

## BOARD OF ADJUSTMENT

May 19, 2008

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, May 16, 2008 at 5:45 p.m. at the City and County Building, 451 South State Street, in Room 326. Members present were Tom Berggren, Catherine Dunn, Michael F. Jones (Chairperson), Rex Olsen and Edward Radford. Nick Norris ((Principal Planner), Katia Pace (Associate Planner), Casey Stewart (Principal Planner), Ana Valdemoros (Associate Planner), Larry Butcher (Development Review Supervisor) and Paul Nielson (Salt Lake City Land Use Attorney) were also present. Board Member Gary Jones was unable to attend.

Chairperson Jones called the meeting to order and 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. Jones further explained that a simple majority vote (or three concurring votes in some cases) is 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 Judicial District Court within 30 days after Findings and Orders of the cases have been mailed.

### ADMINISTRATIVE SESSION

#### Approval of the minutes for the meeting held April 21, 2008

Mr. Radford moved to approve the minutes as presented, and Ms. Dunn seconded the motion. Mr. Radford, Ms. Dunn, Mr. Olsen and Mr. Berggren voted aye, Chairperson Jones did not vote; the motion passed with a 4-0 vote.

#### Report by the Planning Director

Mr. Norris explained that Planning Staff is updating the Zoning Administrator List and will be presenting it to the Board of Adjustment for review at the next Board meeting scheduled for June 16, 2008.

### PUBLIC SESSION

**Case 420-07-247 (Re-advertised) by Brickwell and Donna Thompson at 2639 East Skyline Drive (1625 South) requesting a special exception to construct an accessory structure that would exceed the building height limit in the R-1/12000 zoning district in Council District Six. (Section 21A.40/050(C) (Staff – Katia Pace at 535-6354 or [katia.pace@slcgov.com](mailto:katia.pace@slcgov.com))**

(The case was heard at 5:53 p.m.)

Brickwell Thompson was present.

Ms. Pace presented the case with a slide presentation and explained that the request is for a special exception to construct a detached garage that would exceed the height limit for the R-1/12000 zoning district. The R-1/12000 zoning district allows a maximum height of 17 feet and the Applicants are requesting a height of 20.5 feet from the ridgeline of the structure to the

finish grade of the lot. The lot descends approximately seven feet from the northwest corner to southeast corner. With an additional two-foot grade change, the west elevation of the proposed structure would have a height of about 23 feet. Ms. Pace added that an attached garage exists on the property and the pattern of the neighborhood is attached garages. Staff could find no other detached garages in the neighborhood and reasoned that the proposed detached garage would not be compatible with the neighborhood. Ms. Pace noted that four abutting property owners have contacted her who are in opposition to the proposal because of the height and the impact it would present to abutting properties as well as the neighborhood. The slide presentation included potential view impacts the proposed garage may have from the abutting properties and the street. The proposed garage would be visually buffered with vegetation from the street view. Ms. Pace said Staff recommended that the Board deny the request for additional building height because it would not comply with the standards for granting the special exception.

Chairperson Jones read the Transportation Engineer comment stating that the grades and access to the rear property were reviewed. They also met with the property owner who explained the purpose of the proposed building in the rear. Since the proposal is to be designated as an accessory structure and not a garage that is used frequently, they saw no problems driving in and out a few times a year to access the proposed building.

Mr. Thompson explained that they have been working on the proposal for approximately three years and their concern was view impact on the neighbors. They felt that locating the accessory structure in the back corner of the property would have the least amount of impact. Mr. Thompson explained that zoning regulations would allow the garage at its proposed location, but the steep topography of the lot prohibits meeting the height limit. The location was also chosen in order to preserve the natural scrub oak on the property.

Chairperson Jones noted that the staff report indicated that the subject property is subject to the Indian Hills Plat D Covenants which disallows detached garages, but the City does not enforce private covenants. However, covenants may be an indicator of compatibility and special exception standards address compatibility issues. Mr. Thompson acknowledged that he knew nothing about the Covenants until he received the staff report and he has not had the time to review them, but he would address the issue.

Roger Anderson, 2661 East Hiawatha Circle, voiced his opposition to the proposal in that construction of secondary detached garages would be contrary to the Indian Hills Covenants and set a precedent for more utility garages in the neighborhood which would ruin the character of the area.

Dorinda Arch, 2627 East Skyline Drive, presented a picture of her back yard and explained that her property is at a lower elevation than the subject property. The proposed structure would appear larger than the actual size from her viewpoint.

Michael Gardley, 2618 East Skyline Drive, explained that he has a copy of the original Indian Hills Covenants and he opposed the proposal. He explained that the proposal would have an adverse effect on the integrity of the neighborhood in that it would be contrary to the Covenants which disallows detached garages.

