

For Office Use Only

Date Application Received _____

Date Application Approved/Denied _____

**The Town of Castle Valley
VARIANCE APPLICATION**

Lot # 260.1/ 259-B

Name of Applicant(s): Anna Banasova/ Peter Mlynaric

Address of Subject Property: 260.1 Pope Lane, Castle Valley, UT

Mailing Address: P.O. Box 105, Teton Village, WY 83025

Phone: [REDACTED]

Applicant's Interest in Subject Property

☒ Owner

☐ Contractor

☐ Architect/Drafter

☐ Other: _____

Name of Property Owner (if different from applicant): _____

Email of Property Owner: _____ Phone _____

Please note that additional information may be required to ensure adequate information is provided for Town analysis. All information required for Town analysis will be copied and made public, including professional architectural or engineering drawings, for the purposes of public review by any interested party.

**It is highly recommended to consult with Staff prior to submitting this application.
Please call (435) 259-9828 to schedule a pre-application consultation with Staff or
if you have any questions regarding the requirements of this application.**

Mailing Address: Planning and Land Use Commission Clerk
HC 64 Box 2705
Castle Valley, UT 84532-9608

REQUIRED FEE Filing fee of **\$500**
Plus additional fee for required public notices.

Name and addresses of all professional consultants advising the Applicant with respect to the Application
(attach additional sheets if necessary)

Joel Anderson, Blind Draftsman, LLC Designer/ Draftsman

2468 1/2 Theresea Ln., G.J., CO 81505

Street address and legal description of subject property (attach additional sheets if necessary):
260.1 Pope Lane, Castle Valley, UT; BEG AT THE SOUTHWEST COR OF LOT 259 THENCE N 49°09'00"E 512.4; THENCE S 45°00'00"E
330.2 TO THE SW COR OF LOT 258; N 45°00'00"E 320 ALONG THE SE BNDRY OF LOT 258; S 47°39'W 175 F
42°25'W 136 FT; S 47°39'E 138.1 FT N 42°25'E 136.1 FT; S 47°39'E 113.8 FT; N 47°26'E 132.7 FT; S 44°31'E
46.2 FT; S 47°32'W 124.7 FT; N 87°24'W 1272 TO BEG
SIGNATURE

Signature of Owner or Agent: Banasova Anna Date: 4/26/2022

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.)

SUBMITTAL REQUIREMENT CHECKLIST

1. Project Description (please attach additional sheet)

- ☒ Written description of your proposal (the specific features of the proposed use, construction or development)

2. Variance Information (please attach additional sheet)

- ☒ a. Describe your proposed project and specifically how it would not meet Town Land Use Ordinances.
- ☒ b. Cite specific provisions of Town Land Use Ordinances that your proposal does not meet and the precise variance being sought.
- ☒ c. What special circumstances and characteristics associated with the subject property prevent you from meeting the specific provisions listed in item b. above? (Reasons for your variance request may not be economic, see also Ord. 85-3, 7.1.3 (2) (a) and (c))
- ☒ d. Explain how the literal enforcement of Town Land Use Ordinances causes an unreasonable hardship that is not necessary in carrying out the general purpose of Town Land Use Ordinances (Ord. 85-3, 7.1.3 (1) (a))
- ☒ e. Explain what special circumstances exist on the subject property, which do not generally apply to other properties in the same zone. (The law requires property-related difficulties and hardships be identified before granting a variance, see also Ord. 85-3, 7.1.3 (1) (b))
- ☒ f. Explain how this variance will be essential to the enjoyment of a substantial property right possessed by other properties in the same zone (Ord. 85-3, 7.1.3 (1) (c)).
- ☒ g. Would the variance uphold the Town's General Plan and not negatively affect the public interest? (Ord. 85-3, 7.1.3 (1) (d).) Please explain your reasoning.
- ☒ h. Explain how this variance will observe the spirit of Town Land Use Ordinance (Ord. 85-3, 7.1.3 (1) (e)).
- ☒ i. State the minimum variation of the provisions of Town Land Use Ordinances that would be necessary to permit the proposed use, construction or development (Ord. 85-3, 7.1.3 (6) (b)).
- ☐ j. What, if any negative impacts might result from the granting of this variance and what would you be willing to do to mitigate such problems (Ord. 85-3, 7.1.3 (7) (a))?
- ☐ k. Any other information deemed necessary by the Planning and Land Use Commission Clerk (Ord. 85-3, 7.1.4 (3) (e)).

3. Minimum Plan Requirements

- ☒ A site plan drawn to scale identifying all property lines, existing and proposed structures, fences, road easements, setbacks and their respective distances from the property lines
- ☒ An elevation drawing to scale showing all elevations of proposed structures with existing grade and finished grade shown and labeled
- ☒ A topographical drawing prepared, prior to any earth-moving, by a registered land surveyor or civil engineer identifying all items listed above. The existing grade shall be shown in dashed lines at two foot (2') intervals and the proposed finished grade shall be shown in solid lines at two foot (2') intervals
- ☒ A Grade Review signed by the Building Permit Agent prior to any earth-moving to determine existing grade
- ☒ Any other information deemed necessary by the Planning and Land Use Commission Clerk.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

I acknowledge that the Town of Castle Valley requires the items above to be submitted before my application can be processed. I understand that the Planning and Land Use Commission Clerk will not accept my application unless all of the above items are included in the submittal package.

Signed: Banwar Amu Applicant/ Date: 4/26/2022



Architectural Drafting & Design

2468 1/2 Theresa Ln. Grand Junction, CO 81505

(719) 309-8982

blinddraftsman@gmail.com www.blinddraftsman.com

"To Better Serve Our Owners, Builders, Architects & Engineers."

