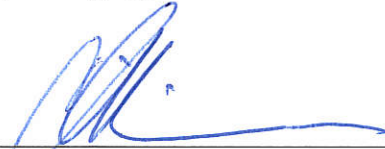


**BOUNTIFUL CITY**  
**PLANNING COMMISSION AGENDA**  
**Tuesday, June 5, 2018**  
**6:30 p.m.**

**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 May 1, 2018.
3. Consider approval of a Conditional Use Permit in written form for an Electronic Message Center for Affordable Title Loans located at 21 W 500 South, Stevan Vasic, applicant.
4. **PUBLIC HEARING** – Consider approval of variance for fence height in the front yard setback located at 99 S 400 East, Heather Mercer, applicant.
5. **PUBLIC HEARING** – Consider approval of variance for a paving in a corner lot side yard not providing direct access to a garage or carport located at 1091 S Main St, Oscar and Farrah Valdez, applicants.
6. **PUBLIC HEARING** - Consider an amendment to the Bountiful City Zoning ordinance to designate the Planning Commission as the appeal authority for variances in the R-F zone related to disturbances of areas greater than 30% slope and cuts and fills exceeding 10 feet in height.
7. Planning Director's report, review of pending applications and miscellaneous business.

  
\_\_\_\_\_  
Chad Wilkinson, City Planner

**Bountiful City**  
**Planning Commission Minutes**  
**May 1, 2018**  
**6:30 P.M.**

Present: Chair – Sean Monson; Planning Commission Members – Jesse Bell, Jim Clark, Tom Smith and Sharon Spratley; City Council Representation – Richard Higginson; City Attorney – Clint Drake; City Planner – Chad Wilkinson; City Engineer – Paul Rowland; 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 April 17, 2018.**

Sharon Spratley made a motion to approve the minutes for April 17, 2018 with two corrections. Item #5, paragraph 11 should say ...Bangerter Farms *wanted* to remove any of the Agriculture... and paragraph 13 should say ... Monson and Spratley voting *aye*.

Richard Higginson seconded the motion. Voting passed 6-0 with Commission members Bell, Clark, Higginson, Hill, Monson, and Spratley voting *aye*. Commission member Smith abstained.

**3. Consider preliminary and final subdivision approval for Culvers located at 620 N 500 W, Mark Young representing CG & S LLC, applicant.**

Mark Young, owner of property and Matt Young, owner of Culvers were present. Paul Rowland presented staff report.

Mr. Mark Young is requesting preliminary and final approval of the Culvers Commercial Subdivision. The commercial development was granted site plan approval on February 13 of this year. The developer is now anxious to subdivide the property into two commercial lots. The property, which includes 3.09 acres, is located at 622 N. 500 West, where the J&L Garden Center was previously located since the early 1970's. The proposal is to divide the parcel into two commercial lots, lot 1 containing 0.96 acres and lot 2 containing 1.99 acres, which leaves 0.14 acres to be dedicated to the UDOT for access off of 500 West (Highway 89). The property is located in the CH zone, which allows for this type of commercial subdivision.

Both lots meet the zone required lot size and frontage, with frontage along 500 West Street. The actual access driveway will be on a shared access easement located on the property just north of this parcel. The UDOT imposed requirements for access and a cross access easement were reviewed and approved as part of the site approvals in February. Both of those easements, along with the necessary public utility easements are shown on this final plat. All necessary utilities and improvements were reviewed and approved as part of the site plan review in February. There will not be the need for a development bond, because the commercial development is not part of a condominium project, and the reconstruction of the 500 West sidewalk, curb and gutter and paving are covered by the UDOT permit which was required by the DOT to work in their right of way.

Recommend preliminary and final approval of Culvers Commercial Subdivision with the following 4 conditions:

1. Pay all fees.
2. Make the few necessary red-line corrections to the subdivision plat.
3. Provide a current title report.
4. Sign the Development Agreement.

Mr. Rowland stated that Mr. Young has a development bond for UDOT's right away to meet access and no bond is needed for Bountiful. There will be a driveway connection to the north. Commission member Hill stated that there is a correction needed for the North bearing on the current set of plans.

Richard Higginson made a motion that to Planning Commission forward to the City Council a recommendation for preliminary and final subdivision approval for Culvers located at 620 N 500 W.

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

**4. Consider final plat approval for Stone Creek Estates Phase 1 & 2 located at 259 E 500 South, Brock Johnston, applicant.**

Brock Johnston was present. Paul Rowland presented staff report.

Mr. Brock Johnston of Rainey Homes is requesting final approval of Phase 1 and Phase 2 of the Stone Creek Estates Subdivision, which is an overall 50 lot subdivision of the long vacant Keller property located at the top of 400 North Street. These first two phases include 18 lots in Phase 1 and seven lots in Phase 2. The overall 50 lot development was granted preliminary subdivision approval on September 12 of last year.

As described in the analysis for the preliminary approval of this subdivision, the first two phases to be constructed include the area to the south and west of the 400 N/Bountiful Blvd. diagonal and the lots fronting the southwest side of 400 N./Bountiful Blvd. Phase 1 must be constructed first because it includes the completion of 1500 East along the west side of the project which is necessary before 400 N./Bountiful Blvd. can be closed for utility work. Because the utility work in Phase 2 will be so extensive, the full road will need to be closed to all non-construction traffic, leaving 1500 East as a very important detour. To restate what was covered in the preliminary approval memo, Moss Hill Drive (1500 East) must be completed with walk, C&G and paving, including the portion which is on the Eubank property, before Phase 2 can be constructed.

Rainey Homes has submitted construction drawing for the work included in Phase 1 and Phase 2, which have been checked by the Engineering Department. Preliminary Bond amounts have been estimated from the construction quantities taken from the design drawings

As with all subdivisions which include the construction of public improvements, the Developer will be required to enter into a Development Improvement Agreement with the City prior to the commencement of any construction. The agreement includes, among other things, the off-site water improvement costs which will be prorated to these lots. These costs have been discussed with the Stone Creek Estates developer and the owners of the property on the north side of the creek, and were

discussed with the Planning Commission and City Council at the time of the preliminary approval. It is also worth mentioning that, although not a part of Phase 1 or Phase 2, the requirement still exists for the paving of the extension of Eagle Ridge Drive when Phase 3 is constructed. That requirement was spelled out in the preliminary subdivision approval memo and will be set as a condition of final approval and a part of the Development Agreement for Phase 3.

Recommend final approval of Stone Creek Estates Subdivision Phase 1 and Phase 2 with the following 11 conditions:

1. Follow all of the conditions listed with the preliminary approval.
2. Sign the Development Improvement Agreement.
3. Post the necessary bonds and pay the fees as outlined in the bond letter for each phase.
4. Pay the Storm Water Impact Fee as described in the Preliminary Memo.
5. Provide a current title report.
6. Receive approval from Davis County Flood Control for any modification to the storm water outfall.
7. Construct the full width of Moss Hill Drive including all curb and gutter and walk on both east and west side.
8. Reconstruct the full width Bountiful Blvd. asphalt surface where the new utilities are installed.
9. Replace any damaged or settled curb and gutter and sidewalk along Moss Hill Drive and Bountiful Blvd. and install new where it doesn't currently exist.
10. Compliance with all Bountiful City zoning ordinances and subdivision construction requirements.
11. Make the necessary red-line corrections to the plat maps.

Mr. Johnston spoke about the interest in this area and plans for the new homes.

Mr. Bell expressed his thanks for the easement and dedication of property to the City for the expansion of the Bountiful City trails.

Jesse Bell made a motion to approve the final plat approval for Stone Creek Estates Phase 1 & 2 located at 259 E 500 South.

Tom Smith seconded the motion. Voting passed 6-0 with Commission members Bell, Clark, Higginson, Monson, Smith and Spratley voting aye. Commission member Hill abstained.

**5. PUBLIC HEARING – Consider approval of a Conditional Use Permit for an Electronic Message Center for Affordable Title Loans located at 21 W 500 South, Stevan Vasic, applicant.**

Stevan Vasic was present. Mr. Wilkinson presented the staff report.

Mr. Stevan Vasic, representing Affordable Title Loan at 21 W 500 S, requests a Conditional Use Permit to replace a portion of an existing panel on the pole sign with an Electronic Message Center (EMC). The subject property is located on 500 South in the General Commercial (C-G) Zone which allows EMC's in this location as a conditional use, but only as part of a permitted freestanding (pole) sign.

The subject property is currently improved with a pole sign, which has been in existence since at least 1986. The proposal is to remove half of the existing panel and replace that portion with an EMC. The

current size of the sign is 5' x 12', meaning that 30 square feet would be fixed signage and the other 30 square feet would be EMC (below the maximum of 64 square feet).

The existing pole sign is double sided and faces generally east-west. The proposed EMC is also double-faced and 30 square feet in size on each side, which is under the maximum allowed, and constitutes 50% of the entire sign area, as required by ordinance.

Mr. Wilkinson stated that the drawing that was attached to the packet showed the size of the sign to be 6' x 12'. This size would not be allowed, the maximum that could be allowed would be 64 square feet. Mr. Vasic confirmed that revised drawings with the corrected size of 5' x 12' would be turned in with the sign permit.

Staff recommends granting the conditional use approval of the proposed sign incorporating an electronic message center in with the fixed pole signage with the following 4 conditions:

1. The sign shall be operated in accordance with the provisions of the Bountiful City Code,
2. Any and all fees shall be paid,
3. The sign shall be turned off between the hours of 11 pm and 6 am,
4. The sign installer shall provide the City written evidence that the sign was installed according to the provisions of the sign ordinance.

Chair Monson opened and closed the Public Hearing at 7:14 pm without comments.

Commission Members discussed the enforcement and permitted uses of the signs.

Mr. Wilkinson stated that the luminance of electronic message signs is enforced when the City sees a problem. Due to the residential proximity, a conditional use permit is used instead of a permitted use with restrictions.

Sharon Spratley made a motion that the Planning Commission approve the Conditional Use Permit for an Electronic Message Center for Affordable Title Loans located at 21 W 500 South with the 4 conditions outlined by staff.

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

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

1. Next Planning Commission meeting – June 5, 2018.
2. Appealed Call Variance to go to Administrative Law Judge.

Chair Monson ascertained there were no other items to discuss. The meeting was adjourned at 7:21 p.m.

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Chad Wilkinson, Bountiful City Planner

When Recorded, Please Return to:  
Bountiful City Planning Department  
790 S. 100 E.  
Bountiful, UT 84010

**Conditional Use Permit**

A public hearing was held on May 1, 2018, at Bountiful City Hall to consider the request of Affordable Title Loans LLC, for a Conditional Use Permit for an Electronic Message Center at the following location:

**Parcel: 03-036-0122; 21 West 500 South, Bountiful City, Davis County, Utah**

**BEG ON THE S LINE OF A STR AT A PT 1074.15 FT E OF THE NW COR OF LOT 4, BLK "L", NMC PLAT, BOUNTIFUL TS SURVEY; & RUN TH S 204.6 FT; TH E 54.44 FT, M/L, TO A PT 157.85 FT W OF THE W LINE OF MAIN STR; TH N 100.0 FT TO A PT 104.60 FT S OF THE S LINE OF 500 SOUTH STR; TH E 53.69 FT, M/L, TO A PT 104.85 FT W OF THE W LINE OF MAIN STR; TH N 0°36'12" W 104.62 FT PARALLEL TO THE W LINE OF MAIN STR TO THE S LINE OF 500 SOUTH STR; TH W 108.0 FT ALG THE S LINE OF 500 SOUTH STR TO THE POB. CONT. 0.383 ACRES.**

The Bountiful City Planning Commission heard the matter and considered the statements of the applicant, the City staff, and the public. As a result, the Planning Commission makes the following findings:

- 1. This matter is properly heard before the Planning Commission.
- 2. Appropriate public notice has been provided and a public hearing held.
- 3. The installation of electronic message centers meets the letter and the intent of the specific requirements in §14-2-506 et seq (Conditional Use Permit provisions) of the Bountiful City Land Use Ordinance.

The Bountiful City Planning Commission hereby grants this Conditional Use Permit for an Electronic Message Center at 21 West 500 South, Bountiful, Davis County, Utah, with the following conditions:

- 1. Only the sign proposed in the application is approved.
- 2. The sign can be located only where proposed in the application.
- 3. The sign shall be operated in accordance with the provisions of the Bountiful City Code.
- 4. The applicant shall obtain a building permit before commencing construction.
- 5. Any and all fees shall be paid.
- 6. The sign shall be turned off daily from 11:00 p.m. to 6:00 a.m.
- 7. The installer shall provide a letter stating that the sign was installed in compliance with the Ordinance.

The Conditional Use Permit was approved on May 1, 2018, and this written form was approved this \_\_\_ day of May, 2018.

\_\_\_\_\_  
Sean Monson  
Planning Commission Chairman

\_\_\_\_\_  
ATTEST: Darlene Baetz, Recording Secretary

County of Davis                    )  
State of Utah                        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Sean Monson and Darlene Baetz.

My commission expires: \_\_\_\_\_ Notary Public

# Commission Staff Report

Item # 4



**Item:** PUBLIC HEARING – Request for a variance to allow a solid fence exceeding 3 feet in height in the front yard setback.  
**Address:** 99 S 400 East  
**Author:** Chad Wilkinson, Planning Director  
**Date:** June 5, 2018

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## Description of Request

The applicant Heather Mercer is requesting a variance to allow for a solid fence exceeding three feet in the front yard setback. Note: The existing fence is located within the clear view area at the intersection of 400 East and 100 South. The applicant has indicated that she is willing to move the fence completely out of this area so a variance to the clear view standards is not being considered.

## Authority

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

## 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:

On March 20, 2018 the City received a code enforcement complaint that a fence was being constructed that would potentially create a vision clearance problem at the intersection of 400 East and 100 South. Mr. Kendall Black, Assistant Planner, visited the site and found that posts had been installed that appeared to violate the fence height ordinance for the front yard and the vision clearance at the street intersection. Mr. Black informed the applicant that the fence posts appeared to be too tall based on City ordinance and gave the applicant a copy of the fencing standards. The applicant came to the City offices later that day and asked for further explanation of the fencing standards. Mr. Wilkinson explained the

standards to the applicant and the process for seeking a variance. It was explained to the applicant that while a variance could be requested, staff would not recommend approval as the fence potentially constituted a safety hazard. The applicant indicated that she wasn't sure that the fence would violate the ordinance based on the scalloped design. Mr. Wilkinson recommended that the applicant install one panel so that staff could review the fence height for compliance with the standards of the Code prior to incurring the expense of installing a fence that potentially did not meet the Code. The City did not hear from the applicant for several days. The following week Mr. Black performed a follow up inspection where it was discovered that the entire fence had been installed without any additional contact with the City.

There are two issues with the fence as constructed. First, the fence is installed in a clear view area at the intersection of two streets. Code requires that a vision clearance triangle be maintained at intersections of streets. The clear-view area for a street intersection is a triangle area of land determined by measuring forty (40) feet from the point of juncture of street curb lines, and then connecting the termini of those lines forming a triangle that encompasses a portion of the street right-of-way and the adjoining lot. Originally the applicant was informed by Mr. Black that a three foot fence could be constructed in this area. However, after reviewing the Code he found that he was mistaken and that the maximum allowed fence height in the clear view area was two feet high measured from the top of curb. Mr. Black contacted the applicant and informed her of the mistake, apologized for the error and let her know that because of the existing retaining wall on the perimeter of the site, no fence would be allowed in the clear view area. The applicant included a vision clearance triangle with the installation of the fence that didn't meet the 40 foot requirement. However, the applicant has indicated she is willing to adjust the fence to meet the clear view area requirements. This will require the removal of a major portion of the existing fencing currently installed on the site. See the attached exhibit illustrating the clear view area. Since the applicant has indicated she is willing to comply with the clear view requirements, that standard has not been included in the variance review.

The second issue relates to the allowed height for fences in the front yard. The Code limits solid fences to three feet in height in the required front yard. Solid fences are those fences that are not at least 75 percent open. An example of an open style fence would be chain link or wrought iron where most of the fence is see-through. In the case of the installed fence, the design is less than 50 percent open and is therefore considered to be solid or site obscuring fence. The Code limits solid fences in front yards to three feet for several reasons including vision clearance concerns and aesthetics. The installed fence varies in height from a maximum 55 inches at the top of the posts to 41 inches at the top of the lowest of the pickets. The requested variance would allow up to a 19 inch increase in height for the fence in the front yard. On a corner lot, the Code allows for up to a six foot tall fence in the corner lot side yard as long as the fence is behind the 25 foot front yard setback. In the case of the subject property, there is a large area where up to a six-foot fence is allowed. An attached exhibit shows the area where up to a six foot tall fence could be constructed.



## 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:** Requiring compliance with the Code will not constitute a hardship for the applicant. The property has a large area where up to a six-foot fence could be constructed meeting the standards of the ordinance. If the applicant wishes to have a fence in the front yard there are several options available to meet the Code. The fence could be lowered to 3 feet in the front yard or the fence could be modified to be 75 percent open and be constructed up to four feet tall in the front yard.

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

**Staff Response:** The lot is a corner lot which has different standards for fencing than interior lots. These standards apply to all corner lots in the City and there is nothing that sets the lot apart from other corner lots in the City. The property is elevated above the adjacent streets with a short retaining wall, but this unique circumstance is actually a condition that reinforces the need for a lower fence height in the front yard to allow for better vision at the intersection.

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

**Staff Response:** Approval of a variance would grant a right that is not possessed by other similar property in the same zone. The Code has height limits for fencing in front yards for both safety and aesthetic reasons.

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

**Staff Response:** The property has a large area that could potentially be enclosed with a fence much higher than 3 feet in order to provide adequate area for an outdoor enclosure for a pet. Constructing a solid fence higher than 3 feet in the front yard, particularly on a corner lot that already has a retaining wall is not in the public interest.

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

**Staff Response:** Granting a variance would be contrary to the spirit of the land use ordinance. Fence heights serve both safety and aesthetic purposes and constructing a fence higher than the maximum is not in keeping with the spirit of the ordinance.

