

1 BOARD OF ADJUSTMENT
2 American Fork City
3 September 14, 2022 • 6:00 PM
4 American Fork Public Works • 275 East 200 North • American Fork UT 84003
5

6 Board Members Present: Michael Privett, Scott Williamson, Mary Street, and Bridgette Nelson

7 Absent: Reid Shelley

8 City Staff Present: Dan Loveland, Chief Building Official
9 Melissa White, Public Works Administrative Assistant
10 Cherylyn Egner, Legal Counsel
11

12 Others present: Joshua Draper, Applicant
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14 BOARD OF ADJUSTMENT MEETING
15

16 1. Call to Order
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18 This meeting of the Board of Adjustment of American Fork City, having been properly noticed,
19 was called to order at 6:00 p.m.
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22 Aye - Michael Privett
23 Scott Williamson
24 Mary Street
25 Bridgette Nelson
26

27 Motion passes.
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29 2. Annual Open and Public Meetings Training
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31 Cherylyn Egner led the board members on Open and Public Meetings training.



AMERICAN FORK

Open Meetings Training

August 2, 2022

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Why are we here?

- ▶ “The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of [the Open and Public Meetings Act].” Utah Code 52-4-104.
- ▶ Auditor checks whether or not we have provided the training.

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Who must comply?

- ▶ Any "administrative, advisory, executive, or legislative body of the state or its political subdivisions that...is vested with the authority to make decisions regarding the public's business."
- ▶ Examples:
 - ▶ City/County Councils
 - ▶ City Council Advisory Boards
 - ▶ Planning and Zoning Commissions
 - ▶ Boards of Adjustment
 - ▶ Boards of Special Service Districts

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Recent cases finding potential failure to comply with OPMA

- ▶ [Southern Utah Wilderness Alliance v. San Juan County Commission, 2021 UT 6](#)
- ▶ [Southern Utah Wilderness Alliance v. Kane County Commission, 2021 UT 7](#)

Both of these cases involved the question of whether or not SUWA had standing to object to the failure of county commissioners to comply with OPMA prior to and during meetings with federal land administrators within Utah counties. The Utah Supreme Court concluded that SUWA had standing to challenge the counties' compliance with OPMA and maintain litigation to review whether (1) compliance with OPMA was required; and (2) if so, whether adequate notice and openness to the public was provided.

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Open Meetings

- ▶ All “meetings” must be open to the public unless specifically allowed to be closed under the Act

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What is a “meeting”?

- ▶ The convening of a public body, with a quorum present,
- ▶ whether the meeting is held in person or by means of electronic communications (or even informally on federal public lands, apparently),
- ▶ for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power (such as in recent Utah Supreme Court cases in which county commissioners met with federal land use managers, discussed in a previous slide)
- ▶ Examples
 - ▶ Regular meetings
 - ▶ Special meetings
 - ▶ Workshops
 - ▶ Executive Sessions
 - ▶ Site Visits
 - ▶ Traveling Tours

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Definition of “convening”

“Convening” means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which the body has jurisdiction.

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What is not a “meeting”?

- ▶ A chance meeting
- ▶ A social meeting
- ▶ A convening solely for discussion or implementation of administrative or operational matters if:
 - ▶ No formal action is taken OR
 - ▶ The matters would not come before the body for discussion or action

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Electronic Meetings Requirements

- ▶ A public meeting convened or conducted by means of a conference using electronic communications
- ▶ A public body may not hold an electronic meeting unless it has adopted specific procedures for conducting it:
 - ▶ These may include consideration of budget, logistics, presence of a quorum at an anchor location, vote to establish an electronic meeting, notice requirements, etc.
 - ▶ Requirement of anchor location may be suspended under emergency orders

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Closed Meetings Requirements

- ▶ For what purpose?
 - ▶ A closed meeting may only be held:
 - ▶ To discuss the character, professional competence, or physical or mental health of an individual
 - ▶ Strategy sessions for:
 - ▶ collective bargaining
 - ▶ pending or reasonably imminent litigation
 - ▶ purchase, exchange, or lease of real property or water rights/shares
 - ▶ sale of real property or water rights/shares
 - ▶ To discuss the deployment of security personnel, devices, or systems
 - ▶ To investigate proceedings regarding allegations of criminal conduct
- ▶ May not do the following in a closed meeting:
 - ▶ Approve any ordinance, resolution, rule, regulation, contract or appointment
 - ▶ Interview a person to fill an elected position
 - ▶ Take final action (final votes must generally be open and on the record)

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Public Meeting Requirements

- ▶ **Public body must give notice**
 - ▶ **Public body must give not less than 24 hours notice of each meeting**
 - ▶ Must also give notice of annual meetings scheduled in advance over the course of a year
- ▶ **Exceptions:**
 - ▶ Regular notice requirements may be disregarded if:
 - ▶ Because of unforeseen circumstances it is necessary to hold an emergency meeting to consider matters of an emergency or urgent nature
 - ▶ Still required to give the best notice practicable
 - ▶ May not hold an emergency meeting unless:
 - ▶ An attempt has been made to notify all the members of the public body; and
 - ▶ A majority of the members approve the meeting

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Penalties

- ▶ Any member of a public body who intentionally violates the closed meeting provisions is guilty of a class B misdemeanor
- ▶ A court can void any action taken in violation of the open meetings laws
- ▶ The public body may have to pay court costs and attorney fees if successfully challenged in court on a violation

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Executive Sessions

- ▶ **The information discussed in executive sessions is confidential and may not be discussed outside of the meeting, including with:**
 - ▶ Members of the public
 - ▶ Spouses, family members or significant others

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2021 Amendments to OPMA

S.B. 77 "Open and Public Meeting Amendments"

Previously, a public body could not vote in a closed session, so they would have to return to the public meeting, then vote to close the closed session and open the public meeting again. A new amendment allows the body to vote in the closed session to adjourn the closed portion of the meeting and return to the open meeting.

S.B. 125 "Open and Public Meetings Act Amendments"

This bill revoked and recodified the ability for public bodies to meet electronically without an anchor location, without having to already have an ordinance in place, as long as certain findings were made. Those required findings are codified at U.C. 52-4-207(4).

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Other amendments:

H.B. 293 "Open Meeting Minutes Amendments" - deals with the posting of minutes by public bodies that are not state public bodies or specified local bodies who already have to have their minutes on the state website. (The body must have a link to the body's website or minutes stated in the notice posted on the state website so the public can easily access and review minutes of non-state public bodies.)

H.B. 297 "Colorado River Amendments" - deals with meetings relating to the Colorado River Compact to adjust allocation of water according to varying availability of water in the drainage, in correlation with the new Colorado River Authority. The use, lease or sale of water shares or water rights may be a reason to close a meeting.

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61 Ms. Egner provided Variance Request Training and discussed the worksheet items with the board members:

62

63 In order to grant a variance, the Board must find that all conditions for approval are met as stipulated by
64 Utah State law. The board reviewed the following conditions:

65

- 66 1. Would granting the variance change the intended use of the property?
- 67 2. Are there special circumstances attached to the property that do not generally apply to other
- 68 properties in the same zone?
- 69 3. Do those circumstances in (2) cause an unreasonable hardship on the applicant, denying use of the
- 70 property, that others in the same zone enjoy or that he/she has a right to expect?
- 71 4. Is the variance essential to a substantial property right possessed by other property owners?
- 72 5. Will granting the variance substantially affect the goals of the general plan or be contrary to the
- 73 public interest?
- 74 6. Is the spirit of the land use zoning ordinance observed and is the Board being fair to all involved?

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77 3. Scheduled Items

78

79 **Applicant Presentation:**

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81 The applicant, Joshua Draper, has submitted an application for a review and action on a request for a
82 variance on a proposed addition as an accessory apartment for a property located at 322 West 1300
83 North in the R1-9000 Zone.

