

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

6 Conducting: Jeff Southard, Chairperson

8 **PRESENT**

Jeff Southard, Chairperson
10 Steve Smith, Boardmember
Greg Slater, Boardmember
12 Brandon Snyder, Associate Planner
Kathy Moosman, City Recorder

ABSENT

Jeff Wilson, Boardmember
Glen Mitchell, Boardmember

14
16 1. **CALL TO ORDER**

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

18 2. **APPROVAL OF MINUTES** – The minutes of the Board meeting of January 28,
20 2016 were reviewed.

22 BOARDMEMBER SMITH MOVED TO APPROVE THE MINUTES OF THE
MEETINGS OF JANUARY 28, 2016 AS PRESENTED. CHAIRPERSON
24 SOUTHARD SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR.
THE MOTION CARRIED.

26 **CURRENT BUSINESS** –

28 3. **Variance: Front Yard Setback – Val McOmber: 785 East 770 North.** The
applicant is requesting a variance of five (5) feet to the front yard setback
30 requirement of thirty (30) feet on Lot 26, Plat A, at the Highlands at Bald
Mountain Subdivision. If approved, the front yard setback of the lot in question
32 would be twenty-five (25) feet.

34 Brandon Snyder, Associate Planner, gave a brief summary of this agenda item
before the Board tonight. He noted the applicant, Val McOmber, is attendance tonight
36 representing this item. He explained that Mr. McOmber is asking for a 5 ft. setback
variance (from 30 ft. down to 25 ft.) specifically for the front yard on lot #26. Mr. Snyder
38 explained that Lindon City Code gives any person an opportunity that is looking for a
waiver or modification to apply for a variance and, in this case, if approved the front yard
40 setback for the lot in question would be reduced to 25 ft.

42 He noted Mr. McOmber has provided information including a letter and some
drawings and photos included in the staff report for the discussion tonight. Mr. Snyder
44 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 pointing out this
46 is a medium density classification as far as the general plan is concerned. He went on to
say the question is whether or not the home can be built on the lot in question and how

2 large the house can be. He also referenced the supplemental materials included in the
staff packet and photos depicting the area in question.

4 Mr. Snyder further explained that the purpose of the Single Family Residential
Zones (R1) is established to provide areas for the encouragement and promotion of an
6 environment for family life by providing for the establishment of one (1) family detached
dwelling on individual lots that are separate and sheltered from non-residential uses
8 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
10 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
12 environment that supports and complements the unique rural quality and character of
Lindon City.

14 Mr. Snyder then referenced the requirements noting this lot meets the minimum
size for the lot (12,000 sq. ft.). The zone requires a minimum of 100 ft. measured at front
16 setback and this lot has 124 ft. and a depth of 131 ft. with a minimum street frontage of
50 ft. (to accommodate cul-de-sacs), so there is the permissible lot coverage which limits
18 the structures on the property to 40% of the area of the lot or parcel of land (analysis
completed by staff when submitted to the city and meets or exceeds all requirements).
20 Mr. Snyder then presented the subdivision plat and also referenced Plat "A" (including
multiple phases) and noted the plat is recorded (4,857 sq. ft. maximum building area).

22 Mr. Snyder discussed when he visited the site, it is apparent there are unique
circumstances on the lot. The question presented tonight is whether or not a home can be
24 built on the lot in question and that answer is yes. The next question is how large of a
house should the owner be able to build considering the unique circumstances of the lot.
26 He then referenced the supplemental materials at the end of the report that outlines the
objective criteria for making such a determination. (The proposed home footprint is 4,409
28 sq. ft. that includes the deck, porch, garage and living area). He explained there is a
dramatic slope and easement on this lot noting there were variances granted for homes
30 across the street as well. Mr. Snyder then directed the Board to look at the circumstances
specifically for this lot.

32 Mr. Snyder also presented air photos showing the grading plans and phases
throughout the years. Mr. Snyder noted Lindon City Code (based on Utah State Code)
34 outlines the objective criteria (for making this determination) that must be included in
meeting a variance, noting those criteria have not changed since the last BOA meeting.
36 He pointed out that variances run with the land. Mr. Snyder then turned the time over to
Mr. McOmber to go through his information and present it to the Board.

