

Minutes of the Board of Adjustment meeting held on Monday, November 19, 2012, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Roger Ishino, Chair
Travis Nay, Vice-Chair
Rosi Haidenthaller
Preston Olsen
Tom Halliday
Chad Wilkinson, Community Development Manager
Joshua Beach, Assistant Planner
Tim Tingey, Administrative & Development Services Director
G.L. Critchfield, Deputy City Attorney
Citizens

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Roger Ishino explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Ms. Haidenthaller made a motion to approve the minutes from October 8, 2012 as submitted. Mr. Halliday seconded the motion.

A voice vote was made. The motion passed, 5-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

APPEAL - CASE #1462 – GEORGE MCBRIDE – 253 East 4800 South – Project #12-128

George McBride and David McBride were the appellants present to represent this appeal. Chad Wilkinson reviewed the application. George McBride is appealing the Community and Economic Development Manager's determination that the property located at 253 East 4800 South is not a legal multi-family dwelling and is not allowed per the previous or current zoning ordinances. Mr. Wilkinson explained that the Board's role for appeals is different than it is for variances. He explained that Municipal Code Section 17.16.050C authorizes the Board of Adjustment to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the administrative official in the enforcement of this title or any ordinance adopted hereto. He explained that the Community Development office often times gets requests from property owners, appraisers, mortgage companies, etc. for a determination verification on the status of legal or nonconforming uses. Staff then researches the property and makes a determination as to whether the use is legal nonconforming or not a legal use. After a determination has been made, the applicant may appeal that determination if they so choose. Mr. Wilkinson explained that the Board of Adjustments role in this situation is to determine whether or not staff made the correct determination based on the information provided by the applicant and found through researching the

property. He stated this appeal is not to authorize a certain number of dwelling units on the property, but to determine whether staff made the correct determination relating to the use of the property. The burden of proof is on the applicant to show to the city that this was a legal multi-family unit at some point in its existence.

Joshua Beach, Assistant Planner, indicated that on August 20, 2012, the City received a request for a determination related to the legal status of a four unit multi-family dwelling on the property. After reviewing the information submitted by the applicant and reviewing the history of the property, the City determined that the zoning of the property has never supported the development of four multi-family units. The following summarizes the information used to make the determination.

1. The property was built in 1918 as a single family dwelling.
2. In 1946, the zoning for the property was residential "A" which did not allow multi-family uses.
3. In 1974 when Mr. McBride purchased the property the zoning was R-3 which allowed for multifamily units, but with a minimum lot area required for each unit. The Murray City Zoning Ordinance adopted in 1963 and applicable at the time of purchase states "The minimum lot area shall be not less than seven thousand (7,000) square feet for each one family dwelling, or eight thousand (8,000) square feet for each two-family dwelling, and not less than seven hundred fifty square feet for each additional living units within a dwelling structure, or other main buildings". Based on code applicable at the time, this property did not meet the minimum requirement for four units at the time that the applicant purchased it.
4. According to County assessor records, the property is assessed as a single family dwelling.
5. There are no building permits or zoning approvals that indicate that this property was ever permitted as a multi-family dwelling.
6. The applicant has indicated that the property has four power meters and that the meters existed in 1974 at the purchase of the property. In the past, the power department would sometimes install meters at the request of the owner and without zoning or building permit approval. The power department no longer follows this practice and now all power meters are approved through a building permit with zoning authorization. The presence of meters does not supersede the zoning standards for the property.
7. It appears that the zoning in 1974 may have allowed a duplex, however the zoning has never supported 4 units on the property.

Based on the information provided and review of available information, staff concludes the following:

1. The home was built in 1918 as a single family dwelling.
2. The zoning of the property did not previously nor does it currently allow four units based on the size of the property.
3. Historic zoning maps and ordinances indicate that the property has never had sufficient area to allow for four units.
4. The applicant has not provided sufficient evidence that the multifamily use was ever permitted at the address.
5. The property is assessed by Salt Lake County as a single family dwelling.

Based on review and analysis of the applicant materials, subject site and applicable Murray City Municipal Codes, the Community and Economic Development Staff recommends the Board uphold the determination of the Community and Economic Development Manager.

Travis Nay stated the reason the property never met the zoning regulations is because there are 4 units on the property. Mr. Beach responded in the affirmative.

Ms. Haidenthaller asked if the units were to be brought down to a two family dwelling (duplex) status, would it be allowed in the current zoning? Mr. Beach responded that it is possible and it would need to be reviewed further, but that is not part of this appeal application.

