

**Provo City Board of Adjustment
Appeal Staff Report
Hearing Date: November 19, 2009**

Agenda Item: 3

Applicant: Jeff & Michelle Brotherson

Staff Coordinator: Rich Bennett

Property Owner: Jeff & Michelle
Brotherson

Parcel ID#: 65:193:0015

Acreage: .275

Number of Units: 1

Number of Lots: 1

REQUEST

Jeff and Michelle Brotherson appeal a staff determination related to a nonconforming parking pad for property generally located at 4562 North 475 East, where staff has denied a nonconforming right for excessive hard surface lot coverage. The property is located in the R1.10 (One Family Residential) zone. *North Timpview Neighborhood* 09-0017AP

CURRENT LEGAL USE

One - Family Dwelling

NEIGHBORHOOD ISSUES

None

STAFF REPORT SUMMARY OF KEY ISSUES

- Home built in 2009.
- Codes affecting this home date from 2006.
- Lot coverage exceeds percentage shown on approved plans.

RECOMMENDED ACTION

Deny the requested appeal. *This action would be consistent with the recommendations of the Staff Report.*

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is December 17, 2009, 6:00 P.M.*
2. **Approve** the requested appeal. *This action would not be consistent with the recommendations of the Staff Report. The Board of Adjustment should state new findings.*

OVERVIEW

The applicants are appealing a staff determination concerning permissible concrete lot coverage. The applicants state that they have a nonconforming right to 50% concrete front yard coverage and that staff has made an error. The code allows only 25% coverage in front and rear yards and 100% of one side yard. Staff has determined that the concrete on the lot exceeds that allowed by code and also the amount which was approved on their building permit and that no nonconforming rights exist.

RELEVANT HISTORY

The applicants were issued a building permit for their single family home in an R1 zone at 4562 North 475 East on August 7, 2008 (Attachment 1). A Notice of Violation was issued August 3, 2009 for (1) renting without a Rental Dwelling License due to the property being owned by an LLC, and for (2) nonpermitted lot coverage of concrete stemming from a parking pad in the front yard setback.(Attachment 2).

On August 17, 2009, Mr. Brotherson brought in a new deed showing a change in home ownership to Jeff and Michelle Brotherson, voiding the rental license violation. He also filed an application for an Administrative Appeal for the concrete lot coverage, citing that the Code was "applied erroneously". The application was mistakenly received on a Board of Adjustment appeal form (Attachment 3). The applicants subsequently filed an application for appeal to the Board of Adjustment, claiming a nonconforming right to the front yard parking pad (Attachment 4).

FINDINGS OF FACT

1. On July 28, 2009, two inoperable vehicles were parked on a parking pad located in the front yard setback which was not part of the driveway leading to covered parking.
2. It was also noted that the home required a rental license, which has since been resolved by a new deed.
3. A Notice of Violation was issued on August 3, 2009.
4. On August 17th, the applicants appealed the Notice of Violation and an Administrative Hearing was scheduled for September 9th. On September 9th, the applicants changed their appeal to the Board of Adjustment, claiming nonconforming rights to the front yard parking pad.
5. Upon further review staff noted that the amount of concrete violates several Codes, all of which the Brothersons are appealing. The property is in violation of the following codes: (Attachment 5 - photos)

Code	Date Enacted or Amended	Description of Code	Description of violation
14.37.080 (c)	1996	No off-street parking in the front yard, unless leading to covered parking.	Parking pad on south of property does not lead to covered parking.
14.10.120 (2)	2001	At least 50% of the area of any lot shall be maintained in landscaping.	Available landscaping area is 38%.
14.10.120	2006	Concrete shall not cover more than 25% of a front yard.	Concrete covers 59% of the front yard.
14.10.120	2001	Concrete shall not cover any portion on at least one side yard.	Both side yards have concrete.
14.10.130	2001	No parking spaces shall be located within 30 feet of the front yard setback.	South parking pad is within 30 of the front yard setback.
14.10.130	2001	The total area of all parking spaces on a lot (including a garage, carport, and uncovered parking slabs) and associated access lanes shall not cover more than 30%.	The total area of all parking is 31%.
15.20.120 (2)	1999	Parkways 3 feet or wider shall be landscaped with turf grass.	Two concrete pads have been placed in the parkstrip.
14.01.060	1974	Building permits or Certificates of Zoning Compliance, issued on the basis of plans, authorizes only the construction set forth in the approved plans and no other use. Use, arrangement, or construction at variance with that authorized in said plans shall be deemed a violation of this Title.	Approved plans included approx. 1150 sq ft of exterior concrete. There has been placed approx. 3400 sq ft of concrete, amounting to an increase of 296% over the approved plans.

6. Code 14.10.120 was amended in 2006 with requirements changing from a maximum of 50% front yard concrete coverage to 25% maximum coverage (Attachment 6).
7. The changed ordinance has been posted on the City’s web site and was posted in the Daily Herald at the time of its passing (Amendment 7).
8. When the actual concrete was placed is still in question. The Brotherson’s account of when the pad was poured varies from “early 2008”, “fall of 2008”, to “several months prior to the 25% rule appearing in the 2009 edition” (available in August 2009). City inspectors do not recall when the pad was placed.
9. The property in 2006 was a vacant building lot with no structures or concrete on it at the time the ordinance 14.10.120 was amended to 25%.

Analysis:

In order to claim a nonconforming use, the burden of proof rests with the applicant; i.e.:
 14.36 - Nonconforming Uses, Structures, and Lots

14.36.040. Nonconforming Uses.

*(1) Continuation. A nonconforming use which was **legally existing** when such use became prohibited may be continued as provided in this section and by any other applicable provision of this Chapter, so long as it remains otherwise lawful, subject to applicable standards and limitations in this Chapter.*

The applicants claims are summarized here:

- (A) That the 2008 Code book did not have the amended 14.10.120 requirement of 25% front yard coverage.
- (B) The south parking pad is for their wheel chaired, handicapped, elderly, and infirm members of family.
- (C) The City building inspectors conducted final inspection and gave final approval.
- (D) The south pad is required as per the Water Drainage Plan and provides a impervious cap for the french drain.
- (E) No complaint was received to initiate zoning enforcement, thus discrimination has occurred.

The City's response to applicants claims:

- (A) The 2008 Code book did have the old 50% standard. The code, however, becomes law once passed by the Council and signed by the Mayor. The ordinance is then posted in the newspaper, internet, and City Recorder's office. This ordinance became law in October 2006 (Attachment 9).
- (B) The Brothersons obtained an application for "Reasonable Accommodation" from Tara Riddle, the City's Ombudsman. As of November 5, 2009, they have not submitted the required documentation for review.
- (C) City final inspections do not imply that items missed become legal uses. Title 14.01.050 states that *any such permit or license, if issued in conflict with the provisions of this Title, shall be null and void.* Also, in the 2006 International Building Code, it states *approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid.*
- (D) The Water Drainage Plan does not require an "impervious cap". The approved plan does not show the rock retaining walls in the front or the basement walk-out on the south. Thus the approved drainage plan does not reflect what has been put into place on the property.
- (E) No complaint is required for the city to initiate enforcement. It is City policy that Zoning Enforcement action may be taken when violations of the City's zoning ordinances occur.

APPLICABLE ZONING CODES

14.37.080.9(c) General Provisions.- *No off-street parking shall be permitted in a required front yard or street side yard, as otherwise stipulated in the respective zones, with the following exceptions: (1) Tandem parking spaces for a one-family dwelling, a one-family dwelling with an accessory apartment, and a two-family dwelling may be located on a driveway in a required front yard, provided: (A) such driveway leads to the minimum number of required covered off-street parking spaces which are located behind any required front setback, and (B) both parking spaces in each tandem parking area are designated to serve the same dwelling unit. (1996 current, 1959 front yard)*

14.10.120. Permissible Lot Coverage. *(1) In an R1 zone, all buildings, including accessory buildings and structures, shall not cover more than forty (40) percent of the area of the lot or parcel of land upon which they are placed. (2) At least fifty (50) percent of the area of any lot shall be maintained in landscaping as defined in Section 15.20.040, Provo City Code. On any lot or parcel, concrete or asphaltic cement shall not cover more than twenty-five (25) percent of a front yard, twenty five (25) percent of a rear yard, and no portion of at least one (1) side yard. The other side yard may be used for a paved driveway. (Am 2001-49, Am 2006-46)*

14.10.130. Parking, Loading, and Access. *(1) Each lot in the R1 zone shall have, on the same lot, off-street parking sufficient to comply with Chapter 14.37, Provo City Code. (2) Said spaces shall be paved with asphaltic cement or concrete and shall be provided with a paved access from a public street. (3) Except for tandem parking on a driveway as provided in Subsection 14.37.080(1)(c)(I), Provo City Code, no parking spaces shall be provided within thirty (30) feet of a front property line. (4) The total area of all parking spaces on a lot (including a garage, carport, and uncovered parking slabs) and associated access lanes shall cover not more than thirty (30) percent of the lot. (Am 2001-49)*

15.20.120. Parkways. *(1) All parkways in new developments shall be landscaped in conformance with the provisions of this Section. (2) Parkways three (3) feet or more in width shall be landscaped with turf grass. No rocks, gravel, bark, asphalt, thorn bearing plant species, ground cover or shrubs shall be permitted in a parkway. Parkways less than three (3) feet in width may be landscaped with impervious materials including brick pavers, concrete pavers or concrete.*

Asphalt shall not be permitted.

14.01.100. Construction and Use to Conform to Plans. *Building permits or Certificates of Zoning Compliance, issued on the basis of plans and specifications approved by the Building Inspector, authorizes only the use, arrangement, and construction set forth in the approved plans and applications and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized in said plans and specifications shall be deemed a violation of this Title and shall be punishable as provided in Chapter 14.42, Provo City Code.*

CONCLUSIONS

The building permit and plans that were submitted to the City showed a driveway to the garage on the north side of the home and a walkway from the sidewalk to the front door. The City approved the site plan as submitted. The applicants did not submit a revised site plan but installed additional concrete driveways on the north side of the home and an additional driveway in the front yard on the south portion of the front yard. Staff recommends that the Board deny the appeal and require the applicants to comply with the lot coverage maximum of 25% in the front yard and all other applicable zoning ordinances.

JUDICIAL APPEAL OF BOARD OF ADJUSTMENT ACTION

Chapter 14.05 provides a process for appeal of a determination by the Board of Adjustment (quoted in part):

04.05.050. Judicial Appeal.

- (I) *Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder.*

ATTACHMENTS

1. Zone map, building permit, and site plan.
2. Notice of Violation.
3. August 17th Administrative Hearing appeal.
4. September 14th appeal to the Board of Adjustment.
5. Site plan with concrete and case photos.
6. 14.10.120 signed ordinance.
7. Proof of Publication.