

Provo City Planning Commission

Report of Action

September 08, 2021

ITEM #1 Shawn Herring requests a variance through the Planning Commission (see Subsection 15.07.010, Provo City Code) to impact 30% slopes to facilitate a three-lot, residential subdivision, located at 3605 N Foothill Drive, in the R1.10 zone. Sherwood Hills Neighborhood. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLVAR20210177

The following action was taken by the Planning Commission, on the above-described item, at its regular meeting of September 08, 2021:

DENY

On a vote of 7:0, the Planning Commission denied the above noted application.

Motion By: Laurie Urquiaga

Second By: Robert Knudsen

Votes in Favor of Motion: Laurie Urquiaga, Dave Anderson, Daniel Gonzales, Lisa Jensen, Brian Henrie, Robert Knudsen, Ally Jones

Dave Anderson was present as Chair.

- Includes facts of the case, analysis, conclusions, and recommendations outlined in the Staff Report, with any changes noted.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was not held for this request.

CONCERNS RAISED BY PUBLIC

Key issues raised in written comments received subsequent to the Planning Commission meeting:

- The subject property has no access to a street
- Foothill Drive already has high volumes of traffic. Additional development accessed at 3605 N Foothill Drive would lead to increased traffic volumes
- The slope of the subject property is very steep
- If the access to the property on Foothill Drive is developed for geotechnical exploration and possibly development, environmental impacts could occur
- Geotechnical companies have already advised against accessing the property from Foothill Drive
- The property may be subject to natural hazards issues. Investigating this issue may cause damage to the vegetation and terrain
- Wildlife would be impacted by developing an access to the property

- There would be aesthetic impacts to the surrounding area if the Foothill Drive access is developed for the subject property
- The subject property lies in an area of high fire risk
- The subject property could be subject to drainage and landslide issues
- Construction and operation of a road cut out of a slope that steep threatens to interfere with the property rights of existing properties as it interferes with their safety

NEIGHBORHOOD AND PUBLIC COMMENT

Comments during the public hearing included the following:

- The Neighborhood Chairs were not present at the Planning Commission meeting (the subject property lies in both the Indian Hills and Sherwood Hills neighborhoods)
- There is no access from the westside of the subject property. There is a piece of private property between the applicant's property and Little Rock Drive (Taz Murray)
- He and his neighbors are concerned about the vegetation, erosion, fire, and impacts from heavy machinery that could participate in hazards exploration (Taz Murray)
- There are many from the community opposed to this property being accessed from either the west or east side (Brian Gibson)
- Mr. Gibson is opposed to development in the gully because of fault, fire risk, challenges for emergency vehicles accessing the area, and impacts to the environment
- I have learned tonight about stability threats to my home if the 3605 N Foothill Drive access is developed (Brian Gibson)
- Mr. Hyde has no right to put my home and family in danger (Brian Gibson)
- We are worried about impact to our property if the access is developed. We submitted a letter to the City (relative to this application) with geotechnical information. We had geotechnical exploration work done on our property, and fault lines were discovered. We suffered a lot of impacts from the exploration work (Aaron Miller)
- Comments and concerns about steepness, erosion, stability, etc., apply to both accesses discussed tonight (Kyle Matthews)
- Please only consider the access that was requested by the applicant (Kyle Matthews)
- The HOA is concerned about possible damage to the road if the subject property is accessed near 3700 North Little Rock Drive (Jeff Cutler)
- Neighbors along Little Rock Drive appear to be opposed to the property being accessed on the Drive because of road impacts, noise, and traffic (Jeff Cutler)
- We are trying to start conversations with the City about maintenance of the development roads (within the Villages of Quail Valley PUD), which is another reason we are concerned about damage to the roads (Jeff Cutler)
- Increases to traffic on Foothill Drive are of concern to her (Haley Gibson)

APPLICANT RESPONSE

Key points made in the applicant's presentation to the Planning Commission included the following:

- Marc Hyde (the property owner) noted there is a small portion of the alternative access near 3700 N Little Rock Drive that has slopes that exceed 30-percent
- Mr. Hyde has had many discussions with the Quail Valley Home Owners' Association (the HOA) about accessing his property through the lot at 3700 N Little Rock Drive. He said the property owner is more than happy to sell the applicant land on the north end of the property. The applicant asserts the HOA has been resistant to his purchase of a portion of the owner's land
- Mr. Hyde claims that his only access point option is 3605 N Foothill Drive
- Mr. Hyde stated he is only asking for the same right that each of his neighbors enjoy—access to their property
- He acknowledged that the access at 3605 N Foothill Drive is steep, but the engineers he has had look at it told him that it is possible to establish an acceptable access at the desired location
- Much of the property is very buildable
- Seismic maps suggest a large area on the west side of the subject property is suitable for development

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- I am afraid of an inherent characteristic of a property being found to be an unreasonable hardship (Dave Anderson)
- I am not accustomed to seeing variances granted for slope requirements (Dave Anderson)
- I do not think it is fair game to grant a variance for a restriction that was established to protect sensitive lands (Dave Anderson)
- Not every property is suitable for development (Dave Anderson)
- Where is the common sense? Some properties just have too many concerns to be developed (Brian Henrie)
- Brian Henrie enumerated several hazards that could potentially impact the property
- There are many hazard concerns with this property. My professional training tells me there are issues with developing this property (Daniel Gonzalez)
- I agree with the previous statements. It would be unfair to the surrounding homeowners to grant a variance that may impact their properties (Ally Jones)
- This property does not have the same circumstances as the other properties. Building in a hazardous area is contrary to the public interest (Lisa Jensen).
- I am concerned about the public interest, as well. The property owner has the right to develop his property (it is properly zoned), but this variance does not meet all the criteria for granting a variance, especially in relation to the public interest (Laurie Urquiaga)
- Is it possible to allow for the property owner at 3700 N Little Rock to allow the applicant to cross their property to allow hazards exploration? (Brian Henrie)
- Cities adopt regulations for a reasons (Dave Anderson)
- Laurie Urquiaga made a motion to deny the requested variance with the following findings:
 - The proposed variance is contrary to the public interest, as described in the purposes and objective of the Critical Hillside Overlay Zone
 - Granting the variance has the potential to create a substantial injustice for uphill properties
 - A hardship exists, but it is not unreasonable
 - It does impact a property right, but it is not unreasonable
- The motion was seconded by Robert Knudsen and the Planning Commission voted 7-0 to deny the requested variance.



Planning Commission Chair



Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Community and Neighborhood Services Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS