

2 The Lindon City Board of Adjustments held a meeting on **Wednesday, July 2, 2014**  
beginning at 6:00 p.m. in the Lindon City Center, Lower Level Conference Room, 100  
North State Street, Lindon, Utah.

4 **Conducting:** Jeff Southard, Chairperson

6 **PRESENT**

8 Jeff Southard, Chairperson  
Glen Mitchell, Boardmember  
10 Jeff Wilson, Boardmember  
Hugh Van Wagenen, Planning Director  
12 Jordan Cullimore, Associate Planner  
Kathy Moosman, City Recorder

**ABSENT**

Steve Smith, Boardmember  
Greg Slater, Boardmember

14 The meeting was called to order at 6:03 p.m.

16 **APPROVAL OF MINUTES** – The minutes of the meeting of October 30, 2013 were  
18 reviewed.

20 CHAIRPERSON SOUTHARD MOVED TO APPROVE THE MINUTES OF  
THE MEETING OF OCTOBER 30, 2013 AS AMENDED. BOARDMEMBER  
22 WILSON SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR. THE  
MOTION CARRIED.

24 **CURRENT BUSINESS** –

- 26
- 28 **1. Request for Variance: Front yard setback requirement – Westco Properties  
725 East 770 North.** The applicant is requesting a variance to LCC17.44.080  
30 which requires the front yard setback in residential zones to be 30 feet as  
measured from the right of way line. If granted, this variance would approve a 25  
32 foot front yard setback.

34 Hugh Van Wagenen, Planning Director, opened the discussion by explaining the  
applicant, Westco Properties, is requesting a variance to Lindon City Code 17.44.080  
36 which requires the front yard setback in residential zones to be 30 feet as measured from  
the right of way line. Mr. Van Wagenen stated that if approval is granted, this variance  
would approve a 25 foot front yard setback.

38 Mr. Van Wagenen further explained the Lindon City Code in question is 17.44.080 Yard  
40 Setback Requirements and reads as follows:

42 *The following minimum yard requirements shall apply in the R1 zones: (Note: All  
setbacks are measured from the property line, or for property lines adjacent to a street  
44 setback shall be measured from the street right-of-way line.)*

- 46 *1. Front yard setback: thirty (30) Feet*

2 Mr. Van Wagenen then gave some background information of this agenda item  
3 stating a future major collector road is planned to abut the subdivisions north and east  
4 boundaries. He then referenced the submitted plat. He explained that the design of the  
5 road carries it much higher than the homes below it. As such, a slope easement has been  
6 retained by Lindon City to accommodate the support of the future road. Mr. Van  
7 Wagenen went on to say this easement encroaches onto several lots, some more than  
8 others, within the subdivision and is identified by the hatched line on the lots. He noted  
9 that a previous applicant received approval in April of 2013 for the same request on the  
10 four lots to the east of the lot in question. Mr. Van Wagenen stated that Brad Belliston is  
11 in attendance on behalf of Homesteads at Coulson Cove to address the Board.

12 Chairperson Southard inquired if the BOA had previously reviewed a variance on  
13 this subdivision. Mr. Van Wagenen confirmed that statement and noted at that time it  
14 was the developer requesting the variance on a project and now it is the property owner  
15 requesting the variance. Mr. Van Wagenen also stated for the record, that the future  
16 collector road will be up higher in elevation than the lots below so the slope is needed to  
17 help support the road that will eventually go in. He noted the applicant, who owns lots  
18 28 & 29, and is now requesting the same thing on his adjacent lot. He also explained  
19 that the developer put in a rock wall before the lot was sold. Mr. Van Wagenen then  
20 presented photos of the lots in question and noted where the property lines are located.

21 Boardmember Wilson commented that he took some pictures of the site today,  
22 specifically to define the property lines, because he was curious as to why the developer  
23 would get a variance on the four lots and not for the next lot over. He went on to say that  
24 he went up and found the markers and measured. He then showed the lot in question  
25 (#28) and the lot next to it (#29) so he could understand, initially, why it was not included  
26 in the first cut. Mr. Van Wagenen mentioned that the applicant provided site plans and  
27 the existing rock wall and additional information to present to the Board. He noted there  
28 is a 10 ft. construction easement in addition to the slope easement. He also referenced the  
29 home plans on lots 32 and 29 which would take advantage of the 25 ft. setback and have  
30 a bigger backyard space. Mr. Van Wagenen then turned the time over to the applicant.