American Design Drafting Association Member

April 26, 2022

Variance and Appeal Hearing Officer
Planning and Land Use Commission
HC 64 Box 2705
Town of Castle Valley, Utah 84532-9608

Application for Variance

Property Owner/ Applicants:
Anna Banasova, Peter Mlynaric
P.O. Box 105
Teton Village, WY 83025

Property:
260.1 Pope Lane
Castle Valley, UT 84532

Legal Description of Property:

BEG AT THE SOUTHWEST COR OF LOT 259 THENCE N 49°09'00"E 512.4;
THENCE S 45°00'00"E 330.2 TO THE SW COR OF LOT 258; N 45°00'00"E 320
ALONG THE SE BNDRY OF LOT 258; S 47°39'W 175 FT; S 42°25'W 136 FT; S
47°39'E 138.1 FT N 42°25'E 136.1 FT; S 47°39'E 113.8 FT; N 47°26'E 132.7 FT; S
44°31'E 146.2 FT; S 47°32'W 124.7 FT; N 87°24'W 1272 TO BEG

Variance Information:

The proposed two-story residential project has a retaining wall and a small portion (378 sf) of the south part of the home that will require a variance. A reduction of the (30) foot setback from the "BLM property line" (N 87d 24' W, 1,272.0') on the south of 260.1 Pope Lane, Castle Valley.

The Town of Castle Valley, Land Use Ordinance 85-3, Section 5.2 SETBACK REQUIREMENTS, Part B. "The setbacks for.... all buildings (except for those listed in subsection E below), including municipal buildings, shall be (30) feet from the property line between contiguous lots."

Geotechnical Engineers assessment of surface conditions:

"The Project site has been roughly graded. To the immediate west of the building pad area is a large cliff leading up to a plateau. The cliff is approximately 1,500 feet in height. Several large drainages are visible in the cliff." According to the Utah Geological Survey, the project site is mapped as located on the Cutler Formation with description of red/ lavender-brown sandstone; angular cross beds forming smooth and round ledges; as much as 1,000 meters (3,300 ft) exposed; 75 meters (245 ft) of gray-white sandstone may be an outcrop of White Rim Sandstone. Rock-fall blocks, boulders, smaller angular gravel deposited on slopes below cliffs and steep slopes, cut and fill channel features.

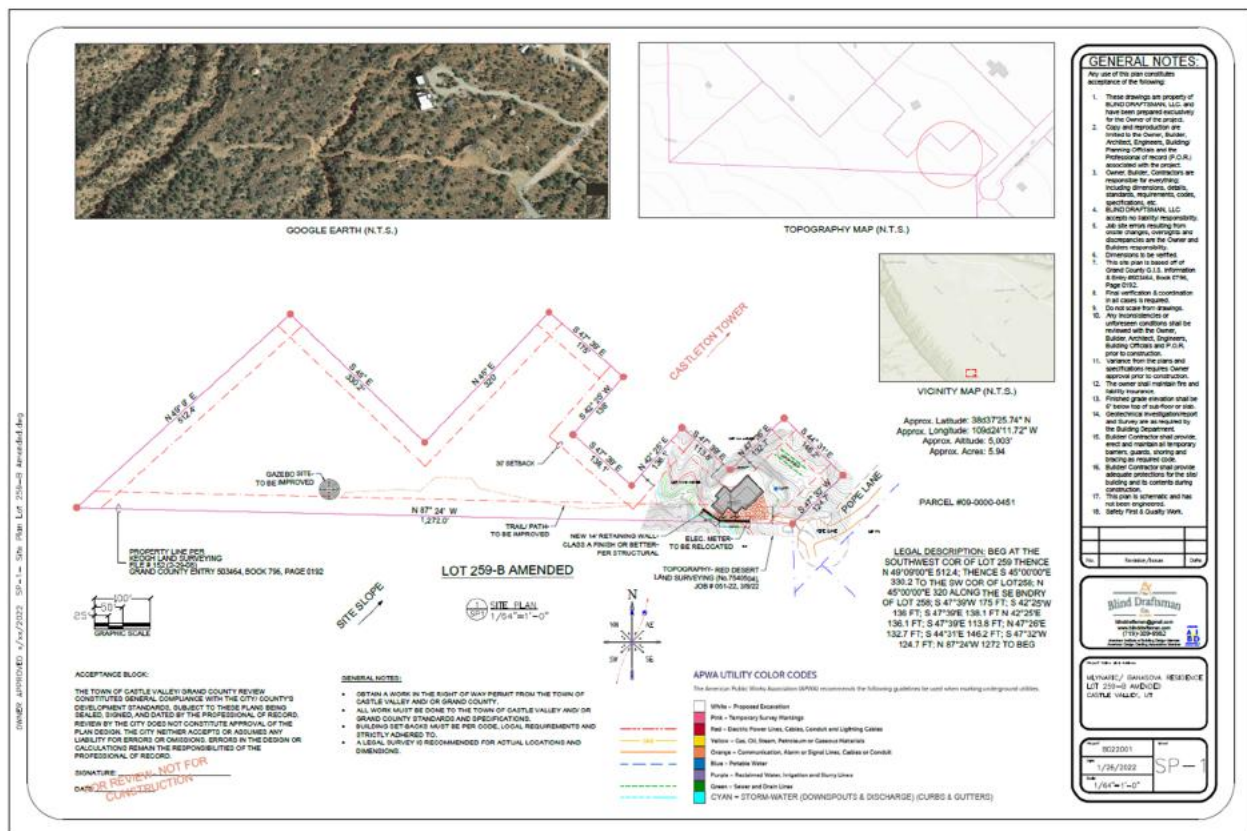
Due to the steep slopes, cliffs, cut and fill channel features and large drainages that surround the project, as mentioned above, we must encroach into the "BLM property line" ("BLM") setback to properly rebuild the existing retaining wall that presently is in disrepair and is necessary to hold back the escarpment, to maintain access to the home, to preserve access to the trailhead. At the same time, we can provide a modest amount of additional space for an unconventional design on an unconventional lot backed up to porcupine rim.

