

MINUTES

BOARD OF ADJUSTMENT

REGULAR MEETING
THURSDAY, MAY 26, 2016
COUNCIL CHAMBERS
SUMMIT COUNTY COURTHOUSE
60 NORTH MAIN
COALVILLE, UTAH

BOARD MEMBERS PRESENT:

Bentley Peay, *Chair*
Brendon Longley

Doug Matheson
Theron Miller
Shawn Wiest

STAFF PRESENT:

Ray Milliner – *Principal Planner*
Jennifer Strader – *Senior Planner*
Steven Taylor – *Engineering Department*
Robert Hilder – *County Attorney*

Katy Staley – *Secretary*
Amir Caus – *County Planner*
Tiffanie Northrup-Robinson – *Senior Planner*

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; public hearing items will be heard first and administrative items will be moved to the end of the meeting. Due to the number of items on the agenda Chair Peay requested that applicants keep their presentations short. The Board relies heavily on the information presented by the Staff, so the applicants should only present anything that shows a key fact, in order to be respectful of everyone present.

1. Public hearing and possible action on a variance from the 100' setback of a year round stream; 635 Parkview Drive; Chris Price, applicant – Jennifer Strader, Senior Planner

Planner Strader gave the background of the application. The parcel is located within Hillside Stewardship Zone. Within Hillside Stewardship Zone the setbacks are 15' from the front property line, 12' on the sides, 12' in the rear, and there is a 100' stream setback from the center line of the stream. The Summit Park Subdivision was recorded in 1963 prior to any County Zoning Regulations. There are 96 lots within the subject plat. The applicant is proposing to construct a single family residence that would contain 2,830 square feet. There is an existing stream that runs parallel to the front property line. The lot averages a 60% slope throughout. In Summit Park there is a special provision for the front setback that states if more than 50% of the lot frontage exceeds 30% slope, measured for a distance of 15' back from the property line, the front

setback shall be 15' from the edge of the pavement, not the property line. This lot does meet that exception. The house has been moved as close to the front of the property as the code allows. By doing so it has been pushed closer to the stream. Planner Strader used a map to show the proposed location of the house, including a retaining wall and the location of the stream. The retaining wall is about four feet from the center line of the stream. The closest structure to the stream is the retaining wall. The garage starts approximately 20' from the center line of the stream.

Analysis and Findings:

Code requires the applicant to demonstrate how the criteria for granting a variance are being met. Staff has evaluated each of the criteria.

- 1.** Literal enforcement of the ordinance would cause an unreasonable hardship.

The hardship associated with the property is the steep slope, which averages about 60%. Moving the residence closer to the stream would result in less excavation and disturbance overall.

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

The lot contains slopes averaging 60% and there is a naturally occurring stream that runs parallel to the front of the property. It does limit the ability to build on this parcel.

- 3.** Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

The lot was legally created through the creation of the subdivision plat in 1963 which was intended for the development of single family residences, which is a substantial property right.

- 4.** The variance will not substantially affect the general plan and will not be contrary to the public interest.

The requested variance would allow the applicant to construct a single family residence on a lot intended for residential uses. This is not contrary to the general plan.

- 5.** The spirit of the provisions of the land use ordinance is observed and substantial justice done.

As conditioned, Staff finds the spirit of the land use ordinance would be observed if the variance is granted.

This item was noticed as a public hearing and Staff has not received any comments from the surrounding landowners. Staff recommends the BOA conduct a public hearing and vote to approve the Price Stream Setback Variance based on the Findings of Fact and Conclusions of Law and with the Conditions that are specific to the site plan submitted with this application.

Chair Peay asked if the retaining wall was required by the County to be there for drainage reasons. Planner Strader answered that it is not required but it is beneficial for drainage and has been approved by the Engineering Department. Chair Peay asked for clarification on an image that was shown earlier depicting the 100' stream setback. Chair Peay stated that it would not be possible to build on the lot without some kind of variance.

Board Member Miller asked if the slope was running down towards the stream, with the stream being shallow, why are the retaining walls required. Chris Price, the applicant answered that in order to have the driveway be flat, the retaining walls are needed.

