

- 1) requirement of two points of access to a subdivision (15A-21-10(D));
- 2) cul-de-sac (or dead end road) may not exceed 600' in length (15A-15-04(B)(7)(b));
- 3) private street width requirement of 27' of pavement (15A-21-10(F) (15A-21-11(A)(1));
- 4) requirement for curb, gutter, and sidewalk (15A-21-02) (15A-21-10(N)); and
- 5) requirement that a lot have the required frontage for the zone (15A-21-21(A & B)).

These requested variances are related to a proposed subdivision, consisting of three (3) parcels totaling approximately 3.04 acres, located at 3392 E. Deer Hollow Circle. The property is within the R-1-40A Residential Single-Family Zone and the Sensitive Area Overlay (SAO) Zone.

The proposed subdivision presented to the Board of Adjustment application is different from the one presented to the Planning Commission on May 17, 2018. The current preliminary plat indicates a two (2) lot subdivision with the lots fronting onto a private street. The previous proposed plat included flag lot access to a private street and involved a total of four (4) lots by reconfiguring two of the adjacent lots to the north to acquire the land needed for a flag lot design that met the development code.

Either way, the proposed subdivision would create one new 2.04-acre lot (Lot 1). This proposed lot is where the applicants intend to build a new home out of two existing parcels that have not been created with a subdivision plat and are not yet considered buildable. In either scenario, most of the requested variances would be applicable.

BACKGROUND

History

The subject property is made up of three (3) parcels that the previous owners of the properties created by deed through Salt Lake County. One (1) of the parcels was granted a building permit in the County in the mid-1980s (Lot 2) and early 1990s (Lot 4) before they were annexed into Sandy City. To date, staff has not received evidence that the other two lots (that make up Lot 1) were legally created. Staff has not allowed additional building permits on these parcels unless they were approved through a subdivision process. Going through the subdivision process will clarify property boundaries for these parties and create a new lot that is legal for residential construction.

Adjacent Area

All of the development in this area has been under the code requirements of Salt Lake County. Since this area has been annexed, there have been two (2) new homes built. Those homes were on legally defined and buildable properties and were only required to make improvements that met minimum Fire Code standards because they were already legally created lots.

Zoning

The subject property is zoned R-1-40A and is surrounded by the same zoning district to the north, west and east. There is undeveloped land zoned PUD(1.62) to the south. There are existing single-family homes to the north, west, and east of the property.

All properties surrounding the subject property are also subject to the requirements of Sensitive Area Overlay (SAO) Zone. The purpose of the SAO is to provide standards, guidelines, and criteria that will minimize environmental hazards and protect the natural scenic character of sensitive areas within Sandy City. This applies to areas located adjacent to faults, flood plain,

watershed, and other potential problems such as significant concerns with 30% or greater slope areas.

Physical Features

The property is heavily vegetated with natural stands of oak trees and has significant slopes. The subject properties are located in an area with known areas with 30% or greater slope constraints and earthquake fault zones. Studies have found that no other geologic concerns are applicable to this proposal.

Parcel Features

The properties are irregularly shaped and are not owned by the same entity. These parcels have been created through actions of previous property owners by illegally dividing the area into smaller parcels through deeds.

NOTICE

Notices were mailed to property owners within a 500-foot radius of the subject parcel to notify them of the Board of Adjustment meeting. The applicants also held a neighborhood meeting regarding their initial subdivision request on March 6, 2018. This was well attended and several questions and concerns were raised during the meeting. A full report from the meeting is attached to this report. A follow-up neighborhood meeting has not been held for the applicant's request of variances, but the intent of the applicants is the same. Therefore, staff did not ask the applicants to hold another meeting with the neighborhood.