Karen (and Bryce) Johnson, 2647 East Skyline Drive, did not wish to speak, but wrote on the Public Meeting Registration Form that she strongly objects to granting the special exception request as stated in their letter and pictures that were submitted to Staff.

Bryce Johnson presented a copy of the Indian Hills Covenants and explained that they are pertinent to compatibility issues. Mr. Johnson explained that he surveyed properties from the "H" Rock to the Indian Hills School and from Wasatch Boulevard to the Foothills, and not one detached structure such as the proposal could be found within that area. Mr. Johnson noted the pictures that were submitted to the Board and he explained that he is also opposed to the proposal because of the view impact it would have on abutting property owners. The most impacted neighbor would be Mr. Lieber (2651 East Hiawatha Circle) directly behind the subject property. Mr. Johnson said that he is also concerned about grading and retaining a seven-foot drop for the structure.

Mr. Thompson explained that he has lived in the neighborhood since 1962 and he has always acknowledged concerns of his neighbors. He explained that he talked to the neighbors who abut his property including Mr. Lieber who had no problem with the proposal and he even gave his signature of approval.

The Board and Mr. Thompson discussed the proposal. Mr. Thompson explained that the proposal would not require a curb cut or a concrete drive. His camper will be stored in the accessory structure and will be moved in and out only three to six times a year. The accessory structure is also intended to store yard maintenance equipment. The existing Tuff shed would be removed. As to alternatives as stated in the staff report, Mr. Thompson explained that the original plan had a 4:12 roof pitch which was reduce to a 3:12 pitch. He also changed the door height from 13 feet to 12 feet which lowered the height of the structure from 18.5 feet to 12.5 feet at that elevation. Mr. Thompson said that he would consider lowering the pitch even more or pushing the structure farther into the ground. Mr. Thompson also considered alternate locations, but that would require substantial grade changes or eliminating a substantial amount of native vegetation. Mr. Radford noted that if Mr. Thompson could design the structure 17 feet or lower, he would not require a special exception, but he may still need to address the Covenants.

The meeting was closed to public comment. Mr. Olsen reasoned that he could not support the request in that the proposed detached accessory structure would not be compatible because it would be the only detached structure in the area and moreover, it would exceed the height limit.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Olsen moved for the Board to deny the special exception for the proposed accessory structure to exceed the maximum height allowable for accessory structures in the R-1/12000 zoning district because the proposed accessory structure does not meet the general standards for granting the special exception in terms of compatibility and compliance with the development pattern.

Ms. Dunn seconded the motion; Mr. Olsen, Ms. Dunn, Mr. Berggren and Mr. Radford voted aye; Chairperson Jones did not vote; the motion passed with a 4-0 vote.

**Case 420-08-036 by Julie Evans at 2669 South 1500 East requesting a special exception to construct an accessory structure that would exceed the building height limit in the R-1/7000 zoning district in Council District Seven. (Section 21A.40.050(C)(2)(b) (Staff – Everett Joyce at 535-7930 or [everett.joyce@slcgov.com](mailto:everett.joyce@slcgov.com))**

The case was withdrawn as requested by the Applicant.

**Case 420-08-051 by Micah Banks at 1143 West Pacific Avenue (440 South) requesting a special exception to construct a detached garage that would exceed the building coverage limit in the R-1/5000 zoning district in Council District Two. (Section 21A.40/050(B)(2) (Staff – Casey Stewart at 535-6260 or [casey.stewart@slcgov.com](mailto:casey.stewart@slcgov.com))**

(The case was heard at 6:26 p.m.)

Micah and Amy Banks were present.

Mr. Stewart explained that the request is for a new single-story detached garage that would exceed the building coverage limits established by the R-1/5000 zoning district. Building coverage for accessory structures in the R-1/5000 zoning district is limited to 50 percent of the footprint size of the principal structure. The subject principal structure has a footprint size of 858 square feet which would allow a garage size of 429 square feet. The Ordinance also has a minimum provision of 480 square feet of which would apply in this case. The Applicants are requesting to allow 572 square feet for the proposed garage measuring 22 feet wide and 26 feet deep.

Mr. Stewart reviewed the standards for granting the special exception request explaining that he did not find any conflict with Standards B, E, F or G which address impact to the environment and features on the lot, and property values. As to Standards A, C and D, Mr. Stewart explained that the purpose for limiting building coverage on accessory structures is to keep them subordinate in size to the primary structure (Standard A). Mr. Stewart found that the proposal may have an adverse impact on the neighborhood (Standard C) and it may not be compatible with surrounding development (Standard D) explaining that there are only two existing detached accessory structures on the respective block face. A detached garage exists on the adjacent property to the west that is 720 square feet which was constructed in 1986. The same property has another detached structure 280 square feet constructed in the early 1920s. The respective block face is shorter ( $\frac{1}{2}$  block) than a typical block face in that it is dead-ended by the Jordan River. The subject property is located at the end of the block next to the Jordan River. Allowing the proposed garage at 572 square feet combined with the existing structures on the adjacent lot would contribute to a larger development pattern that diverges from the typical smaller scaled development pattern of the neighborhood. Mr. Stewart added that garages in the neighborhood are usually located in rear yards with access from the alleyways. The proposed garage would be accessed from the alley; however, the development pattern consists of only two garages in which one is much larger and the other is much smaller than the proposed size. Mr. Stewart noted that he did not receive any public comments regarding the request.

