APPEALS HEARING OFFICER STAFF REPORT

Solt Setback Variance Petition Number PLNZAD2013-00570 902 West Everett Avenue December 4, 2013



Planning and Zoning Division Department of Community and Economic Development

Applicant: Matt Solt

Request

<u>Staff:</u> Everett Joyce 801-535-7930, everett.joyce@slcgov.com

Tax ID: 08-23-454-004

<u>Current Zone</u>: M-2 Heavy Manufacturing District

<u>Master Plan</u>

Designation: Capitol Hill Community – Future Land Use is Business Park.

Council District: District 3 – Stan Penfold

<u>Community Council</u>: Capitol Hill

Lot Size: 0.11 acre or 5,000 square feet

Current Use: Outdoor storage

Applicable Land Use Regulations:

- 21A.28.030 M-2 Heavy Manufacturing District
- 21A.18 Variances

Attachments:

- A. Site Plan
- B. Variance Options
- C. Photographs
- D. Department Comments

The applicant requests a variance for a reduction of required front and corner side yard setbacks at 902 West Everett Ave in order to accommodate reasonable development of the property. The staff is recommending that the side and rear yard setbacks also be reduced to create an adequate buildable area on the subject lot. The Hearing Appeals Officer has final decision making authority for Variances. In order to approve the petition, the Appeals Hearing Officer must find that all of the standards for a variance are met.

Recommendation

Based on the findings listed in the staff report, it is the Planning Staff's opinion that overall the project generally meets the applicable standards and therefore, recommends the Appeals Hearing Officer approve reduction of yard setbacks with conditions. There are two potential options, the requested variance and the staff option. Both options would be the minimum required variance to maintain substantial use of the property they would affect different yard setbacks.

Potential Motions

Option 1 - Consistent with Requested Variance: Based on the findings listed in the staff report, testimony and plans presented, I grant the Solt Setback Variance PLNZAD2013-00570 to allow the reduction of the front yard, corner side yard setbacks to five (5') feet for property located at approximately 902 West Everett Avenue subject to the condition that the reduced front and corner side yards be planted with shrubs at a minimum interval of 10 foot on center with a mature height of at least three feet or a 4-6 foot fence with a minimum of 50 percent screening where such shrubs or fence do not conflict with zoning ordinance site distance standards for intersections and driveways.

Option 2- Consistent with Staff Recommendation: Based on the findings listed in the staff report, testimony and plans presented, I grant the Solt Setback Variance PLNZAD2013-00570 to allow the reduction of the front yard, corner side yard, side yard and rear yard setbacks to ten (10') feet for property located at approximately 902 West Everett Avenue subject to the condition that the reduced front and corner side yards be planted with shrubs at a minimum interval of 10 foot on center with a mature height of at least three feet or a 4-6 foot fence with a minimum of 50 percent screening where such shrubs or fence do not conflict with zoning ordinance site

distance standards for intersections and driveways.
Not Consistent with Requested Variance or Staff Recommendation: Based on the testimony, plans presented and the following findings, I deny the Solt Setback Variance PLNZAD2013-00570 to allow reduced front and corner side yard setbacks, located at approximately 902 West Everett Avenue.
 (If a motion is for denial, the Appeals Hearing Officer must find the variance not consistent with one or more of the standards listed below.) 1. Literal enforcement of the Zoning Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance. 2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
 Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district The variance would not substantially affect the general plan of the City or be contrary to the public interest. The spirit of the Zoning Ordinance is observed and substantial justice done.



12AD2010-00010 302 W EVENCE

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Subject Property

VICINITY MAP

Background

Project Description

The applicant has used the property for several years for outdoor storage. Recent zoning enforcement action has identified that portions of the outdoor storage is located in the required landscape yard areas for the front and corner side yards. In response to the enforcement action the property owner has submitted a variance request for reduced setbacks. The applicant requests the front and corner side yards be reduced to five feet. This request would reduce the front yard setback by 20 feet and the corner side yard setback by 10 feet. The applicant also proposes to improve the outdoor storage area through grading and asphalt paving as shown in the Site Plan in Attachment A.