Mr. Nay asked the size of the units. Mr. Beach responded he was unsure of the square footage for the units.

George McBride, 4873 South Wasatch Street, Murray, stated he moved to Murray in 1937. Mr. McBride stated that when he listed the property with Scott Laga, realtor, he came over to Murray City to discuss the property. Mr. McBride indicated he spoke with Mr. Beach at Murray City at that time. Mr. McBride indicated when he purchased the property in 1974, it was listed by Dee Hale Realty who was a legal realtor. At the time he purchased the home there were four separate units and there were four power meters on the property. He asked Mr. Beach when the meters were installed on the home. Mr. Beach could not determine when the meters were installed and that there is not record of building permits for this property. He spoke with the Mayor about this situation who indicated that he should appeal the determination decision.

Mr. McBride stated when Kearns was built during the World War II, there a lot of homes in this area that were converted for use prior to 1946. He stated that he could cite the addresses of those homes, but did not do so in order to prevent problems for other property owners. He stated when he purchased the property, he financed the property through American Savings & Loan which included title insurance. A property inspection was done at that time including photographs taken. Mr. McBride indicated he has rented this property with the four units since 1974 without any problems. He stated that there are three one-bedroom apartments and one two-bedroom apartment. This property has never been changed as far as the total area of the house, the two car garage, and has been that way since he purchased the property in 1974. He questioned why the city cannot find records for installation of the power meters and that the city would not have installed four separate power meters on a house because it isn't a house, it is a four-plex. He stated his tenants have been there for 12 years, for 7 years, for 5 years and another for 1 ½ years. He stated in 1974 the rents were \$45 per month which he supplemented. He currently rents the one bedroom apartments for \$350 plus the electric bill. He stated if he is going to sell the property he does not want the buyers to buy the property having problems with the city. He stated that had he known the request for determination was going to cause all this commotion, he would never have put it up for sale and would have kept it until he dies.

Mr. McBride stated that the city probably does not have building permits prior to 1946. He stated that the original letter he received from Mr. Beach stated the property use was nonconforming.

Travis Nay asked about the size of the one bedroom units. Mr. McBride responded the bedrooms are around 15'X15' and the house is 1,800 square feet. There are three units on the upper floor with kitchens that have stoves. He stated that he personally does not live at this property but lives nearby. He stated that rents are so high in today's market and he has never had problems with his tenants or parking.

Mr. Nay asked if the garage is detached. Mr. McBride responded that the garage is detached and at the rear of the property. The driveway is single wide in the back and the tenant's park in the garage and to the rear of the property with adequate room to accommodate approximately 7 vehicles.

Mr. Nay asked Mr. McBride if he knows when the property was converted into a four unit dwelling. Mr. McBride stated he was unaware of the date, but that it has had four units for a long time. He stated the dwelling was originally Vaughn Soffe's wife's family who were the Jenkins. The Jenkins-Soffe family owns the mortuary in Murray.

Mr. Halliday asked about the county assessors reports showing the residence has always been a primary residence and a single family. Mr. McBride stated since American Savings & Loan paid the taxes on the property the entire time up until the mortgage was paid off and he did not pay attention to the report. Mr. Halliday stated the county assessors report shows the property with two bathrooms and two kitchens and has never had taxes paid or assessed as a four-plex. Mr. McBride stated many years ago the county assessors sent him a notice requesting how many ranges and fridges were at the property and he responded with the information exactly as it was. He stated that he lives on Wasatch Street and was built in 1908 and his home is as big as this property, but his taxes are less than the four unit property.

Mr. Halliday asked Mr. McBride if he has any closing documents from Dee Hale Realty or American Savings & Loan from when he purchased the property that may indicated the property use. Mr. McBride responded that he may be able to find those documents. Mr. McBride stated the property has one gas meter but four electric meters. The home has a hot water boiler and has had one for as long as he is aware. He stated the tenants for the three one-bedroom apartments pay their own light bill, but he pays the electric bill on the other unit because it operates the water boiler.

The meeting was opened for public comment.

Mr. McBride asked what happens after the Board makes a decision. Mr. Wilkinson indicated if the Board of Adjustment upholds staffs determination, the next step would be for Mr. McBride to file an appeal to the court.

