

MINUTES

BOARD OF ADJUSTMENT

REGULAR MEETING
THURSDAY, JANUARY 28, 2016
COUNCIL CHAMBERS
SUMMIT COUNTY COURTHOUSE
60 NORTH MAIN
COALVILLE, UTAH

BOARD MEMBERS PRESENT:

Bentley Peay, *Chair*
Theron Miller

Doug Matheson
Shawn Wiest

Regrets: Brandon Longley

STAFF PRESENT:

Robert Hilder – *County Attorney*
Gary Horton – *County Engineer*
Ray Milliner – *Principal Planner*

Steven Taylor – *County Engineer*
Kathy Lewis – *Secretary*

REGULAR SESSION

Chair Peay called the meeting of the Board of Adjustment to order at 6:30 PM.

1. Public input for items not on the agenda or pending applications

The public input session was opened. There were no comments made and the public input session was closed.

2. Public hearing and possible action on a possible variance for construction on a slope greater than 30%; 1645 North West Henefer Road; Parcel RRIC-3; Stephen Richins, applicant – Ray Milliner, Principal Planner

Planner Milliner gave the background of the application. The property is a platted lot of record. A vicinity map was shown which displayed the location of the property. There is an existing driveway; however, it is very steep. It exceeds 20% in grade. The Engineering Department determined that it would be safer and better for the applicant to construct a driveway in another location. Planner Milliner used an aerial map to show the proposed location.

The proposed driveway meets the grade requirements, but it crosses slopes in excess of 30%. It was determined by both the Planning and the Engineering Department that the proposed location would be a safer and better option. Because of this, Staff is recommending approval of the variance application.

More aerial photographs were shown of the property of the existing driveway and proposed driveways. The property is a knob hill and the house would be built on the flat top. The lot is one acre in size.

Planner Milliner said the neither the existing nor the proposed driveway originates on the property owner's lot. Board Member Wiest asked if there is an easement for the existing driveway. Planner Milliner said a driveway from either location would require an easement from the same property owner. The applicant, Stephen Richins, said the new easement agreement has been completed.

Board Member Matheson asked if there are any issues relative to emergency services. Planner Milliner said the proposed driveway has been designed so that emergency services can access the house. One of the reasons for Staff's recommendation is that it is safer and easier for a fire truck to access the structure.

The public hearing was opened. There were no comments made and the public hearing was closed.

Board Questions and Comments

Board Member Wiest said it is obvious that the proposed road will be a lot safer than the existing road, especially at the intersection. It is unlikely to have a lot of development at this location. He assumed the necessary engineering requirements will be met. Planner Milliner answered in the affirmative.

Board Member Miller asked what the slope of the hill is. Planner Milliner said he hasn't figured the steepness, but it is quite steep. The location of the existing driveway is also very steep. It took some thought to figure out the best way to access the property. He thinks this is the best configuration for the circumstances.

Board Member Wiest made a motion that the Board of Adjustment grants the variance for the driveway to cross the slope for the driveway in excess of 30% as depicted on the submitted drawing. It meets the five standards, findings of fact, and conclusions of law. These are:

Standard 1: Literal enforcement of the Zoning Ordinance would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the land use ordinance.

Standard 2: There are special circumstances attached to the property that do not generally apply to other properties in the same district.

Standard 3: Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same district.

Standard 4: The variance will not substantially affect the general plan or be contrary to the public interest.

Standard 5: The spirit of the Zoning Ordinance is observed and substantial justice done.

Findings of Fact:

1. The applicant is the owner of a platted lot of record located at 1645 North West Henefer Road.
2. The lot is approximately 1.00 acre in size.

3. The lot is currently vacant.
4. There is an existing driveway to the property that was recognized by the subdivision plat.
5. The existing driveway has an average grade of approximately 18% with section reading a grade of 25%.
6. Section 11-6-8.H of the Development Code states "The maximum grade of a driveway shall not exceed ten percent (10%). Twelve percent (12%) grades may be allowed for up to, but not to exceed, two hundred fifty (250) linear feet."
7. The applicant has submitted plans for a single family home on the lot.
8. The applicant is proposing an alternative driveway to the home that meets the maximum grade standards for a driveway, but crosses a slope greater than 30%.
9. On this particular lot, the Engineering Department has found that the construction of a driveway that meets the minimum grade standards, but crosses steep slopes, is preferable from a safety standpoint than construction of a driveway with a slope above the maximum standards for steepness.
10. There are no access points that meet the minimum requirements for driveway grade and do not cross slopes greater than 30% without exceeding the maximum grade requirements for a driveway.
11. There would be no option for access to the property if the variance is denied.
12. The purpose statement of the Eastern Summit County Development Code states that it was written to allow flexibility of location.

