

**BOARD OF ADJUSTMENT MINUTES**  
**November 5, 2002**  
**7:00 p.m.**

Present: Chairman Bud Neslen, Vice Chairman Dean Holbrook, Al Hess, Planning Commission Representative Mark Green, Representing the City Attorney David Peters, Planning Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Leon Thurgood.

Bud Neslen welcomed all those present and had the Board Members and all those present introduce themselves. Al Hess made a motion to approve the minutes for October 1, 2002 as written. Dean Holbrook seconded the motion and voting was passed by majority vote. Mark Green was not present at the meeting and abstained from voting.

1. Consider requests for variances and appeals of administrative decisions for property located at 1581 S. Stone Hollow Road, Ken and Richelle Patey, applicants.

Ken Patey, applicant, was present. Bud Neslen explained that there are 9 specific requests made by Mr. Patey which only part 2 and 3 of #1 and #7 can be heard. A variance to disturb ground over 30% slope and a variance for a 14-foot wide driveway. The remaining requests the Board of Adjustment has no authority to act on and should be referred to the property authorities. Ken Patey would like to address the position the City took on why the request cannot be looked at. Mr. Patey is prepared to discuss the issue with his presentation. If these issues cannot be discussed, Mr. Patey will address the variance issue of the 30% slope. It has been made known to Mr. Patey that this board cannot approve any building permits so he is amending his request.

David Peters explained that he has been asked by the City Attorney to represent the Board of Adjustment because of possible involvement of the City in this matter. Mr. Peters has reviewed the statutory authority of this Board and provided a memo to the Board Members. This Board has the statutory authority to hear and decide on appeals to zoning issues and enforcement, special exceptions to zoning ordinances and variances from zoning ordinances. The application before this Board has 9 parts to it. Many ask for issuance of a building permit or granting an easement for which this Board has no authority to act on. A variance request for allowing the disturbing ground of 30% and narrowing of a driveway, the Board can consider on the usual terms of a variance.

Ken Patey explained that he has been in discussions with the City for 2 years trying to resolve the property dispute. Mr. Patey will address what is allowed which is an interpretation of the zoning ordinance. Mr. Patey is requesting a variance for the Hillside Ordinance for Lot 87 of Maple Hills and Lot 603 of Stone Ridge. These two properties are impacted by the proposal that Mr. Patey is making.

Mr. Patey would like to address the power of the Board. First of all, the Board of Adjustment can grant a variance on city property. There is a constitutional property right for access, air and

light. Mr. Patey will show that Bountiful City and residents have closed and blocked the access to these properties. He will prove that multiple roads existed connecting Lot 603 and Lot 87 to the 160 acres in the country where Mr. Patey is alleging a blockage and should be granted a variance. The homes and city activities have blocked the original roads. Failing to grant a variance is denying the Patey's their constitutional rights. Mr. Patey is prepared to go to court if these variances are not granted.

Mr. Patey feels that the City can take non city property into consideration while evaluating property in the City for a variance. Zoning ordinance's effect what can and cannot be annexed into the City. Items outside the City being addressed for annexation would say that the Board can talk about and take into consideration items outside the City if it is an adjoining property. Other property owners have been allowed to access over 30% slope on their property. Mr. Patey feels that the majority of the home owners in this room drive over 30% slope to get to their homes. Mr. Patey wants the same protection and treatment.

Mr. Patey provided a lengthy presentation with documents, maps and pictures on the history of his property and preexisting roads. Mr. Patey presented information showing roads were used to access the Leslie Goddard farm, Bountiful Lumber logging, Howard Water System, Berry farms and Jack Lewis farm and pond.

Bud Neslen mentioned to Mr. Patey that the Board has now heard the proof of original roads or preexisting roads and was interrupted by Mr. Patey. Mr. Patey feels that he has proven that roads have existed on his property and that the City closed the roads. This should be a reason for granting a variance.

Mark Green asked what is the relevance of the 160 acres for a variance to cross a 30% slope? Mr. Patey presented a picture showing that there was a road in 1972 going from his property of 19 acres to the property of 160 acres and this is the relevance. Mr. Patey is asking for a variance to build a road to the top of his 19 acres and let the City or the courts decide if he has the right to use the road that existed in 1972. There was another picture presented showing the current homes blocking the road. This road went through Lot 87 and his property Lot 603. Mr. Patey admitted that he created an access road from the bottom to the top of his Lot 603. He has submitted a revegetation plan to the City but has not heard back on the issue. Mr. Patey is asking the Board to approve a variance to the Hillside Ordinance so that the City isn't hiding behind a variance to address the real issue of access to his property. The issue is about being able to build a house and have horses. When he bought the property in Stone Ridge, he did not read the restrictive covenants saying "no horses.". But in the county it is allowed. Mr. Patey found the preexisting roads and bought the land 2 years ago and is now asking for a resolution.