31 Mr. Belliston addressed the Board at this time. He explained he is requesting this  
32 5 ft. variance on the setback because he thinks they left out lot 32 because they thought  
33 the rock wall didn't go down that far, but it actually does; that is the only lot with the  
34 rock wall that doesn't have a 25 ft. setback. He went on to say that lots 33, 36, and 38 do  
35 not have the rock wall and do not have the variance. Mr. Van Wagenen stated that the  
36 subdivision is being phased and they extended the wall down farther and it was left off  
37 the plans. Mr. Belliston stated they would like all of them to look the same and to ensure  
38 safety and also for a bigger back yard; and to basically look good for the neighborhood.  
39 Boardmember Wilson noted the wall is probably about 7 ft. high.

40 Chairperson Southard opened the meeting for public comment at this time.

41 **Landon and Jamie Harsh:** Owners of lot 33. Mr. & Mrs. Harsh were in attendance but  
42 had no comments at this time.

43  
44  
45 At this time, Chairperson Southard closed the public comment portion of the  
46 meeting and explained that in order for the Board of Adjustment to grant a variance, the

2 following five criteria must be met according to LCC 17.10.050(2). The Board went on to  
3 review the five criteria which must be met in order to approve a legal variance according  
4 to LCC 17.10.050(2)(a) as follows:

5  
6 **1. Literal enforcement of the land use ordinance would cause an  
7 unreasonable hardship for the applicant that is not necessary to carry  
8 out the general purpose of the land use ordinances;**

9  
10 *Boardmember Wilson commented that the applicant states that it does minimize  
11 the back yard space and does not affect the master plan necessarily. Boardmember  
12 Wilson questioned whether the size of the backyard falls in the category of unreasonable  
13 hardship; there is definitely a convenience factor but he has not made a decision as yet.  
14 Chairperson Southard commented that the unreasonable hardship is because of the slope  
15 and that easement on the backyard, and the easement is the unreasonable hardship not  
16 the backyard itself. Boardmember Wilson noted when looking at the envelope of the  
17 house he thinks it would fit, and if compared to the existing home that is being built they  
18 actually have less usable space whether they choose to use the 5 ft. or not.*

19 *Chairperson Southard stated that he is not sure the applicant's explanation is  
20 what he would use for determination. When the original variance was done for the other  
21 lots it was based on the fact that the Board knew they would have a retaining wall that  
22 would encroach on those lots. He questioned if it was fair to say the developer did not  
23 know that wall would encroach; reasonably thinking would be that the developer would  
24 do it on all lots that would have that hardship. Boardmember Wilson stated that he feels  
25 it is more of a significant issue than the lot next door and it has two retaining walls. He  
26 went on to say that he is not sure repositioning the house by 5 ft. constitutes an  
27 unreasonable hardship. Boardmember Mitchell commented from what the Board had last  
28 time this should be considered, and if the developer would have come in and done all of  
29 the lots at once the Board would have accepted it last time.*

30 ***At this time, Chairperson Southard moved to other criteria items for discussion and  
31 noted they will come back to this criteria item for more discussion.***

32  
33 *Following some additional discussion, Chairperson Southard asked  
34 Boardmember Wilson, based on the last approval, if he has decided if this is an  
35 unreasonable hardship. Boardmember Wilson replied that he has not decided and  
36 questions whether that hardship is unreasonable or not.*

37  
38 *Chairperson Southard believes based on the previous discussion and the  
39 discussion here tonight that it is an unreasonable hardship as they did not know that the  
40 retaining wall would be there and had that wall been in place the Board would have  
41 approved this variance with the other one at that time.*

42  
43 ***The Board concurred that criteria HAS been met.***

44  
45 **2. Are there special circumstances attached to the property that do not  
46 generally apply to other properties in the same zone?**

2 Chairperson Southard noted the slope easement is mostly within the PUE on this  
lot. Boardmember Wilson commented there will be the same sort of problems.

4 ***The Board concurred that the criteria HAS been met.***

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

8  
10 Chairperson Southard read the applicant's response at this time. Boardmember  
Wilson commented that the only thing to go on at this point is the one house and the  
12 others are not present, but he is not sure this is substantial property loss to be moving 5  
ft. from the front yard to the back yard. Chairperson Southard asked the applicant to  
clarify paragraph #3. Mr. Belliston stated that he feels the master plan is not affected by  
14 moving the variance from 25 ft. vs. 30 ft. He added that a lot of what he states in his  
answer is quoted from the previous meeting which was approved by a 4 to 1 vote at that  
16 time; but the rock wall was not in place at that point. He feels most people will take  
advantage of it and noted it will add more safety in the backyard. He reiterated that the 5  
18 ft. does, in fact, make a difference.

