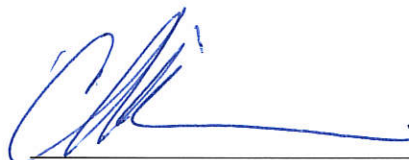


**BOUNTIFUL CITY**  
**PLANNING COMMISSION AGENDA**  
**Tuesday, January 15, 2019**  
**6:30 p.m.**

**NOTICE IS HEREBY GIVEN** that the Bountiful City Planning Commission will hold a meeting in the Conference Room at City Hall, 790 South 100 East, Bountiful, Utah, at the time and on the date given above. The public is invited. Persons who are disabled as defined by the American with Disabilities Act may request an accommodation by contacting the Bountiful Planning Office at 298-6190. Notification at least 24 hours prior to the meeting would be appreciated.

1. Welcome and Introductions.
2. Approval of the minutes for December 18, 2018.
3. Consider final subdivision approval for Seifert Subdivision located at 3332 South 725 West, Roger Seifert, applicant.
4. **PUBLIC HEARING** – Consider a request for a variance to Section 14-4-110 related to the parking setback standards for corner lots. The applicant proposes to reduce the required setback from 10 feet to 8 feet. The property for which the variance is requested is located at 164 W 3300 South, Jacob Boyce, applicant.
5. **PUBLIC HEARING** – Consider a request for a variance to the front yard setback standards of Section 14-5-105 to allow installation of carports for Orchard Gardens Apartments. The property is located at 2720 Orchard Dr, Becki Scymczak, applicant.
6. Consider approval of the Findings of Fact approving a variance request to modify the minimum corner lot width standards for an existing lot in conjunction with a subdivision application for the property located at approximately 1401 E 1800 South for Joe and Bette Eggett Subdivision Phase 6, Terry Eggett and Connie Woolley, applicants.
7. Election of Chairman and Vice Chairman of the Planning Commission for 2019.
8. Planning Director's report, review of pending applications and miscellaneous business.



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Chad Wilkinson, City Planner

**Bountiful City  
Planning Commission Minutes  
December 18, 2018  
6:30 P.M.**

Present: Vice Chair – Von Hill; Planning Commission Members – Jesse Bell, Jim Clark, Tom Smith and Sharon Spratley; City Council Representation – Richard Higginson; City Planner – Chad Wilkinson; City Engineer – Lloyd Cheney; City Attorney – Clint Drake; and Recording Secretary – Darlene Baetz

Excused: Chair – Sean Monson

**1. Welcome and Introductions.**

Vice Chair Hill opened the meeting at 6:30 pm and welcomed all those present.

**2. Approval of the minutes for December 4, 2018.**

Richard Higginson made a motion to approve the minutes for December 4 as written. Tom Smith seconded the motion. Voting passed 6-0 with Commission members Bell, Clark, Higginson, Hill, Spratley and Smith voting aye.

*Note: Items 3 and 4 were presented in combination but have been separated in the written minutes for clarity.*

**3. PUBLIC HEARING - Consider a request for a variance to the lot width standards of Section 14-4-104 of the Bountiful City Land Use Ordinance to modify the minimum corner lot width standards for an existing lot in conjunction with the Joe and Bette Eggett Subdivision Phase 6 application. The property is located at approximately 1401 E. 1800 South, Terry Eggett and Connie Woolley, applicants.**

Terry Eggett was present. Chad Wilkinson presented the staff report.

The applicants have requested a variance to allow for approval of a lot in a proposed subdivision that does not meet the minimum corner lot width requirements. The proposed Eggett Subdivision Phase 6 includes a portion of Lot 1 of the East Peterson Subdivision. This lot, which is shown as Lot 605 of the proposed subdivision, fronts on both 1800 South and the proposed cu-de-sac. Since the lot fronts on both streets it is considered to be a corner lot and is required to meet the lot width standards for corner lots. In the R-3 zone, corner lots must have a minimum width of 90 feet along both frontages. As proposed, the lot meets the standard on 1800 South, but only has approximately 30 feet of frontage on the cul-de-sac.

Although the Eggett property could be developed without the inclusion of Lot 1 of the Peterson Subdivision, a small portion of the lot was included in the design of the subdivision in order to place the access road for the subdivision in a location that would lower the grade of the street and reduce the grading required to construct the street. The applicant had previously submitted a plat showing the minimum configuration needed for compliance with the Code, but the result of that layout produces two lots which are unusual in shape, adds no useable ground to Lot 605, and is not wanted by the current owner of the proposed Lot 605.

- (i) *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;*

**Staff Response:** The proposed Lot 605 is made up of the remainder of an existing developed lot (Lot 1 of East Peterson Subd.) One of the purposes of lot width standards for corner lots is to create a lot that can take access from either street. A second purpose is to create a property that contains adequate buildable area even with the additional exterior setbacks required for a corner lot. In this case, the lot is already developed and has established access to 1800 South. The grade difference between the existing home located on Lot 605 and the proposed cul-de-sac is substantial, making access to the cul-de-sac unlikely and undesirable.

- (ii) *There are special circumstances attached to the property that do not generally apply to other properties in the same zone;*

**Staff Response:** The portion of Lot 605 which fronts on the proposed cul-de-sac is approximately 30 feet in length and is separated from the developed portion of Lot 605 by a 20 foot difference in grade. This is currently a natural area that is not maintained by the property owner and it is anticipated that this area would continue to remain as a natural area. The east portion of lot 605 is already developed with a single family dwelling that takes its access from 1800 South. The owner of Lot 605 has no desire for the additional property that would be required to meet the standard for corner lot width and the difference in grade makes it extremely difficult to take access from the cul-de-sac, even if the lot width were provided. The special circumstances created by the difference in grade and the unusual lot shapes needed to meet the standard justify a variance to the standard.

- (iii) *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*

**Staff Response:** Granting the variance in this instance will allow for orderly development of the applicants property without the need to create an odd shaped or unusable area for the proposed lot 605. Since the reason for including this Lot is to provide for a better access to the proposed subdivision, the variance will provide the property owner with the right to develop their property in an orderly way with a better design.

- (iv) *The variance will not substantially affect the general plan and will not be contrary to the public interest;*

**Staff Response:** The public interest will be served by not creating two odd shaped lots solely for the purpose of meeting the standard. While there are designs that would meet the Code, those designs will create odd shaped lots or portions of lots that are separated by substantial differences in grade from the main part of the lot. This grade separation will make those portions of the lot unusable by the owner of Lot 605 and maintenance of these areas is unlikely. Allowing a variance to the standard will not have a substantial impact to the general plan of the public interest.

- (v) *The spirit of the land use ordinance is observed and substantial justice done*

**Staff Response:** The purpose of the corner lot width standard is to provide for additional opportunities for access and adequate area for building on corner lots. In this case the lot in

question is already developed and differences in grade make it less appealing to provide access to the cul-de-sac. Therefore granting the variance is in keeping with the spirit of the land use ordinance.

Based on analysis of the required review criteria from State law included in the findings above and the materials submitted by the applicant, staff recommends that the Planning Commission approve the variance to the corner lot standards of Section 14-4-104 of the Bountiful Land Use Ordinance

Vice Chair Hill opened the **PUBLIC HEARING** at 6:43 p.m.

Terry Eggett owner of the property expressed appreciation to staff and Planning Commission members and explained the history of this property.

Scott Cummings resides at 1475 Mueller Park. Mr. Cummings stated that he has no problem with this proposal.

Vice Chair Hill closed the **PUBLIC HEARING** at 6:46 p.m.

Mr. Wilkinson explained that the variance fits the state criteria.

**4. Consider a preliminary subdivision approval for Joe and Bette Eggett Subdivision Phase 6 located at 1401 East 1800 South, Terry Eggett and Connie Woolley, applicants.**

Terry Eggett was present. Lloyd Cheney presented the staff report.

Terry Eggett and Connie Woolley are requesting preliminary approval of the Joe and Bette Eggett Subdivision, Phase 6. This six lot subdivision proposes to include Lot 1 from the East Peterson Subdivision and Lot 502 from the Joe and Bette Eggett Phase 5 Amended plat. This location is best described as “the llama pasture” on the north side of 1800 South Street. The subject property extends from the 1800 South Right-of-Way line into the Mill Creek canyon to the north.

The subdivision is located in the R-3 zone, which requires a minimum lot size of 11,000 sq. ft. and a minimum frontage of 80 ft.

All of the interior lots (602, 603 and 604) exceed the minimum requirements. Lot 601 exceeds the minimum requirements of being 10 ft wider and 10% larger for a corner lot. Lot 606, which includes the former Lot 502 and additional property from the pasture area, also meets the minimum requirements for size and frontage.

Lot 605 represents the modified configuration of the former Lot 1 of the East Peterson Subdivision In order to construct the cul-de-sac as proposed, approximately 887 sq. ft. and 71 feet of the tapered west end of Lot 1 is allocated to the cul-de-sac right of way and to the south east corner of Lot 601. This is a negligible impact to the useable area of Lot 1 but it does have a significant consequence in the sense that Lot 1 not becomes a corner lot, and is not compliant with the requirements of the ordinance for minimum frontage on a corner lot. The applicant had previously submitted a plat showing the minimum configuration for compliance, but the result of that layout produces two lots which are unusual in shape, adds no useable ground to Lot 605, and is not wanted by the current owner of the proposed Lot 605. It is preferred that access for Lot 601 be restricted to the cul-de-sac side of the lot.



