

MINUTES

BOARD OF ADJUSTMENT

REGULAR MEETING
THURSDAY, MARCH 24, 2016
COUNCIL CHAMBERS
SUMMIT COUNTY COURTHOUSE
60 NORTH MAIN
COALVILLE, UTAH

BOARD MEMBERS PRESENT:

Bentley Peay, *Chair*
Brendon Longley

Doug Matheson
Shawn Wiest

Regrets: Theron Miller

STAFF PRESENT:

Tiffanie Northrup-Robinson – Senior
Planner
Robert Hilder – *County Attorney*

Katy Staley –*Secretary*

REGULAR SESSION

Chair Peay called the meeting of the Board of Adjustment to order at 6:30 PM. He announced there would be a change in the agenda; agenda item number three will be heard first.

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 from the required 100' setback from a year round stream and also the front setback requirements; 25 St. Moritz Terrace; Parcel SU-M-2-16; Eric Ghanem and Wendelin Westerfeld, applicants. – Tiffanie Northrup-Robinson, Senior Planner

Planner Northrup-Robinson gave the background of the application. The existing parcel is barely over half an acre. Not long ago, Planner Northrup-Robinson presented a similar setback request for a front setback for a property in the same area.

There were some changes to the site plan which have been highlighted in the packet and Planner Northrup-Robinson went over these changes. On the west property line the stream is shown. The required one hundred foot setback would encompass essentially the entire parcel. There is a significant separation (35 feet) from the existing road to the property line which is County right of way. The applicant is requesting a variance from the stream setback to be able to build anything on the parcel. They are also requesting a variance on the front setback requirements so the home will not have to be pushed back any more than necessary.

Chair Peay asked if the 35 foot setback was consistent throughout the neighborhood. Planner Northrup-Robinson responded that 35 feet is a more substantial right of way than what other properties in the area have. Summit Park was platted in the 1960's and the surveying was not perfect back then. If the front setback requirement of fifteen feet is applied, the property owners could meet the front setback requirement. However, there are some constraints on the parcel that the applicants feel is a hardship. One of those is the existing sewer lateral that comes through the parcel. This is unusual. Most sewer lines run along the side of the property.

According to Bryan Atwood of the Snyderville Basin Water Reclamation District, no structure can go over the existing sewer lateral. The applicants have revised their site plan so that they comply with this requirement. There are also comments from Derrick

Radke, the Public Works Director, who stated that the proposed site for the driveway has been used for snow storage and could continue to be used for snow storage. In order to maintain a flat driveway the applicant will have to build retaining walls, being fifteen feet at the highest point. There is an easement for the driveway, but the applicants would need permits to build any structure on that easement. The retaining walls are considered a structure. Any of the modifications that may need to be made to the driveway would be at the owners' expense. Currently the landing of the stairway from the driveway to the home is located over the property line. The new proposal is to shift the home back five feet from the front property line so the landing would fall entirely within the property line. In order to accommodate that and not cross over the sewer lateral, they are shortening the house a little rather than modify the sewer lateral.

Originally the applicants were requesting an eighteen foot setback from the stream. That has remained the same. The front setback request is now a five foot variance instead of the two foot setback they were originally proposing. Taking into consideration the comments that have been received from service providers; the Health Department is satisfied that there are no major issues or health concerns connecting to Summit Water Service and the Snyderville Basin Water Reclamation District.

Chair Peay asked if the applicants will have to move the sewer lateral. If the applicants went ahead with the original site plan and had to push the home back then they would have to move the sewer lateral. Board Member Matheson asked who would be responsible if the sewer line had to be moved. He was told the property owner would be responsible for that. Board Member Matheson also asked if there is a right of way for

the sewer lateral. Planner Northrup-Robinson answered that there is no recorded sewer easement but it is a perpetual easement that has been there since the 70's and since it has been there so long they have the right to be there. The applicants can move it as long as there is continued service and the sewer service is not cut off to the neighboring property owner. The applicants would have to work with the Sewer District if they choose to move the sewer line.

Chair Peay stated even if they push the front back five feet, theoretically the County could expand that road to go right up to the front of the house, basically leaving no driveway. Board Member Matheson stated that the street was put in the way it is because of the grade. If it was to extend out to where the right of way is, the grade would be quite severe.

Planner Northrup-Robinson stated one final note: this has been noticed as a public hearing. Staff did receive comments after packets were made and one email was handed out to the Board Members. It stated that neighbors were concerned with protecting the stream. There were two phone calls as well that expressed the same concern. The public was not concerned with the front setback, only that the stream is protected as much as possible.

Board Member Wiest asked if there is a culvert under the road. It was confirmed and shown on the map that yes, there is a culvert. Board Member Matheson stated that it looks like the lot is in the middle of a little gully or valley. The applicant will show pictures showing the conditions of the lot. Compared to most of Summit Park, this area

is one of the flatter lots. The constraints of this lot are the sewer lateral and the vegetation.