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

Board Member Wiest asked for a breakdown of the variance request. Planner Strader stated the applicant is only requesting a variance on the stream setback. The closest point of the house, being the retaining wall, would be four feet from the center line of the stream. Board Member Miller stated that four feet seemed pretty close and asked if that was due to an engineering issue. Mr. Price responded that a surveyor did the site plan and if the retaining wall was built further from the stream then there would have to be more of a slope and there would also be the loss of mature trees. Chair Peay stated that the Conditions of Approval include the requirement to have an erosion control plan.

Board Member Wiest made a motion to approve the request according to the Findings of Fact and the five Conclusions of Law including the Conditions of Approval as set forth in this document. These are:

Findings of Fact:

1. On May 3, 2016, Chris Price, on behalf of the property owner, Robin Price, submitted a Board of Adjustment application requesting a variance to Section 10-3-6 of the Code which requires structures to be setback a minimum of 100' from the centerline of a stream.
2. The address of the subject application is 635 Parkview Drive, which is located in Summit Park, Plat J.

3. Parcel SU-J-60 contains 0.30 acres.
4. The zoning for Parcel SU-J-60 is Hillside Stewardship.
5. Summit Park, Plat J was recorded on January 7, 1963, prior to County zoning regulations.
6. There are ninety-six (96) lots within the subject plat ranging in size from 0.22 acres to 0.68 acres.
7. The applicant is proposing to construct a single family residence that would contain 2,830 square feet.
8. There is an existing stream that runs parallel to the front property line.
9. Section 10-3-6 of the Code requires structures to be setback a minimum of one hundred feet (100') from the centerline of a stream.
10. The applicant is requesting to locate the residence approximately thirteen feet (13') from the stream; there is a retaining wall that would be located approximately four feet (4') from the stream.
11. The variance is being requested due to the steep slope of the property, which averages approximately sixty percent (60%).
12. Moving the residence closer to the stream would result in less excavation and disturbance to the lot and minimize cuts and fills associated with construction.
13. There are other lots within Summit Park that have been affected by steep slopes or a stream setback that have been granted variances to enjoy the substantial property right of a single family residence.
14. In the HS zone district, there is a front setback exception for lots in Summit Park. If more than fifty percent (50%) of the lot frontage exceeds thirty percent (30%) slope, measured for a distance of fifteen feet (15') back from the property line, the front setback shall be fifteen feet (15') from the edge of the pavement, not the property line.
15. Parcel SU-J-60 is subject to the front setback exception for lots in Summit Park.
16. The applicant will be required to prepare an Erosion Control Plan and Construction Mitigation Plan as required for all building permits through the Engineering Department.

17. There will be a culvert installed under the driveway that will be approved by the Engineering Department, prior to construction.

Conclusion of Law

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 ordinances.
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 rights possessed by other property in the same zone.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. As conditioned, the spirit of the provisions of the land use ordinance is observed and substantial justice done.

Conditions of approval:

1. The retaining wall no closer than four feet from the center line of the stream and that the closest line from the front of the house to the center line of the stream shall be thirteen feet.
2. Prior to building permit issuance the applicant must submit an Erosion Control Plan and Construction Mitigation Plan to the Engineering Department. There will be a culvert installed under the driveway that will be approved by the Engineering Department prior to construction.

Board Member Matheson seconded the motion.

- **MOTION CARRIED (5-0)**
- 2. **Public hearing and possible action on a variance from the required 55' front setback and the 100' setback of a year round stream; 3045 S Cottonwood Drive; Parcel WS-77; Canyon Engineering, applicant – Amir Caus, County Planner.**

Planner Caus shared the background of the application. The lot is located in Wanship Cottage Sites, below Rockport Dam. The parcel is 0.44 acres in size. The majority of the

lot is within the required stream and front setbacks. It would be impossible to build a home on this property and maintain the required setbacks. Staff finds that the stream and front setbacks constitute a hardship and recommend approval of the requested variances.

