

**BOUNTIFUL CITY**  
**PLANNING COMMISSION AGENDA**  
**Tuesday, December 18, 2018**  
**6:30 p.m.**

**NOTICE IS HEREBY GIVEN** that the Bountiful City Planning Commission will hold a meeting in the Conference Room at City Hall, 790 South 100 East, Bountiful, Utah, at the time and on the date given above. The public is invited. Persons who are disabled as defined by the American with Disabilities Act may request an accommodation by contacting the Bountiful Planning Office at 298-6190. Notification at least 24 hours prior to the meeting would be appreciated.

1. Welcome and Introductions.
2. Approval of the minutes for December 4, 2018.
3. **PUBLIC HEARING** - Consider a request for a variance to the lot width standards of Section 14-4-104 of the Bountiful City Land Use Ordinance to modify the minimum corner lot width standards for an existing lot in conjunction with the Joe and Bette Eggett Subdivision Phase 6 application. The property is located at approximately 1401 E. 1800 South, Terry Eggett and Connie Woolley, applicants.
4. Consider a preliminary subdivision approval for Joe and Bette Eggett Subdivision Phase 6 located at 1401 East 1800 South, Terry Eggett and Connie Woolley, applicants.
5. Consider approval of the Findings of Fact denying a variance request to remove and replace the required 10 foot landscape buffer along the street frontage with asphalt at Antion Auto located at 633 S 500 West, Stephen Sandberg representing Antion Auto, applicant.
6. Consider approval of the 2019 Planning Commission Meeting Calendar.
7. Planning Director's report, review of pending applications and miscellaneous business.

  
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Chad Wilkinson, City Planner

**Bountiful City  
Planning Commission Minutes  
December 4, 2018  
6:30 P.M.**

Present: Chair – Sean Monson; Planning Commission Members – Jesse Bell, Tom Smith and Sharon Spratley; City Council Representation – Richard Higginson; City Planner – Chad Wilkinson; City Engineer – Lloyd Cheney; City Attorney – Clint Drake; Asst. Planner – Curtis Poole; and Recording Secretary – Darlene Baetz

Excused: Vice Chair – Von Hill and Planning Commission Member – Jim Clark

**1. Welcome and Introductions.**

Chair Monson opened the meeting at 6:31 pm and welcomed all those present.

**2. Approval of the minutes for November 20, 2018.**

Tom Smith made a motion to approve the minutes for November 20, 2018 with the three corrections as noted. Correction 1 on Page 2 Paragraph 8 “Mr. Bell discussed the possibility of extra windows *on all floors.*” Correction 2 on Page 3, Line 1 “...code for the *windows on* the ground floor...” Correction 3 on Page 3, paragraph 6 “Sharon Spratley made a motion that the Planning Commission *approved* the Conditional...”

Sharon Spratley seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Monson, Spratley and Smith voting aye.

**3. Consider preliminary subdivision approval for Seifert Subdivision located at 3332 South 725 West, Roger Seifert, applicant.**

Roger Seifert was present. Lloyd Cheney presented the staff report.

Mr. Roger Seifert is requesting preliminary approval of the Seifert Subdivision. This three lot subdivision proposes to include the existing single family home at 3332 S 725 W and the vacant parcel at the end of the street into a three lot subdivision. It is proposed that a new cul-de-sac be created in the existing vacant parcel, resulting in a new lot on the east and west sides of the cul-de-sac. The existing vacant parcel slopes from east to west at approximately 5% on the north property line and increases to approximately 20 % towards the south-east corner of the parcel which abuts the Jenkins property. The existing parcels are located in the R-4 zone and combine to form a 1.384 acre parcel from which three lots will be created. The proposed area of each lot is more than twice the 8,000 sq.ft. minimum lot size requirement for this zone. Lot 1, which will include the existing home on the west side of 725 West, will have 90 ft. of frontage. Lots 2 and 3 will have widths of 109 ft. and 112 ft. respectively (measured at the 25 ft. setback).

Utilities are already serving the four lots which front onto 725 West, north of the proposed subdivision. A South Davis Water District 6” culinary water main is located behind the west curb. This line will need to be extended approximately 145 feet to the south side of the cul-de-sac and have a fire hydrant installed at the termination of the line. An existing 8” sewer main extends to the south through the property, so the installation of 2 new sewer laterals to serve the lots which front the cul-de-

sac are all that is necessary to provide sewer service. Overhead power lines are located on the south side of the vacant parcel.

