

**Bountiful City**  
**Planning Commission Minutes**  
**January 15, 2019**  
**6:30 P.M.**

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

**1. Welcome and Introductions.**

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

**2. Approval of the minutes for December 18, 2018.**

Sharon Spratley made a motion to approve the minutes for December 18 as written. Richard Higginson seconded the motion. Voting passed 6-0-1 with Commission members Bell, Clark, Higginson, Hill, Spratley and Smith voting aye and Monson abstaining.

**3. Consider final subdivision approval for Seifert Subdivision located at 3332 South 725 West, Roger Seifert, applicant.**

Roger Seifert was present. Lloyd Cheney presented the staff report.

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. 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.

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).

Mr. Cheney discussed the 4 ft rock wall called out in the plans and reported that the property will have enough room for the wall.

Richard Higginson made a motion that the Planning Commission forward to the City Council a recommendation of approval for a final subdivision approval for Seifert Subdivision located at 3332 S 725 West with the 7 conditions outlined by staff. Tom Smith seconded the motion. Voting passed 6-0-1 with Commission members Bell, Clark, Higginson, Monson, Smith and Spratley voting aye and Hill abstaining.

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.**

Jacob and Nadia Boyce were present. Curtis Poole presented the staff report.

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.

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.

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.

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.

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.

Chair Monson opened and closed the **PUBLIC HEARING** without comments at 6:50 p.m.

Mr. Boyce discussed the inconvenience of the tenants parking their cars on the street and the neighborhoods safety to have the cars on the street. Mr. Boyce discussed the measurements of the overhang, A/C unit and garbage and recycling cans and considers the removal of the concrete pad a hardship. He mentioned that he has removed 10 feet of the concrete and will landscape this portion in the future but he is asking for approval to keep the remaining concrete.

Staff clarified that the wall was built with the road 40 years ago with the County and Mr. Boyce has a 19’6” side yard setback between street and the house. The fencing standards are for all corner lots.

Mr. Monson asked Mr. Boyce and Mr. Poole for the discussion that they had about the removal of the concrete pad. Mr. Boyce stated that Mr. Poole said that the City wouldn’t come out and measure the concrete if it was close to the project measurements. Mr. Poole and Mr. Wilkinson explained that the City doesn’t go to a home and take measurements of their property unless there is an active code enforcement violation which there is in this case. Mr. Wilkinson stated the measurement that Mr. Boyce needed to use for the concrete pad was 10 feet. Mr. Monson asked for legal clarification with Mr. Drake who stated that in order for someone to claim estoppel there needs to be something in writing and that the Standard of Review for the Planning Commission body is only the variance criteria.

Mr. Monson explained the strict approval process of the variance and the Planning Commission members are bound with the constraints of what the statute says.

Richard Higginson made a motion to grant this variance based on the fact that this property owner would be able to enjoy parking rights off the street from the side yard based on the Accessory Dwelling Unit and Parking Ordinance in order to accommodate his renters. His motion is based on the fact that the property is unique in its elevation change and that it only makes sense for us to allow wider access to the back property as possible and that he is substantial compliance to the 10 foot

setback in our eyes. Tom Smith seconded the motion. Voting was 3-4. The motion failed.

Sharon Spratley made a motion to deny this variance based on the fact that it did not meet all the criteria as outlined in the staff report. Von Hill seconded the motion. Voting was 5-2 with Higginson and Smith voting nay.

Chair Monson explained that Mr. Boyce could appeal this decision within 14 days.

**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.**

Becky Scymczak was present. Chad Wilkinson presented the staff report.

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,

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.

In order to grant a variance each of the following criteria must be met:

- (vi) *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.

(vii) *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.

(viii) *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.

(ix) *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.

(x) *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.

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

Staff stated that the carport is 7'6" tall on street side with the height of the retaining wall varying between is 3' to 6' and the dripline is between the retaining wall and the carport.

Chair Monson opened the **PUBLIC HEARING** at 7:36 p.m.

Jill Longhurst. She asked if the carport will be up against the retaining wall and will the angle be against the sidewalk. She is concerned about children climbing on the carport and getting hurt.

Sheriss Burt resides at 2819 S 450 West. She is concerned about the children climbing on the carport and the lack of snow removal on the sidewalk.

Ashley Bolton resides at 2681 Orchard Dr. She echoes all the others concerns from the others and feels that this is more of an economic move more than a hardship. Asks if the covered parking could be moved.

Jason Bolton resides at 2681 Orchard Dr. He asked for planter box setbacks.

Michelle Wise resides at 2812 Southview Circle. She has concerns about the lack of snow removal that she believes will compound the problem with the addition of carports.

Tim works with Smoot Commercial. He stated that the carports are to cover the parking and not the planter boxes. He believes that the problem with the snow on the sidewalk has also been with the plows. The vegetation in the boxes are juniper sticker bushes and are not very inviting for children to get into. The covered parking will be 5 feet away from the retaining wall.

Chair Monson closed the **PUBLIC HEARING** at 7:46 p.m.

Ms. Scymczak stated that the carports are being installed in phases. She feels that the children would not try to jump on top of the carports.

Staff showed the carport height of 7' to the Commission members. Mr. Wilkinson stated that the concerns brought forward at this meeting, is a behavior issue and not a code issue. Mr. Bell mentioned that the carport is an aesthetic issue. There was discussion about exploring the option to bring the covered parking closer to the buildings. The widening of the street was done when the complex was built and was approved under a different code with the County.

Mr. Wilkinson explained that this agenda item is for an approval or denial of a variance.

Jesse Bell made a motion to deny the variance due to not making the situation any better with carports in this location justifies the benefit.

There was discussion about the exploration of other possibilities to be able to approve. There was concern about the aesthetics and buffer of the carports.

Mr. Bell withdrew his motion.

Sharon Spratley made a motion to continue this request to March 5, 2019 for the variance and ask the applicant bring back more info with the possibility of moving the covered parking in another area that takes it away from the street and the understanding of the buffer and the carport locations with more visuals to include the cross sections of this project.

Mr. Wilkinson explained that staff's recommendation for this project was that the hardship was not self-imposed and the parking met the code when it was built. Mr. Drake explained that the Utah code gives the Planning Commission authority to impose mitigating factors/conditions to improve the situation.

Richard Higginson seconded the motion. Voting passed 7-0 with Commission members Bell, Clark, Higginson, Hill, Monson, Smith and Spratley voting aye.

**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.**

Richard Higginson made a motion to approve the Findings of Fact for the approval of the 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 1401 E 1800 South. Von Hill seconded the motion. Voting passed 6-0-1 with Commission members Bell, Clark, Higginson, Hill, Smith and Spratley voting aye and Monson abstaining.

**7. Election of Chairman and Vice Chairman of the Planning Commission for 2019.**

Richard Higginson made a motion to elect Sean Monson as the 2019 Chairman for Planning Commission. Von Hill seconded the motion. Voting passed 7-0 with Commission members Bell, Clark, Higginson, Hill, Monson, Smith and Spratley voting aye.

Sharon Spratley made a motion to elect Von Hill as the 2019 Vice-Chairman for Planning Commission. Jim Clark seconded the motion. Voting passed 7-0 with Commission members Bell, Clark, Higginson, Hill, Monson, Smith and Spratley voting aye.

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

1. Next Planning Commission meeting will be February 5, 2019.

Chair Monson ascertained there were no other items to discuss. The meeting was adjourned at 8:04 p.m.

  
Chad Wilkinson, Bountiful City Planner