CASE# PLNZAD2020-00585
Administrative Interpretation
DECISION AND FINDINGS

REQUEST:
The applicant is requesting an Administrative Interpretation to determine whether the noncomplying parcel located at 1782 S. 1600 E. (tax id: 16-16-328-024-0000) is a legal complying parcel under the provisions of City Code section 21A.38.060and therefore considered to be a legal buildable lot. The subject property is located in the R-1/7000 (Single-Family Residential) zoning district. The purpose of this request is to evaluate the previous Board of Adjustment decisions regarding the legality of the parcel and to determine if a single-family dwelling can be constructed on the property.

DECISION:
The Zoning Administrator finds that the parcel located at 1782 S. 1600 E. is not a legal complying parcel under City Code section 21A.38.060 and therefore is not a buildable parcel. In the Board of Adjustment case 102-B the parcel at 1782 S. 1600 E. was presented as part of 1572 E. Blaine Avenue, not as a separate parcel. The Board of Adjustment found in case 2477-B that 1782 S. 1600 E was not a legal parcel and upheld the staff action revoking a building permit issued in error. This decision was not appealed by the property owner and therefore the decision stands and the decision cannot be overturned or amended through the administrative interpretation process.

FINDINGS:
The first decision that affected the status of the subject property was Board of Adjustment case number 102-B, issued in 1985. Case number 102-B was a request for a variance for additional square footage and height for a detached accessory structure on the subject property located at 1782 S. 1600 E. The Board of Adjustment (BoA) was provided a site plan and legal description of the subject property, which illustrates the property located at 1572 E. Blaine Avenue and 1782 S. 1600 E. functioning as one lot. This site plan and legal description can be found in Exhibit A. This decision determined the future use of the parcel located at 1782 S. 1600 E. to be associated with 1572 E. Blaine Avenue.

The second Board of Adjustment decision, issued in 1999, further confirmed the Board of Adjustment decision from 1985. Case number 2477-B was an appeal by the property owner of 1782 S. 1600 E. of a building permit denial for a new dwelling. The building permit was mistakenly issued and later revoked. The appeal filed by the property owner claimed that the permit revocation was in error, due to the permit initially being issued. The following section is an excerpt of the subject case minutes, also found in Exhibit B:

> The subject lot was created some time in the 1950's by vacation of a mid-block alley, but it did not go through a proper subdivision process. Mr. Nelson then explained that the Petitioner obtained a building permit and it is on hold pending a decision from the Board. The permit was issued based [on] Section 21A.38.100 of the Zoning Ordinance which states any lot in legal existence prior to April 12, 1995 shall be considered a legal complying lot regardless of frontage or size. However, Staff determined that it was not legal existing because it was not legally created even through Salt Lake County has identified it by a parcel number and assesses taxes on it. Mr. Nelson continued to explain that the lot is related to the property abutting to the north. In 1985, the property owner at that time came to the Board to allow a garage on the subject property for the duplex fronting Blaine Avenue (Case #102-B). The garage is 56 feet wide by 31 feet deep and straddles the properties together. Furthermore, the subject property has been continuously used for the

abutting duplex since 1977. Mr. Nelson added that flag lot regulations came into effect in the current zoning ordinance adopted in 1995, but it does not apply to this lot because the Ordinance requires this lot be 10,500 square feet excluding the flat stem to qualify for subdivision approval.

Further discussion of the BOA case 102-B, included the following:

> Mr. Hafey explained that the Board did not grant a variance to build the garage on a separate piece of property. They granted it to be on the same lot as the main building. Mr. Wheelwright noted that the City has a recently required multiple parcels to be combined if the site is made up of multiple parcels before permit is issued. The City does not have a process for combining lots, it requires only recording deed with the County, but the combining of multiple parcels when obtained a permit is an attempt to address situations as in the 1985 Board case.