20 Chairperson Southard stated the Board is trying to understand what substantial  
property right is being denied. Boardmember Wilson stated it is not just lot 27, and  
questioned what property right would be lost that would require moving the home. Mr.  
22 Belliston stated that it is much easier to landscape a yard going down rather than up  
including safety issues. He added they are trying to make this look good and also be  
24 usable; he is not trying to skirt the law but there has been a precedence set.

26 Chairperson Southard stated the substantial property right question needs to be  
addressed. Boardmember Wilson commented that he is just trying to understand what it  
is. Boardmember Mitchell thinks it is the right of the property owner to enjoy what they  
28 have but there are other things that can be done other than that. He feels 5 ft. can make a  
difference in a backyard for the enjoyment of the family, but how much difference it can  
30 make is not known.

32 Chairperson Southard commented that the principle is the same from the last  
variance that was granted. He then referenced the April 2013 minutes. Mr. Van Wagenen  
commented from a staff perspective, and as a homeowner, he feels if it is his land and if it  
34 happens to have an easement on it that restricts the use of his property (whether the rock  
wall is there or not) is that different than the property across the street that may have the  
36 same dimensions as his property but is not restricted so he cannot enjoy the same use. He  
noted at the same time nobody forces someone to buy a lot and all lots are not created  
38 equal.

40 Chairperson Southard pointed out they granted the last variance because it was  
believed that it was an unreasonable hardship and he believes this meets the criteria.

42 ***The Board concurred that criteria HAS been met.***

44 **4. The variance will not substantially affect the General Plan and will not be  
contrary to the public interest, and;**

2 *Chairperson Southard commented that this does not substantially affect the General  
Plan and will not be contrary to the public interest.*

4 ***The Board concurred that the criteria HAS been met.***

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

8 *Chairperson Southard commented that he feels the spirit of the land use  
ordinance is observed and substantial justice is done.*

10 ***The Board concurred that the criteria HAS been met.***

- 12 (b) 1. In determining whether or not enforcement of the land use ordinance  
14 would cause unreasonable hardship under Section (2) (a), the Board of  
Adjustment may not find an unreasonable hardship unless the alleged  
16 hardship;
- 18 A. Is located on or associated with the property for which the  
variance is sought, and;
  - 20 B. Comes from circumstances peculiar to the property, not  
from conditions that are general to the neighborhood.

22 *Chairperson Southard pointed out that many of the lots have the slope easement  
but not all have the retaining wall.*

- 24 2. In determining whether or not enforcement of land use ordinance would cause  
26 unreasonable hardship under Subsection (2) (a), the Board of Adjustment may not  
find an unreasonable hardship if the hardship is self-imposed or economic.

28 *Chairperson Southard pointed out that the applicant bought the lot with the  
30 retaining wall in place, and perhaps the due diligence was not done. Boardmember  
Wilson stated that he measured the proposed structures and this lot is 20% deeper than  
32 the lot next door, but is that a property right? Chairperson Southard stated he feels this is  
not self-imposed or financial for the rock wall and the easement as due diligence should  
34 have been done; the applicant should have known that the 30 ft. setback would apply. But  
the applicant was not told.*

- 36 (c) 3. In determining whether or not there are special circumstances attached to  
38 the property under Subsection (2)(a), the Board of Adjustment may find  
that special circumstances exist only if the special circumstances;
- 40 A. Relate to hardship complained of, and;
  - 42 B. Deprive the property of privileges granted to other  
properties in the same district.

44 *Chairperson Southard commented that they allowed that variance so the property  
rights could be used to the fullest extent. Mr. Van Wagenen reminded the Board because  
46 there is not a full body that a majority vote must be unanimous so all 3 Board member's*

2 will have to agree. Boardmember Wilson reiterated that he walked the grounds because  
4 he was curious as to why that property was not originally included if it will be so severely  
6 impacted. He voiced his concern that in the request there is no option to increase the  
8 backyard except to ask for a front variance. Chairperson Southard asked what he would  
10 propose could be done. Boardmember Wilson replied that in principle it is very much the  
12 same thing as discussed before but now we are talking about one lot in particular not the  
14 area in general. Boardmember Mitchell commented that he does not see what is so much  
16 different now than before. Boardmember Wilson stated before they were talking about  
18 the entire development and now they are talking about just one particular lot.  
Boardmember Wilson further stated that there is no question in his mind that there is a  
hardship presented because of the 7 ft. wall in the back yard. There was then some  
additional general discussion by the Board. Boardmember Wilson stated that ultimately  
the question is the property rights as opposed to no other way to mitigate them.  
Chairperson Southard stated it is the Board's job to determine if the five criteria are met  
and the question is on criteria number one and the hardship issue. Boardmember Wilson  
stated he is leaning toward classifying it as such because of the lay of the entire  
subdivision as an entire entity, but this is still impacted by the same issues it was granted  
for in order to establish that property right.

20 ***The Board concurred that the criteria HAS been met.***

22 Chairperson Southard then called for further comments or discussion. Hearing  
none he called for a motion.

24 BOARDMEMBER WILSON MOVED TO APPROVE THE VARIANCE  
26 REQUEST FOR A TWENTY-FIVE (25) FOOT FRONT YARD SETBACK FOR 725  
28 EAST 770 NORTH, LOT 32, PLAT A, HIGHLANDS AT BALD MOUNTAIN  
SUBDIVISION. BOARDMEMBER MITCHELL SECONDED THE MOTION.

THE VOTE WAS RECORDED AS FOLLOWS:

30 CHAIRPERSON SOUTHARD AYE

BOARDMEMBER WILSON AYE

32 BOARDMEMBER MITCHELL AYE

THE MOTION CARRIED UNANIMOUSLY.

- 34
1. **Request for Variance: Building Lot Sizes – Lindon City Corporation – 316  
36 North 135 West.** The applicant is requesting a variance to LCC17.44.020 of  
38 4,864 square feet to the minimum building lot size of 20,000 square feet in the  
40 residential single-family (R1-20) zone. If approved, the lot in question would be  
15,126 square feet. This is the applicant's second request for a variance.

42 Hugh Van Wagenen, Planning Director, led this discussion by explaining this is a  
44 request by the applicant for a variance to LCC17.44.020 of 4,864 square feet to the  
46 minimum building lot size of 20,000 square feet in the residential single-family (R1-20)  
zone. If approved, the lot in question would be 15,126 square feet. This is the  
applicant's second request for a variance.

Mr. Van Wagenen then gave a brief summary stating this is the applicant's second

request. He noted the previous request was denied because the Board felt that the applicant had not pursued other viable means of meeting the minimum lot size requirement. He noted that it was recommended that the City approach the adjacent land owner to try and purchase the requisite square footage to meet the 20,000 square foot minimum. Mr. Van Wagenen explained that the City did this and had a verbal commitment from the landowner to sell the necessary square footage. However, the landowner, as the City understands it, was not able to secure a release of interest on the square footage agreed upon. Eventually, the adjacent landowner sold the adjacent lot and there is now a home being built on the property. Mr. Van Wagenen further explained that because the adjacent landowner was not able to follow through on the verbal agreement made, the City is now back before the Board of Adjustment to have them reconsider their previous determination.

Mr. Van Wagenen then referenced the Lindon City Code in question, 17.44.020 Lot Area as follows:

*The minimum area of any lot or parcel of land in the R1 zone shall be as indicated by the subzone used in conjunction with the R1 zone designation...The minimum area of any lot or parcel of land in the R1 zone shall be as indicated below for the subzone in which the lot or parcel is situated: R1-12 twelve thousand (12,000) square feet; R1-20 twenty thousand (20,000) square feet.*

At this time Mr. Van Wagenen distributed the submitted letter from the Carter's which the Board read. He also presented photographs of the site and existing tithing house.

Chairperson Southard opened the meeting for public comment at this time. There were several in attendance who addressed the Board as follows:

**Chris and Summer Carter:** Mr. Carter stated that they have nothing prepared other than the submitted letter. Mr. Van Wagenen then read the submitted letter from the Carters.

**Steve Clark:** Mr. Clark voiced his opinion that the city needs to listen to their citizens and Lindon is a great city and it is his hope they will listen to this family. He noted this is a wonderful family that will bring good things to the community.

**Betty Clark:** Ms. Clark stated that she owns property north of the property in question. She also stated that she feels this will not affect her in any adverse way. She would say it will be an advantage to have a decent home on the property. She does think that it should be restricted to a decent size (not too large of a home) as that would look inappropriate for the neighborhood. She would suggest putting a restriction on the sq. footage of the home and on the lot if possible.