Chairperson Jones noted that the Transportation Engineer comment stated that the proposed garage access is off of the alley and set back far enough from the alley to provide access to the structure. Hard-surfacing is required on private property in front of the proposed garage.

Mr. Banks explained that they moved from Minnesota and purchased the property about 1  $\frac{1}{2}$  years ago. The neighborhood has been neglected and they hope to improve their property which would in turn improve the neighborhood. The primary dwelling has very little storage space and the purpose of a larger garage to accommodate storage.

Mrs. Banks presented a slide presentation explaining that the lot is long and narrow, and bounded by the Jordan River and an alleyway which isolates the property from other neighbors. Several homes in the neighborhood are for sale and they were unable to obtain the required

signatures for administrative approval for the request. The primary dwelling is small and they acknowledged that they are allowed the minimum of 480 square feet which may allow a two-stall garage, but would not provide space to store their work equipment and lawn tools. Mrs. Banks then reviewed the standards for granting the special exception explaining that the purpose of the Ordinance is to keep accessory structures subordinate to primary structures, and the proposed size of the garage is subordinate to the primary structure. She explained that older neighborhoods have varying sizes and shapes which make it difficult to apply rules and the 50 percent rule may even hamper revitalization. She noted that the property consists of  $\frac{1}{4}$  acre and eventually they want to construct a bigger home, and a bigger home with a small garage would not be aesthetically pleasing. Furthermore, the 50 percent rule does not consider the size of the lot. Mrs. Banks said that she believes the intent of the Title is to keep structures in the neighborhood fairly uniform and she believes the proposal is fairly uniform in that it is not a three-stall two-story garage. They are asking for a standard sized garage that would not impair property value and improve the value of the neighborhood. Mrs. Banks noted that the staff report indicates that structures in the neighborhood are predominately smaller and the proposal may have an adverse effect on the character of the area. She argued that the benefits of the proposed garage would outweigh the risks; specifically, the garage would improve the character and safety of the neighborhood. She maintained that the proposed garage is still smaller than a standard sized garage and would have no undue adverse impact. The garage would be located in the rear yard which would allow moving their cars to the back and in turn improve the streetscape. Their plans include removing the portable "pack rat" storage unit from the property; installing motion lights, fencing, landscaping; and improving the alley safety. The rear area was a mess when they purchased the property and they have already removed a tree stump and leveled the ground. Mrs. Banks explained that reasonable new development is very important to investing in the neighborhood, and having a huge lot with a small garage would defeat the purpose. She added that the block face consists of five homes and one out of one garage would constitute 100 percent of the development pattern or 50 percent when including the smaller garage.

Mr. Banks added that the proposed 22-foot by 26-foot size was also based on limitations for a monolithic pour which does not allow a single pour of more than 600 square feet. He also added that all the neighbors support the proposed garage and it would be the same size as the garage abutting behind them.

The meeting was closed to public comment. Mr. Radford reasoned that only four feet would be lost if the square footage would be reduced in order to comply with the Ordinance which would not be unreasonable in that the Applicants would still have six feet of storage on either side of the garage access. He also reasoned that the Ordinance provides the Applicants 480 square feet whereas the 50 percent rule would result in a smaller garage. A garage 480 square feet would further be an appropriate size for the primary structure. Mr. Radford noted that the proposed garage is only 14 feet high and the Ordinance allows a maximum of 17 feet. The Applicants have a further option in constructing a 17-foot high structure which could provide storage space above the parking area.

Mr. Norris added the Applicants also have the option to attach the garage to the rear of the home which would still give them access from the alley and the footprint size would then be limited to the lot coverage.

Mr. Olsen reasoned that the Ordinance purposely articulates specific expectations and the Board should presume that it was intended to advance public interest.

Chairperson Jones agreed explaining that the Board has observed a growing number of requests for larger and taller garages that are not otherwise permitted by the Ordinance. The Board has denied a majority of those requests based on the fact that the Ordinance sets compatibility policies by imposing size and height limitations. Chairperson Jones also voiced concerns about setting precedent should the request be granted. He explained that precedent is an issue the Board must take seriously as a quasi judicial board.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Olsen moved for the Board to deny the special exception request to allow construction of a detached garage with a footprint size of 572 square feet because:

1. The proposed use and development would not be in harmony with the general and specific purposes for which the Title was enacted and for which the regulations of the district were established.
2. The proposed special exception would not be constructed, arranged and operated so as to be compatible with the use and development of neighboring properties in accordance with the applicable district regulations.

