
BEFORE THE APPEAL AUTHORITY
TOWN OF SPRINGDALE, UTAH

Application for Variance re Parcels
S-KIN-A-1 and S-KIN-A-12,

Phillip Bimstein, Applicant

RULING ON VARIANCE APPLICATION

This matter is before the Administrative Hearing Officer (“AHO”) on an application for variance under Springdale Ordinance Section 10-6-5. The variance seeks relief from Sections 10-9A-5(B) and 10-15B-9(A) of the Springdale Town Ordinances, which prohibit disturbance of steep slopes with grades of 30% or more. The requested variance will permit the applicant to improve a rough graded driveway to allow access to and development of applicant’s property.

A hearing on the application was held on November 9, 2021. Applicant Phillip Bimstein was represented at the hearing by Jane Whalen. The AHO has considered the statements and presentation at the hearing, and reviewed and considered the application, the documents submitted with the application, and the report and accompanying attachments from the Town’s Director of Community Development (the “Report”).¹ Based thereon, the AHO makes the following findings and ruling.

FACTUAL BACKGROUND

The applicant, Philip Bimstein, owns two adjacent parcels, S-KIN-A-1 (“Lot 1”) and S-KIN-A-12 (“Lot 12”), within the Kinesava Subdivision. Both parcels are zoned Foothill Residential (FR). According to his application, Mr. Bimstein has owned Lot 12 for about 33 years.

The Kinesava Ranch subdivision was developed in the late 1980s as a 28-lot residential subdivision.² Anticipated future development of that subdivision was based on the Town’s ordinances in effect at that time. The Town adopted its current land use ordinance in 1992. The 1992 zoning standards included slope regulations and setback requirements which made development of the lots in Kinesava difficult or impossible given the subdivision’s “challenging terrain.”³

To address this problem, Kinesava’s developer applied for and received a Special Exception Permit from the Town’s Board of Adjustment. This Special Exception (which was granted in

¹ The Report is dated November 2, 2021.

² See Special Exception Permit, attachment 2 to the Report.

³ Special Exception Permit at Recital C, attachment 2 to the Report.

1995) modified the requirements of the 1992 ordinances on a lot-by-lot basis.⁴ While the Special Exception allows disturbance of the 30% and greater slopes for many lots in the subdivision, it made no allowance for disturbance of these slopes on either Lot 1 or Lot 12.

Lot 12, like the other lots, is separately identified in the Special Exception. With respect to Lot 12, the Special Exception states, “Permitted lot coverage shall be varied from twenty-five percent (25%) of net developable acreage to twenty percent (20%) of total lot size. Efforts should be taken to minimize visual impact of structures.”⁵ It does not address disturbance of slopes to accommodate access on Lots 1 or 12.

As it stands, Lot 1 is developed with a single-family residence. The home on Lot 1 was built in 1966, before development of the subdivision. When the subdivision was developed, Lot 1 was created around the existing home while surrounding areas, including Lot 12, were subdivided into additional lots.

At some point before adoption of the 1992 land use ordinances, a rough graded driveway was installed extending across Lot 1 into Lot 12, thereby connecting Lot 12 with the access to Lot 1. Thus, there is a continuance access that begins at the end of Wanda Lane (a private street) and runs across Lot 1 and into Lot 12. An access easement is recorded on the Kinesava Ranch subdivision plat across Lot 1, as well as a small portion of subdivision common area, which benefits Lot 12. The rough graded driveway follows this easement. Thus, this driveway was always intended to provide the means to access Lot 12.⁶ This rough graded driveway, which is currently overgrown and not passable, traverses steep slopes in excess of 30% grade in several places.

The applicant, Mr. Bimstein, is now interested in developing Lot 12 with a single-family residence. To allow for this development, the rough graded driveway must be improved to a minimum of 20 feet in width to meet current fire code requirements for emergency vehicle access.⁷ The width requirement applies through the entire driveway, beginning at Wanda Lane, running across Lot 1, and extending into Lot 12.⁸

Sections 10-9A-5(B) and 10-15B-9(A) of the Town Code prohibit disturbance of steep slopes of 30% grade or more. Specifically, Section 10-9A-5(B), which applies to slopes in the FR Zone, prohibits any building, structure, excavation or fill on any natural grade of 30% or more “unless it is specifically allowed under section 10-15B-9(A).” Springdale Ord. § 10-9A-

⁴ See *id.* § 5.

