

**Bountiful City**  
**Planning Commission Minutes**  
**June 5, 2018**  
**6:30 P.M.**

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

Excused: Planning Commission Member – Tom Smith

**1. Welcome and Introductions.**

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

**2. Approval of the minutes for May 1, 2018.**

Sharon Spratley made a motion to approve the minutes for May 1, 2018 as written.

Von Hill seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Hill, Monson, and Spratley voting aye.

**3. Consider approval of a Conditional Use Permit in written form for an Electronic Message Center for Affordable Title Loans located at 21 W 500 South, Stevan Vasic, applicant.**

Chad Wilkinson presented staff report.

Richard Higginson made a motion to approve the Conditional Use Permit in written form for an Electronic Message Center for Affordable Title Loans located at 21 W 500 South.

Jesse Bell seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Hill, Monson, and Spratley voting aye.

Commission Member Jim Clark arrived.

**4. PUBLIC HEARING – Consider approval of variance for fence height in the front yard setback located at 99 S 400 East, Heather Mercer, applicant.**

Tyson and Heather Mercer were present. Chad Wilkinson presented the staff report.

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

On March 20, 2018 the City received a code enforcement complaint that a fence was being constructed that would potentially create a vision clearance problem at the intersection of 400 East and 100 South. Mr. Kendall Black, Assistant Planner, visited the site and found that posts had been installed that

appeared to violate the fence height ordinance for the front yard and the vision clearance at the street intersection. Mr. Black informed the applicant that the fence posts appeared to be too tall based on City ordinance and gave the applicant a copy of the fencing standards. The applicant came to the City offices later that day and asked for further explanation of the fencing standards. Mr. Wilkinson explained the standards to the applicant and the process for seeking a variance. It was explained to the applicant that while a variance could be requested, staff would not recommend approval as the fence potentially constituted a safety hazard. The applicant indicated that she wasn't sure that the fence would violate the ordinance based on the scalloped design. Mr. Wilkinson recommended that the applicant install one panel so that staff could review the fence height for compliance with the standards of the Code prior to incurring the expense of installing a fence that potentially did not meet the Code. The City did not hear from the applicant for several days. The following week Mr. Black performed a follow up inspection where it was discovered that the entire fence had been installed without any additional contact with the City.

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

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

Variance Findings for Utah Code 10-9a-702:

Requiring compliance with the Code will not constitute a hardship for the applicant. The property has a large area where up to a six-foot fence could be constructed meeting the standards of the ordinance. If the applicant wishes to have a fence in the front yard there are several options available to meet the

Code. The fence could be lowered to 3 feet in the front yard or the fence could be modified to be 75 percent open and be constructed up to four feet tall in the front yard.

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

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

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

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

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

Mr. Higginson asked for clarification on a possible 6 ft fence on this property. Mr. Wilkinson showed the picture that was included in the packet.

Mrs. Mercer stated that the 4 ft white picket fence was installed to prevent her dogs from running into traffic on a busy road. She is not in favor of the look of a chain link fence and would like the Commission members to consider approval of the extra inches that are needed to be in compliance.

Chair Monson asked Mrs. Mercer what Mr. Black had said to her. Mrs. Mercer said that Mr. Black was polite and stated that the fencing needed to be 75% open. She did inform the members that she made a phone call to the fence company to have them install one panel in order to get approval from the city. The fence company did not get the message and installed the entire fence.

Mr. Wilkinson stated that the complaint was a vision clearance concern.

Chair Monson open the Public Hearing at 6:51.

Mrs. Hoag resides at 445 E 100 South. Mrs. Hoag agreed that safety is number one. She showed pictures of the traffic turning onto 400 East. Mrs. Hoag stated that there may be a compromise for the fence and wanted to suggest chain link fencing. She also saw a sign for "house for sale" at the base of the fence and wanted to request that the fencing be changed before the house is sold.

Mrs. Mercer stated that the house is not for sale.

Becky Williams resides at 572 E 100 South. Mrs. Williams appreciates the work that has been put

into the home and property and likes the look of the fence, but is concerned about the safety when turning onto 400 East.

Jerrold Pay resides at 540 E 100 South. Mr. Pay is also concerned about the safety to turn onto 400 East as he can't see around or thru the fence.

Chair Monson closed the Public Hearing at 6:56 p.m.

Commission members stated concern of the vehicle site line that is visually impacted by the fence.

Mr. Wilkinson discussed the standard of the code for the three foot fences, an aesthetics issue for the height of the fence at the sidewalk and visual obstruction from driveways. He showed the 40 ft requirement to the Commission members again and commented that the fence still needs to be 75% open in the front yard.

