

August 9, 2018

**ADMINISTRATIVE DETERMINATION OF A
NONCONFORMING USE
DECISION AND FINDINGS
PLNZAD2018-00608**



REQUEST:

A request for a Determination of Nonconforming Use regarding the property located at 935 E 800 S. Currently, 935 E 800 S serves as a parking lot for the residents of 927 E 800 S. Off-site parking is not a permitted use in RMF-35.

DECISION:

Based on the provisions of the Zoning Ordinance section 21A.38.040.E, planning records, and the documentation submitted by the applicant, the Zoning Administrator finds that the nonconforming use located at 935 E 800 S is considered to be a legal nonconforming parking lot.

FINDINGS:

Sec. 51-5-7 of the 1955 Zoning Ordinance allowed the Board of Adjustment to permit the use of land in a Residential District as a parking lot provided it met several conditions. City records show that a building permit was issued in 1963 for a 14 unit apartment building at 927 E 800 S. The permit also referenced Board of Adjustment Case #4752. The July 29, 1963, Board of Adjustment minutes (attached) note that applicant Carman Kipp and William Johnston sought an exception to the ordinance to permit a parking lot at approximately 925 E 800 S. The minutes detail the proposal for an apartment building with parking that is one lot separated by a 35' wide lot with an existing residence. The applicant also noted that the fee title to the driveway ran with his property. The Board of Adjustment approved the request for the parking lot in the residential district provided it met all of the requirements for a parking lot in a residential district, including ingress from 800 S and egress through the right-of-way to the north and west, a 4' landscaped buffer, a 4' light-tight fence to the west, a hardsurfaced lot, and a setback that was the full average alignment.

Additionally, the applicant submitted information from three individuals stating that the property has been used as parking lot for the residents of 927 E 800 S. One individual, a former owner of the property, Blake Kipp, stated that it had been used as parking for over 50 years.

If you have any questions regarding this interpretation please contact Sara Javoronok at (801) 535-7625 or by email at sara.javoronok@slcgov.com.

APPEAL PROCESS:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this Title may appeal to the Appeals Hearing Officer. Notice of appeal shall be filed within ten (10) days of the administrative decision. The appeal shall be filed with the Planning Division and shall specify the decision appealed and the reasons the appellant claims the decision to be in error. Applications for appeals are located on the Planning Division website at <http://www.slcgov.com/planning/planning-applications> along with information about the applicable fee. Appeals may be filed in person or by mail at:

In Person: Salt Lake City Corp Planning Counter 451 S State Street, Room 215 Salt Lake City, UT	US Mail: Salt Lake City Corp Planning Counter PO Box 145471 Salt Lake City, UT 84114-5417
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NOTICE:

Please be advised that a determination finding a particular use to be a permitted use or a conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure. It shall merely authorize the preparation, filing, and processing of applications for any approvals and permits that may be required by the codes and ordinances of the City including, but not limited to, a zoning certificate, a building permit, and a certificate of occupancy, subdivision approval, and a site plan approval.



Sara Javoronok, AICP
Senior Planner

cc: Nick Norris, Planning Director
Joel Paterson, Zoning Administrator
Heather Gilcrease, Development Review Supervisor
Posted to Web
Esther Hunter, East Central Community Council
Jason Stevenson & Darryl High, Co-Chairs East Liberty Park

Attachment 1: July 29, 1963 Board of Adjustment minutes

The regular meeting of the Board of Adjustment on Zoning of Salt Lake City, Utah, was held on Monday, July 29, 1963, at 9:00 A. M. at 415 South Second East Street. Present were Messrs. Theodore L. Cannon, H. W. Langton, Wesley A. Sorensen, Ray J. Underwood, Edwin Whitney, Vernon F. Jorgensen, Harry A. Hurley and Ray Rolfson.

The Chairman explained that the cases would be heard, would be taken under advisement, the written Findings and Orders would be mailed out in about two weeks and the applicants could call the office Thursday or later to find out what decisions had been made.

Action was taken on cases as advertised for hearing as follows:

Case No. 4751 at 2259 McClelland Street in re-application of The Sugarmonet Swimming Club by George E. Caine, President, for an exception to the ordinance to legalize a private recreational facility by a nonprofit organization at 2259 McClelland Street in a Residential "R-2" District.

