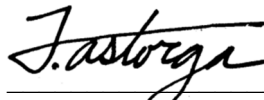


**BOUNTIFUL CITY**  
**ADMINISTRATIVE LAW JUDGE APPEAL**  
**Thursday, January 30, 2020**  
**6:30 p.m.**

**NOTICE IS HEREBY GIVEN** that the Bountiful City Appeal Authority will hold a meeting in the Conference at **South Davis Metro Fire Station, 255 S 100 W, Bountiful, Utah, 84010**, 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. Consider an appeal of a decision by the Administrative Committee denying a Conditional Use Permit to allow for an attached Accessory Dwelling Unit at 1253 Northridge Drive, Larry Simper, applicant representative.



---

Francisco Astorga, Planning Director

# Appeal Staff Report



**Subject:** Appeal of Denied Conditional Use Permit for an Accessory Dwelling Unit  
**Address:** 1253 Northridge Drive  
**Author:** Francisco Astorga, AICP  
**Date:** January 30, 2020

## Summary of City's Request and Recommendations

Staff recommends that the Administrative Law Judge affirm the decision of the Bountiful City Administrative Committee and Planning Director.

## Description

**Appellant (Applicant):** Adam Kerr represented by Larry Simper  
**Location:** 1253 Northridge Drive  
**Zoning:** Single-Family Residential subzone R-3  
**Reason for Review:** The Appeal Authority for Bountiful City consists of an Administrative Law Judge. The Appeal Authority hears and decide appeals from decisions interpreting and applying land use ordinances.

## Background

On September 23, 2019 the Bountiful City Administrative Committee conditionally approved a Conditional Use Permit (CUP) for an Accessory Dwelling Unit (ADU) located at 1253 Northridge Drive, submitted by the property's Contract Purchaser, Adam Kerr. The CUP Application was filed with the proper documentation authorizing Larry Simper as the Applicant's representative.

Bountiful City Land Use Code defines an Accessory Dwelling Unit (also "Accessory In-Law Apartment") as *"a self-contained dwelling unit within an owner occupied single-family residence or located on an owner occupied property that is either incorporated within the single-family residence or in a detached building which maintains complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation including a separate kitchen and/or laundry facilities."*

The approved CUP included the following Conditions of Approval (COA):

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. The applicant shall allow staff to verify that this condition is met by checking City and by inspecting the site.
4. The ADU shall meet all the criteria in 14-14-124 of the City Land Use Ordinance.

5. The Conditional Use Permit (CUP) is solely for this property and is non-transferable.
6. Staff to verify that square footage is accurate through a site inspection.

On December 3, 2019 Bountiful City Administrative Committee Chair and Planning Director denied the CUP due to the Applicant's inability to comply with COA #6 (Per Bountiful City Land Use Code § 14-14(D)(1)): An attached Accessory Dwelling Unit shall be deemed unlawful and shall not be occupied unless all of the following criteria are met:

1. Shall not occupy more than forty percent (40%) of the total floor area square footage of the primary dwelling structure.

On December 17, 2019 Bountiful City Planning Department received an appeal of the denied action from Adam Kerr, with documentation authorizing Larry Simper to act as the Applicant's representative for the appeal.

### **Timeline**

The following timeline represents events related to the property and the ADU:

<b>Date</b>	<b>Event</b>	<b>Result</b>
5/28/2019	Received complaint letter from neighbor identifying a potential unpermitted duplex on site	Opened case # 30-2019
5/28/2019	Sent certified letter to Property Owner (LGI Properties LLC) to investigate	No response
6/17/2019	Spoke with neighbor over the phone. Indicated the unit has been rented.	
6/17/2019	Sent another certified letter to Property Owner to investigate	No response
7/29/2019	Sent two (2) final letters (certified and regular mail)	No response
8/26/2019	Left voicemail message for Larry Simper	
8/28/2019	Larry Simper came to Planning Counter	Discussed ADU CUP
9/10/2019	Received ADU CUP Application	Reviewed application, prepared staff report, and public notices.
9/23/2019	Larry Simper appeared before Administrative Committee	CUP was approved with six (6) conditions

10/1/2019	Staff inspection of property	
10/3/19	Larry Simper sent updated floor plan.	
10/15/2019	Staff e-mail to Larry Simper	
10/31/2019	Staff inspection of property	
11/26/2019	Staff called Larry Simper regarding denial	
12/1/2019	Larry Simper emailed Staff	Questions about denial
12/03/2019	Staff sent formal denial letter via e-mail and certified letters	Formal denial letter

## Analysis

Appeal Background (clarification is required on the following points made on the background section of the submitted appeal):

- The Appellant indicates that the house was built in the 1980's as a two-story single-family home with a mother-in-law apartment. The Appellant (Applicant) has failed to submit any evidence showing the approval of this mother-in-law apartment. City records do not reflect mother-in-law apartment approval. If a mother-in-law apartment was approved, the Applicant would not have sought approval of an ADU.
- The Appellant indicates that the current owner has made no changes to the interior to accommodate the ADU; however, Larry Simper indicated verbally to Staff that they have blocked off the staircase connecting the upper (main) level and the lower level by extending the floor of the main level so that the existing stairs are no longer accessible from the lower level, which was completed without any permits.
- As demonstrated on the Staff Report timeline, the Appellant has been operating an ADU without approval since at least May of 2019.

Appellant's Point I - PLANNING DIRECTOR ERRED BY HAVING THE CUP APPLICATION FOR ADU REVIEWED BY ADMINISTRATIVE COMMITTEE AND DECIDED IN SECRET, RATHER THAN BY QUORUM OF THE PLANNING COMMISSION AS REQUIRED

### City's Response to Appellant's Point I:

City Records show that ADUs (also known as "Accessory In-Law Apartment", per the definition of ADU) have been reviewed and approved by the Administrative Committee since its establishment in August 2005. Land Use Code § 14-2-104(D)(5) indicates that the Administrative Committee has the power and duty to review and decide those matters designated by the City Council or Planning Commission. CUPs for ADUs have been historically designated as such. Since 2005 Bountiful City has reviewed 53 ADU applications, all handled by the Administrative Committee. Furthermore, Bountiful City responded on the CUP application filed by the Applicant (now Appellant) to be reviewed by the Administrative Committee, as marked on the submitted application form.

This CUP for the ADU was approved with conditions by the Administrative Committee on September 23, 2019. After a CUP for an ADU is approved by the Administrative Committee, Bountiful City has traditionally placed the item on a following Administrative Committee's agenda and approved the item *in written form*. This approval *in written form* is a formality not required in the Land Use Code, as it is not specified anywhere as such. Due to the specific conditions of approval from September 23, 2019, staff continued the traditional *in written form* approval as conditions were not yet met, in hopes that the Applicant would indeed be able to comply with the current Code.

When the inspections were concluded, there was no alleged "secret meeting". The proposal simply did not meet the Code, as specified as a condition of approval; and therefore, the application was denied. When it is determined an application does not meet conditions of approval it's standard to notify the Applicant of the denial. Bountiful City Land Use Code §14-1-109 empowers and authorizes the Planning Director to perform inspections to determine compliance with the Code.

14-1-110 INSPECTION The Chief Building Inspector, Planning Director, and City Engineer, or their authorized representatives, are hereby authorized to inspect or cause to be inspected, all buildings and structures in the course of construction, modification, or repair, and to inspect land uses to determine compliance with the provisions of this Title. Said persons are authorized to enter upon private property at reasonable times and/or after reasonable notice has been given to the property owner or occupant.

The Planning Director merely acted pursuant to the authority bestowed upon him when he conducted the inspection. Additionally, the inspection was also a requirement of the Administrative Committee's conditional approval. Confirmation of compliance is then an administrative act that is performed by Staff, in this case the Planning Director.

#### 14-1-113 FINAL DECISIONS AND APPEALS

- A. A "final decision" is "rendered" when a vote is taken on the merits of the proposal by the Administrative Committee, Planning Commission, or City Council, or when an administrative decision is issued in written form by the Planning Director or other City official.

#### Appellant's Point II, III, & IV:

Point II – PC STAFF FAILED TO PERFORM APPROPRIATE DETERMINATION OF COMPLIANCE AND FAILED TO ALLOW FOR IMPOSITION OF REASONABLE CONDITIONS TO COMPLY

Point III PC STAFF FAILED TO MEASURE THE PROPERTY AND ADU LIVING AREAS TO VERIFY SQUARE FOOTAGE COMPLIANCE AS STATED ON THE RECORD

Point IV – THE DIRECTOR'S LETTER OF DENIAL WAS ENTIRELY BASED ON INCORRECT ASSUMPTIONS WITH NO VALIDATION METRICS SUPPORTING AN ERRONEOUS CONCLUSION

City's Response to Appellant's Point II, III, & IV:

A hearing was held. Reasonable conditions were imposed by the Administrative Committee. Staff was directed to confirm those conditions, including square footage. The application and structure were not in compliance with the conditions and the Code. The Applicant/Appellant does not simply get a "second bite of the apple" or an additional set of "reasonable conditions" when he was found to not be in compliance.

It was unnecessary for Staff to perform a room-by-room measurement of the separate units because they consist of nearly identical square footage because the structure is a rambler style home and the only difference between the upper and lower level square footage is small cantilevers on the upper floor. The cantilevers are nowhere near sufficient to meet the 60/40 requirement for ADU.

As coordinated with the Applicant, Staff conducted site inspections of the site on October 1, 2019 and on October 31, 2019 to confirm compliance with conditions of approval regarding condition of approval no. 6. Staff inspections revealed that that the proposal was not in compliance with Bountiful City Land Use Code § 14-14-(D)(1) which states:

***An attached accessory dwelling unit shall be deemed unlawful and shall not be occupied unless all of the following criteria are met:***

***1. Shall not occupy more than forty percent (40%) of the total floor area square footage of the primary dwelling structure.***

The proposal was not in compliance with the provision above as the footprint of the main level consisting of the principal unit, is essentially the same, as the footprint of the lower level, consisting of the proposed ADU. The only exceptions are some small bay windows/cantilevered areas that are located on the main level/principal unit that don't add up to 60% of the total floor area square footage.

Based on the original floor plan submitted by the Applicant (Appellant) to the City, Staff concluded that the application met the forty percent (40%) standard, which is why the Staff recommended approval to the Committee. See Diagram 1, below.

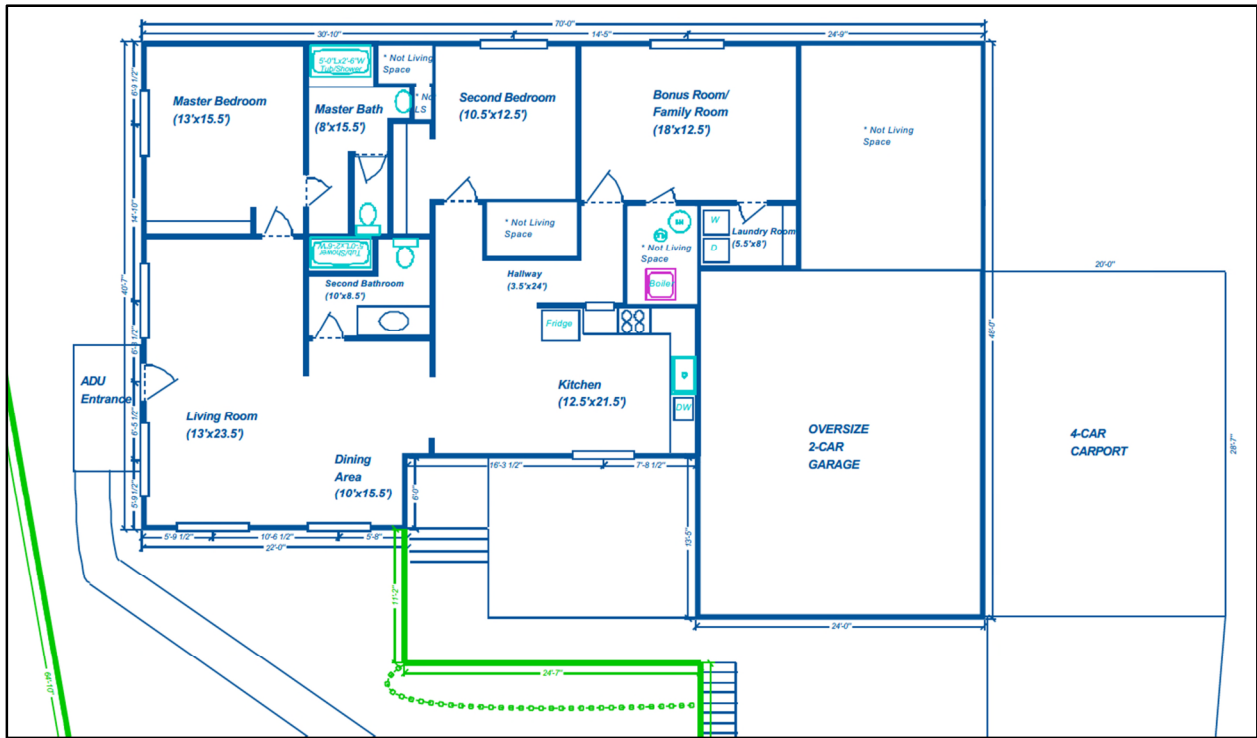


Diagram 1, original floor plan

During the Public Hearing, neighbors indicated that the submitted floor plan did not accurately depict the built structure, specifically on the northeast corner of the house (top left corner of diagram 1), which affected the area of the ADU. During the first inspection, Staff discovered that the submitted floor plan (diagram 1) was inaccurate. On October 3, 2019 the Applicant submitted an updated floor plan, see diagram 2, below.

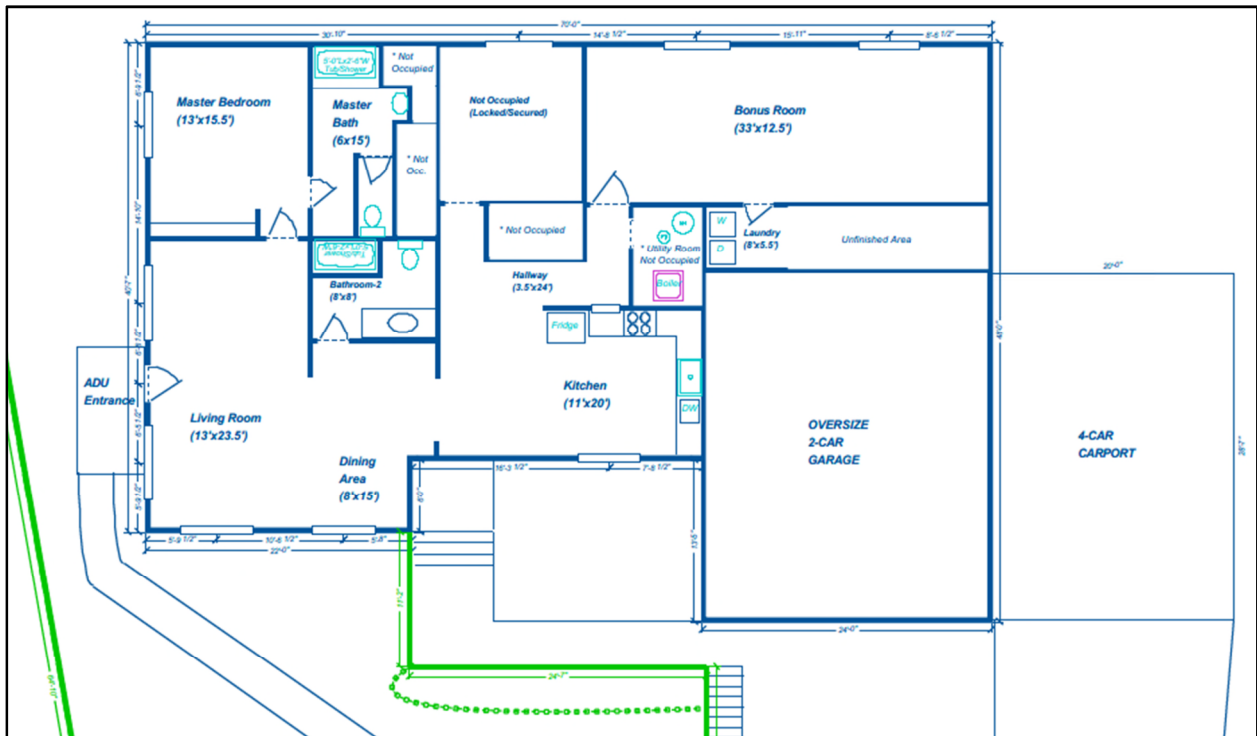


Diagram 2, updated ADU floor plan

The difference between the submitted original floor plan (diagram 1) presented to the Administrative Committed and the updated floor plan (diagram 2), include the following:

1. Layout/size of the bonus room and laundry room. During the inspections Staff determined that the layout of these two (2) rooms on the updated floor plan reflects existing conditions.
2. Label and use of the second bedroom. The original floor plan counted/utilized this second bedroom. The updated floor plan labeled this entire bedroom as “*Not Occupied (Locked/Secured)*” as the Applicant made the claim that this was not part of the requested ADU. When Staff inspected the site, this room was being utilized as storage.
3. Amendment of the size of each room. The size of the kitchen, dining area, master bath, bathroom-2, and bonus room were amended. All these rooms decreased in size from what was shown on the original floor plan.

Although the update floor plan does not count the second bedroom (item 2 above), based on the deadbolt placed on the door, Staff considered this area as part of the ADU. The bedroom’s deadbolt can easily be replaced with a standard bedroom door handle, a key can be left in the deadbolt, or the door can be left unlocked. Most importantly, the bedroom is not contiguous to the principal unit nor is it accessible to the principal unit without passing through the ADU. Also, the updated floor plan does not count the portion of the laundry room delineating the “*Unfinished Area*” from the rest of that same room. Staff considered this area as part of the ADU.

As confirmed by the site inspections the footprint of the principal unit (main level) and the footprint of the accessory dwelling unit (lower level) are essentially the same. The main level is built on top of the lower level. The only exception includes the 2 car garage, which is on the main level, and the small bay windows/cantilevered areas. The application was denied as it did not meet the Code, as required by the Conditions of Approval as Staff found that the bedroom labeled as “*Not Occupied (Locked/Secured)*” as well as the remaining portion of the laundry area labeled as “*Unfinished Area*” could not be counted as part of the principal unit. The CUP Application for the ADU did not meet the current Ordinance, specifically § 14-14-(D)(1); therefore, the application was denied.

Bountiful City’s Land Use Code definition of Floor Area is found below:

The sum of the areas of one or several floors of a building, including areas used for human occupancy in basements, attics and penthouses, as measured from the exterior face of walls. **It does not include cellars, unenclosed porches, or attics not used for human occupancy, or any floor space in accessory buildings or in the principal building intended and designed for the parking of motor vehicles in order to meet the parking requirements of this Ordinance, or any such floor space intended and designed for accessory heating and ventilating equipment.** It shall



include the horizontal area at each floor level devoted to stairwells and elevator shafts (underline and color text added).

In determining the size of an ADU to compare it to the total floor area square footage, the definition of floor area includes **the sum of the areas of one or several floors of a building, including areas used for human occupancy in basements, attics and penthouses, as measured from the exterior face of walls...It shall include the horizontal area at each floor level devoted to stairwells and elevator shafts** (all in black font from the definition).

In determining the size of an ADU to compare it to the total floor area square footage, the definition of excludes (**It does not include...**) cellars, unenclosed porches, or attics not used for human occupancy, or any floor space in accessory buildings or in the principal building intended and designed for the parking of motor vehicles in order to meet the parking requirements of this Ordinance, or any such floor space intended and designed for accessory heating and ventilating equipment.

The only floor area exclusion applied, per the Bountiful City definition of floor area, is the garage (floor space intended and designed for the parking of motor vehicles) and the utility room (floor space intended and designed for accessory heating and ventilating equipment). All other areas count, except for listed exclusions, as floor area. Based on the location and only access of the second bedroom (disputed by the Applicant as not part of the ADU) and the entire laundry area (also not part of the ADU), not just the area housing the washer/dryer, but the entire room; as shown on the updated floor plan, Staff counted both of these rooms as part of the ADU.

Staff did not measure each room because it was unnecessary. As previously stated, with the exception of some very small cantilevered areas upstairs, the square footage is almost identical on the top as it is on the bottom level.

Appellant's Point V – PC STAFF ALLOWED A FENCE TO BE BUILT BETWEEN PROPERTIES WITHOUT MITIGATION IN IGNORANCE TO COMMON LAW ACQUIESCENCE

City's Response to Appellant's Point V:

During the September 23, 2019 meeting, the Administrative Committed discussed the possibility of placing a fence between the subject site and the site to the west as part of a mitigating factor of the ADU, but that ultimately was not part of any of the conditions of approval. Fences that are six feet (6') tall do not require a building permit by the City. Staff was not made aware of the placement and location of the fence along the west property line. A property line dispute of a fence between neighboring properties is a civil matter where the City does not get involved and should not be considered as part of this hearing.

Appellant's Point VI – THE BOUNTIFUL CITY SUPPLEMENTARY DEVELOPMENT STANDARDS PERTAINING TO ACCESSORY DWELLINGS UNITS, AS CURRENTLY WRITTEN, MAY VIOLATE THE CONSTITUTIONAL RIGHTS OF PROPERTY OWNERS

## City's Response to Appellant's Point VI:

The Appellant indicates without certainty that the ADU standards *may* violate constitutional rights utilizing the terms such as *potential problem* and *possible violations*, which are based on inconclusive scenarios. This point is completely irrelevant to the denial of the ADU that didn't meet the Code.

Scenario 1 – All is well.

Scenario 2 – All is well; however, the Appellant criticizes the current standard and fails to understand the purpose of the **accessory** component of an **ADU**, to be clearly incidental and subordinate in nature; while maintaining the site to have property ownership presence, and not yet qualify as a two-family dwelling (duplex).

Scenario 3 – All is well; however, the Appellant again fails to understand the purpose of the **accessory** component. The Property Owner in this scenario has the option to leave the house vacant (use it as a second home), rent the house in its entirety, or sell the house.

Scenario 4 – All is well; however, the Appellant interprets the Code incorrectly in that the Property Owner would not have the ability to use the entire house. This assumption is incorrect.

The Utah Legislature has empowered municipalities with broad powers and discretion regarding the regulation and zoning and each municipality can and does impose such regulations in distinct ways that fit their individual communities as determined by their respective legislative bodies. Appropriate regulations regarding accessory dwelling units fall well within those powers and discretion. Here, the Bountiful City Council has clearly defined how and when an accessory dwelling unit in Bountiful City is appropriate and what regulations apply. Additionally, the Appellant fails to even state a basis for which his constitutional rights “may” have been violated. Given the criticism of the Bountiful City ADU Land Use Code, scenarios provided, as well as the lack of understanding and incorrect interpretation of the Bountiful City Land Use Code by the Appellant, this point is irrelevant and should not be considered. Furthermore, the Appellant should not include codes, policies, definitions, etc., of other municipalities as they are irrelevant.

### **Attachments**

The Appellant included all exhibits that would have been attached by Staff (below shown in bold). Staff does not find Appeal Exhibits F, G, and H relevant as the appeal does not pertain to the Law of Acquiescence; the SLC ADU Handbook should not be referenced in dealing with an ADU in Bountiful; and specific definitions of floor area from other jurisdictions found online, Wikipedia, and other sources should not be utilized, specifically when Bountiful City Land Use Code has an adopted definition of Floor Area (14-3-102 definition no. 121). For the sake of not duplicating documents Staff does not have other attachments/exhibits that need to be included.

**Attachment 1 – Submitted Appeal with the following exhibits:**

**Appeal Exhibit A – Administrative Committee Memo dated 09.18.2019**

**Appeal Exhibit B – Pictures (photographs) of Subject Property**

**Appeal Exhibit C – Applicant & Planning Director E-mails**

**Appeal Exhibit D – Denial Letter**

**Appeal Exhibit E – Admin. Committee Meeting Minutes (09.23.2019 & others)**

**Appeal Exhibit F – Utah Bar Journal Article – Law of Acquiescence**

**Appeal Exhibit G – Excerpts from SLC Planning ADU Handbook**

**Appeal Exhibit H – Building Area Definitions – Industry Standards**

**Appeal Exhibit I – Referenced City Land Use Code & State Statute**

**Recommendation**

It is not within the discretion of the Administrative Law Judge to implement Appellant's "recommended changes to the current land use code" nor should Appellant's #1 prayer for relief be approved because the Application/structure does not fit the conditions of approval and the requirements required by the Land Use Code (square footage). Additionally, Appellant's #2 prayer for relief is inappropriate as procedures were properly followed and the Application was denied appropriately and pursuant to the Code. Accordingly the City respectfully requests and recommends the Administrative Law Judge affirm the decision of the Bountiful City Administrative Committee and the Planning Director.



Bountiful City  
 Miscellaneous - 6060 - 2020  
 012997-0009 Darlene ... 12/17/2019 05:02PM  
 PLAH - Land Use Application (6060)  
 Payment Amount: 250.00  
 Transaction Amount: 250.00  
 CHECK: 1137

**For Office Use Only**

Date Rec'd 12-17-19  
 Received by DB  
 Application \$ 250<sup>00</sup>  
 Receipt # 12997-0009  
 Form of Payment check

## APPEAL APPLICATION

**FEES**

**Appeal of an administrative land-use determination**  
*(For items decided by the Planning Director)*  
**Cost to applicant: \$250.00**

**Any and all other land-use decision appeals**  
**Cost to applicant: \$250.00 + the cost of the public notice and ½ the actual cost of the Administrative Law Judge (or other appeal authority)**

Date of Submittal: December 17, 2019


Property Address: 1253 Northridge Drive, Bountiful, Utah 84010

Appellant Name: Larry Simper

Appellant Address: 1819 S 900 E, Salt Lake City, Utah 84105

Appellant Phone #: (801) 428-9160

Appellant E-Mail: larrysimper@yahoo.com

Appellant Signature: 

**Date of Decision under appeal:** December 3, 2019

**Description:** This is an APPEAL of the Planning Director's Denial of a Conditional Use Permit (CUP) Application for an attached Accessory Dwelling Unit (ADU) at the property located at 1253 Northridge Drive

**Return to: Bountiful City Recorder, Shawna Andrus (801-298-6140)**

- Appeal Application
- Payment (Cash, Check and Credit Card – except Am Ex)
- Statement of Appeal - per instructions found in Bountiful Code 14-2-108B

Department of Planning and Economic Development  
 790 South 100 East • Bountiful, Utah 84010  
 Phone 801.298.6190

The application must be signed and notarized by each property owner or authorized agent(s).

### Property Owners Affidavit

I (we) Adam Kerr, being first duly sworn, depose and say that I (we) am (are) the current owner(s) of the property involved in this application: that I (we) have read the application and attached plans and other exhibits and are familiar with its contents; and that said contents are in all respects true and correct based upon my (our) personal knowledge.

[Signature]  
Owner's Signature

Owner's Signature (co-owner if any)

State of Utah )  
County of Davis )

Subscribed and sworn to before me this 23<sup>rd</sup> day of December, 2019.

Notary Public: [Signature]



### Agent Authorization

I (we), Adam Kerr, the owner(s) of the real property located at 1253 Northridge Dr., in Bountiful City, Utah, do hereby appoint Larry Simper, as my (our) agent to represent me (us) with regard to this application affecting the above described real property, and authorize the aforementioned agent to appear on my (our) behalf before any City board or commission considering this application.

[Signature]  
Owner's Signature

Owner's Signature (co-owner if any)

State of Utah )  
County of Davis )

On the 23<sup>rd</sup> day of December, 2019, personally appeared before me Adam Kerr the signer(s) of the above Agent Authorization who duly acknowledge to me that they executed the same.

