

2 The Lindon City Board of Adjustments held a meeting on **Thursday, April 11, 2013**  
3 beginning at 6:00 p.m. in the Lindon City Center, Lower Level Conference Room, 100  
4 North State Street, Lindon, Utah.

5 **Conducting:** Jeff Southard, Chairperson

6 **PRESENT**

7 Steve Smith, Boardmember

8 Glenn Mitchell, Boardmember

9 Greg Slater, Boardmember

10 Jeff Wilson, Boardmember

11 Hugh Van Wagenen, Planning Director

12 The meeting was called to order at 6:05 p.m.

13 **APPROVAL OF MINUTES** – No minutes were reviewed at this meeting.

14 **CURRENT BUSINESS** –

- 15 1. **Request for Variance: Front Yard Setback Requirement – Black Scot**  
16 **Development – 770 North 650 East.** This is a request by Dan Parkinson,  
17 representing Black Scot Development, is requesting a five (5) foot variance to the  
18 required thirty (30) foot front yard setback on lots 8, 22, 23,24,27,28 and 29 of the  
19 Highlands at Bald mountain Subdivision. If approved, the front yard setbacks  
20 would be twenty-five (25) feet. The property is located in the Residential Single-  
21 Family (R1-20) zone.

22 Hugh Van Wagenen, Planning Director, opened the discussion by explaining this  
23 is a request for variance for a front yard setback requirement by Dan Parkinson,  
24 representing Black Scot Development, who is in attendance. He further explained that  
25 Mr. Parkinson is requesting a five (5) foot variance to the required thirty (30) foot front  
26 yard setback on lots 8, 22, 23,24,27,28 and 29 of the Highlands at Bald Mountain  
27 Subdivision. Mr. Van Wagenen noted that if the variance is approved, the front yard  
28 setbacks would be twenty-five (25) feet. He added that the property is located in the  
29 Residential Single-Family (R1-20) zone.

30 Mr. Van Wagenen then showed a plat map depicting the area in question. He  
31 noted the above mentioned lots have a slope easement along the rear to accommodate a  
32 future collector road that is on the master plan. The slope easement will allow road  
33 construction that will encroach into some of the lots. He added that there are some  
34 significant slopes that are involved. Mr. Van Wagenen then turned the time over to the  
35 applicant. Mr. Parkinson stated that the slope is quite severe in those areas and they  
36 would like to give the homeowners 95-100 feet to situate their homes. He further  
37 explained that the slope easement encroaches a lot on the rear of many of the lots; hence,  
38 they are requesting the variance to give the homeowner more backyard space.

Mr. Van Wagenen noted that 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 the setback shall be measured from the street right-of-way line.)*

1. Front yard setback: thirty (30) Feet:

By way of background information, a future major collector road is planned to abut the subdivisions north and east boundaries (see attached plat). 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. This easement encroaches onto several lots, some more than others, within the subdivision.

Mr. Van Wagenen commented that Black Scot Development submitted the following statement as part of their application:

*For lots 29, 28, 27, 24, 23, 22, and 8, Black Scot Development is requesting a reduction of the front setback to be 25 feet. The reasoning behind the request is that due to the slope easement requirements and also the general slope of the lot, there are significant issues that can be mitigated to a certain degree by allowing a 25 foot setback. The main reason for the request is to give the homeowner an additional 5 feet in the backyard.*

*The request is not unreasonable since it is universally agreed that it's more ideal to have more room in the backyard as to the front yard. Front yards are not generally used or encouraged to have play and recreation activities on them. It is safer and more desirable to have the backyard be used for such activities. By allowing 5 feet, it doesn't seem like a tremendous amount of space but it does help.*

*As for safety, the lots that would be affected will not have heavy traffic. There are no blind spots when backing out of drive ways. Furthermore, 25 feet is plenty of space to park additional vehicles if needed.*

*If the slope easement was not in effect, we could mitigate the backyard issue in other ways, but since we are restricted to the slopes and the slope easement, we can't do anything about increasing the backyard except by asking for the front variance.*

*Additionally, there are plenty of cities that use 20-25 feet as acceptable front setbacks.*

*Black Scot Development LLC*

Mr. Van Wagenen commented that the Highlands at Bald Mountain Subdivision Plat with the lots in question circled in red are also attached. The slope easement is also shown on the lots as a dashed line.

There was then some general discussion by the Board and attendees Kenneth Millett and Larry O'Donnell regarding this request for variance. Chairperson Southard called for any further comments from the applicant. Mr. Parkinson stated that each

homeowner will be responsible for their own retaining wall. Mr. Van Wagenen noted that the application is still active even though the original application was submitted seven years ago. Mr. Van Wagenen clarified with the request for the retaining walls, which were not originally on the plans; the geotech report will determine, along with the city engineer, if it is feasible or not. There was then some discussion about the “blanket”. Mr. Parkinson stated that the “blanket” means, until it is developed, there has to be something done to stabilize the soils, and when it is developed they would have to have a plan that would confirm they will continue to stabilize it the way the house is landscaped and built. He noted they will “blanket” the cross hatch area to keep things from going into the street which is part of the SWMPP program. Chairperson Southard inquired if moving five feet forward will affect the sewer slope. Mr. Parkinson stated that it will not affect the sewer slope as it is a shorter distance. Chairperson Southard commented that the Board will assume that all items are/or will be done correctly and they will now deal with the variance issue itself.

