at the time, Dennis Hamblin, noted that the 20' parcel and subdivision plan was non-conforming because it had been brought in from the county and made the approval, but the subdivision was not executed

and recorded.

Mr. Hall explained that the State requires that an application for variance should meet the 5 tests of hardship:

- 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 required 28' width is intended to do two things: provide 20' of hard surface for appropriate vehicular access to the lot from the public right-of-way, and an additional four feet of landscaping on either side of the hard surface to buffer the lot or lots on either side of the access. The 20' wide access in this case was established in 1991, running between two lots in the Carriage Park subdivision. Those lots are now developed, with mature landscaping and trees lining the 20' access. The appropriate vehicular access from the public right-of-way will be provided by the 20' access as it is hard surfaced, and the intent of the buffering provided by the additional 8' of landscaping is met by the developed lots on either side. As a result, the literal enforcement of the 28' requirement would prevent subdivision and represent an unreasonable hardship that in this case is not necessary to fulfill the purpose of the ordinance. Staff finds that the application meets 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 flag lot subdivision of this property was anticipated by the 1991 Carriage Park plat and was further substantiated by Mr. Hamblin's subsequent approval of the two-lot subdivision. These things and the annexation can be considered as circumstances that are not generally present or applied to other properties in the district. Staff finds that the application meets 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 variance is only sought for that particular width of the stem portion, there is no variance for front or rear setbacks being applied for. Staff finds the requested variance meets this test of hardship because it is not necessary to add that additional 8' to meet the intent of the ordinance, as established in reviewing the first test of hardship. Further, not granting the variance would deprive the property owner of the opportunity to execute a planned subdivision that was previously planned for, and then approved, but never recorded. The potential subdivision represents a substantial property right and Staff finds that the application meets 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 General Plan calls for low density residential development in this area, R-1-10 Zoning, 10,000 sq ft per lot. The property without the 20' access piece is over half an acre. There is plenty of land to provide two lots and will meet all the setbacks and without being contrary to the public interest and affecting the General Plan. 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 intent of this test is met by this application. The intent for these properties to be subdivided in this way is very clear, prior to Murray's annexation of the property which introduced the requirement for 28' instead of 20'. Recognizing that clear, established intent for future subdivision, there is "substantial justice" in granting the variance.

Staff is recommending approval of the variance.

Mr. Harland asked about the 20' access for the driveway for vehicle to access the house and also for emergency access and if it will go right up to the property line of the adjacent properties and the buffers are the landscaping from those adjacent properties. Mr. Hall stated yes and the 20' needs to be fully paved and he displayed the landscaping of the adjacent properties.

Mr. Harland pointed out the unusual configuration of the subdivision for the two lots and stated any house that would be built there would need to fit that unusual lot. Mr. Hall stated a custom home might be needed to make a footprint work and the Planning Division would need a building envelope attached to that subdivision.

Mr. Harland verified that the variance needs to be approved before going to the Planning Commission. Mr. Hall confirmed it can't be applied for Planning Commission unless it receives the variance from the Hearing Officer.

The applicant, Alex Butterfield stated his address as 1776 East Vine Street. He provided some history about the property. His great grandfather built his home, and it was his sister's home that he recently purchased and in order for Terrace Park Circle to go through in 1991 they made the agreement with the original developers to sell off a portion of the back of their land as long as they were given flag lot access so they could eventually have their family build a home there. Murray City annexed that portion of Salt Lake County which was when the access width requirement changed from 20' to 28' for the driveway. He added that the entrance has been used by the neighbor to the south (1797) to park their boats and RVs and he fears that it will eventually become a parking lot. The two other competing offers for the home, one was an owner of a construction company and wanted to park his excavators on the lot and the second wanted to build a big garage and have RV and boat storage for people to use. He stated that he had grown up in the neighborhood and wants to maintain the integrity of the neighborhood by building a single-family home and improving that lot rather than have it become a storage area for equipment.

Mr. Harland asked the applicant whether he was aware of all the building requirements and setbacks for any future construction. Mr. Butterfield stated he was.

Mr. Harland asked for public comment.