The street improvements as proposed deviate slightly from the standard right of way requirements because of the limited north-to-south dimension of the vacant parcel and the width of the adjacent parcel 3333 S 725 W. Because of these conditions, the cul-de-sac is proposed with a 50 ft. radius (measured at the property line). Since there is no sidewalk on 725 W, sidewalk is not proposed to be installed at this time, however, the 8 ft. separation between the curb and gutter and the proposed property line would accommodate a 4 ft. wide park strip and a 4 ft. wide sidewalk.

It should be noted that the extension of the culinary water line as shown will require that the existing curb and gutter on the west side of 725 W be removed and replaced. A 3 ft wide asphalt patch will be required in the existing pavement.

Recommend preliminary approval of the Seifert Subdivision with the following conditions:

1. Provide a current title report.
2. Make all necessary red line corrections.
3. Pay all required fees (Storm Water Impact Fee).

Richard Higginson made a motion that the Planning Commission forward to the City Council a recommendation of approval for a preliminary subdivision approval for Seifert Subdivision located at 3332 South 725 West with the three conditions outlined by staff. Sharon Spratley seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Monson, Smith, and Spratley voting aye.

4. **PUBLIC HEARING - Consider approval of a variance to section 14-6-109 of the Bountiful City Land Use Ordinance to allow for the required landscaping in the parkstrip and the required 10 foot landscape buffer along the street frontage to be removed and replaced with asphalt at Antion Auto located at 633 S 500 West, Stephen Sandberg representing Antion Auto, applicant.**

Stephen Sandberg was present. Curtis Poole presented the staff report.

The applicant, Durbano Law Firm, is requesting a variance to allow for the standards of section 14-6-109 of the Bountiful City Land Use Ordinance to allow for the required landscaping in the parkstrip and the required 10 foot landscape buffer along the street frontage to be removed and replaced with asphalt. The purpose of the variance is to allow the applicant additional room for cars to be displayed. The property is located in the C-H zone.

On May 25, 2018, the City received a code enforcement complaint explaining the applicant had removed the parkstrip and landscaping buffer of their property and replaced it with asphalt. Case #76-2018 was opened and notifications were sent on June 7 and 19, 2018. After no response from the applicant a final certified letter was mailed on July 12, 2018. On July 25, 2018, Jake Fordham, the City Prosecutor, and Curtis Poole met with Stephen Sandberg, attorney with the Durbano Law Firm, on-site to discuss the violation and what was needed to bring the property into compliance.

Mr. Sandberg agreed to submit a landscaping plan to be approved by the Planning Department by August 20, 2018. On August 20, 2018, Mr. Sandberg requested additional time to submit the landscaping plan, and a new deadline of August 31, 2018 was given. Mr. Sandberg emailed on August

31, 2018 indicating the applicant would be considering other options.

The applicant's property is in the C-H zone and the existing business, Antion Auto, has been operating from this location since 2012. City Code 14-6-109 requires there shall be a 10 feet wide landscape buffer installed along all frontage areas except for drive approaches. It further states landscaping shall be installed in all parkstrips, and prohibits any non-vegetative material in the parkstrip. This part of the City Code has been in force since it was adopted in 1982. Aerial photos show that through at least June of 2017 the applicant was meeting the landscape area requirement for the setback buffer and the parkstrip. Landscaping was required as a part of the original approval of the site in 1988 and removal of the landscaping makes the site noncompliant with the original approval. It appears from aerial photos the landscaping on site has been slowly allowed to deteriorate up and until the landscaping was removed sometime after June 2017. City Code requires continuous maintenance of landscape areas in accordance with approved plans.

Utah Code 10-9a-702 establishes the criteria for review of a variance request. In order to grant a variance each of the following criteria must be met:

(i) *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;*

**Staff Response:** City records show the landscaping of the property was originally installed in 1988. Since then property owners have continued to maintain the landscaping until at least June of 2017. The landscaping was removed voluntarily by the applicant to increase their vehicle inventory and parking. State Law 10-9a-702 § (b) states "the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic." The fact the applicant removed the landscaping voluntarily should be considered a self-imposed event. Also, any potential economic impact alleged by the applicant cannot be considered an unreasonable hardship by State Law.

(ii) *There are special circumstances attached to the property that do not generally apply to other properties in the same zone;*

**Staff Response:** The applicant's property is located in the C-H zone. It is a middle lot with frontage on 500 West. The City Code adopted in 1982 required all new commercial developments in the zone to submit a landscaping plan as part of their site development plan. If other properties involving auto-sales or similar businesses were to develop in the C-H zone they would be required to keep and maintain the current landscaping required by the ordinance. There are no unique circumstances which would allow this property to be considered for a variance to the landscaping ordinance.

