



Notice of Wasatch County Appeals Hearing Meeting
Tuesday, June 23, 2026, at 2:00 PM

Public Notice is hereby given that the Wasatch County Appeals Hearing will hold a Public Hearing on Tuesday, June 23, 2026 at 2:00 PM in the Wasatch County Complex Services Building, Conference Room B, 55 South 500 East, Heber City, Utah to consider the below listed items*:

The public is welcome to attend and participate in this meeting real-time either in-person or by joining the Zoom Webinar at <https://wasatchcounty.gov/openmeeting>. A recording of the meeting may also be viewed afterwards at <https://wasatchcout.portal.civicclerk.com>.

Public comments and questions can also be made via email prior to 5:00 PM on the day before the meeting. Emails should be sent to Planning@wasatchcounty.gov. For questions regarding connecting to the webinar please call the Planning Department at 435-657-3205.

Agenda

Order of agenda items subject to change without notice

Call to Order

1. Prayer/Remarks
2. Pledge of Allegiance

Items to Be Heard

1. Charles Pearlman, representing Susan Hawkins, requests a Variance for 1709 Marmot Lane (Lot 14 of Brighton Estates) to allow a lesser setback, for a single-family home, than required by code sections 16.09.09(A) and 16.21.07(C). The property is in the Mountain (M) zone. (Variance-26-001) – Doug Smith
2. Cody Johnson requests a Variance to the setback requirement for lots 3, 4 and 5 of the Stony Oaks Subdivision. Said lots have homes in various stages of construction. The variance, if approved, would allow a lesser setback for all three homes from the setback required by code sections 16.08.08(A) and 16.21.07(C). The lots are located at 5373 East 1200 South, 5333 East 1200 South and 5281 East 1200 South in the RA-1 zoning district (Variance-26-002) – Doug Smith

Adjournment

The Public Is Invited to Participate in All County Appeals Hearing Meetings.

In compliance with the American with Disabilities Act, individuals needing special accommodations during this meeting should notify the Planning Department at 435-657-3205 at least one day prior to the meeting.

Meeting Date: June 23, 2026**Presenter:** Doug Smith**Department:** Planning**Applicant:** Susan Hawkins, Charles
Pearlman**Requested Time:** 30 Mins**Item Title:**

Charles Pearlman, representing Susan Hawkins, requests a Variance for 1709 Marmot Lane (Lot 14 of Brighton Estates) to allow a lesser setback, for a single-family home, than required by code sections 16.09.09(A) and 16.21.07(C). The property is in the Mountain (M) zone. (Variance-26-001)

Issue:

Whether the applicant meets the standards for a variance to Wasatch County Code (WCC) section 16.21.07(C) and 16.09.09(A). Front setback requirements for lots in the M Mountain zone. The applicant is requesting that the 30' setback be measured from the "as built" location of Marmot Lane.

Background:

The applicant is seeking a variance from Wasatch County Code §16.21.07(C) and 16.09.09(A) that regulates the minimum setback requirements for main structures from a road.

Proposed Motion:

Based on the analysis and findings in this staff report, Planning Staff is of the opinion that this application can meet the standards for approval for the variance request in PLN VAR26-001 to allow for a decreased front setback.

Impact:

N/A

Attachments:

1. AHO Staff Report 06-23-2026 – Item 1 – Brighton Estates Lot 14



Item 1 – Charles Pearlman, representing Susan Hawkins is requesting a variance to the front setback requirement contained in 16.09.09(A) and 16.21.07(C) for lot 14 of Brighton Estates located at 1709 Marmot Lane.

Project: PLN VAR26-001 | Hawkin’s setback variance
Meeting Date: 23 June 2026
Report Date: 16 June 2026
Report Author: Doug Smith, Planning Director
Council Action Required: No
Type of Action: Quasi-Judicial
Current Legal Use: Vacant Lot

Applicant: Charles Pearlman
Property Address: 1709 Marmot Lane
Parcel No(s): Lot 14 Brighton Estates
Zoning Designation: M (mountain)
Acreage: 1 acre
Density: 1 unit
Code Section(s): 16.21.07(C) and 16.09.09(A)

DETERMINATION ISSUE

Whether the applicant meets the standards for a variance to Wasatch County Code (WCC) section 16.21.07(C) and 16.09.09(A). Front setback requirements for lots in the M Mountain zone. The applicant is requesting that the 30’ setback be measured from the “as built” location of Marmot Lane. This variance request is a determination made by the Appeals Hearing Officer per WCC 2.02.02.

RECOMMENDATION

Based on the analysis and findings in this staff report, Planning Staff is of the opinion that this application can meet the standards for approval for the variance request in PLN VAR26-001 to allow for a decreased front setback.

Appeals Hearing Officer Staff Report



BACKGROUND

The applicant is seeking a variance from Wasatch County Code §16.21.07(C) and 16.09.09(A) that regulates the minimum setback requirements for main structures from a road. The mountain zone also has a maximum limits of disturbance (LOD) area as stated below. Setback and LOD requirements are stated below:

16.21.07: GENERAL SETBACK REQUIREMENTS

- C. Minor Collector Roads Or Residential Roads: On minor collector roads or local residential roads, the setback shall be sixty feet (60') from the center of the road or thirty feet (30') from the right of way, whichever is greater.

16.09.09: SETBACK REQUIREMENTS

The setback requirements for this zone shall be as follows:

- A. **Front Setback:** The front setbacks for dwellings shall be a minimum of sixty feet (60') from the center of the road, or thirty feet (30') from the edge of the right of way, whichever is greater. If the property is located on a state or federal highway, the setbacks shall be a minimum of one hundred fifty feet (150') from the right of way. See subsection [16.21.07 B](#) for setbacks on major collector roads.

...

16.09.13: MAXIMUM AREA OF DISTURBANCE

- B. For lots or parcels one acre in size or greater, the LOD for an individual single-family use and any accessory structure shall not exceed twelve thousand (12,000) square feet unless the conditions above are satisfied, in which case the LOD may be increased to eighteen thousand (18,000) square feet.

...

The applicant desires to construct a home located on lot 14 of Brighton Estates phase 4. The plat was recorded in 1967. It appears from the survey and the aerial photos that the road was not constructed in the platted right-of-way. The plat shows a 40' right of way. The property lines go to the center of the road with a 20' easement on either side of the center of the road.

The code requires the setback to be measured from the edge of the ROW or the center line of the road whichever is greater and regardless of where the road is built. If a road is built in the wrong location, it can create problems in trying to meet the required setback. The measurement is the greater of the two measurements which is either 30' from the edge of the ROW (not built location) or 60' from the centerline of the road (built location). It appears that Marmot Lane is approximately 60' (by aerial photo measurements) into lot 14.

THE REQUEST:

- The applicant is requesting to be able to establish a 30' setback from the edge of the asphalt of the "as built" Marmot Lane not the 60' from the centerline as required by code.

KEY ISSUES TO CONSIDER

- Variances are intended to provide a path for relief for an unreasonable hardship where special circumstances exist that deprive the property of privileges granted to other properties in the same district.
- The plat was recorded in 1967.
- State and County Code require specific findings in order to grant a variance. Variances cannot be granted if the specific findings cannot be made.
- In order to grant a variance, an unreasonable hardship must exist that is peculiar to the property and not from conditions general to the neighborhood.
- A claimed hardship cannot be self-imposed and cannot be economic in nature.
- The burden of proof that an unreasonable hardship exists is the responsibility of the applicant.
- The request is to allow construction of a single-family home on the lot.
- The applicant claims that due to the road being built outside of the platted right-of-way there is limited building area if the setback requirement is from both the 60' setback from the center of the road and 30' from the edge of the ROW whichever is greater.
- The request is to be able to use the 30' setback from the edge of the "as built" asphalt of Marmot Lane.
- Staff analysis has identified an unreasonable hardship with a direct relationship to the road being built significantly outside of the platted right-of-way.

- The construction of a single-family home is necessary to enjoy the substantial property right enjoyed others in the area.
- A variance is not intended to deviate from code requirements simply because a code requirement is not understood or agreed with by an applicant, administrative, or quasi-judicial body. If the individual/body feels that the code should be inapplicable, the individual/body should make a request to have the County Council as the legislative body consider amending the law.

STAFF ANALYSIS

– VARIANCE PROCEDURE –

Wasatch County Code 16.02.08(E) outlines the findings that are required in order for a variance to be granted. Per paragraph C of the section, the *“applicant for a variance shall bear the burden of proving that all of the foregoing conditions are satisfied.”* The required findings by applicant and staff are as follows:

E. Requirements For Granting Variance: The board of adjustment may grant a variance only if all of the following conditions are met:

- 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;*

Applicant Response: Literal enforcement of the Code would cause an unreasonable hardship that is not necessary to carry out the general purpose of the Code because the hardship arises from the particular relationship between this lot, Marmot Lane as actually located on the ground, the platted or surveyed road condition, the M-zone front setback requirement, the Mountain zone’s area-of-disturbance requirement, and the lot’s shape and topography. The hardship is associated with the property and arises from circumstances peculiar to the property where strict application of the front setback from Marmot Lane as it exists on the ground leaves no practical residential building site that can also comply with the Mountain zone’s area-of-disturbance limitation. Nor is the hardship self-imposed or merely economic, it is not Mrs. Hawkins’ fault that Marmot Lane was constructed in the wrong location.

Literal enforcement would not produce a Code-compliant development plan. It would merely trade the setback issue for a larger site-disturbance problem. The only theoretical setback compliant layout would require approximately 14,510 square feet of area of disturbance. That exceeds the 12,000-square-foot limit applicable to this one-acre M-zone lot. Since that alternative layout requires substantial clearing of existing vegetation, it does not satisfy the purpose of the exception allowing increased disturbance where significant vegetation is retained or where revegetation and land reclamation improvements substantially advance the purpose of the Mountain zone.

The hardship is physical and functional, not merely economic. Without the requested variance, Mrs. Hawkins cannot make viable residential use of the lot in a manner that respects the Code’s other requirements. The only theoretical setback-compliant location would require a long, winding access route, substantially greater soil displacement, significant vegetation removal, and an area of disturbance exceeding the Mountain zone’s baseline limit. That result would undermine the Mountain zone’s own purposes.

This hardship is not self-imposed. Mrs. Hawkins did not move Marmot Lane. She did not create the lot’s unusual condition. She did not manufacture the conflict between the road’s actual location, the

front setback requirement, and the Mountain zone's area-of-disturbance limitation. She is trying to make reasonable residential use of a lot in a zone that expressly permits detached single-family dwellings.

Nor is the hardship necessary to carry out the general purpose of the Code. The Mountain zone is intended to allow mountain residential dwellings while requiring development to remain in harmony with mountain settings and to mitigate adverse impacts. Its purposes include preventing soil erosion generated from excessive streets and soil displacement, protecting vegetation and the aesthetic characteristics of the County's canyons and mountains, encouraging protection of wildlife, plant life, and groundwater, and ensuring appropriate access and fire and emergency access. Forcing this property into a plan that exceeds the area-of-disturbance limit and removes substantial vegetation does not advance those purposes. It undermines them. The requested setback variance is the minimum and most Code-consistent relief. It allows the residence to be placed in a compact and functional area, avoids the need for a broader and less protective variance from the area-of-disturbance requirement, preserves more existing vegetation, and better serves the purposes of the Mountain zone.

Staff Response: If the setbacks were enforced the home would have to be moved to a corner of the lot at approximately a 20' elevation drop from Marmot Lane. The home, as proposed, would not meet the 30' setback from the back property line. Complying with the setback would also require a longer driveway with, most likely, retaining walls and cut and fill in excess of what would need to be done if the variance were granted. The Mountain zone as well as the P-160 zone require a maximum limits of disturbance (LOD) area so that these sensitive areas, that are usually mountainous, are not denuded creating other issues. According to the applicant literal enforcement would create a LOD greater than the 12,000 square feet allowed by code. In Staff's opinion Literal enforcement of this title would cause an unreasonable hardship. The built road is approximately 60' into the lot creating a problem that would force a greater setback that would then require extensive grading to meet the required 60' setback from the center of the built road. Stated purposes of the M zone is to, "prevent soil erosion, protect vegetation, encourage protection of wildlife and vegetation". To that end "limits of disturbance" maximums have been established to limit the amount of grading and vegetation removal on a site. Further, the road was constructed decades before this variance was sought. The hardship was not self-imposed.

2. *There are special circumstances attached to the property that do not generally apply to other properties in the same districts;*

Applicant Response: There are special circumstances attached to the property that do not generally apply to other properties in the same district in that Marmot Lane was not placed where it was supposed to and cuts through Mrs. Hawkins's property in a location that materially reduces the lot's usable residential building area. The special circumstance deprives the property of privileges granted to other properties in the same district because elsewhere Marmot Lane is located at or near its intended location. On this lot, however, the road's actual location creates an unusual condition that does not generally apply to other properties in the Mountain zone.

That special circumstance directly relates to the hardship. Marmot Lane cuts through the property in the wrong location, the front setback pushes the allowable building area into a constrained remnant portion of the lot. That remnant area is not large or functional enough to accommodate a normal single-family residence and the related driveway, septic, utilities, drainage, and other improvements within the Mountain zone's area-of-disturbance limits. The hardship therefore arises from the road's

location on the property, not from Mrs. Hawkins's personal preferences or economic circumstances. The road's misplacement also deprives the property of privileges granted to other properties in the same district. Other Mountain zone lots generally possess the practical ability to place a single-family dwelling, driveway, septic system, utilities, drainage, and related services within a workable development envelope. This lot does not. Strict application of the setback leaves only a constrained remnant area, and the only theoretical setback-compliant development plan would require approximately 14,510 square feet of area of disturbance, exceeding the Mountain zone's 12,000-square-foot limit for a one-acre lot.

These special circumstances are attached to the property itself. The requested variance is therefore necessary to address a physical, property-specific condition that deprives this lot of the same practical residential use available to other properties in the Mountain zone.

Staff Response: The plat was recorded in 1967. On many of these older subdivisions, especially in mountainous areas, the roads were not built in the platted locations. That is most likely the reason the code requires setbacks to be measured from the greater of the two; 60' from the center of the road or 30' from the edge of the right-of-way. Because the road was built outside of the platted right-of-way staff believes that there is a special circumstance with this lot that does not apply generally to other lots in the same district.

3. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same districts;*

Applicant Response: The variance is essential to the enjoyment of a substantial property right possessed by other property in the same district. The Mountain zone is expressly intended to "[p]rovide an appropriate location within the unincorporated area for the development of mountain residential dwellings." Detached single-family dwellings are a permitted principal use in the Mountain zone, and the zone allows one single-family dwelling per lot. The relevant property right, then, is the practical ability to build and use a detached single-family residence on the property.

Without the requested variance, Mrs. Hawkins cannot make viable residential use of the lot. The only theoretical setback-compliant plan requires approximately 14,510 square feet of area of disturbance, exceeding the 12,000-square-foot limit applicable to this one-acre lot. And because that alternative would require clearing substantial existing vegetation, it does not satisfy the Code's exception for increased disturbance where significant vegetation is retained or revegetation and land reclamation improvements substantially advance the purpose of the Mountain zone.

The requested variance is not driven by a preference for a better view, a larger home, or a more convenient layout. It is the minimum dimensional relief necessary to allow the property to be used for the residential purpose the Mountain zone itself contemplates. This is the same substantial property right enjoyed by other properties in the Mountain zone. Other Mountain zone lots generally can be developed with one single-family dwelling and the related driveway, septic, utilities, drainage, and services within a workable development envelope. Because Marmot Lane cuts through this lot in the wrong location, Mrs. Hawkins cannot enjoy that same practical residential use unless limited setback relief is granted. The variance is therefore essential to the enjoyment of a substantial property right possessed by other properties in the same district.

Staff Response: If there were literal enforcement of the code the property would be difficult to develop at best and not developable at worst due to a LOD greater than 12,000 square feet.

Neighboring properties that do not have a road encroachment into the lot can meet setback and can build in accordance with County Code.

4. *The variance will not substantially affect the general plan and will not be contrary to the public interest;*

Applicant Response: The variance will not substantially affect the general plan and will not be contrary to the public interest because the requested relief is narrow. It does not change the use of the property, increase density, authorize a commercial use, or allow any more intensive development than the Mountain zone already contemplates. It simply allows one single-family residence in a zone where that use is already permitted.

The requested variance also will not harm the public interest. The proposed use remains residential. The variance is dimensional and limited. It will not increase traffic, impair public access, interfere with neighboring properties, or change the character of the area. It will allow the residence to be placed in a more compact and less disruptive location on the lot. By contrast, strict enforcement of this provision would produce a worse result. It would force the residence, driveway, septic system, utilities, drainage, and related improvements into the only theoretical setback-compliant location, requiring approximately 14,510 square feet of area of disturbance and substantially more clearing of existing vegetation. That alternative would exceed the 12,000-square-foot area-of-disturbance limit applicable to this one-acre Mountain zone lot and would require a separate, broader variance from that requirement.

The public interest is better served by granting the limited setback variance. It avoids a more disruptive development pattern, preserves more existing vegetation and natural screening, and allows the property to be used for the same single-family residential purpose already permitted in the Mountain zone.

Staff Response: The general plan does have policies regarding “prohibiting development in sensitive areas” (policy 1.1.3) and “Consider clustered development options in mountain environments in a manner that will preserve scenic values, preserve and protect flora and wildlife of the surrounding area, and minimize soil erosion” (policy 1.1.5) These policies in the General Plan do show the intent to protect wildlife and vegetation as much as possible.

5. *The spirit of this title is observed and substantial justice done;*

Applicant Response: Granting the variance is consistent with the spirit of the Code and will result in substantial justice being done. The request is merely to be allowed to use the lesser of two setback measurement methods, both of which are allowed by the Code, rather than the greater of the two. The Mountain zone is established for development in mountainous areas where development should be in harmony with mountain settings and adverse impacts must be mitigated. Its specific purposes include providing an appropriate location for mountain residential dwellings, preventing soil erosion generated from excessive streets and soil displacement, protecting the vegetation and aesthetic characteristics of the County’s canyons and mountains, encouraging protection of wildlife, plant life, and groundwater, and ensuring appropriate access and fire and emergency access.

Granting the requested setback variance observes those purposes better than strict enforcement. Without the variance, Mrs. Hawkins is left with no viable residential use of the property unless she seeks separate relief from the Mountain zone’s area-of-disturbance requirement. But the area-of-

disturbance requirement directly advances the Mountain zone's core purposes by limiting soil displacement, preserving vegetation, maintaining mountain character, and reducing development impacts. A limited setback variance is therefore the narrower and more Code-consistent form of relief.

Denying the variance would not meaningfully advance the Code. It would force the owner toward a design that exceeds the Mountain zone area-of-disturbance limit and removes much of the vegetation the Mountain zone seeks to protect. A limited setback variance, by contrast, allows one single-family residence in a zone created for that use while preserving more vegetation, reducing soil displacement, maintaining natural screening, and avoiding the need for a broader and less protective variance from the area-of-disturbance requirement.

Substantial justice will be done by granting the requested variance. Mrs. Hawkins is not asking for special treatment disconnected from the land. She is asking for limited relief tailored to an unusual property condition: Marmot Lane was placed through her property in the wrong location, leaving no practical residential building site under strict application of the setback and area-of-disturbance requirements. The requested variance allows the property to be used in a manner consistent with the Mountain zone and with less overall disturbance to the site.

Staff Response: The applicant is proposing a 30' setback from the "as built" edge of Marmot Lane. From the view of any neighbors or the public a 30' setback from the "as built" edge of Marmot Lane would appear to meet the required setbacks. Staff believes that the spirit of this title is observed and substantial justice done.

– CONCLUSIONS –

A variance is not a discretionary decision. State and County codes permit the appeals Hearing Officer to "grant a variance *only if*" certain criteria are met. Those criteria must be tied to an unreasonable hardship that cannot be self-imposed. In hearing a variance request, the applicant bears the burden of proving that the hardship exists and that the criteria for granting a variance can be met. The documentation provided by the applicant and the stated hardship in staff's opinion meet the threshold necessary to grant a variance. The hardship is that Marmot Lane which was not built in the platted road location. The Mountain zone further exacerbates the problem because there is an LOD requirement. Moving the home to meet the setback requirement creates a violation of exceeding the maximum LOD.

RECOMMENDED DECISION

APPROVE item 1 consistent with the findings as presented, and as found in the staff report.

– FINDINGS –

1. Wasatch County Code (WCC) §16.09.09(A) and 16.21.07(C) requires a front setback for a dwelling to be 60' from the centerline of the road (wherever that road may be) or 30' from the edge of the right of way.
2. WCC 16.09.13(B) sets a limits of disturbance at 12,000 square feet "unless significant existing site vegetation is retained" in which case the LOD can be up to 18,000 square feet.
3. The applicant is requesting that the setback is allowed to be 30' from the edge of the "as built" road.
4. The property was platted in 1967.

5. The road was not built within the platted right-of-way, and the applicant did not build the road in the current location.
6. The road is approximately 60' into the parcel.
7. The subject property is a 1-acre lot in the Brighton Estates Subdivision.
8. The subject property is currently vacant and does not have a home on it.
9. The applicant's responses to the findings required in Section 16.02.08 of the current Wasatch County Code claims they can satisfy the findings required in order for a variance to be granted.
10. WCC §16.02.08(F)(2)(b)(2) requires that the special circumstances of a property must be specifically related to the hardship and deprive the property of privileges granted to other properties in the same district.
11. A variance request is not a discretionary decision afforded to a jurisdiction. The County must follow state code and must satisfy all required findings in order to grant a variance.
12. WCC §16.02.08(F)(2)(a) precludes the ability of granting a variance if the hardship is self-imposed or economic. The hardship as not self-imposed or economic.
13. The applicant claims that, due to the road being built outside of the platted right-of-way, there are special circumstances that are peculiar to the property that is not applicable to other properties in the same district, criteria #2 of the required findings, has been met.
14. The ability to construct the structure in a manner that complies with the required setbacks and the LOD requirements of the code, as demonstrated by the applicant, would be difficult if not impossible and therefore would preclude the applicant from developing on the property. Criteria #3 of the required findings is satisfied.
15. The applicant has met the burden of proof for criteria #4 and #5 that the public interest is protected and that the spirit of the title is observed.
16. The staff report and the presentation to the hearing officer are incorporated into the findings.
17. Only those variances from Wasatch County Code expressly approved through this Variance Application are adopted. All other provisions of applicable law must be adhered to.

– *CONDITIONS* –

1. The application for a building permit must clearly show that the setback is from the edge of Marmot Lane.
2. The Applicant and their successors in interest will bear the risk that future expansion, improvement, or maintenance of the Marmot Land as built, the placement of utility infrastructure on or about Marmot Lane as built, or the placement of drainage infrastructure to support the road as built may result in encroachment that would be closer to the home than would be possible if the County had not granted this variance.

POSSIBLE ACTIONS

The following is a list of possible motions the Appeals Hearing Officer can take. If the action taken is inconsistent with the recommended findings listed in the staff report, the Appeals Hearing Officer should state new findings.

1. Approve. This action may be taken if the Appeals Hearing Officer finds that the variance request meets the necessary variance criteria found in State Law and that the request is consistent with Wasatch County Code and all other applicable ordinances.
2. Approve with Conditions. This action can be taken if the Appeals Hearing Officer feels that impacts of the variance request can be mitigated to be compliant with Wasatch County Code and State Law. ****This action***

*would be consistent with the staff analysis.**

3. Deny. This action can be taken if the Appeals Hearing Officer finds that the proposal does not meet the necessary criteria found in State Law and Wasatch County Code.
4. Continue. This action can be taken if the Appeals Hearing Officer needs additional information before making a recommendation, if there are issues that have not been resolved, or if the application is not complete.

NEXT STEPS

If the requested variance is approved, the applicant could proceed with applying for a building permit to construct the structure.

