Pleasant Grove
Utah's City of Trees

PLEASANT GROVE CITY
APPEALS HEARING MINUTES
COMMUNITY ROOM, POLICE, AND COURT BUILDING
108 SOUTH 100 EAST
PLEASANT GROVE, UTAH
DECEMBER 7, 2023

PRESENT: Craig Call, Esq., Hearing Officer
Jacob Hawkins, City Planner
Daniel Cardenas, Community Development Director
Aaron Wilson, City Engineer
Christina Gregory, Planning & Zoning Assistant

Hearing Officer, Craig Call, called the meeting to order at 12:00 p.m. He introduced himself to those present and explained that he is an attorney by profession. He was charged by the City of Pleasant Grove to act as the Land Use Appeals Hearing Officer. It was his responsibility to hear Land Use Appeals as well as Variance Requests. The intention was to protect the rights of everyone involved without the hassle of litigation. The appeals process is meant to be less formal and allow for an easier resolution to land use issues. Officer Call has handled the Appeals Hearings for Pleasant Grove for several years and also represents several other cities and counties as a Hearing Officer.

Officer Call reported that there are three items on the Appeals Hearing agenda and they will be heard in order. He informed those present that he had no information about the agenda items except what was provided in the Staff Report. In the case of these specific requests, it appeared that variances or an interpretation of an ordinance had been requested. Different regulations were in place to protect property owners and nearby residents. As a result, notices were sent to certain residents and property owners. If there is a protected interest in the outcome, those residents could participate in the hearing process. However, this was not a public hearing where anyone could share comments. This was a discussion among those with a protected interest. It was his opinion that the property owner, nearby residents, and the City have a right to participate in the process. Those who might be affected were invited to the hearing.

For each of the items on the Appeals Hearing agenda, the process would be that the person bearing the burden of proof would have the first opportunity to comment. This means the applicant would speak first followed by the City. The applicant could then respond. From there, those with a potential protected property interest could speak. The City and applicant could respond to those comments. Officer Call intended for the process to be more of a conversation than something formal but stressed the importance of treating one another with civility and talking about relevant issues. He explained that it was not his prerogative to change City policies unless there is a specific protected substantial property right or unique hardship imposed that according to the courts, would justify that the provisions of the ordinance be varied. The intention was to make sure the

ordinances that are meant to be general in application do not provide such a specific hardship in one instance that it interferes with substantial property rights.

1. **Public Meeting: Variance from City Code Section 10-9B-9: Building Height (Grove Creek Neighborhood)**
   Public Meeting to Consider a Request of Brandon Fugal for a Variance from City Code Section 10-9B-9: Building Height, which Section Limits the Maximum Building Height for Primary Dwellings to be 35 feet in Residential Zones. The Property is Located at 755 North Dalton Drive in the R1-20 (Single-Family Residential) Zone.

Officer Call reported that the first item on the Appeals Hearing agenda involved property owner, Brandon Fugal. The property is located at 755 North Dalton Drive. Representing the applicant was Jory Walker, the President and owner of Beecher Walker Architects in Holladay. The property owners were identified as Brandon and Kristen Fugal, who were also present. Mr. Walker reported that a house is currently being designed for the Fugals. Approximately 20 years ago, a home was designed for the Fugals in Pleasant Grove as well. That home is 50 feet tall in the back and 39 feet in front. It was approved and built in Pleasant Grove without issue. When the new home design process began, there was a desire to create a historically correct house. After reviewing the zoning ordinances, which restrict the maximum building height for residences to 35 feet, the request was made for a variance to allow for additional height.

Community Development Director, Daniel Cardenas, shared a parcel map to show where the property owned by the Fugals is located. It is currently a vacant lot and there is a desire to build a home on the lot. The property owner and architect came to the City with plans that exceeded the maximum heights allowed in the zone. Everything around the subject property is in a R1 Zone, including the R1-20, R1-10, and R1-12. All of the surrounding lots are residential in nature. The applicant was seeking a variance to City Code 10-9B-9, which states the following:

- "No lot or parcel of land in the R1 Zone shall have a main building or structure used for dwelling or public assembly which exceeds a maximum height of 35 feet. Chimneys, flagpoles, church towers, and similar structures not used for human occupancy are excluded in determining height."

Director Cardenas reported that Staff can only make administrative decisions. The responsibility of Staff is to know the Code and determine whether an application does or does not meet the Code. In this case, the proposed building exceeds the maximum height permitted, so the application cannot be approved. He did not know about the nature of the decisions made before he started working in Pleasant Grove but since he has been in the City, the Code has been the focus.

The applicant was informed that their options were to request a variance or a Code change. Director Cardenas reported that the applicant decided to move forward with a variance request. He noted that the subject property is 2.9 acres in size. The argument was made that if the main structure of the dwelling is located in the center, there would be larger setbacks than the Code requires. The setback requirements are 25 feet in front, 25 feet in back, and 10 feet on both sides. Accessory structures can be three feet from the property line but those structures can only be 12 feet tall. If there was a desire to have a 13-foot-tall accessory structure, the setbacks need to be

four feet from the property line. While there is a staggering setback concept, that concept only applies to accessory structures up to a maximum of 25 feet. In this case, the discussion was about a primary dwelling. The way the Code was written, additional setbacks are not taken into consideration. He reiterated that the maximum height of a building is still 35 feet.

