

ITEM #1 Bob Jones requests an appeal of the Planning Commission decision from the Nov. 9, 2022 hearing of a denial for a 30% slope variance for property at 379 East 4900 North, in the R1.10 (One Family Residential) zone. North Timpview Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLABA20220365

<p>Applicant: Bob Jones</p> <p>Staff Coordinator: Aaron Ardmore</p> <p>Property Owner: CRAP TO CASH LLC, Address: 2669 TURNBERRY CT</p> <p>Parcel ID#: 20:027:0237</p> <p>Current Zone: R110</p> <p>Acreage: 7.70</p> <p>Number of Properties: One</p> <p>Number of Lots: 14</p> <p><u>ALTERNATIVE ACTIONS</u></p> <p>Section 14.05.040(8) of the Provo City Code states: In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order requirement, decisions, or determination as ought to be made, and to that end shall have all of the powers of the officer from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or agency or to decide in favor of the appellant on any matter upon which it is required to pass under any such section of the Provo City Code, or to affect any variation in such section of the Provo City Code.</p>	<p>Current Legal Use: Vacant and detention basin for The Preserve on Canyon Road Phase I.</p> <p>Relevant History: After holding two public hearings on a request for a variance to impact steep slopes for construction of a water line, the Planning Commission denied the request.</p> <p>Neighborhood Issues: Destruction of a detention basin, grading 30% slopes without city permits, and concern that approval of the requested variance would undermine the purposes of the Critical Hillside Overlay Zone.</p> <p>Summary of Key Issues: This appeal is to overturn a Planning Commission denial for a variance to grade 30% slopes to construct a waterline for the Ascent Subdivision. At the time of the Planning Commission hearing, two alternatives for waterlines that would not impact 30% slopes were presented to the PC; one by the city and one by the applicant. With alternatives available that would not disturb steep slopes, the original justification for the variance was no longer valid so the PC denied the variance request.</p> <p>Staff Recommendation: That the Board of Adjustment uphold the Planning Commission’s denial to grade or otherwise impact 30% slopes.</p>
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OVERVIEW

On September 28, 2021, Mr. Bob Jones requested that the Planning Commission grant a variance to impact 30% slopes so a needed waterline could be provided to The Ascent Subdivision, located at approximately 379 E 4900 N.

The original staff report to the Planning Commission recommended approval of the variance as the developer represented to the staff that the alignment to impact 30% slope was the only option available to get a second waterline to the site. The Planning Commission took significant public input and, as a result, the staff asked to Planning Commission to continue the item so staff could attempt to identify other waterline alternatives that would not impact 30% slopes or have less impact on 30% slopes.

Subsequent to the Planning Commission meeting, Engineering and Planning staff met with neighboring property owners and received permission for a waterline to extend through their properties using alignments that would not impact 30% slopes. With an alternative alignment that would not impact steep slopes, the justification for the variance approval was no longer valid. The developer would not be denied a substantial property right without the variance.

On November 9, 2022, the Planning Commission denied the variance request with the following findings: 1. That the staff has proposed a waterline alternative that does not impact 30% slopes; 2. That the applicant stated he proposed another waterline alternative that does not impact 30% slopes; 3. That the variance request is contrary to the public interest; and 4. That with other alternatives available, the original variance proposal is an economic hardship and a self-imposed hardship.

The Planning Commission's Report of Action has been attached to this staff report.

RELEVANT HISTORY

The subject property is vacant land within a R1.10 zone. A small portion of the property lies within the Critical Hillside Overlay Zone and is subject to additional design, landscaping, engineering and vegetation preservation requirements of the zone. There is a moderate elevation gain with slopes exceeding 30% in the northeasterly corner of the property.

Land immediately north of the subject property is also in the R1.10 zone and is owned by Mr. and Mrs. Tony Brown. An easement through Brown's property is necessary to extend a waterline to the subject property that does not impact 30% slopes. Browns are willing to allow an easement through their property.

The subject property was originally included in the Preserve on Canyon Road Subdivision as a second phase. When the Preserve Phase I was approved, it was recognized and acknowledged by the developer of the Preserve that Phase II would not have sufficient water pressure from existing infrastructure; that Phase II would require a second waterline to be extended from off-site.

Phase I has been built and most, if not all, of the lots in that phase have homes on them. A detention basin was installed by the developer of Phase I on land within Phase II. The city

received an easement for this detention basin. In order to build Phase II, the detention basin would need to be relocated to the east.

The developer's proposal that would cut through 30% slopes, that was considered by the Planning Commission, would create a significant impact to the hillside. The cut into 30% slope is approximately 1,000 feet long and extends along a meandering path from the bottom of the hill to the top of the hill (See Option #1, Attachment 1). The cross-hatched area illustrated on Attachment 1 designates areas of 30% slope, or higher.