Mr. Radford seconded the motion; Mr. Olsen, Mr. Radford, Mr. Berggren and Ms. Dunn voted aye; Chairperson Jones did not vote; the motion passed with a 4-0 vote.

**Case 420-08-077 by Donald Fulton at 624 South Emery Street (1170 West) requesting a variance to reduce the required lot size and width in the R-1/5000 zoning district in Council District Two. (Section 21A.24.070(C)(1) (Staff – Ana Valdemoros at 535-7236 or [ana.valdemoros@slcgov.com](mailto:ana.valdemoros@slcgov.com))**

(The case was heard at 6:54 p.m.)

Donald Fulton was present.

Ms. Valdemoros explained that the Applicant is requesting to reduce the required lot size and lot width in the R-1/5000 zoning district. The R-1/5000 zoning district requires a lot size of 5,000 square feet and a lot width of 50 feet. The Applicant is combining three non-complying parcels into one lot that still would not comply with minimum size and width standards. The proposed lot would have a lot width of 25 feet and a lot size of 3,049 square feet. Ms. Valdemoros noted that the Applicant has been unsuccessful in acquiring surrounding property to add to the remnants in order to create a complying lot. She also noted that the Applicant is required to go through the subdivision amendment process to combine the lots.

It was noted that the three lots measure 4 feet, 19 feet and 2 feet in width and Board Members questioned how the lots came about and whether or not the division of the lots could be a self-imposed hardship. Mr. Norris explained that Staff could find no record when the lots were recorded, but they could have come about through tax sales, trading, or combining pieces to other parcels. Mr. Milliner explained that the plat is nearly 100 years old and the lots were initially platted measuring 25 feet wide by 124 feet deep. Staff found that the hardship would be the platting of the lots were standard 100 years ago. Also if the parcels were to remain as is, the property owner would be denied the right that others in the neighborhood have had since the time of platting. Ms. Valdemoros added that the proposal would be more compatible as one developable lot rather than three vacant lots, and the one lot would be closer to compliance.

Mr. Radford noted that the plan proposed a tall narrow dwelling and found that no other two-story dwelling existed in the neighborhood. Ms. Valdemoros explained that a structure similar in size of the Applicant's proposal exists on the property to the south which is also on a 25-foot wide lot.

Mr. Fulton explained that he would like to recombine the lots to the original 25-foot wide lot. The proposal was presented to the Development Review Team and the one stipulation that came about was he would be required to recombine the lots in order to build. The property to the south has a dwelling with a footprint size of approximately 1000 square feet on a 25-foot lot and it also has a two-car attached garage which appears to be very functional and livable; Mr. Fulton is proposing a similar home. Mr. Fulton added that the R-1/5000 zoning district allows a building height of 28 feet, but he has held the proposed dwelling to a roof height of 24 feet.

Chairperson Jones read the Transportation Engineer comment stating that the vehicular access is to be off the alley with a 22-foot 7-inch setback including the alley width which requires over riding the 5-foot minimum rear yard setback for a garage. Paving is required including the alley frontage paving as required per Engineering.

Richard Jones explained that he owns the two-foot strip of property and all three parcels were originally Lot 8 of the Poplar Place Subdivision. The parcels came about 20 years ago, and the previous owner of the two-foot parcel (Alan Parsons) would not let go or consider combining back into the original lot. The other parcels occurred through tax sales and were divided as they now exist. Mr. Richard Jones said that he believes Mr. Fulton has approached the problem reasonably and professionally by combining the parcels into the original lot and developing it. Mr. Richard Jones recalled that he offered his two-foot strip of property to the property owner to the north (Mrs. Eastman) and she declined explaining that her lot was big enough and would rather have a house next door. Mr. Richard Jones explained that stability and compatibility are very important aspects for the neighborhood, and he believes the proposal addresses both issues. The proposal would increase the value of the subject properties as well as the value of the neighborhood and create housing for the City. As existing now, the parcels offer no tax base, but they would add to the tax base if they were one combined developed lot.

Mr. Fulton added that both property owners to the north and south are not interested in the subject parcels and he even obtained a signature of approval for the proposal from the neighbor to the north. Mr. Fulton also reviewed the proposal with other neighbors to which they expressed a desire for a home rather than a vacant lot collecting used mattresses and furniture. Mr. Fulton noted that variances would be needed to construct the proposed dwelling on the lot.

