

2 The Lindon City Board of Adjustments held a meeting on **Thursday, October 30, 2013**
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 Steve Smith, Boardmember

Greg Slater, Boardmember

10 Jeff Wilson, Boardmember: arrived 6:27 p.m.

Hugh Van Wagenen, Planning Director

12 Kathy Moosman, City Recorder

ABSENT

Glenn Mitchell, Boardmember

14 The meeting was called to order at 6:10 p.m.

16 **APPROVAL OF MINUTES** – The minutes of the meeting of September 26, 2013 were
reviewed.

18 BOARDMEMBER SLATER MOVED TO APPROVE THE MINUTES OF THE
20 MEETING OF SEPTEMBER 26, 2013. CHAIRPERSON SOUTHARD SECONDED
THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

22 **CURRENT BUSINESS** –

- 24
- 26 1. **Request for Variance: Minimum Distance between offsetting intersections –**
28 **Scott Farrer.** The applicant is requesting a variance to LCC17.32.120(10) which
requires the centerline of two subordinate streets meeting a through street from
opposite sides be offset at least on hundred fifty (150) feet.

30 Hugh Van Wagenen, Planning Director, opened the discussion by explaining this
is a request by Scott Farrer for a variance to LCC 17.32.120(10) on his property on a
32 master planned road. He further explained that the applicant is requesting a variance
which requires the centerline of two subordinate streets meeting a through street from
34 opposite sides be offset at least one hundred fifty (150) feet. He noted that the applicant is
also requesting that a master planned road intersection be moved from its present location
36 on 40 South to a location approximately 150 feet further west. This new location will
encroach on the 150 foot minimum offset distance by approximately 45 feet, measuring
38 centerline to centerline.

40 Mr. Van Wagenen went on to say that this master planned road was approved by
the City Council earlier in 2013. Mr. Van Wagenen then presented photos depicting the
approximate alignment, and the preliminary subdivision plat showing the new proposed
42 alignment. Mr. Van Wagenen also provided applicant materials including a letter that was
submitted by Mr. Farrer with the variance request along with a letter provided from Mark
44 Christensen giving the City Engineer's Opinion with regard to the variance request.

46 Mr. Van Wagenen pointed out that tonight all that is being considered by the
Board is whether or not to grant the variance itself; it is not to approve the road for the

subdivision and does not make it mandatory to go there, but this will give Mr. Farrer the option to locate it there as part of the subdivision application if he so chooses. Chairperson Southard inquired if they will be granting a variance for a roadway that is not specifically tied to a parcel of property or is this variance still tied to a parcel of property. Mr. Van Wagenen replied that it would be in conjunction with encroaching the 150 ft. minimum offset distance between the centerline of two offset subordinate streets meeting a through street from opposite sides, as required by LCC 17.32.120 (10).

Mr. Van Wagenen then showed a map (Old Rail Estates) depicting the road and the property in question. Mr. Van Wagenen stated that Mr. Farrer provided a letter with bullet points regarding the encroachment on the neighboring (Gary Green) property. He noted that the Greens have voiced their opposition of their property being turned into a corner lot as opposed to a non-corner lot. Mr. Van Wagenen mentioned another bullet point being the topography on where the road is planned to come through (the steepness of the slope) which was one of the challenges. He noted that the planned road was approved by the City Council earlier in 2013 (he referenced photos showing the approximate alignment). He noted the preliminary subdivision plat shows the new proposed alignment.

Mr. Van Wagenen then read submitted letters regarding this variance from citizen input (one from Jerald and Shauna Hatch) among others, and also an opinion letter from the City Engineer. Chairperson Southard commented that he hears the issue is having another road on 40 south, not the proposed new location of this road; is this an accurate statement. Mr. Van Wagenen confirmed that it is an accurate statement. Boardmember Smith commented that from a site distance standpoint this alignment is better because it is further away from the crest of the hill.

Mr. Van Wagenen then turned the time over to the applicant, Scott Farrer for further comments and details. Mr. Farrer made a point that to bring the road up onto the east side they would have to tear down a good portion of the existing red house to get the offset. He questioned when it becomes worth it or not to take a part of the house down. Mr. Farrer also stated that the road would be better served on the east side of the house. Mr. Farrer commented that he had no idea that the alignments of the road would be an issue, and he thought the road would go on the east side of the house but always thought that it could possibly go either way. Chairperson Southard inquired if there is enough set back on the east side of the house to the property line for the road to even fit at the location. Mr. Van Wagenen stated that the radius would encroach on the neighbor.