38 Mr. McOmber addressed the Board at this time. Mr. McOmber referenced the plat
map and gave a summary of the intent of the request. He noted there are three pieces they
40 are trying to accomplish as follows: 1. trying to keep the overall feel and 2. trying to give
more balance to the lot and 3. losing between 5 ft. and 10 ft. on the back of the lot to
42 position the house better. He also pointed out the homes across the street have a 25 ft.
setback. Mr. McOmber explained his son is handicapped from ALS so he needs to be
44 able to have an ADA compatible home (to make it wheelchair accessible) that tends to
compromise the floor plan; these are mitigating desires on why they couldn't make the
46 house smaller with more square footage than what was anticipated when first buying the
lot.

2 Chairperson Southard explained the purpose of the Board of Adjustment is to look
4 at issues that relate to ordinances and property rights. He noted the Board has very strict
6 criteria they have to go through from the State and they have to adhere to the criteria in
8 making a determination if the variance is warranted.

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 pointed out that others have come in for variances but the
Board cannot base their decision on others that have been approved because the lots had
or had not the specific criteria. He believes their determinations have been about equal in
this neighborhood. Chairperson Southard then referenced the plat map noting in Lindon
(land use ordinance) the goal is to provide housing and a good living environment. The
question is if literal enforcement of the ordinance restricts that and the question is how do
we define unreasonable hardship.

**(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 stated this is very similar to other lots recently discussed.
Boardmember Smith commented this is the smallest lot in the area. Chairperson Southard
pointed out it meets the minimum lot size for the code in the area. Boardmember Smith
stated even with the setbacks there is a lot of buildable space. Chairperson Southard
stated the curve doesn't impact it. Boardmember Smith stated he is seeing a quasi-
trapezoid and it seems more adapted to a home than the full lot itself. Boardmember
Slater stated on point b, the lot does have conditions general to the neighborhood and it
appears that they are not the only lot with those conditions. Boardmember Smith pointed
out it is on the inside of a curve in essence. Chairperson Southard stated it is a little
unique compared to the lot next door and is general to the neighborhood and the slope is
not within the hillside overlay but it is not unique to that lot. Boardmember Slater pointed
out it has a narrower back yard (58 ft. on the back vs. 69 ft. to the lot in the back).
Chairperson Southard stated they are building a house so deep that it needs an additional
5 ft. of building envelope (front to back) to fit but there are issues that want to push it
forward; in his mind this speaks to self imposed. Chairperson Southard added if the
width weren't an issue and it was pushed back 5 ft. he would be curious to know what the
dimension would be.

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

8 Chairperson Southard stated he does not see how enforcing this is causing an
10 unreasonable hardship when they are trying to maximize the envelope so much that they
12 really need 5 more feet than anyone else in the neighborhood. The question is if it self-
14 imposed with this angle. Boardmember Smith pointed out the balancing front to back is a
 non-issue per code. Chairperson Southard surmised if we are we being asked to grant a
 variance for a self imposed hardship in order to have a bigger, wider, home than what is
 reasonably accommodating there. The only thing that may not be self imposed is the
 narrow back property line because of that angle.

16 Boardmember Smith agreed this is a unique part of this whole thing but he
18 struggles whether it crosses the line. Boardmember Slater stated he commends the
20 architect for fitting that house on the lot. He added there is the southwest corner and
22 should they need more square footage in the house it appears that there is a buildable area
24 (25 more ft.) that could be buildable. Boardmember Smith commented if they moved it
26 back to 30 ft. and designed the home so it recaptured the southwest buildable area it
 would require more creativity but it could accomplish more living space. Chairperson
 Southard pointed out they are trying to look at the self imposed issue and everything they
 have talked about is self imposed. Boardmember Slater agreed with that statement. He
 also understands that every lot is unique and this lot has a narrower back and the Miller
 property had the exact same request and arguments as this request and unless this is
 substantially different then the outcome will be the same.