ORDINANCE SUMMARY

Applicants are requesting to vary from the terms of the following City ordinance(s):

15A-21-02 Curbs, Gutters, Sidewalks and Drive Approaches

The City Engineer may recommend that curbs, gutters, and sidewalks be installed on all existing and proposed streets and along the frontage of any lot within a subdivision in conformance with the Sandy City Standard Specifications and Details for Municipal Construction. Inspections by the Engineering Division are required for the installation of all curbs, gutters, sidewalks, and drive approaches. If the developer/builder fails to notify the Engineering Division for inspection prior to installation, the City Engineer may require remedial action, including, but not limited to, the removal and replacement of the improvements in question. Unless waived by the Planning Commission upon recommendation from the City Engineer, these improvements will be required.

15A-21-10 Streets

D. At least two points of ingress/egress shall be provided for each subdivision, PUD, or multi-family project.

Special Exception: The Planning Commission may grant a special exception to allow a subdivision to have only one point of ingress/egress, after considering a recommendation from the City Engineer and Fire Marshal, under the following circumstances:

1. 30 or fewer lots are accessed from the single ingress/egress; and
2. The City Engineer and Fire Marshal have reviewed the potential for impairment of such single access resulting from vehicle congestion, condition of the terrain, climatic conditions or other factors that could limit access and have made either a positive or negative recommendation to the Planning Commission with regards to a single point of ingress/egress; and

3. The proposed development project has one or more of the following, as determined and recommended for approval or denial by the City Engineer and Fire Marshal to the Planning Commission:
 - a. One or more cul-de-sac(s), hammerhead(s), or other approved turn-around(s) approved by the Fire Marshal and City Engineer, that comply with all development standards herein.
 - b. An emergency access (a point of ingress/egress that provides access for emergency vehicles to respond to a building, or facility, in the event the main access is compromised. The design of this access must meet the International Fire Code).
 - c. The future extension of a stub street that will provide additional access, including a temporary turn-around.
 - d. All buildings are equipped throughout with automatic sprinkler systems approved by the Fire Marshal and Chief Building Official.

15A-21-10 Streets

- N. Parkstrips and sidewalks shall be required on all streets. They shall be designed and installed according to the City's Standard Specifications and Details for Municipal Construction. The Planning Commission may waive, either one or both of these improvements, after considering a recommendation from the City Engineer and Fire Marshal. The following criteria must be evaluated prior to waiving these improvements:
 1. The number of homes within the subdivision.
 2. The length of a cul-de-sac.
 3. The precedence of adjoining improvements.
 4. The configuration of lots.
 5. Where the only other alternative is a private road design.

15A-21-10 Streets

- F. Street right-of-way widths shall be as shown on the Transportation Master Plan and where not show therein shall not be less than the following:

Street Type	Right-of-Way Width
Major Arterial	108+ feet
Minor Arterial	86 feet
Major Collector	82 feet
Minor Collector	68 feet
Local	52 feet
Private Street/ Lane Type	Right-of-Way Width
Private Street	32 feet (27 feet pavement width minimum)
Private Lane	20 feet pavement width minimum

15A-21-11 Additional Standards for Private Streets/Lanes

- A. A private street is a right-of-way or easement in private ownership, not dedicated or maintained as a public street, that serves more than two lots and is greater than 150 feet in length. The following regulations apply to all proposed new developments. Existing roads that provide access to legally subdivided lots, or lots of record, may be allowed to remain at current widths unless it does not meet current Fire Code standards. If it does not meet current fire standards, upon any new development application, the subject property will be required to comply with current development standards.

1. Approved private streets for access to residential dwelling structures shall have a 27 foot minimum width paved surface (32 foot right-of-way).

The Planning Commission may grant a special exception to allow less than a 27 foot pavement width, after considering a recommendation from the City Engineer and Fire Marshal. The City Engineer and Fire Marshal will consider the following conditions when making a recommendation to the Planning Commission for approval of a narrower pavement width:

- (a). Existing site conditions, topography, and improvements, etc.;
- (b). Fire access and water availability;
- (c). Number of lots based on zoning;
- (d). Lot dimensions including frontage;
- (e). Flood control and storm drain; and
- (f). Public utilities.

