



118 Lion Blvd • PO Box 187 • Springdale, UT 84767 • (435) 772-3434

SPRINGDALE APPEAL AUTHORITY NOTICE AND AGENDA

THE TOWN OF SPRINGDALE ADMINISTRATIVE HEARING OFFICER HAS ISSUED A WRITTEN
DECISION CONCERNING THE ITEM BELOW.

THIS DECISION WILL BE ANNOUNCED IN A PUBLIC MEETING

ON THURSDAY, NOVEMBER 30, 2023 AT 11:00 AM

AT THE CANYON COMMUNITY CENTER, 126 LION BOULEVARD, SPRINGDALE, UTAH

A live broadcast of this meeting will be available to the public for viewing and listening only.

****Please see the electronic login information below.**

A. Issuance of Written Decision:

1. Kevin Gianatiempo requests a variance to allow disturbance of a slope with a grade in excess of 30% and the construction of a cut and fill slope taller than 10 vertical feet, in order to construct a driveway to access his property at 282 Valley View Drive. Parcel S-134-D. The property is located in the Foothill Residential zone. Applicant: Kevin Gianatiempo. Staff contact: Niall Connolly

B. Adjourn

***To access the live stream for this public meeting, please visit or click the
YouTube link below:**

<https://www.youtube.com/@SpringdaleTownPublicMeetings>

This notice was posted at the Springdale Town Hall on 11/28/23 at approximately 2:35
am/pm by Aren Emerson.

NOTICE: In compliance with the Americans with Disabilities Act, individuals needing special accommodations or assistance during this meeting should contact Town Clerk Aren Emerson (435.772.3434) at least 48 hours before the meeting.

The official Agenda and Packet Materials for this meeting will be available at: <http://www.springdaletown.com/AgendaCenter>



**MINUTES OF THE SPRINGDALE APPEAL AUTHORITY
TUESDAY, NOVEMBER 30, 2023
AT THE CANYON COMMUNITY CENTER, 126 LION BOULEVARD, SPRINGDALE, UTAH**

The Meeting convened at 11:00 am.

PRESENT: Principal Planner Niall Connolly

ALSO PRESENT: Director of Community Development Tom Dansie, Deputy Clerk, Robin Romero, and Town Clerk Aren Emerson recording. See the attached list of those in attendance.

A. Issuance of Written Decision

1. **Kevin Gianatiempo requests a variance to allow disturbance of a slope with a grade in excess of 30% and the construction of a cut and fill slope taller than 10 vertical feet, in order to construct a driveway to access his property at 282 Valley View Drive. Parcel S-134-D. The property is located in the Foothill Residential zone. Applicant: Kevin Gianatiempo. Staff contact: Niall Connolly**

Mr. Connolly stated that for the reasons stated in the variance decision (attachment #1), the Administrative Hearing Officer granted the variance as to the application of section 10-15B-7A and 10-15B-9A for improving the driveway access for Valley View Drive to parcel S-134-D as identified on the grading plan Mr. Gianatiempo submitted with his application and shown on map 2. The applicant must comply with all other ordinances and standards applicable to the development and building process for the proposed improvement, including the grading standards in Chapter 10-15B of the Springdale Town code. The applicant must also make every effort to minimize and mitigate any visual impacts of the improvements as the Town may require.

The written decision was dated November 28, 2023, by the Town of Springdale Appeal Authority Hearing Officer, Bryan Pattison.

The issuance of written decision is available at the Town Hall, by visiting www.springdaletown.com, or by contacting Town Clerk Aren Emerson.

Any aggrieved parties had 30 days from today to appeal this ruling in the District Court.

The meeting adjourned at 11:02 am.



