

**MINUTES OF THE COTTONWOOD HEIGHTS APPEALS HEARING OFFICER
MEETING HELD THURSDAY, APRIL 13, 2023, AT 5:00 P.M. AT COTTONWOOD
CITY HALL IN THE CITY COUNCIL WORKROOM LOCATED AT 2277 EAST
BENGAL BOULEVARD, COTTONWOOD HEIGHTS, UTAH.**

ATTENDANCE

Present: Paxton Guymon, Appeals Hearing Officer
Shane Topham, City Attorney
Michael Johnson, Community and Economic Development Director
Samantha DeSeelhorst, Senior City Planner
Maria Devereux, Deputy City Recorder

1.0 Public Meeting

1.1 Welcome and Acknowledgements.

Appeals Hearing Officer, Paxton Guymon called the meeting to order at 5:00 p.m. and stated that he typically deals with land use and zoning issues. He has been practicing law as a real estate attorney for the last 25 years and does a lot of work in land use and zoning.

1.1.1 Ex Parte Communications or Conflicts of Interest to Disclose.

There were no ex parte communications or conflicts of interest disclosed.

2.0 Business Items

2.1 (Project AHO-23-004) – Consideration and Potential Action on a Request from Caleb White for an Expansion of a Non-Conforming Structure (Garage Reconstruction) located at 7670 South Steffensen Drive.

Community and Economic Development Director, Michael Johnson presented the Staff Report and stated that the property is located at 7670 South Steffensen Drive, just east of City Hall. The existing residence is a one-story home that is 21 to 23 feet tall, which is well under the maximum height allowed by ordinance. When the garage was built, there were issues with it. For example, there is not a proper foundation beneath it and there are structural issues. The property owners are not currently using the garage due to the existing issues. The structure is sagging and sinking as well. The applicants are doing a full house remodel and rebuilding the garage concurrently. The main impact is that the roof line of the new garage will not match the roof line of the home. On the left side, they are expanding slightly into the back of the property to square off the back wall of the home.

The only issue of non-conformity is the side setback to the right of the home. The closest point is approximately three feet from the property line. If built today, the minimum would be eight feet. As a result, the sideyard is currently non-conforming. Because it was allowed to be built that way it is a legal use. Because the proposed remodel will expand the structure vertically, the applicants will have to go through the process. They are not planning to encroach further into the setback.

1 The height of the home will not change but the massing of the garage will and there will be slight
2 elevation changes to match the roofline. The height of the home is 21 feet at the highest point.
3 The maximum allowable height is 35. The City has seen several similar proposals and believes it
4 is a good reinvestment in the City to invest back into aging structures. Staff expressed support for
5 the application.

6
7 The applicant, Caleb White, was not present but was represented by his father-in-law Mr. Brown
8 who commented that the current garage structure is unstable and could collapse in the event of
9 heavy snow.

10
11 AHO Guymon agreed with the Staff Report and approved the request. Senior City Planner,
12 Samantha DeSeelhorst, stated that staff would continue to coordinate with Mr. White on next steps
13 and provided Mr. Brown with a copy of the decision.

14
15 **2.2 (Project AHO-23-003) – Consideration and Potential Action on a Request**
16 **from Kimley-Horn for an Expansion of a Non-Conforming Use (Two**
17 **Additional Parking Lot Light Poles) at 7025 South Park Centre Drive.**
18

19 Mr. Johnson presented the Staff Report and stated that the request is for the Target Store at 7025
20 South Park Centre Drive. Target would like to expand its drive-up area. As part of that expansion,
21 they would like to add two new light posts. A photo was displayed showing where the posts would
22 be located. The issue was being addressed in this forum because they wish to match the lighting
23 with the rest of the parking lot, which has a Kelvin rating of 4,000. The newly adopted City Code
24 limits outdoor lighting to 3,500 Kelvins. Kelvin measures the lighting temperature. It does not
25 affect how much light is emitted but people usually find warmer light, with a lower Kelvin rating,
26 to be more pleasing to the eye.

27
28 Ms. DeSeelhorst noted that many older developments have higher Kelvin-rated lights because they
29 were constructed before the City was incorporated. The proposal was seeking to match the existing
30 lighting for aesthetic purposes. Mr. Johnson stated that adding the new lighting is still under the
31 City's limit of 100,000 lumens per acre. The only issue being considered tonight was the Kelvin
32 limit.

33
34 AHO Guymon asked if the light from the two poles will intrude into the surrounding
35 neighborhoods. Mr. Johnson did not believe it would. Ms. DeSeelhorst stated that staff will verify
36 that the lighting does not exceed the limit. It will be analyzed as part of the Building Permit review.
37 The applicant, Joanna Graham from Kimley-Horn, clarified that it will not impact the property
38 lines. They want to make sure the site is well-lit to increase safety.