15A-21-21 Lots

- A. Every parcel of land created by a subdivision shall comply with the minimum lot size requirements of this Code and shall be platted as part of a subdivision. No parcel of land shall be created or left unplatted which is either undevelopable or serves merely as a nuisance or lot remnant.
- B. Except as may be otherwise provided in this Development Code, all lots shall have the required frontage upon a dedicated and improved street. Exceptions may include the following:
 1. Residential building lots that do not have frontage upon a public street shall obtain a special exception from the Planning Commission as part of the preliminary review process.
 2. Commercial building lots within a recorded subdivision are exempt from this requirement. They may be developed without direct frontage upon a public street.

15A-15-04 Development Standards for Sensitive Areas

- B. Development Standards for All Sensitive Areas
 7. Streets and Ways. Streets, roadways, and private streets, lanes and driveways shall follow as nearly as possible the natural terrain minimizing cuts and fills. In addition to the standards identified in the Subdivision Design Standards within this Title, the following additional standards shall apply:
 - b. A cul-de-sac may not exceed 600 feet in length. However, the Planning Commission may grant a special exception to extend the length of the cul-de-sac after considering a recommendation from the City Engineer and Fire Marshal based upon geographical constraints or if public safety will be improved above existing conditions.

LEGAL STANDARD TO BE MET AT PUBLIC HEARING

Utah Code Section 10-9a-702 and Sandy City Land Development Code, Section 15A-35-2 set the standards, or conditions, for approving a variance. The Board of Adjustment may grant a variance only if **ALL** statutory conditions are met. If all five conditions are **NOT MET**, the Board of Adjustment is compelled by law to deny the request for a variance.

The traditional conditions for approval of a variance can be stated as follows:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

The State statute and City ordinance have added the following conditions when determining the above factors which were stated in the Utah Supreme Court decision of *Chambers v. Smithfield City* (714 P.2d 1133, Utah Supreme Court (1986)) :

6. Is the hardship complained of economic in nature?
7. Is the hardship complained of self-imposed?

REQUEST ANALYSIS

The applicants are seeking a variance from the requirement of curb, gutter, or sidewalk to be installed in connection with the proposed development (see section 15A-21-02 and 15A-21-10(N)).

The applicants are seeking a variance from the requirement to widen or further improve a private street (Deer Hollow Circle) to the minimum pavement width of 27'. (see section 15A-21-10(F) and 15A-21-11(A)(1))

The applicants are seeking a variance from the requirement to provide two points of ingress/egress for a subdivision (see section 15A-21-10(D)).

The applicants are seeking a variance from the limit on length of a cul-de-sac or single access road of 600 feet (see section 15A-15-04(B)(7)(b)).

The applicants are seeking a variance from the requirement to comply with minimum lot frontages (see section 15A-21-21(A & B)).

Staff has reviewed the applicant's letter to the Board of Adjustment describing their requests. We have added to their listed sections of code that refer to the same element of code which they seek relief through a variance.

Staff disputes the claims of intentional interference in allowing the properties to be developed and some of the incorrect statements made about the history, process, and events of the Planning Commission hearing. The applicants have covered a lot of context and history in the letter to the Board of Adjustment. They have even requested that the Board grant a "grandfather status" to their property. The Board does not have this authority to determine a legal, non-conforming status. If there was evidence to support the claim, staff would recognize the subject properties as legal lots of record. However, we can't grant this without evidence that they were in fact legal in the County prior to annexation. As described in the applicant's letter, the previous

owners sought a subdivision in the County with the intent to make the parcels buildable, which is evidence that these were not buildable.

In staff's opinion, the applicants have not yet addressed all of the seven (7) required standards and conditions to approve each of the variances in their letter to the Board. They sought special exceptions from these same Code sections, yet the Planning Commission determined that the requests did not meet the criteria that is specified in the Code. The criteria to qualify for a variance is an even higher threshold than for a special exception.

