



**Land Use Appeals Board
McKay Bryce Jolley Family LLC
Lot Size Variance**

REPORT SUMMARY...

Project Name: McKay Bryce Jolley Family, LLC Lot Size Variance
Appellant: McKay Bryce Jolley Family, LLC
Project Address: 265 North 400 East
Request: Variance
Current Zoning: Traditional Neighborhood Residential (NR-6)
Type of Action: Quasi-Judicial
Date of Hearing: August 16, 2017
Submitted By: Amber Pollan, Senior Planner

EXISTING CONDITIONS

Current Land use adjoining the subject property

<i>North:</i>	NR-6, Residential Uses	<i>East:</i>	NR-6; 400 East, Community service uses (Whittier Center)
<i>South:</i>	NR-6, Residential Uses	<i>West:</i>	NR-6, Residential Uses

The residence at 265 North 400 East was originally constructed in 1909. The property was grandfathered as a legally existing nonconforming four-plex use in April 2002 by Logan City staff as information was provided verifying the four-plex was established prior to the zoning change in the area in 1990.

A member of the Jolley family purchased the property in December 2009 with the McKay Bryce Jolley Family LLC entity being deeded ownership in 2016. The legal description of the property in 2009 was 3 rods (49.5') by 9 rods (148.5') or 7351 sq. ft. In May of 2014, a Warranty Deed was recorded at the Cache County Recorder's office that transferred ownership of the west 40' of the subject property from McKay Bryce Jolley to Thomas Lee Hale and Allison Ashcroft Hale. The Hales owned the property to the west and have subsequently developed the 40' as a landscaped area in conjunction with their yard. The current legal description of the property with Cache County is 3 rods (49.5') by 108.5' or 5371 sq. ft.

This property is in the Traditional Neighborhood Residential (NR-6) zoning district which requires a minimum lot size of 6000 sq. ft. and only allows for new residential construction to be single family residences. (Land Development Code §17.15.070) The property contains a legally existing nonconforming four-plex. As a grandfathered use it is allowed to continue as long as it is not abandoned and may be rebuilt if the structure is damaged or destroyed through actions other than neglect or intentional demolition.

The transfer of property, or shifting of a property line between two properties is called a boundary line adjustment. Logan City has an application and process for a Boundary Line Adjustment (BLA) that is administered by the City Engineer. As the Deed was recorded with the County and did not go through the BLA process, the City does not recognize the boundary line adjustment. Ownership of a property can change but at the point a City permit or review is requested on the property, such as a building permit, the City can require a BLA to be completed with the City prior to issuance of any permits.

VARIANCE REQUEST

The applicant is requesting consideration of a variance to allow a lot size less than 6,000 sq. ft. in the NR-6 zone. The applicant was recently made aware that the 2014 modification to the property is not recognized by Logan City and has created a substandard lot. Mr. Jolley has not been able to work out adjustments that would provide additional square footage to bring the lot up to the minimum. He would like to have the existing lot size of 5371 sq. ft. approved through a variance so that he can complete a BLA with Logan City and have the lot recognized as a legal lot at its current size.

In the Land Development Code (LDC), §17.53 allows for a property owner to request a variance. The Code indicates "when literal interpretation of the provisions of Title 17 of the Logan Municipal Code results in a situation where the property owner does not have the opportunity to exercise basic property rights, the City may consider an application to vary the standards of [Title 17]." The purpose of a variance is "to relate only to the hardship identified and to ensure that the property is not deprived of privileges generally granted to other properties in the same area or zoning district."

The Utah State Code, §10-9a-702.2a, further sets the five (5) standards that must be met for an appeal authority to grant a variance:

- A. literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
- B. there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- C. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- D. the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- E. the spirit of the land use ordinance is observed and substantial justice done.

The Land Use Appeal Board may impose additional conditions to help mitigate potential harmful effects the variance creates or substitute requirements to help serve the purpose of the original code requirement.