Chair Peay asked about the reasoning behind putting the stream variance where it was. Planner Northrup-Robinson stated that the applicants were concerned about protecting the large trees on that side of the parcel. The trees could be removed, but the applicants would like to preserve as much of the vegetation as possible. The lot is more wooded on the stream side. The applicants will have to remove some vegetation, but they would like to retain as much of the older, larger vegetation as possible.

Board member Longley asked if there would be more of a slope risk. That is something to consider. The applicants are also dealing with a height limit that may modify or change with the slope. Board Member Matheson stated that the sewer line impacts the usable area as much as anything. He also asked if there is any provision or requirement that has anything to do with the stream. There are storm water and erosion control issues and measures that will have to be in place. The applicants will have to meet these prior to any work on the site.

Board Member Wiest asked if once construction is completed if those measures would be eliminated. Planner Northrup-Robinson answered in the affirmative. Board Member Wiest requested clarification on the size of the stream. It is a very small stream, literally a trickle, but it does flow year round. It is probably two feet at the widest. Chair Peay asked if there are other homes located along the stream. Planner Northrup-Robinson said there are some homes that were built previous to stream setback regulations. Any structures being proposed more recently were built a similar distance from that stream.

Board Member Wiest looked on Google Maps at the surrounding lots. Lot 9 and Lot 17 show structures pretty much on the road. What are the structures? They are a garage and a driveway. These homes were constructed several years ago. Most try to enter as flat as they can with a garage at the top of the lot.

The applicants had a slideshow presentation. Eric Ghanem, the owner restated their variance request is eighteen feet from the stream setback and five feet from the front setback. The location of the home was chosen to:

1. Preserve intimacy and privacy between neighbors. There is also a space constraint.
2. The applicants chose the more barren area of the lot to build on that has smaller trees and less root system. The applicants consulted with a tree expert and the HOA about wildfire requirements.
3. If the applicants build toward the east, the neighboring home is close to the property line and the homes would be in close proximity to each other.

The stream goes in many backyards in the area and even up to the foundation of one home. The applicants' goal is to keep the area as natural as possible. That is one of the reasons they chose Summit Park as a place to build. The only improvement they will do on the land is the wildfire defense zone that is supported by the HOA.

Mr. Ghanem listed the hardships he believes they will encounter.

- 1. The year round stream. The lot at its widest is 125 feet, so they would be unable to build on the property and maintain the stream setback.**

- 2. The road is mainly located 35 feet away from the pavement edge and 14 feet below the pavement edge. The road across the lot gains eight feet in elevation. The driveway will need to be narrow because of this.**
- 3. The sewer lateral is basically in the middle of the lot.**

Mr. Ghanem then listed the challenges that are not necessarily hardships, but will impact structure.

- 1. The need to respect the 32 foot height restriction. If they move the location of the home back, the slope makes it harder to stay within the height restrictions. If the home is too low, then the slope of the driveway is too steep. This would cause a lot of safety concerns and winter challenges.**
- 2. Mature trees up to 60 feet in height need to be protected along with their root systems.**
- 3. Respect neighbor's privacy.**
- 4. The neighborhood visual impact of a long concrete wall along the driveway. If the fifteen foot setback is kept, the concrete wall would range from zero to seventeen feet high.**

Mr. Ghanem showed a video and pictures depicting the slope and road elevation, as well as the property line compared to the pavement. There were also pictures showing the area where the stream and culvert are and the sewer lateral. Mr. Ghanem also showed a neighbor's retaining walls that are similar to what would be needed on this property. A picture was shown of the proposed site for home.

The safety challenge that Mr. Ghanem stated was the small driveway entrance along with the change in elevation on the driveway. The County Engineering Department told Mr. Ghanem that at a ten percent slope a car will slide sideways. Mr. Ghanem is concerned with daily management and safety concerns of a steep driveway. There is a neighbor who has a steep driveway and doesn't use their driveway in the winter. Many neighbors have built their driveways close to the road and they are not within the designated fifteen foot setback.

Mr. Ghanem shared his proposed solutions. The applicant has planned an area for snow removal and deposit. They would include the stair access within the property line. They reduced the depth of the house and cut the balcony. These solutions will allow the applicant to respect the 32 foot height restriction and keep a level driveway. The applicant proposed a five foot setback, which would keep the mature trees. They have a place for snow removal and won't disturb any sewer.

Chair Peay opened for public comment. No public comment was made. Public hearing was closed and brought back to the board for discussion.

Board Member Wiest asked Staff if there was a setback requirement to laterals. Planner Northrup-Robinson stated there is not. A lateral just cannot be under a structure. Board Member Longley asked how close to the stream is the neighbor to the west. Planner Northrup-Robinson was unsure but stated that the applicant's statement of the stream flowing up to the foundation of one home is accurate. Planner Northrup-Robinson stated that the primary concern of the neighbors that called was to protect the stream for the wildlife.