The city's suggested waterline alignment is illustrated as Option #2 on Attachment 1. The easement acceptable to the Browns is a slight variation of Option #3 where instead of the waterline extending on the border between Brown's property and The Ascent Subdivision, it extends down the middle of Brown's south parcel.

The applicant alleges the following in his submittal materials:

1. The city's proposed alignment "goes through 30% slopes so it is no better in that regard than the developer's proposal." Staff does not agree. Staff's alignment follows a wash and a dirt road that are not 30% slope.
2. "That (on the city alignment) 30% slope is actually steeper and more impactful than the developer's proposal." Staff does not agree. Staff's alignment follows a wash and a dirt road that are not 30% slope.
3. "That the impacted slope is natural slope whereas the slopes impacted by the developer's proposal are man-made;" Staff does not agree that staff's alignment impacts 30% slopes so man-made or nature is irrelevant.
4. "That the city rejected (the developer's alternative alignment) at least two times in the past;" this is not correct. The staff did not reject previous plans but asked for sufficient information/engineering to complete evaluation of the proposal.
5. "It could only meet the city standards for slope of the actual waterline by massive and expensive cuts and fills including through 30% slopes;" staff does not agree.
6. "The slope of the developer's waterline does meet city standards." Staff does not know this as we have not received sufficient engineering information to make this determination.
7. "The cost of the (city's) alternative alignment is substantially more expensive due to those cuts and fills." Staff does not agree. Staff believes that the city's alternative will require substantially less cutting and filling of the hillside. It should be noted that the city alignment will be less expensive for future maintenance and pipe repairs.
8. "It impacts the city planned trails network whereas the developer's proposal does not." Staff's plan does not impact the city's trails network.

FINDINGS OF FACT

1. The subject property includes 7.7 acres.
2. The subject property is zoned R1.10.

3. The subject property is of sufficient elevation to not be serviceable from existing waterlines adjacent to the property.
4. The Planning Commission heard requests for a variance to impact 30% slopes to extend an off-site waterline on September 28 and November 9, 2022.
5. The Planning Commission denied the variance request on November 9, 2022.
6. An alternative waterline alignment is available that does not impact 30% slopes.

APPLICABLE ZONING CODES

Section 15.03.035	Prohibition of grading slopes of 30% or steeper.
Section 15.07	Planning Commission authority to hear variance request to impact steep slopes.
Section 14.05	Variance criteria
Section 14.05	Board of Adjustment authority to hear appeals of administrative decisions.

CONCLUSIONS

While the Planning Commission was presented two alternative waterline alignments, only one currently is feasible. But with even one alternative that does not impact 30% slopes, the Planning Commission's denial is still valid and applicable. The property owner is not being denied a substantial property right. In order for the Board of Adjustment to overturn the Planning Commission, it must be sufficiently demonstrated, by the applicant, that the Planning Commission erred in interpretation or application of city ordinance.

JUDICIAL APPEAL OF BOARD OF ADJUSTMENT ACTION

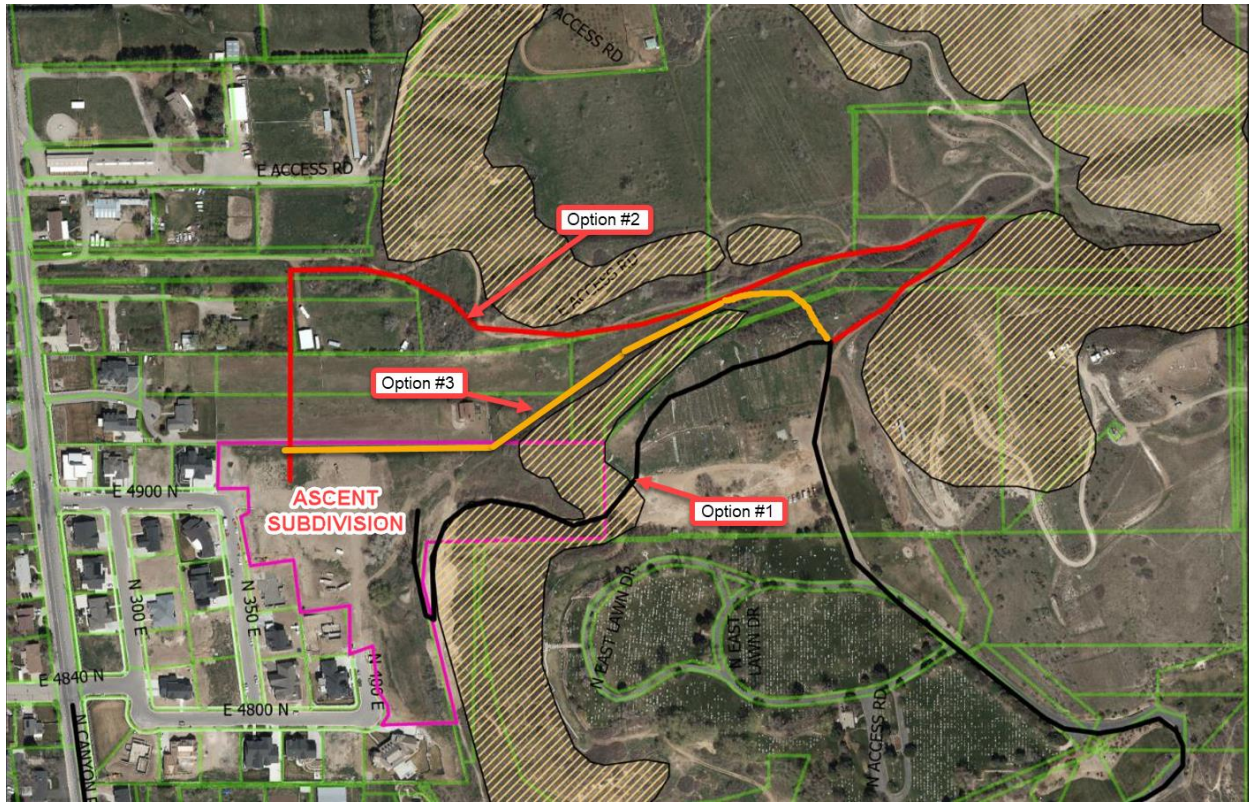
Provo City Code Section 14.05.050 Judicial Appeal