## **Department Review**

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

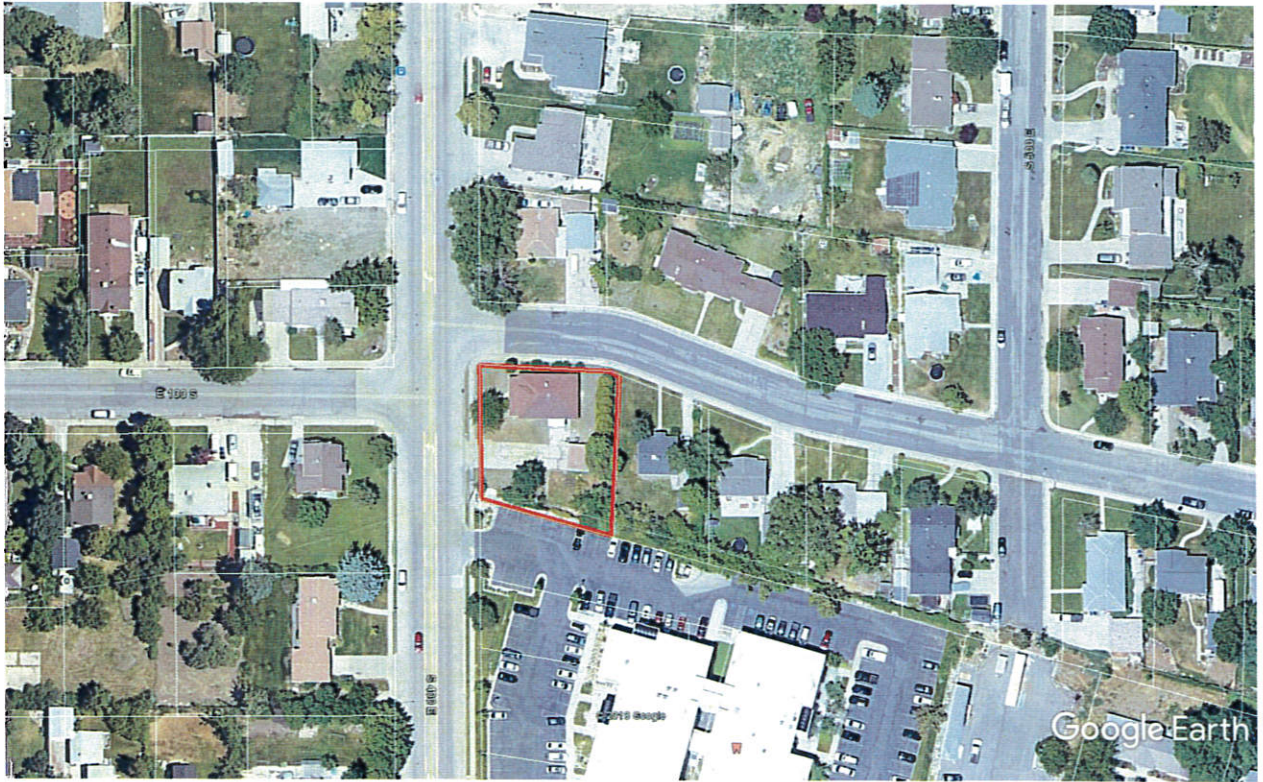
## **Recommended Action**

Staff recommends denial of the requested variance to allow a fence taller than 3 feet within the required front yard setback.

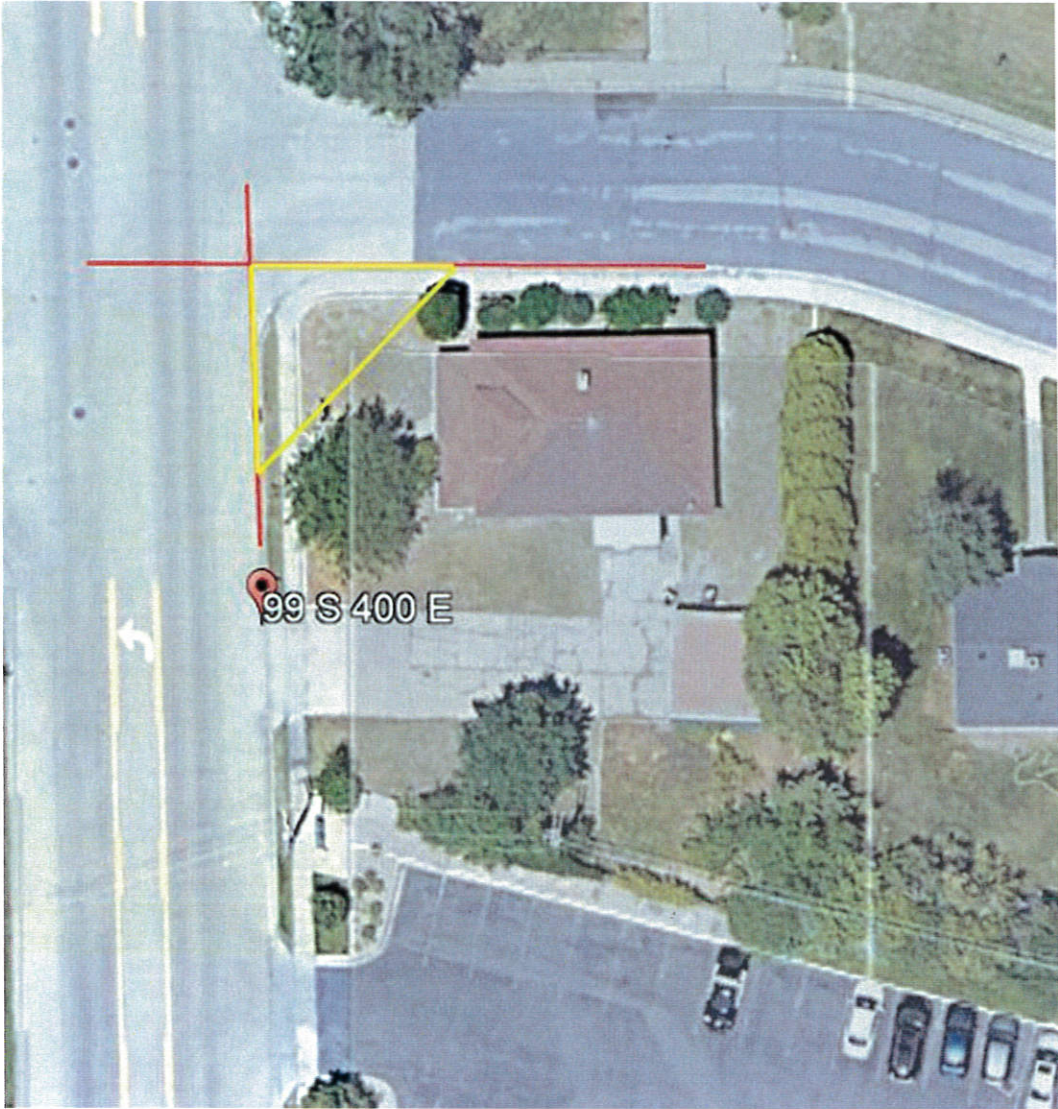
## **Attachments**

1. Current Aerial Photo
2. Approximate location of clear view area on property
3. Six Foot Fence Area
4. Applicant's Narrative