The proposed 54 ft. wide street section and 108' diameter cul-de-sac configuration are standard widths, and will be adequate to serve this development. On the 1800 South frontage, much of the existing curb and gutter is in poor condition, and needs to be replaced. This will also necessitate the replacement of the sidewalk where it has been constructed directly behind the curb.

All of the utilities which are necessary to serve this development are available in 1800 South Street. A detention basin is proposed on the west side of Lot 601. The basin sizing requirements will require a slight adjustment so that the existing runoff from 1800 South can be properly accounted for in the operation of the detention basin. This will likely mean that the basin capacity and discharge rate will be slightly larger than what would be required for just the subdivision itself. The existing storm drain system ends on the east side of the intersection at 1300 East Street, so the developer will need to extend the system approximately 330 feet to the east to provide an outlet for the detention basin.

The Bountiful City Street Department is planning a pavement maintenance project in this location in the next budget year. Utility work and the installation of curb, gutter, waterways, etc. will need to be completed before the City's project begins to avoid additional requirements for restoring the pavement.

Staff recommends preliminary approval of the Joe and Bette Eggett Subdivision, Phase 6 Subdivision with the following conditions:

1. Obtain approval of a variance from the Planning Commission for the reduced corner lot width shown for Lot 605.
2. Provide a current title report.
3. Make all necessary red line corrections.
4. Extend the storm drain from 1300 E to the storm drain detention basin.
5. Post a bond for the required improvements.
6. Pay all required fees.

Mr. Hill stated that the changes to the boundary of the lot 606 will include extra square footage is a cleaner method for this project.

Richard Higginson made a motion that the Planning Commission forward to the City Council a recommendation of approval for a preliminary subdivision approval for Joe and Bette Eggett Subdivision Phase 6 located at 1401 East 1800 South. Jessie Bell seconded the motion. Voting passed 5-0-1 with Commission members Bell, Clark, Higginson, Smith and Spratley voting aye and Commission member Hill abstaining.

- 5. Consider approval of the Findings of Fact denying a variance request to remove and replace the required 10 foot landscape buffer along the street frontage with asphalt at Antion Auto located at 633 S 500 West, Stephen Sandberg representing Antion Auto, applicant.**

Sharon Spratley made a motion to approve the Findings of Fact for the denial of the variance request to remove and replace the required 10 foot landscape buffer along the street frontage with asphalt at Antion Auto located at 633 S 500 West. Tom Smith seconded the motion. Voting passed 6-0 with Commission members Bell, Clark, Higginson, Hill, Smith and Spratley voting aye.

**6. Consider approval of the 2019 Planning Commission Meeting Calendar.**

Richard Higginson made a motion to approve the 2019 Planning Commission Meeting Calendar as written. Jim Clark seconded the motion. Voting passed 6-0 with Commission members Bell, Clark, Higginson, Hill, Smith and Spratley voting aye.

**7. Planning Director's report, review of pending applications and miscellaneous business.**

1. Next Planning Commission meeting will be January 15, 2019.
2. Election of Planning Commission Chairman and Vice Chairman for 2019 will be on the agenda for January 15, 2019.

Vice Chair Hill ascertained there were no other items to discuss. The meeting was adjourned at 6:55 p.m.

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Chad Wilkinson, Bountiful City Planner

# Commission Staff Report

Item 3

**Subject:** Final Subdivision Approval for the Seifert Subdivision  
**Address:** 3350 South 725 West  
**Author:** City Engineer, City Planner  
**Department:** Engineering, Planning  
**Date:** January 15, 2019

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## Background

Mr. Roger Seifert is requesting final approval of the Seifert Subdivision. This subdivision was granted Preliminary Approval by the City Council on December 11, 2018.

## Analysis

The existing parcels are located in the R-4 zone and combine to form a 1.384 acre parcel from which three lots will be created. The proposed area of each lot is more than twice the 8,000 sq.ft. minimum lot size requirement for this zone. Lot 1, which will include the existing home on the west side of 725 West, will have 90 ft. of frontage. Lots 2 and 3 will have widths of 109 ft. and 112 ft. respectively (measured at the 25 ft. setback).

The construction drawings propose the extension of 725 West Street to be constructed at a centerline grade of approximately 4.5%, which is acceptable. The drawings also identify a 4 ft tall rock retaining wall which is to be constructed along the southernmost portion of the right-of-way line of the cul-de-sac. This feature could conceivably occupy 2-3 ft of the 8 ft of right – of-way which is behind the curb line. Since no sidewalk is currently proposed (or required), this is a minor issue which could affect the construction of future sidewalk. Staff recommends that a vertical retaining wall be constructed in a configuration that will accommodate a 6 ft wide sidewalk (adjacent to the curb and gutter) along the southern portion of the cul-de-sac. Since it is possible that the retaining wall structure would extend into the private property beyond the cul-de-sac right-of-way, the ownership and maintenance of the retaining wall should remain the responsibility of the owners of Lots 2 and 3.

## Department Review

The proposed plat and construction drawings have been reviewed by the Engineering Department and Planning Department.

## Recommendation

It is recommended by Staff that the Planning Commission forward a positive recommendation for final approval of the Seifert Subdivision to the City Council, with the following conditions:

1. Provide a current title report for the property which is included in the subdivision.
2. Sign a development agreement for the required subdivision improvements.
3. Post a bond for the required subdivision improvements.
4. Replace the west curb and gutter adjacent to the extension of the culinary water line and repair the adjacent asphalt pavement with a patch which is at least 3'-0" wide.
5. Construct a vertical retaining wall in a configuration that will accommodate a 6 ft wide sidewalk along the southern portion of the cul-de-sac.
6. Make all necessary red line corrections to the plat.
7. Pay all required fees (Storm Water Impact Fee, Power Fee).

### **Significant Impacts**

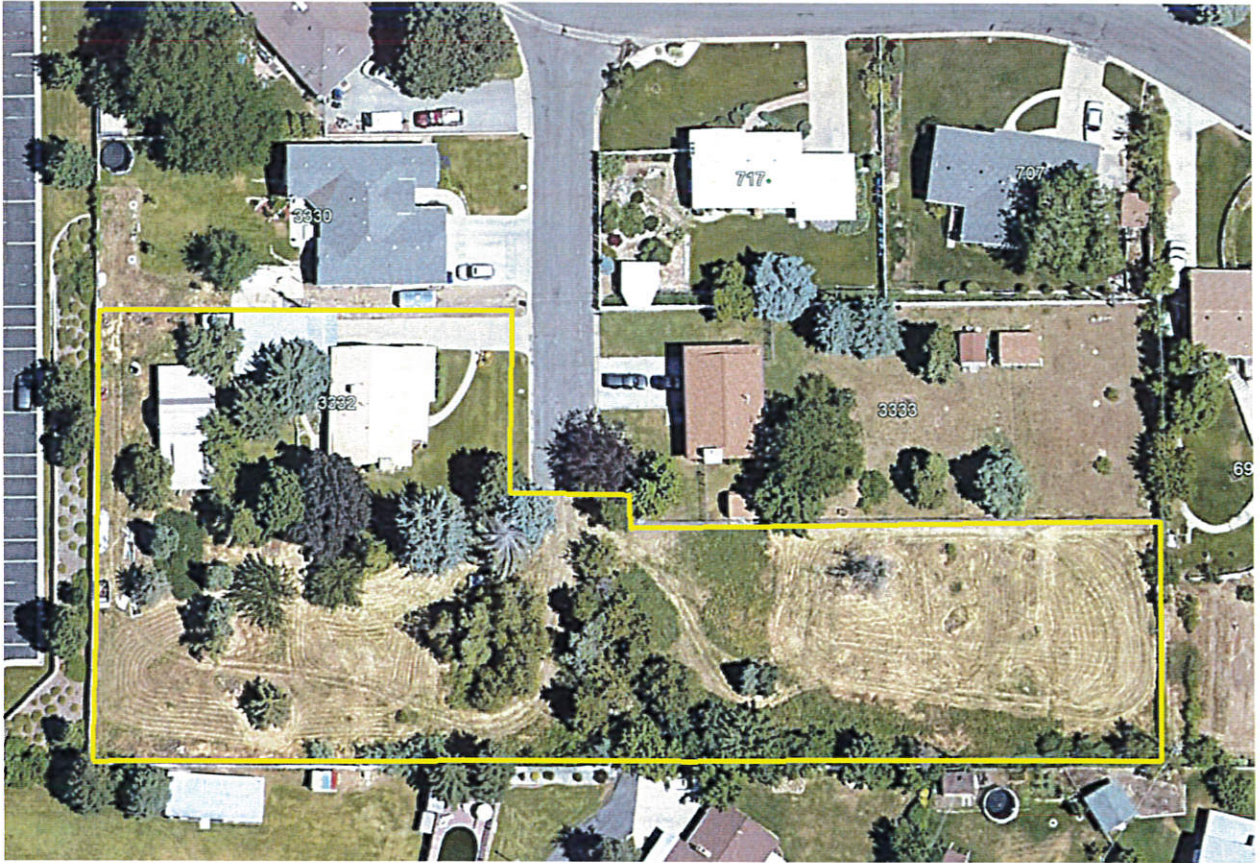
None

### **Attachments**

1. Aerial photo showing the proposed location
2. A copy of the plat and construction drawings.



Aerial Photo of the Proposed Seifert Subdivision









# Commission Staff Report

Item #4

**Item:** PUBLIC HEARING – Request for a proposed variance to the standards of section 14-4-110 of the Bountiful City Land Use Ordinance to reduce the required parking setback on a corner lot.

