

HUNTSVILLE TOWN APPEALS AUTHORITY

Huntsville Town Hall – 7309 East 200 South, Huntsville, Utah 84317

February 16th, 2019

8:00 a.m.

Appeals Authority: Bruce Ahlstrom, Chairman
Artie Powell
Rod Layton
John Bowen
Dawson Hedges

Recorder: Beckki Endicott

Citizens: Rex Harris, Valin Miranker, Dan Miranker by phone

Bruce started the meeting by welcoming the committee and started reviewing the procedure for appeals and variances. John Bowen asked if the Appeals board could overrule the Town Council. Bruce stated that they could overrule the Town Council. He stated the Appeals Board is bound by the ordinances, but on an appeal, they are looking for something the Planning Commission and Town Council missed.

Bruce talked about what constitutes a variance. He stated he believes the property owners could come directly to the Variance Board without going to the Town Council. Artie disagreed with that interpretation. Artie stated in the Utah State Code section 10 states that only a person who has presented to the land use authority could ask for a variance at the Variance Committee. Artie believes the Huntsville ordinance 15.5.6 is incomplete and inconsistent with the State Code. He believes the Appeals Authority doesn't have original jurisdiction. Going to the Town Council first, enables the Town Council to look at all aspects of the situation. Artie pointed out that there may be things the Appeals Authority may not be aware of until they go through the process of the Town Council. He suggested that this part of the Huntsville ordinance needs to change. Bruce stated the Mirankers have been through the process of going to the Planning Commission and the Town Council.

Bruce pointed out that the Huntsville Code allowed a chairman of the Appeals Authority to be selected by that committee. Mayor Truett asked Bruce to chair the committee but he would like the committee to make a nomination and vote for a chairman. **John Bowen made a motion to nominate Bruce Ahlstrom as chairman of the committee.** Rod Layton seconded the motion. All votes aye. Motion passes.

Bruce reviewed the quorum requirements. He would like to see two alternates added to the committee. He stated it is already apart of the Huntsville ordinances. Dawson suggested there should be some

guidelines that would constitute how the voting order would occur. Artie suggested that they rotate the alternate voting. Bruce suggested added a vice chair to the committee in case he couldn't be there.

Bruce went over part of the code that stated that an appeal would have to be done within 10 days of an adverse decision. He feels that this is too short of a time. He proposes we make this time period is 90 days. The discussion then centered around whether the appeal needed to be heard within this time period or just notified and maybe filed with some sort of paperwork.

Bruce brought up how to finalize the decision of the Appeals Authority. He wanted to know whether they issue the decision verbally or by letter. Artie stated there hadn't been a written statement at the end of the appeal but stated he believed there needed to be a written statement. He thinks this would be clear and helpful.

Beckki advised the committee how to go about making the changes to the ordinance for the appeals and variance code. Bruce gave Artie the assignment of referencing the state code on original jurisdiction. Bruce stated he would make the changes in the code he would like to see. They would bring these changes to the Planning Commission. These changes will have to go through the public hearing process at the Planning Commission and then be approved by the Town Council.

The last thing that Bruce wanted to go over before the Mirankers came in for their hearing was the five criteria for an appeal. He stated again that the appeals board must abide by the Huntsville Town Ordinances. He quoted 15.5.6.B.

B. The Huntsville Town Appeal Authority may grant a variance only if:

1. Literal enforcement of the Land Use Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Title; and Title 15 – Land Use Regulations Page 10 of 108 As approved by the Huntsville Town Council 15-10
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone; and
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone; and
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 Title is observed and substantial justice done.

Bruce brought Rex into the meeting to discuss the history of an upcoming appeal for the Taylor's. He described the situation and the couple is now seeking a variance to access their lot through an ally way. Beckki will contact the Taylor's and find a date.