If the requested variance is denied, the applicant would need to redesign the project to comply with the setback requirements.

Any person adversely affected by a final decision made by the Appeals Hearing Officer can be appealed under the provisions outlined in Wasatch County Code 2.02.02 and Utah Code.

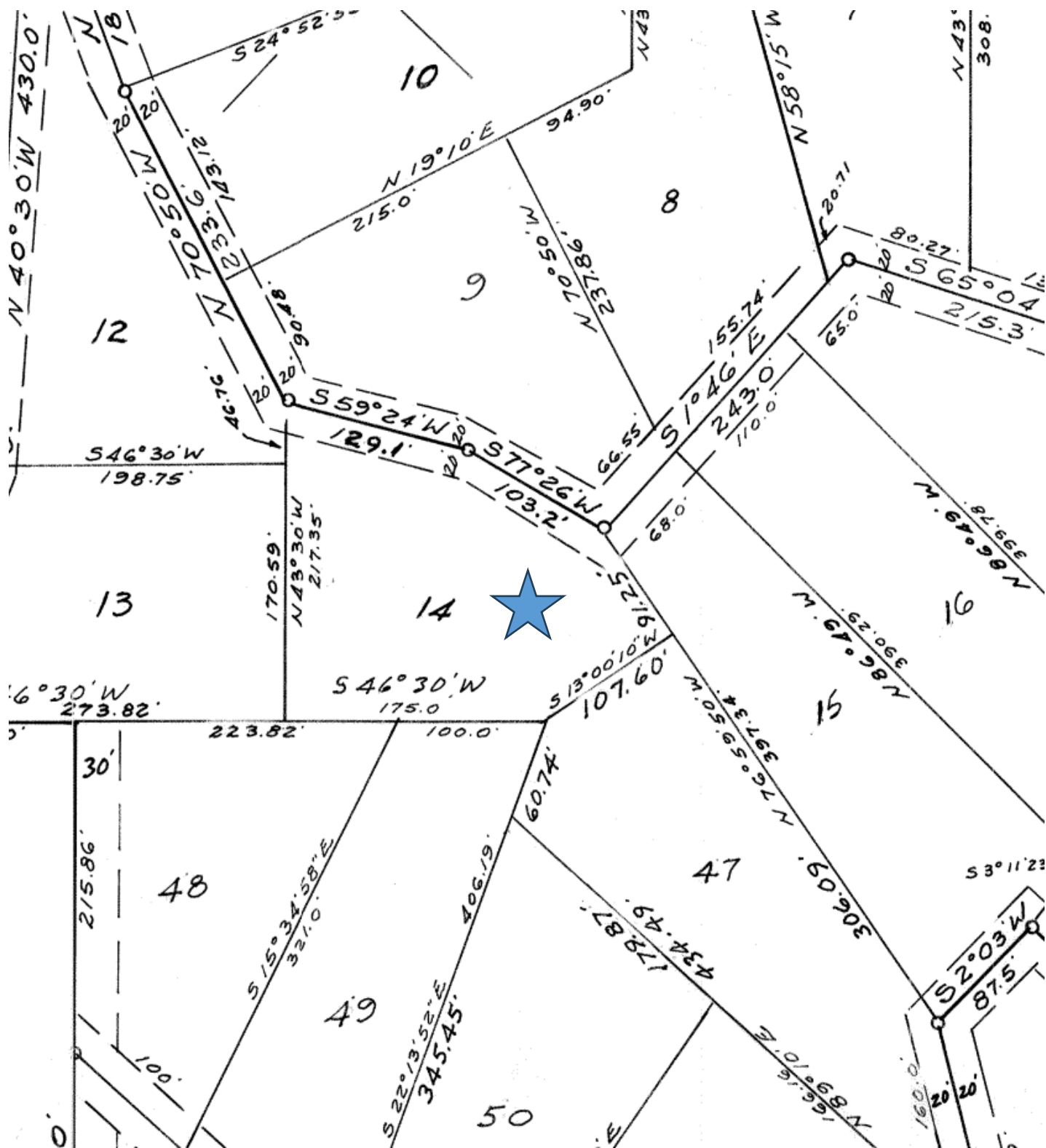
EXHIBITS

Exhibit A – Vicinity Map	11
Exhibit B – Recorded plat	12
Exhibit C – Applicants submittal.....	14

Exhibit A – Vicinity Map









Justin J. Keys
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(435) 731-9151

May 11, 2026

Appeals Hearing Officer
c/o Wasatch County Planning Department
35 South 500 East
Heber City, Utah 84032

Re: Setback Variance Request for 1709 Marmot Lane

Dear Appeals Hearing Officer:

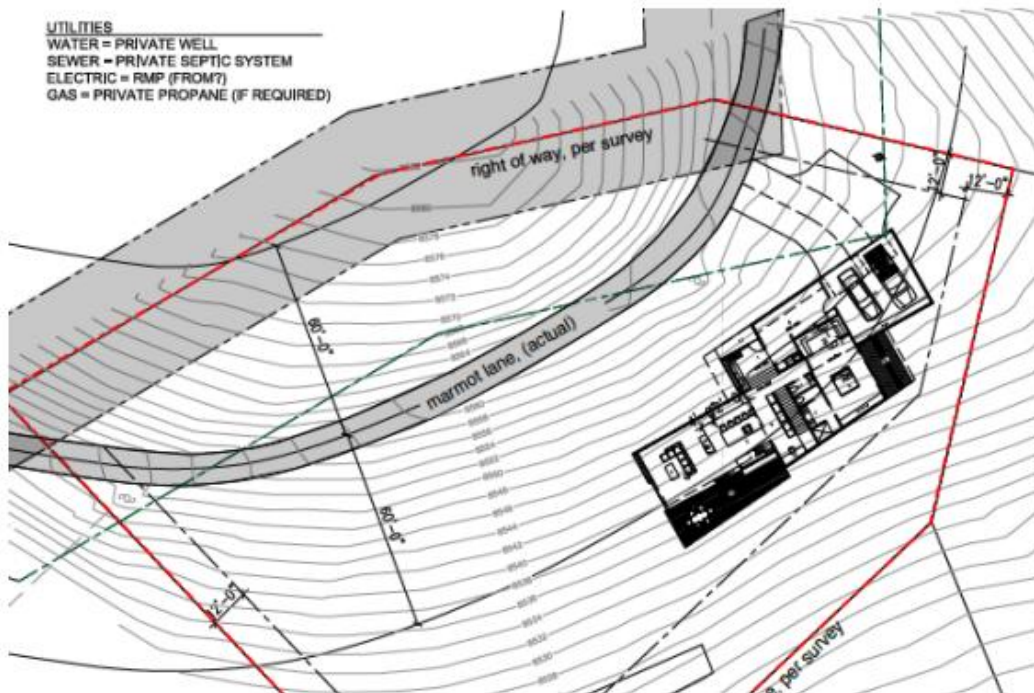
Our firm represents Susan Hawkins, who owns of 1709 Marmot Lane in Wasatch County, Utah. Mrs. Hawkins requests a front setback variance under Wasatch County Code § 16.02.08 for construction of a single-family residence on her property. Mrs. Hawkins' property is located in the Mountain (M) zone, where detached single-family dwellings are a permitted principal use.¹ The requested variance is a narrow dimensional variance from the M-zone front setback requirement so that the property may be used for the residential purpose the zone allows.

BACKGROUND

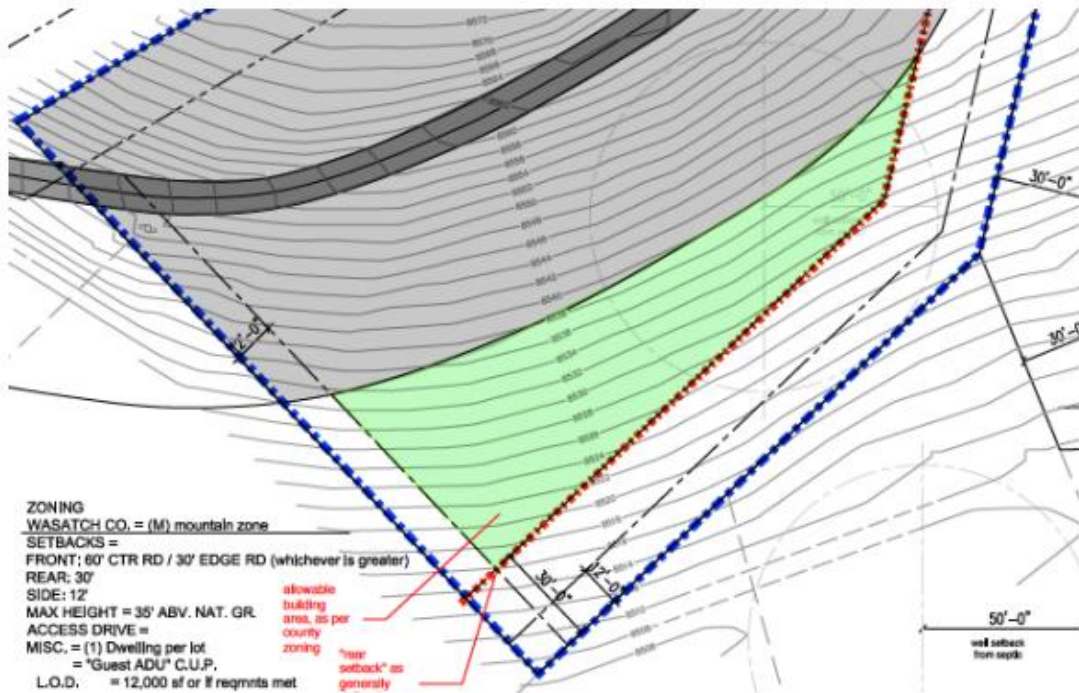
Mrs. Hawkins' property at 1709 Marmot Lane is in the Mountain (M) zone and is intended for a single-family use. The lot is one acre.

The property is effected by an unusual physical condition: Marmot Lane, as it exists on the ground, deviates from its platted location. Instead of running along the edge of the lot as planned and platted, the road was built through the middle of the lot. Because the front setback is applied from the road edge as actually located, Marmot Lane's location materially reduces and distorts the usable building area on the lot.

¹ Wasatch County Code §§ 16.09.02(B), .09.08.



Strict application of the front setback leaves only an irregular and constrained building area of approximately 6,398.7 square feet. That remnant area is not a normal or reasonably workable building envelope for a mountain residence with practical access, septic, utilities, drainage, and related improvements.



The problem is compounded by the Mountain zone's area-of-disturbance requirement. For a lot one acre or larger, the area of disturbance for an individual single-family use and any accessory structure may not exceed 12,000 square feet unless the project qualifies for a limited increase by retaining significant existing site vegetation or implementing remedial revegetation and land-reclamation improvements that substantially advance the purposes of the Mountain zone. The Code defines "Limits of Disturbance" as: "The area in which construction and development activity must be contained, including development and construction of the principal building and permitted accessory structures, play areas and on-site septic tanks, utilities, drainage and other services."²

A residence cannot be placed on this lot without accounting for the driveway, septic system, utilities, drainage, and other improvements needed to make the residence functional. If the home is forced into the only theoretical setback-compliant location, the necessary driveway and related site improvements would substantially increase the area of disturbance. The setback-compliant alternative would require approximately 14,510 square feet of disturbance, exceeding the 12,000-square-foot limit applicable to this one-acre M-zone lot.



That alternative also would not qualify for the Code's increased-disturbance exception. The purpose of that exception is to allow additional disturbance where significant vegetation is retained or where revegetation and land-reclamation improvements substantially advance the purposes of the Mountain zone.³ But the setback-compliant alternative would require a long, winding driveway and removal of substantial existing trees and foliage. That is the opposite of the

² *Id.* § 16.04.02.

³ *Id.* § 16.09.13.

condition that permits excess disturbance. Additionally, this configuration would leave no room downhill from the home for a septic drain field on the lot.

The practical effect is that, without a variance, Mrs. Hawkins is left with no viable residential use of the property. Mrs. Hawkins is requesting a setback variance, rather than an area of disturbance variance, because it better fits the intent and purposes of the M zone and allows for a more functional driveway and downhill septic system. In short, it is the narrower, more practical, and more Code-consistent form of relief. It allows one single-family residence in a zone created for mountain residential dwellings while avoiding the larger and more environmentally harmful disturbance that strict setback enforcement would require.

WRITTEN DESCRIPTION OF VARIANCE

Mrs. Hawkins' property is located in the Mountain zone where the front setback for dwellings is "a minimum of sixty feet (60') from the center of the road, or thirty feet (30') from the edge of the right-of-way, whichever is greater."⁴ Mrs. Hawkins requests a front setback variance from the requirement that the applicable setback be determined by the greater of those two measurements. Specifically, Mrs. Hawkins requests approval to measure the front setback from Marmot Lane using the thirty-foot road-edge setback, rather than the sixty-foot centerline setback, so that the residence may be located no closer than thirty feet from the edge of Marmot Lane as it exists on the ground. This variance would allow Mrs. Hawkins to build her home in a location that, if the road had been built as platted, would have complied with the sixty-foot measurement.

This is a narrow dimensional variance. It does not change the permitted use of the property, increase density, or alter the Mountain zone's general development standards except as necessary to address the unusual location of Marmot Lane on this lot. The requested relief allows the residence, driveway, septic, utilities, drainage, and related improvements to be located in a more compact and less disruptive development area, avoiding the larger area of disturbance that would result if the residence were forced into the only theoretical location satisfying the sixty-foot centerline setback.

Under Wasatch County Code § 16.02.08(E), the Appeals Hearing Officer may grant a variance only if all of the following conditions are met:

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 districts;
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and

⁴ *Id.* § 16.09.09(A).

5. The spirit of this title is observed and substantial justice done.

Each of those standards is satisfied here.

1. *Literal enforcement of the Code would cause an unreasonable hardship that is not necessary to carry out the general purpose of the Code.*

Literal enforcement of the Code would cause an unreasonable hardship that is not necessary to carry out the general purpose of the Code because the hardship arises from the particular relationship between this lot, Marmot Lane as actually located on the ground, the platted or surveyed road condition, the M-zone front setback requirement, the Mountain zone's area-of-disturbance requirement, and the lot's shape and topography.⁵ The hardship is associated with the property and arises from circumstances peculiar to the property where strict application of the front setback from Marmot Lane as it exists on the ground leaves no practical residential building site that can also comply with the Mountain zone's area-of-disturbance limitation. Nor is the hardship self-imposed or merely economic, it is not Mrs. Hawkins' fault that Marmot Lane was constructed in the wrong location.⁶

Literal enforcement would not produce a Code-compliant development plan. It would merely trade the setback issue for a larger site-disturbance problem. The only theoretical setback-compliant layout would require approximately 14,510 square feet of area of disturbance.⁷ That exceeds the 12,000-square-foot limit applicable to this one-acre M-zone lot.⁸ Since that alternative layout requires substantial clearing of existing vegetation, it does not satisfy the purpose of the exception allowing increased disturbance where significant vegetation is retained or where revegetation and land reclamation improvements substantially advance the purpose of the Mountain zone.⁹

The hardship is physical and functional, not merely economic. Without the requested variance, Mrs. Hawkins cannot make viable residential use of the lot in a manner that respects the Code's other requirements. The only theoretical setback-compliant location would require a long, winding access route, substantially greater soil displacement, significant vegetation removal, and an area of disturbance exceeding the Mountain zone's baseline limit. That result would undermine the Mountain zone's own purposes.

This hardship is not self-imposed. Mrs. Hawkins did not move Marmot Lane. She did not create the lot's unusual condition. She did not manufacture the conflict between the road's actual location, the front setback requirement, and the Mountain zone's area-of-disturbance limitation.

⁵ *Id.* § 16.02.08(E)(1).

⁶ *Id.* § 16.02.08(F).

⁷ **Exhibit A**, Alternative B Site Plan, dated April 16, 2026.

⁸ Wasatch County Code § 16.09.13(B).

⁹ *Id.* § 16.09.13(A).

She is trying to make reasonable residential use of a lot in a zone that expressly permits detached single-family dwellings.¹⁰

Nor is the hardship necessary to carry out the general purpose of the Code. The Mountain zone is intended to allow mountain residential dwellings while requiring development to remain in harmony with mountain settings and to mitigate adverse impacts.¹¹ Its purposes include preventing soil erosion generated from excessive streets and soil displacement, protecting vegetation and the aesthetic characteristics of the County's canyons and mountains, encouraging protection of wildlife, plant life, and groundwater, and ensuring appropriate access and fire and emergency access.¹² Forcing this property into a plan that exceeds the area-of-disturbance limit and removes substantial vegetation does not advance those purposes. It undermines them.

The requested setback variance is the minimum and most Code-consistent relief. It allows the residence to be placed in a compact and functional area, avoids the need for a broader and less protective variance from the area-of-disturbance requirement, preserves more existing vegetation, and better serves the purposes of the Mountain zone.

2. *There are special circumstances attached to the property that do not generally apply to other properties in the same district.*

There are special circumstances attached to the property that do not generally apply to other properties in the same district in that Marmot Lane was not placed where it was supposed to and cuts through Mrs. Hawkins's property in a location that materially reduces the lot's usable residential building area.¹³ The special circumstance deprives the property of privileges granted to other properties in the same district because elsewhere Marmot Lane is located at or near its intended location. On this lot, however, the road's actual location creates an unusual condition that does not generally apply to other properties in the Mountain zone.¹⁴

That special circumstance directly relates to the hardship. Marmot Lane cuts through the property in the wrong location, the front setback pushes the allowable building area into a constrained remnant portion of the lot. That remnant area is not large or functional enough to accommodate a normal single-family residence and the related driveway, septic, utilities, drainage, and other improvements within the Mountain zone's area-of-disturbance limits. The hardship therefore arises from the road's location on the property, not from Mrs. Hawkins's personal preferences or economic circumstances.

The road's misplacement also deprives the property of privileges granted to other properties in the same district. Other Mountain zone lots generally possess the practical ability to

¹⁰ *Id.* §§ 16.09.02(B), 16.09.08.

¹¹ *Id.* § 16.09.01.

¹² *Id.* § 16.09.01(A), (C)–(F).

¹³ *Id.* § 16.02.08(E)(2).

¹⁴ *Id.* § 16.02.08(F)(2)(b).

place a single-family dwelling, driveway, septic system, utilities, drainage, and related services within a workable development envelope. This lot does not. Strict application of the setback leaves only a constrained remnant area, and the only theoretical setback-compliant development plan would require approximately 14,510 square feet of area of disturbance, exceeding the Mountain zone's 12,000-square-foot limit for a one-acre lot.¹⁵

These special circumstances are attached to the property itself. The requested variance is therefore necessary to address a physical, property-specific condition that deprives this lot of the same practical residential use available to other properties in the Mountain zone.

3. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.*

The variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.¹⁶ The Mountain zone is expressly intended to “[p]rovide an appropriate location within the unincorporated area for the development of mountain residential dwellings.”¹⁷ Detached single-family dwellings are a permitted principal use in the Mountain zone, and the zone allows one single-family dwelling per lot.¹⁸ The relevant property right, then, is the practical ability to build and use a detached single-family residence on the property.

Without the requested variance, Mrs. Hawkins cannot make viable residential use of the lot. The only theoretical setback-compliant plan requires approximately 14,510 square feet of area of disturbance, exceeding the 12,000-square-foot limit applicable to this one-acre lot.¹⁹ And because that alternative would require clearing substantial existing vegetation, it does not satisfy the Code's exception for increased disturbance where significant vegetation is retained or revegetation and land reclamation improvements substantially advance the purpose of the Mountain zone.²⁰

The requested variance is not driven by a preference for a better view, a larger home, or a more convenient layout. It is the minimum dimensional relief necessary to allow the property to be used for the residential purpose the Mountain zone itself contemplates. This is the same substantial property right enjoyed by other properties in the Mountain zone. Other Mountainzone lots generally can be developed with one single-family dwelling and the related driveway, septic, utilities, drainage, and services within a workable development envelope. Because Marmot Lane cuts through this lot in the wrong location, Mrs. Hawkins cannot enjoy that same practical residential use unless limited setback relief is granted. The variance is therefore essential to the enjoyment of a substantial property right possessed by other properties in the same district.

¹⁵ *Id.* § 16.09.13; **Exhibit A**, Alternative B Site Plan, dated April 16, 2026.

¹⁶ *Id.* § 16.02.08(E)(3).

¹⁷ *Id.* § 16.09.01(A).

¹⁸ *Id.* §§ 16.09.02(B), 16.09.08.

¹⁹ *Id.* § 16.09.13; **Exhibit A**, Alternative B Site Plan, dated April 16, 2026.

²⁰ *Id.* § 16.09.13.

4. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*

The variance will not substantially affect the general plan and will not be contrary to the public interest because the requested relief is narrow..²¹ It does not change the use of the property, increase density, authorize a commercial use, or allow any more intensive development than the Mountain zone already contemplates. It simply allows one single-family residence in a zone where that use is already permitted.²²

The requested variance also will not harm the public interest. The proposed use remains residential. The variance is dimensional and limited. It will not increase traffic, impair public access, interfere with neighboring properties, or change the character of the area. It will allow the residence to be placed in a more compact and less disruptive location on the lot.

By contrast, strict enforcement of this provision would produce a worse result. It would force the residence, driveway, septic system, utilities, drainage, and related improvements into the only theoretical setback-compliant location, requiring approximately 14,510 square feet of area of disturbance and substantially more clearing of existing vegetation.²³ That alternative would exceed the 12,000-square-foot area-of-disturbance limit applicable to this one-acre Mountain zone lot and would require a separate, broader variance from that requirement.²⁴

The public interest is better served by granting the limited setback variance. It avoids a more disruptive development pattern, preserves more existing vegetation and natural screening, and allows the property to be used for the same single-family residential purpose already permitted in the Mountain zone.

5. *The spirit of the Code is observed and substantial justice done.*

Granting the variance is consistent with the spirit of the Code and will result in substantial justice being done.²⁵ The request is merely to be allowed to use the lesser of two setback measurement methods, both of which are allowed by the Code, rather than the greater of the two. The Mountain zone is established for development in mountainous areas where development should be in harmony with mountain settings and adverse impacts must be mitigated.²⁶ Its specific purposes include providing an appropriate location for mountain residential dwellings, preventing soil erosion generated from excessive streets and soil displacement, protecting the vegetation and aesthetic characteristics of the County's canyons and mountains, encouraging protection of

²¹ *Id.* § 16.02.08(E)(4).

²² *Id.* §§ 16.09.01(A), 16.09.02(B), 16.09.08.

²³ **Exhibit A**, Alternative B Site Plan, dated April 16, 2026.

²⁴ Wasatch County Code § 16.09.13.

²⁵ *Id.* § 16.02.08(E)(5).

²⁶ *Id.* § 16.09.01.

wildlife, plant life, and groundwater, and ensuring appropriate access and fire and emergency access.²⁷

Granting the requested setback variance observes those purposes better than strict enforcement. Without the variance, Mrs. Hawkins is left with no viable residential use of the property unless she seeks separate relief from the Mountain zone's area-of-disturbance requirement. But the area-of-disturbance requirement directly advances the Mountain zone's core purposes by limiting soil displacement, preserving vegetation, maintaining mountain character, and reducing development impacts. A limited setback variance is therefore the narrower and more Code-consistent form of relief.

Denying the variance would not meaningfully advance the Code. It would force the owner toward a design that exceeds the Mountain zone area-of-disturbance limit and removes much of the vegetation the Mountain zone seeks to protect. A limited setback variance, by contrast, allows one single-family residence in a zone created for that use while preserving more vegetation, reducing soil displacement, maintaining natural screening, and avoiding the need for a broader and less protective variance from the area-of-disturbance requirement.

Substantial justice will be done by granting the requested variance. Mrs. Hawkins is not asking for special treatment disconnected from the land. She is asking for limited relief tailored to an unusual property condition: Marmot Lane was placed through her property in the wrong location, leaving no practical residential building site under strict application of the setback and area-of-disturbance requirements. The requested variance allows the property to be used in a manner consistent with the Mountain zone and with less overall disturbance to the site.

