

Cottonwood Heights Planning Department
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Memorandum

To: Board of Adjustment

From: Morgan Brim, Associate Planner

Date: December 30, 2010

Subject: Item 2.1 & 3.1 Draper Residence Expansion of a Non-Conforming Building

An application for an expansion to a nonconforming use located at 3281 E. Bengal Blvd. is scheduled for a public hearing on January 6, 2011. This application is similar to a zoning variance, however, our code has a different review criteria for an expansion of a nonconforming use as shown below (see both chapter 19.88 and 19.02 attached):

19.88.070 Additions, enlargements, moving and reconstruction of building.

A. A building occupied by a nonconforming use and a building noncomplying as to height, area or yard regulations shall not be added to or enlarged in any manner or moved to another location on the lot or reconstructed at another location on the lot except as provided by subsection B of this section unless such additions and enlargements comply with the regulations and intent of this title.

~~B. A building occupied by a nonconforming use or a building noncomplying as to height, area or yard regulations may be added to or enlarged or moved to a new location on the lot or reconstructed at a new location on the lot upon a permit authorized by the board of adjustment, provided that the board of adjustment, after the hearing, shall find:~~

- ~~1. The addition to, enlargement of, moving of, or reconstruction of the noncomplying building at a new location on the lot will be in harmony with one or more of the purposes stated in section 19.02.020, and shall be in keeping with the intent of this title;~~
- ~~2. That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or noncomplying building.~~

C. The board of adjustment shall have the same authority with regards to additions, enlargements and moving of noncomplying structures as with noncomplying buildings, but shall not have the authority to allow reconstruction of noncomplying structures at a new location on the lot.

19.02.020 Purpose of provisions.

This title is designed and enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, and securing economy in governmental expenditures, fostering the city's industries, and the protection of both urban and non-urban development.

Overview of the Application:

The applicant is requesting an expansion to a nonconforming use for an addition to the north side of their existing home. The addition consists of about 450 square feet and would move the north side of the house about 15 feet closer to the northern property line. Currently the house is about 23 feet from this property line. This property is located in a flag lot which requires a 20 foot setback on all sides. Plans indicate that the addition would be approximately eight feet from the property, which encroaches 12 feet into the required setback. This structure is already a non-conforming use as to the setbacks of the existing south property line. Currently the south side yard is only about eight feet.

The proposed application is in harmony with the purpose of 19.02.020 as listed above. No finding suggests a threat to any of the elements of the zones purpose nor does it pose a threat to the health safety and welfare of the surrounding neighborhood. Staff does not see any unreasonable burdens that will be created by the proposal. It should also be noted even though this property is a flag lot, which requires larger setbacks, other lots throughout the neighborhood have similar setbacks to those being proposed by the applicant. Staff recommends that the Board of Adjustment approve this request as it is in conformity with the review standards set forth in the ordinance.

Attachments:

Chapter 19.02 & 19.88

Proposed Site Plan

Vicinity Map

**Chapter 19.02
GENERAL PROVISIONS AND
ADMINISTRATION**

Sections:

- 19.02.010 Title for citation.**
- 19.02.020 Purpose of provisions.**
- 19.02.030 Interpretation as minimum requirements.**
- 19.02.040 Resolution of conflicts.**
- 19.02.050 Effect on previous ordinances and maps.**
- 19.02.060 Licensing requirements.**
- 19.02.070 Time computation.**
- 19.02.080 Site plans required—
Contents.**
- 19.02.090 Building and use permits required.**
- 19.02.100 Compliance prerequisite to permit issuance.**
- 19.02.110 Improvements
—Performance bonds.**
- 19.02.120 Development standards.**
- 19.02.130 Application and permit expiration.**

19.02.010 Title for citation.

This title shall be known as the "Zoning Ordinance of Cottonwood Heights, Utah," and may be so cited and pleaded. This title shall also be known as Title 19, Cottonwood Heights Code of Ordinances.

19.02.020 Purpose of provisions.

This title is designed and enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of

the tax base, and securing economy in governmental expenditures, fostering the city's industries, and the protection of both urban and non-urban development.

19.02.030 Interpretation as minimum requirements.

In interpreting and applying the provisions of this title, the requirements contained herein are declared to be the minimum requirements for the purposes set forth.

19.02.040 Resolution of conflicts.

This title shall not nullify the more restrictive provisions of covenants, agreements, other ordinances, or laws, but shall prevail notwithstanding such provisions which are less restrictive.

19.02.050 Effect on previous ordinances and maps.

The existing ordinances of the city covering the zoning of areas and districts in the city, in their entirety and including the maps theretofore adopted and made a part of such ordinances, are hereby superseded and amended to read as set forth in this title; provided, however that this title, including the maps on file with the planning commission and by this reference made a part hereof, shall be deemed a continuation of previous ordinances, and not a new enactment, insofar as the substance of revisions of previous ordinances is included in this title, whether in the same or in different language; and this title shall be so interpreted upon all questions including, but not limited to, questions of construction, relating to tenure of officers and boards established by previous ordinances, and to questions of conforming or nonconforming uses, buildings or structures, and to questions as to the dates upon which such uses,

buildings or structures become conforming or nonconforming.

19.02.060 Licensing requirements.

All departments, officials and public employees of the city which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this title and shall issue no permits or licenses for use, building or purpose where the same would be in conflict with the provisions of this title, and any such permit or license, if issued in conflict with the provisions of this title, shall be null and void.

19.02.070 Time computation.

A. In computing any period of time prescribed or allowed by this title, the day of the act, event or decision after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a holiday. When the period of time prescribed or allowed is less than seven days, intervening Saturdays, Sundays and holidays shall be excluded in the computation. A half-holiday shall be considered as other days and not as a holiday.

B. The date of a decision or recommendation of the planning commission shall be the date of the public meeting or hearing where such decision or recommendation is made. If the decision is made by the city's community development director, the date of the decision shall be the date specified on the property owner's notice or notification letter in the application file.

**19.02.080 Site plans required—
Contents.**

A detailed site plan, drawn to scale (scale and sheet size to be determined by the community development director) shall be filed as part of any application prior to consideration or for any building permit. The site plan shall show, where pertinent:

- A. Note of scale used;
- B. Direction of North point;
- C. Lot lines, together with adjacent streets, roads and rights-of-way;
- D. Location of all existing structures on subject property and adjoining properties (completely dimensioned, including utility lines, poles, etc.);
- E. Location of the proposed construction and improvements, including the location of all signs;
- F. Motor vehicle access, including individual parking stalls, circulation patterns, curb, gutter, and sidewalk location;
- G. Necessary explanatory notes;
- H. Name, address and telephone number of builder and owner; and
- I. All other information that may be required, as determined by the director.

**19.02.090 Building and use permits
required.**

Construction, alteration, repair or removal of any building or structure, or any part thereof, as provided or as restricted in this title, shall not be commenced or proceeded upon except after the issuance of a written permit for the same by the city's building official. The use of the land shall not be commenced or proceeded upon except upon the issuance of a written permit for the same by the director. No use permit shall be required for land used for agricultural purposes, as defined in this title, and/or for the keeping or raising of

animals or fowl.

19.02.100 Compliance prerequisite to permit issuance.

After the effective date of the ordinance codified in this title, no building permit may be issued without first having been approved by the director. The director or his designee shall not approve a building permit if any building, structure or use of land would be in violation of any of the provisions of this title, nor shall any other city officer grant any permit or license nor the use of any building or land if use would be in violation of this title.