The BOA eventually passed the following motion:

> From evidence and testimony presented, Mr. Hafey made a motion to uphold the administrative decision that the parcel known as 1872 South 1600 East and is identified as parcel 16-16-328-024 is not an independent lot and may not be developed with a new single-family dwelling.

Due to the property owner not submitting an appeal of the BOA decision in 1999, the decision remains in effect. Additionally, staff cannot evaluate whether the BOA made a legal or correct decision.

Staff finds that the 1999 Board of Adjustment decision to uphold the 1985 Board of Adjustment effectively merged 1782 S. 1600 E. and 1572 S. 1600 E. as one lot and that 1782 S 1600 E is not a legal parcel and cannot be developed independently.

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 at the Planning Counter, 451 South State Street, Room 215 or by mail at Planning Counter PO BOX 145471, Salt Lake City, UT 84114-5471.

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.

Dated this 9th day of September, 2020 in Salt Lake City, Utah.

Kelsey Lindquist

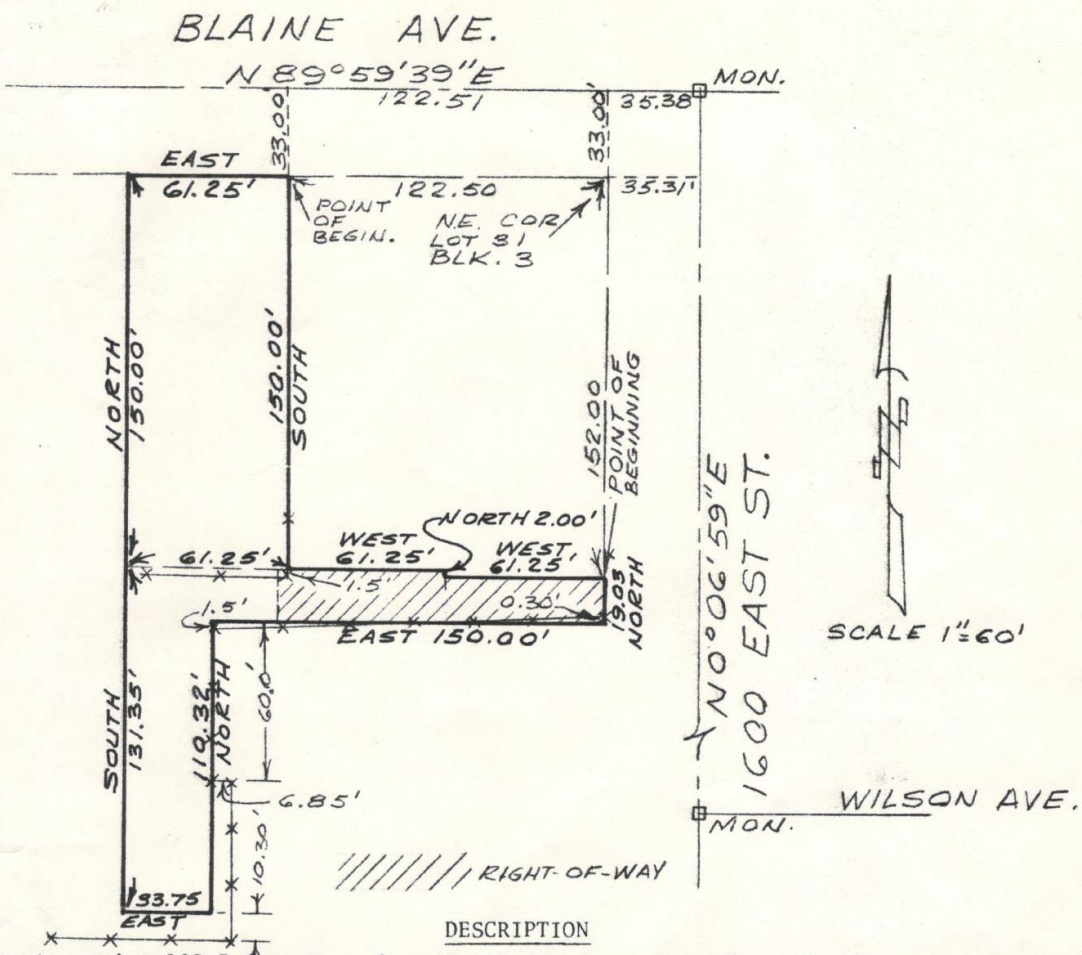
Kelsey Lindquist
Senior Planner
Salt Lake City Planning Division

Exhibits
A
B

CC: Nick Norris, Planning Director
Joel Paterson, Zoning Administrator
Wayne Mills, Planning Manager
Greg Mikolash, Development Review Supervisor
Posted to Web
Applicable Recognized Organization

Exhibit A

CLIENT CATES, DAVID T. JOB NO. 82-1320



DESCRIPTION

Commencing at a point 122.5 feet West from the Northeast corner of Lot 31, Block 3, PROGRESS HEIGHTS SECOND ADDITION, in the City of Salt Lake, County of Salt Lake, State of Utah, according to the official plat thereof, and running thence South 150.0 feet; thence West 61.25 feet thence North 150 feet; thence East 61.25 feet to the place of beginning.
Commencing 152 ft S fr NE cor Blk 3 PROGRESS HEIGHTS 2nd add, W 61.25 ft; N 2 ft; W 122.5 ft; S 131.35 ft; E 33.75 ft; N 110.32 ft; E 150 ft; N 20 ft m or l to beg Being part of lots 24 to 31 incl. sd. Blk 3 together with 1/2 vacated alley. Subject to a Right-of-Way described as: Commencing 152 ft S fr NE cor Blk 3 PROGRESS HEIGHTS 2nd add, W 61.25 ft; N 2 ft; W 63.75 ft; S 22 ft; E 125 ft; N 20 ft m or l to beg.

Exhibit B

BOARD OF ADJUSTMENT

July 19, 1999

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, July 19, 1999, at 4:00 p.m. at the City and County Building, 451 South State Street, in Room 126. Members present were Tim Chambless (Chairperson), Sydney Fonnesbeck, Mark Hafey Jr., Edward Radford, Nancy Taufer and Robyn Taylor. Merrill Nelson (Administrator for the Board of Adjustment), Randolph P. Taylor (Zoning Administrator) and William T. Wright (Planning Director) were also present. Michael Jones and Christy Martinez were unable to attend.

The meeting was called to order by Chairperson Chambless who explained the procedures of the meeting. He informed those present that the Members of the Board have visited the properties and the testimony given during the meeting is recorded. Mr. Chambless further explained that three concurring votes are necessary to pass or defeat a motion. All decisions of the Board of Adjustment are made effective immediately and may be appealed to the Third District Judicial Court within 30 days after Findings and Orders of the cases have been mailed.

Approval of the minutes for the meeting held June 28, 1999.

Mr. Hafey made a motion to approve the minutes as written. Mr. Radford seconded the motion, all voted *aye*; the motion passed.

Case #2472-B (readvertised) by Marilyn H. Peterson at 1788 East Hubbard Avenue for an appeal of an administrative decision holding that the removal and replacement of a foundation wall of a non-complying structure does not constitute the restoration of an unsafe structure under the Salt Lake City Zoning Ordinance Sections 21A.38.060 and 21A.38.090(C).

Marilyn Peterson was present.