James McDonnel, 1797 Carriage Park Circle

Primary concern for the variance from 28' to 20' is the safety of pedestrians on the sidewalk adjacent to the proposed access. The variance would eliminate 4' from the proposed 20' wide drive and the 4' provides additional visibility for seeing and time stop for pedestrians traveling that sidewalk. Pedestrian travelling 3 miles per hour would be going about 4.4' per second and driver perception and reaction time is estimated at 1.5 seconds in most traffic safety standards. Eliminated that 4' would give even a slow driver whose speed allows for nearing and stopping not enough time perceive and react to a pedestrian. Visibility problems made worse on the southside because it borders a back corner of a lot and not the front of the home, a fence or a wall will always likely border that side of the drive blocking visibility until a driver has entered the sidewalk, currently there are 13 kids under 15 years old on the street 3 of which are my own. The intersection of this drive to the street would pose pretty severe hazard to all pedestrians but especially to the children. The visibility factor is made worse by coming from the north from vine street, its not just a right turn its a slightly sharper than 90 degree turn. There are several other general factors to be considered the new lot would have negative impact on bordering lots privacy and views. There would be a period of construction that would be burdensome on the neighbors and our home specifically would end up with a street on two sides and driveway putting us on a driving peninsula. Parking which is problematic already would worsen with an additional home. Ultimately the pedestrian dangers are the main concern.

Peter Cornish, Lot 17

I looked up the county records and the applicant doesn't show as the owner of the property. Would this house be a part of the Carriage Park Home-Owners' Association? The other concerns are based on the application process for the flag lot that don't comply with the vicinity map and the plat map and utility plans there could be a lot of disruption if certain utilities have to be brought in for the lot. Would that all be discussed at the Planning Commission?

Michael Fuller, 6154 Carriage Park Circle

My house will be affected on the south and west side. The proposed 20' goes 3.5' into my lot which has been there since the neighborhood, this would impact my sprinkles and large pine tree. The driveway is on a sharp angle making it difficult to access without going down to the cul-de-sac to the south and turn around and going back. Emergency

and Construction trucks couldn't make it in there especially being only 16' wide, the gate is only 11' wide. We would lose our privacy that we have had in the back of our house. Any way the home is situated they would be looking into our house and we would be looking into theirs. We are also worried about the home not in our HOA and having creative custom construction and dropping the value of our homes considering our area does not grow as significantly as other areas. We would want cohesiveness within our neighborhood.

Rick Butterfield, 1777 Carriage Park Circle

My grandfather was Legrand Allen his sister Afton England so we are the originals. First I want to say we have a great neighborhood and great community, it's a great place to be and that is why we all care. The Allens had the property where Van Winkle and Vine Street and Highland Drive all came through. The Allens property was taken out and moved down to 1770-1776, and you can see that Carriage Park neighborhood in exchange to sell the land they had there was cash and lots and how Carriage Park began. No one would live here without the Allens and Englands, those lots were improved lots. 2002 my grandfather passed away the family offered the land to who wanted it, sold it, I bought it. I had to do these steps in 2003, my father is the one who did the mylar and all the engineering. We did Afton England's at the same time we did Legrand Allen's. We did all the work, the staking, the City work for this flag lot because we were doing it for the Allen lot at the same time. In 2002 we did this smaller development which is when I built my house in 2003. All of us neighbor this lot, I am on the west side of it. From my home, I come in off the cul-de-sac and I see this unimproved, unmaintained lot with weeds and dead grass and a flag lot with weeds and boats and it hasn't been pretty but is better than living in other options. I love where I live and the neighborhood and I knew there would be a day when this would come. What triggered this change was not Alex but Afton England passing away and her family closing out the estate. They put it on the open market a month ago and any or all of us could have bought it. After learning who would possibly buy this property, we would want to keep it as a home not a construction equipment storage lot and employee rental home.

Jennifer Fuller, 6154 S Carriage Park Circle

I want to point out that we have a prescriptive easement issue as my husband pointed out where the 20' actually comes out several feet into our yard and we have an established sprinkler system and plants this change would encumber and take up land that we have been taking care of and is rightfully ours.

Mr. Harland asked if she was aware of where her property line is and stated the applicant and staff can address the issue.

Ellen Brady, 6133 S Carriage Park Circle

I don't face the property line issue my concerns is the HOA issues as a neighborhood we have been through the nightmare of the property immediately adjacent to us that became a drug house which was a long struggle the neighborhood had to fix that issue. My concern would be access of anyone to that lot through our street without the HOA having some voice and control.