ANALYSIS

The following is an analysis of the request's compliance with the State standards:

- A. Literal enforcement of the minimum lot size requirement would not cause an unreasonable hardship for the applicant. The applicant had a compliant lot and made changes to the lot that created the hardship. The Utah Code §10-9a-702.2.b(ii) states that it cannot be found that there is an unreasonable hardship if the hardship is self-imposed or economic.
- B. There are not special circumstances attached to the property that do not generally apply to other properties in the same zone. The applicant was not using or maintaining the western 40' of the property but that does not create a special circumstance to provide for the lot to be a smaller size than is required of other lots in the zone.
- C. The variance is essential to the enjoyment of the property right of obtaining a building permit for an addition or rebuild in accordance with the legally existing nonconforming use and structure allowances. The City would require rectifying a property line and size issue prior to the issuance of a building permit on the property.
- D. The variance is not in accordance with the General Plan. The General Plan's Future Land Use Plan designates this area as Detached Residential and appropriate for single family dwellings at a density of 4-6 units per acre. The property was already a legally existing nonconforming use with a density of 23.7 units per acre. The lot size reduction would bring the property to a density of 32.4 units per acre. The intent of minimum lot sizes is to serve the public interest by providing for control of density, dwellings, and

space for parking and area around buildings. The variance creates further nonconformity on the property.

- E. The Land Use ordinance is to provide for uniform application of regulations. Variances may be just when there is a condition or circumstance that is out of the owner's control such as a condition of the land like a slope or canal that impedes use of the property.

SUMMARY

The proponent's actions in 2014 have created a difficult situation that they are trying to resolve. The proponent is trying to exhaust his options to bring the property into a compliant state to be able to sell the property. In its current condition, the property may be limited as to future actions such as acquiring a building permit, without resolving the property size. However, this situation is due to actions of the property owner and not a unique circumstance of the property or neighborhood. The request only meets one of the five standards that must be met for granting a variance.

PUBLIC NOTIFICATION

Legal notices were published in the Herald Journal on August 6, 2017, and the Utah Public Meeting website. Public notices were mailed to all property owners within 300 feet of the project site on August 1, 2017.

RECOMMENDATION

Staff recommends that the Land Use Appeal Board **deny** a variance request for minimum lot size for the property located at 265 North 400 East, TIN #06-064-0024.

RECOMMENDED FINDINGS FOR DENIAL

The Land Use Appeals Board bases its decisions on the following findings:

1. The proposed appeal does not provide information that all the conditions justifying a variance have been met.
2. The circumstances for the variance request are not peculiar to the property but due to actions of the property owner. Utah Code §10-9a-702.2.b(ii) states that "in determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic."

This staff report is an analysis of the application based on adopted city documents, standard city development practices, and available information. The report is to be used to review and consider the merits of the application prior to and during the course of the Land Use Appeal Board meeting. Additional information may be revealed by participants at the Land Use Appeal Board meeting which may modify the staff report and become the Certificate of Decision. The Director of Community Development reserves the right to supplement the material in the report with additional information at the Land Use Appeal Board meeting.



