Staff Report

PLANNING DIVISION
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To:	Salt Lake City Appeals Hearing Officer
From:	Kelsey Lindquist, Kelsey.lindquist@slcgov.com or (385) 226-7227
Date:	December 4, 2020
Re:	PLNAPP2020-00725

Appeal of Administrative Decision

PROPERTY ADDRESS: 1782 South 1600 East
PARCEL ID: 16-16-328-024-0000
ZONING DISTRICT/ORDINANCE SECTION: 21A.24.060: R-1/7000 (Single-Family Residential) & Chapter 21A.23: Administrative Interpretations
APPELLANT: Stephanie Poulos-Arrasi, property owner of 1782 South 1600 East, represented by J. Michael Coombs.

INTERPRETATION ISSUE:
The issue of this appeal relates to whether the property located at 1782 S. 1600 E. (tax id: 16-16 328-024-0000) is a legal complying lot in accordance with the Salt Lake City zoning laws. The purpose was to determine if a single-family dwelling could be constructed on the subject property.

ZONING ADMINISTRATOR'S DETERMINATION: The Zoning Administrator determined that the subject property located at 1782 S. 1600 E. is not recognized by Salt Lake City as a legal complying lot and therefore a single-family detached dwelling could not be constructed. The decision was determined from the Board of Adjustment (BOA) case 102-B. The BOA case 102-B presented the parcel at 1782 S. 1600 E. as part of 1572 E. Blaine Avenue, not as a separate parcel. Subsequently, a following BOA case 2477-B in 1999, determined that 1782 S. 1600 E. was not a legal parcel and upheld the staff action revoking a building permit issued in error. The BOA decision, rendered in 1999, was not appealed by the property owner and therefore the decision standards and the decision cannot be overturned or amended through the administrative interpretation process. The Administrative Interpretation is included in Attachment D.

APPEAL: The full appeal is included in Attachment C. Please note, due to the legality of each claim the Salt Lake City Attorney's Office is providing the appeal response. The appellant and her representation provided the appeal with the following claims:

Claim 1: The 1999 Board of Adjustment (BOA) decision is not res judicata and does not bar or preclude applicant from challenging the same.

Claim 2: The 1999 BOA decision in the September 9, 2020, F&D is legally incorrect for numerous reasons.

Sub Claim A: The parcel should be deemed "legally existing" or "in legal existence" because it is a "fully conforming lot" under today's zoning laws. A regulatory scheme that fails to allow this is unreasonable, outdated and fails to serve a legitimate governmental purpose.

Sub Claim B: To deprive applicant of any ability to use or develop the parcel violates City interpretative precedent and is otherwise unconstitutional.

Sub Claim C: The 1999 BOA decision erroneously relies on Connecticut and Maryland law to conclude "lot merger".

Sub Claim D: The "lot merger doctrine" is not recognized or adopted in Utah. More importantly, the 1999 BOA Decision is contrary to Utah Supreme Court Authority.

Sub Claim E: The regulatory purpose of "the lot merger doctrine" forming the basis of the BOA's Decision is not met.

NEXT STEPS:
If the administrative interpretation is upheld, the property owner of 1782 S. 1600 E. would not be able to construct a single-family structure on the property. If the decision is overturned, the property would be considered to be a legal buildable lot.

Any person adversely affected by the final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

ATTACHMENTS:

A. Vicinity Map
B. Salt Lake City Attorney's Office Response
C. Appeal Application and Documentation of Evidence
D. Administrative Interpretation
E. Background Documentation
F. Progress Heights Second Addition Subdivision Plat
G. Photograph

ATTACHMENT A: Vicinity Map

ATTACHMENT B: Response from Salt Lake City **Attorney's Office**

ADMINISTRATIVE HEARING OF A LAND USE APPEAL
(Case No. PLNAPP2020-00725)
December 10, 2020

Brief Prepared by Paul Nielson, Senior City Attorney
Office of the Salt Lake City Attorney

Stephanie Poulos-Arrasi ("Appellant") challenges an administrative interpretation issued by Kelsey Lindquist of the Salt Lake City Planning Division regarding whether a parcel of land identified in Salt Lake County records as parcel number 16-16-328-024 (the "Property") should be considered a legal, buildable parcel. The relevant facts in this matter are those provided in the exhibits to Appellant's brief as well as minutes from a 1985 Salt Lake City Board of Adjustment meeting (Case No. 102-B) and the Progress Heights Second Addition Subdivision plat provided with the staff report prepared by the Salt Lake City Planning Division for this appeal.

Appellant's initial argument, labeled "Point I", appears to be that *res judicata* does not apply here to bar Appellant from challenging a 1999 Salt Lake City Board of Adjustment decision (Case No. 2477-B). While the city acknowledges that Appellant may have a valid point that the absence of privity[1] does not trigger issue preclusion, Kelsey Lindquist, the Salt Lake City Planning Division staff member who issued the interpretation being challenged in this case, is correct that she has no authority to reverse a decision of the former board of adjustment. [2] Like this matter, the 1999 board decision was an appeal of a staff-level administrative interpretation. As such, planning division staff members could not overrule the decisions of an appeal authority designated to determine the correctness of staff-level decisions. The city is confident that the appeals hearing officer in this matter will recognize that if he were to find that planning division staff can overturn the decisions of the city's land use appeal authority, that decision would likely be overturned by planning division staff in short order. For this reason, the city is also confident that the hearing officer will have little difficulty concluding that Appellant's assertion regarding Ms. Lindquist's authority to overturn a 1999 board of adjustment decision is meritless.

Appellant's res judicata arguments also include inaccuracies that merit some discussion. First, footnote 3 in Appellant's brief argues that there's something noteworthy about the language in Salt Lake County's ordinances pertaining to the county's appeal authority. Without diving deep into a discussion of why the county's ordinances governing its land use appeal authority have no bearing on Salt Lake City, the city contends that there's absolutely no reason why the county's ordinances are noteworthy here.

Second, Appellant contends that the issue considered in the 1999 appeal concerning whether the Property was a legal lot is not the same issue here because the issue in this matter pertains to a rezone and/or conditional use permit application. If that were true, the hearing officer could instantly dispose of this appeal since the land use appeal authority has no jurisdiction to hear appeals of a land use regulation application (which has not been submitted)

[1] Appellant cites Collins v. Sandy City Bd. of Adjustment, 52 P.3d 1267 (Utah 2002).
[2] Salt Lake City's Board of Adjustment was phased out in 2012 in favor of a land use appeals hearing officer.

or a conditional use permit application that has not been submitted or decided.[3] Further, Appellant claims that "the Parcel is now a 'conforming lot' under these newer zoning laws" and that she "has new substantive rights" that the former owners didn't possess.[4] These assertions are clearly false. Appellant's assertion that the Property is now zoned SR-3 ignores the fact that the Salt Lake City Council has not rezoned the Property to SR-3 from its current R-1/7,000 designation and no conditional use permit has been granted--let alone applied for--to bestow any "new substantive rights". Additionally, Appellant contends that the current "Flag Lot Rule" renders the subject Property compliant.[5] *Salt Lake City Code* Subsection 21A.24.010.G.6 requires that flag lots have a minimum of 24' of public street frontage. The Property has 20' of frontage on 1600 East Street. Thus, the Property does not comply with current flag lot requirements.

Third, Appellant argues that the Abstract of Findings and Order[6] recorded against the Property on August 20, 1999 didn't provide Appellant any notice of the board of adjustment's 1999 decision because the wrong address was included on that document.[7] While it is true that the abstract includes one instance of an incorrect address (1752 South 1600 East), the abstract does state the address to be 1782 South 1600 East in the first paragraph and provides the county's parcel number (16-16-328-024) *three times* in addition to including a metes and bounds description of the Property. Appellant contends that she was "confused" as to which parcel the findings in the abstract referred. That claim seems implausible, especially given that it was recorded against parcel number 16-16-328-024 and it mentioned parcel number 16-16-328-024 three times and did not list any other parcel number.

Appellant's Second set of arguments, labeled "Point II", is broken into five subpoints. Point II(A) includes the claims that the Property was legally created in 1951 and that it now complies with current SR-3 zoning and the "current Flag Lot Rule". As mentioned above, the Property is not zoned SR-3 and does not meet the current requirement of 24' of public street frontage. As to whether the Property was legally created in 1951, the hearing officer should consider that the Property consists of parts of several lots that were created in 1916 in the Progress Heights Second Addition Subdivision. In January 1950, Salt Lake City Corporation's then-Board of Commissioners adopted the city's first subdivision regulations. Chapter LXVI to the Revised Ordinances of Salt Lake City, Utah, 1944 established the rules for "platting and subdividing", and Section 6805 thereof required that an amended plat be approved and recorded when making a material alteration to a subdivision.

The Progress Heights Second Addition Subdivision plat has never been amended. Only two of the lots on that plat are consistent with what county records currently show as lot boundaries. County records also show that most of the dwellings in that subdivision were constructed in the 1950s and 1960s. It seems that in the early days of its subdivision ordinance, Salt Lake City's development regulators were not keen to require plat amendments when considering development applications. Unsophisticated land use regulation was not unique to

[3] See Appellant's Brief at p. 4.
[4] Id. at p. 4-5.
[5] See id. at p. 4, 8.
[6] See id., Exhibit D.
[7] See id. at p. 5.

Salt Lake City throughout much of the twentieth century. Nevertheless, whatever division of land may have occurred in 1951 in the Progress Heights Second Addition Subdivision, no plat amendment was filed and whatever transaction(s) created the current configuration of the Property did not comply with subdivision requirements in effect at that time. The fact that most of the current lot configurations in that subdivision are inconsistent with the lot lines shown on the original plat doesn't somehow render the Appellant's Property compliant, and nothing has changed since to make it so.

Appellant's Point II(B) attempts to compare the administrative interpretation at issue with one issued for a different property in a different zoning district with different circumstances. Appellant argues that there is some unfairness with the fact that an administrative interpretation pertaining to property on Catherine Circle[8], which has less square footage than Appellant's Property, was deemed a legal parcel. What Appellant fails to recognize is that the Catherine Circle property interpretation addressed a lot that had been legally created in 1890 in the Waverly Subdivision and had land mass added by way of a partial street vacation. That lot that was legally created could not have become illegal by virtue of gaining additional land when a part of Catherine Street was legally vacated in 2009 despite the fact that land use regulations adopted subsequent to the 1890 subdivision required a greater minimum lot area than what was provided when that lot was created. Both the 1890 lot creation and the 2009 partial street vacation were legitimate government actions that authorized the Catherine Circle property's lot configuration.

Appellant's Points II(C) through (E) consist of arguments against lot merger principles. Appellant contends in its Point II(C) that the former board of adjustment's 1999 decision relied on cases from Connecticut and Maryland in support of applying the merger doctrine. Although the board's decision does conclude that the properties identified in that case should be treated as one, the board did not specifically determine that it had relied on the cases cited by Paul Durham, an attorney who represented nearby neighbors. The approved motion to uphold the June 29, 1999 administrative interpretation did indicate that a basis for upholding the interpretation included "evidence and testimony presented", but the merger cases identified by Mr. Durham were not specifically called out in that motion. Nevertheless, the board's determination that the properties should be treated as a single parcel indicates that the board did apply the merger doctrine.

Appellant argues that the merger doctrine is not recognized in Utah and points to an advisory opinion of the Office of the Property Rights Ombudsman[9] and Wood v. North Salt Lake, 390 P.2d 858 (Utah 1964) to support that contention.[10] Although the ombudsman's advisory opinion concluded that the merger doctrine had not been specifically adopted in Utah, it determined that nothing in the law prohibited its application.[11]

In Wood, the court held that North Salt Lake's denial of a permit to build on a legally created subdivision lot that did not conform to the zoning ordinance's minimum lot requirements

[8] Appellant refers to the Catherine Circle property as the "Circle City" property a few times in Point II(B).
[9] See Appellant's Brief, Exhibit G.
[10] See id. at p. 11-12.
[11] See id., Exhibit G.

at the time the permit was sought was unfair.[12] That court believed that it was discriminatory to require a property owner who happened to own several abutting lots to merge those lots in order to comply with the zoning ordinance when another owner who did not own multiple lots would not be subject to the same requirements.[13] It is critical to note that the court's determination of unfairness was made "under the particular facts of this case, none other."[14] The city contends that if Wood were decided today, the court would reach a different conclusion.

First, in light of the Utah Court of Appeals decision in Arnell v. Salt Lake County Bd. of Adjustment, 112 P.3d 1214 (Utah Ct. App. 2005) (reversed on other grounds) and statutorily protected rights to develop on lots in approved subdivisions[15], a Utah court today would hold that a lot in an approved subdivision vests the owner with the right to develop the lot in accordance with the zoning requirements in effect at the time the subdivision was approved.[16] In light of Arnell and Utah Code Section 10-9a-509, the property owner in Wood would have been allowed to develop the undersized lots because the owner's vested rights to develop a legally subdivided lot in a manner that met the zoning requirements at the time the property was subdivided.

Second, the Wood Court's pronouncement of some unfairness suffered by the property owner who was fortunate to own more than one abutting lot would not survive in light of the U.S. Supreme Court's 2017 decision in Murr v. Wisconsin, 137 S.Ct. 1933 (2017). In Murr, appellants challenged Wisconsin regulations and parallel St. Croix County ordinance provisions that required the merger of abutting lots in common ownership along the St. Croix River that did not meet minimum developable lot area requirements.[17] In determining whether required lot mergers may constitute unlawful takings, the Murr Court held that,

> courts should give substantial weight to the treatment of the land, in particular how it is bounded or divided, under state and local law. The reasonable expectations of an acquirer of land must acknowledge legitimate restrictions affecting his or her subsequent use and dispensation of the property.
> * * *
> A reasonable restriction that predates a landowner's acquisition, however, can be one of the objective factors that most landowners would reasonably consider in forming fair expectations about their property.[18]

The Court further held that,

> The absence of a special relationship between the holdings may counsel against consideration of all the holdings as a single parcel, making the restrictive law susceptible to a takings challenge. On the other hand, if the landowner's other property is adjacent to

[12] See Wood, 390 P.2d at 858-60.
[13] See id. at p. 859.
[14] Id.
[15] See Utah Code Sec. 10-9a-509.
[16] The same rationale supported the administrative interpretation on the Catherine Circle property.
[17] See Murr at p. 1940-41.
[18] Id. at p. 1945.

> the small lot, the market value of the properties may well increase if their combination enables the expansion of a structure, or if development restraints for one part of the parcel protect the unobstructed skyline views of another part. That, in turn, may counsel in favor of treatment as a single parcel and may reveal the weakness of a regulatory takings challenge to the law.[19]

In light of the Court's Murr opinion, it is clear that there is nothing inherently unfair in applying the merger doctrine against some owners' abutting lots when other owners may not be in the same position. As the Court pointed out, reasonableness of such regulations depends on the specific facts of individual cases.[20] The city encourages the hearing officer to read the entire Murr case for a helpful perspective on what may constitute the relevant parcel in takings jurisprudence.

As noted in Ms. Lindquist's staff report, the Property is not a legal parcel under Section 21A.38.060 of the *Salt Lake City Code* because it was not legally created and it has never met all of the zoning ordinance's requirements. As noted in the June 29, 1999 administrative interpretation that the board of adjustment upheld, the Property did not meet the minimum frontage, side yard setback, or flag lot requirements.[21] In fact, it was noted that the 16' side yard setbacks would have allowed "only four feet of available building width."[22] Clearly, a parcel that was created in violation of applicable subdivision requirements and never met applicable dimensional requirements could not have been a legally recognized parcel or lot.

For the foregoing reasons, the September 9, 2020 administrative interpretation issued by Ms. Lindquist should be upheld, and, to the extent applicable, the 1999 board of adjustment and June 29, 1999 administrative interpretations should be affirmed.

[19] Id. at p. 1946.
[20] See id. at p. 1942-50.
[21] See Appellant's Brief, Exhibit C.
[22] Id. at p. 2.