When this case was called the applicant was not present; however, the Chairman ordered that the opposition be made a matter of record even though the applicant was not present. There were present in protest the following:

George F. Springer	843 Parkway Avenue
Jean Moffitt	966 Simpson Avenue
Josh Davis	931 Simpson Avenue
Mrs. Don R. Karpowitz	974 Elm Avenue
D. M. Jensen	937 Simpson Avenue
Harvey R. Moffitt	966 Simpson Avenue
Mrs. K. A. Murray	932 Simpson Avenue
Jerome V. Moffitt	966 Simpson Avenue

A petition of protest was presented. It was read by the Chairman and ordered filed with the case. Mrs. Karpowitz was the first to speak in opposition and she pointed out that the petition is signed by approximately 370 people. She explained that the swim club has been operating illegally for several years, the lessor was aware that it was illegal even though the lessee may not have been. She noted that the swimming pool has been operating on a one-family cess pool and the natural drainage is into the wading pool in the park. She contended that the pool has been operated without consideration of the general welfare of the young people who use the facilities of the park. She also pointed out the barbed wire on top of the fence around the pool, which barbed wire was put around it to protect youngsters from the dangers of the "illegal private pool", but noted a fence which cannot be seen through is a temptation for children to climb to see what is on the other side. She stated the operators of the pool claim the public parking is adequate to take care of their need and the public need as well; however, within the next month there will be a new picnic terrace under construction in the area where these people mostly park and it would be a great strain on the parking to have both private and public parking in this area. There are also to be more tennis courts east of the existing tennis courts, and a new swimming pool within the next two or three months, a pool which would be easy to maintain and safer for the young people. As soon as this public pool is constructed there will be insufficient parking in the park for the park use itself without having it used for private purposes. The people in the area feel this requested variance should definitely be denied, she noted. Mr. Jensen of 937 Simpson Avenue explained that those who were present in opposition also represented others and they were opposed to having the requested variance granted. He wondered why the private property within the park was not condemned and an equitable settlement made so proper use of the park could be made. He was informed,

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however, that that would be a matter for the City Commission. Mr. Jensen stated the people in the area object to allowing an exception to the zoning in this district inasmuch as it will create considerable nuisance for the residents around it, that a private club could lead to all-night parties and other activities that are not in keeping with a public park. He stated the people in the area want to go on record as opposing this exception to the zoning. Mr. Springer gave some of the background of the area, pointing out that the area was used as a public facility for ice skating, etc. even when it was private property and when it was acquired by the City for recreational purposes that area that is now private property was left private because there was an elderly couple living there, but it fell into the hands of someone else who wished to make other use of it. He stated besides representing his own family, he also represented the Granite Stake Presidency, High Council and Bishops, that he has been authorized by the Stake President to speak as a group in opposition to this application. The opposition was largely not that as a residence it was particularly objectionable although it would be a good facility to add to the park but as any other use it might become more objectionable. Mr. Davis objected to the refuse which goes into a ditch in back of his home which is a health hazard and he stated he concurred in the statements of those who had already voiced their opposition. Mr. Jensen stated he was a member of the Bishopric of the Forest Dale Ward and the matter was presented to the Ward members in last night's meeting and several of the Ward members have signed the petitions which have been circulating. Mr. Whitney explained that it was the general policy of the Board when the petitioner was not present at the first hearing to hold the matter over one additional meeting and give him an opportunity to appear but the objections expressed would be made a matter of record and if the case is considered at another meeting it would not be necessary for the people to appear at that time.

Later in the meeting Mr. George Caine and his attorney, Earl Tanner, came in and explained they knew nothing of this meeting until twenty minutes earlier when they were telephoned by the Planning staff, that they had received no written notice. It was reported that a notice had been sent to Mr. Caine at 2259 McClelland Street since there was no other address indicated on the application nor were there any other names on the petition. This notice was returned and it was resent to his home address. The Chairman ordered that a notice also be sent to Thomas VanWagoner, the property owner, and that the matter be held over and re-advertised for the next meeting but that it would not be necessary to notify the neighbors since their objections have already been heard.

