

Memo



To: Angela Adams, Hearing Officer
From: Ryan Robinson, Assistant City Administrator/Planner
Date: April 17th, 2023
Subject: Variance Request – Charie and Jonathon Francom, 4084 Alpine Cove Circle: Request for Reduced Lot Area

Background

In preparation for the variance hearing scheduled for Monday, April 24, 2023, at 11:00 am at City Hall, city staff has prepared a memorandum regarding the request for a reduced lot area for lot 15, Alpine Cove Plat B Amended, located at 4084 Alpine Cove Circle.

The Francom's approached the City requesting a variance regarding their lots in Alpine Cove Plat B on November 17th, 2022. That application was tabled to allow more time to prepare and address the five standards of review outlined in Alpine Development Code 2.03.030 and Utah State Code 10-9a-702 to grant a variance. A second hearing was held on December 12, 2022, where the Francoms had the opportunity to present their case for a variance. Since that original hearing, the Francoms have retained the services of Brent Bateman from the law firm Durham Jones, and Pinegar to help them make their case for a variance.

The Alpine City Hearing officer issued a decision on the request for a variance on January 17th, 2023, denying their variance application. A new application has been submitted with an argument for the variance submitted by Brent Bateman for consideration. Included in this memo are the newly submitted argument, options for the lot split, and the original denial of the variance.

Variance Request

The Francom family owns lots 13 and 15 in the Alpine Cove Plat B Amended subdivision. Alpine Cove was annexed into the city in 2017. There is an existing home (built in 1994) that is located primarily on lot 13 but extends across the property line onto lot 15. The owner would like to sell lot 15 and has requested to make adjustments to the lot lines to allow a home to be constructed on lot 15.

When the Alpine Cove subdivision, including these two lots, was annexed into the City, the area was placed in the CR-40,000 zone. The following section of the ordinance outlines the lot area and frontage requirements for lots in the zone. It should be noted that Dry Creek runs through

Alpine City
20 North Main • Alpine, Utah 84004
Phone: (801) 756-6347
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portions of both lots so item 2 also needs to be considered to determine compliance with the ordinance.

3.04.040 Density, Lot Area And Width Requirements - Single Family Dwellings

1. The minimum area and width requirements of a zoning lot shall be determined upon the average slope of the lot and shall conform to the following schedule:

Average Slope of Lot*	Minimum Area (in square feet)	Minimum Width (at min. front setback)
0-9.9%	40,000 (.92 ac)	110 ft.
10-14.9%	60,000 (1.36 ac)	150 ft.
15-19.9%	80,000 (1.84 ac)	200 ft.
20-24.9%	120,000 (2.76 ac)	250 ft.
25%+	Not Buildable	Not Buildable

*Average Slope of Lot shall be determined in accordance with the provisions of ADC 3.01.110 "Average Slope of Lot."

2. The zoning lot shall contain a minimum of 40,000 square feet of area outside the mapped 100 year flood plain areas and any storm water detention or retention basins areas.

The following table shows the characteristics of the two existing lots with respect to the ordinance:

Existing Conditions Evaluation						
Lot No.	Average % Slope	Existing Area (SF)	Required Lot Area (SF)	Existing Frontage (feet)	Required Frontage (feet)	Meet Current Ordinance? Y/N
13	13.81	49,919	60,000*	204	150	No
15	21.95	59,198	120,000*	151	250	No

*Any lot with flood plain located on the property must have the minimum area required for the zone outside of the flood plain. Both lots contain flood plain area but they would not meet the required area even if there was not a flood plain within the lot.

The red numbers show parameters that do not meet the Alpine City Zoning Ordinance, green numbers signify compliance. The subdivision was originally developed in Utah County according to the standards in place at that time. If these lots were being developed in the City today, they would not meet the requirements of the zone. We consider the lots legal non-conforming lots.

