

Property Identification

The subject parcel is a .17-acre property located at 1782 South 1600 East (the “Subject Property”) owned by Blaine Properties LLC (the “Applicant”). The Property is what would commonly be referred to as a “flag lot” in that its frontage (on 1600 east) is long and narrow with a more substantial rectangular portion at its southeast. The Property is recognized by the Salt Lake County Recorder’s Office as Parcel 16163280240000.

While identified as a distinct parcel in County records, Salt Lake City does not recognize the Property as such. The Subject Property is adjacent to another property owned by the Applicant (the “Blaine Property”). The Blaine Property is a .21-acre lot with a duplex. For purposes of land-use designation Salt Lake City considers the Subject Property and the Blaine Property to be one cohesive lot. Both Properties are depicted in *Figure 1*.



Figure 1: Salt Lake County Parcel Map.

The Subject Property Highlighted in Yellow. The Blaine Property Highlighted in Red.

Whether using the City’s designation as one unitary lot or the county’s designation as two distinct lots, it is clear the Subject Property is uniquely configured and irregular in the neighborhood.

The Master Plan Amendment (“MPA”) and Zoning Map Amendment (“ZMA”) applications are expressly for the parameters of the Subject Property and do not include the Blaine Property.

Existing Uses and Conditions

The Subject Property currently has three predominant uses: **1)** It houses a 750 sqft shade structure and roughly half of a 1300 sqft accessory garage (the remaining garage footprint is located within the Blaine Property lot¹), **2)** It is used by residents of the Blaine Property to access the accessory garage, and **3)** it is used as a vehicular access to another adjacent lot's accessory garage² (1580 E Blaine Avenue).

Harkening to the “Flag Lot” descriptor, the “pole” is asphalted for vehicular passage and the “flag” contains the shade structure and is otherwise vacant and sodded.

Purpose for the Amendment

The MPA and ZMA are being proposed to provide a higher and better use for the Subject Property than is currently existing or could feasibly be arranged under the current R-1-7000 designation.

The Subject Property is currently used for vehicular storage, accessing parking stalls, and quite frankly not much else. The vacant portion of the lot is unused by the owner or its tenants and its value as “open space” is negligible, in that it is surrounded by private properties and built features.

The location, size, and shape of the Subject Property lends itself well for the construction of a modest single-family home. A small home on the lot would provide the applicant an opportunity to transform this unused space to one that shelters and houses one new family unit in a beautiful existing neighborhood.

Though the applicant's proposal is modest and reasonable on a property of this size and location, the execution of such a goal has been set back by various impediments in the city process and barriers created by zoning and master plan regulations.

History of Impediments and Current Zoning Barriers

The Subject Property is certainly unique and unprecedented within the area. Its current configuration is the result of a long history starting in 1919 when the original Progressive Heights subdivision was subdivided. In 1951 Progressive Heights was further subdivided which created three unique lots now known as 1572, 1580, and 1586 Blaine Avenue. Following the latest subdivision, the Subject Lot was issued a distinct Parcel Number in the same year.

From 1951-1957, the Subject Lot was left vacant. On May 22nd, 1957, the Subject Lot was forfeited to Salt Lake County pursuant to a tax sale for failure to pay property taxes.

In 1977, Salt Lake County sold the Subject Property under its separate Parcel #1616328024 to the then-owners of 1572 Blaine Avenue, namely, David T. and Dorothy L. Cates. In 1985 the Cates' applied to build a garage on the Blaine Property to be used for the Duplex on the same property. The garage was ultimately built straddling the common property line of the Subject Property and the Blaine Property. There is no evidence that the Cates intended to merge the properties together by this encroachment.

¹ The overlapping nature of the accessory garage structure's footprint has been identified as a reason the City considers the Subject Property and the Blaine Property to be “merged” as a unitary lot.

² There is no formal easement on record for this access. However, the Applicant does not contest this access, nor would a re-zone or subsequent development hinder this access. In the event a plat amendment is recorded the applicant would be in favor of memorializing the access as a recorded easement.

In 1999, the then-owner Mark Huber applied for and received a permit to build a small single-family home on the Subject Lot. Within a week of being issued the building permit, neighbors upset about a new home being constructed adjacent to them, complained to the City, and requested a stop work order. The city subsequently issued the stop work order to review if the Subject Property was legally buildable. The Zoning Administrator reviewed the Subject Property specifications and zoning ordinances and determined that the Subject Property did not legally exist and first introduced the notion that the Subject Property and the Blaine Property were one lot.

Huber then appealed the Zoning Administrator's decision to the Board of Adjustments (the "BOA"). In the July 19th, 1999 hearing, a contingent of neighbors who were opposed to the building of a home on the Subject Property were represented by an attorney. The attorney introduced the idea of a "lot merger" having occurred with the previous construction of the detached garage. After other public comment from neighbors opposed to any development, the BOA unanimously voted to uphold the administrative decision, not to recognize the Subject Property as an independent lot, and to restrict any development of a new single-family dwelling.

