

Payson City Board of Adjustment Staff Report

July 25, 2024

Request for Variance to the Minimum Landscaping Requirement

The Board of Adjustment is organized to hear appeals of decisions applying the Zoning Ordinance and variances from the terms of the Zoning Ordinance. The Board of Adjustment is not organized to change, amend or ignore the land use regulations established by the City Council. Rather, the role of the Board of Adjustment is to ensure that when unusual physical conditions of property create unfair or unusual situations, landowners are treated equitably. In accordance with state law, the set of circumstances that led to the need for a variance cannot be self imposed or economic.

Background

Applicant: Connor Lindstrom, on behalf of Jacksons Food Stores, Inc.
Lot Address: 1250 W. 800 S.
Parcel Number: 49:969:0129
Subdivision: Hen Line Plat B
Zone: S-1, Special Highway Service Zone
Acreage: 2.73 acres

Request

Reduction in required landscaping. Payson City Code 13.14.130.18 requires a minimum of 25% a lot to be landscaped. The applicant has requested a reduction in landscaping from 25% to 17% for the property. This will enable the construction of a truck-stop and convenience store gas station on the site.

Analysis

The lot has existed since August of 2010 as part of the Hen Line plat B subdivision. Prior to this date the lot was part of a larger parcel of land and not subdivided. The lot is 2.73 acres. The current S-1, Special Highway Service zoning designation requires a minimum of 25% of the lot to be covered by landscaping. Within the general vicinity and a part of the same zone are several other properties that do not meet the minimum landscaping requirement. Reasons for these properties not having the minimum landscaping requirement vary, however the primary reason may be that the minimum landscaping requirement was not solidified within the zone until April of 2020 with Ordinance #04-01-2020-A.

According to § 10-9a-702 (2) (a) of the Utah Code Annotated, 1953, as amended the Board of Adjustment may grant a variance only if the following criteria are met:

1. 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 (§ 10-9a-702 (2) (a) (i)).

Staff Response

There are other properties within the S-1, Special Highway Service Zone that do not meet the required 25% landscaping requirement. These properties may have received site approvals prior to the 25% landscaping requirement being implemented within the zone. The applicant seeks to have a reasonable amount of landscaping compared to some of these other properties that are also out of compliance with the requirements set forth in Payson City Code 13.14.130.18.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone (§ 10-9a-702 (2) (a) (ii)).

Staff Response

The identified property in this request is situated on the corner of 800 South and 1270 West. While the corner lot allows for more additional access to the property due to its proximity to the adjacent streets it also reduces the availability of where landscaping can reasonably be placed and allows for full development of the property.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone (§ 10-9a-702 (2) (a) (iii)).

Staff Response

Without a variance, the property located at 1250 West 800 South will not be able to develop as planned. The applicant has worked to increase the landscaped areas from previous conceptual site plans and has brought the landscaping up to the 17% that currently is shown in the proposed site plan. To reduce the concern regarding impervious surfaces on the property the applicant has proposed installing pervious pavers in some of the parking areas.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest (§ 10-9a-702 (2) (a) (iv)).

Staff Response

Granting the variance will not substantially affect the general plan and will not be contrary to the public interest as evidenced by other properties within the vicinity also not meeting the minimum landscaping requirement. Additionally, the applicant will be required to follow all local, state and federal regulations regarding any site plan design for this location and this type of development.

5. The spirit of the land use ordinance is observed, and substantial justice done (§ 10-9a-702 (2) (a) (v)).

Staff Response

The primary purpose of the land use ordinance section regarding minimum landscaping is to ensure that there is a softer aesthetic quality to the harsh landscape of buildings, asphalt, and concrete. The applicant plans to have the majority of their landscaping along the perimeter of the property thus fulfilling the language in the second paragraph of Payson City Code section 13.14.130.18 (B).

The following sections of the Utah Code Annotated, 1953, as amended, are provided to assist the Board of Adjustment in consideration of the variance request:

In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under the five criteria listed above, the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought and that the hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood (§ 10-9a-702 (2) (b) (i)).

In determining whether enforcement of the land use ordinance would cause unreasonable hardship, the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic. In this case the lot is situated on the corner of two streets which requires additional access for convenience of customers, but also reduces areas that may typically be landscaped on interior lots.

In determining whether there are special circumstances attached to the property the Board of Adjustment may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the property of privileges granted to other properties in the same zone (§ 10-9a-702 (2) (c)).

The applicant shall bear the burden of proving that all the conditions justifying a variance have been met (§ 10-9a-702 (3)).

In granting a variance, the Board of Adjustment may impose additional requirements on the applicant that will mitigate any harmful affects of the variance or serve the purpose of the standard or requirement that is waived or modified (§ 10-9a-702 (6)).

Staff response

Softening of the hardscaped areas, with the implementation of vegetation and landscaping where possible will greatly enhance the aesthetics of the property and overall corridor of the 800 South commercial area. If the variance is granted perhaps the applicant can provide other improvements that will soften the hardscaped areas and provide additional enjoyment and appeal to patrons of the future development on the property.

Recommendation

Staff feel as if the proposed amount of landscaping is in line with several other properties nearby. Several properties were developed in the area prior to April of 2020, when the 25% landscaping requirement was implemented. Thus, it would not be out of character to permit a reduction in landscaping at this site, especially if the applicant can demonstrate that any detrimental effects can be mitigated. The Board of Adjustment will need to determine whether the applicant has provided proof that the conditions of the Utah Code apply, and if the variance should be granted. If the applicant is unable to satisfy the requirements of state statute and variance is not granted, the Board of Adjustment should deny the request. Findings that indicate reasonable conclusions for the decision of the Board should be provided with any decision made.