

Bountiful City
Administrative Committee Minutes
September 23, 2019

Present: Chairman – Francisco Astorga; Committee Members – Brad Clawson and Dave Badham; Assistant Planner – Curtis Poole; Recording Secretary – Darlene Baetz

1. Welcome and Introductions.

Chairman Astorga opened the meeting at 5:00 p.m. and introduced all present.

2. Consider approval of minutes for September 9, 2019.

Mr. Badham made a motion for approval of the minutes for September 9, 2019 as drafted. Mr. Clawson seconded the motion.

 A Mr. Astorga
 A Mr. Clawson
 A Mr. Badham

Motion passed 3-0.

3. PUBLIC HEARING: Consider approval of a Conditional Use Permit to allow for an Accessory Dwelling Unit at 1253 Northridge Drive, Larry Simper, applicant.

Larry Simper, applicant, was present.

Mr. Poole presented a summary of the staff report (the full staff report follows).

The applicants are requesting approval of an Accessory Dwelling Unit (ADU) which was part of the home which was built in the mid 80's. Plans show the unit has two bedrooms, two bathrooms, a kitchen, living space and a laundry room.

According to City Code, 14-4-124, a Conditional Use Permit for an ADU is required and applicants shall meet all standards of the Code for approval. The site is located in the R-3 Single-Family Residential zone and consists of a single-family dwelling which will be maintained as such by the applicant. The lot is 0.469 acres (20,429 square feet). There will only be one ADU and there will only be one utility connection located at this property. The ADU is approximately 1,630 square feet, and the home is 4,486 square feet, which is less than the 40% standard in the Code.

The property currently meets the parking requirements. It has a two-car garage, a carport and space for multiple cars in the driveway. The entrance for the ADU is on the side of the home and not visible from the street. The property will continue to have the appearance of a single-family dwelling and should have minimal impact on the surrounding neighborhood.

Mr. Simper represents the contract purchaser, Adam Kerr, who will be residing at the home. The Code requires the property owner to reside at the home and further states a property owner could also be a contract purchaser or titleholder.

Based upon the above findings, staff has determined the applicants would comply with all requirements for the Conditional Use Permit. Staff recommends approval of the Conditional Use Permit with the following conditions:

1. The owner(s) of the property, or contract purchaser, must continually occupy the primary residence or the ADU.
2. The property is to be used only as a single-family use and shall be subject to a deed restriction.
3. There shall be no separate utility service connections.
4. The ADU shall meet all the criteria in 14-14-124 of the City Land Use Ordinance.
5. The Conditional Use Permit is solely for this property and is non-transferable.

Mr. Poole noted that the deed restriction, after being signed by the property owner(s) and the city, would be recorded with Davis County and the deed restriction states that the home is zoned as single family and cannot be used as a duplex.

Mr. Astorga requested that Mr. Poole access 14-14-124 of the Bountiful City Code and read it to those in attendance in order to familiarize them with that section of code. Mr. Poole explained that this particular section of code was adopted by the City Council in November, 2018. He further noted that ADU applicants start their process by applying for a Conditional Use Permit, as outlined in the Code, and if an applicant meets all of the Code criteria, the application should be approved.

Mr. Poole read from the Code: “1. An accessory dwelling unit shall be conditionally permitted only within a single-family residential zone” and noted that ADUs are not permitted in multi-family or commercial zones. Mr. Poole continued reading: “2. It is unlawful to allow, construct, or reside in an accessory dwelling unit within a duplex or multi-family residential building” and explained that this refers back to #1. Mr. Poole continued reading from the Code: “3. It is unlawful to reside in, or allow to reside in, an accessory dwelling unit that has not received a conditional use permit” and explained that was the purpose of the meeting. Mr. Poole summarized code criteria #4 by stating that only one ADU is allowed per parcel and noted that multiple ADUs are not permitted. Mr. Poole read: “5. It is unlawful to construct, locate, or otherwise situate an accessory dwelling unit on a lot or parcel of land that does not contain a habitable single-family dwelling” and explained that a home must exist before there can be an ADU. Mr. Poole noted that criteria #6 addresses the deed restriction previously discussed. Mr. Poole read: “7. The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU” and noted that the Code does not specify which unit the property owner should occupy, but they must occupy one of the units at the address. The owner cannot live somewhere else and rent out both units because that would then classify the home as a duplex, and that is noted on the deed restriction. Mr. Poole summarized criteria #8 by stating that separate utility meters are not permitted. Mr. Poole read: “9. Any property and any structure that contains an approved accessory dwelling unit shall be designed and maintained