When there is variation in the terrain, the City can do something called an average height. The highest and lowest heights create an average. Director Cardenas explained that there could be a dwelling with a high point of 40 feet but 27 feet at the lowest point. The average there allows Staff to make an administrative determination. However, in this case, the plans that were presented exceeded the Code by approximately seven feet. The request was to have a structure with a 42-foot height. Staff would rely on the Hearing Officer to determine whether there was an unreasonable hardship and make the final determination. The applicant was present to further discuss the matter.

Mr. Walker argued that a precedent had been set in Pleasant Grove with the previous Fugal residence. That home was built in the City on a one-half-acre lot and is taller than 35 feet. As for the hardship, the style of the design and the historical nature caused the excess in height. There was no extra living space proposed with the additional height but the height was needed for this historic roof pitch. The building was proposed with a 12:8 pitch, which is historically correct. It is the historical pitch that caused the building to be higher. Many changes were made to the design to control the height as much as possible, but still give the owner the historic look that is desired. Mr. Walker reminded those present that the lot is very large. There had been discussions about a potential new zone, such as an Estate Zone that could apply to any lot that is larger than 2.5 acres. He felt it made sense to allow slightly higher building heights on those lots.

There had been discussion with the City Attorney about a possible Code Text Amendment. The attorney suggested that the variance request be made first. If unsuccessful, the Code Text Amendment could be pursued. Nearly all other cities around Pleasant Grove have higher height allowances. In the past, the reason height restrictions were in place for homes had to do with fire safety concerns. There was no fire equipment available to put out fires on larger structures. Now that Pleasant Grove has grown and has that equipment, that was no longer a concern. In this case, the height is not a safety concern and will not impact views. As far as he was concerned, the additional building height would not negatively impact others in the area.

Director Cardenas responded to the comments shared by Mr. Walker. He clarified that there was an exception listed in the Code language. It states that "chimneys, flagpoles, church towers, and similar structures not used for human occupancy are excluded in determining height." The pitch of a roof has always been considered part of the habitable space. He believed the language was clear about what is permitted as an exception. The way the language was interpreted historically is the way the language had been applied. He acknowledged that different cities have different requirements but he felt that the requirements in the City Code language are clear.

Officer Call asked for those with a protected property interest to share comments.

Keri Nielsen gave her address as 731 North Dalton Drive. She lives next door to the subject property and moved to the neighborhood approximately six years ago. Ms. Nielsen knows several

neighbors and has a good relationship with them. There are wonderful views in the neighborhood. The hesitancy from the neighbors she had spoken to had to do with the desire to maintain the neighborhood atmosphere. When the Daltons moved, they insisted that the plot not be subdivided. That spoke to their acknowledgment of the neighborhood atmosphere. This was a close neighborhood and the neighbors enjoy spending time together. There was discomfort with what was proposed by Mr. Fugal. Many neighbors asked that the Code be maintained and that no variance be granted. She had a document with 70 signatures from residents who are opposed to the change. There was fear in the neighborhood that the variance will have a negative impact.

John Lewis gave his address as 750 North Dalton Drive and identified himself as a neighbor who lives across the street from the subject property. He wanted to understand where the proposed home will be located because he believed it will impact his view of the Utah Valley. Mr. Lewis asked to see the renderings to better understand how the development will impact views.

Troy Medford gave his address as 1070 Grove Creek Drive and stated that his lot is sunk down below. Every additional foot of development will impact his views, so what is proposed for the height will significantly impact his view of the mountains. Mr. Medford stated that in the past, he built a few houses in Pleasant Grove and he was required to adhere to the requirements. He wanted the City to maintain the Code in this case as well because it did not seem appropriate to exceed the height allowance in this instance. Mr. Medford believed his property would be the most impacted by the development because it sits down quite a bit lower.

Julietta Fierro gave her address as 637 Canyon View Circle, which is immediately below the subject property. She enjoys the mountain views and believes the home will block them.

Cindy Knudsen gave her address as 1233 East Hillside, which is a cul-de-sac around the corner from the subject property. She has lived there for nearly 35 years and it is a wonderful neighborhood. She felt it was important for everyone to get along. Her view was not the same as when she first moved in, which was to be expected. As a result of her experiences, she thought the height variance was appropriate and supported what was proposed for the property.

Georgia Davis gave her address as 1093 Grove Creek Drive and commented that what is proposed will not impact her views but she realized it will impact the views of several of her neighbors. She hoped a compromise would be made and that the streets in the neighborhood will be taken care of.

Drew Armstrong gave his address as 330 North 6900 East. He previously served as the Planning Commission Chair and now serves on the Design Review Board. The reason he decided to share a comment was that he personally granted a variance previously. When a variance is requested, it is usually because there is something unusual about the property. Variances are not normally granted if the situation can be addressed by a Code Text Amendment. When he served on the Planning Commission, the Code in the RR Zone was changed to allow for the stepped-back height depending on how close the house is to the property line. How close the structure is to the property line is relevant. Sight lines will not be as impacted if the homes have greater setbacks on a larger lot because the homes will be far enough away from other properties. When homes are placed near the property line, the sight lines are more greatly impacted. Mr. Armstrong noted that the

subject property is unusual in the neighborhood as the lot is more similar to what exists in the RR Zone.