Aerial Photo



Approximate Location of Clear View Area



Six Foot Fence Area



Request for Variance for

99 South 400 East  
Bountiful, Utah 84010

Requested by:  
Heather Mercer  
801-845-6359  
heathers.mercer@gmail.com

Request for Variance for

99 South 400 east

Bountiful, Utah 84010

Bountiful City Code 14-16-108 "Clear View Areas"

We are requesting a variance for our fence. This fence is set at its current height to stop our pet from getting out, so the height is very important. It is also set on a three-foot retaining wall so we feel that the added 5-17 inches in varying places is inconsequential because it already creates a 6 foot barrier as it is and because it already is a 6 foot barrier, the added inches does not create a hazard for the neighboring public. If we are unable to get a variance, we will have to move because a three-foot fence will not hold in our dog from running into the busy road and we need the yard space for our children and pets.

We moved into this home October 2017 after falling in love with the home. The yard and property was in bad shape but with a little love we knew we could make it a home that Bountiful City and its residence could be proud of.

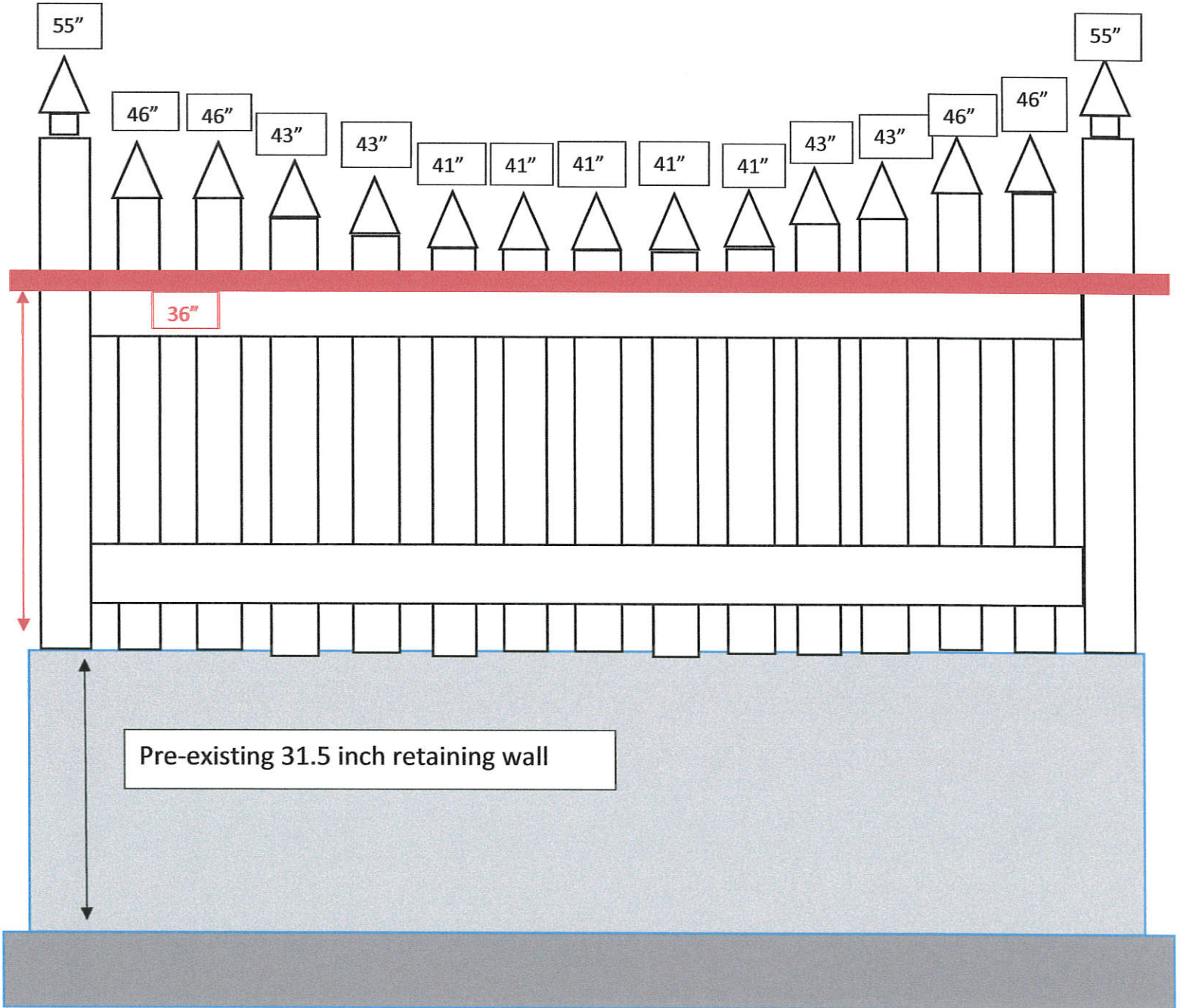
After moving in we quickly realized that our dog needed a fence, but we had to wait until we saved up for a fence that would hold in our pet, but also look appealing and compliment the neighborhood. We chose white vinyl to add value and curb appeal for the entire neighborhood. Then March 15, 2018 our dog got out of our hands and ran into the road. He was headed straight for traffic and missed a passing car by maybe a foot. We scheduled the fence the following morning. But our dog is unique. When motivated this little dog can jump as high as three feet to get to something that it wants. We debated over height and chose a scalloped fence. At it's highest, it is 51". At it's lowest 41". We were naïve and unaware of city code so we scheduled the install.

Kendal Black came by when the posts were in and explained that we were in violation of the code because the corner was creating a view hazard. I felt this was not true and tried to dissuade him but he stated that the corner would need to be 3 feet or shorter on the corner or the fence moved. He only stated that it was the corner. After going into the city and talking with Chad, they both explained that these were the codes and that I could apply for a variance but they discouraged me from doing so because it was expensive and generally frowned upon. Chad said he was look at a section of the fence for the corner to see if it is met code because I told him it dipped to around 3 feet, but I was mistaken. So I concluded to angle the fence to free up the corner view. I did not adjust the fence enough though. It needs to be adjusted and we are doing so without complaint. BUT only after the fence was being installed was I called by Kendal and he said the fence was too tall in the front. I was extremely frustrated because neither he nor Chad had told me that aside from the corner had to be 3 feet. Kendal even apologized for not telling me, and I was frustrated because 90% of the fence was already installed. I was not kind to Kendal and hung up on him, but after a few minutes called back and sincerely apologized for being rude. I realized then that a variance is our only option as putting the fence any lower was not a choice for the pet we have.