ATTACHMENT C: Appeal Application and Documentation

Appeal of a Decision

SALT LAKE CITY PLANNING

OFFICE USE ONLY		
Project # Being Appealed:	Received By:	Date Received:

Appealed decision made by:

☐ Planning Commission ☐ Administrative Decision ☐ Historic Landmark Commission

Appeal will be forwarded to:

☐ Planning Commission ☐ Appeal Hearing Officer ☐ Historic Landmark Commission

Project Name:

PLEASE PROVIDE THE FOLLOWING INFORMATION

Decision Appealed:
September 9th, 2020 Administrative Interpretation Decision and Findings

Address of Subject Property:
1782 South 1600 East, Salt Lake City, UT 84105

Name of Appellant:	Phone:
Blaine Properties, LLC	[redacted]

Address of Appellant:
3440 South 3650 East, Salt Lake City, UT 84105

E-mail of Appellant:	Cell/Fax:
[redacted]	

Name of Property Owner (if different from appellant):

E-mail of Property Owner:	Phone:
[redacted]	[redacted]

Appellant's Interest in Subject Property:
Owner

AVAILABLE CONSULTATION

Please call (801) 535-7700 if you have any questions regarding the requirements of this application.

APPEAL PERIODS

- An appeal shall be submitted within ten (10) days of the decision.
- Applicant of an HLC decision being appealed can submit within thirty (30) days of a decision.

REQUIRED FEE

- Filing fees must be submitted within the required appeal period.
- Filing fee of **$265,** plus additional fees for required public notices and multiple hearings.

SIGNATURE

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent:	Date:
Stephanie Poulos-Arrasi dotloop verified 09/18/20 11:16 AM MDT W7FT-XJBW-I3VH-DGND	09/18/2020

SUBMITTAL REQUIREMENT	
✔	✔ A written description of the alleged error and the reason for this appeal.

WHERE TO FILE THE COMPLETE APPLICATION

Mailing Address:	Planning Counter PO Box 145471 Salt Lake City, UT 84114	*In Person:*	Planning Counter 451 South State Street, Room 215 Telephone: (801) 535-7700

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

SP 09/18/20 11:16 AM MDT dotloop verified

I acknowledge that Salt Lake City requires the items above to be submitted before my application can be processed. I understand that Planning will not accept my application unless all of the following items are included in the submittal package.

Additional Guidelines for Those Appealing a Planning Commission or Landmarks Commission Decision

A person who challenges a decision by the Planning Commission or the Landmarks Commission bears the burden of showing that the decision made by the commission was in error.

The hearing officer, according to state statute, must assume that the decision is correct and only reverse it if it is illegal or not supported by substantial evidence in the record.

"Substantial evidence" means information that is relevant to the decision and credible. Substantial evidence does not include public clamor and emotion. It involves facts and not mere speculation. A witness with particular expertise can provide substantial evidence, but conjecture and public opinion alone are not substantial evidence.

The "record" includes information, including the application by the person seeking approval, the staff report, the minutes of the meeting, and any information submitted to the commission by members of the public, the applicant or others, before the decision was made. It does not include facts or opinion, even expert opinion, expressed after the decision is made or which was not available to the commission at the time the decision was made.

A decision is "illegal" if it is contrary to local ordinance, state statute or case law, or federal law. An applicant is entitled to approval if the application complies with the law, so a person challenging a denial should show that the application complied with the law; a person challenging an approval should show that the application did not conform to the relevant law. Issues of legality are not restricted to the record of the decision, but the facts supporting or opposing the decision are limited to those in the record.

With regard to the factual information and evidence that supports a decision, the person bringing the appeal, according to a long line of decisions handed down by the Utah State Supreme Court and the Court of Appeals, has a burden to "marshal the evidence" and then to demonstrate that the evidence which has been marshaled is not sufficient to support the decision.

The appellant is therefore to:

1. Identify the alleged facts which are the basis for the decision, and any information available to the commission when the decision is made that supports the decision. Spell it out. For example, your statement might begin with: "The following information and evidence may have been relied upon by the Commission to support their decision . . ."
2. Show why that basis, including facts and opinion expressed to the commission is either irrelevant or not credible. Your next statement might begin with: "The information and evidence which may have been relied upon cannot sustain the decision because . . ."

If the evidence supporting the decision is not marshaled and responded to, the hearing officer cannot grant your appeal. It may be wise to seek the advice of an attorney experienced in local land use regulation to assist you.

IN AND BEFORE THE APPELLATE REVIEW DIVISION OF SALT LAKE CITY PLANNING AND ZONING

452 South State Street, Room 215, Salt Lake City, Utah 84114

In the Matter of the Parcel located at 1782 S. 1600 E. (Tax ID # 16-16-328-024-0000) Applicant/Appellant.	**WRITTEN DESCRIPTION OF ERROR AND REASON FOR APPEAL** Appeal No. _____ Case # PLNZAD2020-00585 Entered September 9, 2020

COMES NOW, Applicant/Appellant Blaine Properties, LLC, a Utah limited liability company (hereinafter "Applicant") and hereby appeals the September 9, 2020, Decision and Findings ("D&F") of the Zoning Administrator relative to the parcel located at 1782 S. 1600 E. ("the Parcel") to the next level of review within Salt Lake City Planning and Zoning, a copy of which is attached hereto as **Exhibit A**. This Written Description is included in the appeal as required on p. 2 of the Appeal of Decision form.

INTRODUCTION

Instead of addressing the merits of Applicant's July 29, 2020, Application for re-zoning the subject Parcel to SR-3 or alternatively, giving Applicant a conditional use permit under the current Flag Lot regulation, the Zoning Administrator rubberstamped the 1999 Board of Adjustment's (BOA) decision ("Decision"), taking the position that such 21-year old Decision is

unreviewable in the "administrative interpretation process."[1] Specifically, appeal is hereby sought of the determination that the Parcel "is not an independent lot and may not be developed with a new single-family dwelling." *See* p. 14, top, D&F, **Ex. A**.[2]

Point I—THE 1999 BOARD OF ADJUSTMENT (BOA) DECISION IS NOT *RES JUDICATA* AND DOES NOT BAR OR PRECLUDE APPLICANT FROM CHALLENGING THE SAME.

The second paragraph, p. 1 of the D&F, **Exhibit A** hereto, states:

> This [1999 BOA] decision cannot be overturned or amended through the administrative interpretation process.[3]

Applicant strenuously disagrees with this statement. It is not an accurate statement of the law. Ignoring that the BOA made errors of fact and law as explained further below, the fact is that the 1999 BOA Decision is not *res judicata* nor is it immune from collateral attack or challenge under the doctrine of "issue preclusion." The Utah Supreme Court has weighed in directly on this issue on multiple occasions. In *Collins v. Sandy City Board of Adjustment*, 2002 UT 77, 52 P.3d 1267, 1269-70, 2002 Utah LEXIS 103 (Utah Sup. Ct. 2002), landowners sought review of a judgment of the Utah Court of Appeals finding that their suit against the city and the municipal corporation was barred by principles of issue preclusion because they had previously litigated the same issue

[1] *See* last sentence of second para., p. 1, D&F, **Exhibit A** hereto.

[2] This appeal also includes challenging the determination that the Parcel does not "legally exist" or is not "in legal existence." *See* summary of the BOA Decision on p. 2, D&F, **Ex. A** (characterizing the 1999 BOA Decision as holding that the Parcel is "not a legal parcel"). In this regard, reference is made to Point II, A below.

[3] It is noteworthy that under Chapter 19.92.010 of the County Code titled **Creation**, a Land Use Hearing Officer replaces and has the same power as the now defunct Board of Adjustment (BOA). This means that the appellate adjudicative officer here should have sufficient power and authority to lawfully overrule or surely alter the 1999 BOA Decision when it is clearly erroneous. The BOA, were it to exist today, would have the power and authority to correct its own 1999 Decision.

in an earlier case and failed to appeal. The Utah Supreme Court, while ruling in favor of respondents, held

> It is well settled that that the doctrine of "issue preclusion prevents the relitigation of issues in a subsequent action (citing other authorities)." This doctrine applies if the following four requirements are met: (i) the party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication; (ii) the issue decided in the prior adjudication must be identical to the one presented in the instant action; (iii) the issue in the first action must have been completely, fully, and fairly litigated; and (iv) the first suit must have resulted in a final judgment on the merits.[4]

In this case, the doctrine of "issue preclusion" does not operate to prevent Applicant from challenging the 1999 BOA Decision because none of the 4 requirements is met and all 4 must be met. **First**, Applicant was never in privity of contract with David T. Cates, the owner who acquired the Parcel directly from Salt Lake County as a separate, stand-alone parcel in 1978 (*see* **Exhibit B** hereto) and who, in 1985, petitioned the BOA for a variance in order to approve the building of garage on his adjacent Duplex lot. It is Cates' conduct which allegedly resulted, according to the BOA Decision, in a "merger" of the subject Parcel with Cates' adjoining Duplex Lot (1572 Blaine Avenue), both of which he owned at the time. **Secondly**, the current issue before the appellate adjudicator is not identical to the 1999 appeal brought by previous Parcel-owner Mark Huber. In 1998, Huber bought the Parcel from Thomas C. Rockwood, a person who had purchased the Parcel from Cates in 1994. In 1999, Huber sought a building permit on the Parcel, the same was issued under a code section that no longer exists (21A.38.100), and then the

[4] *See also Jensen v. Cunningham*, 2011 UT 17, 250 P.3d 465, 477, 2011 Utah LEXIS 32, 697 Utah Adv. Rep. 18 (Utah Sup. Ct. 2011) (citing *Collins* with approval and reiterating the 4 part issue preclusion test); *accord, Smith v. Hruby-Mills*, 2016 UT App 159, 380 P.3d 349, 355, 2016 Utah App. LEXIS 171, 818 Utah Adv. Rep. 56 (Utah App. 2016) (also discussing the merits of a trial do novo).

City subsequently revoked the permit in a June 29, 1999 letter to Huber from the Zoning Administrator, a copy of which is attached as **Exhibit C**. Huber appealed that revocation, giving rise to the BOA Decision. Applicant, by contrast, 21 years later, has sought a re-zoning of the Parcel to SR-3 or, alternatively, a conditional use permit under the Flag Lot Rule, as amended, laws or classifications that did not exist in 1999 and which were never brought up or ruled on at the 1999 BOA Hearing because they did not exist.[5] **Thirdly**, the issue in the first action as to the availability of a building permit on the Parcel or whether it was a "legal parcel and can be developed independently" was not "completely, fully, and fairly litigated." To be sure, among other things, no evidence was adduced at the BOA Hearing as to what the zoning requirements were in the 1950s when the Parcel was created and thus, whether the Parcel was legitimately created as part of a "subdivision process." **Fourth**, the appeal by Huber did not result in a final judgment on the merits; that is to say, neither the September 9, 2020, D&F affirming the 1999 BOA Decision nor the 1999 BOA Decision itself is a "final order" of a Utah district court nor was there a trial of the issues on the merits giving rise to those decisions.

But ignoring that challenge to the 1999 BOA Decision is not barred by issue preclusion, the fact is that the law has changed significantly since 1985 and 1999. This fact independently and in and of itself allows Applicant to avoid the effect of issue preclusion. In *Collins v. Sandy City Board of Adjustment*, *supra* at 1271, the Utah Supreme Court went on to hold that while a change in the law allows a party to avoid the effect of issue preclusion, the party must show that a new substantive right has been created. Here, SR-3 and the amended Flag Lot Rule were not in effect in 1985 or 1999 and given that the Parcel is now a "conforming lot" under these newer

[5] Applicant's research reveals that the Flag Lot Rule may have existed in some form in 1995 but at that time the parcel required 10,500 sq. ft. to qualify whereas under the current Flag Lot Rule, the subject Parcel meets the 7,000 square footage requirement. *See* D&F, **Exhibit A**, p. 10 bott.

zoning laws, Applicant has new substantive rights in and to the Parcel that Cates never had in 1985 and Huber never had in 1999. *Id.*

It would also be unfair to hamstring Applicant with the BOA's 1999 Decision. While an Abstract of the BOA's Findings and Order was recorded on August 20, 1999 (*see* **Exhibit D** hereto), the Abstract, without defining the same, characterizes the BOA Decision as "not qualify[ing] as a legal complying lot." Then, at the bottom of the Abstract, it identifies the wrong address (1752 S 1600 E, a separate house and lot) as "not an independent lot and may not be developed with a new single-family dwelling." *So does this language mean that the Parcel would forever be undevelopable? If so, why does it not say that. And is the Parcel merged with another lot? If so, why does it not say that too if that's what the BOA held?* And would a reasonable person interpret the confusing language as never allowing development on the Parcel even if the law changed? Why? Given the wrong address in the most prominent part of the document, Applicant was confused and thought that the "independent lot" language related to another lot or parcel and was mis-recorded. And to the extent a reasonable person would read the Abstract as related to the subject Parcel, Applicant nonetheless reasonably read language in the beginning and end as mere a function of random zoning laws in existence during 1999. Once zoning laws change, the Abstract connotes that the lot may well "qualify as a legal complying lot." Had the language been more precise and clearer to give Applicant actual notice of what it is facing today, Applicant might not have bought the Parcel. Applicant submits that a reasonable person would make the same mistake in interpretation and therefore, it would be unfair and unjust to dismiss this appeal on the basis of the unclear and ambiguously worded Abstract. At the same time, dismissing this appeal, in light of Applicant's new substantive rights in the Parcel,

would surely constitute an unconstitutional and unlawful taking of Applicant's property without due process of law, namely, without notice and an opportunity to be heard.[6]

Based on the foregoing, the law is clear that Applicant has every right to challenge the 1999 BOA Decision.

Point II--THE 1999 BOA DECISION UPHELD IN THE SEPTEMBER 9, 2020, F&D IS LEGALLY INCORRECT FOR NUMEROUS REASONS.

A. The Parcel should be deemed "legally existing" or "in legal existence" because it is a "fully conforming lot" under today's zoning laws. A regulatory scheme that fails to allow this is unreasonable, outdated and fails to serve a legitimate governmental purpose. Page 10, bott., of the BOA Decision (Ex. A), states: "The lot was created some time in the 1950's by vacation of the mid-block alley, *but it did not go through a property subdivision process*." [Emphasis in italics added.] The BOA Minutes (Ex. A) further explain on p. 11 what happened with the subject Parcel:

> [T]he 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. . . . 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

[6] *See, e.g.*, *State ex rel. Nagawicka Island Corp. v. Delafield*, 117 Wis. 2d 23, 27, 343 N.W.2d 816, 818-19, 1983 Wisc. App. LEXIS 4148 (Wis. App. 1983), in which the Wisconsin Court of Appeals held that the zoning of property is a legitimate municipal device to control land use and obtain orderly community development. However, when zoning classifications restrict the enjoyment of property to such an extent that it cannot be used for any reasonable purpose, a taking without due process occurs. The valid exercise of a municipality's police power extends only to reasonable restrictions on the use of property. When the power to regulate by zoning is exercised in such a manner and to such an extent that the property owners are deprived of all practical value and are left with only the burden of paying taxes on it, the useful value of that property has been taken from its owners without due process of law. *See also Town of Rhine v. Bizzell*, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780, 2008 Wisc. LEXIS 328 (Wis. Sup. Ct. 2008) (discussing the Constitutionality of zoning ordinances and holding ordinance that prevented use of property unconstitutional).

> thrown away especially in the manner the other lots considered legal were created.

In reliance on the foregoing findings, the BOA reached its 1999 Decision, which the September 9, 2020, F&D summarizes as follows on p. 2 thereof:

> 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. [sic] as one lot and that 1782 S 1600 E is not a legal parcel and cannot be developed independently.

What is meant by a "legal parcel" or being "in legal existence" and thus "developable" is not defined in the City Ordinances or Utah case law but is ironically explained in the Zoning Administrator's June 29, 1999, letter to Mr. Huber, **Ex. C**. It is a lot which (1) fully conforms to zoning at the time of its creation ("fully conforming lot"), (2) while conforming to zoning at the time of its creation, the lot does not conform to current zoning requirements ("legal nonconforming lot"), or (3) the lot was created at a time which pre-dates all zoning regulations ("Granddaddy lot"). The Parcel here was actually created "by subtraction" or default in 1951 when Valley Sales, the developer, divided up a large parcel of which the subject Parcel was a part and sold 3 subdivided lots to individuals, leaving the subject Parcel.[7]

To determine if a lot created long ago is a "legal parcel" or "in legal existence" thus first requires discerning whether it complied with zoning requirements at the time it was created. Applicant has recently enquired, and Salt Lake City Zoning and its staff have no idea what the City zoning laws affecting the subject Parcel were in 1951.