Finally, as the board prepared to hear the case from the Miranker's, the members asked Rex about a conflict of interest with regard to him presenting the history of the lot for the Miranker's. Rex explained that he was asked by the Miranker's to help them present the history of the lot. Artie pointed out that the state statute stated that public comment could not be a part of the meeting. He is assuming that Rex could be public comment. Beckki pointed out that since the Miranker's case had been heard by both the Planning Commission and the Town Council that there was already an opportunity for public comment to be made. Also, the Ethical Disclosure Ordinance allows for a person with a conflict of interest to discuss and comment on issues as the conflict was disclosed. Beckki also pointed out that it was up to the board to determine whether there is a perceived conflict of interest and whether it applied to the case. Beckki will ask the Town Attorney for an opinion on this statute.

At 9:05 a.m. the Miranker's were introduced. Valin was present and Dan was introduced via the phone. Valin stated that her husband was a professor in Texas. She was born and raised in Utah. She and her husband are skiers and have been coming to Huntsville for 45 years. They had a home on 500 South and 8800 East and it became a lot to take care of. They have the opportunity to buy a lot in Huntsville and build a smaller retirement home. She explained that they are under contract to buy the lot.

Rex gave some history on the lot. He agreed that variances are very hard to come by. The criteria is difficult to meet. One of the reasons he believes that a variance is difficult to grant is that the majority of the issues are conformance issues...meaning the use of the property is not allowed or against the ordinances. The other reason is the owner wanting to do something unique with the property that is not allowed. Those reasons are reasons where the property owners could meet the ordinances but just doesn't want to. He believes the Mirankers meet all the requirements for a variance.

This lot has not always been in the Town of Huntsville. The property that we are discussing was farmed by Bill Farrell. It was one big piece at one time. Artie stated that he thinks this was annexed in 1994. He was wondering if Rex could describe how the annexation took place. Rex stated that the Mountain Waters subdivision was done at the same time. Basically, the properties in between to keep it continuous was annexed in at the time. Dawson asked what the original zoning was. Rex believes that originally it was probably agricultural but when it was annexed it became R-1. The property adjacent to this property was all a part of the annexation.

Rex explained that over the course of time the lots were broken up into building lots. There were some property owners that broke out the lots and subdivided without any Town approval. Artie asked Beckki to pull up the survey of the property in question. Artie stated that in looking at the Andy Hedges property that in order to get to the .75 acres, the survey had to go to the middle of the road. Rex stated that was correct. Rex explained that once the 33 feet half width was removed it put the lot at .72 acres. This is the same situation for the Andy Hedges property as it is with the property that we are talking about today, the Olson's soon to be the Mirankers.

Dan Miranker responded on the phone that he researched all five properties along that road. He stated that all the lots started as .75 acres. When the 33 feet was taken for the road, they all drop below the .75 acres and are now .72 acres. The frontage for all of them are roughly 130 feet across. Artie pointed out that the Moss lot doesn't have a 130-feet of frontage. Rex stated that all these properties are in a similar situation but believed that were also errors with the Reeve survey that was done. Rex commented that the tax rate for the .72 acres.

John Bowen wanted to know how this lot is different than any other lot along this road. Rex stated it was his opinion that this lot was always meant to be a buildable lot. Rex commented that it is his belief that at the time of annexation the Town intended for all these lots to be buildable lots.

Artie wanted to ask a few questions. The plat map shows there is a road on the north of the property. Rex answered that there is an easement. Artie wanted to know if that easement was still in effect. Rex replied that the easement still exists. This is farm access. Although the need for the easement doesn't exist anymore, it still has not been removed.

Artie wanted to know if this situation could be dealt with by deeding an easement of the 33 feet to the Town. Rex wouldn't recommend that to the Town. From the Town's perspective the cleanest option for that right of way is a dedicated right of way. Artie stated that if they grant a variance for the Olson's, are they creating a potential issue down the road. Various situations were discussed. Rex stated that for him, it comes back to the original intent, whether the Town or not intended the lot be a buildable lot. Dawson commented that we don't know what the original intent actually was. Rex stated that was why we were here, to make a ruling on the original intent.

Rex reiterated again that there is a gentlemen's agreement regarding 6600 East. The property owners were allowed to have their .75 acres, then the Town could have a road on 6600 East. There was not any exercise of eminent domain by the Town. It was a gentlemen's agreement.

