

Providence City Appeal Authority

Proceedings held Thursday February 11, 2016 at 4:00 PM

In Re: Checketts Variance Request.

Decision

Providence City resident Stan Checketts seeks a variance from the Providence City Subdivision Ordinance requiring that a road intersection be provided every 1,320 feet - or every two standard city blocks. The variance request comes following an administrative review of the proposed subdivision development by the City officials. The matter has not proceeded to the Providence City Planning Commission. The variance request is properly before this body, the Providence City Appeal Authority, which, pursuant to Utah Code § 10-9a-701 *et seq.* and Providence City Code 2-5-1 *et seq.* has authority “to hear requests for variances from the terms of the land use ordinances” and also “from decisions applying land use ordinances.”¹

The operative provisions of state law set a high standard for this body to grant a variance. Utah Code § 10-9a-702 provides:

10-9a-702. Variances.

- (1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.
- (2)
 - (a) The appeal authority may grant a variance only if:
 - (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(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; and
 - (B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - (ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
 - (c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:
 - (i) relate to the hardship complained of; and

¹ The Appeal Authority acts in a quasi-judicial function.

- (ii) deprive the property of privileges granted to other properties in the same zone.
- (3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- (4) Variances run with the land.
- (5) The appeal authority may not grant a use variance.
- (6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
 - (a) mitigate any harmful affects of the variance; or
 - (b) serve the purpose of the standard or requirement that is waived or modified.

The Appeals Authority held a public meeting to consider the variance on Thursday February 11, 2016. Mr. Checketts was represented by Danny McFarland of Civil Solutions Group. The City was also represented by the City Engineers Gary Knighton and Max Pierce and Robert Stapely the Public Works Director. The meeting included a site visit and then a discussion with the parties.

For the reasons discussed below, the Appeal Authority determines that the evidence presented does not meet the standard which is requisite for a variance to be granted and the variance request is denied.

Findings

Following the presentation the Appeals Authority members met and discussed each of the statutory elements in light of the information presented to the Appeals Authority (hereinafter “AA”).

1. 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. After considering the variance request and the rational and purpose of the ordinance the Appeals Authority could not discern that enforcement of the ordinance would not cause an unreasonable hardship on the developer. The distance between the closest intersection and the main roadway from the intersection where the proposed road begins and the next intersections is approximately 3,200+ feet. There is a cul-de-sac leading to the East and North that is approximately one-half of that distance, but current ordinances do not treat a road leading to cul-de-sac as an intersections.

Members of the AA felt that if the plans could be modified that given the terrain and the location of the proposed subdivision in relationship to the varying and in places steep slope of the terrain (e.g., 20-30%) existing major power lines and the mountains to the East and that it is likely that no development would occur to the East of the proposed subdivision that some variance (+ 100 - 200 feet) could be considered but that compliance with the City Ordinance in light of the requested variance did not cause an unreasonable hardship on the applicant. In addition if the present cul-de-sac were treated as a temporary cul-de-sac to accommodate a road leading to the north if there was future development of that property (owned by the same

proponent-developer) then the AA would likely (without making a final decision) consider that an intersection, particularly as it appears there would be no more development to the East due to the mountain and federal land ownership and if there is no more development to the East of this project then what would a street with cross traffic serve if there is nowhere for the road to connect to.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone. The AA is satisfied that there are special conditions attached to the property that include the steep and varying slope of the terrain (e.g., 20-30%) existing major power lines and the mountains to the East. If this were the only criteria to grant a variance then the unique aspects of the property would justify further consideration of a variance that is related to or has a nexus to the properties special circumstances.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. The constitutional criteria for application of this factor as the AA understands it is that substantially all the property value must be taken. There was no clear evidence that the design of a roadway meeting the conditions of the ordinance was impossible or impractical. Hence this condition is not satisfied.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest. Deference alone to the City Council as the communities elected officials and their rational judgment in setting the criteria of an intersection every 1,320 feet would seem to require a finding that granting a variance to the degree sought in this case would substantially affect the general plan and would be contrary to the community public interest.

and

5. The spirit of the land use ordinance is observed and substantial justice done. The city representatives indicated that the ordinance requiring intersections every 1,320 feet helped facilitate the public safety by providing fire and police turnarounds, water shut offs at intersections, the looping of water and general public convenience in travel and the orderly movement of traffic in the community. Given these factors the AA is of the collective opinion that granting the variance to the degree requested in the application would not meet the spirit of the land use ordinance in question and is not conducive to substantial justice.

Conclusion and Decision

The request for a variance from the subdivision ordinance does not meet the high standard for a variance set by the Utah legislature and the request for a variance is therefore denied.

Dated this 17th day of February, 2016.

Providence City Appeals Authority

Mary Hubbard

Ned Miller

Joseph M. Chambers