[7] *See* **Exhibit F** referenced below, a copy of the City's building permit record on the Parcel, which dates the Parcel "6-14-51."

The "legal parcel" or "in legal existence" concept is thus applied by the City in one direction. Yet it would be illogical not to apply it in the other direction when all protections afforded by the concept are met. For example, what if the Parcel was "created" today? Would there be a reason then to deny Applicant's July 29, 2020, Application for Interpretation? No, there would not. Here, the 7,400 sq. ft. Parcel "conforms" or "complies" with SR-3 zoning and also the current Flag Lot Rule. There is no rational basis to conclude that the Parcel is not "legally existing" on that basis. To deny such a conclusion is unreasonable and serves no legitimate governmental purpose, particularly when the Zoning Division of Salt Lake City is itself not able to determine what the zoning laws relating to the Parcel were in 1951. *Being wedded to an old regulatory paradigm that requires determining what the specific law was in a certain location 70 or100 years ago—something which in this case cannot be done—makes no sense and is illogical when the lot is "conforming" today.* To hold otherwise greatly prejudices Applicant because it relegates the Parcel to being worthless when it does in fact "conform" to and meet current zoning laws, rules, and regulations. Saying the Parcel does not "legally exist" today ignores common sense and thus strikes any reasonable person as a clear "taking" by government without due process of law. *See* footnote 6 above. Applicant's research finds no law or decision in any jurisdiction that compels divining what the zoning law was 70 or more years ago in order to give property value.

B. <u>To deprive Applicant of any ability to use or develop the Parcel violates City interpretative precedent and is otherwise unconstitutional</u>.

On January 14, 2018, in Case No. PLNZAD2009-00005, the City Zoning Administrator issued an interpretation holding that a 3,450 sq. ft. non-complying parcel located on Catherine Circle (600 N 1400 W) with merely 25 ft. of public street frontage, a parcel that came into existence in 1890, and which was made larger at some point, was a "legally complying lot"

under City Code section 21A.38.060. A copy of the Administrative Interpretation is attached hereto as **Exhibit E**. Given that the Parcel subject hereof has existed in its current form since at least 1951 and it is not only twice as large as the Circle City lot but also "complies" with existing zoning regulations, it is difficult to understand how the City can reconcile defining the Catherine Circle lot as "legally complying" and not the subject Parcel—all on the basis of when the lot allegedly came into existence. *Why should that matter when a lot, like the subject Parcel, is "conforming" or "complying" with existing zoning law?*

This is not to ignore that if the practical effect of City Ordinances is that they irrationally favor those such as the Circle City owner and not Applicant here, all for no legitimate reason, they may be unconstitutional in their effect and thus violative of the Equal Protection clauses of the United States and Utah Constitutions. Applicant has just as much right to develop its Parcel as the owner of the small Circle City lot, particularly when Applicant's lot is twice the size and it fully "complies" with at least 2 separate zoning laws.

C. <u>The 1999 BOA Decision erroneously relies on Connecticut and Maryland law to conclude "lot merger."</u>

The 1999 BOA Decision erroneously relies on *Iannucci v. Zoning Bd. of Appeals*, 592 A.2d 970 (Conn. App. 1991) and *Friends of the Ridge v. Baltimore Gas & Elec. Co*., 724 A.2d 34 (Md. App. 1999) to invoke the "lot merger doctrine" and determine that there had been a "merger" of the subject Parcel and Cates' Duplex Lot back in 1985. *See* p. 13, top, **Ex. A** hereto, F&D (attached as Ex. B thereto). We say this because the record lacks any other basis for the BOA's invoking the "lot merger doctrine" to reach the conclusion that it did. Nonetheless, other than invoking the doctrine, a close examination of the two cases reveals that they do not bolster or support the BOA Decision. In *Iannucci*, the Court stated,

> Contiguous land owned by the same person does not necessarily constitute a single lot (citing

> authorities). A merger can occur, however, if the owner of contiguous parcels of land intends to form one tract. The owner's intent "may be inferred from his conduct with respect to the land and the use which he makes of it (citing authorities)." Intent is an inference of fact and "'is not reviewable unless it was one which the trier could not reasonably make (citing authorities)." [8]

In this case, Cates never testified at the July 19, 1999, hearing as to his "intent" to merge the two properties. Nor was an affidavit submitted from him. That Cates may have accidently encroached his Duplex Lot garage on the Parcel is not evidence of intent but more likely mistake and negligence on his part. This is because if Cates "intended" to "merge" the Parcel with the Duplex Lot by that act, he would have been rendering the Parcel worthless. No one would intentionally do that. Contrary to p. 1 of the D&F, Ex. A hereto, which erroneously states that Cates sought a variance for a structure on 1782 S. 1600 E (the Parcel's address), there is no evidence in the record or otherwise that Cates applied for a variance on the subject Parcel. To the contrary, the City's record of Cates' 1985 application for a building permit, **Exhibit F** hereto, shows that he applied for the variance for "1570 -1572 Blaine Avenue," neither of which is the address of Parcel in issue. This is the only evidence the BOA could have relied on in 1999 to surmise or discern Cates' 1985 intent and it says nothing about the subject Parcel. The fact is that the BOA lacked any evidence whatsoever, direct or otherwise, of Cates' intent to "merge" the two properties but nonetheless erroneously concluded that he "intended" to merge the two properties. Based on *Iannucci* and other cases upholding the same rule of law, Cates' intent is reviewable because it was a conclusion the BOA, as trier of fact, could not make, had no basis to

[8] *Friends of the Ridge*, the Maryland case, while inapposite on the facts because it pertains to a public utility that sought to merge 3 parcels to build a larger structure, reiterates the "intent" holding of *Iannucci*. *See Friends of the Ridge, supra*, 724 A.2d at 40.

make and was not competent to make 14 years after-the-fact and without any testimony or evidence from Cates himself.

A more instructive Connecticut case is *Peikes v. Waterford Zoning Bd. of Appeals*, 2010 Conn. Super. LEXIS 1865, 2010 WL 3260119 (Conn. 2010). Therein, at pp. *11-12, the Connecticut Superior Court held that the merger of adjacent lots occurs in two situations. **First**, where the parties *intend* to treat multiple lots as a single lot. **Second**, by operation of law where the zoning regulations contain a merger provision for nonconforming contiguous lots. Here, in 1999 as well as today, the County and the City have no law *compelling* lot merger.[9] Applicant can find no Utah law that allowed the BOA to order the Parcel "merged" or consolidated with the Duplex Parcel and deprive Cates and his successors of the right to use the same in perpetuity for that reason. The BOA thus acted illegally by inferring Cates' intent without rational or other basis and by further imposing merger, namely, a "taking" of the Parcel, without statutory authority. In short, the BOA exceeded its authority.

D. <u>The "lot merger doctrine" is not recognized or adopted in Utah. More importantly, the 1999 BOA Decision is contrary to Utah Supreme Court authority</u>.

In 2009, the Office of the Property Rights Ombudsman of the Utah Department of Commerce published Advisory Opinion #61 authored by the Holladay City Attorney discussing and addressing "the doctrine of lot merger," a copy of which is attached hereto as **Exhibit G**. The Opinion #61 analyzes The Doctrine of Lot Merger which originated in New England, stating that it "arises when the owner of a substandard lot owns other, adjoining property, and the owner is required to merge those lots and treat them as a single lot for zoning purposes." *Id*. at p. 3.

[9] The closest City law is in the last sentence of City Code section 21A.38.060 which is permissive and provides: "Noncomplying lots *may* be combined to create a conforming lot or more conforming lot subject to any maximum lot size standards of the zoning district in which the lot is located. [Emphasis in italics added.]"

"Lot merger has not been expressly established in Utah." *Id*. at pp. 3-4. Contrary to the BOA relying on New England case law to issue its 1999 Decision, it turns out that a pre-1999 Utah Supreme Court case of which the BOA was likely not aware is directly on point. In *Wood v. North Salt Lake*, 390 P.2d 858 (Utah Sup. Ct. 1964), while not examining the lot merger doctrine specifically, the Utah Supreme Court nevertheless rejected the compulsory combination of non-conforming lots based solely upon common ownership, holding that requiring one lot owner to merge his lot to make it satisfy the square footage minimum in the ordinance simply because the owner owns the adjacent lot, where another owner would be able to build upon her lot because she did not own an adjacent lot "would be objectionable under simple principles touching on discrimination." *Id.* at 859. The Court thus rejected the compulsory combining of lots based on an ordinance. Based on *Wood v. North Salt Lake, supra*, there can be no dispute that the BOA lacked power and authority in 1999 to force the merger of the subject Parcel with and into the Duplex Lot. Its act of doing so was illegal.

E. <u>The regulatory purpose of "the lot merger doctrine" forming the basis of the BOA's Decision is not met</u>.

The "lot merger doctrine" originated in New England as indicated in Opinion #61. Courts should thus look to New England jurisdictions for guidance on it. In *Goulet v. Zoning Bd. of Appeals*, 117 Conn. App. 333, 978 A.2d 1160, 2009 Conn. App. LEXIS 435 (Conn. App. 2009), the Connecticut Court of Appeals held that the regulatory purpose of lot merger statutes is to reduce or eliminate nonconforming lots. *Id*. at 1165-66. Here, based on the availability of SR-3 and the amended Flag Lot Rule, the Parcel is "conforming." There is simply no legitimate reason or basis to force the merger of "conforming lots." Accordingly, there is no reason or purpose for government to continue to render the Parcel worthless under the "lot merger doctrine" which has never been adopted in Utah, either by case law or by statute, rule, or

regulation. The BOA Decision must be vacated for this reason in that upholding "lot merger" in this case was not only illegal but it serves no current legitimate regulatory purpose.

Exhibit List

D&F Decision of September 9, 2020	Exhibit A
Deed from Salt Lake County to Cates in 1978	Exhibit B
June 29, 1999 letter from Zoning Administrator to Huber	Exhibit C
Abstract of Findings and Order	Exhibit D
Salt Lake Zoning Interpretative Decision, Jan. 14, 2018	Exhibit E
Cates' Building Application	Exhibit F
Utah Property Rights Ombudsman Advisory Opinion #61	Exhibit G

CONCLUSION

Based on the foregoing, the 21-year old BOA Decision is erroneous. It has been superseded by changes in law which have given Applicant new substantive rights in the subject Parcel. As such, the law makes clear that the Decision can indeed be challenged by Applicant. The Decision is also illegal and not supported by the record. It is likely unconstitutional. The information and evidence adduced at the July 19, 1999, regular meeting of the BOA also cannot sustain the Decision. Among other things, the true intent of Mr. Cates, a prior owner of the Parcel, was never legitimately determined at the hearing. Moreover, no law existed in Utah or the City or County requiring a "merger" of the Parcel and the Duplex Lot, a clear "taking" of the Parcel without just compensation under the federal and Utah Constitutions. Even if the Parcel was "non-conforming" to any zone in 1999, the law has changed, and it does "conform" today. That is what matters. Accordingly, the Decision should be set aside and the Parcel—which according to county records remains separate and distinct from the Duplex Lot for property tax

purposes—should be re-zoned SR-3 or made available for conditional use development under the current Flag Lot Rule.

DATED this 18th day of September, 2020.

Respectfully submitted,

MABEY & COOMBS, L.C.

/s J. Michael Coombs
J. Michael Coombs
Attorneys for Applicant/Appellant

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CERTIFICATE OF SERVICE

The undersigned also hereby certifies that on this 18th day of September, 2020, (s)he served, uploaded the foregoing **WRITTEN DESCRIPTION SUPPLEMENT TO APPEAL**, including all attendant exhibits, to:

https://citizenportal.slcgov.com/citizen/Default.aspx

s/ Anthony Arrasi
Anthony Arrasi

Exhibit “A”

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

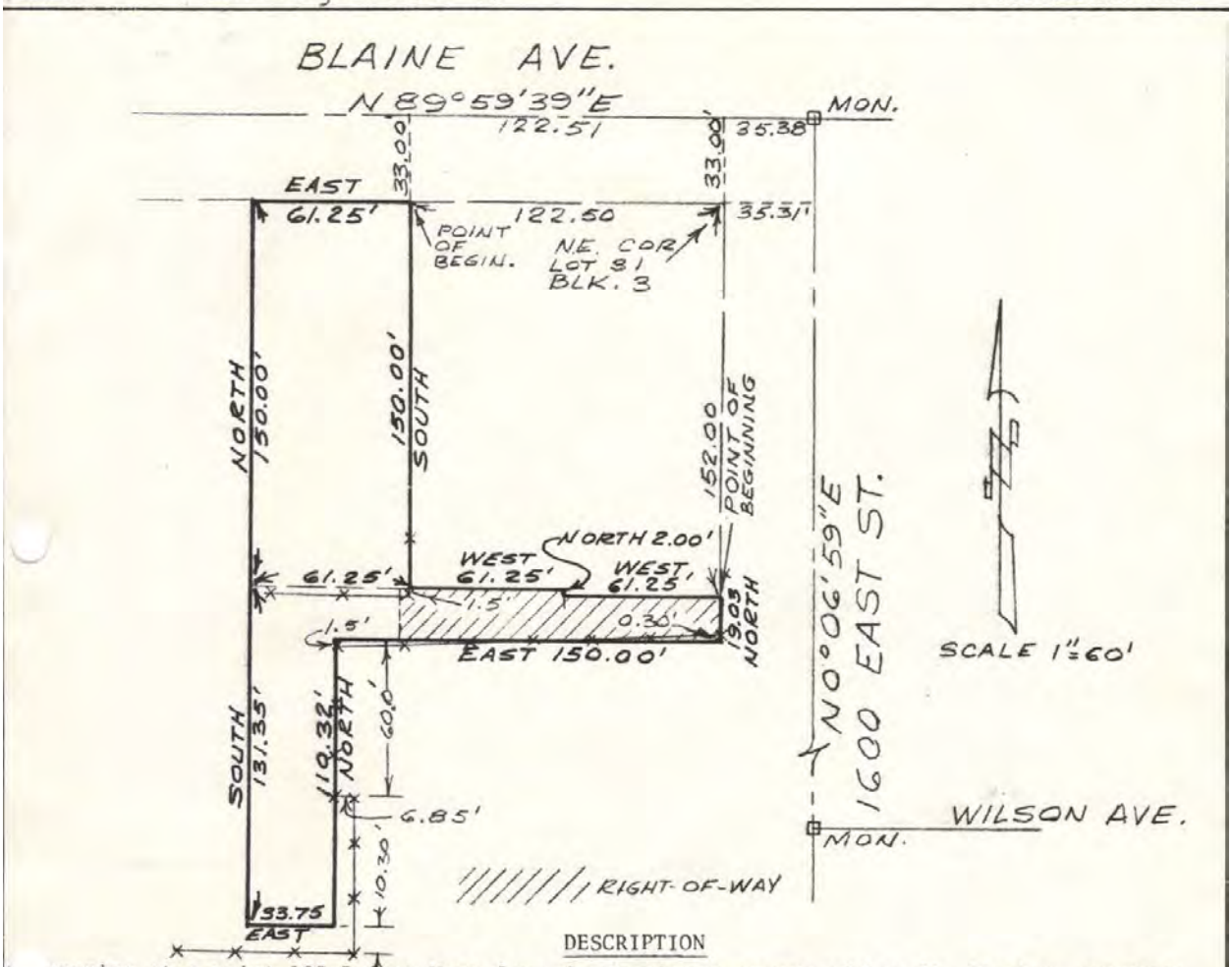
Kelsey Lindquist
Senior Planner
Salt Lake City Planning Division

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 1 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 1 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.

Exhibit “B”

Deed of Salt Lake County

3049636

SALT LAKE COUNTY, a body corporate and politic, of the State of Utah, Grantor, hereby **Quit-Claims** to David T. Cates Jr. and Dorothy L. Cates as joint tenants with the right of survivorship and not as tenants in common, **Grantee**, of Salt Lake, County of Salt Lake, **State of Utah**, for the sum of One Thousand Five Hundred and no/100 ($1,500.00) **Dollars**, for the following described tract of land in Salt Lake County, State of Utah:

Com 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:
Com 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.

