

Minutes of the Board of Adjustments meeting of March 18, 2021, held in the Weber County Breakout Room, 2380 Washington Blvd. Floor 1 Ogden UT at 5:00 pm & via Zoom Video Conferencing.

Members Present: Jannette Borklund – Chair
Kevyn Grimes – Vice Chair
Nathan Buttars
Rex Mumford

Members Excused: Bryce Froerer
Neal Barker
Laura Warburton

Staff Present: Rick Grover, Planning Director; Steve Burton, Principle Planner; Scott Perkes, Planner III; Brandan Quinney, Legal Counsel; Marta Borchert, Secretary.

- Pledge of Allegiance
- Roll Call

1. Minutes: Approval of February 11, 2021. Minutes approved as presented.

2. BOA2021-02: Consideration and action on a request for a 20-foot variance to the front yard setback for a future residential dwelling in the FR-3 zone at approximately 6706 E 6675 N, Eden (Powder Mountain West).

Scott Perkes states that this is a request for a 20 ft. variance front yard setback to facilitate the construction of a single-family residence. The project area is .22 acres in the FR-3 zone. It is currently a vacant lot and the developer is looking to develop it with a single-family residence. A 20 ft. variance is being requested to a front yard setback in the FR-3 zone which typically requires 25 ft. setback variance. This would leave a 5 ft. setback to the front property line. The applicant feels that this variance is necessary to build the desired home. The applicant sites various peculiar circumstances that concern the lot's buildable area. They are contained in Exhibit A which is the applicant's narrative. They include the site topography, slope, size, and the unique easement that traverses the rear that encumbers a third of the property. The buildable area has been reduced to a little over 3000 sq. ft. due to some of the various encumbrances. The 20 ft. variance would increase the buildable area to 4250 sq. ft. this is a restricted lot, it is lot 42 R. the slopes are over 25 percent. There are already unique geologic constraints. There is a ski easement running through the backyard that is unique to this property. Looking at this particular subdivision the Depiano's lot has a disproportionate share of the easement. This easement continues to run east and west along the rear of the property. This is the biggest constraint in addition to the topography that is requiring that a variance be considered. Powder Mountain West is a steep area the roads are narrow and they are not currently plowed in the winter. This does not mean that they won't be plowed in the future should the HOA decide to fund that effort. Concerning the building, there is quite a bit of cut and fill that is required. This is partially why they would like to push it forward, to accommodate the garage that sticks out a little bit further than the rest of the home. The majority of the facade is pushed further back. They just have the garage that is coming forward to facilitate the access of the car and the vehicular access.

Kevyn Grimes asks if there are other houses like that in the area. He read that some are close to 5 ft. of it as well in that subdivision. Mr. Perkes states that they did not do a deep dive review of the surrounding houses to see if they had received a variance as well. They don't usually look at that, it is looked at at a site specifically. One thing that they do look at is if there is a unique hardship on the lot that other lots don't have that would prevent the owner from a property right that others in the area can enjoy. In this instance everybody along Aspen Drive does not have as much of an encumbrance along Aspen Dr. this is also compounded by the existing ski trail, because it was built outside of the easement.

Nathan Buttars asks how far from the Aspen Dr. is the house. Mr. Perkes states that it would be probably about 20 ft from the asphalt. Mr. Buttars asks if there are any safety concerns with it being this close to the road. Mr. Perkes states that there could be.

Right now they are not plowing the road in the wintertime. It is only accessible by a snowmobile. In the future when more lots and more people are contributing to the HOA funds. Concerning the 20 ft. separation the liability would be on the owner. There are no sidewalks curb and gutter or anything in the area. There is just vehicular traffic in the summertime.

Chair Borklund asks if the road is gravel. Mr. Perkes states that the drawing indicates that it is gravel, and staff went on a site visit but the road was covered 3ft of snow it was hard to tell.

James Depiano, states they will be 20 to 25 ft. off of the road. With the ski trail, there is some concern about the snow coming down from that back. He adds that they will be cramped, and the garage protrudes out, but they did not have much of an option. Chair Borklund asks if there is a reason that the garage is not square to the road. If it was straightened out the garage would not be poking out quite so far. Mr. Depiano states that it is because of the slope and the way the rest of the neighborhood is facing. It might look odd to the neighbors. Mr. Perkes states that the home is lined to go with the contour lines.