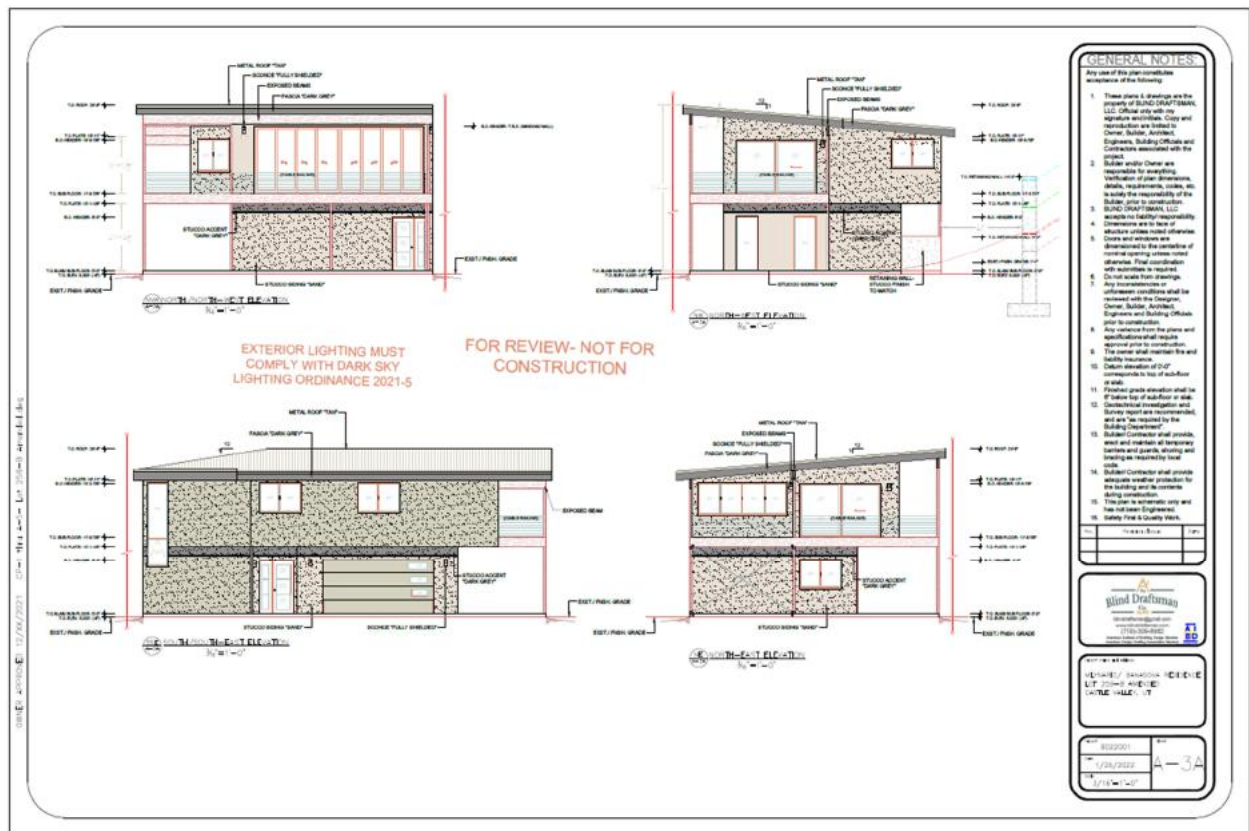
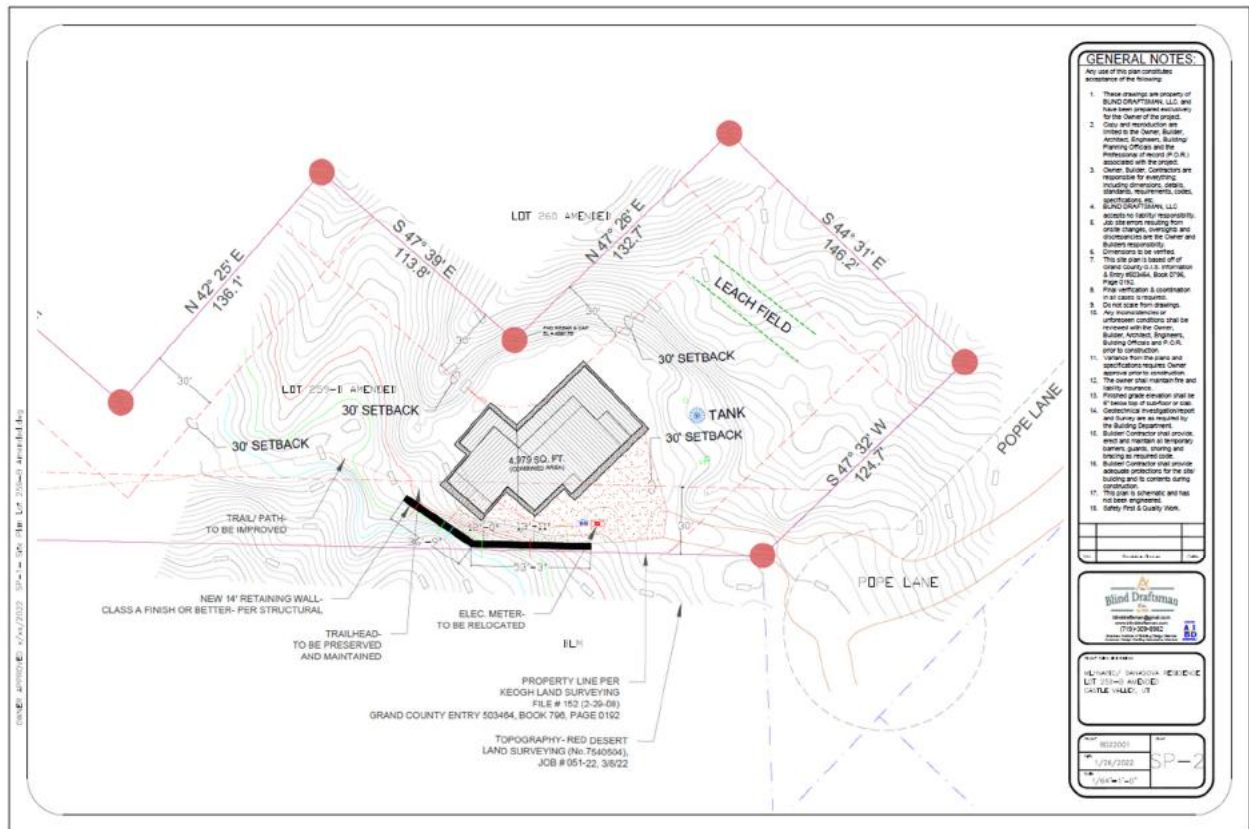
We will need a (29) foot reduction in the (30) foot "BLM" setback for the retaining wall. We will need a (15) foot reduction in the (30) foot "BLM" setback for the (378 sf) portion of the south part of the home. These reductions are located along approx. (80) feet of the "BLM" property line and represent an area of about 1,900 sf.

