

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

Present: Jim Harland – Hearing Officer
Susan Nixon – Senior Planner
Zachary Smallwood – Senior Planner
Diana Baun – Transcriptionist
Briant Farnsworth - Attorney

Members of the public: Jason & Vonnie McLaughlan

Mr. Harland reminded everyone in attendance that this hearing is being recorded. All presentations and comments made will need to be made by approaching the lectern, stating your name and address clearly for the record. All comments and presentations are on the record.

CONFLICT OF INTEREST

Mr. Harland stated he does not have any conflicts with the case being discussed today.

JASON & VONNIE MCLAUGHLAN – 6217 South 700 West – Case #1596

Ms. Nixon reviewed the driveway width variance request from Vonnie and Jason McLaughlan, regarding the property at 6217 South and 700 West. The property is on the east side of 700 West within the R-1.8 residential zoning district. The request for a variance is for Section 17.72.100 of the land use code, which establishes a minimum for residential driveways of 12 feet and a maximum of 30 feet for all residential dwellings. A site plan of the property was presented. The home was built in December of last year. At the time the home received final occupancy, the driveway was 30 feet. The site plan submitted by the McLaughlan's shows a 48-foot-wide driveway. On July 11th, our city inspector happened to be driving by and noticed that the Mr. McLaughlan was pouring the driveway. The city inspector informed Mr. McLaughlan that he needed to obtain a curb cut permit and that the maximum driveway width allowed is 30 feet.

Ms. Nixon stated that in order for a variance to be granted the five criteria established by state code must be met which is the following:

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.

Staff has reviewed this and determined that the hardship cannot be unreasonable, because it is self-imposed, meaning they caused the situation themselves and it is not necessarily due to any uniqueness or restrictions on the property itself.

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

The current circumstances relate to the nature of the request, rather than the property itself, so it would not meet these criteria.

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

The applicant's neighbors do not have a driveway access that violates the city code, which means that the property right is not possessed by people in the surrounding district that staff could see.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

In reviewing it, the general plan calls for single family, low-density residential development in the area. The requested variance would have no practical impacts that would in any way be contrary to the public interest or have any impact on the general plan. The variance does meet these criteria.

5. The spirit of the land use ordinance is observed and substantial justice done.

In review of the case, staff sees no practical impact from the requested variance and staff finds that the granting of the variance will not violate the spirit of the ordinance. The purpose of the ordinance is to promote an environment for family life, and the widening of a driveway does not obstruct this purpose.

She next discussed the unreasonable hardship analysis, which also has to be reviewed in order to establish the variance.

1. Is located on or associated with the property for which the variance is being sought.

Yes, that's the case, it is on the property for which the variance is being sought.

2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood and special circumstances must relate to a hardship complained of or deprive the property owner of privileges granted to other properties in the same district.

As established in the staff analysis of the test of hardship, the circumstances are not peculiar to the property, but arise from the applicants' actions themselves.

3. In determining whether or not the enforcement of the land use would cause unreasonable hardship under subsection C1 of this section, "The assigned hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic."

Staff concludes that the hardship mentioned is self-imposed. The applicant apparently did not review the city ordinances, contact the city regarding their driveway width, or attempt to ask a staff member before beginning construction of the project as was shown earlier with the city inspector stopping by on the day he was pouring the driveway. So, the economic hardship was created by actions of the applicant.

Based on the state criteria, staff has reviewed the request of the McLaughlans and recommends denial as requested per the requirements of Section 17.72.100 of the Murray City Land Use Code.

Mr. Harland asked to confirm that there are five criteria or standards for a variance, and this one is meeting two out of the five. Ms. Nixon responded yes.

Mr. Harland asked to confirm that generally they require all five. Ms. Nixon responded yes, in order to grant a variance, you have to meet all five.

Mr. Harland asked to confirm that the variance is just for the width of the driveway, and the ordinance designation was for the 30 feet. Ms. Nixon responded yes; the code has a maximum of 30 feet for residential driveways.

Mr. Harland asked to confirm that this variance does not address the curb cut. Ms. Nixon responded yes; they are two separate issues. The curb cut permit was not obtained, but it also doesn't meet the requirements.

Mr. Harland asked to confirm that the discussion today is just the variance for the driveway width. Ms. Nixon responded yes; the request is for the 48-foot-wide driveway.

Mr. Harland acknowledged that it was briefly mentioned in the introduction, but he asked for Ms. Nixon to walk him through how all of this started, when and who discovered the violation; what brought us to this point today.