Chair Peay clarified that the applicants were not planning on landscaping between the house and the stream. It was verified by Mr. Ghanem that there would be no landscaping aside from the wildfire defense zone.

Chair Peay stated that there is a lot of balancing to be done. The applicant's willingness to push the property back is nice, but Chair Peay agrees that Mr. Ghanem has a good point that the large retaining wall would be a problem. It is the same balancing act with the stream setback. At first glance, Chair Peay believes that the sewer should be moved, since there is only an economic hardship, but is getting five or ten feet further from the stream worth losing the trees?

Board Member Matheson referenced the letter from Mark Saurer and Kristi Jahn. Their concerns are with the stream setback. Board Member Matheson stated that the stream variance is an absolute necessity. Board Member Matheson also asked if the applicants had given any consideration to snow storage. The applicants stated they had talked to Derrick Radke, with the County, who does not oppose them using the right of way for the driveway, but there may be consequences down the road if there are changes made. Board Member Wiest stated that whether the driveway is five feet or thirty feet back there will be an impact on snow removal. It would be beneficial to not have the driveway be too steep.

Chair Peay said that the Board needs to consider each variance one at a time. On the stream setback there needs to be some variance. How does the Board balance what is an appropriate variance for the stream? On the front setback it is less of a given that one is even required. So then you have to look at the factors. Is one merited by the five

standards which is an unreasonable hardship? The Board has heard arguments as to why pushing the structure back would be unreasonable. The Board has to decide if that is true or not. The special circumstances are whether it be the grading and primarily the sloping issues.

The Board agreed that moving the structure five to ten feet would not make enough of a difference to warrant the financial hardship of moving the sewer lateral. The stream should be safe enough with the eighteen foot setback. Board Member Wiest stated that the steep slope for the driveway is asking for more trouble. Chair Peay said it is more valuable to have the driveway closer to the road.

Board Member Wiest made a motion to grant the variance of ten feet from the front property line and an 82 foot variance from the stream based on the Findings of Fact and the Conclusions of Law and the Conditions of Approval as stated below. Board Member Matheson seconded the motion.

Findings of Fact:

1. The property is located in the Hillside Stewardship (HS) zone.
2. The lot is 0.52 acres in size.
3. Lot SU-M-2-16 is considered to be a legally platted parcel.
4. There is a naturally occurring, year-round stream that runs along the west boundary of the lot.
5. There is a 35 foot separation between the edge of pavement to the platted front property line.

6. Snyderville Basin Development Code Section 10.2.5.D.5 states that the minimum setback from the centerline of a naturally occurring, year-round stream is 100 feet.
7. Snyderville Basin Development Code Section 10.2.5.D.8 states that the minimum setback is 15 feet from the front property line.
8. The proposed dwelling would be approximately 2,000 square feet.
9. The proposed dwelling would be within 18 feet (82 foot variance) of the high water mark of the stream, at the closest point and 5 feet (10 foot variance) from the front property line.
10. The lot is surrounded on all sides by lots with a similar size, shape and slope.
11. The current Development Code standards allow for a reasonably sized home with the reasonable improvements on the property.

Conclusions of Law:

1. Literal enforcement of the Hillside Stewardship (HS) Zoning District requirements for this property causes an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
2. The size and location of the stream creates a special circumstance attached to the property that does not generally apply to other properties in the same district. Additionally, the distance between the edge of the pavement and the front property line also create a special circumstance that does not generally apply to other properties in the same district.
3. Granting the variance is essential to the enjoyment of the substantial property right of a deck attached to a single family home.
4. The proposal is consistent with the General Plan allowing for single family homes to be built in appropriate locations within a platted subdivision.

5. The spirit of the zoning ordinance is observed by this application.

Conditions of Approval:

1. The setbacks are limited to the approved site plan, per the Board of Adjustments final decision.
2. All service provider conditions must be met prior to issuance of a building permit.
3. All necessary permits must be obtained and fees paid prior to the commencement of any construction activity, including but not limited to the Summit County Engineering and the Summit County Building Departments.
4. The applicant shall submit a certificate of survey at the footing inspection to verify that the structure is located according to the final approved site plan.

- **MOTIONED CARRIED (4-0)**

3. Election of Chair and Vice Chair

*Board Member Wiest made a motion to continue this election to the next meeting.
Board Member Longley seconded the motion. All voted in favor.*

MOTION CARRIED (4 - 0)

4. Approval of Minutes

January 28, 2016

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

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

ADJOURN

At 7:45 p.m. Board Member Longley and Wiest made a motion to adjourn.

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

A handwritten signature in cursive script, appearing to read "Brendan P.", is written above a horizontal line.

Approval Signature