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Staff Memorandum

From: Blaine Gehring, AICP, Planner
To: Millcreek Community Council
Meeting Date: January 7, 2020
Meeting Date: East Millcreek Community Council
January 2, 2020

RE: Have a Use Violation Declared Legal Through Special Exception as per Chapter 19.88.140 of the Millcreek Code.

Applicant: Lorri Lake

File No.: EX-19-003

SYNOPSIS AND SCOPE OF DECISION

Lorri Lake owns the property located at 1438 E. Murphy's Lane that is currently zoned R-1-8 and consists of approximately .54 acres. The subject property currently has a structure that operates as a second dwelling above a detached garage in a zone that currently only allows one, single-family dwelling per lot. The detached dwelling was built in 1994 according to the Salt Lake County Assessor's records.

Sometime in 1995 the properties east of this area on Highland Drive were being proposed for a commercial rezone. The residential neighbors did not want that zoning spilling over on to Murphy's Lane, so they petitioned to have their properties zoned R-1-8 from R-2-6.5. The owners were to have those properties containing second units declared legal by the county at that time. Ms. Lake purchased her property in 1996 not aware that it apparently had not been declared legal and a notice of non-compliance was placed on the property. Ms. Lake is seeking the exception to have the detached dwelling unit declared legal by the Planning Commission through special exception as per Chapter 19.88.140 of the Millcreek Code.

Currently the subject property functions as a duplex with the second unit above the detached garage. The unit has adequate off-street parking. Due to the current zoning of R-1-8, the use as a duplex is not a permitted use. The applicant is proposing, through application, as per Chapter 19.88.140 of the Millcreek Code to have the use of a duplex

declared legal through special exception.

“Whenever land or a structure is used in violation of this Chapter, the owner may file an application with the planning commission to have the use declared legal through special exception. The planning commission may approve such an application only when the evidence established all of the following:

1. The use exists on the property at the time of the application and has been in continuous violation of the zoning ordinance for a period exceeding ten years;
2. No complaint has been made to the development services division concerning the violation for a period exceeding ten consecutive years during which the violation existed;
3. Continuation of the use will not have a detrimental effect on the health, safety or welfare of persons or property in the vicinity.

The planning commission may consider as evidence:

1. Documents that are part of the public record, such as tax appraisals, utility records, aerial photographs, building permits, etc.
2. Documentation from third parties, such as affidavits, photographs, etc.
3. Documentation from current or past property owners, such as tax records, rental/lease agreements, appraisals records, etc. In approving an application hereunder, the planning commission may set any conditions it deems necessary for protection of adjacent properties or the public welfare including provisions limiting the period of time the use may continue. This section shall in no way be interpreted to permit the continuation of any violation which exists on the effective date of the ordinance codified in this section. Any person shall have the right to appeal to the land use hearing officer a decision rendered by the planning commission pursuant to this section.”