We have spoken to the community and have gotten nothing but positivity and compliments on our fence and the improving of a home that needs so much attention. And since there is already a 31-inch retaining wall, even if we were to comply with code, that would still create a 6 foot solid visual barrier. Please consider our peculiar situation. We are not trying to create a problem but changing this fence would be so problematic for us and so difficult. We seek a variance to allow us to keep the fence at it's current height.

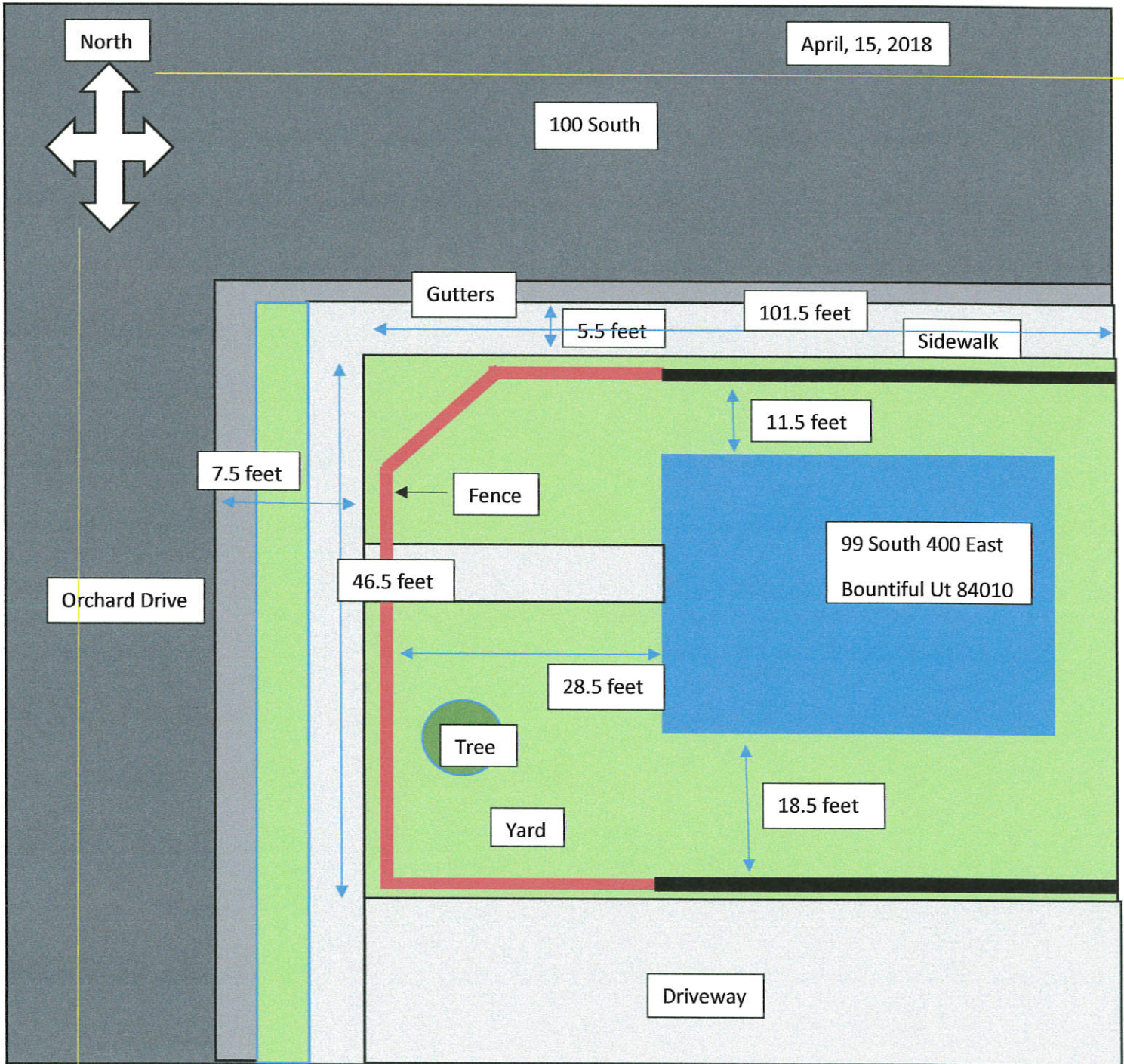


An example of one large sections of the fence that we are requesting a variance



Site Plan Review

I am very new at this and didn't entirely understand the requirements so this is my best effort to understand. Please let me know if you have any questions



# 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:** 1091 S Main Street  
**Author:** Chad Wilkinson, Planning Director  
**Date:** June 5, 2018

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## Description of Request

The applicants, Oscar and Farrah Valdez, have requested a variance to allow for paving an area of a corner lot not providing direct access to a garage or carport. The property is located in the R-4 zoning district. The applicant would like to build a driveway on 1100 South and remove an existing driveway on Main Street.

## Authority

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

## 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 a driveway and paving area on a corner lot. The property is currently served by two driveways both located on Main Street. The southernmost driveway which functions as the primary drive to the property is located within 30 feet of the intersection of 1100 South and Main Street. This location creates a less than ideal circumstance as it places a driveway too near an intersection on a major street. The existing driveways provide access to a detached garage to the south of the existing home on the lot. The existing home was constructed in 1939 and the garage appears to have been built at around the same time. The garage does not meet exterior setback to 1100 South Street. Based on historic aerial photos and subdivision records, it appears that the home and garage may have been built prior to the construction

of 1100 South which would potentially explain the proximity of the garage to 1100 South. This may also explain the location of the southernmost driveway and the orientation of the garage. The need for the variance arises from the location of the existing garage. Section 14-4-105 C states that a corner lot side yard “shall not be paved or used for vehicle parking except for a legally constructed driveway that provides direct access to a garage or carport.” Because of the orientation of the garage, it is impossible to have direct access to the garage from 1100 South. Since there will be a portion of the corner lot side yard paved that does not provide direct vehicle access to the garage a variance is needed.

