
**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 IN THE FOOTHILL
RESIDENTIAL ZONE IN THE TOWN OF
SPRINGDALE, UTAH

**FINDINGS AND DECISION DENYING
REQUEST FOR VARIANCE**

PUBLIC HEARING DATE: Sep. 29, 2015

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.
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. The Property is located on a small ridge overlooking the homes on Kinesava Drive. The Property has sloping topography, with the steepest slopes at the southern end and milder slopes over the rest.

9. The southern end of the Property is closest to Kinesava Drive and is the location where the applicant proposes to gain access off Kinesava Drive.

10. Kinesava Drive, like many streets in the Town's foothills, is not a dedicated public road, nor is it even an established private street. It is a road that developed organically over time and is now a prescriptive easement serving the properties in the area. The Town Code treats these roads as "historic accesses" (see section 10-25-10(K)).

11. Likewise, most of the properties on Kinesava Drive (including the Property) were not created through the Town's subdivision process. They were subdivided at a time when there was no comprehensive subdivision ordinance in place.

12. Because neither the establishment of the road nor the configuration of the properties on the road benefited from a formal review and approval process there are many zoning standards and regulations the properties fail to meet.

13. Section 10-9A-6 of the Town Code recognizes this situation and exempts lots created prior to the adoption of the 1992 zoning ordinance from lot area, width and frontage requirements.

14. A public hearing was conducted on September 29, 2015. Jane Whalen represented the applicants, pursuant to their written request provided to the Town.

15. A transcription of the hearing was taken by a court reporter, along with minutes taken by the Town Recorder.

16. Title 10-3-3(B) of the Springdale Town Code provides the following standards to the Appeal Authority when considering variance requests:

1. 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;
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; and
5. The spirit of this title is observed and substantial justice done.

17. While the subject parcel existed in its current configuration prior to the 1992 adoption of the Town zoning regulations, and is eligible to receive a building permit, Section 10-25-10(K) of the Town Code refers only to lot size, access and frontage requirements. The provisions of Section 10-15B-9(A) continue to apply to the parcel.

18. No specific end point of Kinesava Drive is identified on the property survey or county plats. This prescriptive easement may provide for access to the parcel without the need to disturb slopes exceeding 30 percent. A definitive survey of the prescriptive easement in relation to the subject parcel may identify such an access.

19. Most of the parcels fronting Kinesava Drive exhibit similar circumstances as the subject parcel, including steep slopes, limited frontage, and problematic soils.

20. The minimum lot size in the Foothill Residential Zone is 2 acres. The Parcel does not meet that standard. As noted above, the Parcel existed in its current configuration prior to the 1992 adoption of the Town zoning regulations, and is eligible to receive a building permit, Section 10-25-10(K) of the Town Code refers only to lot size, access and frontage requirements. The definitive identification of the prescriptive easement for Kinesava Drive may provide access to the Property without requiring the disturbance of slopes over 30 percent.

21. Objective 3.4.2 of the Springdale General Plan provides:

Objective 3.4.2 Springdale General Plan:

Strictly monitor grading and earth removal projects to minimize visuals and resource impacts.

Major grading and earth removal projects tend to alter the landscape in dramatic ways. Many negative examples exist in the Town in the form of scars on hillsides where roads were cut to access properties at higher elevations. One example is the private road above Valley View Drive.

The town has adopted a comprehensive grading and excavation ordinance that establishes standards for the quantity and quality of grading and excavation projects. The ordinance also has requirements to re-vegetate or reclaim disturbed ground after the excavation project is completed.

22. The proposed variance would not conform to this General Plan objective or the associated grading and excavation standards.

23. The proposed variance would not observe the spirit of the Town's land use code, including the following:

Springdale Town Code Section 10-1-3: INTENT:

It is hereby declared to be the intent of the planning commission and town council that this title and the regulations set forth herein shall be so construed as to further the purposes of this title and of the general plan, and promote the objectives and characteristics of the respective zones. (Ord. 12-000, 12-28-1992)

Springdale Town Code Section 10-9A-1: FOOTHILL RESIDENTIAL ZONE PURPOSE:

A. Protection: The town and Zion Canyon have a national and international reputation for their natural beauty. The town relies on that scenic beauty to attract tourists, tourism being its economic base. Because of the unique topography of the town, the area that comprises the foothill residential zone is an integral part of that scenic beauty and therefore must be protected.

B. Intent: The foothill residential zone is intended to allow for open space and low density, low profile, single-family dwellings which protect the indigenous characteristics and views of the area and to make provisions for erosion, and other potential geologic hazards.

C. Standards: The town finds that the health, safety and the general public welfare of its residents will be promoted by establishing standards for the development and excavation of hillside and slope areas located in the town. The foothill residential zone encompasses the most fragile geologic and soil stability area of the town. Development of these areas must not threaten the safety of current and future residents and shall preserve to the fullest extent possible the hillsides' indigenous characteristics.

D. Purposes Specified: The provisions herein are designated to accomplish the following:

- 1. Minimize soil and slope instability and erosion;*
- 2. Minimize the adverse effects of grading, cut and fill operations;*
- 3. Preserve the indigenous vegetation and contours of the natural hillsides, and otherwise supplement and amplify the general plan;*
- 4. Prohibit development of uses which would likely result in a hazardous situation due to slope instability, rock falls or excessive soil erosion;*
- 5. Encourage the location, design and development of the building sites in a manner that will minimize the scarring and erosive effects of cutting, filling and grading of hillsides;*
- 6. Encourage the location, design and development of the building sites in a manner that will minimize the visual impact of development from adjacent hillside areas and toward hillsides from the valley floor;*
- 7. Where hillside development does occur, require that buildings be located in the cut area and any remaining cut area be covered and stabilized, and scarring revegetated to minimize the visual effects of scarring;*
- 8. Allow for the development of low profile, low density, single-family dwellings and the preservation of open space. (Ord. 15-95, 8-17-1995)*

24. The application, as presented does not conform to the standards of the General Plan and Town Code noted above.

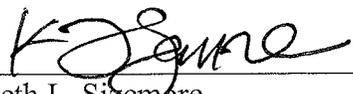
25. The construction of a driveway across slopes of greater than 30 percent will interfere with the hillside's indigenous characteristics, necessitate substantial cuts and fills in a drainage, disturb contours, and create scarring impacts to adjacent hillside areas.