I appreciate your time and attention to this matter and look forward to your determination. Please don't hesitate to reach out if you have any questions or concerns.

Sincerely,
HOGGAN LEE HUTCHINSON



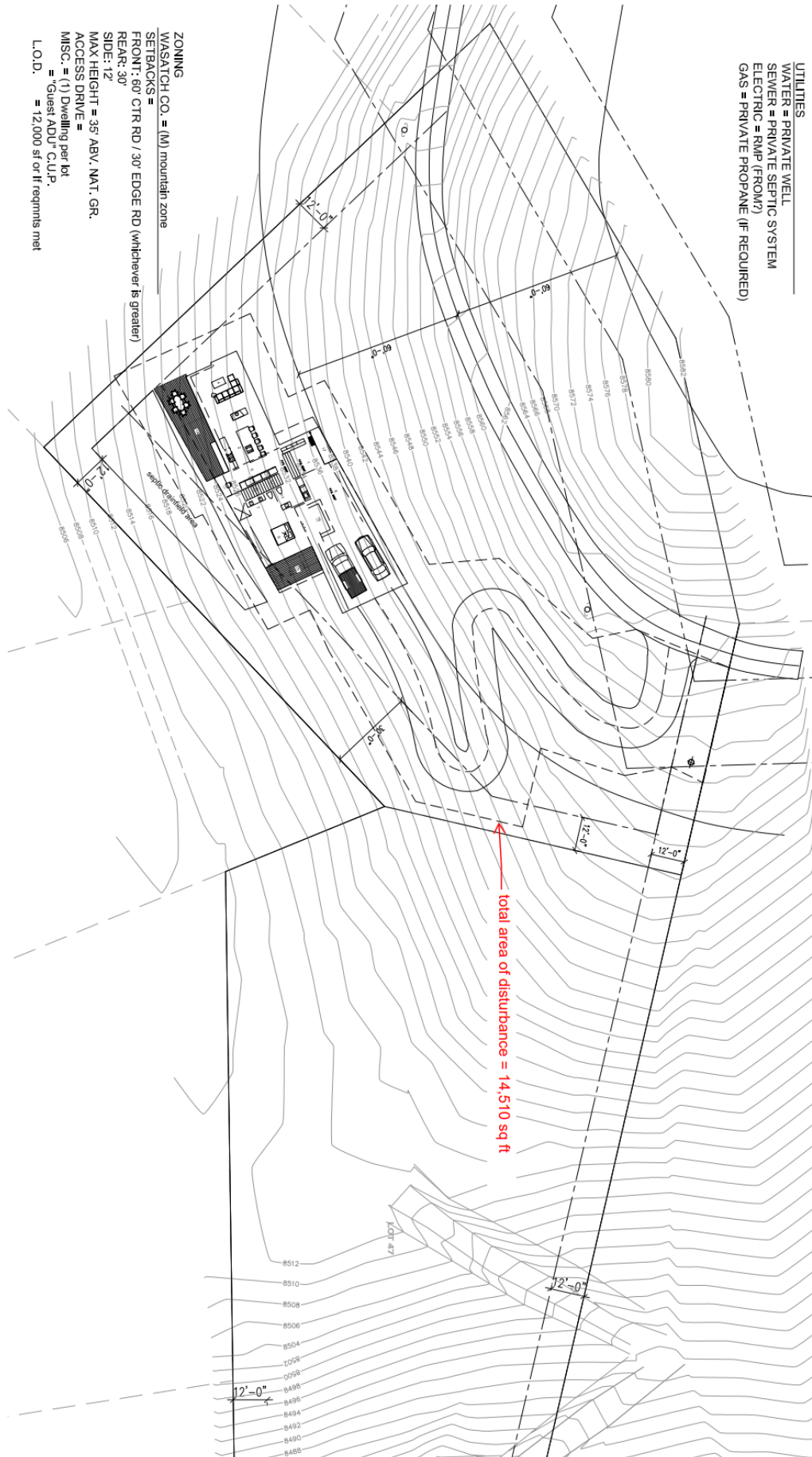
Justin J. Keys.

²⁷ *Id.* § 16.09.01(A), (C)–(F).

EXHIBIT A

UTILITIES
 WATER = PRIVATE WELL
 SEWER = PRIVATE SEPTIC SYSTEM
 ELECTRIC = RMP (FROM?)
 GAS = PRIVATE PROPANE (IF REQUIRED)

ZONING
 WASATCH CO. = (M) mountain zone
 SETBACKS =
 FRONT: 60' CTR RD / 30' EDGE RD (whichever is greater)
 REAR: 30'
 SIDE: 12'
 MAX HEIGHT = 35' ABV. NAT. GR.
 ACCESS DRIVE =
 MSC. = (1) Dwelling per lot
 L.O.D. = 12,000 sf or if reqmnts met



1 SITE PLAN

SCALE: 1"=32.0'

HAWKINS RES. - BRIGHTON ESTATES
 DESIGN DEVELOPMENT - APR 16, 2026

A901 B

SITE PLAN ALTERNATIVE "B"
 PROJECT # 25.150



EXHIBIT B

UTILITIES
 WATER = PRIVATE WELL
 SEWER = PRIVATE SEPTIC SYSTEM
 ELECTRIC = RAMP (FROM?)
 GAS = PRIVATE PROPANE (IF REQUIRED)

ZONING
 WASATCH CO. = (M) mountain zone
 SETBACKS =
 FRONT: 60' CTR RD / 30' EDGE RD (whichever is greater)
 REAR: 30'
 SIDE: 12'
 MAX HEIGHT = 35' ABV. NAT. GR.
 ACCESS DRIVE =
 MISC. = (1) Dwelling per lot
 = Guest ADU C.U.P.
 L.O.D. = 12,000 sf or if reqmnts met

1 SITE PLAN
 SCALE: 1"=20'-0"

HAWKINS RES. - BRIGHTON ESTATES
 DESIGN DEVELOPMENT - APR 16, 2026



A900 A

SITE PLAN ALTERNATIVE "A"
 PROJECT # 25.150



EXHIBIT C

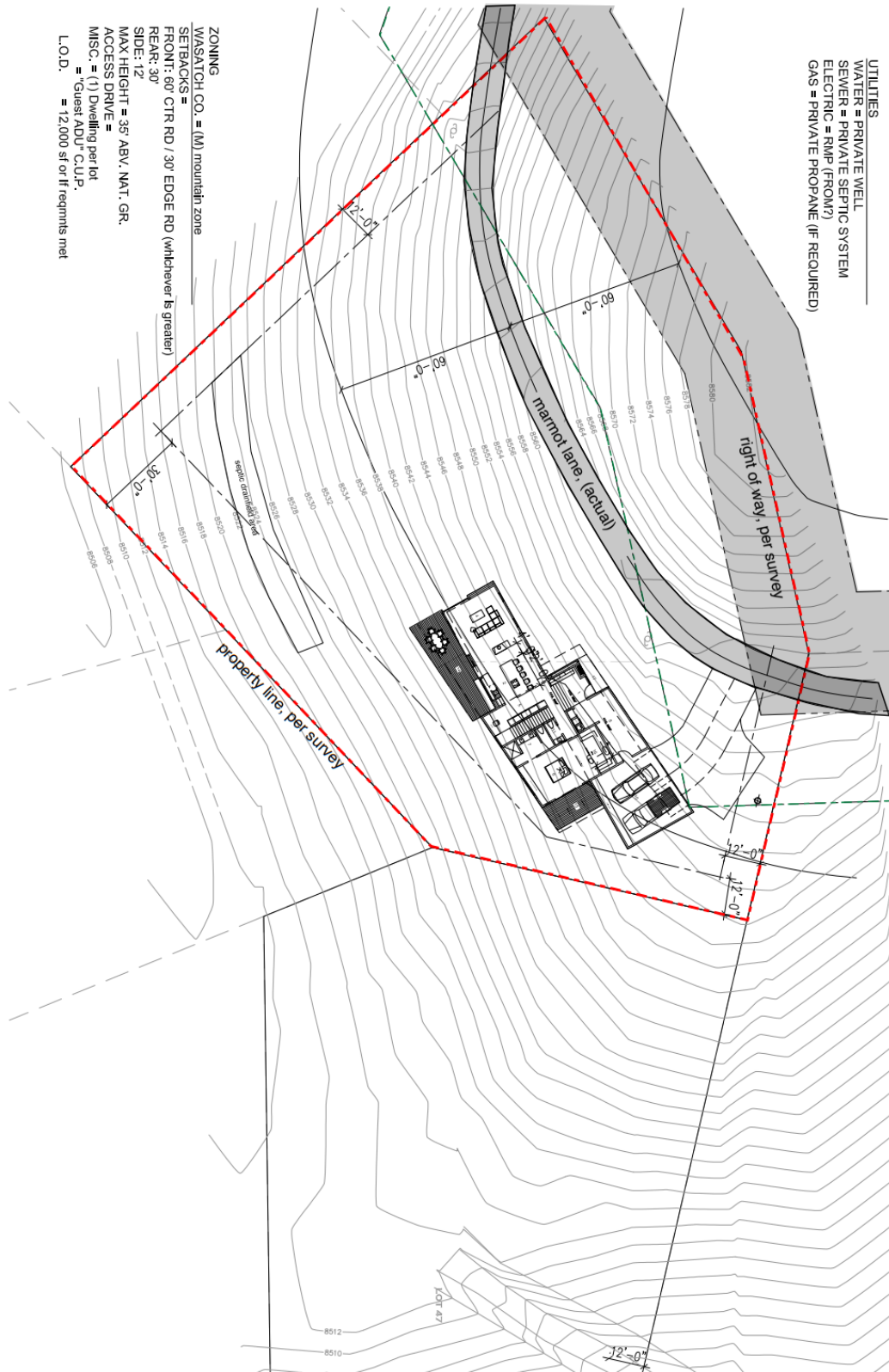
A901 A

SITE PLAN A
PROJECT # 25.150



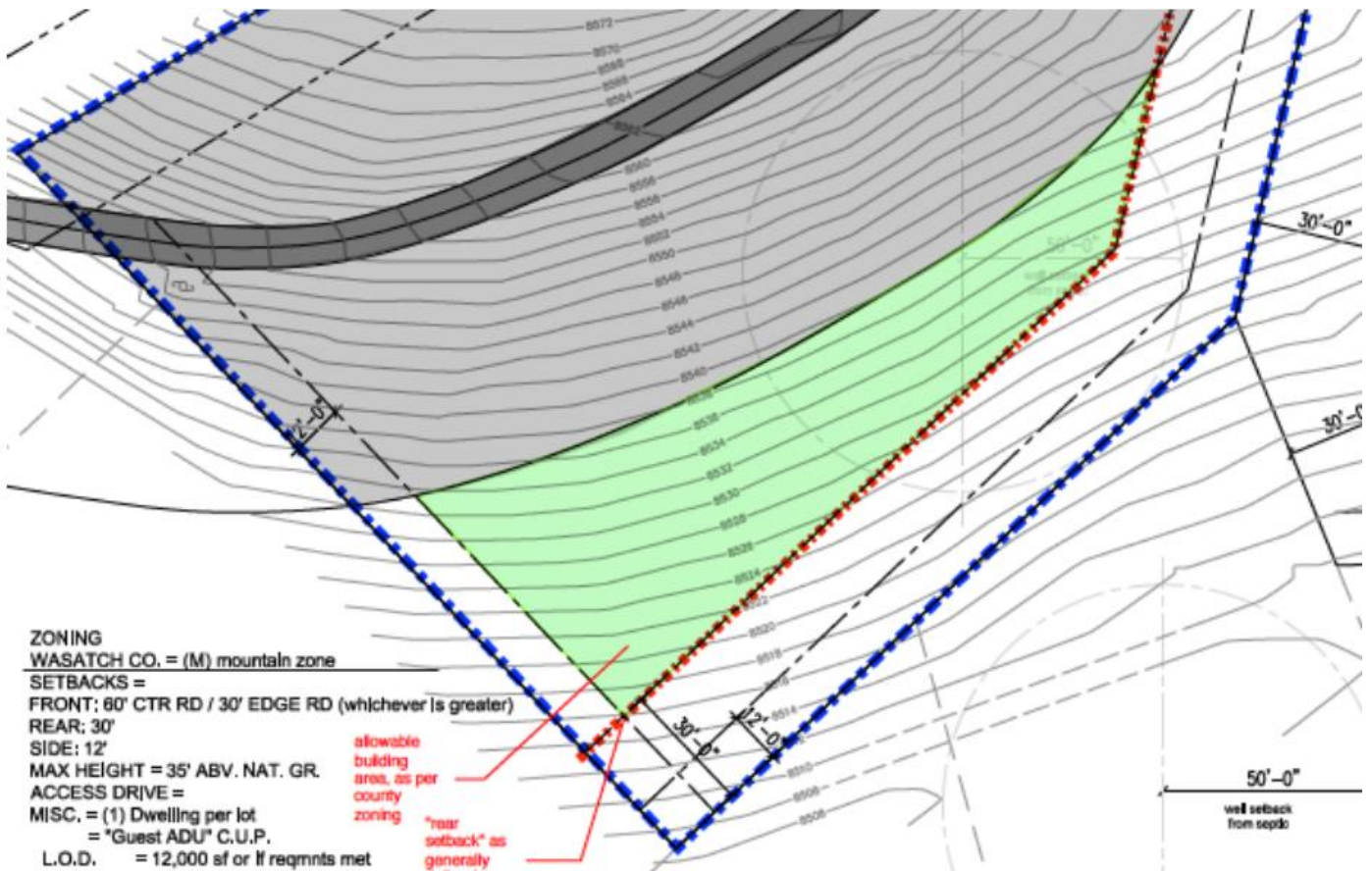
ZONING
 WASATCH CO. = (M) mountain zone
 SETBACKS =
 FRONT: 60' CTR RD / 30' EDGE RD (whichever is greater)
 REAR: 30'
 SIDE: 12'
 MAX HEIGHT = 35' ABV. NAT. GR.
 ACCESS DRIVE =
 MSC = (1) Dwelling per lot
 = "Guest ADU" C.U.P.
 L.O.D. = 12,000 sf or if reqmnts met

UTILITIES
 WATER = PRIVATE WELL
 SEWER = PRIVATE SEPTIC SYSTEM
 ELECTRIC = RMP (FROM?)
 GAS = PRIVATE PROPANE (IF REQUIRED)



UTILITIES

WATER = PRIVATE WELL
SEWER = PRIVATE SEPTIC SYSTEM
ELECTRIC = RMP (FROM?)
GAS = PRIVATE PROPANE (IF REQUIRED)



ZONING

WASATCH CO. = (M) mountain zone

SETBACKS =

FRONT: 60' CTR RD / 30' EDGE RD (whichever is greater)

REAR: 30'

SIDE: 12'

MAX HEIGHT = 35' ABV. NAT. GR.

ACCESS DRIVE =

MISC. = (1) Dwelling per lot

= "Guest ADU" C.U.P.

L.O.D. = 12,000 sf or if reqmnts met

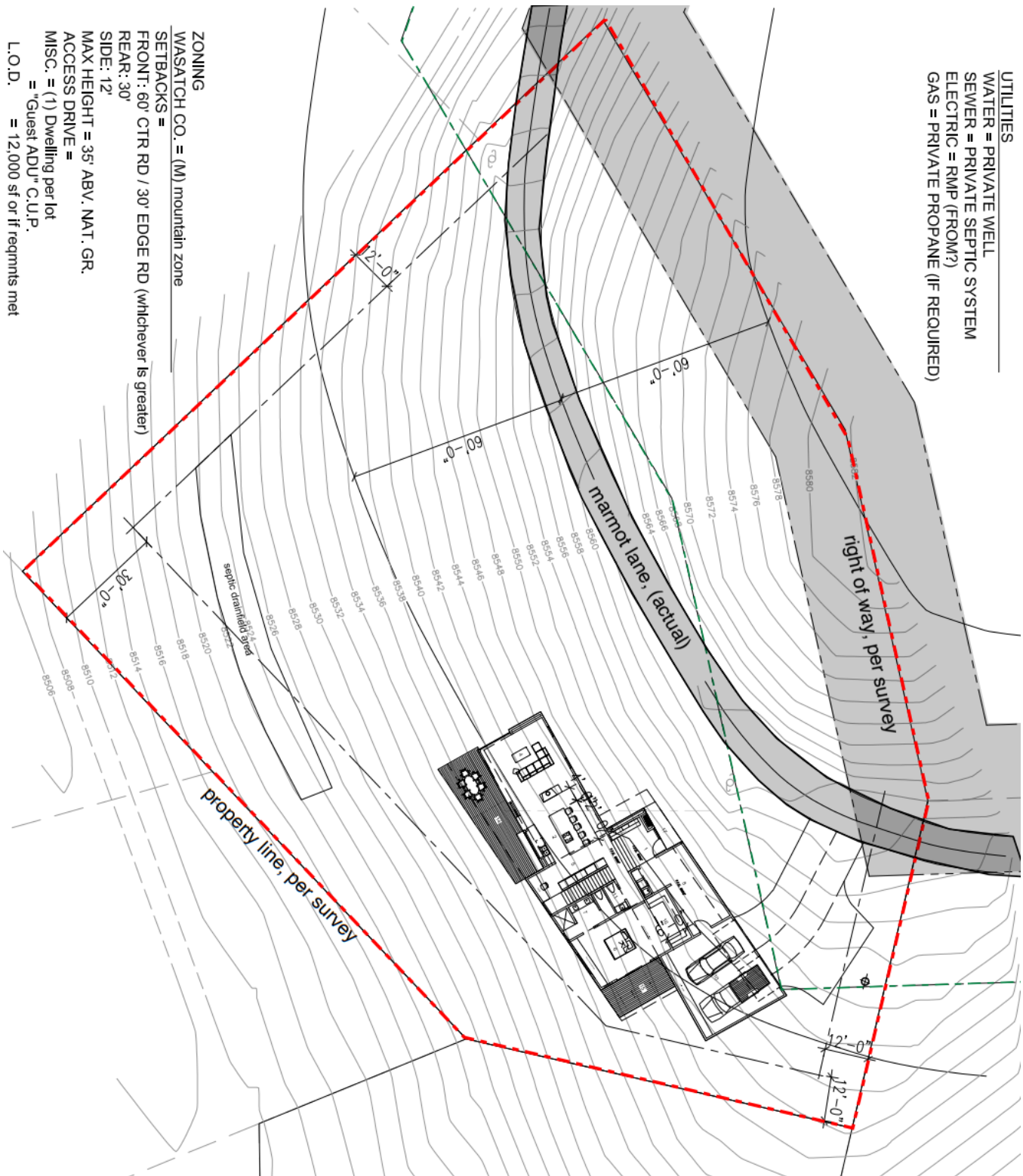
allowable
building
area, as per
county
zoning

"rear
setback" as
generally

50'-0"
well setback
from septic

Exhibit C – Applicant Plans

UTILITIES
 WATER = PRIVATE WELL
 SEWER = PRIVATE SEPTIC SYSTEM
 ELECTRIC = RMP (FROM?)
 GAS = PRIVATE PROPANE (IF REQUIRED)



ZONING
 WASATCH CO. = (M) mountain zone
 SETBACKS =
 FRONT: 60' CTR RD / 30' EDGE RD (whichever is greater)
 REAR: 30'
 SIDE: 12'
 MAX HEIGHT = 35' ABV. NAT. GR.
 ACCESS DRIVE =
 MISC. = (1) Dwelling per lot
 = "Guest ADU" C.U.P.
 L.O.D. = 12,000 sf or if reqmnts met

Meeting Date: June 23, 2026
Presenter: Doug Smith
Requested Time: 30 Mins

Department: Planning
Applicant: Cody Johnson

Item Title:

Cody Johnson requests a Variance to the setback requirement for lots 3, 4 and 5 of the Stony Oaks Subdivision. Said lots have homes in various stages of construction. The variance, if approved, would allow a lesser setback for all three homes from the setback required by code sections 16.08.08(A) and 16.21.07(C). The lots are located at 5373 East 1200 South, 5333 East 1200 South and 5281 East 1200 South in the RA-1 zoning district (Variance-26-002)

Issue:

Whether the applicant meets the standards for a variance to Wasatch County Code (WCC) section(s) 16.08.08 and 16.21.07(C) which regulate front setback requirements in the RA-1 zoning district.

Background:

The applicant is seeking a variance from Wasatch County Code §16.08.08(A) and 16.21.07(C) that regulates setbacks.

Proposed Motion:

Based on the analysis and findings in this staff report, Planning Staff cannot recommend that the application meets the standards for approval for the variance request to decrease the front setback for the three lots noted above. The County leaves it up to the Appeals Hearing Officer to determine whether the applicant met their burden for the proposed variance.

Impact:

N/A

Attachments:

1. AHO Staff Report 06-23-2026 – Item 2 – Stony Oaks
2. Stony Oaks – Supplemental_Brief__Approved_Plan_Note



Item 2 – Stony Oaks Variance request from code sections 16.08.08(A) and 16.21.07(C) Regarding front setbacks for lots 3, 4 and 5 of the Stony Oaks Development.

Project: PLAN-var 26-002 | Lots 3, 4 and 5 Stony Oaks
Variance request

Meeting Date: 23 June 2026

Report Date: 16 June 2026

Report Author: Doug Smith, Planning Director

Council Action Required: No

Type of Action: Quasi-Judicial

Current Legal Use: Single-family homes

Applicant: Cody Johnson

Property Address: 5373 E, 5333 E and 5281 E 1200
South

Parcel No(s): 22-0584, 22-0585, 22-0586

Zoning Designation: RA-1

Acreage: Each Lot is 1.06 acres

Density: 1 unit per acre

Code Section: 16.08.08(A) and 16.21.07(C)

DETERMINATION ISSUE

Whether the applicant meets the standards for a variance to Wasatch County Code (WCC) section(s) 16.08.08 and 16.21.07(C) which regulate front setback requirements in the RA-1 zoning district. This variance request is a determination made by the Appeals Hearing Officer per WCC 2.02.02.

RECOMMENDATION

Based on the analysis and findings in this staff report, Planning Staff cannot recommend that the application meets the standards for approval for the variance request to decrease the front setback for the three lots noted above. The County leaves it up to the Appeals Hearing Officer to determine whether the applicant met their burden for the proposed variance.

above, 30' from the edge of the right-of-way or 60' from the center line of the road, whichever is greater. The application has not addressed the requirement to be 60' from center line of the road in the material submitted. A measurement using the survey provided by the applicant and Blue Beam shows that the homes are approximately 43-47 feet from the center line of the road.

Below are several issues that are pertinent to understanding the variance application submitted:

1. The building permits were issued for lots 3 and 4 with the stamps below. Lot 5 for some reason did not have the stamps on the approved plans:

Actual construction will comply
with applicable local ordinances
and building codes

Height of structure and setbacks, will be strictly
enforced as per the approved plans.

Sidewalks must be in good repair to obtain
a certificate of occupancy.

Set Backs

It is the responsibility of the contractor/property owner to verify
setback compliance to the approved plans

2. The recorded plat shows the right-of-way labeled as the "public road". The snip below is from the recorded plat. The applicant erroneously thought that the edge of the asphalt was the edge of the right-of-way. It is not. The County cross section is typically a 30' asphalt road within a 60' right-of-way. The property line is actually 9' from the edge of asphalt as can be seen from the county cross section below which is the same cross section used for 1260 South and includes the trail on the south side of the road. The front setback for all three homes was taken from the edge of the road not from the front property line which is the edge of the right-of-way. Surveys were not done prior to the inspections.