APPLICATION FOR PROJECT REVIEW

Wed. Aug 16 @ 2:00 pm

Planning Commission Land Use Appeal Board Administrative Review

Date Received 7/17/17	Received By	Receipt Number	Zone NR-6	Application Number LUAB 17-002
Type of Application (Check all that apply): <input type="checkbox"/> Design Review <input type="checkbox"/> Conditional Use <input type="checkbox"/> Subdivision <input type="checkbox"/> Zone Change <input type="checkbox"/> Administrative Design Review <input type="checkbox"/> Code Amendment <input type="checkbox"/> Appeal <input checked="" type="checkbox"/> Variance <input type="checkbox"/> 4950' Design Review <input type="checkbox"/> Other _____				
PROJECT NAME Mckay Bryce Jolley Family, LLC Lot				
PROJECT ADDRESS 265 North 400 East, Logan UT			COUNTY PLAT TAX ID # 06-064-0024	
AUTHORIZED AGENT FOR PROPERTY OWNER (Must be accurate and complete) M. Bryce Jolley				MAIN PHONE # (801) 891-5503
MAILING ADDRESS 6441 South 1610 East SLC		CITY SLC	STATE UT	ZIP 84121
EMAIL ADDRESS mbrycejolley@gmail.com				
PROPERTY OWNER OF RECORD (Must be listed) Mckay BRUCE Jolley Family, LLC				MAIN PHONE # (801) 891-5503
MAILING ADDRESS 6441 South 1610 East SLC		CITY SLC	STATE UT	ZIP 84121
EMAIL ADDRESS mbrycejolley@gmail.com				
DESCRIBE THE PROPOSED PROJECT AS IT SHOULD BE PRESENTED (Include as much detail as possible - attach a separate sheet if needed) See attached letter.				Total Lot Size (acres) .12 Acres
				Size of Proposed New Building (square feet) Same
				Number of Proposed New Units/Lots Same
- NO SITE ACTIVITY MAY OCCUR UNTIL AFTER APPROPRIATE COMMITTEE APPROVAL -				
I certify that the information contained in this application and all supporting plans are correct and accurate. I also certify that I am authorized to sign all further legal documents and permits on behalf of the property owner.			Signature of Property Owner's Authorized Agent	
I certify that I am the property owner on record of the subject property and that I consent to the submital of this project. I understand that all further legal documents and permits will be sent to my authorized agent listed above.			Signature of Property Owner M B Jolley	

July 17, 2017

Logan City Department of Community Development

Attn: Amber Pollan, Senior Planner

255 North Main Street

Logan, UT 84321

Re: 265 North 400 East, Logan UT 84321

Dear Amber,

Attached is the application and requested documents for your consideration. Our family purchased this four-plex several years ago and have maintained the property in compliance with all requirements. The western 40 feet of the property was never used and was a "weed patch" for most of the time. Thomas Hale, the neighbor adjoining the property to the west, approached me and requested purchasing the 40 feet so he could add that to his existing property. That seemed like a better use. We negotiated a price and recorded the transaction. He, subsequently, landscaped this new land and has made it a nice element in his yard.

We have recently decided to sell our property and, after some research by a potential buyer, realized that the transaction Tom and I completed made the lot potentially non-conforming. It's my understanding that the minimum lot size in this zone is 6,000 sq. ft. and the current lot size after the sale is around 5300 sq. ft. I approached Mr. Hale to see if he would be willing to consider doing something differently with the land use and he is not interested in making an adjustment.

I am requesting a variance from the city to allow my current lot to be approved, as is, with the current uses in place. No other changes are needed to the property. Let me know what other information you may need.

Thank you,

M. Bryce Jolley

McKay Bryce Jolley Family, LLC

6441 South 1610 East

Salt Lake City, UT 84121

801-891-5503

SW⁴ Section 34 Township 12 North Range 1 East

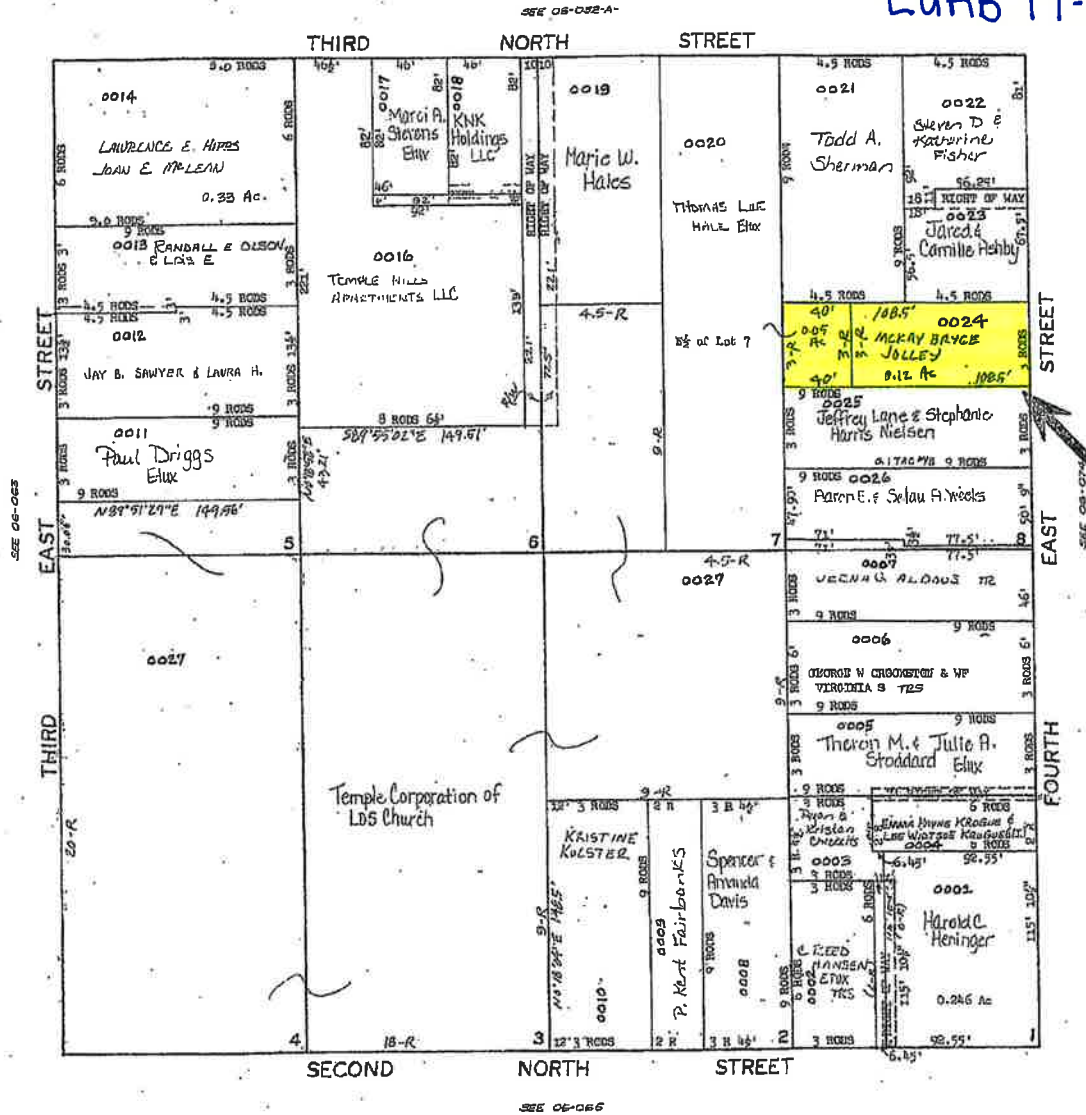
06-084

Scale 1 Inch = 50 Feet

TAX UNIT 27

Block 6 Plat "C" Logan City Survey

LUAB 17-002





DEPARTMENT OF COMMUNITY DEVELOPMENT
255 NORTH MAIN STREET, LOGAN, UTAH 84321 + 435-716-9020 + FAX 435-716-9001

JAY L. NIELSON, AICP
DIRECTOR

May 31, 2002

Michelle Swenson
Cache Mortgage
33 North Main
Logan Utah 84321

RE: 265 North 400 East

Dear Ms. Swenson;

This letter is in regards to the property located at 265 North 400 East, Logan. This house is located in the Single Family Residential (SFR) Zone. In this zone only detached single family residential homes are allowed. Because this home was determined to be legally existing non-conforming or grandfathered by the Department of Community Development in April of 2002 the use as a four-plex may continue. The continuation of this use must conform to all regulations in §17.59 of the Logan City Land Development Code.

Under current zoning laws if the home is damaged or destroyed it may be restored to the intensity or density that existed prior to the damage or destruction. In such cases, the use shall be reestablished within twelve months of the date of damage occurrence unless otherwise delayed by reconstruction of the structure. A good faith effort to complete and occupy the building shall also be required. (LDC §17.59.050 D).

If you have any questions please feel free to call me at 435-716-9024.

Sincerely,

Michelle N. Mechem
Planner I

PAGE 1 OF 1 PAGES

City Documents\l\mnd\lth\lth\265 n 400 e rtd\dd.doc