Board Member Wiest asked for clarification of the map, in particular the hash marks that denote the high water mark of the stream. Gus Sherry, a civil engineer with Canyons Engineering clarified that the gray line was the flood plain limit and the blue line denotes the high water mark. The setback is being requested from the blue line.

Chair Peay asked if there was a particular reason the site of the home was chosen as the best option. Planner Caus answered that the applicants mostly focused on the septic system and water well to determine the placement of the home.

Chair Peay asked for clarification of the comments in Standard 4 about the discharge of dredged and/or fill material in wetlands or waters of the U.S. Planner Caus responded that it was just a parachute condition from the Army Corps of Engineers, but the applicant stated there would be no discharge into the waters.

Board Member Longley asked if there would be any problems with the culinary water rights. Planner Caus stated that the applicant has obtained the water rights. The Health Department has reviewed the proposed well location and the proposed septic system and has accepted them. Board Member Miller brought up the letter from T Reynolds stating their concern with the proposed septic system. Planner Caus stated there was a perc test done and there will be no leaching into the water system. The concerns of nearby property owners have since been mitigated.

Board Member Wiest asked what the side setbacks are. Planner Caus answered that they are twelve feet (12') and they are being met.

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

Board Member Miller asked if the house were down-sized would it make a difference. Planner Caus replied that the house is large, but it would not make a significant difference and the County does not preclude house size. County Attorney Hilder reiterated that the County does not limit house size or enforce any HOA laws. Chair Peay referred to Standard 3 from the Development Code that the size of the home is essential to the enjoyment of a substantial property right possessed by other properties in the same district.

Board Member Matheson made the motion, which was seconded by Board Member Wiest, to approve variance to reduce the stream setback to 30.8 feet and reduce the front setback from the centerline of the road to 41.1 feet as it complies with the

Findings of Fact:

1. The property is located at 3045 S Cottonwood Drive, Wanship, Summit County, Utah and is in the Agriculture Protection (AP) Zone.
2. Eastern Summit County Development Code Section 11-3-3(C.1) states: *"The minimum setback from wetlands shall be forty feet (40'). The minimum setback from any other naturally occurring year round stream, lake, pond or reservoir shall be one hundred feet (100') from the ordinary high water mark."*
3. Eastern Summit County Development Code Section 11-3-2(C.2) states: *"The minimum setback shall be fifty-five feet (55') from the centerline of the road."*
4. The intent of the proposal is to construct a single family home on a legal lot of record.

Conclusions of Law:

1. Literal enforcement of Section 11-3-2 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 other properties in the same district.
3. Granting the variance is essential to the enjoyment of the 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. The setbacks are limited to the site plan as found in the exhibit package.
2. United States Army Corps of Engineers shall review and confirm the final building permit package prior to issuance of the building permit.
3. After confirmation that all United States Army Corps of Engineers, 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, Summit County Health, and the Summit County Building Departments.

• **MOTIONED CARRIED (5-0)**

3. **Public hearing and possible action on a variance from the 100' setback of a year round stream; Beaver Springs Ranch; Parcel BSR-5-79; Karen and Corby Dall, applicants – Tiffanie Northrup-Robinson, Senior Planner.**

Planner Northrup-Robinson gave background on the application. The parcel has a stream that wraps around the North and West boundaries of the parcel, and the Weber

River flows along the South boundary. Planner Northrup-Robinson showed where the stream and river are located on the site plan. The setback requirement encompasses the entire lot. Photos of the existing cabin were shown. The owners would like to add on to the existing cabin. They would be adding approximately 2400 square feet. The cabin would be located approximately thirty feet (30') from the stream and about forty feet (40') from the river.

Analysis and Findings:

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.

Having 3 sides of the property surrounded by the stream and river that requires the 100 foot river setback from each property line renders this lot of record fundamentally unbuildable, without some relief of this requirement.

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

The subject property is a platted legal Lot of Record. Adjacent lots have homes that are similarly located to what is proposed. However, the location of the river and the stream that surrounds this lot creates a special circumstance that does not apply to other lots in the AG-160 zone.

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

There is an existing small single family dwelling on the lot that was built in 1966.