Chairperson Southard asked if the size of the building can be restricted. Mr. Cullimore replied that you can restrict the size as long as it is not unreasonable. Mr. Van Wagenen

2 *stated the current setbacks are 30 ft. in the front and rear and 10 ft. on the side and it*  
*meets the square footage requirements.*

4 At this time, Chairperson Southard closed the public comment portion of the  
meeting and explained that in order for the Board of Adjustment to grant a variance, the  
6 following five criteria must be met according to LCC 17.10.050(2). The Board went on to  
review the five criteria which must be met in order to approve a legal variance according  
8 to LCC 17.10.050(2) (a) as follows:

10 **1. Literal enforcement of the land use ordinance would cause an**  
12 **unreasonable hardship for the applicant that is not necessary to carry**  
**out the general purpose of the land use ordinances;**

14 *Chairperson Southard then reviewed the applicant's statement to criteria #1 as*  
*follows:*

16 *This lot was purchased by the city with the intent to use the old tithing house and*  
18 *surrounding ground as a historic site and public meeting space. However, upon further*  
20 *research the City Council expressed that the City would not be able to utilize the*  
22 *property as originally intended. With that the lot became surplus public property. It is*  
24 *in the public interest to dispose of the property due to maintenance costs, lack of*  
26 *revenue from the parcel, and the lack of necessity to retain the parcel. Without the*  
*variance to the minimum building lot size, the city would have very little options in*  
*disposing of the surplus property. Additionally, there are other lots under 20,000*  
*square feet in the R1-20 zone, including lots on Center Street and the Green Valley*  
*Condominiums, that have not detrimentally impacted the city due to lot size.*

28 *Chairperson Southard stated the options are to rent the existing home but it*  
cannot be occupied in that regard. The city has no use for it and it is not a benefit to the  
30 public. Mr. Van Wagenen clarified if the lot could be sold and the plat taken off the  
public area it would become a residential non buildable lot. Mr. Van Wagenen also  
32 presented the April 13, 2013 minutes for reference.

34 ***At this time, Chairperson Southard moved to other criteria items for discussion and***  
***noted they will come back to this criteria item for more discussion.***

36 *Chairperson Southard continued reviewing the applicant's statements followed by*  
38 *some additional discussion.*

40 ***The Board concurred that the criteria HAS been met.***

42 **2. Are there special circumstances attached to the property that do not**  
44 **generally apply to other properties in the same zone?**

46 *Chairperson Southard then reviewed the applicant's response to criteria #2 as follows:*

*This lot was originally subdivided with the intent to use it as a historic site and public*

2 meeting space. It was not meant to be a building lot at that time. When it no longer was  
in the public interest to maintain the property due to several factors (i.e. new meeting  
space was procured with the purchase of the LDS meeting house on Main Street;  
4 restoring the tithing house was cost prohibitive as stripping the paint cost \$20,000 and  
moving the building cost \$50,000), the property became surplus to City needs.  
6 However, because of the original intended use of the property at the time of subdivision  
the lot does not meet minimum building lot requirements in the R1-20 zone. Although,  
8 one could argue the situation is self-imposed, the decision to make the lot non-buildable  
was done under a different City Council and Administration. The current Council and  
10 Staff are attempting to serve the public interest as it regards the current situation of the  
property. Additionally, the City did approach the adjacent owner and attempted to  
12 purchase the requisite square footage. That deal fell through and the City is back to  
square one.

14  
16 Chairperson Southard commented that this was previously done under a different  
Council and administration and the variance just granted under agenda item two was a  
different developer who brought in those original lots which was a significant factor in  
18 deciding whether this applicant should be held to a different standard or not. He  
questions if this principle applies here. Boardmember Mitchell agreed with that  
20 statement stating that we can't answer for what other people have decided in the past.  
Boardmember Wilson stated at the time the decision was made they were the authorized  
22 people in the city and the landscape has changed whether it is for or against. He added  
there wasn't the foresight to leave enough space to make it a buildable lot just in case.  
24 He went on to say at the time, because of the historical documents, there was a decision  
made to preserve something historically important for the public interest.

26 Chairperson Southard stated there is nothing in the letter that addressed criteria  
#2 regarding special circumstances.

28  
30 ***The Board concurred that the criteria HAS been met.***

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

34 Chairperson Southard then reviewed the applicant's response to criteria #3 as  
follows:

36  
38 ***In order for an owner to utilize the property to the same extent as surrounding  
properties, i.e. being able to build a home, the variance is needed. Lindon City has no  
intention of building on the lot. As mentioned, it has become surplus public property  
40 and will be sold.***

42 Chairperson Southard commented that this comes back to the question are there  
other lots similar to this that enjoy that property right. He noted that generally, we  
44 should consider this criteria objectively. From the discussion in the beginning it does not  
look like it can be used without the variance. Boardmember Wilson stated that the only  
46 possibility aside from that is the city selling the public area to someone to purchase and  
not build on the lot even though it is in a residential zone, otherwise it becomes unusable  
48 and not in the public interest and not a benefit to the public or to anyone unless

2 miraculously someone comes along and purchases it for such a use; he is confirming that  
3 granting the variance is essential. Mr. Carter asked why it can't be remodeled at some  
4 point.