- (1) Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder

ATTACHMENTS

1. Property Map
2. Report of Action

ATTACHMENT 1



ATTACHMENT 2

Provo City Planning Commission

Report of Action

November 9, 2022

ITEM #2 Bob Jones requests a variance through the Planning Commission to impact slopes exceeding 30 percent (Section 15.07.010) for a proposed residential subdivision, located at approximately 379 E 4900 N in the R1.10 zone. North Timpview Neighborhood. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLPSUB20210136

The following action was taken by the Planning Commission on the above described item at its regular meeting of September 28, 2022:

DENIED

On a vote of 6:0, the Planning Commission voted to deny the above application.

Reasons for Denial: 1. That the staff has proposed a water line alternative that does not impact 30% slopes; 2. That the applicant stated he proposed another water line alternative that does not impact 30% slopes; 3. That the variance request is contrary to the public interest; and 4. That with other alternatives available, the original variance proposal is an economic hardship and a self-imposed hardship.

Motion By: Melissa Kendall

Second By: Raleen Wahlin

Votes in Favor of Motion: Melissa Kendall, Raleen Wahlin, Jeff Whitlock, Andrew South, Robert Knudsen, Lisa Jensen
Lisa Jensen was present as Chair.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations.

CITY DEPARTMENTAL ISSUES

- The Public Works Department recognized that the applicant had submitted documentation for Preliminary Subdivision approval. Further engineering and documentation would be needed to Final Subdivision approval.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was not required nor held on the request for a variance, however, staff received many letters and email from the public in opposition to approval of the variance.

NEIGHBORHOOD AND PUBLIC COMMENT

- Six members of the public spoke to the Planning Commission. Concerns raised included the following:
 - Sharon Memmott voiced opposition to the variance because an alternative had been identified that did not require a variance. Mrs. Memmott also read a letter from Morgan Sparenborg which is attached to this Report of Action.

- Angela Mourik voiced opposition to the variance and she read a letter from Tanei Henry, which is also attached to this ROA.
- Boyd Loveless was supportive of the applicant's right to develop his property but did not agree that the 30% slopes should be impacted.
- Debbie Schwarting, who lives in The Preserve on Canyon Road stated how important the debris basin is to the safety of The Preserve.
- In addition to these comments, the city received many letters from citizens that were forwarded to the Planning Commission. Those letters are attached to this report of action.

APPLICANT COMMENTS

The applicant stated that the city staff is dishonest and that the staff water line alternative is a stall tactic. He claimed that the staff's alignment was proposed by the applicant months ago and it was rejected by staff. The applicant believed that the staff's proposal was not real because Utah County had not given permission for the water line to be on property located in unincorporated Utah County. The applicant stated that the staff's water line alternative would cost ten times more than the applicant's variance proposal. The applicant acknowledged that he submitted to the city an alternative that would not impact 30% slopes. The applicant stated that the debris basin that was constructed for The Preserve was illegal because approval had not been obtained from State Dam Safety.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- The Planning Commission asked questions regarding the staff proposal versus the variance proposal.
- That if the applicant's opposition to the staff's proposal is that it would cost more than the variance alignment, then the applicant's hardship is economic, which cannot be considered as a hardship.
- That two alternatives were discussed that would not impact 30% slopes; one by the staff and one by the applicant. If other alternatives exist than impacting 30% slopes is not in the public interest.



Planning Commission Chair



Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Community and Neighborhood Services Department, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS