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**MINUTES OF THE SPRINGDALE BOARD OF ADJUSTMENTS MEETING
HELD ON JUNE 1, 2016, AT 10:00 AM AT TOWN HALL,
118 LION BLVD., SPRINGDALE, UTAH**

MEETING CONVENED: 10:00 A.M.

MEMBERS EXCUSED: Ken Sizemore

ALSO PRESENT: Tom Dansie, Director of Community Development and Jennifer Thompson, Deputy Town Clerk recording. See attached list for citizens signed in.

A. Issuance of Written Decisions:

Mr. Ken Sizemore could not attend the meeting; however, he had asked Tom Dansie, Director of Community Development to announce the variance decisions.

The purpose of the meeting was solely to announce the decisions of the two (2) recent variance cases in a public meeting required by Town code. No other action would be taken. Mr. Dansie had copies of Mr. Ken Sizemore's decisions available for the public and he would provide electronic copies upon request.

1- Randolph and Madelynn P. Lane request for reconsideration of the findings and decision from the September 29, 2015 hearing denying a variance on parcel S-139-A-NP-2 (located at the end of Kinesava Drive) from section 10-15B-9A of the Town Code which prohibits disturbance of 30% and greater grades.

The request for reconsideration of the variance request for parcel S-139-A-NP-2 owned by Randolph and Madelynn Lane was to allow thirty (30) percent slopes to construct a driveway access to the property. The hearing officer had issued a four (4) page written decision for the approval of the requested variance to disturb the thirty (30) percent slopes (Attachment #1).

2- The Mesa, represented by Mark A. Schraut, requests a variance for parcel S-128-C (located in the Public Use zone) from the following code sections:

a. 10-15B-7: to allow a cut slope greater than 10' high

b. 10-15B-9: to allow disturbances on natural slopes 30% and greater in grade

The requested variances will allow the improvement of an access road to the property.

The request for consideration of the variance for parcel S-128-C, owned by the Mesa Project, was to allow disturbance of slopes that measured thirty (30) percent greater in grade for the purpose of improving access to the property. The hearing officer had issued a two (2) page written decision for the approval of the requested variance with the condition the number of vehicles accessing the property were limited to twenty (20) vehicles per pay (Attachment #2).

No other business was conducted.

B. Adjourn- Meeting adjourned at 10:04 A.M.


Jennifer Thompson, Deputy Town Clerk

**BEFORE THE ADMINISTRATIVE HEARING OFFICER
FOR THE TOWN OF SPRINGDALE, UTAH**

IN THE MATTER OF THE APPLICATION OF
RANDOLPH AND MADELYNN LANE FOR A
VARIANCE FROM THE STEEP SLOPE RESTRICTION
OF THE FOOTHILL RESIDENTIAL ZONE IN THE
TOWN OF SPRINGDALE, UTAH

**FINDINGS AND DECISION APPROVING
REQUEST FOR VARIANCE**

PUBLIC HEARING DATE: March 17, 2016

1. Parcel S-139-A-NP-2 (the "Parcel" or "Property") is located in the Foothill Residential (FR) zone near the end of Kinesava Drive in Springdale, Utah.
2. The Parcel is undeveloped.
3. The portion of the Property nearest to Kinesava Drive consists of steep slopes which measure 30% in grade and steeper.
4. The Property has a relatively flat building area at the top of the steep slopes.
5. Section 10-15B-9(A) of the Town Code prohibits the disturbance of 30% and steeper slopes, except under limited exceptions.
6. According to the applicants, a driveway off Kinesava Drive accessing the building area on the Parcel will need to cross 30% slopes.
7. The applicants are requesting a variance to allow disturbance of 30% and steeper slopes in conjunction with the construction of a driveway on the property.
8. On November 4, 2015, the Administrative Hearing Officer issued a decision to deny the request for a variance after a public hearing conducted on September 29, 2015.
9. Mr. Jenkins submitted a written Request for Reconsideration of the Findings a Decision Denying Request for Variance to the Town of Springdale.
10. The Springdale Town Clerk informed the Administrative Hearing Officer of the request for reconsideration, as well as the Town Council's pending consideration of the proposed amendment allowing for reconsideration of a variance request if additional information affecting the outcome of the decision could be presented.