Aren Emerson, Town Clerk

DATE: 12/21/23

A recording of the public meeting is available by accessing the Town's YouTube channel at <https://www.youtube.com/@SpringdaleTownPublicMeetings>



PO Box 187 118 Lion Blvd Springdale UT 84767

ATTENDANCE RECORD

Please print your name below

Meeting Appeal Authority Meeting Date 11/30/2023

IN-PERSON ATTENDEES:

Name (please print)

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BEFORE THE APPEAL AUTHORITY
TOWN OF SPRINGDALE, UTAH

Application for Variance re Parcels
S-134-D, S-134-B and S-138-NP-3-A,

Kevin Gianatiempo, Applicant

RULING ON VARIANCE APPLICATION

This matter is before the Administrative Hearing Officer (“AHO”) on an application for variance under Springdale Ordinance Section 10-6-5. The variance seeks relief from two provisions in the Springdale Town Code: Section 10-15B-7(A), which limits “[c]ut and fill slopes ... to ten feet in vertical distance from the toe of slope to the top of slope,” and Section 10-15B-9(A), which prohibits disturbance of steep slopes with grades of 30% or more.

A hearing on the application was held on November 16, 2023. Applicant Kevin Gianatiempo was present and represented himself at the hearing. The AHO has considered the statements and presentation at the hearing, and reviewed and considered the application, the documents submitted with the application, the submitted public comments, and the memorandum and accompanying attachments from the Town’s Principal Planner (“Memorandum”).¹ Based thereon, the AHO makes the following findings and ruling.

FACTUAL BACKGROUND

The applicant, Kevin Gianatiempo, owns three adjacent parcels, Parcels S-134-D, S-134-B and S-138-NP-3-A. The parcels are all zoned Foothill Residential (FR). There is an existing house on the middle parcel, Parcel S-134-B. The other two parcels are vacant. The parcels are located near Valley View Drive. Only Parcel S-134-B, which has the existing home, meets the Town’s two-acre minimum lot size for the FR zone. The other two parcels are smaller than the minimum lot size. Mr. Gianatiempo intends to go through the Town’s subdivision process and combine the three parcels, creating two larger parcels which would each measure in excess of the two-acre minimum.

Map 2 from the Town’s Memorandum, reproduced below, shows the three parcels and existing home. The right side of Map 2 shows Mr. Gianatiempo’s proposed plan to combine and the parcels, including the access area which is the subject of the variance application.

¹ The Memorandum is dated November 9, 2023, and was prepared by the Town’s Principal Planner, Niall Connolly.

MAP 2 - Existing three parcels side by side with the proposed two parcels.



All three parcels were created before 1992, which is the year the Town's current zoning was adopted. Section 10-9a-6 of the Town Code provides that a parcel in the FR zone created before 1992 may be developed even if it does not comply with the minimum area requirements of the code.² Still, Mr. Gianatiempo intends to subdivide and combine his three parcels to make them more easily developable and compliant with the minimum lot size standards in the current ordinances.

Mr. Gianatiempo has not yet begun the subdivision process. This is because the newly created northern parcel (presently Parcel S-134-D) requires an access that the Town Code currently prohibits. Specifically, the new access would disturb the existing 30% slope in violation of Section 10-15-B-9(A).³ It would also result in taller than 10-foot cut and fill slopes

² Section 10-9a-6 provides: "A lot that was created before the December 1992 adoption of this title is eligible for a building permit notwithstanding any nonconformity with the requirements of lot area, width, or frontage as stated in section 10-9A-5 of this article."

³ Section 10-15B-9(A) states: "No grading, road building, excavating or other disturbance is permitted on slopes of 30 percent or greater natural grade except as specifically allowed below ..."

(retaining walls), which are prohibited by Section 10-15B-7(A).⁴ Mr. Gianatiempo thus seeks a variance from these zoning requirements as the first step to allow the creation of his needed access. If the variance is granted, he intends to proceed forward with the subdivision and related building process.⁵

LEGAL STANDARD

Utah Code § 10-9a-702(2)(a) sets forth the five standards that an applicant must meet to obtain a variance:

- (i) 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;
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (v) the spirit of the land use ordinance is observed and substantial justice done.