(iii) *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*

**Staff Response:** All commercial development which occurred after the 1982 Code was adopted have been required to install and maintain landscaping according to this ordinance. Within the C-H zone the properties which were developed prior to the adoption of the 1982 Code were not required to meet the landscaping code and are considered legal non-conforming, as in the case of properties such as Bountiful Bowl, Flower Patch, and Robintino's. As these legal non-conforming properties have been developed, they have been and will be required to meet the current landscaping requirements, as in the case of the current Culver's and Stout business developments as well as the recent development of the Fordham Commercial Park. There are also circumstances where a property was forced to remove their

landscaping by UDOT as expansions to the intersection of 500 West and 500 South occurred, as in the case of Walgreen's, McDonald's, Sherwin Williams and KFC. These properties are now considered legal non-conforming. If these properties were to redevelop in the future they would be required to meet the current landscaping code. Properties which have removed their landscaping voluntarily and do not comply with the current landscaping code have been and will be subject to code enforcement proceedings.

(iv) *The variance will not substantially affect the general plan and will not be contrary to the public interest;*

**Staff Response:** As the property is located in the high traffic corridor of 500 West, it is a very visible part of the city and maintaining the landscaping code is a public interest.

(v) *The spirit of the land use ordinance is observed and substantial justice done*

**Staff Response:** Granting a variance would be contrary to the spirit of the land use ordinance. Landscaping required by ordinance serves as an aesthetic benefit to the City and also provides valuable pervious space to assist in capture of storm water runoff. Granting the variance to the landscaping ordinance is not in keeping with the spirit of the ordinance.

Staff recommends denial of the requested variance to allow for the landscaping in the parkstrip and setback buffer to be removed and replaced with non-vegetative material. Landscaping shall be restored in order to comply with the originally approved landscape plan for the property.

Chair Monson opened and closed the **PUBLIC HEARING** at 6:50 p.m. without comment.

Mr. Sandberg asked about the code enforcement process the City has for properties that are in violation. He also disagreed with the comments given in the staff report about the substantial impact to the aesthetics in this zone.

Mr. Wilkinson stated that the City has limited staff and that staff are not able to drive around the city conducting proactive enforcement. The City receives complaints from City citizens and also will enforce the code when a request for building permit is received at the City office.

There was discussion about the reduction of inventory if the landscape was restored. Commission members commented that there is strict criteria that needs to be met for variances to be approved and noted that this property did not have anything unique about it and that the commission cannot consider financial hardship.

Sharon Spratley made a motion to deny the variance to section 14-6-109 of the Bountiful City Land Use Ordinance to allow for the required landscaping in the parkstrip and the required 10 foot landscape buffer along the street frontage to be removed and replaced with asphalt at Antion Auto located at 633 S 500 West. Richard Higginson seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Monson, Smith and Spratley voting aye.

Mr. Wilkinson stated the appeal process. Bountiful City Land Use Ordinance section 14-2-108 states an applicant, board or officer of the City, or any person adversely affected by a Land Use Authority's decision administering or interpreting a land use ordinance or ruling on a request for a variance may,

within fourteen calendar days of the written decision, appeal the decision to the Appeal Authority. No other appeals may be made to the Appeal Authority.

The appeal must be in writing and specifically allege there is an error in an order, requirement, decision or determination by the Land Use Authority. The appellant shall state every theory of relief it can raise in District Court.

**5. Consider approval of a Conditional Use Permit letter in written form for a 6-unit multi-family development located at 55 W 400 South, Brian Knowlton, applicant.**

Sharon Spratley made a motion to approve the Conditional Use Permit letter in written form for a 6-unit multi-family development located at 55 W 400 South as written. Jesse Bell seconded the motion. Voting passed 5-0 with Commission members Bell, Higginson, Monson, Smith and Spratley voting aye.

**6. Planning Director's report, review of pending applications and miscellaneous business.**

1. Next Planning Commission meeting will be December 18, 2018 and will include a subdivision review and Variance.
2. Election of Planning Commission Chairman and Vice Chairman for 2019 will be on the agenda in January 2019.

Chair Monson ascertained there were no other items to discuss. The meeting was adjourned at 6:59 p.m.

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Chad Wilkinson, Bountiful City Planner

# Commission Staff Report

Item # 3

**Item:** PUBLIC HEARING – Request for variance to minimum corner lot width requirements  
**Address:** Approximately 1401 E 1800 South  
**Author:** Chad Wilkinson, Planning Director  
**Date:** December 18, 2018



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## Description of Request

The applicants, Terry Eggett and Connie Woolley, have requested a variance to the required corner lot width requirements of the R-3 Zoning District. The proposed variance has been submitted in conjunction with an application for subdivision.

