

Minutes of the Hearing Officer meeting held on Wednesday, May 13, 2020 at 12:30 p.m. electronically in accordance with Executive Order 202-05 Suspending the Enforcement of Provision of Utah Code 52-4-202 and 52-4-207 due to Infectious Disease COVID-19. The meeting was held virtually. No physical location was held for this meeting in the Murray City, Murray, Utah.

Present: Mr. Harland, Hearing Officer  
Jared Hall, Community Development Manager  
Troy Norton, Applicant  
Melissa Norton, Applicant  
Michael Clagett, Attorney representing the Norton's

Mr. Harland opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures. He stated that he will prepare a written summary and decision by next Wednesday, May 20<sup>th</sup>.

### CONFLICT OF INTEREST

Mr. Harland stated that he has no conflicts of interest for this agenda.

### CASE #1571 – TROY NORTON – 5746 South 920 East – Project #20-049

Troy Norton, applicant, was online to represent this request. Jared Hall reviewed the location and request for a variance to side yard regulations for detached structure. The applicant is requesting a variance to the minimum side-yard setback requirement of the R-1-8 Zone as it applies to an accessory structure located in the side yard area. The property owners and applicants, Troy and Melissa Norton, wish to finish improvements to an existing shed on the subject property which is located in the north side yard of the home, in violation of setback requirements. The shed was constructed by previous owners without permitting, which precludes considering it a legal but non-conforming structure. Because the structure cannot be considered legal non-conforming, the property owners have requested the variance. The applicants own the subject property, a 10,000 + ft<sup>2</sup> lot in the R-1-8 Zone. The home is located in a large residential area along 920 East, with the rear yard extending to the east side of 900 East. The applicants purchased the property with a small, existing shed filling the space between the north wall of the house and the fence on the north property line. Recently, they had begun to make improvements to the shed, including a pitched roof. The work was stopped by a Murray City Building Inspector, who referred the applicants to Planning Division staff because while the shed was small enough not to need a building permit, it was clearly located in violation of setback requirements.

Mr. Clagett explained when the Norton's attempted to make improvements on the accessory structure, which was on the same footprint as the original structure, Code Enforcement approached them about needing a permit for the structure; not about any setback violations. The structure does not require a permit, given its size, under the code language, but then the setback issues came up. After that was when the Norton's sought this variance because they did not realize there was an issue prior to that time.

The first criteria of the variance findings states that 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. Mr. Clagett explained their position is that this criteria is satisfied. The property does not have a garage or carport, which the Norton's were aware of when they purchased the property. They did their due diligence and no zoning or land use issues were brought up to them. It was the Norton's belief that the existing structure was conforming. Because there is no garage or carport, the shed is important to the Norton's for storage. Enforcement of the ordinance in this case would create an undo hardship for the Norton's and adversely affect their investment.

Mr. Harland asked Mr. Clagett what he meant when he said the Norton's did their due diligence. Mr. Clagett replied he was referring to the standard due diligence prior to the purchase of property which typically consists of title searches to zoning violations. Nothing had been recorded so it was the Norton's understanding that everything was conforming.

Mr. Harland stated this area was formerly in Salt Lake County and was annexed into the City several years ago. Mr. Clagett said Mr. Norton reviewed the city code to determine whether or not he would need a permit. In looking at the city code he determined that given the size of the structure he would not need a permit to complete the fix to the structure.

Mr. Harland asked if Mr. Norton discovered the setback requirements as he was reviewing the code. Mr. Clagett replied not that he was aware of. Mr. Norton said he has built to the property line and the majority of homes in his neighborhood have sheds, garages and carports that use the fence line as part of the structure. Mr. Norton felt like he was keeping with the spirit of the community and trying to improve upon that. In his review of the city code, he still hasn't found where it clearly states there is a required setback for accessory buildings. In Section 17 of the city code there is a definition of accessory buildings that states they are permitted on the side yard and must be a minimum of 8 feet. Mr. Clagett reiterated that enforcement of the Land Use Ordinance would cause an unreasonable hardship, given the history, the pre-existing shed and the fact that no violations came up when due diligence was conducted before purchasing the property.

The second criteria which is there are special circumstances attached to the property that do not generally apply to other properties in the district. Most of the homes in this neighborhood have external storage such as carports, garages and sheds and many of those come right up to the property line. The preliminary report that was submitted by the City, indicates that a previous owner had converted the carport and garage to additional living space and such actions of previous owners should not be considered as special circumstances. Mr. Clagett said in this case this shed existed for a long time before this issue came up. The existing shed, that no one complained about, was in noncompliance and as soon as the Norton's went to improve it, it became an issue. The nature of the neighborhood and the fact that nothing flagged the Norton's that the shed was an issue prior to them purchasing the property should constitute special circumstances.

The third criteria states granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the district. There are several garages and sheds in the area that come right up to the property line. A variance is necessary because it is not reasonable to place the shed in the backyard given the easements and trees that exist there. A variance is necessary so the Norton's can use this shed on the side yard,

where it has existed for a long time.

