

**MINUTES OF THE DRAPER CITY PLANNING APPEALS AND VARIANCE HEARING
OFFICER MEETING HELD ON TUESDAY, SEPTEMBER 23, 2025, IN THE DRAPER
CITY COUNCIL CHAMBERS**

PARTICIPATING: Tim Pack of Clyde, Sessions & Snow
Bob Rohr
Ellen Rohr
Max Rohr

STAFF: Jennifer Jastremsky, Community Development Director
Spencer DuShane, Assistant City Attorney
Todd Draper, Planning Manager
Paul Geilman, Planning Coordinator
Lori Stout, Administrative Assistant

9:00 AM Business Meeting

Appeals and Variance Hearing Officer Tim Pack called the meeting to order at 11:00 AM.

1. Approval of Previous Meeting Minutes

A. March 25, 2025, Minutes.

Mr. Pack reviewed the minutes and found them to be correct.

Mr. Pack APPROVED the minutes from March 25, 2025.

2. Items for Consideration.

A. Public Meeting: Rohr Family ADU Variance Request.

On the Request of Bob Rohr for a Variance at 763 West 11560 South to modify the Minimum Rear Setback Standard for an Accessory Dwelling Unit in the RA1 Zone. Application 2025-0183-VAR. Staff contact is Jennifer Jastremsky, 801-576-6328, jennifer.jastremsky@draperutah.gov.

Mr. Pack introduced the item and asked the applicant to speak.

Ellen Rohr reported that she and Bob Rohr wish to age in place and move their son, Max Rohr, and his family onto the property. To do so, they would like to build an Accessory Dwelling Unit (“ADU”) on their property. They consulted with attorney Ben Lieberman regarding the variance application. The overall impact on the neighborhood will be minimal, and the ADU would allow her family to remain intact on the property.

Ms. Rohr referred to an aerial map of the property, indicating an eight-foot wall and trees between the home and Sport City to the rear. Her eastern neighbor, Barbara Olsen, was present in support of the application. The western neighbors, Martin and Brandi Orr, were not present but also supported the variance. Ms. Rohr believed the application was respectful of the neighborhood and noted that the request was for a variance of only 60 inches.

Mr. Pack asked about the current structure at the rear of the property. Ms. Rohr stated that it is a garage. They originally intended to improve its appearance and obtained a Building Permit to that effect, but then realized they could apply for a variance to build the ADU. They intend to retain the garage on the western side of the building and create an ADU in the eastern half. Plans for the ADU were submitted with the application.

In response to a follow-up question from Mr. Pack, Ms. Rohr clarified that the ADU will be built within the existing structure and the footprint will not change. The northeastern corner of the structure is 14 feet and three inches from the property line.

Mr. Pack asked if it would be possible to build the ADU with the required 20-foot setback. Ms. Rohr stated that the existing building would have to be demolished, which was cost-prohibitive and seemed unnecessary. She referred to the Site Plan and noted that although the building is approximately 10 feet from the property line at the northwestern corner, there is more space behind it because Sport City's fence is six feet inside their property line.

Mr. Pack asked about costs. Ms. Rohr stated that the building would have to be removed from its foundation and moved. Mr. Bob Rohr noted that the lot slopes east to west, and the structure is built into the ground with 10-inch concrete retaining walls on two sides. Ms. Rohr added that there is also a five-foot stone wall on the eastern exterior of the building. The existing structure was built three years ago.

Mr. Pack asked if it would be possible to build an east-west wall within the existing structure that would comply with the 20-foot setback. That would contain the ADU within the setback without moving the building.

Mr. Pack addressed cost again and asked if the applicant had obtained bids to move the structure. Ms. Rohr stated that they had not received bids, but the entire building would have to be moved, as well as the retaining walls.

Mr. Pack asked if the applicant had any reasons other than cost for being unable to comply. Ms. Rohr stated that it seemed wasteful to do so much construction for 60 inches. They believed it was worth applying for the variance. There is a wall between the rear of the property and Sport City, and the ADU would not negatively impact neighbors because the building already exists. She believes it would make sense to grant the variance.

Photographs of the rear property boundary as seen from the Sport City parking lot and the applicant's property were reviewed. In response to a question, Ms. Rohr clarified that several properties back Sport City.

Mr. Pack agreed that the neighbors likely would not complain about an ADU. However, if the hardship were solely economic, he could not grant a variance. He asked if there were any burdens or hardships unique to the property that prevented compliance.