## Authority

Section 14-2-111 authorizes the Planning Commission as the review body for variance requests within the R-3 zone related to lot width.

## Appeal Procedure

Bountiful City Land Use Ordinance section 14-2-108 states that an applicant, board or officer of the City, or any person adversely affected by a Land Use Authority's decision administering or interpreting a land use ordinance or ruling on a request for a variance may, within fourteen calendar days of the written decision, appeal that decision to the Appeal Authority. No other appeals may be made to the Appeal Authority.

The appeal must be in writing and specifically allege that there is an error in an order, requirement, decision or determination by the Land Use Authority. The appellant shall state every theory of relief that it can raise in District Court.

## Background and Analysis:

The applicants have requested a variance to allow for approval of a lot in a proposed subdivision that does not meet the minimum corner lot width requirements. The proposed Eggett Subdivision Phase 6 includes a portion of Lot 1 of the East Peterson Subdivision. This lot, which is shown as Lot 605 of the proposed subdivision, fronts on both 1800 South and the proposed cu-de-sac. Since the lot fronts on both streets it is considered to be a corner lot and is required to meet the lot width standards for corner lots. In the R-3 zone, corner lots must have a minimum width of 90 feet along both frontages. As proposed, the lot meets the standard on 1800 South, but only has approximately 30 feet of frontage on the cul-de-sac.

Although the Eggett property could be developed without the inclusion of Lot 1 of the Peterson Subdivision, a small portion of the lot was included in the design of the subdivision in order to place the access road for the subdivision in a location that would

lower the grade of the street and reduce the grading required to construct the street. The applicant had previously submitted a plat showing the minimum configuration needed for compliance with the Code, but the result of that layout produces two lots which are unusual in shape, adds no useable ground to Lot 605, and is not wanted by the current owner of the proposed Lot 605.

### **Variance Findings**

Utah Code 10-9a-702 establishes the criteria for review of a variance request. In order to grant a variance each of the following criteria must be met:

(i) *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;*

**Staff Response:** The proposed Lot 605 is made up of the remainder of an existing developed lot (Lot 1 of East Peterson Subd.) One of the purposes of lot width standards for corner lots is to create a lot that can take access from either street. A second purpose is to create a property that contains adequate buildable area even with the additional exterior setbacks required for a corner lot. In this case, the lot is already developed and has established access to 1800 South. The grade difference between the existing home located on Lot 605 and the proposed cul-de-sac is substantial, making access to the cul-de-sac unlikely and undesirable.

(ii) *There are special circumstances attached to the property that do not generally apply to other properties in the same zone;*

**Staff Response:** The portion of Lot 605 which fronts on the proposed cul-de-sac is approximately 30 feet in length and is separated from the developed portion of Lot 605 by a 20 foot difference in grade. This is currently a natural area that is not maintained by the property owner and it is anticipated that this area would continue to remain as a natural area. The east portion of lot 605 is already developed with a single family dwelling that takes its access from 1800 South. The owner of Lot 605 has no desire for the additional property that would be required to meet the standard for corner lot width and the difference in grade makes it extremely difficult to take access from the cul-de-sac, even if the lot width were provided. The special circumstances created by the difference in grade and the unusual lot shapes needed to meet the standard justify a variance to the standard.

(iii) *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*

**Staff Response:** Granting the variance in this instance will allow for orderly development of the applicants property without the need to create an odd shaped or unusable area for the proposed lot 605. Since the reason for including this Lot is to provide for a better access to the proposed subdivision, the variance will provide the property owner with the right to develop their property in an orderly way with a better design.

*(iv) The variance will not substantially affect the general plan and will not be contrary to the public interest;*

**Staff Response:** The public interest will be served by not creating two odd shaped lots solely for the purpose of meeting the standard. While there are designs that would meet the Code, those designs will create odd shaped lots or portions of lots that are separated by substantial differences in grade from the main part of the lot. This grade separation will make those portions of the lot unusable by the owner of Lot 605 and maintenance of these areas is unlikely. Allowing a variance to the standard will not have a substantial impact to the general plan of the public interest.

*(v) The spirit of the land use ordinance is observed and substantial justice done*

**Staff Response:** The purpose of the corner lot width standard is to provide for additional opportunities for access and adequate area for building on corner lots. In this case the lot in question is already developed and differences in grade make it less appealing to provide access to the cul-de-sac. Therefore granting the variance is in keeping with the spirit of the land use ordinance.