39
40 AHO Guymon approved the request for an expansion of a non-conforming use with two additional
41 parking lot light poles at 7025 South Park Centre Drive. The applicant was provided with a copy
42 of the decision. Ms. Graham would continue to coordinate with staff on the Building Permit.

1 **2.3 (Project AHO-22-003) Consideration and Potential Action on a Request from**
2 **Kenny Hillam for Multiple Zoning Variances to Construct a Home Located at**
3 **7950 South Top of the World Drive.**
4

5 Ms. DeSeelhorst presented the Staff Report and stated that the request is for five separate variances
6 to construct a single-family home. The subject property is a vacant lot at 7950 South Top of the
7 World Drive. A zoning map was displayed. The subject property is within the R-1-8 Residential
8 Single-Family Zone, which is relevant as one of the variances seeks relief from a standard in that
9 zone. The applicant seeks to develop the property identified as Lot 16 of the Persimmon Tree
10 Subdivision. It is an older subdivision that was platted in February 1979 and this is the only vacant
11 lot in the subdivision. There are 27 lots on the plat and the other 26 lots were developed before
12 the City was incorporated between 1980 and 2003. There was no record of the subject property
13 having been developed prior. Ms. DeSeelhorst presented a visual of what the applicant is
14 proposing. A Building Permit had not been issued for the property and the design had not been
15 finalized. The Building Permit Application was submitted but not yet issued.
16

17 AHO Guymon asked about the sideyard setback. Ms. DeSeelhorst stated that the side setback is
18 eight feet on one side and 15 feet on the other, which complies with the R-1-8 Zone. The property
19 falls entirely within the City's Sensitive Land Overlay Zone due to its presence in the Fault Rupture
20 Study Zone and the Slope Stability Hazard Area. The Variance Request was originally submitted
21 in 2022. The application has undergone multiple rounds of staff review with the applicant
22 resubmitting accordingly. The requests were as follows:
23

- 24 1. A deviation from the Buildable Area Standards. The Code requires a 3,500-square-
25 foot minimum building pad for properties in a Sensitive Lands Zone. The applicant
26 has requested approval of a 3,200-square-foot building pad.
27

28 Staff feels this request is a reasonable solution to avoid impacting the steep slopes, which are a
29 sensitive aspect of this area. They also see it as a minor deviation and an effort to mitigate sensitive
30 areas. Staff recommended approval of the first Variance Request. AHO Guymon asked about the
31 purpose behind having a minimum square footage requirement. Ms. DeSeelhorst stated that it
32 ensures that there is a pad that can be built on. It was noted that 3,500 square feet was a generous
33 figure to accommodate any size home. AHO Guymon asked why there would be a minimum pad
34 requirement for a lot that is already in an approved subdivision plat. Ms. DeSeelhorst explained
35 that the creation of the building pad takes place during the platting process. That could be a
36 compelling reason to approve the Variance Request.
37

38 Mr. Johnson stated that there is language in the Sensitive Lands Evaluation Development
39 Standards ("SLEDS") that specifies when the standards apply, which is at the time of rezone or
40 subdivision. This is one instance where it applies.
41

- 1 2. Impervious Surface Coverage Standards. The Code requirement is a maximum of
2 30% impervious surface coverage for properties in Sensitive Land Zones. The
3 Variance Request is for approximately 39% impervious surface coverage.
4

5 Ms. DeSeelhorst reported that the Sensitive Lands Development Standards include a requirement
6 that stipulates that no more than 30% of a lot can be covered with impervious surface materials.
7 These include pavement, roof lines, driveways, buildings, etc. The Variance Request submitted
8 appears to be about 39%. The applicant provided it in square footage rather than a percentage,
9 which was rounded out by staff. Staff did not find compelling evidence that an increase in
10 impervious surface coverage is needed to build a reasonably sized home. The City does not
11 recommend deference to private agreements such as Codes, Covenants, and Restrictions
12 ("CC&Rs"). The applicant provided a copy of the CC&Rs for the subdivision, which included
13 stipulations requiring the home to have a certain square footage. The applicants claim that the
14 increase in impervious surface is needed because of that private agreement. Staff did not
15 recommend that the City enforce or regulate private agreements.
16

17 Staff did not see compelling evidence that the property size should be considered a unique factor
18 considering that it exceeds the size requirement for the underlying zone. Staff did not see
19 compelling evidence that other methods of reducing impervious surface coverage have been
20 sufficiently explored. Finally, they found the request to conflict with the previous request, which
21 seeks to reduce the overall buildable area. If the overall buildable area is decreased, an increase
22 should not simultaneously be needed. Staff recommended denial of this variance request.
23