David McBride, son of George McBride, expressed concern that when his father purchased the property it was a four-plex. He stated the difficulty they have encountered is that the property is 40 years old. He stated they made a phone call to the Murray power Department asking why the city would install four power meters on the property. The individual at the power department indicated that unless it was approved or someone had given authority they would never have installed four meters on the property. He stated that he hoped the Board was aware of this issue. He stated that the information is vague from 1946 and the code changed in 1963, but what happened prior to 1963? He stated that possibly the property was legal nonconforming prior to 1963 and there simply are not records available to indicate so. He stated it is difficult to

believe that Murray City doesn't have some of that documentation indicating that possibly prior to 1946 it was a four-plex. He stated the difficulty with this task is there is not a lot of record. He stated originally Mr. Beach sent a letter to them indicating the property was legal nonconforming; then Mr. Wilkinson a few days later sent another letter stating that Mr. Beach's letter was incorrect and that the property is not legal. He expressed concern that this decision may be an arbitrary punishment to his father, George McBride.

Ms. Haidenthaler stated to Mr. McBride; that the applicant has the burden of proof in this instance. If he feels the City has been unjust or arbitrarily made a decision, it is his burden of proof, not the City's. Mr. McBride stressed that what the City is asking him to do is legally define something that is Murray City's responsibility. He bought the property the exact way it is now, so how is he to be able to determine if Murray City set the meters up. Mr. Nay noted that it's not the City's responsibility to go from property to property to make sure that all the meters are correct. At some point they need to rely on the residents to provide that information. Mr. McBride doesn't feel that it's justifiable in putting that kind of a burden on him. He did make note that he called Mountain Fuel and asked when they put the gas line in the building. Their response was March 4, 1930. How is it that they could find out that information in two minutes, but Murray City couldn't find any kind of information after looking for a week?

Ms. Haidenthaler asked Mr. McBride how he has the property listed with his insurance company. Mr. McBride made note that the property was listed as a four-plex, he bought it as a four-plex, he went through American Savings and Loan, the title insurance company and he has been paying the taxes for the last 20 years. Mr. Halliday noted that if the taxation information was correct it would specifically list single-family dwelling with two kitchens and two bathrooms. Mr. McBride said that it didn't say that on the tax notice. Mr. Halliday made note that is in fact does say, "property type: code 111, single-family residence." Mr. McBride responded by saying, "I goofed up." Mr. Halliday also noted, not only is that a mistake, but so is the number of kitchens and number of bathrooms. Mr. McBride stated they have to do what they have to do, but it's truly been a complicated matter. Mr. Halliday asked Mr. McBride if he has ever lived in the building as it is stated the building is owner occupied. Mr. McBride stated he has never lived in it.

Mr. Wilkinson made note there was a rather large typographical error in a letter that went out to the applicant, however within a couple of days of that letter going out the letter was corrected and re-sent. The context of the letter states how the property is not a legal non-conforming use. The determination by staff has been based on facts; the property was built in 1918, it was built as a single family home through historical records, the zoning maps go back only as far as 1946, so that is where the real starting point begins for planning and zoning. At that time it was zoned Residential A and did not allow multi-family use. The ordinance chosen in 1963 was chosen because that was the ordinance in force when this property was purchased in 1974. The property is being assessed as a single-family dwelling. There are no building permits found on that property, but building permits only go back for so many years. Mr. Wilkinson also made note the power meters are separate from the zoning. In the past there were power meters installed without authorization and proper zoning approvals. That does not happen anymore as there must be authorization for them now. The presence of meters doesn't change the zoning of the property.

Mr. McBride doesn't understand how someone can have a meter put on their house, have Murray City bill them and not have any questions asked. Someone had to come in, install the meters and do the work to make it a four-plex and now the burden of proof is on him.

Scott Laga, 288 East Mountain View Drive asked the Board what the status of the property will be if they do not allow for a change. If for example the property is sold to another buyer what does that buyer face as far as the zoning is concerned. Mr. Wilkinson stated that if this property does not meet the code and is not legal nonconforming, it would have to be returned to a structure that does conform to the zoning and is in compliance with the code. Mr. Ishino wanted to have staff reiterate that right now, this property can only be sold as a single-family dwelling. Mr. Wilkinson responded in the affirmative.

Mr. Olson asked Mr. Wilkinson if staff would pursue enforcement. Mr. Wilkinson responded in the affirmative. Mr. Ishino asked if the existing tenants would need to vacate. Mr. Wilkinson stated they would need to work with the applicant in order to bring this property in compliance with the code. Mr. Nay asked if it is zoned R-M-10. Mr. Wilkinson responded in the affirmative, reiterating the 10 refers to the maximum number of units per acre, but the 10 also stands for 10,000 sq. ft. Mr. McBride made note that in his opinion, if his tenants are going to be displaced, it will cause hardship on them.

The public comment portion of the meeting was closed.