### **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 existing garage appears to have been constructed around 1939 and was oriented toward Main Street. Based on subdivision records, it is likely that the garage was constructed prior to the construction of 1100 South and therefore does not meet the required setbacks. The applicant’s request to construct a driveway on 1100 South to access the driveway is a reasonable request to provide access to this legal nonconforming structure while removing a less desirable driveway on Main Street.

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

**Staff Response:** Based on the subdivision record, it appears that the home and garage were constructed before the extension of 1100 South Street. This has resulted in a legal nonconforming garage that is located very close to 1100 South but that does not face the street. The nonconforming setbacks and orientation of the garage are the result of construction of 1100 South which appears to have taken place after the home and garage were constructed. The existing driveway is located very close to 1100 S creating an unsafe condition. All of these are special circumstances that do not apply to other properties in the same zone.

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

**Staff Response:** Approval of a variance will allow the property owner the ability to access a legal nonconforming garage from a corner lot side yard. Other corner lots in the City are allowed access to garage or carport. The need from the variance arises from a condition that was not created by the applicant or a previous property owner.

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

**Staff Response:** The closing of the driveway on Main Street and relocation to 1100 South will serve the public interest by eliminating an unsafe condition on Main.

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

**Staff Response:** The spirit of the land use ordinance is observed. The applicants already gain access to their garage from the corner lot side yard and allowing them to continue with a new driveway is in keeping with the land use ordinance.

### **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 in order to allow pavement of an area of a corner lot side yard not providing direct access to a garage or carport.

### **Attachments**

1. Aerial Photo
2. Applicant's Narrative

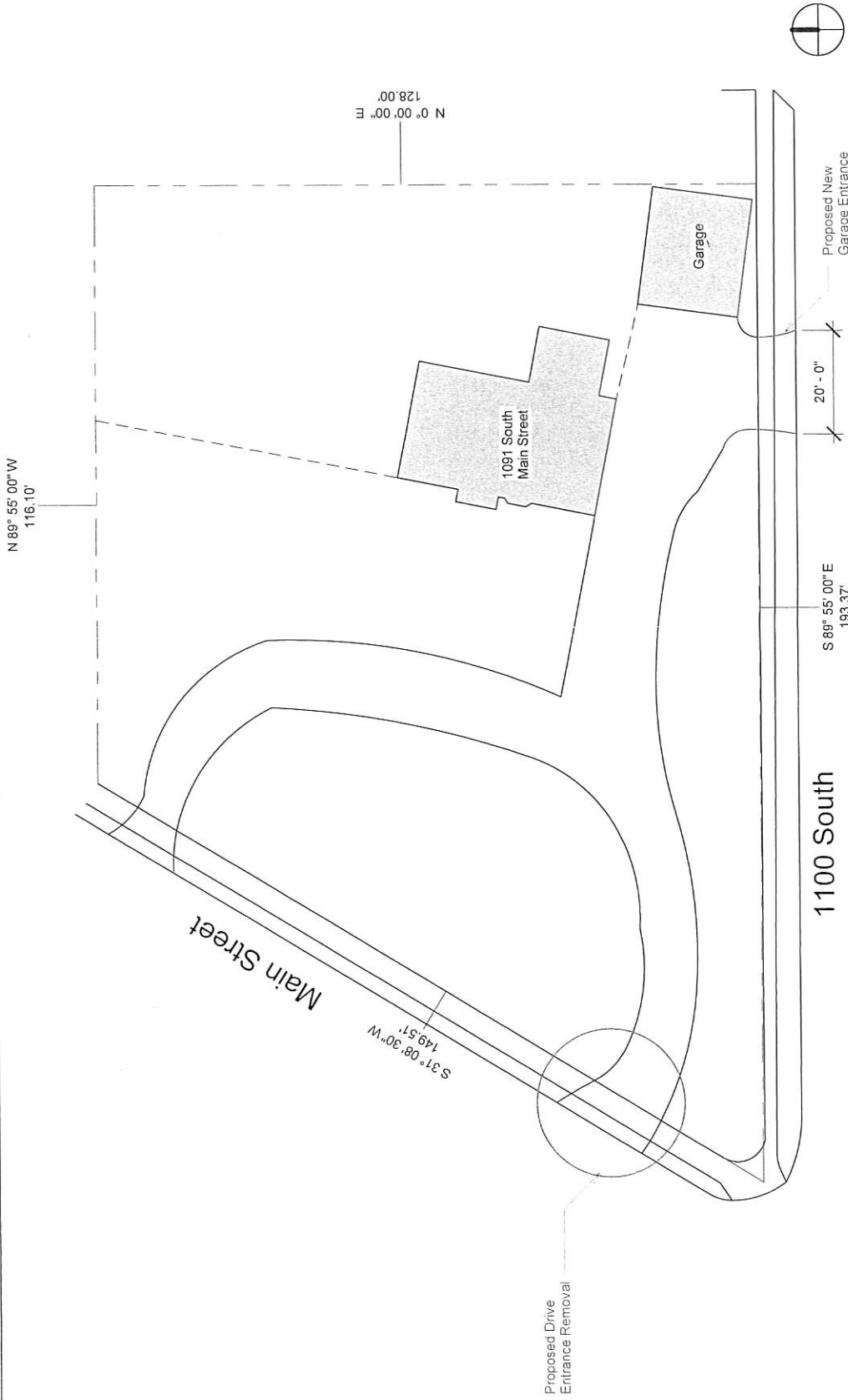
Aerial Photo



We are seeking a variance from **Section 14-4-105C**.

