

APPEALS HEARING OFFICER DECISION

HEARING DATE: April 11, 2019
PROJECT: AHO-19-001
LOCATION: 2085 E. La Cresta Dr. (Parcel #22-22-304-009)
REQUEST: Expansion of a non-conforming structure
APPLICANT: Nicole Omer

APPEALS HEARING OFFICER AUTHORITY

The undersigned Appeals Hearing Officer is authorized to hear and decide this matter in accordance with the provisions of Section 19.92.010(B)(4) of the Cottonwood Heights Code of Ordinances (the "Code"), which provides that the appeals hearing officer has the power and duty to hear and decide applications to amend, modify, and expand nonconforming uses pursuant to Section 19.88.070 of the Code.

APPLICANT'S PROPOSAL

The applicant's proposal is to expand a non-conforming structure by constructing a new garage and addition to the existing home at 2085 E. La Cresta Dr. The request is to construct the addition and garage along the existing non-conforming rear yard setback on the property. Chapters 19.88 & 19.92 of the Cottonwood Heights Zoning Ordinance allows for additions to non-conforming structures upon approval from the city's Appeals Hearing Officer.

ANALYSIS AND FINDINGS

The subject property is in the R-1-8 (single-family residential) zone. Required setbacks in the R-1-8 zone are as follows:

Setbacks	Existing	Proposed	Required
Front (Bo Mar Dr.)	18'	(N/A)	25'
Street Side (La Cresta Dr.)	29'	20'	20'
Interior Side	13' 5"	(N/A)	8'
Rear	9' 4"	9' 4"	20'

The existing home was legally constructed in 1956. The home has a rear yard setback of 9' 4" and a front yard setback of approximately 18', both of which do not comply with current city requirements. The existing home is considered a non-conforming structure which "legally existed before its current land use designation and, because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations,

excluding those regulations which govern the use of the land” (Section 19.04.1800 – Definitions, “Noncomplying Structure”).

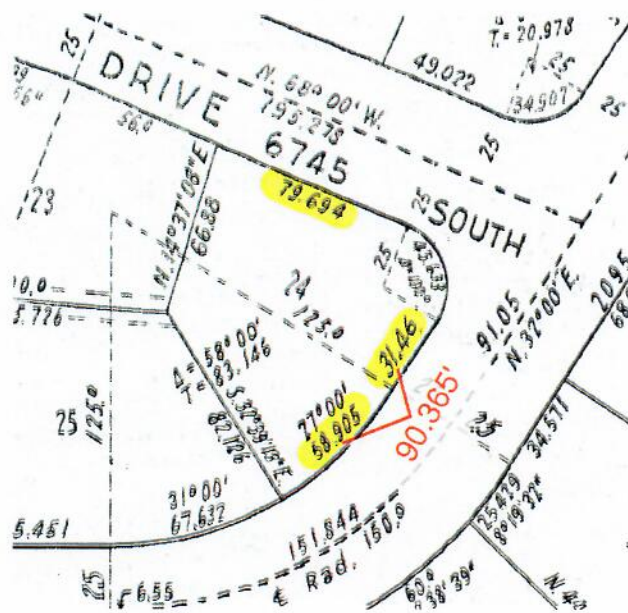
Based on a visual analysis of nearby properties, it appears that most corner lot homes in the La Cresta Park subdivision have a non-conforming front, side, or rear yard. The applicant’s proposal would not increase the degree of non-conformity of any existing setbacks but would seek to continue the eight-foot side setbacks throughout a rear-yard addition to the home.

Corner Lot Standards

Section 19.04.1540 of the zoning ordinance designates the narrower frontage as the front lot line:

19.04.1540 Lot line, front.

The narrower side of the lot abutting a street. Where two lot lines abutting streets are of equal length, the owner shall have a choice in designating which shall be the lot frontage.



Because the north property line (Bo Mar Dr.) is narrower than the east property line (La Cresta Dr.), the north yard would be required to meet the front yard setback standards under current code. The existing structure is non-conforming as to front yard setback standards, but no expansion is requested to the north as part of this application. The plans that were submitted for this hearing show a new pergola to the north of the existing home, but this is not part of the expansion request.

The requested expansion to the structure will retain the existing non-conforming rear yard setback along the southwest property line and will meet the 20’ required setback for side yards abutting a street. Changes to the driveway will be required to meet all current applicable city standards.

The undersigned hearing officer finds that the proposed addition introduces no significant impact, given that the existing building is already nonconforming, and that many other nonconforming

buildings exist in the vicinity. The proposed addition will not increase the degree of nonconformity in the rear yard of the property.

Section 19.88.070 governs proposals to add, enlarge, move, or reconstruction noncomplying buildings:

19.88.070 Additions, enlargements, moving and reconstruction of building.

B. A building occupied by a nonconforming use or a building noncomplying as to height, area, or yard regulations may be added to or enlarged or moved to a new location on the lot or reconstructed at a new location on the lot upon a permit authorized by the Appeals Hearing Officer provided that the Appeals Hearing Officer, after the hearing, shall find:

- *The addition to, enlargement of, moving of, or reconstruction of the noncomplying building at a new location on the lot will be in harmony with one or more of the purposes stated in section 19.02.020, and shall be in keeping with the intent of this title;*
- *That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or noncomplying building.*

Section 19.02.020, referred to in the previous section, is the purpose statement of the zoning ordinance:

19.02.020 Purpose of provisions.

This title is designed and enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, and securing economy in governmental expenditures, fostering the city's industries, and the protection of both urban and non-urban development.

The undersigned hearing officer finds that permitting the proposed expansion will not violate or negatively affect the provisions of Section 19.02.020. A building permit will be required prior to construction to ensure safe building standards are followed, and approval of the expansion promotes reinvestment in an older home in the city. Further, staff finds that the proposed change does not impose any unreasonable burden on adjacent property because nearby properties are similarly non-conforming, and the existing setback is not proposed to be reduced any further.

CONCLUSION AND DECISION

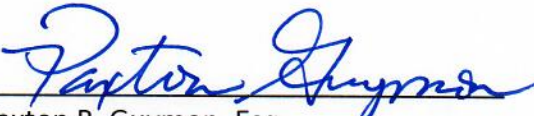
Subject to the conditions set forth below, the undersigned hearing officer approves the applicant's request for an expansion of a non-conforming structure with the following findings:

1. The proposal will not negatively affect the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city because the use is the same as currently exists;
2. The proposal will not create any additional congestion in the streets or roads;
3. The proposal will not create a fire safety issue;
4. The proposal will not affect air flow or block natural light from adjoining properties by conforming with all height regulations;
5. The proposal will have no apparent negative effect on the city's tax base;
6. The proposal will not place any type of unreasonable burden upon neighboring properties;
7. The proposal is in keeping with the intent of the Cottonwood Heights Zoning Ordinance.

The applicant shall comply with the following conditions of approval:

1. A building permit must be obtained prior to construction to ensure safe buildings standards are followed.
2. Other (if any): n/a

DATED this 11th day of April, 2019


Paxton R. Guymon, Esq.
Appeals Hearing Officer
City of Cottonwood Heights, Utah