

Minutes of the Hearing Officer meeting held on Wednesday, March 9, 2022, at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present:        Scott Finlinson, Hearing Officer  
                     Jared Hall, Planning Division Manager  
                     Susan Nixon, Associate Planner  
                     Briant Farnsworth, Deputy City Attorney  
                     Steven Murray, Applicant

Scott Finlinson opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures.

### CONFLICT OF INTEREST

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

### CASE #1582 – Steven Murray – 549 West Kalia Cove – Project #22-026

The request is for a variance to Section 17.100.080 of the Murray Land Use Ordinance regarding the required side-yard setback to allow an addition to the existing home. Jared Hall presented the request. The subject property is a .23-acre residential lot in the R-1-8 Zone with an existing home facing Kalia Cove. Kalia Cove is a cul-de-sac, and the subject property has one side yard adjacent to the I-215 freeway corridor and the other adjacent to another lot in the subdivision. Side yard setbacks are required to be a minimum of 8', and to total 20' combined. Because the side yard setback opposite the freeway-adjacent side is just over 8', the freeway-adjacent side yard setback should be 12' to meet the required 20' combined total. The applicant's proposed addition would extend into that 12', requiring a setback variance for the freeway-adjacent side yard to encroach 5' 10", leaving a 6'2" setback. He identified the freeway wall on I-215 and the 16' Utah Department of Transportation (UDOT) area that is not buildable area. This request would not violate the UDOT easement. There is a lot of space in that area that is not part of the property.

There are five tests of hardship that are reviewed by staff. The first is 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. UDOT actually owns 10' of property and then 6' easement. Setbacks are required to maintain safe, effective, and attractive distances between homes and structures on various properties. Considering the additional setback which is not used by UDOT in conjunction with the admittedly odd shape of the lot relative to the required front yard setbacks along Kalia Cove, Staff found that it meets this test.

The second test of hardship are special circumstances attached to the property that do not generally apply to other properties in the district. The applicant's responses regarding special circumstances rely on the irregular shape of the lot, issues of past flooding, and the size of the home relative to others in the subdivision. While the drainage and flooding issues cited by the applicant are serious and certainly of great concern, they do not di-

rectly relate to the application for variance to the side yard setback requirements and cannot be weighed in the consideration of the request. The placement and orientation of the existing home are the factors that most directly impact the applicant's desired addition, and subsequently drive the application for variance. Those issues cannot be viewed to qualify as "special circumstances" because they have arisen from decisions about where to place the building and how to orient it to the frontage on Kalia Cove. The applicant in this case did not make those decisions, but they are not special circumstances related to the property itself, but to the actions of the original property owner. Staff finds that the application does not meet this requirement for granting a variance.

The third test, is it essential to the enjoyment of a substantial property right possessed by other properties in the district. The addition in and of itself is not a substantial property right. There was a variance granted in 2006 by the Board of Adjustment to go to the 16' easement line on the adjacent property to the south. Staff in that case recommended against it at that time but the Board of Adjustments did grant that variance.

The fourth and fifth test(s) is the variance won't affect the General Plan, there is nothing that is offensive to public interest or problem for the General Plan or development in general and this does meet that test. The last test being the spirit of the Land Use Ordinance would be observed, and substantial justice done there are no practical impacts from this request, it doesn't harm anyone specific it just violates the ordinance. The second and third tests were not met and the request needs to meet all five tests in order to grant a variance. Staff is recommending denial based on the inability to find for all tests.

Applicant, Steven Murray, asked for time to elaborate on the hardships. He stated the staff report was respectfully prepared in accordance with city rules and noted all the concerns and appreciate the reasoning and conclusions. In studying the report, he noted that even though he mentioned the issue of continual flooding as a hardship, it unfortunately cannot be considered in the variance request. He stated the focus will be on the variance request points, but he would like the opportunity to expand on why the extenuating circumstance of the property are directly related to the flooding and how granting this variance would remedy his hardship. The extenuating circumstances to take into consideration are setbacks to include fire, emergency and utility access, spacing between neighbors for privacy, sound separation, better lighting and viewability, better landscape and beautification. This request has no impact whatsoever on any such circumstances. The property has a 10' UDOT easement and although this would be 5' 10" beyond the setback boundary there is a very unique additional buffer between the home and a 22' tall freeway wall. UDOT has documented that they are satisfied with the request of the proposed 16' setback from the wall and state they have no issues with the variance request. In the staff report Mr. Hall stated the apparent setback is much larger than the actual setback due to the UDOT easement. The neighbors do not have a problem with request and every surrounding neighbor signed a petition in agreement. This does not gain special permission that other neighbors could not have as the home is the smallest in the

subdivision even with the addition. In 2006 the neighbor to the back requested a variance total of 29' for a front rear setback, the staff recommended denial for the variance but the Board of Adjustment approved the variance. This request is merely 5' 10" on a back corner still leaving 16' 2" access from the freeway wall. The home and property have extenuating circumstances that warrant consideration and approval for this variance.

Mr. Finlinson expressed his appreciation of the points Mr. Murray made about the uniqueness of the lot and how it is situated in the easement.

