



# Board of Adjustment Variance Staff Report Hearing Date: June 20, 2019

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**ITEM #1** Joel and Sarah Asay request a variance to the building height from 15 feet to 30 feet for the construction of a two story home located at 1510 W 500 N in the Residential Manufactured Home Park (RM) Zone. North Park neighborhood. Aaron Ardmore (801) 852-6404 PLVAR20190181

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<p><b>Applicant:</b> Joel and Sarah Asay</p> <p><b>Staff Coordinator:</b> Aaron Ardmore</p> <p><b>Property Owner:</b> Richard Heilner</p> <p><b>Parcel ID#:</b> 55:136:0004</p> <p><b>Acreage:</b> 0.54</p> <p><b>Number of Properties:</b> 1</p> <p><b>Number of Lots:</b> 1</p> <p><b><u>ALTERNATIVE ACTIONS</u></b></p> <p>1. <b>Continue</b> to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is July 18 at 5:00 P.M.</i></p> <p>2. <b>Deny</b> the requested variance. <i>This action would not be consistent with the recommendations of the Staff Report. The Board of Adjustment should <u>state new findings</u>.</i></p>	<p><b>Current Legal Use:</b> The property is currently a vacant residential lot.</p> <p><b>Relevant History:</b> The property was zoned RM in 1994. A mobile home that had existed on the property for several years was removed last year. The property is now for sale, and the applicant is a prospective buyer.</p> <p><b>Neighborhood Issues:</b> Staff has not heard from any neighbors at the time of this report.</p> <p><b>Summary of Key Issues:</b></p> <ul style="list-style-type: none"><li>• The property is a for sale vacant lot in the RM zone.</li><li>• The RM zone is restricted to one-story or fifteen feet in height.</li><li>• The applicant would like to purchase the lot to build a two-story home.</li></ul> <p><b>Staff Recommendation:</b> Staff recommends that the variance for building height from fifteen feet to thirty feet be granted.</p>
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## **OVERVIEW**

Joel and Sarah Asay request a variance on building height in the RM zone, from fifteen feet to thirty feet, for the property at 1510 West 500 North. This property is currently vacant and has been for sale for over six months. The applicants have a two-story home plan that they would like to build on the property. Since the property is in the RM zone, a zone intended for mobile homes, it is limited to a single story, or fifteen feet, on building height. The applicants are asking to vary that requirement due to limitations of the lot and location of the zone.

The applicant states in their reasoning that the 100 foot setback from the river and the sewer lateral through the middle of the property restrict the building footprint, therefore, a two-story home is the best use of the property to provide sufficient living space comparable to homes being built today. Additionally, the subject property is isolated from the housing in the RM zone in that it is a flag lot with independent access to 500 North and it is basically a remnant parcel that lies between the housing in the RM zone and the Provo River.

## **FINDINGS OF FACT**

1. The subject property is zoned Residential Manufactured Home Park (RM).
2. The subject property is a vacant flag lot with independent access to 500 North.
3. The subject property is bisected by a sewer line and its buildable area is reduced due to the 100' setback from the bank of the Provo River.

## **ANALYSIS**

1. Section 14.05.030(9), Variations, paragraph (b) of the Provo Municipal Code states that the Board of Adjustment may grant variances if the following criteria are met: **(responses in bold)**
  - (i) Literal enforcement of this Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Title;

**Literal enforcement of this Title would restrict the property from meeting its' potential, as the buildable area is small compared to the majority of single-family lots.**

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

**The 100-foot setback from the river and the sewer line running through the property create special circumstances that do not general apply to other buildable lots in the area.**

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

**The majority of the other properties that access off of 500 North enjoy the ability to build up to 35 feet in height.**

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

**The variance would not substantially affect the General Plan, and would serve to be a benefit to the public interest as an unkempt and vacant property adjacent to a City Park would be cleaned and developed.**

- (v) The spirit of this Title is observed and substantial justice done.

**Staff believes that the spirit of the City Code would still be observed and that justice would be done.**

### **APPLICABLE ZONING CODES**

#### 14.15.130. Building Height.

No lot or parcel of land in the RM zone shall have a building or structure which exceeds a height of one (1) story with a maximum of fifteen (15) feet with the exception of club houses which may be two (2) stories with a maximum height of thirty-five (35) feet. Chimneys, flagpoles, or similar structures not used for human occupancy are excluded in determining height.

## **CONCLUSIONS**

Staff feels that the applicant has demonstrated sufficient hardship to justify the requested variance. Staff recommends that the variance be approved.

## **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. Justification Statement of Applicants
2. Proposed Site Plan
3. Proposed Elevation

## ATTACHMENT 1 – JUSTIFICATION STATEMENT OF APPLICANTS

(i) Literal enforcement of this Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Title;

This lot is very limited on what can be built on it. With the 100 ft setback from the river and the 20 ft sewer easement, the buildable area of the lot is too small for a family home. Without the ability to build a home with 2 stories, the lot is not buildable.

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

This property has a 100 ft setback from the river that other properties surrounding do either not comply or are not close enough to the river to need to comply. While we agree that this setback should be respected, this makes this lot almost unbuildable if the square footage of the house is not able to optimized between 2 stories.

The lot also has a sewer lateral crossing across the middle with an accompanying 20 ft setback.

The 100 ft river setback and terrible sewer lateral location and accompanying setbacks make the buildable area much smaller than the buildable areas on the surrounding lots.