24 In response to a question raised by AHO Guymon, Ms. DeSeelhorst stated that other methods
25 could involve reducing the size of the home or permeable pavers for patio and driveway areas.
26 Staff did not see any compelling evidence that those options have been looked into. AHO Guymon
27 commented that the concern with having too much impervious area is that it creates stormwater
28 run-off rather than allowing the water to be absorbed into the ground. Ms. DeSeelhorst clarified
29 that in every underlying zone, there is a coverage limit.
30

- 31 3. Retaining Wall Standards. The Code requirement limits development, including
32 retaining walls, from existing slopes measuring or exceeding 30%. The Variance
33 Request proposes a 20-foot retaining wall on top of a slope that appears to exceed
34 30%. =
35

36 The above request was for a 10-foot retaining wall atop a sloped area measuring or exceeding 30%.
37 Staff found that this Variance Request will expand toward the rear of the lot through retaining
38 walls and grading that is in direct conflict with the next request and seeks to expand toward the
39 front of the lot through a reduced front setback. Staff finds that more reasonable options should
40 be explored to prioritize the avoidance of development on steep slopes. Staff recommended denial
41 of this request.
42

- 1 4. Deviation from the Front Setback Standards. The Code requirement is 25 feet for
2 the front yard. The Variance Request is 20 feet.

3
4 The Code requirement for the front setback request is a 25-foot front yard setback. The Variance
5 Request is 20 feet, which is a five-foot difference. Staff finds this request to be reasonable to
6 utilize the property for a single-family home. It is also a strong effort to comply with the Sensitive
7 Land Standards by avoiding steep slopes and placing the home closer to the front lot line. Staff
8 recommended approval of the Variance Request.

- 9
10 5. Remove all Sensitive Lands Evaluation and Development Standards (“SLEDS”)
11 from applying to this development.

12
13 The above request was for overall relief from the SLEDS Chapter. Staff finds that this request is
14 exceedingly broad and did not see compelling evidence that the property located entirely within
15 that zone should be exempted from its regulations even though it was platted in 1979. Staff also
16 did not see compelling evidence that the request is the minimum variation needed to relieve the
17 alleged hardship and recommended denial.

18
19 The applicant, Kenny Hiram stated that the lot was developed in 1979 before the hillside
20 ordinances were adopted. He commented that the ordinances have taken away his right to build a
21 home on his lot. He has owned the property for three years. Before purchasing the property, he
22 had a Fault Study done as well as engineering work. The City informed Mr. Hiram that that was
23 acceptable and informed him that he could build a home on the lot. He wants to build a 2,100-
24 square-foot ranch home with a two to four-car garage. Staff recommended that he go smaller,
25 however, Mr. Hiram indicated that he is required to build a certain sized home per the CC&Rs.

26
27 The individual variances were reviewed and discussed.

28
29 Mr. Hiram agreed with the staff's recommendation to approve the first variance request.

30
31 With regard to the second request, Mr. Hiram requested that the impervious coverage surface area
32 be increased from 30% to 39%. Mr. Hiram stated that the Code requires him to stop the water
33 runoff from his property from flowing down the hill and onto properties. In his design, the
34 driveway will run to the street and go down to the storm drain. Runoff from the front yard will
35 run down the street and into the storm drain. A storm drain also runs down the side of the property.
36 They can connect gutters from the home to the storm drain if there are concerns about water.

37
38 AHO Guymon asked Mr. Hiram if he could use non-impervious pavers that would allow water to
39 seep through. Mr. Hiram had a problem with that because the home will have to be situated on
40 the side of a hill. He would not want water to flow through the driveway and along the front of
41 the house since it will cause structural problems. AHO Guymon asked Mr. Hiram if he had
42 considered the use of piers. Mr. Hiram stated that piers are very expensive and unnecessary.

43
44 The third variance request pertained to the retaining wall. AHO Guymon asked Mr. Hiram where
45 he would like to place the retaining wall and why. Mr. Hiram hoped to place the retaining wall at
46 the lowest part of the property in the back. He explained that the retaining wall will start at 10 feet

1 tall in the middle and run less than half the width of the lot. He could build the house without the
2 retaining wall but felt it was needed to stop water from flowing down the hill. It is a way to retain
3 the water near the house rather than allowing it to erode and flow into the neighboring property.
4

5 Ms. DeSeelhorst presented an aerial version of what Mr. Hillam was proposing and stated that the
6 Staff Report included feedback from the City Engineer. A Conditional Use Permit is required for
7 any retaining wall over six feet. Neighbor consent is also required for any fence or wall that is
8 eight to 12 feet in height.
9

10 AHO Guymon was not prepared to issue a decision tonight. The matter is complicated and he did
11 not want to make any decisions until first hearing from Mr. Hillam. Furthermore, after reading
12 the Staff Report, it appeared that there was information that had not yet been received.
13

