

2 The Lindon City Board of Adjustments held a meeting on **Thursday, January 7, 2016**
4 beginning at 7:00 p.m. in the Lindon City Center, Lower Level Conference Room, 100
North State Street, Lindon, Utah.

6 Conducting: Jeff Southard, Chairperson

8 **PRESENT**

Jeff Southard, Chairperson

10 Steve Smith, Boardmember

Glen Mitchell, Boardmember

12 Greg Slater, Boardmember

Hugh Van Wagenen, Planning Director

14 Brandon Snyder, Associate Planner

Kathy Moosman, City Recorder

ABSENT

Jeff Wilson, Boardmember

16
18 1. **CALL TO ORDER**

The meeting was called to order at 7:00 p.m.

- 20 2. **APPROVAL OF MINUTES** – The minutes of the meeting of November 12,
22 2014 and May 27, 2015 were reviewed.

24 BOARDMEMBER SMITH MOVED TO APPROVE THE MINUTES OF THE
MEETINGS OF NOVEMBER 12, 2014 AND MAY 27, 2015 AS PRESENTED.
26 CHAIRPERSON SOUTHARD SECONDED THE MOTION. ALL PRESENT VOTED
IN FAVOR. THE MOTION CARRIED.

28 **CURRENT BUSINESS** –

30 Boardmember Smith made it known that he has a conflict of interest with this
32 item but does not feel he will be unduly influenced so he opted to remain in attendance
for the meeting.

- 34 3. **Variance: Front Yard Setback – Jason Miller 745 North 780 East.** The
36 applicant is requesting a variance of five (5) feet to the front yard setback
requirement of thirty (30) feet on Lot 25, Plat A, at the Highlands at Bald
38 Mountain Subdivision. If approved, the front yard setback of the lot in question
would be twenty-five (25) feet.

40 Mr. Snyder, Associate Planner, gave a brief summary of this agenda item. He
42 noted that the applicant, Jason Miller along with Craig Miller are in attendance
representing this item. He explained that Mr. Miller is asking for a 5ft. setback variance
44 from 30 ft. down to 25 ft. for the front yard. Mr. Snyder stated he met with Mr. Miller
and discussed the criteria that must be met in order to grant a variance. Mr. Snyder
46 explained that Lindon City Code does give any person an opportunity who is looking for
a waiver or modification to apply for a variance, and if approved the front yard setback
for the lot in question would be reduced to 25 ft. He noted that he included the

2 information that Mr. Miller provided including a letter and some drawings for the
discussion tonight. He added that the letter states due to the location and the layout of the
4 lot (east side of Lindon) there are some topography changes so the rear yard has a
significant slope. Mr. Snyder stated staff sent out the required third party notices and
6 have not received any comments back at this time. He then referenced the ordinance
language as written adding that this is a medium density classification as far as the
8 general plan is concerned. He went on to say in looking through the submittal the
question is whether or not the home can be built on the lot in question and how large the
10 house can be. He then referenced the supplemental materials included in the staff packet
and photos depicting the area in question.

12 Mr. Snyder further explained that the Single Family Residential Zones (R1) are
established to provide areas for the encouragement and promotion of an environment for
14 family life by providing for the establishment of one (1) family detached dwellings on
individual lots that are separate and sheltered from non-residential uses found to be
16 inconsistent with traditional residential lifestyles customarily found within Lindon City's
single-family neighborhoods. He noted that residential land uses include a range of
18 residential classifications including low, medium, and high density. The goal of housing
and residential areas in Lindon City is to provide a housing and living environment that
20 supports and complements the unique rural quality and character of Lindon City.

Mr. Snyder then mentioned for review a table included in the report. He noted this
22 meets the minimum size for the lot which has an inverse wedge so the narrow portion of
the lot is the rear with the wide portion of the lot being the front. The zone requires a
24 minimum of 100 ft. and this lot has 125 ft. and a depth of 130 ft. with a minimum street
frontage of 50 ft. (to accommodate cul-de-sacs), so there is the permissible lot coverage
26 which limits the structures on the property to 40% (analysis completed by staff when
submitted to the city).