Recorded JAN 11 1978 at 1:36 P m
Request of David Cates
KATIE L. DIXON, Recorder
Salt Lake County, Utah
$ 4.50 By Scott Duckworth Deputy
REF. 1439 Documentary tax 8.1105

This deed is made under the authority of Title 59, Chapter 10, Section 64, Utah Code Annotated, 1953, in pursuance of a sale of said property, authorized by an order of the Board of County Commissioners of said County, made the 19 day of January, 19 77, and vesting in the Grantee all of the title of all taxing units in said property.

It is understood and agreed that the Grantee hereby waives and releases any and all claims of any nature it may have or hereafter have against Salt Lake County on account of any defect in the right, title or interest of Salt Lake County in and to said property including the right, if any, to recover the consideration paid by Grantee to Salt Lake County for said property and that Salt Lake County makes no warranty or representation as to the extent or validity of its right, title or interest in and to said property.

WITNESS the hand of said Grantor, this 19 day of January, 19 77.

SALT LAKE COUNTY
A County of the State of Utah
By W. Sterling Evans
County Clerk of Salt Lake County

STATE OF UTAH }
County of Salt Lake } ss.

On this 19 day of January, 19 77, personally appeared before me, W. Sterling Evans, who, being by me first duly sworn, did say that he is the County Clerk of Salt Lake County, and that the foregoing instrument was signed by him in behalf of Salt Lake County, by authority of Title 59, Chapter 10, Section 64, Utah Code Annotated, 1953, and said W. Sterling Evans acknowledged to me that said Salt Lake County executed the same.

Helen M. Johnston
NOTARY PUBLIC

My commission expires: 2-14-78

Residing at Midvale Utah

MAIL TO:

BOOK 4668 PAGE 466

Exhibit “C”

June 29, 1999

Mr. Mark Huber
P.O.Box 9
Park City, Utah 84060

Dear Mr. Huber:

Thank you for your patience while we gathered the information to clarify why a stop work order was imposed on your project at 1782 South 1600 East – Bldg. Permit # 140880.

The following are the facts, as we understand them.

- Approximately six months ago you contacted Merrill Nelson (officed in Planning assigned primarily to work with zoning administration and the Board of Adjustment) concerning the applicability of SLC zoning ordinance Section 21A.38.100, Noncomplying Lots, to a specific property parcel #16-16-328-024. Limited information was exchanged. Merrill did indicate that it appeared the parcel met the provisions under this section, in that it appeared to have been created in 1977 and had some frontage on a dedicated street. At that time he did not know of the existence of Board of Adjustment Case # 102-B approved November 25, 1985. He also did not know that this parcel had been continuously owned in common with and in conjunction with the duplex parcel located at 1570-72 East Blaine Avenue and that you also owned the abutting duplex parcel.

- The bulk of your contact with city personnel occurred at the permits counter. As part of finalizing this evolving design, the permits review staff (Mr. Alan Hardman) questioned whether your parcel was legally buildable. The legality issue of the parcel was identified by Mr. Hardman in his plan review memo dated May 26, 1999 with the direction to contact a subdivision planner in the planning office and Merrill Nelson for Board of Adjustment information. Mr. Hardman checked with Margaret Pahl, one of the subdivision planners as a follow-up to this identified issue. Ms. Pahl verbally told Mr. Hardman that the parcel had not been approved as a part of any subdivision approval or amendment and therefore was unbuildable as a separate parcel. You then went back to see Merrill Nelson. After some further work with him, he approved issuance of the permit based on his interpretation of 21A.38.100 on June 9, 1999.

- Mr. Nelson was then out of state on military leave from June 14th to the 24th.

- On June 14th a neighbor called the city asking about the permit that had been issued. Upon researching the permit records, we questioned the legality of the parcel as a building lot, and contacted the subdivision and development review supervisor, Doug Wheelwright. He asked for some additional deed research to prove that the parcel was a legally existing lot. He also suggested deed research be done establishing that the lot existed prior to the adoption of the zoning ordinance in 1927.

- On the afternoon of June 14, 1999 Larry Butcher telephoned you and requested you stop work until zoning issues were resolved

The Following Items Are An Analysis Of The Applicability Of SLC Zoning Ordinance Section 21A.38.100 – Noncomplying Lots To Salt Lake County Assessor's Parcel # 16-16-328-024

Under state law local governments control both the creation of the zoning ordinance, zoning map, and subdivision approvals. A guiding principle of zoning theory and practice is that any lots created through subdivision approval will fully comply with the minimum standards of the zoning ordinance as to parcel area, frontage on a street, and required yard areas.

Following is the text of Section 21A.38.100 - Noncomplying Lots.

A lot that is noncomplying as to lot area or lot frontage that was in legal existence prior to April 12, 1995 shall be considered a legal complying lot. 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 requirements of the R-1-5000 district. Legal complying lots in residential districts shall be approved for any permitted use or conditional use allowed in the zoning district, other than a single family dwelling, subject to complying with all lot and yard area requirements of the district in which the lot is located.

"Lot" is defined in the zoning ordinance in 21A.62.040 page 62-18.

"Lot" means *(1) a piece of land identified on a plat of record or in a deed of record of Salt Lake County and (2) of sufficient area and dimensions to meet district requirements for width, area, use and coverage and to provide such yards and open space as are required and (3) has been approved as a lot through the subdivision process.*

As to the meaning of the phrase "in legal existence" as used in 21A.38.100 there are three situations that can be interpreted as "legal existence". They are listed below.

1. Fully conforming lot. The lot fully conforms to current zoning requirements as to lot size, frontage, lot area, and required yards.

2. A legal nonconforming lot. The lot was conforming to zoning at the time of its creation and the zoning requirements have been changed to be more restrictive.

3. Granddaddy Lot. A lot that pre-dates all zoning regulations.

As to the "Lot" Definition

In the definition of "Lot" the only element of the definition that the subject parcel meets is the fact that the parcel is of record in a deed. According to the information provided by you, the first existence of the legal description for parcel 16-16-328-024 was contained in the deed from Salt Lake County to Mr.Cates in 1977. The zoning in 1977 was Residential R-2 which would have required 5000 square feet of lot area, and required front yard, side yard, and rear yard setbacks. The side yards would have required 8 feet and 12 feet for a total of 20 feet. Although the subject parcel would have contained lot area in excess of the minimum lot area requirements established by the zone, the access strip is only 20 feet wide. Development regulations at the time would have required the building to face the street and the 20 feet of required side yard would leave no buildable area. Additionally, the city never approved a subdivision or a subdivision amendment authorizing or legitimizing the 1977 deed description. Therefore, the subject parcel does not constitute a "lot" under the definition of the ordinance.

As to the "In Legal Existence" Definition

This parcel does not conform to the current zoning requirements. Although it has area, it does not have the required 50 feet of lot frontage and the required 16 feet of side yards would leave only four feet of available building width. We believe the lot was created in 1977, and there is no evidence that the parcel met the

Lot - Been that way since 1992

zoning requirements under the ordinances in existence at that time. Therefore, it cannot be considered a "legal nonconforming lot". There has been no evidence submitted that the parcel was created before the 1927 creation of initial zoning regulations. Therefore, it cannot be considered a "granddaddy" lot. Additionally, this parcel has been continually owned in conjunction with the abutting parcel to the north since its creation in 1977.

Flag Lot

Flag lots weren't allowed under zoning until Salt Lake City's new zoning ordinance passed April 12, 1995. Under the new zoning ordinance specific flag lot standards were developed. The ordinance was amended in 1997 requiring flag lots to be handled as conditional uses and modifying the specific standards to require 1 ½ times the minimum required lot area.

The lot never went through the flag lot approval process (conditional use) and never met the specific flag lot standards. The 1977 deed did not give the lot any flag lot approval status because there were no provisions for flag lots until 1995. This parcel does not meet the current flag lot standards. It doesn't have 10,500 square feet of lot area excluding the access portion of the lot. No conditional use application has ever been filed nor could it be processed as a conditional use because the parcel does not meet minimum standards.

Board of Adjustment Case # 102-B.

In Board of Adjustment Case # 102-B, Mr. Cates sought legalization of an existing accessory structure which exceeded the maximum accessory structure building size. This accessory structure provided the required off-street parking for the previously approved duplex conversion at 1570-72 East Blaine Avenue. The Board case site plan and legal description, provided as part of the application, included both parcels. In fact, the accessory structure was built across the common parcel line. We believe the effect of this is that the two parcels had been used since at least 1977 as one building site. It is not uncommon for building sites to be composed of more than one parcel. There is no evidence that the lot existed before 1977 when it was deeded to the adjacent lot owner (Cates). From this point on it was owned in conjunction with the duplex. The combined parcel has changed hands three times [Cates – Rockwood – Huber]. It appears that it has only been independently owned since you deeded it to your daughter.

Determination

Therefore, we declare that the permit issued on June 9th was issued in error on two counts.

1. It was not a legal complying lot under our interpretation of Section 21A.38.100. It was not a separate parcel. Since at least 1977, it was always owned in conjunction with the duplex parcel.

2. Regardless of whether or not the parcel qualifies as a legal complying lot, it was never processed through the conditional use process nor does it meet the specific minimum standards for flag lot development.

After reviewing the history, materials, and facts of the case, we suggest four potential courses of action to resolve this matter.

Option 1. Acquire additional vacant property sufficient to meet the minimum standard for flag lot development. Redesign the site plan and enter the conditional use flag lot approval and subdivision amendment processes.

Option 2. Provide additional research and documentation establishing that this parcel was separately owned and in continuous existence since prior to the September 1, 1927 adoption of the initial zoning ordinance for Salt Lake City.

Option 3. Submit a letter to the Building Official requesting the termination of the building permit and requesting a refund of all fees paid.

Option 4. Appeal to the Board of Adjustment this administrative decision that Parcel # 16-16-328-024 does not qualify as a legal complying lot under Section 21A.38.100 of the Salt Lake City Zoning Ordinance.

We apologize for any inconvenience this review and delay has caused you.

Sincerely,

Randolph P. Taylor
Zoning Administrator

cc: Stuart Reid Alison Gregersen Bill Wright Brent Wilde Roger Evans Larry Butcher
Lynn Pace Merrill Nelson Alan Hardman Margaret Pahl

Exhibit “D”

7448224

7448224
08/20/1999 03:34 PM NO FEE
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
SL CITY BOARD OF ADJUSTMENT
BY: RDJ, DEPUTY - WI 1 P.

SALT LAKE CITY CORPORATION
Community & Economic Development
451 South State Street, Room 406
Salt Lake City, Utah 84111

ABSTRACT OF FINDINGS AND ORDER

I, Deborah Kraft, being duly sworn, deposed, and say that I am the Secretary of the Salt Lake City Board of Adjustment, and that on the 19th day of July, 1999, case number **2477-B** by Mark Huber (Applicant) was heard by the Board. The Applicant requested on the property at 1782 South 1600 East 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.

The legal description of the property being as follows:

BEG 152 FT S FR NE COR BLK 3, PROGRESS HEIGHTS SECOND 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, TOGETHER WITH ½ VACATED ALLEY ABUTTING ON S

Parcel Number: 16-16-328-024

It was moved, seconded, and passed 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.

Deborah Kraft, Secretary

State of Utah)
)ss
County of Salt Lake)

The foregoing instrument was acknowledged before me this 19th day of July, 1999, by Deborah Kraft, Secretary to the Board of Adjustment.

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
February 16, 2002
LUCILLE H. TAYLOR
451 South State, Rm #406
Salt Lake City, Utah 84111

Lucille H. Taylor
NOTARY PUBLIC, residing in Salt Lake County, Utah

BK8303PG8141

Exhibit “E”

January 14, 2018

ADMINISTRATIVE INTERPRETATION
DECISION AND FINDINGS
PLNZAD2019-00005

REQUEST:
This is a request for an administrative interpretation regarding whether the property located at approximately 615 N Catherine Circle (tax ID#08-34-226-006) is a legal complying lot in accordance with the Salt Lake City zoning laws. The purpose of the request is to determine if a single-family dwelling can be constructed on the property.

DECISION:
The Zoning Administrator finds that the subject property located at approximately 615 N Catherine Circle (tax ID#08-34-226-006) is recognized by Salt Lake City as a legal complying lot and therefore a single family detached dwelling could be constructed subject to all applicable zoning regulations.

FINDINGS:
The subject property is currently located in the R-2 (Single- and Two-Family Residential) zoning district. The lot has a total area of approximately 3,450 square feet and lot width fronting a public street of 25 feet. The R-2 zoning district requires a minimum lot area of 5,000 square feet and a minimum lot width of 50 feet. The subject property does not comply with the minimum lot area and the minimum lot width of the R-2 zoning district and therefore is noncomplying.

Section 21A.38.060 of the Salt Lake City Zoning Ordinance states the following regarding noncomplying lots:

> *"A lot that is noncomplying as to lot area or lot frontage that was in legal existence on the effective date of any amendment to this title that makes the existing lot noncomplying shall be considered a legal complying lot and is subject to the regulations of this title. Any noncomplying lot not approved by the city that was created prior to January 13, 1950, may be approved as a legal noncomplying lot subject to the lot meeting minimum zoning requirements at the time the lot was created and documented through an updated zoning certificate for the property."*

The subject parcel was created on October 13, 1890 as Lot 9, Block 4 of the Waverly Subdivision. The property has increased in size after Salt Lake City deeded a vacated portion of Catherine Street to the property owner on May 5, 2009. This made the lot more conforming but it still does not meet the minimum lot size. Zoning regulations were first adopted by Salt Lake City in 1927. Thus, at the time of the creation of this lot, there were no city regulations related to lot width or lot size.

Based on the provision in 21A.38.060, this lot is a legal noncomplying lot.

Documents obtained from the Salt Lake County Recorder's Office shows no evidence that the subject property was ever combined with another parcel or any other significant changes except as indicated above.

If you have any questions regarding this interpretation please contact Mayara Lima at (801) 535-7118 or by email at mayara.lima@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:	US Mail:
Salt Lake City Corp Planning Counter 451 S State Street, Room 215 Salt Lake City, UT	Salt Lake City Corp Planning Counter PO Box 145471 Salt Lake City, UT 84114-5417

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.

Mayara Lima
Principal Planner

cc: Nick Norris, Planning Director
Joel Paterson, Zoning Administrator
Greg Mikolash, Development Review Supervisor
Posted to Web
Applicable Recognized Organizations

Vicinity Map

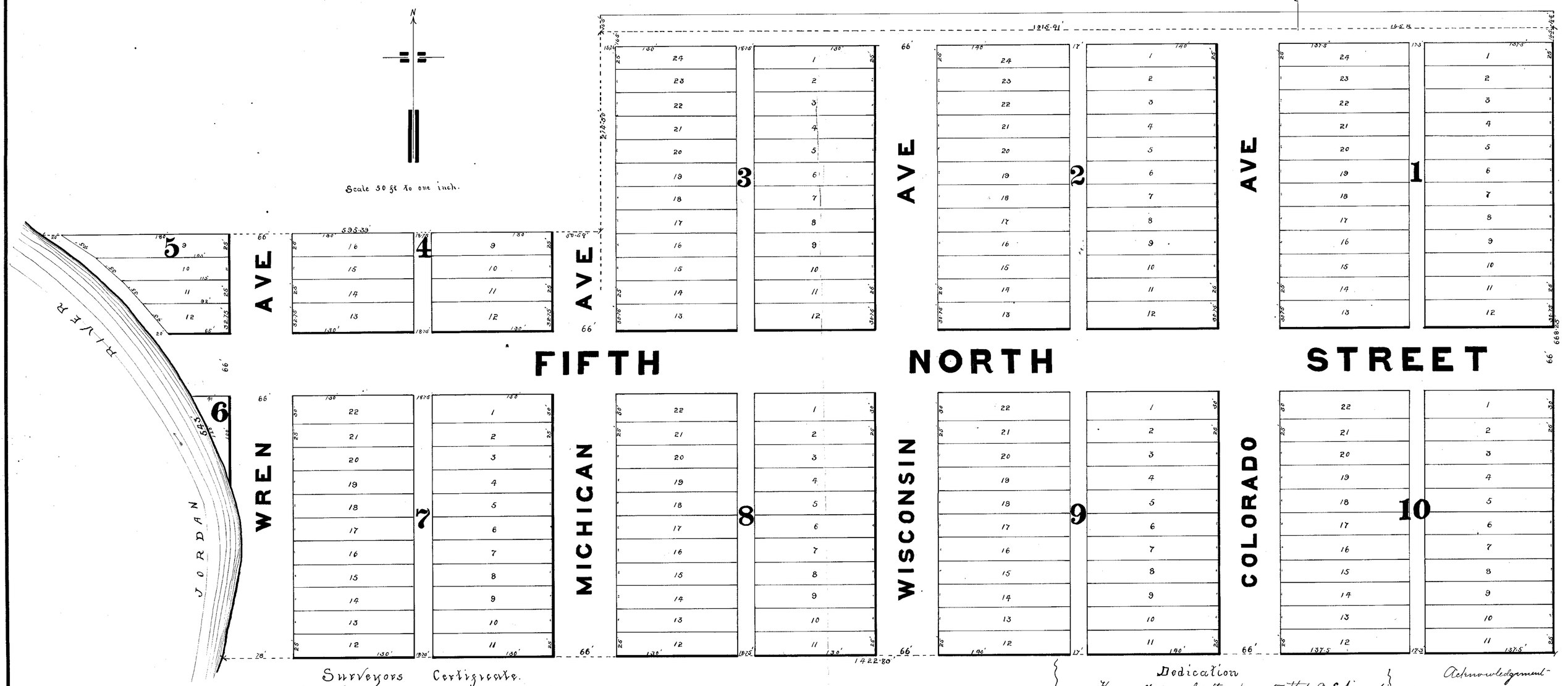
WAVERLY

A

SUBDIVISION OF PARTS OF SECTIONS 34 & 35. T.1 N. R.1 W. S.L.M.