Notary Public: [Signature]



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## **EXHIBITS**

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The following are attached herewith, as Exhibits to the foregoing APPEAL:

- Exhibit-A: Staff Report for Administration Meeting
- Exhibit-B: Pictures of Subject Property w/Attached ADU
- Exhibit-C: Applicant & Planning Director emails
- Exhibit-D: Letter of Denial Issued by Planning Director
- Exhibit-E: Administrative Committee Meeting Minutes
- Exhibit-F: Utah Bar Journal Article - Law of Acquiescence
- Exhibit-G: Excerpts from Salt Lake City Planning ADU Handbook
- Exhibit-H: Building Area Definitions - Industry Standards
- Exhibit-I: Referenced Bountiful City Land Use Code & State Statutes

## STATEMENT of APPEAL

This is an APPEAL of the written DENIAL of a Conditional Use Permit (CUP) Application for an Accessory Dwelling Unit (ADU) on a property at 1253 Northridge Drive. Said DENIAL was issued by Planning Director Francisco Astorga, on December 3, 2019. Following submittal and review of the CUP, a Planning Commission (PC) Staff Report<sup>1</sup> dated September 18, 2019 states: "...staff has determined that the applicants would comply with all requirements for the Conditional Use Permit. ***Staff recommends approval of the Conditional Use Permit...***" (emphasis added).

Following proper notice, a public hearing was held on September 23, 2019. During said hearing, the Committee voted on a "***Motion to Approve***" the Conditional Use Permit for an Accessory Dwelling Unit at 1253 Northridge Drive. The Motion "***Passed w/unanimous 3-0 vote***" with only minor conditions that should be verifiable and easily mitigated for compliance. However, over two months later, Astorga denied the Conditional Use Permit, by way of phone call and Certified Letter, in ignorance to established procedures for proper processing of the application, while offering no path of mitigation for compliance, thus denying the applicant appropriate due process.

During the decision making process, Astorga failed to clearly and appropriately communicate with the Applicant regarding status, any concerns that may exist, and what mitigation would reasonably be expected to achieve compliance. Furthermore, the CUP Application was tabled then denied, with the final decision being rendered with a lack of transparency and insufficient votes for a Quorum, as required by State law and applicable provisions of Bountiful City Land Use Code.

This is a clear case where an administrative agency has a) Abused its discretion; b) Failed to perform an act required by law; and c) Refused the Applicant/Appellant the use or enjoyment of a right to which the Applicant/Appellant is entitled.

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<sup>1</sup> See Exhibit-A, Staff Report for Administrative Meeting – Approval Recommended



Therefore, the Applicant/Appellant in this matter appeals the decision of the Bountiful City Planning Director to deny the Applicants' Conditional Use Permit for an Accessory Dwelling Unit.

The CUP Application was not properly processed and the subsequent denial was not based on substantive issues congruent with State law and Bountiful City Land Use Code.

While this APPEAL is appropriate and the most expedient option for relief, all arguments and theories for relief presented herein shall lay the groundwork for the filing of a Petition for Extraordinary Relief in the District Court for Davis County, State of Utah, if deemed necessary.

### **MATTER of JURISDICTION**

The Appeal Authority has jurisdiction for this matter to be heard, pursuant to Bountiful City Land Use Code § 14-2-108 which 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.”

In accordance with applicable provisions of Bountiful City Land Use Code, the Appeal Authority shall act in a quasi-judicial manner, and while decisions of the Appeal Authority are legally enforceable at the municipal level, they can be challenged in a court of law which is the final decisive authority over such matters.

### **TIMELINESS of APPEAL**

This Appeal Application was timely filed in accordance with Bountiful City Land Use Code § 14-2-108, which specifies that an appeal must be submitted within 14 days of the written decision, or in this case by December 17, 2019.

### **CITY ORDINANCES & STATUTES**

Bountiful City Land Use Code and relevant State statutory provisions and rules referenced herein are contained verbatim in Exhibit-I attached herewith.

## BACKGROUND

The subject property was built in the 1980's as a two-story single family home with a mother-in-law apartment (now referred to as an ADU) on the lower level. It appears to have been designed to create space for family members by creating an independent living area with separate access. The owners have always maintained the appearance of a single family home and the current property owner has made no changes to the interior to accommodate the ADU, as none were necessary, only upgrades to finishes such as cabinetry, flooring, trim work, and paint.

The exterior has been repaired, painted and fully landscaped with a sidewalk for safety and a carport for added off-street parking. Many neighbors have since stopped by to thank the owner for making the exterior of the home beautiful again, and for taking such good care of the property, as it was an eyesore and a fire hazard with tall dead weeds before the current owner took possession<sup>2</sup>.

However, a neighbor filed a complaint with the City stating that the property was a "duplex" and that bothered him. Upon receiving notice via phone on August 26, 2019, the owners' agent went to the offices of Bountiful City to inquire as to what could be done to comply with current ordinances, and as a result, a Conditional Use Permit Application for an ADU was submitted on September 10, 2019.

During the subsequent public hearing, several residents in the area attended to protest ADU's in general, as the surrounding neighborhood consists of large homes high on the East bench, homes that are primarily occupied by seasoned homeowners that have been there for decades and are resistant to change. However, such push-back should not hamper the approval process if the applicant meets all established criteria defined in the ADU Ordinance, as approved. Accessory Dwelling Units in a city's housing plan are generally aimed at reducing the gap between supply and demand, with minimal impact to the scale of an existing neighborhood, as is the case here.

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<sup>2</sup> See Exhibit-B, Pictures of Subject Property with Attached ADU

Although unusual and not required, following the required public hearing, the owner allowed PC Staff to conduct two inspections of the entire property and the ADU to verify compliance with code. The only request made during this time was by Astorga for updated drawings since the owner made a couple changes in terms of what areas are “occupied” in the ADU. In response, updated drawings with detailed descriptions were provided two days later.

Following the second inspection, however, there was no input, no requests for additional information, and no specification as to what may be required for compliance. Then, surprisingly, Astorga abruptly denied the Permit without logical reason and offering no path for proper mitigation.

The Applicant/Appellant has dealt with various other municipalities on permit and compliance issues, and *never* has he seen such blatant disregard for due process.

#### EVENT TIMELINE

Date	Event	Result
9/10/2019	CUP Application for ADU	Submitted for Review and Approval
9/23/2019	Public Hearing	Staff Recommended Approval
10/1/2019	Inspection-1	Planner Poole and chair Astorga present Astorga requested updated floor plan
10/3/2019	Updated Floor Plan	Provided to Astorga as requested
10/15/2019	Chair Astorga E-Mail <sup>3</sup>	Astorga requested second inspection
10/31/2019	Inspection-2	Planner Poole, chair Astorga & inspector Thurgood present; No input or further requests
11/26/2019	Chair Astorga phone call	Applicant informed of denial
12/1/2019	Applicant E-Mail <sup>3</sup>	Applicant requests more information
12/2/2019	Chair Astorga E-Mail <sup>3</sup>	Astorga’s inappropriate and confusing answer
12/3/2019	Formal Denial Letter	Application Denied without mitigation
12/16/2019	Appeal Application	Appeal submitted; Relief requested

<sup>3</sup> See Exhibit-C, E-Mail Communications between Planning Director and the Applicant

## STATEMENT of FACTS

**Continuation of Nonconforming Use.** The subject property was built in the 1980's with a mother-in-law apartment (or "ADU" per today's ordinances) that has been continually maintained for over 30 years, and as such, should be legally classified as a "nonconforming use" whereby such use may be continued by the present or a future property owner per Bountiful City Land Use Ordinance § 14-2-402(A) and Utah Code § 10-9A-511 (*see* Exhibit-I for reference).

**Complaint Filed.** On (date unknown), a complaint was filed by a disgruntled neighbor, Fred J. Bacon of 1241 Northridge Drive wherein it was incorrectly stated that the subject property was a "duplex" and apparently, he didn't like it.

**Expedient Response to Complaint.** The owner's agent was notified of said complaint on August 26, 2019 via telephone from PC staff. The call was immediately returned and a meeting set to determine what could be done to comply with existing ordinances. In response, as requested, a Conditional Use Permit Application for an ADU was submitted on September 10, 2019.

**Staff Report – Approval Recommended.** A Staff Report was prepared by Assistant City Planner Curtis Poole dated September 18, 2019, wherein the STAFF RECOMMENDED APPROVAL of the Conditional Use Permit for an ADU at 1253 Northridge Drive.

**Public Hearing.** On September 23, 2019, a public hearing was held. As previously stated, while neighbors shared concerns over ADU's in general, the only concerns specific to the subject property came from the neighbor Bacons, whose outlandish claims were properly addressed by the Administrative Committee. The only viable concerns were privacy and the accuracy of square footage determinations. Josh Bacon inquired how "non-livable" space is determined, which is a very good question that should be clearly defined. Chair Astorga stated that questions would be answered

after the close of the Public Hearing. However, after the close of said hearing, how “non-livable” space is determined or what constitutes “occupied” or “not occupied” space was never clarified.

**Mitigation of Privacy Concerns – Building of a Fence.** To mitigate Bacons privacy concerns, building a fence between the two properties was discussed at said hearing. However, it was agreed that it should not be a requirement for approval of the Conditional Use Permit.

However, the Bacons built a fence anyway, which encroached approx. 2 feet upon the subject property, while ignoring existing landscape marks, monuments, sprinkler system lines and valves that have been in existence for many years. These systems are now destroyed, unable to function and are not accessible since they are now on the neighbor’s side of the fence.

**First Inspection.** On October 1, 2019, although not required and out of the ordinary for a CUP Application for an ADU, an inspection was allowed for PC staff to “measure the ADU square footage to verify its size” and verify public utility meters as single source. Meters were verified. A couple changes in terms of what areas are “occupied” from that specified on the original drawings were noted. Updated drawings were supplied at the request of chair Astorga.

However, no measurements were taken by anyone, as specified during said hearing.

Then, there was a significant time delay with no input or requests from PC Staff...

**Second Inspection.** On October 31, 2019, at chair Astorga’s request, a second inspection was allowed for the City Building Inspector to see if a building permit was required for prior work completed, and to take measurements of the ADU space.

However, once again, no measurements were taken by anyone to verify square footage and there was no discussion of what constitutes “occupied” and “non-livable” space when making any determinations of ADU square footage, as would be necessary to verify compliance with the Bountiful City Land Use Ordinance pertaining to Accessory Dwelling Units.

And again, there was a significant time delay with no input or requests from PC Staff...

**Conditional Use Permit Abruptly Denied.** The only communication following the second inspection was a phone call from Astorga on November 26, 2019, whereby Astorga called to inform the owner that the Conditional Use Permit would be denied. On what grounds? It was asked. “Non-conformance with the 60/40 Rule, replied Astorga.

The conversation was illogical and made no sense at that point, so the Applicant requested something in writing explaining the legal reasoning behind such a decision, with an explanation of how a decision could be made when there was inadequate discussion concerning determination of square footage and no measurements were taken by any PC Staff at any time.

The Applicant sent a follow-up email to Astorga to ensure his requests would be in writing. However, rather than supply additional information on how to rectify the situation, chair Astorga responded via email the next day in a threatening tone, stating:

“While the City could have sent the case over to the City Prosecutor, the City choose to work with you to see if the CUP application for the ADU would work out with you. The City has been patient and prudent in working with you... Feel free to examine the Code to see how you may bring the structure/site up to compliance with the Code.”

Surprisingly, chair Astorga abruptly issued his formal Letter of Denial<sup>4</sup> the very next day, which clearly deprived the owner of any time to examine anything – no input, no discussion, and no avenues or paths for mitigation of compliance with Code, only this APPEAL.

### **SUMMARY of LEGAL ERRORS**

Following the submittal of an Application for a Conditional Use Permit for an ADU at 1253 Northridge Drive, and during the processing of said request for Permit, the Bountiful City Planning Director committed several errors by failing to adhere to established policies and procedures, consistent with State law and applicable provisions of Bountiful City Land Use

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<sup>4</sup> See Exhibit-D, Letter of Denial Issued by Planning Director

Code, which governs the conduct of its meetings and the APPROVAL/REVIEW process of specific Applications for Conditional Use Permits for Accessory Dwelling Units, submitted by the citizens of Bountiful City.

### LEGAL ARGUMENTS – POINT I

#### **PLANNING DIRECTOR ERRED BY HAVING THE CUP APPLICATION FOR ADU REVIEWED BY ADMINISTRATIVE COMMITTEE AND DECIDED IN SECRET, RATHER THAN BY QUORUM OF THE PLANNING COMMISSION AS REQUIRED**

In accordance with State law and applicable Bountiful City Land Use Code, all the powers and duties associated with the Approval/Review of Conditional Use Permits for Accessory Dwelling Units in Bountiful are bestowed upon the governing body of the Planning Commission consisting of seven (7) members. The Administrative Committee, on the other hand, only consists of three (3) members and was established by the City to ensure that items of a routine nature are processed expeditiously.

As such, the powers and duties of the Administrative Committee is limited. Bountiful City Land Use Code § 14-2-111 states that the Administrative Committee can only Approve/ Review Conditional Use Permit Applications for “Home Occupation” or “Commercial Operation” designations, *not* Accessory Dwelling Units.

The Administrative Committee, chaired by Astorga, has only 2 other members, which means that theoretically, chair Astorga and one other member could essentially vote and thus decide on matters before the Committee. Even more alarming is the fact that in his capacity as Planning Director, he may even get away with deciding matters on his own, without proper validation or vote.

This is insufficient and unjust for any decision of importance effecting the citizens of Bountiful.

Bountiful City Land Use Code, Title 14, Chapter 2, Part 5 describes certain uses which necessitate special conditions in order to make them compatible with permitted uses within a zone designation. An Accessory Dwelling Unit (ADU) is one of those listed as a conditional use, and therefore a Conditional Use Permit is required.

Bountiful City Land Use Code § 14-2-505(A) states that:

“Any request for a conditional use permit ***shall be heard and decided by the Planning Commission*** unless the item falls within a category designated for Administrative Committee review” (emphasis added).

However, a Conditional Use Permit Application for an ADU does *not* fall within such category, as explained previously (*see* Bountiful City Land Use Code § 14-2-111).

Under provisions of Bountiful City Land Use Code § 14-2-103(A) “A Planning Commission, consisting of seven (7) members is hereby established to exercise the powers and duties specified herein.” And Bountiful City Land Use Code § 14-2-103(D) states in pertinent part:

“The Planning Commission shall have all the powers and duties, explicit or implied, given planning commissions by Utah State law and the Bountiful City Land Use Ordinance, including but not limited to the following...***Hear and decide the approval or denial of conditional use permits***” (emphasis added).

Furthermore, Bountiful City Land Use Code § 14-2-103(C)(4) states that:

“No official business shall be conducted by the Planning Commission unless a quorum of its members are present. Four (4) members of the Planning Commission shall constitute a quorum. ***Any actions taken shall require a minimum of four (4) yes votes from members of the Planning Commission, unless otherwise prescribed by law.***”

And as specified in Bountiful City Land Use Code § 14-2-111 (chart), the designated Approval/Review body for a Conditional Use Permit for “Structural/Land-Use Improvements” which would include an Accessory Dwelling Unit, is the Planning Commission, with decision only by proper vote of a Quorum of the Planning Commission, and *not* the Administrative Committee or the Planning Director, whom has limited decision making authority under said Land Use Code.



However, upon review of the agenda and minutes of all Planning Commission meetings from the date of application submittal until formal denial by the Planning Director, there was never a line item nor was there any discussion regarding the foregoing Conditional Use Permit Application for an Accessory Dwelling Unit at 1253 Northridge Drive.

This is because chair Astorga placed the matter before the Administrative Committee, rather than a Quorum of the Planning Commission, as required by law. Furthermore, it appears that back-lash from influential neighbors fueled a lack of transparency in the Approval/Review process, as the formal denial was issued without appropriate mitigation, without proper vote, and without further meeting or discussion, unless done in secret.

Upon review of the Administrative Committee Meeting Minutes<sup>5</sup> published to date, there was never a proper vote, with or without proper authority by said Committee, relating to the subject CUP Application. The only vote, aside from the unanimous vote of Approval on September 23, 2019, occurred in the meeting of September 30, 2019, whereby it was stated that committee member Badham made a motion to “Table Approval of the CUP Application” and chair Astorga seconded the motion, while member Christensen abstained for reasons unknown, which resulted in a 2-0 vote. Such a meager vote is unacceptable by any standards, but is also incongruent with pertinent State statutes and Bountiful Land Use Code.

The only other discussion on the record regarding the subject CUP Application was at the end of the meeting of October 21, under the “Miscellaneous business and scheduling” line item, where chair Astorga made reference to the September 23<sup>rd</sup> Committee item regarding an ADU on Northridge Drive. Chair Astorga noted that “the written form for that item would be on the Administrative Committee agenda in the near future, even if no regular meeting was scheduled.”

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<sup>5</sup> See Exhibit-E, Planning Commission Administrative Committee Minutes

The final Administrative Committee Meeting prior to the Letter of Denial by Astorga was held on November 18, 2019. Upon review of the “pending minutes” for the meeting however, there was no discussion and no vote relating to the denial of the subject CUP Application.

Decisions by a municipality made in secret or not in accordance with State statutes and Bountiful Land Use Code may be rendered non-binding in law. Was a closed door meeting held that was undocumented? If so, that would be a violation of the Utah Open and Public Meetings Act, which is a crime, as Utah Code § 52-4-305 (*see* Exhibit-G for reference) states:

“In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.”

Illegal or not, the lack of transparency regarding the processing of the subject Conditional Use Permit Application for an ADU is astounding, especially since the appropriate Approval/ Review Body for such matters is the Planning Commission of 7 members, not an Administrative Committee of 3, and definitely not a chair or 1. Just because the only superiors to Astorga in the Bountiful City Organizational Chart is the Mayor and the City Council, he is not above the law.

## **LEGAL ARGUMENTS – POINT II**

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### **PC STAFF FAILED TO PERFORM APPROPRIATE DETERMINATION OF COMPLIANCE AND FAILED TO ALLOW FOR IMPOSITION OF REASONABLE CONDITIONS TO COMPLY**

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It is reasonable to expect that when a citizen of Bountiful submits an application for approval of a Conditional Use Permit that includes maps, drawings, statements, reports, studies, or other documents, as required and/or requested by the approval body and/or City Staff, there would be clear and concise feedback regarding what conditions would be necessary to achieve compliance. However, in this case, that never occurred.

The Assistant City Planner, Curtis Poole was the initial point of contact for the Applicant, and Curtis communicated well during the early stages of the application review process. The Staff Report he prepared for the Administrative Committee Meeting of September 23, 2019 was thorough and appropriate.

Regarding the appropriate DETERMINATION for subsequent APPROVAL of a Conditional Use Permit Application, please refer to the Conditional Use Provisions of Bountiful City Land Use Code, § 14-2-506(A) DETERMINATION which states that:

“A conditional use permit *shall be approved if reasonable conditions are proposed, or can be imposed*, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with the applicable standards” (emphasis added).

Firstly, reasonable conditions were proposed, as evidenced by the Staff Report prepared by Planning Commission Staff whereby the staff recommended APPROVAL of the Conditional Use Permit to allow for an Accessory Dwelling Unit at 1253 Northridge Drive (*see Exhibit-A, Staff Report*). The Staff Report was a component of the “Packet” supplied during the Bountiful City Administrative Committee meeting held on September 23, 2019, and on Page 7 of said Packet, the **Staff Recommendation** Section states:

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 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.

Secondly, there were no anticipated detrimental effects of the proposed use in accordance with applicable standards, and records of communications between the Applicant and PC Staff, and meeting minutes of the Planning Commission and Administrative Committee, clearly show that the

Applicant was responsive to any requests made by PC Staff, and supported any needs of the Staff to make a proper determination of compliance with applicable standards.

The Conditional Use Provisions of Bountiful City Land Use Code, § 14-2-506(B)

DETERMINATION states that:

“If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal, ***or if the imposition of reasonable conditions to achieve compliance with applicable standards is not possible***, the conditional use permit request may be denied” (emphasis added).

However, as the record shows in this case, the Bountiful City Planning Director issued a Certified Letter of Denial with no intentions of allowing for discussions of, or for any proposals for, reasonable conditions to achieve compliance with applicable standards, as allowed by law.

Thus, the PC Director’s actions directly contradict the provisions of said ordinance.

### LEGAL ARGUMENTS – POINT III

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#### PC STAFF FAILED TO MEASURE THE PROPERTY AND ADU LIVING AREAS TO VERIFY SQUARE FOOTAGE COMPLIANCE AS STATED ON THE RECORD

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Upon review of the meeting minutes of the Administrative Committee Meeting of September 23, 2019, the following statements of Administrative Committee Members were noted on the record regarding “areas to be excluded from square footage determination for the ADU” and statements that PC Staff would “visit the property and take measurements”.

- 1) Mr. Badham, whose role on the committee is that of an appointed citizens’ representative, stated that “***certain areas of the basement (i.e. staircase, furnace room, etc.) will be excluded from the square footage of the ADU.***” and that “if the code criteria is met, the committee must grant approval in spite of public opposition to the ordinance.”
- 2) 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.***

- 3) Mr. Clawson noted “his belief that the committee is tasked with enforcing the ordinance and felt that the applicant had met the conditions of the ordinance.”
- 4) Mr. Astorga stated that *the ADU area does not include an uninhabitable basement area with no windows and that a utility room and staircase would not be included.*
- 5) Mr. Clawson made a **Motion to Approve** the 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:
  - a. *The City will measure the ADU square footage to verify its size;*
  - b. The City will verify that the property has only one utility connection; and
  - c. The City will ensure that current and future property owners, title holders or contract purchasers abide by the deed restriction.

The Motion Passed w/3-0 vote.

So the Motion to Approve a Conditional Use Permit to allow for an Accessory Dwelling Unit passed unanimously by members of the Administrative Committee with only minor conditions that should be verifiable and easily mitigated for compliance, right? One would think.

As requested during said hearing, the property owner granted City Staff access to the property to measure the ADU square footage to verify its size. However, during the first inspection of the entire property and the ADU, no one measured anything - not the perimeter of the building structure, not the main living area, not the ADU, absolutely nothing.

Then on October 15, 2019, Astorga stated via e-mail that Curtis was unavailable and that he was currently in the process of determining compliance with the specific ADU Ordinance, as approved. His lengthy e-mail outlined all criteria in § 14-14-124 of the City Land Use Ordinance that the ADU shall meet. A notation of compliance was provided by each item with the exception of a reference to Bountiful Land Use Code § 14-14-124(D)(4) which states:

“Shall meet all of the requirements of the International Building Code relating to dwelling units” with a side notation that “...*In order to find compliance with this ADU standard, we requested to have the Bountiful City Building Inspector inspect the ADU...*” (emphasis added).

The owner agreed and on October 31, 2019, Curtis Poole, Assistant City Planner, Francisco Astorga, Planning Director, and Marty Thurgood, City Building Inspector, inspected the entire property and the ADU. From all indications, all seemed well - no code violations, no permits required. Interestingly though, once again, after two inspections, no measurements were taken - not the perimeter of the building structure, not the main living area, not the ADU, nothing.

Regarding statements of Planning Commission Staff as to what would be done to verify compliance for permit approval, there was no follow-through. Subsequently, none of the statements were acted upon – there were no measurements and there was no consideration for exclusions of unoccupied areas as specified in the meeting minutes of the Administrative Committee, and no mention thereof in Astorga’s Letter of Denial.

#### **LEGAL ARGUMENTS – POINT IV**

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#### **THE DIRECTOR’S LETTER OF DENIAL WAS ENTIRELY BASED ON INCORRECT ASSUMPTIONS WITH NO VALIDATION METRICS SUPPORTING AN ERRONEOUS CONCLUSION**

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The Planning Commission Director’s Certified Letter of Denial dated December 3, 2019 states “Please note that your submitted Conditional Use Permit (CUP) application for an accessory dwelling unit (ADU) located at 1253 Northridge Drive is hereby denied.” The Letter further states that said denial is based on the lack of compliance with a condition of approval, as specified by the Administrative Committee, specifically that the site is not in compliance with Land Use Code § 14-14-124(D)(1) which states in pertinent part:

*An attached accessory dwelling unit... Shall not occupy more that forty percent (40%) of the total floor area square footage of the primary dwelling structure.*

The Erroneous Letter of Denial continues to state that:

*“The proposal is not in compliance with the provision above as the footprint of the main level consisting of the principal unit, is essentially the same, as the footprint of the lower*

*level, consisting of the proposed ADU. The only exceptions are some small bay windows/cantilevered areas that are located on the main level/principal unit that don't add up to 60% of the total floor area square footage."*

This statement is false and is entirely based on erroneous assumptions, with no validation metrics employed for verification. Unoccupied areas not used for human occupancy in the ADU were clearly documented on submitted drawings and were referenced and discussed by several Members during Administrative Committee Meetings. Furthermore, areas that should be subtracted from ADU square footage calculations are easily verifiable if only the main living area and the ADU were actually measured for accuracy, which was committed to be done by PC Staff to verify compliance, as stated on the record, but they failed to do so. There was no follow-through on statements made during Administrative Committee meetings, and now all parties involved are subjected to unnecessary expense of resources with this APPEAL.

As documented on the record and clearly ignored, several areas of the basement ADU are *not* for human occupancy and are *not* occupied, and therefore should *not* be included in the ADU square footage determinations, in accordance with the Bountiful City definition of "Floor Area".

Such areas include an enclosed stairwell, a utility/mechanical room housing boilers and hot water heaters, and dead space between the master bathroom and bedroom that houses mechanical and plumbing runs. All of these spaces are fully utilized as living space on the floor above (the main level). Consequently, such space collectively amounts to a square footage difference between living areas (the Main Living Area and the ADU Living Area) that places the ADU in compliance with square footage specifications of Land Use Code § 14-14-124(D)(1), as approved. If the primary dwelling structure and the ADU Area were actually measured for accuracy, and accounting for only "livable space" you will find that the ADU does in fact occupy less than forty (40%) of the total floor area square footage of the primary dwelling structure.

Regarding the space in the ADU labeled “Not Occupied (Locked/Secure)” on the plans submitted to the City and referred to in the Planning Director’s Letter of Denial, that was for the benefit of the owner to use for storage – not to fool anyone or to subtract space in attempts to comply with square footage requirements.

However, the main level garage is huge and provides ample storage for the owner living on the main level, so the room Astorga had issue with can be opened up and made available, to be included as part of the ADU Living Area.

Even with that being proposed, we should still be in compliance of the square footage specifications of Land Use Code § 14-14-124(D)(1), which makes Astorga’s point concerning use of that area inconsequential.

However, decisions regarding square footage should not be made on assumptions, that’s what tape measures are for. With that in mind, unoccupied areas were noted on drawings submitted to PC Staff, and two inspections were allowed for PC Staff to measure, however, they failed to do so. Apparently the PC Staff has no use for measurements and metrics, as it appears they would rather make assumptions, then just deny permits at will.

Something is seriously wrong here, to *not* rely on metrics of any kind for verification. It seems unusual and highly suspect for a municipal authority charged with assuring compliance with Land Use Code and being responsible for the Approval/Review process of Conditional Use Permits, to conduct business in such a manner - to ignore stated facts, then fail to conduct a simple metric verification when tasked to do so, as stated on the record in Meeting Minutes.

And why the Planning Director, a short time after the required public hearing, would take over this request for a Conditional Use Permit and be so determined to have it denied without cause is unknown. One can only assume political reasons, but who knows...



It's important to note, however, that the Office of the Property Rights Ombudsman, a division of the Utah Department of Commerce, regarding how Conditional Uses are Designated and Approved, states that:

*“Consideration should focus on facts and applicable standards, and avoid “public clamor,” or emotional arguments for or against a permit. An application may be denied only if the detrimental impacts cannot be mitigated by reasonable conditions.”<sup>6</sup> (Emphasis added).*

The Office of the Property Rights Ombudsman further states that:

*“If the use is denied, the land use authority must determine the negative impacts, and must also find the impacts cannot be mitigated with the imposition of reasonable conditions to achieve compliance with the applicable standards contained in the local ordinances. If the detrimental effects can be mitigated by the imposition of reasonable conditions, **the use must be approved**, and the land use authority may impose reasonable conditions. **Any decision must be based on substantial evidence in the record of the proceedings.**”<sup>6</sup> (Emphasis Added).*

As reflected in the Meeting Minutes, it was clearly stated on the record by several members of the Administrative Committee that 1) “Certain areas of the basement area will be excluded from the square footage” of the ADU; and 2) PC Staff would visit the property and “take measurements” in order to determine if the ADU complies with the 40% standard. Yet, even after allowing two inspections of the entire property and the ADU, both of these commitments were ignored once the Planning Director took charge of this Conditional Use Permit application.