- The burden of proof that an unreasonable hardship exists is the responsibility of the applicant.
- The request is to allow construction to continue on three homes that are built too close to the road and do not meet the requirement to be 60' from the center of the road or 30' from the edge of the right-of-way whichever is greater.
- The applicant claims that the plat which states, "public road" instead of "right-of-way" was misleading thinking that the setback was measured from the edge of the road.
- The applicant claims that the County should have caught the error as part of the inspections that were done.
- A variance is not intended to deviate from code requirements simply because a code requirement is not understood or agreed with by an applicant, administrative, or quasi-judicial body. If the individual/body feels that the code should be inapplicable, the individual/body should make a request to have the County Council as the legislative body consider amending the law. If the legislative body changed the law, it would have to change the general applicability of the law, and not just the law as it applies to the applicant.

STAFF ANALYSIS

– VARIANCE PROCEDURE –

Wasatch County Code 16.02.08(E) outlines the findings that are required in order for the Board of Adjustment to approve a variance. Per paragraph C of the section, the *"applicant for a variance shall bear the burden of proving that all of the foregoing conditions are satisfied."* The required findings are as follows (Applicant and Staff analysis responses are provided in **bold**):

E. Requirements For Granting Variance: The board of adjustment may grant a variance only if all of the following conditions are met:

- 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;*

Applicant Response: A literal enforcement of §16.08.08 would require physically relocating three substantially completed homes. These are three large, two-story framed structures built over crawlspace foundations. Lots 4 and 5 in particular feature homes approximately 120 feet in width. Lot 5 has already progressed through seventeen inspections and reached the 4-way inspection stage with fully completed electrical, mechanical, and plumbing rough-ins.

The engineering complexity of attempting to relocate homes of this scale cannot be overstated. Relocation would require, at minimum: (1) lifting entire two-story framed structures using specialized heavy-lift equipment that is extremely rare and requires specialized training; (2) for the 120-foot-wide homes on Lots 4 and 5, either sectioning the structures into smaller segments or employing world-class lifting and moving technology, as moving a home of that width intact presents extraordinary engineering challenges; (3) demolishing the existing crawlspace foundations; (4) excavating and constructing entirely new foundations at revised locations; (5) resetting the lifted structures onto the new foundations; and (6) substantially reworking or completely replacing the mechanical, electrical, and plumbing systems, particularly on Lot 5 where these systems are already fully roughed in.

Due to the size and construction stage of these homes, any attempt to physically lift and relocate them would present significant safety risks. The engineering complexity involved is extraordinary

and wholly disproportionate to a deficiency of less than 10 feet that arose from good-faith reliance on county-approved construction documents.

The hardship is not merely economic; it is a physical and practical impossibility under any reasonable assessment. This hardship is not necessary to carry out the general purpose of the setback ordinance. The homes remain set back approximately 30 feet from the actual paved road surface, which is the functional road corridor. The deficiency exists only in relation to the platted right-of-way boundary, not in relation to any improved infrastructure, utility installation, drainage facility, or maintenance area.

Staff Response: Literal enforcement would most likely require either demolition of the structures or, as mentioned above, moving the structures and pouring a new foundation. It will also interfere with the construction loan and occupancy. Additionally, many building inspections were performed, including a footing inspection that determined that the footings were OK, before any vertical construction was done. County code clarifies that in order to find a ‘unreasonable hardship’, the hardship cannot be self-imposed or economic. WCC 16.02.08(F)(2). While the owner did not choose the ‘public road’ language on the plat that he claims mislead him into thinking he was to measure from the road, as opposed to the ROW, this explanation is hard to give much weight to. The Wasatch County Code, CLUDMA, and the Utah Transportation Code all define a *road* and a *street* in a way that includes the *right of way*. WCC 14.02.01; UCA 17-79-102(68); UCA 72-1-102(11); UCA 72-3-103(1) & (2). Further, the building permits warned that it was the responsibility of the lot owner to verify setback compliance. The inspections performed by the building department did not include this issue, but warned that this was the responsibility of the owner to verify. Finally, the plans themselves show a 60’ ‘public road’ that the 30’ setback is measured from. The paved surface of the road is only 30’. From their own approved plans, the owner reasonably should have known they were to measure from the 60’ public road, right of way, or street, as opposed to the 30’ pavement surface. Due to these issues, staff cannot recommend that this issue is not self-imposed.

Staff struggles to see how this meets the statutory requirements for an ‘unreasonable hardship’ because the hardship appears to be self-imposed.

2. *There are special circumstances attached to the property that do not generally apply to other properties in the same districts;*

Applicant Response:

1. County-Approved Site Plans Created a Reasonable Misunderstanding of the Setback Line.

The approved site plans for Lots 3, 4, and 5 depicted the road area in a manner that created a reasonable but incorrect understanding of where the setback should be measured from. The plans labeled the frontage as “1260 SOUTH (PUBLIC ROAD)” and never used the term “right of way.” The plans showed a 60-foot area identified as a public road. A reasonable contractor reviewing those approved plans would conclude, as the Applicant’s contractors did, that the depicted road area defined the measurement point for the setback. This circumstance is specific to these lots and these approved plans. Other properties in the district were not built in reliance on these particular plans and do not share this specific source of confusion.

2. The Undisclosed Temporary Turnaround Easement on Lot 5.

The survey performed by Chad Anderson revealed a temporary turnaround easement encumbering Lot 5 that the Applicant was not previously aware of. This is an additional encumbrance on this specific lot that neighboring properties in the subdivision and the broader district do not carry. The turnaround easement further constrains how the lot can be used and adds complexity that is unique to this property.

3. Physical Placement of Three Substantially Completed Structures.

The physical placement of three substantially completed homes creates a circumstance that is now fixed and specific to these lots. The structures exist. They cannot practically be relocated. The question is no longer one of prospective planning but of how to address an existing condition in a way that is reasonable and consistent with the ordinance's purposes. These structures, built over a six-month period with county knowledge and approval at each stage, represent a physical condition unique to these lots.

4. The Asymmetric Right-of-Way Configuration.

The 60-foot right of way for 1260 South is not centered on the paved road surface. Approximately 20 feet of the right of way extends south of the pavement, while only approximately 10 feet extends north onto the frontage side of these lots. This asymmetric configuration means that the actual setback measured from the paved road (the functional road corridor) is approximately 30 feet, while the setback measured from the platted right-of-way boundary is significantly less. This disparity between the functional road corridor and the platted right-of-way boundary is a circumstance specific to the configuration of these particular lots along this particular stretch of 1260 South.

Staff Response: Staff can see how the labeling on the plat could be confusing, but cannot agree that the confusion is reasonable considering the County Code, CLUDMA, and the Utah Transportation Code all make a right-of-way and a public road synonymous. The temporary turn-around is also shown on the recorded plat. Special circumstances might be considered that the houses are substantially complete, received all the necessary inspections required by code and the plat note that states, "public road" is misleading. However, the staff struggles to see how this meets the statutory requirements. The County code clarifies, that in order to meet the 'special circumstances' test, the special circumstances must relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same district. WCC 16.02.08(F)(2)(b). These lots do not appear to be deprived of the right to build single family homes that is granted to other properties in the district. The partially constructed homes were built in a way that did not comply with the approved plans or the county code.

3. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same districts;*

Applicant Response:

Without a variance, the Applicant cannot obtain certificates of occupancy for three homes that were built in reliance on county-approved plans and that passed all requested inspections over a period of approximately six months. The Applicant would be left with three substantially completed but uninhabitable structures and no viable path to complete or occupy them.

That outcome would deprive the Applicant of the same fundamental property right that every other property owner in the RA-1 district enjoys: the ability to build and occupy a home on their lot in accordance with plans the County approved. Every neighboring property owner in the Stony Oaks Subdivision and the broader RA-1 zone possesses the right to build a home, obtain a certificate of occupancy, and use their property for residential purposes. Without this variance, the Applicant alone would be denied that right, despite having followed the county's own approved plans.

Staff Response: It is true that the ability of the applicant to use the property for its permitted use (a residence) is substantially interfered with if they have to tear down or move a substantially complete home and rebuild it in the correct location. However, this is for a limited time. The lots remain developable for single family residences. The County struggles to support that a failure of the owner to follow the code and the notes on the building permit gives rise to substantially interfering with their ability to use the property for its permitted use. The use permitted is a right to use the property in compliance with the code, the plat and the building permit. The county struggles to see how a property owner can build something that does not follow the code or the building permit, and then be allowed to use it because its already partially complete.

4. *The variance will not substantially affect the general plan and will not be contrary to the public interest;*

Applicant Response: Granting this variance will not substantially affect the Wasatch County General Plan, will not contradict the General Plan, and will not be contrary to the public interest. The General Plan contemplates residential development in the RA-1 zone, and these three homes are fully consistent with that designation. The variance conforms to the General Plan because it permits the completion of residential homes on residentially zoned lots within an approved subdivision, which is precisely the type of development the General Plan envisions for this area.

The homes do not interfere with any current road operations, utility access, drainage, snow storage, or maintenance along 1260 South. They are set back approximately 30 feet from the paved road surface, which is the functional road corridor. The deficiency exists only in relation to the platted right-of-way boundary, not in relation to any improved infrastructure.

Several specific facts demonstrate that the variance is not contrary to the public interest:

- **Road Operations:** The homes do not impede vehicular traffic, sight lines, or road maintenance. The paved road is approximately 30 feet wide, and the homes are approximately 30 feet from the pavement edge.
- **Utilities:** Regular utilities are installed in the area, including electrical transformers, electrical lines, water, sewer, gas, and likely internet lines. Some utilities are located on the Applicant's property within existing 10-foot utility easements inside the property boundaries, while others are located within the approximately 10-foot strip of right of way north of the pavement. The Applicant is willing to record additional easements to ensure the County's continued access to all utilities.
- **Drainage:** On the south side of 1260 South, there is a culvert immediately after the road, followed by an asphalt sidewalk. On the north side (the Applicant's side), there is no culvert and has not been one since the property was acquired. The Applicant did not remove any culvert during construction. There was no drainage infrastructure on this side to disturb. The grade transitions directly and flatly from the road surface to the property.
- **Snow Storage:** The flat grade on the north side of the road provides adequate area for snow storage operations. The homes do not encroach into any area currently used for snow storage.

- **Neighborhood Character:** The homes are consistent in scale, style, and placement with other residential construction in the Stony Oaks Subdivision and the broader RA-1 zone.
- **Precedent:** This variance is limited to Lots 3, 4, and 5 under the specific and unrepeatable circumstances described herein. It does not seek a broader reduction of the setback standard for future construction and will not create a precedent applicable to other properties.

The Applicant is prepared to offer conditions as part of any variance approval, including recorded easements preserving the County's full rights for utilities, drainage, culverts, snow storage, grading, access, and maintenance over the affected area, as well as no-build restrictions preventing any additional structures from being placed closer to the road than the existing homes.

Staff Response: Though the homes will be closer to the ROW than is desirable, the over 20' distance between the home and the ROW, and the 30-foot distance between the edge of asphalt and the homes will not cause any safety issues, nor interference with utilities as long as there can be provisions for the temporary turn-around to be installed and culverts under driveways as per the recommended condition. The General plan allows single family residences in this area, and the order of the subdivision and the county will not be substantially interfered with by this deviation from the setback in these three houses.

5. *The spirit of this title is observed and substantial justice done;*

Applicant Response: The spirit of the setback requirement is to ensure adequate separation between structures and the public road corridor, protecting public safety, road operations, utility access, drainage, snow storage, and future infrastructure needs. That spirit is observed here because the homes remain approximately 30 feet from the paved road surface and do not interfere with road operations, utilities, drainage, snow storage, maintenance, visibility, or public access. The deficiency exists only because the platted right of way extends beyond the improved road area, not because the homes were placed in a manner that creates a public safety or infrastructure concern.

Substantial justice is served by granting the minimum relief necessary for the existing homes while preserving the County's functional interests through recorded easements and conditions. The requested variance is limited to Lots 3, 4, and 5 and does not seek a broader reduction of the setback standard for future construction. The Applicant is willing to accept reasonable conditions to ensure public protection and that substantial justice is ultimately achieved.

Staff Response: The spirit of the ordinance is observed because overall, the houses comply with the land use ordinance. There is less than a 10' deviation from the required setback in a zone that has larger 30' setbacks, and where the houses are relatively far apart, making these setback variances not have as much of an impact on the neighborhood or the community as they would have in more restricted zones.

The County leaves it up to the hearing officer to determine if Substantial justice is done. The builder would be required to bear the construction delays and the costs of rebuilding the home. If there was any evidence this was intentional, or that there was some personal interest in violating the ordinance for personal benefit, this would clearly be against the interests of justice. With this particular situation we have a somewhat minor mistake, that will cost huge amounts of money and delays to rectify but will only have a small impact on the county or the subdivision to leave as is as long as, as mentioned, the temporary turnaround condition can be met.

– CONCLUSIONS –

A variance is not a discretionary decision. State and County codes permit the Hearing Officer “grant a variance *only if*” certain criteria are met. Those criteria must be tied to an unreasonable hardship that cannot be self-imposed or economic. In hearing a variance request, the applicant bears the burden of proving that the hardship exists and that the criteria for granting a variance can be met. This is difficult because there seems to be a hardship that on some levels can be considered self-imposed. The staff cannot recommend that the special circumstances stated with the provided documentation from the applicant and the stated hardship do meet the threshold necessary to grant a variance, but leaves these issues to the judgment of the hearing officer.

RECOMMENDED DECISION

The County staff does not make a recommendation on this application. Staff has prepared two set of findings, to help the hearing officer decide.

If the hearing officer decides to Approve item 2:

– FINDINGS –

1. Wasatch County Code (WCC) §16.09.09(A) and 16.21.07(C) requires a front setback for a dwelling to be 60’ from the centerline of the road or 30’ from the edge of the right of way whichever is greater.
2. The applicant is requesting that the setback is allowed to be 30’ from the edge of the road not the edge of the right-of-way and not 60’ from the center of the road.
3. The property was platted in 2024.
4. The plat labels the right-of-way as the “Public Road” the applicant claims created some confusion that the road (edge of asphalt) is where the setback should be measured from.
5. The three homes were built into the 30’ setback. Lot 3 is 8.53’ into the setback, Lot 4 is 9.39 feet into the setback and Lot 5 is 7.39 feet into the setback and 21.77 feet into the temporary turnaround.
6. All three homes are on lots that are over 1-acre in size.
7. The applicant applied for and received building permits with a setback requirement of 30’ from the public road and 60’ from the center of the road whichever is greater.
8. The home on lot 5 is built substantially into the temporary turn-around at the end of what is now a dead-end street but is intended to be a through street.
9. There are substantial notes on the building permits stating the setbacks must be verified by the builder/owner.
10. All three homes are substantially complete.
11. All homes are over 5,500 square feet in size.
12. All three homes had footing and foundation inspections as well as other subsequent inspections.
13. The applicants’ responses to the findings required in Section 16.02.08 of the current Wasatch County Code claim they can satisfy the findings required in order for a variance to be granted.
14. WCC §16.02.08(F)(2)(b)(2) requires that the special circumstances of a property must be specifically related to the hardship and deprive the property of privileges granted to other properties in the same district.
15. A variance request is not a discretionary decision afforded by a jurisdiction. The County must follow state code and must satisfy all required findings in order to grant a variance.

16. WCC §16.02.08(F)(2)(a) precludes the ability of granting a variance if the hardship is self-imposed or economic. the hearing officer believes that the hardship, although self-imposed to some level, was an honest mistake compounded a note on the plat, and a number of successful inspections performed by the County.
17. It may be considered a special circumstance because of the substantial completion of the structures.
18. The applicant, in the hearing officer's opinion, has met the burden of proof for criteria #4 and #5 that the public interest is protected and that the spirit of the title is observed.

– *CONDITIONS* –

1. Prior to occupancy on any of the three units construct a temporary turn-around either on-site, and provide a recorded and executed easement on lot 6, or by constructing an offsite turn-around, and providing a recorded and executed easement on the property to the east and reconstruct the drainage swale per county standards. Driveways must have culverts to allow continuous unobstructed flow of stormwater in the drainage swales. Approval of the turn-around and the easement form must be granted by the engineering department.

If the hearing officer decides to Deny item 2:

– *FINDINGS* –

1. Wasatch County Code (WCC) §16.09.09(A) and 16.21.07(C) requires a front setback for a dwelling to be 60' from the centerline of the road or 30' from the edge of the right of way whichever is greater.
2. The applicant is requesting that the setback is allowed to be 30' from the edge of the asphalt, not the edge of the right-of-way and not 60' from the center of the road.
3. The property was platted in 2024.
4. The plat labels the right-of-way as the "Public Road". Public road is an understood term in the development industry. Further, the Wasatch County Code, CLUDMA, and the Utah Transportation Code all define a *road* and a *street* in a way that includes the *right of way*. WCC 14.02.01; UCA 17-79-102(68); UCA 72-1-102(11); UCA 72-3-103(1) & (2).
5. The three homes were built into the 30' setback. Lot 3 is 8.53' into the setback, Lot 4 is 9.39 feet into the setback and Lot 5 is 7.39 feet into the setback and 21.77 feet into the temporary turnaround.
6. All three homes are on lots that are over 1-acre in size.
7. The applicant applied for and received building permits with a setback requirement of 30' from the public road and 60' from the center of the road whichever is greater. The building permits all reflect a 60' public road, while the asphalt is only 30' in width, showing that even if they did not understand the term, they should have been aware that the public road was 60' in width, as opposed to the 30' width of the asphalt.
8. The home on lot 5 is built substantially into the temporary turn-around at the end of what is now a dead-end street but is intended to be a through street.
9. There are substantial notes on the building permits stating the setbacks must be verified by the builder/owner.
10. All three homes are substantially complete.
11. All homes are over 5,500 square feet in size.

12. All three homes had footing and foundation inspections as well as other subsequent inspections, but all but one of the three building permits gave notice that the contractor/ property owner was required to verify the setbacks. The county building department does not verify this as part of their inspections, in part, because it is difficult to measure this while a lot is heavily disturbed by the excavation and construction work being done on site.
13. The building permit for Lot 5 that did not have this additional notice is actually the one with the most significant safety concern, due to the temporary turnaround that was noted on the plat, and which makes the setback violation more significant.
14. The applicants' responses to the findings required in Section 16.02.08 of the current Wasatch County Code claim they can satisfy the findings required in order for a variance to be granted.
15. WCC §16.02.08(F)(2)(b)(2) requires that the special circumstances of a property must be specifically related to the hardship and deprive the property of privileges granted to other properties in the same district. The special circumstances here are the direct result of the contractor/ property owner failing to verify location of the public road, and do not prevent future use of the property in a manner consistent with the residential uses allowed on the property.
16. A variance request is not a discretionary decision afforded by a jurisdiction. The County must follow state code and the applicant must satisfy all required findings in order to grant a variance.
17. WCC §16.02.08(F)(2)(a) precludes the ability of granting a variance if the hardship is self-imposed or economic. The primary impact of coming into compliance will be economic, as the homes will need to be placed in the correct location at considerable expense, but a C of O has not been issued for the homes. The applicant has failed to prove the hardship was not self-imposed. The contractor/ owner failed to survey the property to verify the setback, and their primary explanation is to assert the term 'public road' is vague, whereas the industry, County Code, and state code are all consistent in defining a public road to be the same as a right of way.
18. The public interest is protected and that the spirit of the title is observed by having the homes built in a manner that comply with the standard setback requirements applicable throughout the zone, and not allowing the failure of an applicant to follow their approved plans to serve as a basis for a variance.
19. The applicant has not met their burden of proving all of the requirements for granting a variance have been met.

POSSIBLE ACTIONS

The following is a list of possible motions the Appeals Hearing Officer can take. If the action taken is inconsistent with the recommended findings listed in the staff report, the Appeals Hearing Officer should state new findings.

1. Approve. This action may be taken if the Appeals Hearing Officer finds that the variance request meets the necessary variance criteria found in State Law and that the request is consistent with Wasatch County Code and all other applicable ordinances.
2. Approve with Conditions. This action can be taken if the Appeals Hearing Officer feels that impacts of the variance request can be mitigated to be compliant with Wasatch County Code and State Law. ****This action would be consistent with the first analysis. ****
3. Deny. This action can be taken if the Appeals Hearing Officer finds that the proposal does not meet the necessary criteria found in State Law and Wasatch County Code. ****This action would be consistent with the second analysis. ****

4. Continue. This action can be taken if the Appeals Hearing Officer needs additional information before making a recommendation, if there are issues that have not been resolved, or if the application is not complete.

NEXT STEPS

If the requested variance is approved, the applicant could proceed with the removal of the red tag on the three lots and building the temporary turnaround prior to occupying any of the structures.

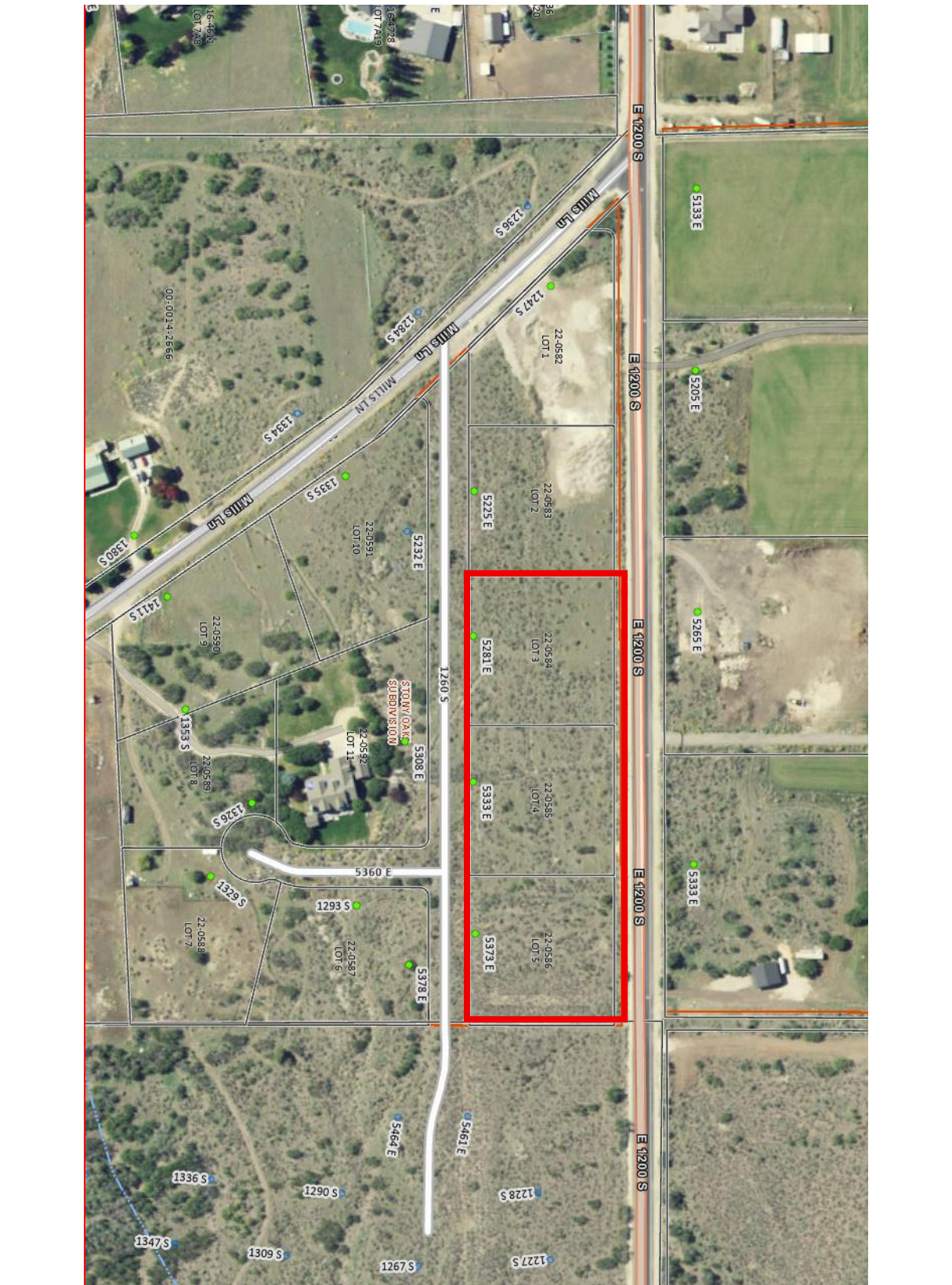
If the requested variance is denied, the applicant would need to remove the homes and comply with the setback requirements, or come up with new designs that are reviewed and approved, and comply with Wasatch County Code.