N.E. Corner Sec. 34 T.1 N. R.1 W.

Scale 50 ft to one inch.



Surveyors Certificate.

I hereby certify that the tract of land shown on this diagram and owned by A. L. Simonds is bounded and described as follows to wit:- Commencing 15 Rods South & 16.5 Rods East of the N.W. corner of Sec. 34 T.1 N. R.1 W. S.L.M. Thence running West 901.41 ft. Thence South 214.5 ft. Thence West 595.39 ft. to the East bank Jordan River. Thence Southerly along the East bank said River 548 ft. Thence East 1422.8 ft. Thence North 668.25 ft. to place of beginning - And that I have by request of the said owner subdivided the same into Lots, Streets, Avenues & Alleys to be known as "Waverly" subdivision - and that the same has been correctly staked out on the ground as represented hereon -

The following are the names and dimensions of parcels designated for public use to wit:- Fifth North St. is 66 x 1445.8 ft. the centre lines of which coincides with the centre line of 5th North St. in Salt Lake City. Colorado Ave. is 66 x 657.75 ft. the centre lines of which coincides with the centre line of same Ave. in Comet & Roberts Add. Wisconsin Ave. is 66 x 657.75 ft. the centre line of which coincides with the centre line of same Ave. in Fairfield Add. Michigan Ave. is 66 x 1453.75 ft. the centre line of which coincides with the centre line of [illegible] of same Ave. in Fairfield Add. Also strip 16.86 x 198 at north end of Michigan Ave. Wren Ave. is 66 ft. from south end, South to bank of river thence west line follows bank of river to south line of the Subd. at which point said Ave. is 78 ft. wide being 453.75 ft. long. the centre line of Wren Ave. coincides with the centre line same Ave. in Fairfield Add. An alley 17 x 595.39 ft. through Block 1. An alley 17 x 595.39 ft. through Block 2. An alley 18.75 x 395.75 through Block 5. An alley 18.50 x 107.75 ft. through Block 4. An alley 20 x 190 ft. along bank river at west side Block 5. An alley 18.75 x 280 ft. through ends of Blocks 7 & 8. An alley 17 x 280 ft. through Block 9. An alley 17.5 x 284 ft. through Block 10. An alley 16.5 x 101.5 ft. along the north side Block 2 & 3.

Lots 1 to 11 & 14 to 24 inclusive Block 1 are each 25 x 130.5 ft. Lots 12 & 13 Block 1 are each 30.75 x 130.5 ft. Lots 1 & 22 Block 10 are each 30 x 137.5 ft. Lots 2 to 11 & 12 to 21 inclusive Block 10 are each 25 x 130.5 ft. Lots 1 & 11 & 14 to 24 inclusive Block 2 and 3 & 12 to 21 inclusive Block 5 are each 25 x 130 ft. Lots 12 & 13 Block 2 are each 30.75 x 130 ft. Lots 1 & 22 Block 5 are each 30 x 130 ft. Lots 1 & 11 & 12 & 20 Block 6 & 2 & 11 & 12 & 21 Block 8 Lots 9 & 11 & 14 & 16 Block 4 Lots 2 & 11 & 12 & 21 Block 7 are each 25 x 130 ft. Lots 12 & 13 Block 8 are each 30.75 x 130 ft. Lots 1 & 22 Block 8 are each 30 x 130 ft. Lots 1 & 22 Block 7 are each 30 x 130 ft. Lots 12 & 13 Block 4 are each 32.75 x 130 ft. Block 5 is 4 ft. in north side 100 ft. on Wren Ave & 120 ft. along river bank. Lot 9 Block 5 is 130 ft. in north side 25 ft. in Wren ave. 140 ft. in south side & 45 ft. along river bank. Lot 10 Block 5 is 143 ft. in north side 25 ft. in Wren Ave 115 ft. in south side & 85 ft. along river bank. Lot 11 Block 5 is 115 ft. in north side 25 ft. on Wren ave 92 ft. in south side & 85 ft. along river bank. Lot 12 Block 5 is 92 ft. in north side 32 ft. in Wren Ave 65 ft. in Fifth North St. & 45 ft. along river bank.

J. J. Rasmussen
Surveyor

Dedication

Know all men by these presents that A. L. Simonds & Olga C. Simonds his wife, owners of the aforesaid described tract of land having caused the same to be subdivided into Lots, Streets Avenues & Alleys to be hereafter known as "Waverly Subdivision do hereby dedicate for the perpetual use of the public all the Streets Avenues & Alleys described in surveyors certificate hereto annexed and as shown on the above diagram -

In witness whereof we have hereunto set our hands and seals this day of Sept 1890

A. L. Simonds
Olga C. Simonds

Witness A. H. Parsons

Approved October 15th 1890 by authority of a resolution of the City Council, passed October 14th 1890.

A. J. Gormus
City Engineer

#29013
Filed October 18th 1890 At 12:20 PM

John A. Rampel Jr.
Recorder Salt Lake Co. Utah

Acknowledgment

Territory of Utah } ss
County of Salt Lake }

On this 13th day of October A.D. 1890 personally appeared before me Arthur H. Parsons a Notary Public in and for the said Salt Lake County, A. L. Simonds and Olga C. Simonds his wife, whose names are subscribed to this instrument as parties thereto personally known to me to be the persons described in and who executed the said instrument as parties thereto and who acknowledged to me that they each executed the same freely and voluntarily for the uses and purposes therein mentioned

In witness whereof, I have hereunto set my hand and official seal this 13th day of October 1890

Arthur H. Parsons
Notary Public

10693794

10693794
05/05/2009 02:56 PM $13.00
Book - 9719 Pg - 1874-1875
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
ANTHONY GOMEZ
PO BOX 27921
SLC UT 84127
By: TMW 2p.

When Recorded Mail To:
Anthony Gomez
617 N. Catherine Circle
Salt Lake City, UT 84116-202817

QUIT CLAIM DEED

SALT LAKE CITY CORPORATION, a Utah municipal corporation, 451 South State Street, Room 225, Salt Lake City, Utah 84111, "GRANTOR," hereby quit claims to **ANTHONY GOMEZ**, 617 N. Catherine Circle, Salt Lake City, Utah 84116-202817, "GRANTEE," for the sum of TEN DOLLARS ($10.00) and other good and valuable consideration, all of the City's right, title and interest in and to a parcel of land described as follows:

See Exhibit A attached hereto and made a part hereof.
Affects Sidwell number: 08-34-226-006.

SUBJECT TO all other existing rights-of-way and easements of all public utilities of any and every description now located on, in, under or over the confines of the above-described property.
SUBJECT TO the rights of entry thereon for the purposes of obtaining, altering, replacing, removing, repairing or rerouting said utilities, including the City's water and sewer facilities, and all of them.
SUBJECT TO any existing rights-of-way or easements of private third parties.

DATED this _____ day of MAY 26 2006, 2006.

CITY RECORDER

BY _____
Acting MAYOR

ATTEST & COUNTERSIGN:

CHIEF DEPUTY RECORDER

APPROVED AS TO FORM:
Salt Lake City Attorney's office

BY _____
Dated 5/22/2006

STATE OF UTAH)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 26 day of May, 2006, by Ross C. Anderson in his capacity as Mayor of SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah.

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
October 03, 2007
JENNIFER MAJOR
451 South State Street Room 225
Salt Lake City, Utah 84111

_____
NOTARY PUBLIC, Residing in
Salt Lake County, Utah

STATE OF UTAH)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 26 day of May, 2006, by Chris Meeker in her capacity as Chief Deputy Recorder of SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah.

BEVERLY JONES
NOTARY PUBLIC - STATE OF UTAH
451 SO. STATE STREET RM 416
SALT LAKE CITY, UT 84111
My Comm. Exp. 10/01/2009

_____
NOTARY PUBLIC, Residing in
Salt Lake County, Utah

BK 9719 PG 1874

EXHIBIT A

Lot 9 and a portion of the vacated Catherine Street, Block 4, Waverly Subdivision
Affected parcel # 0834226006

Beginning at the Northwest corner of Lot 9, Block 4, of Waverly Subdivision, located in the Northeast Quarter of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian; thence S89°59'30"E along the north line of said Lot 9 130.00 feet; thence S00°00'55"E 2.00 feet; thence S89°59'30"E 8.00 feet to the west right of way of Catherine Circle; thence S00°00'55"E along said right of way 23.00 feet; thence N89°59'30"W 138.00 feet to the southwest corner of said Lot 9; thence N00°00'55"W 25.00 feet to the point of beginning, contains 3434 square feet more or less.

Exhibit “G”

B.M.I. 104 5M 5-50

Address 1570-1572 Blaine Ave Date 6-14 1951

~~Current owners Tom & Jennifer Ryland Converted to S/F Res Mid 1990s.~~

Owner H. E. Rigby - David L. Cates ~~9-15-98~~ 143 (over)

Building Permit No. 28603-Res 30798-9-28-51-Res

Electrical Permit No. 32799-12-5-51 — 29006-3-10-52-P.H.

Plumbing Permit No. 31149-12-15-51 —

Building Permit No. 17262-8-27-82 Add & Conversion to Duplex 218 #

Bldg. Permit No. 24989-10-24-83 Bld Ret Wall & planters

Permit No. 43107-10-29-85 Bd of Adj. LEGALIZE A DETACHED GARAGE OVER 720 ft AND EXCEED HEIGHT. DDW

Building Permit No.

Electrical Permit No.

Plumbing Permit No.

Electrical Permit No.

Electrical Permit No.

Address 1570-1572 E. BLAINE AVE. Date SEPT. 18, 1998

PERMITTED AND RECOGNIZED AS A TWO (2) UNIT RESIDENTIAL STRUCTURE ONLY.

Owner MARK HUBER

DDW 9/18/98

Building Permit No. 4 LEGAL PARKING STALLS

Electrical Permit No.

Plumbing Permit No.

Building Permit No. 17262-8-27-82 CONV. TO DUPLEX.

Electrical Permit No.

Plumbing Permit No.

Building Permit No.

Electrical Permit No.

Plumbing Permit No.

Electrical Permit No.

Electrical Permit No.

DDW 9/18/98

TWO GAS METERS AND TWO KITCHENS EXIST.

LETTERS SUBMITTED. TWO ELECTRIC METERS,

INFORMATION INCORRECT—SEE FILE CONCERNING

floor & lower level for Single family use.

A stairway was added to combine main

Exhibit “G”

Advisory Opinion #61

Parties: Steven C. Pace and City of Holladay

Issued: January 21, 2009

TOPIC CATEGORIES:
Q: Nonconforming Uses and Noncomplying Structures
R(v): Other Topics (Interpretation of Ordinances)

Although the doctrine of lot merger is unknown in Utah, a handful of other states have upheld similar ordinances. An ordinance requiring merger of noncomplying parcels can reasonably be seen to promote the health, safety, and welfare of the City. Since local governments are entitled to deference in their choice of zoning ordinances, it cannot be said that the City's ordinance is invalid.

The Office of the Property Rights Ombudsman
Utah Department of Commerce
PO Box 146702
160 E. 300 South, 2nd Floor
Salt Lake City, Utah 84114

(801) 530-6391
1-877-882-4662
Fax: (801) 530-6338
www.propertyrights.utah.gov
propertyrights@utah.gov

ADVISORY OPINION

Advisory Opinion Requested by:	Steven C. Pace
Local Government Entity:	City of Holladay
Applicant for the Land Use Approval:	Steven C. Pace
Date of this Advisory Opinion:	January 21, 2009
Opinion Authored By:	Brent N. Bateman, Lead Attorney, Office of the Property Rights Ombudsman

Issues

May the City require the owner of two or more adjacent lots under common ownership, where those lots were legally created but do not meet the current zoning requirements for lot area, to merge the lots in order to meet the current zoning requirements?

Summary of Advisory Opinion

The City presently permits nonconforming lots. Where two or more adjacent nonconforming lots are under common ownership, the City requires that those lots be merged in order to receive a building permit. The City is entitled to great deference in enacting its land use ordinances. Although there are some questions regarding the legality of Holladay's lot merger ordinance, those questions do not rise to the point where the ordinance can be found to be arbitrary, capricious, or illegal. Accordingly, Holladay's lot merger ordinance is valid.

Review

A request for an advisory opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of § 13-43-205 of the Utah Code. The opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and

neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

The request for this Advisory Opinion was received from Stephen C. Pace on November 6, 2008. A letter with the request attached was sent via certified mail, return receipt requested, to Stephanie Carlson, City Recorder for the City of Holladay, at 4580 South 2300 East, Holladay, Utah 84117. The return receipt was signed and was received on November 7, 2008, indicating that the City had received it. The City did not submit a written response to the Request. The OPRO had a telephonic conversation with H. Craig Hall, attorney for the City of Holladay, on December 17, 2008. Mr. Hall indicated that he would contact representatives for the City and determine whether to submit a response. The OPRO had an additional telephonic conversation with Mr. Hall on January 5, 2009, wherein Mr. Hall provided brief general information regarding the zoning history of the Holladay area. No further response was received from the City.

Evidence

The following documents and information with relevance to the issue involved in this advisory opinion were reviewed prior to its completion:

1. Request for an Advisory Opinion received November 6, 2008 by the Office of the Property Rights Ombudsman by Steven Pace, including exhibits.

Background

Steven C. Pace is personal representative of the estate of his mother, Maxine C. Pace. Since approximately 1972, Ms. Pace was the owner of two adjacent but legally separate lots in Holladay City. There appears to be no dispute that the lots were legally created and existing as separate tax entities. It appears that one lot contained a single family dwelling occupied by Ms. Pace until her death. The other lot appears to be vacant.

In 1999, the City of Holladay was incorporated, and a land use code was adopted. The Holladay City land use code presently includes the following ordinance:

> 13.76.050: LOTS IN SEPARATE OWNERSHIP:
>
> Any lot legally held in separate ownership at the time of adoption of this code, which lot is below the requirements for lot area, lot width or frontage for the zone in which it is located and was legally created under the provisions of a previous zoning ordinance, shall be classified as a legal nonconforming lot under this code.
>
> A. In any zone, when a lot lacks sufficient area to meet the minimum required by this code and there is adjacent property under the same ownership, the two (2) parcels shall be combined. If the combined parcels do not meet the minimum requirement and there is sufficient area upon which to construct a residence

reasonably comparable to those in the vicinity with required setbacks, the lot may be determined to be legal nonconforming and a single-family dwelling shall be permitted if such lot is in a residential zone.

