

Minutes of the Hearing Officer meeting held on Wednesday, September 14, 2022, 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 – Senior Planner  
Seth Rios – Associate Planner  
Diana Baun – Transcriptionist

Members of the public: Mark Boren, John Hancey, Beau Pilo, Leroy Walker, Patricia Kingston, Joseph Kingston, Aaron Daley, Adam Archer

### CONFLICT OF INTEREST

Mr. Harland stated he does not have any conflicts with any of the cases being discussed today. He has driven by both of the properties and looked at the houses and the projects.

### CASE #1594 - ADAM ARCHER – 5718 South 625 East - Project #22-135

Mr. Smallwood reviewed the location and request for expansion of a nonconforming structure. The structure is nonconforming to the side yard setbacks per Land Use Code Section 17.100 of the Land Use Ordinance. The property is in the R-1-8 zone, and setbacks for a R-1-8 property are listed as a minimum of 8 feet on one side, for a total of 20 feet combined. He stated that the structure is on their property lines. Mr. Smallwood researched the property and was able to find aerial imagery from 1970 showing the house was still in this condition and they did not find any building permits prior to that. The building division only keeps permits for several years. It is in the R-1-8 zone and it has been declared a legal nonconforming property, where the zoning ordinance does allow for expansions of nonconforming uses in 17.52.040. The property owner is proposing to take the garage space and build a new two car garage system with a side storage area, as well as build a second story on top of that. The second story isn't really the request, they are allowed to build a second story per the zoning ordinance and it is within the rights of the zoning ordinance to allow up to 35 feet for that. The request is purely regarding the side yard setbacks. Mr. Archer is proposing to go from a zero-foot setback in the corner shown to a minimum of 5.8 feet on the northern corner, then as it goes back further it will come more back into compliance. As well, the rear yard setback will become more in conformance as well, going from 5.6 inches to a minimum of 12 feet 3 inches. That will bring the property more into compliance than what was originally there. Mr. Smallwood showed a picture he took yesterday of the existing property showing where the overhang gets close to the property line. He showed an image of the proposed addition, and the new garage which will allow for a second story that he intends to use as a potential ADU or workspace, based on what Mr. Smallwood has seen. There are two findings that the hearing officer has to make in order to approve an expansion of a nonconforming use. The first is that the addition to, enlargement or moving of the building will be in harmony with one or more purposes of this title. Staff does find that in Section 17.04.020, preservation and creating a favorable environment for citizens and visitors of the city, is met by reinvesting in the existing dwelling. This would contribute to a favorable environment and it also fosters the city's residential business and industrial development. The proposed addition would allow for a more usable single-family home in an established area of Murray. Lastly, it would promote the development of a wholesome, serviceable and attractive city, resulting from an orderly planned use of resources, as reinvestment of this home will increase the property's

value and bring up values in the vicinity as well. The second finding is that the proposed change does not impose an unreasonable burden upon the lands located in the vicinity of a nonconforming use or structure. It is staff's opinion that providing that extra buffered space and imposing the conditions will help to remedy some of what has already existed by providing a greater setback and shrinking that footprint a little bit. Staff recommends the hearing officer approve the expansion of a nonconforming use, subject to the four conditions in the report, with the two most important ones being:

- If this is going to be used as an accessory dwelling unit, they need to apply for an accessory dwelling unit permit and obtain a Murray City business license for it.
- To not impact the northern neighbors, no windows shall be placed on the north side. They can be anywhere else on the property as there are ample opportunities for that.

Mr. Harland asked approximately when this house was built.

Mr. Smallwood said it was built in 1957, per the county records.

Mr. Harland asked how this happened, that this house is so close to the property line.

Mr. Smallwood noted that in the past, we didn't have nearly as accurate surveying records as we do now, so it's possible there was an error in the survey. Again, he was able to go back to 1970 and nothing has changed, even the original pictures showed this.

Mr. Harland asked to confirm, since this is totally tied to setbacks, that the north side existing setback is zero and right on the line. The proposed remodeling will make it between 5 feet 8 inches, and the minimum required is 8 feet. On the southeast, the existing is zero and the proposed is still zero with a minimum of 8 feet. This means on the southeast side will still have a problem, but staff's recommendation of approval is because it's an existing problem, nonconforming, and that the project applicant is improving the situation.

Mr. Smallwood said that since they are not proposing to do anything on the southeast side, there will be no changes there; everything is focused on the northwest side.

Mr. Harland asked to confirm this is a removal of the garage with the reconstruction and a foundation this time.

Mr. Smallwood responded yes.

Mr. Harland thanked Zac for his report and the findings. He Invited the applicant forward to talk about his project.