Director Cardenas explained that Staff only makes administrative decisions. When a plan is presented, Staff is unable to make any exceptions. Staff read the Code and made decisions accordingly. If a request complies with the Code, it is approved. If something does not meet the Code, it is denied. The City Council, on the other hand, makes legislative decisions. There are also quasi-judicial decisions, which involve the Hearing Officer. Different groups make different decisions about applications.

Mr. Walker was asked to share additional comments. He noted that a Site Plan had been brought for the neighbors to review. It was determined that the closest home is 75 feet away. He reiterated that he was open to sharing the proposed building location with neighbors. Some comments made in the application were clarified. As a designer and architect, his hands are tied since a 10:12 pitch will not look right, especially since the historic design elements are driving the process. He acknowledged that the roof is creating the height issue but without the proposed pitch, the overall look of the home will be negatively impacted.

Officer Call thanked those who commented and invited the property owner to speak. Mr. Fugal explained that there was no desire to be a bad neighbor. They currently live approximately two blocks away from the subject property and he loves the neighborhood and the community. They want to be good neighbors and contribute to the beauty of the neighborhood. However, there was also a desire to build something that is historically accurate and appropriately designed. This was his first time seeing the petition that was distributed. He had not received a copy of the petition prior to this meeting nor had he received a call, text, or email from any of the neighbors about their concerns.

Officer Call did not believe the signatures were relevant to the hearing. This was a decision related to policy and will not be made based on public consensus. That being said, the petition will be admitted into the record. If there was a desire to continue the item to allow Mr. Fugal to look at or respond to the petition, that would be appropriate, but he reiterated that the petition was not relevant to his decision. Mr. Fugal was unaware of the nature of the concerns outlined in the petition. Officer Call reported that he was entitled to respond to evidence that relates to the decision but he was not sure the petition qualifies. Mr. Fugal responded to some of the specific comments made by neighbors during the hearing. He was concerned that people are making judgments about him and making unfair statements about his character. Some of the neighbors present apologized for their comments as they were not intended to cause harm.

Officer Call understood the concerns expressed and noted that the City Code clearly provides regulations for building heights. The Code also provides exceptions to the rule when a substantial property right or undue hardship associated with the property imposes a burden on the property owner that reaches unconstitutional unfairness. He noted that a hand had been raised.

Roy Spindler gave his address as 1099 Canyon View Lane just below the subject property. It was mentioned that this would be a two-story building but with all of the land available, it might make sense to have a larger one-story building. Doing so would address the height issue.

Officer Call noted that the request made by the applicant was understandable. That being said, it does not rise to a constitutional question or to what he understood to be the narrow range of protected property interests or substantial property rights that the courts have defined. The property can be used for residential without having a structure that exceeds 35 feet. He had sympathy because the goal was to focus on historical architectural design but he thought it made sense to take the matter to the Planning Commission and City Council. He appreciated the insights offered by the residents and the applicant during the hearing. Officer Call stated that he would Deny the application with a written decision to be provided in a few days.

2. **Public Meeting: Variance from City Code Section 11-3-5: Block Standards (Manila Neighborhood)**

Public Meeting to Consider a Request of Canyon Grove Academy for a Variance from City Code Section 11-3-5: Block Standards, which Section Requires a Second Access if a Street with a Single Means of Ingress and Egress, and Having a Turnaround, Exceeds a Maximum Average Daily Trip Level of 250. The Property is Located at 588 West 3300 North, in the Agricultural (A-1) Zone.

Officer Call reported that he serves as the Executive Director of the Utah Land Use Institute but did not consider it to be a conflict of interest. In that role, he writes publications and is the Executive Director of the non-profit. Among the Board Officers and Members is Brent Bateman. Mr. Bateman appeared before him in several previous cases and in those cases, he did not believe the decision made was impacted by that connection. However, he wanted to put the matter on the record and ask the City or the applicant to determine whether they believed there was a conflict of interest. Officer Call apologized for the short notice but he had not known that Mr. Bateman was involved until the last minute. Director Cardenas wanted to hear about the variance request as everyone had gathered to participate in the hearing. He explained that he would seek counsel from the City Attorney after the Appeals Hearing.

Mr. Bateman reported that he is a Land Use Attorney representing the applicant. He pointed out that the community of Land Use Attorneys in the State is small and everyone seems to know one another. The fact that Mr. Bateman and Officer Call are part of the Utah Land Use Institute has nothing to do with the variance request being considered. He pointed out that similar situations have occurred in the past and have not been problematic. Mr. Bateman did not anticipate that his participation would be an issue or that there would be a conflict of interest. Director Cardenas stated that he would have a conversation with the City Attorney. He was glad that the potential conflict was raised so that legal counsel could be consulted. Officer Call clarified that the decision of the Hearing Officer is not final until it is reduced to writing.

Director Cardenas shared information about the variance request, which is related to City Code 11-3-5: Block Standards. He shared an aerial image and noted that the subject property lines are outlined in red. The property is Canyon Grove Academy, located at 588 West 3300 North in the Agricultural (A-1) Zone. Canyon Grove Academy is a charter school that has been in operation for approximately 14 years. The Site Plan was completed 14 years ago and the secondary access was the stem of the flag lot. The current access location was identified. Director Cardenas clarified

that it was always intended in the original Site Plan for the current access to be the secondary access. The primary access was planned to be developed to the east of the property.

The primary point of access was intended to pass through the property directly adjacent to the east, which was vacant until 2017. The point of access was to connect to a future planned public road through the same property and then cross Murdock Canal to the north and connect to Valley View Drive in Cedar Hills. No primary access point had been established after 14 years. For reasons of safety, the City requested that Canyon Grove Academy provide that primary access.

According to the property owner, the request made by the City was not reasonably feasible and it was suggested that the existing secondary access be converted to the primary access. It could meet the standards of a primary access with an extension. However, with the completion of a primary access, the City Code still requires a secondary access point, per Section 11-3-5: Block Standards. The applicant was looking to eliminate the secondary access requirement and make the existing access point the primary access to the property. A variance from the Code had been requested.

Mr. Bateman stated that he is with the law firm of Dentons Durham Jones Pinegar and was representing Canyon Grove Academy. He explained that there were three access points to discuss consisting of the primary access, the secondary access, and the emergency access. The secondary access being discussed was not the emergency access. There was a current easement in place for emergency access. Mr. Bateman acknowledged that the Code requires a primary and secondary access. The route was only built to the secondary access in anticipation that the primary access would be addressed at a later date. There was a plan to expand the current secondary access to make it a primary access. There was a desire to have the original primary and secondary access but the neighbors had not proceeded with the development. Certain factors were to have come into play by now but had not, which created a hardship for Canyon Grove Academy.

The applicant wanted to come into compliance and improve the area. There was a desire to create a proper primary access so people can come and go safely. Mr. Bateman noted that there might be a time in the future when the neighbors develop, but there was no desire to wait until that happens. Canyon Grove Academy wants to come into full compliance with the City but currently, they can only improve the existing secondary access and turn it into a primary access. He reiterated that the request was to receive a variance for the secondary access. Director Cardenas pointed out that there were additional images in the Staff Report for review.

Officer Call asked for those with a protected property interest to share comments.

Jeremy Reutzel gave his address as 628 West 3300 North and identified his home on a map displayed. He explained that the story shared was incomplete. He purchased his home in part because he knew there was a Development Agreement that the school had entered into with the City. That Development Agreement was recorded and stated that the school would create a road that would cross the Murdock Canal Trail. He noted that the Murdock Canal Trail connects to a local elementary school that all of his children attended. That made it possible to avoid all of the busy roads. However, the developer sold the property and the school decided to create a hobby farm. The area was fenced off, which blocked his access to the Murdock Canal Trail. Mr. Reutzel

provided a copy of the Development Agreement for the record. He reminded those present that the agreement was recorded against the property.

Mr. Reutzel shared his perspective on the variance request. The current access, which is supposed to be temporary, requires parents who line up to pick up their children, do so in front of his home. It is chaotic when children arrive and leave school. He referenced Section 10-9a-702 governing variances. It includes the following language:

- The Appeal Authority may grant a variance only if:
  - Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
  - There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
  - Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
  - The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - The spirit of the land use ordinance is observed and substantial justice is done.

The applicant essentially stated that complying with the Development Agreement that they knowingly entered into was an unreasonable hardship. Mr. Reutzel did not feel that was appropriate. It is not an unreasonable hardship, but one they agreed to undertake. As for special circumstances attached to the property, there are no special circumstances. He felt they may have misrepresented to the City that it was possible to put a road in there. The applicant also had to prove that the variance is essential to the enjoyment of the property. It was not essential. Mr. Reutzel stated that the applicant created his own circumstances and hardship. Since the hardship was self-imposed, he did not believe the variance should be granted. He referenced another case that went to the Court of Appeals where a variance was denied. It was similar to what was seen in this case. The applicant created the circumstance and now did not want to deliver what was promised. He stressed the importance of following through.

Officer Call asked how granting the variance would impact the use of his property. Mr. Reutzel stated that parents line up in front of his home instead of the school. All of the traffic that was not intended to be there has essentially been forced into that area. There was discussion about what was proposed and how it will impact his property. It was his impression that parents will pick up students either using the access road or coming from Cedar Hills. Mr. Reutzel did not know how Cedar Hills felt about a connection but he noted that a promise had been made.

Robert Schow gave his address as 3548 North 900 West and reported that he sold the property to the school. He clarified that both Quail Run Primary School Foundation and Quail Run Partners were referred to in the document as the developer. He wanted to make it clear who the developer is. Mr. Schow had a petition signed by 43 neighbors, which he shared. He read the petition language, which states that the signatories are opposed to the variance requested by Canyon Grove Academy to remove the requirement for a secondary access to the school. When the elementary school was built north of 3300 North, it was requested that there be temporary access to the school

from 3300 North until the Murdock Canal was enclosed. A contract was signed with Pleasant Grove that the main access to Valley View Drive would be completed and the 3300 North access would be closed within one year of the canal being enclosed. 14 years later, the access had still not been built and the school fenced off the dedicated road for 540 West.