5 Chairperson Southard explained that being subdivided into a lot that is non-  
6 conforming in size that would allow it to be residential; platted that way it is not platted  
7 to be a residential use and illegal to occupy it; whether it be the city or for someone else.

8 ***The Board concurred that criteria HAS been met.***

10 **4. The variance will not substantially affect the General Plan and will not be  
11 contrary to the public interest, and;**

12 Chairperson Southard then reviewed the applicant's response to criteria #4 as  
13 follows:

14 *The variance will allow a home to be built on the lot which is in a residential zone. As  
15 mentioned above, it would be contrary to the public interest to not dispose of the  
16 property. Creating a building lot for a future owner allows the public to dispose of the  
17 property in an efficient manner.*

18 Chairperson Southard commented that this is a unique situation because the  
19 public interest has to be taken into account as the applicant. He then referenced the  
20 previous minutes. He added that he would be disappointed if when the lot was purchased  
21 that Mr. Carter wasn't brought up to speed with some of the discussion had by the city;  
22 he would hope, as the buyer, that he knew some of the history of the property.

23 Mr. Carter stated that the seller informed them that the variance was rejected  
24 before. Mr. Carter also stated that they had no interest in the property until this issue was  
25 raised again. He commented that the problem is what amount the city needs out of the  
26 property is not what it is worth as it is a non-conforming lot. Chairperson Southard  
27 stated, as a Board, he does not want to know how much the city is asking for it. Mr. Van  
28 Wagenen stated that it is not currently on the market. Chairperson Southard stated  
29 based on the discussion they have had it has zero market value because it is unusable.  
30 Boardmember Mitchell asked when the seller sold it to Mr. Carter had they been  
31 approached by the city to buy it. Mr. Carter stated they had some discussion and they  
32 told him they were not interested and they were told the deal fell through so the whole  
33 property was available; which is a predicament. Boardmember Wilson asked what Mr.  
34 Carter envisioned would happen to the parcel. Mr. Carter stated that he assumed it  
35 would be sold as is, and remodeled and rented as it had been rented in the past. He also  
36 inquired what the city will do with the property if this doesn't pass. Boardmember  
37 Mitchell inquired how long it has been vacant. Mr. Carter said he heard it had been  
38 vacant for 7 or 8 years.

39 Chairperson Southard stated the General plan is not affected and the public interest  
40 is the applicant which is a unique situation.

41 ***The Board concurred that the criteria HAS been met.***

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

2 *Chairperson Southard then reviewed the applicant's response to criteria #5 as follows:*

4 *Granting the variance essentially preserves rights to build a home on the property. Not*  
6 *every buildable lot in the R1-20 zone is 20,000 square feet but this has not impacted the*  
8 *city in a negative fashion. Creating a building lot allows the public to dispose of surplus*  
*property while allowing a future owner to enjoy property rights enjoyed by*  
*surrounding properties.*

10 *Chairperson Southard commented that he agrees that the spirit of the land use*  
12 *ordinance is observed and substantial justice done.*

14 ***The Board concurred that the criteria HAS been met***

16 *He also made reference to the following subsections.*

- 18 (b) 1. In determining whether or not enforcement of the land use ordinance  
20 would cause unreasonable hardship under Section (2)(a), the Board of  
22 Adjustment may not find an unreasonable hardship unless the alleged  
24 hardship;
- 22 A. Is located on or associated with the property for which the  
24 variance is sought, and;
  - 22 B. Comes from circumstances peculiar to the property, not  
24 from conditions that are general to the neighborhood.
- 26 2. In determining whether or not enforcement of land use ordinance would cause  
28 unreasonable hardship under Subsection (2)(a), the Board of Adjustment may  
not find an unreasonable hardship if the hardship is self-imposed or economic.

