



January 2, 2020

***Draper City Planning Division
Administrative Interpretation***

RE: 9-27-140 Lots and Yards Interpretation

This letter is in regards to an administrative interpretation application, application number APPL-903-2019, regarding the meaning of Draper City Municipal Code (DCMC) Section 9-27-140(C) Lots and Yards, Substandard Lots. The subject property is located at 11490 South 700 West. The applicant would like to subdivide the 1 acre property into two lots. This interpretation will address the code sections under consideration and the practical matter of required road dedication, and then address the arguments made by the applicant in their request for interpretation.

Relevant Code Sections and Road Dedication:

The property was rezoned from RA1 to the RA2 on August 6, 2019. The findings for such a request can be found in DCMC Section 9-5-060(E)(1). The minimum required lot size within the RA2 zone is 20,000 square feet per DCMC Section 9-10-090.

9-5-060: ZONING MAP AND TEXT AMENDMENTS:

- E. Approval Standards: A decision to amend the text of this title or the zoning map is a matter committed to the legislative discretion of the city council and is not controlled by any one standard. However, in making an amendment, the city council should consider the following factors:
1. Map Amendments:
 - a. Whether the proposed amendment is consistent with goals, objectives and policies of the city's general plan;
 - b. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;
 - c. Whether the proposed amendment is consistent with the standards of any applicable overlay zone;
 - d. The extent to which the proposed amendment may adversely affect adjacent property; and
 - e. The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.



9-10-090: USE AND DEVELOPMENT STANDARDS TABLES:

TABLE 9-10-3

DEVELOPMENT STANDARDS IN RESIDENTIAL ZONES

Development Standard	Zones							
	RA1	RA2	RH	R3	R4	R5	RM1	RM2
Lot standards ¹ :								
Minimum area, single-family dwelling	40,000 s.f.	20,000 s.f.	40,000 s.f.	13,000 s.f.	10,000 s.f.	8,000 s.f.	6,000 s.f.	4,000 s.f.

The adjacent 700 West right-of-way is currently a two lane road without any shoulder improvements. Roadway dedication is required for any subdivision to take place on the property per DCMC Section 17-5-020(B) and 17-5-030(B).

17-5-020: LOTS:

B. Frontage: All lots or parcels created by the subdivision shall have frontage on a street, improved to standards hereinafter required, equal to at least fifty percent (50%) of the street's minimum required width. This standard shall not apply to commercial development given adequate cross access is provided between any and all affected developments and/or properties. Land designated as public right-of-way shall be separate and distinct from lots adjoining such right-of-way and not be included in the area of such lots.

17-5-030: STREETS:

B. Width: All streets shall conform to the width designated by the City's master traffic and transportation plan.

The required amount of roadway dedication will be 33-feet from the centerline of the roadway per the Master Transportation Plan (MTP). The MTP classifies 700 West as a Minor Collector, with an overall width of 66-feet. Based on the property lines shown in the county parcel maps, the property owner would be required to dedicate 17-feet in order to provide the 33-foot half width, or roughly 2,244 square feet. Based on information provided in a warranty deed, the parcel line goes to the centerline of the roadway. If that is the case, the full 33-foot half width would be required to be dedicated, which would equal roughly 4,356 square feet. These estimated square footages are based on a property width of 132-feet, as shown in the county parcel map.

DCMC Sections 17-5-020(D), 9-27-140(C), and 17-8-010 requires lots and parcels to meet the



minimum lot size standards when subdivided. In addition, DCMC Section 9-27-140(C) lays out standards that have to be met for a lot or parcel to be subdivided if that lot or parcel is made nonconforming to the minimum lot size standard by acquisition for public use in any manner, including dedication, condemnation or purchase.

17-5-020: LOTS:

D. Minimum Area, Dimensions: The minimum area and dimensions of all lots shall conform to the requirements of the zoning ordinance for the district in which the subdivision is located.

9-27-140: LOTS AND YARDS:

C. Substandard Lots: No lot or parcel having less than the minimum width and area required by the zone where it is located may be divided from a larger parcel of land, whether by subdivision or metes and bounds, for the purpose, whether immediate or future, of building or development as a lot except as permitted by this section or by the appeals and variance hearing officer pursuant to the requirements of this title.

1. If a portion of a lot or parcel of land which meets minimum lot area requirements is acquired for public use in any manner, including dedication, condemnation or purchase, and such acquisition reduces the minimum area required, the remainder of such lot or parcel shall nevertheless be considered as having the required minimum lot area if all of the following conditions are met:
 - a. Such lot or parcel contains a rectangular space of at least thirty by forty feet (30 x 40') exclusive of applicable front and side yard requirements, and exclusive of one-half ($\frac{1}{2}$) of the applicable rear yard requirements, and such rectangular space is usable for a principal use or structure.
 - b. The remainder of such lot or parcel of land has an area of at least one-half ($\frac{1}{2}$) of the required lot area of the zone in which it is located.
 - c. The remainder of such lot or parcel of land has access to a public street with a width of not less than twenty feet (20').

17-8-010: MINOR SUBDIVISION:

A "minor subdivision" shall be defined as a subdivision of ten (10) or fewer lots from a parcel which meets the following criteria:

- A. Zoning Designation: The parcel proposed to be subdivided currently has the zoning designation required for the minimum lot size proposed.
- B. Access: All lots have acceptable access to a public street, either by direct frontage or through access by an approved private lane or right-of-way. Private lane and/or public street standards must meet standard City cross sections.
- C. Area Requirements: Each lot within the proposed subdivision must meet the frontage, width and area requirements of the zone district in which it is to be located. Any flag lot(s) within the minor subdivision shall be required to comply with section 9-27-090 of this Code.



D. Not Platted Subdivision: The proposed lots are not part of a platted subdivision.

The Land Development Code, Title 17 of the DCMC also requires subdivided lots to be capable of being built upon, including shape and size and any subdivision to conform to the zoning ordinance, MTP, and the subdivision requirements in order to be approved by the Planning Commission.

17-5-020: LOTS:

A. Developable Lots: All subdivisions should result in the creation of lots which are developable and capable of being built upon. A subdivision shall not create lots which would make improvement impractical due to size, shape, steepness of terrain, location of watercourses, problems of sewerage, driveway grades, or other physical conditions.

17-1-070: COMPLIANCE REQUIRED:

A. It shall be unlawful for any person to subdivide any tract or parcel of land which is located wholly or in part in the City except in compliance with this title. No plat of any subdivision shall be recorded until it has been submitted and approved as herein. A plat shall not be approved if the Planning Commission determines such plat to be in conflict with any provision or portion of the general plan, master traffic and transportation plan, zoning ordinance, this title, or any other State law or City ordinance.

Interpretation Request:

The applicant has proffered an interpretation that the DCMC Section 9-27-140(C)(1) allows a property to be subdivided if the property complied with the minimum lot size standard prior to roadway acquisition through dedication and the acquisition will result in a property that does not conform to the minimum lot size standards.

It is clear the DCMC requires subdivisions to generally comply with the minimum lot size standards within the code. However, through DCMC Section 9-27-140(C)(1), the code provides another avenue to subdivide if the act of roadway acquisition through dedication, condemnation, or purchase, would create lots that no longer conform to the minimum lot size standards. This code section further provides modified minimum lot size standards to ensure that any lots created under the section still comply with DCMC Section 17-5-020 by creating lots that are capable of being built upon.

Per Utah State Code Section 10-9a-306, if a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.

10-9a-306. Land use authority requirements -- Nature of land use decision.

(1) A land use authority shall apply the plain language of land use regulations.



- (2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.
- (3) A land use decision of a land use authority is an administrative act, even if the land use authority is the legislative body.

It is the Zoning Administrators position that DCMC Section 9-27-140(C)(1) does apply to the property located at 11490 South 700 West as the act of dedication could create a substandard lot within the subdivision. In reviewing the City Council meeting minutes for the meeting during which the subject property was rezoned from RA1 to R2, comments were made that indicated the intent of the legislative body was to permit the rezone so that the property could be subdivided into two lots. It is reasonable to interpret DCMC 9-27-140(C)(1) as allowing a plat to simultaneously dedicate a portion of the property for public right-of-way and create a substandard lot. The property is eligible for subdivision into two lots, subject to complying with DCMC, and as modified by DCMC Section 9-27-140(C)(1).

Please be advised that Draper City intends to amend its code to clarify this section of the DCMC, and this interpretation may not be consistent with or applicable to the amended version. Rights to the applicability of this interpretation of the DCMC do not vest until an application has been submitted.

There are a couple options available to you if you believe this interpretation has been made in error. You may seek a text amendment in order to change the code, or you may appeal this determination. An appeal is subject to DCMC Section 9-5-180 and shall be made within 14 days of the decision which is appealed. Applications for both options can be found on the city's website.

If you have further questions, please contact me at jennifer.jastremsky@draper.ut.us or at 801-576-6328.

Respectfully,

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Cc File