



**Land Use Appeals Board
Whittier Grandfathering Appeal #20-001**

REPORT SUMMARY...

Project Name: Whittier Grandfathering Appeal
Appellant: Cameron Whittier
Project Address: 174 North 500 East
Request: Appeal
Current Zoning: Traditional Neighborhood Residential-6 (NR-6)
Type of Action: Quasi-Judicial
Date of Hearing: April 27, 2020 (10:00 M)
Submitted By: Russ Holley, Senior Planner

RECOMMENDATION

Staff recommends that the Land Use Appeals Board **deny** an appeal request for project #20-001, Whittier Grandfathering Appeal, for the property located at 174 North 500 East, TIN# 06-082-0016.

INTRODUCITON

This appeal to the Logan City Land Use Appeals Board (LUAP) is to determine whether the Logan City Community Development Department (City) acted appropriately and was justified in their denial of Cameron Whittier's (Appellant) grandfathering request for a duplex at 174 North 500 East. Grandfathering is defined in the Logan City Land Development Code (LDC) as a colloquial term used to refer to legally existing nonconformities. Residential grandfathering's are typically multi-family dwellings located and established in multi-family zoning districts that have subsequently been rezoned to single-family zoning districts. Once the single-family zoning district is adopted, anything other than a single-family home is considered nonconforming. A legally certified grandfathered property recognizes the previous legal establishment and allows the property to continue to operate in a manner consistent with legal establishment.

The City reviews and either approves or denies grandfathering applications submitted by property owners. Approvals and denials are based on zoning history, permit records and applicable evidence proving legal establishment associated with the nonconformity. The burden of proof is initially on the property owner at the time of application with submittals required to include historical records and documentation proving legal establishment. Based on the time of establishment and the individual owner's record keeping ability, relevant evidence is sometimes sparse. The City then conducts independent research with the goal of gathering all applicable evidence and documentation. Once all the evidence is collectively gathered, a property inspection, with both parties present, is conducted to physically inspect and photographically document the grandfathering case. Important information gathered at the inspection may include plumbing fixtures, cabinetry, mechanical equipment and physical configuration of the units. This inspection evidence further verifies or contradicts paper documents gathered. Legally, the City can only deny a grandfathering application if specific evidence is found that contradicts legal establishment. Ambiguities in a case must be ruled in favor of the property owner.

After a physical inspection and reviewing the grandfathering application submitted to the City by the Appellant for the property at 174 North 500 East, staff determined that two (2) dwelling units at this location were not legally established. The following findings were given supporting staff's position of denial.

1. According to the Cache County Recorder's Office and Logan City Building permit record, the original structure was built in 1964.
2. The City of Logan has building permit records from the year 1930 to present. The only building permits on record for this address are the following:
 - a. Building permit #6595 for a new dwelling with number of families indicated as "one".
3. In 1964 the property was zoned R2. R2 zoning required a minimum of 7,000 SF of land in order to legally establish a duplex. This property is 6,534 SF (0.15 ac.) in size which is 466 SF below the minimum for a duplex/two units.
4. A Logan City Code Enforcement Case Number #14-00153 notice was issued for unauthorized building remodeling in the basement without a building permit in 2014.
5. Multiple letters were written concerning Landlord Licensing from the City Planning and Zoning Division in 2014 to previous property owners indicating that this property was not grandfathered or considered a legal duplex.
6. No other evidence was found indicating legal establishment of two dwelling units.

LOGAN CITY LAND DEVELOPMENT CODE

The LDC regulates land use and development in the City. LDC 17.52 regulates legally existing nonconformities and defines the types, policy and authority to continue. The chapter categorizes the nonconformities as, nonconforming uses, nonconforming structures, nonconforming lots and nonconforming signs. Nonconforming uses and structures are the categories typically associated with residential properties. The policies set forth in the chapter allow legally established nonconforming uses and structures to continue to operate in the same way the use operated at the time the zoning regulations were enacted, revised, or amended which rendered the use nonconforming.

GRANDFATHERING APPLICATION

On February 4, 2020 the Logan City Community Development Department received a Grandfathering Application from the Appellant requesting grandfathering for the property located at 174 North 500 East. The request was for two-units (duplex) to be legally recognized. Documentational evidence submitted included, ownership information, county appraisal and tax roll information. A statement was included indicating that the building to the north is identical and approved as a legal duplex.

DENIAL & APPEAL

Following further data collection, a property inspection and a staff meeting for the case, on February 20, 2020, the City officially denied the grandfathering application for the six (6) above-mentioned findings. Once the City issues a denial, the applicant has ten (10) days to file an appeal. On February 21st, the applicant filed an appeal to the Land Use Appeals Board (LUAB) for the denial of their grandfathering application.

APPELLANT POSITION

The Appellant argues that the lot was bigger when the structure was originally built and was later subdivided into two (2) lots with the property to the north. The same person (B. Call) built both this structure and the structure to the north. The attached document shows this property at 0.15 acres (174 North 500 East) and the property to the north at 0.14 acre (186 North 500 East). The Appellant argues that a precedent was set when the property to the north was grandfathered as a duplex. The property to the north was built one year later in 1965.

The Appellant further argues that the original building permit issued by the City, which is labeled as only "one" unit, only accounts for half of the structure's square footage (1080 SF). Historical use of the property shows multiple units as far back as 1974. The County shows the property as a duplex on all available county records.

CONCLUSION

The Land Use Appeals Board must determine if Logan City was justified and acted appropriately in denying the grandfathering application for 174 North 500 East. Logan City staff finds that the denial was justified because the duplex was never legally established. No permits were issued for the second unit (basement unit) and the zoning at the time required more acreage than this property contained at the time of establishment. The City has never indicated that this is a legal duplex and has send notices on numerous occasions to previous property owners signifying only one unit. This parcel as configured with 0.15 acre was created in 1965 and has not been altered since.

The Appellants arguments concerning lot size, the neighbor to the north being grandfathered and the county records showing two units are invalid. First, even initially combined with the property to the north, the combined acreage of 0.29 (~12,600 SF) would not have supported two separate duplexes in the R2 zoning district (6,000 SF min. for house, 7,000 SF min. for a duplex), only two homes could legally be established. Thus, and consistent with zoning, the building permits for both properties indicate "one" for number of families. The issued building permit was for the construction of the main floor and the basement was unfinished. This was and still to this day is common practice. Often homes are built with an unfinished basement and then after occupancy the basement may be finished later. Finishing the basement does not automatically imply the creation of a duplex, a home can have a finished basement with additional bedrooms or living rooms. Finishing a basement at a later date would require a building permit. The original layout, floorplan and photographic evidence suggest a stairway near the side door connecting upper and lower floor into one living area. The identical building to the north show's photos with the stairway still intact.

The county is not the legal land use authority, only the taxation and recording authority. It is true that county records indicate a duplex, but they do not check with the City (land use authority) prior to these designations. The county assigns these designations purely for taxation and assessment purposes. Consistent with grandfathering policies and procedures, the property to the north was originally denied by City Staff in 2006 and later overruled by the Board of Adjustments with improper findings. Based on the findings, that property should not be overturned. The City chose not to appeal the Board of Adjustments ruling. Regardless of that case, past mistakes or precedent does not dictate future decisions as suggested by the appellant. This property, based on city policy and code, can not be grandfathered or considered legally established because of the factual information proving only the legal establishment of one unit in this case.

PUBLIC NOTIFICATION

Legal notices were published on 4-14-20 and were mailed to all property owners within 300 feet of the project site on 4-10-20.

RECOMMENDED FINDINGS FOR DENIAL

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

1. According to the Cache County Recorder's Office and Logan City Building permit record, the original structure was built in 1964.
2. The City of Logan has building permit records from the year 1930 to present. The only building permits on record for this address are the following:
 - a. Building permit #6595 for a new dwelling with number of families indicated as "one".
3. In 1964 the property was zoned R2. R2 zoning required a minimum of 7,000 SF of land in order to legally establish a duplex. This property is 6,534 SF (0.15 ac.) in size which is 466 SF below the minimum for a duplex/two units.
4. A Logan City Code Enforcement Case Number #14-00153 notice was issued for unauthorized building remodeling in the basement without a building permit in 2014.

5. Multiple letters were written concerning Landlord Licensing from the City Planning and Zoning Division in 2014 to previous property owners indicating that this property was not grandfathered or considered a legal duplex.
6. No other evidence was found indicating legal establishment of two dwelling units.

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 Planning Commission meeting. Additional information may be revealed by participants at the Planning Commission 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 Planning Commission meeting.

EXHIBIT A

Packet with critical case evidence (original building permit, zoning ord. plat map, case photos, enforcement letters)



APPLICATION FOR PROJECT REVIEW

Planning Commission

Land Use Appeal Board

Administrative Review

mtg date: Fri. Mar 27 @ 3:00 p.m.