**19.02.110 Improvements—
Performance bonds.**

A. Any improvements required under this title or by the planning commission including, but not limited to, curb, gutter and sidewalk, fences, landscaping, streets, fire hydrants and parking, shall be satisfactorily installed prior to the city authorizing electrical service being provided; or, if no electrical service is required, prior to occupancy permit issuance for the land being developed. In lieu of actual completion of such improvements prior to electrical service being provided or occupancy permit, a developer may file with the city a completion bond, in form and amount specified by the city, to ensure completion of improvements within one year. Twenty-five percent of the bond amount for public improvements, such as curb, gutter, sidewalk, road surfacing and fire hydrants, shall extend for a one-year period beyond the date the improvements are completed, to guarantee replacement of such defective public improvements. Upon completion of the improvements for which a completion bond has been filed, the developer shall call for

inspections of the improvements by the director or his designee.

B. If the city determines that the required improvements should be completed in a specified sequence and/or in less than a one-year period in order to protect the health, safety and welfare of the city or its residents from traffic, flood, drainage or other hazards, it may require in approving the completion bond that the improvements be installed in a specified sequence and period which may be less than one year and shall incorporate such requirements in the completion bond.

C. Such completion bonds shall be processed and released in accordance with the procedures set forth in this code.

D. When the developer is a school district, municipality, service area, special-purpose district or other political subdivision of the state, the city may waive the bond and accept a letter from the developer's governing body guaranteeing installation of the improvements. Before approving any such waiver, the city shall receive a recommendation from the director.

19.02.120 Development standards.

The planning commission may adopt development standards for use as a guide in conditional use review, site plan review, subdivision design, and for use in site plan review for single-family dwellings.

19.02.130 Application and Permit Expiration.

A. Applications applied for under this title shall not be considered for processing and/or approval if no new submittals are received by the city for a period of six months. Resubmitted applications related to an expired application shall conform to current zoning, subdivision and other standards

under this code at the time of resubmittal to the city.

B. Conditional use permits, grading permits, site plan permits, building permits, use permits, sign permits and any other permit issued under this title shall become null and void if the work authorized under such permit has not been commenced within one year after the date such permit was issued and substantially completed within two years following such issuance.

**Chapter 19.88
NONCOMPLYING BUILDINGS
AND NONCONFORMING USES**

Sections:

19.88.010 Continuation of use.

19.88.020 Occupation within one year.

19.88.030 Maintenance permitted.

19.88.040 Repairs and alterations permitted.

19.88.050 Addition of parking space.

19.88.060 Expansion of use permitted.

19.88.070 Additions, enlargements, moving and reconstruction of building.

19.88.080 Nonconforming use of land.

19.88.090 Change of use.

19.88.110 Restoration of damaged building.

19.88.120 One-year vacancy.

19.88.130 Abandonment.

19.88.140 Application to have a use violation declared a nonconforming use.

19.88.150 Termination.

19.88.010 Continuation of use.

The occupancy of a noncomplying building or structure, or a building or structure by a nonconforming use, existing at the time this title became effective, may be continued by the present or a future property owner. The definitions of "noncomplying building" and "nonconforming use" shall be as provided in UTAH CODE ANN. §10-9a-103, as amended.

19.88.020 Occupation within one year.

A vacant building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied within a period of one year after the use became nonconforming.

19.88.030 Maintenance permitted.

A noncomplying building or structure may be maintained.

19.88.040 Repairs and alterations permitted.

Repairs and structural alterations may be made to a noncomplying building or to a building housing a nonconforming use.

19.88.050 Addition of parking space.

A building or structure lacking sufficient automobile parking space for a legal use under this title may be altered or enlarged, provided additional automobile parking space is supplied to meet the requirements of this title for such alteration or enlargement.

19.88.060 Expansion of use permitted.

A nonconforming use may be extended through the entire existing building in which it is conducted at the time the use became nonconforming, provided no structural alteration is proposed or made for purpose of the extension. The addition of a solar energy device is not a structural alteration under this section.

19.88.070 Additions, enlargements, moving and reconstruction of building.

A. A building occupied by a nonconforming use and a building noncomplying as to height, area or yard regulations shall not be added to or enlarged in any manner or moved to another location on the lot or

reconstructed at another location on the lot except as provided by subsection B of this section unless such additions and enlargements comply with the regulations and intent of this title.

