

Box Elder County
VAR23-02
Alan Jack Patterson – 4583 North Hwy 38
Appeals Hearing Officer – Approval of Variance

July 7, 2023

This is a request for a variance from the County's minimum road standards for a proposed residence in the Harper Ward area of unincorporated Box Elder County.

BACKGROUND INFORMATION:

This variance request came before Craig M. Call, the Appeals Hearing Officer, in a hearing held on July 5, 2023. Those participating in the initial hearing included Alan Jack Patterson, the Applicant; Teresa Patterson, co-owner of the property which is the subject of this request; Marcus Wager and Scott Lyons, County Planning Staff; neighbors Kory Wayment and counsel Michael Christiansen; DeAnn Clark; Sheldon Black; and Ralph Clark.

At the hearing, Mr. Patterson outlined the variance request and made comments; Mr. Lyons also commented from the County Planning Staff. Also speaking for or against the variance were neighbors Kory Wayment and counsel Michael Christiansen, who opposed granting the variance; and DeAnn Clark; Sheldon Black; and Ralph Clark, who favored granting the variance.

RECORD:

The record of this matter includes:

- Staff Report, July 5, 2023 – 12 pages, including the applicants' statements in response to the criteria required to approve a variance and several exhibits.
- Audio recording of hearing held July 5, 2023

FINDINGS OF FACT:

1. The subject property consists of approximately 27.47 acres in the Harper Ward area of Box Elder County.
2. The property address is 4583 North Hwy 38.
3. The property is a recorded lot in what appears to be a metes-and-bounds subdivision.
4. The Applicant intends to construct a single-family residence on the property.
5. The property is zoned RR-5 (rural residential 5 acre).
6. The Applicant requests that the construction of a new dwelling be allowed using as access a shared driveway which is 33 feet in width and 812 feet in length.
7. There already exist more than two other properties with residences which abut and use the shared driveway.

8. The shared driveway is the subject a recorded private easement.
9. The applicant's parcel is shown on the county plats as Lot No. 1 of a three-lot subdivision. The shared driveway serves the existing residences on Lots 2 and 3 of the same subdivision.
10. The County Road Standards provide at Section 5-1-340 that the minimum residential access via a private road and private driveway serving one or two lots is thirty feet in width if the shared driveway is more than 150 feet long.
11. The County Road Standards provide at Section 5-1-340 that an access road which serves more than two lots is not defined there as a driveway, but as a public road.
12. The standard road section for a paved public road serving more than two lots is a minimum of sixty feet in width.
13. The County has advised the Applicants that because there are at least two residences sharing the existing private driveway, the construction of a third residence would normally require the driveway to be expanded to conform to the current sixty foot minimum width requirement.
14. If the sixty foot minimum width access is not provided, according to this interpretation of the road standards, the Applicants would not be able to build a home on their Lot No.1 without a variance from those road standards.
15. The Applicants therefore seek a variance from the minimum access width of sixty feet for a road serving more than two residences.
16. The Applicant's Lot No. 1 was created as a legal residential lot before the current road standards were adopted by the County in approximately 2010.
17. Other properties in the area are used as lots for single family residences, as allowed by the RR-5 zone.
18. If the variance is denied, the Applicants will not be able to use their property for the same purposes as the uses allowed for other similar properties in the area.

CONCLUSIONS OF LAW:

1. The proposed home is allowed in the current RR-5 Zone under the current land use regulations.
2. The proposed residential use is subject to the requirements of the County Minimum Road Standards, Section 5.1.340.
3. If the requested variance is not approved, the Applicants will not be able to build a home on their property as it is now configured.
4. The Applicant's Lot 1 does not conform to the current road standards and could not be approved as it is now configured under the current code in that a three-lot subdivision could not be approved if all three lots were served by a single common driveway and not by a public road.

5. The Applicant's Lot 1 was a legal building lot at the time that it was platted and recorded, at a time before the current road standards were adopted.
6. The Applicant's Lot 1 is therefore a legal nonconforming lot.
7. According to the Box Elder Land Use Management and Development Code Section 2-2-130E, a variance may be granted only if certain criteria are met, each of which is described and responded to as follows:
 - a. Literal enforcement of this Code would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Code.