Date Received	Received By	Scheduled Meeting Date	Zone	Application Number
2-21-20				LUAB 20-001
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"/> Code Amendment <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Other <input type="checkbox"/> Administrative Design Review				
PROJECT NAME Grandfathering Appeal				
PROJECT ADDRESS 174 North 500 East Logan UT 84321			COUNTY PLAT TAX ID # 06-082-0016	
AUTHORIZED AGENT FOR PROPERTY OWNER (Must be accurate and complete) Cameron Whittier			MAIN PHONE #	
MAILING ADDRESS 580 South 3200 West Logan UT		CITY	STATE	ZIP 84321
EMAIL ADDRESS				
PROPERTY OWNER OF RECORD (Must be listed) Cameron Whittier			MAIN PHONE # NA 435-764-2589	
MAILING ADDRESS 580 South 3200 West Logan UT		CITY	STATE	ZIP 84321
EMAIL ADDRESS whittcam@yahoo.com				
DESCRIBE THE PROPOSED PROJECT AS IT SHOULD BE PRESENTED (Include as much detail as possible - attach a separate sheet if needed) See Attached			Total Lot Size (acres)	
			Size of Proposed New Building (square feet)	
			Number of Proposed New Units/Lots	
- 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 permit 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 submittal 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 	

Logan City Nonconforming Status Appeal

Cameron Whittier

580 south 3200 west

Logan UT. 84321

Please accept this letter as to my appeal to the denial of my nonconforming housing application. To the best of my understanding based on the letter of denial that the nonconforming property was denied based on:

Lack of evidence that the property was built to be a multi-family home.

Zoning Based on total square footage of property.

STATEMENT OF FACTS

The property in question was built in 1964 on a larger lot that was later subdivided into two lots (see plot map) Lot 0016 and Lot 0015 Lot 0015 address change from subdivision. The structure on lot 0015 was built in 1965 by the same builder and currently is zoned as a legal duplex and sits on a smaller lot. Lot 0015 0.14 acres and lot 0016 (property in question) 0.15 (See attached)

Logan city approved the property north of property in question in 2017. The property on Lot 0015 is identical in structure and was built by the same builder around the same time and was granted legal multi-family status setting a precedent for the property in question.

The only record of a building permit found by Logan city states that the number of family's is one but only accounts for half of the structures square footage at (1080sqft. See attached building permit) the property is 2160 sqft.

Past use of the property show use as a multi-family dwelling as far back as 1974 (see attached appraisal) showing two of all kitchen appliances and individual entrances to the two units. The property shows as a duplex on all available county records and appraisals of sales of the property.

Sincerely

Cameron Whittier

No 6595

BUILDING PERMIT

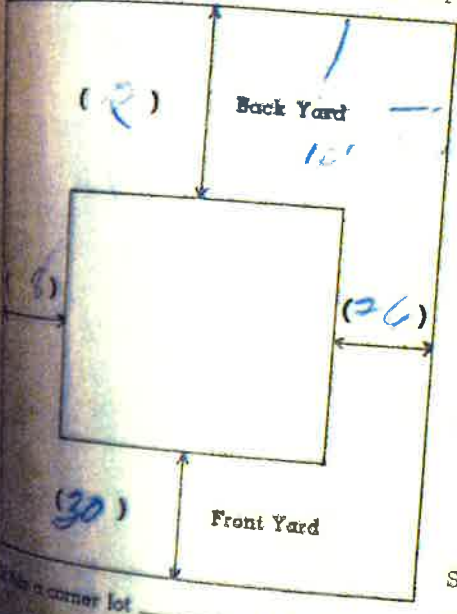
DEPARTMENT OF MECHANICAL INSPECTION
LOGAN CITY CORPORATION

Building for Thomas J. Call
Location of Building 174 NO 514 East

Permission is hereby granted Thomas J. Call LOGAN CITY, UTAH May 12 1964
having agreed to comply with all ordinances relating to buildings, is hereby granted permission to him
to erect on the above described premises a building to be used for Dwelling
Type of permit issued New Const. Said building to be completed by March 1965

And that the said party to whom this permit is issued is hereby strictly forbidden the use of any public street, sidewalk, alley, lane or public grounds for the purpose of storing or piling and building materials except such spaces as provided in the ordinances of Logan City.