The meeting was closed to public comment. The Board Members discussed that combining the lots would result in one lot measuring 25 feet wide by 124 feet deep with 3,049 square feet of lot area which is consistent with the originally platted lots. They reasoned that the subdivision occurred prior to the current minimum lot size and lot width standards. Mr. Olsen further noted that testimony revealed that the remnant pieces of properties are a nuisance for the neighborhood.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Berggren moved for the Board to grant the variance to reduce the minimum lot area from 5,000 square feet to 3,049 square feet and also to reduce the minimum lot width from 50 feet to 25 feet to accommodate the construction of a new single-family dwelling at 624 South Emery Street. The variance is granted because:

1. Holding the Petitioner to the regulations of the Zoning Ordinance would cause an unreasonable hardship that is not necessary in carrying out the general intent of the Ordinance because the width of the property can not comprise a 50-foot width and accommodate the construction of a standard sized single-family dwelling of approximately 782 square feet.
2. A special circumstance is attached to the property that does not generally apply to other properties in the R-1/5000 zoning district because the lots to be combined have substandard widths and combining them will bring them closer to compliance.
3. Granting the variance is essential to the enjoyment of a substantial property right, which is the right to build a single-family dwelling, enjoyed by other property owners in the neighborhood because the proposed new lot is a combination of three non-complying lots that would be brought closer to compliance and is compatible with similar neighboring lots.
4. The allowance will not affect the general plan and will not be contrary to public interest.
5. The plan meets the spirit and intent of the Zoning Ordinance.

Condition of Approval:

The variance will become null and void if the Applicant does not combine the three lots into one by the subdivision amendment process within one year of the approval.

Mr. Radford seconded the motion; Mr. Berggren, Mr. Radford and Mr. Olsen voted *aye*; Ms. Dunn voted *no*; Chairperson Jones did not vote; the motion passed with a 3-1 vote.

*Before the motion was seconded, it is noted that Mr. Berggren amended his motion to include "the right to build a single-family dwelling" under Standard 3.*

**Case 420-08-079 by Donald Fulton at 331 South 1000 West requesting a variance to reduce the required lot width in the R-1/5000 zoning district in Council District Two. (Section 21A.24.070(C)(1) (Staff – Ana Valdemoros at 535-7236 or [ana.valdemoros@slcgov.com](mailto:ana.valdemoros@slcgov.com))**

(The case was heard at 7:27 p.m.)

Donald Fulton was present.

Ms. Valdemoros explained that the Applicant is requesting to subdivide the subject lot that has a width of 75 feet into two lots that would result in a width of 37.5 feet. The R-1/5000 zoning district requires a minimum lot width of 50 feet. Ms. Valdemoros further explained that Staff recommended denying the request based on the findings that the proposal would be a self-imposed hardship and does not meet the standards for granting the variance request.

Chairperson Jones read the Transportation Engineer comment stating that no problems were found. If a future driveway is to be installed on each of the two separate parcels, a six-foot side yard setback is required and 12 feet of spacing between driveways is also required.

Mr. Fulton said he disagreed with the analyses in the staff report in that it calculated the average lot width of the neighborhood at 48.5 feet and identifies two other lots that are 75 feet wide. The staff report further states that that neighboring properties in the same block face have lot widths that range from 33 feet to 80 feet. Mr. Fulton argued that only one lot on the block face has a width of 75 feet and the use is a six-plex which makes that property inconsistent with

surrounding development. The other lot that the staff report may refer to is located on the northeast corner of 1000 West and 400 South. That lot measures 80 feet by 65 feet and it fronts 400 South in which the 80 feet is actually the depth and the 65 feet is the width. Also, the total square footage of that lot is 5,200 square feet and it would have less square footage than what he is proposing (5,250 square feet).

Mr. Fulton said that he believed the substantial property right for dividing the property would be that he would be denied the right to build in harmony with the environment. The average house on the block has about 800 square feet and maximizing the use of the land would result in a home of 3,000 square feet. It would also be out of character if he built a home of 800 square feet on such a large lot.

Mr. Olsen advised Mr. Fulton that the request is not a question of compatibility. Mr. Fulton must demonstrate that he would be denied the use of the property if the variance was not granted. Mr. Olsen explained that this request is unlike Mr. Fulton's prior request in that there was literally nothing that could be built on a two-foot wide lot without a variance. This request has a fully complying lot which would accommodate a house, but the Applicant is requesting to make two non-complying lots without articulation of a substantial property right.

Mr. Fulton explained that the abutting property owners and the property owners across the street have homes that are compatible with the environment. He understood that the issue was not compatibility, but there would be ramifications for the neighborhood if a house was built to scale with the lot. Mr. Fulton further explained that he reviewed the highest and best use of the property and could find no other way but to divide the lot which makes it more consistent with the neighborhood.

Mr. Fulton read a letter written by one of the neighbors stating in part that he supported the proposal because he has seen the house plans and believes they will add beauty and create forward movement for the area. Two homes will fit naturally into the established neighborhood with its conservative sized homes and quaint yards. He would be much more apt to support two smaller homes built on this lot rather than one large home because they would appear more uniform.