B. A building occupied by a nonconforming use or a building noncomplying as to height, area or yard regulations may be added to or enlarged or moved to a new location on the lot or reconstructed at a new location on the lot upon a permit authorized by the board of adjustment, provided that the board of adjustment, after the hearing, shall find:

1. The addition to, enlargement of, moving of, or reconstruction of the noncomplying building at a new location on the lot will be in harmony with one or more of the purposes stated in section 19.02.020, and shall be in keeping with the intent of this title;

2. That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or noncomplying building.

C. The board of adjustment shall have the same authority with regards to additions, enlargements and moving of noncomplying structures as with noncomplying buildings, but shall not have the authority to allow reconstruction of noncomplying structures at a new location on the lot.

19.88.080 Nonconforming use of land.

The nonconforming use of land, existing at the time this title became effective, may be continued, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or adjoining property, and provided that if such nonconforming use of land, or any portion thereof, is abandoned or changed for a period of one year or more, any future use of such land

shall be in conformity with the provision of this title.

19.88.090 Change of use.

A. A nonconforming use may be changed to any use allowed in the most restrictive zone where such nonconforming use is allowed, provided the planning commission finds that such use would not be more intensive than the most recent existing legal nonconforming use.

B. Noncomplying buildings, or buildings housing a nonconforming use, shall not be enlarged, removed, reconstructed or otherwise changed except for interior remodeling and exterior restoration or renewal that will make the appearance of the building more nearly conform to the character of the area in which it is located.

C. The existing lot or parcel shall not be enlarged upon or modified except to create landscaping, fencing, curb, gutter and sidewalk, road widening or minimum off-street parking that will provide a safer and more compatible facility.

D. Any change of a nonconforming use to another nonconforming use shall be a conditional use and subject to chapters 19.78, "Supplementary and Qualifying Regulations," and 19.84, "Conditional Uses," except that the proposed nonconforming use need not conform to the city's general plan.

E. The planning commission may approve a change of use pursuant to this title even though the nonconforming use may have been abandoned under the provisions of section 19.88.130.

19.88.110 Restoration of damaged building.

A noncomplying building or structure, or a building or structure occupied by a nonconforming use, which

is damaged or destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building, structure or part thereof, which existed at the time of such damage or destruction may be continued or resumed, provided that:

A. The structure has not been allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months, or

B. The property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.

19.88.120 One-year vacancy.

A building or structure or portion thereof occupied by a nonconforming use, which is, or hereafter becomes, vacant and remains unoccupied by a nonconforming use for a continuous period of one year, except for dwellings, shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located.

19.88.130 Abandonment.

A nonconforming use that has been abandoned shall be deemed to be terminated. Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment under the standards specified in UTAH CODE ANN. §10-9a-511, as amended.

19.88.140 Application to have a use violation declared a non-conforming use.

A. Whenever land or a structure is used in violation of this title, the owner may file an application with the planning commission to have the use declared nonconforming. The planning commission may approve such an application only when the evidence establishes all of the following:

1. The use exists on the property at the time of the application and has been in continuous violation of the zoning ordinance for a period exceeding five years;

2. No complaint has been made to the department concerning the violation for a period exceeding five consecutive years during which the violation existed;

3. Continuation of the use will not have a detrimental effect on the health, safety or welfare of persons or property in the vicinity.

B. In approving an application hereunder, the planning commission may set any conditions it deems necessary for protection of adjacent properties or the public welfare including provisions limiting the period of time the use may continue. This section shall in no way be interpreted to permit the continuation of any violation which exists on the effective date of the ordinance codified in this section. Any person shall have the right to appeal to the board of adjustment a decision rendered by the planning commission pursuant to this section.

19.88.150 Termination.

A. The city council may provide by ordinance for the termination of a nonconforming use, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the

amount of his investment, in the nonconforming use, if any.

B. The city council may terminate the nonconforming status of a school district or charter school use or structure with the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period of one year or longer.



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