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85 As noted in a letter included in the application:

86

87 The Drapers stated that the reason for their application to the Board of Adjustments is to ask for an exception
88 to Building Code 17.5.134.B.10 Accessory Apartments. In pursuing an independent living space for a
89 family member, the least expensive option they were able to come up with is adding an accessory apartment
90 to their home. The Drapers feel that in today's market, rentable spaces are out of reach for those on a very

91 limited income. Therefore, they feel the most economical option would be to add a living space to their
92 home.

93
94 In exploring their options, the Drapers determined that adding a living space above their existing garage
95 would be the best fit. They noted that they misinterpreted ordinance 17.5.134.B.10 which states, “10.
96 Interior access. An interior access between the main living area and an accessory apartment must be
97 maintained.” They noted that they were thankful that the American Fork Building Official flagged the
98 oversight during the plan review phase. They noted that, in their opinion, to meet this ordinance a dedicated
99 set of stairs to the accessory apartment would need to be built in their already cramped living room which
100 would effectively render their living room unusable and add unnecessary expense to their project.

101
102 The Drapers note that they understand the reasoning behind the ordinance which is to allow the homeowner
103 access to the living space without having to enter from the exterior, thus extending the usable living space
104 of a single-family home without creating a separate apartment in an otherwise single-family home area.
105 They note that, in their opinion, the attached drawings show that the addition would not detract from the
106 single-family home intent of the building ordinance but would add beauty and value to their community. It
107 is their opinion that the current design meets all the other requirements of an accessory apartment.

108
109 The Drapers noted that they feel that in today’s market, limited homes to single-family units are near
110 impossible and stated the following, “Adult children are having to return home, retired in-laws are moving
111 in with their children. Occupied RVs are a common site throughout residential neighborhoods. Everyone is
112 looking for a reasonable and affordable place to live. My wife and I were extremely lucky to purchase this
113 home when interest rates and home prices were reasonable, although we didn’t think so at the time. In
114 researching other housing options for my mother-in-law, I do not know how anyone can afford a home or
115 apartment.”

116
117 **Board Discussion:**

118
119 In order to grant a variance, the Board must find that all conditions for approval are met as stipulated by
120 Utah State law. The board reviewed the following conditions:

- 121
122 1. Would granting the variance change the intended use of the property? ***Yes, it would be a two-family***
123 ***dwelling as shown on the plans, not an accessory apartment which is allowed in the municipal***
124 ***code R-1, 9000 only allows one family dwelling.***
125
126 2. Are there special circumstances attached to the property that do not generally apply to other
127 properties in the same zone? ***No, the request is not a property circumstance.***
128
129 3. Do those circumstances in (2) cause an unreasonable hardship on the applicant, denying use of the
130 property, that others in the same zone enjoy or that he/she has a right to expect? ***No, this is a self-***
131 ***imposed hardship.***
132
133 4. Is the variance essential to a substantial property right possessed by other property owners? ***No, an***
134 ***accessory apartment is allowed as long as all conditions are met. See American Fork Municipal***
135 ***Code 17.5.134.***
136
137 5. Will granting the variance substantially affect the goals of the general plan or be contrary to the
138 public interest? ***Yes, the City allows accessory apartments as long as all conditions are met which***
139 ***keeps everything consistent and fair for all.***
140

141 6. Is the spirit of the land use zoning ordinance observed and is the Board being fair to all involved?
142 *No, the request is for a two-family dwelling, not an accessory apartment.*

143
144 Mr. Draper asked the board members if they had any questions.

145
146 Mr. Privett stated that the difficulty Mr. Draper's plan had was that it had an exterior access but not an
147 interior access.

148
149 Mr. Draper stated he had misinterpreted what an interior access meant when creating his plans and asked
150 the Board to redefine what that access means within the ordinance as it was unclear.

151
152 Mr. Privett agreed and stated that changing the ordinance would have to go through the Planning
153 Commission and then to City Council.

154
155 Mr. Draper introduced his father, Boyd Draper, who is the former owner of the property.

156
157 Mr. Boyd Draper noted the number of basement apartments being built in American Fork City, and his
158 thoughts that many of them are not necessarily being approved by the city as many people can not afford
159 rent and are trying to come up with solutions for housing. He stated he felt the plans for Mr. Draper's home
160 would enhance the home and neighborhood. He stated his hopes that the Board would look at the plans as
161 an improvement even though it does not meet one part of the ordinance.