28 Chairperson Southard commented when the lot was platted it was unique and
30 hampered unlike the others in the area. He added the smallest lots (square footage wise)
32 would naturally have a smaller square footage home than the average because the
 buildable footprint is smaller. Boardmember Slater pointed out the draw to the lot may
 have been that it was less to purchase; if you buy the smallest lot you have to assume that
 the house will be smaller; there is give and take.

34 Mr. McOmber pointed out that all the lots in the area were close in price. He also
36 mentioned the size of the homes in the area and noted the backend space is tremendous to
 handle a rectangle to be there and that it is a hardship.

38 Chairperson Southard brought up the fact that the size and shape of the lot wasn't
40 a surprise when the lot was purchased, and the architecture should be designed to fit
42 within what is there; across the street the mitigating circumstances were imposed upon
 the lot by the fact that the city owns an easement that can't be touched. He also suggested
 that a retaining wall would rectify the situation. Mr. McOmber stated he will talk to his
 engineer but he may not be able to build a retaining wall due to the way the lot below has
 built their retaining wall.

44 Chairperson Southard noted that generally the Board likes to be as reasonable and
46 fair minded as possible, but with the criteria they are looking at he is not seeing how this
 is not self imposed. Mr. McOmber pointed out that the lot size is significantly narrower
 in the back and less than the other lots in the area. Chairperson Southard stated at the
 point they are at tonight he is not sure that he can vote or go any further with discussion

2 about it being self imposed. If the research is done to find out if this really is the
4 narrowest lot on the back property line that may make it unique enough to continue the
discussion. The only way to move forward before we go into the rest of the criteria is if it
6 is the narrowest lot, and where we are at tonight this may need to be continued to do
more research/analysis and if it is in fact the narrowest lot on the property it would
8 warrant further investigation. Mr. McOمبر pointed out it would be at the base of the
easement line because there may be lots that are much deeper. Mr. Snyder stated
10 following a quick look the majority of the lots are wider at the rear (some substantially
wider) than this lot in question.

12 Chairperson Southard stated in essence, at this point, the applicant doesn't
qualify for a variance unless the back of the lot is so narrow that 90% of the other lots are
14 wider. He would propose continuing this meeting in order for the applicant to do more
research to figure out where the width falls in relation to other lots above the canal. Mr.
Snyder expressed his only concern with this is to keep in mind that not every lot in the
16 zoning district is similar and was developed under different standards.

18 Chairperson Southard further stated because the argument is that it is so restrictive
because of the angle it makes more sense to leave the 30 ft. front setback and it may be
more reasonable to ask for a 3 ft. side yard setback variance. The other option is if this
20 really is the narrowest lot in the neighborhood (overall zone) then that means the lot is
unique and things specific to that lot that it is not a self imposed hardship. Mr. Snyder
22 stated the question comes back if they are being deprived of a property right that others
are enjoying by not having as wide of a home. And if it is self imposed by the way they
24 designed their home or by the way the lot is shaped, that would seriously reduce the
square footage compared to the adjoining homes. Then it would also come back to what
26 is allowed by code as far as square footage and what has been granted as far as the
surrounding and existing homes. Boardmember Slater asked if there could be a
28 percentage applied that may put it into perspective to come up with a value/average of the
neighboring lots to see if it is reasonable. Mr. Snyder stated there are two ways to come
30 up with that average they could use the GIS system or pull all the building permit records
and get the square footages to calculate against the lot.

32
34 Chairperson Southard asked the Board for their consensus on criteria number one
again with the information they have today as follows:

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

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

42 Boardmember Smith commented the only way to see this as an unreasonable
44 hardship is if this is unique enough vs. self imposition. We noted we can have somewhat
of an obligation to give every opportunity for the variance for the application to succeed
46 and this is the only way to do it; it appears to be self imposition other than the issue at
hand and the question is if there is a way to warrant that with additional research.

2 Chairperson Southard asked does this warrant more investigation as he does not
3 see how we can move forward without additional information, but even so it wouldn't
4 guarantee a variance. Mr. Snyder suggested going to number five and work backwards to
5 verify this is the only issue.

6 Boardmember Slater stated he thinks perhaps more creativity in the architecture
7 could solve the problem. He also still feels it is self imposed and it appears that there are
8 other substantially smaller homes in the area.