#### **Department Review**

City Planner, City Engineer

#### **Recommended Action**

Based on analysis of the required review criteria from State law included in the findings above and the materials submitted by the applicant, staff recommends that the Planning Commission approve the variance to the corner lot standards of Section 14-4-104 of the Bountiful Land Use Ordinance

#### **Attachments**

1. Aerial Photo
2. Applicant's Narrative
3. Proposed Subdivision

Aerial Photo-Approximately 1401 E 1800 S



Variance Request Questions: Ordinance 14-4-104

1. The development of the property facilitates the need to acquire a small sliver of ground from Lot 1 of East Peterson Subdivision to make the new road grades flatter and the uphill cuts more manageable. The new culdesac street will be easier to maintain by the City Public Works department. This project could be done without using any of lot 1 but the new road grades would be very steep and the cuts at the fronts on the lots in the culdesac would be very difficult to overcome. By placing the road entrance in this location makes Lot 1 into a corner lot. This lot was already and irregularly shaped lot that ends with a point. The ordinance requires that there be minimum frontage on both sides of a corner lot. This brings on a hardship for the lot owner because it increases the frontage that he has to maintain. The owner doesn't want the frontage because he has a difficult time maintaining what he already has. It is not necessary to carry out the general purpose because there already is an existing home on the lot with the driveway on the opposite side of the lot. There is also a large amount of grade change that makes the frontage on the proposed street difficult to access the lot from that street.
2. The original lot was odd shaped because of the existing property boundaries when the East Peterson Subdivision was platted. 1800 South Street followed the section line and then turns Southerly at the property corner which created the point of the triangle for the existing lot. This condition for the odd parcel shape was created when 1800 South Street was improved and was not created by the proposed development.
3. Granting this variance allows for a more uniform lot shape in the new subdivision. It will allow the frontage to be better maintained from the new lot owner because it is in front of their house.
4. The variance will not substantially affect the general plan or contrary to the public interest because the lot that would be required to change is already improved with a home and driveway that works with the steep slope of 1800 South Street. There are also many examples of situations similar, so it won't look out of place.
5. The spirit of the land use ordinance is observed, and substantial justice done because the proposed subdivision will take an existing irregular shaped lot and make it slightly better shape. It also allows to new lot be more regular in shape which would not be the case if the frontage of the existing lot was per ordinance. This will result in a more orderly development of the ground with more traditionally shaped lots.



# Commission Staff Report

Item #4

**Subject:** Preliminary Subdivision Approval for the Joe and Bette Eggett Subdivision, Phase 6  
**Address:** 1400 East 1800 South  
**Author:** City Engineer, City Planner  
**Department:** Engineering, Planning  
**Date:** December 18, 2018



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## Background

Terry Eggett and Connie Woolley are requesting preliminary approval of the Joe and Bette Eggett Subdivision, Phase 6. This six lot subdivision proposes to include Lot 1 from the East Peterson Subdivision and Lot 502 from the Joe and Bette Eggett Phase 5 Amended plat. This location is best described as “the llama pasture” on the north side of 1800 South Street. The subject property extends from the 1800 South Right-of-Way line into the Mill Creek canyon to the north.

## Analysis

The subdivision is located in the R-3 zone, which requires a minimum lot size of 11,000 sq. ft. and a minimum frontage of 80 ft.

### Lot Size and Frontage

All of the interior lots (602, 603 and 604) exceed these minimum requirements. Lot 601 exceeds the minimum requirements of being 10 ft wider and 10% larger for a corner lot. Lot 606, which includes the former Lot 502 and additional property from the pasture area, also meets the minimum requirements for size and frontage.

Lot 605 represents the modified configuration of the former Lot 1 of the East Peterson Subdivision. In order to construct the cul-de-sac as proposed, approximately 887 sq. ft. and 71 feet of the tapered west end of Lot 1 is allocated to the cul-de-sac right of way and to the south east corner of Lot 601. This is a negligible impact to the useable area of Lot 1 but it does have a significant consequence in the sense that Lot 1 now becomes a corner lot, and is not compliant with the requirements of the ordinance for minimum frontage on a corner lot. The applicant had previously submitted a plat showing the minimum configuration for compliance, as shown in Figure 1, but the result of that layout produces two lots which are unusual in shape, adds no useable ground to Lot 605, and is not wanted by the current owner of the proposed Lot 605. With those considerations in mind, the applicant has also begun the process to obtain a variance for this requirement. Alternate acceptable layouts which would not require a variance are shown in Figure 2.

It is preferred that access for Lot 601 be restricted to the cul-de-sac side of the lot.