Mr. Farrer commented that he spoke to the neighbor, Gary Green, (whose mother owns the property to the east) and he indicated that he is not excited about it becoming a corner lot. Mr. Farrer went on to say that he never thought about the road alignment and perhaps he should have waited for this to all be worked out before buying the property. Mr. Farrer noted that he feels it fits better on the west side of the house and blends in better because of the topography of the constant slope and the natural grade.

Boardmember Smith commented that the lot would be an unusual shape. Mr. Van Wagenen agreed that the lot is a unique shape but it meets the ordinances. He added that these issues will be reviewed at the time of formal application. Boardmember Slater asked if the 150 ft. (per city code) is it mandated by the state as well as the city. Mr. Van Wagenen confirmed that it is city mandated based on the City Engineer's recommendations which come from the state. Boardmember Slater also inquired if the

2 City Engineer's opinion isn't contrary to the city's code. Mr. Van Wagenen replied that
3 the Engineer has stated that he does not see a safety concern for this specific request.
4 Boardmember Smith commented that the Engineer justified his opinion by the amount of
5 traffic and the need for an additional turn lane, right of way, etc. and pointed out that this
6 is a unique situation.

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

8
9 **Craig Carter:** Mr. Carter commented that he lives next to Jerald Hatch on 300 west. Mr.
10 Carter then addressed his questions to the Board as follows:

- 11
12 1. Where this road has already been proposed and put on the master plan if the
13 variance is approved and Mr. Farrer decides to go with the road on the west side
14 of his property does the process start all over again and will it go back to the
15 Planning Commission because it is a new road and then back to City Council
16 again.

17 *Mr. Van Wagenen commented that it would be part of the subdivision application
18 and would not go back to the Planning Commission unless the connectivity of the
19 road would be an issue or more property owners are impacted.*

20
21 Mr. Carter expressed that he feels this issue should go back before the Planning
22 Commission because it is a whole new road.

23
24 *Chairperson Southard questioned what the distance requirement is for noticing
25 and if it is the same as for a subdivision and if there should be more people
26 noticed. Mr. Van Wagenen stated noticing requirement is a 300 ft. radius. Mr.
27 Van Wagenen commented that it would have to be a different circumstance that
28 justifies expanding the noticing radius, but not to put undo stress on the applicant
29 that is outside of the requirements. Mr. Van Wagenen said noticing would
30 encompass everyone in a 300 ft. radius. Mr. Van Wagenen said that he could
31 decide at a later date whether to further notice residents or not.*

32
33 Mr. Carter stated that he has concerns about traffic and he also has concerns that
34 this issue keeps changing.

35
36 *Boardmember Smith commented that the intent of the master plan was to provide
37 an idea of how to get from "Point A" to "Point B" and not provide a specific
38 alignment as long as the connectivity is not altered significantly and that could
39 shift depending on development. Chairperson Southard commented that he feels
40 that it should be re-noticed to the same people who were noticed before when the
41 application is submitted.*

- 42
43
44 2. In the City Council meeting they requested that safety studies be completed on 40
45 south before the road gets put in and is that still in place.

2 *Mr. Van Wagenen stated that the City Engineer has looked at what remedies can*
4 *be done on 40 south, for safety concerns, and they have come up with some*
different ideas none of which will be presented to the City Council at the time of
application.

6 3. Is there a policy with the BOA that if the road is self-imposed, which makes it out
8 of compliance to the variances that are set, can the BOA send it back to the
Planning Commission?

10 *Mr. Van Wagenen stated that the BOA cannot send anything back to the Planning*
12 *Commission but there is an appeal board. Mr. Van Wagenen stated that the*
14 *alignment as currently shown on the master plan is not set in stone, and if Mr.*
16 *Ferrer's proposal did not encroach, this meeting would not be necessary. He*
18 *added that the purpose of the master plan is to show connectivity generally where*
roads are coming out in the future. Mr. Van Wagenen expressed his opinion that
the Board should be focusing on the proposed variance to the 150 ft. (what the
applicant is requesting) and not the location. Chairperson Southard stated that
Mr. Van Wagenen's comment is duly noted from the Board.

20 **Doug Olsen:** Mr. Olsen stated that he lives on the corner from Mr. Farrer's property. He
22 commented that he is not in opposition to Mr. Farrer's development, but he wants
24 something to be done with 40 south. He would like to see the city endorse the widening
and improvements on 40 south, including curb and gutter, especially in the areas where
they are getting increased amounts of traffic.

26 *Chairperson Southard commented that the Board does not have the authority or ability to*
28 *propose these things and noted that he should go to the City Council and raise his*
concerns in the open public comment portion of the meeting.

30 At this time, Chairperson Southard closed the public comment portion of the
32 meeting and explained that in order for the Board of Adjustment to grant a variance, the
following criteria must be met according to LCC 17.10.050(2).