28 Mr. Snyder then presented the subdivision plat and also referenced Plat "A"
(including multiple phases) and noted the plat is recorded. Chairperson Southard asked if
30 this is the slope easement that caused us to talk about several of these lots in the past. Mr.
Snyder confirmed that statement. Mr. Miller stated the grading changed from Phase I to
32 Phase II and noted they cut out a lot of the existing lot with Phase I. Mr. Miller then
described the phases and also presented a topography map. Mr. Snyder also presented air
34 photos showing the grading plans and phases throughout the years. Mr. Snyder noted two
items not included in the staff report are the criteria that are listed in Lindon City Code
36 (based out of Utah State Code) that outlines the objective criteria for making this
determination that must be included in meeting a variance, noting those have not changed
38 since the last meeting. Also included is Mr. Miller's letter to the Board and several
layouts. Mr. Snyder stated Mr. Miller will have the opportunity to go through the
40 information and present it to the Board.

Mr. Snyder concluded by stating in looking at the lot, it is apparent there are
42 unique circumstances associated with the lot. The question then presents itself as to
whether or not a home can be built upon the lot in question and that answer is yes. The
44 question then becomes how large of a house should the owner be able to build
considering the unique circumstances of the lot. He then asked if there were any
46 questions for staff at this time.

2 Chairperson Southard opened the meeting to public comment at this time to allow
the applicant an opportunity to address the Board.

4 The applicant, Jason Miller, addressed the Board at this time. Mr. Miller stated he
is requesting this variance because the back of the lot is very narrow and the slope of the
6 grade drops significantly off the back. He would like to have some back yard on this lot
and by pushing the house forward 5 ft. that will help. He then referenced the topography
8 map noting the only part of the house that is being affected is the front part of the garage
as the majority of the house fits within the setbacks. Mr. Miller pointed out that a lot of
10 other homes in this subdivision have at least a 100 ft. width on the back sides of their
yards where his has 69 ft. on the backside of the lot. He added that the buildable area on
12 the backside is 61 ft. wide so you are trying to fit a house on the lot, which can be done,
but proves to be difficult. He noted he is trying to keep the house similar in size to the
14 other homes built in the area. Mr. Miller stated he does not see that this would disturb or
harm anything that has been done, but it would simply help him with a back yard and also
16 help with getting into the garage (side entry) on his lot. Mr. Miller also mentioned the lots
across the street (5 lots) were granted a similar variance (5 ft.) and he is requesting a
18 similar variance.

Mr. Snyder commented with Mr. Miller's floorplan the garage doesn't project too
20 much further out in front of the home itself, so even though that portion would be closer
to the street it would be a very inviting elevation. Mr. Miller then referenced the photos
22 of the site showing the topography and the slope off the back of the house of the neighbor
to the south. Chairperson Southard called for any further public comment at this time.

24 Jean and Julie Shoaee addressed the Board at this time. Ms. Shoaee stated they
also have a lot in the subdivision in question and are here because they may ask for a
26 variance as well because of the shape of their lot. She noted they have been trying to find
a plan to fit the lot as the footprint has to be very small, but because it is a luxury
28 neighborhood she doesn't want to put a 1,300 sq. ft. home on the lot. Mr. Shoaee asked
about the existing setbacks and if that is a preference or because of a safety reason. Mr.
30 Van Wagenen stated it is a Lindon City ordinance and it is a community preference. Ms.
Shoaee then pointed out the location of their lot on the screen which is across the street
32 from Mr. Miller's lot on the southeast in the cul-de-sac on the corner.

Chairperson Southard stated the purpose of the Board of Adjustment is to look at
34 issues that relate to ordinances and property rights. He noted the Board has very strict
criteria they have to go through from the State and they have to adhere to the criteria in
36 making a determination. Boardmember Smith asked for verification on the numbers
(dimension) on the garage. Mr. Snyder pulled up the maps for verification. Mr. Snyder
38 clarified the front measurements on the garage. Mr. Van Wagenen pointed out that the
orientation of the house is slightly skewed. Mr. Snyder also pointed out there is a
40 cantilever and Lindon City code allows for projections.