Adam Archer, applicant, stated he purchased the home in December of 2020. He stated he has done a major renovation on the home; pulled the permits for it. Both the interior and exterior of the home have been upgraded. He didn't know the extent of the renovation until he was living in the home, the severity of the problem with the garage. Mainly that the third car garage was probably a carport at some point, that would be my guess, and then someone along the way converted it into an actual garage. The eave is well over the property lines and there is serious recession off the back corner of the third car garage. There is a structural crack that goes through the entire garage, and it has probably dropped 2 inches over the years. The whole purpose of this is twofold, to continue to improve the property as the whole interior of the home

is brand new and they would like to have the two-car garage with the additional living space. Mr. Archer stated his father-in-law died of a massive heart attack a few years ago and his mother-in-law lives in Spokane, WA and his wife is an only child. They would like to move their mother from Spokane to here and create living space above the garage so she can come live with them. It will not be an ADU, just their mother living with their family. This proposal will continue to improve the property even further. The garage will have a foundation and doesn't risk collapsing further and pulling the house away from the property line. It is less than the required 10 feet, but it is better than what is currently there.

Mr. Harland said the recommendations from staff indicated the four conditions, and he asked if the applicant would comply with all four conditions. Mr. Archer responded yes.

Mr. Harland asked if an ADU permit is needed in this situation.

Mr. Smallwood said when it is being used for family members, and it's just an addition, technically they do not need an ADU permit. However, if in the future they wanted to rent that out, they would have to go through the permit and inspection.

Mr. Harland asked the applicant if he understood. Mr. Archer responded yes.

Mr. Harland opened the hearing for public comments. There were no comments and the hearing was closed.

Mr. Harland will review the rest of the report and prepare a written report. The final decision and report will be available next Wednesday, September 21, by noon. It can be picked up at the Public Works office, where the planning and development folks are located.

#### CASE #1595 - PATRICIA KINGSTON – 633 East Mount Vernon Circle – Project #22-136

Mr. Rios presented this application for a variance. The property is at the end of a cul-de-sac, in the R-1-8 zone. The surrounding area is in the R-1-8 zone as well. The applicants are seeking a variance for their side and rear yard setbacks. The minimum allowed side yard setback is 8 feet, and on the back for this home the minimum rear setback is 15 feet because it was built before 1987. This was brought to the city's attention when a neighbor called and complained about how close the addition was to the property line. The property owners are attempting to build a pergola. Mark Boren, the code enforcement officer, went to the property issued a stop work order. They are now seeking a variance request for those setbacks so that they would be able to continue with the construction of the pergola. Mr. Rios showed the site plan provided with the application showing where the pergola is located. At its closest on the side yard, it would be 2 feet 3 inches away from the property line. In the rear yard at the closest point, it would be 2 feet 5 inches from the property line. He showed photos from different angles of the property from the staff report and he described which photos showed where everything is located in relation to the property line. The requirements for a variance are different than an expansion for a nonconforming structure, as there are certain hardships the applicant has to meet. To receive approval for the variance, it has to pass all five of the tests as listed below.

#1 – The literal enforcement would cause an unreasonable hardship for the applicant, not necessary for the purpose of the land use ordinance. The hardships being faced by the applicant are just that they would lose time and money. Staff found this can't be deemed an

unreasonable hardship since all the circumstances are self-imposed; they began to build the pergola and everything else without checking the zoning or checking with the city first. The first test is not met, as this was self-imposed.

#2 – Special circumstances attached to the property that do not apply to other properties in the district. There is not uniqueness to the property. The home is weirdly placed, in that it is very close to the property lines as it is. Staff was able to find old photos in the county records to see that was how the home was built originally, so it was not from any action on the applicant's part. However, because they built the pergola so close, it does violate and encroach further into the setback. They noted in the application that something that could be considered unique is the grade change. There is a drastic grade change at the back of the property. However, we looked at an aerial view and measured out where the pergola is, as well as where the property line is. Even if the property was flat, it would still be encroaching into that 15-foot rear yard setback.

#3 – The variance is essential to the enjoyment of a property right. This is a standard that this variance application does pass. Many other people build porches and pergolas throughout Murray, and they are able to enjoy those. That is something that, if granted, is a property right that they would be able to enjoy for a gathering place like they mentioned.

#4 – Does not substantially affect the general plan and is not contrary to public interest. It meets this standard, there is not really anything that it is contrary to. The whole purpose of the land use ordinance in the R-1-8 zone is to encourage single-family development, and it meets that purpose here.