We have also analyzed the lots with the proposed adjustment to the lot lines. The results are no different than those of the original lot layout. Neither of the lots meet the current City ordinance. With the proposed lot line adjustment, the lots would continue to be non-conforming lots, but would not technically be better or worse than the original lots. Following is analysis of the lots based on the proposed lot line adjustments:

Proposed Conditions Evaluation						
Lot No.	Average	Existing	Required	Existing	Required	Meet

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	% Slope	Area (SF)	Lot Area (SF)	Frontage (feet)	Frontage (feet)	Current Ordinance? Y/N
13	13.99	56,551	60,000*	240	150	No
15	22.77	52,566	120,000*	110	250	No

**Any lot with flood plain located on the property must have the minimum area required for the zone outside of the flood plain. Both lots contain flood plain area but they would not meet the required area even if there was not a flood plain within the lot.*

March 15, 2023

Re: Request for Variance | Francom | Lots 13 and 15 of Alpine Cove

Dear Alpine City Hearing Officer:

This law firm represents Charie and Jonathan Francom (collectively, “Francom”) with respect to the boundary adjustment of their property in Alpine Utah. This letter serves as Francom’s request for a variance from the lot size, frontage and slope requirements of the Alpine City CR-40,000 zone involving Lots 13 and 15 of the Alpine Cove Plat B Amended Subdivision (“Alpine Cove”), as set forth on survey attached as **Exhibit 1**. For the reasons below, Francom respectfully requests that a variance be granted on Lots 13 and 15.

Background

Francom owns Lots 13, 15 and 16 (collectively, “Lots”) in Alpine Cove. In 1994, a home was built primarily on Lot 13 but also extends onto Lot 15. While the home straddles the boundary line, the evidence shows that Francom’s predecessors, the Grays, intended for Lots 13 and 15 to remain separate.

Utah County subdivided Alpine Cove prior to annexation into Alpine City. At the time, the lots were fully-legal building lots under County law, as evidenced by the fact that the home on lots 13 and 15 was legally constructed. In 2017, about a month *after* Francom purchased the Lots, Alpine Cove annexed into Alpine City and became part of the City’s CR-40,000 zone. This new zone is more restrictive than the County’s zoning under which the subdivision took place. According to the City, the lots in Alpine Cove do not satisfy the requirements of the CR-40,000 zone. Nevertheless, Alpine City considers them legal, non-conforming lots because they were legally created in Utah County.

Alpine City Code has requirements for slope, frontage, and lot size based on the average slope of lots in the CR-40,000 zone. Dry Creek runs through Lots 13 and 15, and the two Lots slope down precipitously near Dry Creek, thus increasing the average slope considerably. In part, because the *average* slope is so steep, the Lots do not conform to size and frontage requirements in Alpine City Code.

Francom would like to put these lots to good use. To do so, Francom desires to make a slight adjustment to the boundary between lots 13 and 15. However, with this boundary adjustment, the City feels that Francom will lose their legal nonconforming lot status, and will need to come into compliance with current code.

To solve this problem, Francom requested a variance from the City’s lot size, slope and frontage requirements, essentially allowing this small boundary adjustment while maintaining the current legal status. The variance would allow Lots 13 and 15 to become legal, non-conforming lots of record (as was intended by the Grays), and permit Francom to full use and enjoyment of the Lots. In January 2023, the Hearing Officer denied the previous variance request, reasoning that Francom did not satisfy the

elements for a variance.

Francom is filing this new request for variance because of new evidence and legal arguments that were not previously considered by the Hearing Officer. Based on these new grounds, a variance should be granted.

Discussion

Zoning ordinances are “in derogation of a property owner’s common-law right to unrestricted use of his or her property,” and because of this “provisions therein restricting property uses should be strictly construed . . . in favor of the property owner.” *Patterson v. Utah Cnty. Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995) (emphasis added).

With this standard in mind, under Utah law, Alpine City may grant a variance 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.

UTAH CODE § 10-9a-702(2); *Alpine City Development Code* 2.03.030(7). Francom satisfies each of the six elements necessary for a variance.

i. Francom is Suffering Unreasonable Hardship.

Literal enforcement of the City’s zoning ordinances would cause an unreasonable hardship for Francom that is not necessary to carry out the general purpose of the City’s zoning ordinances.

