The Lindon City Board of Adjustments held a meeting on **Thursday, January 7, 2016** beginning at 7:00 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  
Steve Smith, Boardmember  
Glen Mitchell, Boardmember  
Greg Slater, Boardmember  
Hugh Van Wagenen, Planning Director  
Brandon Snyder, Associate Planner  
Kathy Moosman, City Recorder

**ABSENT**

Jeff Wilson, Boardmember

1. **CALL TO ORDER**

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

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

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

3. **CURRENT BUSINESS** –

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

   **Variance: Front Yard Setback – Jason Miller 745 North 780 East.** The 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 Mountain Subdivision. If approved, the front yard setback of the lot in question would be twenty-five (25) feet.

   Mr. Snyder, Associate Planner, gave a brief summary of this agenda item. He 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 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 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
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 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 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 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 house can be. He then referenced the supplemental materials included in the staff packet and photos depicting the area in question.

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 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 inconsistent with traditional residential lifestyles customarily found within Lindon City’s single-family neighborhoods. He noted that residential land uses include a range of 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 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 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 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 which limits the structures on the property to 40% (analysis completed by staff when submitted to the city).

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 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 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 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 (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 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 information and present it to the Board.

Mr. Snyder concluded by stating in looking at the lot, it is apparent there are 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 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 questions for staff at this time.
Chairperson Southard opened the meeting to public comment at this time to allow the applicant an opportunity to address the Board.

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 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 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 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 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 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 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 similar variance.

Mr. Snyder commented with Mr. Miller’s floorplan the garage doesn’t project too 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 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.

Jean and Julie Shoaeee addressed the Board at this time. Ms. Shoaeee stated they also have a lot in the subdivision in question and are here because they may ask for a 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 neighborhood she doesn’t want to put a 1,300 sq. ft. home on the lot. Mr. Shoaeee asked about the existing setbacks and if that is a preference or because of a safety reason. Mr. Van Wagenen stated it is a Lindon City ordinance and it is a community preference. Ms. Shoaeee then pointed out the location of their lot on the screen which is across the street 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 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 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 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 cantilever and Lindon City code allows for projections.

Boardmember Smith also commented that he is assuming the 40% is good. Mr. 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 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 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.
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:

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 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, 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.

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 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 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 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.

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.

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 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 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 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.

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 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 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 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:

(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;

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 commented that the other requests they looked at had slope, easement, and master planned road issues that were peculiar to those specific properties. 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:

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.

Boardmember Smith stated we are not talking about economics here but we may need to discuss self-imposition. Chairperson Southard stated he is not sure those are all inclusive, meaning if it is not either one then it automatically qualifies; it could be 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 regrade 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.

Boardmember Slater commented he thinks a minor modification to the plan for the home may mitigate the issue (for access to the garage). He also feels the lot was 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 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 where “self-imposed” comes in whereas should the applicant have purchased the lot if he wanted to build a house larger than 69 ft.

Chairperson Southard noted the purpose of the Board of Adjustment, 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 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 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.

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. 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 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 the building envelope could be. He would suggest to Mr. Miller to meet with staff to
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. 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 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 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 not need to consider in granting the variance.

Chairperson Southard asked the Board for their consensus on criteria number one 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;**

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

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 criteria.

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

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

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

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

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.

c) 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;

   i. Relate to hardship complained of, and;

   ii. Deprive the property of privileges granted to other properties in the same district.
Chairperson Southard called for any further discussion. Hearing none he called for a motion.

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.

BOARDMEMBER SLATER SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

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THE MOTION CARRIED UNANIMOUSLY.

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

ADJOURN

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

Approved – January 28, 2016

Jeff Southard, Chairperson

Hugh Van Wagenen, Planning Director