162
163 Mr. Josh Draper stated his understanding that a duplex was not allowed in the zone that affects his property.
164 He stated his feelings that the changes he proposes will technically make it a duplex, but it will not be a
165 rentable space. He quoted what he read on the City's website that the Board "can impose additional
166 requirements on the applicant to mitigate harmful effects of the variance in certain purposes that the
167 standard requirement is waived." Mr. Draper proposed that the variance state that his addition would not
168 be considered a rentable space.

169 Mr. Boyd Draper likened the situation to those who were renting a basement apartment and reiterated his
170 hopes that the Board would grant the variance due to Mr. Josh Draper's approach of seeking approval
171 through the Board and going about it in "the right way."

172
173 Ms. Egner noted that during her Variance Request Training she used a duplex as an example. She noted
174 that her example was purely coincidental and was not meant to be directed to Mr. Josh Draper's variance
175 request.

176
177 Mr. Williamson asked what the garage type will be when Mr. Josh Draper's project is done and inquired as
178 to why Mr. Josh Draper couldn't put the stairs in an interior location within the home or garage.

179
180 Mr. Josh Draper stated that the garage type would not be changing and would be a standard 9 by 9.5 feet
181 from the top of the concrete. He stated that adding stairs within the home or garage would increase the
182 amount of construction required, add a significant amount of cost to the project, and negatively impact the
183 space needed in their living room. He feels it would not be a feasible solution.

184
185 Mr. Williamson reiterated his thoughts of putting the stairs in the garage and having the doorway flush with
186 the garage. He stated his hopes of finding a solution that would work for the applicant. He noted there were
187 other ordinances he felt the applicant did not comply with.

188
189 Josh Draper inquired about the other ordinance Mr. Williamson was referring to. Mr. Loveland replied that
190 they were not in compliance with the R1-9000 zoning ordinance.

191
192 Mr. Williamson noted that he had to adhere to the requirements needed to grant a variance as instructed in

193 the training as well as represent those in the community when making his decision.
194

195 Ms. Egner introduced the applicant's neighbor, Jordan Fong, who came to state his support. Mr. Fong stated
196 he has been in the neighborhood at 334 West and 200 North for 19 years and feels that the Draper's are
197 wonderful neighbors. Mr. Fong stated his thoughts that the Draper's updates to their home would not
198 negatively impact the neighborhood.
199

200 Mr. Williamson stated that the ordinances are put in place by City Council for a reason.
201

202 Mr. Boyd Draper stated he understood Mr. Williamson's concern. He reiterated his thoughts that although
203 the plans do not meet a part of the ordinance, he feels that they will not negatively impact the city, and his
204 hopes that the Board will grant the variance to Mr. Josh Draper.
205

206 Mr. Privett stated his understanding and noted his agreement with Mr. Williamson that Mr. Josh Draper has
207 alternative ways to meet the ordinance to be in compliance with the zone.
208

209 Mr. Boyd Draper noted that the required interior access would not be used.
210

211 Mr. Privett reiterated the question, "Would granting the variance change the intended use of the property?"
212 and that the Board is required to answer honestly and that the answer must be no. He stated that he feels
213 that they would be changing the intent of the property by adding an apartment that has not been zoned for
214 that purpose.
215

216 Mr. Boyd Draper stated that the purpose of the Board of Adjustments was for the applicant's situation.
217

218 Mr. Privett reiterated the Board was in place in case there were unusual circumstances and suggested Mr.
219 Joshua Draper discuss other options with his architect to find a way to meet the ordinance.
220

221 Mr. Josh Draper reiterated the difficulties adjusting the plans would create, such as decreasing the living
222 area of the apartment, decreasing the space in the living room, and adding cost to the project.
223

224 Ms. Street noted that the ordinance required by American Fork was not unusual, and the ordinance
225 requirements are often used in other cities. She noted that the Board was required to question why the
226 variance exists and the necessity of staying consistent with the ordinance in the interest of fairness for all
227 residents of American Fork. It was her opinion that because the applicant has a way to comply with the
228 ordinance that the Board could not grant the variance.
229