Conclusion of Law

1. Literal enforcement of the Development Code requirements for this property causes an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to the other properties in the same district.
3. Granting the variance is essential to the enjoyment of substantial property right possessed by other property owners in the same district.

4. The proposal is consistent with the General Plan.
5. The spirit of the zoning ordinance is observed by this application.

Conditions of approval:

1. All necessary permits must be obtained and fees shall be paid prior to the commencement of any construction activity, including but not limited to the Summit County Engineering and the Summit County Building Departments.

Board Member Miller seconded the motion.

• **MOTION CARRIED (4 - 0)**

3. **Public hearing and possible action on a possible variance from the required 15" front and 12" side yard setback; 135 Crestview Terrace; Parcel SU-H-23-AM; Shelby and Malory Pigott; applicant - Sean Lewis, County Planner**

Chair Peay said the applicant has asked for a continuation of this application.

Board Member Matheson made the motion to continue the public hearing. Board Member Wiest seconded the motion. All voted in favor.

• **MOTION CARRIED (4-0)**

4. **Public hearing and possible action on a possible variance to a driveway for Lot 84, Plat 4 of the Pine Meadow Ranch Subdivision; 1687 Heather Lane; Parcel PI-E-84; Ritchie Date and Mia Yue, applicants - Steven Taylor, County Engineering Code Enforcement Officer**

Engineering Code Enforcement Officer, Steven Taylor, provided the background of the report. The applicants request a variance from the driveway slope requirements. The application contains a second variance request for the first 20 feet of the driveway; however, those requirements have been satisfied.

Officer Taylor used an aerial map to show the location of the property. It is located near the top of Tollgate Canyon in the Pine Meadow Ranch Subdivision. It is a narrow lot with fairly steep slopes.

Officer Taylor said there is an existing roadway into the lot. This was shown on the aerial photograph. The driveway is located by or in a swell located on the lot. In the center of the lot is a 30 foot trailer that the existing property owners have been using. This is where the applicants wish to build a house.

The driveway has been designed with a sweeping curve. To the side of the existing driveway there are slopes in excess of 30%. On the other side, there are 20% slopes. He said the proposed site plan is included with Staff's Report. Their proposal is to use the route of the existing driveway where possible.

Officer Taylor said different options for a driveway were explored by the Engineering Staff. On the aerial photograph, the yellow line shows the proposed driveway route. The red line shows an alternative route. This route would require the cutting of trees and the need for more fill. Chair Peay asked for more details about the need for fill with the different routes. Gary Horton, County Engineer, said the yellow route will require a fill of 6 feet or less. The red route will require a fill of 13 feet or more.

Officer Taylor said the request for the yellow route is preferred over the other because of fewer disturbances to the hillside, less cutting of trees, and less fill that would be needed. Photographs of Heather Lane were shown. He said the neighboring driveways frequently have grades in excess of 18%. This driveway will have a maximum of just over 16% grade.

Board Member Miller asked if there is winter access. Officer Taylor said the roads are not completely cleared. Board Member Miller said when he visited years ago, it was snowmobile only access during the winter months.

A tax record photograph of the property was shown along with a recent photograph. It shows that the snow on the lot has not been plowed. Planner Miller said when it is snow packed, a 16% driveway grade is pretty steep. He asked if they plan on being there in the winter time. The applicant, Ms. Yue, responded that the neighbor plows the street to his house. If they are allowed to build on the lot, they will pay him to plow just past their driveway.

Chair Peay said it sounds like it would be possible to meet the Code requirements along the red line; however, that would require fill up to 13 feet. With the current proposal, it would be 6 feet of fill. Officer Taylor said it would be 6 feet at the highest point.

Chair Peay asked why there is such a difference between the paths. County Engineer, Gary Horton, said that adding more length to the driveway decreases the grade, but increases the amount of fill needed. The grade of the red line averages 10%.

Officer Taylor said the yellow path follows the contour of the mountain. The maximum grade is just under 17%. Because the ground is steeper, it makes the driveway steeper. With the red line, they are building the driveway up enough to maintain the 10% grade. The base of the driveway on the yellow path would be 18 feet wide. On the other path, including the fill and cut, the driveway base would be 54 feet wide.

Officer Taylor said he discussed this application with the Fire District. The Fire Chief said the proposed variance would be acceptable as long as there is a turnaround area. They need to be able to make a 3-point turn. A fire engine is about the length of a school bus. Chair Peay suggested this should be made a condition of the variance.

Chair Peay asked if the site plan in the Staff Report is the footprint of the structure. Engineer Horton said what is on the site plan should accommodate a 3-point turn with little to no modifications.