The Public Hearing was opened for those with concerns or questions.

Scott West, residing at 1941 S. Ridgehill Drive, mentioned that the roads mentioned have not had public access the last ten years or more. The roads used in the past are irrelevant to the use now.

David Crapo, property owner and member of the Stone Ridge Homeowners Association, presented a written statement from the Homeowners Association included as part of these minutes. Mr. Crapo read that the Stone Ridge Homeowners Association recently reviewed a copy of Mr. and Mrs. Patey's application to this Board. The Association respectfully requests that the Board deny the requested variances and dismiss the other requests made by Mr. and Mrs. Patey in their application. The Association has reviewed the October 29, 2002, memorandum of the Planning Director to the Board concerning this application and substantially agrees with and hereby joins the argument set forth by the Planning Director in that memorandum. In addition, the Association believes that the requested variances for building on the 30% slope, and/or building a private driveway, should be rejected by this board for the reasons set by State Law.

Mr. Crapo mentioned that the Utah Code says that a person is allowed to apply for a variance if he owns or leases the property. The property at 1965 S. Ridge Hill Dr., Lot 87 Maple Hills, is not owned by Mr. Patey but Dick Smith. Mr. Patey has no ownership on this property and the Board cannot act on it. The Lot 603 is a very large lot and is a buildable lot and meets City Ordinances. The owners of the property in Stone Ridge sold and deeded the land for a subdivision and waived all rights to any access to the property. Restrictive Covenants were also recorded stating "no horses, no construction or removal of trees and no roads without the approval of the Homeowners Association." None of these permits have been filed from Mr. Patey. Mr. Patey knew of these covenants when he bought the property, and for him to claim that he has an economic hardship is quite disingenuous. Mr. Patey has the same rights for the use of his property as the other homeowners. If a road is allowed, it will convert Lot 603 from a residential building lot into a roadway. This will cause an increase in traffic through the subdivision and greater access to the forces of the hillside for water erosion, fire hazards, illegal firearm use, etc. The road that Mr. Patey has cut has caused a hazard and a nuisance to the community. There have been gasoline containers left in the sun, trespassers, and now deer hunters shooting guns within 100 yards of Mr. Crapo's home. None of this occurred until Mr. Patey cut the road through his property. This type of behavior, without a proper variance or permits, has to stop.

Utah Code Ann. 10-9-707 only allows a variance if the person can establish the five elements outlined. Mr. and Mrs. Patey's requested variances do not meet any of the five elements. Mr. Crapo read the five requirements required by State Law adding the above comments. The Association respectfully requests that since not one of the five elements for a variance has been met that the Board of Adjustment deny the requested variance. Mr. Patey will have his day in court to argue all the material he has presented on access which is irrelevant to this Board.

Larry Dupaix, residing at 2044 E. Ridge Hill Drive, mentioned that the top section of the 160 acres located in the county there has been cut a 60 to 80-foot path down a gully and on a slope over 30%. Mr. Dupaix does not know who Mr. Patey's fire break expert was but can't imagine an expert condoning such a cut. The intent for this road seems to be more than an access for horses with this wide of a cut. This is very disingenuous to say that this is just a fire break road when it is not.

J.C. Ynchausti, City Prosecutor, explained that Mr. Patey represented a litigation that is pending

and Mr. Ynchausti is representing Bountiful City in that litigation. The standard that the Board has to use for determining whether a variance can be granted was stated by Mr. Crapo very well. Mr. Patey's feels that the argument about historical roads fails as a reason for granting a variance. Case Law states that a person does not get to develop what is an existing road. If a variance is granted, all Mr. Patey has is what was historically left on the property. He would not be able to make it 14, 15, or 20 ft. wide nor cross on a 30% grade. Mr. Ynchausti feels that you cannot go with history even though it was presented in detail.

Clark Burbidge, residing at 1603 S. Ridge Point Dr., mentioned that the homes that are alleged to be blocking the road, existed before Mr. Patey bought his property. Mr. Burbidge feels that Mr. Patey did not do his homework about his property until after he made the mistakes that he has made or this is an ingenuous manipulation and was intended all along. Asking for a variance is based on the trust of this Board. Mr. Burbidge has also applied for variances, which some were granted and some were not. Mr. Burbidge did not go ahead without approval from the City, Homeowners Association and Forest Department just because he owns the land. There is a process in this country like voting, going to City Council meetings and asking for permits. You cannot do as you please, violate other people's property and Mother Nature herself. There are not just roads on the property but four-wheelers now are driving up and down the side of the hill. This is a great concern that this is happening in the community. Mr. Burbidge suggested that if the City is dealing with someone who has disregarded all levels of government it is inappropriate to grant another trust to him.