in such a manner that the property maintains the appearance of a single-family residential use. A separate entrance to the ADU shall not be allowed on the front or corner lot side yard. Any separate entrance shall be located to the side or rear of the principal residence.” Mr. Poole noted that the City strives to eliminate the appearance of a home having two front doors, and that an ADU entrance must be on the side or rear of the building. Mr. Poole read: “10. It is unlawful to construct an accessory dwelling unit, or to modify a structure to include an accessory dwelling unit, without a building permit and a conditional use permit.” Mr. Poole explained that if someone is building a new home with an ADU, they would be required to obtain a building permit and a conditional use permit. Mr. Poole read: “11. Adequate off-street parking shall be provided for both the primary residential use and the accessory dwelling unit, and any driveway and parking area shall be in compliance with this Title.” Mr. Poole summarized that ADU code requires at least four off street parking spaces, two of which need to be in a garage.

Mr. Astorga invited comment from the applicant, Mr. Simper. Mr. Simper noted that the staff report seemed to have covered everything and expressed gratitude that the home was not harmed by the recent fire in the area. Mr. Simper further noted that he recognizes the value of maintaining the appearance of a single-family home for the Northridge Drive neighborhood. Mr. Simper also noted that he represents the company that fixed the home and landscaping from its prior poor condition into the present good condition.

PUBLIC HEARING: Mr. Astorga explained the Public Hearing rules and opened the Public Hearing at 5:17 p.m.

Wade Frey (1434 Northridge Drive) addressed the code change from last November and asked for an explanation of the reasoning behind the code change and what was changed. Mr. Astorga read the following code change reasons from Section 14-14-124(a):

1. *Allow opportunities for property owners to provide social or personal support for family members where independent living is desirable;*
2. *Provide for affordable housing opportunities;*
3. *Make housing units available to moderate income people who might otherwise have difficulty finding homes within the city;*
4. *Provide opportunities for additional income to offset rising housing costs;*
5. *Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle; and*
6. *Preserve the character of single-family neighborhoods by providing standards governing development of ADUs.*

Mr. Astorga noted that he was not employed by the City when the code change was adopted but that the code does contain the purpose for the change. Mr. Frey asked if the change came out of common concern for the City of Bountiful or was it brought forward by residents who wanted to see a change. Mr. Astorga indicated that he was uncertain if the change was initiated internally or by constituents and offered to provide pertinent City Council minutes to Mr. Frey. Mr. Frey expressed concern regarding the City’s ability to monitor ADU residency and stated that his concern is based on another residence on Northridge Drive where the owner is not regularly present.

Jacci Bacon (1241 Northridge Drive) asked how neighbors can be assured that the owner is actually living there. Mr. Poole noted that documentation was submitted with the CUP application, specifically the contract purchase agreement. Mr. Poole further noted that city staff accesses county records to verify property ownership, and in this case staff verified the contract purchaser.

Kathleen Bailey (1272 Northridge Drive) expressed concern with the current code in that it does not define the term “contract purchaser,” and she stated her opinion that requests for ADUs from those other than the legal title holder should not be granted until that term is defined in the code. Ms. Bailey stated her belief that the term “contract purchaser” was probably meant for new construction, although she doesn’t know for sure. Ms. Bailey also stated her displeasure about the limited notice given for the code change public hearings last September, and stated that most people were probably shocked regarding the code change. Ms. Bailey said that regardless of why the term “contract purchaser” was added to the code language, she believes that the terms under which the contract is executed need to be considered, and further stated that a legal title holder is not the same as a contract purchaser. Mr. Astorga explained that the contract purchaser scenario had not previously come up on any ADU/CUP application and that the city attorney was consulted regarding the contract purchase agreement submitted with the application. Mr. Astorga described this situation as a sort of rent-to-own arrangement, and stated that the contract purchaser is currently living at the property, that the contract owner is acting as a bank of sorts, and that the city attorney concluded that the contract reflects that arrangement. Ms. Bailey asked to see the language in the code, and Mr. Astorga re-read the language stating, “The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU.” Ms. Bailey noted that the term “contract purchaser” is not defined. Mr. Astorga explained that he had contemplated that term and had concluded that the term is not meant to include those who are merely under contract to purchase because the purchase might not go through, but the term is meant to include contracts involving seller financing. Ms. Bailey said that her neighborhood was previously impacted by lack of clarity in the code regarding building height, and she stated her belief that the code needs to be very clear regarding what a contract purchaser is.