Board Member Miller asked if they discussed with the Fire District that under winter conditions, they could be sliding down the hill. Officer Taylor said the Fire District has many concerns for the entire area. They have plans to have some smaller vehicles located closer to the area.

The public was opened.

Dave Brach is the architect of the project. The owners asked him to design a driveway. He came up with six or seven different design configurations, with the home being located in different areas of the lot. He can attest that they have spent thought, time, and resources in designing the driveway.

Mr. Brach said he is an architect that specializes in passive design. The owners want to have a house and lot that is in harmony with the environment. The house will be placed in a neighborhood friendly location. There is a year round home in the area that was permitted within the past year with steep driveway grades.

Bill Benelli is the neighbor. He is looking forward to having good neighbors. It is his understanding that a fire house is being built two blocks away. There are many driveways in Tollgate Canyon that have this steep of a grade. A fire truck will have the same situation throughout the Canyon.

Ms. Yue said what attracted her and her husband to this piece of property is the mountain environment. There is a sign at the bottom of the hill that says four-wheel drive and chains are required. On the two main roads there are sections that are in excess of 20%. Even so, this is still an area they are attracted to. The passive design and existing with the environment is important to them. They want to coexist with nature and not be an eyesore to the neighbors. That is why they don't want to have a 12 foot retaining wall.

The public hearing was closed.

BOARD MEMBER COMMENTS AND QUESTIONS

Board Member Miller said his concern is about accessibility for emergency vehicles, but that seems to be accounted for. The remoteness of the property will be a hardship. There are a lot of homes in Tollgate Canyon that have similar issues. In a way, this complies with the normal conditions of the area.

Board Member Wiest said he thinks the red path of the driveway, is less compatible because of the amount of fill that would be needed.

Chair Peay said where there is an option that complies with the Code the Board has typically been hesitant to grant a variance. He has been debating how they get around Standard 1. He thinks the answer is found in the second part of the standard. Standard 1 reads as: *"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 ordinance."* The fill and cut of 54 feet wide seems to go against the general purposes of the land use ordinance.

Chair Peay added that the special circumstances required of Standard 2 is also a little bit tricky. An argument could be made about the contours and the trees of the property creating a special circumstance.

Board Member Matheson said if they consider the number of trees that would need to be cut and the scarring of the land with the retaining issues of the driveway it seems that the preferred route is the lesser of two evils. He asked if the home site was selected because it is the flattest area of the lot. Officer Taylor said it is the flattest area. He is unsure if that is the reason why it was chosen.

Chair Peay said that part of their job as members of the Board is to balance all factors and do what is best. In this case, he thinks the public interest and the interest of the property owners are aligned.

Board Member Matheson made a motion to approve the request variance. He said although this is a compromise, it is in the best interest of the zoning requirements and the interest of the property owners. In addition to the conditions outlined by Staff, this approval is subject to the condition that approval is received from the Fire District and other emergency services.

Chair Peay asked Ms. Yue about requirement #4 which has to do with having a guardrail or barrier. She asked what could that be. Board Member Matheson said that would be something they would work out between their architect and the County. Officer Taylor said these were recommendations from the Engineering Department because of the steepness of the slope. This will increase the safety factor. It would only be required on areas with slopes greater than 12%.

Mr. Brach said he understands the concept; however, this seems unusual. Perhaps that is because this is an unusual case. It seems like there will be some aesthetic concerns, but they will find a solution. Chair Peay asked if the following could be added to condition #4 “...as otherwise agreed to by the County Engineering Department.” Mr. Benelli said as a resident, he can’t think of any properties within the subdivision that has a guardrail. He believes the closest guardrail is Interstate 80.

Board Member Matheson accepted the amendment. Board Member Miller seconded the motion. All voted in favor.

- **MOTION CARRIED (4-0)**

5. Approval of Minutes:

July 30, 2015

A motion was made by Board Member Miller to approve the minutes as corrected. The motion was seconded by Board Member Wiest. All voted in approval.

- **MOTION CARRIED (3-0)** Board Member Matheson abstained as he was not in attendance.

September 24, 2015

A motion was made by Board Member Wiest to approve the minutes as written. The motion was seconded by Board Member Matheson.

- **MOTION CARRIED (4-0)**

October 22, 2015

A motion was made by Board Member Matheson to approve the minutes as written. The motion was seconded by Chair Peay.

- **MOTION CARRIED (2-0)** Board Member Miller and Board Member Wiest abstained as they were not in attendance.

ADJOURN

At 7:25 p.m. Board Member Wiest made a motion to adjourn. The motion was seconded by Board Member Matheson. All voted in approval.

- **MOTION CARRIED (4-0)**



Approval Signature