

Town of Cedar Fort

Town Council Variance Meeting Minutes

March 13, 2019 at 6:00pm

Town Hall, 50 East Center Street, Cedar Fort

APPROVED



Time: 6:05 p.m.

Minutes Taken By: Cara Lyon, Town Clerk

Town Employees Present: Cara Lyon, Town Clerk

Town Council Present: Mayor David Gustin, Councilman Wyatt Cook, Councilman Christopher Whiting, Councilwoman Laura Ault and (Councilwoman Ellen Cibula attended via Skype)

Visitors Present: Charlie Heaton, Paula Heaton and Chariman Dave Rose

1. CALL TO ORDER; ROLL CALL; PLEDGE OF ALLEGIANCE; PRAYER/THOUGHT

Mayor Gustin called the meeting to order at 6:05 PM and read the roll call. He stated that the variance will be considered by the Appeal Committee, which consists of members of the Town Council.

Mayor Gustin announced that Ms. Lyon will swear in Laura Ault as a new councilmember.

Ms. Lyon swore in Councilwoman Laura Ault.

2. VARIANCE APPLICATION

Mayor Gustin stated that the Appeal Committee will review the variance application submitted by Kyle Heaton. The applicant or his representative will first have a chance to address the Committee and then Councilwoman Cibula will provide additional comments.

Charlie Heaton, applicant's father, thanked the members of the Town Council for taking the time to meet with him and his wife, Paula Heaton. Mr. Heaton asked if it's possible to move this application forward and receive a building permit. If this is not possible, he is ready to withdraw the application. The building permit for that lot, adjacent to his son, Kyle Heaton was submitted by Zane Dansie, and approved by the county, but it never came before the Town. Mr. Dansie built a house on a lot that was never approved by the Town. Mr. Heaton has paid a \$1,000 deposit. He explained to the

councilmembers that only one house will be built if the variance is approved. The applicant is not planning to apply for any additional subdivisions.

Mayor Gustin stated that the house was not buildable per ordinance CFO-202, which includes requirements for both major and minor subdivision. Dave Busk applied for subdivision and then sold the property as two lots.

Ms. Cibula stated that the building permit wasn't approved because it wasn't filed with the Town. Mayor Gustin read the ordinance CFO-202-1.5 that states: **Variations and exceptions to this Ordinance may be made to avoid non-economic hardship whenever the tract of land to be subdivided is, in the opinion of Town Council, of such unusual shape or size or is surrounded by such development of unusual conditions, that the strict application of the requirements contained herein would result in real difficulties and substantial hardships or injustices. The Town Council may, after recommendation by the Planning Commission, vary such requirements so that the sub-divider is allowed to develop his property in a reasonable manner. However, it shall be necessary that the public welfare and interest of the Town and surrounding area are protected, and the general intent and spirit of the land use ordinances is preserved. Details of the variance process are contained in the Cedar Fort Zoning Ordinance.** He then read ordinance CFO-200-PZ-2019-10.3.1 that states:

Basis for Granting Variance:

- a) The appeal authority may grant a variance only if:
 - i. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
 - ii. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - iii. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
 - iv. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - v. The spirit of the land use ordinance is observed, and substantial justice done.

Mayor Gustin suggested that all five requirements should be checked, not just one or two.

Councilwoman Ault indicated that the ordinance is also a State Code.