The property is located an M-2 Heavy Manufacturing Zoning District. Outdoor storage is a permitted use in the M-2 Zoning District. The definition of Outdoor Storage is *the use of open areas of the lot for the storage of items used for nonretail or industrial trade, the storage of merchandise inventory, and the storage of bulk*

materials such as sand, gravel, and other building materials. Outdoor storage shall include contractors' yards and salvage and recycling areas. Outdoor storage may take place within the side and rear yard setbacks. However, the front and corner side yard setbacks are required to be landscaped and would prohibit outdoor storage. The petitioner is requesting a variance to reduce the front and corner side yard setbacks in the M-2 Zoning District requirements for front and corner side yard setbacks.

Project Details

M-2 Heavy	Requirement	Current	Proposed	Compliance
Manufacturing		Development	Development	
District Regulations		Outdoor Storage	Outdoor Storage	
Front Yard Setback	25'	None	5'	No
Corner Side Yard	15'	None	5'	No
Setback				
Side Yard Setback	20' – permits outdoor	None	None	Yes
	storage			
Rear Yard Setback	35' – permits outdoor	None	None	Yes
	storage			
Required Landscaped	Front and Corner Side	None	5'	No
Yard	Yard			
Minimum Lot Area	20,000 sq. ft.	5,000 sq. ft.	5,000 sq. ft.	Legal Noncomplying
Minimum Lot Width	80 ft	50' and 100 '	50' and 100 '	Yes

The subject area was platted as the Superior Addition Subdivision which was platted for residential lots. The Superior Addition Subdivision is a 158 lot residential subdivision recorded May 17, 1888. The subdivision was platted with 25' x 125' lots. The typical lot size for the remaining residential properties in the platted area is 50' x 125'. The subject parcel was further reduced in size (50' x 100') when the City acquired the north 25 foot portion of the lot for public utility purposes. This occurred prior to 1995 when there were no setbacks or minimum lot area requirements.

The area is zoned for industrial use, the underlying subdivision lots do not correlate within the minimum 20,000 square foot lot size requirement of the M-2 Zoning District. Applying the setbacks for a minimum lot of 20,000 square feet to the subject noncomplying lot that is only 25 percent of the minimum lot area creates a significant conflict with obtaining the desired zoning pattern when the lots reflect the original residential lot subdivision pattern of the area. Literal enforcement of the landscape setback standards on the subject parcel places a setback area that is significantly greater than if the standards were applied to a parcel meeting the minimum lot area designated by the 1995 zoning standards.

Zoning History					
Time Period	Classification	Setback Standards	Minimum Lot Standards		
1927-1955	Unrestricted	No setbacks	No minimum lot area		
1955-1995	M-3	No setbacks	No minimum lot area		
1995-2013	M-2	25' Front Yard, 15' Corner-side Yard,	Minimum lot area 20,000 sq. ft.		
		20' Side Yard and 35' Rear Yard			

The subject parcel is a corner lot that fronts on 900 West Street and on Everett Avenue. 900 West Street is an improved street and Everett Avenue is an unimproved dead end street. Since 900 West is the only improved street fronting the parcel the access and front yard orientation would need to be on the 900 West Street frontage. The map below depicts the M-2 zone required setbacks and usable outdoor storage area. The M-2 Zoning

District does not require side and rear yards to be landscaped. They may be used for accessory uses and outdoor storage



Lot Comparison Based on Area Requirements							
Calculations are based on the front yard adjacent to the improved 900 W Street frontage	Required yard area	Buildable area	Required landscaped yard area (Front / Corner Side Yards)	Outdoor storage area			
Required Minimum Lot	13,400 sq. ft.	6,600 sq. ft.	6,125 sq. ft.	13,875 sq. ft			
100'x 200' = 20,000 sq. ft.	67%	33 %	31 %	69 %			
Subject Lot	5,000 sq. ft.	0 sq. ft.	2,875 sq. ft.	2,125 sq. ft.			
50' x 100' = 5,000 sq. ft	100 %	0 %	58 %	43 %			
Requested Variance	4,250 sq. ft.	750 sq. ft.	725 sq. ft.	4,275 sq. ft.			
5' Front / Corner Side Yard	85.0 %	15 %	15 %	86 %			

Note: The subject lot is 25 percent of the minimum lot requirement of the M-2 Zoning District.