Ms. Nixon said that Seth Rios, a former planner, is the one that wrote the staff report, but he filled her in and she has talked to the Murray City Public Services department about this; believes she has the information correct. She stated the home was constructed and got a building permit and was issued a final certificate of occupancy on December 8th. She stated that the McLaughlans bought the home shortly thereafter. At the time the home received the certificate of occupancy, it did have a 30-foot-wide driveway and passed the inspection that way. On July 11th, Sam Adams, one of the city inspectors, happened to be driving by and noticed that they were pouring concrete for a wider driveway, and was aware that the curb cut permit had not been obtained as he is usually the one that approves them. Mr. Adams is also aware that 30 feet is the maximum allowed for residential homes. He informed Mr. McLaughlan that it didn't meet the city code, and that a curb cut permit had not been obtained. Mr. McLaughlan continued to pour the concrete as the concrete truck was there at the time. On July 27th, Mark Boren, the zoning/code enforcement officer sent a notice of the violation to the McLaughlans. Then both Mark and Sam met with the applicants sometime thereafter. The McLaughlan's applied for the variance on September 19th. No citation was issued for this, typically they try to work with property owners before any citations are issued. By not obtaining a curb cut permit under Section 12.16.020, it is a Class B misdemeanor, and could potentially have a penalty and fines.

Mr. Harland asked to confirm that would be the penalty for the code violation. Ms. Nixon responded yes, but again noted that no citation was issued. She also noted that when she was talking to the inspector for the engineering division, they had mentioned that because the driveway had been widened, and no curb cut approval was done, that new section does not meet the ADA accessibility regulations and is out of compliance with ADA access requirements.

Mr. Harland asked if that was because of the width or the slope. Ms. Nixon responded both.

Mr. Harland asked if that would have to be corrected regardless. Ms. Nixon said it should be, but that would ultimately be up to Public Works.

Jason McLaughlan, applicant, stated they moved into the home last December. He wasn't aware of, and he would imagine there are probably permits, but he has poured driveways many times. He built his first house at 18 and any city that they have lived in, they have always kept to the highest standards. He stated this is a temporary home while they build their next estate. They poured the driveway and didn't think it was an issue. What prompted the variance request is they were backing their camper in and having to hop over a curb and sidewalk. His home is adjacent to 700 West where the bridge narrows down and traffic is going like "a bat outta hell". He stated that he had a guy threaten him while he was trying to back the RV in and it's hard to do. He stated he is not going to rally his RV and mess up his axles over a curb. They decided to pour the driveway and the inspector did come out, he told the applicant that he should probably stop before he goes too far. Mr. McLaughlan stated his response was "Oh, I'm not going to do that because I cut the curb like two days before just so it wouldn't impede too much pedestrian traffic." Then he said, "I'll pour it and I'll deal with it later, if I have to rip it out, I have to rip it out." The inspector proceeded to tell the applicant the codes, and commercial code is a 50-foot opening, but their home is not in a commercial zone. The code does allow for two driveways for residential properties. The inspector wanted the applicant to fix this issue and stated he could have two driveways and could ramp it up for 5 feet, and then immediately ramping it back down 5 feet to separate the driveway. He said he really didn't see the point in that, instead of a 48 foot he'll have a 42-foot opening, it will just be separated by a hump. He didn't really understand the necessity of that, it just doesn't make much sense. Mr. McLaughlan stated they are on a collector street and it is not a residential street. He stated he has never lived on a main street before and has always lived in a residential subdivision and 700 West is a pretty busy road. He stated that they proceeded to pour the driveway. He stated with the codes being like that, safety is a big concern. He decided to attend the variance hearing today before he gets his attorneys involved, because he will just turn it over to them after today. Mr. McLaughlan stated he maintains the highest standards in business and personal life. He understands it's an aesthetic issue, because if it's allowed in commercial and there are no water flow problems, he's scratching his head here.

Mr. Harland said it's not necessarily the approach to the driveway, it's the driveway width exceeding the 30 feet.

Mr. McLaughlan said it's the curb cut, the driveway isn't the issue; it's the curb and the sidewalk where they cut the curb. The inspector said that if they were just pouring the driveway, and didn't mess with the sidewalk or the curb, he wouldn't have even stopped.

Mr. Harland said that he was familiar with the 700 West area, and regardless of the traffic, it is still a residential street.

Mr. McLaughlan said it's a collector street, which is like commercial. He then asked his wife in the audience, who works for a city, what a collector street is. Vonnie McLaughlan responded from the audience with a definition and then Mr. McLaughlan said that means it's not a residential street, a residential street is zoned differently.