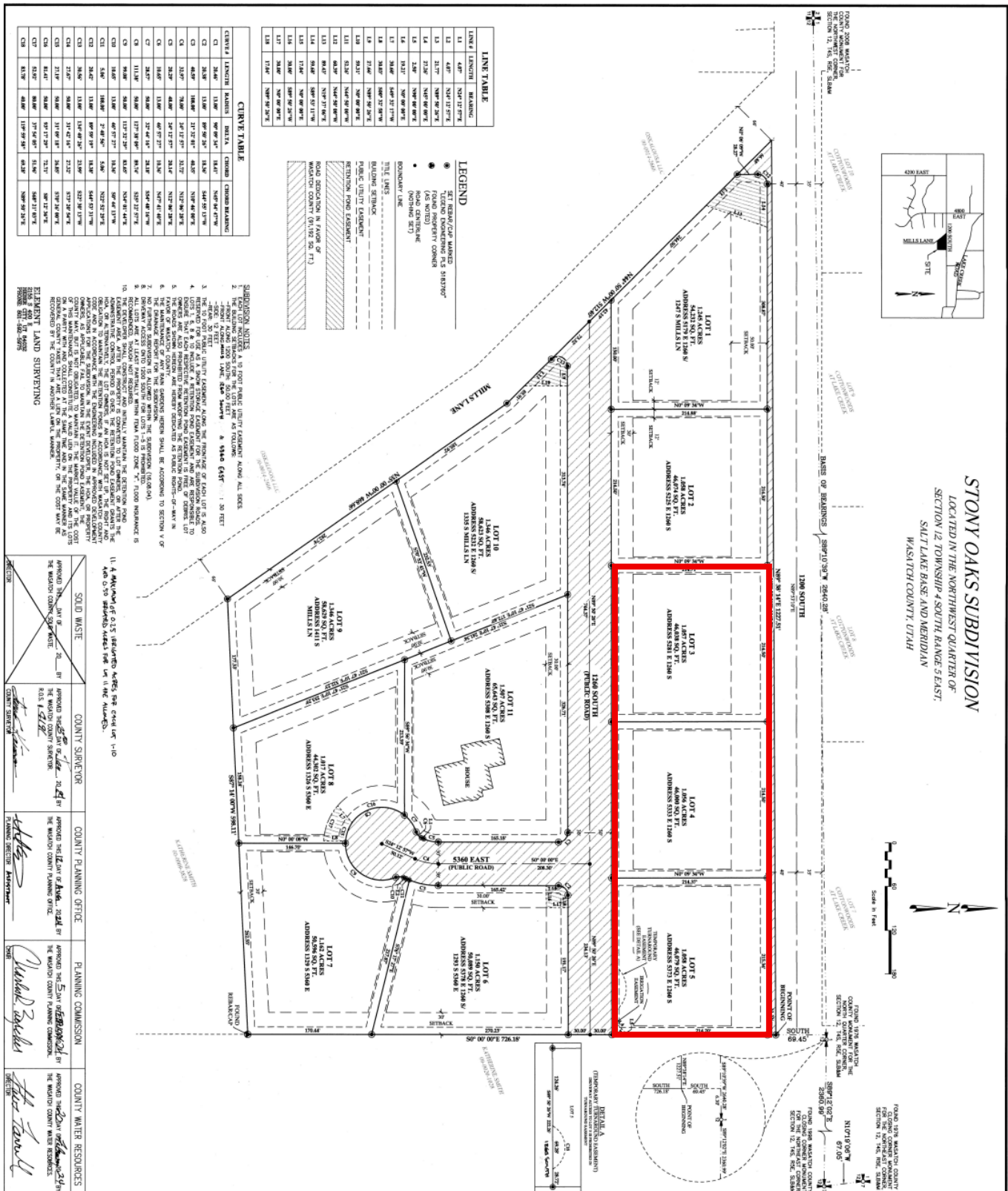
Any person adversely affected by a final decision made by the Appeals Hearing Officer can be appealed under the provisions outlined in Wasatch County Code 2.02.02.

EXHIBITS

Exhibit A – Vicinity Map	14
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Exhibit A – Vicinity Map





LOT 3
1.057 ACRES
46,038 SQ. FT.
ADDRESS 5281 E 1260 S

LOT 4
1.056 ACRES
46,000 SQ. FT.
ADDRESS 5333 E 1260 S

LOT 5
1.058 ACRES
46,079 SQ. FT.
ADDRESS 5373 E 1260 S

TEMPORARY TURNAROUND EASEMENT (SEE DETAIL A)

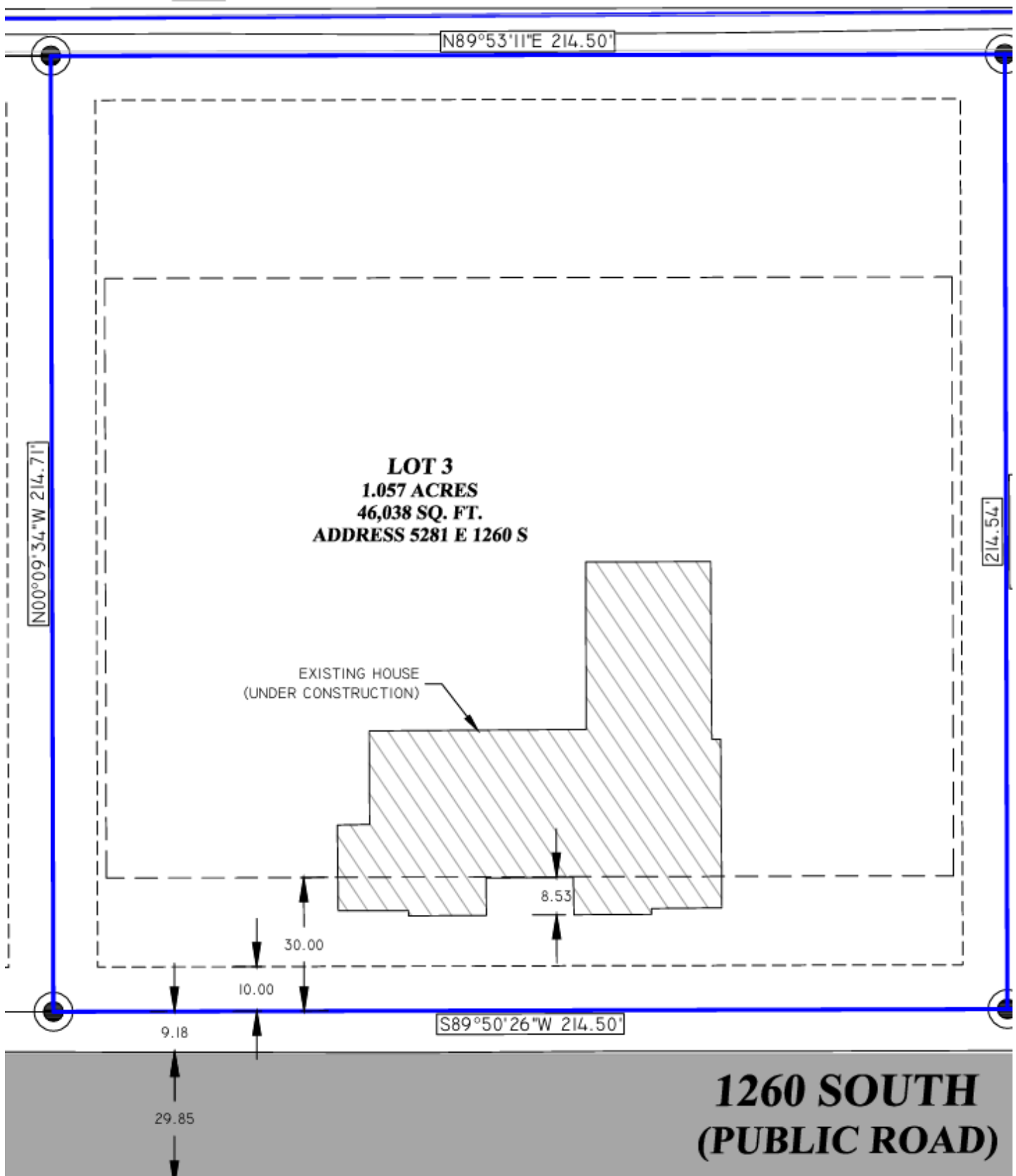
IRRIGATION EASEMENT

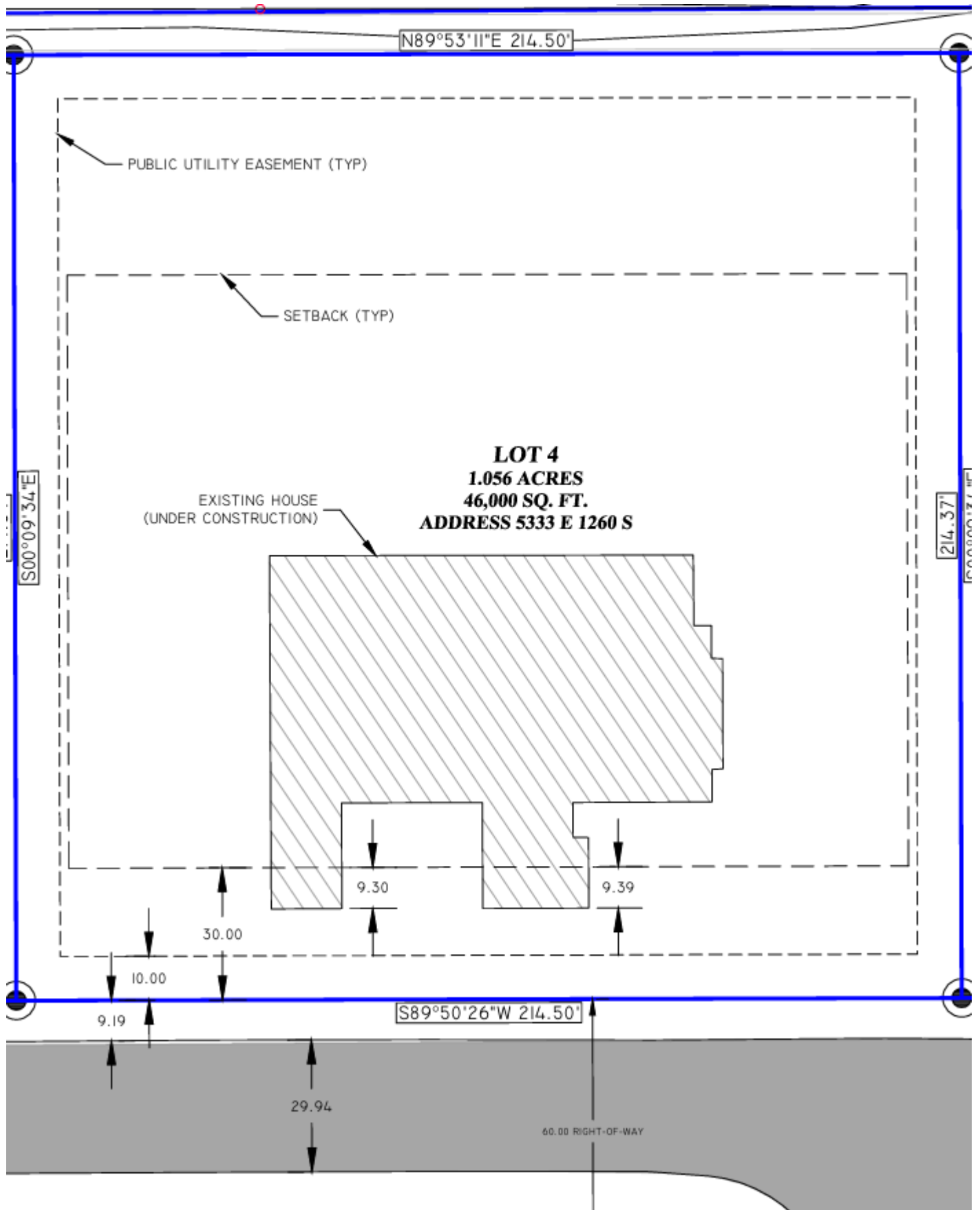
1260 SOUTH (PUBLIC ROAD)

Survey measurements and bearings include: N89° 50' 26" E, 744.37', 214.50', 214.71', 214.50', 215.34', 214.37', N0° 09' 34" W, 214.20', 214.74', 234.13', 191.17', 30.00', 30.00', 30°, 326.71', N89° 53' 11" E 3167.70', 14.31'.

[illegible]

Exhibit E – Setbacks from the right-of-way by lot





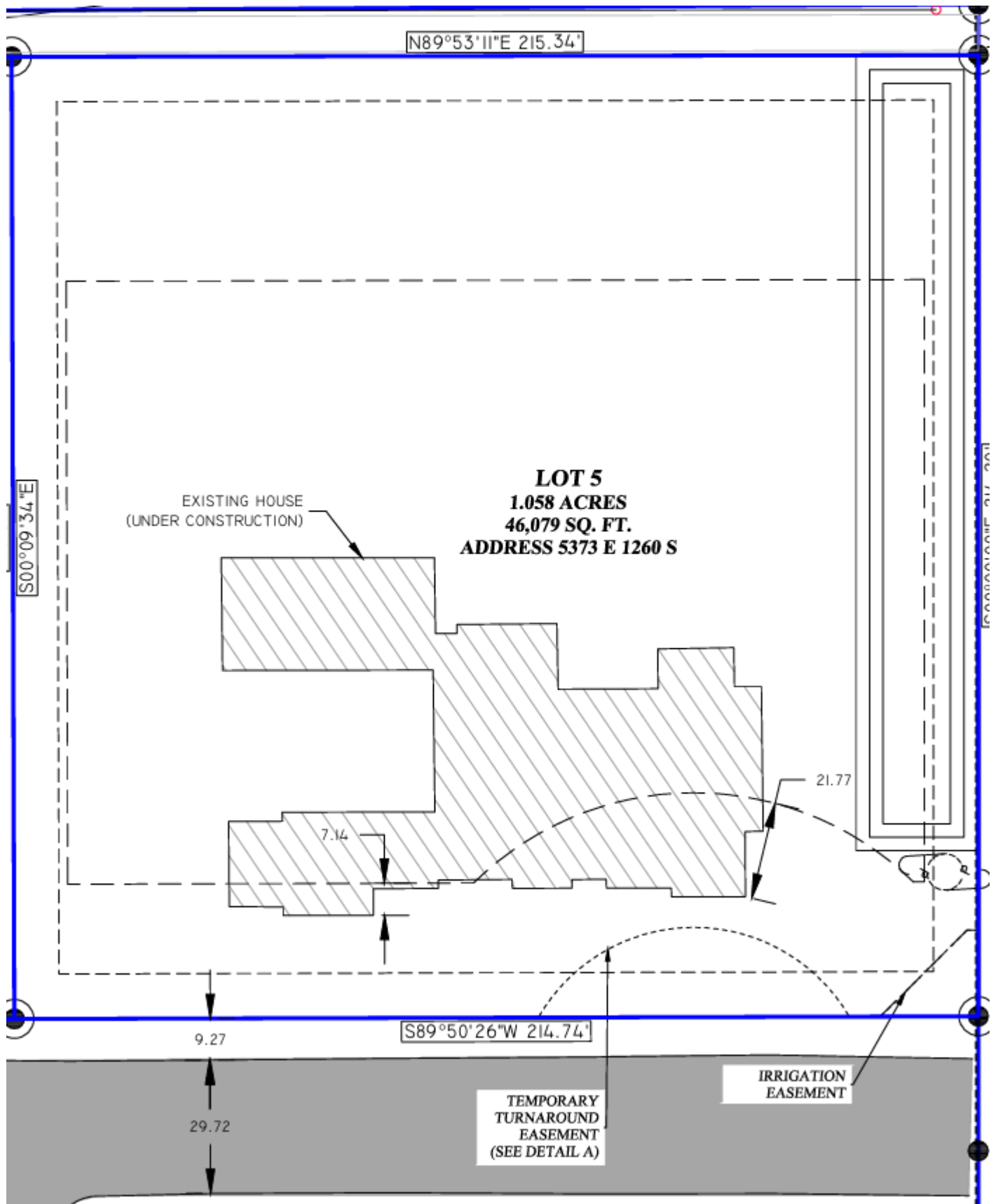


Exhibit F – Structure pictures









Exhibit G – Lot 3 site plan and Inspection Report

Actual construction will comply with applicable local ordinances and building codes

Height of structure and setbacks, will be strictly enforced as per the approved plans.
Sidewalks must be in good repair to obtain a certificate of occupancy.

MODIFYING THE PUBLIC RIGHT-OF-WAY TOPOGRAPHY IN ANY WAY (DRIVEWAYS, SIDEWALKS, LANDSCAPING, ETC.) IS PROHIBITED. DRAINAGE SWALES MUST REMAIN UNDISTURBED. CULVERTS ARE REQUIRED WHERE DRIVEWAYS CROSS THEM. DRIVEWAYS TO FOLLOWING EXISTING -2% SLOPE FROM EDGE OF ASPHALT TO CENTERLINE OF DITCH, THEN +2% TO EDGE OF PUBLIC RIGHT-OF-WAY. WHERE CURB CUTTER AND SIDEWALK EXISTS, SLOPES TO REMAIN +2% FROM TOP BACK OF CURB TO PROPERTY LINE.

Site retaining walls exceeding 4 feet in height require a separate, additional building permit.

Retaining walls exceeding 4 feet in height that are connected to the foundation need to be reflected on both the site plan and the structural plans to be included in the current permit.

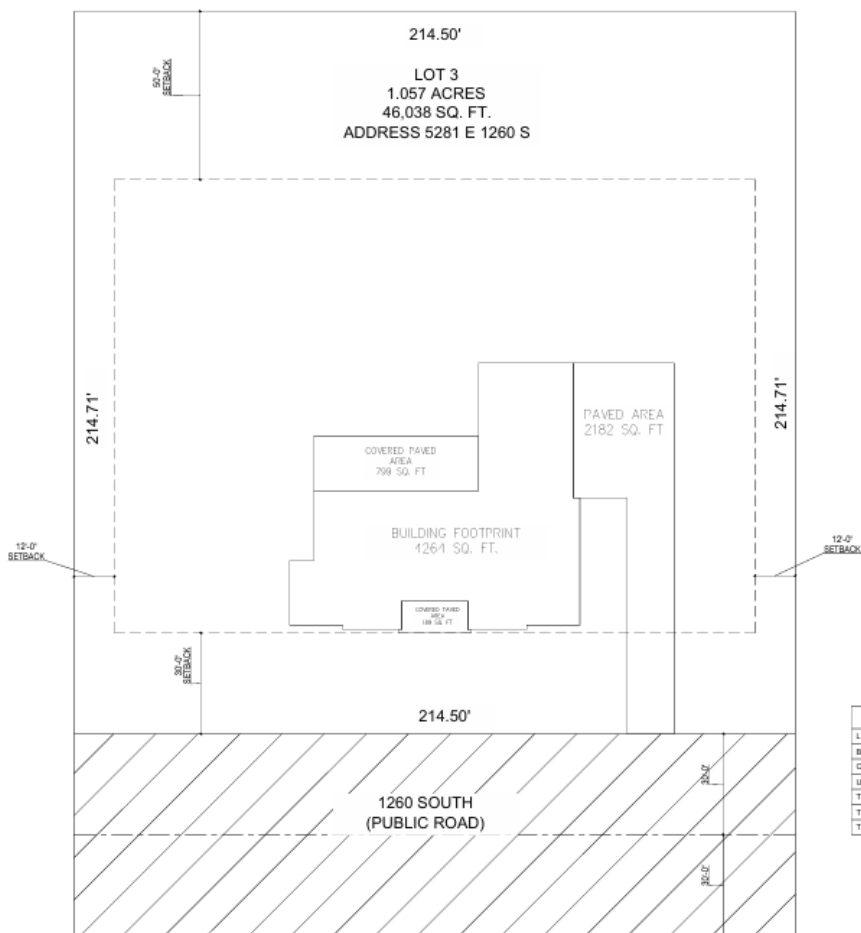
Set Backs

It is the responsibility of the contractor/property owner to verify setbacks compliance to the approved plans.

WASATCH COUNTY
PERMIT NUMBER: 25-853

REVIEWED FOR CODE COMPLIANCE
BY: QD
REVIEW COMPLETION DATE: 11/17/2025

STAMPED PLANS TO REMAIN ONSITE AND
ACCESSIBLE FOR ALL INSPECTIONS



AREA SUMMARY	
LOT AREA	46,038 S.F.
BUILDING FOOTPRINT	1,264 S.F.
COVERED PAVED AREA	983 S.F.
UNCOVERED PAVED AREA	2,182 S.F.
TOTAL COVERED AREA	3,252 S.F.
TOTAL AREA	7,434 S.F.
TOTAL AREA COVERAGE	16.3%

Inspection Request Guidelines – PLEASE READ CAREFULLY Please ensure you are fully ready for all inspections prior to submitting your request. When requesting concrete inspections, it is critical to enter the accurate pour time. Inspectors are scheduled to arrive approximately one hour prior to the listed pour time to complete the inspection. If you are not pouring on the requested inspection date, still enter the accurate pour time and note the actual pour date in the Notes section (e.g., "Not pouring until tomorrow"). We will then schedule an inspector for the afternoon of the business day prior to your pour. Due to increased inspection volume, if your site is not ready at the time of inspection, a reinspection fee may be assessed, and future inspection requests may be delayed or pushed out. For more detailed information, please refer to the inspection memo included in your building packet.