Mr. Nelson explained that the subject property is located in an R-1/7000 Zone. This zone requires side yard setbacks of six feet and ten feet on either side. A dwelling existed on this lot that was considered legal non-complying because it had side yard setbacks of six feet on the east side and eight feet on the west. The owner planned to remodel the dwelling and obtained a permit to remove most of the structure leaving the west wall and a large portion of the basement floor so that the non-complying side yard of eight feet could be maintained. The building permit notes that the Petitioner agreed to maintain 44 percent of the original structure which would maintain the legal non-complying status. During construction, the entire structure was razed and the legal non-complying status was lost which then required meeting current side yard setbacks of six feet and ten feet. Mr. Nelson further explained that a provision in the Zoning Ordinance allows the Building Official to authorize restoration or repair of an unsafe non-complying structure. The Petitioner is before the Board applying this provision. The City determined that this provision does not apply because the Building Official was not involved in making the decision to remove the non-complying elements of the structure and razing it resulted in a lot that became a legal buildable lot on which prevailing zoning standards could be met.

Ms. Peterson explained that she purchased the property in January 1998 and decided to remodel the house which included a second story while maintaining the existing eight-foot setback on the west side. She obtained a routine and un-contested in-line variance to build above the eight-foot side yard. During the design process, Ensign Engineering determined that the foundation was unsound and would not support a second story. (Ms. Peterson presented a letter dated May 12, 1999 from Ensign Engineering.) They then went to the City and inquired how they could proceed with the project using the same design and maintaining the eight-foot setback. The City informed them that maintaining a certain portion of the house would qualify as a remodel. Thus, the plans were approved with the contingency that 44 percent of the existing house including the west wall would remain. During demolition, the west wall was knocked down by an employee while the demolition crew leader was at lunch. The building contractor informed

Chairperson Chambless read the Transportation Engineer report which states the wrought iron fence causes no sight distance problems.

Mr. Stokes explained that the overall project included a fence that would provide a safe place to work as well as aesthetics. He noted that cars have been stolen and vandalized in the parking lots. The operation has multiple shifts and the Petitioner asked their architect to design a fence that will be beautiful and protect the employees.

The Petitioners and the Board discussed other security measures that have been provided. The fence includes security gates and the gates will be closed after business hours. Lighting also illuminate parking and work areas. The fence is designed seven feet to the top of the pickets and then curves outward from the top rail. The projection of the curve will not encroach past the property line.

Mr. Catherall added that they have considered a seven-foot fence rather than an eight-foot to reduce the cost of the project. The principles of the design underwent a Crime Prevention Through Environmental Design (CPTED) review for safety and security with the Police Department. It was found that it promotes security for the community as well because it denies a place for suspects to flee. The fence is finished with an epoxy paint that is washable and along with the 80 percent openness is not conductive for graffiti. The Petitioners believe that the fence along with the landscaping enhances and upholds the character of the neighborhood. Mr. Catherall noted that Jay Ingleby, Chairperson for the West Salt Lake Community Council Chairperson, supports the special exception.

From the evidence and testimony presented, Ms. Taufer made a motion that the Board grants the special exception because it meets the three standards of review:

1. The wrought iron styled fence is more in keeping with the neighborhood than the existing chain-link fence with barbed wire strands on top.
2. The 80 percent open design mitigates any walled-in effect.
3. The proposed fence does not cause any line-of-sight traffic problems.

Mr. Hafey seconded the motion, all voted *aye*; the motion passed.

Case #2477-B by Mark Huber at 1782 South 1600 East for an appeal of an administrative decision holding that the parcel identified as 16-16-328-024 does not qualify as a legal complying lot under Section 21A.38.100 of the Salt Lake City Zoning Ordinance.

Mark Huber, Jessica Huber and Haas Hoffman were present to represent the case.