It appears from the record that perhaps the Planning Director decided early on, more than likely following the public hearing, due to political pressure from influential neighbors, to deny the Conditional Use Permit at issue here, without verification or validation. However, for the Planning Director to choose to blatantly ignore stated facts and not follow clearly defined policies and procedures in this matter is astounding.

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<sup>6</sup> See Office of the Property Rights Ombudsman <https://propertyrights.utah.gov/conditional-uses/>

## LEGAL ARGUMENTS – POINT V

### PC STAFF ALLOWED A FENCE TO BE BUILT BETWEEN PROPERTIES WITHOUT MITIGATION IN IGNORANCE TO COMMON LAW OF ACQUIESCENCE

In order to mitigate a complaint voiced by a disgruntled neighbor directly to the North of the property that is the subject of the Conditional Use Permit application, Planning Commission Staff allowed said neighbor, Fred J. Bacon, to build a fence between the two properties.

However, the Applicant was not informed nor involved in the process. An independent surveyor was hired by the neighbor, and as a result, existing monuments and markers including a concrete retaining wall, landscaping and sprinkling systems, and monuments that have all been in existence for well over 20 years, were ignored. The new independent survey ordered by the neighbor, placed the boundary encroaching onto the subject property approximately 2 feet.

Even the contractor on site new this was wrong and spoke of property boundary disputes resulting from such negligence, as he stated that he has been involved in a few, so his conscience directed him to have his crew honor the concrete retaining wall as the existing boundary, then honor the neighbors new requested boundary line at the North East corner.

However, this resulted in a fence in a wavy pattern that ignored existing landscaping marks, monuments and critical sprinkler system lines and valves that have been in existence for many years, and now these systems are destroyed, unable to function and are not accessible.

The well-established Common Law of Acquiescence<sup>7</sup> respects property boundary lines where existing fences or structures or systems have been in place for many years, regardless of survey results. However, the fence was put in place in ignorance of said law.

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<sup>7</sup> See Exhibit-F, Utah Bar Journal Article – Law of Acquiescence

Furthermore, the new fence blocks the owners' view to the West, which is difficult to place a value on since the subject property is the highest on the hill with mountains as the backyard and breathtaking sunset views over the Great Salt Lake, which are now obstructed from view due to placement of the fence.

Building of the fence was premised upon approval of the Conditional Use Permit and was proposed in good faith to help mitigate any concerns of the neighbor. However, since established procedures were not followed by the Bountiful City Planning Director, and the designated Agent for the owner of the subject property was not notified nor involved in the planning and building of said fence, and the fact that existing monuments and markers were ignored with disregard to the Common Law of Acquiescence, the only feasible remedy would be: a) removal of the fence and payment for damages sustained; or b) a monetary settlement paid to the owner of the subject property for damages sustained. If an amiable agreement cannot be reached, the owner or owner's agent may retain the option to file a civil lawsuit seeking monetary damages due to gross negligence.

#### **LEGAL ARGUMENTS – POINT VI**

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#### **THE BOUNTIFUL CITY SUPPLEMENTARY DEVELOPMENT STANDARDS PERTAINING TO ACCESSORY DWELLING UNITS, AS CURRENTLY WRITTEN, MAY VIOLATE THE CONSTITUTIONAL RIGHTS OF PROPERTY OWNERS**

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Accessory Dwelling Units in a single-family residential zone in Bountiful are an important tool in the City's overall housing plan. However, existing Accessory Dwelling Unit ordinances as written, taken together in context with all of 2018-09 Chapter 14 Supplemental Development Standards, may in fact cause unforeseen problems for property owners and for the City. Applicable sections of the ADU ordinance include Land Use Code § 14-14-124(C)(7) which states:

“The property owner... must occupy either the principal unit or the ADU, but not both, as their primary residence...”

And Bountiful City Land Use Code § 14-14-124(D)(1) states:

“An attached accessory dwelling ... shall not occupy more than forty percent (40%) of the total floor area square footage of the primary dwelling structure.”

Potential problems (possible violation of constitutional property rights) with these Bountiful City Land Use Ordinances taken together in context may be demonstrated by carrying out a couple real life scenarios, as further described below:

**Scenario-1: No ADU – All is well**

Let's say you own a beautiful home in Bountiful. You live in the home. You get a job transfer to another area, but want to continue to own the property. You can legally rent or lease 100% of the home. All is well.

**Scenario-2: Owner Lives in ADU, Rents Other Area** (Owner lives in 40% or less of the home, then rents the remaining +60% which deters from the intended purpose of the 60/40 Rule).

Let's say you own a beautiful home in Bountiful. You get approval for an ADU. You opt to live in the ADU as allowed per with Bountiful City Land Use Code § 14-14-124(C)(7).

You then rent the main living area of your home (nowhere in the ordinance does it say that's not allowed). So, what's the point of the 60/40 Rule when now you are renting or leasing at least 60% of your home, but not 50% of your home, which doesn't make much sense.

**Scenario-3: Owner Lives in Main Area, Rents ADU, Then Gets Job Transfer**

Let's say you own a beautiful home in Bountiful. You get approval for an ADU. You occupy the main living area and rent the ADU as allowed per Bountiful City Land Use Code § 14-14-124(C)(7), except now you get a job transfer to another area, but you want to continue to own the property. You can't, unless you want to leave it vacant. With the ordinance as written, your only options would be to 1) kick the tenants out and leave it vacant, or 2) sell it.

This again makes no sense and clearly violates the property owners' "Right to Possession" and "Right to Control" afforded by the constitution.

**Scenario-4: Owner Rents ADU, Then Later Decides to Occupy Entire Home**

Let's say you own a beautiful home in Bountiful. You get approval for an ADU.

You occupy the main living area of the home and rent the ADU. Then, due to a life changing event (you get married, have more kids, adopt, whatever...) you decide you want to occupy your entire home. Because of how the Bountiful City Land Use Ordinance is written, as approved, you can't. You're now stuck renting or leasing the ADU, thus being forced to move if you need the additional space that you already had.

This again makes no sense and clearly violates the property owner's "Right to Possession" and "Right to Control" afforded by the constitution.

As you can see from these real life scenarios, the Bountiful Land Use Ordinance pertaining to ADU's has the potential to not only *not* satisfy the true objectives of the overall housing plan for the city, but may in fact infringe on the constitutional rights of property owners.

The need for and the acceptance of Accessory Dwelling Units is not new, as it is mandated at the State level due to housing shortages across the state. Other municipalities, such as Salt Lake City Planning, share common goals as Bountiful City, and they have "worked out the kinks" so to speak. It seems to make sense for Bountiful City to adopt ADU Ordinances that have been put in place and have been proven, like those in Salt Lake City Planning.<sup>6</sup>

The primary issues in this Appeal would be satisfied, if that were the case, as the need for Appeal would not exist.

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<sup>6</sup> See Exhibit-G, Excerpts from SLC Planning ADU Handbook

For example, the ADU ordinance for Salt Lake City Planning specifies that “The size of your ADU cannot exceed 50% of your homes gross square footage” (50/50 makes more sense, as it would not matter which area the owner lived in – the main living area or the ADU) which would render the currently ambiguous and confusing 60/40 rule moot. It would also take care of the confusion surrounding the interpretation of the phrase “total floor area square footage” since Salt Lake City Planning follows the same definition as referred to in Exhibit-H: Building Area Definitions - Industry Standards, attached herewith, and as further described below.

### **SUMMARY of APPROPRIATE RELIEF**

**Recommend Changes to Current Land Use Code** – To clarify issues and improve the efficiency of the Approval/Review process of Conditional Use Permits in Bountiful City, it is recommended that proposed changes be documented and forwarded to the City Council for review and subsequent approval. It is recommended that Bountiful City Land Use Code § 14-14-124(D)(1) be changed from “Shall not occupy more than forty percent (40%) of the total floor area square footage of the primary dwelling structure” to “The size of your ADU cannot exceed 50% of your home’s gross square footage” to more appropriately align with the intended goals of the housing plan for the City, as well as with other local municipalities, such as Salt Lake City Planning.

In addition, it is recommended that the ordinance reference to the term “total floor area square footage” be changed to “Gross Floor Area or (GFA)” with a simplified definition, to be in alignment with industry standards and other local municipalities. Two examples are as follows, both of which facilitate ease of reference and calculation with clarity:

**Gross Floor Area (GFA)** – The total floor area contained within the building measured to the external face of the external walls;

**Gross Floor Area (GFA)** – The sum of the floor areas of all the spaces within the building, with no exceptions. The total area within the perimeter of the outside walls.

Under either definition, an attached garage, if part of the home's foundation footprint under the horizontal projection of the roof or floor above, would be included in the "Gross Floor Area" square footage calculation, which is appropriate since most garages are utilized not just for vehicle parking, but for storage of personal property as well.

Various Respected Sources<sup>7</sup> concur, with a standard definition of Gross Floor Area or Total Floor Area, including: 1) Wikipedia; 2) The Federal Construction Council Technical Report, *Classification of Building Areas*; 3) AssetInsights.net (2000+ pages of content ref. for asset stakeholders); 4) National Center for Education Statistics (nces.ed.gov); 5) 2018 IBC; 6) ecode360.com, Zoning, Definitions; 7) San Juan County Community Development & Planning, Policies & Procedures, Floor Area Determination for Accessory Structures; and 8) Santa Monica Municipal Code, Planning & Zoning, Rules for Measurement, Determining Floor Area, just to name a few. The only minor difference in the industry definitions, is whether or not to include the thickness of the exterior walls (some measure the inside perimeter of the building, while others measure the outside perimeter of the building). However, this seems to be the only discrepancy between differing definitions industry wide in the U.S.

In addition, the ADU ordinance would be clearer and confusion would be avoided if there was a consistent determination of how the ADU square footage is calculated. What constitutes "occupied" or "non-occupied" areas for example, and how is "non-livable" space determined. The Approval/Review process would go much smoother with these minor changes with added definitions, and thus, the aforementioned Conditional Use Permit would have been issued without delay.

**Conditional Use Permit for ADU at 1253 Northridge Drive** – Based on the egregious level of errors committed by PC Staff in processing the aforementioned Conditional Use Permit,

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<sup>7</sup> See Exhibit-H, Building Area Definitions (various sources)

coupled with overwhelming evidence that the Conditional Use Permit application met all requirements of the Bountiful City Land Use Code, as approved, the following relief is sought:

- 1) Based upon the facts of this matter, the Conditional Use Permit for an attached Accessory Dwelling Unit at 1253 Northridge Drive should be APPROVED.
- 2) As a secondary form of relief, if the Appeal Authority does not have the power and authority to issue the primary relief sought, the Appeal Authority could remand the Conditional Use Permit (CUP) Application back to the Planning Commission for a Quorum of its members to properly vote, subsequent to following appropriate determination and mitigation for approval, in accordance with State law and Bountiful City Land Use Code, as approved.

### CONCLUSION

The Applicant/Appellant in this matter has clearly shown by a preponderance of the evidence that the property owner's position was harmed as a result negligent errors, errors that occurred during the Approval/Review process of a Conditional Use Permit (CUP) for an attached Accessory Dwelling Unit (ADU) in the lower level of a single-family home located at 1253 Northridge Drive, a dwelling unit that has existed since the home was built in the 1980's.

The Planning Director's Letter of Denial of said Conditional Use Permit, was abruptly issued on December 3, 2019 in ignorance to appropriate due process, and was based solely on incorrect assumptions of square footage, with no validation metrics supporting an erroneous conclusion, and therefore must be rescinded.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of December, 2019.

  
Larry Simper  
Applicant & Agent for Owner



**EXHIBIT-A**

**Staff Report for Administrative Meeting - Approval Recommended**

Administrative Committee Meeting of September 23, 2019

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**APPEAL:** Of Planning Director Denial Issued December 3, 2019

**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)

**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

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RANDY C. LEWIS  
MAYOR

CITY COUNCIL  
Kate Bradshaw  
Kendalyn Harris  
Richard Higginson  
John Marc Knight  
Chris R. Simonsen

CITY MANAGER  
Gary R. Hill

## **Memo**

Date: September 18, 2019  
To: Administrative Committee  
From: Curtis Poole, Assistant City Planner  
Re: Staff Report for the Administrative Committee Meeting on Monday, September 23, 2019

## **Overview**

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

## **Background**

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.

## **Findings**

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.

**Staff Recommendation**

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.

**Bountiful Land Use Ordinance**

**14-14-124      ACCESSORY DWELLING UNIT**

- A. *Purpose: The city recognizes that accessory dwelling units (ADUs) in single-family residential zones can be an important tool in the overall housing plan for the city. The purposes of the ADU standards of this code are to:*
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.*
- B. *An accessory dwelling unit shall only be approved as a conditional use.*
- C. *An accessory dwelling unit shall not be approved, and shall be deemed unlawful, unless it meets all of the following criteria:*
1. *An accessory dwelling unit shall be conditionally permitted only within a single-family residential zone, and shall not be permitted in any other zone.*
  2. *It is unlawful to allow, construct, or reside in an accessory dwelling unit within a duplex or multi-family residential building or property.*
  3. *It is unlawful to reside in, or allow to reside in, an accessory dwelling unit that has not received a conditional use permit or without written authorization from the Bountiful City Planning Department.*
  4. *A maximum of one (1) accessory dwelling unit shall be permitted as a conditional use on any lot or parcel in a single-family zone.*
  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.*
  6. *A deed restriction limiting the use of a property to a single-family use, prepared and signed by the Bountiful City Planning Director and all owners of the property on which an accessory dwelling unit is located, shall be recorded with the Davis County Recorder's Office prior to occupancy of the accessory dwelling unit. If a building permit is required, then said deed restriction shall be recorded prior to issuance of the building permit.*
  7. *The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU, but not both, as their permanent residence and at no time receive rent for the owner occupied unit. Application for an ADU shall include proof of*

owner occupancy as evidenced by voter registration, vehicle registration, driver's license, county assessor records or similar means.

8. Separate utility meters shall not be permitted for the accessory dwelling unit.
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.
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.
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. In no case shall fewer than four (4) total off street parking spaces be provided with at least 2 of the spaces provided in a garage. Any additional occupant vehicles shall be parked off-street in City Code compliant parking areas.

- E. A detached accessory dwelling unit shall meet all of the above criteria, plus the following:
1. Shall require a conditional use permit, reviewed and approved by the Bountiful City Administrative Committee.
  2. Shall not be located on a lot with less than eight thousand (8,000) square feet buildable land.
  3. Shall be configured so that any exterior doors, stairs, windows, or similar features are located as far away from adjoining properties as is reasonably possible to provide privacy to those properties.
  4. Shall meet all of the setbacks required of a detached accessory structure requiring a conditional use permit.

## Aerial Map



Northridge Drive



SITE PLAN - LOWER LEVEL ADU	
4544 LAKELAND	NEW CASE
120 METROVIEW BL. SUITE 107, NORTON	OWNER: J. DAVIS
PROJECT:	DATE: 1-20-17
DESIGNED BY: JAMES W. HARRIS	ARCHITECT: JAMES W. HARRIS
DRAWN BY: JAMES W. HARRIS	SCALE: 1/8" = 1'-0"

**EXHIBIT-B**

**Pictures of Subject Property w/Attached ADU**

Exterior Before & After

Front View - ADU Hidden w/Appearance of Single Family Home

ADU Entrance at North Side

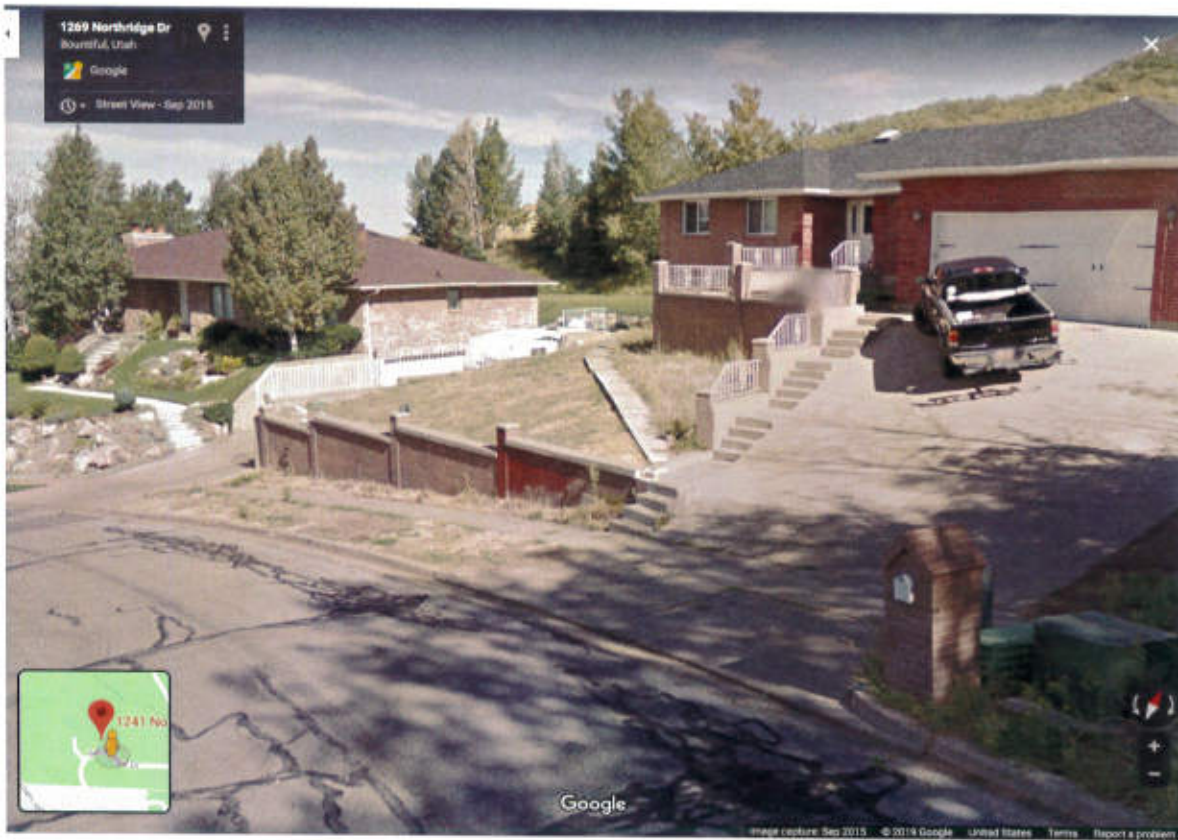
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**APPEAL:** Of Planning Director Denial Issued December 3, 2019

**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)

**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

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**EXHIBIT-C**

**E-Mail Communications Between Applicant & PC Staff**

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**APPEAL:** Of Planning Director Denial Issued December 3, 2019  
**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)  
**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

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## RE: 1253 Northridge Dr - Follow-up on Inspection and Site Plan

From: Francisco Astorga (fastorga@bountifulutah.gov)

To: larrysimper@yahoo.com

Cc: cpoole@bountifulutah.gov

Date: Monday, December 2, 2019, 01:35 PM MST

Mr. Simper,

We are glad that you appreciate my phone conversation with you last week regarding our official letter that will be sent to you shortly indicating that your application does not comply with the Code. The point of the inspection was to follow up on the specific conditions of approval (CoA) that were specified by the Administrative Committee:

- CoA no. 4 - The ADU shall meet all the criteria in 14-14-124 of the City Land Use Ordinance
- CoA no. 7 - Staff to verify that square footage is accurate through a site inspection

We have indeed provided you the opportunity to comply with the Code. We contacted you several items in May 2019 (certified mail), July 2019 (certified and regular), and August 2019 (voicemail) to make you aware of the violation consisting of an un-permitted Accessory Dwelling Unit (ADU). Assistant City Planner Curtis Poole spoke with you over the front counter in August 2019, as your Conditional Use Permit (CUP) application for the ADU was submitted to the City on September 10, 2019. Bountiful City Land Use Code indicates that ***it is unlawful to reside in, or allow to reside in, an accessory dwelling unit that has not received a conditional use permit or without written authorization from the Bountiful City Planning Department (14-14-124(C)(3)); furthermore, it also indicates that 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 (14-14-124(C)(10))***. While the City could have sent the case over to the City Prosecutor, the City choose to work with you to see if the CUP application for the ADU would work out with you. The City has been patient and prudent in working with you.

Again, the Administrative Committee approved the CUP for the ADU subject to the following Conditions of Approval on September 23, 2019.

1. The owner(s) of the property, or contract purchaser, must continually occupy the primary residence or the ADU. (ADU criteria C7)
2. The property is to be used only as a single-family use and shall be subject to a deed restriction. (ADU criteria C6)
3. There shall be no separate utility service connections. The applicant shall allow staff to verify that this condition is met by checking City and by inspecting the site. (ADU criteria C8)
4. The ADU shall meet all the criteria in 14-14-124 of the City Land Use Ordinance. (all ADU standards)
5. The Conditional Use Permit (CUP) is solely for this property and is non-transferable. (CUP § 14-2-511)
6. Staff to verify that square footage is accurate through a site inspection. (ADU criteria D1)

There were many complaints that were made against your application during the public hearing held by the Administrative Committee by your neighbors regarding your application. Most of them were dismissed by the Administrative Committee as they didn't apply to your request; however, where prudent, conditions of approval were clarified/added to verify compliance with the ADU Code, specifically; CoA no. 3 (last sentence added) and CoA no. 6

(added). You are incorrect that the City is searching for anything possible to deny the application for political reasons. Feel free to examine the Code to see how you may bring the structure/site up to compliance with the Code.

We will send you our official denial of the application in a certified letter once ready. We will be more than happy to also provide the same letter via e-mail as well. The agenda, packet, and approved meeting minutes of the Administrative Committee is found online at <https://www.bountifulutah.gov/Agenda-Minutes>, the records are filed in reverse chronological order.

Respectfully,

**Francisco Astorga, AICP | Director of Planning and Economic Development**

Bountiful City | ~~700 South 100 East~~ temporary address: 150 North Main Street, Suite 103, Bountiful, Utah 84010

801.298.6190 | [fastorga@bountifulutah.gov](mailto:fastorga@bountifulutah.gov)

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**From:** Larry Simper [mailto:[larrysimper@yahoo.com](mailto:larrysimper@yahoo.com)]  
**Sent:** Sunday, December 1, 2019 11:17 PM  
**To:** Francisco Astorga  
**Subject:** Re: 1253 Northridge Dr - Follow-up on Inspection and Site Plan

Dear Mr. Astorga,

I appreciate your input regarding the status of the approval process for the Conditional Use Permit for an ADU via telephone Tuesday 11/26. However, your statement that the application was denied based upon a lack of compliance with the 60/40 rule came as a total shock. It has been over two months since submittal, the owner(s) have allowed two inspections at your request (though not required), and in all communications to date, there was never any indication that we were not in compliance with said rule.

Furthermore, it is my understanding that when you have a specific rule in place, you must allow the owner(s) of the property, the opportunity to comply, with specificity as to what needs to be done for compliance. Without such a path to rectify, all building projects would grind to a halt. It just wouldn't be prudent.

Planning Commission Staff recommended approval of the CUP application at the public hearing held on 9/23. While several residents attended the hearing to protest ADU's in general, most complaints were not specific to the subject property, but resistance to change generally with an obvious ignorance and lack of understanding of the benefits of ADU's in the overall growth plan for the City. Such resistance should not hamper the approval process of a CUP application if the applicants meet all established criteria of the ADU Ordinance, as approved.

However, it appears evident at this juncture that you have been searching for anything possible to deny the application for political reasons, due to pressure or push-back from influential neighbors, and not based on substantive evidence. Was this your personal decision or was it made by vote with members of the City Planning Commission? What paths for compliance are available? Or are you saying there are none?

At your earliest convenience, please send me the reasoning behind the decision in written form via e-mail, together with a copy of all meeting transcripts related to said decision, or instructions on how to obtain them. Thank you.

Sincerely,

Larry Simper

Agent for Owner(s)

On Tuesday, October 15, 2019, 03:35:47 PM MDT, Francisco Astorga <fastorga@bountifulutah.gov> wrote:

Larry,

Curtis has been in and out of the office last week as well as this week taking care of some personal matters. I am currently in the process of determining compliance with the specific Accessory Dwelling Unit (ADU) Ordinance, as approved. These are the conditions that were part of the approval:

Conditions of Approval:

1. The owner(s) of the property, or contract purchaser, must continually occupy the primary residence or the ADU. (ADU criteria C7)
2. The property is to be used only as a single-family use and shall be subject to a deed restriction. (ADU criteria C6)
3. There shall be no separate utility service connections. The applicant shall allow staff to verify that this condition is met by checking City and by inspecting the site. (ADU criteria C8)
4. The ADU shall meet all the criteria in 14-14-124 of the City Land Use Ordinance. (all ADU standards)
5. The Conditional Use Permit (CUP) is solely for this property and is non-transferable. (CUP § 14-2-511)
6. Staff to verify that square footage is accurate through a site inspection. (ADU criteria D1)

Bountiful City Code indicates that an ADU shall not be approved, and shall be deemed unlawful, unless it meets all of the following criteria (See Condition of Approval no. 4) in *italics*:

1. *An accessory dwelling unit shall be conditionally permitted only within a single-family residential zone, and shall not be permitted in any other zone. The site is within the Single-Family Residential Zone (R-3).*

2. *It is unlawful to allow, construct, or reside in an accessory dwelling unit within a duplex or multi-family residential building or property. Proposal is within a single-family dwelling, not a duplex or multi-family residential.*
  
3. *It is unlawful to reside in, or allow to reside in, an accessory dwelling unit that has not received a conditional use permit or without written authorization from the Bountiful City Planning Department. I understand that the City received a complaint about this ADU and Code Enforcement contacted you. You then submitted the ADU CUP application to remedy the situation.*
  
4. *A maximum of one (1) accessory dwelling unit shall be permitted as a conditional use on any lot or parcel in a single-family zone. Only one (1) ADU is being requested.*
  
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. The site contains a habitable single-family dwelling.*
  
6. *A deed restriction limiting the use of a property to a single-family use, prepared and signed by the Bountiful City Planning Director and all owners of the property on which an accessory dwelling unit is located, shall be recorded with the Davis County Recorder's Office prior to occupancy of the accessory dwelling unit. If a building permit is required, then said deed restriction shall be recorded prior to issuance of the building permit. The Planning Department prepares the deed restrictions once the ADU CUP is approved in its written form. See Condition of Approval no. 2. See highlighted text below.*
  
7. *The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU, but not both, as their permanent residence and at no time receive rent for the owner occupied unit. Application for an ADU shall include proof of owner occupancy as evidenced by voter registration, vehicle registration, driver's license, county assessor records or similar means. The property owner, as specified in the ADU Ordinance includes the Contract Purchaser (Adam Kerr, buyer) which occupies the principal unit as a permanent residence. The contract purchaser (property owner or buyer) does not pay rent as the Contract for Deed is a seller financed agreement/mortgage. The City received owner occupancy as evidenced by voter registration. See Condition of Approval no. 1.*
  
8. *Separate utility meters shall not be permitted for the accessory dwelling unit. The Planning Department inspected the site on October 1, 2019 as specified on Condition of Approval (COA) no. 3 and found only one (1) gas, water, and power connection.*
  
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. The ADU maintains the appearance of a single-family residential use. The ADU entrance is located on the west side of the existing house.*

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. The site did not receive any permits for the ADU except for the filed CUP, as a result of the Code Enforcement complaint. See highlighted text below.*
  
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. In no case shall fewer than four (4) total off street parking spaces be provided with at least 2 of the spaces provided in a garage. Any additional occupant vehicles shall be parked off-street in City Code compliant parking areas. The site has a two (2) car garage and a two (2) vehicle carport.*

An attached ADU shall be deemed unlawful and shall not be occupied unless all of the following criteria are met:

1. *Shall not occupy more than forty percent (40%) of the total floor area square footage of the primary dwelling structure. As presented to the Administrative Committee by the applicant, the ADU is 1,630 square feet or 36% of the house; however, during the October 1, 2019 site inspection there were some areas that were not included on the submitted application. Staff is currently evaluating the updated floor plans submitted on October 3, 2019. See Condition of Approval no. 6.*
  
2. *Shall not exceed ten percent (10%) of the buildable land of the lot. The lot is 20,429 square feet and ten percent (10%) is 2,042.9 square feet.*
  
3. *Shall be at least three hundred fifty (350) sq ft in size. The proposed ADU complies.*
  
4. *Shall meet all of the requirements of the International Building Code relating to dwelling units. The Planning Department was not able to locate any ADU building permits issued by the Building office. We found the original 1985 permit for the house, and a 2004 mechanical permit. In order to find compliance with this ADU standard, we request to have the Bountiful City Building Inspector inspect the ADU and to have you explained what was built accommodating the ADU.*
  
5. *An attached accessory dwelling unit shall meet all of the required setbacks for a primary dwelling. The ADU was incorporated on the already built lower level of the existing single-family dwelling.*
  
6. *Shall not have a room used for sleeping smaller than one hundred twenty (120) square feet, exclusive of any closet or other space. The Planning Department is verifying with the applicant to make sure that it complies with this requirement.*

Please take a closer look at the highlighted text in yellow as it also applies to criteria 6 and 10 (first section) and also criteria 4 (second section). Staff would like to inspect the site with the Building Inspector to see if a building permit was required for the work already taken place in preparation for the already occupied ADU. We would like to schedule this inspection in the next two (2) weeks and we request your presence so you can explain the completed work/remodel/etc. Please let me know when we can



schedule this. This is required before we can issue your written approval of the ADU as it pertains to general compliance with the ordinance.