Johnson Estates LLC

Permit #: 25-853 / Lot 3 /
Stony Oaks / 5281 E 1260
S

[view \(https://wasatch.cityinspect.com/builder/permits/view/12345\)](https://wasatch.cityinspect.com/builder/permits/view/12345)

[summary \(https://wasatch.cityinspect.com/builder/summary/12345\)](https://wasatch.cityinspect.com/builder/summary/12345)

requested	completed	inspection	inspector	view
03/12/26	03/16/26 08:56 AM	Foundation/Concrete Columns,	Cody Sweat	PDF
03/03/26	03/04/26 09:45 AM	Footings - re,	James Vierra	PDF
03/02/26	03/03/26 01:28 PM	Footings,	Cody Sweat	PDF

records 1 to 3 of 3

Exhibit H – Lot 4 site plan and Inspection Report

WASATCH COUNTY
PERMIT NUMBER: 25-813
REVIEWED FOR CODE COMPLIANCE
BY: QD
REVIEW COMPLETION DATE: 11/6/2025
STAMPED PLANS TO REMAIN ONSITE AND
ACCESSIBLE FOR ALL INSPECTIONS

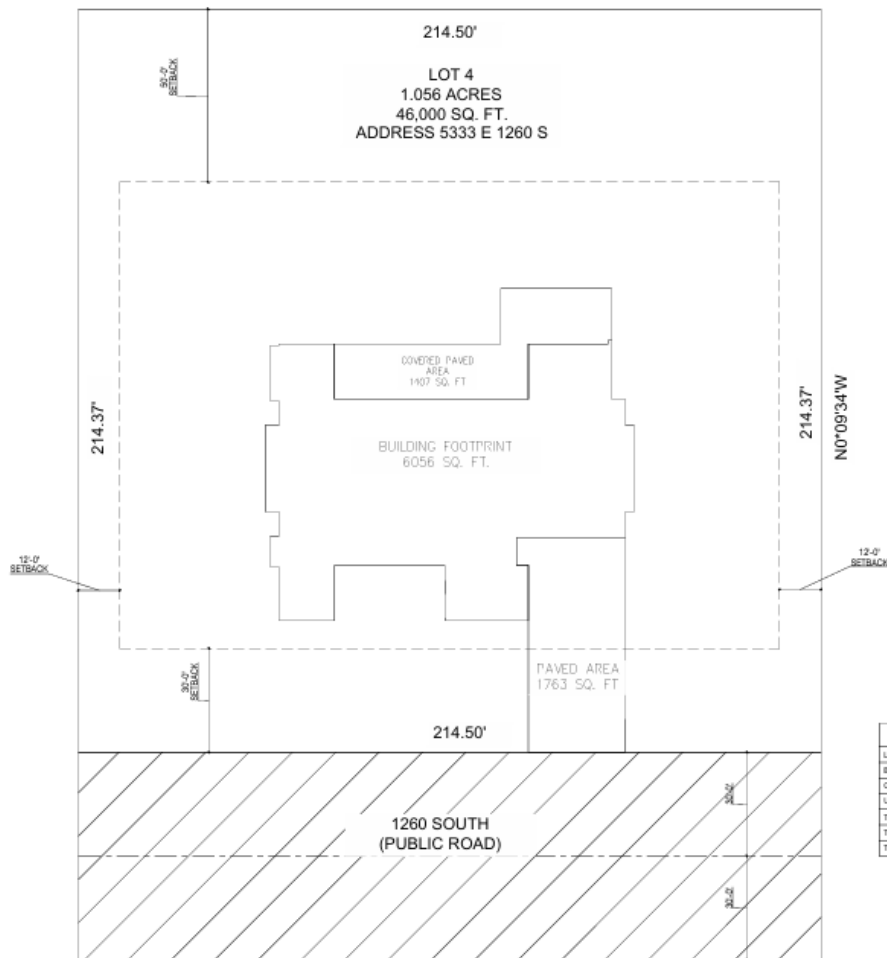
Actual construction will comply
with applicable local ordinances
and building codes

Set Backs

It is the responsibility of the contractor/property owner to verify
setback compliance to the approved plans

Height of structure and setbacks, will be strictly
enforced as per the approved plans.

Sidewalks must be in good repair to obtain
a certificate of occupancy.



AREA SUMMARY	
LOT AREA	46,000 SF
BUILDING FOOTPRINT	6,056 SF
COVERED PAVED AREA	1,407 SF
UNCOVERED PAVED AREA	1,763 SF
TOTAL COVERED AREA	7,463 SF
TOTAL AREA	9226 SF
TOTAL AREA COVERAGE	81.3%

Site retaining walls exceeding 4 feet in height require a separate, additional building permit.
Retaining walls exceeding 4 feet in height that are connected to the foundation need to be reflected on both the site plan and the structural plans to be included in the current permit.

MODIFYING THE PUBLIC RIGHT-OF-WAY TOPOGRAPHY IN ANY WAY (DRIVEWAYS, SIDEWALKS, LANDSCAPING, ETC.) IS PROHIBITED. DRAINAGE SWALES MUST REMAIN UNDISTURBED. CULVERTS ARE REQUIRED WHERE DRIVEWAYS CROSS THEM. DRIVEWAYS TO FOLLOWING EXISTING -2% SLOPE FROM EDGE OF ASPHALT TO CENTERLINE OF DITCH, THEN +2% TO EDGE OF PUBLIC RIGHT-OF-WAY. WHERE CURB/GUTTER AND SIDEWALK EXISTS, SLOPES TO REMAIN +2% FROM TOP BACK OF CURB TO PROPERTY LINE.

Set Backs

It is the responsibility of the contractor/property owner to verify
setback compliance to the approved plans

Inspection Request Guidelines – PLEASE READ CAREFULLY Please ensure you are fully ready for all inspections prior to submitting your request. When requesting concrete inspections, it is critical to enter the accurate pour time. Inspectors are scheduled to arrive approximately one hour prior to the listed pour time to complete the inspection. If you are not pouring on the requested inspection date, still enter the accurate pour time and note the actual pour date in the Notes section (e.g., "Not pouring until tomorrow"). We will then schedule an inspector for the afternoon of the business day prior to your pour. Due to increased inspection volume, if your site is not ready at the time of inspection, a reinspection fee may be assessed, and future inspection requests may be delayed or pushed out. For more detailed information, please refer to the inspection memo included in your building packet.

**JOHNSON
ESTATES LLC**

Permit #: 25-813 / Lot 4 /
Stony Oaks / 5333 E 1260
S

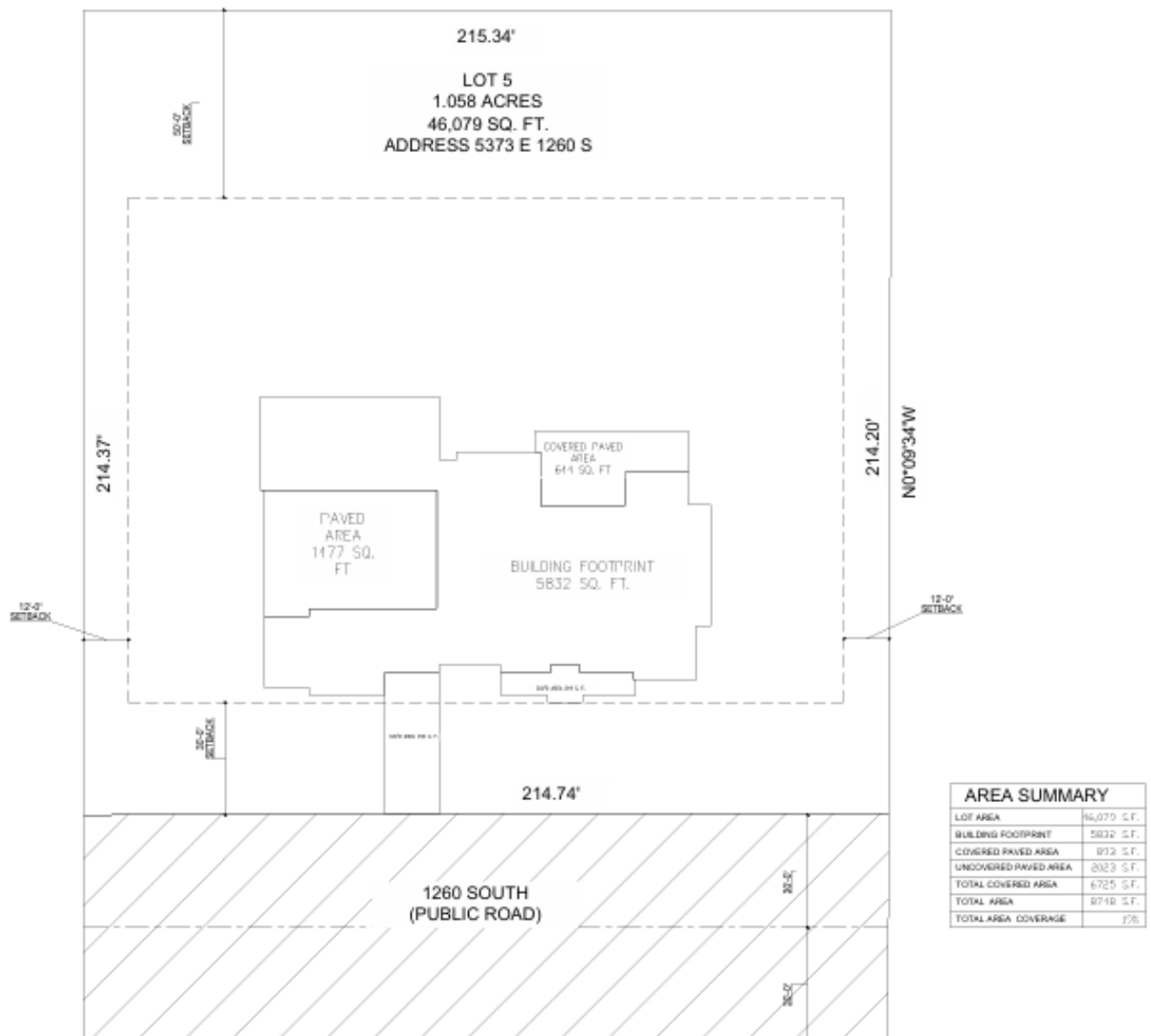
view (<https://wasatch.cityinspect.com/builder/permits/view/11253>)

summary (<https://wasatch.cityinspect.com/builder/summary/11253>)

requested	completed	inspection	inspector	view
04/30/26	05/01/26 05:04 PM	Shear Wall / Framing,	James Wills	PDF
04/30/26	04/30/26 04:17 PM	Truss Package Review (Office Use Only) ,	Cody Sweat	PDF
01/21/26	01/22/26 01:27 PM	Footings - re,	Derek Kohler	PDF
01/21/26	01/22/26 01:27 PM	Foundation/Concrete Columns,	Derek Kohler	PDF
01/13/26	01/14/26 04:41 PM	Temp Power,	Cody Sweat	PDF
01/13/26	01/14/26 04:41 PM	Footings,	Cody Sweat	PDF

records 1 to 6 of 6

Exhibit I – Lot 5 site plan and Inspection Report



Inspection Request Guidelines – PLEASE READ CAREFULLY Please ensure you are fully ready for all inspections prior to submitting your request. When requesting concrete inspections, it is critical to enter the accurate pour time. Inspectors are scheduled to arrive approximately one hour prior to the listed pour time to complete the inspection. If you are not pouring on the requested inspection date, still enter the accurate pour time and note the actual pour date in the Notes section (e.g., "Not pouring until tomorrow"). We will then schedule an inspector for the afternoon of the business day prior to your pour. Due to increased inspection volume, if your site is not ready at the time of inspection, a reinspection fee may be assessed, and future inspection requests may be delayed or pushed out. For more detailed information, please refer to the inspection memo included in your building packet.

JOHNSON ESTATES LLC

Permit #: 25-855 / Lot 5 /
Stony Oaks Subdivision /
5373 E 1260 S

view (<https://wasatch.cityinspect.com/builder/permits/view/11081>)

summary (<https://wasatch.cityinspect.com/builder/summary/11081>)

requested	completed	inspection	inspector	view
04/30/26	05/04/26 02:19 PM	4-way Rough, Gas Line Test & Schematic,	Quinn Davis	PDF
04/28/26	04/30/26 02:36 PM	Roof Framing - re, Shear Wall / Framing - re,	Bryan Arnold	PDF
04/24/26	04/27/26 02:09 PM	Roof Framing - re, Shear Wall / Framing - re,	Quinn Davis	PDF
04/24/26	04/27/26 02:09 PM	Foundation/Concrete Columns - re,	Quinn Davis	PDF
04/24/26	04/27/26 01:59 PM	Roof Framing - re, Shear Wall / Framing - re,	Quinn Davis	PDF
04/24/26	04/27/26 01:59 PM	Foundation/Concrete Columns - re,	Quinn Davis	PDF
04/10/26	04/14/26 02:21 PM	Roof Framing - re, Shear Wall / Framing - re,	Cody Sweat	PDF
03/12/26	03/17/26 01:01 PM	Shear Wall / Framing - re,	Cody Sweat	PDF
02/19/26	02/23/26 12:44 PM	Shear Wall / Framing - re,	Quinn Davis	PDF
02/17/26	02/19/26 05:28 PM	Shear Wall / Framing,	Cody Sweat	PDF
02/17/26	02/18/26 04:38 PM	Roof Framing,	Cody Sweat	PDF
02/02/26	02/02/26 12:00 AM	Truss Package Review (Office Use Only) ,	Building Department Office	PDF
12/29/25	12/30/25 11:58 AM	Foundation/Concrete Columns,	Scott Sanderson	PDF
12/19/25	12/23/25 04:10 PM	Temp Power,	Cody Sweat	PDF
12/19/25	12/23/25 04:10 PM	Footings,	Cody Sweat	PDF
02/14/26	rejected 02/17/26	Roof Framing, Shear Wall / Framing,	-	note
02/19/26	rejected 02/19/26	Shear Wall / Framing - re,	-	note

VARIANCE APPLICATION

SUPPORTING EVIDENCE PACKET AND LETTER OF INTENT

Stony Oaks Subdivision, Lots 3, 4, and 5
5281 E 1260 S (Lot 3) | 5333 E 1260 S (Lot 4) | 5373 E 1260 S (Lot 5)
Wasatch County, Utah | RA-1 Zone

Submitted to the Wasatch County Board of Adjustment

Pursuant to Wasatch County Code §16.02.08

Prepared by:

CODY JOHNSON

Sole Proprietor, Johnson Estates, LLC

Phone: (801) 503-1939 | Email: JohnsonEstatesREI@gmail.com

May 27, 2026

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- D. Literal Enforcement Would Cause Unreasonable Hardship
- E. Special Circumstances Attached to the Property
- F. Granting Relief Is Essential to a Substantial Property Right
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III. SUMMARY OF EXHIBITS

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May 27, 2026

Wasatch County Board of Adjustment
Wasatch County Planning Department
Wasatch County, Utah

Re: Variance Application — Front Setback, Stony Oaks Subdivision, Lots 3, 4, and 5

Wasatch County Code §16.08.08, Subsection A (Setback Requirements)

Dear Members of the Board of Adjustment:

This letter constitutes the written statement of intent in support of a variance application submitted by Cody Johnson, sole proprietor of Johnson Estates, LLC (the “Applicant”), pursuant to Wasatch County Code §16.02.08. The Applicant respectfully requests a variance from the front setback requirements of Wasatch County Code §16.08.08, Subsection A, as applied to three residential homes currently under construction on Lots 3, 4, and 5 of the Stony Oaks Subdivision along 1260 South in the RA-1 zone. This letter is organized to directly address each of the criteria set forth by §16.02.08 for the granting of a variance.

A. Background and Factual Summary

Three single-family homes are currently under construction on Lots 3, 4, and 5 along 1260 South in the RA-1 (Residential-Agricultural) zone within the Stony Oaks Subdivision. The approved site plans for each lot were reviewed and stamped for code compliance by the Wasatch County Building Department in November 2025. Each plan labels the frontage as “1260 SOUTH (PUBLIC ROAD)” and depicts the homes set back 30 feet from that road area. Notably, the term “right of way” does not appear anywhere on any of the three approved site plans. The plans depict a 60-foot-wide area labeled as a public road, and the homes are shown set back 30 feet from the boundary of that labeled area.

Construction began in mid-December 2025. The Applicant’s contractors relied on the county-approved site plans when laying out the foundations at approximately 30 feet from the edge of the paved road surface.

Construction and regular inspections continued without interruption for approximately six months. In May 2026, the building official, Quinn Davis, observed during a routine inspection that the front setbacks may be deficient relative to the recorded right-of-way line. This was the first time any county official raised the issue. Upon learning of the potential deficiency, the Applicant immediately ordered a boundary survey from Chad Anderson of Element Land Surveying.

The survey confirmed that the recorded plat for the Stony Oaks Subdivision establishes a 60-foot right of way for 1260 South. The survey further revealed that approximately 9 or more feet of that right of way extends north of the paved road surface onto the frontage side of these lots. Because the applicable setback under §16.08.08 is measured from the edge of the right of way rather than the edge of the paved road, the homes fall short of the required 30-foot front setback by the following amounts:

- Lot 3 (Permit #25-853, 5281 E 1260 S): approximately 7.14 feet
- Lot 4 (Permit #25-813, 5333 E 1260 S): approximately 8.53 feet
- Lot 5 (Permit #25-855, 5373 E 1260 S): approximately 9.39 feet

Following discovery of the deficiency, discussions began between the Applicant and Wasatch County Planning Director Doug Smith regarding potential remedies. Any and all reasonable solutions were discussed internally within the planning department and county officials, and between the Applicant and County Planning Director. A spirit of willingness and cooperation characterized these discussions. It was recommended to the Applicant that a variance application was the primary vehicle for addressing the special circumstances of these lots.

During the approximately six months of active construction before the issue was identified, the County inspected and approved work at multiple stages across all three lots without any setback concern being raised. The complete inspection history is as follows:

Lot 3 (Permit #25-853):

Three inspections completed and approved between March 2 and March 16, 2026, including Footings (March 3, 2026), Footings Reinspection (March 4, 2026), and Foundation/Concrete Columns (March 16, 2026). Inspectors included Cody Sweat and James Vierra.

Lot 4 (Permit #25-813):

Six inspections completed and approved between January 13 and May 1, 2026, including Temp Power, Footings, Footings Reinspection, Foundation/Concrete Columns, Truss Package Review, and Shear Wall/Framing. Inspectors included Cody Sweat, Derek Kohler, and James Wills.

Lot 5 (Permit #25-855):

Seventeen inspections completed between December 19, 2025 and May 4, 2026, including Temp Power, Footings, Foundation/Concrete Columns, Truss Package Review, Roof Framing (with multiple re-inspections), Shear Wall/Framing (with multiple re-inspections), Foundation/Concrete Columns reinspection, and culminating in a 4-Way Rough (including Gas Line Test & Schematic) on May 4, 2026. Lot 5 has fully completed electrical, mechanical, and plumbing rough-ins. Inspectors included Cody Sweat, Scott Sanderson, Quinn Davis, Bryan Arnold, and the Building Department Office.

At no point during this extensive inspection history, spanning approximately six months and twenty-six total inspections across three lots, did any inspector flag the front setback as an issue.

B. Confirmation of Understanding of Wasatch County Code 16.02.08

The Applicant has read and understands Wasatch County Code §16.02.08 regarding variances, including all criteria set forth in Subsection E of that section. The Applicant understands that the Board of Adjustment may grant a variance only upon finding that all five statutory criteria are satisfied, and that the burden of proof rests with the Applicant. This letter addresses each criterion in turn, and the accompanying legal memorandum provides additional case law and statutory analysis in support.

C. Variance Request

The Applicant formally requests a variance from Wasatch County Code §16.08.08, Subsection A, which provides:

“Front Setback: Each lot or parcel in the residential-agricultural zone (RA-1) shall have a front yard setback of not less than sixty feet (60’) from the center of the road, or thirty feet (30’) from the edge of the right of way, whichever is greater.”

The minimum variation necessary to permit the continued construction and completion of the homes is:

- Lot 3: approximately 7.14 feet of relief from the 30-foot setback
- Lot 4: approximately 8.53 feet of relief from the 30-foot setback
- Lot 5: approximately 9.39 feet of relief from the 30-foot setback

The Applicant requests no more relief than the minimum necessary to address the existing conditions, and is willing to accept reasonable conditions as part of any approval.

D. Literal Enforcement Would Cause Unreasonable Hardship

A literal enforcement of §16.08.08 would require physically relocating three substantially completed homes. These are three large, two-story framed structures built over crawlspace foundations. Lots 4 and 5 in particular feature homes approximately 120 feet in width. Lot 5 has already progressed through seventeen inspections and reached the 4-way inspection stage with fully completed electrical, mechanical, and plumbing rough-ins.

The engineering complexity of attempting to relocate homes of this scale cannot be overstated. Relocation would require, at minimum: (1) lifting entire two-story framed structures using specialized heavy-lift equipment that is extremely rare and requires specialized training; (2) for the 120-foot-wide homes on Lots 4 and 5, either sectioning the structures into smaller segments or employing world-class lifting and moving technology, as moving a home of that width intact presents extraordinary engineering challenges; (3) demolishing the existing crawlspace foundations; (4) excavating and constructing entirely new foundations at revised locations; (5) resetting the lifted structures onto the new foundations; and (6) substantially reworking or completely replacing the mechanical, electrical, and plumbing systems, particularly on Lot 5 where these systems are already fully roughed in.

Due to the size and construction stage of these homes, any attempt to physically lift and relocate them would present significant safety risks. The engineering complexity involved is extraordinary and wholly disproportionate to a deficiency of less than 10 feet that arose from good-faith reliance on county-approved construction documents. The hardship is not merely economic; it is a physical and practical impossibility under any reasonable assessment.

This hardship is not necessary to carry out the general purpose of the setback ordinance. The homes remain set back approximately 30 feet from the actual paved road surface, which is the functional road corridor. The deficiency exists only in relation to the platted right-of-way boundary, not in relation to any improved infrastructure, utility installation, drainage facility, or maintenance area.

E. Special Circumstances Attached to the Property

Section 16.02.08.E.2 requires that special circumstances be attached to the property that do not generally apply to other properties in the same district. Several circumstances here are specific to these lots and distinguish them from other properties in the RA-1 zone.

1. County-Approved Site Plans Created a Reasonable Misunderstanding of the Setback Line.

The approved site plans for Lots 3, 4, and 5 depicted the road area in a manner that created a reasonable but incorrect understanding of where the setback should be measured from. The plans labeled the frontage as “1260 SOUTH (PUBLIC ROAD)” and never used the term “right of way.” The plans showed a 60-foot area identified as a public road. A reasonable contractor reviewing those approved plans would conclude, as the Applicant’s contractors did,

that the depicted road area defined the measurement point for the setback. This circumstance is specific to these lots and these approved plans. Other properties in the district were not built in reliance on these particular plans and do not share this specific source of confusion.

2. The Undisclosed Temporary Turnaround Easement on Lot 5.

The survey performed by Chad Anderson revealed a temporary turnaround easement encumbering Lot 5 that the Applicant was not previously aware of. This is an additional encumbrance on this specific lot that neighboring properties in the subdivision and the broader district do not carry. The turnaround easement further constrains how the lot can be used and adds complexity that is unique to this property.

3. Physical Placement of Three Substantially Completed Structures.

The physical placement of three substantially completed homes creates a circumstance that is now fixed and specific to these lots. The structures exist. They cannot practically be relocated. The question is no longer one of prospective planning but of how to address an existing condition in a way that is reasonable and consistent with the ordinance's purposes. These structures, built over a six-month period with county knowledge and approval at each stage, represent a physical condition unique to these lots.

4. The Asymmetric Right-of-Way Configuration.

The 60-foot right of way for 1260 South is not centered on the paved road surface. Approximately 20 feet of the right of way extends south of the pavement, while only approximately 10 feet extends north onto the frontage side of these lots. This asymmetric configuration means that the actual setback measured from the paved road (the functional road corridor) is approximately 30 feet, while the setback measured from the platted right-of-way boundary is significantly less. This disparity between the functional road corridor and the platted right-of-way boundary is a circumstance specific to the configuration of these particular lots along this particular stretch of 1260 South.

F. Granting Relief Is Essential to the Enjoyment of a Substantial Property Right

Without a variance, the Applicant cannot obtain certificates of occupancy for three homes that were built in reliance on county-approved plans and that passed all requested inspections over a period of approximately six months. The Applicant would be left with three substantially completed but uninhabitable structures and no viable path to complete or occupy them.

That outcome would deprive the Applicant of the same fundamental property right that every other property owner in the RA-1 district enjoys: the ability to build and occupy a home on their lot in accordance with plans the County approved. Every neighboring property owner in the Stony Oaks Subdivision and the broader RA-1 zone possesses the right to build a home, obtain a

certificate of occupancy, and use their property for residential purposes. Without this variance, the Applicant alone would be denied that right, despite having followed the county's own approved plans.

G. The Variance Will Not Affect, Contradict, or Conflict with the General Plan and Will Not Be Contrary to the Public Interest

Granting this variance will not substantially affect the Wasatch County General Plan, will not contradict the General Plan, and will not be contrary to the public interest. The General Plan contemplates residential development in the RA-1 zone, and these three homes are fully consistent with that designation. The variance conforms to the General Plan because it permits the completion of residential homes on residentially zoned lots within an approved subdivision, which is precisely the type of development the General Plan envisions for this area.

The homes do not interfere with any current road operations, utility access, drainage, snow storage, or maintenance along 1260 South. They are set back approximately 30 feet from the paved road surface, which is the functional road corridor. The deficiency exists only in relation to the platted right-of-way boundary, not in relation to any improved infrastructure.

