

TOWN OF ROCKVILLE, UTAH VARIANCE / APPEAL HEARING OFFICER	
Variance Request for Relief from Slope Setback Requirement in Section 8.20.3.1 Town of Rockville, Applicant	RECORD OF DECISION July 23, 2022

Background

The Town of Rockville has requested a variance from section 8.20.3.1 of the Rockville Town Code which requires a 50-foot setback for new development from slopes that measure 30% and greater in grade, as well as from known areas of geologic hazard. The requested variance would allow the construction of a Public Works building on parcel R-1232-A, 43 East Main Street. The proposed building would be located approximately 38 feet from the toe of a 30% slope and would be within a rockfall high-hazard area. The proposed building is intended to store Town Public works vehicles and machinery.

The subject property is the site of the Town Hall, Town Park, and other public uses. It is located in the Public Use zone. The Town recently expanded the parcel by acquiring undeveloped property to the north of the Town Park area and adding it to the Town Hall parcel. The Public Works building is proposed to be developed in the newly acquired undeveloped portion of the property.

There is a steep hillside (measuring in excess of 30% grade) to the north of the subject property. According to the Applicant's geotechnical consultant, this steep slope and the area under the slope has also been mapped by the Utah Geological Survey as a high rockfall hazard area. Due to the nature of the building (a storage facility which will not be permanently occupied), the Applicant's geotechnical consultant did not find the rockfall hazard on the property to present a significant threat to human life.

DeMille Road, a Town road, runs between the toe of the slope and the subject property.

The proposed building site for the Public Works building is constrained by an access drive benefiting the property to the east on the north of the building site and an irrigation line on the south of the building site.

Based on testimony given at the hearing, it is possible to construct the proposed building on the property in compliance with the 50-foot setback from the toe of the 30% slope. However, doing so would require the building to be rotated 90 degrees. This would increase the visual impact of the building as viewed from the Town Park (by placing the long axis of the building in the public viewshed). It would also decrease the ultimate functionality and usability of the building by requiring vehicles to make an awkward 90 degree turn in a constrained space to get into and out of the building.

Section 3.2.3 of the Rockville Town Code authorizes the Variance / Appeal Hearing Officer (VAHO) to hear and act on requests for variance from the standards in the Land Use Code. Per section 3.2.3.2 of the Town Code and section 10-9a-702(2) of the Utah State Code the VAHO may grant a variance only when all five of the following standards are met:

- (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.

On July 14, 2022, the VAHO held a hearing to consider the variance. Mayor Pam Leach presented the variance application on the Town's behalf. Town Clerk Vicki Bell recorded the meeting. Three members of the community attended.

Analysis

Per section 3.2.3.3 of the Rockville Town Code, the VAHO may grant a variance only if all five of the standards for variance listed above have been met. The following is an analysis of the requested variance relative to each of the five standards for variance.

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.

Enforcement of section 8.20.3.1 would require a 50-foot setback between the toe of the 30% slope north of the property and the Public Works building. This would require the building to be rotated 90 degrees. This would make it difficult to use the building for its intended purpose, a storage facility for machinery and equipment. Based on testimony given at the hearing, there are very few individuals within the Town who would have the expertise and skill to negotiate a vehicle or piece of machinery into the building if it were rotated to meet the setback. This would cause a hardship for the Town by reducing the usability and functionality of the building.

Further, literal enforcement of the 50-foot setback from the toe of the slope is not necessary to carry out the purpose of the general plan or land use ordinance. The purpose of the 50-setback from steep slopes is to preserve the natural character of the slopes. However, the area within the 50-setback from the 30% slope has already been disturbed. DeMille Road, a public road, runs through this setback area. There are no natural areas or continuous slope systems that will be protected or preserved by literal enforcement of the 50-setback.

Finally, literal enforcement of the prohibition on development within 50 feet of areas at high risk of geologic hazard is not necessary to accomplish the purpose of the general plan and land use ordinance, both of which seek to promote public health and welfare. According to the Applicant's geotechnical consultant, the building will not be permanently occupied and as such presents a low risk to human life from rockfall hazard.