The table above shows how the setback standards of the M-2 Zoning District affect a typical minimum lot of 20,000 square feet, the subject 5,000 sq. ft. lot and the subject lot with respect to the requested variance with five foot front and corner side yard setbacks. The most significant factors affecting the usability of the lot are the buildable area size and the area allowing outdoor storage use.

<u>Buildable Area</u>. Applying the setback standards to the subject parcel, results in no buildable area on the lot. The requested five foot front and corner side yard setback variance would allow for a 750 sq. ft. buildable area or 15 percent of the lot. The buildable area would be less than half of what is allowed on a minimum lot in the M-2 Zoning District. Limiting the buildable area to 15 percent of the lot area would not allow for a reasonable buildable area as compared to the minimum lot requirements which allow for a buildable area of 33 percent of the lot.

<u>Outdoor Storage Area</u>. The requested five foot front and corner side yard variance would allow a substantial enough of outdoor storage area to allow for the continued use of the property by the applicant. The outdoor storage area with approval of the requested setback variance would exceed the outdoor storage area ratio allowed on a required minimum lot within the M-2 district.

Staff has considered an optional variance of a 10 foot setback for all yards in order to obtain a reasonable buildable lot area. The applicant's variance request only relates to the present use, outdoor storage and does not consider the option of developing a principal structure on the lot. Staff has provided setback information below for an optional variance to be considered on the subject lot.

Optional – Staff Recommended Variance						
Calculations are based on the	Required yard	Buildable area	Required	Outdoor		
front yard adjacent to the	area		landscaped yard	storage area		
improved 900 W Street frontage			area (Front /			
			Corner Side Yards)			
Optional –Staff	2,600 sq. ft.	2,400 sq. ft.	1,400 sq. ft.	3,600 sq. ft.		
Recommended Variance	52 %	48 %	28 %	72 %		
10' setback for all yards.						

The staff optional variance recommends that all yard setbacks be modified to 10 foot setbacks. The staff recommended option would allow for a 2,400 buildable area or 48 percent of the lot versus no buildable area with strict application of the setback standards of the M-2 district. Modifying the variance setback to 10 feet rather than five feet more closely matches the development pattern established by the M-2 regulations, plus it

establishes a more consistent streetscape and keeps outdoor storage further from the front yard property line and pushes potential impact into yards where they are already allowed by ordinance.

Graphic depictions of how the Applicant's requested five foot setback variance and the staff's optional ten foot setback variance would affect the lot are shown in Attachment B.

Comments

Public Comments

No comments were received prior to completion of this staff report.

Analysis

Options

If the variance request is denied the applicant must reduce the outdoor storage area to the rear and side yard areas. Due to the front and corner side yard setbacks of the M-2 district the outdoor storage area is limited to 43 percent of the lot where in comparison a minimum required 20,000 square foot lot outdoor storage can be on 69 percent of the lot. There would be no buildable area on the lot if no variance is granted.

If the Appeals Hearing Officer approves the variance as requested then the applicant can use 4,275 square feet for outdoor storage use which would be 86 percent of the lot. The buildable portion of the lot would be 750 square feet or 15 percent of the lot.

If the Appeals Hearing Officer approves the staff recommended variance then the applicant can use 3,600 sq. ft. for outdoor storage use which would be 72 percent of the lot. The buildable portion of the lot would be 2,400 square feet or 48 percent of the lot.

General Standards of Review

The standards required for granting a variance are set forth in the Utah Code 10-9-707 and Salt Lake City Code 21A.18.060, which standards are provided below. If the Appeals Hearing Officer finds that the standards are met, then the variance to reduce the front and corner side yard setbacks may be granted.

<u>Standard 1</u>. Does literal enforcement of the Zoning Ordinance cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance?

Section 21A.18.060.B of the Salt Lake City Code provides direction to the Appeals Hearing Officer in determining if an "unreasonable hardship" exists. Specifically, Section 21A.18.060.B states the following provisions:

1. The alleged hardship is related to the size, shape, or topography of the property.

One of the applicant's claims is that due to the small lot size he would not have enough usable space left to effectively operate a business if the minimum setback requirements are applied. The setback requirements of the zoning ordinance are the hardship for which the petitioner seeks the variance. The

applicant contends that by granting reduced front and corner side yard setbacks he could utilize the lot in a manner equivalent to the usable area of an M-2 minimum lot sized parcel of 20,000 square feet.