For sentimental reasons, the applicant wishes to keep the original cabin and add on the new structure. As the lot is considered to be a lot of record, then a single family home is considered to be a substantial property right.

Staff finds that although the proposed structure is larger than the existing structure, the size of the new structure is similar in size to other homes in the area.

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

Goal 5.1.a of the Eastern Summit County General Plan states, "Ensure that development occurs in a manner and location that protects natural resources, including but not limited to pollution prevention, erosion prevention, national forests, crucial wildlife habitat and corridors, agricultural lands, fisheries, water quality, wetlands, scenic view sheds, riparian areas, wildlife and clean air." The applicant proposes to place the structure in the most appropriate location of the alternative septic system, in conformance with the Eastern Summit County Development Code.

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

Granting of a variance will allow a land owner to build a single family dwelling on land within a subdivision that was platted for that specific purpose.

The applicant is trying to meet these setbacks as much as possible. Comment was received from the Summit County Engineer, who said they would like to have that applicant meet the setbacks as much as possible and also indicated the home would be located within Flood Zone A. The applicant will have to meet the requirements of the Flood Zone which is included in the building permit review. The Health Department has reviewed the application and indicated the applicant will have to install the alternate septic system being installed less than one hundred feet (100'), regardless of the variance request.

Staff received public comment in favor of the variance being granted.

Staff recommends approval of the variance request based on the Findings of Fact and Conclusions of Law and Conditions of approval as outlined in the Staff Report.

Board Member Wiest asked what the restrictions of Flood Zone A are. Engineer Gary Horton answered that the applicant will have to determine if they are impacting the flood plain elevation. If they are there may be additional insurance requirements for any structures within that flood plain. Board Member Wiest said there was nothing related to the flood zone currently on the site plan. Planner Northrup-Robinson stated they will have to have it signed off by the Engineering Department prior to receiving a building permit.

Chair Peay asked Planner Northrup-Robinson for clarification of an email from Mike Kendell of the Summit County Engineering Department, who stated that he would like to see the house located away from the main Weber River Channel. This is as currently shown and proposed.

Chair Peay asked if there was a current existing driveway and if there will be any changes to that. Planner Northrup-Robinson answered that the owners have recently installed a new culvert in order to handle the additional impact of the construction there.

Board Member Longley asked if the use of the cabin is year round or seasonal. The property owner, Corby Dall answered that there is a gate that is locked at the beginning of winter, so the cabin is for seasonal use only.

In response to Chair Peay's question of whether this is an addition to the existing cabin, Mr. Dall answered that the cabin has existed since he was a child and he wanted to preserve the old cabin along with being able to have the additional space without disturbing the old structure.

Board Member Miller asked if there is an existing septic system. Mr. Dall answered that there is, but it is too small. There was a perp test done and it was found there would need to be a new septic system installed.

Board Member Miller also asked about flooding around the cabin. Mr. Dall said there is a gulf in the yard that allows the water to pool into it and protect the house from flooding.

Board Member Matheson asked if the variance was being driven by the size of the addition. Planner Northrup-Robinson answered that the variance would be required for any addition since the entire parcel is located within the one hundred foot (100') setback requirement. Making the cabin smaller would require less of a variance. The size of this cabin would be similar to others in the area.

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

Board Member Matheson is still considering if the variance is essential to the enjoyment of the property, since there is already a cabin on the property. Board Member Wiest responded by saying that the Board should not limit the enjoyment by limiting the size of the cabin. The size of the cabin they are requesting is not excessive.

Chair Peay stated what makes everyone uneasy is the nearness to the water, but with there already being a cabin located on the parcel, there is no reason to limit the enjoyment of the property owner by limiting the size of the cabin.

Board Member Miller asked if construction would cause any disturbance to the stream. The property owner needs to be cautious to not disturb the natural habitat and flow of the stream and river.

Board Member Miller made the motion, which was seconded by Board Member Longley, to approve variance to reduce the stream setback to 30 feet from the stream and 40 feet from the Weber River as it complies with the Findings of Fact and Conditions of Law and complies with the Conditions of Approval.