Mr. Van Wagenen noted that in order for the Board of Adjustment to grant a variance, the following must be met according to LCC 17.10.050(2).

Chairperson Southard then closed the public comment portion of the meeting, and stated that the Board will deliberate and go through the code, which is what is expected of them. Chairperson Southard also reiterated that the Board is not here to decide if the code makes sense or is appropriate, but that it is applied properly.

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;**

*Does forcing the houses back 30 ft vs. 25 ft create an unreasonable hardship. The applicant states that it does minimize the back yard space and does not affect the master plan necessarily.*

*The Board was in agreement that the criteria are met.*

**2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;**

*This easement does not seem a special circumstance specific to these properties.*

*The Board was in agreement that the criteria are met.*

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

*Simply being able to build at that location and being used does not inhibit the master plan. It is essential to the rights of the property owner. Because*

2 *of the non-typical easement it is limiting the usable area of the backyard.*  
3 *By granting the variance it will allow them to use the back yard.*

4 *The Board was in agreement that the criteria are met.*

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

8  
9 The General plan will be somewhat affected but not substantially and will not be  
10 contrary to the public interest. Most of the general public would not notice the 5  
11 foot difference on the properties just by driving by because all of the lots are on  
12 the same side of the road.

14 *The Board was in agreement that the criteria are met.*

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

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

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

32  
33 (c) 1. In determining whether or not there are special circumstances attached to  
34 the property under Subsection (2)(a), the Board of Adjustment may find  
35 that special circumstances exist only if the special circumstances;  
36 A. Relate to hardship complained of, and;  
37 B. Deprive the property of privileges granted to other  
38 properties in the same district.

40 *The Board was in agreement that the criteria are met.*

42 Following discussion, the Board felt that the variance did meet all of the required  
43 criteria with the one item in question being criteria number three (3) but the majority vote  
44 was in favor that criteria number three (3) did meet the standards and therefore the  
45 recommendation was to approve the variance. Chairperson Southard then called for  
46 further comments or discussion. Hearing none he called for a motion.

2 BOARDMEMBER WILSON MOVED TO APPROVE THE VARIANCE  
3 REQUEST FOR A TWENTY-FIVE (25) FOOT FRONT YARD SETBACK FOR LOTS  
4 8, 22, 23, 24, 27, 28 AND 29 OF THE HIGHLANDS AT BALD MOUNTAIN  
5 SUBDIVISION AS PRESENTED IN THE STAFF REPORT. BOARDMEMBER  
6 SMITH SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:  
7 CHAIRPERSON SOUTHARD AYE  
8 BOARDMEMBER MITCHELL NAY  
9 BOARDMEMBER SLATER AYE  
10 BOARDMEMBER WILSON AYE  
11 BOARDMEMBER SMITH AYE  
12 THE MOTION CARRIED 4 TO 1.

- 13  
14 2. **Request for a Variance: Minimum Building Lot Size – Lindon City**  
15 **Corporation – 316 North 135 West.** The applicant is requesting a variance of 4,  
16 864 square feet to the minimum building lot size of 20,000 square feet in the  
17 Residential Single-Family (R1-20) zone. If approved, the lot in question would  
18 be 15,136 square feet.

19  
20 Mr. Van Wagenen opened the discussion by explaining this is a request for  
21 variance from Lindon City of 4,864 square feet to the minimum building lot size of  
22 20,000 square feet in the Residential Single-Family (R1-20) zone. He noted if this  
23 variance is approved, the lot in question would be 15,136 square feet.

24 Mr. Van Wagenen stated the Lindon City Code in question is section 17.44.020  
25 Lot Area and reads as follows:

26  
27 *The minimum area of any lot or parcel of land in the R1 zone shall be as*  
28 *indicated by the subzone used in conjunction with the R1 zone designation. The minimum*  
29 *area of any lot or parcel of land in the R1 zone shall be as indicated below for the*  
30 *subzone in which the lot or parcel is situated: R1-12 twelve thousand (12,000) square*  
31 *feet; R1-20 twenty thousand (20,000) square feet.*

32  
33 Mr. Van Wagenen then referenced attached photographs of the site and existing  
34 tithing house. Mr. Van Wagenen gave a brief overview and history of the tithing house.  
35 There was then some general discussion by the Board regarding this requested variance.  
36 Chairperson Southard called for public comment. Lindon resident, Darla Hurst, was in  
37 attendance to address the Board. She inquired about her concerns about 135 West which  
38 is covered with potholes. She also asked if the city will tear down the home on the  
39 property. Mr. Van Wagenen stated that the city is selling the house and property as it  
40 does not serve any purpose to the public. It is residentially zoned and flag lots are  
41 common in the area. He added that the flag lot neighbor has been approached to buy the  
42 property. The LDS church has also been approached and they have no interest in the  
43 property.

