

Minutes of the Hearing Officer meeting held on Wednesday, January 11, 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
Jared Hall, CED Director
Brian Farnsworth, Deputy City Attorney

Members of the public:
Chihan Kim, applicant
Casey Copier, project architect
Craig Bennett
Tom Hamann
Steven Slack

CONFLICT OF INTEREST

No conflicts of interest.

CASE #1599 - Cosmos Enterprises - 158 East 4500 South - Project #23-011

Ms. Nixon presented the application requesting to expand 25,941 ft² to the existing commercial warehouse building. The building is currently nonconforming to the east side yard setback regulations as written in Section 17.160.040. of the Land Use Ordinance. The property consists of two separate parcels: 22-06-305-046-4001 and 22-06-305-046-4002. The County Assessor has identified these the two separate parcel numbers because they have differing taxing entities. For this reason, the two parcels cannot be combined. Staff has determined that the property is nonconforming to the east side yard setback and the proposed addition would require a request to the hearing office for an expansion of a nonconforming structure.

The Hearing Officer, acting as the Murray City Appeal Authority, may authorize approval of an addition, enlargement, or moving of a structure occupied by a nonconforming use or a structure that is nonconforming as to height, area, or yard regulations subject to the following findings:

1. The addition to, enlargement of, or moving of the building will be in harmony with one or more of the purposes of this title;

The proposed addition is in harmony with the purpose of the C-D, Commercial Development Zone that "provide areas in appropriate locations where a mixed use of businesses, commercial, entertainment and related activities may be established and maintained."

The proposed addition is in harmony with the following statements that are located in Section 17.04.020(A), (E), (F), and (H) of the Murray City Land Use Ordinance:

- Encourage and facilitate the orderly growth and development of the city.
 - Reinvestment in existing businesses contributes to a favorable environment for the businesses and citizens of the city.
- Enhance the economic and cultural well-being of the inhabitants of the city.
 - The proposed addition will contribute to the economic well-being of the city and an existing business.
- Foster the city's residential, business, and industrial development.

- The proposed addition would allow for a more useable commercial/warehouse in an established area of Murray.
 - Promote the development of a wholesome, serviceable, and attractive city resulting from an orderly, planned use of resources.
 - Reinvestment in this business will increase the property's value, and neighboring commercial values in the area as well.
2. That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure.
- Staff finds that the proposed addition will not impose additional burden upon the lands located in the vicinity of the nonconforming structure. The proposed addition will maintain the existing side yard setback along the east boundary and a buffer wall will also be required along the east boundary for the length of the addition. Staff does not have or anticipate any concerns with the proposed request.

The applicant's request for an expansion is to allow the property owner to add on to the rear of the building. The request will not bring the property into full compliance and will maintain the existing side yard setback nonconformity. For this reason, staff supports the applicant's request.

The proposed addition will reduce the rear yard setback (which will front on to 4600 South Street) from approximately 256' to 30'. The proposed rear yard setback with the addition is 30' and is larger than the minimum required of 20 feet. Staff does not anticipate that the requested addition to the structure will increase the existing nonconformity on the property or cause a burden to neighboring property owners. Additionally, a buffer wall is required along the east boundary line to help mitigate any potential impact. The applicants will be required to go through Site Plan Review after the Hearing Officer decision. Based on a review and analysis of the submitted material and applicable sections of the Murray City Land Use Ordinance, Staff finds that the proposal meets the standards for an expansion of a nonconforming structure and recommends approval subject to the following conditions:

1. The applicant shall obtain the appropriate Murray City Building Permits necessary for the proposed addition.
2. The proposed addition shall meet the setbacks as described on the proposed site plan.
3. The applicant a submit a Site Plan Review application.