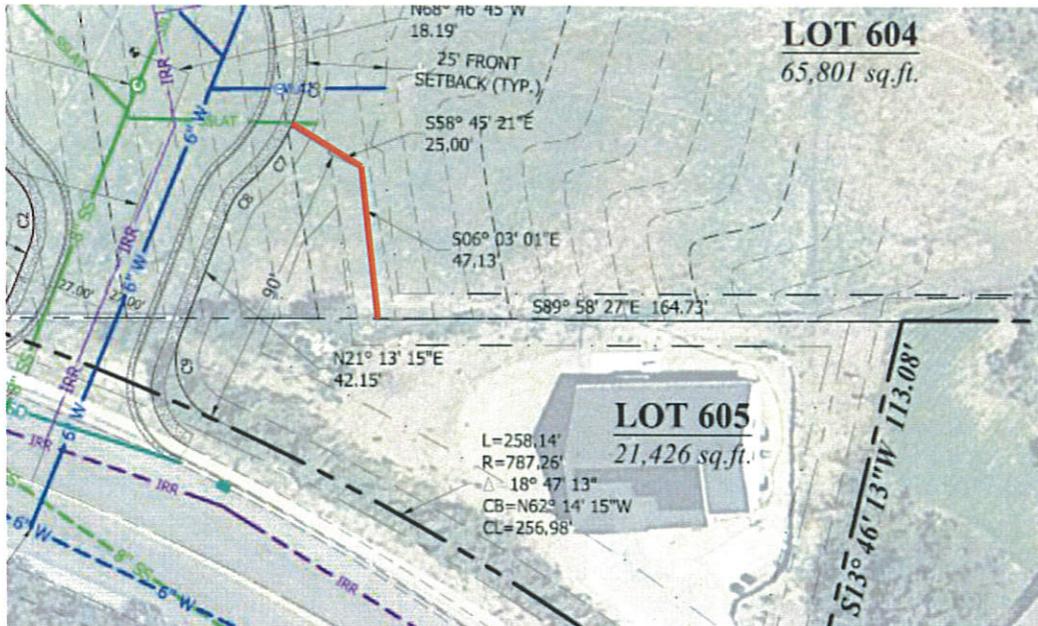


Figure 1 Original proposed configuration of Lot 605 meeting corner frontage requirement.

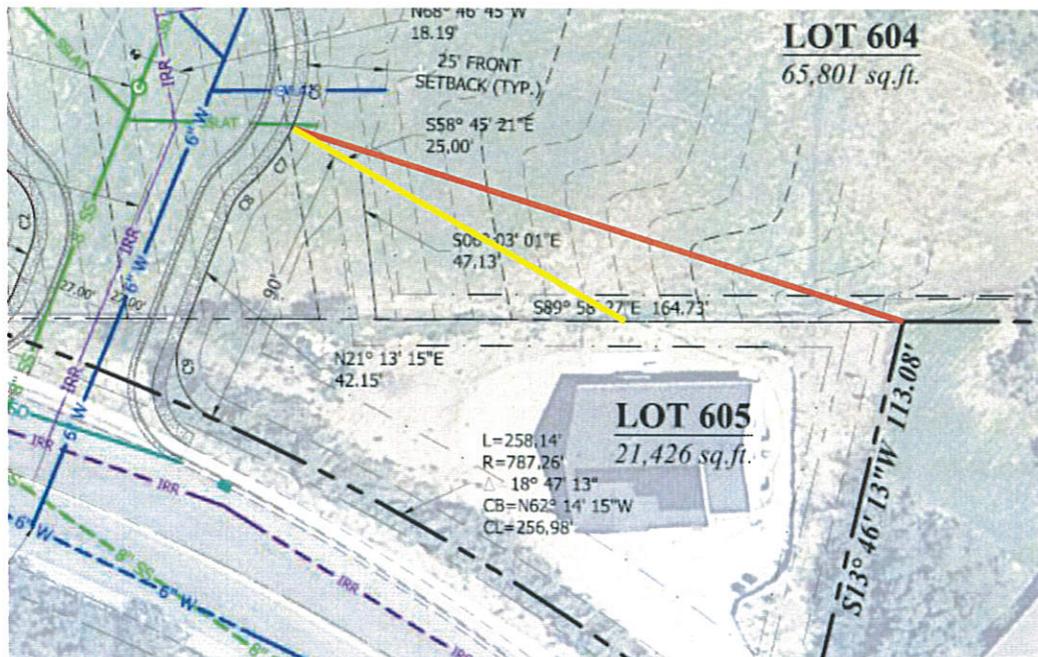


Figure 2 Alternate configurations of Lots 604 and 605 which meet corner lot frontage requirements.