Clair Asay (1305 Northridge Drive) expressed his concern regarding how the city will monitor the ADU rental situation and explained a current neighborhood concern regarding a home with multiple renters with no owner living on site.

Steve Gulbrandsen (1337 Northridge Drive) expressed concern regarding the “contract purchaser” situation and requested that the city attorney review it to make sure it is legitimate and made a plea to the committee to not allow the neighborhood to be turned into multi-unit facilities.

Tim Jones (1385 Northridge Drive) noted that the referenced code section D(1) states that the ADU shall not occupy more than 40% of the total floor area square footage and asked if the application meets that requirement. Mr. Poole stated that it does. Mr. Jones stated his desire that no duplexes or multi-home units be created in the neighborhood as they might decrease property values. He stated that at 1375 Northridge Drive there are rooms being rented out – not just floors – and stated he would like to discuss this address with the city to see if they

have the proper permit to do this. Mr. Jones further stated that he has concerns with potential fire at that address as he believes small kitchens have been set up in bedrooms because the renters share a kitchen, and it is a nightmare waiting to happen. Mr. Jones expressed concern regarding the slippery slope of problems arising from multi-family homes being allowed in single family home neighborhoods.

Donald Milligan (1493 Skyline Drive) stated that he agreed with Mr. Asay and Mr. Gulbrandsen. Mr. Milligan stated his belief that the City needs a better system of monitoring and following up with these agreements.

Glenna Frey (1434 Northridge Drive) asked if there was a check and balance system to verify that the owner actually lives at the property in question and if rooms are being rented.

James Bacon (1241 Northridge Drive) presented an advertisement for rental of the bottom floor of the property and noted that the advertisement stated the square footage as 2,200. Mr. Bacon stated his belief that there are two utility meters at the applicant's address. Mr. Bacon read a text from a friend who had shown interest in the rental which stated that the property is a multi-family home. Mr. Bacon stated that the home has been used as a duplex for two years and wondered if the owner applied for permits in order to run a duplex. Mr. Astorga stated that that is the purpose of the meeting. Mr. Bacon clarified by asking if a permit was previously obtained and was there a penalty for not obtaining one earlier. Mr. Bacon asked how verifiable the contract was. Mr. Bacon recounted conversations with Adam Kerr regarding purchase of the home, specifically a conversation where Mr. Kerr stated he was going to buy the house for a while. Mr. Bacon expressed concern regarding the words "buy it for a while" and questioned if the purchase might be a sham. Mr. Bacon surmised that if the ADU is 2,200 square feet, it does not meet the code criteria. Mr. Bacon also raised concerns regarding the purchase contract because Mr. Kerr expressed uncertainty to him regarding the terms of the contract.

Josh Bacon (1241 Northridge Drive) asked regarding the ADU square footage calculation. Mr. Poole explained that the applicant provided the square footage calculation with the application. Mr. Bacon noted that the square footage of the home is 4,497, and questioned the accuracy of the ADU square footage as stated in the application as it is a mirror of the top floor. Mr. Bacon also inquired how "non-livable" space is determined. Mr. Astorga stated that questions would be answered after the close of the Public Hearing.

Dave Kurtz (827 Northridge Drive) inquired about the existence of ADUs in other high-end Bountiful City neighborhoods. Mr. Astorga explained that there is no definition of high-end neighborhood in Bountiful City. Mr. Astorga further explained that ADUs are permitted everywhere where single home dwellings are allowed – which is most of Bountiful City. Mr. Astorga noted that the Administrative Committee approves an ADU application about every other week – and that is for the entire city – not just for nice neighborhoods versus not-so-nice neighborhoods. Mr. Astorga added that, in his estimation, the bigger the lot the more easily an ADU can be accommodated.

Karen Whitehead (1227 Northridge Drive) stated that the past code allowed for a property owner to rent to a family member and asked about about the code change. She also queried if

the existence of an ADU in the neighborhood would classify the neighborhood as low rental income area. Mr. Astorga explained that the City does not determine low rental income areas – the market does that. Mr. Astorga noted that the prior code limited a mother-in-law apartment, which is another name for an ADU, by allowing property owners to rent to a blood relative only, and that changed in November 2018. Ms. Whitehead asked who made that change, and Mr. Astorga answered that it was approved by the City Council. Ms. Whitehead requested information regarding the change, and Mr. Astorga agreed to provide that information and explained that the ADU changes were adopted as an amendment to the code. Ms. Whitehead inquired regarding the process for noticing the public regarding code changes, and Mr. Badham said he would address that at the close of the Public Hearing.

Roy Woodbury (1258 Northridge Drive) echoed prior concerns regarding monitoring the conditions of the ADU and protecting property values.