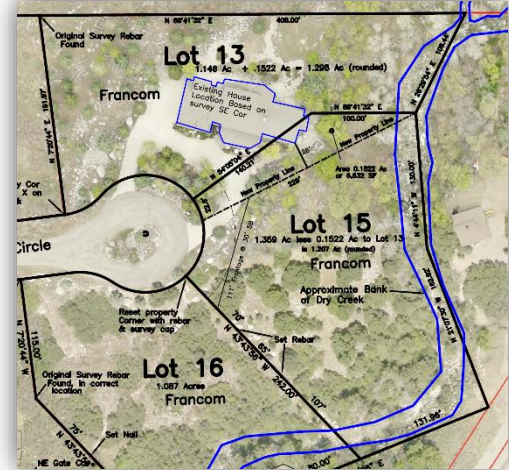
Under Utah law, an unreasonable hardship must be “located on or associated with the property for which the variance is sought” and come “from circumstances peculiar to the property, not from conditions that are general to the neighborhood.” UTAH CODE § 10-9a-702(2)(b)(i). In addition, “the unreasonable hardship [cannot be] self-imposed or economic.” *Id.* § 10-9a-702(2)(b)(ii). A case that illustrates this analysis is *Specht v. Big Water Town*, where the Court of Appeals affirmed a board’s finding that the applicant suffered unreasonable hardship because the “small size of the [applicant’s] lot and the steepness of the grade from the cul-de-sac to their lot created a hardship, which the [applicant] did not create themselves. 2017 UT App 75, ¶ 33, 397 P.3d 802, 812.

Similar to *Specht*, two critical facts show that there is a unique hardship associated with this property, and that the hardship is neither self-imposed nor economic. The first fact is that Dry Creek runs through the rear of lots 13 and 15, and the steep slope to the creek significantly increases the average slope on the lot. The second fact is that the County approved the subdivision of the lots, and approved the location of the home on lots 13 and 15.

a. *Circumstances Particular to the Property*

As shown here, the presence of Dry Creek, directly on the property, is a very unique circumstance, in that it affects very few lots in the neighborhood. Dry creek brings with it a significant slope. Because Alpine City's ordinance is based upon average slope on a lot, the presence of Dry Creek and the accompanying slope significantly increase that average, and disregards the significant unsloped portions of the lots where building is possible. Dry Creek's effects are unique to these properties, and exacerbate a hardship of exactly the kind that a variance is intended to prevent.

The effect of Dry Creek on the average slope skews the on-paper usefulness of this lot. In reality, according to surveyor calculations, Lot 15 contains over 15,000 square feet of slope area *less than 10%*. This is more than sufficient to construct a dwelling on the lot without impacting sensitive slopes. This unique circumstance, of having Dry Creek directly on the lot and increasing the average slope contributes to this hardship or removing the ability to meaningfully use the property.



Accordingly, Lots 13 and 15 contain special circumstances and those circumstances are particular to the property. They contribute to the hardship of being unable to meaningfully use the property under the current ordinances. Without a variance, Lots 13 and 15 will be deprived of similar privileges enjoyed by other properties in the CR-40,000 zone.

b. Self-Imposed Hardship

In denying Francom's initial variance request, the Hearing Officer found that Francom's alleged hardship was self-imposed:

the house was already sitting on the line between lots 13 and 15 and the previous owner clearly intended to combine the lots for the purpose of building the home in that specific spot . . . Because the Francoms purchased the property under these conditions, the hardship of which they are complaining is considered self-imposed, since it was imposed by the previous owners. The annexation did not make the lot any more or less divisible.

(Decision on Request for Variance, dated January 23, 2023, 1-2 ("Prior Decision").)

To the contrary, this hardship was not self-imposed. The hardship was imposed by Alpine City. Critical to the question of whether the hardship is self-imposed is the fact that the County approved the subdivision of the land and the construction of the home. At the time of approval, the lots and the home were compliant with County law. Thus, the act of subdividing and building the home on the lot did not cause any hardship. No hardship existed at that time.