B. If there is not sufficient area for a buildable area, comparable to the other residences in the area, or of at least thirty feet by fifty feet (30' x 50'), a building permit shall not be issued. (Ord. 07-01, 1-9-2007)

Accordingly, in a letter sent by Paul Allred, Holladay City Community Development Director, to Mr. Pace dated October 13, 2008, the City indicated that a building permit was not available on the second lot, and that the lots would need to be combined as they are both owned by the same entity. Apparently, due to an amendment to the Ordinance on January 9, 2007, it is no longer possible to maintain the nonconforming lot status by causing diverse ownership of the two lots.

Mr. Pace has requested an Advisory Opinion from the OPRO to determine whether Holladay City can require the merger of two adjacent legal nonconforming lots under common ownership.

Analysis

A. The Doctrine of Lot Merger

Section 13.76.050 of the Holladay City land use code establishes legal nonconforming lots within the City. According to its language, any lot held at the time of adoption of the code that does not comply with width or frontage requirements in the zone would be a legal nonconforming lot permitting a single family dwelling to be built. That Ordinance further requires that when such a lot is adjacent to another lot under the same ownership "the two (2) parcels *shall* be combined" (emphasis added). Accordingly, in Holladay City, a property owner may build upon a legal nonconforming lot unless that owner also owns an adjacent lot. The lots must then be combined.

At question is the land use doctrine of lot merger. The doctrine of lot merger arises when the owner of a substandard lot owns other, adjoining property, and the owner is required to merge those lots and treat them as a single lot for zoning purposes. *See* 7-42 ZONING AND LAND USE CONTROLS § 42.03.

Most U.S. courts that have reviewed a local lot merger ordinance have upheld it. *See, e.g., Remes v. Montgomery County,* 874 A.2d 470 (Md., 2005); *Robertson v. York,* 553 A.2d 1259 (Maine, 1989); *Giovannucci v. Board of Appeals*, 344 N.E.2d 913 (Mass. App. Ct. 1976); *McKendall v. Barrington*, 571 A.2d 565 (R.I., 1990). In each of these cases, the reviewing court considered local lot merger ordinances very similar to Holladay's. No cases could be found overturning a local lot merger ordinance similar to Holladay's.

Also noteworthy, however, the cases dealing with lot merger ordinances originate almost exclusively from a few New England states. Lot merger does not appear to be a commonly litigated subject any other region of the country. Lot merger has not been expressly established in

Utah.[1] Nevertheless, the fact that several cases exist upholding lot merger ordinances similar to Holladay's, and that no cases have been found overthrowing such an ordinance, inclines in favor of the ordinance.

B. The Wood *Case.*

Conversely, the most on-point Utah case that could be located,[2] *Wood v. North Salt Lake*, 390 P.2d 858 (1964), reaches a different result. In *Wood*, the Utah Supreme Court did not examine the lot merger doctrine specifically, but nevertheless rejected the compulsory combination of non-conforming lots based solely upon common ownership. In *Wood*, a plat was recorded creating several 6000 square foot lots. Sometime after the lots were created, the City adopted an ordinance establishing 7000 square feet as the minimum lot size for a building permit. While the City did not have a compulsory lot merger ordinance as does Holladay, the City argued to the Supreme Court that the Plaintiffs owned more than one adjacent lot, and that the lots could easily be combined in order to comply with the ordinance. The Court rejected this approach. The Court stated that requiring one lot owner to comply with the ordinance simply because that owner owns an adjacent lot, where another owner would be able to build upon her lot because she did not own an adjacent lot "would be objectionable under simple principles touching discrimination." *Id*. at 859:

> It loses sight of the fact that one owning two adjoining lots would be subject to the zoning ordinance, while a neighbor owning but one lot presumably would be either inoculated against the ordinance -- or . . . virtually would be owner of a useless lot for lack of elbow room to expand the area.

Id. Accordingly, the *Wood* court rejected the *effect* that the lot owner faces in Holladay City, where owners have conforming lots unless they are unlucky enough to own an adjacent lot. Holladay City has adopted an ordinance recognizing non-conforming lots. The only reason why the property owner in this case does not have two non-conforming lots is because the lots are contiguous and under the same ownership. The Utah Supreme Court has rejected this result. This inclines against Holladay's ordinance.

C. The City is Entitled to Deference for its Land Use Ordinances

All of the above information should be considered in light of well-established Utah law regarding the passage of land use ordinances generally. Local municipalities have tremendous

[1] Lot merger does not appear to be the widespread practice in Utah. No state statute or court case can be found adopting or sanctioning lot merger in Utah. Moreover, an informal, and certainly not comprehensive, review of the ordinances of various Cities and Counties in Utah revealed no adopted ordinance like that of Holladay City's. Several Utah cities and counties have adopted ordinances recognizing nonconforming lots, but none could be found requiring merger of adjacent nonconforming lots as does Holladay's. As stated, this review was not comprehensive, and such an ordinance may exist elsewhere in Utah.

[2] Because neither party submitted any legal argument or authority to the OPRO in support of their position, the OPRO was obligated to rely on its own research in producing a "statement of facts and law supporting the Opinion's conclusions" as required by UTAH CODE §13-43-206(9).

latitude in adopting land use ordinances. UTAH CODE ANN. 10-9a-801(3) states that, when a court reviews a local land use ordinance:

> The courts shall:
> (i) presume that a decision, ordinance, or regulation made under the authority of this chapter is valid; and
> (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.
> (b) A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if the decision, ordinance, or regulation is reasonably debatable and not illegal.

Accordingly, a land use ordinance is assumed to be valid if it is reasonably debatable to be in the public welfare and not illegal. *Springville Citizens v. Springville*, 1999 UT 25 further illuminates:

> A municipality's land use decisions are entitled to a great deal of deference. *See Xanthos v. Board of Adjustment*, 685 P.2d 1032, 1034 (Utah 1984); *Triangle Oil, Inc. v. North Salt Lake Corp.*, 609 P.2d 1338, 1339-40 (Utah 1980); *Cottonwood Heights Citizens Ass'n v. Board of Comm'rs*, 593 P.2d 138, 140 (Utah 1979); *Naylor v. Salt Lake City Corp.*, 17 Utah 2d 300, 410 P.2d 764 (Utah 1966). Therefore, "the courts generally will not so interfere with the actions of a city council unless its action is outside of its authority or is so wholly discordant to reason and justice that its action must be deemed capricious and arbitrary and thus in violation of the complainant's rights." *Triangle Oil*, 609 P.2d at 1340.

The presumption that local land use ordinances are valid unless they are arbitrary, capricious or illegal, and the standard that an ordinance is not arbitrary or capricious if it is reasonably debatable that it advances the general welfare, is nearly insurmountable. The case of *Harmon City, Inc. v. Draper City*, 2000 UT App 31, ¶18 provides a illustrative quote: "Indeed, we have found no Utah case, nor a case from any other jurisdiction, in which a zoning classification was reversed on grounds that it was arbitrary and capricious." *Id*.

The Holladay City lot merger ordinance is a land use ordinance, and entitled to legislative deference. Reasonable minds could differ regarding whether eliminating nonconforming lots through merger advances the general welfare. Therefore, the Holladay lot merger ordinance meets that standard and must be upheld.

The *Wood* case, discussed above, is the wrench in the works. It can be argued that *Wood* forbids compelling a property owner to merge its legal nonconforming lots in order to bring them into conformity simply because that lot owner is also the owner of an adjoining lot. This certainly raises a question of whether the Holladay lot merger ordinance is legal. Nevertheless, *Wood* can be distinguished because that case was not examining a lot merger ordinance. The result may have been different due to the level of deference to which ordinances are subject. Accordingly,

although it raises questions regarding the legality of Holladay's ordinance, *Wood* does not raise a question sufficient to overcome the high level of deference.

Conclusion

Holladay's lot merger ordinance must be upheld. The *Wood* case, and the fact that the lot merger doctrine has not been adopted in Utah, certainly calls the legality of the ordinance into question. However, several courts throughout the country have examined lot merger ordinances and upheld them. Therefore, the Holladay lot merger ordinance is not clearly illegal. Furthermore, it is reasonably debatable that requiring owners of adjoining nonconforming lots to merge the lots to bring them into conformity advances the general welfare. Therefore, under the well-established standard in Utah for reviewing local land use ordinances, Holladay's ordinance is valid.

Brent N. Bateman, Lead Attorney
Office of the Property Rights Ombudsman

NOTE:

This is an advisory opinion as defined in Utah Code Annotated § 13-43-205. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

MAILING CERTIFICATE

UTAH CODE ANN. § 13-43-206(10)(b) requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with UTAH CODE ANN. §63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Stephanie N. Carlson, City Recorder
4580 S. 2300 East
Holladay, UT 84117

On this _____ day of January, 2009, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

_____
Office of the Property Rights Ombudsman

Gmail

Anthony Arrasi <aarrasi@gmail.com>

Follow up from yesterday

Mike Smith [redacted]

[redacted]

Anthony,

As we discussed yesterday, I have been working in Utah as an attorney in the title industry for about 30 years, and I have never before heard of a “lot merger doctrine.” I also just spoke with the most senior title examiner at US Title, and he said the same thing. Both he and I agree, in Utah, and specifically in Salt Lake City/Salt Lake County, the customary way for an owner of adjacent properties, with separate legal descriptions and tax identification numbers, to combine those properties into one parcel is for the owner to sign a deed to himself/herself, list both legal descriptions and tax identification numbers on the deed (if both parcels are described with metes and bounds legal descriptions, a revised single description that is a combination of both legal descriptions can be used), specify on the deed that, “The purpose of this deed is to combine the parcels described above,” or similar words to that effect, and then record the deed. The county will then combine the parcels into one and assign a new, single tax identification number. That is a time-honored process, and I have never seen it done otherwise, including under a common law or statutory “lot merger doctrine” that I have never seen recognized or utilized in Utah previously.

Let me know if you have additional questions.

Mike

Mike Smith
Operations Manager
Office: 801.462.0501 **Cell:** 801.664.1567
2150 S 1300 E, Suite 350
Salt Lake City, UT 84106
ustitleutah.com
US TITLE INSURANCE AGENCY

[Quoted text hidden]

ATTACHMENT D: Administrative Interpretation

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

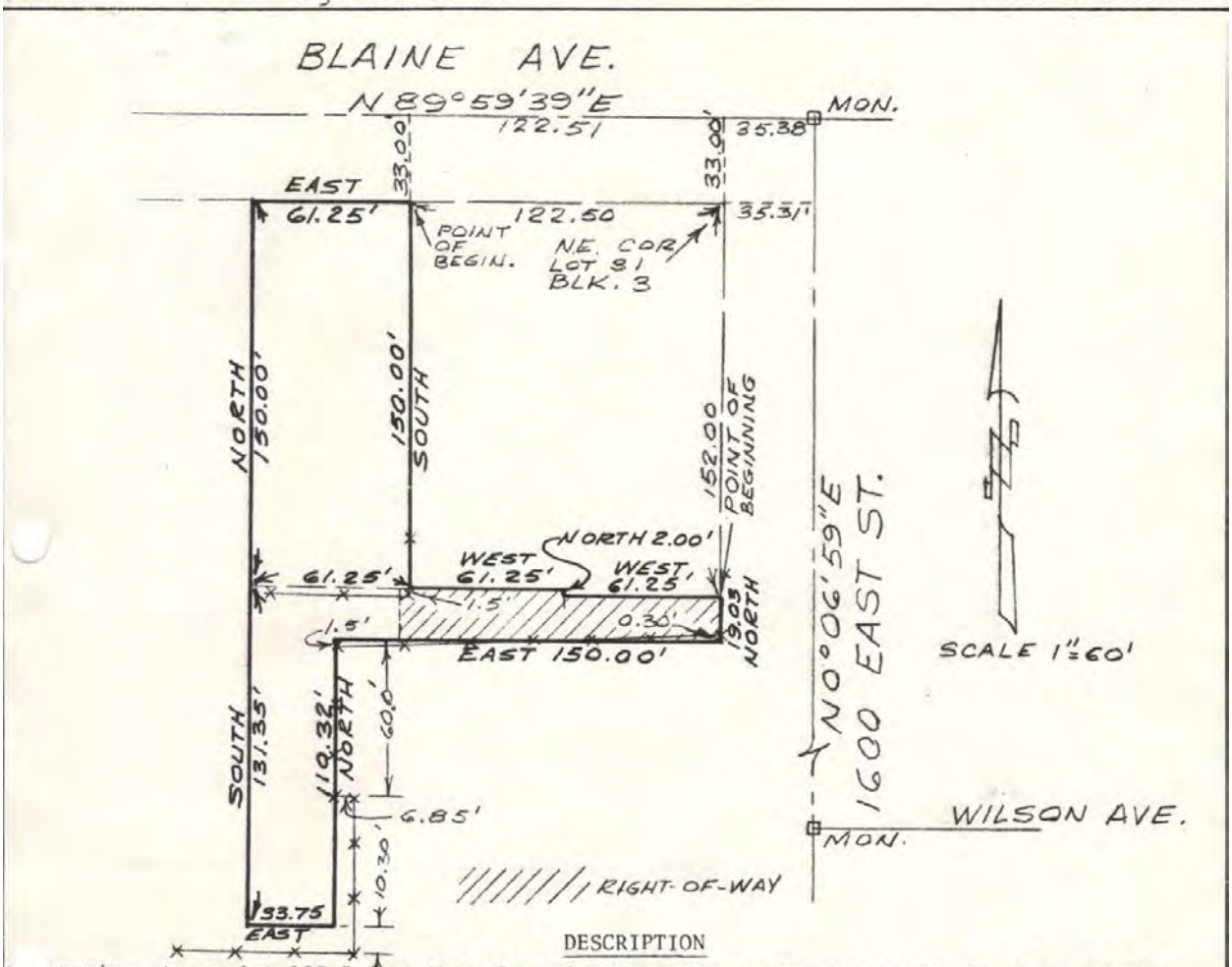
Kelsey Lindquist
Senior Planner
Salt Lake City Planning Division

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 1 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 1 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.

ATTACHMENT E: Background Documentation

1985 Board of Adjustment Case

16-16-3 2 411

SALT LAKE CITY BOARD OF ADJUSTMENT
$ ____ DEP.
Penni Korologos

RECORDED
SALT LAKE COUNTY, UTAH
DEC 18 10 53 AM '85

4177872 ABSTRACT OF FINDINGS AND ORDER

I, Mildred G. Snider, being first duly sworn, depose and say that I am the Secretary of the Salt Lake City Board of Adjustment (414 City & County Building), and that on the 12th day of November, 1985, Case No. 102-B by David T. Cates was heard by the Board. Mr. Cates requested a variance on the property at the rear of 1570 and 1572 Blaine Avenue to legalize a detached garage which exceeds the permitted 720 square feet and exceeds the permitted height for accessory structures in a Residential "R-2" District, the legal description of said property being as follows:

lots 24-24 ad unit

Commencing at a point 122.5 feet West from the Northeast corner of Lot 31, Block 3, Progress Heights Second Addition, and running thence South 150.0 feet; thence West 61.25 feet; thence North 150.0 feet; thence East 61.25 feet to the point of beginning.

lots 21-31 ad unit

Commencing 152 feet South from the Northeast corner of Block 3, Progress Heights Second Addition, running West 61.25 feet; North 2 feet; West 122.5 feet; South 131.35 feet; East 33.75 feet; North 110.32 feet; East 150 feet; North 20 feet more or less to beginning, being part of Lots 24 to 31 incl. said Block 3, together with 1/2 vacated alley. Subject to a right-of-way described as : Commencing 152 feet South from the Northeast corner of Block 3, Progress Heights Second Addition, running West 61.25; North 2 feet; West 63.75 feet; South 22 feet; East 125 feet; North 20 feet more or less to beginning.

It was moved, seconded and unanimously passed that a variance be granted to legalize a detached garage which exceeds the permitted 916 square feet and exceeds the permitted height limit for an accessory structure, subject to the garage being used only by the tenants of the duplex, that no commercial activities be conduted in the garage, the petitioner construct a planter box in front of the retaining wall to the north, the applicant remove all construction debris on the property and the

BOOK 5719 PAGE 110

yard area to the south be cleaned up, that no special wiring or plumbing be installed in the detached structure and that the structure be completed according to the approved plan. If a permit has not been taken out in six months, the variance will expire.

Mildred G. Snider

Subscribed and sworn to before me this 16th day of December, 1985.

Notary Public
Residing at Salt Lake City, Utah

My commission expires SEP 28 1988.

BOOK 5719 PAGE 111

November 25, 1985

David T. Cates
1439 Downington Avenue
Salt Lake City UT 84105

Dear Mr. Cates:

Enclosed are the Findings and Order in Case No. 102-B before the Board of Adjustment.

Please note that said order is to expire six months from the dating of this order, and also the provisions by which your variance was granted.

Sincerely

Michelle Forsyth

Michelle Forsyth
Acting Secretary

Enclosure

BEFORE THE BOARD OF ADJUSTMENT, SALT LAKE CITY, UTAH

FINDINGS AND ORDER, CASE NO. 102-B

REPORT OF THE COMMISSION:

This is an appeal by David T. Cates for a variance to legalize a detached garage at 1570 and 1572 Blaine Avenue which exceeds the permitted 720 square feet and exceeds the permitted height for accessory structures in a Residential "R-2" District.

David T. Cates and Bill Hansen were present. Jane Seville, 1564 East Blaine Avenue, was also present. Mr. Hafey explained that the structure garage is located on the south side of Blaine Avenue. Mr. Hafey explained that the Board approved the conversion of the single-family dwelling on the lot to a duplex and the changing of the grade in the front yard more than the permitted 2 feet. He stated that the access to the parking is from 1600 East Street through a 20' right-of-way. A detached garage has been constructed in the parking area which has a 4 foot grade change that causes the structure to exceed the permitted height limit by three feet. He further noted that according to the ordinance for a duplex the detached garage could not exceed 916 square feet rather than the 720 square feet as advertised. The garage is 24' x 56' and has a total of 1,344 square feet of area.

Mr. Hansen explained that Mr. Cates had the plans for the detached garage approved in August of 1982. He presented to the Board inspection reports for the structure; however, after construction was almost completed he was "red-tagged" for the excessive height and square footage. He noted that the building was constructed according to the plan approved. He stated that the height of the structure exceeds the permitted limit due to the fact that there was a grade change on the lot. Mr. Cates was told he would need to move the structure forward (north) approximately 20 feet which caused the structure to extend into the grade change area. Because the structure was moved forward it was necessary for a 4' retaining wall to be constructed and when the height of the building from the finished grade is measured at the north wall the structure exceeds the permitted height limit by 3 feet. He stated that the topography of the lot was not shown on the approved plan; therefore, the approved plan did not show that the grade and the height limit would be exceeded. He stated that Mr. Cates would be willing to construct a planter that would cover the retaining wall. Mr. Hansen explained that he had spoken with Mr. Nelson of the Building and Housing Department and it was discovered that a misunderstanding had taken place regarding the square footage actually proposed. He stated that Mr. Nelson understood the plan to show only three enclosed units and one open slab for parking. Mr. Cates understood the plan as four enclosed bays. He presented to the Board a letter from Beth Johnson, abutting property owner to the east, stating that she does not object to the structure or the variance.

Mr. Nelson stated that he was involved in the issuance of the building permit for the structure; however, the plan he was presented with showed only three units and one slab as well as the fact that it did not illustrate the topography of the lot showing the down grade.

Mrs. Seville explained that she owns the property abutting Mr. Cates to the west and that she is opposed to the garage and its excessive square footage. She presented photographs to the Board showing her view of the garage and how it blocks her view. She stated that she feels the structure should have been constructed to meet the 916 square feet of footage allowed. The Board asked why the structure has two large and two small doors. Mr. Cates explained that the two larger doors are to permit large vans or boats to park in the structure. The Board further noted that a large amount of concrete and construction debris exists on the site. Mrs. Seville noted that Mr. Cates is in the construction business and that she doubts that he was not aware of the violations.

Later in the meeting the various aspects of the case were reviewed. It was noted by the Board that the structure should only be used by the tenants of the duplex and that at no time should any type of commercial or business activity be run from the garage and that the storage of vehicles in the structure be for tenants of the duplex only.

From the evidence before it, the Board is of the opinion that the petitioner would suffer an unnecessary hardship from a denial of the variance; that the spirit and intent of the Zoning Ordinance will be upheld and substantial justice done in the granting of the variance.

IT IS THEREFORE ORDERED that the variance be granted and the Building Inspector is directed to issue the required permits in accordance with the order and decision of the Board provided the construction plans show conformity to the requirements of the Uniform Building Code and all other City Ordinances applicable thereto; provided the garage only be used by the tenants of the duplex, that no commercial activities be conducted in the garage, the petitioner construct a planter box in front of the retaining wall to the north, the applicant remove all construction debris on the property and the yard area to the south be cleaned up, that no special wiring or plumbing be installed in the detached structure and that the structure be completed according to the approved plan, provided such reduction or addition does not conflict with any private easements which may be attached to or apply to the property, said order to expire within six months from the dating of this order.

THE FAILURE OF THE APPLICANT TO ABIDE BY THE CONDITIONS OF THIS VARIANCE SHALL CAUSE IT TO BECOME NULL AND VOID, WHICH IN EFFECT IS THE SAME AS THE VARIANCE HAVING BEEN DENIED.

Action taken by the Board of Adjustment at its meeting held Tuesday, November 12, 1985.

Dated at Salt Lake City, Utah, this 25th day of November, 1985.

Nancy K. Pace
Acting Chairperson

Michelle Forsyth
Acting Secretary

NOTICE IS HEREBY GIVEN that the Board of Adjustment on Zoning of Salt Lake City, Utah will at its meeting to be held Tuesday, November 12, 1985, beginning at 4:00 p.m. at 414 City & County Building, consider the following appeals with respect to the enforcement of the Zoning Ordinance and IT IS HEREBY REQUIRED THAT EACH CASE UP FOR HEARING WILL BE PRESENTED AND ARGUED BEFORE THE BOARD OF ADJUSTMENT EITHER BY THE PETITIONER OR BY AN AUTHORIZED AGENT. IF REPRESENTED BY AN AGENT, THE AGENT MUST HAVE WRITTEN AUTHORIZATION FROM THE OWNER. CASES WILL BE DISCUSSED BY THE BOARD AFTER THE HEARING.

Case No. 97-B at 89 D Street in application of Arle M. Motiwala for a permit to enlarge a nonconforming retail use building by constructing a storage shed without the required parking which requires Board of Adjustment approval in a Residential "R-5A" District.

Case No. 98-B at 366 East Ninth Avenue (the southeast corner of Ninth Avenue and D Street) in application of LDS Hospital for a variance to construct underground parking, a portion of which will extend into the required 25 foot rear yard in a Residential-Health Services "R-H" zone.

Case No. 99-B at 661 South 200 East Street in application of the National Society to Prevent Blindness--Utah Affiliate for a permit to convert a boarding house into an office building which does not have the required side yard and off-street parking in a Commercial "C-1" District.

Case No. 100-B at 873 East 400 South Street in application of Phillips Petroleum Company for a permit to construct a retail convenience store with a coin operated drive through automatic carwash at a self-service gasoline station which is a conditional use which requires Board of Adjustment approval in a Commercial "C-1" District.

Case No. 101-B at 333 South 900 East Street in application of The Salt Lake Clinic for a permit to add a new C.T. Scan Facility addition to a nonconforming existing medical clinic which requires Board of Adjustment approval in a Residential "R-6" District.

Case No. 102-B at the rear of 1570 and 1572 Blaine Avenue in application of David T. Cates to legalize a detached garage which exceeds the permitted 720 square feet and exceeds the permitted height for accessory structures in a Residential "R-2" District.

Case No. 103-B at 2295 Foothill Drive in application of Foothill Consortium for a permit to erect an identification sign flat on the medical clinic building which exceeds the permitted size and a directional sign in the front yard which also exceeds the permitted size in a Residential "R-7" District.

Case No. 104-B at 1117 East 2700 South Street in application of Gaddis Investment and Menlove Development Inc. for a permit to enlarge an existing nonconforming storage unit facility by adding additional storage units and without the required landscaped buffer in a Business "B-3" District adjoining a Residential "R-2" District.

Case No. 105-B at 1756 Park Street in application of Earl Madsen for a permit to construct a 30' x 35' detached garage which exceeds the permitted 720 square feet for accessory structures in a Residential "R-2" District.

Case No. 106-B at 868 West 300 North Street in application of Paul M. Deputy for permission to construct a front porch addition to a residence which would not maintain the required front yard setback in a Residential "R-2" District.

Case No. 107-B at 1451 DuPont Avenue in application of Mark J. Smith for a permit to construct an attached garage to a single-family dwelling which would not maintain the required 25 foot rear yard in a Residential "R-2" District.

Case No. 108-B at 1775 West 200 South Street in application of David Burbidge for a permit to construct an addition to an existing commercial building without the required setback and off-street parking in a Commercial "C-3" District abutting a Commercial "C-2" District.

ALL THOSE INTERESTED IN BEHALF OF OR IN OPPOSITION TO ANY OF THE APPLICATIONS WILL BE GIVEN AN OPPORTUNITY TO BE HEARD AT THE MEETING THERE.

Dated at Salt Lake City, Utah, this 2nd day of November, 1985.

Michelle Forsyth
Acting Secretary

T 98

102-B

#43107
10.29.85

REQUEST FOR A VARIANCE FROM THE TERMS OF THE ZONING ORDINANCE

TO THE BOARD OF ADJUSTMENT UNDER THE TERMS OF THE ZONING ORDINANCE OF SALT LAKE CITY AND TO THE BUILDING INSPECTOR OF SALT LAKE CITY, UTAH:

Please note that David T. Cates and Dorothy L. Cates, the property owner, hereby appeals to the Board of Adjustment of Salt Lake City for a variance from the terms of the Zoning Ordinance of Salt Lake City allowing the applicant to erect garage

at in rear of 1570-1572 Blaine which is in a R-2 zoning district.
(official address of proposed construction)

The Zoning Ordinances of Salt Lake City in question are as follows : 51-14-5, dealing with the floor space of the structure

51-5-10, dealing with the height of the structure

Existing use of premises duplex

Will this addition or remodeling change the use? no

If so, how? Not applicable

THE PETITIONER CONTENDS THAT THE REQUESTED VARIANCE SHOULD BE GRANTED DUE TO THE FOLLOWING:

Under the provision of Utah State law the Board of Adjustment cannot grant a variance unless the applicant shows there is an unnecessary hardship imposed upon the applicant by the Zoning Ordinance, the granting of a variance will not change the spirit or intent of the Zoning Ordinance, and the variance will not substantially affect the comprehensive plan of zoning of the City.

The applicant must also show there are special circumstances attached to the property covered by the request not generally applying to other properties in the same district, and these special circumstances deprive the owner of a substantial property right possessed by others in similar zoning districts.

TO SUBSTANTIATE THE ABOVE, THE PETITIONER CONTENDS:

1. That the following special circumstances are attached to this property and not to other properties in the same zoning district which deprive the applicant of a proper use of his property: The building plans were approved by the Department of Building and Housing Services. In addition, the various aspects of the building were inspected and approved by Salt Lake City within four months of the stop card being issued on 10-18-85. Specifically, the footings were approved on 6/27/85 and the masonry was approved on 10-2-85.

2. That the following special hardships will be imposed upon him if a variance is not approved: tenants would have no covered parking and would be more inclined to park on the street. In addition, the carport is already constructed. If the variance is not approved, the owner will be forced to go to the unnecessary expense of tearing down the building. Further, he will be delayed in being able to rent the duplex to tenants.

3. That the granting of the variance will be in keeping with the spirit and intent of the ordinance and will not substantially affect the comprehensive plan due to the following:

at in rear of 1570-1572 Blaine which is in a R-2 zoning district.
(official address of proposed construction)

The Zoning Ordinances of Salt Lake City in question are as follows : 51-14-5, dealing with the floor space of the structure

51-5-10, dealing with the height of the structure

Existing use of premises duplex

Will this addition or remodeling change the use? no

If so, how? Not applicable

THE PETITIONER CONTENDS THAT THE REQUESTED VARIANCE SHOULD BE GRANTED DUE TO THE FOLLOWING:

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The applicant must also show there are special circumstances attached to the property covered by the request not generally applying to other properties in the same district, and these special circumstances deprive the owner of a substantial property right possessed by others in similar zoning districts.

TO SUBSTANTIATE THE ABOVE, THE PETITIONER CONTENDS:

1. That the following special circumstances are attached to this property and not to other properties in the same zoning district which deprive the applicant of a proper use of his property: The building plans were approved by the Department of Building and Housing Services. In addition, the various aspects of the building were inspected and approved by Salt Lake City within four months of the stop card being issued on 10-18-85. Specifically, the footings were approved on 6/27/85 and the masonry was approved on 10-2-85.

2. That the following special hardships will be imposed upon him if a variance is not approved: tenants would have no covered parking and would be more inclined to park on the street. In addition, the carport is already constructed. If the variance is not approved, the owner will be forced to go to the unnecessary expense of tearing down the building. Further, he will be delayed in being able to rent the duplex to tenants.

3. That the granting of the variance will be in keeping with the spirit and intent of the ordinance and will not substantially affect the comprehensive plan due to the following: This is a neat well-built garage in the rear of property and does not detract from any adjoining property. In addition, the building will be the exact same height regardless of where it is located on the property.

Date of Application

Signature of Owner David V Cates Jr Telephone Number 484-0657

Permanent Address 1439 Downington Ave Zip Code 84105

Send notice to 1439 Dilonington Ave

ADDITIONAL INFORMATION REQUIRED TO BE ATTACHED TO THE APPLICATION

1. One PLOT PLAN, to be attached hereto, which is:

   A drawing to scale of the lot to be built upon, showing the actual dimensions thereof, the size and location of all existing buildings and proposed buildings and the plan and location of off-street parking facilities. The plan must show the location of all structures on the adjoining affected properties. Also indicate the distance to the nearest dwellings on all abutting properties. An original drawing or duplicate print, not smaller than 8½" x 11", will be acceptable. INCOMPLETE OR OTHERWISE UNREADABLE DRAWINGS WILL BE REFUSED. Refusal of drawings may result in a delayed hearing before the Board.

2. Plans for the building, including elevation drawings.

3. NAMES and MAILING ADDRESSES of all owners of property abutting and across the street; also any other property affected nothing across the street

   Beth Johnson - 1580 Blaine Avenue ; Jane Seville - 1564 Blaine

4. LEGAL DESCRIPTION of lot: Legal description attached on AAA Surveyor's certificate

5. If request involves constructing a building on the property line or if there is a dispute concerning the property line location, a certified survey is required to be furnished with the application.

6. Acting under the authority given to them by the Legislature, the Board of Adjustment has appointed a Zoning Administrator and given him the authority to act on relatively routine requests which are not controversial, do not impact upon the character of the neighborhood and which are approved by all abutting property owners. Contact the Planning & Zoning Department, 535-7757, to determine if your request can be handled by the Zoning Administrator.

   IF THIS APPEAL IS TO BE HANDLED BY THE ZONING ADMINISTRATOR, A WRITTEN WAIVER OR STATEMENT OF APPROVAL FROM ALL ABUTTING PROPERTY OWNERS MUST ALSO BE FILED WITH THE APPLICATION. ONLY SIGNATURES OF OWNERS OF RECORD OR VERIFIED CONTRACT BUYERS WILL BE ACCEPTED.

GENERAL INFORMATION

The Salt Lake City Board of Adjustment meets in session once or twice each month. The exact dates for these meetings are determined from the number of requests received. Please phone 535-7757 for information regarding these dates and the deadline for filing. State law requires that all petitions for variances must be advertised by the Board in the local paper at least one week before a scheduled meeting.

It is required that each case up for hearing will be presented and argued before the Board of Adjustment either by the petitioner or by an authorized agent. If represented by an agent, the agent must have written authorization from the owner.

All variances will be recorded.

FILING INFORMATION

File completed application and all additional information required with:

the Board.

2. Plans for the building, including elevation drawings.

3. NAMES and MAILING ADDRESSES of all owners of property abutting and across the street; also any other property affected nothing across the street

Beth Johnson - 1580 Blaine Avenue ; Jane Seville - 1564 Blaine

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It is required that each case up for hearing will be presented and argued before the Board of Adjustment either by the petitioner or by an authorized agent. If represented by an agent, the agent must have written authorization from the owner.

All variances will be recorded.