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

The building site for the proposed Public Works building is constrained by special circumstances not generally applicable to other properties. First, there is an irrigation line on the south side of the building site. The building must be placed a minimum of eight feet from the irrigation line. Second, there is approximately eight feet of vertical relief between DeMille road north of the building site and the elevation on the east side of the proposed building pad. This vertical relief limits the points where vehicles can enter the subject property from DeMille Road. Vehicles must enter the property on the western side of the property. This dictates the way vehicles approach the building. The eight feet of vertical relief from DeMille Road also requires a large retaining wall to be constructed. Third, there is an access drive benefiting the adjacent property to the east

that cuts across the building site. This access drive occupies a large portion of the area in between the irrigation line and the northern boundary of the property.

All of these special circumstances combine to constrain access into the proposed building. If vehicles and machinery enter the site from the west and then can drive straight into the building it maximizes the effectiveness of the structure to fulfill its intended purpose (to store vehicles and machinery). However, if the building were rotated 90 degrees (to meet the 50-foot slope setback) vehicles and machinery would need to make a sharp 90 degree turn to enter and exit the building. Due to the special circumstances on the property (irrigation line, vertical drop from DeMille Road, retaining walls, and access drive to the adjacent property) the space available to make this sharp turn is extremely limited. These special circumstances are not generally present in the Public Use zone.

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

The Applicant concedes the proposed building can be built in compliance with the 50-foot slope setback. Thus, granting the variance is not essential to the construction of the proposed building. However, granting the setback is essential for the building to be constructed in the Applicant's preferred location, and in the location that makes the building most effective and usable. The question before the VAHO then becomes whether or not the ability to build the Public Works building in the Town's preferred location is a "substantial property right" in the Public Use zone.

If the variance is not granted the building will need to be rotated 90 degrees to comply with the setback requirement. This will reduce the functionality and usability of the building. The building is located in the Public Use zone. The purpose of the Public Use zone is to allow development needed for the municipal operation of the community, which in turn benefits the community. The proposed structure is intended to benefit the community by ensuring municipal vehicles and equipment are properly secured and protected from damage. The Town has a responsibility to ensure public property is maintained and protected from damage. The ability to construct a building in a location and in a manner to most effectively accomplish this duty is essential in the Public Use zone.

The VAHO finds that constructing the proposed Public Works building in a location that maximizes its ability to protect important municipal assets (vehicles and machinery) is a "substantial property right" in the Public Use zone. Granting the requested variance is essential for the Town to enjoy this right.

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

The requested variance will not be contrary to the public interest. Granting the variance will allow the Town to most effectively protect important Public Works equipment by storing it in a protecting facility. Preserving this machinery is in the public's interest. Granting the variance will also allow the building to be oriented in a way that has as minimal an impact on the view of natural features from the Town's park as possible. If the variance is not granted the building would need to be rotated 90 degrees, placing the long axis of the building in the viewshed as seen from the Town's park. This would have a negative impact on the public interest.

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

The spirit of the land use ordinance section 8.20.3.1 is to protect sensitive slopes from disturbance, and to protect new development from risk of geologic hazard. As discussed above, should the variance be granted the proposed Public Works building will not impact the integrity of any steep slopes or detract from the natural character of the slopes. In fact, these slopes have already been disturbed by the development of DeMille Road, which sits between the subject property and the steep slopes. The Applicant has provided expert opinion from a qualified geotechnical consultant that the placement of the Public Works building in the rockfall hazard area does not present a risk to human life because it will not be an occupied building. Based on these findings granting the variance and allowing the building to be built in the Applicant's proposed location is consistent with the spirit of the land use ordinance.

Decision

Based on information provided in the Applicant's variance request, as well as testimony provided at the variance hearing, the VAHO finds that all five standards required by Town Code and State Law for granting a variance have been met. The variance request is therefore **approved**. As authorized by Town Code section 3.2.3 the VAHO imposes the following conditions on the approval:

- 1) The Public Works building must be developed in substantially the same location and configuration as presented on the plans submitted with the variance application.
- 2) The variance applies only to the proposed Public Works building and not to any other potential future development on the property.
- 3) The Public Works building must be used for storage of vehicles, equipment, and machinery only and may not be occupied by people for continuous periods.

DATED: July 23, 2022

Town of Rockville Variance / Appeals Hearing Officer

//Thomas Dansie, Hearing Officer