Kent Whitehead (1227 Northridge Drive) expressed frustration about not knowing about the change in the code prior to its being adopted by the City Council and pleaded that the committee deny the application as approval could destroy the neighborhood.

Cindy Dubois (1223 Northern Hills Drive) expressed agreement with all things said in the Public Hearing and noted that the neighborhood is beautiful with wonderful homes and families, and she expressed frustration about not being properly notified about changes in the city.

The Public Hearing was closed at 5:43 p.m.

Mr. Astorga expressed gratitude for the civility displayed during the Public Hearing.

Mr. Poole explained the notification requirements for Public Hearings and specifically noted that for a CUP a sign is posted on the property to alert neighbors regarding the considered action. Mr. Poole and Ms. Baetz further explained that for code changes the action to be considered is published in a local newspaper and for zone changes the action to be considered is published in a local newspaper and notice is given to each property owner within 500 feet of the affected area. In addition, regarding a CUP or code change, the agenda with the action to be considered is posted on Bountiful City's website, the Public Notice website, and on social media platforms. Mr. Poole indicated that the city follows state law when noticing these types of actions. Mr. Astorga noted that it is not feasible for the city to send out 43,000 letters for code changes.

Mr. Badham explained his role on the committee is that of an appointed citizens' representative. Mr. Badham noted that as people have learned about the ADU code change he has received many phone calls from concerned citizens. Mr. Badham explained, from his personal perspective, the reasoning behind the code change. He noted that the State of Utah encouraged cities to provide affordable housing and that Bountiful, following a trend, passed the revised ordinance. In accordance to the passed ordinance, if the criteria for an ADU are met, the committee cannot deny the application. Mr. Badham noted that one person who spoke at the Public Hearing requested a denial – but if the applicant meets the criteria it cannot be denied. Mr. Badham countered that the committee can hold the applicant to the

letter of the law. He expressed agreement that the ADU code needs additional definitions and told the group that it would take people like them to advocate changes. He encouraged the group to contact their City Council and come to the city meetings. Mr. Badham explained that the ADU ordinance did not change by itself and that there was a public meeting held at City Hall. He observed that people don't seem to respond until things hit home. Mr. Badham also explained that Bountiful City does not employ a full time ordinance enforcement officer. He encouraged the group to police the conditions placed on the ADU and contact the city if those conditions are not met. Regarding the comment that there are two meters, Mr. Badham noted that would need to be investigated and could disqualify the application. Regarding the ADU parking, Mr. Badham raised a question regarding whether two cars can park in the carport, and Mr. Poole indicated there was room for two cars. Mr. Badham also noted that the structure is close to the property line and suggested the city investigate its compliance with city requirements. He also noted that the ordinance does not specify which tenant parks where. Mr. Badham suggested that the city evaluate the ADU square footage and confirm that it complies with the code. He also noted that certain areas of the basement (i.e. staircase, furnace room, etc.) will be excluded from the square footage of the ADU. Mr. Badham addressed the concern raised regarding owner occupancy at the property and encouraged the group to know their neighbor. Mr. Badham stressed again that if the code criteria is met, the committee must grant approval in spite of public opposition to the ordinance.

Mr. Clawson noted that his concerns were mostly the same as Mr. Badham's.

Mr. Astorga explained that any code change goes through the Planning Commission and the City Council and that both require a Public Hearing – so two Public Hearings are held. Mr. Astorga noted that monitoring things like this are challenging based on the city budgeting resources. Mr. Astorga noted again that the idea of “contract purchaser” was discussed with the city attorney, the contract was examined, and it was determined to be aligned with the code. Mr. Astorga addressed the comment regarding the online ADU advertisement. He noted that determinations are not based on what is seen online but only through what is officially submitted with the application and added that this applies even if an incorrect term is used online or in social media (i.e. calling an ADU a duplex). Mr. Astorga addressed the question about checks and balances and noted that the conditions of approval serve this purpose, and he noted his desire to amend some of those conditions. Mr. Astorga reiterated that the contract between the contract purchaser and the property owner was reviewed by the city attorney and no issues were raised which prevented the item from being placed on the meeting agenda. Mr. Astorga addressed the issue of what is deemed “livable” and noted that an application cannot be denied simply based on what someone says regarding a supposed incorrect measurement. Mr. Astorga proposed a condition of approval in which the city would obtain owner permission to visit the property and take measurements in order to determine if the ADU complies with the 40% standard. He noted there are some basement areas which will not be considered part of the ADU. Mr. Astorga addressed the issue raised regarding two utility connections and noted that city records will show the number of utility connections on the property, and further noted that with owner permission the city can walk the site and verify the number of utility connections. He suggested this be another condition of approval in order to meet the land use code. Mr. Astorga addressed the question regarding the carport setbacks and noted that his examination of the site plan indicates that the carport