Chairperson Jones advised Mr. Fulton that the letter does not speak to the standards for granting the variance and asked that he do so in conclusion. Mr. Fulton answered by stating that literal enforcement would preclude him from developing the lot in harmony with the environment. The size of the lot is a special circumstance in that it is more than twice the size of the average lots on the street. As to Standard 3, Mr. Fulton said that he believes this Standard addresses compatibility issue. Other property owners have a right to have a home that is compatible with adjacent properties or the development pattern of the neighborhood and he should also have that same property right. Mr. Fulton added that if the variance is not granted, it would result in a large vacant lot that would be overgrown and collecting trash which would be contrary to public interest. The public is very interested in having two normal houses on two normal lots for that neighborhood, and thus the spirit of the Zoning Ordinance would be observed.

It was noted that the subject lot was originally platted as Lots 16, 17 and 18 and was combined with one sidwell number. Should one of the abutting property owners be interested, Mr. Fulton could sell 25 feet of the lot and build on a 50-foot lot. This alternative would require the lot line adjustment process which could be handled administratively.

The meeting was closed to public comment. Mr. Radford said that he could find no hardship or any advantage in subdividing a complying lot into two non-complying lots and dividing the lots would cause a self-imposed hardship. Mr. Olsen agreed adding that the lot meets minimum lot size and width and has a level topography. He also reasoned that it would be difficult to articulate an inversed hardship in that the lot is bigger than most lots in the neighborhood. Furthermore, the Board found that denying the variance would not deny a substantial property right because a home may be built on the lot.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Radford moved for the Board to deny the variance to reduce the lot from 75 feet to 37.5 feet at 331 South 1000 West because:

1. Literal enforcement of the Ordinance does not cause an unreasonable hardship.
2. The Board is unable to identify a special circumstance attached to the property which relates to a development hardship.
3. Granting the variance is not essential to the enjoyment of a substantial property right.
4. The proposal will be contrary to the public interest.
5. The proposed plan does not meet the spirit and intent of the Zoning Ordinance.

Mr. Berggren seconded the motion; Mr. Radford, Mr. Berggren, Mr. Olsen and Ms. Dunn voted aye; Chairperson Jones did not vote; the motion passed with a 4-0 vote.

**Case 420-08-091 by Steve Haymond at 675 South 400 East for an appeal to an administrative decision holding that the proposed use is considered a music conservatory and is not permitted in the RMF-35 zoning district in Council District Four. (Sections 21A.24.190 & 21A.38.080(D) (Staff – Larry Butcher at 535-6181 or [larry.butcher@slcgov.com](mailto:larry.butcher@slcgov.com))**

(This case was heard at 7:46 p.m.)

Wes Robinson (Attorney) was present to represent Steve Haymond.

*Mr. Nielson recused himself from the case due to potential conflict of interest. The Board of Adjustment was represented by Kevin Anderson.*

Mr. Butcher explained that the case came before him as an interpretation request. The request was to allow a music school at the subject property that once was occupied by an office use which was a non-conforming use in the RMF-35 zoning district. After reviewing use classifications in the Zoning Ordinance, Mr. Butcher determined that the proposed use was a music conservatory in that it was the closest similar use listed in the use tables. The Zoning Ordinance further refers to the Webster's Dictionary should a definition not be found in the Ordinance. Webster's defined a conservatory as a school of the fine arts or music school. Mr. Butcher thus determined that the proposed use would not be allowed at the subject location. He reasoned that a music conservatory or music school would not be a similar land use based on the fact that the previous use of an office is allowed in less restrictive districts.

Chairperson Jones noted that the Transportation Engineer did not offer a comment for the case.

The Board and Mr. Butcher discussed at length other possible similar uses and scenarios, and the thought process and definitions that resulted in the determination. The consensus of the Board was that the proposed use was not a music conservatory. Board Members reasoned that

a conservatory would be an institution similar to the Julliard School of Performing Arts in which the institution has exacting curriculum and grants degrees in the arts. The consensus was that the proposed use would be more similar to a music studio and further a music studio would be similar to a dance studio in that they are both uses of the arts and offer only lessons.

Mr. Butcher explained that he considered the proposed use similar to a dance studio which is allowed in the CN zone, but further review directed him away from that train of thought. The use charts have separate categories and specific listings and both dance studio and music conservatory were specifically listed. The Webster's Dictionary further defined conservatory as "a home for foundlings, music school, a school specializing in one of the fine arts" and fine arts were defined as "painting, sculpture or music". Mr. Butcher said that he was obligated to review the plain language of the Zoning Ordinance and he did not read anything in the Ordinance that stated it had to be a place of higher learning.

