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.

**Conducting:** Jeff Southard, Chairperson

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

**ABSENT**
Steve Smith, Boardmember  
Greg Slater, Boardmember

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

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

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

**CURRENT BUSINESS** –

1. **Request for Variance: Front yard setback requirement – Westco Properties 725 East 770 North.** The applicant is requesting a variance to LCC17.44.080 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 foot front yard setback.

   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 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.

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

   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 setback shall be measured from the street right-of-way line.)
   1. Front yard setback: thirty (30) Feet
Mr. Van Wagenen then gave some background information of this agenda item stating a future major collector road is planned to abut the subdivisions north and east boundaries. He then referenced the submitted plat. He explained that the design of the road carries it much higher than the homes below it. As such, a slope easement has been retained by Lindon City to accommodate the support of the future road. Mr. Van Wagenen went on to say this easement encroaches onto several lots, some more than others, within the subdivision and is identified by the hatched line on the lots. He noted that a previous applicant received approval in April of 2013 for the same request on the four lots to the east of the lot in question. Mr. Van Wagenen stated that Brad Belliston is in attendance on behalf of Homesteads at Coulson Cove to address the Board.

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

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

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

Boardmember Wilson noted the wall is probably about 7 ft. high.

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

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

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
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 to LCC 17.10.050(2)(a) as follows:

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

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

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

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.

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

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

The Board concurred that criteria HAS been met.

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

The Board concurred that the criteria HAS been met.

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

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 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 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 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 ft. does, in fact, make a difference.

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. 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 usable; he is not trying to skirt the law but there has been a precedence set.

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 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 make is not known.

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 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 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 equal.

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.

The Board concurred that criteria HAS been met.

4. The variance will not substantially affect the General Plan and will not be contrary to the public interest, and;
Chairperson Southard commented that this does not substantially affect the General Plan and will not be contrary to the public interest.

The Board concurred that the criteria HAS been met.

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

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

The Board concurred that the criteria HAS been met.

(b) 1. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Section (2) (a), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship;

A. Is located on or associated with the property for which the variance is sought, and;

B. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

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

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

Chairperson Southard pointed out that the applicant bought the lot with the 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 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 have been done; the applicant should have known that the 30 ft. setback would apply. But the applicant was not told.

(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;

A. Relate to hardship complained of, and;

B. Deprive the property of privileges granted to other properties in the same district.

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 there is not a full body that a majority vote must be unanimous so all 3 Board member’s
will have to agree. Boardmember Wilson reiterated that he walked the grounds because he was curious as to why that property was not originally included if it will be so severely impacted. He voiced his concern that in the request there is no option to increase the backyard except to ask for a front variance. Chairperson Southard asked what he would propose could be done. Boardmember Wilson replied that in principle it is very much the same thing as discussed before but now we are talking about one lot in particular not the area in general. Boardmember Mitchell commented that he does not see what is so much different now than before. Boardmember Wilson stated before they were talking about 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.

The Board concurred that the criteria HAS been met.

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

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

CHAIRPERSON SOUTHARD      AYE
BOARDMEMBER WILSON         AYE
BOARDMEMBER MITCHELL       AYE
THE MOTION CARRIED UNANIMOUSLY.

1. Request for Variance: Building Lot Sizes – Lindon City Corporation – 316 North 135 West. The applicant is requesting a variance to LCC17.44.020 of 4,864 square feet to the 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.

Hugh Van Wagenen, Planning Director, led this discussion by explaining this is a request by the applicant for a variance to LCC17.44.020 of 4,864 square feet to the 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 landowner 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
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.

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 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 to LCC 17.10.050(2) (a) as follows:

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

Chairperson Southard then reviewed the applicant’s statement to criteria #1 as follows:

*This lot was purchased by the city with the intent to use the old tithing house and surrounding ground as a historic site and public meeting space. However, upon further research the City Council expressed that the City would not be able to utilize the property as originally intended. With that the lot became surplus public property. It is in the public interest to dispose of the property due to maintenance costs, lack of 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.*

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 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 presented the April 13, 2013 minutes for reference.

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.

Chairperson Southard continued reviewing the applicant’s statements followed by some additional discussion.

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

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

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*
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; 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. 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, 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 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 purchase the requisite square footage. That deal fell through and the City is back to square one.

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 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 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 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. 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.

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

The Board concurred that the criteria HAS been met.

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

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

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 and will be sold.