26. After a comprehensive analysis of the application and conducting a public hearing, the administrative hearing officer determines that the variance request should not be granted due to the factors described above.

27. The variance request is denied.

Dated this 4th day of November, 2015.

ADMINISTRATIVE HEARING OFFICER



Kenneth L. Sizemore

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

IN THE MATTER OF THE APPLICATION
OF IRA RUBINFELD AND WILLAMARIE
HUELSKAMP FOR A VARIANCE FROM
THE FLOOR ELEVATION
RESTRICTIONS IN THE TOWN OF
SPRINGDALE, UTAH

**FINDINGS AND DECISION GRANTING
REQUEST FOR VARIANCE**

PUBLIC HEARING DATE: Sep. 29, 2015

1. The subject property is two parcels in the Canyon Springs Estates Subdivision, Lots 26 and 27. The property is located in the Valley Residential (VR) zone and is currently undeveloped.
2. The applicants desire to build a single residence on the two parcels.
3. Due to concerns regarding flooding, the applicants desire to place the proposed residence on fill to elevate it above natural grade.
4. Town Code section 10-9B-9(A)(1) regulates structures whose finished floor elevation is more than four feet above natural grade.
5. The proposed residence will have the finished floor approximately six feet above natural grade at its northwest corner, and is thus subject to this regulation. The applicants are requesting a variance from code section 10-9B-9(A)(1).
6. The property is located on the northeast side of Canyon Cove, a private street. The topography on Canyon Cove slopes downhill from the southeast to the northwest.
7. Drainages in the area follow the same general path.

8. There is a large wash on the opposite side of Canyon Cove from the subject property that carries most of the storm runoff in the area. However, smaller drainages exist throughout the area, including on the subject property.

9. There is a steep slope on the east side of the property that limits the developable area to the northwest quadrant of the property.

10. The property is generally lower in elevation than the adjacent roadway.

11. The elevation discrepancy between the road and the property is greatest in the northwest quadrant of the property where a small drainage has created a minor depression.

12. At this point the lot is between five and six feet lower than the adjacent roadway.

13. The applicants' submittal states the lot is in a "documented flood hazard area."

14. While the lot may be subject to flood issues, it is not in a documented or mapped flood hazard area as identified by the Town's adopted flood hazard map (the FEMA Flood Insurance Rate Map for Springdale).

15. Thus, there are no additional flood hazard regulations to which the property is subject.

16. Given the topography, soils, and canyon setting of the Town, many properties in Springdale are subject to flood issues similar to those on the applicants' property.

17. A public hearing was conducted on September 29, 2015.

18. A transcription of the hearing was taken by a court reporter, along with minutes taken by the Town Recorder.

19. Title 10-3-3(B) of the Springdale Town Code provides the following standards to the Appeal Authority when considering variance requests:

1. 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;
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; and
5. The spirit of this title is observed and substantial justice done.

20. Section 10-9B-9(A)(1) of the Town Code requires that all areas of a structure where the finished floor elevation is more than four feet above natural grade be counted double in the building size calculation.

21. The actual building size is approximately 4,400 square feet.

22. The proposed elevation of the structure is designed to avoid potential flooding, as documented by a Utah Geological Survey Flood Hazard Map dated 2013.

23. Steep topography on the eastern side of the subject lots constrain the configuration of a building pad without elevating the finished floor.

24. Lots 26 and 27 are part of the Canyon Springs Estates Subdivision which was approved and platted by the Town of Springdale for the express purpose of accommodating residential development.

25. Approval of the plat by the Town indicated conformance with applicable Town ordinances and authorized residential uses that conform to the Valley Residential Zone standards.

26. The proposed structure conforms to the provisions of the Town General Plan by maintaining a low profile, tucked against a hillside, and providing for adequate drainage around the structure.

27. Approval will accommodate the construction of a single family dwelling which conforms to design guidelines found in the General Plan.

28. The creation of the Canyon Springs Estates subdivision by the Town of Springdale provides property owners with the expectation of the ability to develop residences that conform to Town ordinance standards.

29. The configuration of the subject parcels presents a dilemma that pits flood protection against significant cuts into a hillside or the elevation of a structure that would not fit into the neighboring properties.

30. Section 10-9B-9(A)(c) exempts buildings elevated above natural grade for the sole purpose of flood protection.

31. The applicants provided sufficient information to show that the purpose of the proposed building elevation more than four feet above natural grade was to provide flood protection.

32. The variance is hereby granted.

Dated this 4th day of November, 2015.

ADMINISTRATIVE HEARING OFFICER



Kenneth L. Sizemore



TOWN OF SPRINGDALE

PO Box 187 118 Lion Blvd Springdale UT 84767

ATTENDANCE RECORD

Please sign

Meeting of Appeals Authority on 11/4/15

If you'd like to be included on our great e-notice list, please give us your email address. That's the only reason you need to provide that information. Your address will never be sold, though we may have to provide it as public information. If you have provided the information before, you don't need to add it again.

name Jane Whalen _____ er

name Mr. Zumpf _____ er

name _____ email (not required)

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