14 AHO Guymon next addressed the front setback variance and noted that Staff recommended
15 approval. The current front yard setback requirement is 25 feet and the applicant is requesting a
16 20-foot setback. AHO Guymon stated that one of the standards of the State and City codes that
17 must be considered is that the Variance Request must meet the minimum variance necessary to
18 alleviate the hardship. He was trying to balance the reasonable expectations of someone who buys
19 or owns a lot in an approved residential subdivision versus the current ordinances, which make it
20 very difficult to design a home that complies with the ordinances and fits on the lot.
21

22 AHO Guymon addressed the last variance request. He stated that he cannot grant a blanket
23 variance and asked Mr. Hillam to identify a specific provision for which he was seeking relief.
24 Mr. Hillam explained that he cannot build on a 30% slope, which comprises a portion of his
25 property. Mr. Johnson stated that in his application, Mr. Hillam simply referenced relief from the
26 Sensitive Lands requirements. He suggested that Mr. Hillam resubmit an application specifying
27 how much of the 30% slope he intends to build on. There was discussion regarding what portion
28 of the home will be on a 30% slope.
29

30 AHO Guymon stated that although this was not a public hearing, a neighbor submitted a letter.
31 The complaint in the letter was that Mr. Hillam is proposing to build a home on what has
32 historically been a storm drain channel or ravine. Mr. Hillam stated that this could be mitigated
33 by adding engineered fill. The only water that flows there currently is rainwater that falls on the
34 property. AHO Guymon asked Mr. Hillam if he was familiar with benching and if that is what he
35 plans to do. Mr. Hillam stated he plans to use structural fill. AHO Guymon commented that it
36 does Mr. Hillam no good to have only some of the variances approved. Mr. Hillam agreed and
37 said he could move forward without the retaining wall but would prefer to have it.
38

39 Mr. Johnson referenced the reports submitted and stated that staff has looked at them but was
40 unsure whether the City Engineer and their Geologic Consultant has cleared all of them. He noted
41 that several sensitive land issues need to be addressed. Mr. DeSeelhorst also commented that
42 reference was made to two members of staff who indicated that the property was buildable. She
43 reported that neither individual is still employed by the City and there is no record of any approval
44 in the files.
45

1 AHO Guymon acknowledged the difficulty of the situation and stated that the City wants its
2 ordinances to be adhered to. Moreover, the ordinances are in place to ensure safety. This is a
3 residential lot in an approved residential subdivision that was approved for a home to be built on.
4 There are competing interests. Mr. Johnson explained that the staff analysis always comes down
5 to whether what is proposed is the most reasonable solution. He noted that economic hardship is
6 not a consideration and questioned whether there is a more creative design that better mitigates the
7 hardship. What is proposed is development that consumes the entire lot. Ultimately, the rear
8 retaining wall is intended to create a flat yard in the rear of the property, which is on top of a very
9 sensitive natural slope. Other variances were issued years ago by the Board of Adjustment where
10 the home could be seen from Wasatch Boulevard and Prospector Drive, which had the opposite
11 problems at the bottom of the slope. The home was custom designed to be very narrow and taller.
12 This was done to avoid hazards rather than develop on top of them. Staff's opinion was that that
13 would be a more reasonable endeavor.

14
15 AHO Guymon stated that it is not unheard of for a home to be built on slopes of this degree.
16 Ms. DeSeelhorst agreed but stated that staff sees no evidence that the proposed design has to be
17 built. They felt that a less impactful design could be considered. AHO Guymon would determine
18 the level of variance required to relieve the undue hardship. He reported that he would continue
19 to analyze the situation and issue a written decision the following week.

20 21 **3.0 Consent Agenda**

22 23 **3.1 Approval of Appeals Hearing Officer Meeting Minutes from April 13, 2022.**

24
25 **The Appeals Hearing Officer will approve the minutes of the April 13, 2023, meeting after**
26 **the following process is met. The Recorder will prepare the minutes and email them to the**
27 **hearing officer. The Hearing Officer will have five days to review the minutes and provide**
28 **any changes to the recorder. If, after five days there are no changes, the minutes will stand**
29 **approved. If there are changes, the process will be followed until the changes are made and**
30 **the Hearing Officer is in agreement, at which time the minutes shall be deemed approved.**

31 32 **4.0 Adjournment**

33
34 The Appeals Hearing Officer Meeting adjourned at approximately 6:00 P.M.

1 *I hereby certify that the foregoing represents a true, accurate and complete record of the*
2 *Cottonwood Heights City Appeals Hearing Officer Meeting held Thursday, April 13, 2023.*
3

4 Teri Forbes

5 Teri Forbes

6 T Forbes Group

7 Minutes Secretary

8
9 Minutes Approved: _____