

Minutes of the Hearing Officer meeting held on Wednesday, March 8th, 2023 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, CED Director
Susan Nixon, Senior Planner
Zachary Smallwood, Senior Planner

Members of the public:
Paul Henderson
Jim Harland
Cali McMurtrey
Amanda McFarland
Andrew Allman
Allie Platt
Jack Marble
Sheila Hurst

CONFLICT OF INTEREST

No conflicts of interest.

VARIANCES

CASE #1601 - Rhino Property Management - 97 West Winchester Street (East Side) - Project #23-030

Ms. Nixon presented the application for Rhino Property requesting a landscaping variance to Section 17.140.130 C. along the east boundary. The code requires a minimum landscaping buffer of ten feet (10') from the boundary line on the commercial side of the property. The subject property has been a residential single-family home on the south side of Winchester Street. The applicant recently went through a General Plan amendment and Zone Map amendment changing the zoning to R-N-B (Residential Neighborhood Business) with the intention of converting the existing dwelling to an office building. Mr. Henderson would like to relocate his property management company to operate their offices at this location. Property management businesses (LU# 6150) are permitted use in the R-N-B Zone. Section 17.140.010: states the Purpose of the R-N-B Zone is: *"to provide a variety of mixed use, low scale, low intensity residential, commercial, office and business operations as appropriate transition between high traffic arterial streets to adjacent residential neighborhoods. The zone should share design characteristics with nearby residential uses, provide a good neighborhood "fit" and exude a distinct residential character. Where possible, existing homes should be preserved and converted to appropriate uses. The number of curb cuts providing access should be minimized and parking consolidated where possible."*

Prior to the submittal of the variance application, staff requested that Mr. Henderson have an architect review the possibility of converting the dwelling to office use and have a cost estimated in order to establish the viability of retaining the existing structure. Mr. Henderson provided an architect's review for compliance with commercial ADA requirements along with a construction cost estimate for the conversion. Mr. Henderson indicated he is committed to the expense and time associated with the conversion. Retaining the existing structure does include constraints such as drive aisle width and buffer landscaping as required in the R-N-B Zoning regulations.

This request is to vary from the required 10' minimum buffer landscaping along the east boundary in order to provide adequate drive access to the rear of the property. There is an existing garage at the rear of the property. The applicant would like to keep the garage for storage.

The request is to Section 17.140.130.C. of the Murray Land Use Ordinance along the east side buffer landscaping would be to retain the current widths ranging from 1' at the north, increasing to 10' and then tapers down to 7'6" at the south for a length of approximately 142'. The landscaping request is to vary the landscaping width along the east side while maintaining a consistent minimum drive access width of 20 feet.

In reviewing this request, it makes practical sense to vary the landscaping width rather than the drive width in order to accommodate proper access to the rear of the property to the additional required parking. Staff feels meeting the required number of parking stalls and adequate access width take precedence for safety reasons over the aesthetics of the landscaping buffer. There will still be a 6' high solid buffer wall along the east property line

The east side yard setback for the structure is 27'3" at the closest point. The applicants are requesting to maintain the existing drive access and widen it to a minimum of 20' at the closest point. The Murray City Fire Department requires a minimum twenty-foot (20') drive access to the rear of the home/structure if the home is located closer than 150' to the front property line. The measurement to the dwelling's rear wall is approximately 141 feet measured from the front access point. Zoning would prefer a 24' wide drive access to the rear of the property to allow for two-way traffic. A buffer landscaping variance is necessary in order to have the minimum 20' drive access.

Based on review and analysis of the application materials, the subject property, the surrounding area, and applicable sections of the Murray City Land Use Ordinance, Staff finds that the application meets all applicable standards of review for the granting of a variance and recommends approval of the requested variance to the requirements of Section 17.140.130.C. for the east side subject to the following conditions:

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

Thirty-two (32) notices were sent to all property owners within 300 feet of the subject property. As of the date of this report, staff received an email from Alice Jensen, an adjacent neighbor to the west at 6437 South Blaine Drive, inquiring about the west side variance request and potential impacts to her property. After explaining the request and requirements, she had no further concerns.

If the variance is approved, the applicant will have to proceed with receiving conditional use permit and site plan review from the Planning Commission.

Mr. Finlinson asked for clarification on the project. The idea is that the city is allowing the landscaping at the north end to be narrowed to accommodate the angled approach onto the property line.

Cali McMurtrey with CRS Engineers stated that they are requesting to pave the entire area from the dwelling to the solid wall and not install the landscaping along the east boundary. They request to have no landscaping as a matter of safety and clearance between the building. There will be a wall built and a tree removed.

There was a miscommunication between Ms. Nixon and CRS Engineers regarding the landscaping. Ms. Nixon had the understanding that there would be some landscaping, but apparently, their intention now, is to not install any buffer landscaping along the east boundary.