Mr. Schow referred to a map of the area. He had spoken to all of the property owners and there was an agreement to sell certain parcels to the school. The school seemed to have no desire to buy what was needed for the access. Residents in the area would prefer that the school be required to complete the work they contracted with the City to do. That being said, it was recently learned that Quail Run Primary School Foundation had purchased the building. The school has no legal access to the site and the temporary emergency access will soon be revoked. He identified the temporary emergency access and stated that it needs to be wide enough for a fire apparatus to set up and fit other equipment around it.

The access was identified on a map displayed. Mr. Schow explained that the school uses it for collateral when they bonded for the purchase of their building. He asked Pleasant Grove to enforce the Development Agreement. If the road is completed as previously stated, legal access to the school would be provided. All barriers that will prevent Canyon Grove Academy from completing the access to Valley View Drive have been overcome, including the availability of land and slope issues. The only thing preventing the school from completing the access was their desire to save money, which creates unsafe situations for students, faculty, and the surrounding neighborhoods. He reiterated that 43 people signed the petition.

Officer Call commented that it is difficult for him to consider a petition without knowing the standing of each person who signed it. This was not a public opinion issue but a question of what evidence has been provided by those with standing to provide it. It appeared that Mr. Schow had standing because he owns the property that abuts the school and the emergency access goes through his property. He asked Mr. Schow to state how the variance would impact him personally. Mr. Schow stated that his ground is now encumbered by the emergency access. The emergency access will be eliminated if the Development Agreement is actually enforced.

Officer Call noted that this was the first time he had seen the Development Agreement. He asked if the emergency access would be removed when the secondary access is built. This was confirmed. Mr. Schow explained that there is another contract between himself and the school regarding providing the emergency access. That should have been done one year after completion of the canal enclosure. He stated that the school entered into a bond in 2022 and now his ground is encumbered by that bond. He was told that there was no way to have it released. Legal action would proceed against the school and was filed last week.

Officer Call referenced Item 6 in the Development Agreement. He stated that he had only briefly scanned the document but it included information about the future development of access. Mr. Schow clarified that within six months of enclosing the canal, the construction of 540 West should have been started. He argued that the daily trips exceed 250. He shared information from the State School Board on enrollment. The average school enrollment for the past three years was 665 students with 29 teachers and 15 staff members. 710 people could be in the building at any one time, which does not include visiting parents. The Cedars Hills Engineer estimated that the

average trips per day would reach 556 peak trips per hour between the hours of 7:30 a.m. and 8:30 a.m. That was presented by Cedar Hills staff in 2010. Prior to the hearing, he requested a copy of the Traffic Survey but was denied access to it by Quail Run Partners.

City Engineer, Aaron Wilson, clarified that a Traffic Study was not required. He believed the number of trips per day had likely been exceeded and that issue was not disputed. Mr. Schow was concerned that if a variance is granted to do away with the secondary access and there is an emergency. Currently, all the school has is a 24-foot-wide paved driveway. He reiterated his request that the variance be denied as there are valid safety concerns. There was discussion about the emergency access. Mr. Schow stated that it is a temporary access to be removed one year after completion of the canal. He was in the process of suing the school to get that access closed. Officer Call asked if people accessing the school use the emergency access for normal use. This was denied as there is a crash gate there.

Mr. Schow referenced the Ombudsman website, which lists the definition of a variance. Six items needed to be met. It was his view that an unreasonable hardship had not been proven as it was self-imposed. The request for the variance is economic in nature. When the school was built, a temporary access was requested, which was memorialized in the Subdivision Plat. He provided a copy of the Quail Run Subdivision Plat to Officer Call and the applicant. On Plat B, there was a note that referenced 540 West. It read that there was a Development Agreement to be recorded with the plat. There was also language to state that emergency access would be relinquished once the Valley View Drive access is created. His ground was encumbered until that road is finished. He shared additional information about the litigation currently being pursued.

Chandler Goodwin gave his address as 29 South 760 East. He explained that he serves as the City Manager for the City of Cedar Hills. The decision made would not be subject to public clamor, so although a petition had been submitted it should not have any bearing on the final decision. Mr. Goodwin read through the variance application and stated that Cedar Hills is opposed to either primary or secondary access to the property from Valley View Drive. That had been the position of the City from the beginning. Cedar Hills was not a party to the Development Agreement between the applicant and Pleasant Grove. Cedar Hills had been in opposition from the start and did not want the additional traffic pushed out to their residential neighborhoods. Mr. Goodwin recognized the frustrations expressed by nearby residents but to push everything to Cedar Hills was not a fair resolution. He pointed out that the Development Agreement includes timelines that are contingent on items outside of the control of the school. It was noted that the home directly across the street from the proposed access is a residential treatment center for alcoholism and group therapy sessions take place there. There is already traffic queuing along that street. Cedar Hills also cannot accommodate school traffic in the area.

Marty Southworth gave her address as 3805 West Valley View Drive in Cedar Hills. She referenced the traffic from the existing treatment center and stated that a road there would create a bottleneck.

Michael Wright gave his address as 9425 North 3830 West in Cedar Hills. If the access were to go in as described, he would be four houses over from the access point. Mr. Wright explained that the cut-through would cause traffic issues and he asked that the treatment center be considered.