Mr. Nelson explained that the subject lot is located in a residential R-1/7000 Zone. This zone requires lots to have a minimum size of 7,000 square feet and a minimum frontage of 50 feet on a dedicated street. The subject lot is 7,400 square feet with 20 feet of frontage on 1600 East. The lot was created some time in the 1950's by vacation of a mid-block alley, but it did not go through a proper subdivision process. Mr. Nelson then explained that the Petitioner obtained a building permit and it is on hold pending a decision from the Board. The permit was issued based Section 21A.38.100 of the Zoning Ordinance which states any lot in legal existence prior to April 12, 1995 shall be considered a legal complying lot regardless of the frontage or size. However, Staff determined that it was not legal existing because it was not legally created even though Salt Lake County has identified it by a parcel number and assesses taxes on it. Mr. Nelson continued to explained that the lot is related to the property abutting to the north. In 1985, the property owner at that time came to the Board to allow a garage on the subject property for the duplex fronting Blaine Avenue (Case #102-B). The garage is 56 feet wide by 31 feet deep and straddles the common property line. The Board granted the request and Staff further determined that this tied the two properties together. Furthermore, the subject property has been continuously used for the abutting duplex since 1977. Mr. Nelson added that flag lot regulations came into effect in the current Zoning Ordinance adopted in 1995, but it does not apply to this lot because the Ordinance requires this lot to be 10,500 square feet excluding the flag stem to qualify for subdivision approval.

Mr. Huber explained that his daughter Jessica is studying architecture at the University of Utah and he wanted to help her with living arrangements. He decided to purchase the duplex and the subject lot in August 1998. They did minimal research prior to purchasing the property and knew from the beginning that there may be some problems with developing the lot. They worked very closely with the City and relied on Staff to assist in designing a house for the lot.

Jessica Huber added that she is in her last year of architecture studies and wanted to get experience in designing and decided to design a house for the lot. Mr. Hoffman, an intern architect, assisted her and their goal was to design a dwelling that would be in keeping with the neighborhood and conductive to the lot and the environment. They focused on form and materials. She explained that the lot is unsightly and overgrown and is a fire hazard. She believes the proposed dwelling will improve the lot.

Mr. Hoffman said they dealt with many issues when they began the process of designing. The lot is small and the existing garage blocks access to the rear of the lot. They wanted to minimize the building impact and designed it low to the ground. To achieve this, most of the windows were installed on the west side and different building materials were used to break up the form and mass. The dwelling is small with two bedrooms and 1 ½ bathrooms. The dwelling was always intended to be a single-family dwelling and not a cheap rental.

Mr. Huber said that they have had several meetings with City Staff since the stop work order was issued. He wishes to continue to work with Staff and does not want this issue to be confrontational because he believes he has a legitimate building permit. He wants to work out a solution that would be fair to everyone involved. Furthermore, they met with the neighbors and found that the neighbors were frustrated and angry and not receptive to the project. Mr. Huber requested that this case be held until they can discuss alternative designs with the neighbors and options with the City. The Petitioners have not contacted the Sugar House Community Council.

Mr. Nelson said that options are available to the Petitioner such as purchasing more land and going through the subdivision process and Staff is willing to work with Mr. Huber, but suggested that the case not be tabled. Staff stands on the decision that the lot is unbuildable and the City has agreed to refund the money for the permit if voided. The Board decided to hear the case.

Mr. Huber then explained that he was required to obtain a certificate of house number from the Engineering Department, a zoning certificate from the Building and Licensing Division and the property was required to have a tax id number before the building permit could be purchased. During this process, Mr. Huber had several meetings with Staff including Mr. Nelson and the issue regarding the garage being tied to the duplex property was not brought up. Mr. Huber noted that Board Member Mark Hafey is also familiar with the site. Mr. Huber believes that whether or not the Board upholds the administrative decision, one or another decision will be overturned. If this decision is upheld, the original decision allowing the permit for the garage will be appealed. At one point, zoning determined that the subject lot was legitimate and buildable because he obtained a building permit.

