

1 **BOARD OF ADJUSTMENT MINUTES OF MEETING**

2 **Monday, January 23, 2017**

3 **6:00 p.m.**

4
5 A quorum being present at Centerville City Hall, 250 North Main Street, Centerville,
6 Utah. The meeting of the Board of Adjustment was called to order at 6:00 p.m.

7
8 **MEMBERS PRESENT**

9 Brian Hulse, Chair

10 Steven Markham

11 Kevin Merrill

12 Paula Tew

13
14 **MEMBERS ABSENT**

15 Scott Sappenfield

16
17 **STAFF PRESENT**

18 Emily Hatch, Recording Secretary

19 Lisa Romney, City Attorney

20 Cassie Younger, Assistant Planner

21
22 **VISITORS**

23 Lois Abercrombie

24 Interested citizens (see attached sign-in sheet)

25
26 **THOUGHT/LEGISLATIVE PRAYER** Brian Hulse

27
28 **TRAINING AND REVIEW OF PROCEDURES BY CITY ATTORNEY LISA**
29 **ROMNEY**

30
31 Lisa Romney, City Attorney, provided training and reviewed procedures with the Board
32 of Adjustment Members. Ms. Romney introduced Cassie Younger, the new Assistant City
33 Planner, and Emily Hatch, the new Recording Secretary, then discussed the roles and
34 responsibilities of the BOA.

35
36 Ms. Romney explained that the BOA serves as the land use appeal authority for the City
37 as required by Utah law. Any person adversely affected by a final local land use decision may
38 appeal such decision to the BOA. The BOA consists of five members who serve staggered five-
39 year terms. The BOA has the power and duty to hear and decide appeals from Planning
40 Commission land use decisions, hear and decide variances from the requirements of land use
41 ordinances, and hear and decide matters regarding nonconformities.

1 Ms. Romney noted that three members of the BOA must be present to constitute a
2 quorum. Three concurring votes are required to reverse a decision or decide in favor of an
3 appellant. On original jurisdiction decisions, only a majority vote is needed.

4
5 Ms. Romney discussed the difference between legislative and administrative decisions.
6 While the City Council makes legislative decisions, both the Planning Commission and the
7 Board of Adjustment make or review administrative decisions. The Planning Commission and
8 BOA make or review decisions implementing policies set forth in ordinances already in place,
9 while the City Council makes decisions setting policy and adopting legislation. The standard of
10 review for administrative matters is based on the “substantial evidence” standard, which requires
11 substantial evidence in the record to support the decision or determination.

12
13 Ms. Romney explained that appeals of decisions made by the BOA go to District Court.
14 The record of the proceedings before the BOA, including any evidence and meeting minutes, are
15 submitted to the reviewing court. It is important to have a good record and to make sure there is
16 sufficient evidence in the record to support the BOA’s decision.

17
18 Ms. Romney noted that the BOA is a public body, subject to the requirements of the Utah
19 Open and Public Meetings Act. Under the Open Meetings Act, all meetings of the BOA must be
20 open to the public (unless lawfully closed for reasons permitted by law), all meetings must be
21 recorded and minutes taken and approved, and notice for and agenda of all meetings must be
22 provided to the public. In the case of the BOA, which meets infrequently, minutes will be
23 approved by email in accordance with the City’s Minutes Approval Policy.

24
25 Ms. Romney also reviewed conflict of interest matters. Members of the BOA must
26 declare any conflicts of interest and are required to do so by filling out the necessary forms every
27 year or as conflicts arise. It is recommended that members recuse themselves from matters as
28 necessary if they cannot make an objective decision or if there is the appearance of a conflict.

29
30 Ms. Romney concluded her training session by thanking all members of the BOA for
31 their service.

32
33 **REVIEW THE REQUEST OF DETERMINATION OF A NONCONFORMING**
34 **DUPLEX LOCATED AT 175 & 185 NORTH 400 EAST, CENTERVILLE. THERICE**
35 **HARDY DUNCAN FAMILY TRUST, APPLICANT AND PROPERTY OWNER. LOIS**
36 **ABERCROMBIE, TRUSTEE. KRISTEN MCDONALD, KELLER WILLIAMS UTAH**
37 **REALTORS, AGENT.**

38 Cassie Younger, Assistant Planner, reported that the owner of the property in question,
39 the duplex at 175 and 185 North 400 East, is requesting the determination and acknowledgement
40 of a legal, non-conforming status. The City has no documentation regarding the property, so the

1 decision is left to the Board of Adjustment. A nonconforming use must have legally existed
2 before current zoning designations and must have been maintained continuously since the time
3 the zoning designation changed.

