

Minutes of the Hearings Officer meeting held on Wednesday, September 24, 2014 at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: James Swan, Hearing Officer
Brad McIlrath, Assistant Planner
Jared Hall, Community Development Manager
G.L. Critchfield, Deputy City Attorney
Applicants

Mr. Swan opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures.

CONFLICT OF INTEREST

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

CASE #1505 – JOLENE NELSON – 653 East Spruce Glen Road - Project #14-159

Jolene Nelson and Kevin Godfrey were the applicants present to represent this request. Mr. Swan asked the applicants to introduce themselves.

Kevin Godfrey, 1210 East Brekenridge Drive, stated he is the architect for the property owners. He stated the purpose behind the project is generated from the need for a work and office space in the existing home. He stated that Ms. Nelson has done photography work and is involved in a large nonprofit organization where she has needed the space in the home. There are six individuals that live in the home and all the rooms are occupied. In accommodating the office space some of the living space has been reduced and the addition to the back of the home is a result of that expansion.

Mr. Swan stated in order to grant a variance, state code requires that the five criteria are met and also by city ordinance. Unfortunately, sometimes for applicants it is difficult to meet each of those standards because failing to meet even one the five criteria may result in a denial of the variance. Mr. Swan stated he is concerned that this application undue hardship. He stated that the existing home currently complies with the zoning ordinance setback requirements and that it is possible that the building plans could be modified so as to meet the zoning regulations. He stated that it was indicated that the additional space is needed to conduct a business out of the home but that does not meet the statutory requirements for an undue hardship. He asked if there was another basis for a hardship. Mr. Godfrey stated that Ms. Nelson runs a wedding business where she does the photography and needs designated space for handling the materials for the business. He stated the nonprofit organization for Charlie's Angel's has also required space for storage. He stated the house does meet the zoning restrictions. He stated the rear yard is an unusual shape and backs up to Big Cottonwood Creek and there is only about 5 feet in which they can work with regards to meeting the 25 foot rear yard setback. They are desirous to have an office space to accommodate at least some of what Ms. Nelson is trying to do and accommodate a family of six.

Mr. Swan stated that he cannot grant a variance if the undue hardship is self-imposed in nature. He stated that he recognizes that the work for the nonprofit agency is important but is not grounds for a variance. He stated that economic issues cannot be considered as a basis for granting a hardship. He stated that the lot is somewhat unusual because of the creek. He asked if there are any other special circumstances associated with the lot or home. Mr. Godfrey responded the shape of the lot is what is restricting them from

being able to make the addition and the unique angles at the rear of the property they are not able to go straight out, but the rear of the property and part of their property goes into the river and is unusable property. He stated there is an enormous parkway space in this area owned by Murray City Corporation and is wide open.

Mr. Swan stated the difficulty is there does not appear to be any undue hardship. He stated for example, if there were an existing lot that a home could not be built on, that may be grounds for a variance but where there already is an existing home that meets the zoning code, it is difficult to show that there are special circumstances to justify granting a variance.

Mr. Godfrey commented that in this neighborhood, the Nelson's home is the only home that abides by all the existing zoning regulations and he has looked through the neighborhood and there are home homes that abut up to the river. Mr. Swan stated that he is not reviewing the other homes in the neighborhood and some of those homes may have been built prior to 1987 when the setback regulation changed. Mr. Godfrey stated the adjacent home to the Nelson's has a 15 foot rear yard setback and is about the same age of home as the Nelson's. Mr. Swan responded that he cannot consider the adjacent neighbors home in relation to this request. Mr. Godfrey stated that this situation is similar to other situations in the neighborhood and they are asking for similar consideration.

Mr. Swan stated that the staff presentation should have been given at the beginning of this agenda item. He then asked Mr. McIlrath to give the staff presentation for this agenda item.

Brad McIlrath reviewed the location and request for a variance to the minimum rear yard setback of 25 feet to 11 feet for the property located at 653 E. Spruce Glen Road. Murray City Code Section 17.100.080.D. Rear Yard: The minimum depth of the rear yard shall be twenty five feet (25'). Single-family structures which existing prior to April 7, 1987, shall meet a fifteen foot (15') rear yard setback requirement. The applicant proposes to construct a rear addition to the existing single family residence. The proposed addition will include the expansion of the kitchen area and the addition of a new office area. The existing deck will be removed for the additions and reconstructed at the rear of the new addition. The total area of the expansion, including the deck, will be approximately 587 feet 6 inches in size. With the proposed expansion, the rear yard setback will be reduced from 25 feet to 11 feet. The applicant has included a site plan for the existing and proposed residential plan for review. He stated if the applicants were just to construct the addition and not include the deck, they would be still short of meeting the 25 foot setback but not as much. The information indicates that the fence is not on the property line and the property line may be further back from the fence.