Ann Cornish, 6134 Carriage Park Circle

Our main concern is our direct neighbors have two young children, 3 and 6 years old. We see those young children riding their bicycles and running up and down the sidewalk so that they are not playing on the street. That is a major concern because of the way that easement or driveway is, the line of site for a car pulling out of there and by the time you see a child. There are cars that come speeding along that section and we have talked to the HOA about putting some speed bumps in. We don't want the kids riding their bikes and walking to and from the school bus on the street. The major concern I am reiterating is the safety concern for the children in the neighborhood.

Mr. Hall read two emailed comments into the record:

Dan Eldredge, 1787 Carriage Park Circle

The subject property is claustrophobic with no street facing exposure; completely enclosed by neighboring developed properties. Typical properties have a buffer of at least one exposure open to the street that this property will not have. Lot size affects buffering and should be evaluated. The lot sizes of the adjacent properties raise buffering concerns. An example is the proposed driveway of the subject property that borders very near the dwelling of the property to the north of the driveway.

Ordinances governing properties like the subject have been created to address their unique characteristics and concerns of adjacent properties and variances should be weighed against the possible detriments. It seems likely that such ordinances would take into consideration privacy, congestion, safety, emergency response, parking and garbage collection concerns that would need to be addressed. The subject property presents with each of these concerns and has the potential to adversely affect our right of quiet enjoyment and market value of our property. Robust mitigation measures, if possible, would be necessary to address these concerns.

These concerns challenge the prudence of the variance and weigh against approval. Based upon information available, we are in opposition to the variance. If Murray City leans in favor of approval, we request that the mitigation measures be subject to the approval of the majority of the adjacent property owners before the variance is granted.

Michael & Elizabeth Katsanevas, 1798 Carriage Park Circle

We would like to enter our support for the variance application by Alex Butterfield located at 1776 East Vine Street. We have studied the information submitted by Murray City and see no concerns, or adverse effects to the neighborhood, or surrounding community.

Mr. Butterfield showed the fence on the left side down the lane showing the original property line. He stated they built that fence there and the neighbors previously, the Becks had grassed up to the driveway, then moved that fence back to be correct with the original property line. A new fence was built around the pine tree about 7 years ago because Afton England was a single older lady and didn't want people coming into the back of her lot. We would want to look to take that fence down and have the original property line be our property. The entrance is 20.54' and it has been surveyed. He stated he understands the safety concern but is worried about people using that easement anyway because it is there. JR has parked a boat back there for years. If someone builds a home there they are going to be more conscientious about it and care about the safety of the neighborhood versus someone who rents the front house and lets the weeds grow and is coming in and out with heavy equipment.

Mr. Cornish wanted to add that he was involved in putting in that fence in 2008 and wanted to clarify that the fence would have to come down in order to provide that 20'. It would have helped a lot to know this history, in terms of process and respect that's the thing that hurt.

Marin McDonnel at 1797 S Carriage Park Circle, clarified that the boat had only been there for one year and was only there because her brother passed away and until the assets were sold. The boat is no longer there, it was a temporary use and she had permission from the previous owners.

Ms. Fuller again stated they have a prescriptive easement and asked if they would be hearing from someone with regards to that. Mr. Harland stated Mr. Hall would address that.

Mr. Harland closed the public comment portion of this item.

Mr. Hall addressed the prescriptive easement stating that such matters are complicated, and that Mrs. Fuller should not wait for someone from the city to contact them about that because that issue is between property owners. It is something that will need to be established legally as a claim by the property owner. The 20' width is clear from plats and surveys going back years, into the 90's; fence lines do not establish property lines, surveys establish property lines. The owners contending that the fence line established

some kind of prescriptive easement would need to consult an attorney. As far as going forward with a subdivision, if there is an actual legal claim or suit about a prescriptive easement then that is something that would have to be considered. In terms of the variance today, we build a record as staff and as the hearing officer based on the tests of hardship and whether this particular application can meet those five tests which are fairly stringent. The other kinds of issues would be considered with the subdivision itself like clear visibility, where the line of site has to be maintained. Fences shouldn't be 6' high where they are adjacent to the street within 12' of driveways, as is the case here.

Mr. Harland stated he will continue to review this based upon the facts that were presented in the staff report and what was learned during the hearing. The majority of the concerns today had to do with the subdivision approval itself, however this is being heard for the variance approval only. If approved it will go to Planning Commission for subdivision approval. The final decision and report will be made by Wednesday, August 18, 2021 by noon.

There was no other business.

The meeting was adjourned at 1:29 p.m.



Jared Hall, Planning Division Manager

Community & Economic Development Department