### Right-of-Way and Utilities

The proposed 54 ft. wide street section and 108' diameter cul-de-sac configuration are standard widths, and will be adequate to serve this development. On the 1800 South frontage, much of the existing curb and gutter is in poor condition, and needs to be replaced. This will also necessitate the replacement of the sidewalk where it has been constructed directly behind the curb.

All of the utilities which are necessary to serve this development are available in 1800 South Street. A detention basin is proposed on the west side of Lot 601. The basin sizing requirements will require a slight adjustment so that the existing runoff from 1800 South can be properly accounted for in the operation of the detention basin. This will likely mean that the basin capacity and discharge rate will be slightly larger than what would be required for just the subdivision itself. The existing storm drain system ends on the east side of the intersection at 1300 East Street, so the developer will need to extend the system approximately 330 feet to the east to provide an outlet for the detention basin.

The Bountiful City Street Department is planning a pavement maintenance project in this location in the next budget year. Utility work and the installation of curb, gutter, waterways, etc. will need to be completed before the City's project begins to avoid additional requirements for restoring the pavement.

### **Department Review**

The proposed preliminary and final plat has been reviewed by the Engineering Department and Planning Department.

### **Recommendation**

Recommend preliminary approval of the Joe and Bette Eggett Subdivision, Phase 6 Subdivision with the following conditions:

1. Obtain approval of a variance from the Planning Commission for the reduced corner lot width shown for Lot 605.
2. Provide a current title report.
3. Make all necessary red line corrections.
4. Extend the storm drain from 1300 E to the storm drain detention basin.
5. Post a bond for the required improvements.
6. Pay all required fees.

### **Significant Impacts**

None

### **Attachments**

1. Aerial photo showing the proposed location
2. A copy of the preliminary plat.

Aerial Photo of the Proposed Joe and Bette Eggett Subdivision, Phase 6





**BOUNTIFUL CITY PLANNING COMMISSION  
FINDINGS OF FACT AND CONCLUSIONS**

**APPLICANT:** Durbano Law Firm

**APPLICATION TYPE:** Request for a variance to the standards of section 14-6-109 of the Bountiful City Land Use Ordinance to allow for the required landscaping in the parkstrip and the required 10 foot landscape buffer along the street frontage to be removed and replaced with asphalt.

**I. DESCRIPTION OF REQUEST:**

The applicant, Durbano Law Firm, is requesting a variance to the standards of section 14-6-109 of the Bountiful City Land Use Ordinance to allow for the required landscaping in the parkstrip and the required 10 foot landscape buffer along the street frontage to be removed and replaced with asphalt. The purpose of the variance is to allow the applicant additional room for cars to be displayed. The property is located in the C-H zone.

**II. LAND USE ORDINANCE AUTHORITY:**

Section 14-2-111 authorizes the Planning Commission as the review body for variance requests related to landscaping and parking setbacks.

**III. APPEAL PROCEDURE:**

Bountiful City Land Use Ordinance section 14-2-108 states that an applicant, board or officer of the City, or any person adversely affected by a Land Use Authority's decision administering or interpreting a land use ordinance or ruling on a request for a variance may, within fourteen calendar days of the written decision, appeal that decision to the Appeal Authority. No other appeals may be made to the Appeal Authority.

The appeal must be in writing and specifically allege that there is an error in an order, requirement, decision or determination by the Land Use Authority. The appellant shall state every theory of relief that it can raise in District Court.

**IV. SUMMARY OF EVIDENCE:**

- A.** The basic facts and criteria regarding this application are contained in the staff report, which is attached as **Exhibit A** and is incorporated herein.
- B.** The minutes of the public hearing held by the Planning Commission on **Tuesday, December 4, 2018** which are attached as **Exhibit B** summarize the oral testimony presented and are hereby incorporated herein.

V. FINDINGS OF FACT:

Based upon the information presented and oral testimony given at the public hearing the Planning Commission made the following findings:

- A. The literal enforcement of the land use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance;

City records show the landscaping of the property was originally installed in 1988. Since then property owners have continued to maintain the landscaping until at least June of 2017. The landscaping was removed voluntarily by the applicant to increase their vehicle inventory and parking. State Law 10-9a-702 § (b) states “the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.” The fact the applicant removed the landscaping voluntarily should be considered a self-imposed event. Also, any potential economic impact alleged by the applicant cannot be considered an unreasonable hardship by State Law.

- B. There are special circumstances attached to the property that do not generally apply to other properties in the district;

The applicant’s property is located in the C-H zone. It is a middle lot with frontage on 500 West. The City Code adopted in 1982 required all new commercial developments in the zone to submit a landscaping plan as part of their site development plan. If other properties involving auto-sales or similar businesses were to develop in the C-H zone they would be required to keep and maintain the current landscaping required by the ordinance. There are no unique circumstances which would allow this property to be considered for a variance to the landscaping ordinance.

- C. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the district;

All commercial development which occurred after the 1982 Code was adopted have been required to install and maintain landscaping according to this ordinance. Within the C-H zone the properties which were developed prior to the adoption of the 1982 Code were not required to meet the landscaping code and are considered legal non-conforming, as in the case of properties such as Bountiful Bowl, Flower Patch, and Robintino’s. As these legal non-conforming properties have been developed, they have been and will be required to meet the current landscaping requirements, as in the case of the current Culver’s and Stout business developments as well as the recent development of the Fordham Commercial Park. There are also circumstances where a property was forced to remove their landscaping by UDOT as expansions to the intersection of 500 West and 500 South occurred, as in the case of Walgreen’s, McDonald’s, Sherwin

Williams and KFC. These properties are now considered legal non-conforming. If these properties were to redevelop in the future they would be required to meet the current landscaping code. Properties which have removed their landscaping voluntarily and do not comply with the current landscaping code have been and will be subject to code enforcement proceedings.

- D. The variance will not substantially affect the general plan and will not be contrary to the public interest;

As the property is located in the high traffic corridor of 500 West, it is a very visible part of the city and maintaining the landscaping code is a public interest.

- E. The spirit of the land use ordinance is observed and substantial justice is done

Granting a variance would be contrary to the spirit of the land use ordinance. Landscaping required by ordinance serves as an aesthetic benefit to the City and also provides valuable pervious space to assist in capture of storm water runoff. Granting the variance to the landscaping ordinance is not in keeping with the spirit of the ordinance.

## VI. DECISION AND SUMMARY

The Planning Commission denied the requested variance by a vote of 5-0.

**FINDINGS OF FACT APPROVED BY THE Bountiful City Planning Commission this 18 day of December, 2018**

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Sean Monson, Chair  
Bountiful City Planning Commission

## 2019 PLANNING COMMISSION MEETING

### **DRAFT ONLY - DATES HAVE NOT BEEN APPROVED**

<i>MEETING DATE (TUESDAY - 6:30 p.m.)</i>	<i>AGENDA ITEM SUBMISSION DEADLINE (3 weeks prior to mtg) (TUESDAY - 6:00 p.m.)</i>	<i>SITE PLAN REVIEW 10:30 a.m. - City Hall Planning Conference Room (THURSDAY) <b>(Applicant to attend)</b></i>	<i>PUBLISH DATE (10 days prior)</i>
January 1, 2019	HOLIDAY - NO MEETING		
January 15, 2019	12/26/2018 (Wednesday)	December 27, 2018	January 3, 2019
February 5, 2019	January 15, 2019	January 17, 2019	January 25, 2018
February 19, 2019	January 29, 2019	January 31, 2019	February 7, 2019
March 5, 2019	February 12, 2019	February 14, 2019	February 21, 2019
March 19, 2019	February 26, 2019	February 28, 2019	March 7, 2019
April 2, 2019	March 12, 2019	March 14, 2019	March 21, 2019
April 16, 2019	March 26, 2019	March 28, 2019	April 4, 2019
May 7, 2019	April 16, 2019	April 18, 2019	April 18, 2019
May 21, 2019	April 30, 2019	May 2, 2019	May 9, 2019
June 4, 2019	May 14, 2019	May 16, 2019	May 23, 2019
June 18, 2019	May 28, 2019	May 30, 2019	June 6, 2019
July 2, 2019	June 11, 2019	June 13, 2019	June 20, 2019
July 16, 2019	June 25, 2019	June 27, 2019	July 3, 2019
August 6, 2019	July 16, 2019	July 18, 2019	July 26, 2019
August 20, 2019	July 30, 2019	August 1, 2019	August 8, 2019
September 3, 2019	August 13, 2019	August 15, 2019	August 22, 2019
September 17, 2019	August 27, 2019	August 29, 2019	September 5, 2019
October 1, 2019	September 10, 2019	September 12, 2019	September 19, 2019
October 15, 2019	September 24, 2019	September 26, 2019	October 3, 2019
November 5, 2019	October 15, 2019	October 17, 2019	October 24, 2019
November 19, 2019	October 29, 2019	October 31, 2019	November 7, 2019
December 3, 2019	November 12, 2019	November 14, 2019	November 21, 2019
December 17, 2019	November 26, 2019	12/2/2019 (Monday)	December 5, 2019
January 7, 2020	December 17, 2019	December 19, 2019	December 26, 2019
January 21, 2020	December 31, 2019	January 2, 2020	January 9, 2020