The hardship arose later, and not through the actions of the applicant or their predecessors. The hardship arose because the property was annexed, and upon annexation, the City applied a new zone that the lots and home did not comply with. Accordingly, the hardship, which arises from the new zoning imposed by the City, was not self-imposed. Moreover, hardships belong to the property rather than the owner. UTAH CODE § 10-9a-702(2)(b)(i)(A) ("the appeal authority may not find an unreasonable hardship unless the alleged hardship: (A) is located on or associated with the property for which the variance is sought."). Accordingly, Francom did not cause, but inherited this hardship. The hardship was not self-imposed.

c. Economic Hardship

Finally, Francom's hardship is not economic. The hardship is not costing Francom any money. Rather, it is preventing Francom from fully enjoying and utilizing Lots 13 and 15, whether to his economic advantage or not. The right to use property is a fundamental right, and not just an economic benefit. The question is whether the hardship interferes with rights the owner would otherwise enjoy. This is the reason that variance laws exist – to prevent local governments from imposing regulatory takings where unique circumstances exist on the property. The fact that some economic advantage may arise therefrom is not the question. The hardship concerns the ability to use the lots. Francom is facing a hardship that arises from the unique circumstances related to the property that is neither self-imposed nor economic.

ii. Lots 13 and 15 Have Special Circumstances.

The law requires a finding that "Special circumstances exist only if the special circumstances: (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). As shown above, special circumstances are attached to Lots 13 and 15 that do not generally apply to other properties in the CR-40,000 zone.

This is not a question of whether the hardship applies to some other lots. The Code specifically states that the hardship should not apply to other lots in the same zone. *Specht* is again illustrative. There, the Court of Appeals affirmed the board's finding that special circumstances attached to the applicant's property because the property owner had only limited access to their property because their lot was much lower than other lots in the zoning district, and other property owners in the zoning district enjoyed easy access to their lots, as well as ample space to install septic systems. 2017 UT App 75, ¶ 35. The Court found that "without a variance, the [applicant] would have been deprived of similar privileges." *Id.*

Like *Specht*, Lots 13 and 15 consists of special circumstances that do not apply to other properties in the CR-40,000 zone. Dry Creek flows through the rear of the Lots 13 and 15 and caused steep slopes that restrict building area. This is a problem since the City's newly imposed code calculates average slope. Other properties in the CR-40,000 zone are not impacted by these special circumstances. Thus, Lots 13 and 15 are deprived of privileges granted to other properties in the same zone.

iii. A Variance is Essential to Francom's Enjoyment of a Substantial Property Right.

Francom must have a variance to enjoy the substantial property rights possessed by other properties in the CR-40,000 zone. In *Specht*, the Court of Appeals affirmed the board's finding that granting a variance was essential to the enjoyment of a substantial property right possessed by others in the same zone because the other owners were able to construct homes on similar sized lots, "without having to construct unreasonably steep driveways." *Specht*, 2017 UT App 75, ¶ 39.

Likewise, here other property owners in the CR-40,000 zone are able to construct homes on lots of similar size, and use their properties without having to deal with Dry Creek flowing through their properties or the inflated-average slopes.

In the denying the previous variance request, the Hearing Officer found Francom did not satisfy this element because:

The problem comes back to the previous owners. The Grays clearly intended to combine the lots in order to build their house in its current location, which they could not do without combining the lots. The Francoms purchased the property subject to this. Although the Grays may have represented to the Francoms that they could redivide the lot at some future date, there is no evidence to support that conclusion by the Grays.

(Prior Decision, at 3.)

New evidence shows differently. Francom's predecessors the Grays always intended for Lots 13 and 15 to be separate lots, even when the home was built across the boundary. In 1994, the Grays recorded a declaration stating that Lots 13 and 15 would be treated as "one single zoning, which meets the requirements of Utah County Zoning Ordinance for a private residence." See **Exhibit 2**. However, in that same recorded document, accepted by the County to allow the building permit, the document states that the lots are to remain separate under certain circumstances. Expressly, the document states that Lots 13 and 15 should no longer be treated as one upon any annexation:

5. This covenant shall run with the land and be binding upon all persons owning or leasing the above-described property until 20 years from the date of execution hereof and shall be automatically renewed for successive 10 year periods, or until such time as: (a) the Utah County zoning ordinances are repealed to no longer require the above-described zoning lot; (b) the entire property as described above becomes a part of an incorporated city or town; or (c) the "Subject Building and Use" is abated or removed from the above-described property.