Utah Code § 10-9a-702(2)(a)(i)-(v). *See also* Springdale Ord. § 10-6-5(B). The burden is on the applicant to meet all five standards. *See* Springdale Ord. § 10-6-5(C).

ANALYSIS

I. Literal Enforcement Causing an Unreasonable Hardship.

The first standard requires the applicant to show that “[l]iteral 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.” Utah Code § 10-9a-702(2)(a)(i). In addition, this hardship must be “located on or associated with the property for which the variance is sought;” and “come[] from circumstances peculiar to the property, not from conditions that are general to

⁴ Section 10-15B-7(A) states: “Cut and fill slopes are limited to ten feet in vertical distance from the toe of slope to the top of slope.”

⁵ Mr. Gianatiempo suggested at the hearing that his properties might be exempt from the slope ordinances because the lots were created before 1992. But it is established law in Utah that “[u]ntil the rights vest on a particular piece of property, the city or state can change land-use and zoning regulations and apply the new laws to the development of the property.” *Keith v. Mt. Resorts Dev., L.L.C.*, 2014 UT 32, ¶ 30, 337 P.3d 213 (quoting Thomas G. Pelham et al., “What Do You Mean I Can’t Build!?” A Comparative Analysis of When Property Rights Vest, 31 Urb. Law. 901, 901 (1999)). And rights generally do not vest until the development process begins, such as receiving a permit to build and taking steps in reliance on that approval. *See id.* That is not the case here, which is why the variance is necessary.

the neighborhood.” *Id.* § 10-9a-702(b)(i). Moreover, the hardship cannot be self-imposed or purely economic. *See id.* § 10-9a-702(b)(ii).

The hardship Mr. Giantiempo identifies is the ability to access and use Parcel S-134-D by developing it for its intended residential purpose. That parcel, existing since 1992, is presently undeveloped. As shown on Map 2 above, the proposed access is specific to what is currently Parcel S-134-D. That hardship is located on the property for which the variance is sought. And though it is Mr. Giantiempo’s intent to combine the three parcels, that potential combination is not the driving force behind his need for the variance. Rather, the variance is needed regardless of the potential lot combination because that is the only means of access to Parcel S-134-D. Mr. Giantiempo also explained at the hearing that the location selected for the access is the most feasible and would result in the least amount of disturbance to the existing terrain and slopes. Thus, the hardship is not self-imposed.

In short, without the variance, Mr. Giantiempo cannot use his property for its intended purpose. Under the circumstances, that is a hardship associated with the property that is not self-imposed. The first standard is therefore met.

II. Special Circumstances Applicable to the Property.

Under the second standard, the applicant must show that “[t]here are special circumstances attached to the property that do not generally apply to other properties in the same zone.” Utah Code § 10-9a-702(2)(a)(ii). Special circumstances may exist only if they “(i) relate to the hardship complained of; and (ii) deprive the property of privileges granted to other properties in the same zone.” Utah Code § 10-9a-702(2)(c).

Mr. Giantiempo identifies the special circumstances as the access issue. Parcel S-134-D has a single point of access from Valley View Drive under a recorded easement. Given the steep slopes and single point of access, Parcel S-134-D is otherwise inaccessible. While other lots in the same area may face similar challenges given the surrounding slopes and terrain, without the variance, Sections 10-15-B-9(A) and 10-15B-7(A) would bar development and practical use of Parcel S-134-D. The ability to use a residential lot as a residence within the FR zone relates to the hardship complained of and deprives Mr. Giantiempo of the privileges that other properties in the FR zone enjoy. The second standard is therefore satisfied.

III. Granting the Variance as Essential to the Enjoyment of a Property Right.

The third standard requires a showing that “[g]ranting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.” Utah Code § 10-9a-702(2)(a)(iii). Here, as explained above, the ability to use and develop one’s property for its intended use is a substantial property right. It is a right possessed by other properties in the FR zone. And, as explained above, because granting the variance is the only way Mr. Giantiempo can access his lot, the variance is essential to the enjoyment of this property right. The third standard is therefore met.