Standards for Variance:

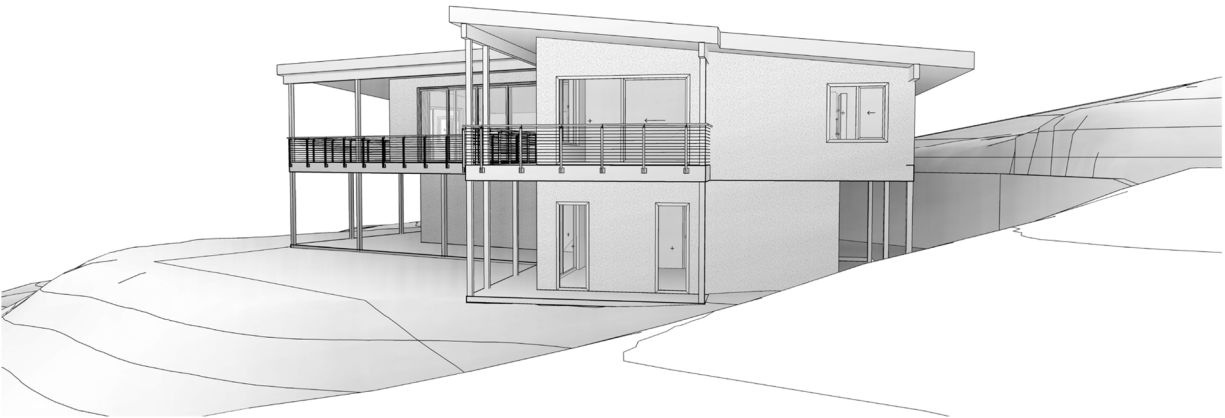
Literal enforcement of the Town Land Use Ordinances is not necessary to carry out the general purposes of the Town Land Use Ordinances in this circumstance due to the location of the lot. The (30) foot "BLM" setback in question is adjacent to Porcupine Rim. Land that will never be developed or improved. Literal Enforcement of the Town Land Use Ordinances would cause an unreasonable hardship in building and adapting to the shape of the lot and challenging natural features, which do not recognize man-made setbacks. We are the last lot at the end of Pope Lane, at the edge of the "improved development," backed up to porcupine rim of the Cutler Formation, where the terrain and natural features of the land become more extreme. There are only a handful of lots that are backed-up to porcupine rim and on the boundary edges of the Land Use Zones where a (30) foot setback (In our case from an escarpment) does not make as much sense as many of the other lots in our zone.

Granting a variance is essential to the enjoyment of building a fine, unconventional, home that is comparable to the area, supports the general purposes of the Town Land Use Ordinances and is designed to fit in with the difficult natural surroundings. Adapting to the conditions of the site is crucial and challenging. Granting a variance is essential to adapting to those conditions and minimizing the impact on the environment by utilizing the existing building pad and not disturbing the pristine land further west on the property. The variance will not substantially affect the general plan, but help this project adapt to the current building pad and better comply with the General plan. This is a special circumstance attached to this property and the spirit of the Town Land Use Ordinances are intact.



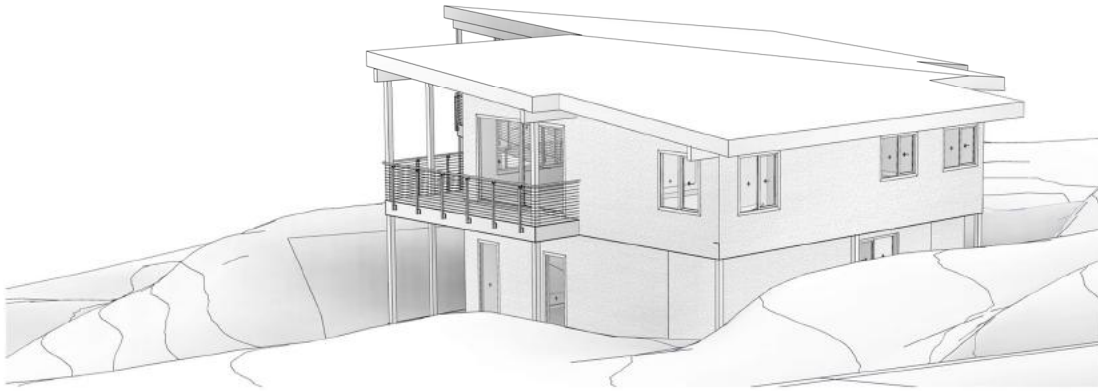








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June 19, 2022

To: Hearing Officer Zachariah Levine

Retaining walls not subject to setback requirements

Here is the definition of Setback in the land use ordinance 85-3:

SETBACK: The shortest distance between the outside surface of the foundation, wall or main frame of a building, septic system or well, to the legally platted street easement line, side property line or back property line.