1. Literal enforcement of this ordinance would cause an unreasonable hardship, not only monetarily, but due to the property's age, location of where the house was built on the lot, as well as how the garage was built during a time when code was different. The house was built in 1939 in the back center of the lot nearest to its South street; 1100 S. The easement to the property was built on Main St, therefore the previous owners who built the garage, built it facing the direction they would pull into the property from. It is impractical and a huge unnecessary burden, to tear down an entire garage that was built too close to the sidewalk on codes that were not in effect when it was constructed. Tearing it down alone, wouldn't solve the code requirement either, because current code states that we need to have the easement lead to a garage.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone. Unlike surrounding houses in our neighborhood, this one was one of the first constructed. Lot sizes were zoned differently, homes were facing the street with only one, feasible option for constructing a driveway, we have a corner lot with an approach that was constructed not to code, and unlike homes in the area, ours is the only house that was built in an unprecedented area of the lot itself. Given the location of the house, a garage that has been grandfathered in, and the original easement, this property is a unique situation.
3. Granting this variance is a right of all other property owners in this zone, because it will take away a confusing safety hazard that currently exists. The driveway/exit/entrance is currently against code, too close to a stop sign at the corner at 1100 s and Main St. It is too close to where we pull in and out of the driveway, in that it can one day cause an accident. When we slow down to turn into the property, anyone turning right at the stop sign can rear end us, not realizing we were pulling in. We have had experiences with our turn signal on while driving on Main St, and people at that stop sign assume we are turning down 1100 S and proceed forward, only to realize we keep going to turn into our driveway. By changing our driveway to 1100 S we will remove traffic from a busy street to a quiet, less traffic area that meets current traffic codes. All property owners in our neighborhood will benefit from this change, because the change will no longer be a confusing right of way.
4. Granting this variance will not affect the general plan, because all other homes on 1100 S have a drive way entrance on 1100 S. All corner lots also have entrances on their side street. We are actually in the minority for having a Main Street driveway being a corner lot. Granting this variance will put us in the majority of properties in the same zone. As reasons stated in point 3, granting this variance will not be contrary to the public interest, but in favor of public interest, and most importantly public safety.
5. The spirit of the land use ordinance is observed. With the proposed easement change, cars will be able to pull into the property up to the house, which is 20 feet away from the street, and also pull into the garage, which fulfills the requirement to have vehicles on driveway gain access to a garage.

If we are denied a variance, our driveway will continue to be against code, and a safety hazard. Granting us a variance is best for public safety and conforms to neighborhood majority driveway standards.



1 Site Plan  
1" = 20'-0"

Existing/Proposed Site Plan	
Project number	2018-020
Date	04/12/2018
Drawn by	Marc Johnson
Checked by	Checker
C101	
Scale 1" = 20'-0"	

No.	Description	Date

## Valdez Residence Site Design

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# Commission Staff Report

Item #6

**Subject:** Public Hearing-Amendment to Section 14-2-111 to designate the Planning Commission as the Appeal Authority for Variances in the R-F Zone

**Applicant:** Bountiful City

**Author:** Chad Wilkinson

**Date:** June 5, 2018



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## Description of Request

Consider amending Bountiful Land Use Ordinance Section 14-14-126 in order to designate the Planning Commission as the Appeal Authority for variances in the R-F zone related to disturbance of slopes greater than 30 percent and for cuts and fills greater than 10 feet.

## Background and Analysis

The Administrative Committee was originally created to “ensure that items of a routine nature are processed expeditiously and in a public forum.” The Administrative Committee is made up of three members: the City Engineer or designee, the City Planning Director or designee and a citizen representative. The Administrative Committee routinely reviews items such as conditional use permits for home occupation contractor uses, certain commercial uses in existing buildings, lot line adjustments, and other items of a purely administrative nature where a public meeting is appropriate because of potential impacts to neighboring property owners. Variances to the standards of the R-F zone were included in the Administrative Committees review authority as a way to expedite approval of homes in the R-F district that were being constructed on existing lots. While this practice has worked in a limited number of cases where minor exceptions have been requested, more often it has resulted in difficulties caused by staff acting both in the capacity of making recommendations and as the decision maker.

Variances are not administrative decisions but are discretionary in nature and require judgement in the application of criteria from State Code. There has been concern that when City staff have been uncomfortable with a proposal and have recommended denial, it has not provided the applicant with adequate due process to have the Administrative Committee review the request. In those cases the applicant is almost certainly guaranteed a denial. The Code currently allows for the Planning Director to refer any application submitted to the Administrative Committee to the Planning Commission for review. This has been happening with more and more frequency as the variance requests in the R-F zone have become increasingly complex. The reason for this increased complexity is that the lots and properties that remain undeveloped in the R-F are those that are the most steep and difficult to develop. Variances on these lots have moved far from resembling an administrative decision to being extremely discretionary. Another issue has arisen with applications that request additional encroachments from those originally approved by the Administrative Committee. Since the original request was deemed to be the minimum variance needed to allow reasonable development of a lot, an additional request moves beyond a routine decision to a decision requiring a great deal of discretion. Because of its composition as an appointed citizen led body, the Planning Commission, is much better suited to make

discretionary decisions than the Administrative Committee. City Staff are bound to administer a Code and are not in a good position to act as both the administrator of the Code and in the neutral quasi-judicial role that a variance requires.

### **Department Review**

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

### **Significant Impacts**

The impacts to applicants are expected to be minimal. Because of noticing requirements for variances, the time from application to public hearing only differs by a few days between the Planning Commission and Administrative Committee. There may be a small additional workload for the Planning Commission caused by the change. However since many of the recent R-F decisions have been referred to the Planning Commission for review, the impacts are expected to be minimal. In addition, there have only been a handful of R-F zone variance requests submitted in the last two years, so impacts to the Commission are expected to be minimal.

### **Recommendation**

Staff recommends that the Planning Commission forward a recommendation of approval for the proposed change to designate the Planning Commission as the Appeal Authority for variances in the R-F zone related to disturbance of slopes greater than 30 percent and for cuts and fills greater than 10 feet.

### **Attachments**

1. Proposed Text Amendment

**Proposed Text Amendment**

**14-2-111 APPROVAL/REVIEW BODIES (CONTINUED)**

Item	Subcategory	Approval/Review Bodies			
		Staff	AC	PC	CC
Easement Release	All	No	No	No	Final
Variance	Slopes > 30%	No	<del>Final</del> No	<del>No</del> Final	No
	Cuts and Fills (includes retaining walls) > 10 feet	No	<del>Final</del> No	<del>No</del> Final	No
	Setbacks	No	No	Final	No
	All others	No	No	Final	No
Drive Approach	Residential SFD	Final	No	No	No
	All Non-SFD (without site plan review)	Final	No	No	No
	All Non-SFD (with site plan review)	No	No	Recommend	Final
Interior Remodel	All	Final	No	No	No
Retaining Wall	All	Final	No	No	No
Signs	Commercial Pole/Monument – New Developments	No	No	Recommend	Final
	All Others	Final	No	No	No
Utility Connections	All	Final	No	No	No
Vacate/Abandon Public Property	All	No	No	Recommend	Final
Improve Public Property	All	No	No	Recommend	Final
ADA and FFHA Accommodations	All	Planning Director	No	No	No

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