does meet setbacks and that there appears to be ample parking based on the information submitted. Mr. Astorga indicated he would support a motion with conditions outlined by staff and with additional conditions which address verification of the utility connection, verification of the ADU size, and actions to be taken if the contract purchaser moves from the property. Mr. Astorga noted that a property owner or contract purchaser must live on site in order to for the conditions of the ADU to be valid and suggested that the deed restriction be very specific in stating that. Mr. Astorga addressed the issue raised regarding the rear door and noted that is allowed by code. The idea of adding a condition for the applicant to install a fence, in order to mitigate impacts, was raised, and Mr. Astorga asked Mr. Simper about his willingness to install a fence. Mr. Simper indicated he was not willing to finance the fence installation, but he would support installation of a fence by the contract purchaser and neighbor if they desire.

Mr. Clawson reminded the group that part of the responsibility of the ADU lies with the owner living on site and keeping the property properly maintained.

Mr. Poole explained that part of the reasoning behind a conditional use is putting conditions on a use and many issues can be mitigated by those conditions. Mr. Clawson noted that he was comfortable with most of the additional conditions suggested, but he did not think it was consistent with prior actions taken by the committee to require fence installation. He further noted his belief that the committee is tasked with enforcing the ordinance and felt that the applicant had met the conditions of the ordinance. Mr. Badham added his agreement that he felt the addition of a fence should not be included as a condition of approval.

Mr. Clawson made a motion to approve a Conditional Use Permit to allow for an Accessory Dwelling Unit at 1253 Northridge Drive, Larry Simper, applicant, according to conditions outlined by staff and with additional conditions as follows: the City will measure the ADU square footage to verify its size; the City will verify that the property has only one utility connection; and the City will ensure that current and future property owners, title holders or contract purchasers abide by the deed restriction. Prior to the vote being taken, Mr. Badham inquired whether any of the contract purchaser's family would live in any portion of the ADU. Mr. Simper indicated that was not the case and that the ADU is separated from the main home. Mr. Badham clarified that certain rooms of the basement wouldn't be pulled from the proposed ADU area simply to meet the 40% criteria, and Mr. Simper said the entire basement is the ADU. Mr. Astorga interjected that the ADU area does not include the garage space or an uninhabitable basement area with no windows. Mr. Simper verified that was the case, and in addition, a utility room and the staircase would not be included. Mr. Poole indicated that a garage should not be included in the ADU calculation. Mr. Astorga summarized that a motion for approval had been made with conditions outlined by staff with addition conditions as follows: the City shall verify the ADU square footage for compliance with the 40% criteria; the City shall verify the existence of only one utility connection; and measures will be taken to ensure that the current and next property owner, title owner or contract purchaser abide by regulations of the deed restriction. Mr. Badham seconded the motion with the amended conditions outlined.

A Mr. Astorga
A Mr. Clawson
A Mr. Badham

Motion passed 3-0.

- 4. Consider approval of a Conditional Use Permit, in written form, to allow for a Home Occupation Group Instruction with up to 12 children at 1062 Arlington Way, Megan Bowden, applicant.**

Mr. Badham made a motion to approve a Conditional Use Permit, in written form, to allow for a Home Occupation Group Instruction with up to 12 children at 1062 Arlington Way, Megan Bowden, applicant. Mr. Clawson seconded the motion.

A Mr. Astorga
A Mr. Clawson
A Mr. Badham

Motion passed 3-0.

- 5. Consider approval of a Conditional Use Permit, in written form, to allow for an Accessory Dwelling Unit at 2220 South 900 East, Carrie & Tad Mills, applicants.**

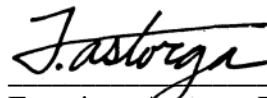
Mr. Clawson made a motion to approve a Conditional Use Permit, in written form, to allow for an Accessory Dwelling Unit at 2220 South 900 East, Carrie & Tad Mills, applicants. Mr. Astorga seconded the motion.

A Mr. Astorga
A Mr. Clawson
A Mr. Badham

Motion passed 3-0.

- 6. Miscellaneous business and scheduling.**

Mr. Astorga outlined the next committee meeting and ascertained there were no further items of business. The meeting was adjourned at 6:22 p.m.



Francisco Astorga, Planning Director