230 Ms. Nelson stated her agreement and noted her concern that it would be difficult to enforce any parameters
231 put on a variance.
232

233 Ms. Street noted the difficulties associated with adding a restriction that would state it could not be rented
234 as the applicant's situation and the homeownership itself may change.
235

236 Mr. Boyd Draper mentioned again the illegal apartments in American Fork and asked the Board what their
237 thoughts were about handling illegal apartments as so many people have them due to the housing crisis.
238

239 Ms. Street stated that it would be better if they were legal to ensure they were safe apartments that had gone
240 through the correct inspection process.
241

242 Mr. Josh Draper stated his understanding and agreed that zoning ordinances may change over time.
243 Mr. Fong asked if it was illegal to have a basement apartment and to rent it out. Ms. Egner stated that it was
244 not illegal. Mr. Fong clarified that the Draper's having an outside entrance and not an inside entrance was

245 what was illegal.

246

247 Ms. Egner stated that that was correct and clarified that it would become a duplex at that point. She clarified
248 that the apartment would be an accessory dwelling unit and is not classified as an apartment.

249

250 Ms. Street questioned if the apartment could be considered a bonus room if the kitchen were removed.

251

252 Mr. Loveland clarified that it would still need to have an internal access point. Ms. Egner stated it was her
253 understanding that there must be internal access and if there is not it is considered a separate unit.

254

255 Ms. Street questioned whether it was an International Building Code requirement to have interior access or
256 if it was a city-by-city ordinance.

257

258 Mr. Loveland stated that the municipal code addresses accessory apartments and was intended as a solution
259 to help provide economical relief.

260

261 Ms. Egner defined a duplex as being two living spaces connected with one wall and reiterated the zoning
262 issue that states there can not be a duplex in Mr. Draper's zone. She noted that in order for Mr. Draper's
263 home not to be considered a duplex it must have an interior access.

264

265 A brief discussion was held between the Board members and Ms. Egner regarding the best way to state
266 the motion.

267

268 **MOTION: Scott Williamson moved to deny this variance for property located at 322 West 1300**
269 **North in the R1-9000 zone because it does not meet the criteria outlined by American Fork City.**
270 **Seconded by Mary Street.**

271

272 Aye - Michael Privett
273 Scott Williamson
274 Mary Street
275 Bridgette Nelson

276

277 Nay -

278

279

The motion was denied.

281

282 Mr. Fong asked if the interior access must be a stairwell. Ms. Egner noted that it must be a usable access
283 that meets the code. Mr. Loveland noted that a spiral staircase could work as long as it meets code.

284

285 Mr. Privett notes that there is no way to tell what the future of the home will be, despite the current
286 intention of the owner which is why they must make a decision based on the current ordinances.

287

288 Mr. Boyd Draper asked if someone has a basement apartment and if somebody lives upstairs if it is
289 considered a duplex. Ms. Egner stated that it is not considered a duplex if there in an interior access and if
290 there's no interior access, then it's a duplex. She noted that some areas are zoned for a single-family and
291 duplex.

292

293 Mr. Loveland noted that it is defined as a two-family in the code and, additionally, there are other
294 requirements that must be met as well.

295 A brief discussion is held regarding Ms. Street's experience with her rental property in Orem and the
296 requirements needed in Orem City.

297
298 The Board commended Mr. Josh Draper for going about his project in the correct way to get approved by
299 the city.

300
301 Mr. Josh Draper asked for confirmation that his request was denied. Ms. Egner confirmed that Mr. Josh
302 Draper's request was denied as the Board did not find that his request met the six criteria set forth.

303
304 4. Other Business

305
306 None

307
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309 5. Adjourn.

310
311 A motion was made by to adjourn Michael Privett. Bridgette Nelson seconded the motion. It was
312 unanimously approved. The meeting was adjourned at 6:57 p.m.

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Melissa White
Public Works Administrative Assistant

Approved