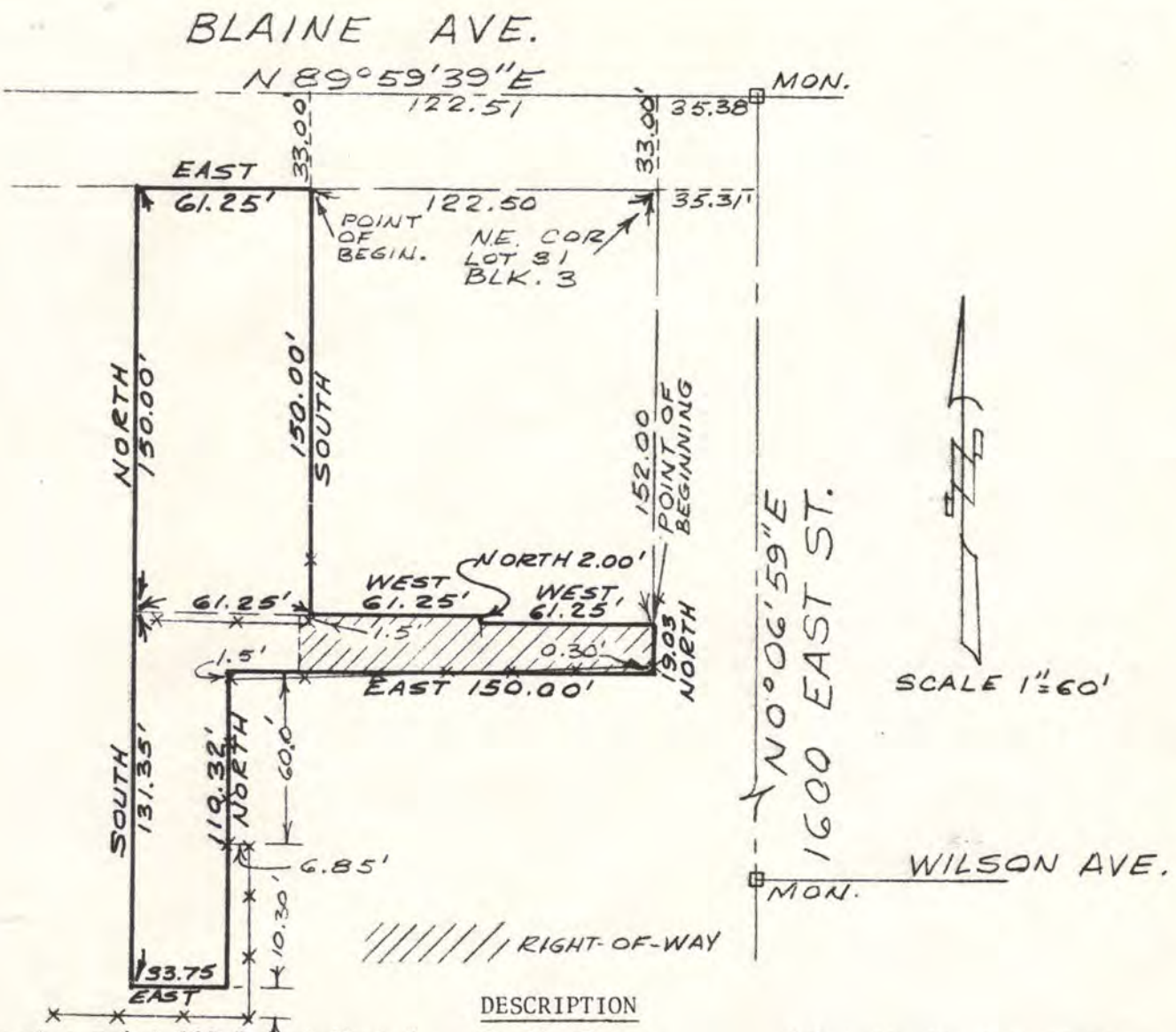
FILING INFORMATION

File completed application and all additional information required with:

Department of Building & Housing Services
Room 412, City & County Building
Salt Lake City, Utah 84111

The FILING FEE is $25.00 (twenty-five dollars). No application will be accepted for consideration unless it is properly filled out, all required additional information is attached and the filing fee is paid.

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.

CERTIFICATE OF SURVEY:

I, JAMES E. STUERCKE, a duly licensed Land Surveyor as prescribed by the laws by the State of Utah, depose and say that I hold Certificate No. 4953 and that I have made a survey of the property described above.

I further certify that the foregoing sketch correctly shows the dimensions of the property surveyed and of any building located thereon; that the position of the building is as shown and that none of the improvements on the above described property encroach upon adjoining properties and that no improvements of adjoining properties encroach upon the above described property except as noted hereon.

AAA ENGINEERING & DRAFTING INC.
1865 SO. MAIN ST. - SALT LAKE CITY, UTAH 84115

10-12-82
Date

REGISTERED LAND SURVEYOR No. 4953 JAMES E. STUERCKE STATE OF UTAH

JAMES E. STUERCKE
Registered Land Surveyor, Certificate 4953

To whom it May Concern:

I don't oppose the garage being built where it is, including its height or size

Beth C. Johnson

ALBERT C. BLAIR
DIRECTOR
ROGER R. EVANS
ASSISTANT DIRECTOR

SALT LAKE CITY CORPORATION

DEPARTMENT OF BUILDING AND HOUSING SERVICES
412 CITY AND COUNTY BUILDING
SALT LAKE CITY, UTAH 84111
TELEPHONE: 535-7751

MERRILL L. NELSON
ZONING
LAURA LANDIKUSIC
HOUSING

December 17, 1985

David T. Cates
1570 Blaine Avenue
Salt Lake City, Utah

Dear Mr. Cates:

Case No. 102-B at the rear of 1570 and 1572 Blaine Avenue in application of David T. Cates to legalize a detached garage which exceeds the permitted 720 square feet and exceeds the permitted height for accessory structures in a Residential "R-2" District.

This case has been reviewed by this department and is hereby denied.

Respectfully,

Albert C. Blair
Director

ACB:rm

ATTACHMENT F: Progress Heights Second AdditionSubdivision Plat

353317

RECORDED AT REQUEST OF
PROGRESS REALTY & BUILDING CO.
Jan. 6th 1916 At-1:25-P.M.
BOOK-G-OF-Plats-PAGE-51
FEE-$44.40
Geo. H. Islaub
Recorder, Salt Lake County, Utah
G-14
146-25 to 28 incl. By- [signature]
Deputy

Presented to the Board of City Commissioners and the City Engineer authorized to approve January 3rd 1916.

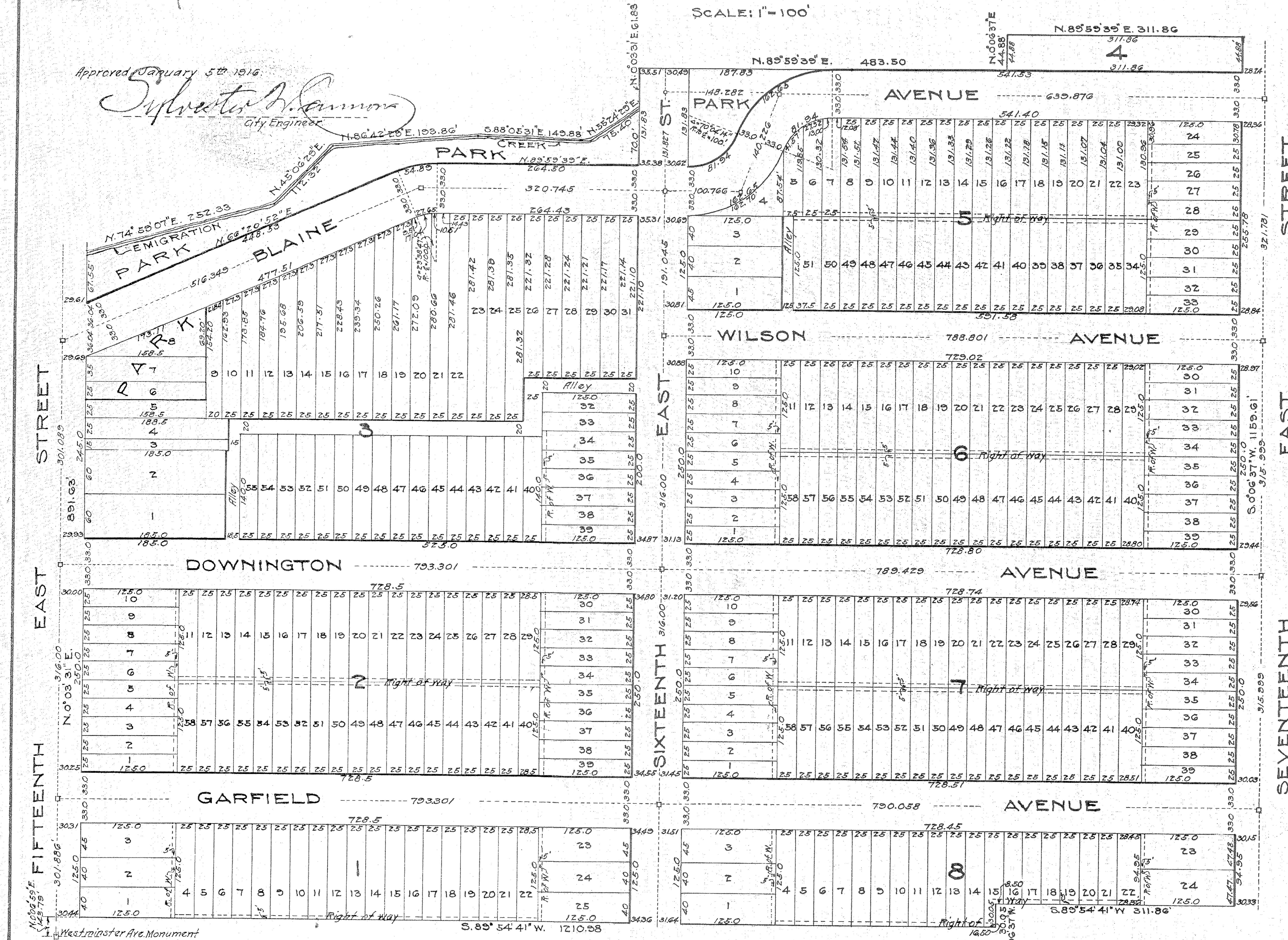
D12
240-26 to 28 incl. [signature]
City Recorder.

PROGRESS HEIGHTS SECOND ADDITION

A SUBDIVISION OF LOTS 7, 8, 9, 13, 14 AND 15, AND PART OF LOTS 10, 12 AND 16, BLOCK 9, 5-ACRE PLAT C. BIG FIELD SURVEY. AND PART OF BLOCK 9, F.M. LYMAN JR'S. SURVEY OF SECTION 16, T. 1 S., R. 1 E.

SCALE: 1" = 100'

Approved January 5th 1916.
[signature]
City Engineer.



SURVEYOR'S CERTIFICATE.

I hereby certify that the tract of land shown on this map and owned by the Progress Realty and Building Company, Glenn R. Bothwell and Jessie E. Bothwell, his wife, Walter D. Buntin and Alice C. Buntin his wife, William C. Van Hoorebeke and Ada Van Hoorebeke his wife, is bounded and described as follows, to wit: Beginning at the south west corner of Lot 7, Block 9, 5-Acre Plat C, Big Field Survey, N.0°06'59"E. 143.79 feet and N.89°54'41"E. 30.44 feet from the City monument at the intersection of Westminster Avenue and Fifteenth East Street. thence N.0°03'31"E. along the west line of Block 9. 891.63 feet to the center of Emigration Creek; thence N.74°59'07"E. along the center of said creek 252.33 feet; thence N.45°06'29"E. 112.32 feet; thence N.86°42'29"E. 193.86 feet; thence S.88°05'31"E. 149.88 feet; thence N.55°24'29"E. 75.40 ft. thence N.0°03'31"E. 61.83 feet to the north line of lot 10, said Block 9; thence N.89°59'39"E. 483.50 feet; thence N.0°06'37"E. 44.88 feet; thence N.89°59'39"E. 311.86 feet to the east line of said Block 9; thence S.0°06'37"W. along said block line, 1159.61 feet; thence S. 89°54'41"W. 311.86 feet to the center line of Section 16, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence S.0°06'37"W. along said center line 30.05 feet; thence S.89°54'41"W. 1210.98 to the place of beginning, containing 37.73 Acres and known as Lots 7, 8, 9, 13, 14, and 15 and Part of Lots 10, 12 and 16, Block 9 5-Acre Plat C, Big Field Survey; that I have, by authority of the said owners thereof, subdivided the same into lots, blocks, streets, avenues, etc, to be known as PROGRESS HEIGHTS SECOND ADDITION; that the same has been correctly staked out on the ground as represented hereon and that the Steel Tape used in making the survey thereof was tested at the time, in accordance with the provisions of the Revised Ordinances of 1913, and was in adjustment with the official standard prescribed in said ordinances.

NAMES AND DIMENSIONS OF PARCELS OF LAND DESIGNATED FOR PUBLIC USE.

STREETS.

Blaine Avenue, 66.0 feet wide and 1554.78 feet long, running east and west.
Wilson " 66.0 " " " 729.05 " " " " " "
Downington " 66.0 " " " 1457.27 " " " " " "
Garfield " 66.0 " " " 1450.98 " " " " " "
Sixteenth East Street, 66.0 " " " 1145.83 " " " north " south.

All parks as shown on this map.
All alleys as shown on this map.

RIGHTS-OF-WAY.

All rights-of-way are as shown on this map.

A perpetual right to use the surface and the ground beneath the same of the above described rights-of-way for laying sewer, water and any other pipes or mains, including manholes for the same, and also the right to grant and issue permits to persons or corporations to erect poles on and string wires over the said land for electric light, telegraph and telephone purposes, and to construct under the surface of said land conduits, pipes and mains in which to carry electric light, telegraph and telephone wires, gas, steam and hot water, including manholes for the same. The conveyance also includes the right enter upon said land for the purpose of repairing and maintaining the same.

All lots are of dimensions as shown on this map.

This map is accurately drawn to a scale of 100 feet to one inch.

W. G. Knox
Surveyor.

OWNERS' DEDICATION

Know all men by these presents that the Progress Realty and Building Company, a corporation, by its President and Secretary, Glenn R. Bothwell and Jessie E. Bothwell his wife, Walter D. Buntin and Alice C. Buntin his wife, William C. Van Hoorebeke and Ada Van Hoorebeke, his wife, owners of the above described tract of land, having caused the same to be subdivided into lots, blocks, streets, avenues, etc. to be hereafter known as PROGRESS HEIGHTS SECOND ADDITION, do hereby dedicate for the perpetual use of the public all parcels of land designated in the Surveyor's Certificate and shown on this map as intended for public use.

In witness whereof we have hereunto set our hands and seals.

Progress Realty and Building Company
by N. J. Hansen
President
attest: W. L. Hansen
Secretary

Walter D. Buntin
Alice C. Buntin
Glenn R. Bothwell
Jessie E. Bothwell.
William C. Van Hoorebeke
Ada Van Hoorebeke

ACKNOWLEDGMENT BEFORE NOTARY PUBLIC

State of Utah
County of Salt Lake } SS.

On this 13th day of November A.D. 1915, personally appeared before me, the undersigned, a notary public in and for said county of Salt Lake, N.J. Hansen, President and W.L. Hansen, Secretary of the Progress Realty and Building Company, each of whom did say that they are the president and Secretary, respectively, of the Progress Realty and Building Company, a corporation, and that the above instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said N.J. Hansen and W.L. Hansen acknowledged to me that said corporation executed the same.

My commission expires June 7, 1919.

W. J. Guest
Notary Public.

State of Utah
County of Salt Lake } SS.

On this 13th day of November A.D. 1915, personally appeared before me, the undersigned, a notary public in and for said county of Salt Lake, Glenn R. Bothwell and Jessie E. Bothwell, William C. Van Hoorebeke and Ada Van Hoorebeke signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

My commission expires June 7 1919

W. J. Guest
Notary Public

State of Arizona
County of Maricopa } SS.

On this 11th day of August A.D. 1915, personally appeared before me, the undersigned, a notary public in and for said county of Maricopa, Walter D. Buntin and Alice C. Buntin signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

My commission expires June 15, 1918

Isabel Major
Notary Public

G 51

G-51

ATTACHMENT G: Photograph

Photo of Subject Property