11. A Public Hearing was scheduled and conducted by the Administrative Hearing Officer on March 17, 2016 at 2:00 p.m. in the Springdale Town Council Chambers.
12. At the public hearing Mr. Jenkins presented the following exhibits as new evidence not considered by the Administrative Hearing Officer at the September 29, 2015 Public Hearing and in the subsequent Decision dated November 4, 2015:
 - a. A Declaration of Mark A. Schraut, Professional Land Surveyor, dated January 11, 2016, noting that he had prepared a land survey of the Parcel in March 2014. The survey identifies the location of a "constructed road" referred to as Kinesava Drive. The width, direction, course and path of Kinesava Drive on the land survey conforms to the easement of record. Mr. Schraut concluded that the only access to the Parcel is the route identified on the land survey and in the application for variance.
 - b. A Washington County, Utah Tax Parcel Plat identifying the location of Kinesava Drive in relation to the Parcel and surrounding property holdings. The plat demonstrates a significant gap between the location of Kinesava Drive and the east property boundary of the Parcel.
 - c. Google Map images of Kinesava Drive and the Parcel, demonstrating that the physical location of the road does not allow access from any other location than that proposed in the application for variance.
13. Mr. Jenkins also noted that between the issuance of the Decision of November 4, 2015, and the application for reconsideration of the variance request, the applicants unsuccessfully attempted to negotiate an easement from the adjacent property owner that would allow an access that would not cross slopes 30% or greater. The only remaining viable access to the Parcel is that described in the application for variance.
14. In the written request for reconsideration, Mr. Jenkins asserts that Section 10-25-10(K) of the Town Code states that "...parcels which have been accessed by historical accesses prior to the adoption date hereof shall not be denied a building permit based solely on noncompliance with access or frontage requirements." He asserts that "access" requirements include provisions prohibiting access on slopes 30% or greater, and that this section should allow construction of the proposed driveway.
15. The only comment from the public concerned the location of the buildable area on the Parcel.
16. The November 4, 2015 denial of the requested variance centered on three major findings:
 - a. The definitive identification of the prescriptive easement may provide for access to the parcel without the need to disturb slopes 30% or greater.
 - b. The proposed variance does not conform to standards found in the Springdale General Plan and Town Code.

- c. Construction of the proposed driveway will interfere with the hillside's indigenous characteristics, necessitate substantial cuts and fills in a drainage, disturb contours, and create scarring impacts to adjacent hillside areas.
- 17. The additional evidence provided by the applicants demonstrates that the prescriptive easement called Kinesava Drive terminates approximately 50 feet inside Parcel No. S-139-B-NP-1 to the east of the Property. This endpoint does not allow access to the Parcel at a location that does not cross slopes 30% or greater.
- 18. Title 10-3-3(B) of the Springdale Town Code provides the following standards to the Appeal Authority when considering variance requests:
 - a. Literal enforcement of the provisions of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;
 - b. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
 - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 - d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - e. The spirit of this title is observed and substantial justice done.
- 19. The additional exhibits provided for the March 17, 2016 public hearing demonstrate the applicant's good faith efforts to establish an access that would not cross 30% or greater slopes. The exhibits further demonstrate the definitive identification of the prescriptive easement. The location of the prescriptive easement does not allow access without disturbing slopes 30% or greater.
- 20. Since the configuration of the Parcel and surrounding property holdings does not allow another driveway location, the only viable option to access the Parcel is the proposed driveway crossing slopes 30% or greater. Not allowing the proposed driveway would cause an unreasonable hardship to the applicants.
- 21. In the November 4, 2015 decision, the administrative hearing officer noted that surrounding property holdings "exhibit similar circumstances as the subject parcel, including steep slopes, limited frontage, and problematic soils", and found that the Parcel did not exhibit special circumstances that do not generally apply to other properties. Upon further analysis, and considering assertions made by the applicant's counsel, it is evident that the five other parcels traversed by Kinesava Drive are configured so that driveways have been able to be installed to building pads. The Parcel is the only remaining property without a driveway accessing Kinesava Drive. The configuration of the lot does create a special circumstance not found on the remaining lots.
- 22. Without the proposed driveway, the applicants would not be able to enjoy property rights possessed by other property owners fronting Kinesava Drive. The November 4, 2015 decision clearly noted that the Parcel existed in its current configuration prior to 1992, and was not subject to lot size, access and frontage requirements established in 1992. Counsel for the

applicants presented convincing reasoning that "access" is also an attribute that should fall under the policy of the Town in Section 10-25-10(K) to allow development of parcels along historical accesses existing prior to adoption date (1992).