⁵ See Special Exception at p. 10.

⁶ The only other possible access to Lot 12 is through Wanda Lane on the “staff portion” of Lot 12. But access using this staff extension would require much more disturbance on steep slopes compared to using the rough graded driveway across Lot 1. Also, there is no indication that this staff portion was ever intended to serve as the access to Lot 12.

⁷ No provisions of the relevant fire code were put before the AHO. Even so, the AHO accepts Ms. Whalen’s un rebutted representation at the hearing that the requirement has been imposed by the fire marshal.

⁸ This widening will also require obtaining easements from the Kinesava owners association.

5(B). But Section 10-15B-9(A) makes no allowance for grading, road building, excavating, or other disturbance to improve a road or driveway “on slopes of 30 percent or greater natural grade ...” Springdale Ord. § 10-15B-9(A).

Widening the driveway will require disturbance of natural grades on either side of the existing driveway, including slopes that measure 30% grade or more in two locations.⁹ For these reasons, Mr. Bimstein requests a variance from Sections 10-9A-5(B) and 10-15B-9(A) to allow improvement of the driveway.

LEGAL STANDARD

Utah Code § 10-9a-702(2)(a) sets forth the five standards that an applicant must meet to obtain a variance:

- (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.

Utah Code § 10-9a-702(2)(a)(i)-(v). *See also* Springdale Ord. § 10-6-5(B). The burden is on the applicant to meet all five standards. *See* Springdale Ord. § 10-6-5(C).

ANALYSIS

I. Literal Enforcement Causing an Unreasonable Hardship.

The first standard requires the applicant to show that “[l]iteral 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.” Utah Code § 10-9a-702(2)(a)(i). In addition, this hardship must be “located on or associated with the property for which the variance is sought;” and “come[] from circumstances peculiar to the property, not from conditions that are general to the neighborhood.” *Id.* § 10-9a-702(b)(i). Moreover, the hardship cannot be self-imposed or purely economic. *See id.* § 10-9a-702(b)(ii).

Mr. Bimstein identifies his hardship as the inability to use or develop Lot 12. It is not disputed that he cannot develop or use Lot 12 without improving and widening the rough graded

⁹ The layout of the driveway is set forth on the Grading Plan dated September 2021, prepared by Mark A. Schraut and submitted with the application.

driveway to enable an approved access. And it is not disputed that this improvement and widening would violate Sections 10-9A-5(B) and 10-15B-9(A). The AHO agrees that the inability to use and develop property as intended is an unreasonable hardship. And here, that hardship is both associated with and peculiar to Lot 12. While the Kinesava Subdivision exists in difficult terrain and is subject to the same slope ordinances from which relief is sought, the access issue for which the variance is necessary is unique to Lot 12.

Finally, Mr. Bimstein did not bring this hardship on himself. He did not buy into it. Rather, the ordinances from which he seeks relief were enacted after he came into ownership of Lot 12. He is not seeking a use different from that originally intended. Nor he is contributing to the hardship by selecting an unreasonable access location from among several options. There is no other reasonable or intended access. The hardship is also not purely economic. While the property will likely become more valuable once improved, it is the special circumstances unique to Lot 12 which drives this analysis, not economic loss alone.

The first standard is met.

II. Special Circumstances Applicable to the Property.

Under the second standard, the applicant must show that “[t]here are special circumstances attached to the property that do not generally apply to other properties in the same zone.” Utah Code § 10-9a-702(2)(a)(ii). Special circumstances may exist only if they “(i) relate to the hardship complained of; and (ii) deprive the property of privileges granted to other properties in the same zone.” Utah Code § 10-9a-702(2)(c).

Mr. Bimstein identifies the special circumstances as the access issue and the noncompletion of the roadway to Lot 12 by the subdivision’s developer. This access issue, as explained above, is the reason for the hardship. While other lots within the Kinesava Subdivision generally share similar challenges over slopes, the Special Exception addressed many of these issues thereby allowing for use and development of these lots post-1992. But none appear to share the same access problem as Lot 12, which was not addressed in the Special Exception. And, as explained above, application of Sections 10-9A-5(B) and 10-15B-9(A) does not merely lessen the developable area on Lot 12 or require building modifications, it bars any ability to use and develop Lot 12. Again, this challenge is unique to Lot 12 and deprives it of privileges granted to other properties within the same zone, including those within the same subdivision.