**Address:** 164 West 3300 South

**Author:** Curtis W. Poole, Assistant Planner

**Date:** January 8, 2019



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## Description of Request

The applicants, Jacob and Nadia Boyce, have requested a variance to City Code 14-4-110, which will allow for the reduction in the 10 foot, required parking setback on a corner lot. The purpose of the variance is to allow a recently installed concrete pad to remain. The property is in the R-4 zone.

## Authority

Section 14-2-111 authorizes the Planning Commission as the review body for variance requests related to yard setbacks.

## Appeal Procedure

Bountiful City Land Use Ordinance section 14-2-108 states that an applicant, board or officer of the City, or any person adversely affected by a Land Use Authority's decision administering or interpreting a land use ordinance or ruling on a request for a variance may, within fourteen calendar days of the written decision, appeal that decision to the Appeal Authority. No other appeals may be made to the Appeal Authority.

The appeal must be in writing and specifically allege that there is an error in an order, requirement, decision or determination by the Land Use Authority. The appellant shall state every theory of relief that it can raise in District Court.

## Background and Analysis

The applicants have requested a variance to allow for a recently poured concrete pad, which has been partially removed, to extend an additional 2 feet into the required corner side yard setback. The home was built in 1961 within Davis County boundaries and was annexed by the City in 1992. The applicants purchased the property last year with renters living in a basement unit. A citizen complaint initiated a code enforcement case regarding renting the unit without city approval. The applicants applied for a Conditional Use Permit for an Accessory Dwelling Unit in their home.



During the notification period for the Conditional Use Permit the applicants installed a concrete pad which extended to the property line on the corner side lot. After a site visit and discussion with staff regarding the concrete pad and standards of the code, the applicants removed all but two feet of the concrete on the corner side yard. The Conditional Use Permit application has been placed on hold pending the outcome of the variance request. The property does have an existing retaining wall along the property line on the corner side lot.

The newly approved section 14-4-110, of the Bountiful City Land Use Ordinance, states, "street Side Yard (Corner Lot): Parking is only allowed on approved parking areas either within an approved garage or carport or located at least 10 feet from the street side property line and behind a six foot screening fence. Fencing adjacent to driveways on corner lots shall be subject to required clear view requirements of Section 14-16-108." Should the variance be approved by the Commission, and prior to approval of the Conditional Use Permit the applicants shall be required to install a six foot screening fence on the corner side yard of their property.

In order for a Conditional Use Permit to be issued for an Accessory Dwelling Unit, the City has to make a finding that the property meets all of the standards of the Code. If the applicants were to remove the additional two feet of concrete, they would still have a 9 feet 2 inch parking width, as measured from the garage wall to the edge of the concrete, which would exceed the minimum parking space standard of 9 feet. Concerns such as areas to play basketball and trash can storage are not hardships that directly relate to the variance requested since the lot is large enough to accommodate recreation areas in other portions of the property and trash can storage could occur elsewhere.

### **Variance Findings**

Utah Code 10-9a-702 establishes the criteria for review of a variance request. "In granting a variance, the appeal authority may impose additional requirements on the applicant that will: (a) mitigate any harmful effects of the variance; or (b) serve the purpose of the standard or requirement that is waived or modified." In order to grant a variance each of the following criteria must be met:

- (i) *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;*

**Staff Response:** State law states that a hardship must be "associated with and peculiar to the property itself," and further states the hardship "cannot be self-imposed or economic." Furthermore, a "variance is not necessary if compliance is possible, even if the property owner has to alter desired plans." With modification to the width of the concrete pad compliance is possible. Therefore, the hardship should be considered as self-imposed and does not constitute the need for a variance approval.

(ii) *There are special circumstances attached to the property that do not generally apply to other properties in the same zone;*

**Staff Response:** The property does have an existing retaining wall located on the corner side yard with a 4 foot grade difference between the sidewalk and property line. This feature is unique to this property which may not exist on other similar corner lots within the R-4 zone. This grade difference may allow the applicants to pour concrete closer to the property line due to the required screening fence which would further minimize the impact of street and neighborhood views.

(iii) *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*

**Staff Response:** The ability to develop properties has always been constrained by characteristics and location of a lot. Regardless of what a property owner feels is needed to maximize the enjoyment of their property, they cannot install or erect structures or surfaces which are contrary to the Bountiful Land Use Ordinance. Other lots in the R-4 zone share this common constraint. Therefore, requiring the applicants to meet the corner side yard setback as required by code does not deprive a property right that is available to other similar lots, to the contrary, granting approval of the variance will grant a right to the applicant's property which may not be available to other similar properties.

(iv) *The variance will not substantially affect the general plan and will not be contrary to the public interest;*

**Staff Response:** Allowing the applicants to keep the two additional feet of concrete in the corner side yard setback will not substantially affect the general plan or public interest.

(v) *The spirit of the land use ordinance is observed and substantial justice done*

**Staff Response:** The spirit of the land use ordinance is to promote open spaces which will help the City maintain its motto of "city of beautiful homes and gardens." A variance should not be considered an "escape clause" allowing property owners to disregard zoning regulations; however, having removed a portion of the concrete pad will allow the applicants to install some landscaping and a screening fence which will be consistent with the spirit of the Land Use Ordinance.

## **Department Review**

City Planner, City Engineer, City Attorney

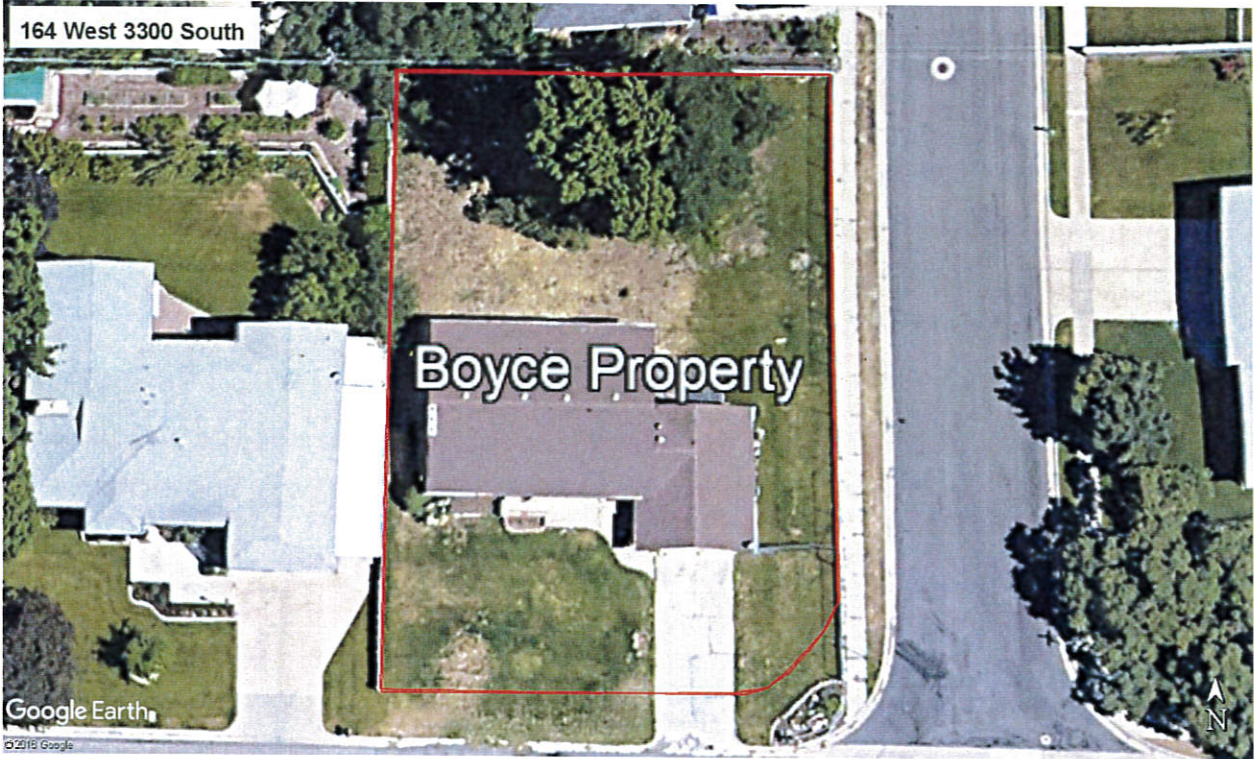
**Recommended Action**

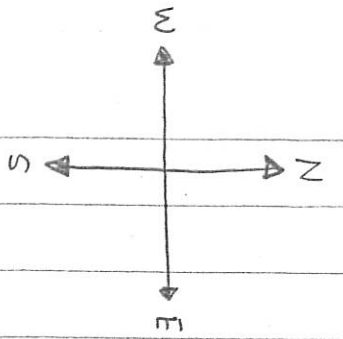
Staff recommends denial of the requested variance, based on analysis of the required review criteria from State law included in the findings above and the materials submitted by the applicants; however, Commissioners should consider circumstances which may be unique to this property and whether they constitute reasons for approval.

