

August 8, 2024

Minutes of the Board of Adjustments meeting of August 8, 2024, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 pm.

Member Present Bryce Froerer
 Rex Mumford
 Jannette Borklund
 Marshall McGonegal
 Neal Barker
 Ben Peterson

Staff Present: Rick Grover, Planning Director; Felix LLeverino, Planner; Chris Crockett, Legal Counsel; Tiffany Snider, Secretary

- Pledge of Allegiance
- Roll Call

1. Election of Chair and Vice Chair

Neal Barker made of motion for Rex Mumford as for Chair this meeting. Janette Borklund seconds the motion. Motion carries (6-0)

2. Minutes: April 25, 2022. Approved as presented

3. Training from Chris Crockett regarding legal requirements to approve a variance

The BOA hears two subjects regarding variances. The first is the variance itself, the second is an appeal. A variance is an exception to the county code. There are 5 requirements to grant a variance and each one needs to be satisfied for the variance to be approved.

A. *Any person or entity desiring a waiver or modification of the requirements of the Land Use Code as applied to a parcel of property that they own, lease, or in which they hold some other beneficial interest may apply to the board of adjustment for a variance from the terms of the Land Use Code.*

B. *The board of adjustment may grant a variance only if the following five criteria are met:*

1.B.1 *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code.*

1.B.1.1 *In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*

1.B.1.2 *In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*

1.B.2 *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*

1.B.2.1 *In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.*

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- 1.B.3 Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- 1.B.4 The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- 1.B.5 The spirit of the land use ordinance is observed and substantial justice done.*

If it is found that one of the stipulations does not apply the BOA is legally prohibited from granting the variance.

Questions:

Q: Explain the self-imposed aspect.

A: Self-imposed burdens do not relate to a physical characteristic of the land. Examples of characteristics of the land include slope or a water body running through the land. It is something that the land owner has added to the land themselves. Economic concerns are considered self-imposed.

Q: In evaluating variance requests, the board takes into consideration what similar properties have been granted in the past. How is this done if the properties are different that a fair comparison cannot be made?

A: It comes down to the physical characteristics of the property and the board would need to use that to justify the variance.

Q: During a variance hearing is it ok to refer to legal counsel?

A: Yes. Questions can also be directed, via the chair, to staff.

3. BOA 2024-04: *Consideration and action on a request for an 8' variance to the front yard setback, a 14' variance to the west side, a 5' variance to the east side, and a 10' variance to the rear yard setback. Property is on Old Snowbasin Road. FV-3 Zone.*

Planner: Felix Lleverino

This request was previously approved 10/22/2020 for a previous owner and has expired (only valid for 18 months). The applicant is requesting variances to the front, sides, and rear minimum yard setbacks of the Forest Valley (FV-3) zone for the construction of a single-family dwelling. The applicant feels that a variance is necessary to build their desired home. The applicant cites the shape of the parcel, the square footage of the parcel, and ridgeline location as unique circumstances that should justify a variance to the setbacks. In this zone the minimum yard setbacks for a SFD are Front: 30', Rear: 30', Sides: 20'. New setbacks requested are Front: 22', Rear: 20', Side (west): 10', Side (East): 15'. The planner then walked through the criteria for issuing a variance.

Questions:

Q: Was the lot created prior to the current zoning?

A: Yes, it is a grandfathered lot size.

Q: What is the actually size of the lot?

A: .57

Q: Please explain why the setbacks are what they are.

A: They help to shape the look of the neighborhood. People who move to rural areas expect to have more space. In some forest zones the lot sizes are larger for more privacy.

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Chair invited Tyler McCue to address the board.

Tyler McCue of Magelby Construction 1291 West Center Street Lindon, Utah

Working with client to determine setbacks for new home. When he purchased the land the setbacks were already approved for the previous owner. A developer built the Sundance subdivision next to the applicants' lot. All lots in that subdivision are 3+ acre lots. The smallest is 23,000 sq ft. The current setbacks allow for an 11,000 sq ft. home. The variances will allow for a 19,000 sq ft. home. The 19,000 fits within the adjacent subdivision.

Clarification was made that the original variance approved on the west side was 10'. The request now is 14'. The request is not the same as the original approval.

Tyler McCue is representing the owner in the meeting. The owner of the property was unable to attend.

Questions:

Q: Will the building plans fit the lot better if the variance is granted? If the request is denied will the home still fit on the lot? The request is so the home is more in line with other homes in the area?

A: The project was already moving with the architect in place with the previously approved variances.

Q: Is there a precedent for re-approving an expired variance?

A: Not bound by any previous decision. This is a new application as the previous approval has expired.

