
Minutes of the Board of Adjustments meeting if October 22, 2020, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1 Ogden UT at 4:30 pm & via Zoom Video Conferencing.

Members Present: **Laura Warburton – Chair**
 Rex Mumford
 Neal Barker

Staff Present: **Rick Grover, Planning Director; Felix Lleverino, Planner II; Matt Wilson, Legal Counsel; Marta Borchert, Secretary**

1. Minutes: Approval of October 8, 2020 minutes. Approved as presented.

2. BOA 2020-07: Consideration and action on a request for a 22' variance to the front yard setback, a 10' variance to the west side, a 15' variance to the east side, and a 20' variance to the rear yard setback.

Felix Lleverino states that he would like to make some corrections. He states that he would like to restate the applicant's request. This is a request for consideration and action for an 8 ft. variance to the front yard setback, a 10 ft. variance to the Westside a 15 ft. variance to the Eastside, and a 10 ft. variance to the rear yard.

This the second time this item is before the Board. It was seen on October 8th and there were some disruption and confusion due to some technical issues. This lot is not currently vacant. The owner of the home is looking to build a home. To accommodate the size of the home and the orientation, they are requesting variances. The minimum setbacks are established by the zoning code. The Forest Valley – 3 zones requires a minimum of 30ft from the front yard property line a minimum of 30 ft. from the rear property line and 20 ft. on both sides. The floor and house plans have been included there is also a narrative, of why the variances should be granted. It is located off of Old Snowbasin Road.

Mr. Lleverino goes over the criteria for granting a variance. He explains the floor plan. He adds that one thing to point out is that in this request for a variance and, the burden of proof lies with the applicant to state why they think variance is necessary.

Chair Warburton asks if there are any questions for Mr. Lleverino.

Rex Mumford asks once the proposed variances are granted what would they be changed to. Mr. Lleverino states that there are roughly 10 ft. in the front 10 ft. on the Westside, 16 ft. on the East, and 20 ft. on the rear.

Neal Barker asks if they can address criteria number 1. It says that circumstances peculiar to the property not from conditions that are general to the neighborhood. He asks what makes this property peculiar that would require these setbacks, or is it just that they want a large house. Mr. Lleverino state that he will the applicant answer the question.

Robert McArthur 85 E 2200 S, states that he the architect for the applicant. He appreciates the opportunity to discuss this issue. It is a small parcel, but for some reason, the setbacks are the same as the larger parcels. He states that this is about 6/10th of an acre. In the area of the setback compared to the buildable area, there is more setback than the buildable area. That portion that overlaps into the west side setback is an open deck it comes 10 ft. to the property line. On the Eastside, there is a patio that goes about 5 ft. into the setback. He adds that he designed the house to step with the grades. They did not want to set the house too high for the neighbors. They met with the neighbors to make sure that everyone's concerns were considered. The views are so spectacular that they wanted to make sure that they were not impacting the neighbor's views. The other challenge with the rear lot is 54 ft. wide and it tapers to a larger 200 ft. on the road. He states that because of this they could build a house up towards the road, but they would have to do a two-story above grade. This would impact the neighbor's views. If they build too close to the Eastside, what gets built there would be towering over the neighbors to the east. He states that they pushed it to the West because that is National Forest property. They felt that that would be a safe position for the long term. At the October 8th meeting the neighbors attended the meeting because they had some concerns. These concerns have been addressed and the Board of Adjustments should have received

a letter from one of the neighbors regarding this. He adds that there is some disparage on the lot because of the size in relationship to the other homes in the area.

Neal Barker states that there was some mention concerning the easement and that the size of the house was restricted because of the easements. He asks if he has any information on the easements attached to the property. He asks if Mr. McArthur can address this. Mr. McArthur states that the terms easements and setbacks might have been confused. Susan Muse 5055 Old Snowbasin RD. states that she used the term appropriately because she believes a part of her lot was given away to Sundance Ridge which is the neighboring community for their entrance. She adds that they have a site plan dated back to 2005, which shows this being a bigger lot. The new site plan shows it a little differently. She states that they do not feel that the setbacks are congruent to their property. She wants to make it clear that none of the neighbors are present because all of their concerns have been addressed. They were concerned about the size of the home, she states that the home is 3700 sq. ft. it is not a large home. They want to build a home that fits into the landscape. They want to build into the configuration, they want to integrate it into the mountain top. The neighbor that is most impacted by the project has written an email that was sent to all the Board members. He is 100 percent ok with the project because he has seen the plan. The president of Sundance Ridge is also very happy that the house has been oriented towards the National Forest. All of the neighbors are happy with what is being done.

Chair Warburton states that the staff report says that the applicant has proposed a home that is 7,000 sq. ft. and they said it was 3700. Mr. Lleverino states that when staff looks at the size of the home they don't just look at the living area. They looking at everything including decks, garages, and porches. All of this is part of the building footprint, this is probably where the main discrepancy is. Also, the measurement is calibrated based on the scale at the bottom of the page. The scale that was provided by the applicant may be wrong.

