

The Lindon City Board of Adjustments held a meeting on **Thursday, September 26, 2013** beginning at 6:30 p.m. in the Lindon City Center, Lower Level Conference Room, 100 North State Street, Lindon, Utah.

Conducting: Jeff Southard, Chairperson

PRESENT

Glenn Mitchell, Boardmember

Greg Slater, Boardmember

Jeff Wilson, Boardmember, arrived 6:35

Hugh Van Wagenen, Planning Director

Brittany Bell, Planning Clerk

ABSENT

Steve Smith, Boardmember

Special Attendee:

Matt Bean, Councilmember

The meeting was called to order at 6:32 p.m.

APPROVAL OF MINUTES – *The minutes from the Board of Adjustments meeting of June 13, 2013 were reviewed and approved.*

The Board reviewed the minutes of the meeting of June 13, 2013. Chairperson Southard called for a wording change in the minutes to clarify whether the extension was cantilevered out or whether the foundation would be moved out. Chairperson Southard recommended that the minutes be approved as amended.

BOARDMEMBER MITCHELL MOVED TO APPROVE THE MINUTES OF THE MEETING OF JUNE 13, 2013 AS AMENDED. BOARDMEMBER SLATER SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

CURRENT BUSINESS –

1. **Request for Variance: Minimum Lot Size — Danny Bentley — 811 East Center Street.** The applicant, Danny Bentley, is requesting a variance of 2,593 square feet from the required 20,000 square foot lot minimum in the R1-20 (Residential Single-Family) zone. If approved, the proposed lot would be 17,407 square feet (one lot in a proposed four lot subdivision).

Hugh Van Wagenen, Planning Director, opened the discussion by showing the location of the variance request. He stated that the Bentley's have an existing home on the lot and the request would subdivide the lot into four (4) lots, three (3) of which would be 20,000 square foot

lots, and the fourth being a flag lot. The total square footage of the fourth lot would actually be 20,000 square feet, but since the “flag pole” portion of the lot would not count toward required square footage, the lot would be 17,407 square feet, for a variance of 2,593 square feet from the 20,000 square foot minimum lot size. Mr. Van Wagenen explained that flag lots have their own regulations by the Planning Commission and City Council, but applying for a Variance is the first step in the approval process of a minimum square footage reduction. Mr. Van Wagenen gave a brief background on the property as provided by a letter from the Bentleys that some of the Bentley’s land was dedicated to a street out in front and then they also sold land to the City, upon the City’s request, for the trail that runs back behind (on NW side) of the Bentley’s property.

Chairperson Southard asked if the size of the (flag) lot would be 20,000 square feet if the Bentleys had retained the land that was sold to the City. Mr. Van Wagenen affirmed that it would be over 20,000 square feet since 7,140 square feet of land was sold to the City.

Mr. Van Wagenen pointed out the map from the Staff Report that shows the cul-de-sac road dedication, which takes up approximately 13,000 square feet of land, cannot be counted toward the size of the lots. It was noted that this information is just for reference, but is not part of the Variance approval. Chairperson Southard asked if the cul-de-sac (future road on the Bentley’s property) was supposed to connect with 100 North. Mr. Van Wagenen stated that was information provided by the applicant. The applicant provided a map showing original plans for the land. Mr. Bentley stated that originally the Master Plan had the (aforementioned) roads connecting, but later the developer of the adjacent subdivision (to the West) got a cul-de-sac approved instead of a connecting road. Mr. Van Wagenen stated that the change to the Master Plan road was before the selling of the trail land to the City.

Chairperson Southard asked if there were any questions for Mr. Van Wagenen. He then asked to hear from applicant.

Statement from Mr. Danny Bentley: When we bought the ground originally, we were told that that road (previously discussed) would connect, which would give us our four (4) lots without any problems. From there, the City approached the neighbors (abutting the Bentley’s property) asking to buy part of their land for the trail, but the neighbors told them no. We think originally they were going to split the trail with the neighbor’s property. So then we actually covered the whole trail out of our property. If we would have split the trail with the neighbors we wouldn’t be in this predicament. We didn’t fight the trail, we didn’t fight the City on it, and we saw it as something that would be a benefit to the community so we agreed to sell the property. Since that time, when Center Street was going in, a lot of neighbors weren’t happy with it going all the way through. We never stood in the City’s way. We feel like we’ve always worked with the City. We’ve been willing to donate ground for Center Street to go through. We sold the horse

trail for the City. We feel like we've been good-standing citizens and never stood in the way of the community growing.

The Plat Map of the Bentleys area dated 10/26/1989, brought to the meeting by the Bentleys, was reviewed.

Statement from Loudell Bentley: At the time we came in the only other spot that had the big, wide street was in front of the LDS Church. So when we went in, we were told, by the City Manager, that we had to put in another wide street. It seemed weird to me because we were adding a road that was dead-ending, but we paid for all the improvements and we went along with it. Mr. Walker said we could do it, but he wanted nothing to do with it, so we just took it on our own. But his sons are not happy, so they put a fence in the middle of it. But that's ok. We learned to live with it.

Chairperson Southard noted that a copy of the applicant's exhibits was left for Mr. Van Wagenen.

Chairperson Southard asked if there was any other public comment. He then closed the public hearing portion of the meeting for the Board to deliberate.