To memorialize the BOA's decision an Abstract of Findings and Order was recorded over the property to notice that the Subject Property "is not an independent lot and may not be developed with a new single-family dwelling". This ruling by the BOA has since become a barrier to reimagining the Subject Property's land-use and highest and best use.

After the ruling Huber ceased his efforts to develop the Subject Property and did not submit an appeal to the BOA's decision. Eventually, on February 25th, 2014 both the Blaine Property and the Subject Property were purchased by the applicant.

Like Huber, the applicant recognized the Subject Property as an ideal opportunity for the development of a humble single-family home structure. The applicant reached out to Salt Lake City Planning Department to explore the possibility of seeking a land-use redesignation. It was at this point where the applicant became aware of the history of the site and the BOA decision of 1999. In an effort to unwind the decision the applicant requested an Administrative Interpretation to determine whether the Subject Property is a legal complying parcel and a buildable lot.

On September 9th, 2020 staff determined that they were unable to evaluate whether the BOA made a legal or correct decision. Given that the BOA decision of 1999 was never appealed by Huber, staff found that the decision remains in effect and that the property could not be developed independently.

On September 18th, 2020 the applicant submitted an Appeal of Decision before Planning and Zoning arguing that the BOA decision 1) should be available for review and appeal and 2) that the BOA decision was legally incorrect. This appeal went before the Salt Lake City Land Use Appeals Hearing Officer who on December 22nd, 2020 issued his ruling to uphold the decision of the September 9th, 2020 Administrative interpretation.

In his ruling the Hearing Officer was sympathetic to the first issue argued by the applicant, namely, that the 1999 BOA decision could be challenged and plausibly overturned. The officer also questioned his authority to overturn a decision by a BOA (that no longer exists).

With the latest land-use decision rendered the applicant reached out to city planning staff to see what processes exist to revisit and petition the "non-developable" status of the Subject Property. Two options

were given 1) Appeal the decision to the Third District Court, or 2) Submit a MPA and ZMA to rezone the subject property.

The applicant has elected to pursue option two with this application for MPA and ZMA. If this petition is granted the applicant will be required to submit a Planned Development (“PD”) and Preliminary Subdivision application before any development of the Subject Property. The applicant understands that the PD application could be run concurrently with the MPA and ZMA, however, due to monetary constraints, the applicant is electing to only petition the MPA and ZMA at this time.

Description of the Proposed Use of the Property

The property is tucked inside a typical single-family and two-family neighborhood. While lots in the neighborhood more or less conform to Low Density Residential R-1-7 zone characteristics there is a variety of housing types and massing in the area. The property is best suited for a small-scale single-family residence.

While no design decisions have been made the property is of ample size to provide space for a small footprint custom or modular home structure.

Reasons why the Present Zoning is not Appropriate for the Area

The applicant does not dispute that the R-1-7 zone is appropriate for the area at large. For the vast majority of the neighborhood blocks the dimensional standards have efficiently distributed properties with a proper balance of living spaces and open spaces. The R-1-7 has proven to be a value to the community as a rule, but it is desperately lacking in usability for exceptions.

The Progress Heights Second Addition subdivision is more than 70 years old, and its current lot configuration has changed immensely since its initial subdivision. While the plat has never been formally amended, lots have been combined and a midblock alleys have been vacated in what surprisingly has resulted in a fairly typical neighborhood residential pattern.

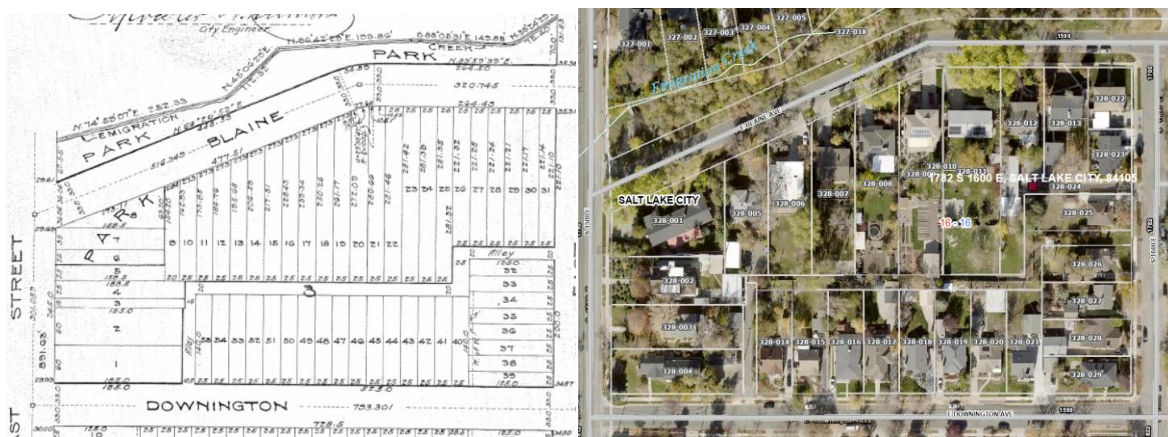


Figure 2: Portion of Progress Heights Second Addition Plat contrasted with current site condition.

