A quorum being present at Centerville City Hall, 250 North Main Street, Centerville, Utah. The meeting of the Board of Adjustment was called to order at 6:00 p.m.

MEMBERS PRESENT
Brian Hulse, Chair
Steven Markham
Kevin Merrill
Paula Tew

MEMBERS ABSENT
Scott Sappenfield

STAFF PRESENT
Emily Hatch, Recording Secretary
Lisa Romney, City Attorney
Cassie Younger, Assistant Planner

VISITORS
Lois Abercrombie
Interested citizens (see attached sign-in sheet)

THOUGHT/LEGISLATIVE PRAYER Brian Hulse

TRAINING AND REVIEW OF PROCEDURES BY CITY ATTORNEY LISA ROMNEY
Lisa Romney, City Attorney, provided training and reviewed procedures with the Board of Adjustment Members. Ms. Romney introduced Cassie Younger, the new Assistant City Planner, and Emily Hatch, the new Recording Secretary, then discussed the roles and responsibilities of the BOA.

Ms. Romney explained that the BOA serves as the land use appeal authority for the City as required by Utah law. Any person adversely affected by a final local land use decision may appeal such decision to the BOA. The BOA consists of five members who serve staggered five-year terms. The BOA has the power and duty to hear and decide appeals from Planning Commission land use decisions, hear and decide variances from the requirements of land use ordinances, and hear and decide matters regarding nonconformities.
Ms. Romney noted that three members of the BOA must be present to constitute a quorum. Three concurring votes are required to reverse a decision or decide in favor of an appellant. On original jurisdiction decisions, only a majority vote is needed.

Ms. Romney discussed the difference between legislative and administrative decisions. While the City Council makes legislative decisions, both the Planning Commission and the Board of Adjustment make or review administrative decisions. The Planning Commission and BOA make or review decisions implementing policies set forth in ordinances already in place, while the City Council makes decisions setting policy and adopting legislation. The standard of review for administrative matters is based on the “substantial evidence” standard, which requires substantial evidence in the record to support the decision or determination.

Ms. Romney explained that appeals of decisions made by the BOA go to District Court. The record of the proceedings before the BOA, including any evidence and meeting minutes, are submitted to the reviewing court. It is important to have a good record and to make sure there is sufficient evidence in the record to support the BOA’s decision.

Ms. Romney noted that the BOA is a public body, subject to the requirements of the Utah Open and Public Meetings Act. Under the Open Meetings Act, all meetings of the BOA must be open to the public (unless lawfully closed for reasons permitted by law), all meetings must be recorded and minutes taken and approved, and notice for and agenda of all meetings must be provided to the public. In the case of the BOA, which meets infrequently, minutes will be approved by email in accordance with the City’s Minutes Approval Policy.

Ms. Romney also reviewed conflict of interest matters. Members of the BOA must declare any conflicts of interest and are required to do so by filling out the necessary forms every year or as conflicts arise. It is recommended that members recuse themselves from matters as necessary if they cannot make an objective decision or if there is the appearance of a conflict.

Ms. Romney concluded her training session by thanking all members of the BOA for their service.

REVIEW THE REQUEST OF DETERMINATION OF A NONCONFORMING DUPLEX LOCATED AT 175 & 185 NORTH 400 EAST, CENTERVILLE. THERICE HARDY DUNCAN FAMILY TRUST, APPLICANT AND PROPERTY OWNER, LOIS ABERCROMBIE, TRUSTEE. KRISTEN MCDONALD, KELLER WILLIAMS UTAH REALTORS, AGENT.

Cassie Younger, Assistant Planner, reported that the owner of the property in question, the duplex at 175 and 185 North 400 East, is requesting the determination and acknowledgement of a legal, non-conforming status. The City has no documentation regarding the property, so the
Ms. Younger explained that the property was built in 1959 and is now located in an R-L Zone, which does not allow duplexes. Centerville City does not have any original building permits or documents about this property and house. Tax records and County Assessor records for Davis County all show the structure as a duplex. The Building Inspector, floor plan, and photographic evidence all indicate that the building was built and has always functioned as a duplex with mirrored halves, having separate addresses, driveways, mailboxes, entrances, etc.

Ms. Younger noted that the 1954 zoning map, which is difficult to read, shows the property as either being in an R-2 Zone or an R-3 Zone. Staff believes the property was located within the R-2 Zone. The oldest Zoning Ordinances on record, from 1963, shows that duplexes are allowed in both R-2 and R-3 Zones. The Zoning Map from 1987 clearly shows the property as being in an R-2 Zone. In 1996, this area became an R-1-10 Zone. Currently, it is an R-L Zone.

Ms. Younger noted there are three questions to be addressed:
- Did the duplex legally exist before current zones were in place?
- Has the duplex been maintained consistently since then?
- Is there any record of abandonment?

Ms. Younger concluded that, since the structure was built as a duplex at a time when the zoning allowed duplexes and has never been vacant, staff can affirmatively answer these questions and recommend recognition of the non-conforming use.

Kevin Merrill inquired as to what prompted this matter being brought before the BOA. Ms. Younger responded that the owner is trying to sell the property, and one of the buyer’s lender conditions was that the property be recognized by the City as a legal non-conforming duplex.

Chair Hulse asked the applicant if they, or the applicant’s representative, had any comments or questions.

Kristen McDonald, who represents the seller, confirmed that the County records show the property as a duplex and the property was listed for sale as a duplex. However, the buyer cannot get a loan on the duplex without approval to have a duplex in that Zone.

Lois Abercrombie, owner and applicant, explained that her father owned the property, as well as the property surrounding. She remembers her father building this duplex when she graduated high school. At the time, he had approached the City for permission to build a four-plex, but was only granted permission for a duplex. He built the property as a source of income.
during retirement and for inheritance purposes. When her father passed, Ms. Abercrombie and her brother inherited the property. Before the documentation was resolved, her brother passed away, leaving his share to his children. Ms. Abercrombie would like to sell the property so she can split the proceeds between all inheritors.

Chair Hulse asked Ms. Romney about the condition for the approval of this non-conforming use. He expressed his concern that the condition exceeded the purview of the BOA, and asked that, since any zoning laws would apply if any changes were made to the property, is it then necessary to include this in the condition for the decisions? Ms. Romney responded that this condition could cause ambiguity in the future, so the Board could modify it or eliminate it.

Chair Hulse made a motion for the Board of Adjustment to recognize the nonconforming use of a duplex (two-family dwelling) at 175 and 185 North 400 East, and the property may be used as such, subject to applicable law. Paula Tew seconded the motion. The motion passed with a unanimous vote (4-0).

Reasons:

a) Section 12.21.150 empowers the Board of Adjustment with the responsibility of hearing and deciding the existence, expansion, or modification of any nonconformity.

b) The applicant has provided sufficient evidence indicating how the property has been built and used throughout its history, all of which is indicted in the backup information provided by Kristin McDonald, realtor, and Louis Abercrombie, the owner and trustee, and the Staff Report.

c) Section 12.22.050 states that any nonconforming use of a legally conforming structure may be continued.

ADJOURNMENT

Paula Tew made a motion to adjourn. Kevin Merrill seconded the motion, which passed by unanimous vote (4-0).

The meeting was adjourned at 6:37 p.m.

___________________________________ 02/08/2017
Brian Hulse, Chair Date Approved (electronically)

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Emily Hatch, Recording Secretary