

Minutes of the Hearing Officer meeting held on Wednesday, June 14<sup>th</sup>, 2023, at 12:30 p.m. in the Murray City Municipal Council Chambers, 10 East 4800 South, Murray, Utah.

Present:        Jim Harland, Hearing Officer  
                 Jennifer Kennedy  
                 Sam Christensen  
                 Donna Harland  
                 Elvon Farrell  
                 Susan Nixon, Senior Planner  
                 Elvon Farrell, Community Economic Development Specialist

### CALL MEETING TO ORDER

#### Conflict of Interest Disclosure

Mr. Harland has no conflict with the applicant. He does not know the applicant, nor does he have any business or personal relationship with the applicant.

### VARIANCES

#### CASE # 1606 - Sam Christensen – 788 East Pontiac Drive – Project 23-064

Mr. Harland reviewed the process for the hearing and gave instructions for the hearing. He indicated that the decision will be available at noon on Wednesday, June 21, 2023.

Ms. Nixon reviewed background information on this case. The request is to vary from two sections of the code in the R-1-8 Zone, Section 17.100.80 and Section 17.100.100, which are front setbacks and an exception to certain structures allowed to encroach within the front setback. The front setback minimum is 25 feet, measured from the inside back of the sidewalk to the wall of the home, or whatever portion of the home is closest to the front property line. There is a section in that code that allows for certain structures to encroach into that 25-foot setback, up to four feet in the front or rear, and 2.5 feet on the side. The applicant submitted a building permit about a year ago, the site plan submitted has the dimension of 21 feet four inches to replace the existing stairway and landing; this would have met the four-foot allowance to encroach in the front setback for certain structures. In addition to the stairway and front landing area addition, the applicant was also going to remodel the back and some interior on the same permit. Staff signed off on the building permit. Subsequent to that the applicant submitted a revision a few months ago, and that was when staff noticed that the setback dimensions did not reflect what was actually built and the site plan was no longer accurate. Ms. Nixon stated it is unknown how or why that happened between the contractor and architect. In the meantime, the porch, landing, etc., were built and they are completed. When that was discovered, she went to the property and met with Mr. Christensen who was very hospitable. When she went out to measure, the edge of the front landing and sidewalk is actually 17 feet from the front property line, but should be closer to 21 feet to meet code. When discovered, she went to the building department and spoke with the building official. The Building Department was okay with the building specs on the front landing, sidewalk, porch, etc. since they had met the building codes

and they approved those. Photos were shown of the home as it exists, where you can see the porch and front stairway are complete. The front door of the home is about 10 feet different in elevation from the front door landing to what is referred to as the public right-of-way, or the driveway and sidewalk. For building code, there has to be a certain angle at a certain degree for stairways and landings. It is not possible to meet that 10-foot difference in elevation within the front setback requirement for zoning. After Ms. Nixon discussed that with the building official, it met the building codes but did not meet the zoning code.

The home was built in 1966, and if it was built today they would have to change the grade to avoid the current vertical distance from the front door to the public right-of-way. The code in 1966, when it was built, did not specify that front door landings or stairway encroachments had to meet the setbacks. When it was built, it had an 18-foot setback, and it is now 17 feet. Staff does not know if it met the code back then or not.

In order to grant a variance, the state criteria mandate that five requirements be met. The first one 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. Staff, after review, has responded that the requested variance is related to providing the proper ingress/egress from the front door to the public right of way. Again, that is about a 10-foot vertical distance in elevation. Considering that, it's not self-imposed, it's a prior existing built environment that is not caused by the applicant himself. Staff finds that the application does meet this requirement for granting a variance.

The second one is whether there are special circumstances attached to the property that do not apply to other properties in the district. Typically, as was stated before, the built environment isn't used as justification for granting a variance. However, in this particular instance, it is not possible to meet the zoning setbacks and still meet the building codes for ingress/egress from the front of the home to the public right of way. Safety and building codes always come first, therefore staff suggested to the applicant that he apply for the variance.

The third one is granting the variance is essential to the enjoyment of a substantial property right possessed by the other properties in the district. The home should have originally been built in a manner that did not have such a big change in vertical height, so it would be able to meet the setbacks of the 25 feet and even the 4-foot encroachment. However, in order to meet the building code and safety issues it was originally built as indicated. Also, after speaking with the building official, they calculated, based on the rise of the stairs with the landing, that there was no way to do it given the existing setback of the home and the difference in elevation height. It does meet this particular requirement for granting a variance as well.