34 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:

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

40 *Chairperson Southard stated that there is not literal enforcement of the 150 ft.*
42 *because the roadway is not exact. Mr. Van Wagenen stated that the Land Use ordinance*
44 *in question is the literal enforcement. Boardmember Wilson questioned what is the*
46 *underlying desire to move the road because it is a hardship that is causing the desire to*
move the road to a new location or is it something else? Chairperson Southard
commented (per the applicant's letter) if the road is on the east side (where it is currently
proposed) that the elevation change is steep and that makes it difficult for the road to

2 work and also the interior topography. Mr. Farrer commented that he feels it would be a
4 hardship for him to have to remove a portion of the existing house. Chairperson Southard
6 questioned if this grade works better (per the engineer letter) and if that is accurate or
8 just that there are no safety concerns. Mr. Van Wagenen stated that he can't speak to
10 that and noted the Board can continue this to obtain more information. Mr. Farrer
12 commented that in the end it is the city's road and it will flow better with a constant
14 grade.

16 Chairperson Southard asked if it is necessary to require the road to be on the east
18 side to carry out the general purpose of the land use ordinance. He stated, per the
20 discussion, that within reason, we are saying it is not necessary to leave the road on the
22 east side to carry out the general purpose of the land use ordinance. Boardmember
24 Wilson then referenced the hardship verbiage section (B2) below. Chairperson Southard
26 mentioned "self-imposed" hardship, and noted that it sounds like the applicant was part
28 of the process when the other road alignment was approved on the east side of the
30 existing house. Boardmember Smith disagreed with that statement. He expressed his
32 opinion that the applicant didn't create the topography or the 300 west intersection and
34 the applicant didn't put the house where it is at, but the topography was there so he
36 didn't create the hardship and it is not self imposed. Boardmember Wilson brought up
38 the economic consideration. Boardmember Smith commented that he thinks it will be
40 difficult to create lots on the uphill side and to get driveway slopes because of depths and
42 the length of the driveway to get up to the homes if it is left on the east alignment.
44 Boardmember Slater commented that with the way it is currently approved, the road will
almost cut across the top so there wouldn't be any slope left, because the slope would be
in the road. Mr. Farrer commented that it would just reverse the problem and to a certain
extent you are just swapping the side of the road and which direction it is headed.
Boardmember Slater questioned Mr. Farrer if this is the best use of the property (per his
engineer's proposal). Mr. Farrer replied, in his opinion, that this is the best use of the
property.

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.

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

Chairperson Southard noted that the slope is not special to this property and also
the fact that the road cannot align with 300 west because of the substation. He questioned
if that is a unique or special circumstance. Mr. Van Wagenen commented that in one
essence the applicant does not own the property that the road will align up with, and
another way to look at it is that this is unique because of the substation location and the
road can never go there.

The Board concurred that the criteria HAS been met.

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

4 *Chairperson Southard commented if this variance is not granted and the applicant*
5 *has to put the road on the other side are we denying him a substantial property right*
6 *possessed by other property owners in the same zone. Boardmember Slater commented*
7 *that the applicant can still develop residentially like other properties in the area.*
8 *Chairperson Southard this is the best way to maximize the yield of lots on this*
9 *subdivision, but that is not the Board's place to guarantee that right to someone.*

10 ***The Board concurred that criteria has NOT been met.***

11 *At this time Chairperson Southard pointed out that all of the 5 criteria must be met*
12 *in order to grant the variance, and since this requirement is not met it is not necessary to*
13 *review the additional criteria. Mr. Van Wagenen confirmed that the Board can be done*
14 *but added that it might be helpful for the applicant to appeal or come back with more*
15 *information if the remaining criteria are discussed.*

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

18 *Chairperson Southard commented that the realignment of the road does not*
19 *increase the traffic and does NOT substantially affect the General Plan and will not be*
20 *contrary to the public interest.*

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

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

24 *Chairperson Southard commented that the Board has never dealt with a road*
25 *distance requirement but he feels the spirit is observed because the road alignments are*
26 *not set in stone.*

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

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

36 That slope that close to the road and has to tie in could be peculiar.

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

6 (c) 1. In determining whether or not there are special circumstances attached to
7 the property under Subsection (2)(a), the Board of Adjustment may find
8 that special circumstances exist only if the special circumstances;
9 A. Relate to hardship complained of, and;
10 B. Deprive the property of privileges granted to other
11 properties in the same district.