Part of the variance request is for the retaining wall on the uphill side of the house, as described in the letter from the designer Blind Draftsman:

We will need a (29) foot reduction in the (30) foot "BLM" setback for the retaining wall. We will need a (15) foot reduction in the (30) foot "BLM" setback for the (378 sf) portion of the south part of the home. These reductions are located along approx. (80) feet of the "BLM" property line and represent an area of about 1,900 sf.

I would just like to clarify that, per our definition of Setback, the retaining wall is not subject to setback requirements. The structure of the house itself, of course, is. Therefore the setback portion of the variance request can be disregarded.

This was pointed out by me at both the Planning Commission meeting and the Town Council meeting where the variance request was discussed.

—Colleen Thompson
Building Permit Agent

From: "Ryan Anderson" <ryana@castlevalleyutah.com>
Date: June 15, 2022 at 9:45:04 AM MDT
To: "jazmined@castlevalleyutah.com"
<jazmined@castlevalleyutah.com>, "Jocelyn Buck"
<townclerk@castlevalleyutah.com>
Reply-To: ryana@castlevalleyutah.com

Dear Castle Valley Mayor Duncan and Town Council Members,

Having previewed the information regarding Variance request standards that was sent out to all PLUC and Town Council members well in advance of our June 1st meeting, and trusting that all members were informed about those standards and from our site visits prior to our June 1st, 2022 meeting, and with our few questions answered satisfactorily by the land owners, the PLUC members voted unanimously to recommend the variance request from Anna Banasova on 260.1 Pope Lane to the Castle Valley Town Council for your consideration and possible action.

Best regards,

Ryan Anderson
Castle Valley PLUC Chair

June 15th 2022 Castle Valley Town Council Meeting

After some discussion the Council voted to approve sending the Variance Application to the Town's Variance Officer.

Council's opinion was "undecided" on granting the Variance and asked the Variance Officer listen to the Meeting Audio discussion and to give special attention to Ordinance 85-3 Chapter 7.1.3 Standards for Variances and to take into consideration Section 2a If the hardship is self-imposed or economic (Ordinance Chapter 7 in full below).

Jocelyn Buck
Town Clerk

CHAPTER 7 VARIANCES AND APPEALS

All Variance and Appeal Hearing Officer requirements shall follow the provisions as further provided for in Ordinance 2006-3.

7.1 VARIANCE

Variances are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of Town Land Use Regulations that create unreasonable hardships. When such hardships are more appropriately remedied, if at all, pursuant to other provisions of Town Land Use Regulations, the Variance procedure is inappropriate. Property owners considering a Variance shall consult with the Town prior to such an application in order to clarify the Town's Land Use Ordinances and other possible remedies.

7.1.1 Parties Entitled to Seek Variances

Any person or entity desiring a waiver or modification of the requirements of Town Land Use Ordinances as applied to a parcel of property that he/she owns, leases, or in which he/she holds some other beneficial interest may apply for a Variance from the terms of Town Land Use Ordinances.

7.1.2 Authority for Variance

The Variance and Appeal Hearing Officer (the "Officer"), in accordance with the procedures, standards and limitations of this Chapter and as further provided for in Ordinance 2006-3, shall approve, approve with conditions or disapprove an application for a Variance after receiving a recommendation from the Town.

7.1.3 Standards for Variance

1. The Officer may grant a Variance only if each of the following conditions are met:
 - a. Literal enforcement of Town Land Use Ordinances would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purposes of Town Land Use Ordinances;
 - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - c. Granting the Variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
 - d. The Variance will not substantially affect the General Plan and will not be contrary to the public interest; and
 - e. The spirit of Town Land Use Ordinances are observed and substantial justice is done.
2. In determining whether or not enforcement of Town Land Use Ordinances would cause unreasonable hardship under this section, the Officer may not find an unreasonable hardship:
 - a. If the hardship is self-imposed or economic;
 - b. Unless it is located on or associated with the property for which the Variance is sought; and
 - c. Unless it comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
3. In determining whether or not there are special circumstances attached to the property under this section, the Officer may find that special circumstances exist only if the special circumstances:

- a. Relate to the hardship complained of; and
 - b. Deprive the property of privileges granted to other properties in the same zone.
4. The applicants shall bear the burden of proving all of the conditions justifying a Variance have been met.
5. Variances run with the land.
6. The Officer shall not grant a Variance that:
 - a. Is intended as a temporary measure only;
 - b. Is greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant; or
 - c. Authorizes uses not allowed by law (i.e., a "use variance").
7. In granting a Variance, the Officer may impose additional requirements on the applicant that will:
 - a. Mitigate any harmful effects of the Variance; or
 - b. Serve the purpose of the standard or requirement that is waived or modified.
8. The Officer shall decide all Variance Applications and other issues brought before it within a reasonable time. Decision on a Variance Application is final when the Officer dates and signs the application, stating approval or denial of the Application and the "Finding of Facts" or the written facts and evidence used in making the decision.

7.1.4 Submittal Requirements for Variance Applications

The Applicant of a Variance shall file a Town Variance Application with the Planning and Land Use Commission Clerk. Variance Applications shall only be accepted after a complete application has been submitted, along with all submittal requirements and all fees paid. The Town Planning and Land Use Clerk shall certify the completeness of the Variance Application or reject the same, in a timely manner. A complete Variance Application shall include the following items and information unless determined inapplicable by the Planning and Land Use Clerk:

1. Written Information:

- a. The property owner's name and address and the owner's signed consent to the filing of the Application;
- b. The Applicant's name and address, if different than the owner, and the Applicant's interest in the subject property;
- c. The names and addresses of all professional consultants, if any, advising the Applicant with respect to the Application; and
- d. Street address and legal description of the subject property.