Chair Borklund asks if this will be a summer home or a year-round home. Mr. Depiano states that it will be winter and to be determined.

Chair Borklund states that the 20 ft. variance seems like a lot. She agrees that there is a hardship.

Mr. Buttars states that he does not feel that they can take into account the size of the lot as a hardship, but the easement on one side and the slope are creating special circumstances.

MOTION: Nathan Buttars moves to approve BOA2021-02: Consideration and action on a request for a 20-foot variance to the front yard setback for a future residential dwelling in the FR-3 zone at approximately 6706 E 6675 N, Eden (Powder Mountain West). Based on the findings that there are special circumstances on this lot that include the easement and the slope and that the special circumstances are causing the hardship and that it meets the following criteria a. The applicant's narrative states that literal enforcement of the setbacks substantially reduces the buildable area and makes it unreasonable to build a home similar to other homes in the Powder Mountain/Summit area. b. The applicant states that the special circumstances that exist are the size of the lot, the slope of the lot (see Exhibit B), and the encroachment of Slow Poke Trail along with the rear third of the property. All of which restricts the buildable footprint. c. The applicant's narrative indicates that granting a variance is needed to enjoy a substantial property right that is possessed by other properties in the area. d. The General Plan indicates that this area should be developed as is planned and zoned. The applicant states that variance to the setback will not adversely affect the neighbors and will not crowd the existing Aspen Road. e. The applicant has taken the appropriate measures to submit for a variance request and is looking to preserve the existing ski easement along the rear of their property while still requesting that substantial justice be considered by allowing their home to be built closer to the front property line. Kevyn Grimes seconds.

It is not clear if there was a unanimous vote.

Mr. Quinney states that since it was unclear what the vote was, it would be good to revisit the motion and clarify the roll call of the vote.

Rex Mumford states that he was trying to oppose and there was an issue with the audio. He states that he was waiting for the Chair to call for a motion and discussion. There was no call for discussion. Director Grover states that they can go back to that if they would like.

Chair Borklund states that they can call for a motion to reconsider. Mr. Mumford states that it was his understanding based on the Roberts Rules of Order that after the Motion and second there should have been an opportunity for discussion. Mr. Quinney states that because it was unclear if there was a unanimous vote it is appropriate to make a motion to reconsider.

MOTION: Kevyn Grimes moves to reconsider the first motion on BOA2021-02: Consideration and action on a request for a 20-foot variance to the front yard setback for a future residential dwelling in the FR-3 zone at approximately 6706 E 6675 N, Eden (Powder Mountain West). Rex Mumford second. Motion carries (4-0)

Rex Mumford states that his concern is much like Chair Borklund's concern. This is an 80 percent variance and it seems excessive. While he agrees that there is an easement zone that poses a hardship and some topography issues, he feels that when someone buys a lot that is .23 of an acre those restrictions were on it when they bought it. There are certain things to accept when someone buys a lot. It should not be contingent on getting an 80 percent removal of a variance or a setback. He states that he feels that this easement is taking away some of the options for the neighborhood.

Mr. Perkes read an email which is public comment, it states: Dear Mr. Perkes, Thank you for sending the staff report on the above project to my wife Wendy Sauter. In general, I think the owner should be allowed to build a reasonable house on the property, and granting some variances is appropriate. With that in mind, I must say the owners should have been aware of the easement and in general the set-back requirements on the property when they purchased it. I feel an 80% variance to the front setback is too much. I agree the existing street is a distance from the property line, however, this eventually may be used for a sidewalk or ski path for residents. Therefore, 5' from the property line seems much too close. It appears that if the house as proposed is rotated clockwise just a few degrees and moved close to the easement, that it would fit with only a minor front yard set-back. Repositioning the most northerly portion of the house to one side or the other might give even more room. Again, I support some latitude in set-backs to allow a good house to be built. Thank you for your time. Regards, Bob Guthrie.

Mr. Mumford states that Mr. Guthrie made a good point. If the home was slightly shifted could result in less of a variance. There would be less of a need for the reduction. It sounds like one of the neighbors is okay with not having the house lined up with everyone else's.

Chair Borklund states that it could be scooted back and rotated a bit. She notes that there is an option available this is not the only way that it would work.

Kevyn Grimes states that he was on the fence and he could only see it meeting 3 of the criteria, and he feels that Mr. Mumford made a great point.

Nathan Buttars states that he is interested in hearing from the applicant.