Vonnie McLaughlan, applicant, stated that a minor collector street gets all of the traffic from all of the neighborhoods, churches, businesses that are on that street or close to it. Then, that street goes to a major collector street, which would be like 7200 South or 5400 South which are major collector streets; basically, it has more than three lanes.

Mr. Harland said the point is, whether the designation is collector or residential street doesn't make any difference because the issue is the width of the driveway.

Mr. McLaughlan said it's the curb and gutter.

Mr. Harland asked staff to explain what they are talking about.

Ms. Nixon said that in this case, it's really almost one in the same. Murray code specifically says, "for each residential lot, not more than two driveways, each of which will be a minimum of 12 feet in width with a maximum of 30 feet in width at the property lot line, exclusive of turnaround areas." The property lot line is where the sidewalk meets the driveway.

Mr. Harland asked to confirm that theirs is more than 30 feet, it's 48 feet. Ms. Nixon responded yes, at the property lot line it's 48 feet, and the issue is the width.

Mr. McLaughlan interjected that this is about the width of the approach, and that his driveway can remain, as it's an RV pad. If he has to do anything, the only thing he has to rip up is sidewalk and curb, and re-pour a nipple, basically a ramp in the middle of their approach.

Mr. Harland asked staff if that is what they are asking.

Ms. Nixon responded that at the property lot line, the maximum is the 30 feet; that typically is on the inside of the sidewalk.

Mr. Harland referenced the applicant's question about the removal of the entire pad or the driveway. Ms. Nixon said that once you get into a private residential property, past the back of the sidewalk, you can widen the driveway at that point.

Mr. Harland reiterated that it's the portion of the driveway that's on city property that's the issue.

Ms. Nixon said it's from where you enter the property behind the sidewalk that 30 feet is the maximum.

Mr. Harland asked if the property line is on the inside back of the sidewalk. Ms. Nixon said typically the property line is on the inside back of the sidewalk but wasn't sure in this case.

Mr. McLaughlan agreed and noted that from the sidewalk forward is the only thing in question right now. He met with staff out there and went over it. The only thing he has to mess with is the sidewalk and the gutter, ripping out 10-12 feet and ramping it up.

Ms. McLaughlan said they basically have to hit a curb and gutter to try and back up a trailer.

Mr. McLaughlan understands city code and we are talking aesthetics. In the end it is aesthetics versus safety. This is a huge safety concern for them.

Mr. Harland said we are talking about the requirements of the ordinance that require a certain width, and it can't exceed 30.

Mr. McLaughlan responded that you can have two driveways at 30-foot widths each.

Mr. Harland said the driveway needs to be 30 feet and the ADA requirements have to be met as well.

Mr. McLaughlan said he gets it, but personally doesn't understand that one, even if he was in a wheelchair, but he gets it and it's all debatable.

Mr. Harland responded that no, it is not debatable. Mr. McLaughlan said sure, that's what a special variance is for, right?

Mr. Harland said the issue here is adherence to the city ordinances, which sometimes may seem unreasonable. If you do construction, then you should know this if you are a contractor. A simple phone call to the city to clarify what the requirements are and if you need a permit and what those requirements are, would have avoided this whole thing.

Mr. McLaughlan replied "yeah, I get that."

Mr. Harland said this is the third or fourth hearing he has conducted regarding a similar type of issue, where somebody did not bother to check with the city. He stated the city employees are very reasonable, very educated as far as the ordinances, and they will explain that to you thoroughly. If the applicant had done that, he would have saved himself having to repair and replace this and wouldn't be here right now.

Mr. McLaughlan said "but, we are here."

Mr. Harland asked if the applicant had anything else to add.

Mr. McLaughlan responded no.

Mr. Harland opened the hearing for public comment.

Ms. Nixon noted there was one email received before the meeting, and it was included in the packet that was sent out.

Mr. Harland acknowledged there is no one in person to speak, so he closed the public comment portion of the hearing. He had no other questions for the applicant. He appreciated them coming today and explaining their issue. He asked staff if they had any additional information to share.

Ms. Nixon did clarify that this property is in the residential zone, even though it might be on a minor collector street, it is a residential use and follows Section 17.72.100 for residential driveway widths.

Mr. Harland closed the hearing at 12:55 p.m.

Mr. Harland stated he will have his decision to the planning staff one week from today, October 19th.

Mr. McLaughlan asked about the process for an appeal. Ms. Nixon responded an appeal to any decision from the hearing needs to be to the Third District Court within 30 days of the decision.

Minutes transcribed by Diana Baun, transcriptionist.