

**Hurricane City Appeals Board  
Meeting Minutes  
October 3, 2022**

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**On October 3, 2022 at 10:30a.m., the Hurricane City Appeals Board met in the City Council chambers located at 147 N 870 West Hurricane, UT.**

**Members Present:** Beth Lock, Bob Peterson, and Rick Wixom

**Staff Present:** Planning Director Stephen Nelson, Assistant Planner Fred Resch, and Planning Technician Brienna Spencer

**1. Consideration and possible approval for a variance from building separation and setbacks request located at 1042 W 400 S. Travis Dickey Applicant**

Travis Dickey stated that when the house was originally built in 1987, the entire slab was poured at the same time but this patio section was not framed in. He cannot tear it out because it'll ruin the dexterity of the house but it is overkill for a patio. If he doesn't build on it, it ruins the purpose of his backyard and he would like to build on it. Bob Peterson asked if this lot was originally an acre. Mr. Dickey shared that in the early 2000's when the house was sold, they sold of a section of the property to his current neighbor to the north. Mr. Peterson asked about the secondary structure that was up for request as well but it was explained that the site plan was done incorrectly for the original submittal but it has been updated and is no longer part of the request. Mr. Dickey shared that his neighbor encouraged him to file for the variance request and that he doesn't have any issues with him being 5' closer to the property line. Rick Wixom clarified that the slab he is wanting to build on already exists. Stephen Nelson stated that it is already there and pulled up the pictures submitted with the application. Mr. Peterson commented that the slab there is and it is pretty tall. Mr. Dickey expressed that the footing was put there for a purpose. Mr. Wixom asked Mr. Nelson what the setback requirement is. Mr. Nelson referenced the city code that states the rear setback is 30' and the biggest issue is that the request is within that required setback. Mr. Wixom asked if the code has been changed since the house was built. Mr. Nelson looked to find the history of the code and stated it was adopted in 2016. Mr. Peterson feels it fits the requirements for a variance. It does not affect the neighborhood or the city in any way. He does agree that it would increase the value of the property and make it more esthetically appealing as well.

*Bob Peterson motioned to approve the variance.*

Beth Lock stated that because this is a variance, it does have to meet the 5 criteria for one and the first item on that is list is what always seems to be the hold up: unreasonable hardship. You have to explain the hardship. Mr. Dickey shared that the home is currently only 3 bedrooms and his wife is pregnant with their third child. They intend to add another bedroom which would allow them to stay in the home longer. They would be adding a bedroom and laundry room area. Right now their laundry is in the garage which is

inconvenient and garages are typically dirty, especially his. Mrs. Lock understands that expanding the home would allow them to stay in the house longer, but that is not what they are looking for when they talk about a variance and the hardship. It cannot be personal; it has to be a hardship to the property. Mr. Dickey asked for an example of a hardship but he doesn't understand the definition of it. Mrs. Lock asked Mr. Nelson for some help so he pulled up what the Utah Ombudsman defines a hardship as. Mr. Dickey asked if him having to deal with the slab is an unreasonable hardship? Because if he cannot build on it, he's stuck dealing with it because he can't pull it out due to it being poured in a single pour perimeter. Mrs. Lock stated that it was in compliance when it was poured because it was a one-acre property. Mr. Dickey asked because it is now out of compliance, wouldn't it be kind of forcing him to deal with the unreasonable hardship because he has to deal with it and not be able to utilize it? Mr. Peterson quoted the last criteria about altering plans and he does not see a way to alter them to bring it into compliance because that is the way it was designed. Mr. Wixom stated that they don't know what the setback was when the property was subdivided and what it comes back to is, does the foundation justify the hardship of the property to say he wants to build on it; the foundation is already there and already within the setback. What could you do with it if you say he can only go to 30 feet? Is that even possible? Building on the existing and losing 5 feet, would that make any sense at all? Any more sense than just allowing him to build to the 25 feet? In his mind, that is the question; does the existing slab that was not created by the applicant and was already on the property create an unreasonable hardship that is unique to the property? It seems to him that it does. Mrs. Lock shared that the thing they have to do as a board is insist that all five criteria be met in order to grant a variance and they don't just come in and rubber stamp everything. There is a process that has to be gone through and it is up to the applicant to say in your own words what the hardship. A gentleman in the audience asked if he could point out another perspective. He shared that the hardship could be a safety hazard. It's not a patio, it's actually a foundation. So, when you get your family out there playing, it could become a tripping hazard. It was never meant to be a patio, it was meant to have a structure, it just wasn't done, for whatever reason, at that time. Mrs. Lock thinks that if it was subdivided prior to the code being changed, if the code was change from something to a 30' setback, that would be the hardship. But we don't know when that code was changed. Mr. Wixom asked if this is currently being used as a patio. Mr. Dickey shared that he doesn't have any patio furniture on it, it's just an entry and exit into his back yard. Mr. Nelson shared that the subdivision adjacent to this property was recorded in October 2005. Mr. Wixom asked Mr. Nelson what the neighbor side yard set back would be. Mr. Nelson shared that the code requires 10' on one side and 20' on the other. Mr. Dickey stated that is what code says but he actually has 15' because they measured it when they were measuring his property.

*Bob Peterson motioned to approve the variance based on the findings that the hazard that was prebuilt before he moved there, the fact that it was built with the intentions of adding onto the house at some point that would not generally apply to other properties and it does not cause harm to them either, the other 3 criteria are also fulfilled in his*

*opinion. Beth Lock seconded the motion finding that with the information provided to them by the City, that setback code was written after the property was subdivided and based on that, that would be the hardship. Motion carried unanimously.*

**2. Consideration and possible approval for a building permit for an enlargement of a noncomplying structure located at 199 N 200 W. Jesse Poll Applicant.**

Jesse Poll shared that he wants to add a garage with a tandem second bay that'll have an apartment on top. The reason they are asking for a variance is because his house sits 6' from the front property line on one side and 8' on the other. The house was built in 1922 and they are trying to keep it as esthetically pleasing so it won't detract from the value because he'd have to chop it all up putting it to current house setback standards. It'll have a 10' side set back and all be the same height as well. Beth Lock asked if this is a variance as well. Stephen Nelson stated that it is not, it is a request to enlarge a nonconforming structure. Mrs. Lock asked if he was planning to rent the unit or keep it for himself. Mr. Poll shared it'll mostly be for his kids but he needs to look at the code to see what is allowed. This property is currently zoned for multifamily. Mr. Nelson stated that means that by law, he is entitled to a duplex on the property. Mr. Wixom asked if there will be a setback issue with the stairs. Mr. Poll stated that because there will not be a roof over the top of it, there will not be an issue.

*Rick Wixom motioned to approve the enlargement of a nonconforming structure based on the findings that the enlargement is compatible with the adjoining property and it is not detrimental to the community. Beth Lock seconded the motion. Unanimous.*