Mr. Huber then referenced definitions from the Zoning Ordinance and Webster's 1995 Collegiate Dictionary to reason why he believes the subject lot is a legal existing complying lot. He read the definition of a lot in Section 21A.62.040 of the Ordinance and understands why the City finds this definition to imply that the ground is not a lot because it has not gone through the approval process to combine it to another lot or the proper subdivision process. However, the original subdivision of the neighborhood was created in 1955 and went bankrupt. The developer then sold off pieces of ground and lots were created by subdividing parcels in which one (the subject lot) was left over. He noted that the definition states a lot may consist of combinations of adjacent individual lots and/or portions of lots except that no division or combination of any residual lot, portion of lot or parcel shall be created which does not meet the requirements. The subject lot is the last lot in the subdivision and created by subtraction, and the definition does not imply that the last lot can be thrown away especially in the manner the other lots considered legal were created. Mr. Huber added that the lot was not described until it was re-sold in 1977.

Mr. Huber understands that since the lot has not gone through the subdivision process and does not meet frontage requirement, the City determined that it does not qualify as a lot. However, Section 21A.62.040 also refers to a non-conforming lot which a lot lawfully existing prior to the effective date of the Ordinance, but fails to conform to the lot regulations of the zoning district in which it is located. Mr. Huber believes that by this definition, the City described the lot as such prior to issuing the building permit. He then explained that the code does not define *lawfully existing* or *legally existing*, but under Section 21A.62.101, Definitions Generally, the code states that any words in this title not defined in this chapter shall be as defined in Webster's Collegiate Dictionary of 1995. According to definitions of *legal, law* and *exist* in the Webster's Dictionary, Mr. Huber finds that the lot legally existed as a non-conforming lot prior to 1995. This is also supported by the fact that the lot has a separate tax id number, a separate address assigned by the City and a separate legal description. It can be shown that the lot was a separate parcel prior to 1977, there has been no previous action by the City requiring that the subject lot and the duplex lot be combined, and the two lots have not gone through subdivision process to combine them.

Mr. Huber then explained that the Ordinance does not define a non-conforming lot, but it defines a non-complying lot. Through definitions of *conforming* and *complying* in the Webster's Dictionary, he determined that the lot is non-complying. Section 21A.38.100 of the Ordinance states that *a non-complying lot is a lot that is non-complying as to lot area or frontage that was in legal existence prior to April 12, 1995, shall be considered a legal complying lot.* During the design process, he was required to meet certain setback requirements and Section 21A.38.100 further states that *legal complying lots in residential districts shall be approved for the development of a single-family dwelling regardless of the size of the lot subject to complying with all yard area requirements of an R-1/5000 district.* In addition, the lot conforms with Section 21A.36.020, Conformance with Lot and Bulk Controls, which states that in any residential district, on a lot legally established prior to April 12, 1995, a single-family dwelling may be erected regardless of the size of the lot subject to complying with all yard area requirements of the R-1/5000 Zone. Mr. Huber said that he does not consider the lot a flag lot, but a legal complying lot.

Mr. Huber asked whether or not the City has a process in which he could combine two lots and build a house in the middle. Doug Wheelwright, Subdivision Planner, answered that two original lots created in an original subdivision plat may be combined by recording deeds with the County without City approval. The exception to this is in the foothill district where the City has defined a buildable area as part as the original subdivision plat. A plat amendment is required when changing the shape and location of a buildable area. Mr. Huber noted that the lot has not gone through a process to combine it with the duplex property even though the garage sits across the property line. The code allows for a common wall to be located on a property line. Mr. Huber added that the City did not require the two lots to be combined in the 1985 findings.

Mr. Hafey explained that the Board did not grant a variance to build the garage on a separate piece of property. They granted it to be on the same lot as the main building. Mr. Wheelwright noted that the City has recently required multiple parcels to be combined if the site is made up of multiple parcels before a permit is issued. The City does not have a process for combining lots, it requires only recording deeds with the County, but the combining of multiple parcels when obtaining a permit is an attempt to address situations as in the 1985 Board case. State law; however, requires subdivision approval on any division of parcels because it must comply with zoning. Mr. Wheelwright added that the City has admitted the building permit was issued in error. Mr. Huber believes the permit was not issued in error, but the stop work order was.