Findings of Fact:

1. The property is located in the Agriculture 160 (AG-160) Zone.
2. The lot is approximately 0.93 acres in size. The property has access from Weber Canyon Road.
3. Lot BSR-5-79 is considered to be a legal Lot of Record.
4. There is a naturally occurring, year-round stream that runs along the north and west boundary of the lot.
5. The Weber River, a naturally occurring, year-round river runs along the south boundary of the lot.

6. Eastern Summit County Development Code Section 11-3-4.C.1 states that the minimum setback from the high watermark of a naturally occurring, year-round stream is 100 feet.
7. A 502 square foot house is currently on the lot. The applicant intends to add on to the existing structure.
8. The proposed envelope for the new home lies within 39 feet (61 foot variance) of the high water mark of the Weber River. The applicant also proposes 31 feet from the stream on the northerly boundary (69 foot variance) and 30 feet from the stream on the westerly boundary of the lot.
9. The lot is surrounded on all sides by lots with a similar size and shape.
10. The current Development Code standards allow for a reasonably sized home with reasonable improvements on the property. Because the lot has a 100 foot setback on 3 sides of the property due to the stream and river, it prevents any construction on the site.

Conclusions of Law:

1. Literal enforcement of Agriculture 160 (AG-160) 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 location of the river and stream creates a special circumstance attached to the property 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 construction of 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 site plan found in the Staff Report Exhibit A.
2. 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.
3. The applicant shall submit a certificate of survey at the footing inspection to verify that the structure is located according to the site plan as shown in Exhibit A of this staff report.

• **MOTION CARRIED (5-0)**

4. **Public hearing and possible action on a variance from the 10' side yard setback to edge of driveway to allow a 2 foot setback; 3218 Creek Road; Parcel JR-3-381; Patrick and Emily Olsen, applicants. – Steven Taylor, Engineering Department**

Engineering Code Enforcement Officer, Steven Taylor shared the background of the application, including pictures and maps of the lot in question. The site plan was presented.

The applicant's basis for the variance request is they have spent time and effort with their architect trying to design a home that they will enjoy that will best fit this parcel. They desire to build a side facing garage to better enhance the aesthetics of the developed parcel.

Public input was shared by Officer Taylor. Neighbors stated they have no issues with the applicants receiving a variance for their driveway setback. All five emails received on this issue were positive for the applicants being granted the variance. There was one email received on the date of the hearing stating concern for variances being granted without a need. They believe that granting this variance would be against the intent of the ordinance.

Part of the ordinance for the Hillside Stewardship is maintaining the view shed, keeping the best possible view intact. The Olsons feel that the side yard driveway would limit the amount of paving to the home, which would allow for more landscaping. It would also limit the public's view of the inside of the Olsen's garage.

Pat Olson, the applicant stated the stream setback requirement will be affected by the outcome of this hearing. The applicant will be requesting a variance for the stream setback at a later date and if the Board decides to deny the driveway setback variance, the request for a stream setback variance will be greater.

Mr. Olson also shared a picture showing the neighboring home. These neighbors sent an email stating they have no problem with the Olsons being granted a driveway variance.

Chair Peay asked what the width of the parcel is. Officer Taylor answered the parcel width is just over one hundred feet (100'). The two twelve yard setbacks would make it approximately eighty feet (80'). The ordinance requires a ten foot (10') minimum setback for the driveway.

Chair Peay asked for clarification on how this setback request would affect the stream setback variance request. Mr. Olson replied that they would like to be farther away from the stream and if the variance request for the driveway is denied then he would request a larger variance for the stream, which would put them closer to the stream.

Board Member Miller asked if a certain area on the site plan was the golf course fairway. He stated the fairway would be a pretty good buffer for the stream.

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

Board Member Wiest agrees the stream issue has enough of a buffer with the golf course fairway. Board Member Wiest is concerned with future neighbors having issues with how close together the driveways would be. Officer Taylor said there was a suggestion that there be a recorded document stating the neighbors are in agreement with granting the variance.