Ms. Rohr stated that the West Crest Irrigation system runs along the rear property line, and the six-foot easement contains a City water culvert. Mr. Bob Rohr clarified that the 15-inch culvert runs from 700 West to the Jordan River. Moving the building could damage the culvert, as it is only a few feet from the building.

Mr. Pack asked if the applicant had spoken with contractors to determine if it was possible to demolish the building without harming the culvert. Ms. Rohr stated that they had not researched the matter. From an environmental standpoint, she believes it would be wasteful to demolish the building. They wanted to build an ADU to keep their family together, not to rent out, and not allowing it would be an economic hardship. She believed allowing the ADU would be good for both her family and Draper. Mr. Bob Rohr added that the building is only two years old, and he does not believe a two-year-old building should be demolished.

Mr. Max Rohr reported that he works in construction, and moving the building could have a substantial environmental impact on the Orr property. The properties are prone to mudslides. He believed his family had done a good job of building tiers into their property to maintain a slow flow of water down the hill, but removing the building could cause mudslides during construction. Mr. Pack asked if the property was prone to mudslides prior to building the current structure. Mr. Bob Rohr stated that the rock wall was installed due to mudslides.

Mr. Bob Rohr stated that surrounding communities require a 10-foot setback, and the 20-foot ADU setback adopted by Draper in 2021 prohibits many property owners from building ADUs. Neighbors can also park large recreational vehicles two inches from the property line.

Assistant City Attorney, Spencer DuShane, stated that the City was not opposed to multi-generational family living or detached ADUs. The larger issue was how to enforce City ordinances and the erosion of ordinances if variances are granted based on sympathetic applicants. The Rohr Family is a sympathetic applicant. However, a variance is an extraordinary form of relief. Case law shows that variances granted by the City have met all five criteria required by statute and City code. It is an extraordinary measure of relief, and it requires extraordinary facts that Mr. DuShane did not believe had been demonstrated by the Applicant.

Mr. DuShane reported that it was the applicant's burden to show that all criteria for granting a variance are met. Those criteria are as follows:

1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the General Plan and will not be contrary to the public interest.

5. The spirit of the land use ordinance is observed and substantial justice is done.

Mr. DuShane reported that most variance applications fail on the first criterion. The unreasonable hardship cannot be purely economic or self-imposed. He did not believe the hardship in this case was self-imposed, but it was purely economic. He then reviewed *Specht v. Big Water Town*, 172 P.3d 306 (Utah 2007), which is the benchmark used by the City to determine whether this criterion is met. As the hardship was economic in nature and no cost estimates had been provided, he did not believe the applicant had met the burden. The second criterion requires that any special circumstances relate to the unreasonable hardship. The applicant stated that the wall separating Sport City from residential uses was a special circumstance, but it was the City's position that the wall had no relation to the economic hardship the applicant complained of.

The City needs to ensure that ordinances are enforced citywide. While it may be sympathetic to grant the variance to the Rohr family, if they receive the ADU to age in place, a less sympathetic applicant could use that approval as justification for granting a variance to convert their shop into an Airbnb, for example. If a variance were granted to allow the Rohr family to age in place, one would also have to be granted for the Airbnb. The City cannot say that substantial justice will be done based on the type of living situation. Additionally, a variance for an ADU would become a vested property right that the City cannot later regulate, so it could be used as a short-term rental at a later time. The City's setback for accessory structures is 10 feet, but changing the use changes the setback requirements and all dwelling units require a 20-foot setback. Mr. DuShane did not believe the applicant had met the burden of proving that all five required criteria had been met.

Mr. Max Rohr understood that there were rules in place, and he did not know how neighbors would feel about an Airbnb in an existing building. However, he believed there should be a way to bend the rules. They were not asking that the setback be changed to 10 feet citywide, and he did not believe that granting the variance would impact the rules. His family's research indicated that this was the least offensive variance they could ask for. If it were not granted, they would likely move rather than risk negatively impacting their downhill neighbors by removing the structure. He understood that they did not have cost estimates on moving the structure, but getting the lot into its current condition was very costly.

Mr. Bob Rohr added that when the ADU ordinance was passed, Draper offered a grace period for existing ADUs to be brought into compliance. If someone had built an ADU 10 feet from the property line, they would have been forced to demolish it because it could not be brought into compliance.

Mr. Pack stated that a decision would be made by Monday, September 29, 2025.

B. Adjournment.

The meeting adjourned at 11:37 AM.