The second standard is therefore satisfied.

III. Granting the Variance as Essential to the Enjoyment of a Property Right.

The third standard requires a showing that “[g]ranting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.” Utah Code § 10-9a-702(2)(a)(iii). The ability to use and develop one’s property is a substantial property right. It is a right possessed by other properties within the same zone. And, as explained above, because granting the variance is the only way Mr. Bimstein can access Lot 12

and comply with roadway requirements applicable to emergency vehicle access, the variance is essential to the enjoyment of this property right. The third standard is therefore met.

IV. Impact on the General Plan and Protection of the Public Interest.

Fourth is the public interest standard. It requires a showing that the “variance will not substantially affect the general plan and will not be contrary to the public interest.” Utah Code § 10-9a-702(2)(a)(iv). To begin, there is no evidence that granting the variance will substantially affect the general plan. Lot 12 has long been platted and zoned for its intended use within a subdivision intended for the same use.

As to the public interest component, the Town’s slope ordinances exist to protect the public health, safety, and general welfare, and to protect aesthetics. *See generally* Springdale Ord. § 10-15B-1. Among other things, these ordinances exist to “[r]egulate the development of potentially hazardous terrain;” “[c]onserve the visual character of grading sites and settings;” “[e]nhance the value of new development; and “[c]onserve the value of properties near proposed grading activities.” *Id.* For these reasons, it is in the public’s interest to enforce Sections 10-9A-5(B) and 10-15B-9(A).

Still, to balance these interests with the right of property owners to put their property to use, the Town has allowed narrowly tailored exceptions for lots created before the 1992 adoption of these slope ordinances. This is shown in the Special Exception which granted relief from these slope ordinances to various lots within the Kinesava Subdivision. Another example is Section 10-9A-6, which addresses lots in the FR Zone which, like Lots 1 and 12, were created before 1992. Section 10-9A-6 states, “[a] lot that was created before the December 1992 adoption of this title is eligible for a building permit notwithstanding any nonconformity with the requirements of lot area, width, or frontage as stated in section 10-9A-5 of this article.” Springdale Ord. § 10-9A-6. While not expressly addressing the slope ordinances at issue, this also shows that granting some relief from the effects of the 1992 ordinances on pre-existing lots is not contrary to the public interest.

Here, the variance is requested at two points along the driveway’s current location (one on Lot 1, and one on Lot 12), as reflected on the Grading Plan. Thus, the potential disturbance is limited to these two points. Further, Ms. Whalen represented at that hearing that these disturbance points would not be visible from neighboring properties and that the improved roadway and related construction activities would be appropriately engineered. Application of the Town’s current ordinances will ensure that these representations hold true and that any aesthetic, health, and safety issues are appropriately addressed to protect against and otherwise mitigate any harm that granting a variance may cause.

For these reasons, granting the variance will not substantially affect the general plan and will not be contrary to the public interest.

V. Preserving the Spirit of the Ordinance and Doing Substantial Justice.

The final standard requires that “the spirit of the land use ordinance is observed and substantial justice done.” Utah Code § 10-9a-702(v). As explained, since 1992, the Town has made narrowly tailored exceptions to the slope ordinances to accommodate and allow for development of these pre-1992 lots while still maintaining the spirit of its land use ordinances. The AHO views Mr. Bimstein’s variance request no differently. Granting a variance from application of these slope ordinances to permit use of Lot 12, while requiring compliance with other ordinances to mitigate and protect against any potential harm, observes the spirit of the land use ordinances and does substantial justice in allowing Lot 12 to be put to its intended use. The final standard is therefore satisfied.

RULING

1. For the reasons stated above, the AHO grants the variance as to application of Sections 10-9A-5(B) and 10-15B-9(A) for improving the driveway access beginning at Wanda Lane, running across S-KIN-A-1, and extending into S-KIN-A-12 as identified on the Grading Plan in two places with the designation “Variance Requested in this Area.”
2. Applicant must comply with all other ordinances and standards applicable to Lots 1 and 12 with respect to the proposed improvements, including the grading standards in Section 10-15B-1 of the Springdale Ordinances and any standards in the Special Exception. Applicant must also make every effort to minimize and mitigate any visual impacts of the improvements as the Town may require.

DATED: November 19, 2021.

Town of Springdale Appeal Authority



By: Bryan Pattison
Administrative Hearing Officer