Staff has not been presented with any convincing evidence that the literal enforcement of the Code has created an unreasonable hardship on the applicants. The literal enforcement of the Code is designed to create safe subdivisions and neighborhoods, especially as they intensify the uses in an area. That is the reason for the standards. There are special exceptions to seek relief from some of the requirements of the Code. The Planning Commission ultimately decided that this request did not meet the criteria therein. Any development will be faced with installing required improvements that promote the health, safety, and welfare of the future residents. A variance should not result in a detrimental result to the health, safety, and welfare of current or future Sandy residents, as that violates requirement 4 (contrary to the public interest) and 5 (the spirit of the zoning ordinance is observed) for variances.

The substantial property right they seek is to develop the property with a home thereon, similar to those that were developed several years ago or developed under a different set of regulations in the County. The other surrounding properties were subdivided previously and enjoy rights to build homes. The applicants have bought property where the previous property owner sought to further develop their property, but did so in such a manner that it is not legally recognized as a buildable lot, and therefore doesn't have building rights. Staff has identified several similarly situated properties within this neighborhood and others within Sandy City with the same or very similar circumstances attached to the subject properties. There is no expectation or right to further densify or further subdivide an existing legal lot. Further subdivision of property can be done when compliance with the Development Code is demonstrated. We find nothing unique to this case that would support the claim that they don't enjoy the same rights as those on surrounding properties in a similar situation.

It can be argued that these requests would substantially affect the General Plan, as it is contrary to the goals and policies of creating safe living environments. In some ways this proposal does enhance the fire safety to some of the existing homes, but in other ways it makes the situation worse. The Development Code has created a set of standards that need to be met to ensure this goal. Allowing variances from those requirements could lead to undermining the development requirements that we will apply to other similarly situated properties.

The spirit of the ordinances is not being met as there is no demonstrated attempt to address public safety, which is a primary purpose of the zoning ordinances which the applicants seek to avoid by their application.

All of these variance requests are either self-imposed hardships, or are economic in nature, or both. Compliance with the Code sections they cite all would result in a large cost that may make the project economically difficult at this time. The history of how this property came to be without a subdivision being approved is a self-imposed issue. It was not done by the applicants,

but it is a situation that he's accepted in purchasing the land. The applicants bought a parcel that didn't have all of the bundle of property rights he needs to allow for a construction of a home. The City didn't create that situation; it existed before it was annexed into the City and was created through the actions of previous owners.

STAFF POSITION

The Board should carefully consider the conditions listed above before rendering a decision on each of the requested variances (individually or collectively) and should follow the law as outlined above. The applicants bear the burden of proof in showing that all of the conditions justifying a variance have been met. Based upon our analysis of the letter requesting the variances and the standards and conditions to grant a variance, we recommend to the Board of Adjustment that it deny the requests as presented.

Planner:

Reviewed by:

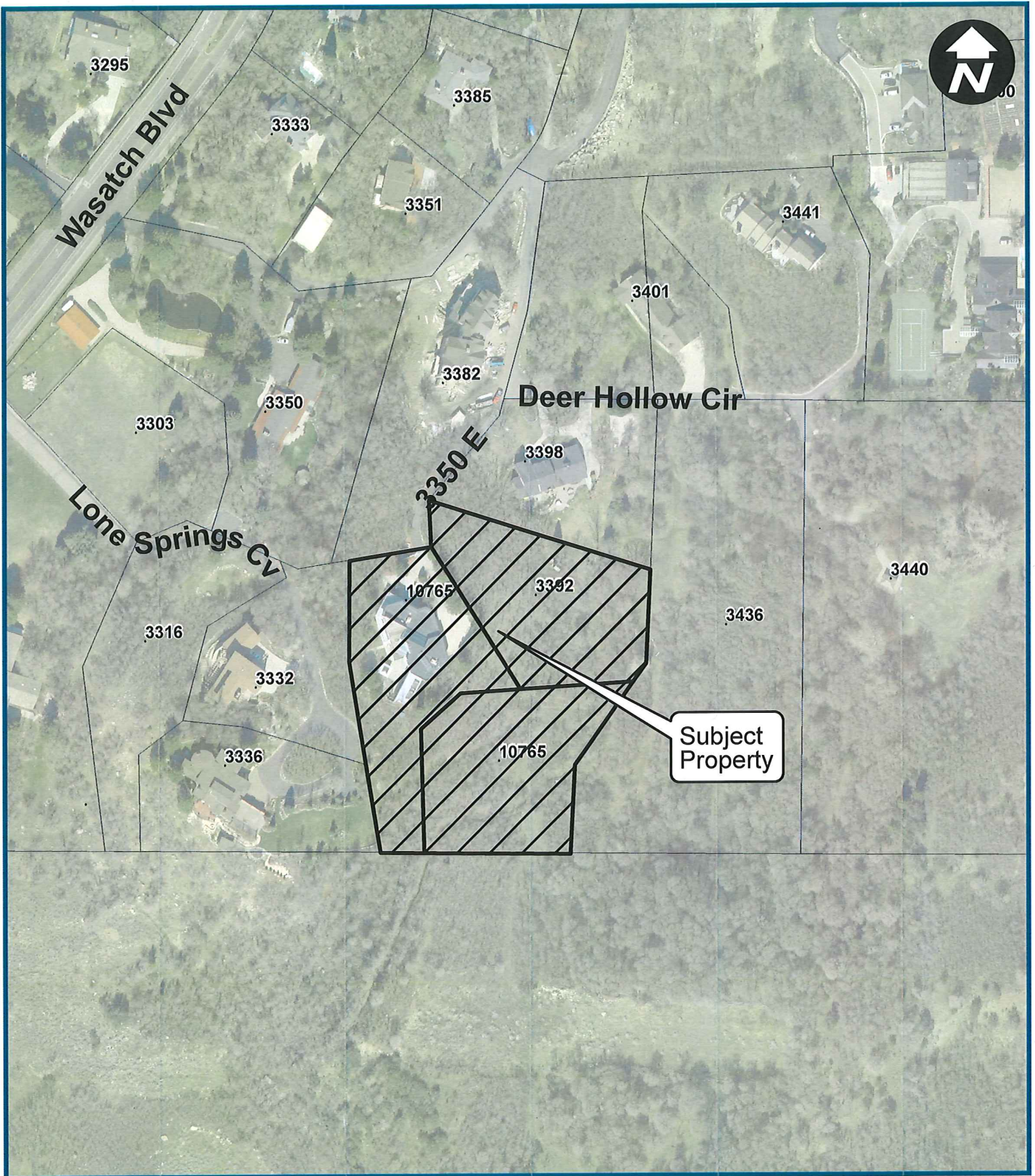


Mike Wilcox
Zoning Administrator

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Notice to Applicants: Be prepared to discuss the criteria for a variance as mentioned above in your presentation to the Board of Adjustment. Generally, the questionnaire you completed as part of the variance application process requests the information which the Board needs to consider. However, you may be aware of additional information that could be useful to the Board of Adjustment, which you may wish to present orally or in writing at the public hearing.

NOTE: *Any appeal of the decision of the Board of Adjustment must be made within thirty [30] days to the appropriate District Court of the State of Utah. The proper forms and procedure for filing such an appeal may be obtained from the District Court or the attorney of your choice. Sandy City **DOES NOT** have this information and **cannot** assist you in any way with the filing of any appeal of a Board of Adjustment decision. Copies of the case file, including all evidence submitted will be made available to interested parties. You may make a copy of the audio tape of the proceedings at our offices located at 10000 Centennial Parkway, suite 210, Sandy, Utah.*



BOA-05-18-5418

**Firefly Forest Subdivision – Variance Requests
3392 E. Deer Hollow Circle**



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