Forty-nine (49) notices were sent to all property owners within 400 feet of the subject property. As of the date of this report, staff received one phone call from James Jensen, resident on 4600 South, who stated he is in favor of the variance requests and that this proposal will improve the area. Ms. Nixon also met with the adjacent neighbor, Tom Hamann, to discuss in better detail the improvements along 4600 South. The city will require frontage improvements along 4600 South be installed and either pay for the contractor or Murray City will perform the improvements.

Casey Copier, architect representing the property owner, stated they are desirous to expand the studio space, as well as additional bathrooms. Mr. Harland asked how this expansion will enhance the community.

Steve Slack, owner of the motion production company Mullet Studio Services, stated they will provide office space for those who want to rent. The new building will be a full studio that will attract larger projects that will bring in visitors who will utilize hotels and restaurants and generate revenue for Murray City.

The public comment period was opened.

Tom Hamman, neighbor to the east, asked how the project would affect his apartment complex. He has 24 apartments, with 60 people, living there. There is a chain link fence between the properties. There are also carports and storage sheds. He stated that a solid block wall is required between the properties. If there is a variance, he asked that he not be required to alter his carports or sheds. He stated there has been a lot of homeless encampments that he's had to deal with because the adjacent property wanted to address this issue. He expressed concern how this may affect his tenants and will there be noise issues from the production company. He does feel everything will be fine, he just wants open communication with the studio company. He is concerned that the retention pond doesn't drain into his parking lot.

Mr. Slack stated that film studios require complete quiet, so there will not be any noise from the business.

Public comment was then closed. Mr. Harland informed applicant they will be informed in writing by next Wednesday.

CASE #1600 - Cosmos Enterprises - 158 East 4500 South - Project #23-012

Ms. Nixon presented the application requesting to expand 25,941 ft² to the existing commercial warehouse building. The building is currently nonconforming to the east side yard setback regulations of 20' minimum as written in Section 17.160.040 of the Land Use Ordinance. The applicant is requesting a variance to Section 17.160.110 to locate the new 6-foot-high solid wall with a setback approximately 30' to be in alignment with the setback of the new building front on 4600 South Street. Additionally, the applicant is requesting a variance to Section 17.160.100 to not install the required 10' buffer landscaping along the east boundary adjacent to the residential zoning.

Staff analysis and findings for compliance with standards for a variance as contained in Land Use Ordinance Section 17.16.060 are listed below.

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 C-D, Commercial Development Zone. The applicant's request is based on the needs for expansion of the existing motion picture production business and maintaining uniformity with the building footprints and setbacks. Motion picture production (LU#6398) is a permitted use in the C-D Zone. Section 17.160.010 states the Purpose of the C-D Zone is: *To provide areas in appropriate locations where a mixed use of businesses, commercial, entertainment and related activities may be established and maintained.*

Section 17.64.010 states: "*The purpose for fence regulation provisions is to allow a wide variety of fence styles and construction to promote property security, privacy, and architectural compatibility. In addition, these regulations are provided to promote vehicular and pedestrian safety by requiring safe fence placement and height to allow proper visibility standards.*"

1. With regards to Section 17.160.110 buffer wall variance, the purpose of a buffer wall is to mitigate any impacts from a commercial use on to a residential use. In this case staff feels that requiring the buffer wall to line up with the building front setback is reasonable and if required to install the buffer wall within 10 feet of the property line, it will be less appealing to the residential area than what the frontage landscaping. It would be more aesthetically pleasing to have landscaping than a solid wall within 10 feet of the property line. Staff finds that the application does meet this requirement for granting a buffer wall variance to be in line with the front of the building along 4600 South Street.
 2. With regards to Section 17.160.100 buffer landscaping variance, the purpose for a 10' buffer landscaping adjacent to residential is to mitigate any impacts from a commercial use onto a residential use. Typically, the buffer landscaping is part of a parking lot, access, or where there is other activity generated from the commercial use. In this case, a buffer landscaping will not be visible or of any benefit to the adjacent residential uses. In this case, the 10' width between a solid building wall and the buffer wall means there will be no activity in that area to mitigate. The literal enforcement of requiring the 10' buffer landscaping would cause a hardship to the applicant by adding unnecessary expenses, will serve no buffering purpose and will be difficult to maintain live vegetation with little sun light. Staff finds that the application does meet this requirement for granting a buffer landscaping variance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the district.

The property owner states there are special circumstances associated with the property, which are: "The area of property line requested to not have fencing is unique in that there is no building in this portion of the property. The adjacent residential zone will have landscaping to improve the feeling of open space adjacent to them."

1. With regards to Section 17.160.110, buffer wall variance, the purpose of a buffer wall is to "buffer or mitigate" any impacts on the adjacent properties. There will be no activity between the building and the buffer wall to mitigate impacts. The requirement for the additional length of wall to within 10 feet of the property line is an unnecessary expense imposed on the property owner and will not "buffer" any more than the frontage landscaping would do and is unique to other properties in the district. The proposed setback location for the buffer wall will improve the visual sight line of motorists and will be more aesthetically pleasing with proposed frontage landscaping rather than a solid wall within 10 feet of the property line. Staff finds that the application does meet this requirement for granting a buffer wall location variance.

2. With regards to Section 17.160.100 buffer landscaping variance, the property is unique in that it has two frontages, 4500 South and 4600 South Streets. The building is unique in that it as it has existed from 1989 with a 10-foot side yard setback from the residential zone. Typically, a commercial building is set back 20 feet inclusive of the 10' buffer landscaping and a buffer wall that is usually associated with a parking lot. In this case the building and solid buffer wall do not allow for the typical landscaping buffer and maintenance of vegetation. Because of this situation, the property differs from other properties in the same district. The landscaping will not be seen by anyone other than from a distance on 4600 South Street. Staff finds that the application does meet this requirement for granting a buffer landscaping variance.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the district.

 1. With regards to Section 17.160.110, buffer wall variance: With most properties where landscaped buffers and fences are required, the commercial property is in use for parking, access, or other "back-of-house" functions such as loading docks or service bays. In this case a landscaping will be installed from the building to the street frontage on 4600 South, but the normal requirement for placement of the wall at within 10' of the property line would block visibility from the street to large amounts of additional landscaping – not the commercial activities the wall placement is designed to buffer. Staff agrees with the applicants that the visible frontage landscaping is of much more benefit to the area than a solid wall within 10' of the property line. In most cases in this district the purpose of frontage landscaping is to beautify the street frontage. Staff agrees with the applicants that the installation of all the frontage landscaping should be visible from the street and represents a substantial property right. Staff finds that the application does meet this requirement for granting a buffer wall location variance.
 2. With regards to Section 17.160.100 buffer landscaping variance. The applicants feel that the required buffer landscaping on the east side of the building will not contribute to the enjoyment of properties in the area and would become an eye-sore due to difficulties in maintaining thriving vegetation during the summer months with the heat generated between the building and solid buffer wall and lack of direct sunlight. As discussed previously, in most cases where landscaped buffers and fences are required the commercial property is in use for parking, access, loading docks or service bays. In this case, the buffer wall will be installed, but the proximity of the building makes landscaping difficult to maintain in the area, and of no benefit to the adjacent residential uses. In most cases in the district, landscaping that cannot viably be maintained is not required. Staff finds that the application does meet this requirement for granting a buffer landscaping 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 this area to be commercial neighborhood adjacent to residential medium density neighborhoods. Staff finds the proposed variance(s) will not be contrary to that public interest and will adequately serve the intent of buffering impacts from the commercial onto residential. Staff recommends that the application does meet both the buffer wall location variance (Section 17.160.110) and to not install the buffer landscaping variance (Section 17.160.100) requirement(s).