Rod commented that the cover letter from the Miranker's that explained how the five criteria are met for a variance, doesn't mean a lot to him. To him, it is clear, that the property meets all the criteria. Artie disagreed. Rod stated that it all comes down to #1 for him. He asked the question if it was a hardship. Rod believes it is a hardship. He stated the Town made it a hardship. He stated he worked on that road when he was volunteering with the Town. He explained that it was his job to meet with the Osmond's on trying to deed the property over to the Town. Rod said for the Appeal's Authority to rule against building a home on this lot because of a problem the Town created seemed like a hardship to him.

Artie stated that the first and second criteria are the hardest to meet. It is Artie's opinion that the property owners are partly to blame for this confusion and hardship. He stated that if the Town wanted to put the road in, why wouldn't the property owners ever ask about their ownership and how the road would affect their own property. Although the Town may be mostly to blame for this hardship, the

property owners share some responsibility as well. He does believe that he can go along meeting the first criteria for hardship. Where Artie is having difficulty is on the second criteria. He doesn't believe that there are special circumstances that only exist for this property. He states that this circumstance exists for all the properties that exist along 6600 East. It is his opinion, that this case is not right for a variance. He is not saying that they shouldn't be allowed to build on this lot. He would like to see the Town Council clean up the confusion on the entire street. Rex asked how the Town could do that. Artie stated he didn't have the answers for that. Rex also pointed out that this property is unique because it is the only lot that doesn't have a house on the street.

Dawson wanted to ask one last question. He stated that most of the non-complying lots in Town got that way by something that happened in the past. Dawson's question is does history constitute a hardship? Rex doesn't think the variance should be granted based on mistakes that have been made in the past. Artie commented that the state statute states the decision needs to be based on substantial evidence. He also believes that this could be resolved by the Town Council by ordinance.

Rod asked what the Town obligations are to the property owners are if an easement is granted. Rex replied that it all depending on the language of the easement agreement.

Bruce called for a roll call vote in favor of the variance on the Miranker's property.

John Bowen: Yes
Rod Layton: Yes
Dawson Hedges: Yes
Artie Powell: No
Bruce Ahlstrom: Yes

The favorable vote for a variance on the Miranker's property passes.

The appeals board will write the recommendation to the Town Council regarding the vote on the variance.

The meeting was adjourned at 11:05 a.m.



Huntsville Town Appeal Authority Board

Variance Decision Hearing:

Hearing held February 16, 2019

Board Members present: Bruce Ahlstrom, Artie Powell, Dawson Hedges, Rod Layton, and John Bowen.

Variance Request: 279 North 6800 East, Huntsville, Utah, parcel #200100028

Daniel and Valin Miranker have contracted to buy this lot to build their home. The lot size is 0.813 acres, but the current property boundary goes to the road center line on the east end of the property. When the Mirankers sought a building permit from the town, they were asked to deed over 33 feet of the east property to the town for the already existing road. This would be of benefit to Huntsville town but would only leave 0.7189 acres remaining, which is less than the required 0.75 for a building lot in Huntsville Town. If this 33 feet were deeded over to Huntsville Town, the Mirankers would need a variance if they wished to build their home. Thus they came to the Appeals Authority Board seeking a variance. This property and adjacent property was annexed into Huntsville Town almost 25 years ago and these lots were recognized as conforming residential building lots. Several of the lots already had homes on them. Since the annexation, other homes have been built on adjacent similar lots. This is the last similar lot without a home on it.

The majority of the board determined that the requirement to deed over 33 feet of the eastern end of the property for the already existing road placed an unreasonable hardship as they would lose their property rights to build a home. This variance was essential for this property to enjoy the same rights possessed by other property owners in the same zone and circumstances. The deeding over of the 33 feet on the east end of the property was of benefit to Huntsville Town and the variance does not substantially affect the general plan. The spirit of the land use plan is observed and we believe justice is done for all concerned.

Thus, the variance was approved by a 4 to 1 vote of the board.

Bruce Ahlstrom
Appeals Authority Chair



Becki Endicott
Recorder