With additional traffic, a bottleneck will be created and there are already high volumes of traffic there. Residents considered asking Cedar Hills to install speed bumps to slow down the existing traffic. It seemed that what was being proposed was for traffic from Pleasant Grove to be shifted to Cedar Hills. He was opposed to the road being installed there. With so many students at the school, it would be problematic to add traffic to Valley View Drive. Mr. Wright asked about the City policy regarding having roads or intersections so close together. Officer Call pointed out that his property is outside of the impacted area. Mr. Wright was opposed to the road coming to Valley View Drive and expressed support for the variance.

Officer Call adjourned the Appeals Hearing at 1:51 p.m. and took a brief recess. The Appeals Hearing was called back to order at 2:01 p.m.

Officer Call thanked the audience for allowing the brief recess. Mr. Bateman argued that the Development Agreement was not relevant. The variance would not impact the Development Agreement from being fulfilled. Denying the variance would not ensure that the road will be installed. As for the lawsuit from Mr. Schow, he felt it was essentially a nuisance lawsuit. He reminded those present that what they were at the hearing to discuss was whether the existing access could be improved and the secondary access requirement excused. The City and the school both want the access issues to be resolved moving forward.

Mr. Bateman clarified that Mr. Schow's property is not encumbered but there is an easement in place. That easement was agreed to. He acknowledged that it is a temporary easement. There had been discussions with the City and Mr. Schow about how to end the temporary easement but those options had not been well received. Many different options had been explored. Mr. Bateman maintained that the easement issue is not relevant as the variance request has to do with allowing improvements to the current access and excusing the secondary access requirement. Even if the Development Agreement was relevant, the current owner has no way to force the adjacent property owners to sell. None of the adjacent property owners are parties to the Development Agreement and it is not possible to make them accept the required roads. There was also no ability to force Cedar Hills or Pleasant Grove to accept the road. The Development Agreement cannot be met based on the current conditions. It is not simply a matter of expense. Mr. Bateman asked that the variance be granted to improve the primary access.

Officer Call reported that he is trying to process all of the information shared. The matter is more complicated than the Staff Report led him to believe. His initial impression was that after 14 years, it seemed illogical to render the property useless without the variance. One of the arguments made in the application was that without the variance, the property could be rendered useless. Officer Call noted that what was argued was that the issues were self-imposed because the developer had already agreed to solve the problem. Now, it seemed that the developer and City want to change the impact of the Development Agreement and resolve the matter differently. He pointed out that the City and developer are the only parties to the Development Agreement. Ultimately, the question was whether the variance conditions were met.

Mr. Bateman explained that the school has essentially been operating for 14 years in non-compliance. The City does not have to allow the school to open and operate in non-compliance, but it did and the intention was to complete the Development Agreement. Problems began to arise

and time continued to pass. The idea that this situation was self-imposed implied that the school had control over the actions of others. Going up into Cedar Hills was never a resolution that made sense, but perhaps that might have been easier in the past when the initial suggestion was made. Mr. Bateman explained that the building was allowed to be built and has operated for 14 years. There was a desire to cooperate with the City. However, it is not currently possible to fulfill the Development Agreement and that was not the fault of the applicant. The variance request was asking that the secondary access obligation be relieved if the current access was upgraded.

An unreasonable hardship was the first factor to consider. Mr. Bateman believed there was an unreasonable hardship in this case. If the properties could be acquired at a reasonable price there was a willingness to move forward. There was an understanding that it was their responsibility, but currently, it is not doable. That was where the hardship was created. It was also a hardship that the school was operating with a subpar entrance. Officer Call asked what the issue was with leaving things as they are currently. Mr. Bateman explained that the current access is not compliant and not as safe as it could be. Larger and safer access was needed. The school also did not want to deal with threats of being shut down for non-compliance.

Officer Call believed that what had been stated was that the City and developer own the Development Agreement. Both parties wanted to ignore those terms as they relate to the secondary access and how that would be provided. Mr. Bateman denied this. He clarified that it was not currently possible to fulfill the requirements of the Development Agreement. However, there was no suggestion that the Development Agreement be ignored. The decision made by Officer Call will not impact the Development Agreement. If the variance is granted, it would simply excuse the need for a secondary access. The emergency access would still be in place and only go away if the road goes through. His client still has an obligation to assist with that road when the City wants it and to build it, even if the variance is granted at the hearing.

Officer Call noted that both parties seemed to be in agreement that the Development Agreement is not practical to be fulfilled currently. Mr. Bateman stated that an argument from neighbors was that the Development Agreement was not impossible to fulfill. He pointed out that Cedar Hills is not in support of what has been proposed, so that took it into impossible territory. That aside, it was still not practical to fulfill the Development Agreement as the situation currently stands. Mr. Bateman explained that the concern was not that the City will try to enforce the Development Agreement. The concern was that there is inadequate access currently. There was a desire to address that. If the inadequate access is not improved, it is possible that the City could shut the school down. The hardship was the fact that there is no current compliance and secondary access is unavailable. The variance was needed to come into compliance. He added that even though student enrollment is 665, only 150 attend in-person.

Officer Call asked if the City agreed with the position of the developer on the hardships and the need for the variance. Director Cardenas confirmed that there was a need for a variance. To come into full compliance, the school would need to provide both primary and secondary access. Officer Call asked about the Emergency Access Easement and if it will comply with the secondary access requirement. Engineer Wilson stated that the emergency access was recorded as an emergency access only. It only allows for emergency vehicles or use in the event of an emergency where evacuation is needed. It is not allowed to be used as secondary access.