Several specific facts demonstrate that the variance is not contrary to the public interest:

- **Road Operations:** The homes do not impede vehicular traffic, sight lines, or road maintenance. The paved road is approximately 30 feet wide, and the homes are approximately 30 feet from the pavement edge.
- **Utilities:** Regular utilities are installed in the area, including electrical transformers, electrical lines, water, sewer, gas, and likely internet lines. Some utilities are located on the Applicant's property within existing 10-foot utility easements inside the property boundaries, while others are located within the approximately 10-foot strip of right of way north of the pavement. The Applicant is willing to record additional easements to ensure the County's continued access to all utilities.
- **Drainage:** On the south side of 1260 South, there is a culvert immediately after the road, followed by an asphalt sidewalk. On the north side (the Applicant's side), there is no culvert and has not been one since the property was acquired. The Applicant did not remove any culvert during construction. There was no drainage infrastructure on this side to disturb. The grade transitions directly and flatly from the road surface to the property.
- **Snow Storage:** The flat grade on the north side of the road provides adequate area for snow storage operations. The homes do not encroach into any area currently used for snow storage.
- **Neighborhood Character:** The homes are consistent in scale, style, and placement with other residential construction in the Stony Oaks Subdivision and the broader RA-1 zone.

- **Precedent:** This variance is limited to Lots 3, 4, and 5 under the specific and unrepeatable circumstances described herein. It does not seek a broader reduction of the setback standard for future construction and will not create a precedent applicable to other properties.

The Applicant is prepared to offer conditions as part of any variance approval, including recorded easements preserving the County’s full rights for utilities, drainage, culverts, snow storage, grading, access, and maintenance over the affected area, as well as no-build restrictions preventing any additional structures from being placed closer to the road than the existing homes.

H. The Spirit of the Ordinance Is Observed and Substantial Justice Done

The spirit of the setback requirement is to ensure adequate separation between structures and the public road corridor, protecting public safety, road operations, utility access, drainage, snow storage, and future infrastructure needs. That spirit is observed here because the homes remain approximately 30 feet from the paved road surface and do not interfere with road operations, utilities, drainage, snow storage, maintenance, visibility, or public access. The deficiency exists only because the platted right of way extends beyond the improved road area, not because the homes were placed in a manner that creates a public safety or infrastructure concern.

Substantial justice is served by granting the minimum relief necessary for the existing homes while preserving the County’s functional interests through recorded easements and conditions. The requested variance is limited to Lots 3, 4, and 5 and does not seek a broader reduction of the setback standard for future construction. The Applicant is willing to accept reasonable conditions to ensure public protection and that substantial justice is ultimately achieved.

I. The Hardship Was Not Self-Imposed

One of the central questions in any variance analysis under §16.02.08 is whether the hardship is self-imposed. The Applicant respectfully submits that this hardship was not self-imposed by any reasonable definition of that term.

The approved site plans were the governing construction documents. The County reviewed these plans for code compliance and approved them in November 2025 without requesting any modification, correction, or notation regarding the distinction between the depicted road area and the actual right-of-way boundary. The plans depicted a 60-foot area labeled as “1260 SOUTH (PUBLIC ROAD)” —not as a right of way— and showed the homes set back 30 feet from that labeled area. The Applicant relied on the approved plans and built accordingly.

The County then inspected and passed the structures at multiple stages across all three lots over a period of approximately six months without identifying a setback concern. Lot 3 received three approved inspections. Lot 4 received six approved inspections including framing. Lot 5 progressed through seventeen inspections including footings, foundation, framing, roof framing, and a completed 4-way rough-in with full electrical, mechanical, and plumbing work. At no point during this extensive inspection history did any inspector flag the front setback as an issue.

The Applicant is not suggesting that building inspections are intended to certify setback compliance, and the Applicant is not assigning fault to the County. However, the totality of the circumstances is directly relevant to the question of whether the hardship was self-imposed. The Applicant submitted site plans that the County reviewed and approved. The Applicant built in accordance with those approved plans. The County inspected and passed the work repeatedly over a period of months. The hardship that now exists arose from good-faith reliance on county-approved documentation and the county's own inspection process, not from any intentional or negligent disregard of known setback requirements.

Utah law strongly supports the principle that a property owner's good-faith reliance on governmental approvals should be respected, and that the resulting hardship should not be characterized as self-imposed. The detailed legal analysis of applicable case law is set forth in Part II of this packet.

J. The 60-Foot Right of Way and Its Functional Necessity

Section 16.08.08.A establishes the front setback as not less than 60 feet from the center of the road or 30 feet from the edge of the right of way, whichever is greater. The purpose of this standard is to ensure adequate separation between structures and the public road corridor, protecting public safety, road operations, utility access, drainage, snow storage, and future infrastructure needs.

The Applicant respectfully asks the Board to evaluate whether the full 60-foot right of way for 1260 South is functionally necessary to serve those purposes as the road currently exists and is reasonably projected to be used. The improved road surface is approximately 30 feet wide. The right-of-way allocation is asymmetric: approximately 20 feet of right of way extends south of the pavement, while approximately 10 feet extends north onto the frontage side of these lots. The approximately 10 feet of right of way on the north side is unimproved.

It is important to note that the Stony Oaks Subdivision was not planned or developed with the expectation that 1260 South would be improved to the full 60-foot right-of-way width. The road was and is a standard 30-foot-wide paved rural residential road. A 30-foot improved road with standard shoulders and drainage capacity is consistent with how comparable roads operate throughout the county and the state in RA-1 residential-agricultural zones.

To the Applicant's knowledge, the County's general plan and transportation master plan do not contemplate widening 1260 South to fill the 60-foot right of way in this area. If there are no current or reasonably foreseeable plans to widen the road, install curb and gutter, or otherwise improve the northerly portion of the right of way adjacent to these lots, then the setback is effectively protecting unimproved, unused space rather than actual or planned public infrastructure.

The homes remain approximately 30 feet from the edge of the paved road, which is the functional road corridor. They do not encroach on any improved surface, utility installation, drainage facility, or maintenance area. This fact directly informs the variance analysis and supports the conclusion that granting relief would not adversely affect the general plan or be contrary to the public interest.

K. Proposed Conditions of Approval

The Applicant is willing to accept any reasonable conditions the Board deems appropriate, including but not limited to:

1. Recorded easements preserving the County's full rights for utilities, drainage, culverts, snow storage, grading, access, and maintenance over any affected portion of the right-of-way area adjacent to Lots 3, 4, and 5.
2. No-build restrictions preventing any additional structures (including accessory structures, fences, or walls) from being placed closer to the road than the existing homes on Lots 3, 4, and 5.
3. A recorded covenant running with the land acknowledging that the variance is specific to the existing structures and does not permit additional encroachment.
4. Any other conditions the Board determines are necessary to protect the County's functional interests in the right-of-way corridor.

These conditions would ensure that the County's functional interests remain fully protected regardless of how the setback line is ultimately treated.

II. LEGAL MEMORANDUM AND CASE LAW ANALYSIS

A. Statutory Framework

Under Utah Code §17-27a-702 (County Land Use, Development, and Management Act) and Wasatch County Code §16.02.08, the Board of Adjustment may grant a variance if the applicant demonstrates that all five statutory criteria are satisfied:

- (1) Literal enforcement of the land use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the ordinance;
- (2) There are special circumstances attached to the property that do not generally apply to other properties in the same district;
- (3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- (4) The variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (5) The spirit of the land use ordinance is observed and substantial justice done.

B. Utah Case Law Supporting the Variance

1. Vested Rights and Good-Faith Reliance on Government Approvals

The Utah Supreme Court's landmark decision in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), established the principle that an applicant for subdivision approval or a building permit is entitled to favorable action if the application conforms to the zoning ordinance in place at the time of application. The Court expressed concern about the "economic hardship that would be imposed on a property owner whose development plans are thwarted" and held that an applicant for approval of a planned and permitted use "should not be subject to shifting policies that do not reflect serious public concerns." *Id.* at 391, 396.

While *Western Land Equities* arose in the vested-rights context rather than the variance context, its core principle is directly applicable here: a property owner who acts in good-faith reliance on governmental approvals should be protected from the consequences of government's own failure to identify an issue at the time of approval. The Applicant's site plans were reviewed and approved by the County. The Applicant built in conformity with those approved plans. The County inspected and passed the work at 26 separate stages across three lots without raising a setback concern. The resulting hardship did not arise from the Applicant's disregard of known requirements but from the totality of the County's own approval and inspection process.

The Court in *Western Land Equities* further noted that it is "incumbent on a local government to act in good faith and not reject an application to simply substitute the judgment of

current officials for that of their predecessors.” 617 P.2d at 396. Here, the County’s predecessor officials reviewed and approved the site plans; the current enforcement action effectively reverses that approval after the Applicant has made an irreversible change in position.

2. Reliance on Government Acts and Substantial Change in Position

In *Wood v. North Salt Lake*, 15 Utah 2d 245, 390 P.2d 858 (Utah 1964), the Utah Supreme Court held that a zoning ordinance change was unenforceable against a property owner who had installed water mains and sewer connections in reliance on the city’s earlier approval of a subdivision plat. The Court found that “enforcement of the ordinance would be unfair, inequitable, discriminatory and inconsonant with realistic concepts of affirmative and privileged use of one’s property.” *Id.*

The parallels to the present case are clear. The Applicant did not merely prepare plans or clear land. The Applicant constructed three homes—poured foundations, erected framing, installed mechanical systems—all in reliance on the County’s approval of the site plans and passage of inspections at every stage. The substantial change in position here far exceeds the water main and sewer installation that the *Wood* court found sufficient to establish reliance.

3. Equitable Principles and Government Accountability

In *Utah County v. Young*, 615 P.2d 1265 (Utah 1980), the Court recognized that to invoke zoning estoppel, a local zoning authority must have committed an act or omission upon which the property owner could rely in good faith in making substantial changes in position or incurring extensive expenses. Importantly, the Court noted that “the action upon which reliance is claimed must be clear, definite, and affirmative.” *Id.* at 1267.

Here, the County’s actions were the most “clear, definite, and affirmative” acts a government can take in the land-use context: formal approval of site plans reviewed for code compliance, followed by repeated passage of construction inspections over a six-month period. These were not passive omissions or ambiguous signals. They were affirmative governmental approvals that the Applicant reasonably relied upon in continuing construction.

4. Special Circumstances Must Relate to the Property

In *Xanthos v. Salt Lake City Board of Adjustment*, 685 P.2d 1032 (Utah 1984), the Utah Supreme Court held that “what must be shown by the applicant for the variance is that the property itself contains some special circumstance that relates to the hardship complained of and that granting a variance to take this into account would not substantially affect the zoning plan.” *Id.* at 1035.

Here, the special circumstances are directly attached to the property: (a) the approved site plans for these specific lots depicted the road area in a misleading manner; (b) the physical structures now permanently placed on these specific lots cannot be relocated; (c) a previously undisclosed turnaround easement encumbers Lot 5 specifically; and (d) the asymmetric right-of-

way configuration uniquely affects the front setback calculation for the north-side lots. These are not general neighborhood conditions; they are circumstances peculiar to Lots 3, 4, and 5.

5. Self-Imposed Hardship Standard

In *Chambers v. Smithfield City*, 714 P.2d 1133 (Utah 1986), the Court denied a variance where the applicant had purchased a lot already smaller than the zoning minimum, finding that the hardship was self-imposed. The critical distinction here is that the Applicant in the present case did not knowingly disregard any setback requirement. The Applicant relied on the County's own approved plans, which depicted the setback measurement in a manner that appeared compliant. The County's approval of those plans was an affirmative act that contributed directly to the misunderstanding.

Unlike the applicant in *Chambers*, who purchased a nonconforming lot with knowledge of the dimensional deficiency, the Applicant here had every reason to believe the homes complied with the setback requirements as shown on the approved site plans. The hardship is not the product of a voluntary choice to build in known violation of the code; it is the product of a systemic failure involving the site plan review, the plan labeling, and the inspection process.

6. Variance Properly Granted When Statutory Conditions Are Considered

In *Specht v. Big Water Town*, 2017 UT App 75, 397 P.3d 802, the Utah Court of Appeals upheld a setback variance where the Town Council had properly considered the statutory conditions and the evidence supported the variance. The court held that the evidence in the record was sufficient to support the variance, noting that the Town had considered the unique circumstances of the property and the impact on health and safety. This case confirms that variance decisions are reviewed for sufficiency of the evidence, and that a properly supported variance will be upheld.

In *Martin v. Rasmussen*, 2014 UT App 200, the Court of Appeals confirmed that once a variance is granted, the relevant zoning provision no longer applies to the affected parcel. This underscores the finality and effectiveness of the variance mechanism as the proper tool for resolving the present situation.

7. Additional Persuasive Authority

Courts across jurisdictions have recognized that where a property owner builds in reliance on an erroneously issued or ambiguously drafted building permit or approved plan, the resulting hardship is not self-imposed and a variance is an appropriate remedy. In *Town of South Padre Island v. Cantu*, 52 S.W.3d 287 (Tex. App. 2001), the court recognized the hardship created when a house was built in accordance with approved plans but extended over a setback line. Similarly, in *Board of Adjustment v. McBride*, 676 S.W.2d 705 (Tex. App. 1984), the court addressed circumstances where an erroneously granted permit allowed homeowners to build in reliance before the error was discovered.

These cases reflect a consistent judicial recognition that when a government entity approves plans, issues permits, and inspects construction without objection, the property owner's reliance on those governmental acts should weigh heavily in the variance analysis and against any finding that the hardship was self-imposed.

C. Shared Responsibility and Good-Faith Reliance

The Applicant wishes to be clear: this application does not seek to assign blame to the County, nor is it framed in an adversarial posture. The Applicant has worked cooperatively with the Wasatch County Planning Department throughout this process and intends to continue doing so. The Applicant is willing and agreeable to any reasonable solution.

However, an honest assessment of how this situation arose requires acknowledging that responsibility is shared. The Applicant submitted site plans for review. The County reviewed those plans for code compliance and approved them. The plans labeled the road area as "1260 SOUTH (PUBLIC ROAD)" without any notation of the right-of-way boundary or any direction regarding where the setback should be measured. The Applicant's contractors relied on those approved plans. The County inspected the resulting construction at 26 separate stages across three lots over six months without raising a setback concern.

This is not a case where an applicant circumvented the process, ignored warnings, or proceeded without permits. The Applicant engaged the county's review and inspection process at every stage and received approvals at every stage. The totality of these interactions—plan review, plan approval, and repeated inspection approvals—created a reasonable assurance that the homes were compliant. That this assurance turned out to be incorrect does not make the Applicant solely responsible for the resulting hardship.

The Applicant comes before the Board with clean hands, in good faith, and with a genuine desire to resolve this matter in a way that protects both the Applicant's property rights and the County's legitimate interests. The conditions of approval proposed above reflect that cooperative spirit.

D. The Subdivision Was Not Platted for a 60-Foot Improved Road

A critical contextual point is that the Stony Oaks Subdivision was not planned or developed with the expectation that 1260 South would be improved to the full 60-foot right-of-way width. The recorded plat establishes a 60-foot right of way, but the road as built is a standard 30-foot-wide paved rural residential road. This is consistent with how comparable roads operate throughout Wasatch County and the state of Utah in RA-1 residential-agricultural zones.

The 60-foot right-of-way designation on the plat likely reflects a standard reservation for potential future road improvements. However, a right-of-way reservation is not the same as a

road improvement. The purpose of a right of way is to preserve the option for future infrastructure if needed. The purpose of a setback is to protect the public from the actual or reasonably anticipated road corridor. Where the right of way significantly exceeds the actual and projected road corridor, the setback requirement measured from the right-of-way edge can produce results that are disproportionate to the ordinance's protective purpose.

Here, the homes are approximately 30 feet from the paved road surface—the same distance that would satisfy the setback requirement if measured from the road edge rather than the right-of-way edge. The deficiency exists entirely because of the gap between the right-of-way line and the actual road surface. Granting a variance to address this gap does not undermine the setback ordinance's purpose; it aligns the ordinance's application with its protective intent.

E. Policy Considerations

The Board should consider the broader policy implications of this request. If a variance is denied, the message sent to property owners and contractors in Wasatch County is that reliance on county-approved site plans is insufficient, that passage of county inspections provides no assurance, and that a property owner must independently verify every dimensional requirement regardless of what the approved plans depict. That outcome would undermine confidence in the county's plan review and inspection process.

Conversely, granting this variance sends a proportionate and appropriate message: that when a property owner acts in good faith, relies on approved plans, and proceeds through the county's inspection process without objection, the county will work cooperatively to resolve an unforeseen dimensional issue rather than imposing an extraordinary and disproportionate remedy on the property owner alone.

The Applicant has demonstrated cooperation throughout this process, has offered meaningful conditions to protect the County's interests, and requests only the minimum relief necessary to complete homes that were built in full reliance on county approvals.

III. SUMMARY OF EXHIBITS

The following exhibits are submitted in support of this application and are incorporated by reference. Originals or certified copies are available upon request.

Exhibit A: Approved Site Plans (Lots 3, 4, and 5)

County-approved site plans stamped for code compliance in November 2025. Each plan labels the frontage as “1260 SOUTH (PUBLIC ROAD)” and depicts homes set back 30 feet from the road area. The term “right of way” does not appear on any plan.

Exhibit B: Boundary Survey by Chad Anderson, PLS, Element Land Surveying

Survey completed in May 2026 confirming the 60-foot right of way, the setback deficiency measurements for each lot, and the temporary turnaround easement on Lot 5.

Exhibit C: Inspection Records (Lots 3, 4, and 5)

Complete CityInspect records showing all 26 inspections conducted across the three lots between December 2025 and May 2026. No setback deficiency was identified at any inspection.

Exhibit D: Photographs of Homes Under Construction

Current photographs showing the construction stage and physical placement of the homes on Lots 3, 4, and 5.

Exhibit E: Correspondence with Wasatch County Planning Department

Email correspondence between the Applicant and Planning Director Doug Smith documenting the cooperative discussions regarding resolution.

Exhibit F: Recorded Plat, Stony Oaks Subdivision

The recorded subdivision plat establishing the 60-foot right of way for 1260 South.

EXHIBIT A

Approved Site Plans

Lots 3, 4, and 5

County-approved site plans reviewed and stamped for code compliance by the
Wasatch County Building Department in November 2025.

Lot 3 — Permit #25-853, 5281 E 1260 S

Lot 4 — Permit #25-813, 5333 E 1260 S

Lot 5 — Permit #25-855, 5373 E 1260 S

Actual construction will comply with applicable local ordinances and building codes

Height of structure and setbacks will be verified on-site prior to the permit start date.

Setbacks must be in good faith to maintain a minimum of 10 feet.

Site retaining walls exceeding 4 feet in height require a separate, additional building permit.

Retaining walls exceeding 4 feet in height that are connected to the foundation must be reflected on both the site plan and the structural plans to be included with the current permit.

WASATCH COUNTY
PERMIT NUMBER: 25-053

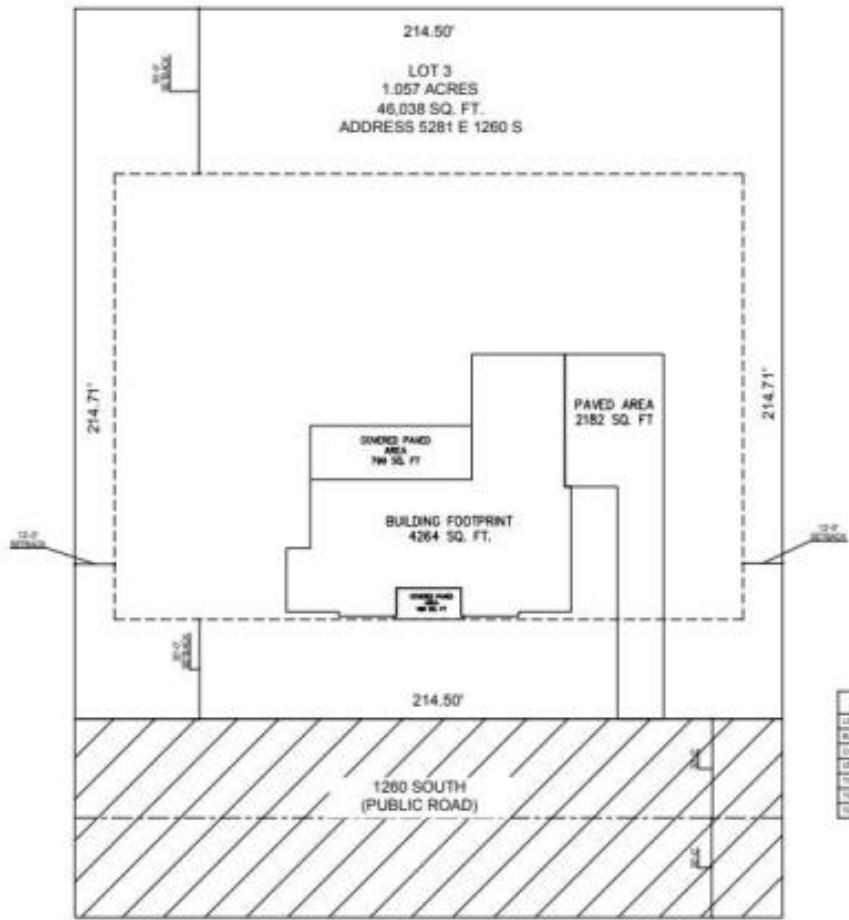
REVIEWED FOR CODE COMPLIANCE
BY: JGD
REVIEW COMPLETION DATE: 11/17/2025

STAMPED PLANS TO REMAIN ONSITE AND ACCESSIBLE FOR ALL INSPECTIONS

MODIFYING THE PUBLIC RIGHT-OF-WAY (TOPOGRAPHY, DRAINAGE, ETC.) IS PROHIBITED. DRAINAGE SWALES MUST REMAIN UNOBTURBATED. DRIVEWAYS ARE REQUIRED WHERE DRIVEWAYS CROSS THEIR DRIVEWAYS TO FOLLOWING LOTTERS. 2% SLOPE FROM EDGE OF ASPHALT TO CENTERLINE OF DITCH. 2% TO EDGE OF PUBLIC RIGHT-OF-WAY. WHERE CURB CUTTER AND JACOBI CUTS, SLOPES TO REMAIN 2% FROM TOP BACK OF CURB TO PROPERTY LINE.

Set Backs

Setbacks must be in good faith to maintain a minimum of 10 feet.