Mr. Robinson explained that they believe the Wasatch Music Coaching Academy (WMCA) is not a music conservatory, but rather a vocational school. The term conservatory is a term of art and is very general and overbroad as provided by the Webster's Dictionary. Webster's defines conservatory as "a school specializing in the fine arts". The WMCA provides vocational training for aspiring and current musicians, but does not offer degreed programs or accredited courses. Mr. Robinson then explained that since they found the term conservatory a term of art and overbroad, he consulted with three experts in the area and obtained letters from each as to their definition of conservatory:

Jeff Bram, Vice President of Artistic Operations with the Utah Symphony, wrote in part that the origins of the word conservatory have very little to do with how it is used today. Conservatory is a word chosen by the finest colleges and universities to set apart their music schools from the rest of the fine arts division, and is an accepted way to acknowledge the reputation of the most prestigious establishments. Conservatories offer more advanced degrees, numerous concerts and always a decidedly collegiate musical experience. Based on what he has read about the WMCA, it was his opinion that it is not actually a conservatory itself.

The letter from Robert Walzel, Director for the School of Music at the University of Utah, basically confirmed the opinion that WMCA is not a conservatory stating that within higher education, conservatories of music and/or the performing arts are understood to be professional schools that award academic degrees and performing certificates. Conservatories provide professional and academic training for students. Their facilities include concert halls, recital halls, and/or other spaces in which to present performances. They also typically have libraries that support their academic and performance missions. Mr. Walzel concluded that WMCA does not have a performance mission associated with the private instructions they provide, so it does not meet the definition generally understood among music professionals of being a conservatory.

Dan M. Bonsanti, who holds a professional career in music as a performer, arranger and educator for 35 years, wrote in part that even in the most basic examination of WMCA offerings, students and performances should clearly indicate to the Board that the Academy is not a conservatory. The WMCA offers no accredited courses, holds nor sponsors any faculty or student concerts at its facility, and provides only vocational and occupational training. The WMCA emphasize modern pop music, rarely a part of accredited schools of music or music conservatories. It does not resemble a music conservatory in any fashion and should not be designated as such.

Mr. Robinson noted the Website "Wikipedia" as a further reference to the definition of conservatory which states "a university school of music or college of music also known as a conservatory is a higher education institution dedicated to teaching the art of music including the playing of musical instruments, musical composition, musicianship, music history and music theory". Mr. Robinson again explained that WMCA does not offer any accredited courses, it does not provide grades or degree programs. WMCA simply offers music instruction for various instruments. Mr. Robinson added that they also had a problem with the Zoning Ordinance in that it may not clearly define the City Council's intent for a music conservatory. Instead it defaults to the Webster's Dictionary which offers a definition too vague and ambiguous for application. Accordingly, Utah case law is clear in that if a statute is ambiguous it shall be construed in favor of the land owner. Ambiguity is further evident by the fact that the City itself interpreted the term music conservatory to mean different things. He explained that the Utah Conservatory located on Foothill Boulevard in the CN district was allowed. The Utah Conservatory is almost identical to WMCA in that the owner is the only employee and hires independent contractors to teach music lessons. David P. Murphy is the owner of WMCA and hires independent contractors to teach music lessons.

Board Member and Mr. Robinson further discussed the proposed use and possible similar uses. The consensus of the Board was that the proposed use was neither a conservatory nor a vocational school, but still more similar to a music studio.

Mr. Robinson explained that the Ordinance was clear that it considers music schools/studios and dance studios to be similar uses. The definition in the Ordinance for Schools, Public or Private specifically excludes professional and vocational schools, dance schools, music schools or similar limited schools. By definition, a music school could to be considered a similar use to a dance school, or a vocational or professional school. The Ordinance also referred to dance studios/music studios in its parking requirements. Mr. Robinson noted that the definition of a dance studio is "a studio that provides instruction in dance" and the proposal provides the same in regards to music. They believe the proposal would fit as a vocational school or a music studio akin to a dance studio. Mr. Robinson added that it is important for the Board to consider the Utah Conservatory in which it was an approved use two years ago. The staff report refers to the Utah Conservatory, not by name, but by the statement that "it was a one-employee business providing guitar lessons and hires other instructors". According to the staff report the Utah Conservatory use was approved based on size and scope of which is nearly identical to the proposal. Mr. Robinson asked the Board to overturn the interpretation and rule that the proposed use is a permitted use based on the findings that dance studios are a permitted use as well as art studios within the CN district. The proposal also fits within the purposes of the CN district which are intended to provide for small scale commercial uses that can be located within residential neighborhoods without having significant impact upon residential uses. Mr. Robinson noted that the staff report had no finding that there would be any adverse impact on the community. Mr. Robinson also asked the Board to recognize community support for the music coaching academy as indicated by approximately 30 citizens attending the hearing. He had asked them to show their support in presence only.