44 Chairperson Southard then closed the public comment portion of the meeting, and  
45 stated that the Board will deliberate and go through the code, which is what is expected  
46 of them.

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:

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

8 *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.  
10 However, upon further research the City Council expressed that the city  
would not be able to utilize the property as originally intended. With that  
12 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  
14 parcel, and the lack of necessity to retain the parcel.*

16 *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  
18 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  
20 city due to lot size.*

22 ***There are lots this size or smaller, and there is a hardship, not considering the  
self-imposed factor etc.***

24 *The Board was in agreement that the criteria is met.*

- 26 2. **There are special circumstances attached to the property that do not  
28 generally apply to other properties in the same zone;**

30 *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  
32 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  
34 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  
36 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  
38 building lot requirements in the R1-20 zone.*

40 ***The special circumstance in this case is it was slated to be a museum or  
historical property and that is why it was allowed to be that small.***

42 *The Board was in agreement that the criteria is met.*

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

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

6 ***It is not a buildable lot, so the property right is taken away. This is also self-***  
7 ***imposed and the city bought the property and allowed it to be split. The Board***  
8 ***and the City would expose themselves if the variance is granted at this stage,***  
9 ***because it is at the request of the city with economic reasons being the main***  
10 ***factor as to why the variance was granted. Mr. Van Wagenen questioned if the***  
11 ***city were approached by R &R land (who owns the flag lot behind the property)***  
12 ***to buy the 5,000 square feet, and they say no, how does that change the***  
13 ***conversation on this criteria number. Chairperson Southard stated that it***  
14 ***would change the conversation dramatically because the Board could see that***  
15 ***every avenue has been pursued to remediate the issue and would become less***  
16 ***self-imposed and less of an economic issue. Mr. Van Wagenen stated if the city***  
17 ***is denied with this application, the city is not hesitant to come back with the***  
18 ***same application after pursuing the means suggested.***

20 *The Board was in agreement that the criteria have **not** been met.*

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

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

30 ***Long-term it will be contrary to the public interest.***

32 *The Board was in agreement that the criteria is met.*

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

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

41 ***Chairperson Southard stated that the spirit of the law is justified and it is not***  
42 ***self-imposed if the city pursues all avenues possible and comes back before the***  
43 ***board for more discussion. The applicant today is different from the applicant***  
44 ***today.***

2 *when the property was approved for purchase that had a different plan and*  
3 *vision of the city at that time.*

4 *The Board was in agreement that the criteria are met.*

6 Following discussion, the Board felt that the variance does not meet all of the  
7 required criteria and standards and therefore the recommendation was to deny the  
8 requested variance to allow time for the city to pursue and investigate all of the means  
9 possible. Chairperson Southard commented that denying the variance shows that the  
10 Board was not showing favoritism to the city. Mr. Van Wagenen noted that from the  
11 applicant's standpoint he understands the credibility issue is a legitimate point.  
12 Chairperson Southard then called for further comments or discussion. Hearing none he  
13 called for a motion.

14 CHAIRPERSON SLATER MOVED TO DENY THE REQUEST FOR A  
15 VARIANCE OF 4,846 SQUARE FEET TO THE MINIMUM BUILDING LOT SIZE OF  
16 20,000 SQUARE FEET IN THE R1-20 ON THE LOT LOCATED AT 319 NORTH 135  
17 WEST BASED ON THE BOARD'S RECOMMENDATION THAT ALL OF THE FIVE  
18 CRITERIA TO GRANT A VARIANCE WERE NOT MET SPECIFICALLY THAT IT  
19 IS SELF IMPOSED AND ECONOMIC BASED. BOARDMEMBER MITCHELL  
20 SECONDED THE MOTION.

22 THE VOTE WAS RECORDED AS FOLLOWS:

23 CHAIRPERSON SOUTHARD AYE  
24 BOARDMEMBER MITCHELL AYE  
25 BOARDMEMBER SLATER AYE  
26 BOARDMEMBER WILSON AYE  
27 BOARDMEMBER SMITH AYE

28 THE MOTION CARRIED UNANIMOUSLY.

30 **ADJOURN**

32 BOARDMEMBER SMITH MOVED TO ADJOURN THE MEETING AT 8:00  
33 P.M. BOARDMEMBER MITCHELL SECONDED THE MOTION. ALL PRESENT  
34 VOTED IN FAVOR. THE MOTION CARRIED.

36 Approved – June 13, 2013

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Jeff Southard, Chairperson

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

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