Chair Peay stated that this request meets most of the Standards set forth in the Snyderville Basin Development Code. The first Standard is questionable, whether this creates an unreasonable hardship for the Applicant. The only unreasonable hardship might be aesthetics or cost, which the Code states should not be a consideration. Mr. Olson referred to the stream setback requirement as making it more difficult to build according to Code requirements. The site plan would have to be changed to a front facing garage, which would require more use of concrete and less vegetation. Board Member Wiest agrees that it is difficult to consider this issue as being a hardship.

The neighbors next door have a driveway that runs the entire length of the east side of their house. Board Member Miller brings up the point that if the neighbors sell their home at any time the future neighbors may have a problem with the driveway being so close to the property line. Board Member Matheson does not believe that the neighbors having the variance should validate the granting of this variance.

Chair Peay stated Code states literal enforcement would need to cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance. There is a need to balance literal enforcement with an unreasonable hardship with the general purpose. It is not just a question of whether there is an unreasonable hardship, but is it necessary to ask the applicant to bear a hardship to carry out the general purpose of the land use ordinance? There may be some latitude to balance all three factors in Standard 1. Standard 2 would address the special circumstance of the neighbor already having a close driveway.

Board Member Miller agreed that the best way to build the driveway is to grant the variance request and have the neighboring driveways next to each other. Aesthetics is part of the enjoyment of a substantial property right. Chair Peay countered that having driveways next to each other does not look very good. The desire of the area is to not have that look of homes right next to each other. This does relate to personal preference, but the County Code has the setbacks in place because that is what is preferred by the County. Board Member Wiest stated snow storage would be a problem if the variance was granted.

Chair Peay shared his concern that granting the variance would set precedence for other landowners to want to go against Code because they like the way it looks. There is

not a clear reason to grant the variance. Board Member Longley agrees that it would be difficult to articulate how the variance is necessary.

Board Member Wiest made a motion to deny this request on the basis of the literal enforcement does not create an unreasonable hardship for the applicant. Board Member Matheson seconded the motion.

- **MOTION CARRIED (3-2) Board Member Wiest, Board Member Matheson and Chair Peay voted for the motion. Board Member Longley and Board Member Miller voted against the motion.**
5. **Public hearing and possible action on a variance from the 32' height limit; 100 Matterhorn Terrace; Parcel SU-M-2-128; Roderick Nix, applicant. – Ray Milliner, Principal Planner**

Planner Milliner gave the background of the application. The slope was the hardship stated by the applicant. It is difficult to build a home on that great of a slope. It is difficult to get a driveway, while meeting the height and setback requirements. To meet the height requirement would require a sloping garage. Staff looked at other homes in the area with the same issue and found that most had a garage coming in from the side.

The special circumstance was stated to be the lot was platted in the 1960's when there were no rules and now it would not be considered a buildable lot. It is very difficult to build a height compliant home on that great of a slope.

Granting the variance is essential to the enjoyment of a substantial property right. The applicant does have a right to build a home on the property. The Board should decide if what the applicant is proposing is essential to being able to build a home or if there is another way to build a home on the property that would not require the height variance.

The general plan encourages integration with the environment. If the applicant were to do more excavation of the lot it would lower the height of the home, but would also require more removal of trees and other vegetation.

The spirit of the zoning ordinance shows that the lot is already outside of the intent of the zone in which it is located. The slope is much greater than the 15-25% indicated as ideal.

Planner Milliner indicated that he did not have a firm recommendation for this application. Staff has prepared findings of fact, conclusions of law and conditions of approval for both approval and denial of the proposed variance.

Chair Peay asked what is behind the house. Who would be affected by the granting of the variance? Planner Milliner responded there is a lot directly below. There is current construction on that lot but there is a significant gap in between the lots. The vertical distance (elevation) of the entire lot is about two hundred sixty feet (260').

Chair Peay asked if the only point of variance was the garage. Ken Nix (father of the applicant) responded. Chair Peay asked if the front setback was changed would that change the request for the height variance. The applicant was already automatically granted a zero front setback. The site plan shows they are already building up to the property line.