30 *Chairperson Southard stated this is "self-imposed" if the city did this, but we*  
32 *have looked at owners or developers in the past who have done something with a*  
34 *property and then a new owner comes in, and even though they bought it and should have*  
36 *known something was done to the property the Board has not necessarily considered that*  
38 *self-imposed. He noted this doesn't meet any historical needs that the city may have and*  
40 *at the same time it is not a building that can be rented, or even if donated they could not*  
42 *do that. Boardmember Mitchell commented he feels when looking down the road if it sits*  
*there it will become a hazard and an eyesore. Chairperson Southard commented that*  
*Mr. Carter has had some discussion with the city. Mr. Carter confirmed that statement.*  
*Chairperson Southard stated that the Board does not know what was worked out with the*  
*owner before so they can't take that in to account. He also noted that an economic*  
*reason cannot be the reason for hardship, but they have to balance that with the public*  
*interest. He stated this is a unique circumstance in that respect and the balance is*  
*difficult.*

44 *Chairperson Southard commented that he is leaning towards meeting the criteria*  
46 *based on what the Board did last time which was to tell the city to approach the*  
*neighboring property owners and try to ensure that every possible resource is exhausted.*  
*He further stated that tonight he would be willing to approve the variance but would he*

2 does not think it would be fair to approve the variance if the lot has no value. He  
recommended that the city could work something out with the neighboring property  
4 owner for something reasonable and fair for the public interest and the neighbor next  
door. He does not feel it is right to go back to the applicant and have him try to work out  
6 a negotiation with the neighbor; which may or may not work. He would also recommend  
a possible condition be to try to negotiate with the neighboring property owner first in a  
8 reasonable way that may not even relate to the market value. If this could be reasonably  
done it would be easy to make this go away but at the same time it would not be fair to  
approve the variance. Chairperson Southard would recommend upon closing to un-  
10 subdivide it and record a new plat where it is part of one lot. He feels that would be a  
reasonable way to do it. Chairperson Southard would encourage the City Council to  
12 consider an offer from the neighboring property owners with the condition that upon  
closing they had to record a new subdivision for one lot and then the variance would go  
14 away and they would not be allowed to subdivide again. There was then some additional  
general discussion regarding this recommendation.

16 Chairperson Southard commented that he feels the city should be willing to  
consider working something out as to not have to have a smaller lot.

18 Boardmember Wilson stated that we are trying to correct a mistake the city made earlier  
that was not in the public's interest and we are trying to apply the same standards that  
20 got it to this point and he does not feel this will be break even and there will be some  
loss; they may need to put some conditions on the variance. He feels that despite the best  
22 efforts to keep it secure, people will find their way into that facility because it is vacant  
and it can become a potential public safety hazard.

24 Jimmy Rex, real estate broker in attendance, commented that he feels this was  
self-imposed by the city. He stated that the city council may have changed, but not the  
26 owner so he does not see how this variance cannot be approved. Chairperson Southard  
stated they have to weigh the public interest which in this case is all the citizens of  
28 Lindon, which is a unique situation.

30 Chairperson Southard commented that the conditions given to the city from the  
last meeting have been met and that is why he brought up the topic of finding some way  
to work this out, but the city may be willing to sell for less than market value and he feels  
32 that this is a discussion that they should have; where everyone can benefit and no one is  
hurt. Mr. Carter stated that he appreciates that but what would be the conditions of  
34 taking this to the city council and how will he leave this meeting tonight feeling somewhat  
protected in a sense. He asked if there is language that can be added in the variance to  
36 facilitate the discussion. Boardmember Wilson commented if there is an interest in  
discussion it may be worthwhile to continue this item because granting the variance  
38 implies that it could be sold to anyone. On the other hand if there is interest in not  
granting the variance and yet still have an avenue for the city to transfer the property it  
40 may be worthwhile to pursue before further action.

42 Chairperson Southard asked for the applicant's comments at this time on  
continuing this item vs. approval. Mr. Van Wagenen addressed Mr. Carter's question for  
44 both parties to be protected based on a condition of moving forward would be to start  
negotiations quickly. He appreciates the Carter's circumstances and position and the  
amount of harm of having a home in front of them is detrimental to their well-being, he is  
46 not quite sure why that would be other than the expectation of not having a home in front

2 of them. He went on to say as far as continuing the item, they can have a discussion but  
3 then it goes economical outside of this meeting. He noted the city is looking to dispose of  
4 the property and it is in the public's best interest to recoup the money. He can't say they  
5 would be willing, as owners of the property, to "take a hit" just to have it be favorable to  
6 the neighbors and help their circumstance out; he can't make that claim.