**Attachments**

- 1. Aerial Photo
- 2. Site Plan
- 3. Applicant’s Narrative

**Aerial Photo**





removed  
concrete

11' 5"

8' 5"

8'

A/C

G/C

G/C

Q/C

Property  
line →



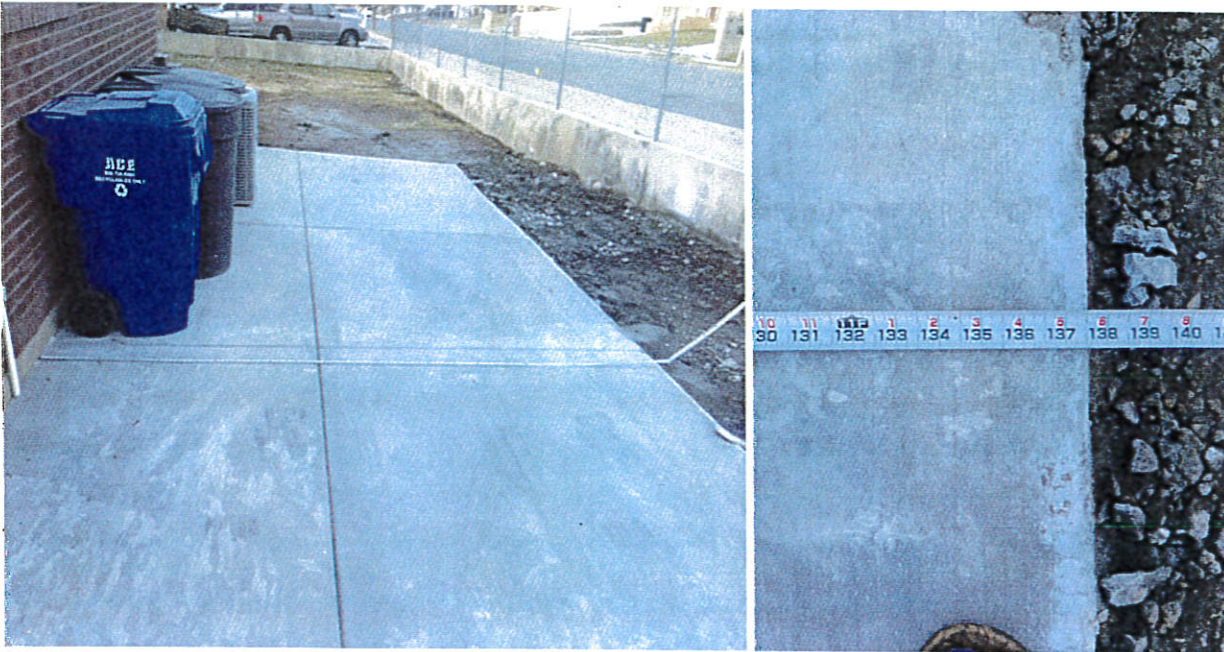
## VARIANCE REQUEST

Appealing: 14-4-110 SECTION 1

2a

1. The parking pad on the side of my house was installed to provide a safer road for the community (a road that is considered "high-traffic") and a safer area for my tenants and I to enter and exit our car. In the winter time the cement pad also provides a flat surface to step onto instead of a step grade the driveway provides. With the amount of snow and ice we receive in Utah it was necessary to provide a safe place for a family to enter and exit their car. The flat concrete surface on the side of my home provides that. The neighbors who have complained about extra cars being parked on the road due to our tenants living in the basement has also been a hardship. The concrete pad solves that issue and allows us to not have to listen to neighbor complaints.

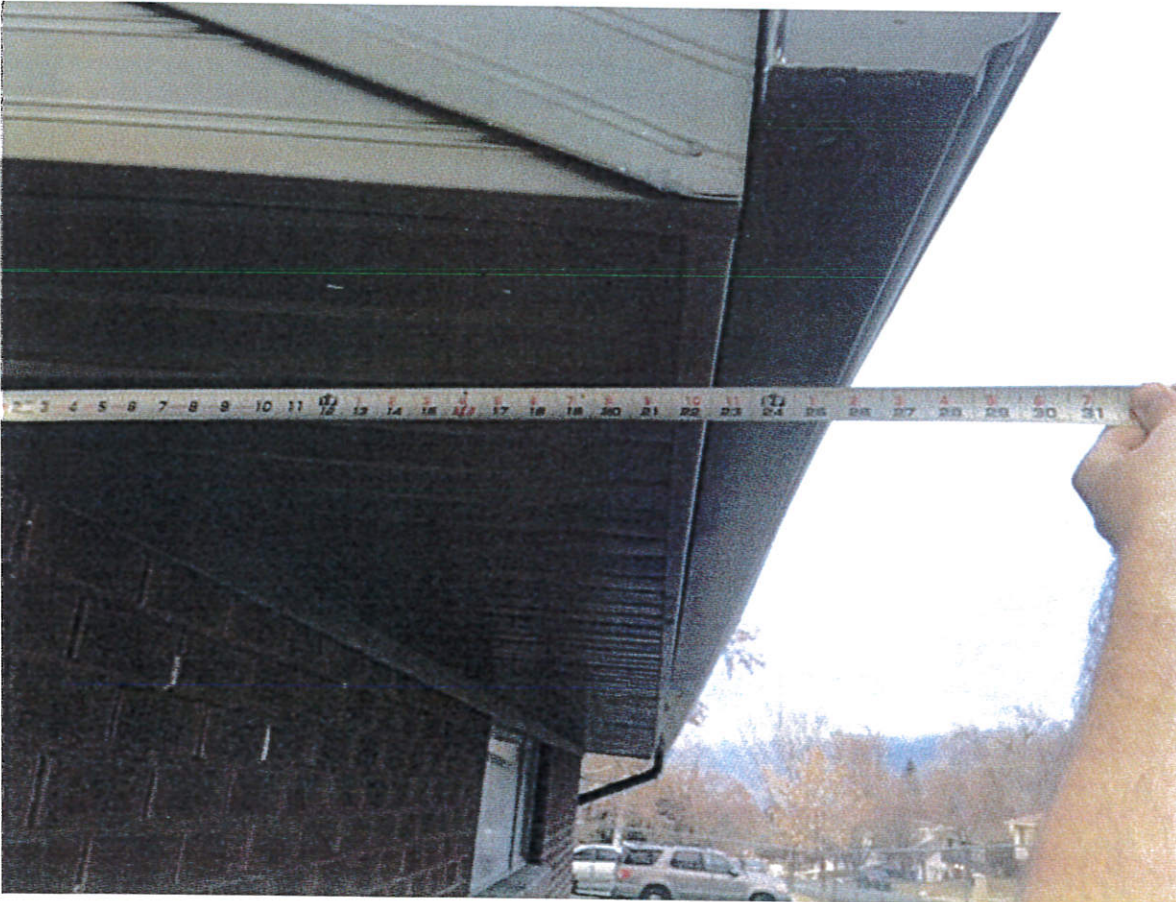
The distance from my home to the end of the concrete is currently 11'5":



BUT there are 3 major obstructions: The over-hang of my soffit, the garbage cans and the A/C condenser.

- 1- Over-hang. Currently my over-hang measures 80" from the cement to the soffit and 26" from the tip of the gutters to the brick:





My truck currently sits at 78" high and doesn't have a lift. Any kind of lifted truck or a truck with a rack would cause extensive damage to the soffit and fascia if it tried to park underneath the over hang. 11'5" MINUS the 27" over would put us at 9'2". There is currently 9'2" of unobstructed space for a truck to park on the cement pad. If the city forced me to remove the additional 2' of concrete that space would drop to 7'2" which is not enough according to Chapter 4 Page 22. This would be a hardship.



According to Chapter 4 page 22, a parking pad is to have 8' of unobstructed paved area. This I believe is considerably small if you take into account that my truck with it's doors partially open measures at over 135" (11')



Yes, an adult or a child can slip through a car door not opened all the way, but what about a car seat for a newborn? At least 2' of door clearance is needed for a car seat to be removed or loaded. It would be a hardship on my tenants and I to have to remove a baby car seat from a pad only 9'2" wide. It would be a safety concern and could cause the car door to hit the house causing damage to the door.

The garbage cans and A/C condenser are also considered obstructions on the parking pad. The garbage cans measure 36" Wide:



With the pad currently measuring at 137" (11'5") that would leave 101" (8'5") of unobstructed space to park car. That is a great distance, BUT if the city forces me to remove the 2 additional feet the unobstructed area would drop to 6'5". Based on previously stated parking pad specs on page 22 of Chapter 4 there needs to be 8' of unobstructed area to

safely park a car. The removal of 2 additional feet would not allow me to meet those specs. Having to park a car with these garbage cans and A/C condenser obstructing our way would be a hardship for my family and I.

The removal of 2 additional feet would also make it very difficult to enjoy a basketball hoop there. As an avid basketball fan I plan to one day play with my kids on this concrete pad. The 8' that was already removed makes it difficult to enjoy a game of basketball, but I believe I can still make it happen. Removing more concrete would give us less room to dribble a ball and therefor would be a hardship for my kids and I.

2. The special circumstances on our home is that it is a corner lot. There are countless neighbors around me who have poured concrete to the edge of their property line, but according to this code I do not have that privilege.

3. Granting this variance will allow me, for the time being, to provide sufficient parking space for my tenants in the basement. Providing them with sufficient parking will allow me the right to receive a conditional use permit. Receiving a conditional use permit is a right all properties around me can enjoy.