The minimum lot area and setback requirements in the M-2 Zoning District were established based on a minimum lot area of 20,000 square feet. The size of the subject property is only 25 percent of the minimum lot area required. Because the lot is only 25 percent of the required minimum lot for the M-2 zone it is unreasonable to apply the minimum setback requirements to the subject parcel

Findings: Staff finds that the subject lot is not typical of those found in the M-2 Heavy Manufacturing Zoning District. Staff finds that there is a hardship related to lot size, when the minimum setbacks are applied, the lot is not usable.

2. The alleged hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

Section 21A.28.030 requires a 25 foot front yard setback and a 15 foot corner side yard setback on a lot with a minimum lot area of 20,000 square feet. There are similar smaller lots in the immediate neighborhood however these lots are legal nonconforming single family residential uses which are not permitted in the M-2 Zoning District. The subject lot is even smaller than the typical lots created through the original subdivision, since the City obtained the north 25 feet of the parcel for public utility use. There are industrial users within the Superior Subdivision area with similar small lots; however, these uses are developed on several parcels of land in order to accommodate their business activities.

Finding: It is staff's finding that the imposition of the requirements of the zoning ordinance creates a hardship that is peculiar to the property and not from a condition that is general to the neighborhood or the M-2 zoning district for the following reasons:

The lot is peculiar because it is significantly smaller than most lots in the M-2 Zoning District and most lots in the neighborhood that are used for industrial purposes. The required setbacks if applied to a lot significantly less than the minimum lot area creates a hardship. Therefore, staff finds that a hardship based on circumstances that are peculiar to the property does exist in this case.

3. The hardship is not self-imposed or economic.

The original lot was legally created in 1888. At the time of the lot creation, it met all necessary standards for approval by Salt Lake City. The subject lot was further modified when the City purchased a portion of the lot for public utility purposes. The applicant was not responsible for the shape, size or location of the lot in its current status. The existing lot was a legal complying lot at the time it was created.

Since the time the existing lot was created, changes to the City zoning ordinance, specifically the rezoning of the property to M-2 in 1995, and the zoning standards have made the lot legal noncomplying to the minimum lot size and setback standards.

Finding: The staff finds that the hardship is not self-imposed; rather it is a result of changes to the Zoning Ordinance standards that render the property s less usable because the M-2 district setback standards which are designed to apply to a minimum lot area of 20,000 square feet. Application of these setbacks on smaller noncomplying lots creates reduced usable outdoor storage and buildable areas that place a hardship on the property owner to provide a viable use of the property.

Standard 2. Are there special circumstances attached to the property that do not generally apply to other properties in the same district?

Section 21A.18.060.D.1 provides direction to the Appeals Hearing Officer in determining whether or not there are special circumstances attached to the property. Section 21A.18.060.D.1 states:

1. The special circumstances relate to the alleged hardship.

The lot is a corner lot that is subject to the standard setbacks for a corner lot. The lot is 25 percent of the minimum lot area requirement.

Findings: A hardship is created by the application of the minimum setbacks resulting in no buildable area on the lot. The special circumstance is the lot is substantially smaller than the minimum lot size in the M-2 zone because the lot was created prior to the M-2 zone being established.

2. The special circumstances deprive the property of privileges granted to other properties in the same zoning district.

The subject lot is not usable when the M-2 standards are applied. Therefore, the property does not have the same privileges as other M-2 zoned properties. Application of the M-2 setback standards do not allow for any buildable area.

Findings: Staff finds that there are special circumstances that relate to the alleged hardship that deprives the property owner of privileges granted to other properties in the same zoning district.

<u>Standard 3.</u> Is granting the variance essential to the enjoyment of a substantial property right possessed by other property in the same district?

The granting of reduced front and corner side yard setbacks would allow the applicant to use the property in a manner similar to other properties that meet the minimum lot area within the M-2 Zoning District.

Findings: Staff finds that granting the variance is essential to the enjoyment of a substantial property right.