The plan is to have the driveway and garage with no slope. The master bedroom would be slightly up from the garage and the other levels would go down from there. The requested fifty foot (50') variance would be to the top of the master bedroom. Chair Peay stated even if the driveway was sloped there would not be a significant height reduction in the home.

Mr. Ken Nix shared more pictures of the lot and the area.

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

The applicant talked to the neighbor that would be able to see the applicant's home from his lot and the neighbor had no problems with the variance being granted. There were no official comments from neighbors.

Chair Peay stated there was clearly a hardship in this case. The applicant cannot build without the variance being granted. Chair Peay asked if the County Engineers explored all other options. Planner Milliner responded that it is possible to build a house with less height. In order to do that it would require more excavation and loss of trees and vegetation.

The applicant was asked to share the different options they had explored for the house design. The applicant explored rotating the garage, moving the master bedroom to the other side, or rotate the house one hundred eighty (180) degrees.

The applicant did clarify that the alternate site plan is the design they are planning on using.

Chair Peay stated there is no reason to negotiate a different height for the variance. Fifty feet (50') seems reasonable. Board Member Miller stated the spirit of the ordinance is to preserve the view shed and believes the variance would still maintain the view shed.

Board Member Miller made the motion, which was seconded by Board Member Wiest, to approve the eighteen foot (18') variance to a fifty foot (50') height above grade based on the reasoning as it complies with the Findings of Fact and Conditions of Law and complies with the Conditions of Approval.

Findings of Fact:

1. The applicant is the owner of a lot of record located at 100 Matterhorn Terrace.
2. The lot is approximately 0.67 acres in size.
3. The lot is currently vacant.
4. The lot is extremely steep, with slopes approaching 50%.
5. The allowed front setback for the lot is fifteen feet (15') from the edge of the road pavement.
6. Section 10-2-5.D of the Snyderville Basin Development Code states that the maximum structure height in the HS Zone is 32 feet above existing or finished grade, whichever is higher.
7. The applicant is proposing a maximum height of 50 feet above existing grade.
8. Building a driveway that is not steeply sloped and building a garage with sufficient depth to park a car creates a situation where the variance is necessary to build the home.
9. There are very few homes built on the lots in the surrounding area, due to the extreme steepness of the lots.
10. When the County approved the subdivision plat it determined that it would be appropriate for someone to build one home on the property.
11. The lot is extremely wooded with mature trees some of which are at least 40 to 50 feet tall.
12. Moving the home farther down the slope to enable a side entry driveway would require the removal of more of these trees as part of construction, as well as more excavation of the slope.

Conclusions of Law:

1. Literal enforcement of HS District 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 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 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.
6. It can be shown that all of the conditions justifying a variance, pursuant to Snyderville Basin Development Code Section 10-3-6 have been met.

Conditions of approval:

1. The maximum building height on the property shall be fifty feet (50') above existing grade.
2. 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.

• **MOTION CARRIED (5-0)**

6. **Approval of Minutes**

March 24, 2016:

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

• **MOTION CARRIED (5-0)**

7. **Election of Chair and Vice Chair**

Board Member Matheson moved to retain Chair Peay as the Chair of the Board. Board Member Miller seconded the motion.

• **MOTION CARRIED (5-0)**

Board Member Wiest moved to retain Board Member Matheson as Vice Chair. Board Member Longley seconded the motion.

• **MOTION CARRIED (5-0)**

8. **Discussion regarding possible change in meeting time**

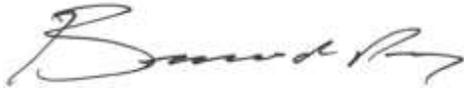
Planner Milliner stated the County Planners have requested that all County meetings start at the same time, which is 6:00pm. The Board of Adjustments currently meets at 6:30pm.

Chair Peay stated the Board will think about this and possibly come back to it at a later date.

ADJOURN

At 9:03 p.m. Board Member Longley and Wiest made a motion to adjourn.

- **MOTION CARRIED (5-0)**

A handwritten signature in cursive script, appearing to read "B. Wiest", written in black ink.

Approval Signature