Number four, the variance will not substantially affect the general plan and will not be contrary to the public interest. The general plan for the area calls for single-family low density, and this has no practical impacts that would be contrary to any of the public interests or impact the general plan. Staff finds that it meets this criteria as well.

The last one, the spirit of the land use ordinance is observed and substantial justice done. In review, staff sees no practical impact from the requested variance and finds that granting the

variance will not violate the spirit of the ordinance; therefore, it meets this requirement for granting the variance.

Based on the review, staff is recommending the application does qualify for a variance, given that both the building codes and zoning codes cannot be met and they are requesting variance approvals for both sections of 17.100.080 and 17.100.100 of the code.

Mr. Harland asked to confirm that there was a building permit approved, but his understanding is that there was some confusion over the dimensions of the setback as far as the measurement from the stair platform to the curb.

Ms. Nixon responded that is correct, the measurements shown on the site plan indicated a 21'4" setback from the property line to the edge of the sidewalk stairway; that is not accurate, and it is closer to 17 feet. The city signed off on the permit, based on the site plan, which met the code.

Mr. Harland asked to confirm that when it was originally built in 1966 it didn't meet the requirements either.

Ms. Nixon responded that is correct. When she went out and talked with Mr. Christensen at the property, he showed her where the original landing and stairs were and could see the old concrete, and they measured that at 18 feet. It was built with an 18-foot setback, which technically didn't meet the setbacks.

Mr. Harland asked to confirm that with the new ordinance, there is a four-foot encroachment allowance in there, but it still doesn't fall within that. Ms. Nixon responded that is correct, that would be a requirement to allow encroachment up to within 21 feet and right now it's about 17 feet.

Mr. Harland asked if there are other houses in the neighborhood with a similar situation. Ms. Nixon noted that when she was there, she did notice that the property to the west is very similar in house style, landing and front stairway; she did not take any measurements but it looked very similar.

Mr. Harland went by the home this morning and saw the same home. The problem is that the front door of the house is 10 feet above the curb level, so you have to have the landing area come out far enough so the stairs aren't overly steep. He asked if this was already built.

Ms. Nixon confirmed that it is already built, and after discovering it and talking to the building official he calculated it based on the rise of the stairs and required landing width and other measurements.

Mr. Harland asked to confirm that they did get a permit, but there was confusing information; especially back in 1966. Ms. Nixon responded that yes, and even the permit signed off now wasn't accurate to what exists on the property.

Mr. Harland asked to confirm that the city has a bit of responsibility for the confusion back in 1966. Ms. Nixon responded yes.

Mr. Harland noted it was good that the applicant got a building permit.

Ms. Nixon added that the applicant has been great to work with, these are usually not fun issues to deal with and can be stressful, but he has been very willing to work with the city.

Mr. Harland invited Mr. Christensen up to give his presentation.

Mr. Christensen noted that if intent matters in the opinion, as far as the remodel goes, there was no aesthetic or any other purpose to redoing the front porch other than safety. The rise and run as discussed was too steep and the boards were falling out. Essentially it was the begrudgingly expense fix for safety. Ms. Nixon did a good job explaining the technical issues and their intent was nothing of use or aesthetics just safety.

Mr. Harland asked, before doing the remodel and stairway, if this was too steep and did not meet the regulations.

Mr. Christensen said he wouldn't have known, but yes.

Mr. Harland clarified that it was steeper than it is now, and now it meets the regulations.

Mr. Christensen said yes, they built up the cement, hence the extra foot because they needed to build it up a little higher to lessen the rise and run.

Mr. Harland asked if all the other setbacks on the back and sides, with this kitchen remodel, are okay.

Ms. Nixon responded yes, and he also included a deck in the back that meets the setbacks.

Mr. Harland noted they have had a lot of variances for setbacks recently, and if people would get building permits first like Mr. Christensen did, they would have known about the issues before doing all the work. He noted this is an easy fix, he intends to approve this for the applicant. He instructed the applicant not to do anything until he receives the response in writing. He asked if there was any public comment, and the comment period was closed.

Ms. Nixon noted that Mr. Christensen is waiting for a four-way inspection on the remodel, the inspectors will not do any kind of inspection until the decision is made on this. She asked to clarify that he would have to wait until next week to call for the inspection.

Mr. Harland responded yes, to follow the procedures.

Mr. Harland and staff discussed the possibility of meeting for next week and he adjourned the meeting at 12:50 P.M.