Boardmember Smith also commented that he is assuming the 40% is good. Mr.
42 Snyder stated they looked at that on the plans and he believes that was not a concern.
Boardmember Smith also pointed out that the 69 ft. at the back is usually the way they
44 are on a corner lot to make it work. Boardmember Mitchell asked Mr. Miller if the added
5 ft. would give enough room in the garage. Mr. Miller stated he needs 20 ft. to be able to
46 turn and get into the garage, so by sliding it forward it would help him get into the garage
on the backside; if he takes 5 ft. off the house he can't get a three car garage.

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

4
6 **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;**

8
10 Chairperson Southard mentioned that staff presented the purpose of the land use
ordinance upfront as an aesthetically pleasing neighborhood etc. He is not sure that
literally enforcing, because there is a way to set the house and still have what he wants,
12 causes an unreasonable hardship. Boardmember Slater commented that geometrically
speaking, it may be impossible to get into the garage if the house is at the same angle.
14 The Board then discussed the lines and layout of the house with Mr. Miller. Chairperson
Southard stated the Board has looked at 5 or 6 variances (front and rear yard) in this
16 neighborhood for specific reasons which is irrelevant to what they are discussing today.
He expressed his concerns, that as a Board, they are starting to set a precedence that
18 anyone who wants to build a specific house can get a variance to fit the house better on
the lot; he is not sure that is the purpose of the Board of Adjustments. Boardmember
20 Slater commented when they addressed the lots across the street it was because of the
easement/slope issues not because of a specific house size.

22 Chairperson Southard also voiced his concern about allowing variances for people
to fit the home they want on their lot without making it work within reason.

24 Boardmember Smith commented that these are valid points, but the Board is not allowed
to use previous decisions for current issues and the problem presents itself that the
26 property owners can come in and use previous decisions to validate their request so it
only goes in one direction. Mr. Van Wagenen clarified, from staff's perspective, that
28 there is a history of previous decisions made, but every property is unique in its own way
and noted not every lot has been given approval as some lots in this subdivision were
30 denied. He went on to say the application still has to meet the criteria and special
circumstances regardless of what has previously been approved or not approved.

32 Chairperson Southard commented on this issue stating when looking back at the
previous requests he would have preferred that the developer bring all lots to the Board
34 simultaneously; that is what the Board tried to get the developer to do. He added when
looking at the history, he believes that hurts any future applicants because the Board has
36 tried to review them all based on what the developer did at that time. Chairperson
Southard then read criteria number one again (requiring the 30 ft. setback). Boardmember
38 Smith suggested going to letter "b" below where it defines "unreasonable" as that really
is what the question is. Boardmember Smith then read letter "b" as follows:

40
42 **(b) 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;**

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

46 **b. Comes from circumstances peculiar to the property, not from
conditions that are general to the neighborhood.**

2 Chairperson Southard commented that the other requests they looked at had slope,
4 easement, and master planned road issues that were peculiar to those specific properties.
6 He also questioned if the fact that it has a narrower back yard than front yard is
something peculiar to that property. Boardmember Smith suggested going to the sub-
paragraph number two as follows:

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

14 Boardmember Smith stated we are not talking about economics here but we may
16 need to discuss self-imposition. Chairperson Southard stated he is not sure those are all
18 inclusive, meaning if it is not either one then it automatically qualifies; it could be
20 something else, but those are specific reasons that it cannot be approved. He went on to
say that the applicant did not develop the lot but he is designing the home that fits on the
lot; so is that self-imposed? Chairperson Southard went on to say Mr. Miller didn't re-
grade the property but that could easily be mitigated and fixed with a retaining wall as far
as having a slope issue. Chairperson Southard stated he does not see how enforcing this
is causing an unreasonable hardship.

22 Boardmember Slater commented he thinks a minor modification to the plan for
24 the home may mitigate the issue (for access to the garage). He also feels the lot was
26 purchased knowing the existing conditions of the lot and the house plan may already be
drawn; he questioned if there can be a way to make a small concession on the size of the
home or to tilt it. Mr. Miller said the lot narrows and the lines will start touching and the
more you skew it on the lot it will look out of place as they are trying the match the other
28 houses in the neighborhood. He pointed out that the widest the house can be is 69 ft.
which is very narrow for the neighborhood. Chairperson Southard mentioned this may be
30 where "self-imposed" comes in whereas should the applicant have purchased the lot if he
wanted to build a house larger than 69 ft.