Sincerely,

**Francisco Astorga, AICP | Director of Planning and Economic Development**

Bountiful City | ~~790 South 100 East~~ temporary address: 150 North Main Street, Suite 103, Bountiful, Utah 84010

801.298.6190 | fastorga@bountifulutah.gov

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**From:** Larry Simper [mailto:larrysimper@yahoo.com]  
**Sent:** Thursday, October 3, 2019 9:21 AM  
**To:** Curtis Poole  
**Cc:** Francisco Astorga  
**Subject:** 1253 Northridge Dr - Follow-up on Inspection and Site Plan

Curtis,

As requested, attached you will find an updated Floor Plan in PDF format and Square Footage Detail for the ADU. I measured the exterior building envelope to get an accurate measurement of the entire building area, and I also measured each and every room/area of the ADU to ensure accuracy. I then updated the Floor Plan accordingly along with a detailed description of the measurements.

Please let me know if you need hard copies (E-Size Plots and/or 11x17 prints) of the Floor Plan, as I would be happy to print and drop them off to you, if needed. Also, please let me know if you need anything else in order to process the CUP Application and issue the Conditional Use Permit and deed restriction on behalf of Adam Kerr and LGI Properties I.L.C.

Respectfully,

Larry Simper

**EXHIBIT-D**

**Planning Director Denial of Conditional Use Permit**

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**APPEAL:** Of Planning Director Denial Issued December 3, 2019

**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)

**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

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RANDY C. LEWIS  
MAYOR

CITY COUNCIL  
Kate Bradshaw  
Kendalyn Harris  
Richard Higginson  
John Marc Knight  
Chris R. Simonsen

CITY MANAGER  
Gary R. Hill

**Certified Letter, and e-mail delivery to larrysimper@yahoo.com**

December 3, 2019

Adam Kerr, contract purchaser  
1253 Northridge Drive  
Bountiful, Utah 84010

Dear Mr. Kerr,

Please note that your submitted Conditional Use Permit (CUP) application for an accessory dwelling unit (ADU) located at 1253 Northridge Drive is hereby denied. This denial is based on the lack of compliance with condition of approval no. 6 as specified by the Bountiful City Administrative Committee.

After months of dealing with an un-approved ADU, on September 10, 2019 you submitted a CUP application to be reviewed by the Bountiful City Administrative Committee for an ADU. The Administrative Committee reviewed the application, held a public hearing, and approved the CUP for the ADU Unit with the following Conditions of Approval:

- 1. The owner(s) of the property, or contract purchaser, must continually occupy the primary residence or the ADU.**  
*(Per Bountiful City Land Use Ordinance § 14-14-124(C)(7)).*
- 2. The property is to be used only as a single-family use and shall be subject to a deed restriction.**  
*(Per Bountiful City Land Use Ordinance § 14-14-124(C)(6)).*
- 3. There shall be no separate utility service connections. The applicant shall allow staff to verify that this condition is met by checking City and by inspecting the site.**  
*(Per Bountiful City Land Use Ordinance § 14-14-124(C)(8)).*
- 4. The ADU shall meet all the criteria in 14-14-124 of the City Land Use Ordinance.**
- 5. The Conditional Use Permit (CUP) is solely for this property and is non-transferable.**  
*(Per Bountiful City Land Use Code § 14-2-511).*

**6. Staff to verify that square footage is accurate through a site inspection.**

*(Per Bountiful City Land Use Code § 14-14(D)(1)).*

(Code citations in parenthesis are added for reference).

As coordinated with Mr. Larry Simper, your applicant representative, staff conducted site inspections of the site on October 1, 2019 and on October 31, 2019 to confirm compliance with conditions of approval no. 3 and 6. Regarding condition of approval no. 3, staff recognized that there was one (1) utility service connection for both the principal unit and the ADU, making the proposal compliant with condition no. 3. Regarding condition of approval no. 6, staff inspections revealed that that the site is not in compliance with Bountiful City Land Use Code § 14-14-(D)(1) which states:

***An attached accessory dwelling unit shall be deemed unlawful and shall not be occupied unless all of the following criteria are met:***

- 1. Shall not occupy more than forty percent (40%) of the total floor area square footage of the primary dwelling structure.***

The proposal is not in compliance with the provision above as the footprint of the main level consisting of the principal unit, is essentially the same, as the footprint of the lower level, consisting of the proposed ADU. The only exceptions are some small bay windows/cantilevered areas that are located on the main level/principal unit that don't add up to 60% of the total floor area square footage.

The updated plans submitted by Larry Simper after September 23, 2019 reflect several changes from the original plans submitted, which included an entire bedroom labeled "*Not Occupied (Locked/Secured)*" while another area built as a narrow laundry room shows a significant portion of it labeled as "*Unfinished Area*". Although the application did not count these two (2) areas (based on the deadbolt placed on the door to the bedroom and showing a line on the updated plans delineating the "*Unfinished Area*" from the laundry area from the rest of the same room), staff considers these two (2) areas as part of the ADU. The bedroom's deadbolt can easily be replaced with a standard bedroom door handle, a key can be left in the deadbolt, or the door can be left unlocked. Perhaps most importantly, the bedroom is not contiguous to the principal unit nor is it accessible to the principal unit without passing through the ADU. With regards to the "laundry area" there is no permanent physical barrier consisting of a wall separating the labeled "laundry area" from the rest of that same room, just a line on an updated floor plan, and again, it is not contiguous to or accessible to the principal unit without passing through the ADU.

The bedroom labeled as "*Not Occupied (Locked/Secured)*" as well as the remaining portion of the laundry area labeled as "*Unfinished Area*" cannot be counted as part of the principal unit and the CUP application for the ADU does not meet the current Ordinance, specifically § 14-14-(D)(1); therefore, the application is denied.

Pursuant to Bountiful City Code § 14-2-104(E), you may appeal this decision. The appeal and accompanying appeal fee must be filed with the City by December 17, 2019 at 6 pm. The appeal provisions are found in Section 14-2-108 Appeals, 14-2-109 Appeal Authority, and 14-2-110 Property in Good Standing, of the Bountiful City Land Use Code. Don't hesitate to contact us should you have any questions.

Sincerely,



**Francisco Astorga, AICP**

**Administrative Committee Chair**

**O: 801-298-6190 | E: [fastorga@bountifulutah.gov](mailto:fastorga@bountifulutah.gov)**

Certified Copies to:

ADU Tenant: Michael Castro  
1253 Northridge Drive  
Bountiful, UT 84010

Owner agent: Larry Simper  
1819 South 900 East  
Salt Lake City, UT 84105

## Attachment 1

### 14-3-102 DEFINITIONS

[...]

4. ACCESSORY DWELLING UNIT (also “Accessory In-Law Apartment”): A self-contained dwelling unit within an owner occupied single-family residence or located on an owner occupied property that is either incorporated within the single-family residence or in a detached building which maintains complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation including a separate kitchen and/or laundry facilities.

[...]

### 14-14-124 ACCESSORY DWELLING UNIT

#### A. Purpose:

The city recognizes that accessory dwelling units (ADUs) in single-family residential zones can be an important tool in the overall housing plan for the city. The purposes of the ADU standards of this code are to: Allow opportunities for property owners to provide social or personal support for family members where independent living is desirable;

1. Provide for affordable housing opportunities;
2. Make housing units available to moderate income people who might otherwise have difficulty finding homes within the city;
3. Provide opportunities for additional income to offset rising housing costs;
4. Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle; and
5. Preserve the character of single-family neighborhoods by providing standards governing development of ADUs.

B. An accessory dwelling unit shall only be approved as a conditional use.

C. An accessory dwelling unit shall not be approved, and shall be deemed unlawful, unless it meets all of the following criteria:

1. An accessory dwelling unit shall be conditionally permitted only within a single-family residential zone, and shall not be permitted in any other zone.
2. It is unlawful to allow, construct, or reside in an accessory dwelling unit within a duplex or multi-family residential building or property.

3. It is unlawful to reside in, or allow to reside in, an accessory dwelling unit that has not received a conditional use permit or without written authorization from the Bountiful City Planning Department.
  4. A maximum of one (1) accessory dwelling unit shall be permitted as a conditional use on any lot or parcel in a single-family zone.
  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.
  6. A deed restriction limiting the use of a property to a single-family use, prepared and signed by the Bountiful City Planning Director and all owners of the property on which an accessory dwelling unit is located, shall be recorded with the Davis County Recorder's Office prior to occupancy of the accessory dwelling unit. If a building permit is required, then said deed restriction shall be recorded prior to issuance of the building permit.
  7. The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU, but not both, as their permanent residence and at no time receive rent for the owner occupied unit. Application for an ADU shall include proof of owner occupancy as evidenced by voter registration, vehicle registration, driver's license, county assessor records or similar means.
  8. Separate utility meters shall not be permitted for the accessory dwelling unit.
  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.
  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.
  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. In no case shall fewer than four (4) total off street parking spaces be provided with at least 2 of the spaces provided in a garage. Any additional occupant vehicles shall be parked off-street in City Code compliant parking areas.
- D. An attached accessory dwelling unit shall be deemed unlawful and shall not be occupied unless all of the following criteria are met:

1. Shall not occupy more than forty percent (40%) of the total floor area square footage of the primary dwelling structure,
  2. Shall not exceed ten percent (10%) of the buildable land of the lot,
  3. Shall be at least three hundred fifty (350) sq ft in size,
  4. Shall meet all of the requirements of the International Building Code relating to dwelling units,
  5. An attached accessory dwelling unit shall meet all of the required setbacks for a primary dwelling.
  6. Shall not have a room used for sleeping smaller than one hundred twenty (120) square feet, exclusive of any closet or other space,
- E. A detached accessory dwelling unit shall meet all of the above criteria, plus the following:
1. Shall require a conditional use permit, reviewed and approved by the Bountiful City Administrative Committee.
  2. Shall not be located on a lot with less than eight thousand (8,000) square feet buildable land.
  3. Shall be configured so that any exterior doors, stairs, windows, or similar features are located as far away from adjoining properties as is reasonably possible to provide privacy to those properties.
  4. Shall meet all of the setbacks required of a detached accessory structure requiring a conditional use permit.



**EXHIBIT-E**

**Planning Commission Administrative Committee Meeting Minutes**

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**APPEAL:** Of Planning Director Denial Issued December 3, 2019

**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)

**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

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**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 Bactz

**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 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 the 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.**

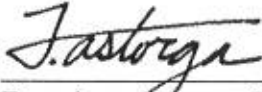
Mr. Clawson made a motion to approve a Conditional Use Permit, in written form, to allow for an Accessory Dwelling Unit at 2220 South 900 East, Carrie & Tad Mills, applicants. Mr. Astorga seconded the motion.

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

**Bountiful City**  
**Administrative Committee Minutes**  
**October 21, 2019**

**Present:** Chairman – Francisco Astorga; Committee Members – Dave Badham and Brad Clawson; Recording Secretary – Julie Holmgren

**1. Welcome and Introductions.**

Chairman Astorga opened the meeting at 5:05 p.m. and introduced all present.

**2. Consider approval of minutes for September 23, 2019 and September 30, 2019.**

Mr. Astorga referred to a highlighted copy of the minutes for September 23, 2019 and outlined necessary changes on page eight of the minutes as follows: (1) replace all occurrences of the word “contractor” with “contract,” (2) replace references of “contract owner” with “contract purchaser,” and (3) change the word “inhabitable” to “uninhabitable.” Mr. Astorga made a motion to approve the minutes for September 23, 2019 with the changes described herein. Mr. Badham seconded the motion.

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

Motion passed 3-0.

Mr. Badham made a motion to approve the minutes for September 30, 2019. Mr. Astorga seconded the motion.

  A      Mr. Astorga  
        Mr. Clawson (abstained)  
  A      Mr. Badham

Motion passed 2-0.

**3. Consider approval of a Lot Line Adjustment at 1060 John Thomas Circle and 1619 Lakeview Drive, Blake & Julie Murdock and Lauren Schweikle, applicants.**

Julie Murdock, applicant, was present, along with her contractor, Kevin Hunt.

Mr. Astorga presented the staff report (the full staff report follows).

The applicants are requesting a Lot Line Adjustment between two properties located at 1060 John Thomas Circle and 1619 Lakeview Drive. Both properties, shown as Lot 46 and Lot 6, are located in the R-3 zone. The purpose of the adjustment is to convey a portion of Lot 6 to Lot 46. Lot 6 will convey 82 square feet (0.002 acres), shown as Conveyance Parcel to Lot 46. The adjustment will bring Lot 6 to 13,208 square feet (0.30 acres) and Lot 46 to 18,819 square feet (0.43 acres). No new lots are being created in the conveyance of property.

1. No new lots were created in this conveyance so an amended subdivision plat will not be necessary.
2. No new building permits have been issued or proposed.

Based on the above findings, Staff recommends approval of the lot line adjustment, with the following conditions:

1. Complete any redline corrections required on the plat.
2. The approved lot line adjustment shall be recorded with Davis County.

**Note:** Approval of the property line adjustment by the City does not act as a conveyance of real property and appropriate conveyance documents must be prepared by the applicant and recorded by the County.

Mr. Badham inquired regarding the conveyance of property, and Mr. Hunt indicated that a quit claim deed would be utilized in the transaction. Mr. Badham inquired regarding the permitting process, and Mr. Hunt noted that the project is under permit but the lot line adjustment will accommodate a wider separation in the patio walkway area.

Mr. Badham made a motion for approval of a Lot Line Adjustment at 1060 John Thomas Circle and 1619 Lakeview Drive, Blake & Julie Murdock and Lauren Schweikle, applicants. Mr. Clawson seconded the motion.

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 an Accessory Dwelling Unit at 231 South 1300 East, Marci Rosenlof and Chad & Jamee Lefler, applicants.**

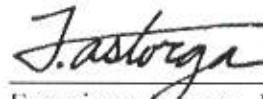
Mr. Badham made a motion for approval of a Conditional Use Permit, in written form, to allow for an Accessory Dwelling Unit at 231 South 1300 East, Marci Rosenlof and Chad & Jamee Lefler, applicants. Mr. Clawson seconded the motion.

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

Motion passed 3-0.

5. **Miscellaneous business and scheduling.**

Mr. Astorga made reference to the September 23 committee item regarding an ADU on Northridge Drive. He noted that the written form for that item would be on the Administrative Committee agenda in the near future – even if no regular meeting was scheduled. Mr. Astorga noted the need for transparency and also the need to provide the proper time period for a decision appeal, if necessary. Mr. Astorga outlined a few future projects including: a review of ADU trends since the code change, the Moderate Income Housing Plan, and trails plans. He ascertained there were no further items of business, and the meeting was adjourned at 5:25 p.m.



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Francisco Astorga, Planning Director

**Bountiful City**  
**Administrative Committee Minutes**  
**November 18, 2019**

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

**1. Welcome and Introductions.**

Chairman Astorga opened the meeting at 5:02 p.m. and introduced all present.

**2. Consider approval of minutes for October 21, 2019.**

Mr. Badham made a motion to approve the minutes for October 21, 2019. 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 66 East 1200 South, Todd Willey, applicant.**

Todd Willey, applicant, was present.

Curtis Poole presented the staff report (the full staff report follows).

The Applicant is requesting approval of a detached Accessory Dwelling Unit (ADU). The Applicant constructed a detached garage and is now requesting to modify the existing structure to include a partial garage with an ADU. The Applicant applied for, and received approval to build the detached garage. Plans submitted show the unit will have 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-4 Single-Family Residential Zone and consists of a single-family dwelling which will be maintained as such by the Applicant. The lot is 0.242 acres (10,541 square feet). There will only be one (1) ADU and there will only be one (1) utility connection located at this property. The ADU is approximately 1,160 square feet, and the home is 4,264 square feet, which is less than the 40% standard in the Code.

The property currently meets the parking standard required for approval. The primary dwelling has a three-car garage, plus parking in the driveway. In addition to the primary dwelling parking the detached garage has parking in front of the garage. The entrance to the ADU is on the east side of the detached garage, facing the primary dwelling 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.

Based upon the above findings, Staff has determined the Applicant 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 must continually occupy the primary dwelling 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. Prior to beginning any construction on the ADU, the Applicant shall receive a building permit.
4. The Applicant shall resolve any concerns regarding setbacks, especially the distance from the detached garage to the primary dwelling, to the satisfaction of the Building Official, prior to receiving a Certificate of Occupancy.
5. There shall be no separate utility service connections.
6. The ADU shall meet all the standards in 14-14-124 of the City Land Use Ordinance.
7. The Conditional Use Permit is solely for this property and is non-transferable.

Mr. Poole noted that Mr. Willey currently has a permit for the detached garage and that it was red-tagged by the Engineering Department. Mr. Poole suggested that the distance issues be resolved prior to commencement of the ADU work. Mr. Astorga asked if the garage permit would be converted to an ADU permit, and Mr. Willey stated that there has not yet been an ADU permit issued, and that the original permit was for an RV garage. Mr. Astorga inquired regarding the utility services, and Mr. Willey stated that there is currently no power to the garage structure and that he is working with the Power Department regarding power specifications for the project. Mr. Astorga asked if there would only be one utility connection, and Mr. Willey said that was correct. Mr. Astorga referred to condition #4 and suggested that it be modified to include the words "specified in the Land Use Code" before the comma; this is in order to clarify that the setback is not dictated by the Building Official. Mr. Astorga referred to the plans for the ADU and specifically questioned the one foot setback distance. Mr. Willey stated that was a typographical error and should read as three feet, and he was tasked with remedying the error on the site plan. Mr. Astorga stated that in order to comply with the city code the wall must be at least three feet from the property line. Mr. Badham further clarified that the eaves can have a one foot overhang, leaving two feet of distance to the property line. Mr. Badham explained his role as citizens' representative on the committee and explained that he is finding that many Bountiful residents oppose ADUs. He further explained that the committee's role is to determine if an ADU applicant follows the ADU guidelines. Mr. Badham referenced the applicant's setbacks and the existing problem with the eaves and inquired if the project was properly permitted. Mr. Poole noted that the garage was built with a permit, but it was discovered by an inspector that the garage eaves were too close to the home. Mr. Badham suggested that the typo on the site plan not merely be changed but also verified, and Mr. Poole noted that the Planning Department could measure the area but that the Building Inspector would measure that area as part of his inspection. Mr. Astorga explained that property line disputes are not uncommon in the city and suggested that in the future it might be advisable to require applicants to obtain a survey or a surveyor's letter regarding the property lines – especially if a proposed project is situated

near a property line. A discussion ensued regarding the property setbacks and the proposed solution to the eaves issue. Mr. Willey noted that city staff had verified his setbacks in approximately 2016. Mr. Badham speculated that city staff based their verification on information provided but does not certify it. Mr. Willey explained that the setbacks were measured during a garage foundation inspection, and Mr. Badham reiterated that the city does not certify the setbacks nor take responsibility. Mr. Willey explained that the current setback problem would be rectified by clipping the corners of the eaves and that this clipping proposal had been discussed with the city inspector and determined to be a feasible solution. Mr. Astorga read from the code that "an accessory structure shall be located at least five (5) feet from a primary structure, including eaves, bay windows, chimneys, and any other protrusion on either the accessory building or the primary structure." Mr. Willey requested the Certificate of Occupancy be contingent on him correcting the eaves issue rather than making the ADU permit contingent on the correction. Mr. Poole noted that work on the current building permit has been halted and no further construction can occur until the eaves issue has been rectified. Mr. Badham stated his belief that the committee does not have jurisdiction over the Certificate of Occupancy decision. Mr. Badham inquired regarding utilities for the ADU, and Mr. Willey explained that the power line would be run up the backside of the ADU (and not under the structure), there would be no gas line, and the structure already has water and sewer. Mr. Badham asked if the sewer had been inspected, and Mr. Willey said yes. Mr. Badham observed that the property has a large area covered by concrete and inquired regarding the code specifications for landscaping. Mr. Poole stated that landscaping code requires 50% front, 50% side and 50% rear. Mr. Badham expressed concern regarding too much concrete on the property. Mr. Willey noted that he had previously obtained a permit for work on his property and there were no issues regarding green space. A discussion ensued regarding the concrete, and Mr. Poole recommended that the committee investigate the issue to determine if modifications should be required. Mr. Badham queried if more concrete was possibly poured than was originally included on the plan. Mr. Astorga raised a question regarding the main door through the garage and wondered if it could be relocated in the back. Mr. Willey stated that he discussed the plans with his architect and they did not see that as a potential problem.

**PUBLIC HEARING:** Mr. Astorga opened the Public Hearing at 5:38 p.m. and closed the hearing at 5:39 p.m. with no comments from the public.

Mr. Willey stated that the current garage project has already had a permit issued and inspected and everything prior to the eaves situation passed.

Mr. Astorga made a motion for approval of a Conditional Use Permit to allow for an Accessory Dwelling Unit at 66 East 1200 South, Todd Willey, applicant, with the following modifications to conditions: First, change condition #4 to read as, "The Applicant shall resolve any concerns regarding setbacks specified in the Land Use Code, especially the distance from the detached garage to the primary dwelling, to the satisfaction of the Building Official, prior to receiving a building permit." Second, add an additional condition which reads, "A site plan shall be submitted to the City showing appropriate compliance with applicable codes. The site plan shall also show the existing landscaping for comparison to issued plans." Mr. Badham clarified that if the existing landscaping meets with what is on an approved plan then the landscaping will be deemed compliant. Mr. Badham asked if the



question of egress needed to be added to the conditions, and Mr. Astorga indicated it did not. Mr. Clawson seconded the motion.

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

Motion passed 2-1.

**4. Miscellaneous business and scheduling.**

Mr. Astorga ascertained there were no further items of business, and the meeting was adjourned at 5:45 p.m.

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Francisco Astorga, Planning Director

PENDING APPROVAL

**EXHIBIT-F**

**Utah Bar Journal Article - Law of Acquiescence**

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**APPEAL:** Of Planning Director Denial Issued December 3, 2019

**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)

**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

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## Settling Boundary Disputes Using Utah's Boundary by Acquiescence Doctrine

by Elliot R. Lawrence

Not too long ago, I took a call from a property owner involved in a boundary dispute. A masonry wall had stood for several years, separating her parcel from a neighboring property. A new owner had recently purchased the neighboring property, and he discovered that the wall had been built about ten feet onto his parcel. He immediately demanded that it be removed, so he could install a swimming pool. The woman protested, but he hired a contractor, who began removing the wall and her flower bed. She was distraught, but at that point, she had no choice but to begin legal action against her neighbor. If the parties had understood the boundary by acquiescence theory, they could have settled the dispute and avoided litigation.

Boundary by Acquiescence is an equitable doctrine applied to resolve property line disputes based on recognition of long-established markers used to identify boundaries. "Its essence is that where there has been any type of a recognizable physical boundary, which has been accepted as such for a long period of time, it should be presumed that any dispute or disagreement over the boundary has been reconciled in some manner." *Baum v. Defa*, 525 P.2d 725, 726 (Utah 1974). The boundary by acquiescence principle was recognized in Utah as early as 1887. See *Switzgable v. Worseldine*, 5 Utah 315, 15 P. 144 (Utah 1887).

Boundary by acquiescence is not found in the Utah Code but was developed over many years by Utah's appellate courts. It is intended to guide property owners, prevent inequity, and help avoid litigation. The doctrine thus promotes stability in property descriptions, contributing to the "peace and good order of society." *Babr v. Imus*, 2011 UT 19, ¶ 35, 250 P.3d 56.

### The Equitable Underpinning of Boundary by Acquiescence

Boundary by acquiescence, like the similar doctrines of adverse possession or prescriptive easements, prevents inequity by recognizing long acceptance of property use or occupation.

The very reason for being of the doctrine of boundary by acquiescence... is that in the interest of preserving the peace and good order of society the quietly resting bones of the past, which no one seems to have been troubled or complained about for a long period of years, should not be unearthed for the purpose of stirring up controversy, but should be left in their repose.

*Hobson v. Panguitch Lake Corp.*, 530 P.2d 792, 794 (Utah 1975). Altering property ownership is not to be taken lightly but may be necessary to prevent inequity and injustice and to recognize property rights arising from reliance on long-standing use. "It is not unjust in certain cases to require disputing owners to live with what they and their predecessors have acquiesced in for a long period of time." *Staker v. Ainsworth*, 785 P.2d 417, 422 (Utah 1990) (citation and internal quotation marks omitted).

### Elements of Boundary by Acquiescence

A property owner must prove the following four elements in order to successfully establish a boundary by acquiescence: "(1) occupation up to a visible line marked by monuments, fences, or buildings, (2) mutual acquiescence in the line as a boundary, (3) for a long period of time, (4) by adjoining landowners." *Babr*, 2011 UT 19, ¶ 35. The person asserting a claim for boundary by acquiescence has the burden of proof. And, because application of the acquiescence doctrine alters an

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owner's interest in real property, all four elements must each be established by "clear and convincing" evidence. *Essential Botanical Farms, LC v. Kay*, 2011 UT 71, ¶ 22, 270 P.3d 430, 437. If any of the four elements are not proven, the claim fails. *Hales v. Frakes*, 600 P.2d 556, 559 (Utah 1979).

For a time, a fifth element – objective uncertainty as to the correct boundary line's location – was also required. However, in 1990, the Utah Supreme Court eliminated that requirement, holding that it made "boundary by acquiescence less practical," and that the extra element would lead to more litigation rather than less. *Staker*, 785 P.2d at 423.

### Occupation Up to a Visible Line

The occupation element requires actual or constructive occupation and use of the area in question, not just a mere claim to the property. "The first element [of boundary by acquiescence] may be satisfied where land up to the visible, purported boundary line is farmed, occupied by homes or other structures, improved, irrigated, used to raise livestock, or put to similar use." *Babr v. Imus*, 2011 UT 19, ¶ 36, 250 P.3d 56. The occupation should be consistent with "a pattern of use that is normal and appropriate for the character and location of the land." *Dean v. Park*, 2012 UT App 349, ¶ 29, 293 P.3d 388 (internal citation omitted). An encroaching owner may not claim a new boundary if access and occupancy of a parcel up to the correct boundary by the neighboring property owner is impossible. *Carter v. Hanrath*, 925 P.2d 960, 962 (Utah 1996) (holding that inability to access and occupy all of parcel is not acquiescence in a new boundary).