2. Graphic Information:

- a. A site plan drawn to scale identifying all property lines, existing and proposed structures, fences, road easements, setbacks and their respective distances from the property lines;
- b. An elevation drawing to scale showing all elevations of proposed structures with existing grade and finished grade shown and labeled;
- c. A topographical drawing prepared, prior to any earth-moving, by a registered land surveyor or civil engineer identifying all items listed in Subsection 2.a and 2.b of this Section. The existing grade shall be shown in dashed lines at two foot (2') intervals and the proposed finished grade shall be shown in solid lines at two foot (2') intervals; and
- d. A Town Grade Review signed by the Building Permit Agent prior to any earth-moving to determine existing grade.

3. Variance Information:

- a. The specific feature or features of the proposed use, construction or development that require a Variance;
- b. The specific provision of Town Land Use Ordinances from which the Variance is sought and the precise Variance being sought;
- c. A statement of the characteristics of the subject property that prevent compliance with the provisions of Town Land Use Ordinances and result in unnecessary hardship;
- d. A statement of the minimum variation of the provisions of Town Land Use Ordinances that would be necessary to permit the proposed use, construction or development; and
- e. An explanation of how the Variance Application satisfies each standard for Variances set forth in this Chapter; and any other information identified by the Planning and Land Use Commission Clerk to be pertinent to the requested Variance.

4. Fees

A filing fee to cover the cost of review in accordance with the fee schedule adopted by resolution of the Town Council. The Applicant shall also be responsible for payment of all fees established for providing the public notices required by this Chapter.

7.1.5 Procedures for Variance Applications

Noticing and posting requirements shall be met as specified in this Chapter and in accordance with the Utah Open and Public Meetings Act.

1. Town Recommendation

Upon receipt of a complete application for a Variance, the Planning and Land Use Commission (Commission) shall review and make a recommendation to the Town Council who shall review the application and make a recommendation to the Variance and Appeal Hearing Officer (the "Officer"). Variance Applicants, or their representatives, must attend both the Commission and Town Council meetings at which the Variance request will be reviewed.

Upon completion of a Town recommendation, but before a public hearing, the Town Clerk shall forthwith transmit to the Officer the Town recommendation along with the complete Variance Application and all required items and information listed in section 7.1.4 of this Chapter.

2. Notice of Town Review of Variance Applications to Neighbors

To allow neighbors time to respond to a Variance request, an Applicant must submit the Variance Application to the Town thirty (30) days before the meeting at which the Variance request will first be reviewed by the Commission. The Town shall send notice, including, if practical, a copy of the Variance Application describing the proposal to the Parties of Interest at least fourteen (14) days prior to the Commission's meeting at which the Variance Application will first be reviewed. Parties of Interest include the lot owner of each parcel of property abutting the property upon which the Variance is to be located and anyone else who has submitted a written request to be notified of the decision.

3. Public Hearing Required for Variance Applications

A public hearing shall be held at the Town Community Building on a Variance Application after a recommendation has been made by the Town as required by this Chapter. At the public hearing the Officer shall consider the Application, the recommendation of the Town, the relevant support materials and the public testimony given at the public hearing. After the close of the public hearing, the Officer shall approve, approve with conditions or disapprove the Application for a Variance within a reasonable time. The Town shall approve procedures and policies that govern the conduct of the public hearing in accordance with Section 5 of Ordinance 2006-3, as amended.

4. Notice of Public Hearing for Variance Applications

Before a public hearing for an Application for a Variance is held by the Officer, the Officer shall give notice to the Town and the Applicant at least fourteen (14) days prior to the hearing stating the time, place and purpose of the hearing. The Town shall send notice, including, if practical, the recommendation made by the Town to the Parties of Interest, at least ten (10) days prior to the Public Hearing stating the time, place and purpose of the hearing. The public hearing shall be noticed to the public in accordance with the Open and Public Meetings Act (Section 52-4-101, *et seq.*, as amended).

7.1.6 Notice of Final Decision for Variance Applications

The Officer shall give written notice of all final decisions and rulings for a Variance to the Town, the Variance Applicant, and other Parties of Interest within ten (10) business days after such a final decision is made.

7.1.7 Records of Proceedings and Final Decision

The Town Clerk shall file a hard copy, marked as final with adoption date, of the final decision along with all other records of meetings or hearings held by the Officer, including written minutes, rulings, and other associated documents, in the Town Records for review and access by the public subject to the provisions of the Government Records Access Management Act, Section 63G-2-101, *et seq.*, UCA, as amended.

7.1.8 Variance Less than Requested

A Variance less than or different than that requested may be authorized when the record supports the applicant's right to some relief but not to the relief requested.

7.1.9 Conditions for Variance

The Town may recommend, and the Officer may impose such conditions regarding the location, character and other features of the proposed structure on a Variance Application that are deemed necessary to accomplish the purposes of Town Land Use Ordinances and the Town's General Plan, to prevent or minimize adverse impacts upon the public and neighbors and to ensure compatibility. These conditions shall be expressly set forth in the Variance and Appeal Hearing Officer's decision granting the Variance. Violation of any condition or limitation on the grant of a Variance shall be a violation of this Land Use Ordinance and shall constitute grounds for revocation of the Variance by the Town.

7.1.10 Effect of Variance

Issuance of a Variance shall authorize only the particular variation that is approved in the Variance Decision.

7.1.11 Time Limit for Variance

Subject to an extension of time granted upon application to the Town and unless otherwise specified in the Variance Decision, no variance shall be valid for a period longer than one year unless approval is granted by the Town on a building permit and the Applicant has submitted a complete building permit to the Grand County Building Department within that period. The Town may grant an extension of a Variance for up to one additional year when the Applicant is able to demonstrate no change in circumstance that would result in an unmitigated impact and the permit has yet to be approved by the Grand County Building Department. Extension requests must be submitted prior to the expiration of the Variance. Permitted time frames do not change with successive owners.