<u>Standard 4</u>. Will the variance substantially affect the general plan of the City or be contrary to the public interest?

The Capitol Hill Community Master Plan's Future Land Use Map designates the subject area for Business Park. The property is within Swedetown, which is located between Beck Street and Interstate15 and between Everett Avenue and 1900 North. Industrial land uses have been allowed in Swedetown since 1927. Between 1927 and 1955 the zoning in Swedetown allowed unrestricted development. In 1955 the zoning was further refined to industrial zoning which allowed for residential land uses. Over the years, as the definition of industrial zoning has been further restricted, new residential land uses have not been permitted and the existing residences have not been protected from incompatible neighbors. The current residential uses can continue to exist under a nonconforming use status.

Policies for the Swedetown area include:

- Initiate redevelopment of Swedetown in the non-residential area first.
- Ensure the new interchange at 1800 North enhances access to Swedetown.
- Ensure that any vacations/street closures in this area do not eliminate important buffer areas between land uses.

The master plan action items to obtain the envisioned business park land use for this area included the development of a small area plan. This plan would include the development of a relocation plan for residential uses, zoning changes from industrial to business park, environmental cleanup, circulation improvements, provide sewer, water and other infrastructure improvements and provide redevelopment strategies. These are long term goals and implementation actions have not been initiated since the adoption of the master plan. In the interim the City has continued the heavy manufacturing uses in the area through the application of the M-2 Zoning District. There is no evidence that the approval of the petition would substantially affect the general plan for the neighborhood, which is in the Capitol Hill Community Master Plan area.

Findings: Based on the analysis, Planning staff finds that the proposed setback variances would not be contrary to the master plan or the public interest.

Standard 5. Is the spirit of the Zoning Ordinance observed and substantial justice done?

One of the intents of the manufacturing districts is to improve the design quality of industrial areas. The front and corner side yard setbacks were established to help implement this intent. At the same time the manufacturing districts purpose is to provide an environment for large and more intensive industrial uses.

The requested five foot front and corner side yard setback variance provides for a usable outdoor storage use similar to what would be allowed on a minimum lot for the M-2 district. However, the buildable area on the lot would be less than half of what is permitted on a minimum 20,000 square foot lot. The staff variance option for a reduction of all required yards to 10 feet would allow for outdoor storage use and a buildable area for other industrial uses in a similar ratio as would be permitted on a minimum 20,000 square foot lot. The staff's 10 foot setback variance option would allow for adequate outdoor storage and buildable area whereas the applicant's requested variance would allow only adequate outdoor storage area use only.

Any variance granted should consider the minimum setback required to address the hardship and meet the intent and purpose of the manufacturing district setbacks. Staff is of the opinion that having a ten foot front and corner side yard is more in line with the intent of the setback requirements than the five foot setback requested. The five foot front and corner side yard setback on a lot substantially less than the minimum required lot area helps to allow for more intensive industrial use of the property.

Findings: The setback requirements of the M-2 Zoning District are designed to accommodate the typical land uses desired within the district on a minimum lot area of 20,000 square feet. By allowing the development of a substandard lot (5,000 sq. ft.) that is 25 percent of the minimum lot area requirement with reduced setbacks would be compatible with the spirit of the Zoning ordinance, and substantial justice will be done.

Conditions on Variances

Section A.18.080: CONDITIONS ON VARIANCES: In authorizing a variance, the appeals hearing officer may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest to mitigate any harmful effects of the variance or that will serve the purpose of the standard or requirement that is waived or modified. The appeals hearing officer may require a

guarantee or bond to ensure that the conditions imposed will be followed. These conditions shall be expressly set forth in the appeals hearing officer's motion granting the variance. Violation of any condition or limitation on the grant of a variance shall be a violation of this title and shall constitute grounds for revocation of the variance.