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

The intent of the language in the Land Use Ordinance is clear: to provide buffering to help mitigate impacts from a commercial use onto residential uses with appropriate fencing/wall and landscaping. Staff finds that granting the variance would not violate the spirit of the Land Use Ordinance and will still meet the intent with the proposed requests. Staff recommends that the application does meet both the buffer wall location variance (Section 17.160.110) and to not install the buffer landscaping variance (Section 17.160.100) requirement(s) and will meet the spirit of the land use ordinance as requested.

UNREASONABLE HARDSHIP ANALYSIS:

In determining whether enforcement of the Land Use Ordinance would cause unreasonable hardship, the Hearing Officer may not find an unreasonable hardship unless the applicant proves that the alleged hardship:

A. Is located on or associated with the property for which a variance is sought.

The alleged hardship is associated with the property for which the variance is sought.

B. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood. Special circumstances must: (1) Relate to the hardship complained of, and (2) Deprive the property owner of privileges granted to other properties in the same district.

As established in the variance analysis, the circumstances are peculiar to the property, and literal enforcement of them will deprive the property owner of rights or privileges granted to other properties in this district.

In reviewing this request, it makes practical sense and aesthetically would be more appealing to have the solid wall stop to be in line with the building front or at the point the wall changes direction from southward to southeast. Staff feels it would be more pleasing to the neighbors to the east to have a view of the frontage landscaping rather than a solid wall to within 10 feet of the property line. The applicant is desirous to not install the 10' buffer landscaping along the east boundary because it will be between the solid wall of the building and the 6' buffer wall.

Forty-nine (49) notices were sent to all property owners within 400 feet of the subject property. As of the date of this report, staff received one phone call from James Jensen, resident on 4600 South, who stated he is in favor of the variance requests and that this proposal will improve the

area. Staff also met with the adjacent neighbor, Tom Hamann, to discuss in better detail the requests.

Mr. Copier did not have anything additionally to add.

Public comment was opened. Mr. Hamann had questions regarding the drawing. He wanted to know how far away from 4600 South to the wall of the building. Mr. Copier indicated it will be 31 feet. Mr. Hamann is concerned that there will not be a buffer. The wall will go along the property line. There will be about 25 – 30 feet with no buffer. From 4600 South to that wall, there is a vertical drop, so the wall won't block anything. He's concerned about the open parking. He'd like them to go straight down instead of angle. It may increase the wall an additional 50 feet.

Mr. Hall said the applicant wants to stop the buffer wall on the building front setback or at the angle rather than bring it to within 10 feet of the front property line. Mr. Hamann's suggestion for the wall to run straight (parallel to the building) will serve its purpose better and provide a better buffer to residents but that is not what was requested. If the buffer location request is changed at this time, Ms. Nixon feels that's a different request and cannot be changed at this point. The action must be taken on the request as submitted or the applicant can come back with a new variance request.

Mr. Hamann is still concerned that there is not a sufficient buffer. He feels the angled wall does not help anything.

There was a discussion regarding a couple different scenarios of the buffer wall location. It was indicated that the only action that can be taken at this point is what was requested for the buffer wall to line up with the building front setback from 4600 South which is approximately 30 feet.

Ms. Nixon stated the analysis of the standards for granting a variance as they relate to the subject property, Staff finds that the application can be considered to meet the requirements for the granting of both variances. Based on review and analysis of the application materials, the subject property, surrounding area, and applicable sections of the Murray City Land Use Ordinance, Staff finds that the application does meet the applicable standards for both variances. Staff recommends approval of the requested variances to Sections 17.160.110 and 17.160.100 of the Land Use Ordinance subject to the following conditions:

1. The applicant shall obtain the appropriate Murray City Building Permits necessary for the proposed addition.
2. The proposed addition shall meet the setbacks as described on the proposed site plan.
3. The applicant shall submit a formal Site Plan Review application with the Planning Division.

Mr. Harland's decision will be in writing by Wednesday. Mr. Harland concluded the meeting at 1:40 p.m.