Chair Warburton asks what the sizes of the homes are in the area on average. Mr. Lleverino states that based on the imagery they are around 4500 sq. ft. Chair Warburton states they are not asking for a bigger home they are asking for a smaller home relative to the surrounding homes. She notes that she was quite pleased to get the letter from one of the neighbors Mr. Boyle who stated that he was happy with the proposal. She asks if there were any other letters of public comment submitted. Mr. Lleverino states that the other public comments that were received were presented at the meeting on the 8th of October. Those issues have been addressed.

Rex Mumford states that he would like more clarification on the actual size of the home. There is a discrepancy concerning the actual footprint and the footprint of the surrounding homes. Mr. Lleverino states that if the applicant believes that the 7,000 sq. ft. stated in the staff report is incorrect They are welcome to present any information that the 3500 sq. ft. is indeed the actual footprint. Mr. McArthur states that the square footage of the home is 3750 sq. ft. He adds that to his knowledge the surrounding homes are around 8000 sq. ft. with garages.

Neal Barker asks if there was no variance given and they were required to stick with the setbacks what would the size of the house be. Mr. McArthur states that they would have to build the house up, the square footage would be the same. The shape and the elevation make the limit the buildable area of the lot. He adds that he feels confident that the proposal is within the confines of the buildable area. He adds that the only thing that is overlapping in the corners. There is a shower that overlaps into the back 3 ft. part of the deck overlaps, and the corner of the front garage overlap. The corner of the master bedroom overlaps. He states that they are not asking for a huge variance. The configuration of the lot would not change what can be placed there. He states that he feels very confident that it was designed within the parameters set forth. Chair Warburton states that they were to say that they need to stick to the rules they can still build a home with the same footprint, but it would be a two-story house. It is not what the petitioners want and it would cause conflict with the neighbors.

Rex Mumford states that he has a concern that this has nothing to do with the size of the home it is the size of the lot. If they are providing setback variances because the lot in question is .6 of an acre compared to the neighborhood, none of those encroached on the other setbacks. He states that he struggling with them trying to remove the setbacks from the lot simply because it is a small lot. It is not the neighbors that set the setbacks. Chair Warburton states that she agrees. She adds that they are not supposed to look at that, but it is part of the criteria. Looking at the lot it is limited.

Chair Warburton states that they may have done things differently but there needs to be a motion before they can have a discussion.

MOTION: Rex Mumford moves to deny BOA 2020-07: Consideration and action on a request for an 8' variance to the front yard setback, a 10' variance to the Westside, a 5' variance to the Eastside, and a 10' variance to the rear yard setback in the FV-3 zone. There is not second. The motion dies.

Rex Mumford states that the reason for the motion to deny is that he feels this needs to be discussed. He states that there is a reason for setbacks to be there. Some of the reasons include access, encroachment on neighboring properties, or the forest and riparian areas. If there needs to be work done on the house there needs to be accessed for the equipment to go in. He notes that he is not able to see the neighboring properties to see how the modifications to the setbacks would affect the surrounding properties.

Chair Warburton asks if this is denied if it would cause unreasonable hardship on the applicant. She states that her personal opinion is that it would. She states that if she were building a retirement home she would not want a two-level home, and it seems all the neighbors don't mind. Matt Wilson states that looking at the code it states that the Board 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 in circumstances peculiar to the property and from conditions general to the neighborhood. Neal Barker states that the first criteria were the one that he was hung up on. It states that the circumstances are peculiar to the property. He states that the shape of the property is peculiar. He states that he feels this could be a hardship for the applicant. Also, it is not in the best interest of the neighbors for the applicant to build a two-story. He notes that by looking at it should have access to the forest service side that is direct to the west. He adds that he feels that it is peculiar in that it is different than the other neighbor's lots. Chair Warburton states that it is important to keep in mind that it has not gone through the review process. Just because the Board approves does not mean it will get built. I will have to go through the review agencies, to make sure it meets all of the criteria. She notes that all of the Board members have to agree for a decision to be approved because there is only three board member.

Rex Mumford states that he understands the stair issue that she mentioned earlier. The Board members can not approve or deny based on their feelings concerning the stairs. He asks if this is a self-imposed hardship because of the size of the structure, or is it a hardship because of the size of the lot. Chair Warburton states that she can see his point, they could shorten part of the deck and it would be fine. She states that she may be caught up in what the whole neighborhood wants, and how the whole neighborhood would be best benefited. She states that for a ridgeline home it would be best as a single-story home. She states that they could cause more problems if they deny the variance. She asks if maybe the rules don't apply to this lot.