7 Chairperson Southard asked if it would it be in the public's interest to see the lot  
8 absorbed into another lot as to have a one acre lot vs. a smaller lot. Mr. Carter asked if  
9 there is any concern about precedence where another home owner to the south is sitting  
10 in almost the exact same spot; what will be stopping him from subdividing his parcel in  
11 the future and selling a flag lot. Chairperson Southard said the way these variances are  
12 granted does not set a precedence like that because of the special circumstances with the  
13 public interest; that is the only reason this is being considered. Mr. Van Wagenen stated  
14 it would not be a legal lot and it would have to have a variance granted and the  
15 difference is that there was a sincere interest by the city in making this a public area. Mr.  
16 Carter asked how this does not go back to purely an economic issue. Chairperson  
17 Southard commented that in his mind, the way to balance the economics is to go back  
18 into the pockets of the entire population of Lindon; it is the public interest idea not a  
19 specific individual. Mr. Carter asked if it is fair to say if it were a private entity that had  
20 done this same thing would the variance not be granted because it is purely economic.  
21 Mr. Van Wagenen stated if the economics is taken out, from the city's standpoint, this  
22 serves no public interest or public use. Mr. Carter asked if the economics are taken off  
23 the table why not put conditions and grant the variance and remodel the existing home as  
24 this is a huge value to the lot to make it buildable rather than making the existing  
25 building useable.

26 Boardmember Wilson stated this is not a buildable lot so it is different.  
27 Chairperson Southard no one could buy it and rehab it. Mr. Van Wagenen asked Mr.  
28 Carter what would be his concerns of the home in front of his lot. Mr. Carter stated had  
29 they known about this they would have put their home a little farther back on the lot, and  
30 may not have purchased the lot in the first place; the setbacks are a concern and also a  
31 possible second story.

32 Chairperson Southard would consider for discussion making it a bigger rear yard  
33 setback and maybe a smaller front yard setback because of this circumstance; he is not  
34 sure this should be made as a condition.

35 Mr. Cullimore then read the conditions as follows:

- 36 a. Mitigate any harmful effects of the variance
- 37 b. Serve the purpose of the standard or requirement

38 Mr. Van Wagenen then showed the aerial view of the property in question. He noted that  
39 he would prefer, as the applicant, to not have any imposed conditions.

40 Chairperson Southard commented that he thinks there has been enough  
41 discussion and he is open to considering putting a condition on the setbacks to help  
42 mitigate for whoever builds there who would like the separation from the flag lot; this is  
43 a reasonable condition. He also believes the Board has met, because of the public  
44 interest, the requirements in order to grant the variance. Chairperson Southard  
45 commented, based on his experience, that the City is reasonable and the Mayor and City  
46

2 Council are reasonable and they do not want to take a hit on something economically,  
and would consider a price that is reasonable, and there is value in encouraging that  
4 discussion and value on the city's side in trying to see what could be done; but it is not  
the Board's place to try to impose any requirements. Mr. Van Wagenen stated they will  
6 pursue this in good faith but the Board does not have to require it.

- 8 (c) 3. In determining whether or not there are special circumstances attached to  
the property under Subsection (2)(a), the Board of Adjustment may find  
that special circumstances exist only if the special circumstances;  
10 A. Relate to hardship complained of, and;  
12 B. Deprive the property of privileges granted to other  
properties in the same district.

14 Chairperson Southard then called for further comments or discussion. Hearing  
none he called for a motion.

16 CHAIRPERSON SOUTHARD MOVED TO APPROVE THE VARIANCE  
18 REQUEST OF 4,846 SQUARE FEET TO THE MINIMUM BUILDING LOT SIZE OF  
20,000 SQUARE FEET IN THE R1-20 ZONE ON THE LOT LOCATED AT 319  
20 NORTH 135 WEST WITH THE CONDITION THAT THE FRONT YARD SETBACK  
BE SET AT 25 FT. AND THE REAR YARD SETBACK BE SET AT 35 FT.

22 BOARDMEMBER WILSON SECONDED THE MOTION.

THE VOTE WAS RECORDED AS FOLLOWS:

24 CHAIRPERSON SOUTHARD AYE

BOARDMEMBER WILSON AYE

26 BOARDMEMBER MITCHELL AYE

THE MOTION CARRIED UNANIMOUSLY.

28 Mr. Van Wagenen mentioned an upcoming application for a variance regarding a  
30 minimum lot size in the commercial zone stating they would like this to be a new item on  
the agenda at the meeting before July 22, 2014 due to time constraints. Mr. Van  
32 Wagenen stated he contact the Board via email to confirm a meeting date.

34 **ADJOURN**

BOARDMEMBER WILSON MOVED TO ADJOURN THE MEETING AT 8:33  
36 P.M. BOARDMEMBER MITCHELL SECONDED THE MOTION. ALL PRESENT  
VOTED IN FAVOR. THE MOTION CARRIED.

38 Approved – September 11, 2014

40  
42 \_\_\_\_\_  
Jeff Southard, Chairperson

44  
46 \_\_\_\_\_  
Hugh Van Wagenen, Planning Director