SITE & VICINITY DESCRIPTION

Figure 1: Street View

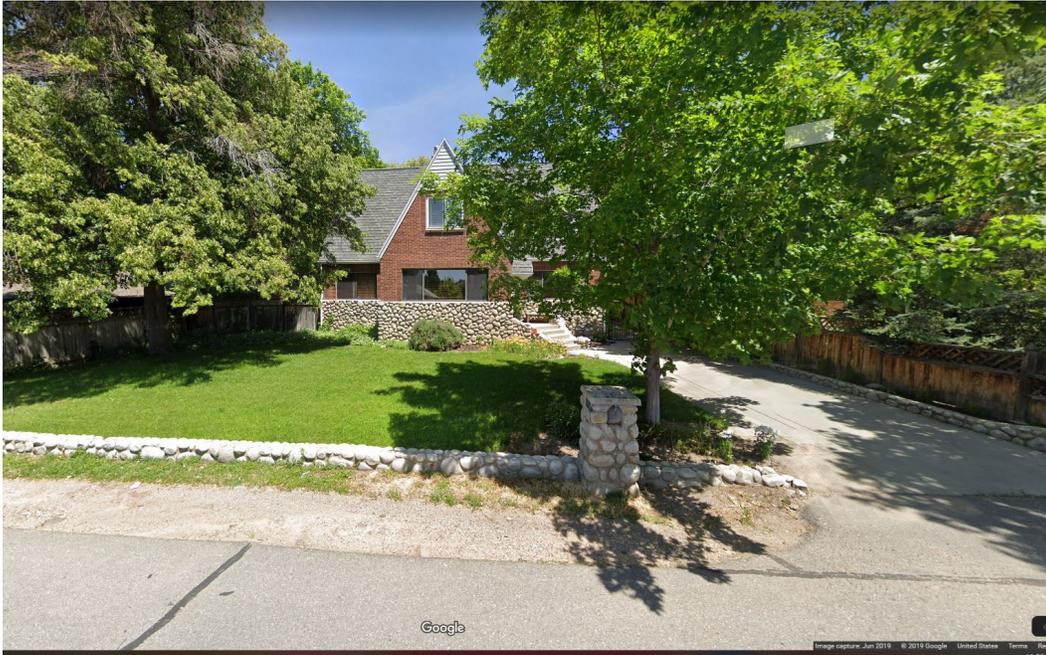


Figure 2: Zoning map

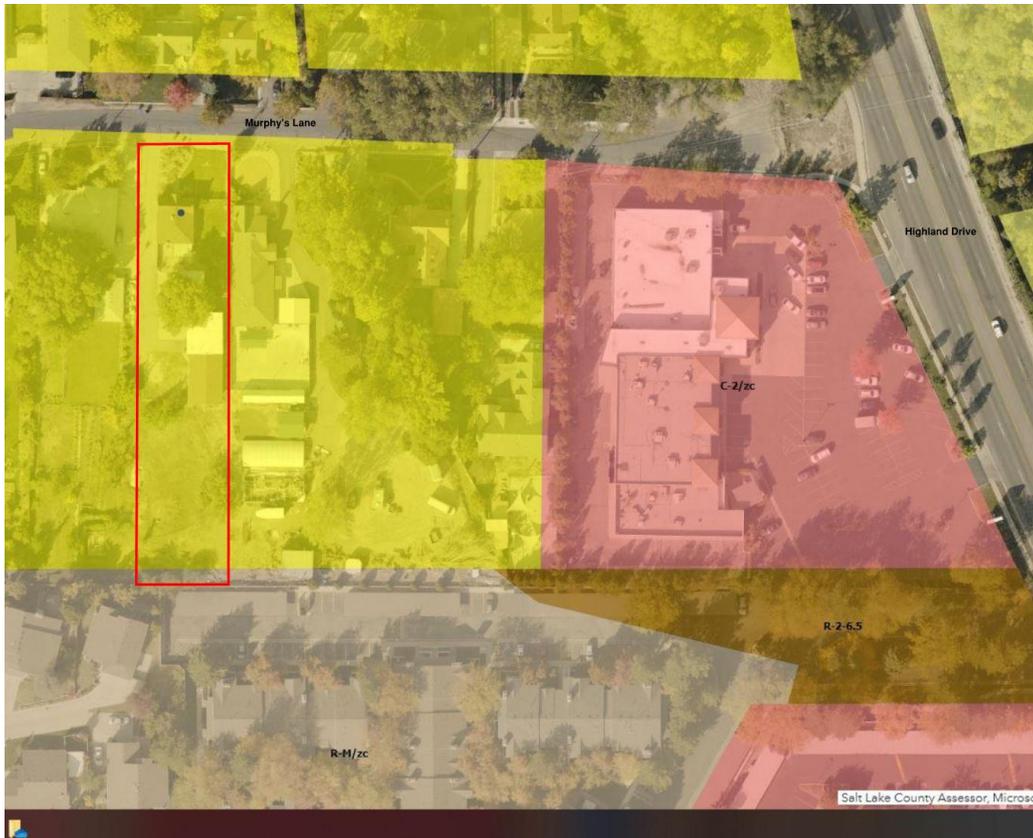


Figure 3: Aerial map



PROJECT INFORMATION

The subject parcel is located at 1438 E. Murphy's Lane. The property lies in the midst of R-1-8 Zoning and consists of single -family homes and a few duplexes. The subject parcel has existed with the second unit since 1994 based on the Salt Lake County Assessor's site.

According to Chapter 19.88.140 of the Millcreek Code, the applicant must establish the following evidence in order to be eligible for approval.

1) The use exists on the property at the time of the application and has been in continuous violation of the zoning ordinance for a period exceeding ten years; Assessor's record shows the second unit was built in 1994.

2) No complaint has been made to the development services division concerning the violation for a period exceeding ten consecutive years during which the violation existed; No record of any complaints has been found for the subject parcel.

3) Continuation of the use will not have a detrimental effect on the health, safety or welfare of persons or property in the vicinity. The house has the appearance of a single-family home with the unit above the garage in the rear of the property. There is sufficient parking to not cause any detrimental effects on the neighboring properties.

Community Council Action

As per Chapter 2.56.100 of the Millcreek City Code, staff is seeking East Millcreek Community Council and Millcreek Community Council input on the proposed special exception. Specifically, does it meet the necessary criteria for the Planning Commission to grant the special exception.