James Depiano states that he is concerned with the steepness of the hill and going further west on the lot it gets steeper. IT makes it more difficult. He adds that they could turn it a foot or two. He asks if this will make much of a difference. He adds that they are asking for a 5 ft. setback which was allowed in other areas. These houses were built 5 ft. from the road. He states that they are asking for a 20 ft. variance but are still 20 ft. from the road. It is still a setback fairly reasonably to be plowed and have a driveway. 20 ft. would be on the west side where it would be angling up, it might be closer to 30ft. He notes that they have a smaller lot and a hardship. He states that they want to have a lower profile and to stay in line with the neighborhood. He states they can bring it in but it will bring the height up. The proposal presented would be less intrusive.

Chair Borklund states that the Board does not function on previous actions that may or may not have been approved. Applications are looked at, on a case-by-case basis. Each situation is looked at based on its merits.

Rex Mumford states that he feels it is an excessive amount. 80 percent variance leaving only 5 ft. of setback from the County ordinance.

Chair Borklund asks if there is a reason why the road is so far away from the pavement of the road. Mr. Perkes states that the road can build anywhere within the right of way. The right of way is almost always wider than the improved surface of the road. He adds that one thing that is important to note is that the letter that was read into the record indicated that there may be a sidewalk or a trail within the setback on the lot and that's not the case. Any trails or sidewalks will be contained within the right of way and not within the 5ft setback. The road could be expanded closer to the home or it could be kept in its current location and the right of way can be widened for those types of improvements, there can be trails or sidewalks. It would all be contained in the right of way and not on the property. Rex Mumford states that this is his concern the request is for 20 ft which would put the house 5 ft from the property line. They cannot know what happens in the future or what the plans are for that area. They could within the right of the way move the road. If they paved it could put a sidewalk, a biking path. They could in effect put a biking path within 5 ft. there is a

lot of uncertainty this road is not in yet it is not finished. If this variance is granted any plans for this easement could be placing the structure very close to those plans.

Chair Borklund asks Aspen Dr. is a private road. Does this make a difference? Mr. Perkes states that it is not County standard. Chair Borklund asks if it is not dedicated to the county as a public road. Mr. Depiano states that it is not. Mr. Mumford notes that it could be dedicated. Chair Borklund asks how it is taken care of. Mr. Depiano states that it is maintained by the HOA.

Chair Borklund states that it might be good to table the action and have the applicant come back with some other suggestions.

Kevyn Grimes asks if they need to withdraw their previous motion. Director Grover states that they would need to go back and withdraw that. Mr. Quinney states that they already placed a motion to reconsider which by itself to withdraw the original motion and reconsider. The Chair can entertain additional motions for the variance or additional motions considerations to vote and all present Board members may vote on any additional motions for consideration.

MOTION: Rex Mumford moves to deny BOA2021-02: Consideration and action on a request for a 20-foot variance to the front yard setback for a future residential dwelling in the FR-3 zone at approximately 6706 E 6675 N, Eden (Powder Mountain West). thus allowing the applicant to come back with a counter request. Chair Borklund seconds.

Kevyn Grimes asks if they want to deny the request or table it to allow the applicant to come back. Director Grover states that if it is denied the applicant would have to apply again and reapply.

Nathan Buttars states that it would be fair to table the request and allow the applicant to come back with a counter request.

Rex Mumford states he agrees with Mr. Buttars.

MOTION: Rex Mumford moves to withdraw the motion to deny and moves to table item BOA2021-02: Consideration and action on a request for a 20-foot variance to the front yard setback for a future residential dwelling in the FR-3 zone at approximately 6706 E 6675 N, Eden (Powder Mountain West) and allow the applicant to come back with a modified request. Kevyn Grimes seconds. Motion carries (4-0).

3. BOA2021-03: Consideration and action on a request for a 5-foot variance to the front yard setback and a 10-foot variance to the rear yard setback to facilitate the construction of a single-family.