Chairperson Southard noted that he had called Mr. Butler, the neighbor adjacent neighbor, and asked if he had any concerns with this matter. Chairperson Southard stated that Mr. Butler said he had talked to Mr. Bentley and told him they were supportive. Chairperson Southard asked if Mr. Van Wagenen had any other concerns brought to him by the public. Mr. Van Wagenen replied that he had not, but reminded that it is not public comment or opinion that is the determining factor.

The Board went on to review the state 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.**

Boardmember Discussion: Boardmember Wilson stated that in his perspective the best use of the land would be residential, which is what the applicant is trying to use the land for, and if that use is prevented, then literal enforcement would be an unreasonable hardship. Both Boardmember Mitchell and Boardmember Slater stated they agree.

Following discussion the Board concurred 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.**

Boardmember Discussion: Chairperson Southard stated that what was previously discussed, specifically about the piece of land sold to the City for the trail taking square footage out of the property, seems like a special circumstance that would apply. All Boardmembers stated they agreed.

Following discussion the Board concurred 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.

Boardmember Discussion: Chairperson Southard referred back to Boardmember Wilson's comment that the intended and best use is residential. Mr. Van Wagenen clarified that the use of the land would remain residential regardless of the size of the lots to be created, and that the use is not being changed from residential. Chairperson Southard then clarified that the enjoyment of the property right would be the ability to subdivide the parcel with a maximum yield of 20,000 square foot lots, which could have been done if land had not been given up for the trail.

Following discussion the Board concurred that the criteria are met.

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

Boardmember Discussion: Chairperson Southard stated he does not think it affects the General Plan at all. Boardmember Wilson asked Mr. Van Wagenen about the intended use of the sliver of land to the North (of the Bentley's property) that is owned by the City. Mr. Van Wagenen replied that the City doesn't have any intentions to use it for anything outside of public recreation space. It was noted that the other sliver of land owned by the City adjacent to the Bentley's property running North and South is 3,700 square feet.

It was also noted that the Bentley property is nearly adjacent to the boundary between R1-20/R1-12 zones where lots to the east of the Murdock Canal have a 12,000 square foot minimum.

Following discussion the Board concurred that the criteria are met.

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

Boardmember Discussion: Boardmember Slater stated that the portion of the land that was sold for the trail was done out of good will. Boardmember Wilson stated that all the impacts on the property may not have been discussed at the time the property was sold. Boardmember Slater asked if the City would have condemned and taken the property.

Boardmember Wilson stated the City has condemned property in the past, but it is rare and tries not to.

Following discussion the Board concurred that the criteria are met.

6. 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;
 - Is located on or associated with the property for which the variance is sought, and;
 - Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood

Boardmember Discussion: Chairperson Southard stated that the variance is specific to the property as the Board has already discussed. He also stated that the trail is a peculiar circumstance because it doesn't affect every single lot in the area.

Boardmember Wilson added that it doesn't even affect the neighbors because they would not sell land for the trail.

Following discussion the Board concurred that the criteria are met.

7. 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.
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;
 - Relate to hardship complained of, and;
 - Deprive the property of privileges granted to other properties in the same district.

Boardmember Discussion: Chairperson Southard stated that because the Bentleys agreed to cooperate with the City to sell land for the trail when the neighbor didn't that could have made the difference in how much land the Bentleys had and whether they would need to apply for the variance. It was determined that it is unknown what alternate route the trail would have taken had it not been developed as its present route, but Boardmember Wilson stated that when the City was trying to develop the trail, they tried to use as many pre-existing trail sections as possible and then make purchases to tie those pieces together. Mr. Van Wagenen brought up for discussion the point of distinction between self-imposed and lack of foresight. Chairperson Southard stated that he does not think that anyone on either side of the transaction (in sale of land from the Bentley's to the City for the trail) realized that it would affect the ability to allow for (a subdivision including) this fourth lot. He continued that he thinks if the effects had been realized at the time, there may have been more effort to work with the neighbor who

declined to sell their land or to work with the applicant at that time to allow for a Variance. He stated he thinks there was good intent to cooperate and that the applicant should not be punished for that. Boardmember Mitchell and Boardmember Wilson stated they agreed.

Following discussion the Board concurred that the criteria are met.

Following discussion, the Board felt that the variance did meet all of the required criteria and standards and, therefore, the recommendation was to approve the variance. Chairperson Southard then called for further comments or discussion. Hearing none he called for a motion.

CHAIRPERSON SOUTHARD MOVED TO APPROVE THE VARIANCE REQUEST FOR A 2,593 SQUARE FOOT VARIANCE FROM THE REQUIRED 20,000 SQUARE FEET LOT MINIMUM IN THE R1-20 (RESIDENTIAL SINGLE-FAMILY) ZONE SPECIFICALLY FOR LOT NUMBER FOUR (4) OF THE PROPOSED DANNY BENTLEY SUBDIVISION ALONG 800 EAST CENTER STREET IN LINDON. BOARDMEMBER WILSON SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

CHAIRPERSON SOUTHARD	AYE
BOARDMEMBER MITCHELL	AYE
BOARDMEMBER SLATER	AYE
BOARDMEMBER WILSON	AYE

THE MOTION CARRIED UNANIMOUSLY.

ADJOURN

BOARDMEMBER MITCHELL MOVED TO ADJOURN THE MEETING AT 7:12 P.M. BOARDMEMBER SLATER SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

Approved – October 30, 2013

Jeff Southard, Chairperson

Hugh Van Wagenen, Planning Director