

DECISION
Pleasant Grove Land Use Appeals Hearing Officer
Variance/Modification Request
Derek Scoville – Approx. 788 East 100 South
August 31, 2022

This matter involves a request for a variance/modification to the city ordinances related to bonding for development improvements. Mr. Scoville asks for a variance/modification from language in the code that requires that street improvements be installed at the time that a subdivision plat is recorded. This application relates to Lot 2 of the Anne Hill Subdivision Plat ‘A’, Utah County, State of Utah.

RECORD

The record includes the eight-page staff report, application for hearing by Derek Scoville dated June 9, 2022 comprised of six pages, and an audio recording of a hearing held on Wednesday August 17, 2022 at 70 South 100 East in Pleasant Grove. Present and appearing at the hearing were the applicant Derek Scoville, Planner Jacob Hawkins, City Engineer Aaron Wilson, and City Director of Community Development Daniel Cardenas. Minutes of the hearing were taken by Kara Kresser from the city staff and are included in the record.

ANALYSIS – FINDINGS OF FACT

1. This issue involves a two-lot subdivision or lot split approved by the City on July 22, 2021, known as the Anne Hill Subdivision Plat ‘A’.
2. The code would normally require that street improvements, including utility lateral connections, be installed at the time the plat is recorded.
3. Both Lots 1 and 2 have some street improvements as required by City Ordinances, including pavement, curb, gutter and sidewalk.
4. While Lot 1 in the subdivision has existing utility laterals which serve the existing residence on the lot, the new Lot 2 does not.
5. In this particular case both the applicant for the modification and the City support the granting of an modification or variance to the requirement that lateral utility connections be provided at the time of recording for Lot 2 because both parties believe that it is unreasonable to require utility connections for Lot 2 at this time.
6. The applicant does not wish to build on the lot at this time.
7. The City staff, specifically the City Engineer, prefers that the applicant not open the city street and disturb the existing street pavement and other street improvements to install sewer and water laterals into the lot when they are not needed at this time.
8. The City has proposed and the applicant has agreed that if a modification is granted at this time, that modification is not a waiver of the required improvements, but only a deferral of the improvements and a deferral of any bonding requirements.
9. There is no evidence in the record to indicate that the request here is to avoid a requirement that would be imposed due to the negligence of the Applicant in completing the provisions of the final plat or supplementary documents.

ANALYSIS – CONCLUSIONS OF LAW

1. The City Code does not allow a person to build on any parcel without constructing the required street improvements, including utility laterals for culinary water, secondary water, and sanitary sewer.
2. The code also prohibits recording a plat until a bond is in place to cover the development of street improvements. See Pleasant Grove City Code at 11-3-2.
3. The Ordinances do require either completion of all street improvements or bonding for those improvements at the time the plat is recorded.
4. The City Code does allow for the consideration of “variances or modification” of the requirements in this section of the code unless the conditions that support the modification or variance are due to the negligence of a subdivider seeking the modification or variance. See Pleasant Grove City Code at 11-5-1.
5. An application for an modification or variance is a land use application, as that term is defined in Utah Code Ann. 10-9a-103.
6. The land use authority, as the term “land use authority” is defined in Utah Code Ann. 10-9a-103, which is appointed to hear modifications and variances for this section of the Ordinances is the land use appeals hearing officer. Ordinances at 11-5-1.
7. The only condition imposed on the issue of whether a modification/variance is to be granted in this part of the code relates to an applicant who requests a modification or variance due to some negligence on the part of the applicant.
8. The request in this instance is not defeated by this provision of the Code as there is no evidence in the record that the Applicant here negligently caused the problem from which relief is sought.
9. The Ordinances at Section 11-5-1 refer to “variances or modifications” and not to a “variance” as defined by State Code at Section 10-9a-703. The term “variance” is not used here in the manner that the term “variance” used elsewhere in the land use regulations of the City. Here the term is supplemented and modified by the word “modifications”. This matter is considered here as a request for an “modification to” or a “modification of” the requirements of the Ordinances and not as a request for a traditional “variance”.
10. This legal conclusion is based on the requirement in state code that a land use authority shall apply the plain language of land use regulations. If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation in favor to favor the land use regulation. Utah Code Ann. 10-9a-306.
11. The Ordinance provides that reasonable variances (modifications) are to be granted unless the request is from a person who negligently created the problem which is the basis for the modification.
12. Granting this request is legally reasonable and not prohibited by the Ordinance or the State Code.

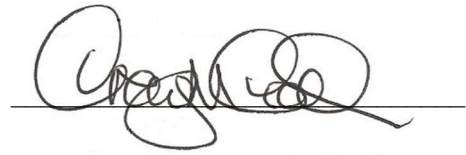
The variance/modification is approved, with a condition. The utility laterals needed for a structure on the lot in question need not be built at the time the subdivision plat is recorded nor

shall a bond to secure the future development of those laterals be required at the time the plat is required.

Condition: As a condition of approval of this modification/variance it is specifically required that either the bond or the improvements be provided before a structure is built on Lot 2, Anne Hill Subdivision Plat 'A'.

This modification/variance and the associated condition shall run with the land and benefit both the current and future owners of the lot in question. A notice of this modification of the terms of the Ordinances as applied to Lot 2 may be recorded.

Dated this 31st day of August, 2022.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "C. J. [unclear]".