The lots were annexed into Alpine City, thus triggering that provision. Accordingly, the Grays expressly intended that the lots be separate.

Note that there is no relevance to the speculations that Alpine City may not have accepted this document itself, nor issued a building permit on the home based on this document. What matters is that the County did issue a building permit for the home. Moreover, no other document acts to combine the lots besides this document. Accordingly, the Grays did indeed intend that the lots be separate. Also, the home on the property was built legally under County jurisdiction. A variance is necessary for Francom to enjoy property rights possessed by others in the same zone.

iv. A Variance will not Substantially Affect the General Plan and will not be Contrary to the Public Interest.

A variance on Lots 13 and 15 would not affect the general plan and is not contrary to public interest. In *Specht*, the Court of Appeals found this element was satisfied because "the health department did not believe the variance would be a problem." 2017 UT App 75, ¶ 41. Likewise, the City here has expressed no concern about Francom's variance request. In fact, the City has stated the lot line adjustment would not make worse the non-conforming slope and area ratio of Lots 13 and 15 but would in fact be a benefit because it would eliminate the lot line and structure conflict. In addition, the City has stated that granting of the variance would not pose any threat to the public health or safety or raise any concerns regarding fire safety, structural stability, clearance, preservation of light and open space, and visuals and aesthetics. Finally, a variance would actually support the public's interests in protecting and preserving property owner's property rights. Finally, in effect this variance is not adding anything new to the Property. It is allowing them to keep the non-conforming lot status that the property currently enjoys. A variance preserves the status quo, while fixing a problem.

v. The Spirit of the Land Use Ordinance is Observed and Substantial Justice Done.

A variance on Lots 13 and 15 satisfies the spirit of the land use ordinance and would result in substantial justice. The City's ordinance sets forth requirements for lot size, slope and frontage. The spirit of the ordinance is observed because the variance will result in only minor deficiencies in these areas but will result in the two separate lots that can be fully enjoyed and used by Francom:

Existing Conditions Evaluation						
Lot No.	Average % Slope	Existing Area (SF)	Required Lot Area (SF)	Existing Frontage (feet)	Required Frontage (feet)	Meet Current Ordinance? Y/N
13	13.81	49,919	60,000*	204	150	No
15	21.95	59,198	120,000*	151	250	No

Lots 13 and 15 were legal lots of record in Utah County under the TR-5 zone. When Alpine Cove annexed into Alpine City, Lot 15 became subject to the CR-40,000 Zone and is now considered a legal, non-conforming lot. For Francom to fully enjoy and use Lots 13 and 15, a variance from the City's size and frontage requirements is needed to adjust the lot line to separate the two Lots.

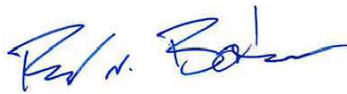
If a variance is granted, the spirit of the City's ordinance will be observed and substantial justice will be done.

In conclusion, Francom satisfies the six elements necessary for a variance, and the Hearing Officer should grant a variance.

Please let me know if you have any questions.

Very truly yours,

DENTONS



Brent N. Bateman

cc: Francom

TO ZONING & PLANNING DEPT.

DECLARATION OF ZONING LOT

TO THE PUBLIC:

I (we), the undersigned owner(s) of real property in the unincorporated area of Utah County, State of Utah, which property consists of two or more parcels that are located as follows [legal description]:

Lots #13 and #15 Alpine Cove Plat "B" Amended to be combined into one parcel. The listed addresses are 4072 and 4084 West Alpine Cove Circle.