#5 – Land use ordinance is observed and substantial justice is done. This is similar to what was just said, it doesn't violate the whole spirit of the ordinance, which is encouraging single family dwellings, so it does pass this test in staff's opinion.

Mr. Rios then went on to discuss the unreasonable hardship analysis. As mentioned earlier, they can't consider this an unreasonable hardship, simply because all the circumstances come from the actions of the applicant; this is not something that just exists with the property as it currently is. Since this application does not meet all five of the tests, staff has to recommend denial of this request because it doesn't meet all the variance requirements.

Mr. Harland asked when this home was built. Mr. Rios believes it was in 1980 or 1981.

Mr. Harland said that in the analysis and findings, staff indicated under section "B" that the 1977 zoning ordinance required the same minimum side yard setbacks. As the home was built after that time, it violated those setbacks at that time.

Mr. Rios said that, as Mr. Smallwood mentioned, they don't have the original records of the buildings and don't know why it was built that way, and they did find an old picture that showed it was built that way, very close to the property line.

Mr. Harland asked if there had been any other additions to the property.

Mr. Rios said there weren't any that they knew of. There is a structure on the south side that is a detached structure, but that building does conform with zoning code.

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Mr. Harland noted that the test for a variance is pretty much tied to the five items discussed above, and generally they require all five of them to be met; however, two of the items are not met based on staff opinion, and he asked Mr. Rios if that was correct.

Mr. Rios agreed that the first two items were not met.

Mr. Harland thanked Mr. Rios for the good job on the staff report and invited the applicant to come forward and speak.

Aaron Daley, representative for applicant, stated he is representing the applicant on this. He stated in his discussions with the owners, the financial aspect is not the concern that they have. First of all, they went into this looking at considerations that were in the general area, examples of what may or may not be permissible; he thinks that's why they approached it the way they did. The idea behind it was to create a good open space area that would enhance one of the amenities that are on site, which is a pool; that is why they wanted the terrace area. That was seemingly the only place that they could place it, which is the reason they did that. They are not concerned about the financial aspect, just the ability to use the space as best they can for the amenity that they have. As you can see by the lot, it is very limited on what they can do on-site, and how they can develop that to be able to use it. As was noted, and was something they found as well, for some reason a lot of the areas have issues or preexisting problems with that setback for multiple reasons. A lot of others they noticed were also trying to develop uses that encroached on that, just by nature of irregular lots or conditions trying to utilize open spaces that just, for the most part, weren't probably pre-planned during the '60s or '70s, when the homes were built. They are trying to make good use of developing and creating more value in the home and utilizing irregular areas of the lot that before hadn't been considered or developed. He thinks that's why they approached this the way they did.

Mr. Harland acknowledged that Mr. Daley was representing the applicant and asked if he was the developer. Mr. Daley responded that he is not the developer, he is just representing the owner and helping them through this.

Mr. Harland asked who is building the project. Mr. Daley believes they hired a contractor, not related to them.

Mr. Harland asked if Mr. Daley was familiar with how this all started, obviously they didn't obtain a building permit. Mr. Daley stated he was not familiar with that and he is just familiar with dealing with the code issues and concerns with the site itself.

Mr. Harland asked why they built the pergola without first getting a building permit or checking with the city, as that could have avoided this whole situation. He asked Mr. Daley if he could find that information out for him now. He noted that they need all that information now, so he can evaluate the application and make his decision.

Patricia Kingston, applicant, stated when they started this addition, there wasn't any place in the yard that was big enough to have a gathering area. They pushed the landscaping back a little bit and put a little 3-foot wall which gave them a little more space. They wanted to put something there, and they did not realize that there needed to be a building permit for a non-enclosed structure there; that is the reason they didn't go to that. When they found out that they did, which she is glad it was brought to their attention, they then looked at it to see if they could

comply as much as possible on the new drawing to the code, hopefully getting a variance for the side and back yard, which is the odd shape. She feels the majority of the hardship was the odd shape of the yard, so that's how it came about.

Mr. Harland asked about the hard surface, the patio that's under the pergola they built; was that already there. Ms. Kingston said no, that was built before the pergola, about four years ago.

Mr. Harland noted that they said they had an existing patio out there. Ms. Kingston responded yes.

Mr. Harland said they claimed they had no place to gather, but he didn't understand that if they already had the existing patio. Ms. Kingston responded that they do have that patio to gather, but they wanted to cover it. They didn't realize that having a pergola that was a non-enclosed structure needed to have a building permit.

Mr. Harland said he drove by their house the other day. He doesn't typically go walking in the backyards when doing these, usually driving by because he doesn't want to interfere with the property owner. He noticed on the left side of the backyard there was a truck and trailer parked there, so he couldn't really see anything. He asked the applicant what they are doing back there, as it looked like they had some construction going on; the pictures showed there was construction going on as well.