4. The public interest in my area has been to get as many cars off the street as possible. The parking pad suffices that demand and provides a safer area for the people driving on the road AND for those entering and exiting their car who had parked on the road. The 2' that we don't remove from my parking pad would not "substantially" affect the general plan

5. The spirit of this law is to keep Bountiful beautiful. To continue the legacy that Bountiful is a place with beautiful landscapes and yards. With 8' removed already from the concrete pad the justice has been done and the 8' will be made into a beautiful section of yard that will complement the City of Bountiful.



# Commission Staff Report

Item # 5



**Item:** PUBLIC HEARING – Request for a variance in order to allow for paving a corner lot not providing direct access to a garage or carport.  
**Address:** 2720 S. Orchard Drive  
**Author:** Chad Wilkinson, Planning Director  
**Date:** January 15, 2019

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## Description of Request

The applicant, Orchard Drive Associates LLC, has requested a variance to Section 14-5-105 related to minimum setbacks from public streets for proposed carports to be constructed at Orchard Gardens Apartments. The applicant proposes to reduce the required setback from 25 feet to 5 feet. The property for which the variance is requested is located at approximately 2720 Orchard Drive,

## Authority

Section 14-2-111 authorizes the Planning Commission as the review body for variance requests related to setbacks.

## Appeal Procedure

Bountiful City Land Use Ordinance section 14-2-108 states that an applicant, board or officer of the City, or any person adversely affected by a Land Use Authority's decision administering or interpreting a land use ordinance or ruling on a request for a variance may, within fourteen calendar days of the written decision, appeal that decision to the Appeal Authority. No other appeals may be made to the Appeal Authority.

The appeal must be in writing and specifically allege that there is an error in an order, requirement, decision or determination by the Land Use Authority. The appellant shall state every theory of relief that it can raise in District Court.

## Background and Analysis:

The applicant has requested a variance to allow for construction of carports over existing parking spaces within the Orchard Gardens Apartment development. The requested setback variance would allow for a reduction in the required structural setback from 25 feet to 5 feet. The Orchard Garden Apartments were constructed in the mid 1970's while the property was located in unincorporated Davis County. Because the property was originally developed in the County, it is considered to be legal nonconforming related to parking lot setback standards. Current code standards would require that all parking along a public street be setback a minimum of 25 feet from the street-side property line. The original approval of the development included a widening of Orchard Drive which is not present in other sections of the roadway. This "bump-out" reduces the landscaping and

places the parking closer to the street than in other areas of the City, although this may have met the standard in the County at the time of development. Another unique circumstance on the property is related to the difference in grade between the street and the parking area. The parking area sits between four and six feet below the adjacent street and is screened by a landscape area located between the side walk and parking area. At the time of development in the County, none of the units were provided with covered parking. Current Bountiful Code requires at least one covered parking space per unit. Because the provision of covered parking on site is desirable, this presents an interesting challenge in a case where parking setbacks do not meet current standards.

### **Variance Findings**

Utah Code 10-9a-702 establishes the criteria for review of a variance request. In order to grant a variance each of the following criteria must be met:

- (i) *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;*

**Staff Response:** The development was constructed around 1975 and as a requirement of development a portion of Orchard Drive was widened. It is unclear if the purpose was to provide for on-street parking or for future widening of the street. But in any case the resulting parking lot setback is less than the current code standard of 25 feet. At the time of the development of the property, no covered parking was provided for any of the units. The applicant will be providing other covered parking throughout the site but there is no good opportunity for providing convenient covered parking for the units along Orchard Drive without the approval of a variance. The parking location and configuration has not been changed since the original approval by the County and changing the configuration to meet the Code would require a total redesign of an existing site. Since the application involves covering existing legal nonconforming parking spaces, a variance in this case is appropriate and would avoid an unreasonable hardship of not being able to provide covered parking for the development.

- (ii) *There are special circumstances attached to the property that do not generally apply to other properties in the same zone;*

**Staff Response:** Besides the unique conditions related to the widening of Orchard Drive, the proposed carports cover parking spaces that are several feet below the grade of the adjacent street, especially on the north east side of the parking lot. The grade difference varies from approximately four feet to almost six feet. This will create a situation where the structures will be partially obscured by the retaining wall and vegetation along Orchard Drive. There may be a need to include some additional vegetation to provide for better screening of the parking structures, but this difference in grade and the ability to screen the parking with additional vegetation constitutes a unique circumstance.

(iii) *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*

**Staff Response:** The proposed variance will allow for the residents of the development to have conveniently located covered parking which is a property right provided by current code standards.

(iv) *The variance will not substantially affect the general plan and will not be contrary to the public interest;*

**Staff Response:** Because the development was legally constructed in the County, the nonconformity is not a self-imposed violation of the current ordinance. Providing the carports will support the public interest of providing covered parking for individuals residing in multifamily developments.

(v) *The spirit of the land use ordinance is observed and substantial justice done*

**Staff Response:** While a structural setback is an important component of the land use ordinance, the need for conveniently located covered parking and other amenities is also a concern and is outlined in several places in the multifamily ordinance, and is a requirement of current Code. Allowing construction of carports within the front yard to cover existing parking spaces will allow for the spirit of the ordinance to be observed for the residents of this development.

## **Department Review**

This request has been reviewed by the City Planner, City Engineer, and City Attorney.

## **Recommended Action**

Staff recommends approval of the requested variance related to minimum setbacks from public streets for proposed carports to be constructed for the Orchard Gardens Apartments subject to the following condition:

1. Any dead and dying trees and/or shrubs along the frontage on Orchard Drive shall be replaced in order to provide screening for the proposed carports.
2. Constructed carports near the drive approach onto Orchard Drive shall meet the clear-view standards of the Code

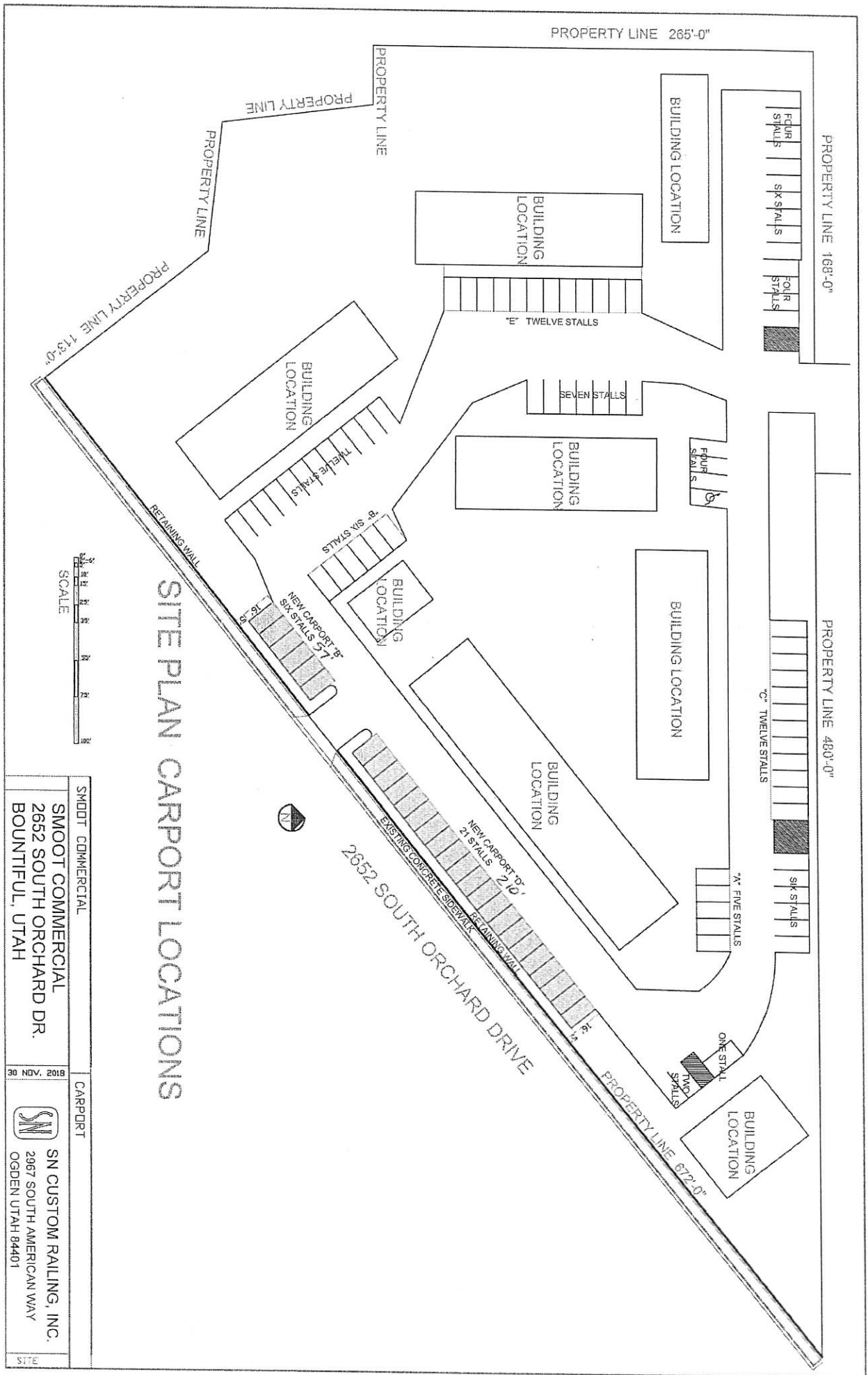
## **Attachments**

1. Aerial Photo
2. Applicant's Narrative









SITE PLAN CARPORT LOCATIONS

SMOOT COMMERCIAL	CARPORT
SMOOT COMMERCIAL	SN CUSTOM RAILING, INC.
2652 SOUTH ORCHARD DR.	2967 SOUTH AMERICAN WAY
BOUNTIFUL, UTAH	OGDEN UTAH 84401
30 NOV. 2018	
SITE	



## Orchard Gardens Car Ports Variance Application

What City Ordinance(s) do you want a variance from?