Mr. Finlinson asked if that changes the staff's recommendation. Mr. Hall stated that this still meets the five tests of hardship, so it should not change the staff's recommendation. Mr. Finlinson stated he will review the request and take it under advisement. His decision will be available one week from the date of this meeting.

A public comment was made by a neighbor, Mr. Burton, stating that he has no problem with there not being buffer landscaping along the east boundary and that he owns the adjacent property to the east.

Paul Henderson, owner of the property, introduced himself.

CASE #1602 - Rhino Management Properties - 97 West Winchester Street (West Side) - Project #23-031

Ms. Nixon presented the application for Rhino Management requesting a landscaping variance along the west boundary, to Section 17.140.130 C. which requires a minimum landscaping buffer of ten feet (10') from the boundary line on the commercial side of the property. A summary of the property was not given since it is the same property as above (Case #1601).

This request is to Section 17.140.130.C. of the Murray Land Use Code Ordinance pertains to the west side landscape buffer. The applicant is requesting to reduce the minimum from ten feet (10') to three and a half feet (3 ½'). In reviewing this request, staff acknowledges that the landscaping width to accommodate ninety-degree parking is preferable rather than having an awkward angled parking situation. The length of the landscaping variance request is 83'11". The applicant will install a 6' high solid buffer wall along the west boundary adjacent to the parking. There are two site plans associated with this request. One site plan shows ninety-degree parking requiring a landscape buffer variance. The other site plan shows angled parking with the required 10' wide landscape buffer. While able to meet the parking regulations utilizing angled parking, the applicant is proposing ninety-degree parking as a safer and better layout for maneuvering vehicles.

Ms. Nixon reviewed the first site plan with ninety-degree parking which would require a buffer landscaping variance. The second site plan shows angled parking and landscaping requirements can be met and would not require a variance.

In reviewing this request, staff acknowledges that varying the landscape buffer width for ninety-degree parking is a better situation than having an awkward angled parking layout. Staff feels it is preferable to have access for parking and safety reasons over the aesthetics of the landscaping buffer. The proposal for ninety-degree parking is more practical than meeting the "letter of the law" with angled parking. In an attempt to meet one of the Purposes of Provision statements of the R-N-B Zone "*Where possible, existing homes should be preserved and converted to appropriate uses*", staff feels it is prudent to retain the existing dwelling by converting it to office use; however, it is not critical to retain the existing detached garage and if the garage were removed, the rear yard would meet the site improvements buffer wall, buffer landscaping and parking requirements.

Based on a review and analysis of the application materials, the subject property, the surrounding area, and applicable sections of the Murray City Land Use Ordinance, Staff finds that the application does meet some of the standards, but not all the applicable standards for the landscaping variance as required by state code. Staff recommends denial of the requested variance to Section 17.140.130C for the west side.

Thirty-two (32) notices were sent to all property owners within 300 feet of the subject property. As of the date of this report, staff received an email from Alice Jensen, an adjacent neighbor to the west at 6437 South Blaine Drive, inquiring about the west side variance request and potential impacts to her property. After explaining the request and requirements, she had no further concerns.

Cali McMurtrey asked to appeal the findings with a negative recommendation. She stated when the owner purchased the property, he assumed the garage was part of the existing structure. Removing the garage would not be a feasible solution, as it is part of the structure (it is substantial). This would be an unreasonable hardship. In regard to the parking request, the current parking situation accommodates one-way traffic. The proposal accommodates two-way parking. While 45-degree parking meets the letter of the law, but not the spirit of the law. They feel that the 90-degree parking request would meet the spirit of the law.

Paul Henderson spoke about the request. He stated that safety needs to be thought of and angled parking would make for awkward maneuverability.

Mr. Finlinson said he'll have his decision next week.

CASE #1603- Lotus Company, LLC - 825-865 East 4800 South - Project #23-033

Mr. Smallwood presented the application from Lotus Company requesting a variance to Section 17.144.100(A) of the Murray Land Use Ordinance, which limits the height of buildings located within 100' of a residential zone. The applicant is requesting a variance to a restriction in the land use ordinance that requires proposed buildings to be thirty feet (30') in height or less when located within 100 feet of adjacent residential zoning. The applicants are requesting the variance to be allowed to build up to thirty-five feet (35'). All other land use regulations would apply as normal (setbacks, lot width, etc.). The subject property currently has a small office complex comprised of six (6) buildings. The applicant would like to reinvest in the property and

build a senior living facility at the location. The applicant states that this use will better fit into the surrounding neighborhood and provide a service to those that live nearby.

Based on review and analysis of the application materials, the subject property, the surrounding area, and applicable sections of the Murray City Land Use Ordinance, Staff finds that the application meets all applicable standards of review for the granting of a variance and recommends approval of the requested variance to the requirements of Section 17.144.100(A) of the Murray City Land Use Ordinance subject to the following conditions:

1. The applicant shall obtain the required building permits for the development of the property and construction of the proposed building.
2. The site development shall meet all other applicable requirements of Chapter 17.144 of the Murray City Land Use Ordinance.