~~ENT 31820 BK 3152 PG 161
NINA B REID UTAH CO RECORDER BY MB
1993 MAY 21 9:26 AM FEE 14.00
RECORDED FOR JAMES E GRAY~~

Re-recorded to correct legal-

2ND RECORDING
ENT 33042 BK 3423 PG 628
NINA B REID UTAH CO RECORDER BY MB
1994 APR 20 4:42 PM FEE 14.00
RECORDED FOR JAMES E GRAY

have the intent to maintain said property as a single zoning lot which meets the requirements of the "Utah County Zoning Ordinance" for a private residence [state specific type or use of building], hereinafter termed the "Subject Building and Use".

I (we) hereby covenant and agree as follows:

1. That the above-described property shall be maintained as one unit and considered as one zoning lot for the "Subject Building and Use";
2. That only the "Subject Building and Use" and no other buildings or uses, except those deemed by Utah County to meet its zoning and building ordinances as evidenced by a county permit granted therefore, shall be located upon the above-described property;
3. That any sale, lease, bequest, or other assignment or transfer of the above-described property shall occur for the property as a unit, and that any sale, lease, bequest, or other assignment or transfer, of only a part of the property to persons or entities other than the owners of the "Subject Building and Use" shall be a violation of this covenant, and in addition to any sanctions for such violation, shall revoke the right to maintain the "Subject Building and Use" on the property;

4. This covenant shall hereinafter be included in any deed dealing with the above-described property, or portions thereof, in whole or by reference thereto.
5. This covenant shall run with the land and be binding upon all persons owning or leasing the above-described property until 20 years from the date of execution hereof and shall be automatically renewed for successive 10 year periods, or until such time as: (a) the Utah County zoning ordinances are repealed to no longer require the above-described zoning lot; (b) the entire property as described above becomes a part of an incorporated city or town; or (c) the "Subject Building and Use" is abated or removed from the above-described property.

ENT33042-BK 3423 PG 629

6. If the owners, or their heirs, executors, administrators, agents, or assigns shall violate, or attempt to violate any of the provisions of this instrument, Utah County may enforce said agreement through the withholding of building permits; appropriate civil proceeding including injunctive relief which may include enjoining construction, abatement, mandamus, or other appropriate civil remedies; or may institute criminal proceedings for misdemeanor violations as provided for violation of a zoning ordinance. Further, any aggrieved party having a legal interest may seek similar civil relief, and, where successful, the county or such other party may be awarded any court costs and attorney's fees required for enforcement.

Invalidation of any of these covenant provisions by judgment or court order shall not affect any other of the provisions, which shall remain in full force and effect.

Signed:

James E. Gray
Ann M. Gray

ACKNOWLEDGEMENT

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

On the 18 day of May, 1993, personally
appeared before me Johanna Jones, the

~~ENT 31820 BK 3152 PG 165~~

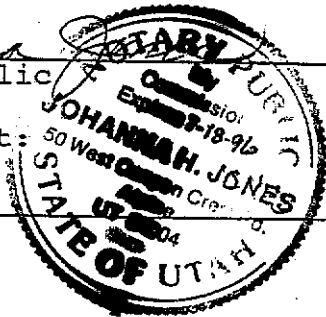
signer(s) of the above instrument, who duly acknowledged to me that he/she executed the same.

Johanna
Notary Public

My Commission Expires:

7/18/96

Residing At:



ACKNOWLEDGEMENT
(Corporate Form Only)

STATE OF UTAH)

: ss.

COUNTY OF UTAH)

ENT 33042 BK 3423 PG 630

On the _____ day of _____, 19____,
personally appeared before me _____ and
_____, who being by me duly sworn did
say, each for himself, that he, the said _____
is the President and he, the said _____ is
the Secretary of _____ Corporation,
and that the within and foregoing instrument was signed in behalf
of said Corporation by authority of a resolution of its Board of
Directors and said _____ and _____ each
duly acknowledged to me that said Corporation executed the same
and that the seal affixed is the seal of said Corporation.