Literal enforcement of the Code would provide that the Applicants would not be able to build a home on their legal nonconforming residential building lot. As single-family uses are allowed in the zone, it would be an unreasonable hardship for the Applicants to be prohibited from using their lot for the uses allowed in the zone at the time that the lot was created. The general purpose of the Code, as stated in the Box Elder County Land Use Management & Development Code at Section 1-1-030, includes:

“This Code is designed and enacted for the purpose of promoting the health, safety, welfare, and to promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the present and future inhabitants and businesses of Box Elder County, State of Utah, including, among other things, the lessening of congestion in the streets, securing safety from fire and other dangers, protecting the tax base, securing economy in governmental expenditures, fostering the state's agricultural and other industries, protecting both urban and non-urban development, protecting and ensuring access to sunlight for solar energy devices, encouraging energy efficient patterns of development, providing adequate light and air, preventing the overcrowding of land, avoiding undue concentration of population, facilitating adequate provision for transportation, water, sewage, and other public requirements, providing for the classification of land uses and providing fundamental fairness in land use regulation. These land use regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the County.”

The approval of this variance is consistent with these objectives, particularly the goal of fundamental fairness in land use regulation. Substantial evidence or authority was not provided in the review of this application to the contrary.

- b. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

Lot No. 1 is a legal non-conforming lot which does not front upon Highway 38 as other parcels do. The special circumstance is that most other lots are not dependent on a shared driveway serving more than two existing residences for their only access to a public road. Lot No. 1 is also a legal non-conforming lot, unlike other lots in the area which do conform to the access requirements of the existing code and are therefore appear to be conforming lots with respect to the access each lot has to the public roads.

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

Without this variance, Lot No. 1 could not be used as a single family residential lot, which is allowed by the current RR-5 zone. It would therefore be limited only to agricultural uses. If a residential use is not allowed for a single-family lot, a taking of private property for a public use without the payment of just compensation may be found. *Arnell v. Salt Lake County Bd of Adj.*, 2005 UT App 165; *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992)). The right to be paid compensation for a taking of private property for a public use is a substantial property right. The right to utilize a legal non-conforming lot for its non-conforming use is also a substantial property right. *Rock Manor Tr. V. State Road Comm'n*, 550 P.2d at 206 (Utah 1976); *Gibbons & Reed v. N. Salt Lake City*, 431 P.2d 559 (Utah 1967).

- d. The variance will not substantially affect the General Plan and will not be contrary to the public interest.

The proposed use for a single-family residence is allowed by the current ordinances and general plan. Using a vested non-conforming lot for its originally allowed residential use, in a manner consistent with the density and use provisions of the General Plan is not contrary to the public interest. Utilizing a 27 acre lot for a residence in a zone allowing residences on 5 acre lots is also consistent with the densities and other aspects of the General Plan. No evidence has been provided that this is contrary to the public interest. It would be contrary to the public interest to impose on the County the duty to pay just compensation by denying a residential use on a legal non-conforming

residential lot, as well as impose on the County the duty to maintain an 800 foot long public road in perpetuity solely to allow the Applicants to build a home.

- e. The spirit of this Code is observed and substantial justice done.

The use of a single-family residential lot for a single-family residence is consistent with the spirit of the land use regulations. To deny the owners of a legal residential lot the right to build on that lot would not further substantial justice.

- f. The Hearing Officer may find an unreasonable hardship exists only if the alleged hardship is located on or associated with the property for which the variance is sought and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood. The Hearing Officer may not find an unreasonable hardship exists if the hardship is self-imposed or economic.

Again, while every parcel is unique to some extent, the conditions complained of here do not apply to other properties in a manner that is general to the neighborhood. This is a unique non-conforming residential lot created and recorded before the current road standards were adopted. The restriction on economic hardships does not prohibit the granting of a variance if the expenditure of unlimited funds on another solution could also allow the proposed use. Every hardship has an economic aspect, but here the hardship is not primarily economic, but practical. It would be unreasonable to require the owner of a non-conforming lot to cure that nonconformity by the expenditure of funds to acquire more property for access and thus render the lot conforming. If the only way to utilize a non-conforming lot is to make it conforming, then the legal protections afforded to non-conforming lots would be eviscerated and rendered null and void. Lot No. 1, in its current form, is a legal non-conforming lot and may be used for residential purposes in its current configuration.

- g. The Hearing Officer may find that special circumstances are attached to the property exist only if the special circumstances relate to the hardship complained of and deprive the property of privileges granted to other properties in the same zoning district.

See responses above.

- 8. The Applicant bears the burden of proving that all the conditions justifying a variance have been met with substantial evidence in the record of this matter.

In this case, the Applicants have met this burden. This decision also incorporates by reference the responses to the variance issues provided at pages 4-6 of the staff report found in the record of this matter.

CONCLUSION

The variance is approved because all the conditions to receive a variance have been met.

Dated this 7th day of July, 2023.

A handwritten signature in black ink, appearing to read "Craig M. Call", written over a horizontal line.

Craig M. Call, Appeals Hearing Officer