Ordinance 14-5-105 Yard and Setback Requirements

The proposed variance request meets all of the criteria. See the following:

(2) (a)

(i) Enforcement of the ordinance would cause an unreasonable hardship as most of the parking at Orchard Gardens Apartments will have covered parking except next to Orchard Drive causing some tenants to not receive the same benefits that other tenants will receive. This will lead to many tenants wanting to move apartments for covered parking, therefore causing additional work for managers. These inequalities would cause unreasonable hardship for tenants who have to scrap snow and ice off their cars while other tenants do not have to where carports exist on the property. In addition, the owners will lose rent value for apartments without carports.

(ii) There are special circumstances attached to this property as it likely had a 25 foot setback from the road until a drive lane was installed into the 25 foot setback area for UTA bus stop purposes. Further, this property was likely built before this ordinance was written and the setbacks at the time were appropriate for the regulations at that time. The parking spaces already exist and simply need to be covered. In addition, the property elevation where these parking spaces are located next to Orchard Drive are much lower than the road. Therefore, the top of the car ports would only be approximately 3 feet above road level, therefore not causing any visual obstructions for motorists on the road. See attached pictures.

(iii) Other multifamily properties in Bountiful have carports next to major roads and with Utah's winters and snow season it is critical to the enjoyment of the owners' property rights to provide carports for tenants.

(iv) Carports over parking spaces that already exist and that will be substantially lower in elevation than Orchard Drive should not affect any general plan or public interest.

(v) We believe this request is in the spirit of the land use ordinance and provides substantial justice.



## **BOUNTIFUL CITY (RM) – RESIDENTIAL MULTIPLE FAMILY**

### **14-5-105 YARD AND SETBACK REQUIREMENTS**

The following minimum yard requirements shall apply in the (RM) Zone, except for single family dwellings which shall meet the setback requirements for the (R-4) Subzone:

A. The minimum setback along any public street at any point shall be twenty-five (25) feet. No dwellings, parking spaces, or other site elements other than sidewalks, landscaping, and approved driveways may be allowed in the front setback.

B. The minimum interior side yard setback shall be ten (10) feet or one-half ( $\frac{1}{2}$ ) the height of the adjacent structure, whichever is greater.

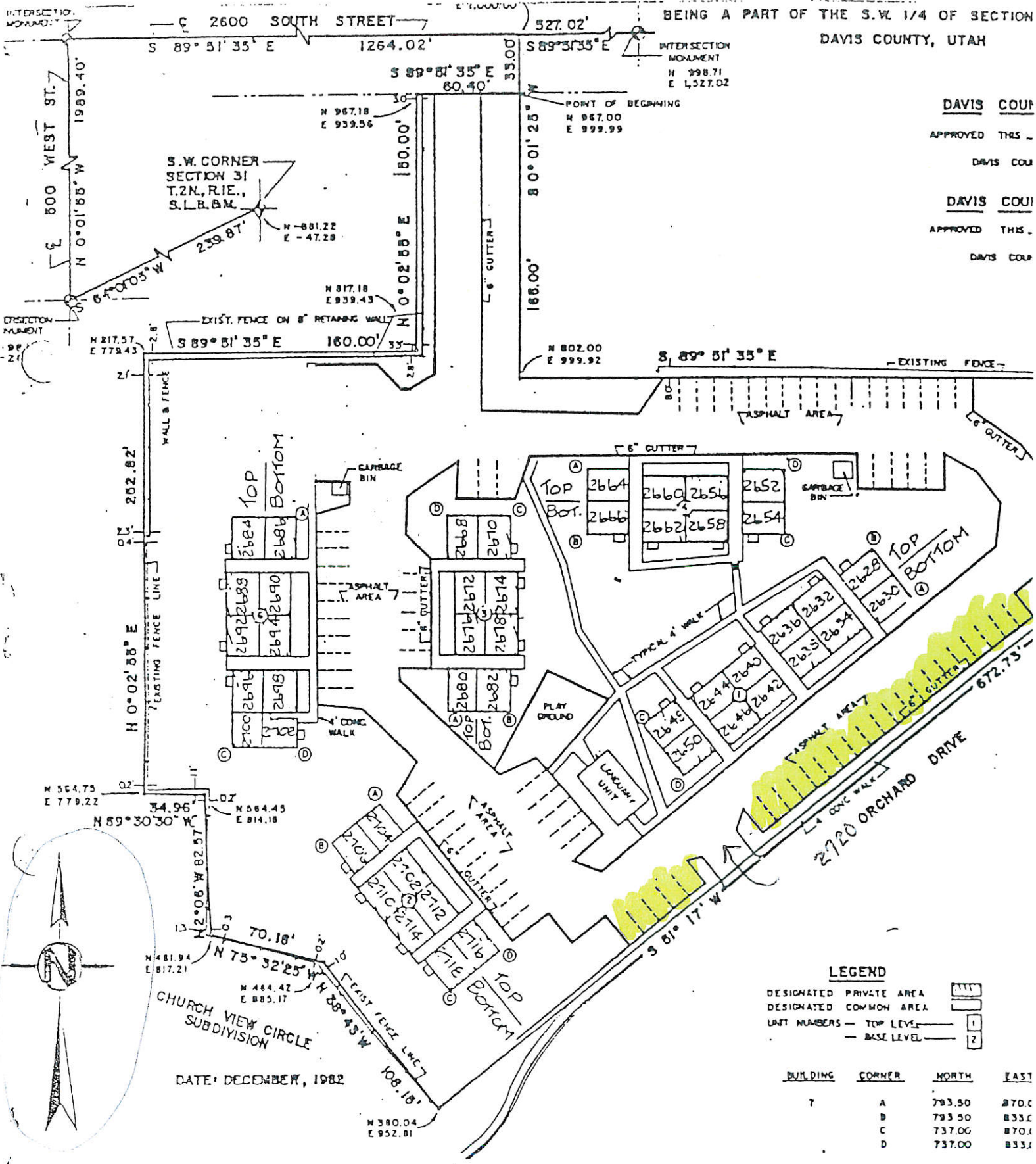
C. The minimum side building separation shall be ten (10) feet or two-thirds ( $\frac{2}{3}$ ) the height of the tallest adjacent structure, whichever is greater.

D. The minimum separation between the rear of a building and a property line shall be twenty (20) feet. The rear of a building shall be any side opposite a primary entrance. The minimum separation between the rear of a building and any portion of another building shall be thirty (30) feet.

F. The minimum separation between the front of a building and a property line shall be twenty-five (25) feet. The front of a building shall be any side with a primary entrance.

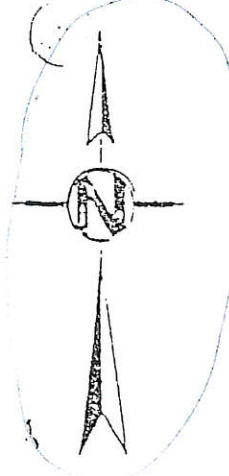
G. Accessory Structure – Each accessory structure shall be located within the minimum setbacks required for principal structures. The exception is that an accessory building may be located within three (3) feet of a rear or interior side property line if the following criteria are met:

1. The entire structure is located more than five (5) feet to the rear of any main building on the same lot on which the building is being placed.
2. No part of the structure is closer than twelve (12) feet to any dwelling on an adjacent property.
3. The eaves are at least one (1) foot from the property line.
4. The structure is designed to prevent roof runoff from impacting the adjacent property.
5. The structure meets all applicable provisions of the International Building Code.
6. The structure does not encroach on any easements, recorded or otherwise.