Steve Burton states this is a request for a 5 ft. variance to the front yard setback, it would normally be 25 ft they are asking that it be 20 ft. They are asking for a 10 ft. variance to the rear yard setback, which would normally be a 30 ft. The proposed house is a 1050 sq. ft. house, it would be 3 levels. The applicant has cited a few things relative to the variance criteria. Regarding variance criteria A., the applicant has cited that the shape and the lot size are special circumstances. Literal enforcement of the setbacks creates a small triangular buildable footprint that would make it difficult to achieve coherent aesthetics and home sight standards of other dwellings in the area. Regarding the second variance criteria, the applicant has stated that the special circumstance is the size and shape of the lot. The applicant stated that regarding the substantial property right they are explaining that the granting of this variance is needed for the person to be able to enjoy the right of a single-family home. Concerning the general plan, the applicant feels that approving the variance is not contrary to the goals and objectives of the general plan. Concerning the last criteria concerning substantial justice, they are exhausting all of their remedies under the land-use code. They feel that the spirit of the law is being met here and that substantial justice they are exhausting all of their remedies under the land-use code, they feel that the spirit of the law is being met here and that substantial justice is being done. The proposed access is of Chaparral Dr.

Chair Borklund asks if there are any questions for staff.

Joseph Draves states that it is a corner lot and the lot is turned from being parallel running east to west along Aspen Dr. He notes that he does not have enough frontage on Aspen to put a driveway there. He adds that he is trying to stay to the contours. With the

existing setbacks, he has 980 ft of the buildable triangle to build a house in. the driveway would be off of Chaparral and lead right into the garage.

Chair Borklund asks if there are any questions for the applicant.

Tim Lane states that he owns the parcel to the north of this lot. They are worried because of the blocking of their view because of the size. Bringing the house 5 ft closer to the road will block their view. He notes that the owner bought the piece of land knowing it was going to be tough to build on, he adds that he does not feel that he should be penalized.

Joseph Draves states that what made this difficult is the lots run parallel with the two roads. The back edge is where the two side edges intersect at the other point. To place a house symmetrically in this triangle if it the same easement as the rectangle it would be 8 ft in from each of those edge lines and a 30 ft radius off of the back point. He adds that he would like to center the house more and split the difference between each side. That is considered the back because of the driveway. The back of the house is pointing uphill. He adds that he has no problem changing it up and going to the 25 ft road variance that is not a big deal. Sticking with 950ft triangle and this is what the County allows and the HOA will go along with it he can make those changes and shift it to the left and not even ask for a variance off of the road. It will be difficult to build a house within the triangle and not block some of Mr. Lane's views.

Tim Lane states that looking at the drawings showed the deck outside of the variance. He states that he wants to know what the deck entails and the extent is. Mr. Draves states that concerning the southern deck he can trim it back so that it falls within the road variance. He states that he is aware if it sticks out into the variance. He adds that he will work with his architect based on what happens in this meeting.

Nathan Buttar asks what the slope is like on the parcel. The applicant did not site slope in their application as an issue. Mr. Burton states that there is a 30 ft increase heading North.

Kevyn Grimes asks Mr. Lane which setback is hurting him the most. Mr. Lane states that it is the front setback that will be blocking them.

Rex Mumford states that it sounds like the applicant is okay with reducing the variance request on the front. He asks if they are now just looking at a side variance. Mr. Burton states that they should still be considering both variances. Mr. Mumford states that between the two it is still 5ft on the front and 10ft on the rear.

Mr. Draves states that if it helps get the variance request through and it makes Mr. Lane happy he has no problem with a 25 ft variance. He adds that the rear setback offers him a better opportunity to square off the house.

Rex Mumford states that they can make a motion to only approve one of the two variances. Mr. Quinney states that looking at section 102-3-4 (b)(6) it states that in granting a variance the appeal authority may impose additional requirements on the applicants that will mitigate any harmful effects or serve the purpose of the standard and requirement that is waived or modified. He notes that they should not have a problem reducing some of the variance request or only approving half of it and only leaving half of it.

MOTION: Rex Mumford moves to approve a 10 ft variance to the rear with no change to the front setback on item BOA2021-03. This is based on staff analysis and that it meets the criteria and the findings that it meets state law requirements. Kevyn Grimes Seconds. Motion carries (4-0).

4. Rules of Order: Approval of Rules of Order. Board members decide to table the approval of the Rules of order to have a better chance to review. Nathan Buttars states that it would be better the have comments from all the Board members, he did not get a chance to review it.

MOTION: Kevyn Grimes moves to table the approval of the rules of order. Nathan Buttars seconds. Motion carries (4-0).

MOTION: Kevyn Grimes moves to Adjourn. Nathan Buttar seconds. Motion Carries. (4-0)

Adjournment: 5:52pm

Respectfully submitted,

Marta Borchert