Mr. Ishino made note that it is understood there is a human side to every case that is heard and reviewed by the Board. This case is not a question of zoning, but is really to decide whether the determination was arrived at with accuracy based upon information that staff and the city have.

Mr. Halliday commented that records are only kept for a certain period of time. Knowing that, could an installation have occurred, a record been made and both Murray City and Salt Lake County lose that record? Mr. Halliday's thought on that is, if Murray City had approved it as a four-plex and Salt Lake County recorded it, would it be possible they both could lose that record? In addition, the tax records state single-family on it and the owner has been paying it every year as that. Mr. Nay also stated that historic zoning doesn't allow for it to have existed outside of special approvals. In so doing it would have had to been approved and recorded with the county.

Ms. Haidenthaller made note that the City doesn't go out of their way to identify nonconforming/ noncompliant properties, but when something has been brought to the City's attention, they need to bring those properties into compliance. Mr. Olson also noted that a lender or purchaser will rely on the statements from the City, so if the City states this property is a legal nonconforming use when there is no evidence that it is, would they be putting themselves at some sort of liability?

Mr. Nay made a motion to uphold the previous determination of the Community and Economic Development Manager based on finding presented.

Mr. Halliday seconded the motion.

Vote recorded by Mr. Wilkinson

A _____ Mr. Olsen
A _____ Ms. Haidenthaller
A _____ Mr. Halliday
A _____ Mr. Ishino
A _____ Mr. Nay

Motion passed, 5-0.

Ms. Haidenthaller made a motion to approve the Findings of Fact as prepared by staff.
Mr. Nay seconded the motion.

A voice vote was taken. Motion passed, 5-0

EXPANSION/ALTERATION OF NONCONFORMING USE - CASE #1463 – BRUCE SHOEMAN – 6644 South Cottonwood Street – Project #12-134

Bruce Shoeman was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for approval to construct a second story addition onto a legal non-conforming dwelling. The property is located within the M-G-C (manufacturing general) zone at 6644 South Cottonwood Street. Murray City Code 17.52.040 allows for a building or structure occupied by a nonconforming use, or a building nonconforming as to height, area, or yard regulations to be added to, enlarged or moved to another location on the lot subject to authorization by the Board of Adjustment. The applicant is requesting Board of Adjustment approval for a second story addition onto the legal nonconforming dwelling in the M-G-C zone. Information from the Salt Lake County Recorder's office indicates the dwelling was built in 1957, but may have been remodeled about 1995. The applicant indicated the proposed 560 sq. ft. second story addition is located at the south portion of the dwelling. The applicant stated the height of the dwelling with the addition will be about 28 ft. high. The scaled plan indicates there is approx. 12 ft. setback from the south property boundary to the dwelling. There is a business use at the west area of the property called SS Plumbing & HVAC Supply which was approved by the Murray Planning Commission May 2005. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for an expansion/alteration of a nonconforming use or development. Therefore, staff recommends approval with conditions:

1. The applicant shall obtain a Murray City Building permit and comply with building and fire code requirements.

Bruce Shoeman, 6644 South Cottonwood Street, stated he did not have any other comments.

Ms. Haidenthaller asked what the square footage of the house is currently and how much square footage does he want to add. Mr. Shoeman responded that the house is approximately 1,750 sq. ft., 550 sq. ft. of that is two bedrooms, a bathroom and a kitchen. They would like to build on top of that, approximately 580 sq. ft. Mr. Halliday asked if it was changing the footprint of the building. Mr. Shoeman stated he was just going to add above what is already there.

The discussion was then opened up to public comment. No comment was made and the public comment section was closed.

Ms. Haidenthaller made a motion to approve an expansion/alteration of a nonconforming use at the property addressed 6644 South Cottonwood Street, subject to the condition listed by staff.

Mr. Nay seconded the motion.

Vote recorded by Mr. Wilkinson

A Mr. Olsen
A Ms. Haidenthaller
A Mr. Halliday
A Mr. Ishino
A Mr. Nay

Motion passed, 5-0.

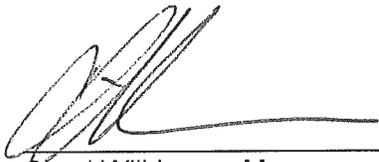
Mr. Halliday made a motion to approve the Findings of Fact as prepared by staff. Mr. Nay seconded the motion.

A voice vote was taken. Motion passed, 5-0.

OTHER BUSINESS

There was no other business to discuss.

Meeting adjourned.



Chad Wilkinson, Manager
Community & Economic Development