Minutes of the Board of Adjustment held April 28 2016 in the Weber County Commission Chambers, 2380 Washington Blvd., Ogden UT

Members Present: Rex Mumford, Chair; Deone Ehlers-Rhorer, Phil Hancock, Bryce Froerer, Neal Barker Members Excused: Douglas Dickson,

Staff Present: Rick Grover, Planning Director; Scott Mendoza, Assistant Planning Director; Courtlan Erickson, Legal Counsel;

Kary Serrano, Secretary

\*Pledge of Allegiance

Regular Agenda Items

1. Minutes: Approval of the February 25, 2016 meeting minutes

MOTION: Phil Hancock moved to approve the February 25, 2016 meeting minutes. Bryce Froerer seconded. A vote was taken with members Deone Ehlers-Rhorer, Phil Hancock, Bryce Froerer, Neal Barker, and Chair Mumford voting aye.

Motion Carried (5-0)

1. BOA 2016-02: Consideration and action on a request for a 13 foot variance into the front yard setback locate at

6706 E 6675 N in the Forest Residential-3 (FR-3) Zone. (Joe Sadler agent for Jim DePiano, Applicant)

Ben Hatfield said staff had a request from applicant Jim DePiano, and Joe Sadler is the designer representing the applicant. The application is for a variance for a reduction to the front yard setback in the Forest Residential FR-3 Zone. The applicant is proposing to build a new single family dwelling 12 feet to the front lot line; this would require an approval of a 13 foot variance to the standard. The property is located in a remote area on top of Powder Mountain, and there's a subdivision called Powder Mountain West Phase 2 in a remote location that is the far westerly lot of the entire subdivision. The unique thing about this subdivision is where the road (Aspen Drive) switches back up the hill and partly behind the lot. This road is an unimproved and unmaintained private road which for many months is snowbound, causing the owners to have to ski or snowmobile to their properties. Lot 42 R was deemed as a restricted lot due to its slope, and will be required to undergo a Hillside review. As staff and the engineering office had looked at this, it was noticed that that slope of this lot as it hit the switchback there, and determined additional reviews will need to be done when it is appropriate for a building permit. This lot will still have to follow that process; it is anticipated that they can deal with the slope and the building.

Ben Hatfield said that he tried to make this a little easier in the FR-3 Zone that has a minimum lot area; it is sort of unique for the county area, where the county is very rural and is used to large lot sizes, whereas these lots are fairly small lots.

Lot 42R is 9,505 sq. ft. and there is a requirement of 40%; and in this case the setbacks are large enough that they don't have to worry about the 40% because the setbacks take up more than 40% of the lot. After setbacks the lot would have 3,500 sq. ft. and once they include that small area in this area that takes up an easement, they are then left with about 3,007 sq. ft. of the building envelope. The applicant has proposed the location of the home in this area, and discussion before the application, the applicant was looking to get as close to the road as possible. They had some concerns on granting a setback instead of 25 feet down to 0 feet as has been done in this neighborhood in the past. They tried to allow some distance so they can get out of the garage; they can see on Aspen Drive as traffic goes back and forth on the road they don't have building right next to it.

Bryce Froerer asked on that photograph on the east line, where does it cross over on the property line and does it include that driveway on the southwest corner. Mr. Hatfield replied this photo is based on some information from the GIS department. The red is that parcel data that comes from the recorder's office. The red is not survey grade and often times they will find a shift there so when they see how close that is to a neighbor's house to that line, that line is not the location of the lot. It is merely to represent an approximate location of the lot and was included mainly for the photo itself. It does include that driveway; he has seen the parcel data shift throughout the neighborhood, and there is a disclaimer as they look at this data that states this data is not accurate.

Chair Mumford asked in the original picture, did he recall what that circle was. Mr. Hatfield replied that he would have to ask the applicant.

Ben Hatfield said it should be noted that any minor modifications should be made and addressed during hillside review requiring that no portion for retaining walls and for the driveway shall be maintained within the right of way. In discussion with the County Engineer Staff, they looked at the angle in this area with the slope, and would suggest that they taper the hillside back a little and not have retaining boulders in the right of way.

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Deone Ehlers-Rhorer said if she understood correctly, this lot was restricted meaning unbuildable. Mr. Hatfield replied meaning additional review would have to happen based on the plans that would come forth. Mrs. Ehlers-Rhorer said this is preliminary to receive the setback requirements currently needed and then they would do the additional approvals.

Mr. Hatfield replied they would go through the hillside process, so basically they are trying to cover if a variance is needed based on the condition for the lot, go through the process before they have to pay extra for engineering and for the footings.

Ben Hatfield said he will go through the five criteria that the board has for granting a variance:

1. Staff has found that literal enforcement of the land use code would require an undesirable result, that being a difficult area to build within that lot. As suspected by the photos of this property, the ski trail may extend beyond the provided easement. They can see that in the site plan as the easement is the straight line, and there is a curve there from the aerial photo. Not sure if the trail land exactly in the easement; but the request is the best scenario to address the unique circumstances of this lot, and avoid impacts of the slope and ski trail.
2. The special circumstances attached to this property are not self imposed or economic. The placement of the described easement and the elevation of the ski trail are the cause of the hardship.
3. The other homes in the area are not impacted in the same way that Lot 42 in regards to slope and the trail easement. Therefore, granting the variance preserves the right intended for this property and the additional area request by the variance fall in line within the building envelopes of similar properties within the subdivision. It appears that the modest request would not increase that dramatically in comparison to the other lots.
4. As the general plan indicates that this area should be developed as is planned and as zoned; being adjacent to the resort, and thereby the variance and development is not contrary to any public interest in the general plan.
5. This variance is not an attempt to avoid and circumvent the requirements of the County Land Use Code but provide justified compensation to the building envelope allowed for the single family dwelling to be built.