12
13 Mr. Farrer pointed that the variance is 150 ft. and he is asking for 130 ft., so the
14 alignment is out 20 ft. Chairperson Southard commented that even if he was asking for a
15 one ft. variance at 149 ft., the Board has to meet the same criteria (State law).
16 Chairperson Southard further commented (as a benefit to the applicant) that he has been
17 in meetings where he has requested from cities or boards to continue an item in order to
18 bring in more information; so rather than denying the application tonight (at this point
19 that is what will happen) if the City Engineer looked at the road alignment to the east of
20 the existing house and decided that it did not work well, and the Board believes that it
21 causes and unreasonable hardship and that it doesn't work, then perhaps there may be a
22 different discussion.

23 Mr. Farrer re-iterated that the road will be Lindon City's road and maybe the city
24 would rather have a road that flows better and has an easier grade that matches better
25 with 40 south than the east road; how does that offset the criteria. He noted it seems that
26 the hardship issue is an unanswerable question. Chairperson Southard pointed out that the
27 financial issue is not a criteria. There was then some general discussion regarding the
28 "hardship" criteria.

29 Following discussion, Chairperson Southard gave the applicant the option to
30 continue this variance application and come back with more information from the
31 engineer. Chairperson Southard stated that he feels that right now the only way to grant
32 a variance is to understand a little more of what the engineer requires to make the road
33 work and whether that is reasonable or not.

34
35 Chairperson Southard asked for any further thoughts or feedback from the Board.
36 Boardmember Smith suggested having the City Engineer and the applicant's engineer
37 review it; he also explained his opinion through a drawing. Boardmember Slater
38 commented that after reading the City Engineer endorsed letter why go any further, but
39 from the items discussed it makes sense to put the road intersection further away from the
40 hill. Boardmember Wilson commented that the submitted engineer letter really doesn't
41 address any issues they have talked about, i.e., safety issues. Chairperson Southard
42 agreed with that statement. Mr. Farrer commented that the city engineer letter stated that
43 there are not any safety issues. Chairperson Southard stated that maybe an ordinance
44 change would be an option but the Board has to deal with what is in place today
45 (ordinances).

2 Chairperson Southard invited Craig Carter to comment at this time. He stated that
he would like to see Mr. Farrer ask for a continuance in order to obtain more input from
the engineers and come back and refigure this. Chairperson Southard asked Mr. Farrer if
4 he would prefer that this item is continued. Mr. Farrer agreed that he would prefer to
continue this item in order to gather and provide more information from the engineers.

6
8 Chairperson Southard then called for further comments or discussion. Hearing
none he called for a motion.

10 BOARDMEMBER SMITH MOVED TO CONTINUE THE REQUEST FOR A
VARIANCE FOR 260 WEST 40 SOUTH AS ILLUSTRATED IN THE ATTACHED
12 OLD RAIL ESTATES PRELIMINARY PLAT, TO ENCROACH ON THE 150 FOOT
MINIMUM OFFSET DISTANCE BETWEEN THE CENTERLINE OF 300 WEST
14 AND THE PROPOSED SUBDIVISION ROAD MEETING AT TWO OFFSET
SUBORDINATE STREETS MEETING A THROUGH STREET FROM OPPOSITE
16 SIDES, AS REQUIRED BY LCC 17.32.120 (10) BASED ON THE BOARDS
RECOMMENDATION THAT ALL OF THE FIVE CRITERIA TO GRANT A
18 VARIANCE WERE NOT MET WITH THE RECOMMENDATION THAT THEY
WOULD LIKE TO SEE THE ENGINEERS DOCUMENT WITH REGARDS TO THE
20 FEASIBILITY OF THE ROAD IN ITS ORIGINAL ALIGNMENT ON THE EAST
SIDE OF THE RESIDENCE RATHER THAN THE WEST SIDE. BOARDMEMBER
22 WILSON SECONDED THE MOTION.

24 THE VOTE WAS RECORDED AS FOLLOWS:

24 CHAIRPERSON SOUTHARD AYE
26 BOARDMEMBER SLATER AYE
BOARDMEMBER WILSON AYE
28 BOARDMEMBER SMITH AYE
THE MOTION CARRIED UNANIMOUSLY.

30
32 Mr. Carter commented that he has enjoyed the variance process and the criteria
discussion here tonight and expressed that he appreciates the Board and the process.

34 **ADJOURN**

36 BOARDMEMBER SLATER MOVED TO ADJOURN THE MEETING AT 7:30
P.M. CHAIRPERSON SOUTHARD SECONDED THE MOTION. ALL PRESENT
38 VOTED IN FAVOR. THE MOTION CARRIED.

40 Approved –

42 _____
Jeff Southard, Chairperson

44
46 _____
Hugh Van Wagenen, Planning Director