Mayor Gustin read the second part of the ordinance CFO-200-PZ-2019-10.3.1. He repeated that granting the variance would have to involve looking at all five requirements for the variance. He then read the application, that involved the following elements:

1. Is the variance requested one which is the Board of Adjustments empowered to grant? Their answer was no.

State the details of the variance. Seeking variance to be approved on the building parcel immediately prior to any five-year delay. Currently vacant pasture, one residential home is desired to be built

2. Are you the applicant, the owner, lessee, or holder of the beneficial interest in the subject property? The answer is yes.
3. Will the enforcement of the width area, side yard or setback requirements of the ordinance produce necessary hardships? No.
4. Have you been denied a building permit, zoning clearance or zoning compliance permit for the subject use of the property? No.
5. Is the hardship located on or associated with circumstances of the property itself such as difficulties with the width, area shape, topography, geographic setting, but not associated with personal or financial problems unrelated to real estate? No.
6. Is the lot's topography, geographic setting or other site characteristics peculiar rather than a condition general to the neighborhood? No.
7. Were the difficulties and hardships that pertain the property width, area shape, etc. created by an act of the appellant or other party after the effective day of the ordinance? No.
8. Is the use house barn, gravel pit, etc. which will be allowed if the variance is granted which is specifically permitted in the zone? Yes.
9. Will granting the variance be compatible with the express purpose in the spirit of the zoning ordinance and assure that substantial justice is done? Yes.
10. Will granting the appeal run contrary to public health, safety, and welfare or be contrary to the general plan? No.
11. Will granting a variance constitute a special grant of privilege not enjoyed by other properties in the zone? No.
12. Is granting the variance necessary to preserve the substantial property rights of the applicant? Yes, due to town ordinances we have the right to build on our lot.
13. Will the variance be the minimum amount in order to give necessary relief required? Yes, we will be allowed to obtain a building permit.
14. State any other details about this appeal which you want the Board to be aware of.

Mayor Gustin read all three options regarding the building permit.

Councilman Whiting asked about the subdivision permit issued to David Busk.

Mayor Gustin replied that residents who applied during the last two years and don't want to be a subject to a five-year period need to apply and correct it retroactively. The grace period has passed and currently everyone is subject to the five-year period.

Councilwoman Ault asked regarding the reason for denying the subdivision application.

Mayor Gustin clarified that if the land wasn't subdivided prior to David Busk's application, the applicant would be able to apply retroactively. He stated that the variance is inappropriate, and it's not the right tool to fix the issue. Even without subdividing, you can always build a home on the 20-acre parcel, so Mr. Heaton's argument that he has a special exception doesn't prove anything. The non-refundable deposit for the building permit is in place because the Town pays the building official. He pointed out that talking through the rationale for each element is important.

Councilman Whiting asked if both properties were purchased at the same time.

Councilwoman Cibula replied that the properties were probably not purchased at the same time because when the ordinance was changed Mr. Dansie had already built his building at that time.

Councilwoman Ault stated that she doesn't feel that the application satisfies all the variance requirements.

Mayor Gustin stated that the central purpose of the land use ordinance is to have an orderly, controlled way to ensure that subdivisions are implemented correctly. It is critical that the Town literally enforces ordinances to prevent future complications. Furthermore, there's nothing unique about this parcel. However, there's still an opportunity for the applicant to get a subdivision. It is in public interest that every subdivision is preapproved and brought before the Council to make sure that is adequate. The Council wants to provide everyone equal treatment. Justice requires to not grant the variance and observe the law.

Councilman Whiting asked regarding a five-year waiting period for a subdivision.

Councilwoman Ault explained that the purpose of the waiting period is to prevent making a major subdivision through several minor subdivisions.

Councilwoman Ault motioned to deny the variance request because all five conditions are not met, and the hardship was self-imposed.

Councilwoman Cibula seconded the motion.

Mayor Gustin:	Yea
Councilman Cook:	Yea
Councilman Whiting:	Yea
Councilwoman Ault	Yea
Councilwoman Cibula	Yea

Motion Passed

The variance application submitted by Kyle Heaton was denied.

3. ADJOURN

Councilman Whiting motioned to adjourn the meeting

Councilwoman Ault seconded the motion.

Mayor Gustin:	Yea
Councilman Cook:	Yea
Councilman Whiting:	Yea
Councilwoman Ault	Yea
Councilwoman Cibula	Yea

Motion Passed

The meeting was adjourned at 7:20 PM.