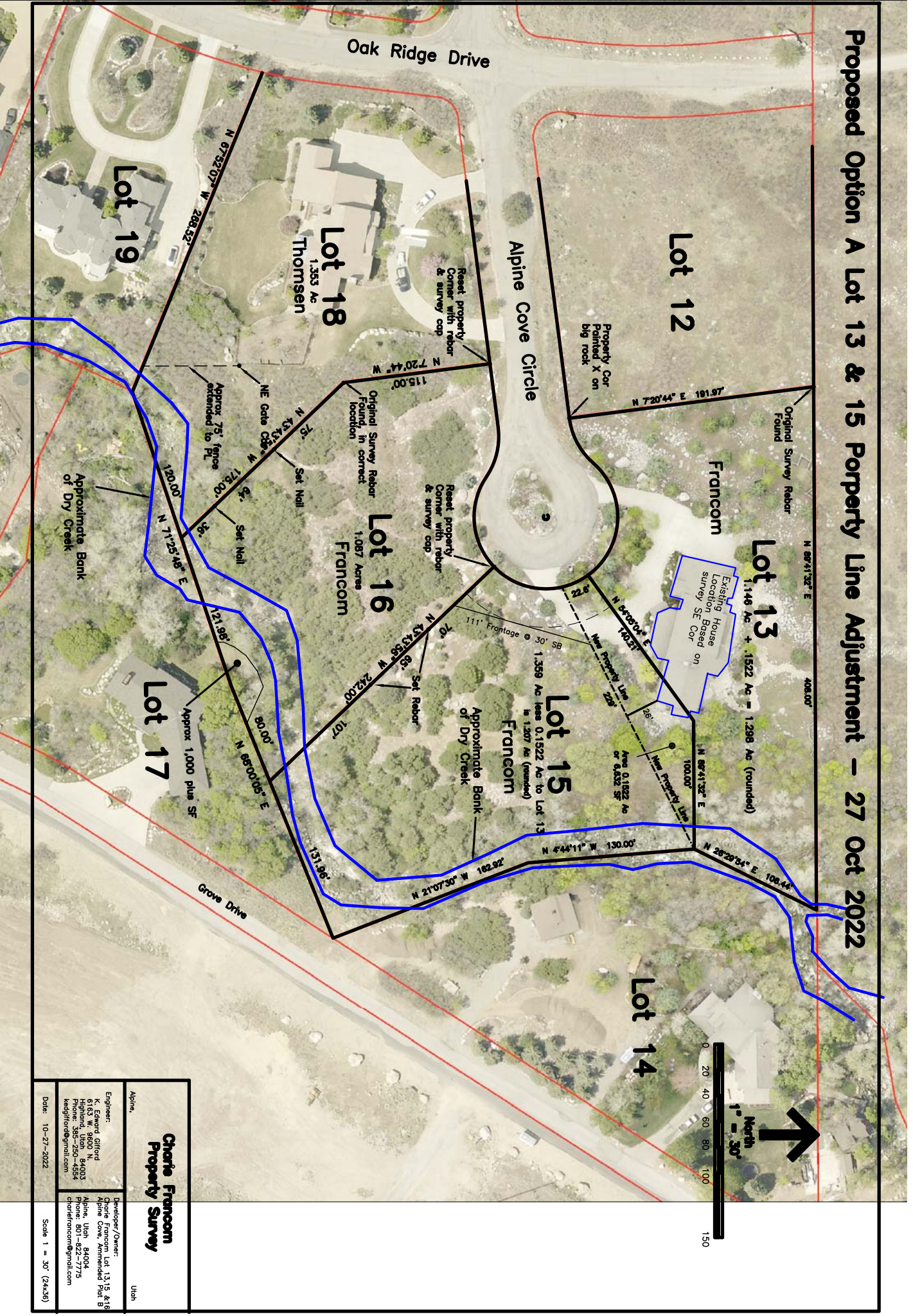
Notary Public

My Commission Expires:

Residing At:

This form approved by the Utah County Attorney's office, Civil
Division, on May 7, 1985 *JRB*

Proposed Option A Lot 13 & 15 Porperty Line Adjustment – 27 Oct 2022



Charlie Francom Property Survey		
Alpine,	Utah	
Engineer:	Developer/Owner:	
Alpine Survey Office	Charlie Francom, Lots 13, 15 & 16	
6163 W. 9600 N.	Alpine, Utah 84004	
Phone: 386-250-4554	Phone: 386-250-4554	
charlie@alpine.com	charliefranco@gmail.com	
Date: 10-27-2022	Scale 1" = 30' (2x36)	

