

1 **Providence City**

2 **Appeal Authority Meeting Minutes**

3 **August 20, 2020 – 3:30 PM**

4 Providence City Office Building

5 164 North Gateway Drive, Providence UT 84332

6 **Members of the Appeal Authority may be attending this meeting electronically.**

7 **This meeting was live streamed on Providence City's YouTube Channel**

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9 Member Attendance: Mary Hubbard, Randy Simmons, Ed Banda

10 Other attendance: Chad Woolley, Attorney for Providence City; Craig Smith, Attorney for the Appeal
11 Authority; Mike Carter, Lifestyle Homes on behalf of Jason and Tammy Benson; Josh Givens & Ryan
12 Hales, Hales Engineering; Stephanie & Wade Swan, applicants.

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14 **Item No. 1:** The Providence City Appeal Authority will consider a request by Wade and Stephanie Swan, who are
15 seeking a variance be granted on lot 20 of Providence Hollow Phase 3, 694 E. 525 N., to allow driveway access onto
16 Spring Creek Parkway.

- 17 • Stephanie Swan, applicant, explained why her request meets the requirements for a variance. She is
18 requesting a variance from Providence City Code 11-4-3.Q. She was told that Utah Code 10-9a-103 also
19 applies to the lot.
- 20 • R Snow showed a map dated January 31, 2019 showing limited access roadways within Providence. S
21 Swan questioned whether this map meets the requirement in PCC 11-4-3.Q that the map be shown on the
22 General Plan and/or Transportation Corridor Master Plan. She could not find it in the master plans listed
23 on the City's website.
- 24 • M Hubbard also could not find Spring Creek Parkway listed as a specified road in the city's transportation
25 plans.
- 26 • S Swan brought up Utah Code 10-9a-306 (2), which states that "if a land use regulation does not plainly
27 restrict a land use application, the land use authority shall interpret and apply the land use regulation to
28 favor the land use application." She feels that Providence City Code does not plainly restrict her
29 application because the map is not in the General Plan and/or Transportation Corridor Master Plan.
- 30 • C Woolley, City Attorney, said that there may be some ambiguity in the statute, but that the restriction
31 that is printed on the plat itself is very plain.
- 32 • S Swan brought up Providence Hollow Phase 1, which has several lots with access onto Spring Creek
33 Parkway. Little Baldy also has two lots that could have access onto 200 N, but the plat indicates that they
34 must have access onto 850 E, which is essentially Spring Creek Parkway. This shows ambiguity in the
35 application of the statute.
- 36 • Mary Hubbard asked the City what the reason was for allowing corner lots in Providence Hollow Phase 1
37 to access Spring Creek Parkway.
- 38 • C Woolley believes that at that point, the road had not been laid. Therefore, there would have been no
39 damage to the road from new cuts for driveways, etc., which is one of the reasons for a limited access
40 road.
- 41 • S Swan felt that even though the restriction is on her plat, the City may have ambiguously applied the
42 standard to her plat and not to others.
- 43 • R Simmons suggested that S Swan may want to simply apply for an amended plat to remove the
44 restriction.
- 45 • C Woolley said that the city might not accept an amendment to remove the restriction, because according
46 to the City, that road is a limited access road. The variance, on the other hand, would allow the applicant
47 to vary from the city code relating to the road.
- 48 • S Swan felt that the application of the restriction is not plain because it is applied differently to different
49 subdivisions, and therefore she should receive the benefit of Utah Code 10-9a-306 (2).
- 50 • S Swan asked how roads are classified. R Snow said that they are classified based on design and on
51 expected traffic.