Notices for the proposed variance were sent to neighboring properties on September 12, 2014, and as of the date of this report there has not been public comment regarding this request. The property is similar in size and shape to other properties in the area and zoning district. This property meets the general standards of the R-1-8 zoning district related to lot area, setbacks and building height. There are no special circumstances that apply to this property and the setback requirements are standard for all properties in the area and zone. All properties within this area and same zoning district are required to have a minimum twenty-five foot (25') rear yard setback unless the main dwelling was constructed prior to April 7, 1987 in which case a minimum fifteen foot (15') rear yard

setback is required. With this property meeting the minimum standards of the zoning district and being similar to other properties within the area and zone, there is no special circumstance that applies to this property and the property owner will not be deprived of privileges granted to other properties in the same zoning district. 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 does not meet the standards for a variance. Therefore, staff recommends denial of the application.

There were no comments made from the public.

Mr. Swan asked about the city's analysis of an undue hardship and it cannot be economic or self-imposed. Mr. McIlrath responded even though the rear property line angles inward, the size of the property or shape of the property does not prohibit any type of expansion or the existence of a dwelling and does not present an undue hardship. With the 25 foot setback the applicants are still able to meet that requirement and the intent of the standards of the zoning ordinance would still be met. Mr. Swan asked if there are any situations where this addition would not be a self-imposed hardship. Mr. McIlrath responded that if there weren't any way to do an expansion at all, or if the property would completely prohibit the ability to have a home on the property or to have any type of an expansion, it might be possible to recommend a variance at that time. He indicated that staff did look at the surrounding properties and the property to the west which was built prior to 1987 and has a 15 foot setback and if it is not meeting the 15 foot setback there may need to be some enforcement conducted. Mr. McIlrath stated if the variance was granted, it wouldn't affect the general plan or the intent of the zoning ordinance because of the parkway that is at the rear of the property and the distance between the other properties in the area. What is difficult is this application does meet some of the criteria, but not all of the criteria as outlined in state code for granting a variance.

Mr. Swan asked if staff views this request as a special circumstance because there is an existing home on the property and that the shape of the property is different with the creek at the back of the property. Mr. McIlrath responded that this property in question meets the lot size, setbacks and the current standards of the R-1-8 zone.

Mr. Swan stated he has enough information to make his decision regarding the variance. He stated the decision will be available next Wednesday, October 1st at noon at the Murray City Community Development Office, 4646 South 500 West, Murray.

CASE #1506 – JULIE STEINMETZ – 5478 South Kenwood Drive, Project #14-162

Julie Steinmetz, the applicant, was not present to represent this request because she recently underwent surgery. Jared Hall reviewed the location and request for a building addition onto the back of the existing dwelling, which is non-conforming to the required side yard setback at the property addressed 5478 South Kenwood Drive. 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 Hearings Officer. The applicant is requesting approval for a residential addition onto the back of the existing dwelling which has an 8 ft. side yard setback on each side of the dwelling. The zoning ordinance requires a minimum 8 ft. side yard setback and requires total

combined side yard setbacks to be a minimum 20 ft. This proposed addition requires Hearing Officer approval in order to have an expansion of the non-conforming dwelling. The Salt Lake County Recorder record indicates the existing dwelling was constructed in 1954, and currently has 16 ft. total side yards setbacks in the R-1-8 zone. Murray does not have any records for any building additions onto this dwelling since it was originally constructed. The new addition will comply with the minimum side yard setback requirement of 8 ft. to align with the existing house in the R-1-8 zone. A notice was sent dated September 10, 2014, and as of the date of this notice no public input has been received. 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 structure. Therefore, staff recommends approval subject to the following condition:

1. The applicant shall apply for a building permit for the new addition, providing plans which comply with current building codes and shall comply with 8 ft. minimum side yards setback to align with the existing dwelling.

Mr. Swan asked if the jog in the property line will reduce the 8 foot setback. Mr. Hall responded that the setback will still be 8 feet with the jog in the property line near the proposed addition.

Tim Wyatt, 4471 South Highland Drive, stated he is with the Highland Group Architecture, stated he is the designer for this project. He stated that Ms. Steinmetz has recently had surgery and is unable to attend this meeting. He stated that he has had discussions with the planning staff with regards to this proposal and the proposed design does not impose further into the side yard setbacks and maintains an "in line" setback. He stated the rear yard setback is approximately 55 feet.

Phyllis Plot, 5490 South Kenwood Drive, stated she resides on the adjacent property to the south. She stated she does not have an objection to this request.

Mr. Swan stated he did not have any questions for the applicant and that he has enough information to make his decision regarding the expansion of a nonconforming structure and that the standards for approving such an expansion are different standards than those for approving a variance. He stated that it appears the standards have been met for an expansion of a nonconforming structure. He stated the decision will be available next Wednesday, October 1st at noon at the Murray City Community Development Office, 4646 South 500 West, Murray.

Meeting adjourned 12:58 p.m.



Jared Hall, Division Manager
Community and Economic Development