The purpose of the occupancy element is not the extent of the use or occupancy, but whether the owners have knowledge of conditions and activities which might alter the ownership rights in the property, so that there is opportunity to interrupt or alter those conditions or activities. See *Anderson v. Fautin*, 2014 UT App 151, ¶ 18, 330 P.3d 108, 113. "Constructive" occupation, even if intended plans are not carried out, may also satisfy the occupation requirement, if the owners have knowledge of the conditions prevailing on the property. See *Harding v. Allen*, 10 Utah 2d 370, 353 P.2d 911, 914–15 (Utah 1960).

The line claimed as the boundary "must be definite and certain, [with] physical properties such as visibility, permanence, stability, and a definite location." *Gillmor v. Cummings*, 904 P.2d 703, 707 (Utah Ct. App. 1995). The claimed boundary line "must be open to observation" and "must be definite, certain and not

speculative." *Fuoco v. Williams*, 421 P.2d 944, 946 (Utah 1966). In *Fuoco*, the court found that an unused irrigation ditch was not permanent, visible, or stable enough to mark a purported boundary. *Id.* at 946–47.

Ultimately, the measure of whether the occupation requirement has been satisfied is to establish that a claimant's occupation up to, but not over, the purported boundary "would place a reasonable party on notice that the given line was treated as the boundary between the properties." *Babr*, 2011 UT 19, ¶ 36. It follows, therefore, that occupation and use of property without regard to a fixed line would probably not be sufficient to establish a boundary by acquiescence.

### Marked by Monuments, Fences, or Buildings

The purported boundary line must be clearly marked, again so that a reasonable person would realize that the line was being treated as the property boundary. "A monument must be some tangible landmark to indicate a boundary" *Englert v. Zane*, 848 P.2d 165, 169 (Utah Ct. App. 1993) (citation omitted). The monument, building, or fence may be replaced or even altered,

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but, as long as the same visible line is treated as the boundary, an acquiescence claim may still be successful. *See Orton v. Carter*, 970 P.2d 1254, 1257–58 (Utah 1998).

The purpose of the fence, building, or monument and whether it was installed to mark a property boundary is important. A structure or other marker erected as part of the normal use of the property, may identify a boundary only if the owners treated it as such. A temporary, moveable fence used to control livestock, but not intended to delineate a boundary, would not be sufficient to support a claim for a new boundary by acquiescence. *Pitt v. Taron*, 2009 UT App 113, ¶ 2, 210 P.3d 962.

Most of the cases addressing boundary by acquiescence have concerned an artificial marker, such as a fence or building. Natural features, however, may also serve to mark a purported boundary line, as long as the affected owners acquiesce in the feature as marking the boundary. *Englert*, 848 P.2d at 170 (treating a river as property boundary). The nature of the marker is not critical. “[T]he law merely requires ‘a recognizable physical boundary of *any character*, which has been acquiesced in as a boundary for a long period of time.’” *Orton*, 970 P.2d at 1257 (citations omitted).

#### Mutual Acquiescence in the Line as a Boundary

The “heart” of boundary by acquiescence is mutual recognition by adjoining property owners that a visible line marks the boundary between the properties. This element is satisfied “where neighboring owners recognize and treat an observable line, such as a fence, as the boundary dividing the owner’s property from the adjacent landowner’s property.” *Babr v. Imus*, 2011 UT 19, ¶ 37, 250 P.3d 56. Because it is based on the actions of the property owners, acquiescence is highly fact dependent. *Essential Botanical Farms, LC v. Kay*, 2011 UT 71, ¶ 26, 270 P.3d 430. What the owners intended regarding placement of the boundary is not a factor. “[A] party’s subjective intent has no bearing on the existence of mutual acquiescence.” *Id.* ¶ 27, 439. Since acquiescence may be implied or inferred by the owners’ actions, it is not necessary to show that the owners explicitly agreed that the line was the property boundary. *Wilkinson Family Farm, LLC v. Babcock*, 1999 UT App 366, ¶ 8, 993 P.2d 229.

“Mutual acquiescence in a line as a boundary has two requirements: that both parties recognize the specific line, and that both parties acknowledge the line as the demarcation between the properties.” *Id.* (citation omitted). Acquiescence

thus requires more than just the existence of some identifiable line. “[T]he mere fact that a fence happens to be put up and neither party does anything about it for a long period of time will not establish it as the true boundary.” *Brown v. Jorgensen*, 2006 UT App 168, ¶ 16, 136 P.3d 1252, 1257 (citation omitted).

Acquiescence may be established by the direct actions of the property owners regarding the purported boundary. It may also “be tacit and inferred from evidence, i.e., the landowner’s actions with respect to a particular line may evidence that the landowner impliedly consents, or acquiesces, in that line as the demarcation between the properties.” *Ault v. Holden*, 2002 UT 33, ¶ 19, 44 P.3d 781. Even silence and inaction may be evidence of acquiescence. *See Anderson v. Fautin*, 2014 UT App 151, ¶ 21, 330 P.3d 108, 114.

Any person familiar with the situation could offer relevant testimony concerning whether the property owners considered a particular line as the property boundary. *See RHN Corp. v. Veibell*, 2004 UT 60, ¶ 27, 96 P.3d 935; *Martin v. Lauder*, 2010 UT App 216, ¶ 6 n.4, 239 P.3d 519.

In order for the acquiescence to be mutual, “both parties must have knowledge of the existence of a line as [the] boundary line.” *Wilkinson Family Farm*, 1999 UT App 366, ¶ 8 (citations omitted). Since acquiescence is determined by the owners’ objective actions and not their mental state or intent, a party’s actual knowledge of the correct boundary is relevant to determine acquiescence, but it is not necessarily fatal to the claim. *Id.* ¶ 13. In like manner, while a deed provides constructive notice of the correct boundaries, a deed description by itself is insufficient to negate an acquiescence claim. *RHN Corp.*, 2004 UT 60, ¶ 28. Finally, a party’s subjective belief concerning the location of the boundary could also be relevant to a boundary by acquiescence action. *Id.* ¶ 26.

A claim of mutual acquiescence may be countered by actions indicating that either property owner did not recognize or treat the purported line as marking the property boundary. *Ault*, 2002 UT 33, ¶ 20. Objections to the use or occupancy of the property are sufficient. “[M]ere conversations between the parties evidencing either an ongoing dispute...or an unwillingness...to accept the line as the boundary refute any allegation that the parties have mutually acquiesced....” *Id.* ¶ 21. In addition, evidence that the boundary had already been settled in an earlier dispute may defeat a new claim for boundary by acquiescence. *See Low v. Bonacci*, 788 P.2d 512, 513 (Utah 1990).

### For a Long Period of Time

Utah's courts have firmly established that twenty continuous years is the minimum period of time required for a successful boundary by acquiescence claim. *Jacobs v. Hafen*, 917 P.2d 1078, 1080-81 (Utah 1996). Any interruption in that period, however brief, "restarts the clock for determining boundary by acquiescence." *Orton v. Carter*, 970 P.2d 1254, 1258 (Utah 1998) (citing a Colorado case where a two-week period of common ownership disrupted the acquiescence period).

When a twenty-year period of mutual acquiescence is proven, the new boundary is delineated, even if actions taken after the twenty-year period would otherwise defeat a claim. "Once adjacent landowners have acquiesced in a boundary for a long period of time, the operation of the doctrine of boundary by acquiescence is not vitiated by a subsequent discovery of the true record boundary by one of the parties." *RHN Corp.*, 2004 UT 60, ¶ 31.

Finally, "once adjacent landowners have acquiesced to a visible boundary other than the recorded property line for the requisite

twenty years, the encroaching landowner's possession ripens into legal title by operation of law, extinguishing the other landowner's legal title to any part of the disputed land." *Q-2, LLC v. Hughes*, 2014 UT App 19, ¶ 11, 319 P.3d 732 (citation omitted). In other words, title to the disputed property is transferred when all of the elements of boundary by acquiescence are established, even if some time has passed, and regardless of when it is confirmed that the elements have been satisfied. When all elements are satisfied, the new boundary would be established from that point and could impact subsequent events pertaining to the property. *Id.*, ¶¶ 14-18, (holding that there was sufficient evidence to establish a subsequent adverse possession claim).

### By Adjoining Landowners

Although it seems a bit obvious, a new boundary may only be established when adjoining property owners mutually acquiesce in a purported boundary. See *Brown v. Milliner*, 232 P.2d 202 (Utah 1951) (noting unsuccessful cases that did not involve adjoining owners). Boundary by acquiescence may not be invoked

## ClydeSnow

### Attorney Victoria Bunch Joins Clyde Snow & Sessions



Victoria Bunch  
vbunch@clydesnow.com  
(801) 322-2516

Clyde Snow & Sessions is pleased to welcome attorney Victoria Bunch as an associate in their Salt Lake City office. Ms. Bunch will be focusing her practice on civil and business litigation, and in particular, medical malpractice defense, contract claims, and employment claims. She received a J.D. from the University of Utah S.J. Quinney College of Law graduating with honors, and a B.A. in government from University of Texas, graduating *cum laude*.

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when one of the properties is in the public domain. *Carter v. Hanrath*, 925 P.2d 960, 962 (Utah 1996). In addition, the dispute must involve a common boundary. For example, in *Switzgable v. Worseldine*, 15 P. 144 (Utah 1887), the dispute concerned the correct placement of other property lines, but not the common boundary between the parties' parcels. *Id.* at 144–45.

The actions of previous owners may establish a boundary by acquiescence, which would bind subsequent purchasers, even if those purchasers acted in good faith and identified the correct boundary. See *Q-2*, 2014 UT App 19, ¶ 13, 319 P.3d 732. Boundary by acquiescence, however, cannot derive from actions of non-owners regarding the boundary, even if they are familiar with the property and even if they have an interest in the placement of the boundary. “[A]cquiescence between [non-owners] was impossible because they could not permissibly settle their dispute by adjusting the boundary on property neither of them owned.” *Argyle v. Jones*, 2005 UT App 346, ¶ 12, 118 P.3d 301.

Several boundary by acquiescence cases have involved properties owned by corporate entities rather than individuals. However, none of these cases have directly addressed the question of how a corporate entity's actions could be construed as mutual acquiescence. It stands to reason that only the actions of the individuals responsible for the corporate entity could establish that a purported line was recognized and treated as the property boundary. See *Judd Family Ltd. P'ship v. Hutchings*, 797 P.2d 1088, 1090 (Utah 1990). It also follows that actions by individuals who are not in a position of responsibility, i.e., employees, could not establish acquiescence of a corporate entity through their actions.

### Conclusion

As the old adage goes, “[g]ood fences make good neighbors.” Obviously, it is better to avoid potential boundary disputes through correct measurement and placement of fences or other boundary markers. Unfortunately, most property boundaries are not reviewed on a regular basis, so mistakes can be perpetuated for several years and later cause heated disputes between neighbors. Many years ago, the Utah Supreme Court acknowledged this fact of life, with a small dose of cynicism:

It is significant that in most cases, a physical, visible means of marking the boundary was effected at a

time when it was cheaper to risk the mistake of a few feet rather than to argue about it, go to court, or indulge the luxury of a survey, pursuance of any of which motives may have proved more costly than the possible but most expedient sacrifice of a small land area. The rub comes when, after many years, land value appreciation tempts a test of the vulnerability of a claimed ancient boundary. The struggle usually involves economics. Nothing is wrong in the urge to acquire or retain. But neither is there anything wrong in the law's espousal of a doctrine that says that with the passage of a long time, accompanied by an ancient visible line marked by monuments with other pertinent and particular facts, and with a do-nothing history on the part of the parties concerned, can result in putting to rest titles to property and prevent protracted and often belligerent litigation usually attended by dusty memory, departure of witnesses, unavailability of trustworthy testimony, irritation with neighbors and the like. This idea is based on the concept that we must live together in a spirit justifying repose or fixation of titles where there has been a disposition on the part of neighbors to leave an ancient boundary as is without taking some affirmative action to assert rights inconsistent with evidence of a visible, long-standing boundary. In the vernacular, the doctrine might be paraphrased to enunciate that boundaries might be established by an “I don't give a hoot” attitude on the part of neighbors.

*King v. Fronk*, 14 Utah 2d 135, 378 P.2d 893, 896 (Utah 1963).

In a successful boundary by acquiescence action, there will be a winner and a loser. One owner will forfeit property, and another may gain a significant amount of land. See *LPM Corp. v. Smith*, 2006 UT App 258, ¶ 12, 139 P.3d 292 (holding that ownership of entire parcel may be transferred through boundary by acquiescence). Since the stated purpose of the boundary by acquiescence doctrine is to avoid litigation, attorneys who counsel property owners facing boundary disputes should become familiar with the doctrine, and apply it to resolve matters outside of court. While litigation may sometimes be necessary, understanding the boundary by acquiescence doctrine may lead to settlement through negotiation or through alternate dispute resolution.

**EXHIBIT-G**

**Excerpts From Salt Lake City Planning ADU Handbook**

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**APPEAL:** Of Planning Director Denial Issued December 3, 2019  
**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)  
**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

---



451 S. State Street, Room 406  
Salt Lake City, UT 84114 - 5480  
P.O. Box 145480

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*This handbook provides general guidelines for property owners who want to add an ADU to a lot that already has an existing single-family home. However, it is recommended to work with a City Planner to help you answer any questions and coordinate your application.*

---

ADU regulations can change, visit our website to ensure latest version of the guide.

www.slc.gov/planning  
version 1.1 // 07.2019

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# OVERVIEW

---

## WHERE ARE WE?

Utah is facing a housing shortage, with more people looking for a place to live than there are homes. Low unemployment and an increasing population are driving a demand for housing. Growing SLC is the City's adopted housing plan and is aimed at reducing the gap between supply and demand. Growing SLC includes a number of policies to increase the housing supply including ADUs.

Accessory dwelling units are part of a range of housing types that can help increase the housing supply with minimal impacts to the scale of an existing neighborhood. This makes ADUs a good option to help provide more housing in parts of the city where other types of housing may be too tall, too wide, or too bulky with the surrounding structures.

In addition to the zoning ordinance, ADUs are subject to building code requirements, utility requirements, fire codes, and other applicable regulations that apply to all new buildings and additions to buildings. These codes will add construction costs that may be significant. Before you apply for an ADU, it is recommended you meet with the City's Building Services Division to discuss applicable building code requirements that may make it costly to build an ADU.

---

[building.services@slc.gov](http://building.services@slc.gov) // 801.535.6000

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4

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## WHAT IS AN ADU?

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An accessory dwelling unit (ADU) is a complete secondary residential unit that can be added to a single-family residential lot. ADUs can be attached to or part of the primary residence, or be detached as a separate building in a backyard or a garage conversion. An ADU provides completely separate living space including a kitchen, bathroom, and its own entryway.

---

## WHY BUILD AN ADU?

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Building a new ADU or converting existing space into one, can be a smart investment for many single-family homeowners.



*Increase Your Property Value*



*House Friends & Family*



*Generate Rental Income*

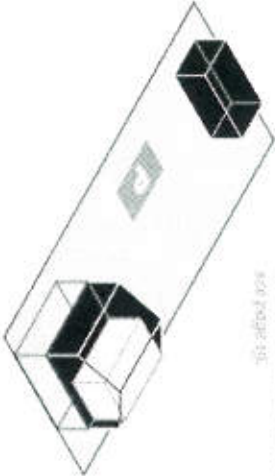


*Add Housing Stock to the City*

---

5

## EXISTING SPACE CONVERSION



General Guidelines apply. See page 16.

## REGULATIONS

### ADU

You can build a maximum of one ADU if your property has a single-family dwelling.

### SIZE

The size of your ADU cannot exceed 50% of your home's gross square footage.

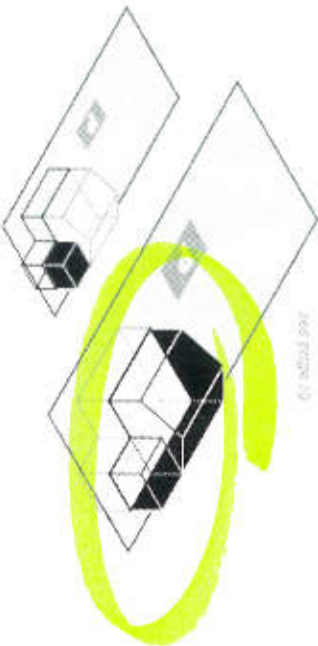
For some footage of your detached garage unit, it be included in your home's footprint.

### PARKING

Provide a minimum of one parking space in addition to existing parking on your property.

Zoning regulations can be waived if a legal on-street parking space is located in front of your property or if you live within a 1/4 mile of a transit stop.

## HOME WITH ATTACHED GARAGE



General Guidelines apply. See page 16.

## REGULATIONS

### ADU

You can build a maximum of one ADU if your property has a single-family dwelling.

### SIZE

The size of your ADU cannot exceed 50% of your home's gross square footage.

For some footage of your detached garage unit, it be included in your home's footprint.

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Provide a minimum of one parking space in addition to existing parking on your property.

Zoning regulations can be waived if a legal on-street parking space is located in front of your property or if you live within a 1/4 mile of a transit stop.

## **EXHIBIT-H**

### **Building Area Definitions - Industry Standards**

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**APPEAL:** Of Planning Director Denial Issued December 3, 2019

**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)

**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

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# Floor area

In architectural, construction, and real estate, **floor area**, **floor space**, or **floorspace** is the area (measured as square feet or square metres) taken up by a building or part of it. The ways of defining "floor area" depend on what factors of the building should or should not be included, such as external walls, internal walls, corridors, lift shafts, stairs, etc. Generally there are 3 major differences in measuring floor area.<sup>[1]</sup>

- **Gross floor area (GFA)** - The total floor area contained within the building measured to the external face of the external walls.
- **Gross internal area (GIA)** - The floor area contained within the building measured to the internal face of the external walls.
- **Net internal area (NIA)** (or usable floor area UFA) - The NIA is the GIA less the floor areas taken up by lobbies, enclosed machinery rooms on the roof, stairs and escalators, mechanical and electrical services, lifts, columns, toilet areas (other than in domestic property), ducts, and risers.

## Contents

### Gross floor area

In Hong Kong

In Singapore

### Gross leasable area

### See also

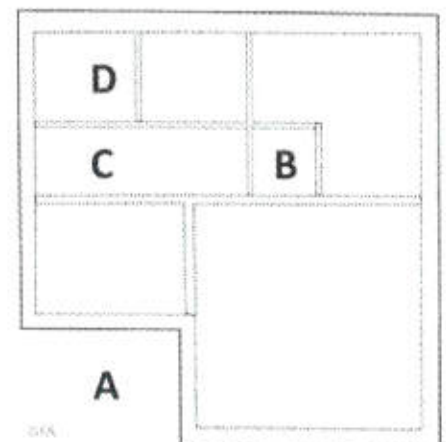
### References

### External links

## Gross floor area

**Gross floor area (GFA)** in real estate is the total floor area inside the building envelope, including the external walls, and excluding the roof.

Definitions of GFA, including which areas are to be counted towards it and which areas aren't, vary around the world. Adding to this confusion is the practice among some developers to use gross leasable area (GLA) and GFA interchangeably, or to use GFA as GLA, even though GLA usually excludes corridors and other public areas inside the development, while both figures include areas occupied by structure, like walls and columns.



Measuring gross floor area (GFA)

## In Hong Kong

## Building Area Definitions

### A. Gross Area

1. Definition: The sum of all areas on all floors of a building included within the outside faces of its exterior walls, including floor penetration areas, however insignificant, for circulation and shaft areas that connect one floor to another.
2. Basis for Measurement: Gross area is computed by physically measuring or scaling measurements from the outside faces of exterior walls, disregarding cornices, pilaster, buttresses, etc., which extend beyond the wall faces.
3. Description: **In addition to all the internal floored spaces obviously covered above, gross area should include the following:** excavated basement area; mezzanines, penthouses, and attics; **garages;** enclosed porches, inner or outer balconies whether walled or not, if they are utilized for operational functions; and corridors whether walled or not, provided they are within the outside face lines of the building, to the extent of the roof drip line. The footprints of stairways, elevator shafts, and ducts (examples of building infrastructure) are to be counted as gross area on each floor through which they pass.
4. Limitations: Exclude open areas such as parking lots, playing fields, courts, and light wells, or portions of upper floors eliminated by rooms or lobbies that rise above single-floor height.
5. Exception: Include top, unroofed floor of parking structures where parking is available.

### B. Assignable Area (Net Assignable Square Feet – NASF)

1. Definition: The sum of all areas on all floors of a building assigned to, or available for assignment to, an occupant or specific use.
2. Basis for Measurement: Assignable area is computed by physically measuring or scaling measurements from the inside faces of surfaces that form the boundaries of the designated areas. Exclude areas having less than a 6'6" clear ceiling height unless the criteria of a separate structure are met.
3. Description: Included should be space subdivisions of the ten major room use categories for assignable space – classrooms, labs, offices, study facilities, special use, general use, support, health care, residential and unclassified – that are used to accomplish the institution's mission.

Source: Federal Construction Council Technical Report No. 50 (Publication 1235), *Classification of Building Areas*, National Academy of Sciences, Building Research Advisory Board.

4. Limitations: Deductions should not be made for necessary building columns and projections. Areas defined as building service, circulation, mechanical, and structural should not be included.

**C. Non-assignable Area**

1. Definition: The sum of all areas on all floors of a building not available for assignment to an occupant or for specific use, but necessary for the general operation of a building.
2. Basis for measurement: Non-assignable area is computed by physically measuring or scaling measurements from the inside faces of surfaces that form the boundaries of the designated areas.
3. Description: Included should be space subdivisions – building service, circulation and mechanical.
4. Building Service Area
  - a. Definition: The sum of all areas on all floors of a building used for custodial supplies, sink room, housekeeping closets, and for public rest rooms.
  - b. Description: Included should be housekeeping closets or similarly small cleanup spaces, maintenance material storage areas, trashrooms exclusively devoted to the storage of nonhazardous waste created by the building occupants as a whole, and public toilets.
5. Circulation Area
  - a. Definition: The sum of all areas on all floors of a building required for physical access to some subdivision of space, whether physically bounded by partitions or not.
  - b. Description: Included should be, but is not limited to, public corridors, fire towers, elevator lobbies, tunnels, bridges, and each floor's footprint of elevator shafts, escalators and stairways. Receiving areas, such as loading docks, should be treated as circulation space. Any part of a loading dock that is not covered is to be excluded from both the circulation area and the gross building area. A loading dock which is also used for central storage should be regarded as assignable area and coded as central storage (730). Also included are corridors, whether walled or not, provided they are within the outside face lines of the buildings to the extent of the roof drop line.

- c. Limitations: Deductions should not be made for necessary building columns and minor projections. When determining corridor areas, only spaces required for public access should be included. Restricted access private circulation aisles used only for circulation within an organizational unit's suite of rooms, auditoria, or other working areas should not be included.

6. **Mechanical Area**

- a. Definition: The sum of all areas on all floors of a building designed to house mechanical equipment, utility services, and shaft areas.
- b. Description: Included should be mechanical areas such as central utility plants.

**D. Net Usable Area**

- a. Definition: The sum of all area on all floors of a building either assigned to, or available for assignment to, an occupant or specific use, or necessary for the general operation of a building.
- b. Basis for Measurement: Net usable area is computed by summing the assignable area and the nonassignable area.

**E. Structural Area**

- a. Definition: The sum of all areas on all floors of a building that cannot be occupied or put to use because of structural building features.
- b. Basis for Measurement: Precise computation by direct measurement is not possible under these definitions. It is determined by calculating the difference between the measured gross and the measured net usable area.





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## Gross Floor Area (GFA)

The sum of the floor areas of all the spaces within the building, with no exclusions. The total area within the perimeter of the outside walls.

The total floor area of a building, including all public and private spaces. the following spaces are considered outside the building and are not part of GFA:

- Balconies
- Decks
- Patios

The area contained within the external walls of the building measured at each floor level (including any floor below the level of the ground), together with the area of each balcony in the building.

### Alternative Scopes

The basis for calculating GFA may vary between owner groups and sometimes the GFA excludes the parking garage.

- All areas within the external walls, including the parkade (GFA)

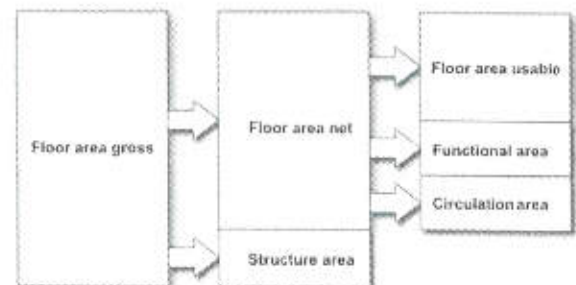


Fig. Hierarchy of floor areas ranging from gross floor area (GFA) to various types of net floor area (NFA).



### Postsecondary Education Facilities Inventory and Classification Manual (FICM)

NCEES 2006-160  
May 2006

[FICM Overview](#)

[How to Use](#)

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### 3.2.1 Gross Area (Gross Square Feet—GSF)

(See figure 3-2 below)

- A. Definition.** The sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another.
- B. Basis for Measurement.** Gross Area is computed by physically measuring or scaling measurements from the outside faces of exterior walls, disregarding cornices, pilasters, buttresses, etc., that extend beyond the wall faces. Exclude areas having less than a 3-foot clear ceiling height unless the criteria of a separate structure are met. (See [section 2.3](#), What to Include in a Building Inventory.) Measured in terms of Gross Square Feet (GSF).  
  
*GSF = Net Usable Area + Structural Space*
- C. Description.** In addition to all the internal floored spaces obviously covered above, Gross Area should include the following: excavated basement areas; interstitial space (i.e., mechanical floor or walkways), mezzanines, penthouses, and attics; garages; covered porches, whether walled or not; inner or outer balconies to the extent of a drip line from a roof or balcony immediately above, whether walled or not, if they are utilized for operational functions; and corridors or walkways, whether walled or not, provided they are either within the outside face lines of the building to the extent of the roof drip line or, if covered, to the extent of their cover's drip line. The footprints of stairways, elevator shafts, and vertical duct shafts are to be counted as gross area on each floor through which they pass.
- D. Limitations.** Exclude open areas such as parking lots; playing fields; pools; courts; light wells; and portions of upper floors eliminated by spaces or lobbies that rise above single-floor ceiling height. Exclude unexcavated basement areas.
- E. Exception.** Include top, unroofed floor of [parking structures](#) where parking is available. (See the section on [parking structures](#) after figure 3-8.)

Figure 3-2. Gross Area of a building by floor

a serious hazard. A chemical shall be considered a flammable *solid* as determined in accordance with the test method of CPSC 16 CFR; Part 1500.44, if it ignites and burns with a self-sustained flame at a rate greater than 0.1 inch (2.5 mm) per second along its major axis.

**[F] FLAMMABLE VAPORS OR FUMES.** The concentration of flammable constituents in air that exceeds 25 percent of their *lower flammable limit (LFL)*.

**[F] FLASH POINT.** The minimum temperature in degrees Fahrenheit at which a *liquid* will give off sufficient vapors to form an ignitable mixture with air near the surface or in the container, but will not sustain combustion. The flash point of a *liquid* shall be determined by appropriate test procedure and apparatus as specified in ASTM D56, ASTM D93 or ASTM D3278.

**[BE] FLIGHT.** A continuous run of rectangular treads, *winders* or combination thereof from one landing to another.

**[BS] FLOOD or FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

**[BS] FLOOD DAMAGE-RESISTANT MATERIALS.** Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic *repair*.

**FLOOD, DESIGN.** See "Design flood."

**FLOOD ELEVATION, DESIGN.** See "Design flood elevation."

**[BS] FLOOD HAZARD AREA.** The greater of the following two areas:

1. The area within a flood plain subject to a 1-percent or greater chance of *flooding* in any year.
2. The area designated as a flood hazard area on a community's flood hazard map, or otherwise legally designated.

**FLOOD HAZARD AREAS, SPECIAL.** See "Special flood hazard area."

**[BS] FLOOD INSURANCE RATE MAP (FIRM).** An official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the *special flood hazard areas* and the risk premium zones applicable to the community.