7.1.12 Appeal of Variance Decision

Any person adversely affected by a final decision made by the Variance and Appeal Hearing Officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

7.2 APPEALS OF LAND USE DECISIONS

7.2.1 Administrative Appeals. Any person adversely affected by the Land Use Authority's application of a Town Land Use Regulation to a particular Land Use Application shall first appeal said decision to the Officer. Legislative Decisions related to the enactment or amendment to Town Ordinances, Land Use Regulations, General Plans, and Zoning Maps shall be appealed directly to the Grand County District Court pursuant to Section 10-9a-801 (5), *et seq.*, UCA.

7.2.2 Appeal Authority. The Planning and Use Commission ("the "Commission") and the Officer shall have the powers and be subject to the limitations contained in Ordinance 2006-3 and Chapter 3 of this Land Use Ordinance..

7.2.3 Applications for Appeal.

1. Routine Designations. Any person who claims that the Building Permit Agent made an erroneous determination regarding whether an application qualifies as a Routine Application, as defined in Section 1.6 and as specified in Ordinance 85-3 ("Routine Designation") shall appeal said Routine Designation to the Commission. Such Appeal shall be filed in writing with the Town Clerk setting forth the reasons for appeal within 15 calendar days of the date of the Building Permit Agent's written Routine Designation. An appeal fee, as established by Resolution 2013-1 as amended, must accompany the appeal. If, upon appeal, the Commission determines that the Land Use Application is routine, it shall remand the Land Use Application to the Building Permit Agent for processing. If the Commission determines that the Land Use Application is nonroutine, the Designated Land Use Authority may review and issue a Land Use Decision on the nonroutine Land Use Application.

2. Land Use Application Fees. Any person who claims a Land Use Application fee exceeds the reasonable cost of processing the application, issuing the permit, or other services rendered shall appeal said fee to the Officer. Such Appeal shall be filed in writing with the Town Clerk setting forth the reasons for the appeal within 15 calendar days of the date the fee is assessed. An appeal fee, as established by Resolution 2013-1 as amended, must accompany the appeal. The Town shall return the appeal fee to the Appellant if the Officer determines the Land Use Application fee is unreasonable under Section 10-9a-510, UCA. On appeal, the Officer shall deem Land Use Application fees as presumptively reasonable. It shall be the Appellant's burden to prove that a Land Use Application fee is clearly disproportional to the cost of processing the application, issuing the permit, or other services rendered, including all staff, consultant and attorney review.

3. Land Use Decisions. Any persons, including any officer or body of the Town, adversely affected by any other Land Use Decisions, including the grant or refusal of a building permit, shall first appeal the Land Use Decision to the Officer. An appeal must be made within thirty (30) calendar days of the date of the Land Use Decision by filing with the Town Clerk: 1) a written notice of appeal stating in detailed specificity the decision being appealed and the grounds thereof, including the alleged error(s) made by the Land Use Authority and every theory of relief that can be raised in district court; and 2) fees established by Resolution 2013-1, as amended (collectively the "Appeal"). Appeals shall only be accepted in which final action of the Land Use Authority has been made, as evidenced by issuance or denial of a Land Use Application Permit or other final written Land Use Decision. The Town Clerk shall certify the completeness and timeliness of the Appeal or reject the same, in a timely manner. Upon the Town Clerk's certification of the Appeal, the Town Clerk shall forthwith transmit the "Record," as

defined below, to the Officer.

4. The Record shall consist of all those documents and papers filed by the Land Use Applicant with the Land Use Authority; all correspondence between the Town and the Land Use Applicant; all documents, papers, and correspondence received from the public or adversely affected persons or entities; transcripts of all public meetings; the Land Use Regulations; all such Land Use Decisions or transcripts thereof; and the notice of appeal. By mutual agreement of the Parties, the Record may include a “Brief of the Issues,” submitted by the Parties and directed to the Officer. The Record shall not include any documentation, papers, or correspondence from the Town, the Applicant, or an adversely affect person or entity dated or prepared after the date of the Land Use Decision, or any other evidence outside of the Record. In the event there is no written Record, the Officer may call witnesses and take evidence.

5. An appeal is not subject to de novo review, and the Officer shall defer to the Town’s determination of factual matters where the Record includes substantial evidence for each of the Town’s findings of fact.

6. The Officer shall review the Record under the “Clearly Erroneous” standard, and it shall be the appellant’s burden to prove the Land Use Authority erred. If the Land Use Decision is reasonable in light of the entire Record, the Officer may not reverse it, even if the Officer would have weighed the evidence differently.

7. When reviewing the reasonableness of the Land Use Decision, the Officer shall apply the plain meaning of the Land Use Regulations. If the meaning of a Land Use Regulation is ambiguous, it shall be interpreted in the light most favorable to the Land Use Applicant.

8. The Officer, with the mutual agreement of the Parties, may rule on the Record alone or may fix the date and time for a hearing within a reasonable time. In the event the parties proceed to a hearing, the Officer shall give the Parties and the public notice thereof. All meetings and hearings held by the Officer shall be considered public meetings and shall be properly noticed and held in accordance with the Utah Open and Public Meetings Act, and no later than ten (10) business days prior to the hearing stating the time, place, and purpose of the meeting. All meetings and hearings by the Officer shall be held at the Town Community Building unless the Officer determines that an alternate location better meets the purposes and need of the meeting or hearing. All records of meetings or hearings held by the Officer, including written minutes, final decisions and rulings, and associated documents shall be filed by the Town Clerk in the Town Records for review and access by the public subject to the provisions of the Government Records Access Management Act, Section 63G-2-101, *et seq.*, UCA, as amended.

9. Proceedings and hearings before the Officer shall be pursuant to rules adopted by the Town and in conformance with general principles of due process; provided, however, the rules of evidence need not apply. Any party in interest may appear at such hearing in person, by agent, or by an attorney of his/her choice.