23. The November 4, 2015 decision cited extensive excerpts from the Town General Plan and noted that construction of the proposed driveway will interfere with the hillside's indigenous characteristics, necessitate substantial cuts and fills in a drainage, disturb contours, and create scarring impacts to adjacent hillside areas. This finding was tied to the potential location of an access that would avoid these impacts. Counsel for the applicants has provided compelling evidence that no such option exists. Absent such an alternative, the impacts to the hillside must be weighed against the substantial property rights of the applicants who purchased a parcel that existed prior to the adoption of the Town's General Plan and 1992 zoning regulations. In this case, the substantial property rights, acknowledged by Town policy regarding historical accesses, must outweigh the impacts to the hillside necessary to facilitate access to the Parcel. This outcome accommodates the residential development of a parcel existing prior to the adoption of the 1992 zoning regulations, and preserves the rights of the applicants to enjoy the residential uses evident on surrounding property holdings.
24. After consideration of the additional exhibits provided by the applicants, and reconsideration of the request, the administrative hearing officer determines that the variance request should be granted.
25. The variance request is approved.

Dated this 22nd day of April, 2016

ADMINISTRATIVE HEARING OFFICER



Kenneth L. Sizemore

**BEFORE THE ADMINISTRATIVE HEARING OFFICER
FOR THE TOWN OF SPRINGDALE, UTAH**

IN THE MATTER OF THE APPLICATION OF THE MESA FOR A VARIANCE FROM THE CUT SLOPE AND STEEP SLOPE RESTRICTION OF PUBLIC USE ZONE IN THE TOWN OF SPRINGDALE, UTAH

**FINDINGS AND DECISION APPROVING
REQUEST FOR VARIANCE**

PUBLIC HEARING DATE: March 17, 2016

1. Parcel S-128-C (the "Parcel" or "Property") is located in the Public Use zone west of the Springdale Town Offices on Lion Blvd.
2. The Parcel is undeveloped.
3. An existing access is an unimproved dirt road that also provides access to the Springdale one million gallon water storage tank. The road traverses steep slopes with grades exceeding 30% on both sides. The road predates current code provisions regarding cut slopes and disturbance of 30% grades.
4. "The Mesa" is a proposed residency retreat center for artists and writers. The proposed use requires improvement to the access road that includes cut slopes exceeding allowable heights and disturbance to slopes exceeding 30%.
5. The proposed variance was considered and approved by the Springdale Board of Adjustment on July 1, 2009. That approval expired after one year.
6. The 2009 staff report noted that "granting the requested variance will not affect the General Plan or be contrary to the public interest" and recommended approval of the request.
7. At the public hearing held on March 17, 2016, the staff could not identify any circumstances that changed between the July 2009 approval and the current request for re-approval of the variance.
8. Title 10-3-3(B) of the Springdale Town Code provides the following standards to the Appeal Authority when considering variance requests:
 - a. Literal enforcement of the provisions of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;
 - b. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
 - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

- d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - e. The spirit of this title is observed and substantial justice done.
9. The proposed use of the Parcel conforms to the Town General Plan that indicates that the Civic area, which includes the Parcel, "should fill one ofthree purposes: 1) promotion of cultural events and arts...."
10. Literal enforcement of the provisions of the title would effectively stymie any use of the Parcel requiring access that meets safety standards, thus creating an unreasonable hardship to the applicants that is not necessary to carry out the general purposes of the Town's land use ordinances.
11. The requested variance was reviewed and approved in 2009, with a favorable staff recommendation. No circumstances have changed appreciably. These special circumstances include the presence of an access road which already traverses slopes of greater than 30 percent serving a public use; terrain constraints that do not allow any other viable access; and regular use of the existing road for access to the subject parcel. These circumstances do not apply to other properties in the Civic area of the General Plan or Public Use zone.
12. Without the requested safety improvements to the access road, the property owners will not be able to enjoy the substantial property right to have vehicular access that meets applicable safety standards, which is a right possessed by other property in the same zone.
13. The proposed variance conforms to the General Plan and will not be contrary to the public interest.
14. The proposed use of the parcel has been acknowledged in Town General Plans, and the owners of the parcel have continued to make investments relying on past actions of the Town. The Civic area identified on the Future Land Uses Map includes the following suggested uses: "Open space, public assembly, cultural activities and cultural facilities, *facilities designed to promote the arts.*" The proposed use meets both the spirit of the title and accomplishes substantial justice.
15. The variance request is approved without the condition of the previous Board of Adjustment decision limiting the number of vehicles to 20 per day.

Dated this 24th day of May, 2016

ADMINISTRATIVE HEARING OFFICER



Kenneth L. Sizemore