- 52 • Josh Givens of Hales Engineering said that he estimates around 5,000 vehicle trips per day on Spring Creek
53 Parkway by 2040 based on the surrounding land uses. Two-lane roads can handle approximately 10,000
54 trips per day. Traffic operations look good on the road.
- 55 • J Givens also did a safety study regarding sight distance. The sight distance from lot 20 is pretty good [on
56 Spring Creek Parkway] and compares well to the other lots nearby. It is better than lot 27 [which is
57 allowed access onto Spring Creek Parkway].
- 58 • S Swan noted that there is no competing access across Spring Creek Parkway from lot 20, whereas there
59 are competing accesses for other lots in Providence Hollow Phase 3.
- 60 • J Givens said that they were not able to find anything indicating that this road was specified as per
61 Providence City Code 11-4-3.
- 62 • S Swan spoke about the requirements for a variance. The first requirement is unreasonable hardship. She
63 feels that her lot meets this because it is steeply sloped. It is unique from other lots because it is the only
64 lot with frontage on both Spring Creek Parkway and 525 N. The best way to situate a house on it would be
65 to minimize cutting into the slope, which could cause erosion problems, etc.
- 66 • S Swan explained that the slope on the lot is more oriented toward the north side. Placing a home there
67 at the 20 ft setback would require more cutting into the hill in order to put in a basement. She felt that
68 requiring them to do more cutting into the hill in order to access the lot from the north presented an
69 unreasonable hardship. The study from Hales Engineers also mentions that there are topographical
70 difficulties with installing an access on 525 N.
- 71 • Another requirement for a variance is that there be special circumstances on the property which do not
72 apply to other properties in the same zone. S Swan believes that the topography qualifies as a special
73 circumstance because accessing the property from the north would require them to cut into the slope
74 more and increase the risk of erosion.
- 75 • M Hubbard asked whether the engineers indicated that there would be problems from cutting into the
76 banks that would lead to problems with the stability of the home. S Swan said that the engineers
77 indicated that they would need to do an in-depth study to address the possibility. They were adamant
78 that the increased risk of erosion was very real based on accessing from the North.
- 79 • S Swan explained that minimizing erosion is important not only to her lot, but also to the lots west of her
80 lot. It is in the public interest.
- 81 • S Swan spoke about the condition that granting the variance is essential for enjoying a substantial
82 property right that is possessed by other property in the same zone. The substantial property right in this
83 case is being able to access the land from the point that will allow for the highest and best use of the
84 property. Properties in Providence Hollow Phase 1 had the right to access Spring Creek Parkway even
85 though they had no hardship with access onto other roads. Properties in Little Baldy were also given the
86 right to access 850 East, an extension of Spring Creek Parkway.
- 87 • S Swan spoke about the condition that the variance will not substantially impact the general plan or be
88 contrary to the public interest. She argued that the integrity of the general plan is improved by granting
89 this variance request. Having all the homes on the north side of Spring Creek Parkway face south will
90 improve aesthetics. Having the home face north would cause the back fence to be built along Spring
91 Creek Parkway, which would look out of place, and which would impose a hardship on the homeowner
92 because fences against roads cannot be as tall as other fences.
- 93 • S Swan spoke about the condition that the spirit of the land use ordinance is observed and substantial
94 justice is done. She argued that she put forth the effort to ensure that the public interest is preserved by
95 doing the traffic study and comparing her lot to other similar lots [with regards to safety]. She felt that
96 the public welfare is also improved by granting this variance because the possibility of future erosion is
97 reduced.
- 98 • S Swan spoke about the requirement that the hardship be on or associated with the property. The slope
99 and line-of-sight issues are specific to this property.
- 100 • S Swan spoke about the requirement that the circumstances must be peculiar to the property and not
101 conditions general to the neighborhood. The property has a better line-of-sight than other nearby lots
102 and no competing access across the parkway. The property has an unusual shape.

- 103 • S Swan spoke about the requirement that the hardship may not be self-imposed or economic. She said
- 104 that her earlier discussion of the study and the topography prove that this is not the case.
- 105 • S Swan spoke about the requirement that special circumstances relate to the hardship complained of. The
- 106 physical conditions make adherence to the ordinance difficult or impossible. The special circumstances
- 107 also deprive the property of privileges granted to other properties because other properties had access
- 108 onto Spring Creek Parkway even when they had other options.
- 109 • Chad Woolley, City Attorney, said that he was impressed with the presentation. He explained that his job
- 110 as the City Attorney is to poke holes in S Swan’s argument. He asked S Swan if they own the property yet.
- 111 S Swan said that they are under contract and their performance date is the 3rd of September.
- 112 • C Woolley spoke about ambiguity. The reason that ambiguity in the law is a bad thing is because people
- 113 are not put on notice what the law is. That is not an issue in this case, because the law is on the plat.
- 114 • C Woolley spoke about unreasonable hardship. The applicant has other options, such as purchasing
- 115 another property.
- 116 • C Woolley spoke about special circumstances. Most if not all of the properties in that area have slope
- 117 issues. There were many issues with developing this area, and the restrictions are many and varied on the
- 118 lots in that area. He would argue that the special circumstances do not exist. S Swan said that the
- 119 engineering firm that she hired felt that special circumstances do exist.
- 120 • C Woolley felt that the issues with this lot could be economic in nature. Many of the issues could be fixed
- 121 by spending money to fix them. The applicant didn’t cause the hardship, but she also doesn’t have to buy
- 122 the property.
- 123 • C Woolley said that he is concerned as the city attorney by the precedent that is set by approving this
- 124 variance. It might allow people in that area to go against the plats that have been laid out for various
- 125 reasons, which could be catastrophic in some ways.
- 126 • Craig Smith, Attorney for the Appeal Authority, recommended that if the appeal authority makes a
- 127 decision today, that they should prepare a written statement of findings and conclusions which they can
- 128 then adopt at a future meeting. He also said that the Appeal Authority is allowed to have a closed session
- 129 to have deliberations. C Smith said that in order to grant the variance, the Appeal Authority would need
- 130 to make the findings that are listed in Utah Code.
- 131 • C Smith spoke about the ambiguity as to whether the road in question is a restricted access road. The
- 132 Appeal Authority can also make a finding in regards to this. The standard is that unless the decision of a
- 133 lower land use body is arbitrary, capricious, or illegal, it should be upheld. He also said that it is correct
- 134 that a land use regulation is construed in favor of the applicant.
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136 **Item No. 2:** The Providence City Appeal Authority will consider a request by Lifestyle Home in behalf of Jason and
 137 Tammy Benson, who are seeking a variance be granted on lot 29 of Orchard Hills Phase 1, 612 E. 1000 S., to allow
 138 driveway access onto 1000 South.

- 140 • M Carter read from the letter that he submitted. This property had been permitted and approved by
- 141 Providence City with a driveway onto 1000 South. His company had commenced digging on the lot in
- 142 preparation for a home facing north before they were informed that the approval was revoked.
- 143 • M Carter felt that having to re-excavate would cause unreasonable hardship, including costs and delays.
- 144 • M Carter explained that the special circumstances applying to this lot are the unusual amount of data
- 145 junction boxes that are located on the north side. The property owners would like this area to be their
- 146 front yard so that the data junction boxes can be against their driveway and not in their back yard. It
- 147 would also allow for easier access to the boxes.
- 148 • M Carter brought up the homes on the opposite side of the road which have access to 1000 S, and he
- 149 brought up Lot 27 in the same subdivision as Lot 29. It also has access. He doesn’t see any reason why Lot
- 150 29 shouldn’t also have access.
- 151 • C Woolley said that he would submit similar arguments as he did for the last item. He asked M Carter if
- 152 the digging on the property started before approval was granted. M Carter said that he is not sure.
- 153 • C Woolley explained that approving this could set a bad precedent. There are other lots in the area that
- 154 have similar restrictions. There is a reason that some roads are limited access. There are some economic

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issues to those properties. It isn't unreasonable for the City to put restrictions on those properties that make them more expensive to develop. However, it is possible to be too unreasonable.

- C Woolley explained that all variances must meet the qualifications in State Code. One of the hardest to meet is the requirement that the hardship must not be economic. C Woolley said that the City's interest is in being able to enforce our ordinances and keep as many properties from accessing these limited access roads as possible.
- R Snow pointed out that the properties on the north side of the street with access onto 1000 South have that as their only access option.
- M Hubbard asked about when M Carter got the signed permit and when they started digging. M Carter said that he will have to check on that.
- R Snow explained that the zoning permit was approved, but that zoning permits need to be taken to the county for a building permit.
- Diane Campbell, Zoning Staff, said that this project was approved at a meeting of the Land Use Authority, and then approximately 30 minutes later the City called M Carter and asked him to hold off. The zoning permit was never actually issued.

The Appeal Authority entered closed deliberations at about 4:50 PM

Ed Banda motioned to close the meeting.

Minutes prepared by Jesse Bardsley

Randy Simmons, Chair

Skarlet Bankhead, City Recorder