**[BS] FLOOD INSURANCE STUDY.** The official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the *base flood* and supporting technical data.

**[BS] FLOODWAY.** The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the *base flood* without cumulatively increasing the water surface elevation more than a designated height.

**[BE] FLOOR AREA, GROSS.** The floor area within the inside perimeter of the *exterior walls* of the building under

consideration, exclusive of vent *shafts* and *courty*, without deduction for *corridors*, *stairways*, *ramps*, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding *exterior walls* shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include *shafts* with no openings or interior *courty*.

**[BE] FLOOR AREA, NET.** The actual occupied area not including unoccupied accessory areas such as *corridors*, *stairways*, *ramps*, toilet rooms, mechanical rooms and closets.

**[BF] FLOOR FIRE DOOR ASSEMBLY.** A combination of a *fire door*, a frame, hardware and other accessories installed in a horizontal plane, which together provide a specific degree of fire protection to a through-opening in a fire-resistance-rated floor (see Section 712.1.13.1).

**[F] FOAM-EXTINGUISHING SYSTEM.** A special system discharging a foam made from concentrates, either mechanically or chemically, over the area to be protected.

**[BF] FOAM PLASTIC INSULATION.** A plastic that is intentionally expanded by the use of a foaming agent to produce a reduced-density plastic containing voids consisting of open or closed cells distributed throughout the plastic for thermal insulating or acoustical purposes and that has a density less than 20 pounds per cubic foot (pcf) (320 kg/m<sup>3</sup>).

**[BE] FOLDING AND TELESCOPIC SEATING.** Tiered seating having an overall shape and size that is capable of being reduced for purposes of moving or storing and is not a building element.

**[BG] FOOD COURT.** A public seating area located in the *mall* that serves adjacent food preparation tenant spaces.

**[BG] FOSTER CARE FACILITIES.** Facilities that provide care to more than five children, 2½ years of age or less.

**[BS] FOUNDATION PIER (for Chapter 21).** An isolated vertical foundation member whose horizontal dimension measured at right angles to its thickness does not exceed three times its thickness and whose height is equal to or less than four times its thickness.

**[BS] FRAME STRUCTURE.** A building or other structure in which vertical *loads* from floors and roofs are primarily supported by columns.

**[F] FUEL CELL POWER SYSTEM, STATIONARY.** A stationary energy-generation system that converts the chemical energy of a fuel and oxidant to electric energy (DC or AC electricity) by an electrochemical process.

**Field-fabricated fuel cell power system.** A *stationary fuel cell power system* that is assembled at the job site and is not a preengineered or prepackaged factory-assembled fuel cell power system.

**Preengineered fuel cell power system.** A *stationary fuel cell power system* consisting of components and modules that are produced in a factory and shipped to the job site for assembly.

**Prepackaged fuel cell power system.** A *stationary fuel cell power system* that is factory assembled as a single,

## Chapter 70. Zoning

### Article XXV. Word Usage and Definitions

#### § 70-230. Word usage.

Words used in the present tense include the future and the future the present; the singular number includes the plural and the plural the singular; the word "lot" includes the word "plot," as the sense may require it; the word "shall" is always mandatory.

#### § 70-231. Definitions.

[Amended 7-23-1968; 10-15-1968; 12-31-1974 by L.L. No. 22-1974; 2-1-1977 by L.L. No. 2-1977; 3-27-1979 by L.L. No. 3-1979; 8-12-1980 by L.L. No. 11-1980; 8-12-1980 by L.L. No. 12-1980; 8-26-1980 by L.L. No. 13-1980; 9-13-1983 by L.L. No. 6-1983; 2-26-1985 by L.L. No. 4-1985; 12-17-1985 by L.L. No. 13-1985; 12-17-1985 by L.L. No. 18-1985; 3-25-1986 by L.L. No. 3-1986; 4-28-1987 by L.L. No. 10-1987; 2-19-1991 by L.L. No. 5-1991; 7-9-1991 by L.L. No. 10-1991; 5-21-1996 by L.L. No. 8-1996; 1-28-1997 by L.L. No. 2-1997; 3-18-1997 by L.L. No. 6-1997; 5-21-1997 by L.L. No. 9-1997; 12-16-1997 by L.L. No. 25-1997; 6-8-1999 by L.L. No. 7-1999; 12-14-1999 by L.L. No. 14-1999; 10-2-2001 by L.L. No. 8-2001; 3-12-2002 by L.L. No. 2-2002; 6-25-2002 by L.L. No. 9-2002; 3-11-2003 by L.L. No. 1-2003; 9-30-2003 by L.L. No. 12-2003; 11-15-2005 by L.L. No. 13-2005; 1-3-2006 by L.L. No. 1-2006; 1-24-2006 by L.L. No. 2-2006; 8-22-2006 by L.L. No. 13-2006; 10-3-2006 by L.L. No. 14-2006; 12-12-2006 by L.L. No. 16-2006; 5-29-2007 by L.L. No. 4-2007; 5-29-2007 by L.L. No. 5-2007; 12-11-2007 by L.L. No. 12-2007; 7-29-2008 by L.L. No. 7-2008; 9-22-2008 by L.L. No. 9-2008; 10-2-2008 by L.L. No. 10-2008; 5-19-2009 by L.L. No. 9-2009; 6-23-2009 by L.L. No. 11-2009]

For the purpose of this chapter, the terms used herein are defined as follows:

#### **ABATTOIR**

A slaughterhouse for the slaughtering of livestock other than poultry.

#### **ACCESSORY APARTMENT**

A separate space within a one-family dwelling, or a structure on property on which exists a one-family dwelling, which is wholly or partly used or arranged, designed or intended to be occupied or used for living or sleeping by one or more human occupants.

#### **ACCESSORY BUILDING OR USE**

A subordinate building or use customarily incidental to and located on the same lot occupied by the main building or use.

#### **AFFORDABLE SENIOR CITIZEN FACILITY**

A residential dwelling unit made available for sale or rent such that the shelter portion of the housing cost is below the market price of such units, to be determined as follows:

- A. Units for rent. Rent shall not exceed 80% of the county median income, as determined by the United States Department of Housing and Urban Development (HUD), times 30%.
- B. Units for sale. Sales price shall not exceed 45% of the average sales price of single-family homes in the county for the prior 12 months, and be for sale to households whose income is 80% of the county median income as determined by HUD.

#### **AGRICULTURE**

The cultivation of the soil for food products or other useful or valuable growths, crops or products of the field or garden, tillage or husbandry, but shall not include dairying, raising of livestock, fowls or birds where the same is carried on as a gainful operation.

**ALL-SUITE HOTEL**

A commercial building primarily for transient guests and having one or more of the following: lounge, meeting/conference room, dining room and kitchen for the serving of food to be consumed primarily in said dining room. All guest rooms shall contain a sitting room, separate bedroom and the provision of limited kitchen facilities.

**ALTERATION**

As applied to a building or structure, the change or rearrangement of the structural parts or any enlargement, whether by extending on any side or by increasing in height, or the moving from one location to another. It does not include ordinary repairs to buildings or structures.

**AMUSEMENT ARCADE**

Any premises where three or more amusement devices are available for operation.

**AMUSEMENT DEVICE**

Any coin- or token-operated machine, apparatus or contrivance which is used or which may be used as a game of skill or amusement wherein or whereby the player initiates, employs or directs any force or action to, or generated by, the machine, including, but not limited to billiard tables; casino-type games; computerized games; electronic bowling; electronic shuffleboard; pinball machines; shooting galleries; and skill boards. "Amusement devices," for the purpose of this chapter, shall not include bowling alleys and duckpin bowling alleys.

**ATTIC**

The space between the ceiling joists of the top story and the roof rafters. An attic shall not be used or occupied as living or sleeping quarters. There shall be no fixed stair to any new attic space nor operable windows. Attics shall not have finished floors or heating systems. Attics over one-story extensions shall count as additional gross floor area if the height from the joist to the underside of the ridge is greater than five feet. Horizontal access to attics shall be limited to nine square feet. Notwithstanding the foregoing, an attic may be permitted to be constructed as, or converted into, habitable or occupiable space where the requirements of the district would permit a full story; provided, however, that the attic shall be counted as gross floor area when used as habitable or occupiable space.

[Amended 1-29-2019 by L.L. No. 3-2019]

**BAR AND GRILL**

Any business use in which the primary service offered is the sale of alcoholic beverages for consumption on the premises, regardless of whether food is also served and entertainment of any type is offered.

**BASEMENT**

That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the average established finished grade of the ground adjoining the building.

**BELOW-GRADE PARKING STRUCTURE**

An accessory use in which the final paved surface is located more than 24 inches below the preexisting grade of a building site, and that provides for the parking of vehicles, including drive aisles, and which may include loading areas.

**BILLBOARD or POSTER PANEL**

A sign erected and maintained by an outdoor advertiser.

**BLOCKFRONT**

The street and the space surrounding it, including the buildings and open space fronting on both sides of the streets.

**BOATEL**

A hotel on a waterfront with docks for use by boaters.

**BUILDING**

A combination of materials other than a structure to form a construction that is safe and stable and adapted to permanent or continuous occupancy for public, institutional, residence, business or storage purposes; the term "building" shall be construed as if followed by the words "or part thereof."

**BUILDING DEPARTMENT**

The Building Department of the Town of North Hempstead.

**BUILDING HEIGHT**

PACKET: Bountiful City, Administrative Law Judge Appeal

The vertical distance measured from the average level of the preexisting grade at the perimeter of the building to the highest point of the roof.

#### **BUILDING OFFICIAL**

The officer or other person specifically charged by the Town Board with the administration and enforcement of this chapter, or his duly authorized representative.

#### **CARETAKER UNIT**

An accessory living space within a historic building, structure or dwelling intended as a primary residence for the person or family responsible for the maintenance, upkeep and/or security of the building or site. Caretaker units may comprise up to 50% of the gross floor area of the building, and may have a separate entrance.

[Added 9-10-2013 by L.L. No. 4-2013]

#### **CELLAR**

That portion of a building with half or more of its floor-to-ceiling height below the average level of the adjoining ground. A "cellar" shall not be used or occupied as living or sleeping quarters.

#### **CHILD-CARE FACILITY**

Any program or facility providing care for children for more than three hours but less than 24 hours per day per child on a regular basis away from the child's residence, in which care is provided by someone other than the parent, step-parent, guardian or other relative within the third degree of consanguinity of the parent or step-parent.

- A. This definition shall apply whether or not care is given for compensation.
- B. This definition shall include any facility that provides child-care services as defined in § 390 of the New York State Social Services Law.
- C. This definition shall not include child-care facilities located in private dwellings and multiple-dwelling units licensed and operated in accordance with the regulations set forth by the New York State Office of Children and Family Services.
- D. Medical care or delinquency correction may not be the principal use of the facility.
- E. Child-care facilities shall be licensed by and operated in accordance with the regulations set forth by the New York State Office of Children and Family Services.

#### **CODE ENFORCEMENT OFFICER**

The officer or other person specifically charged by the Town Board with the administration and enforcement of this chapter, or his duly authorized representative.

[Added 11-16-2010 by L.L. No. 15-2010]

#### **COMMERCIAL PARKING LOT**

Any lot or premises, other than one owned or maintained by the municipality, used for parking automobiles or other motor vehicles by the public upon the payment of a fee, whether or not such use is an accessory use.

#### **CONCRETE RECYCLING OPERATION**

A facility used for the collection and processing and/or crushing of uncontaminated concrete waste for conversion to recycled concrete aggregate.

[Added 8-9-2016 by L.L. No. 6-2016]

#### **CONVENIENCE STORE**

A retail sales area that offers for sale prepackaged food or beverages, and may allow for cooking and preparation of ready-to-serve food, for off-site consumption. A convenience store shall co-locate or coexist only with a gasoline service station or automobile service station, and only as approved by the Town Board.

[Amended 3-22-2016 by L.L. No. 3-2016]

#### **CORNER LOT**

A lot situated at the intersection or junction of two or more streets.

#### **CORRAL**

An outdoor accessory structure for the storage of shopping baskets, carts and wagons that is made available for use by the shopping public and for the secure storage of carts during hours when the business is closed.

[Added 3-8-2011 by L.L. No. 4-2011]

#### **COURT**

SECRET: Bountiful City, Administrative Law Judge Appeal

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A required open and unoccupied space on the same lot and enclosed on at least three sides by walls of a building.<sup>(1)</sup>

#### **DEPARTMENT OF HEALTH**

The Department of Health of the County of Nassau and any other health board or department established pursuant to the laws of the State of New York and entrusted with the regulations, control and/or supervision of matters pertaining to and affecting the public health in the Town of North Hempstead.

#### **DEPTH OF A LOT**

The mean distance from the street line of the lot to its opposite rear line, measured along the side lines of the lot.

#### **DISPLAY SURFACE**

The total number of square feet of sign space on one side of a sign, exclusive of moldings.

#### **DRIVE-THROUGH FACILITY**

A business, establishment, building or other structure intended, in whole or in part, to accommodate in-vehicle customer service. Such facilities shall also include, but not be limited to, establishments such as drive-through oil change and/or car wash operations, which utilize a drive-through lane or lanes, but perform their services while customers wait outside their motor vehicles, and establishments that provide in-vehicle customer service via a freestanding box.

#### **DWELLING**

A building containing not more than two dwelling units occupied principally for residential uses.

#### **DWELLING UNIT**

A portion of a row dwelling housing not more than one family.

#### **EAVE HEIGHT**

The top of the uppermost wall plate, as measured from the average level of the preexisting grade at the perimeter of the building.

#### **ELEEMOSYNARY**

A not-for-profit organization, public or private, primarily engaged in charitable activities or primarily supported by charitable contributions.

#### **ELECTRONIC CIGARETTE**

A device containing a liquid or other substance that is vaporized and inhaled for the purpose of simulating the experience of smoking.

[Added 8-9-2016 by L.L. No. 7-2016; amended 11-20-2018 by L.L. No. 10-2018]

#### **ELECTRIC VEHICLE CHARGING STATION**

A system for the charging of an electric vehicle. Components typically include a charging kiosk and transformer.

[Added 5-13-2014 by L.L. No. 7-2014]

#### **ERECTED**

Includes constructed, reconstructed, altered, placed or moved.

#### **EXISTING BUILDING**

A building erected prior to the effective date of this chapter.

#### **FAMILY**

One individual or a collective group of individuals either:

- A. Related to each other by blood, marriage or adoption who live together in the same dwelling unit, cook together and function as a single, stable housekeeping unit with common access to all rooms and facilities; or
- B. Not related by blood, marriage or adoption but who together constitute the functional equivalent of a natural family, all living together in the same dwelling unit, cooking together and generally functioning as a single, stable housekeeping unit, all with common access to all rooms and facilities, with no member or members of such group subletting, subleasing or otherwise controlling any part of the dwelling separately from the others.

#### **FOOD SERVICE**

PACKET: Bountiful City, Administrative Law Judge Appeal

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See definition of "restaurant" contained in this section.

#### **FRONT OF BUILDING**

On an interior lot, the exterior wall facing the street. The "front of a building" on a corner lot is the exterior wall where the main entrance is established.<sup>[2]</sup>

#### **FRONT YARD**

A yard across the full width of the lot extending from the front line of the building to the front line of the lot measured between the side property lines.

#### **FRONT YARD, PRIMARY**

The front yard with the narrower street frontage. For lots having equal street frontage, the primary front yard shall be the front yard where the main entrance is established.

[Added 7-10-2012 by L.L. No. 11-2012]

#### **GASOLINE SERVICE STATION or AUTOMOBILE SERVICE STATION (used synonymously in this chapter)**

The use of premises for the dispensing of motor fuels, lubricants and other materials used in the operation of motor or other vehicles and/or where minor repairs to motor or other vehicles are made.

#### **GASOLINE SERVICE STATION/CONVENIENCE STORE**

The co-location of a gasoline service station and a convenience store, only as approved by the Town Board. No use other than a convenience store may coexist or co-locate with a gasoline service station. A gasoline service station/convenience store contains a convenience store that offers for sale food or beverages, in conjunction with the sale of automotive fuel. Other prepackaged goods, household items, automotive fluids and wiper blades, automotive cleaning supplies, oils, waxes and windshield fluids, newspapers and magazines may also be sold at a gasoline service station/convenience store.

[Amended 3-22-2016 by L.L. No. 3-2016]

#### **GROSS FLOOR AREA (NONRESIDENTIAL)**

The sum of the gross horizontal areas of the several floors of a building, including interior balconies and mezzanines and attics over one-story extensions where the height from the joist to the underside of the ridge is greater than five feet, but excluding exterior balconies. All horizontal dimensions of each floor are to be measured from the exterior faces of the walls of each such floor, including roofed porches having more than one wall. The "gross floor area" of accessory buildings shall include the floor area of accessory buildings on the same lot, measured the same way. In computing the "gross floor area," there shall be excluded any floor area of a story whose ceiling is less than four feet above grade at the nearest building line and attic space having a headroom of less than seven feet, provided that those areas are nonhabitable and are used for storage or mechanical equipment.

[Amended 1-29-2019 by L.L. No. 3-2019]

#### **GROSS FLOOR AREA (RESIDENTIAL)**

The sum of the gross horizontal area of all floors or stories of a dwelling as measured to the outside face of the exterior wall inclusive of all exterior facing as well as attached garages, enclosed porches and roofed porches having more than 50% of the perimeter enclosed or screened, attics over one-story extensions where the height from the joist to the underside of the ridge is greater than five feet, all habitable and occupiable attics and basement areas with ceiling heights in excess of seven feet or greater. Basement areas with a maximum ceiling height of eight feet shall not be included in the gross floor area in all residential building permit applications or amendments submitted prior to December 21, 2007. Attics that are nonhabitable and nonoccupiable and cellars shall be excluded from the gross floor area. The gross floor area of detached garages greater than 300 square feet shall be included in their entirety. Gross floor area in dwellings for areas exceeding 12 feet in height shall be counted at 2.0 times the actual floor area except in garages.

[Amended 1-29-2019 by L.L. No. 3-2019]

#### **GROUND OR FIRST STORY**

The lower story entirely above the average level of the ground surrounding a building.

#### **GROUND SIGN and POLE SIGN**

A "ground sign" is one securely fastened to the ground by means of two or more supporting posts. A "pole sign" is one attached to the upper part of a single pole securely fastened to the ground.

#### **GROUP GARAGE**

A building, one story in height, divided into separate units or with a common means of access, used for the storage of noncommercial automobiles, but not used for servicing or making repairs to automobiles.





**San Juan County  
Community Development & Planning**

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**POLICIES AND PROCEDURES**

**Floor Area Determination for Accessory Structures**

René M. Beliveau  
Deputy Director/Chief Building Official

Issued 9/21/2006  
Revised 7/24/2007  
BP-2007-10\_FloorArea-Acc

**ISSUE: How shall the floor area accessory structures be determined?**

**ANALYSIS:** The International Residential Code (IRC) exempts accessory structures of less than or equal to 120 square feet from permitting and inspection requirements. Additionally, the San Juan County Unified Development Code (UDC) Shore Line Master Program limits the number of accessory structures over 200 square feet allowed on shoreline properties. How is the square footage of these structures to be measured? Is it to be measured from the outside or inside of the exterior wall? Does it include eaves, porch covers, or other roof projections? Does it include uncovered exterior decks?

Neither the IRC nor the UDC provides a clear definition of how to measure this square footage. However, Section R201.3 of the IRC states that when terms are not defined within the IRC their meaning shall be "ascribed to them as in other code publications of the International Code Council."

Section 502.1 of the International Building Code (IBC) defines "building area" as "The area included within surrounding exterior walls exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projections of the roof or floor above."

Section 1002 of the IBC defines "gross floor area" as: "The area within the inside perimeter of the exterior wall of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, closets, the thickness of interior walls, columns or other features. The floor area of the building, or portion thereof, not provided with surrounding exterior walls shall be the useable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts."

**From these definitions it is clear that the floor or building area of a structure is measured from the interior face of the exterior walls. It is also clear that useable exterior space under a roof or other projection should be included in the floor area. However, it is clear that the square footage of exterior decks without a roof or floor above should not be included.**

**POLICY:** The following policy shall apply when determining the total floor or building area of detached accessory structures when determining IRC permitting exemption requirements and/or applying UDC shoreline size limits.

1. The floor or building area of a structure shall include the area of the structure as measured from the interior face of the exterior walls.
2. The area under roofs, eaves, overhangs, or similar projections which extend more than 2 feet beyond the exterior wall surface shall be presumed to create useable floor or building area and shall be include in the total calculated floor or building area.
3. The area of uncovered exterior decks shall not contribute to the total floor or building area.

### 9.04.080 Determining Floor Area

The floor area of a building is the total gross horizontal areas of all floors of a building, including usable basements and all other areas measured from the interior face of the exterior walls or, in the case of a shared wall, from the centerline of a wall separating the two buildings. Floor area also includes unenclosed decks, balconies, porches, and platforms used for commercial or restaurant activity. In addition to calculating floor area ratio, floor area shall be used to determine parking requirements and all relevant impact fees including but not limited to affordable housing fees, transportation impact fees, childcare linkage fees, cultural arts fees, and parks and recreation fees.

A. **Included in Floor Area.** Floor area is deemed to include:

1. The actual floor space of all habitable rooms on all levels and mezzanines, interior balconies, lofts, and closets;
2. Restrooms, lounges, lobbies, kitchens, storage areas, and interior hallways and corridors;
3. Portions of basements that meet Building Code requirements for habitable space;
4. Enclosed and roofed porches and balconies;
5. Interior courtyards, atria, paseos, walkways and corridors that are fully enclosed;
6. Storage and equipment spaces that are roofed and enclosed on all sides; and
7. Covered parking at or above grade.

B. **Excluded from Floor Area.** Floor area does not include:

1. Stairways and stairwells;
2. Elevators, elevator equipment rooms, and elevator shafts;
3. Ramps to a subterranean or semi-subterranean parking structure or ramps between floors of a parking structure provided the ramp does not accommodate parking;
4. Loading spaces and docks used exclusively for loading and unloading as required by Section 9.28.080;
5. Unenclosed decks, balconies, porches, and platforms not used for commercial or restaurant activity;
6. Covered and uncovered courtyards, arcades, atria, paseos, walkways, and corridors located at or near the street level and are accessible to the general public provided they are not used as sales, display, storage, service, or production areas;
7. Parking areas located below finished grade or finished floor of habitable space where the vertical distance between finished grade and finished floor is 5 feet or less;
8. Semi-subterranean parking areas that meet the following criteria:
  - a. The parking area is located below finished grade along a minimum of one street frontage;
  - b. The portions of the parking area located above finished grade are a result of the site's slope and cannot feasibly be fully subterranean due to geological or physical site constraints; and
  - c. The facades of any of the visible portions of the parking area located above finished grade are appropriately treated and landscaped.
9. Mechanical equipment rooms, electrical rooms, telecommunication equipment rooms, and similar space located below grade;
10. Enclosures constructed pursuant to Section 9.31.060, Automobile Repair, Major and Minor, for outdoor hoists in existence on the adoption of Ordinance Number 1452 (CCS); and
11. Attics. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

View the [mobile version](#).

**EXHIBIT-I**

**Referenced Bountiful City Land Use Code & Utah Statutes**

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**APPEAL:** Of Planning Director Denial Issued December 3, 2019

**Permit:** Conditional Use Permit (CUP) for Accessory Dwelling Unit (ADU)

**Property:** 1253 Northridge Drive, Bountiful, Utah 84010

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**14-2-104 ADMINISTRATIVE COMMITTEE**

- A. Established. In order to provide for just and fair treatment in the administration of this Title, and to ensure that items of a routine nature are processed expeditiously and in a public forum, an Administrative Committee consisting of three (3) members is hereby established to exercise the powers and duties specified herein.
  
- B. Appointment and Terms of Office.
  - 1. The Planning Director and City Engineer, or their designees, shall each serve as members of the Board. The third member and an alternate shall be appointed by the Mayor with the advice and consent of the City Council.
    - a. An appointed member of the Administrative Committee shall serve a term of two (2) years and until a successor is appointed. Terms shall commence July 1<sup>st</sup> of every odd year.
    - b. An appointed Administrative Committee member may be reappointed for successive terms.
    - c. The Mayor, with the advice and consent of the City Council, may remove an appointed member of the Administrative Committee at any time with or without cause.
    - d. A vacancy occurring on the Administrative Committee by reason of death, resignation, removal, disqualification or any other reason shall be promptly filled by a replacement appointed in the same manner as the original appointment for the remainder of the unexpired term of the replaced member.
  - 2. The Mayor, with the advice and consent of the City Council, may approve an alternate to the Administrative Committee.
  
- C. Organization and Procedure. The Administrative Committee shall be organized and exercise its powers and duties as follows:
  - 1. The Planning Director shall oversee the proceedings and activities of the Administrative Committee, and shall act as the Committee Chair.
  - 2. The Planning Director or acting Chair may vote.
  - 3. The Administrative Committee shall not meet in the absence of the Planning Director, City Engineer, or their designees, and no official business shall be conducted by the Administrative Committee unless a quorum of its members is present.
  - 4. The Administrative Committee may adopt policies and procedures, consistent with the provisions of this Title and applicable law, to govern the conduct of its

meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the Committee.

5. The Administrative Committee shall meet as necessary to consider matters within its jurisdiction. All meetings shall be properly noticed as required by law, and held in accordance with the open meetings law set forth in Utah Code Ann. § 52-4-1, et seq., as amended.
  6. Public comment shall be allowed on all items brought before the Administrative Committee. If an item brought before the Administrative Committee requires a public hearing and/or public notice, the noticing requirement shall be an on-site posting in a prominent location of the meeting date, location, and time, at least ten (10) days prior to the meeting, unless otherwise required by State Law. This noticing requirement shall supersede all other noticing provisions of this Title.
  7. Decisions of the Administrative Committee shall take effect on the date of the meeting or hearing where the decision is made, unless a different time is designated in the Board's rules or at the time the decision is made.
  8. The Administrative Committee shall keep written minutes of its proceedings, showing the vote upon each matter, and keep records of its examinations and other official actions.
    - a. The Administrative Committee shall provide a copy of each agenda and the outcome of each item to the City Council and Planning Commission.
    - b. The minutes of all meetings of the Administrative Committee shall be prepared and filed in the office of the Planning Director, under the direction of the City Recorder. All such records are public records and shall be available for public review and access in accordance with the Government Records and Access Management Act, Utah Code Ann., 63-2-101, et seq., as amended.
- D. Powers and Duties. The Administrative Committee shall have the power and duty to review and decide those matters designated by the City Council and/or Planning Commission. The Administrative Committee Chairman may assign any item designated for Administrative Committee review to the Planning Commission, in which case any power or review authority granted to the Administrative Committee shall also be afforded to the Planning Commission. Each of such powers and duties shall be exercised pursuant to the procedural rules and other provisions of this Title and of State law. Items specifically designated to the Administrative Committee are as follows:
1. Conditional use permits for home occupation licenses and for commercial business operations that do not require a new and/or amended site plan.
  2. Variances from the terms of this Title, as designated by Ordinance.
  3. The expansion or modification of a non-complying single-family dwelling or structure where the non-complying aspect is continued.

4. Lot-line adjustments.
  5. Any other matter designated by the City Council or Planning Commission.
  6. Beer License violations short of suspension or revocation.
- E. Appeals. Any person adversely affected by a final decision of the Administrative Committee may appeal that decision as set forth in Section 14-2-108 of this Title. Any recommendation of the Administrative Committee to another approval body is not a final decision and therefore cannot be appealed.

**14-2-105 OTHER COMMITTEES**

The Mayor and/or Planning Director may organize other, non-binding committees as necessary to facilitate planning objectives.

**14-2-106 LAND USE ADMINISTRATION**

- A. Appointment. The Planning Director shall be responsible for administering and enforcing this Title.
- B. Interpretation. When necessary, the Planning Director shall interpret the provisions of this Title, subject to general and specific policies established by the Planning Commission and City Council. These interpretive decisions may be appealed as set forth in Section 14-2-108 of the Bountiful City Land Use Ordinance.
- C. Administrative Duties. The Planning Director shall accomplish or cause to be accomplished all administrative actions required by this Title, including the giving of notice, holding of hearings, preparation of staff reports, and receiving and processing of appeals.

**14-2-107 ADA AND FFHA ACCOMMODATIONS**

None of the requirements of this Title shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.

- A. Application. Any person or entity wanting a reasonable accommodation shall make application therefore to the Bountiful City Planning Director and shall articulate in writing the nature of the requested accommodation and the basis for the request.
- B. Decision. The Bountiful City Planning Director shall render a decision on each application for a reasonable accommodation. The decision shall be based on evidence of record. The Planning Director may approve a reasonable accommodation request, in whole or in part, if he/she finds all of the following:
  1. That the requested accommodation will not undermine the legitimate purposes of existing zoning regulations notwithstanding the benefit that the accommodation would provide to a person with a disability; and

2. That, but for the accommodation, one or more persons with a disability likely will be denied an equal opportunity to enjoy housing of their choice; and
  3. That the accommodation is the minimum amount necessary to provide one or more persons with a disability an equal opportunity to enjoy housing of their choice.
- C. Appeal. The decision of the Planning Director on the request for reasonable accommodation may be appealed in the manner set forth in 14-2-108 of the Bountiful City Land Use Ordinance.

**14-2-108 APPEALS**

- A. 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.
- B. 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.
- C. The Appeal Authority shall hold a public meeting within forty-five days after an appeal has been filed, unless a longer period has been agreed to in writing by the parties involved. A decision of the Appeal Authority takes effect when the written decision is issued, unless the Appeal Authority otherwise states.
- D. The Appeal Authority shall hold a de novo hearing. The requirements of State law and City ordinances shall be applied.
- E. A decision of the Appeal Authority is subject to a petition for review in the District Court as provided by State law.

**14-2-109 APPEAL AUTHORITY**

- A. The Appeal Authority for Bountiful City shall consist of an administrative law judge. The Appeal Authority shall hear and decide appeals from:
  1. Decisions on variance requests from the terms of the land use ordinances, and
  2. Decisions interpreting and applying land use ordinances.
- B. The City Council may designate separate appeal authorities to hear each of the two types of appeals described above.
- C. The administrative law judge shall be appointed by the Mayor with the advice and consent of the City Council, and shall serve for two years. An alternate judge may also be appointed by the same process. The City Council may remove an administrative law judge for cause and after a public hearing if the judge so requests.



- D. The Appeal Authority shall act in a quasi-judicial manner and its decisions on issues within its jurisdiction are final.

**14-2-110 PROPERTY IN GOOD STANDING**

Any land use authority may postpone deliberation of any application or approval until such time that any unlawful nonconformity or unlawful noncompliance associated with the subject property, structure, site, or entity is remedied. Furthermore, any land use authority may deny any application or approval if it is found that the subject property, structure, site, or entity is in violation of any provision of the City Code.

14-2-111 APPROVAL/REVIEW BODIES

Item	Subcategory	Approval/Review Bodies			
		Staff	AC	PC	CC
Conditional Use Permit	Home Occupation	No	Final	No	No
	Commercial Operation	No	Final	No	No
	Structure/Land-use improvements	No	No	Final	No
Subdivision	All	No	No	Recommend	Final
Re-Zone	All	No	No	Recommend	Final
Land Use Code Text Amendment	All	No	No	Recommend	Final
Combine Lots/Lot Line Adjustment	All	No	Final	No	No
Land Use Code/Map Interpretation	All	Planning Director	No	No	No
General Plan	All	No	No	Recommend	Final
Site Plan	Residential SFD	Final	No	Appeal	No
	Res SFD 200+ feet from street	No	Final	No	No
	All other Residential	No	No	Recommend	Final
	Res. SFD Accessory Structure	Final	No	No	No
	All other Res. Accessory Structure	Final	No	No	No
	Non-Residential	No	No	Recommend	Final
	Non-Residential Accessory Structure	Final	No	No	No
	All Non-SFD Residential Amend	No	No	Recommend	Final
	All Non-Residential Amend	No	No	Recommend	Final
Expansion of Non-Complying Site or Structure	Residential SFD	As Designated	All Others	No	No
	All Others	No	As Designated	All Others	No
Expansion of Non-Conforming Use	All	No	As Designated	All Others	No

**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	Final	No	No
	Cuts and Fills (includes retaining walls) > 10 feet	No	Final	No	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

**Staff** = The Planning, Engineering, and/or Building Department employees as assigned.

**AC** = Administrative Committee; As currently composed.

**PC** = Planning Commission; As currently composed.

**CC** = City Council; As currently composed.

**14-2-103 PLANNING COMMISSION**

- A. Established. A Planning Commission, consisting of seven (7) members is hereby established to exercise the powers and duties specified herein.
- B. Appointment and Terms of Office.
1. Planning Commission members shall be residents of Bountiful City and shall be appointed by the Mayor with the advice and consent of the City Council.
  2. The terms of Planning Commission members shall be staggered. Each member of the Planning Commission shall serve for a term of four (4) years and until a successor is appointed, provided that members may be appointed for terms shorter than three (3) years when necessary to provide staggered terms.
  3. Terms of Planning Commission members shall begin on July 1<sup>st</sup> of each year.
  4. Planning Commission members may be reappointed for successive terms.
  5. The Mayor, with the advice and consent of the City Council, may remove any member of the Planning Commission at any time with or without cause.
  6. A vacancy occurring on the Planning Commission by reason of death, resignation, removal, disqualification or any other reason shall be promptly filled by a replacement appointed in the same manner as the original appointment for the remainder of the unexpired term of the replaced member.
  7. The Mayor may appoint one person from the City Council as a full member of the Planning Commission.
- C. Organization and Procedure. The Planning Commission shall be organized and exercise its powers and duties as follows:
1. Members of the Planning Commission shall select one (1) of its members as chair to oversee the proceedings and activities of the Planning Commission.
    - a. The chairperson shall serve for a term of one (1) year.
    - b. Members of the Planning Commission shall select one (1) of its members as vice-chair to act in the absence of the chair. The chair and vice-chair may be re-elected for successive terms.
  2. The Planning Commission may adopt policies and procedures, consistent with the provisions of this Title and applicable law, to govern the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the Planning Commission. All such policies and procedures shall be submitted to the City Council for review and approval.
  3. The Planning Commission shall meet on a regular basis, as determined by a vote of the Commission members, and at such other times as the Commission

members may determine. All meetings shall be properly noticed as required by law, and held in accordance with the open meetings law set forth in Utah Code Ann. § 52-4-1, et seq., as amended. At the beginning of each calendar year the Bountiful City Planning Department shall create and post in its office a schedule of Planning Commission meetings and application deadlines.

4. No official business shall be conducted by the Planning Commission unless a quorum of its members is present. Four (4) members of the Planning Commission shall constitute a quorum. Any action taken shall require a minimum of four (4) yes votes from members of the Planning Commission, unless otherwise prescribed by law.
5. Any person desiring to appear before the Planning Commission shall complete an application and submit all required materials and fees to the Planning Department. An application that does not include all of the required signatures, materials, fees, or other necessary information shall be deemed incomplete and returned to the applicant.
6. After an applicant has submitted a completed application to the Planning Department, the item shall be placed on the next available Planning Commission agenda, unless the applicant and the Commission Chair agree to postpone placing the item on the agenda or agree to continue the item to a subsequent meeting.
7. An applicant may request that an item be postponed or continued a maximum of one (1) meeting (i.e. once) or for forty five (45) days from the date of application, whichever is longer. If the matter is not heard within this deadline, the application is deemed to have expired or been withdrawn, and must be resubmitted if the applicant desires the Commission to act on the item. This shall not apply to completed applications that have been placed on an agenda, reviewed and discussed by the Planning Commission, and then continued for reasons determined by the Commission.
8. The Planning Commission shall not reconsider a previous action or change a recorded vote, and once an action is taken, the matter shall not be considered again for twelve (12) months from the date of decision.
9. Decisions of the Planning Commission shall take effect on the date of the meeting or hearing where the decision is made, unless a different date is designated in the Commission's rules or at the time the decision is made. The approval of written findings shall relate back to the date of decision.
10. The Planning Commission shall keep written minutes of its proceedings, showing the vote upon each question, or if absent or failing to vote, indicating that fact, and keep records of all its official actions. The Planning Commission may, but is not required to, have its proceedings transcribed by a secretary, a court reporter, a tape recorder, or other recording device.
  - a. The Planning Commission shall report, either verbally or in writing, its official acts and recommendations to the City Council. Any member of

the Planning Commission may also make a concurring or dissenting report or recommendation to the City Council.

- b. The minutes of all meetings of the Planning Commission shall be prepared and filed in the office of the Planning Director, under the direction of the City Recorder. All such records are public records and shall be available for public review and access in accordance with the Government Records and Access Management Act, Utah Code Ann., 63-2-101, et seq., as amended.

D. Powers and Duties. The Planning Commission shall have all the powers and duties, explicit or implied, given planning commissions by Utah State law and the Bountiful City Land Use Ordinance, including but not limited to the following. Each of such powers and duties shall be exercised pursuant to the procedural and other provisions of this Title and of State law.

1. Prepare and recommend a general plan and amendments to the general plan to the City Council;
2. Recommend Land Use Ordinances and maps, and/or amendments to Land Use Ordinances and maps, to the City Council;
3. Administer applicable provisions of this Title and of State law;
4. Recommend approval or denial of subdivision applications;
5. Advise the City Council on matters requested by the City Council;
6. Hear and decide the approval or denial of conditional use permits;
7. Hear and decide variances from this title;
8. Hear and/or decide any other matter that the City Council designates;
9. Exercise any other powers that are necessary to enable the Planning Commission to perform its function or that are delegated to it by the City Council; and
10. Perform any other power or duty set forth in this Land Use Ordinance or in State law relating to Planning Commissions.

E. Appeals. Any person adversely affected by a final decision of the Planning Commission may appeal that decision as set forth in Section 14-2-108 of this Title. Any recommendation of the Planning Commission to another approval body is not a final decision and therefore cannot be appealed.

F. Examinations and Surveys. The Planning Commission and its authorized agents may enter upon any land at reasonable times to make examinations and surveys as necessary to enable it to perform its function to promote City planning, development, and enforcement of the provisions of this Title.

189. MODULAR HOME: A home or other building of new construction which has been assembled fully or in substantial part, upon another site or in a factory and moved to the site where it is to be placed upon a permanent foundation in compliance with the provisions of the International Building Code.
190. MONUMENT SIGN (also "Low Profile Sign"): Any on-premises or identification sign incorporated into some form of landscape scheme or planter box.
191. MOTOR HOME: A motor vehicle built on a truck or bus chassis and designed to serve as self-contained living quarters for recreational travel and use.
192. MOVABLE SIGN: (also "Portable Sign")
193. MULTIPLE-FACED SIGN: A sign containing two (2) or more faces, not necessarily in back-to-back configuration.
194. NATURAL VEGETATION: This term includes orchards, trees, shrubs, lawns, grass, and perennial growth.
195. NATURAL WATERWAYS: Those areas varying in width along streams, creeks, gullies, or washes, which are natural drainage channels, as determined by the City Engineer.
196. NIT: A unit of measurement for luminance, which is equal to one candela per square meter, (nit = 1 cd/m<sup>2</sup>).
197. NONCOMPLYING STRUCTURE: (Also "NONCONFORMING STRUCTURE" or "NONCONFORMING BUILDING") A structure that legally existed before its current land use designation; and because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations which govern the use of land.
198. NONCONFORMING SIGN: (Also "NONCOMPLYING SIGN") A sign or sign structure that legally existed before its current land use (zoning) designation; and because of subsequent changes to the land use ordinance, does not conform to the regulations that now govern the use of the sign.
199. NONCONFORMING LOT: (Also "NONCOMPLYING LOT") A parcel that legally existed before its current land use (zoning) designation. Shown continuously on the records of the Davis County Recorder as an independently existing piece of property and because of one (1) or more subsequent land use ordinance changes does not conform to the minimum size, width, frontage, depth or other applicable dimensional requirements of the zone where the lot is located.
200. NONCONFORMING USE: A use of land that legally existed before its current land use designation that has been maintained continuously since the time the land use ordinance governing the land changed; and because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.
201. NONCONFORMITY: Is a general term to collectively describe a noncomplying structure, nonconforming lot, nonconforming sign, nonconforming use, and/or any other item that legally existed before the current land use (zoning) designation of the property where the said item is located, and that, because of subsequent land use ordinance changes does not conform to the regulations that now govern the use of the land.

## CHAPTER 2

### ADMINISTRATION AND PROCEDURES

#### PART 4 - **NONCONFORMING USES** AND NON-COMPLYING SITES/BUILDINGS

14-2-401	DEFINITIONS
14-2-402	GENERAL PROVISIONS
14-2-403	ABANDONMENT OF NONCONFORMING USE
14-2-404	CHANGE OF STATUS
14-2-405	TERMINATION OF NONCONFORMING USES AND NONCOMPLYING STRUCTURES
14-2-406	DETERMINATION OF NONCONFORMING STATUS
14-2-407	SCHOOLS

#### 14-2-401 DEFINITIONS

See Chapter 3 of this Title for the following definitions:

**NONCOMPLYING STRUCTURE** (also **NONCONFORMING STRUCTURE**)  
**NONCONFORMING LOT**  
**NONCONFORMING SIGN**  
**NONCONFORMING USE**  
**NONCONFORMITY**  
**OTHER NONCONFORMITY**

#### 14-2-402 **GENERAL PROVISIONS**

- A. **Continuation.** A nonconformity in any zone may be continued as provided so long as no additions or enlargements are made thereto and no structural alterations are made therein, except as provided in this Chapter or as may be required by law. If any nonconformity is removed from the property on which it was located, it shall not be replaced unless it conforms to the current provisions of this Title.
- B. **Maintenance and Repair.** Repairs and structural alterations may be made to any nonconformity within the existing footprint thereof provided that the degree of nonconformity is not increased.
- C. **Expansion and Enlargement.** Any expansion of a nonconformity that increases the degree of nonconformance is prohibited except as provided in this Title or as may be required by law. For purposes of this Section, the addition of a solar energy device to a building is not an expansion.
- D. **Relocation.** Only noncomplying structures may be relocated. If a noncomplying structure is relocated within the City, it shall be located in a manner which fully conforms to the applicable requirements of this Title.
- E. **Restoration.** A noncomplying structure or a nonconforming sign damaged by fire, wind, tornado, earthquake, or other natural disaster or calamity may be restored as it existed



## CHAPTER 2

### ADMINISTRATION AND PROCEDURES

#### PART 5 - CONDITIONAL USES

14-2-501	PURPOSE OF CONDITIONAL USE PROVISIONS
14-2-502	PERMIT REQUIRED
14-2-503	APPLICATION
14-2-504	FEE
14-2-505	PUBLIC COMMENT AND NOTICE
14-2-506	DETERMINATION
14-2-507	INSPECTION
14-2-508	REVOCAION
14-2-509	TIME LIMIT
14-2-510	RE-APPLICATION AFTER DENIAL OR REVOCAION
14-2-511	CONTINUING EFFECT

#### 14-2-501 PURPOSE OF CONDITIONAL USE PROVISIONS

Certain uses which necessitate special conditions in order to make them compatible with permitted uses within a zone designation, are classified as conditional uses and require approval of a Conditional Use Permit.

#### 14-2-502 PERMIT REQUIRED

A Conditional Use Permit shall be required for any use listed as a conditional use in any zoning designation and/or as set forth elsewhere in this Title. A Conditional Use Permit may be revoked upon failure of the original applicant or any successor, owner, or occupant to comply with conditions precedent to the original approval of the permit, or as otherwise provided in the Bountiful City Code.

#### 14-2-503 APPLICATION

- A. Conditional Use Permit application shall be filed with the Planning Department as provided in this Title. Conditional uses shall be heard and decided by the Planning Commission or the Administrative Committee as set forth in this Title.
- B. Applications for Conditional Use Permits shall be accompanied by: maps, drawings, statements, reports, studies, or other documents, as required by the approval body and/or City staff. If applicable, the applicant shall also provide mailing addresses of all of the property owners within three hundred (300) feet of the subject property, per current County records, printed on self-adhesive labels.

#### 14-2-504 FEE

The applications for any Conditional Use Permit shall be accompanied by an appropriate fee set by the City Council.

**14-2-505 PUBLIC COMMENT AND NOTICE**

- A. Any request for a conditional use permit shall be heard and decided by the Planning Commission unless the item falls within a category designated for Administrative Committee review. When considering the request, the Planning Commission or Administrative Committee shall hold a public hearing to review the request and other concerns, and then take appropriate action upon the request.
- B. The noticing requirement for a Conditional Use Permit heard by the Planning Commission shall be as follows:
  - 1. Sent to all property owners within a three hundred (300) feet radius around the subject property at least fourteen (14) days prior to the meeting.
  - 2. Posted with notification signage on the subject property by the applicant/agent. The signage shall be provided to the applicant/agent by the City and shall be posted by the applicant/agent ten (10) days in advance of the scheduled meeting.
- C. The noticing requirement for a conditional use permit request heard by the Administrative Committee shall be the same as required for any public hearing held by the Administrative Committee, as set forth in 14-2-104.

**14-2-506 DETERMINATION**

- A. A conditional use permit shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with the applicable standards.
- B. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal, or if the imposition of reasonable conditions to achieve compliance with applicable standards is not possible, the conditional use permit request may be denied.
- C. Standards applicable to conditional uses include all the requirements of this Title, and consideration of the following:
  - 1. The location of the proposed use in relationship to other existing uses in the general vicinity.
  - 2. The effects of the proposed use and/or accompanying improvements on existing developments in the general vicinity;
  - 3. The appropriate buffering of uses and buildings, proper parking and traffic circulation, and the use of building materials and landscaping which are in harmony with the area.
- D. The applicant, at his or her cost, shall provide any report and/or study relating to utilities, traffic impact, school impact, soil and water impact, existing conditions, line-of-sight and

building massing, and any other information requested by the City in order to render a proper decision.

**14-2-507 INSPECTION**

Following the issuance of a Conditional Use Permit, the Planning Department shall approve an application for a building permit upon compliance of construction plans meeting such conditions and requirements as established by the Planning Commission. Representatives of the Planning Department shall inspect the project to insure that all required improvements meet the conditions of the Conditional Use Permit and this Ordinance before a certificate of occupancy is issued by the Engineering Department and before an application for permanent power for the property may be approved by the Bountiful City Power Department.

**14-2-508 REVOCATION**

- A. Upon receiving a written complaint alleging a violation or failure to comply with any condition prescribed in a Conditional Use Permit, the Planning Department shall investigate the complaint. If the complaint has merit, and attempts to remedy the complaint fail, the Planning Department:
  - 1. May place the complaint on the agenda of a regularly scheduled meeting of the approving body, provided that the permittee shall have at least fourteen (14) days notice of the meeting.
- B. Permittee shall be given written notice by personal service or by certified mail of the exact nature of the complaint and the date and time of the hearing before the Land Use Authority. An informal hearing may be conducted to determine the current status of the Conditional Use Permit prior to any public hearing, without notification to surrounding owners.
- C. The Land Use Authority, after hearing the evidence presented regarding the complaint, may continue the hearing from time to time, may modify or rescind any condition or requirement of the Conditional Use Permit as it deems necessary, or may take no action and dismiss the complaint.
- D. If, after review at the informal hearing the Land Use Authority finds that evidence of failure to comply with the provisions of the Conditional Use Permit is substantial enough to consider revocation, it shall schedule a formal hearing for purposes of considering revocation of the Conditional Use Permit. The notice for the revocation hearing shall be the same noticing procedure used for considering a new petition.
- E. The Land Use Authority, after hearing final evidence and testimony on the status of the Conditional Use Permit, may revoke the Conditional Use Permit or modify the conditions as deemed necessary.
- F. Any permittee aggrieved by an order may appeal such decision as set forth in 14-2-108.

**14-2-509 TIME LIMIT**

- A. A temporary Conditional Use Permit for a use which is incidental or directly related to an intended permanent use or is intended to become a permanent use may be issued by the Administrative Committee for a period of six (6) months. This permit may be renewed by the Planning Department for a total of three (3) successive six (6) month periods allowing a total of two (2) years for the temporary Conditional Use Permit. Where hardship or unusual circumstances exist, the Administrative Committee may extend the temporary permit for one (1) additional year. These extensions shall be granted in two (2) separate six (6) month increments. A temporary Conditional Use Permit shall not be issued for a use which is not incidental to or directly related to an intended permanent use on the property.
  - 1. Mobile offices, homes or trailers which are used for business purposes shall only be allowed for a six (6) month time period as authorized by the Administrative Committee. The Administrative Committee may extend the time period for the temporary structure up to one (1) additional year providing that the Planning Commission and City Council have granted final site plan approval and construction has commenced.
  - 2. Temporary structures shall be removed from the property upon occupancy of the permanent structure. Any pre-manufactured structure which meets all building code regulations and which is part of the approved site plan, and any construction trailer which is removed at the end of construction, shall be exempt from this regulation.
- B. Bountiful City does not issue temporary Conditional Use Occupancy Permits, and any document purporting to be a temporary conditional use occupancy permit is void.
- C. Unless there is substantial action under a Conditional Use Permit within a maximum period of one (1) year of its issuance, the Conditional Use Permit shall expire. The Bountiful City Planning Director may grant a maximum extension of six (6) months, when deemed in the public interest. Substantial action under this section shall mean:
  - 1. For new construction or a remodel, at least twenty five percent (25%) of the proposed construction has been completed
  - 2. For a use located in an existing or completed structure, at least twenty five percent (25%) of the approved area is continuously occupied and utilized for the conditional use.

**14-2-510 RE-APPLICATION AFTER DENIAL OR REVOCATION**

It is unlawful to apply or reapply for a Conditional Use Permit within one (1) year of the date of denial or revocation of a Conditional Use Permit regarding any parcel of property or any portion thereof.

**14-2-511 CONTINUING EFFECT**

- A. A Conditional Use Permit applies to a specific parcel of property, or portion of a parcel of property, and may not be transferred to another parcel of property.
- B. A Conditional Use Permit for the operation of a business does not run with the land unless the approving body specifies otherwise. A Conditional Use Permit for the construction of improvements to a property will run with the land unless the Planning Commission sets conditions that limit it to a specific individual and/or for a finite period of time. If any aspect of the conditional use becomes a legal nonconforming element due to a later amendment to this Ordinance, the provisions of Part 4 of this Chapter relating to nonconformities shall apply.

## CHAPTER 14

### SUPPLEMENTARY DEVELOPMENT STANDARDS

14-14-101	PURPOSE
14-14-102	LOT STANDARDS
14-14-103	YARD SPACE FOR ONE BUILDING ONLY
14-14-104	FRONT YARD MODIFICATION - DEVELOPED AREAS
14-14-105	COMBINED LOTS - RESTRICTIONS
14-14-106	SPECIAL PROVISIONS FOR EXISTING SINGLE AND TWO-FAMILY RESIDENTIAL DWELLINGS
14-14-107	LOCATION OF TRAILERS, BOATS, RECREATIONAL VEHICLES, AND STORAGE CONTAINERS
14-14-108	USE OF MOBILE HOMES, RECREATIONAL VEHICLES, CAMPER TRAILERS, AND STORAGE CONTAINERS
14-14-109	ABANDONED, WRECKED, OR JUNKED VEHICLES
14-14-110	TRASH, DEBRIS, WEEDS, AND SIMILAR HAZARDS
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14-14-117	SEMI-PRIVATE SWIMMING CLUBS AND RECREATION FACILITIES
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14-14-120	RESERVED
14-14-121	RESERVED
14-14-122	TEMPORARY CLASSROOMS AT PRIVATE SCHOOLS
14-14-123	FILLING, GRADING, AND EXCAVATING
14-14-124	ACCESSORY DWELLING UNIT
14-14-125	PUBLIC UTILITY EASEMENTS ON PRIVATE PROPERTY
14-14-126	PRIVATE POWER PLANTS

#### 14-14-101 PURPOSE

The purpose of this Chapter is to establish miscellaneous land development standards which are generally applicable to more than one (1) zone. The requirements of this Chapter shall be in addition to and in some circumstances may supersede the requirements contained within the provisions of each respective zone and/or other chapters of this Title.

#### 14-14-102 LOT STANDARDS

- A. Newly Created Lots to Conform to Parcel Requirements. Except for more flexible requirements, such as those pertaining to planned developments, every lot or parcel created within the city shall conform to the minimum requirements of this Title regarding width, yard, area, coverage, parking, and frontage upon a dedicated public street or upon an approved private street or right-of-way before a building permit may be issued.

- B. Transfer of Required Yard Space Prohibited. No space needed to meet the width, yard, area, parking, frontage or other requirements of this Title for a lot, parcel, or building may be transferred, sold, bequeathed or leased apart from such lot, parcel, or building unless other space so complying is provided and approved by the City. No land shall be sold or transferred which will result in a lot or parcel being created for building purposes that does not comply with the provisions of this Ordinance.
- C. Minimum Buildable Area - Any lot or parcel designated or zoned for residential development shall have a rectangular buildable area with a length to width ratio between 2:1 and 1:2, that is located entirely on ground of less than thirty percent (30%) slope, that does not encroach into required setbacks or easements, and that meets the following criteria:

R-4	2,000 sq ft
R-3	3,000 sq ft
RF	6,000 sq ft
All other zones	5,000 sq ft

**14-14-103 YARD SPACE FOR ONE BUILDING ONLY**

No required yard or other open space around an existing building or which is hereafter provided around any building for the purpose of complying with the provisions of this Title shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing yard or open space on a lot or parcel where on a building is to be erected or established.

**14-14-104 FRONT YARD MODIFICATION - DEVELOPED AREAS**

In instances where at least seventy-five (75) percent of the lots within a subdivision and/or at least fifty percent (50%) of the lots along the side of a street have front yard setbacks which are less than that required for the zone in which they are located, the minimum front yard setback requirement for vacant lots shall be equal to the average of the existing front yards. However, in no case shall the front yard setback be less than twenty (20) feet.

**14-14-105 COMBINED LOTS - RESTRICTIONS**

A combined lot may be created from two (2) or more contiguous lots or parcels that are undeveloped. The side, front, and rear yard requirements of this Ordinance shall apply only to the external boundaries of the combined lot. However, once a combined lot has been created, it shall not be divided except through a new subdivision plat meeting current City ordinance. Prior to receiving a building permit and/or commencing any development activity, the property owner shall record at the Office of the Davis County Recorder a deed restriction memorializing the creation of the combined lot, and shall amend any easements in conflict with the utilization of the combined lot. Failure to produce or record the required deed restriction shall not void any provision of this ordinance, and no part of this ordinance shall abrogate any use restriction provided by deed or other written recorded instrument affecting or otherwise restricting the use of the real property in question.

**14-14-106 SPECIAL PROVISIONS FOR EXISTING SINGLE AND TWO-FAMILY RESIDENTIAL DWELLINGS**

In order to encourage the revitalization of older homes and neighborhoods within Bountiful City, the following provisions shall apply to single family and two family residential dwellings:

- A. Any dwelling built prior to January 1, 1965, that does not meet the current setback standards may be expanded consistent with the setbacks approved at the time of initial construction, as determined by the location of the original building foundation in relationship to the property lines, with the condition that the new construction shall meet the provisions of the current International Building Code or International Residential Construction Code (IBC/IRCC) and does not violate provisions of this title regarding maximum lot or parcel coverage.
- B. Any dwelling built prior to January 1, 1965, that does not have an attached two (2) car garage, may be allowed the following actions, upon the condition that all new construction shall meet the provisions of the current IBC/IRCC and does not violate provisions regarding maximum lot or parcel coverage:
  - 1. Construct an attached two car garage within five (5) feet of a side property line as long as the opposite side yard is at least eight (8) feet wide. A single story of living space may be constructed directly above and/or below the garage addition, but no additional horizontal living space may encroach into the minimum required side yard setback. Maximum garage width shall not exceed twenty-four (24) feet. This shall not apply to situations where there is sufficient space to construct a two car garage but the home has been, or is proposed to be, modified from its original configuration, thus creating the need for a reduced setback.
  - 2. Attach an existing detached garage to a dwelling without an attached garage. The garage shall be located at least three (3) feet from the nearest side property line and at least twenty (20) feet from the rear property line. No additional living space may be constructed above or beneath the garage unless the new space is setback at least five (5) feet from a side property line and the opposite side yard is at least eight (8) feet wide. The existing garage shall have been constructed prior to the adoption of this section, and the new construction tying the structures together shall meet all of the minimum required yard setbacks.
- C. Any existing dwelling may expand vertically within the original foundation boundaries to the maximum height allowed by this Title or the IBC/IRCC, whichever is more restrictive, unless otherwise limited. All new construction shall meet all provisions of the IBC/IRCC.
- D. The Building Official may require any structural upgrades to an existing building or structure as necessary to accomplish a requested addition or modification. Such upgrades may be required during plan review or during construction if the existing conditions deviate from approved plans.

**14-14-107 LOCATION OF TRAILERS, BOATS, RECREATIONAL VEHICLES, AND STORAGE CONTAINERS**

- A. Any boat, boat trailer, camper, travel trailer, utility trailer, storage container, or other similar device shall not be placed, kept, stored, or maintained on any property in Bountiful City except in accordance with the following:



1. In a residential zone, no boat trailer, camper, travel trailer, utility trailer, storage container, or other similar device shall be located within a front yard or street side yard except on legally established driveways. A minimum setback of ten (10) feet from the street property line is required so as to preserve adequate visibility for pedestrian and traffic safety.
2. In a non-residential zone, storage containers shall be located in screened areas that have been designated for storage in an approved site plan.
3. In any zone, no boat trailer, camper, travel trailer, utility trailer, storage container, or other similar device shall be located in a clear-view area or vacant lot as defined in this Title.

**14-14-108 USE OF MOBILE HOMES, RECREATIONAL VEHICLES, CAMPER TRAILERS, AND STORAGE CONTAINERS**

- A. It is unlawful for any person to place, keep, occupy, or maintain a mobile home upon any lot or parcel of land within the City except in a mobile home park or mobile home subdivision. Mobile offices that are part of a construction site or development project may be permitted as a temporary use as provided in this Title.
- B. It is unlawful for any person to reside in or otherwise utilize a recreational vehicle, camper trailer, or similar device, whether temporarily or permanently, except in an approved recreational vehicle park.
- C. It is unlawful to park, place, or otherwise locate a storage container on any fire access lane, public street, public easement, or public right-of-way without the express, written permission of the Bountiful City Public Works Director. The City may abate any unlawful situation without notice and at the expense of the owner of the container.
- D. A storage container is not allowed in any residential zone, professional office zone, downtown zone, mixed use zone, watershed protection zone, hospital zone, or any other non-commercial zone, except as a temporary use associated with construction, renovation, or moving. In such instances, the storage container shall be located on a concrete or asphalt surface, and shall meet all of the following criteria:
  1. A storage container shall not be placed on a site more than thirty (30) days prior to the permitted activity
  2. A storage container shall be removed within thirty (30) days after a permitted activity is substantially completed
  3. Only one (1) storage container may be located on a lot or parcel except for in a commercial zone.
- E. A storage container in a commercial zone shall be used in accordance with the following criteria:
  1. A storage container shall be used solely for the transportation or shipment of

goods and products, and

2. It is unlawful to use a storage container for business operations, and
  3. A storage container not being actively used for transportation or shipment shall not be stored within Bountiful City.
- F. A storage container shall not be located on any property for more than six (6) months in any twelve (12) month period, measured continuously from the day the container is first placed. The Bountiful City Planning Director may grant extensions of up to six (6) months, but only if he/she determines that:
1. The storage container is located on a site with an active building permit, and
  2. The storage container is a necessary part of the construction process, and
  3. Construction is moving forward in a timely manner and in accordance with generally accepted industry standards.
- G. It is unlawful to use a storage container as a permanent structure or as an appendage to a permanent structure.
- H. It is unlawful, in any zone, to vertically stack two (2) or more storage containers or stack/place any other materials or items on top of or around a storage container.

#### **14-14-109 ABANDONED, WRECKED, OR JUNKED VEHICLES**

See Chapter 3 of this Title for the following definitions:

"UNREGISTERED VEHICLE"  
"INOPERATIVE VEHICLE"  
"DISMANTLED VEHICLE"  
"WRECKED VEHICLE"  
"ABANDONED VEHICLE"  
"VEHICLE PART(S)"

- A. Unlawful Conduct. It is unlawful and a public nuisance for any owner or tenant to cause or permit any unregistered, inoperative, dismantled, wrecked, or abandoned motor vehicle(s) and/or vehicle part(s) to be parked, stored, or remain on any property or premises, unless within an enclosed garage or in connection with a lawfully situated and licensed business engaged in the repair of motor vehicles. Violations of this section may be prosecuted by criminal prosecution or by abatement provision for public nuisances.
- B. Exception Permit. A permit may be granted by the Planning Director for an exception to Section 14-14-109(B) if the owner of an unregistered, inoperative, dismantled, wrecked, or abandoned motor vehicle and/or vehicle part(s) submits written application to the Bountiful Planning Director providing:
1. Proof that the applicant is the owner of the motor vehicle;

2. Proof that the applicant is the owner of or has permission of the owner of the property upon which the motor vehicle and/or vehicle part(s) will be parked, stored, or remain;
  3. A description of the condition of the motor vehicle, i.e., that the motor vehicle is unregistered, inoperative, dismantled, wrecked, and/or abandoned;
  4. A description of the plan by which the condition of the motor vehicle will be changed, i.e., the date upon which the vehicle will be registered, repaired, removed from the property, etc.;
  5. The address at which the motor vehicle and/or vehicle part(s) will be parked, stored, or remain while its/their condition is being changed;
  6. The location upon the property, at the address set forth in condition 3), above, where the motor vehicle and/or vehicle part(s) will be parked, stored, or remain while its/their condition is being changed; and,
  7. That a nuisance or health hazard will not be created while the motor vehicle and/or vehicle part(s) are parked, stored, or retained.
- C. An exception permit is valid for only one (1) vehicle. Only one (1) permit may be issued per year per property, and for a period not to exceed six (6) months. When the permit expires, the vehicle shall either be repaired and lawfully registered or removed from the property along with all vehicle parts.
- D. Any vehicle maintained on a property under an exception permit shall be otherwise kept in compliance with all applicable laws, shall not be parked or kept in the public right-of-way or on landscaped areas, shall not constitute a hazard in any way, and shall not constitute a public nuisance. A permit may be revoked by the Planning Director for failure to comply with these terms, and a permit may be denied for failure to comply with these terms for earlier vehicles. The denial or revocation of a permit may be appealed as set forth in the Administration and Procedures chapter of this Title.
- E. Penalty. Any violation of this section is hereby declared to be a public nuisance and a class B misdemeanor.

#### **14-14-110 TRASH, DEBRIS, WEEDS, AND SIMILAR HAZARDS**

- A. No yard or other open space shall be used for the storage of trash, debris, junk, outdoor storage, or abandoned equipment, except as specifically authorized by and in compliance with the provisions of this Ordinance.
- B. It is unlawful to allow weeds, grass, or similar growth to exceed six (6) inches in height on an improved property.
- C. It is unlawful and deemed a public safety hazard for a property owner or tenant to cause or allow the following conditions:

1. The storage or accumulation of flammable materials, yard clippings, tree trimmings, and similar items outside of a structure, except for permanent propane/natural gas tanks meeting the approval of the Fire Marshall, and firewood stacked in accordance with the Fire Code.
  2. The existence of a vacant lot, open field, or other undeveloped parcel adjacent to a developed property without a firebreak at least twenty (20) feet wide.
- D. Whenever an "Extreme Conditions" or "Red Flag" warning is issued by the Fire Department or other fire management agency with jurisdiction over lands within the South Davis County Metro area, the City or its agent may abate high risk fire hazards without notice. If a situation abated was also in violation of City ordinances, the City may recuperate full costs, including administrative expenses, through any legal means necessary. A high risk fire hazard shall be:
1. Any item deemed a public safety hazard under this Section.
  2. Any vacant lot within a developed subdivision that has weeds, grass, or similar growth higher than six (6) inches, or that does not have a firebreak at least ten (10) feet wide around the perimeter of the property.
  3. Any item deemed by the City or its agents to be in immediate peril.

**14-14-111 REFUSE SITING STANDARDS**

- A. When refuse storage containers are used or otherwise required by this Title, the containers shall be of sufficient size and numbers to provide suitable capacity to contain the refuse generated at the site. Containers shall be closed by an attached cover at all times.
- B. All containers shall be kept at a location easily accessible by collection vehicles and refuse producers. Refuse containers shall be kept away from overhead utility lines and structures with projections to facilitate pickup. Container sites shall also comply with the International Fire and International Building Codes.
- C. Outdoor refuse containers, except for individual residential containers, shall be completely encompassed by a solid enclosure that is: architecturally compatible with the main structure(s), equipped with a solid barrier access gate, and located on a paved surface.
- D. Outdoor refuse containers in industrial or commercial areas located within an area completely encompassed by a site obscuring wall or fence and not visible from the street shall not need a separate barrier enclosure unless it is a specific requirement of conditional use or site plan approval.
- E. In cases where a refuse container enclosure is required, the container shall be enclosed by a six (6) foot high enclosure or solid barrier fence with a minimum gate opening of nine (9) feet wide. The fence or enclosure shall have a minimum clearance of two (2) feet from the refuse container to be stored within it.

- F. No refuse collection areas shall be permitted between the street and the front building line except as shown on an approved site plan.
- G. Temporary refuse collection containers on construction sites or other related uses shall be exempt from barrier fencing.

**14-14-112 HEIGHT LIMITATIONS - EXCEPTIONS**

- A. Where doubt exists as to the height of fences, hedges, buildings, and other items regulated by this Title, height limitations shall be measured from the averaged finished grade of the front yard of a building or from the average finished grade of the yard in which the fence, hedge, or other such item is located.
- B. The height limitations of this Ordinance shall not apply to church spires, belfries, cupolas, or domes not used for human occupancy, or to chimneys, ventilators, fire or parapet walls, flag poles, sky lights, water tanks, silos, cornices without windows, antennas, radio towers, or properly screened mechanical appurtenances usually carried above the roof level of a building unless otherwise stated in this Title; except in no case shall it be lawful to construct, build, or establish a building, tree, smoke stack, chimney, flag pole, wire, tower, or other structures or appurtenances thereto which may constitute a hazard or obstruction to navigation or landing and take-off of aircraft at a publicly used airport. Regulations established by the Federal Aviation Agency shall be considered to be the minimum acceptable standards for facilities in such an area.
- C. A private power plant is not exempt from the height requirements of the Zone in which it is located, and shall be considered an occupied structure for the purposes of calculating height.

**14-14-113 ADDITIONAL HEIGHT ALLOWED**

Public and quasi-public buildings, when authorized in a zone, may be erected to a height greater than the required height limit by conditional use permit if it is found that the additional height is necessary for the operation of the facility and if the impact has been reasonably mitigated.

**14-14-114 STORAGE OF COMMERCIAL VEHICLES - RESIDENTIAL ZONES**

- A. No truck, motor vehicle, or commercial trailer having a gross weight of twelve thousand (12,000) pounds or more shall be stored or parked on any lot or parcel within any residential zone.
- B. No contracting and/or earth moving equipment shall be stored or parked on any lot or parcel in any residential zone except as follows:
  - 1. The equipment shall be completely stored within an enclosed structure,
  - 2. The equipment shall not be used wholly or in part for any commercial activity or enterprise,
  - 3. Equipment may be parked on-site and outside of a structure if there is a current building permit issued for the property and the equipment relates to the actual work being performed. Any equipment allowed by this provision shall be removed immediately if it is not actively used, if the permit expires, or upon final

permit approval.

- C. Any vehicle parked or stored in violation of this section is hereby declared to be a public nuisance, and may be removed summarily from public property by the City by towing, and may be prosecuted criminally and/or civilly. The owner of any towed vehicle shall have the right of a post-towing hearing as provided in Section 13-1-121 of the City Code.

#### **14-14-115 SWIMMING POOLS**

Any swimming pool in a single family residential zone shall be set back at least five (5) feet from any property line and shall have at least five (5) feet of unobstructed area around the entire perimeter. A pool located in any other zone may only be constructed after receiving site plan approval, and the land use authority may require an increased setback depending upon the size and occupancy of the pool. Each pool shall be surrounded by a substantial fence or wall meeting the requirements of the Davis County Health Department and the IBC or IRCC. In addition, any required fence or wall shall be equipped with a self-closing, self-latching device on each gate. Any swimming pool in a multi-family development, motel, or hotel shall require conditional use permit approval in addition to site plan approval.

#### **14-14-116 SATELLITE TELEVISION ANTENNAS**

- A. Definitions. See Chapter 3 of this Title for the following definitions:

COMMERCIAL SATELLITE ANTENNA  
MINOR SATELLITE ANTENNA  
HEIGHT OF ANTENNA

- B. Permit Required.

1. It shall be unlawful for any individual, firm, partnership, or corporation to install, construct, reconstruct, or materially alter a commercial satellite television antenna without first obtaining a building permit from the City of Bountiful.
2. Application for a building permit for a commercial antenna structure shall be accompanied by construction drawings showing the proposed method of installation, and a plot plan showing the proposed location of the antenna upon the lot or property.

- C. Standards for Residential and Institutional Districts.

1. All commercial satellite antennas shall be subject to the following provisions:
  - a. On interior lots, a commercial satellite television antenna:
    - (1) Shall not exceed a height of twenty (20) feet measured from the highest point of the antenna to the ground.
    - (2) Shall be located in the rear or side yard.
    - (3) Shall be located no closer to a public street than the main building

on a lot or parcel that has a reduced front yard setback.

- (4) Shall be located at least five (5) feet from any rear or side property line.

b. On corner lots, a satellite antenna:

- (1) Shall not exceed a height of twenty (20) feet measured from the highest point of the antenna to the ground.
- (2) Shall not be permitted within the front yard, or the side yard that fronts upon a public street.
- (3) Shall be located at least five (5) feet from any rear or side property line that is adjacent to the adjoining lot.

D. Standards for Commercial and Industrial Districts. Any commercial satellite antenna installed, located, constructed, reconstructed, or materially altered as provided in this Section, shall be subject to the following provisions:

1. The antenna shall not exceed a height of twenty (20) feet if mounted on the ground.
2. The antenna shall not be located closer than fifteen (15) feet to any public street.
3. The antenna shall not be located closer than ten (10) feet to any residential property line.
4. If used for advertising purposes, the antenna shall not be installed on any floor and shall be deemed a sign governed by the sign regulations as provided in this Title.
5. If an antenna is proposed to be mounted on the roof of a building the antenna shall:
  - a. Not exceed the height limit established for the zone in which it is located.
  - b. Not be used for any advertising purposes.
  - c. Be screened from public view as per the requirements of this Title.
6. If an antenna is proposed to be located in any landscaped area, the antenna shall:
  - a. Be located so as not to create any traffic safety or vision problems.
  - b. Be screened by shrubs and/or other landscaping features.

**14-14-117 SEMI-PRIVATE SWIMMING CLUBS AND RECREATION FACILITIES**

The Planning Commission may permit the use of land in any residential zone for semi-private swimming clubs or recreational facilities provided all of the following are met:

- A. The facilities shall be owned and maintained by members with a minimum of seventy-five percent (75%) of the membership being residents of the neighborhood or section of the subdivision in which the recreational facility is to be located.
- B. The property or proposed project area shall be of sufficient size to accommodate all proposed facilities and still maintain all of the minimum yard setbacks for a principal structure for the zone in which it is located.
- C. The area to be developed into a recreational area shall be of such size and shape as not to cause undue infringement on the privacy of the abutting residential areas and be in keeping with the design of the neighborhood in which the recreational area is to be situated.
- D. The use of the property shall be for private recreational use by members, their families, and guests. Under no condition may any admission fee be charged nor any type of retail or business facility, vending machine, or other commercial use be allowed except as specifically approved by the Planning Commission and listed on the conditional use permit.
- E. Accessory facilities other than standard shower and changing rooms (i.e., clubhouses) shall not be allowed.
- F. Any nighttime indoor or outdoor activity shall conform to the Bountiful City Noise Ordinance. The facility shall close for any activity at 11:00 p.m.
- G. A solid masonry or concrete block wall, or substitute as approved by the Planning Commission, shall be required around the entire recreational area to a height of not less than six (6) feet. The fence across the front of the property shall be constructed no closer to the front property line than the required front yard setback for the zone in which it is located.
- H. At least ten percent (10%) of the site area shall be landscaped, including any front yard, side yard, and at least ten (10) feet depth at side and rear yard lines abutting a residential zone or property. Landscaping of park strips shall be required in addition to the on-site landscaping required.
- I. The facility shall include an on-site parking area, and shall provide on-site parking spaces equal to twenty percent (20%) of the capacity of the proposed recreational facility, as determined by the Fire Marshall and/or Building Official.
- J. Approval of any recreational facility by the Planning Commission under this section shall be by Conditional Use Permit and any and all conditions as required by the Planning Commission must be complied with by the owners of the facility or the approval may be revoked.

#### **14-14-118 TELECOMMUNICATIONS TOWER SITES**



- A. It is the finding of the City Council that:
1. It is in the best interests of the citizens of the City to have quality cellular wireless telephone service available. This necessarily entails the erection of telecommunications towers within the City limits.
  2. It is the right of private enterprise to do business within the City, subject only to reasonable regulation by the City. This includes the telecommunications business.
  3. It is in the best interests of the citizens that the telecommunications towers which are constructed are:
    - a. as unobtrusive as possible in their location, size, and construction;
    - b. as few in number as possible;
    - c. subject to such reasonable restrictions as may best minimize the impact upon surrounding properties and the City as a whole; and
    - d. not placed in residential areas unless there is no other alternative.
  4. It is in the best interests of telecommunications businesses to have access to towers which are of the appropriate height and location to serve their reasonable needs.
  5. It is the policy of the City of Bountiful to make available to telecommunications companies such sites as the City owns and which can reasonably serve the needs of the companies, the citizens, and the City.
  6. The visual burden of towers is borne by the public, and it would be appropriate for the revenues of those towers go to the public. Therefore, telecommunication towers shall be located on publicly owned sites (i.e. lands owned by governmental entities such as the City, schools, etc) where possible, and on private property only when public properties serving the same area are not available.
- B. In order to serve current and reasonably foreseeable needs, any site approved by the City, regardless of location, shall be subject to all of the following requirements:
1. The applicant shall consent in the lease to two co-locations (in addition to applicant) on the same tower
  2. The tower shall be constructed in such a manner as to accommodate three (3) different services, meaning the original company's equipment and two co-locations on the same tower.
- C. Any tower shall be located, designed, and constructed in such a manner that it is:
1. As unobtrusive as possible in its location,

2. Necessary for the telecom system to function properly,
  3. subject to such reasonable restrictions as may best minimize the impact upon surrounding properties and the City as a whole, and
  4. not placed in residential areas unless there is no other alternative.
- D. When later applications for towers are received, the applicants shall be required to:
1. co-locate on an existing tower, unless it can be shown by a preponderance of the evidence that all existing sites are inadequate to serve that company's reasonable needs due to location, height or other reason, and
  2. pay reasonable compensation to the original tower company to fairly share past and future costs.

**14-14-119 SIGHT CLEARANCES ON CORNER LOTS**

This section has been moved to, and consolidated with, the provisions for clear-view areas found in Chapter 16 of this Title.

**14-14-120 RESERVED**

**14-14-121 RESERVED**

**14-14-122 TEMPORARY CLASSROOMS AT PRIVATE SCHOOLS**

The Administrative Committee may issue a temporary use permit to allow the placement or use of temporary classroom facilities on private school property. The time limit for the temporary use shall be established at the time of approval. Any permit without an approved time limit or that exceeds the approved limit may be revoked by the City immediately.

**14-14-123 FILLING, GRADING, AND EXCAVATING**

No lot or parcel may be filled, excavated, graded, or otherwise disturbed without an excavation or building permit issued by Bountiful City, except for the following:

- A. Soil disturbance that occurs during the natural course of bona fide agricultural production.
- B. Landscaping that involves the disturbance of a total of ten (10) cubic yards of material or less.

**14-14-124 ACCESSORY DWELLING UNIT**

- A. Purpose:  
The city recognizes that accessory dwelling units (ADUs) in single-family residential zones can be an important tool in the overall housing plan for the city. The purposes of the ADU standards of this code are to:

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.
- B. An accessory dwelling unit shall only be approved as a conditional use.
- C. An accessory dwelling unit shall not be approved, and shall be deemed unlawful, unless it meets all of the following criteria:
1. An accessory dwelling unit shall be conditionally permitted only within a single-family residential zone, and shall not be permitted in any other zone.
  2. It is unlawful to allow, construct, or reside in an accessory dwelling unit within a duplex or multi-family residential building or property.
  3. It is unlawful to reside in, or allow to reside in, an accessory dwelling unit that has not received a conditional use permit or without written authorization from the Bountiful City Planning Department.
  4. A maximum of one (1) accessory dwelling unit shall be permitted as a conditional use on any lot or parcel in a single-family zone.
  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.
  6. A deed restriction limiting the use of a property to a single-family use, prepared and signed by the Bountiful City Planning Director and all owners of the property on which an accessory dwelling unit is located, shall be recorded with the Davis County Recorder's Office prior to occupancy of the accessory dwelling unit. If a building permit is required, then said deed restriction shall be recorded prior to issuance of the building permit.
  7. The property owner, which shall include titleholders and contract purchasers, must occupy either the principal unit or the ADU, but not both, as their permanent residence and at no time receive rent for the owner occupied unit. Application for an ADU shall include proof of owner occupancy as evidenced by voter registration, vehicle registration, driver's license, county assessor records or similar means.

8. Separate utility meters shall not be permitted for the accessory dwelling unit.
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.
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.
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. In no case shall fewer than four (4) total off street parking spaces be provided with at least 2 of the spaces provided in a garage. Any additional occupant vehicles shall be parked off-street in City Code compliant parking areas.

D. An attached accessory dwelling unit shall be deemed unlawful and shall not be occupied unless all of the following criteria are met:

1. Shall not occupy more than forty percent (40%) of the total floor area square footage of the primary dwelling structure,
2. Shall not exceed ten percent (10%) of the buildable land of the lot,
3. Shall be at least three hundred fifty (350) sq ft in size,
4. Shall meet all of the requirements of the International Building Code relating to dwelling units,
5. An attached accessory dwelling unit shall meet all of the required setbacks for a primary dwelling.
6. Shall not have a room used for sleeping smaller than one hundred twenty (120) square feet, exclusive of any closet or other space,

E. A detached accessory dwelling unit shall meet all of the above criteria, plus the following:

1. Shall require a conditional use permit, reviewed and approved by the Bountiful City Administrative Committee.
2. Shall not be located on a lot with less than eight thousand (8,000) square feet buildable land.
3. Shall be configured so that any exterior doors, stairs, windows, or similar features are located as far away from adjoining properties as is reasonably possible to provide privacy to those properties.

4. Shall meet all of the setbacks required of a detached accessory structure requiring a conditional use permit.

#### **14-14-125 PUBLIC UTILITY EASEMENTS ON PRIVATE PROPERTY**

A public utility easement located on private property shall not be used for a private service lateral without the permission of the affected property owner. A private service lateral is any utility connection beyond the trunk line, meter box, transformer, manhole, service riser, or other main transmission line, that serves a single property, residence, or user.

#### **14-14-126 PRIVATE POWER PLANTS**

- A. A "Private Power Plant" is any device or combination of devices not owned and operated by a regulated utility company, which convert mechanical or chemical energy into electricity, or solar energy into any other form of energy. A private power plant with a peak power generation capacity of 10 Watts/12v/500mAmp (or less) is exempt from the provisions of this Section. A private power plant, including a windmill or wind turbine, shall not be permitted within Bountiful City limits, with the following exceptions:
  1. A back-up power generator running on unleaded gasoline, diesel, natural gas, propane, or hydrogen fuel cell, rated for a single structure or building lot, located in accordance with the requirements of the zone in which it is located.
  2. A photovoltaic cell array or other passive solar energy system located in accordance with the requirements for occupied structures for the zone in which it is located.
- B. A private power plant is not exempt from the height requirements of the Zone in which it is located, and shall be considered an occupied structure for the purposes of calculating height.
- C. Solar energy design standards and requirements
  1. Solar energy panels or collectors that are mounted to the roof shall:
    - a. Not extend beyond the roofline.
    - b. Not reflect sunlight onto neighboring windows or rights-of-way.
    - c. Not exceed fifty (50) percent of the total roof area.
    - d. Shall be maintained in good condition.
  2. Prior to installation, use, and connection to the grid, the following shall be required:
    - a. A Building Permit issued by the City for the proposed installation
    - b. Power Department approval of the application for net metering
    - c. Power Department approval of the physical installation

**Effective 5/8/2018**

**10-9a-511 Nonconforming uses and noncomplying structures.**

- (1)
  - (a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.
  - (b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.
  - (c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.
- (2) The legislative body may provide for:
  - (a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use ordinance;
  - (b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and
  - (c) the termination of a nonconforming use due to its abandonment.
- (3)
  - (a) A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.
  - (b) A municipality may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:
    - (i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after the day on which written notice is served to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or
    - (ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.
  - (c)
    - (i) Notwithstanding a prohibition in the municipality's zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner.
    - (ii) If the municipality and billboard owner cannot agree to a mutually acceptable location within 180 days after the day on which the owner submits a written request to relocate the billboard, the billboard owner may relocate the billboard in accordance with Subsection 10-9a-513(2).
- (4)
  - (a) Unless the municipality establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.
  - (b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.
  - (c) Abandonment may be presumed to have occurred if:
    - (i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;
    - (ii) the use has been discontinued for a minimum of one year; or

- (iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.
- (d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and has the burden of establishing that any claimed abandonment under Subsection (4)(b) has not occurred.
- (5) A municipality may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

Amended by Chapter 239, 2018 General Session

**52-4-305 Criminal penalty for closed meeting violation.**

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

Enacted by Chapter 263, 2006 General Session



**Effective 5/14/2019**

**10-9a-507 Conditional uses.**

- (1)
  - (a) A municipality may adopt a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.
  - (b) A municipality may not impose a requirement or standard on a conditional use that conflicts with a provision of this chapter or other state or federal law.
- (2)
  - (a)
    - (i) A land use authority shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.
    - (ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.
  - (b) If a land use authority proposes reasonable conditions on a proposed conditional use, the land use authority shall ensure that the conditions are stated on the record and reasonably relate to mitigating the anticipated detrimental effects of the proposed use.
  - (c) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the land use authority may deny the conditional use.
- (3) A land use authority's decision to approve or deny conditional use is an administrative land use decision.
- (4) A legislative body shall classify any use that a land use regulation allows in a zoning district as either a permitted or conditional use under this chapter.

Amended by Chapter 384, 2019 General Session

**Effective 5/14/2019**

**17-27a-506 Conditional uses.**

- (1)
  - (a) A county may adopt a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.
  - (b) A county may not impose a requirement or standard on a conditional use that conflicts with a provision of this chapter or other state or federal law.
- (2)
  - (a)
    - (i) A land use authority shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.
    - (ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.
  - (b) If a land use authority proposes reasonable conditions on a proposed conditional use, the land use authority shall ensure that the conditions are stated on the record and reasonably relate to mitigating the anticipated detrimental effects of the proposed use.
  - (c) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the land use authority may deny the conditional use.
- (3) A land use authority's decision to approve or deny a conditional use is an administrative land use decision.
- (4) A legislative body shall classify any use that a land use regulation allows in a zoning district as either a permitted or conditional use under this chapter.

Amended by Chapter 384, 2019 General Session