AREA SUMMARY	
LOT AREA	46,038 SQ. FT.
BUILDING FOOTPRINT	4,264 SQ. FT.
COVERED PAVED AREA	100 SQ. FT.
UNCOVERED PAVED AREA	2,082 SQ. FT.
TOTAL COVERED AREA	4,364 SQ. FT.
TOTAL AREA	46,038 SQ. FT.
TOTAL AREA COVERAGE	9.5%

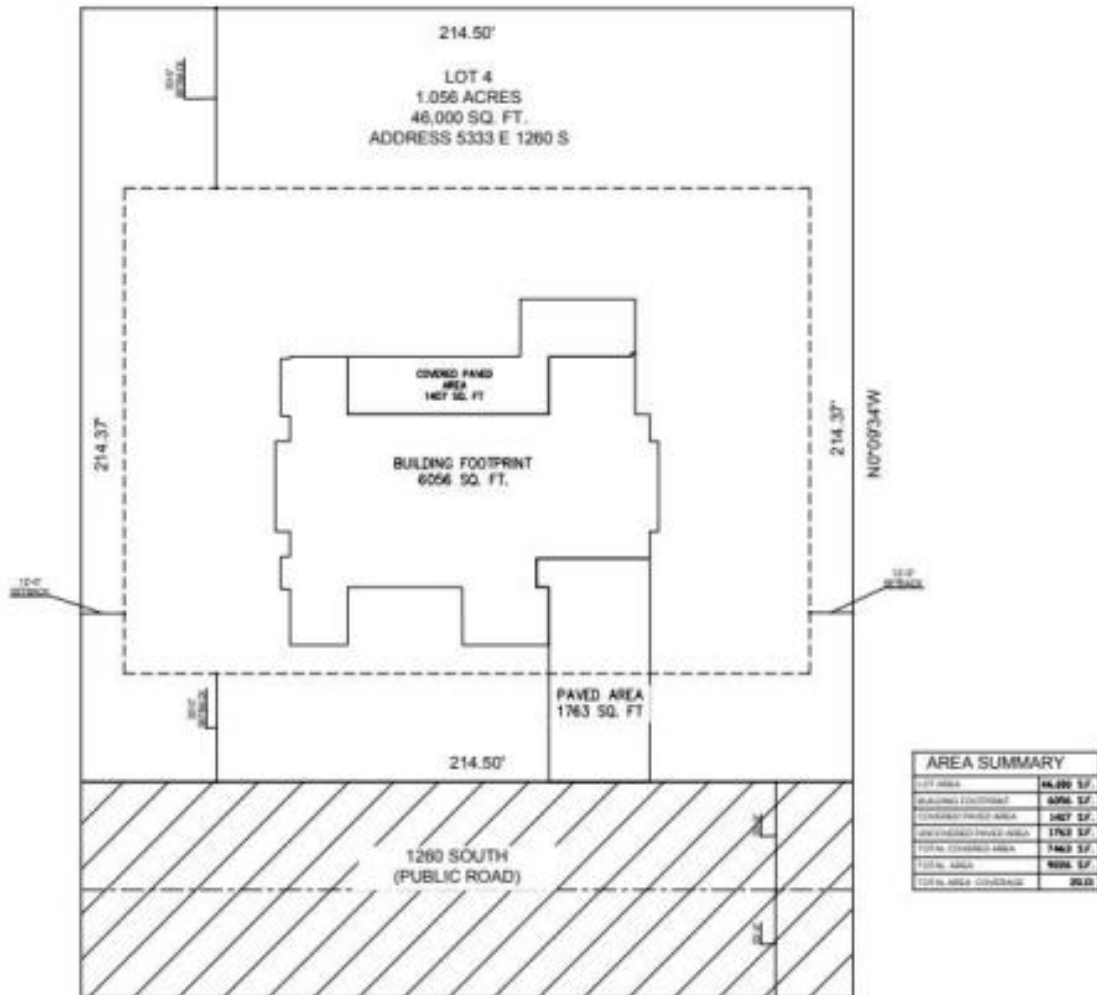
WASATCH COUNTY
PERMIT NUMBER: 25-813
REVIEWED FOR CODE COMPLIANCE
BY: QD
REVIEW COMPLETION DATE: 11/6/2025
STAMPED PLANS TO REMAIN ONSITE AND
ACCESSIBLE FOR ALL INSPECTIONS

Actual construction will comply
 with applicable local ordinances
 and building codes

Set Backs

It is the responsibility of the contractor/property owner to verify
 setback compliance to the approved plans

Height of structure and setbacks, will be strictly
 enforced as per the approved plans.
 Sidewalks must be in good repair to obtain
 a certificate of occupancy.



Site retaining walls exceeding 4 feet in
 height require a separate, additional building
 permit.
 Retaining walls exceeding 4 feet in height
 that are connected to the foundation need to
 be reflected on both the site plan and the
 structural plans to be included in the current
 permit.

MODIFYING THE PUBLIC RIGHT-OF-WAY TOPOGRAPHY
IN ANY WAY (DRIVEWAYS, SIDEWALKS, LANDSCAPING,
ETC.) IS PROHIBITED. DRAINAGE SWALES MUST
REMAIN UNDISTURBED. CULVERTS ARE REQUIRED
WHERE DRIVEWAYS CROSS THEM. DRIVEWAYS TO
FOLLOW EXISTING -2% SLOPE FROM EDGE OF
ASPHALT TO CENTERLINE OF DITCH, THEN +2% TO
EDGE OF PUBLIC RIGHT-OF-WAY. WHERE
CURB/GUTTER AND SIDEWALK EXISTS, SLOPES TO
REMAIN +2% FROM TOP BACK OF CURB TO PROPERTY
LINE.

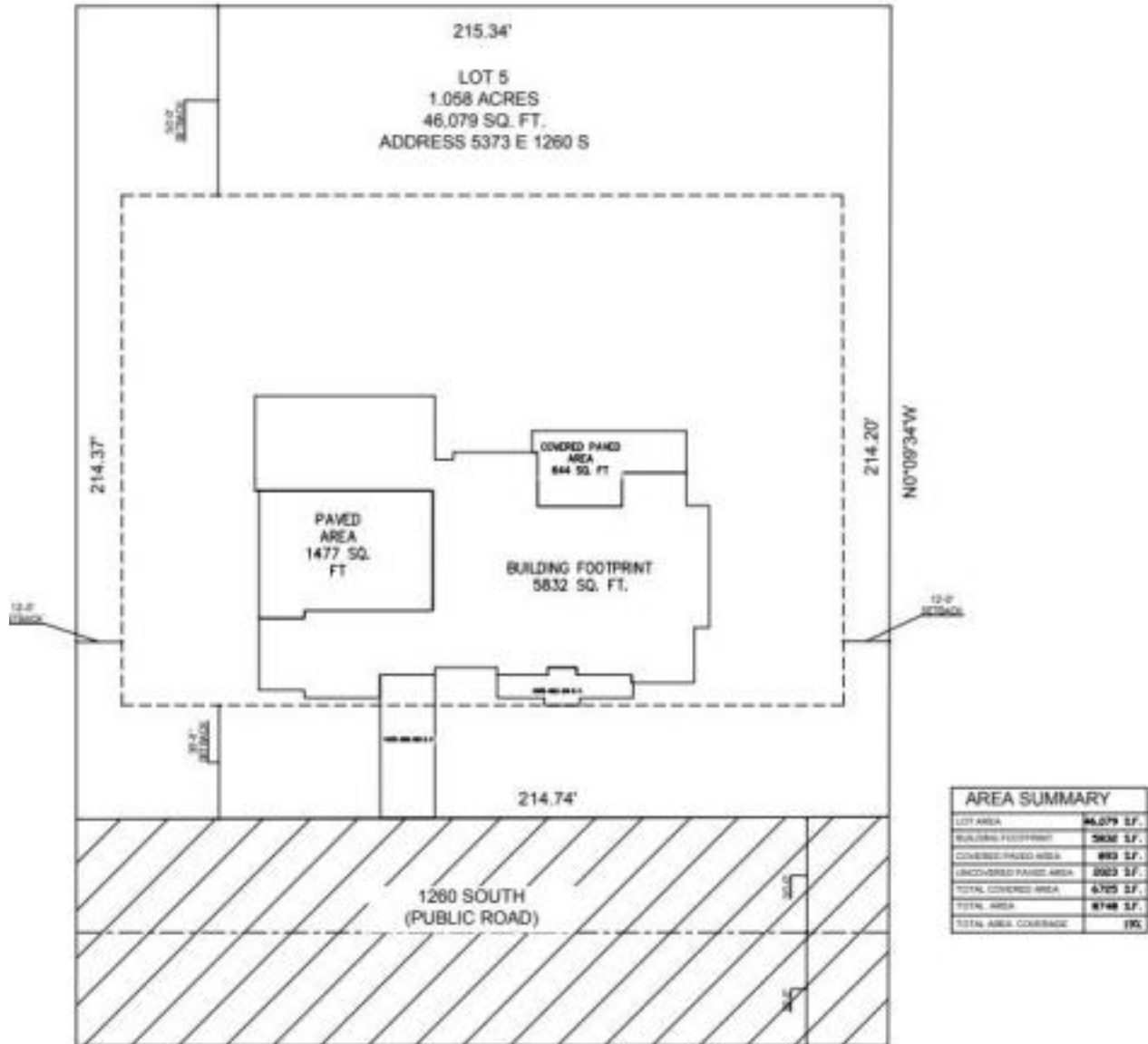


EXHIBIT B

Boundary Survey

Chad Anderson, PLS, Element Land Surveying

Survey completed May 2026 confirming the 60-foot right of way, setback deficiency measurements, and temporary turnaround easement on Lot 5.

Lot 3: ~7.14 ft short

Lot 4: ~8.53 ft short

Lot 5: ~9.39 ft short

EXHIBIT C

Inspection Records **Lots 3, 4, and 5**

Complete CityInspect records showing all 26 inspections conducted between
December 2025 and May 2026. No setback deficiency identified.

Lot 3 — 3 inspections

Lot 4 — 6 inspections

Lot 5 — 17 inspections through 4-Way Rough

Inspection Request Guidelines – PLEASE READ CAREFULLY Please ensure you are fully ready for all inspections prior to submitting your request. When requesting concrete inspections, it is critical to enter the accurate pour time. Inspectors are scheduled to arrive approximately one hour prior to the listed pour time to complete the inspection. If you are not pouring on the requested inspection date, still enter the accurate pour time and note the actual pour date in the Notes section (e.g., "Not pouring until tomorrow"). We will then schedule an inspector for the afternoon of the business day prior to your pour. Due to increased inspection volume, if your site is not ready at the time of inspection, a reinspection fee may be assessed, and future inspection requests may be delayed or pushed out. For more detailed information, please refer to the inspection memo included in your building packet.

Johnson Estates LLC

Permit #: 25-853 / Lot 3 /
Stony Oaks / 5281 E 1260 S

[view \(https://wasatch.cityinspect.com/builder/permits/view/12345\)](https://wasatch.cityinspect.com/builder/permits/view/12345)

[summary \(https://wasatch.cityinspect.com/builder/summary/12345\)](https://wasatch.cityinspect.com/builder/summary/12345)

requested	completed	inspection	inspector	view
03/12/26	03/16/26 08:56 AM	Foundation/Concrete Columns,	Cody Sweat	PDF
03/03/26	03/04/26 09:45 AM	Footings - re,	James Viera	PDF
03/02/26	03/03/26 01:28 PM	Footings,	Cody Sweat	PDF

records 1 to 3 of 3

Inspection Request Guidelines – PLEASE READ CAREFULLY Please ensure you are fully ready for all inspections prior to submitting your request. When requesting concrete inspections, it is critical to enter the accurate pour time. Inspectors are scheduled to arrive approximately one hour prior to the listed pour time to complete the inspection. If you are not pouring on the requested inspection date, still enter the accurate pour time and note the actual pour date in the Notes section (e.g., "Not pouring until tomorrow"). We will then schedule an inspector for the afternoon of the business day prior to your pour. Due to increased inspection volume, if your site is not ready at the time of inspection, a reinspection fee may be assessed, and future inspection requests may be delayed or pushed out. For more detailed information, please refer to the inspection memo included in your building packet.

JOHNSON ESTATES LLC

Permit #: 25-813 / Lot 4 /
Stony Oaks / 5333 E 1260 S

[view \(https://wasatch.cityinspect.com/builder/permits/view/11253\)](https://wasatch.cityinspect.com/builder/permits/view/11253)

[summary \(https://wasatch.cityinspect.com/builder/summary/11253\)](https://wasatch.cityinspect.com/builder/summary/11253)

requested	completed	inspection	inspector	view
04/30/26	05/01/26 05:04 PM	Shear Wall / Framing,	James Wills	PDF
04/30/26	04/30/26 04:17 PM	Truss Package Review (Office Use Only) ,	Cody Sweat	PDF
01/21/26	01/22/26 01:27 PM	Footings - re,	Derek Kohler	PDF
01/21/26	01/22/26 01:27 PM	Foundation/Concrete Columns,	Derek Kohler	PDF
01/13/26	01/14/26 04:41 PM	Temp Power,	Cody Sweat	PDF
01/13/26	01/14/26 04:41 PM	Footings,	Cody Sweat	PDF

records 1 to 6 of 6

Inspection Request Guidelines – PLEASE READ CAREFULLY Please ensure you are fully ready for all inspections prior to submitting your request. When requesting concrete inspections, it is critical to enter the accurate pour time. Inspectors are scheduled to arrive approximately one hour prior to the listed pour time to complete the inspection. If you are not pouring on the requested inspection date, still enter the accurate pour time and note the actual pour date in the Notes section (e.g., "Not pouring until tomorrow"). We will then schedule an inspector for the afternoon of the business day prior to your pour. Due to increased inspection volume, if your site is not ready at the time of inspection, a reinspection fee may be assessed, and future inspection requests may be delayed or pushed out. For more detailed information, please refer to the inspection memo included in your building packet.

JOHNSON ESTATES LLC

Permit #: 25-855 / Lot 5 /
Stony Oaks Subdivision /
5373 E 1260 S

view (<https://wasatch.cityinspect.com/builder/permits/view/11081>)

summary (<https://wasatch.cityinspect.com/builder/summary/11081>)

requested	completed	inspection	inspector	view
04/30/26	05/04/26 02:19 PM	4-way Rough, Gas Line Test & Schematic,	Quinn Davis	PDF
04/28/26	04/30/26 02:36 PM	Roof Framing - re, Shear Wall / Framing - re,	Bryan Arnold	PDF
04/24/26	04/27/26 02:09 PM	Roof Framing - re, Shear Wall / Framing - re,	Quinn Davis	PDF
04/24/26	04/27/26 02:09 PM	Foundation/Concrete Columns - re,	Quinn Davis	PDF
04/24/26	04/27/26 01:59 PM	Roof Framing - re, Shear Wall / Framing - re,	Quinn Davis	PDF
04/24/26	04/27/26 01:59 PM	Foundation/Concrete Columns - re,	Quinn Davis	PDF
04/10/26	04/14/26 02:21 PM	Roof Framing - re, Shear Wall / Framing - re,	Cody Sweat	PDF
03/12/26	03/17/26 01:01 PM	Shear Wall / Framing - re,	Cody Sweat	PDF
02/19/26	02/23/26 12:44 PM	Shear Wall / Framing - re,	Quinn Davis	PDF
02/17/26	02/19/26 05:28 PM	Shear Wall / Framing,	Cody Sweat	PDF
02/17/26	02/18/26 04:38 PM	Roof Framing,	Cody Sweat	PDF
02/02/26	02/02/26 12:00 AM	Truss Package Review (Office Use Only) ,	Building Department Office	PDF
12/29/25	12/30/25 11:58 AM	Foundation/Concrete Columns,	Scott Sanderson	PDF
12/19/25	12/23/25 04:10 PM	Temp Power,	Cody Sweat	PDF
12/19/25	12/23/25 04:10 PM	Footings,	Cody Sweat	PDF
02/14/26	rejected 02/17/26	Roof Framing, Shear Wall / Framing,	-	note
02/19/26	rejected 02/19/26	Shear Wall / Framing - re,	-	note

EXHIBIT D

Photographs of Homes Under Construction

Photographs documenting construction stage and physical placement of homes
on Lots 3, 4, and 5.



<https://mail.google.com/mail/u/0/?ik=b5a91f933e&view=pt&search=all&permthid=thread-f:1866283358651954251&simpl=msg-f:1866283358651954251&simpl=...> 3/22





<https://mail.google.com/mail/u/0/?ik=b5a91f933e&view=pt&search=all&permthid=thread-f:1866283358651954251&simpl=msg-f:1866283358651954251&simpl=...> 7/22



<https://mail.google.com/mail/u/0/?ik=b5a91f933e&view=pt&search=all&permthid=thread-f:1866283358651954251&simpl=msg-f:1866283358651954251&simpl...> 10/22



<https://mail.google.com/mail/u/0/?ik=b5a911933e&view=pt&search=all&permthid=thread-f:1866283358651954251&simpl=msg-f:1866283358651954251&simpl...> 11/22



<https://mail.google.com/mail/u/0/?ik=b5a91f933e&view=pt&search=all&permthid=thread-f:1866283358651954251&simpl=msg-f:1866283358651954251&simpl...> 15/22



<https://mail.google.com/mail/u/0/?ik=b5a91f933e&view=pt&search=all&permthid=thread-f:1866283358651954251&simpl=msg-f:1866283358651954251&simpl...> 16/22



<https://mail.google.com/mail/u/0/?ik=b5a91f933e&view=pt&search=all&permthid=thread-f:1866283358651954251&simpl=msg-f:1866283358651954251&simpl...> 17/22



<https://mail.google.com/mail/u/0/?ik=b5a91f933e&view=pt&search=all&permthid=thread-f:1866283358651954251&simpl=msg-f:1866283358651954251&simpl...> 20/22



5/27/26, 10:31 AM

Let 3

Law Offices of Samuel J. Taylor Mail - Photos

Cody Johnson
Johnson Estates, LLC
Owner/Founder
Ph: 801-503-1939



Samuel Taylor <samuel@samueljtaylorlawoffices.com>
To: Richard Taylor <Richard@oakl.com>

Tue, May 26, 2026 at 3:23 PM

This sucks

[Quoted text hidden]

Samuel J. Taylor, Esq.
Attorney at Law
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Los Angeles | 90071

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EXHIBIT E

Recorded Plat Stony Oaks Subdivision

The recorded subdivision plat establishing the 60-foot right of way for
1260 South.

56.02.06. VARIANCE PROCEDURES

The variance procedures are intended to provide a sensitive, unencumbered review by which relief may be granted from uniformity particular applications of this title that cause unreasonable hardships, unless such hardships may be more appropriately remedied, if at all, pursuant to other provisions of this title. The variance procedure is inappropriate:

- A. Applications for variance from the Land Use and Development Code shall be filed with the planning officer. Applications shall contain the following information:
 1. A description of the proposed variance, together with a description of that section of the Land Use and Development Code from which relief is being requested.
 2. A statement of the characteristics of the subject property that prevent compliance with the provisions of this title and result in unreasonable hardship.
 3. A statement of the maximum variation of the provisions of this title that would be necessary to permit the proposed use, construction, or development.
 4. An explanation of how the applicant believes the request satisfies each standard set forth in subsection E of this section.
 5. An accurate site plan and architectural plans, if applicable, indicating the manner in which the variance will be applied and its effect upon adjacent properties, and
 6. A listing of as established by ordinance.
- B. Public Hearing: Upon receipt of a complete application as determined by the planning department, a public hearing shall be set with the Appeals Hearing Officer.
- C. Burden of Proof: The applicant for a variance shall bear the burden of proving that all of the hardship conditions are satisfied as determined by the planning department.
- D. Findings Required: The Appeals Hearing Officer may authorize variances from the requirements of this title, only when those variances serve the public interest, and are consistent with state law. If the required findings cannot be made, the request shall be denied.
- E. Requirements for Granting Variance: The Appeals Hearing Officer may grant a variance only if all of the following conditions are met:
 1. Likelihood of hardship: The variance 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 district.
 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.
 4. The variance will not substantially affect the general plan and will not be contrary to the public interest, and
 5. The spirit of this title is observed and substantial justice done.
- F. Unreasonable hardship: In determining whether or not enforcement of this title would cause unreasonable hardship under subsection E of this section, the Appeals Hearing Officer may not find an unreasonable hardship unless the alleged hardship:
 1. Is based on an assumption with the property for which the variance is sought, and
 2. Causes those circumstances peculiar to the property, not those conditions that are general to the neighborhood.
- G. In determining whether or not enforcement of this title would cause unreasonable hardship under subsection E of this section, the Appeals Hearing Officer may not find an unreasonable hardship if the hardship is well imposed or reasonable:
 - a. In determining whether or not enforcement of this title would cause unreasonable hardship under subsection E of this section, the Appeals Hearing Officer may find that special circumstances exist only if the special circumstances:
 - (i) Relate to the hardship complained of, and
 - (ii) Impose the property of principles granted to other properties in the same district.
- H. One Variance: The Appeals Hearing Officer and any other body may not grant one variance.
- I. Additional Requirements: In granting a variance, the Appeals Hearing Officer may impose additional requirements or conditions on the applicant that will:
 1. Mitigate any harmful effects of the variance, or
 2. Serve the purpose of the standard or requirements that is waived or modified.

CODY JOHNSON

Sole Proprietor of Johnson Estates, LLC

Phone: (801) 503-1939 | Email: JohnsonEstatesREI@gmail.com

June 2026

Supplemental Brief in Support of Variance Application

Re: Stony Oaks Subdivision, Lots 3, 4, and 5 (Permits 25-853, 25-813, and 25-855): The Approved Plan Verification Note and Good Faith Reliance

This supplemental brief is offered in support of the variance application for Lots 3, 4, and 5 of the Stony Oaks Subdivision. It addresses a single point that the County has identified, the standard note on the approved plans stating that “it is the responsibility of the contractor or property owner to verify setback compliance to the approved plans.” We address that note directly and respectfully, because when it is read carefully it supports the application rather than weighing against it. The letter of intent sets out the full factual background and addresses each of the statutory criteria, and this brief is meant to complement that document rather than restate it.

The Note Directs Verification to the Approved Plans

The note asks that setback compliance be verified to the approved plans. By its own terms, the approved plans are the reference standard it points to. The applicant and the applicant's contractors did exactly what the note asks. They built to the approved plans and placed the homes as those plans depicted them. Compliance with the note is measured against the approved plans, and the homes were placed in conformity with the approved plans.

The Approved Plans Contained No Right of Way Information

The approved plans labeled the frontage as “1260 SOUTH (PUBLIC ROAD)” and depicted the homes set back 30 feet from that road area. The plans contained no right of way line, no right of way label, no recorded plat reference, and nothing directing the reader to compare the depicted road against the platted right of way. There was therefore no information on the approved plans that would have alerted anyone verifying to those plans that the setback should be measured from a right of way edge sitting roughly 9 or more feet north of the pavement. Verifying setback compliance to the approved plans, precisely as the note instructs, produces exactly the placement that occurred. The deficiency appears only when the homes are compared against the recorded plat, which is a document the approved plans never referenced and the note never mentioned.

The Note Must Be Read Together With the County's Code Compliance Approval

The same plans that carried this verification note were reviewed and stamped for code compliance by the County in November 2025. The County's own code compliance reviewer examined the plans and approved them without flagging any distinction between the depicted road area and the platted right of way, and without adding any right of way line or notation. The note asks the applicant to build to the approved plans. The County itself certified those same plans as code compliant. When the County approves a set of plans for code compliance and then

asks that construction be verified to those approved plans, an applicant who builds to them has done everything the note and the approval together ask. Reliance on plans the County reviewed and approved was reasonable.

The Review and Inspection History Confirms the Reliance Was Reasonable

The letter of intent details the full construction and inspection history, and we will not restate it here. In summary, the County inspected and passed the work at multiple stages across all three lots over roughly six months, including 17 inspections on Lot 5 through the 4 way rough in stage, without any inspector identifying a front setback concern. We do not contend that inspections certify setback compliance, and we are not assigning fault. We note the history only because it confirms that verifying to the approved plans, and building accordingly, was reasonable at every stage, and that the placement of the homes followed directly from the approved plans rather than from any disregard of a known requirement.

The Hardship Was Not Self Imposed

Taken together, these points show that the verification note, fairly read, was satisfied. The applicant verified to the approved plans, the approved plans contained no right of way information, the County had approved those plans for code compliance, and the inspection history confirmed the reasonableness of the reliance. To deny relief on the strength of a note that the applicant in fact followed, for homes built to county approved and county inspected plans, would be a difficult result, and we believe an inequitable one. Utah law has long recognized the equities that arise when a property owner relies in good faith on affirmative governmental action, and we respectfully submit that those equities weigh in favor of granting the requested variance. We raise the point here only to confirm that the hardship was not self imposed, and we remain focused on the variance as the appropriate path to resolution.

We appreciate the County's continued willingness to work through this matter constructively, and we are glad to address any questions the Board may have about the approved plans, the verification note, or the survey.

Respectfully,

Cody Johnson

Sole Proprietor of Johnson Estates, LLC

Phone: (801) 503-1939

cc: Samuel J. Taylor, Esq., Law Offices of Samuel J. Taylor