Scott West mentioned that there has been SUV's seen on the mountain. There has been a SUV stuck and left on the mountain for several days. In ten years there have not been any vehicles on the mountain. These types of things are impacting the neighborhood. Mr. Patey has not reduced the fire hazard, as he says the road has done, but now vehicles are appearing and causing a hazard.

The Public Hearing was closed.

Dean Holbrook made a motion that the request for variances from Ken Patey be denied. The evidence presented does not support granting a variance. The Staff report, David Peters memo and David Crapo's statement were consistent in their evaluation of the five requirements required by State Law and not one of the five requirements were met. This situation has been self imposed by not having checked with the City, County and the subdivision covenants. Al Hess seconded the motion and voting was unanimous.

2. Consider approval of a variance to allow a 20-foot front yard setback where a 30-foot setback is required at 2763 S. Lewis Park Drive, Ryan Sampson, applicant.

Ryan Sampson, applicant, was present. Blaine Gehring explained that Ryan Sampson is the owner of Lot 216 of Lewis Park Subdivision at 2763 S. Lewis Park Drive. The Lewis Park Subdivision was built on the Foss Lewis gravel pit. The pit was dug into the hillside coming off of 400 East. A roadway was maintained from 400 East to Davis Blvd. during that time for access to and from the pit. That road access is now the extension of North Canyon Road.

As the pit was excavated, while avoiding excavating into the old access road, a slope of 50% was created along that eastern portion of the property. As the subdivision was developed, lots were created in Phase 1 of Lewis Park Subdivision fronting North Canyon Road. Lots were created along the bottom of the slope as part of Phase 2. Lot 216 happened to fall on the end of the transition of that slope to the flatter parts of the pit. The lots of the upper slope fronting on North Canyon Road are relatively flat and the lots to the north of Lot 216 are deep with the slope toward the back of the lots, Lot 216 has about a third if it in that 50% slope. The lots are irregular with the southern lot line only 79.30 feet deep with the slope representing close to 50% of that dimension. Even a standard, rectangular shaped rambler house placed at 30 feet back into the property begins to encroach into that 50% slope sooner than on any other lot in the subdivision.

Mr. Sampson would like to build a home of reasonable size on the lot and not cutting drastically into the hillside. For every four feet he goes back into the hill, he cuts two feet in depth. A house placed at 30 feet from the property line near the south lot line begins into that hillside at about 15 feet back from the front setback and at 26 feet back is already 6 plus feet into it. The building code requires that the home be setback 10 feet from the toe of the hill for drainage protection. That additional 10 feet adds another 5 to 6 feet for a 10 foot cut into the hill. A cut greater than ten feet into a 50% slope poses a dangerous condition for slope stability. When a cut is into a slope of sandy material like this one, it becomes more dangerous.

Mr. Sampson has provided site plans showing three possible designs and how they would fit on the property at a 30 foot setback. Mr. Gehring has traced over the top of those plans where the same homes would sit at 20 feet back. Also shown is where the 10 foot setback to the toe of the hill would be in each case. At a 20 foot setback, all of the homes would have a 10 foot cut or less. At 30 feet, some cuts would be close to 16 feet and into 75 % of the slope. Cuts no greater than 10 feet into the slopes are allowed in the Foothill Ordinance. The same standard should apply here even though it is not in the Foothill Zone.

Mr. Gehring read the five items required by State Law to approve a variance and these have been met. Staff recommends granting the variance to allow a 20 foot front yard setback with the condition that no cuts be made into the 50% slope greater than 10 feet.

Ryan Sampson explained that the three plans submitted meet the requirements in the subdivision covenants and he will choose the house that fits the best on the lot. Mr. Sampson does not want to cut into the hill any more than necessary. The plans submitted will be in line with the surrounding homes.

Dean Holbrook made a motion to grant the request for a variance to allow a 20 foot front yard setback where a 30 foot setback is required at 2763 S. Lewis Park Drive subject to the recommendations by Staff that no cuts into the 50% slope be greater than 10 feet. All five requirements required by State Law have been met. Al Hess seconded the motion and voting was unanimous.

Meeting adjourned at 8:10 p.m.