Paul Durham, an attorney representing the neighbors, said that the proposed development is in the middle of 12 to 14 existing homes which will be impacted because it abuts the rear yards of these homes. These home owners and many members of the neighborhood were surprised to find a home on the subject lot was being proposed. Mr. Durham then explained that the lot may be defined as a merged lot. It and the adjacent duplex property were owned by the same owner in 1985 when the owner petitioned to build a garage across the two contiguous lots. At the time the variance was granted and the garage was built, City ordinances did not allow accessory buildings on vacant lots. It was acknowledged that the two lots became one by granting the variance. Mr. Durham supported this statement by citing law cases from

Connecticut and Maryland. In the 1991 Connecticut case (592 A2nd 970), a house was built over two contiguous lots and the proposal was to relocate the house on one lot and build another house on the other lot. The Court held that a merger of the two lots occurred by placing the home straddling those two lots and they could not be re-divided once they were merged. Both of these lots were recorded as two separate lots, but this did not refute the documented merger. In the February 1999 Maryland case (724 A 2nd 3rd and 4th) titled *Friends of the Ridge vs. Baltimore Gas and Electric Company*, an electrical substation was proposed to be built across two contiguous lots. The Court held that the substation combined the two lots into one lot and a subsequent building would not be allowed because of the merger. These lots had two parcels and the titles were held separately, but the lots were viewed as one parcel for zoning purposes. Mr. Durham believes that the proposed dwelling can not be built because of the merger and an additional home on the lot would be contrary to zoning.

Becky Davis, 1364 East Blaine Avenue, read the letter she and Mr. Davis submitted to the Board. They requested that the administrative decision be upheld. Mr. and Ms. Davis have lived in their home for 11 years and always thought the subject lot was part of the duplex property. She believes it was never meant to be a separate building lot after reviewing the plat map of the block. She also believes the proposed dwelling is not in keeping with the character of existing homes. All the neighbors she has spoken to are opposed to the development.

Jim Wright, 1784 South 1600 East, agrees with the neighborhood. He believes the lot is too small to accommodate a dwelling and the dwelling is not in keeping with the character of existing dwellings. He also believes it will increase traffic on the alley leading to the lot and this will change the integrity of the neighborhood.

Beth Johnson, 1580 East Blaine Avenue, is also concerned about the traffic because the alley is actually a driveway that she shares with Mr. Huber of which she has a right-of-way on her half. It abuts her property and she does not want any more traffic on it. Ms. Johnson explained that parking is also a problem and at times she has no parking for her visitors. Ms. Johnson has lived in her home for 40 years.

Ann Kelly Wright, 1554 East Blaine Avenue, read her letter that Mr. Wright and she presented to the Board. They believe the dwelling is out of character and would adversely impact all bordering properties in terms of quality of life and property values. It is bigger and higher and placed on a smaller lot. The Wrights would lose their privacy and view of the mountains because of the size and placement of the dwelling. The six-car parking lot would also create an adverse impact on surrounding neighbors. Ms. Wright added that the dimensions of the subject parcel is subject to dispute because property and existing fence lines are off by as much as 6 feet for a 60-foot stretch. She believes greener and lower impact development would better suit the land. Ms. Wright also presented a letter from Marissa Tessman who lives at 1548 East Blaine Avenue. Ms. Tessman also opposes the development and supports the administrative decision. She is concerned about her privacy and the impact on neighboring rear yards.

Christine Earley, 1563 East Downington Avenue, spoke on behalf of her family and herself and neighbors who live at 1569 East Downington Avenue. Ms. Earley explained that the lot as it exits is an eyesore, but it provides a hunting ground for birds of prey which she has learned to appreciate. Development of the lot will disturb the hunting grounds for these birds.