With that staff is recommending approval for the variance to Lot 42, in the Powder Mountain West, Phase 2, for the reduction of 13 feet to the front yard setback. The recommendation is based on the compliance with the applicable variance criteria discussed in the staff report.

Joe Sadler, Representative, Habitations Residential Design Group, 1523 E Skyline Drive in South Ogden, said he would like to offer some clarification to that question about the circle. That is just a circle because the owner was wondering if there was any area to view any kind of landscaping for an area that is dead and is not relevant. This is survey grade and was surveyed and the ski trail does encroach outside of the unit. They could say that Powder Mountain would like for them to move that and get back in their area; but the slopes and grade are there, and the ability to get equipment is very difficult. There is also a massive pine tree there and he would prefer not to cut that tree. To clarify on this site the property corner is in this area so this is slid over, and this view shows that easement actually does affect it more than shown in the photo. This photo shows the trail easement along the back of these lots, and it's outside of their setback in the rear. This is the only lot in Powder Mountain West that has the trail easement which crosses like this and it actually swipes right across it. When they were looking at the home and they tried to keep it as shallow as possible; not just because of the setback but also because of the grade that is so steep. The reason they are not pushing the home closer to this trail is because in Powder Mountain deals with snow that is between 6 to 10 feet of snow. They are trying to get some relief off of that trail not only from the skiers but also as a safety issue. They want to give more distance off of that ski trail and offer more of a buffer so it isn't that close to that ski trail. This easement slices across this lot and if they didn't have that easement in this area, they wouldn't have the ability to slide that home up and use that buildable area.

Neal Barker asked if he had considered bringing the driveway in from the west somewhere to the side of it. Mr. Sadler replied that they did try to do that, and that was the desire of the owner. Due to the heavy snow the owner is trying to get more of a straight shot, so they do plan on just grading all the retention and everything they do will be on that property line.

Chair Mumford said so from Aspen Drive, would this be a flat driveway. Mr. Sadler replied that it was actually a pretty steep lot and that is about 11% grade from Aspen to the front of the garage. That is the reason for that being a restricted lot is because that exceeds the 30% grade on this lot; what that hillside review test the staff mentioned, there is going to be an intensive geologic and geotechnical test when it gets done.

Deone Ehlers-Rhorer said when this lot was marketed and sold, it was sold as a residential lot but with full disclosure of what it needed to pass. Mr. Sadler replied yes, and if they look at the Weber County GIS, it is listed as a restricted lot and they called on staff to ask what the requirements are for that lot.

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Chair Mumford said that the restrictions are due to the steepness of the grade and not due to the ski trail. Mr. Sadler replied yes, and any lot that is in Weber County that is over 30% grade will be a restricted lot.

Chair Mumford read the applicant's narrative under the variance request, "Strict adherence to the front setback in this area, with the ski run in the rear would limit the depth of the home to approximately 30 feet, which doesn't allow for a decent home depth." This bothered him because it seems as if they are asking for a variance so they could build a decent depth home. Mr. Sadler replied that maybe he used the wrong word there, as there were so many considerations. Being in the architectural business they see homes that are typically 50 or 60 feet deep, and with this home it is quite shallow, and the reason they didn't design it wider was because of the concerns with the water and also from the Geologist.

Chair Mumford asked what was the approximate square footage of this home. Mr. Sadler replied that on the top of the garage it has a level and with all three levels, it is about 1,200 sq. ft. each level.

Chair Mumford said one of the considerations of a variance is trying not to deprive this property owner from what others in that subdivision are allowed. Is this home larger than the others comparable or smaller? Mr. Sadler replied that it is comparable and is actually on the smaller size and it wasn't the setback the drove the footprint it was the grade. In looking at the homes in the development, some of them are good size that would not fit on this lot. Some of those homes are maybe 2,500 to 3,000 sq. ft. on each level.

Neal Barker asked what distance Mr. Sadler expected from the driveway to the rode as it currently exists. Mr. Sadler replied that there is quite a distance from the road and the property line; he and staff have had discussion about the about that property that started so far back from the graded area. That front distance is about 30 feet if they take the shortest distance to the graded road. One of staff's concerns is if this was even possible, with off-street parking because that Aspen Drive is graded so far down. In a lot of cases that gap between graded road and the property line are typically a lot closer.

Chair Mumford asked staff on this variance request; he assumed that letters went out to the next door neighbor.

Mr. Hatfield replied yes, that people were notified within 500 feet.

MOTION: Deone Ehlers-Rhorer moved to approve a request for a 13 foot variance into the front yard setback locate at 6706 E 6675 N as recommended by staff report which meets the 5 criteria, and noted pending future reviews as mandated restricted lots. Neal Barker seconded. A vote was taken with Deone Ehlers-Rhorer, Phil Hancock, Bryce Froerer, Neal Barker, and Chair Mumford voting aye. Motion carried (5-0)

Chair Mumford welcomed the new board member Neal Barker and Bryce Froerer has become a full fledge member.

3. Adjournment: The meeting was adjourned at 5:15 p.m.

Respectfully Submitted,

Kary Serrano, Secretary

Weber County Planning Commission