Ms. Kingston said yes, they have waited about four years to get this project going. When they first moved there, they started noticing that as they would experience rainstorms that were a flash flood type of storm, the existing French drain was not able to hold that. Water would rise, go over, and flood her basement. Most of that construction is to place a bigger French drain in that area to accommodate all the water that flows into there when the storms happen, so they won't get the flooding in to the basement. They re-did the rain gutters and some improvements to the house like painting.

Mr. Harland asked if it would have been feasible to build a covered patio on that side of the yard, rather than where it is. Ms. Kingston said it didn't feel like it because the existing detached garage is already there. This was already here when they moved here, everything was made into concrete so they could put a trailer and there is usually a motorhome that is parked there. The people that live there are usually able to park inside that space.

Mr. Harland asked to confirm that there is an entrance to her home on the side with the patio, which makes it convenient to walk out of their house on to the patio. Mr. Daley added that there is the amenity of the pool in that corner, which is the reason why the natural location for that was where it was placed. Ms. Kingston said the pool was existing on the property when they purchased the home.

Mr. Harland said there are two problems. First, it doesn't meet the minimum setbacks. Secondly, they built it without getting a permit. They have had these things happen before, at least three times that he can remember while sitting in this position, where people-built things without getting a building permit. If you are going to build something, get a building permit and it will solve all these problems. He asked if staff had informed her of the fact that if this is not approved, she will have to remove that structure.

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Ms. Kingston responded that yes, she is aware of that.

Mr. Harland asked if she had any other questions for himself or the staff. Ms. Kingston said no, she doesn't believe so.

Mr. Harland said he will evaluate this further, and he will read through the reports. He has already read through everything, but he will read it again, evaluate it, discuss it with the staff, and then the final decision will be made by next Wednesday at noon, which is September 21. She will be contacted, or she can contact the planning division office, and they will tell her the results.

Mr. Harland opened the hearing for public comment on this item.

*John Hancey, resident, stated he is the property adjacent to the Kingston's to the north. Mr. Hancey stated we live in a society of rules and regulations, licenses to drive cars, to do this and that. Licenses and permits need to be obtained before the building happens. I think it is already kind of a given, the purpose of this hearing is to obtain permission to build a pergola; well, I think we all know that it's already built. It's built, it's done, and it's there. I feel sorry for the money that was spent there, and all would have been avoided if the proper permits and stuff would have been there. His stated he wanted to go on the record that he is opposed to the pergola as it is right now, it is like a big cathedral looking into my backyard. He also takes exception to the two feet. He stated he measured it and it is less than a foot away from the property line on his wall. It's like a cathedral looking down.*

*Beau Pili, resident, stated he is the neighbor on the other side. Similar to John Hancey, he wanted to express his opposition of having the pergola variance granted. He stated there has been digging and other things involved which he doesn't believe there were permits pulled on that either. Additionally, he has not seen blue stakes come out to make sure that, as deep as they are digging, that we are in a good position. There are fears there, and again to Mr. Hancey's point, when you build something you do it right the first time and you take care of it like that.*

*LeRoy Walker, resident, stated he is the property owner behind this building and is along much of his property line. He stated he feels sorry for the owners, the problems they have created and wish it hadn't happened, but disapproves of having it built.*

Mr. Rios read a public comment received prior to the meeting:

*Carlton Fish, resident, stated he is opposed to the granting of a variance for the construction of a pergola on the property at 633 E Mount Vernon Circle for the following reasons:*

*1 – This is a very large house, 7 bedrooms and 8 baths, in a neighborhood of mostly smaller homes. A potential for large gatherings exists, even if only the residents are outside, thus noise is a concern.*

*2 – The house is located on a cul-de-sac with limited parking availability, which is already a problem.*

*3 – The placement of a pergola would, by necessity, be very close to the property lines, thereby adversely affecting the neighbors and property values.*

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*He thanked Mr. Harland for the opportunity to speak.*

Mr. Harland asked to confirm that notices were sent to about 40 people.

Mr. Rios said they were sent to 30-40 people, within 300 feet.

Mr. Harland asked if there are any additional public comments, specifically if Mr. Boren had any comments.

*Mr. Boren responded he did not have any additional comments and everything has been adequately addressed and covered.*

Mr. Harland said that, as mentioned, he will have an answer by next Wednesday at noon. It will be in writing, available from the planning office at the public works building on 500 West.

Mr. Smallwood said he doesn't believe there will be a hearing meeting next month.

The meeting adjourned at 1:13 p.m.



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Community Development Director