IV. Impact on the General Plan and Protection of the Public Interest.

Fourth is the public interest standard. It requires a showing that the “variance will not substantially affect the general plan and will not be contrary to the public interest.” Utah Code § 10-9a-702(2)(a)(iv).

There was no evidence submitted that granting the variance would substantially affect the general plan. Rather, the property at issue has long been zoned for the intended residential use and that is the intended use if the variance is granted.

As to the public interest, as the Town explained in its Memorandum, the Town’s grading standards exist to “[r]egulate the development of potentially hazardous terrain;” “[c]onserve the visual character of grading sites and settings;” “[e]nhance the value of new development; and “[c]onserve the value of properties near proposed grading activities.” Springdale Town Code § 10-15B-1. To that end, the AHO received public comments generally against the application, citing issues such as disturbance and scarring of the terrain and potential drainage and other hazards. The slope ordinances exist to address and protect against these concerns.

Still, the Town’s own ordinances recognize that the adoption of 1992 ordinances were not intended to stifle all productive use and development of existing lots. For example, Section 10-9a-6 provides that lots “created before the December 1992 adoption” the current zoning ordinances are “eligible for a building permit notwithstanding any nonconformity with the requirements of lot area, width, or frontage as stated in section 10-9A-5 of this article.” Springdale Town Code § 10-9a-6. And Valley View Drive—for which access to Parcel S-134-D is dependent—is considered a historic access under Section 10-25-10(K). As a result, Parcel S-134-D may “not be denied a building permit based solely on noncompliance with access or frontage requirements.” *Id.* § 10-25-10(K).

These exceptions demonstrate the balance between the rights of property owners and the public interests identified in Section 10-15B-1. In addition, as discussed at the hearing, the variance is only the first step in the process. As Mr. Gianatiempo proceeds through the development and building process, the Town may apply its ordinances and building requirements to address and mitigate issues such as visible scarring and disturbances and any geologic hazards and drainage issues to ensure the public health, safety, and interest is at all times protected.

For these reasons, granting the variance will not substantially affect the general plan and will not conflict with the public interest.

V. Preserving the Spirit of the Ordinance and Doing Substantial Justice.

The final standard requires that “the spirit of the land use ordinance is observed and substantial justice done.” Utah Code § 10-9a-702(v). Granting a variance from application of these slope ordinances to permit use of Parcel S-134-D for its intended purpose as a residential lot, while requiring compliance with other ordinances to mitigate and protect against any potential harm, observes the spirit of the land use ordinances and does substantial justice in

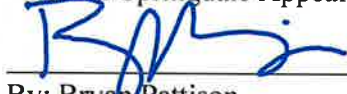
allowing Parcel S-134-D to be put to its intended use. In fact, the intended combination of the three parcels, including Parcel S-134-D, into two parcels would bring the lots into compliance with current FR zone minimum acreage requirements. Given that the variance is the first step in that process, the AHO finds that granting the variance observes the spirit of the land use ordinances and does substantial justice.” The final standard is therefore satisfied.

RULING

1. For the reasons stated above, the AHO grants the variance as to application of Sections 10-15B-7(A) and 10-15B-9(A), for improving the driveway access from Valley View Drive to Parcel S-134-D as identified on the grading plan Mr. Giantiempo submitted with his application, and shown on Map 2 (above).
2. Applicant must comply with all other ordinances and standards applicable to the development and building process for the proposed improvement, including the grading standards in Chapter 10-15B of the Springdale Ordinances. Applicant must also make every effort to minimize and mitigate any visual impacts of the improvements as the Town may require.

DATED: November 28, 2023.

Town of Springdale Appeal Authority



By: Bryan Pattison

Administrative Hearing Officer