To meet Standard 5, Is the spirit of the Zoning Ordinance observed and substantial justice done, conditions related to the reduction of the front and corner side yard setbacks are recommended to mitigate potential impacts upon neighboring properties. Planning staff recommends that a condition be set in place on the requested variance for reduced setbacks. Staff recognizes that a hardship exists on the property to justify reduction of setbacks. In order to better provide for the intent of the required setbacks it is recommended that the applicant as a condition of granting the variance provide additional screening and/or landscaping elements. Specifically recommended is that shrubs or a fence be provided within the reduced front and corner side yard setbacks. The fence option should be of an allowed material at a minimum height of four feet and a maximum height of six feet to be placed at the reduced buildable setback line for the front and corner side yards that provides at least 50 percent screening. The shrub option should have a maximum spacing of ten foot on center, with a minimum mature height of three feet. Both, the fence or the shrubs should not encroach into any sight distance triangles necessary for the street intersection and driveways.

Notification

- Required notices mailed on November 21, 2013.
- Sign posted on property on November 21, 2013.
- Agenda posted on the Planning Division and State Website on November 21, 2013.
- Agenda sent to Planning Division Listserve on November 21, 2013.

ATTACHMENT A Site Plan

PLNZAD2013-00570; Solt -Setback Variance





ATTACHMENT B

Requested Variance and Staff Option Maps





ATTACHMENT C

Photographs





ATTACHMENT D

Department Comments



Work Flow History Report 902 W Everett DRT2013-00076

Project: Affordable Portables

Project Description: 3:00PM, pour concrete on the lot for hard surface open storage.

The Development Review Team (DRT) is designed to provide PRELIMINARY review to assist in the design of the complete site plan. A complete review of the site plan will take place upon submittal of the completed site plan to the Permits Counter.

Date		Task/Inspection	Status/Result	Action By	Comments
2/28/2013	0	Application Acceptance	Accepted	Robinson, DeeDee	
2/28/2013	0	Engineering Review	Comments	Norlem, Chris	Certified address required prior to building permit issuance. See Alice Montoya at 801-535-7248. Site Plan Review Required. All public way improvements shall be installed per APWA standard plans and specifications. Sidewalk adjacent to property needs to be replaced if cracked, sunken or heaved. Speak with Scott Weiler (801- 535-6159, scott.weiler@sicgov.com) to discuss waiving this requirement. At the time of application for Building Permit or Plat, an inventory of the condition of the existing street and/or access-way improvements will occur. The condition of said improvements will be determined, and any sub-standard improvements (curb, gutter, sidewalk, drive approach, etc.) will be required to be either repaired or replaced as a condition of approval of the project. Public Way Permit is required for project completion. Licensed, bonded and insured Contractor to obtain permit to install or repair required street improvements. Approved site plan required. Submit approved site plan to Engineering Permits Office @ 349 South 200 East. (Contact George Ott @ 801-535-6396 fo Permit information)
2/28/2013	0	Fire Review	Comments	Itchon, Edward	Fire hydrant is required within 400' of a exterior walls. Fire department access shall be within 150 feet f all exterior walls.

2/28/2013	0	Public Utilities Review	Comments	Stoker, Justin	The portion of the parcel that is City- owned is planned for a proposed storm drain pump station. This is planned and funded and it likely to happen this summer. Please relocate personal items from the public property. Paving or hard surfacing should be designed and graded in a way that storm runoff is not directed on neighboring properties. Ideally, it is maintained onsite until the storm drain system is constructed. At that point, the storm runoff can connect and drain to the system. If onsite storm retention is not possible then make sure that runoff is directed to right-of-way, away from other properties. Grading and drainage plans will need to be submitted to public utilities for review and permitting.
2/28/2013	0	Transportation Review	Comments	Waish, Barry	Review for proposal to develop vacant lot as contractor storage yard. No parking required. Need hard surfacing for all maneuvering areas and defined access drive from public roadway. suggest two way approach width of 20 to 24 feet wide.
2/28/2013	0	Zoning Review	Comments	Brown, Ken	M-2 Zone - Hard surfacing for open storage on a vacant property. Development of this property as an open storage lot requires 25' of front yard landscaping, 15' of corner side yard landscaping, no storage in the front corner or corner side yard, the 20' interior side yard or the 35' rear yard. Development of this property will likely require a variance to the front and corner side yard landscaping and a variance to allow storage in the front, corner side, interior side yard and rear yard setbacks. Development of this property will require hard surfacing for all parking and maneuvering areas.
3/4/2013	4	Closure	Emailed Notes to Applicant	Robinson, DeeDee	