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 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 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 and not in the public interest and not a benefit to the public or to anyone unless...
miraculously someone comes along and purchases it for such a use; he is confirming that
granting the variance is essential. Mr. Carter asked why it can’t be remodeled at some
point.

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

The Board concurred that criteria HAS been met.

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

Chairperson Southard then reviewed the applicant’s response to criteria #4 as
follows:

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

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

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

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

The Board concurred that the criteria HAS been met.

5. The spirit of the land use ordinance is observed and substantial justice done.
Chairperson Southard then reviewed the applicant’s response to criteria #5 as follows:

Gracing the variance essentially preserves rights to build a home on the property. Not every buildable lot in the R1-20 zone is 20,000 square feet but this has not impacted the 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.

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

The Board concurred that the criteria HAS been met

He also made reference to the following subsections.

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

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

Chairperson Southard stated this is “self-imposed” if the city did this, but we have looked at owners or developers in the past who have done something with a property and then a new owner comes in, and even though they bought it and should have known something was done to the property the Board has not necessarily considered that self-imposed. He noted this doesn’t meet any historical needs that the city may have and at the same time it is not a building that can be rented, or even if donated they could not 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.

Chairperson Southard commented that he is leaning towards meeting the criteria 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
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 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 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 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-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 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 away and they would not be allowed to subdivide again. There was then some additional general discussion regarding this recommendation.

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. 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 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 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.

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 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 Lindon, which is a unique situation.

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 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 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 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 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 may be worthwhile to pursue before further action.

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 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 not quite sure why that would be other than the expectation of not having a home in front
of them. He went on to say as far as continuing the item, they can have a discussion but then it goes economical outside of this meeting. He noted the city is looking to dispose of the property and it is in the public’s best interest to recoup the money. He can’t say they would be willing, as owners of the property, to “take a hit” just to have it be favorable to the neighbors and help their circumstance out; he can’t make that claim.

Chairperson Southard asked if it would be in the public’s interest to see the lot absorbed into another lot as to have a one acre lot vs. a smaller lot. Mr. Carter asked if there is any concern about precedence where another home owner to the south is sitting in almost the exact same spot; what will be stopping him from subdividing his parcel in the future and selling a flag lot. Chairperson Southard said the way these variances are granted does not set a precedence like that because of the special circumstances with the public interest; that is the only reason this is being considered. Mr. Van Wagenen stated it would not be a legal lot and it would have to have a variance granted and the difference is that there was a sincere interest by the city in making this a public area. Mr. Carter asked how this does not go back to purely an economic issue. Chairperson Southard commented that in his mind, the way to balance the economics is to go back into the pockets of the entire population of Lindon; it is the public interest idea not a specific individual. Mr. Carter asked if it is fair to say if it were a private entity that had done this same thing would the variance not be granted because it is purely economic.

Mr. Van Wagenen stated if the economics is taken out, from the city’s standpoint, this serves no public interest or public use. Mr. Carter asked if the economics are taken off the table why not put conditions and grant the variance and remodel the existing home as this is a huge value to the lot to make it buildable rather than making the existing building useable.

Boardmember Wilson stated this is not a buildable lot so it is different.

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

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

Mr. Cullimore then read the conditions as follows:

a. Mitigate any harmful effects of the variance

b. Serve the purpose of the standard or requirement

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

Chairperson Southard commented that he thinks there has been enough discussion and he is open to considering putting a condition on the setbacks to help mitigate for whoever builds there who would like the separation from the flag lot; this is a reasonable condition. He also believes the Board has met, because of the public interest, the requirements in order to grant the variance. Chairperson Southard commented, based on his experience, that the City is reasonable and the Mayor and City
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 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 pursue this in good faith but the Board does not have to require it.

(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 exist only if the special circumstances
A. Relate to hardship complained of, and;
B. Deprive the property of privileges granted to other properties in the same district.

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

CHAIRPERSON SOUTHARD MOVED TO APPROVE THE VARIANCE 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 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.

BOARDMEMBER WILSON SECONDED THE MOTION.

THE VOTE WAS RECORDED AS FOLLOWS:
CHAIRPERSON SOUTHARD AYE
BOARDMEMBER WILSON AYE
BOARDMEMBER MITCHELL AYE

THE MOTION CARRIED UNANIMOUSLY.

Mr. Van Wagenen mentioned an upcoming application for a variance regarding a 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 Wagenen stated he contact the Board via email to confirm a meeting date.

ADJOURN

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

Approved – September 11, 2014

Jeff Southard, Chairperson

Hugh Van Wagenen, Planning Director