Mr. Murray added there are some other items to address. There should be no blame on the neighbor for flooding issues, that home was built three years later and raised the home to protect himself from flooding issues. Year after year Mr. Murray's home has flooded due to the 3' retaining wall on one side and a 22' tall UDOT wall on the other side. Because the basement bedrooms require egress, the flood potential was not known. It didn't flood until it became below grade and trapped in a hole. The home floods based on ground saturation and intensity of storms in a short time frame. Any storm over  $\frac{3}{4}$ " in 24 hours will collect water in the window wells. In multiple meetings with the city he asked about options and was told it would be the property owners responsibility. After meeting with numerous professionals to find a solution, they concluded there are two options, one is to bring in loads of dirt, create a waterway canal diverter system around the home which would render the back yard unusable or two would be to eliminate and fill all the basement windows and turn the basement into storage only, which would be a three-bedroom loss. Selling the property would require disclosure of all known issue with continual flooding damage which would be a significant loss in home price. The lot has unusual circumstances, and a usable basement is essential to the enjoyment of a substantial property right under the test of that hardship. On August 18<sup>th</sup>, 2021, Murray City flooded with four inches of water in two hours. 200,000 gallons came through his yard, the abandoned drain line that had no outlet had not been maintained in 20 years to his knowledge his was the only property with that amount of water. He lost a furnace, boiler, and majority of an AV rack. Insurance denied the claim due to it being Murray City caused damage. This is a special circumstance and hardship. The property has a unique characteristic that along the I-15 wall the storm drain goes in a natural direction from north to south. The subdivision drains from south to north. The remedy is, with the variance would allow the entire roof to square off the back of the house which would allow the rain gutters to drain to the front of the yard. The dirt can be taken from the addition to be used to remove and relocate new bedrooms and dirt from the excavation will allow the water to grade toward the freeway wall and out to the front to the natural grade of the development. This request of variance again has no impact whatsoever on anyone. The home and property have these extenuating circumstances that warrant consideration and approval of this variance.

Mr. Finlinson asked about the pictures the applicant provided and where most of the water comes in. Mr. Murray stated the neighbors roof line drains on the driveway and the

way the concrete grades away from the house and 100' of that driveway water ends up in his yard. Not blaming him for this, he has a walk out basement and for that elevation he needed that grade. The freeway wall grades from left to right. The development itself grades from right to left. There is two inches from the lowest point in his yard to the window well and to get out to the front of the house it needs to be raised at least 6" to not flood the other two window wells on the other side of the house. To be able to extend the back out and raise the house up the existing grade on the west side and wrap it around to the freeway wall side and let it naturally grade out the front. If the corner is removed which is one option, then it will leave a strange roofline and engineering and truss issues in addition to an odd-shaped room. The other option is a small addition off to the side which changes the roofline to where there would still be drainage into the back yard. He can add oversized gutters or whatever is needed so he can use his home.

Mr. Finlinson asked about the new addition footprint and if there needs to be 12' from the property line or easement line. Mr. Hall verified 12' from the property line. Mr. Murray stated he is asking to encroach 5' 10" in the setback only on a small corner that affects no neighbors and leaves plenty of room access. It is understandable that Mr. Hall is doing his job by the letter of the law. Mr. Finlinson agreed and stated staff is doing their job as they should but there are those unique scenarios that come up where the letter of the law may not make sense and is what this process is for.

Mr. Finlinson opened the hearing for public comment. The following comments were made:

Scott Heath, 557 Kalia Cove

*I am in the home that received the variance. When you look at the development as a whole not one lot is normal and square. The nice thing is that Murray does realize that. If you look at the bottom corner they were counting my front yard as needing a 20' setback from there but because of how odd the lot is it didn't work because the spirit of the lot doesn't affect us because that 16' makes it feel much bigger than any neighbor on a normal lot. UDOT is super accommodating its extra 16' most people don't have a 16' side yard and he will have more than that. We have no problem with this whatsoever and I am the only neighbor that this would affect but really doesn't. It's a small area that probably shouldn't have been approved to do eight homes on, five would have been more fitting. It's a problem that should have been addressed with the developer and the city.*

Jenn Kikel-Lyn, 331 East Shamrock

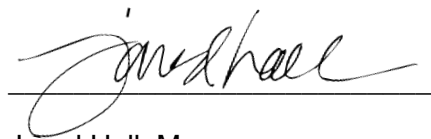
*I am a Real Estate Broker and here to support the Murray's from a real estate standpoint. I am looking at this from their enjoyment and long term from the perspective of what is going on with the property right now because of the water. They are not able to use the square footage that is needed within their house. They intend to stay in this home but if they need to sell there is liability involved as they would have to disclose that information. There are three sections of seller disclosures that are required that apply to water which would require a lot of documentation.*

No further comments were made and the comment portion was closed.

Mr. Finlinson stated he is a Murray resident born and bred and loves the City. He recognized it is a challenging situation. This process helps address these types of situations. The final decision and report will be made by Wednesday, March 16, 2022, by noon.

There was no other business.

The meeting was adjourned at 1:00 p.m.

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

Jared Hall, Manager

Community Development Planning Division