There was discussion about the plat language. Mr. Schow pointed out that the agreement specifies that when there are 250 round trips per day, his access has to be used and he needs to be paid for that. Engineer Wilson confirmed that the plat mentioned emergency and secondary access. Officer Call read the language aloud. Mr. Bateman noted that the Staff Report included potential conditions that could be placed on the variance. He asked that those be reviewed.

Mr. Reutzel asked that the hardship be better defined. The applicant built the school knowing that there was no permanent proper access but with the promise that there would be permanent proper access. He reiterated his previous statement that an unreasonable hardship cannot be self-imposed or economic. Whether the Development Agreement is enforceable or not was not the decision of the Hearing Officer. That being said, the agreement demonstrates that there was an awareness of what had been agreed to. He believed there was self-imposed harm. The Development Agreement shows that the developers created the current situation. Mr. Reutzel believed there could be a resolution if the variance is denied.

Officer Call thanked those present for their input. He commented that the City recommended some conditions be imposed if the variance is granted. Director Cardenas presented the Staff Report and explained that it was prepared with the assistance of the City Engineer and City Attorney. He read from the second page of the Staff Report, which stated:

- Engineering Staff finds the variance request reasonable with the following conditions:
    - Modify the terms of the existing Development Agreement or record a new agreement, to widen the existing access to the South to be 32 feet wide of asphalt and include curb and gutter on the east side. This includes submitting a revised Site Plan submittal with engineered drawings for review and approval by the City.
    - Include terms in the modified/new agreement that the property owner will dedicate the access to the City as a local road, in the event that the future road on the Flinders property is not developed within 10 years or if the City can negotiate with Cedar Hills to have the 540 West roadway constructed to the north, connecting to Valley View Drive. (This will allow for the possibility of the access to become a public road if these conditions are met.)
    - Maintain the existing emergency accesses and turnaround areas as designed on the approved plans. (Currently, the turnaround area on the north of the building is covered with what looks like dirt.)
    - Submit a new Stormwater Maintenance Agreement and long-term Stormwater Management Plan meeting City standards for how the stormwater is being managed on-site. Currently, the existing dirt piles, animal enclosures, etc. in the parking lot or detention basin do not meet these standards.
    - Maintain a permanent emergency/secondary access. This could be through the existing access to the west, by securing easements and constructing a new access to the north onto Valley View Drive in Cedar Hills, or by securing easements and constructing a new access, to the east, to Canyon Road.
    - All other requirements from Engineering, Community Development, and Fire are addressed during the Site Plan review process for the widening of the access road or modification of the emergency easement.

Mr. Bateman had only one objection, which was to the second proposed condition. There were a lot of unknowns that needed to be considered. Engineer Wilson explained the intent of the language from a City standpoint. Mr. Bateman suggested that if after 10 years, the Flinders had not developed, there be a discussion with the City about what should be done. The current wording was not supported.

Officer Call stated that he was not ready to make a decision now. He asked for the email addresses of Mr. Schow, Mr. Reutzel, and Mr. Goodwin. Those individuals have a protected interest in the variance decision. Director Cardenas offered to obtain the email addresses and forward them. Officer Call noted that since those individuals have a protected interest, they are entitled to object to him making the decision. If anyone had an objection to Officer Call making the decision, he asked that the objection be submitted within three business days. The City Attorney would also be involved in that decision. He would not make a decision any sooner than three business days to allow those with protected interests to object if desired. After the three-day period has passed, a decision will be made. Officer Call closed the hearing on the item.

3. **Public Meeting: Appeal of City Code Section 10-9B-11: Lot Coverage (North Field Neighborhood)**

   Public Meeting to Consider a Request from Hamilton Calder to Appeal the Interpretation of City Code Section 10-9B-11: Lot Coverage. This Section of the Code Outlines the Lot Coverage Requirements of the R-1 (Single-Family Residential) Zones and Limits the Maximum Lot Coverage to 30% of the Lot Area. The Appeal is Regarding Staff's Interpretation of Lot Coverage and What is Included in Staff's Calculations.

City Planner, Jacob Hawkins, presented the Site Plan and reported that the property was measured at 4,631 square feet. He reported that the appeal had been requested by Hamilton Calder and it related to the interpretation of City Code Section 10-9B-11: Lot Coverage. That section of Code outlined the lot coverage requirements of the R-1 (Single-Family Residential) Zone and limited maximum lot coverage to 30% of the lot area. The subject property was 1593 North 750 West.

Page 5 of the Staff Report included the Proposed Site Plan for the new single-family residence. When Staff reviewed the proposed plans, the square footage of the home was calculated, including the covered patio and covered porch. It was found to be approximately 4,631 square feet in area. The calculations were shown on Page 7 of the Staff Report. Planner Hawkins reported that the calculation was measured from exterior wall to exterior wall. The lot coverage requirement for the R-1- Zone is a maximum of 30%. Including the covered patio and covered porch, he calculated the home to be at 35.7% lot coverage and asked for a resubmittal of the plans to come into conformance with the zoning ordinances. The applicant later met with Staff and discussed the definition of lot coverage. The zoning ordinances defined "lot coverage" as:

- "The total horizontal area of a lot, parcel, or building site covered by any building or occupied structure, which extends above the surface of the ground level and including any covered automobile parking spaces. Covered patios, covered walkways, and covered recreation areas shall not be considered as lot coverage, provided that said areas are not more than fifty percent (50%) enclosed."