The surrounding properties do not have these severe setback and easement requirements to have to work around

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

Other homes in the area are not restricted by the 100 ft setback nor the easement, so they were built or can be replaced without the buildable area restrictions that this lot has to comply with. Many of the neighboring homes on the same street (500 North) are already enjoying the benefit of 2-stories and would not differ much than what is being petitioned for. Although there are other neighboring houses in the RM zone that are 1-story, they are on a different street (570 North). If you were to stand on the lot, it would become obvious that the proposed 2-story house would naturally fit with houses on 500 North, especially when the access to the subject lot is accessible only from 500 North and the other manufactured homes on the other street are not quite visible from that lot.

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

The surrounding neighborhood is single family homes. The property bordering this property to the south and sits directly on the north side of 500 N is a single family home in the RC zone.

If granted the variance, we can build a single family home that will enhance the neighborhood.

Building two stories will not block the neighbors' view of the river or the mountain.

As the front of the house will face the parking lot for the park, we believe that a brand new house will enhance the neighborhood feel and the beauty of the area.

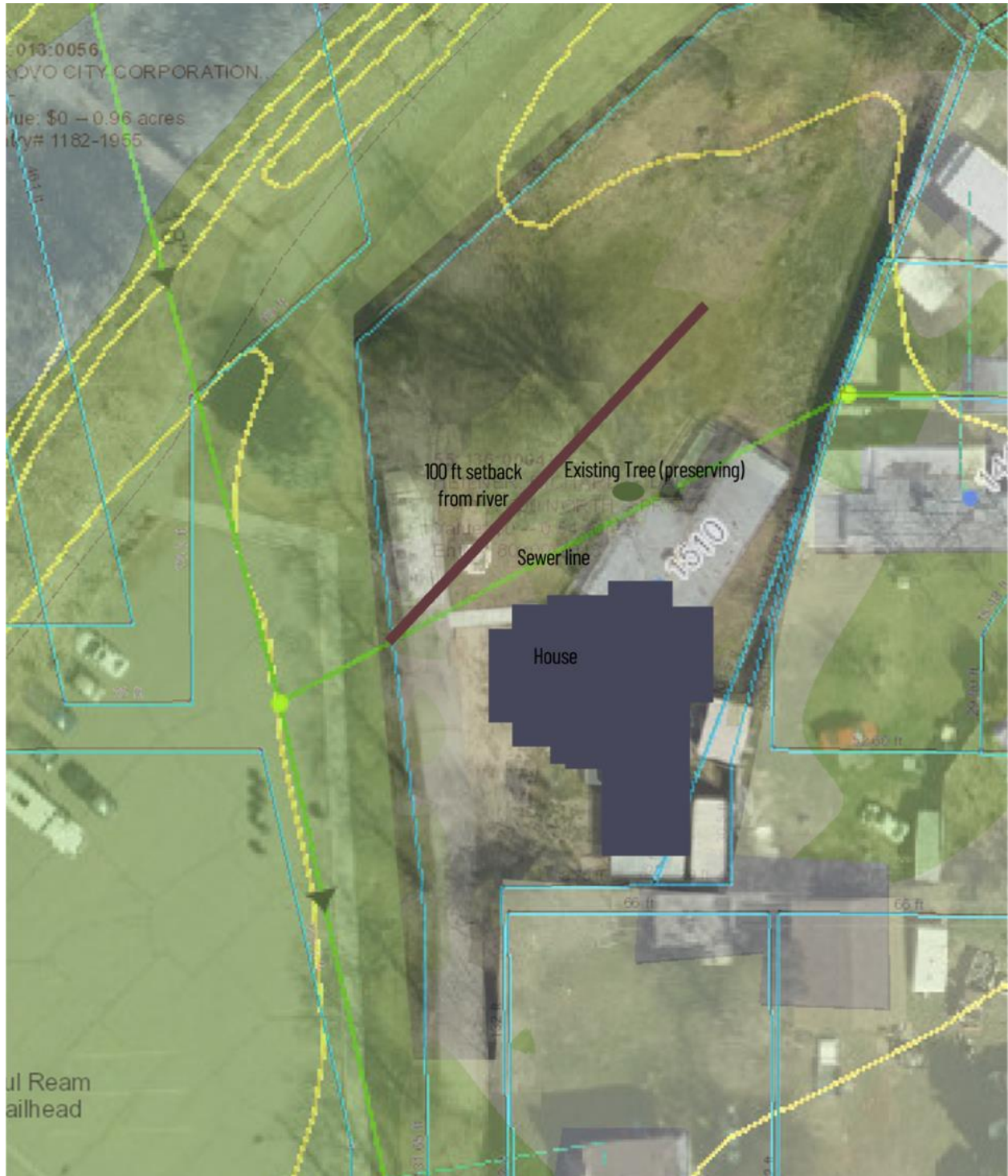
(v) The spirit of this Title is observed and substantial justice done.

The spirit of the zoning in this area is to preserve the nature of the building of 1-story single family homes. This lot does not share any roads with any homes of this zone. It shares its east border with the RM zone, but it is accessed from 500 N next to RC zoned homes (many of which are 2 stories).

This lot has a history of various interested buyers exploring the options but have failed for several reasons including the tight buildable area and the empty lot has remained a blight to Paul Ream Park visitors for the past several years. This variance request would push through the obstacles to help make this property a success.

All of the requirements of this zone can be met and we ask only for a variance on the height restriction so that a 2-story single family home can be built on the lot.

ATTACHMENT 2 – PROPOSED SITE PLAN





ATTACHMENT 3 – PROPOSED ELEVATION



FRONT Elevation