Cindy Cromer explained that she is a participant on the task force for reviewing conditional uses, and they were puzzled over the term conservatory and why some conditional uses are allowed in some commercial zones and not others. She suggested to the Board that they make their determination tonight if there is a real estate transaction pending, but the task force is working on obtaining some consistency for particular classifications. The City Council will meet for conditional use issues on July 15, 2008. Ms. Cromer added that she believes Mr. Butcher did the best he could with the rules he had. The Ordinance makes very clear distinctions

between the classifications of professional and vocational schools, dance studios, art studios, art galleries, music conservatories and museums, but it does not allow those things in the same commercial zones. She voiced her respect to Mr. Butcher's thinking in that it was consistent and did not leap from one type of art to another in an attempt to solve the problem. She also does not believe that an art studio, a dance studio and music have enough in common to be lumped together especially when the Ordinance itself calls out different classifications for each one and restricts their use in different zones. Ms. Cromer agreed that a music coaching facility would not be a similar use as is a vocational school.

Board Members further discussed possible similar uses. Mr. Berggren found that the proposed use could be considered an office use in that the definition in the Ordinance defines it as "a business use which offers services to the public that is engaged in the application of professional experience" and "shall not include any use or other type of establishment which is otherwise specifically listed in the table of permitted and conditional uses". Chairperson Jones asked Mr. Butcher if he could find that the proposed use would be a music studio akin to dance studio or an office use. Mr. Butcher explained that there was nothing in the use charts that would draw a similarity. The dance studio classification has its own definition, but there is no mention for music. Mr. Butcher said that he may have made a decision based on impact to the neighborhood; however, the plain language led him to his decision. The definition of a conservatory use used the plain language "music school" and he felt that the proposed use was the closest to that use. At that point, Mr. Butcher did not consider other uses especially the office use with respects to a business operation.

As to the approval of the Utah Conservatory, Mr. Butcher explained that he was directed to give approval by Planning and recalled that it was based on one instructor giving lessons and one instructor could be considered as a conditional home occupation. One instructor further could not be considered a full school. This case involved nine instructors, so it could not go in the direction of a conditional home occupation.

Mr. Butcher explained that if the Board should find that the proposed use is a vocational school or music studio rather than a music conservatory, he would be willing to have it remanded back to him for further review. He explained it is clear in the Ordinance that the institution of higher learning definition under the public and private schools specifically excludes music schools. There is no other mention of music schools other than music studio which is found in the parking calculations. So from a parking standpoint, music schools and dance studios are considered to have a similar impact to the neighborhood. He could also review the proposed use as similar to a dance studio based on the language of "a studio of fine arts".

Mr. Anderson explained that he read through the documents and believed that Mr. Butcher did the best he could with the deficiencies and broad definitions. He also believed that the best point was made by Mr. Robinson in that the definition of conservatory is so broad it may be ambiguous. Ambiguity provides the opportunity to look outside the Webster's definition to find a meaning under applicable circumstances. Also, an argument could be made that an office would include a music studio because it is not separately listed in the use charts.

Mr. Robinson said that he could agree the proposed use could be considered an office use and in fact their first request was for the Planning Division to interpret the use as an office space use. When the interpretation came down as a music conservatory, they changed gears and started looking at vocational schools and dance studios. The Ordinance clearly considers dance and music studios to be similar in the parking calculations, but it does not provide for a music studio use. And again, any ambiguity should be construed broadly in favor of the

property owner. Mr. Robinson asked the Board to overturn the administrative interpretation that the WMAC is a music conservatory and to make a determination that a similar use under the Zoning Ordinance would be for an office space or dance studio which are substantially similar and permitted in the CN zoning district.

The meeting was closed to public comment. Chairperson Jones reasoned that it may have been demonstrated that the proposed use is not a conservatory use or a vocational use, but the evidence and testimony did not convince him that it could be akin to an office or a dance studio use. He advised his fellow Members that it may not be appropriate for them to make a decision as to the type of use, but it would be appropriate to remand the issue back to the Zoning Administrator or the Administration itself for further proceedings. He noted Ms. Cromer's testimony in that administrative efforts are taking place for clarification of permitted and conditional uses.

THEREFORE, from the evidence and testimony presented, Mr. Berggren moved for the Board to reverse the administrative decision that the proposed use is classified as a music conservatory because the use is not a music conservatory pursuant to the definitions found in the Zoning Ordinance. The Board further remands the matter to the Zoning Administrator for proceedings not inconsistent to this ruling.

Mr. Olsen seconded the motion; Mr. Berggren, Mr. Olsen, Mr. Radford and Ms. Dunn voted *aye*; Chairperson Jones did not vote; the motion passed with a 4-0 vote.

*Before the motion was seconded, it is noted that Chairperson Jones suggested adding a finding that the Appellant's contention relating to the vocational school also would not apply. Mr. Berggren declined to amend his motion to reflect that finding.*

There being no further business, the meeting adjourned at 9:12 p.m.

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Deborah Martin, Secretary

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Michael F. Jones, Chairperson