According to the applicant, they interpreted the Code as saying covered patios shall not be considered as lot coverage and that the definition of "enclosed" through a third-party website was defined as "all space between a floor and ceiling that is contained on all sides by solid walls or windows, exclusive of doorways, which extends from the floor to the ceiling." With that in mind, the applicant understood that the lot coverage definition did not apply to their proposed covered patio and covered porch, as the walls of the said structures would not enclose more than 50%.

Staff interpreted the term "enclosed" in the definition for lot coverage as being in reference to the roof of said structures. Covered automobile parking spaces were specifically included as part of the lot coverage definition because carports have a solid roof, with or without supporting walls. Several other types of structures, such as gazebos, would be similar to carports in that regard, having solid roofs with or without walls. Covered patios, porches, and walkways, with or without supporting walls, were historically considered by Staff to contribute to the total lot coverage. The roof or covering would need to be 50% or more transparent not to be considered enclosed. Planner Hawkins shared an example that was included on Page 2 of the Staff Report.

In this case, the applicant was requesting an appeal for the definition of "lot coverage" for the purpose of not including the proposed patio and porch in the lot coverage requirement. Staff interpreted the Code in a way that would count the proposed covered patio and porch in the lot coverage requirement, especially when those structures are attached to the house and continued the roofline through the proposed structures. Since Staff had historically interpreted the definition in one way, the appeal was brought to the Hearing Officer for further consideration.

Scott Crook from Crook Legal Group was present to speak on behalf of Mr. Calder. In his view, this was a simple legislation interpretation question. Binders were provided to Officer Call and Planner Hawkins that outlined sample cases and definitions. The issue before Officer Call was whether Section 10-9B-11 allowed the City to count proposed covered patio areas as part of lot coverage in the building lot design. He read language from Section 10-9B-11:

- "In an R-1 Zone, all buildings, including accessory buildings and structures, shall not cover more than thirty percent (30%) of the area of the lot or parcel of land."

Mr. Crook attached as Exhibit 2 a highlighted area showing where the covered patios would be located. He thought that better clarified what the applicant was intending to do with the home. The question of lot coverage was made simple by the definition of "lot coverage" found in Section 10-6-2. As he understood it, the Planning Department argued that any roof that is not under 50% permeable must be included as part of the lot coverage. However, Utah Law was very clear and stated, "Because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed and provisions permitting property uses should be liberally construed in favor of the property owner." That was from the Ferre versus Salt Lake City case, which was Exhibit 4. Mr. Crook shared more recent cases as examples, which were shown as Exhibit 5 and Exhibit 6.

Mr. Crook argued that the interpretation adopted by Staff violates all presumptions. It interpreted a covered patio to mean something more restrictive than what an ordinary person would understand

a covered patio to mean. It also rendered the term covered patio meaningless. Mr. Crook felt that by the Staff interpretation, covered automobile parking space and covered patio must be treated the same but the ordinance states that they are treated separately. Additionally, he argued that the interpretation rendered the word "enclosed" superfluous. As for whether the patio was enclosed, the definition itself was clear that covered patios should not be considered as lot coverage unless more than 50% enclosed. Mr. Cook pointed out that if a covering over a patio made it enclosed, then the analysis of the 50% enclosure amount would be entirely superfluous.

Mr. Crook reported that he looked at the definitions of "enclosure" for additional clarity. He reminded those present that the matter is governed by Utah law and shared information about plain and ordinary meaning. A plain definition of "enclosed" was to surround something. None of the common definitions mentioned anything being covered or partially covered. Earlier in the hearing, the City admitted that an enclosure could be a fence. It violated statutory interpretation to use that particular meaning of enclosed. Mr. Crook shared additional definitions for "enclosed indoor area," which was typically used in smoking or bar situations. In that case, the 50% enclosure requirement was not about the surroundings, but how high the surrounding wall was. It did not include a reference to covering in that instance. Mr. Crook explained that he had also looked at the definition of "patio" and the language did not mention anything about a covering.

Planner Hawkins clarified that the definition of the term "enclosed" was difficult to define in a single context. For example, an enclosed parking lot could be considered enclosed by a fence whereas an enclosed room would include the walls and the roof. As Staff had interpreted the definition of lot coverage when it came to covered patios and porches, enclosed was in reference to the roof.

Officer Call reported that State law related to Appeal Authorities gave specific direction. In the past, deference was given to the local officials in terms of interpretation, but the Supreme Court specifically acted to clarify that. He was charged with looking at the matter anew as if there was no previous interpretation or application. The Code should be interpreted to allow the use of property. Being aware of those guidelines, his finding was that the applicant's interpretation of the Code was within reason, and therefore, it should apply in this case. Officer Call stated that he would grant the appeal. He reported that a written decision would be provided within a few business days.

The Appeals Hearing adjourned at 3:07 p.m.

- SEE DECISIONS -
Attorney Craig Call, Hearing Officer

Christina Gregory
Christina Gregory, Planning & Zoning Assistant

4/8/2024
Date Approved