Case No. 4752 at approximately 925 East 8th South Street in re-application of Carman E. Kipp and William Johnston for an exception to the ordinance to permit a parking lot at approximately 925 East 8th South Street in a Residential "R-6" District which requires Planning Commission and Board of Adjustment approval.

Mr. Kipp was present. Mr. Jorgensen explained that on the north side of 8th South the applicant has a 73' piece of property on which he is proposing to construct an apartment building but the parking is the problem. The parking is proposed on a lot which is one lot separated to the east so it is not a part of the same parcel of land on which the apartment is being built so it was interpreted as being a parking lot in a residential district. The access to the parking is proposed from a private 15' right-of-way to the west of the lot adjoining on the west right-angling into a private 16½' right-of-way to the rear of the lots. Both this Board and the Planning Commission wondered how such a proposal would work. The applicant explained that the 35' wide lot between the proposed apartment and the parking lot is occupied by a small, old frame house on the rear of the lot and the owner wants to stay there.

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In long-range planning, according to the applicant, a 35' wide piece of property has little utility but it could be incorporated into an over-all plan and possibly that property could be developed at a later date with the parking very likely to be moved to the rear. He explained there are plans for other apartments on three developments which will take up more than half of the block, so he felt that his plan would lend itself to the area and upgrade the area, noting they have about 1 1/3 times the square foot area required. He also explained that the fee title to the driveway runs with this property but he made out the application on the basis that they are separate. Actually the five lots are one piece of property since the fee title rests with the applicant, it is not a situation where they have an alley-way adjoining some pieces of property. His plans showed that there would be good-sized apartments and he felt the development would add materially to the value of the area. The Board questioned the usability of the parking. A suggestion was made that the entrance rather than the exit be from 8th South. It was noted too that a 4' landscaped buffer is required down the side of the parking. Building one unit with parking on the adjoining ground was suggested to eliminate the problem of having the house between the proposed apartment and the parking. Rounding off the corners of the properties next to the right-of-way at the rear was also suggested.

There were no protests. The Chairman ordered that the matter be considered in executive session, in which the various aspects of the case were reviewed, where it was noted that actually the applicant owns an "E" shaped piece of property and although the proposal is not an ideal situation he has tried to buy the other property but has been unable to do so, and the area is zoned for apartment houses.

At the conclusion of the executive session Mr. Cannon moved that a variance be granted to permit the proposed parking lot in a residential district provided it meets all the requirements under the ordinance for a parking lot in a residential district (Section 51-5-7), provided ingress is from 8th South and egress through the right-of-way to the north and west, with no backing out over the sidewalk, provided there is a 4' landscaped buffer and a 4' light-tight fence to the west of the parking, the parking area to be hardsurfaced and drained in accordance with the requirements of the City Engineer's office, the setback on the parking area to be back the full average alignment, with the final plans to be subject to approval by a Committee of the Board with a recommendation that an attempt be made to round off the rear corners of the properties next to the rights-of-way to the north, a copy of the finally approved plan to be filed with the case, seconded by Mr. Sorensen, all voting "Aye", except Mr. Underwood, who voted "No".

Case No. 4753 at 449-449A Ramona Avenue in re-application of Frank P. Heiner for a variance to legalize a duplex under construction at 449-449A Ramona Avenue without the required side yard in a Residential "R-4" District.

Mr. Heiner was present. He had a survey of his property but he hesitated presenting it to the Board because the survey was not correct, in his opinion. He pointed out the discrepancies on it and explained that this property consists of Lots 16 and 17 and the east 4' of Lot 18, the 4' of Lot 18 having been included for at least 35 years. Mr. Jorgensen explained the duplex under construction maintains 9' and 10' side yards since there are stoops projecting 3' into the side yards. The applicant was asked the reason for the outside stairway to the basement and he explained it was in case the zoning is changed some time he could put in an apartment there. It was suggested that such an entrance be left until such time that an apartment could be put in when and if the zoning were changed. The applicant explained he wanted to use the center part of the basement for his personal storage since he has his