Mr. Huber addressed the neighbors' concerns. He does not believe adequate information has been researched to determine whether or not the lot could be considered a merged lot. He noted that case law cited by Mr. Durham would not apply to Utah zoning and the Salt Lake City Ordinance does not define a merged lot. If the City considers the lot to be merged, it should take the responsibility to write zoning laws clear enough for the public to understand. He relied on the interpretation that the lot was buildable and was further issued a building permit to build on the lot. The lot without the stem is almost 8,000 square feet and the dwelling was designed to fit it, but the Petitioners are open to design options that would mitigate privacy, height and mass concerns. The parking design was intended to lessen on-street parking problems and not to increase traffic on the driveway. He said they were not offered the opportunity to speak with neighbors during the design process. They only met with some neighbors a couple days before the hearing and they are willing to work with the neighbors and City Staff.

Chairperson Chambless noted that the Transportation Engineer states that the driveway meets City standards.

From the evidence and testimony presented, Mr. Hafey made a motion to uphold the administrative decision that the parcel known as 1752 South 1600 East and is identified as parcel 16-16-328-024 is not an independent lot and may not be developed with a new single-family dwelling. Ms. Taylor seconded the motion, all voted *aye*; the motion passed.

Case #2478-B by Prescott Muir Architects at 1706 East 1300 South for a variance to allow a new addition within a required seven-foot buffer area for an existing retail business in a Commercial Neighborhood CN Zone abutting a residential zone. (21A.48.080(C)(3)

This case was withdrawn at the Petitioner's request.

Case #2479-B by Colby Ries at 663 East Hollywood Avenue for a variance to allow a new dwelling without the required side yards in a Residential R-1/5000 Zone. (21A.24.080(E)

Colby Ries was present.

Mr. Nelson explained that the subject property is located in a high density residential zone and the existing dwelling was built in 1918 which predates any zoning ordinances. The lot is 25 feet wide and is considered a legal non-complying lot. The existing dwelling is one story high and maintains 18-inche side yards on both the east and west. The Petitioner is proposing demolishing the existing dwelling and constructing a new single-family dwelling that will be two stories high and provide 3 feet of side yard setback on the west and maintain 18 inches on the east.

Mr. Nelson then reviewed the five standards for granting a variance and explained that Staff determined the property-related hardship is the size of the lot. The Zoning Ordinance requires a lot to be 50 feet wide in an R-1/5000 Zone. The Zoning Ordinance also requires side yard setbacks of 4 feet and 10 feet on either side which would limit the proposed dwelling to 11 feet. Staff considers a house 11 feet wide unreasonable. The size is a special circumstance attached to the property and most dwellings in this neighborhood were constructed on two original 25-foot parcels. Replacing one non-complying dwelling with another non-complying dwelling will not affect the general plan. Mr. Nelson noted that the Building Code requires at least a three-foot setback for walls with windows. The Petitioner will not install windows on the east side of the dwelling which improves the current situation.

Mr. Ries explained that he has owned the property since November 1998 and designed the proposed dwelling to be in keeping with the character of existing homes in the neighborhood. Several homes in the area are two stories high.

Mr. Ries and the Board discussed the proposed plan. The neighboring dwellings on both sides will be 15 feet away from the subject house. The property to the west is further buffered by a driveway. The second level is within the roof structure and therefore the home is considered 1 ½ stories high. The dwelling will be 960 square feet including the garage and covers about 29 percent of the lot. The garage and a parking pad adjacent to the garage are located in the rear (north) yard and will be accessed by the abutting alley running east and west. Mr. Ries has talked to his neighbors about the project and they have no objections. Mr. Ries intends to occupy the dwelling.

From the evidence and testimony presented, Ms. Taylor made a motion to grant the variance for a new single-family dwelling with side yards of 1 ½ feet on the east side and 3 feet on the west because:

1. Holding the Petitioner to the required side yards of 10 and 4 feet would cause an unreasonable hardship of only an 11-foot wide house.
2. The property has a special circumstance of a 25-foot width that does not generally apply to other lots in this district.