BEING A PART OF THE S.W. 1/4 OF SECTION DAVIS COUNTY, UTAH

DAVIS COUNTY  
 APPROVED THIS  
 DAVIS COUNTY  
 APPROVED THIS  
 DAVIS COUNTY



DATE: DECEMBER, 1982

**LEGEND**

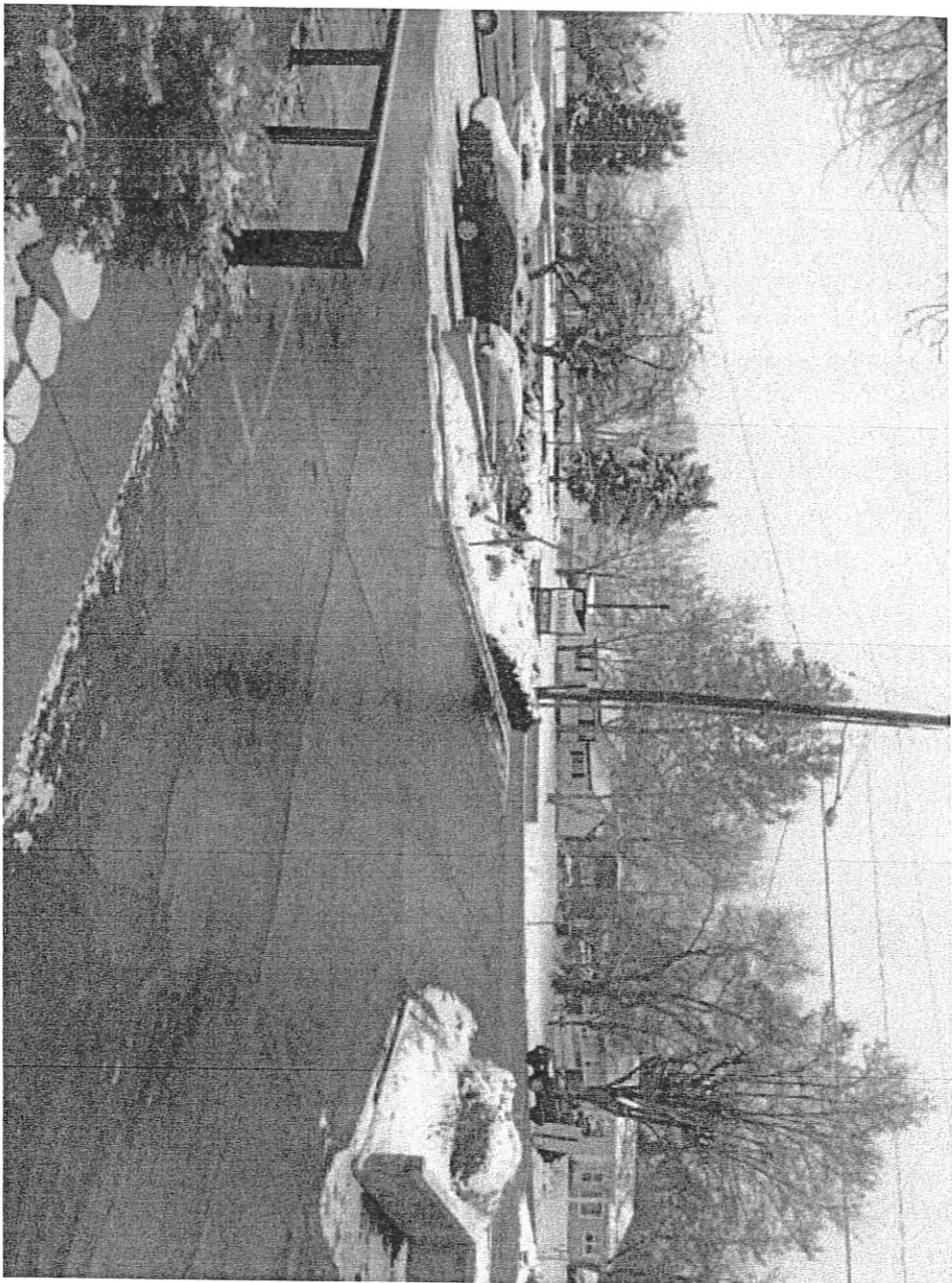
- DESIGNATED PRIVATE AREA
- DESIGNATED COMMON AREA
- UNIT NUMBERS — TOP LEVEL
- BASE LEVEL

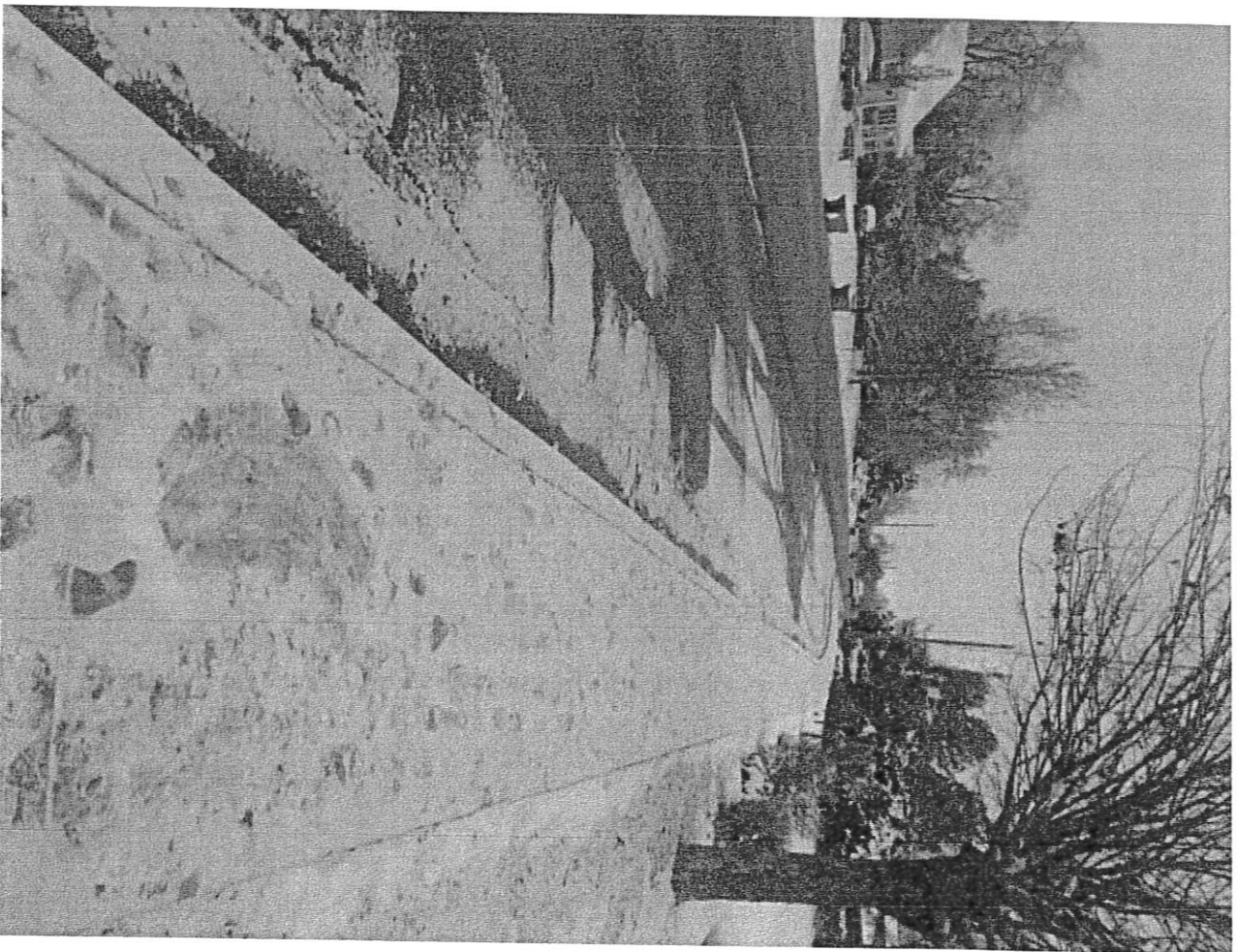
BUILDING	CORNER	NORTH	EAST
7	A	793.50	870.0
	B	793.50	833.0
	C	737.00	870.0
	D	737.00	833.0