The only exception to a typical lot in the plat is the Subject Lot. Its peculiar historical circumstances have left this as the only “flag lot” and only “un-developable” building lot in the entire Progress Heights Second Addition Plat.

Exceptions like this lot can be found in various historical neighborhoods throughout the city where development occurred before processes were more formalized and zoning as stringent. Where these unique parcels are of adequate size and dimension, they should not be blocked perpetually from development, but should rather be granted thoughtful consideration to see how they can be developed to their highest and best use while maintaining general neighborhood character.

Thankfully the applicant has identified a city zoning designation that seems to address this exact exceptional situation. The SR-3 special pattern residential provides for lot, bulk and use regulations, including a variety of housing types, in scale with the character of development located within the interior portions of city blocks. This zone has been used liberally in the city to provide land-use to uniquely located properties where use of the surrounding zoning restrictions would render a site undevelopable.



Figure 3: SR-3 Interior Block Examples Shown in Yellow

The SR-3 is a designation that recognizes that unique properties should be given unique considerations and that “spot zoning” is not a pejorative but rather a tool for land-use efficiency. SR-3 is definitionally a different zone than its surrounding properties for the purpose of dealing with distinctive site location.

Because the property is located midblock in a flagging composition it is petitioned that the lot be reclassified. The request is to amend the Future Land Use Map from Low Density Residential to Medium Density Residential. Along with this, the requested zone change is from R-1-7000 to that of the SR-3 zone.

Consistency with City Objectives

Salt Lake City has made significant commitments to providing a broad array of responses to the housing shortage crisis. City master plans such as *Plan Salt Lake* and *Growing SLC: A Five Year Plan* have clearly established objectives to increase housing where it makes sense and can be of minimal impact to the community.

Plan Salt Lake specifically supports, “Promot(ing) infill and redevelopment of underutilized land” (PSL pg.19), “Increas(ing) the number of medium density housing types and options” and “Enabl(ing) moderate density increases within existing neighborhoods where appropriate” (PSL pg. 21).

By designating the property SR-3, a medium density zone, a property that has been restricted for development can be made viable to build a modest single-family home.

Growing SLC seems to be speaking directly to the subject property when it reads “Apart from traditional infill ordinances, responding to the unusual age, form, and shape of housing stock should be addressed and leveraged to add incremental density...” (GSL pg. 19) *Growing SLC* specifically addresses small courtyard cottages and bungalows as “Missing Middle Housing” and prioritizes “finding a place for these (missing middle housing) types throughout the city...”.

This petition is in line with *Growing SLC* in “finding a place” for missing middle housing. Small infill opportunities such as that presented by the Subject Property should be considered individually to see if they can responsibly include more housing or development otherwise. The city’s current objectives are to eliminate certain barriers that have historically and reflexively been put upon properties that don’t fit neatly into usual neighborhood characteristics. “Exacerbating the housing crisis are local barriers to housing development. These barriers, such as density limitations, prohibitions on different types of housing, and other development regulations, have contributed in part to a general supply deficit and economic segregation” (GSL pg. 11).

Conclusion

Even a cursory review of the site conditions of the Subject Property indicate that it is clearly an appropriate site for a modest single-family residence. It is only in review of the existing zoning designation and the recorded Abstract of Findings that anyone would consider this lot “un-buildable”. To step back and consider this logic is to find that there are no physical and practical constraints but only legal and definitional constraints.

The history of the Abstract of Findings shows that the reasons for the barrier to development were not only supported by but wholly introduced by an attorney representing a NIMBY contingent. The language that is memorialized in the Abstract of Findings has for many years obstructed any commonsense development of this infill lot.

Fortunately, there is a method to restore a commonsense and higher and better use for the property. That is to redesignate the lot to the SR-3 zone. The zone recognizes that unique properties can be dealt with more nuance than would otherwise be available by simple consultation of the surrounding zoning limitations.

The applicant recognizes that one new infill cottage home will have negligible effects on the housing crisis. However, it will also have no real negative effects on the neighborhood that it finds itself in. Rather it will provide one new home that can house one more family and be of an immense value to those who will one day live in it.

The applicant implores the Planning Staff and the Planning Commission to consider this Petition to redesignate the Subject Property from R-1-7000 to SR-3.