Thirty-five (35) notices were sent to all property owners within 300 feet of the subject property. No comments or questions were received as of the date of this report.

Mr. Finlinson asked if the new building will be built on the slope. Mr. Smallwood deferred the question to the applicant. They will have to work that out as they begin the project.

Allie Platt, with Lotus Company, spoke about the application and the necessity of a variance. She indicated that they do not know at this point how much of that slope will need to be graded. The site plan will have more details. They'd like to preserve the buffer for aesthetics.

Mr. Finlinson said he would have his ruling in a week.

APPEAL

CASE #1604 - Allmanjoy - 431 East 5600 South - Project #23-034

Appeal to Administrative Decision for Nonconforming Use

Mr. Hall presented the appeal is of a land use determination by planning division staff as to the allowable uses for the subject property. The property has previously been in use as a chiropractic office in the R-M-15 Zone. Mr. Allman is appealing a determination made by staff as to the allowable use of the subject property at 431 East 5600 South. The subject property is a commercial building located in the R-M-15, multi-family residential zone. The building had most recently been used as a chiropractic office. Mr. Allman purchased the property with the intent to operate a different office use, related to training workers for his restaurant business. Planning staff determined that the property's status as a nonconforming use in the R-M-15, multi-family residential zone would not permit a change from use as a chiropractic office to a different office use.

Appellant's Written Statement

Staff's review of and response to the appellant's written statement is outlined in the following.

- Property's Historical Use: The appellant asserts that the building has been in use as an office building since 1965, was sold to him as an office building, and was marketed as such. Planning staff does not argue the validity of any of those statements, but Staff's determination that is being appealed relates only to the status of the property as a nonconforming use. As described previously, the nonconforming use that staff was able to establish is LU #6511, a chiropractic office.
- City's Allowance of the Nonconforming Use: The appellant references the property's historical use and the city's allowance of that nonconforming use "for over 50 years". Staff would point out that as discussed previously and shown in the research, the first established official business license on the property that can be verified is from 1990, for a chiropractic office. In 1992, that office use became nonconforming. Any use of the property prior to that date is not relevant to staff's determination because the nonconforming use was established based on licensure, and the *licensed* use of the property was the same until December of 2022. The appellant further asserts that "not permitting...a professional use anymore would be...a significant departure from what the city has knowingly permitted." This begs clarification: planning division staff would support the continuation of the use that has, in fact, been not only "knowingly" but *officially* permitted to date. What has been permitted to date is a specific land use, and not the broad "professional office" term used by the appellant.
- Reliance on Questions to Staff: The appellant also describes his visits with planning staff, discussion of his intent to use the building as an office, and that no objections were made in several contacts regarding that intent. The Planning Division does not dispute these assertions, but it should be made clear that staff responds to many questions about properties informally, and cannot account for the details of those questions, or for how the context in which those questions are posed may impact the answers or information provided. Further, it should be stated that legal nonconforming uses are complicated, and the information needed to make the determination is not always readily available. Due diligence in purchasing property almost always involves research by a title company, and a request for a determination of some kind is not uncommon. In this case, the first formal request for information was met with the research and subsequent February 6, 2023 letter that has precipitated this appeal. That letter should be the only staff communication considered.

Based on the review of the appellant's narrative arguments and the record, staff finds the following:

- A. The legal nonconforming status of the use of the subject property can be established beginning in 1992 as a chiropractic office, LU #6511.
- B. The Murray City Land Use Ordinance, Chapter 17.52 establishes parameters for the continuation of legal nonconforming uses. Those standards do not allow for the use to change from one established nonconforming land use to a different nonconforming land use (Section 17.52.100.) The appellant's proposed use of the property

represents an unsupportable change of use from the verifiable nonconforming land use, LU #6511, Chiropractic Office.

Based on the findings stated above, review and analysis of the appellant's narrative arguments, and the record as presented, Staff recommends DENIAL of the appeal.

Mr. Finlinson asked if the R-M-15 is a mixed-use zone. Mr. Hall indicated it is a multi-family zone and that Utilities and Bed & Breakfast uses are the closest it comes to commercial. The idea behind legal non-conforming use is that it can keep on going, and even expand to a degree, but they can't change from use to use (non-conforming use). Of note, chiropractic is its own code. Mr. Finlinson stated he does not feel the staff denial is capricious or unreasonable.

Andrew Allman, appellant, stated he has been working closely with Ms. Nixon and understands fully why his application was denied. He intends to turn the property into multi-family use.

ADJOURNMENT

The meeting was adjourned by Mr. Finlinson at 1:31 p.m.

NOTE: A decision of a Hearing Officer takes effect on the date when the Hearing Officer issues a written decision. (Murray City Municipal Code Section 17.16.060(A).)

An appeal of the decision by the Hearing Officer may be made to the Utah District Court in compliance with Section 10-9a-801 of the Utah Code.