10. Appellants may always reapply to the applicable Land Use Authority if they have new information that might change the previously-issued Land Use Decision. Further, appeals shall consider and decide the reasonableness of the Town’s application of a Land Use Regulation to a particular Land Use Application on a case-by-case basis.

11. Appeals may not be used to waive or modify the terms, requirements, or text of the Town's ordinances or Land Use Regulations.

12. The Officer shall decide all appeals and other issues brought before it within a reasonable time. Decision on an appeal is final when the Officer dates and puts in writing their record of decision, which shall include: the "Finding of Facts" or the written facts and evidence used in making the decision; "Conclusions of Law" based on Town Land Use Regulations or other law, rule or regulation relied on; and the "Ruling" setting forth the Ruling of the Officer.

13. In exercising the above-mentioned powers, the Officer may affirm, wholly or partly, or may modify the order, requirement, decision or determination of a Land Use Authority consistent with Town Land Use Regulations and other applicable laws.

14. In the event the Officer upholds the Land Use Decision, the Applicant shall pay to the Town all of its costs and expenses incurred as a result of the appeal of the Land Use Decision, including reasonable attorneys' fees and costs. Further, in the event the Applicant appeals the Officer's Ruling to the Grand County District Court, and if the Court upholds the Officer's Ruling, the Applicant shall further pay to the Town all of its costs and expenses incurred as a result of the appeal of the Officer's Ruling, including reasonable attorneys' fees and costs.

7.2.4 Stay of Final Decision of Land Use Authority Pending Appeal

An appeal to the Officer hereunder shall not stay proceedings taken in furtherance of the action appealed from unless such proceedings are specifically stayed by order of the Land Use Authority. An appellant may request a stay by submitting to the Land Use Authority, in writing, an application for a stay setting forth the reasons why a stay is necessary to protect against imminent harm. In determining whether or not to grant a stay, the Land Use Authority shall assure that all potentially affected parties are given the opportunity to comment on the request. A ruling on the request for a stay shall be given within five (5) days from the date the request is received by the Land Use Authority. The Land Use Authority, in granting a stay, may impose additional conditions to mitigate any potential harm that may be caused by the stay, including requiring the appellant to post a cash escrow financial guarantee. Within ten (10) days of the Land Use Authority's decision regarding the grant or denial of a stay, any aggrieved party may appeal the decision to the Officer, whose decision shall be final.

7.2.5 Notice to Council of Meeting or Hearing for Appeal of a Land Use Decision

Before an appeal of a Land Use Decision is heard by the Officer, the Officer shall give notice to the Town, the Appellant, and other Parties of Interest at least ten (10) business days prior to the meeting or hearing stating the time, place and purpose of the meeting or hearing. Parties of Interest include anyone else who has submitted a written request to be notified of the decision.

7.2.6 Notice of Final Decision for Appeal of a Land Use Decision

The Officer shall give written notice of all final decisions and rulings for an appeal of a Land Use Decision to the Town, the Appellant, and other parties of interest within ten (10) business days after such a final decision is made. The Town Clerk shall file a hard copy, marked as final with adoption date, in the Town Records for review and access by the public subject to the provisions of the Government Records Access Management Act, Section 63G-2-101, *et seq.*, UCA, as amended.

7.2.7 Time Limitation

The Officer shall dismiss all appeals not heard or decided within one hundred eighty (180) days of filing of the appeal due to the Appellant's failure to proceed or prosecute. In such an event, the Officer shall first provide 10 days' advanced written notice of Intent to Dismiss to the Appellant, and a subsequent written ruling of dismissal.

7.3 DISTRICT COURT REVIEW

1. Any person adversely affected by any final decision of the Appeal Authority, including Variance Decisions or legislative decision of the Town Council may Petition for Review with the District Court in accordance with section 10-9a-801, et seq., UCA, as amended.
2. A Petition for Review of a Land Use Decision may be heard by the District Court only after the appellant has exhausted his administrative remedies described above and only if the Petition for Review is filed with the District Court within thirty (30) days of the date of a final decision of the Appeal Authority.
3. A Petition for Review of a legislative decision shall be filed within thirty (30) days of Town Council's enactment of an ordinance, Land Use Regulation, Zoning Map, or General Plan that is compliant with Section 10-9a-205, UCA.
4. Upon receipt of Notice of a Petition for Review, the Appeal Authority or Town Council shall transmit the Record to the District Court which shall include minutes, findings, orders, and transcript of the appeal proceedings, if any. If the proceeding was taped, a transcript of that tape recording shall constitute a true and correct transcript for purposes of this subsection. The cost of preparing the transcript shall be paid by the appellant prior to transmittal of the record to the Court.
5. The District Court's review is limited to the Record provided by the Appeal Authority or Town Council. The Court may not accept or consider any evidence outside the Record unless that evidence was offered to the Appeal Authority or Town Council and the Court determines that it was improperly excluded by the Appeal Authority or Town Council. In the event there is no record, the Court may call witnesses and take evidence.
6. The Court shall review all Land Use Decisions using the "substantial evidence" standard and shall uphold the Town's Land Use Decisions if the Record as a whole contains relevant evidence adequate to convince a reasonable mind to support the Land Use Decision. The Court shall review all legislative decisions using the "reasonably debatable" standard and shall uphold the Town's legislative decisions if the Record as a whole contains evidence that the decision could promote the general welfare, or is reasonably debatable that it is in the interest of the general welfare.
7. The filing of a Petition for Review does not stay the decision of the Appeal Authority or the Town Council. Either the Appellant or Respondent may petition the Appeal Authority to Stay a Land Use Decision, which petition the Appeal Authority may grant only if the Appeal Authority finds the stay is in the best interest of the Town. Either the Appellant or Respondent may petition the Court to Stay a legislative decision, which the Court may grant only if the Court finds the motioning party will suffer irreparable harm if the stay is not granted.