And the said party is further notified and warned under penalties provided by the Revised Ordinances of Logan City that He must conform to all said ordinances, and all rules and decisions of the Building Inspector, and all work must be done in accordance with the statements set forth herein and that no changes in or departures from the general dimensions or construction described herein, and further shown by the plans and specifications filed, will be allowed without permission and approved by the Building Inspector.



Use of Building Dwelling
Square Footage 1080
No. of Families one
Size of Lot 2
Subdivision _____
Lot No. _____
Width of Foundation Wall 9"
Footing Size 10x20
Depth in Ground 15"
Exterior Walls Brick
Type of Const. 1 1/2
Occupancy Group 2
Use Zone _____
Fire Zone _____

Valuation	\$ 11,880
Building Permit	\$ 39.00
Plumbing Permit	\$ 2.00
Electrical Permit	\$ 6.00
Gas Permit	\$ 3.00
3/4" water conn.	125.00
Amount Collected	\$ 185.00

THIS PERMIT DOES NOT
GUARANTEE WATER, SEWER
OR POWER FACILITIES

SPECIAL AND UNUSUAL CONDITIONS

I hereby acknowledge that I have read this Building Permit and state that the above is correct and agree to comply with all City Ordinances and State Laws regulating building construction.
Signature of Thomas J. Call
Permittee _____
Approved [Signature]
Building Inspector

OWNER, LEGAL DESCRIPTION AND/OR MAILING ADDRESS:

D2814C MARLAN T. & ANNIE BERRETT
174 NORTH 5TH EAST
LOGAN, UTAH

BEG AT A PT 136.5 FT N OF A PT 18
RDS N & 4 RDS E OF THE INTERSEC OF
W LINE OF 5TH E & N LINE OF 1ST NO
N 61 FT E 104 FT S 61 FT W 104 FT
TO BEG BLK 22 PLAT A LOGAN FRM 12N

1.15 ac

SCALE:

ULC URBAN LAND COMPUTATION

Frontage or Area	Average Depth	Area or F.F. Rate	Depth or W-D Factor	Adjusted F.F. Rate	Subtotal	Corner or Alley Inf. ?
<i>15 AC</i>	<i>20,000</i>			<i>3300 Lot</i>		
<i>-.05</i>	<i>-1500</i>					
	<i>18,500</i>					
<i>61'</i>	<i>104'</i>					

URBAN LAND MARKET VALUE

MA MARKET ANALYSIS, RLC RURAL LAND COMPUTATION

Market Sale	No. 1	No. 2	No. 3	Land Class	Number Acres	Unit Agricultural Value	Total Agricultural Value	Unit Market Value												
Date Sold				Irrigated-Tillable	I															
Sale Price					0-I															
*Rating I.E.S.					II															
Total Adj.					0-II															
Indicated Value					III															
*Inferior, Equal, Superior					0-III															
RA RENTAL ANALYSIS					IV															
*Rent per sq. ft.					0-IV															
Area of Building					M-IV															
Estimated Rent per month				Dryland-Tillable	III															
*Gross Rent Multiplier					IV															
Indicated Value				Grazing	I															
*From Research-Class of Bldg. in Area					II															
This parcel complies with the minimum acreage requirements of the "Farmland Assessment Act of 1969" as amended. Yes <input type="checkbox"/> No <input type="checkbox"/> FAA This parcel has qualified under the "Farmland Assessment of 1969" for the following years: <table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;"><u>Mill Levy</u></td> <td style="text-align: center;"><u>Mill Levy</u></td> <td style="text-align: center;"><u>Mill Levy</u></td> </tr> <tr> <td>19 _____</td> <td>19 _____</td> <td>19 _____</td> </tr> <tr> <td>19 _____</td> <td>19 _____</td> <td>19 _____</td> </tr> <tr> <td>19 _____</td> <td>19 _____</td> <td>19 _____</td> </tr> </table>				<u>Mill Levy</u>	<u>Mill Levy</u>	<u>Mill Levy</u>	19 _____	19 _____	19 _____	19 _____	19 _____	19 _____	19 _____	19 _____	19 _____		III			
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				Homesite																
				Total Acres																
				Total																
Less Noxious Weed Reduction																				
AGRICULTURAL USE VALUE (10)																				
MARKET MODIFIERS				Community Location	X															
				Roads - Type		X														
				Roads - Distance			X													
				Small Tract																

Appraised 9-11-1974 by 1894
19 by
Computed 4, 19 by 4