Decision on Request for Variance

On November 17, 2022, the City held a hearing on a request for a variance by Charie and Jonathan Francom. The Francoms own lots 13 and 15 of Alpine Cove Plat B located on Alpine Cove Circle. The properties were previously owned by James and Ann Gray. In 1993, the Grays filed a document with Utah County entitled Declaration of Zoning lot in which they combined the two lots for the purpose of building a home across the interior lot line. The document combines the lots, though the Grays should have also filed an amended plat, which they did not do. The Francoms house currently sits on what was originally the lot line between lots 13 and 15. In or about the summer of 2017, the Francoms purchased the property from the Grays. At that time, the property was being considered for annexation to Alpine City. The Francoms attended some of the meetings about the possible annexation in the time leading up to their purchase of the property. In the fall of 2017, Alpine annexed the property in question. The lot in question and the surrounding property is now part of Alpine City and zoned CR-40,000. Under the City's zoning rules, the lot cannot be redivided because the slope and frontage would not meet the zoning ordinance requirements. The lots surrounding the property also fail to meet the zoning requirements but are considered non-conforming uses since they were annexed by the City in their current state.

In the Francoms original request for a variance, they listed their aim as wanting to sell lot 15 as a buildable lot independent from the lot on which their home sits. Although the Francoms presented two survey options for re-dividing the lots, they did not present facts, arguments or precedent to satisfy the requirements for a request for a variance. Accordingly, the hearing officer took the request under consideration

pending a second hearing. The Francoms request for a second hearing was granted and a second hearing was held on December 12, 2022.

Under the Alpine City code and the Utah Code, a hearing officer may grant a variance *only if*:

- a. 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;
- 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 the land use ordinance is observed and substantial justice done.

Alpine City Development Code 2.03.030(7).

First, the party requesting a variance must show that literal enforcement of the zoning ordinance would cause unreasonable hardship for the applicant. Utah courts have long held that “the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.” Utah Code Ann. 10-9a-702(2)(ii). *See also Specht v. Big Water Town*, 2017 UT App. 75, ¶32, 397 P.3d 802. In this case, the Francoms argue that the problem is not self-imposed because it was caused by Alpine’s annexation of the property in 2017. However, the house was already sitting on the line between lots 13 and 15 and the previous owner clearly intended to combine the lots for the purpose of building the home in that specific spot. The combination of the lots for tax and building purposes, happened more than 20 years before the Francoms purchased the property. Because the Francoms purchased the property under these conditions, the hardship of which they are complaining is considered self-

imposed, since it was imposed by the previous owners. The annexation did not make the lot any more or less divisible. Additionally, since the Francoms aim is to re-divide the properties in order to sell lot 15, any hardship is entirely economic.

The second requirement for the granting of a variance is “special circumstances attached to the property that do not generally apply to the other properties in the same zone.” Although the Francoms are correct that the home sitting on the previous interior lot line is unusual, this is self-imposed as it was done intentionally by the previous owners. The other circumstances including slope and creek frontage are common to all of the properties surrounding the Francoms. Accordingly, there are no circumstances special to this property.

Third, the Francoms need to show that, without the variance, they will be deprived of property rights possessed by others in the same zone. Again, the problem comes back to the previous owners. The Grays clearly intended to combine the lots in order to build their house in its current location, which they could not do without combining the lots. The Francoms purchased the property subject to this. Although the Grays may have represented to the Francoms that they could redivide the lot at some future date, there is no evidence to support that conclusion by the Grays.

The Francoms remaining argument is that the variance will make the properties no more non-comforming than they already are and will, therefore, not really have an effect on the City’s zoning and land use. Although that may be accurate, it does not meet the requirements for a variance.

The Francoms have requested a third hearing on this matter. However, with no new information or precedent to consider, the hearing officer finds it unnecessary to have a third hearing. Accordingly, the request for a variance is denied.

_____/s/_____,

Angela Adams

January 17, 2023.