Director Grover states that looking at the criteria. One of the criteria talks about the special circumstances attached to the property that may not generally apply to other properties in the same zone. In this situation, they can look at the lot configuration. It is an odd-shaped lot in that area and those things are going to need to be looked at as they make the findings. This included things that are specifically associated with the lot. Whether or not the owners are looking at retiring are not things that cannot be included when looking at the criteria to make the decision. It has to do with physical things on the land because the house will sell at different times throughout its stage of existence. The Board will need to look at the physical land and the land configuration. If they are looking at the lot configuration and the slopes thing that are unique to the parcel not associated with other properties in the area are things they need to look at as they review the criteria.

Chair Warburton thanks Director Grover for the clarification and states that they purchased the lot they should have known what they could do with it.

Rex Mumford asks what staff recommended. Director Grover states that the legal department has asked that staff not set a recommendation. The Board must use the five criteria to make their determination. Mr. Wilson states that concerning the hardships the code states that in determining whether or not enforcement of the land use ordinance would cause unreasonable hardship the appeal authority may not find an unreasonable hardship when the hardship is self-imposed or economic. Rex Mumford states that from his perspective if they bought a lot that had less acreage in an area where the neighboring lots are bigger, one would think that they need to figure out what they want to put on the smaller footprint anything bigger than that is self-imposed. Chair Warburton

states that she agrees, she does not agree with the comment in the application that stated that there was a hardship because of the easement granted to Sundance Ridge. This lot stands on its own. She notes that she is still inclined to grant the variance. Looking at the proposed structure compared to the surrounding houses it is a reasonable request. She asks if Rex Mumford if he believes this is a reasonable request. Mr. Mumford states that looking at the actual footprint of the 7000 sq. ft. it still feels like a self-imposed hardship. They are asking for a variance on all four sides of the structure, it makes him feel that there is something there that is self-imposed. Chair Warburton asks if the request is unreasonable.

Neal Barkers states that he agrees with everything that Mr. Mumford has stated. This is a difficult decision. Looking at criteria one is he feels that it is self-imposed. He adds that he feels that it also has a peculiar shape. Looking at the fourth criteria states that the variance will not substantially affect the general plan, and will not be contrary to the public interest. He adds that it was the neighbor's letter that turned it for him. They are the only ones that would be affected and they are in favor of it.

Chair Warburton states that she appreciates everything that is being said. She does not see how this will hurt the spirit of the land-use code.

Susan Muse 5505 Old Snowbasin Rd, states that she feels that they are going off of a number that is not accurate. The 7,000 sq. ft. is coming from Mr. Lleverino, not the architect and he would like to correct it. Robert McArthur states the conditioned space is 3700 sq. ft. the double garage is approximately 650 sq. ft. the single car garage is 300 sq. ft. one deck off to the west is approximately 300 sq. ft. the porch off of the master bedroom is 60 sq. ft. the total square footage is 5010. Chair Warburton asks if there is any way to get the deck and bump it back a little? Mr. McArthur states that they designed the layout toward the East with a two-story elevation and the neighbors did not want that. In other jurisdictions, they have setbacks that as long as there are no structural elements supporting the structure it can go into the setback. He states that this is something that can be considered, the deck is covered and it wouldn't have to have structural columns on the end. Rex Mumford asks if the 10 ft. variance on one side and the 5 ft. variance on the other side are other of those strictly for nonstructural parts of the dwelling. Mr. McArthur states that both are unconditioned spaces. Mr. Mumford asks if they are a structural part of the building, are they cantilevered. Mr. McArthur states that they are not at the moment it is more economical to build columns for it. At the moment to hold the structure of the deck and the roof is in the variances. Mr. Mumford asks if on both sides it would be possible to mitigate those by cantilevering. Mr. McArthur states that it would.

Rex Mumford notes that based on Mr. McArthur's comments they could remove both of the side setback requests, by cantilevering the porch or deck, they would rather not do that because it is more expensive. Mr. McArthur states that the structural post off of the master bedroom is within the 20 ft. setback. It is the patio overhang that goes into the setback. The main deck off of the main great room is covered. There is a den with another deck that is also covered and it protrudes to the West. Mr. Mumford states that if they removed those two setback requests it would eliminate the self-imposed element on at least two sides. He states that he is not uncomfortable with the front or the back.

MOTION: Neal Barker moves to approve consideration and action on a request for an 8' variance to the front yard setback, a 10' variance to the west side, a 5' variance to the east side, and a 10' variance to the rear yard setback in the FV-3 zone. Chair Warburton second. Rex Mumford votes aye. Neal Barker votes aye. Chair Warburton votes aye. Motion carries (3-0).

Director Grover states that he knows it is difficult when the staff doesn't make a recommendation. The burden of proof of hardship falls on the applicant, not on staff.

Chair Warburton thanks everyone involved.

MOTION: Neal Barker moves to Adjourn.

Adjourned: 6:00 PM

Respectfully submitted,
Marta Borchert

Approved 2.11.2021