32 Chairperson Southard noted the purpose of the Board of Adjustment,
34 unfortunately, is not to allow people to get or do everything they want and that is why the
State law gives this criteria in making their determination. Mr. Miller stated five other
36 neighbors across the street have the same type of situation and got a variance because of
the slope and he feels he should get the same consideration. Chairperson Southard
38 pointed out that not all of the neighboring properties were granted a variance and those
that were granted variances got it because there was an imposed slope where this slope
could be fixed with a retaining wall.

40 Mr. Van Wagenen clarified that the slope easement on the lots across the street
cannot be touched with fill or grading as the city has purchased it for a future roadway.
42 Mr. Miller stated he hears the arguments but feels those houses should have been built
smaller as they are trying to replicate the houses in the neighborhood. Chairperson
44 Southard stated the Board did not have houses presented to them when those variances
were presented, it was because of the slope itself and they were trying to figure out what
46 the building envelope could be. He would suggest to Mr. Miller to meet with staff to

2 review/compare his building envelope to the existing homes in the neighborhood and
would surmise that his home is bigger.

4 Boardmember Mitchell stated he agrees with Boardmember Slater's statement
that modifications could be made to the size of the home to mitigate the issues or to tilt it.
6 He added that could possibly create a hardship for the individual, but it would not be an
unreasonable hardship; he also feels there are special circumstances unless they put in a
8 retaining wall. There was then some discussion regarding a retaining wall with Mr. Miller
stating he does not feel a retaining wall is possible on the property. Boardmember Slater
10 agreed that a retaining wall may pose an issue and be difficult on that particular lot; that
is something to consider. Chairperson Southard stated he feels that is something they do
12 not need to consider in granting the variance.

14 Chairperson Southard asked the Board for their consensus on criteria number one
as follows:

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

20 *Following discussion the Board concurred that this criteria **HAS NOT** been met.*

22 At this time Chairperson Southard stated because the Board concurred that criteria
number one has not been met there is no need to review the remainder of the following
24 criteria.

- 26 2. Are there special circumstances attached to the property that do not generally
apply to other properties in the same zone?
28 3. Granting the variance is essential to the enjoyment of a substantial property right
possessed by other property in the same zone;
30 4. The variance will not substantially affect the General Plan and will not be
contrary to the public interest, and;
32 5. The spirit of the land use ordinance is observed and substantial justice done.

- 34 b) 1. In determining whether or not enforcement of the land use ordinance
would cause unreasonable hardship under Section (2)(a), the Board of
36 Adjustment may not find an unreasonable hardship unless the alleged
hardship;
38 A. Is located on or associated with the property for which the
variance is sought, and;
40 B. Comes from circumstances peculiar to the property, not
from conditions that are general to the neighborhood.
42 c) In determining whether or not there are special circumstances attached to the
property under Subsection (2)(a), the Board of Adjustment may find
44 that special circumstances exist only if the special circumstances;
i. Relate to hardship complained of, and;
46 ii. Deprive the property of privileges granted to other
properties in the same district.

2 Chairperson Southard called for any further discussion. Hearing none he called
for a motion.

4
6 BOARDMEMBER MITCHELL MOVED TO DENY THE APPLICANT'S
REQUEST FOR A FIVE FOOT VARIANCE ON THE FRONT YARD ON LOT 25,
PLAT A, OF THE HIGHLANDS AT BALD MOUNTAIN SUBDIVISION.

8 BOARDMEMBER SLATER SECONDED THE MOTION.

THE VOTE WAS RECORDED AS FOLLOWS:

10 CHAIRPERSON SOUTHARD AYE

BOARDMEMBER SLATER AYE

12 BOARDMEMBER MITCHELL AYE

BOARDMEMBER SMITH AYE

14 THE MOTION CARRIED UNANIMOUSLY.

16 Following some additional discussion Chairperson Southard called for a motion to
adjourn.

18 **ADJOURN**

20 BOARDMEMBER MITCHELL MOVED TO ADJOURN THE MEETING AT
22 8:04 P.M. CHAIRPERSON SOUTHARD SECONDED THE MOTION. ALL
PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

24
26 Approved – January 28, 2016

28 _____
Jeff Southard, Chairperson

30
32 _____
Hugh Van Wagenen, Planning Director