The fourth criteria states that the variance will not substantially effect the General Plan and will not be contrary to public interest. Mr. Clagett said it cannot reasonably be argued that the variance will not affect the General Plan when it has been non-conforming for so long. The previous shed was aging and no one knows how long it had been there. There is a fence that would prevent any further encroachment and the side yard is already blocked off as a result of the fence. Their position is that it doesn't change anything material about the nature of the neighborhood or have any adverse effects to the General Plan given that it has already been in place for so long without an issue.

The fifth criteria states that the spirit of the ordinance is observed and substantial justice is done. This is the subtraction of a right that has existed for the previous owners and the Norton's to this point. The spirit of the land use ordinance has either been respected, or disrespected, to this point without issue. Now that the Norton's are trying to improve upon it, that right is at risk of being subtracted so substantial justice is not being done by any denial of the variance.

Mr. Harland asked why the shed couldn't be put in the applicant's back yard. Mr. Norton replied the only area available to put the shed on would be the middle of the backyard due to the overhead powerlines and the power company requesting continuous access to trim trees away from the powerlines. Mr. Harland stated Mr. Norton would be able to build a larger shed that would have a greater benefit to the property if he built the shed in the backyard. Mr. Norton replied it wouldn't benefit the property because a shed would take up the limited space in his backyard and reduce the amount of usable space due to all the trees. He was told by the Zoning Department that there is a larger easement required on 900 East and 920 East. He added if he had realized this was going to create a problem, he would have left the old shed on the property.

Mr. Harland said the applicant and Mr. Clagett have indicated there are several other properties in the area that are in violation. He asked Mr. Hall to address that issue and the sequence of events that triggered this request for a variance.

Mr. Hall said this was located in unincorporated Salt Lake County that was annexed into Murray City. A lot of the time there was not oversight by the Planning and Building Departments in the unincorporated areas of the County. There are several violations of that type of setback, however, Mr. Hall has driven through the neighborhood and gone through aerial photos and he didn't find the violations were prevalent enough to warrant saying this is a special circumstance that already exists throughout the neighborhood. People having "gotten away with things for years" should not be relied on to suggest if a variance should be granted.

Mr. Norton said he has photos of people putting up new sheds on their property line within the last two weeks.

Mr. Hall told Mr. Norton that a shed going up that does not require a building permit does not make it legal. The fact that it's not required to have a building permit doesn't mean the structure will meet all codes. The Planning and Zoning Department has to look at the structure and ask if they can give the Building Department permission to remove the stop work order. The answer is "no" because this structure cannot meet the Zoning Codes. The

area in general does have some zoning issues and violations, which is typical of almost every single neighborhood. To be a legal non-conforming structure, the structure would have had to be legal at one point. Even under the County's Code, there were not zero lot lines, so this structure was never legal. The City cannot view this as a right being subtracted. It's an oversight that was unnoticed.

Mr. Hall stated this hearing is not about the City telling Mr. Norton to remove his shed. This hearing is about an application for a variance and the Planning Department saying the application doesn't meet the requirements for a variance. He read from the City Code regarding accessory structures located in side yards. Section 17.100.090 (F) states: "*Side Yard Accessory Buildings: Such buildings and structures located in a side yard must comply with this chapter's setback requirements for dwellings and have adequate facilities for the discharge of all roof or other drainage onto the subject property.*" Mr. Hall said if you have a side yard accessory building located in the side yard of the dwelling, it has to meet the same requirements that the dwelling has to meet, and that requirement is an 8 ft. side yard. There is no way around that and if the Code was unclear, staff would have made that determination already.

Mr. Hall said they only consider easements in very special cases. When an easement has eliminated the ability to utilize an area of property that needs to be utilized, they will consider them as part of special circumstances. Easements are very common and there are public utility easements around almost every lot in this valley. The problem with this property for locating a rear yard accessory structure amounts to an easement that is typical and trees that have grown large and problematic over the years and could be removed. Mr. Norton said he was told he would have to have special consideration to remove trees along 900 East because it's a beautification issue.

Mr. Harland said there was one public comment received from Ellen Swift, at 942 East 5750 South, indicating opposition to the variance request based upon the following:

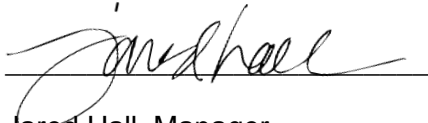
- There is large construction equipment parked on the property and along the street on a daily basis blocking traffic along 920 East.
- The property owners stock pile nursery stock on the property and obviously run a nursery business.
- The property owners pile wood 4 feet high along the south property line the entire length of the property running east to west which may be a fire hazard.
- Cars and truck are overflowing from the property on a continual basis.
- The proposed shed would be a fire hazard being so close to the property line and no separation between the shed and north property line.

Mr. Norton said all the material and construction equipment on the property is to be used for the property.

Mr. Harland thanked staff for the complete staff report and those participating in this meeting. He stated he will forward his written decision to the Community Development Office at 4646 South 500 West, by noon on Wednesday, May 20, 2020.

There was no other business.

The meeting was adjourned at 1:03 p.m.

A handwritten signature in black ink, appearing to read "Jared Hall", is written over a horizontal line.

Jared Hall, Manager

Community Development Planning Division