4
5 Ms. Younger explained that the property was built in 1959 and is now located in an R-L
6 Zone, which does not allow duplexes. Centerville City does not have any original building
7 permits or documents about this property and house. Tax records and County Assessor records
8 for Davis County all show the structure as a duplex. The Building Inspector, floor plan, and
9 photographic evidence all indicate that the building was built and has always functioned as a
10 duplex with mirrored halves, having separate addresses, driveways, mailboxes, entrances, etc.

11
12 Ms. Younger noted that the 1954 zoning map, which is difficult to read, shows the
13 property as either being in an R-2 Zone or an R-3 Zone. Staff believes the property was located
14 within the R-2 Zone. The oldest Zoning Ordinances on record, from 1963, shows that duplexes
15 are allowed in both R-2 and R-3 Zones. The Zoning Map from 1987 clearly shows the property
16 as being in an R-2 Zone. In 1996, this area became an R-1-10 Zone. Currently, it is an R-L Zone.

17
18 Ms. Younger noted there are three questions to be addressed:

- 19 - Did the duplex legally exist before current zones were in place?
20 - Has the duplex been maintained consistently since then?
21 - Is there any record of abandonment?

22
23 Ms. Younger concluded that, since the structure was built as a duplex at a time when the
24 zoning allowed duplexes and has never been vacant, staff can affirmatively answer these
25 questions and recommend recognition of the non-conforming use.

26
27 Kevin Merrill inquired as to what prompted this matter being brought before the BOA.
28 Ms. Younger responded that the owner is trying to sell the property, and one of the buyer's
29 lender conditions was that the property be recognized by the City as a legal non-conforming
30 duplex.

31
32 Chair Hulse asked the applicant if they, or the applicant's representative, had any
33 comments or questions.

34
35 Kristen McDonald, who represents the seller, confirmed that the County records show the
36 property as a duplex and the property was listed for sale as a duplex. However, the buyer cannot
37 get a loan on the duplex without approval to have a duplex in that Zone.

38 Lois Abercrombie, owner and applicant, explained that her father owned the property, as
39 well as the property surrounding. She remembers her father building this duplex when she
40 graduated high school. At the time, he had approached the City for permission to build a four-
41 plex, but was only granted permission for a duplex. He built the property as a source of income

1 during retirement and for inheritance purposes. When her father passed, Ms. Abercrombie and
2 her brother inherited the property. Before the documentation was resolved, her brother passed
3 away, leaving his share to his children. Ms. Abercrombie would like to sell the property so she
4 can split the proceeds between all inheritors.

5
6 Chair Hulse asked Ms. Romney about the condition for the approval of this non-
7 conforming use. He expressed his concern that the condition exceeded the purview of the BOA,
8 and asked that, since any zoning laws would apply if any changes were made to the property, is it
9 then necessary to include this in the condition for the decisions? Ms. Romney responded that this
10 condition could cause ambiguity in the future, so the Board could modify it or eliminate it.

11
12 Chair Hulse made a **motion** for the Board of Adjustment to recognize the nonconforming
13 use of a duplex (two-family dwelling) at 175 and 185 North 400 East, and the property may be
14 used as such, subject to applicable law. Paula Tew seconded the motion. The motion passed with
15 a unanimous vote (4-0).

16
17 ***Reasons:***

- 18 a) Section 12.21.150 empowers the Board of Adjustment with the responsibility of
19 hearing and deciding the existence, expansion, or modification of any nonconformity.
20 b) The applicant has provided sufficient evidence indicating how the property has been
21 built and used throughout its history, all of which is indicted in the backup
22 information provided by Kristin McDonald, realtor, and Louis Abercrombie, the
23 owner and trustee, and the Staff Report.
24 c) Section 12.22.050 states that any nonconforming use of a legally conforming
25 structure may be continued.

26
27 **ADJOURNMENT**

28
29 Paula Tew made a **motion** to adjourn. Kevin Merrill seconded the motion, which passed
30 by unanimous vote (4-0).

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

32
33 _____
34 Brian Hulse, Chair

_____ 02/08/2017
Date Approved (electronically)

35
36
37 _____
38 Emily Hatch, Recording Secretary