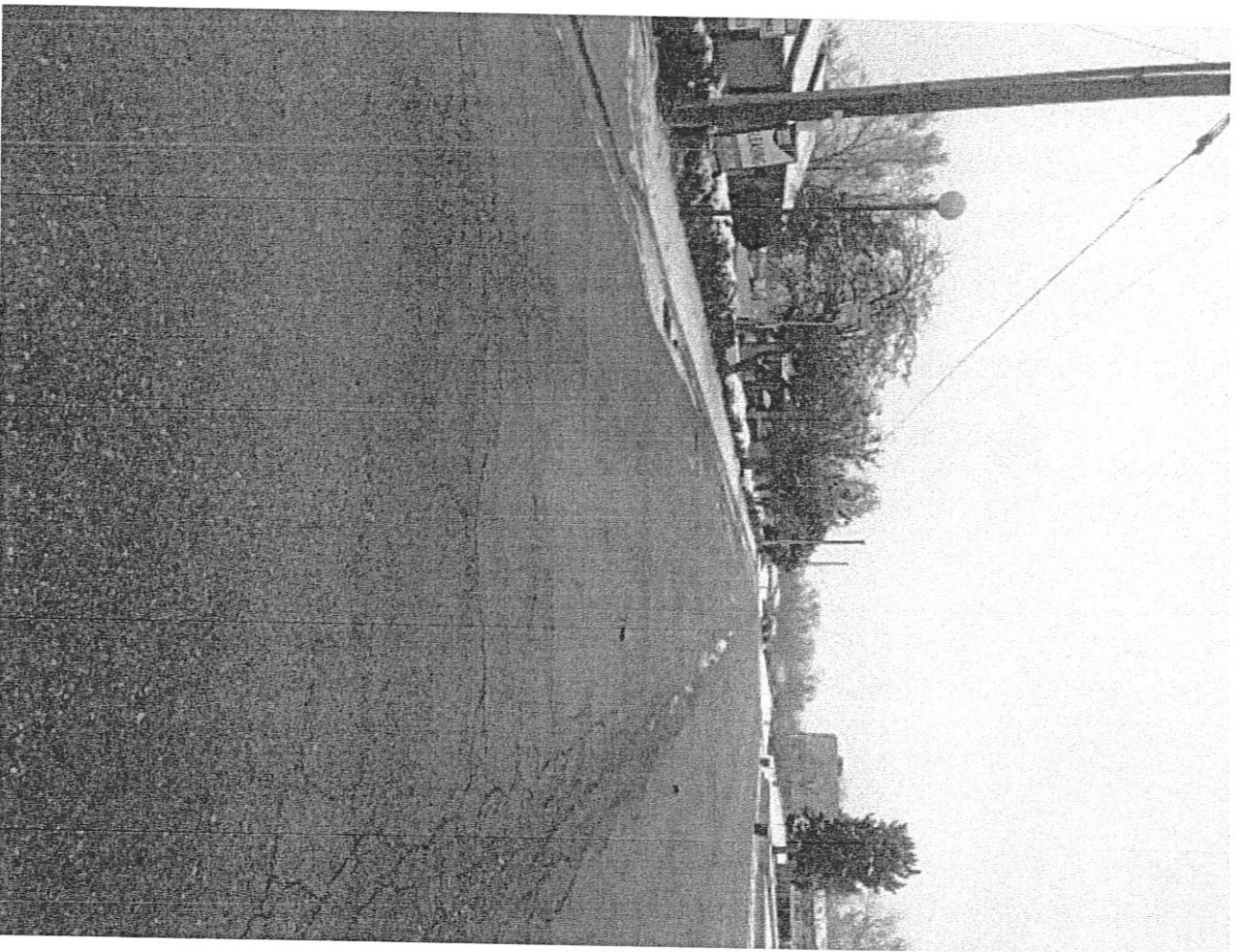


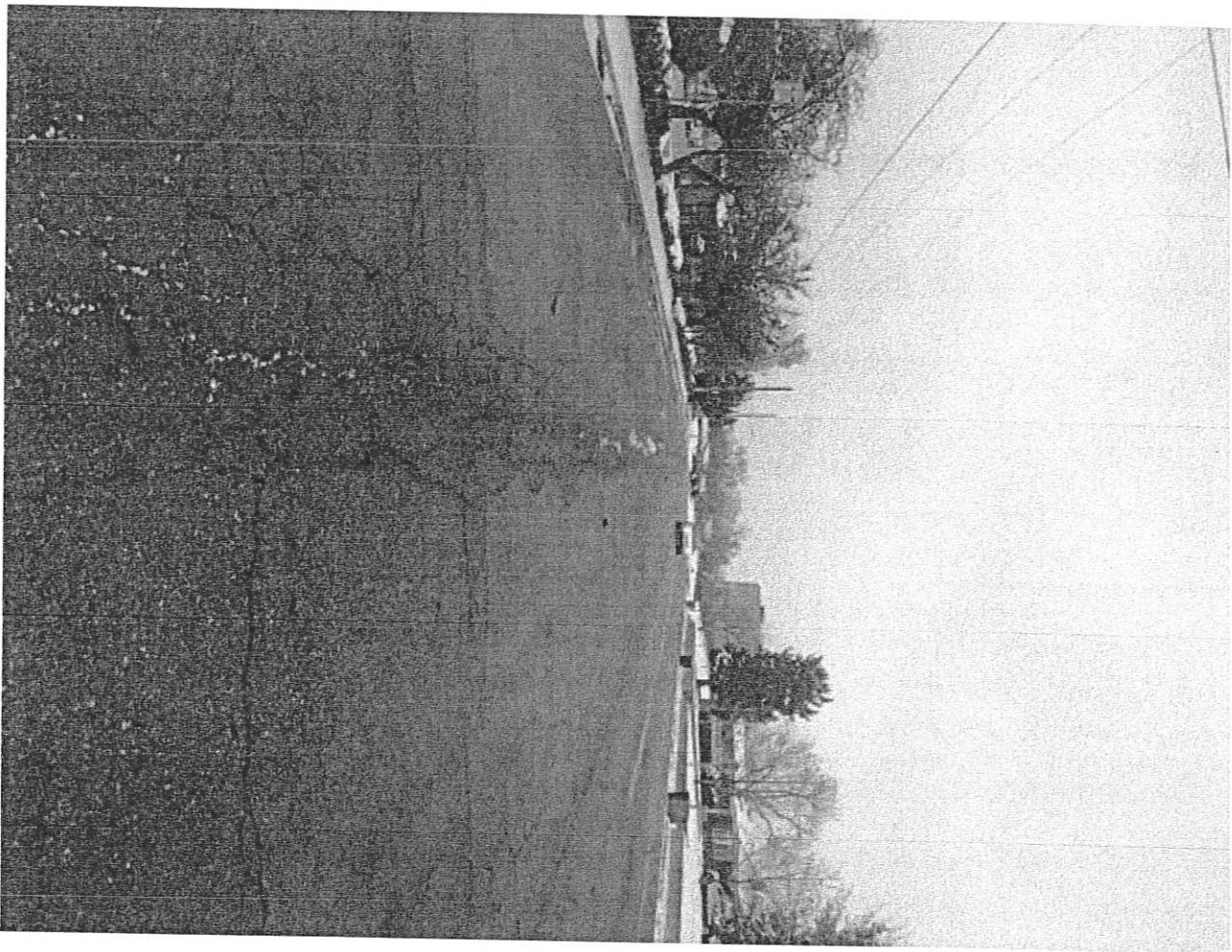


















**BOUNTIFUL CITY PLANNING COMMISSION  
FINDINGS OF FACT AND CONCLUSIONS**

**APPLICANT:** Terry Eggett and Connie Woolley

**APPLICATION TYPE:** Request for a variance to the required corner lot width requirements of the R-3 Zoning District. The proposed variance has been submitted in conjunction with an application for subdivision.

**I. DESCRIPTION OF REQUEST:**

The applicants, Terry Eggett and Connie Woolley, have requested a variance to the required corner lot width requirements of the R-3 Zoning District. The proposed variance has been submitted in conjunction with an application for subdivision.

**II. LAND USE ORDINANCE AUTHORITY:**

Section 14-2-111 authorizes the Planning Commission as the review body for variance requests within the R-3 zone related to lot width.

**III. APPEAL PROCEDURE:**

Bountiful City Land Use Ordinance section 14-2-108 states that an applicant, board or officer of the City, or any person adversely affected by a Land Use Authority's decision administering or interpreting a land use ordinance or ruling on a request for a variance may, within fourteen calendar days of the written decision, appeal that decision to the Appeal Authority. No other appeals may be made to the Appeal Authority.

The appeal must be in writing and specifically allege that there is an error in an order, requirement, decision or determination by the Land Use Authority. The appellant shall state every theory of relief that it can raise in District Court.

**IV. SUMMARY OF EVIDENCE:**

- A. The basic facts and criteria regarding this application are contained in the staff report, which is attached as **Exhibit A** and is incorporated herein.
- B. The minutes of the public hearing held by the Planning Commission on **Tuesday, December 18, 2018** which are attached as **Exhibit B** summarize the oral testimony presented and are hereby incorporated herein.

**V. FINDINGS OF FACT:**

Based upon the information presented and oral testimony given at the public hearing the Planning Commission made the following findings:

- A. 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;**

The proposed Lot 605 is made up of the remainder of an existing developed lot (Lot 1 of East Peterson Subd.) One of the purposes of lot width standards for corner lots is to create a lot that can take access from either street. A second purpose is to create a property that contains adequate buildable area even with the additional exterior setbacks required for a corner lot. In this case, the lot is already developed and has established access to 1800 South. The grade difference between the existing home located on Lot 605 and the proposed cul-de-sac is substantial, making access to the cul-de-sac unlikely and undesirable.

- B. There are special circumstances attached to the property that do not generally apply to other properties in the district;**

The portion of Lot 605 which fronts on the proposed cul-de-sac is approximately 30 feet in length and is separated from the developed portion of Lot 605 by a 20 foot difference in grade. This is currently a natural area that is not maintained by the property owner and it is anticipated that this area would continue to remain as a natural area. The east portion of lot 605 is already developed with a single family dwelling that takes its access from 1800 South. The owner of Lot 605 has no desire for the additional property that would be required to meet the standard for corner lot width and the difference in grade makes it extremely difficult to take access from the cul-de-sac, even if the lot width were provided. The special circumstances created by the difference in grade and the unusual lot shapes needed to meet the standard justify a variance to the standard.

- C. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the district;**

Granting the variance in this instance will allow for orderly development of the applicants property without the need to create an odd shaped or unusable area for the proposed lot 605. Since the reason for including this Lot is to provide for a better access to the proposed subdivision, the variance will provide the property owner with the right to develop their property in an orderly way with a better design.



- D. The variance will not substantially affect the general plan and will not be contrary to the public interest;

The public interest will be served by not creating two odd shaped lots solely for the purpose of meeting the standard. While there are designs that would meet the Code, those designs will create odd shaped lots or portions of lots that are separated by substantial differences in grade from the main part of the lot. This grade separation will make those portions of the lot unusable by the owner of Lot 605 and maintenance of these areas is unlikely. Allowing a variance to the standard will not have a substantial impact to the general plan of the public interest.

- E. The spirit of the land use ordinance is observed and substantial justice is done

The purpose of the corner lot width standard is to provide for additional opportunities for access and adequate area for building on corner lots. In this case the lot in question is already developed and differences in grade make it less appealing to provide access to the cul-de-sac. Therefore granting the variance is in keeping with the spirit of the land use ordinance.

## VI. DECISION AND SUMMARY

The Planning Commission approved the requested variance by a vote of 5-0-1.

FINDINGS OF FACT APPROVED BY THE Bountiful City Planning Commission this \_\_\_\_\_ day of January, 2019.

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Sean Monson, Chair  
Bountiful City Planning Commission