Q: Do we have access to minutes from the previous approval?

A: Previous minutes could not be found. The initial motion was tabled.

Q: What is the unreasonable hardship incurred by the owner by building a smaller home?

A: Cannot enjoy their property the same as their neighbors. In addition, see below from the applicant:

The applicant's narrative states that literal enforcement of the setbacks "pose limitations that hinder the owner's ability to develop and utilize the property to its full potential."

b. The applicant states that the lot size of .57 acres is a special circumstance that exists that does not generally apply to other properties in the same zone.

c. The applicant's narrative provides an argument that granting a variance is essential to the enjoyment of a substantial property right that is possessed by other properties in the same zone because this property is located on a ridge which limits the height of the home to 35 feet and that the rear of the property is at a slope.

d. The General Plan indicates that this area should be developed as planned and zoned. The applicant states that "adjusting these regulations will enhance the functionality and aesthetics of the property while remaining in compliance with local zoning ordinances and regulations."

e. The applicant's narrative explains that the impact on the neighboring properties is minimal, and in the best interest of the community

Brian Hartman of Magelby Construction 1291 West Center Street Lindon, Utah

- **With regard to the hardship, the owner purchased the property with the understanding that the variances were already approved. The lot is similar to a regular residential lot size, which would accommodate the larger home. The variances proposed would be similar to those of a regular residential lot size.**
- **Clarification from Rex Mumford that he was referring to an A-3 lot size, not a small residential lot.**
- **Q: Architecturally any hardships present due to the more restrictive setbacks.**
A: No, just the shape of the lot is the hardship.
- **Q: When was the lot purchased?**
A: 2021??
- **Rex Mumford restated the original variance request was not the same as the current request. This request is for an additional 3000 sq ft.**

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Chris Crockett: Since this request is an administrative application, public comments are not required and at the discretion of the Chair.

Rex Mumford – Calls for public comment

Denise Green 5580 Snowbasin Road (neighbor) If you allow this to happen then it will happen over and over. Second concern is about water scarcity. Had 2 wells that dried out. Very concerned it will impact her and her livelihood.

Janette: Thinks it is a lot of house for that size of lot. House size can be reduced.

Rex Mumford asks if any of the five criteria bother her.

Janette: Can't think of which one she thinks is applicable.

Rex Mumford concerned with a four sided variance.

Neal Barker wants property owners to be able to use their property. Who determines how much water each home is allowed to use. But water isn't part of what we are supposed to discuss. But, it matters.

Rex Mumford: Weber Basin Exchange grants water based on lot size, not home size.

Neal Barker state although it matters it is not up to the BOA to determine size or architecture of home. Lot is odd shape and affects how you can build a home.

Marshall McGonegal does not see that it fits the criteria for an approval.

Rex Mumford: Are other homes in the area larger than 11000 sq ft? Is it on a hill? Are they restricted on height?

Felix: There is a mix of home sizes in the area. Not sure how many are larger than 11,000 sq ft. It is on a ridge line and they are restricted to 35'. The height of the structure cannot be averaged, as it can in other zones.

Chris Crockett: The financial burden of having to redesign the home cannot be taken into consideration for this variance request.

Ben Peterson: Is the home size restricted to 11,000 sq ft.

Rex Mumford: No, just the building footprint. They can have more than 1 story as long as it doesn't exceed 35' in height.

Chris Crockett: We have ordinance for zoning all over. We are not allowed to build what we want without adhering to those laws. These ordinances still allow property owners to build and enjoy their property. He has no opinion on the outcome of the proceeding.

Rick Grover: Appreciates the discussion and the time being put into the process.

Chris Crockett: Because there are 5 members here instead of three the vote does not have to be unanimous. Only majority vote required.

Rex Mumford: Feels there is a self-imposed hardship. Also, reiterates that this is not the same request as the previous request that was approved.

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Motion: Jannette Borklund moves to BOA 2024-04: *Consideration and denial on a request for an 8' variance to the front yard setback, a 14' variance to the west side, a 5' variance to the east side, and a 10' variance to the rear yard setback. Property is on Old Snowbasin Road. FV-3 Zone*, based on the findings that it is a self-imposed hardship based on the size of the home.

Marshall McGonegal seconds the motion.

Rex Mumford calls for a roll call vote:

Jannette Borklund: Aye

Neal Barker: Nay

Marshall McGonegal: Aye

Ben Peterson: Nay

Rex Mumford: Aye

Motion carries (3-2)

Neal Barker: What if the applicant wanted to amend the application to support a different variance.

Rick Grover: The applicant would have to submit a new request with the alternative variances.

Respectfully Submitted,

Tiffany Snider