Chair Monson commented that the Commission members are obligated to follow state and city code. He stated that the fence is nice and can be moved back, but it still is a height issue.

Mrs. Spratley agreed with Chair Monson.

Sharon Spratley made a motion to deny the Variance for fence height in the front yard setback located at 99 S 400 East.

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

**5. PUBLIC HEARING – Consider approval of variance for a paving in a corner lot side yard not providing direct access to a garage or carport located at 1091 S Main St, Oscar and Farrah Valdez, applicants.**

Oscar and Farrah Valdez were present. Mr. Wilkinson presented the staff report.

The applicants, Oscar and Farrah Valdez, have requested a variance to allow for construction of a driveway and paving area on a corner lot. The property is currently served by two driveways both located on Main Street. The southernmost driveway which functions as the primary drive to the property is located within 30 feet of the intersection of 1100 South and Main Street. This location creates a less than ideal circumstance as it places a driveway too near an intersection on a major street. The existing driveways provide access to a detached garage to the south of the existing home on the lot. The existing home was constructed in 1939 and the garage appears to have been built at around the same time. The garage does not meet exterior setback to 1100 South Street. Based on historic aerial photos and subdivision records, it appears that the home and garage may have been built prior to the construction of 1100 South which would potentially explain the proximity of the garage to 1100 South. This may also explain the location of the southernmost driveway and the orientation of the garage. The need for the variance arises from the location of the existing garage. Section 14-4-105 C states that a corner lot side yard "shall not be paved or used for vehicle parking except for a legally constructed driveway that provides direct access to a garage or carport." Because of the orientation of the garage, it is impossible to have direct access to the garage from 1100 South. Since there will be a

portion of the corner lot side yard paved that does not provide direct vehicle access to the garage a variance is needed.

Variance Findings for Utah Code 10-9a-702:

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

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

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

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

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

Staff recommends approval of the requested variance in order to allow pavement of an area of a corner lot side yard not providing direct access to a garage or carport.

Mr. Wilkinson stated that there is no proposal to close the north driveway.

Chair Monson opened the Public Hearing at 7:16 pm.

Joe Hawks resides at 4 E 1100 South. Mr. Hawks stated that he agrees with the change of driveway and feels that this is a good change to an existing safety issue.

Chair Monson closed the Public Hearing at 7:17 p.m.

Von Hill made a motion to approve the Variance for a paving in a corner lot side yard providing direct access to a garage or carport located at 1091 S Main St.

Richard Higginson seconded the motion. Voting passed 6-0 with Bell, Clark, Higginson, Hill, Monson, and Spratley voting aye.



**6. PUBLIC HEARING - Consider an amendment to the Bountiful City Zoning ordinance to designate the Planning Commission as the appeal authority for variances in the R-F zone related to disturbances of areas greater than 30% slope and cuts and fills exceeding 10 feet in height.**

Chad Wilkinson presented the staff report.

Consider amending Bountiful Land Use Ordinance Section 14-2-111 in order to designate the Planning Commission as the Appeal Authority for variances in the R-F zone related to disturbance of slopes greater than 30 percent and for cuts and fills greater than 10 feet.

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

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

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

addition, there have only been a handful of R-F zone variance requests submitted in the last two years, so impacts to the Commission are expected to be minimal.

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

Mr. Hill confirmed that the 30% slope variances would continue as a Public Hearing but would also require mailed notices and Planning Commission approval.

Chair Monson opened and closed the Public Hearing at 7:28 p.m.

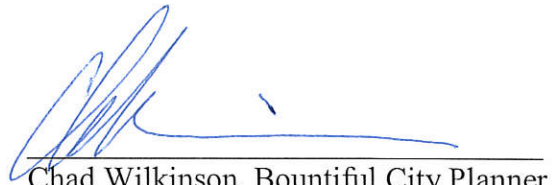
Sharon Spratley made a motion that the Planning Commission forward to the City Council a recommendation of approval for an amendment to the Bountiful City Zoning ordinance to designate the Planning Commission as the appeal authority for variances in the R-F zone related to disturbances of areas greater than 30% slope and cuts and fills exceeding 10 feet in height.

Von Hill seconded the motion. Voting passed 6-0 with Bell, Clark, Higginson, Hill, Monson, and Spratley voting aye.

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

1. Next Planning Commission meeting – June 19, 2018.
2. Available training for League of Cities and Towns.

Chair Monson ascertained there were no other items to discuss. The meeting was adjourned at 7:32 p.m.



Chad Wilkinson, Bountiful City Planner