9 Mr. McOmber stated the intent is for the home to fit within the community and
10 moving the house up 5 ft. on that angle best meets the criteria. The hardship is the
11 engineering will not let them go with a retaining wall.

12
13 **2. Are there special circumstances attached to the property that do not
14 generally apply to other properties in the same zone?**

15 *Chairperson Southard stated more information is needed on this criteria.*

16
17 **3. Granting the variance is essential to the enjoyment of a substantial property
18 right possessed by other property in the same zone;**

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

20
21 **4. The variance will not substantially affect the General Plan and will not be
22 contrary to the public interest, and;**

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

24
25 **5. The spirit of the land use ordinance is observed and substantial justice done.**

26
27 **b) 1. In determining whether or not enforcement of the land use ordinance
28 would cause unreasonable hardship under Section (2)(a), the Board of
29 Adjustment may not find an unreasonable hardship unless the alleged
30 hardship;**

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

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

35
36 Boardmember Slater stated he is willing to continue and he is not ready to vote
37 right now if they can provide more information that may change his mind later. He feels
38 strongly that this is self-imposed and the applicant should have had the foresight to know
39 there would be challenges based on the appearance of the lot. Chairperson Southard and
40 Boardmember Smith agreed that pursuing more information may be warranted.

41
42 **c) In determining whether or not there are special circumstances attached to
43 the property under Subsection (2)(a), the Board of Adjustment may find
44 that special circumstances exist only if the special circumstances;**

- 2 i. **Relate to hardship complained of, and; (width of back)**
- 4 ii. **Deprive the property of privileges granted to other**
properties in the same district.

6 Chairperson Southard stated the width of the back meets the 12,000 square foot
8 minimum requirement that relates specifically and it may deprive the property privileges
10 granted to others because of how narrow the lot is, but he feels they don't have enough
12 information specific to the lot to make that determination. This could be continued and
14 have more discussion with the other Board members present which may change the
16 outcome. Boardmember Smith stated it falls on the side of doing all that we can to make
18 the applicant successful.

20 Mr. Snyder stated what he would caution against is if the Board is making a
22 decision on the certain width or size of the home as a standard given to all property
24 owners. If we are going to compare, are they entitled to the maximum size and designed
26 footprint as there is still a substantial footprint to build on; could a reasonable home be
28 built in that footprint that is built throughout that area. Boardmember Slater stated it
30 looks like buildable space in the building envelope if it is reconfigured.

32 At this time Chairperson Southard stated the Board agrees it will still be a NO on
34 criteria number three. He added the Board has looked at trying to give every opportunity
36 for success but even if the other criteria are gone through it would still come back to
38 number three as they are not being denied a property right. Boardmember Slater agrees
40 he wants a fair outcome and he is willing to continue if the other absent Board members
42 could bring something into play that they are not seeing.

44 Mr. McOmber re-iterated the request is for balancing the neighborhood and to
46 balance the home on the lot; he was not trying to build a bigger house and feels the
48 variance should have been granted.

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

54 BOARDMEMBER SLATER MOVED TO DENY THE APPLICANT'S
56 REQUEST FOR A FIVE FOOT VARIANCE ON THE FRONT YARD ON LOT 26,
58 PLAT A, OF THE HIGHLANDS AT BALD MOUNTAIN SUBDIVISION.

60 BOARDMEMBER MITCHELL SECONDED THE MOTION.

62 THE VOTE WAS RECORDED AS FOLLOWS:

64 CHAIRPERSON SOUTHARD AYE

66 BOARDMEMBER SLATER AYE

68 BOARDMEMBER SMITH AYE

70 THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

72 Chairperson Southard called for a motion to adjourn at this time.

74 **ADJOURN**

76 CHAIRPERSON SOUTHARD MOVED TO ADJOURN THE MEETING AT
78 7:40 P.M. BOARDMEMBER MITCHELL SECONDED THE MOTION. ALL
80 PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

2

Approved – July 27, 2017

4

6

Jeff Southard, Chairperson

8

10 Hugh Van Wagenen, Planning Director