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BEFORE THE APPEAL AUTHORITY  
TOWN OF SPRINGDALE, UTAH

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Application for Variance re Lion Boulevard,  
Town of Springdale, Applicant

RULING ON VARIANCE APPLICATION

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This matter is before the Administrative Hearing Officer (“AHO”) on an application for variance under Springdale Ordinance Section 10-6-5. The variance seeks relief from Section 10-15B-9(A) of the Springdale Town Ordinances to allow disturbance on slopes that exceed 30% in grade to allow for the improvement of Lion Boulevard with additional paved space for on-street parking.

A hearing on the application was held on September 27, 2022. Applicant Town of Springdale was represented at the hearing by Thomas Dansie, the Town’s Director of Community Development. The AHO has considered the statements and presentation at the hearing, and reviewed and considered the application, the documents submitted with the application, and the report and accompanying attachments from the Town’s Director of Community Development (the “Report”). Based thereon, the AHO makes the following findings and ruling.

**FACTUAL BACKGROUND**

The Town of Springdale requests a variance from section 10-15B-9(A) to allow disturbance on slopes that exceed 30% in grade. Section 10-15B-9(A) prohibits disturbance of natural grades that measure 30% and greater grade. This is intended to avoid visual scarring of hillsides with large cuts and to limit disturbance on sensitive slopes. Section 10-15-B-9(A) specifically prohibits “road building” in addition to other types of disturbance on 30% slopes.

The Town seeks a variance from Section 10-15B-9(A) so it can improve Lion Boulevard with additional paved space for on-street parking. The proposed improvements and associated disturbance of 30% slopes are entirely contained within the Lion Boulevard public right-of-way. The area where the proposed improvements are being made will provide additional on-street parking during peak parking congestion periods (e.g., holiday weekends with peak visitation to Zion National Park). The proposed improvements will also install curb and gutter along the southern edge of the road to improve drainage and mitigate drainage nuisances on properties further downhill on Lion Boulevard.

The Town’s Streets Department is planning improvements to the south side of Lion Boulevard. These improvements include widening pavement to allow additional on-street parking, installing curb and gutter to improve drainage, and installing new sidewalks to improve

pedestrian connectivity. The Lion Boulevard improvement project will begin at the end of the existing curb, gutter, and sidewalk near the Hoodoo's market and run westward to the area near the Canyon Community Center. All the proposed improvements will be contained within the Lion Boulevard right-of-way.

On the far west side of the project (west of the Lion Boulevard / Winderland Lane intersection) there is a steep hillside south of the Lion Boulevard pavement. This hillside encroaches into the Lion Boulevard right-of-way. This hillside reduces the usable width of the Lion Boulevard right-of-way. Because of the reduced width resulting from application of Section 10-15B-9(A), it is impossible to install paved on-street parking, curb and gutter, and sidewalk without encroaching onto the steep hillsides.

Because of the limited usable width of the right-of-way, the Town has reduced the scope of the Lion Boulevard improvement project in this area. Paved on-street parking and sidewalk have been removed from the south side of the roadway in this area of the project. But even with this reduced scope, the proposed improvements will encroach onto steep slopes (in excess of 30% grade) in this location. The Town thus seeks a variance to allow disturbance of these slopes to accommodate the road widening project.

The proposed disturbance on slopes of 30% and greater grade varies in width from seven feet to eleven feet wide, and one foot to four feet in height. In connection with its variance application, the Town proposes to restore and revegetate any disturbed slopes in compliance with the standards in section 10-15B-8 of the Town Code.

### **LEGAL STANDARD**

Utah Code § 10-9a-702(2)(a) sets forth the five standards that an applicant must meet to obtain a variance:

- (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (v) the spirit of the land use ordinance is observed and substantial justice done.

Utah Code § 10-9a-702(2)(a)(i)-(v). *See also* Springdale Ord. § 10-6-5(B). The burden is on the applicant to meet all five standards. *See* Springdale Ord. § 10-6-5(C).

## ANALYSIS

### **I. Literal Enforcement Causing an Unreasonable Hardship.**

The first standard requires the applicant to show that “[l]iteral enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances.” Utah Code § 10-9a-702(2)(a)(i). In addition, this hardship must be “located on or associated with the property for which the variance is sought;” and “come[] from circumstances peculiar to the property, not from conditions that are general to the neighborhood.” *Id.* § 10-9a-702(b)(i). Moreover, the hardship cannot be self-imposed or purely economic. *See id.* § 10-9a-702(b)(ii).

Here, if the variance is not granted the Town will be unable to construct needed public improvements. These improvements: additional parking to accommodate peak demand at Zion National Park, infrastructure to address drainage, and pedestrian improvements are necessary for the Town to accomplish the purpose of its general plan and serve the public. Denying the variance will result in a hardship to the Town in the form of increased traffic and parking congestion, increased workload on the Town’s police department in managing the issues, and a degraded experience for visitors to Zion National Park which is integral to the Town. In addition, the drainage improvements are necessary to better manage stormwater runoff and prevent property damage which has and will continue to occur if the drainage improvements are not permitted. Additionally, the proposed pedestrian improvements will create a safety issue for pedestrians to successfully navigate public streets. For these reasons, the first standard is met.<sup>1</sup>

### **II. Special Circumstances Applicable to the Property.**

Under the second standard, the applicant must show that “[t]here are special circumstances attached to the property that do not generally apply to other properties in the same zone.” Utah Code § 10-9a-702(2)(a)(ii). Special circumstances may exist only if they “(i) relate to the hardship complained of; and (ii) deprive the property of privileges granted to other properties in the same zone.” Utah Code § 10-9a-702(2)(c).

The Lion Boulevard right-of-way where the proposed improvements will be made is wide enough to accommodate the improvements. But the steep slopes which encroach on the right-of-way limit the usable space necessary to make these improvements. The combination of the reduced usable right of way and the Town’s role to provide public infrastructure create a special circumstance for this right-of-way property that is not generally applicable to other properties within the Town. Indeed, such public improvements are generally made in the public rights-of-way and the improvements needed for this particular right-of-way (Lion Boulevard) are inhibited only by application of Section 10-15B-9(A). The second standard is therefore satisfied.

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<sup>1</sup> In addition, there is no basis to conclude that the circumstances were self-imposed by the Town or purely economic. Rather, the Town is fulfilling its unique function to better serve growing public demand and strain on its essential services.

### **III. Granting the Variance as Essential to the Enjoyment of a Property Right.**

The third standard requires a showing that “[g]ranting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.” Utah Code § 10-9a-702(2)(a)(iii). The Town uses its public rights-of-way to serve the public, including for traffic flow, parking, stormwater drainage, and similar public improvements. Here, granting the variance is essential to permitting the Town to enjoy the use of its property rights in the right-of-way. It will allow the Town to use the public right of way for its intended purpose to benefit and protect the community at large. The variance is essential for the subject area of Lion Boulevard to similarly fulfill this purpose.

### **IV. Impact on the General Plan and Protection of the Public Interest.**

Fourth is the public interest standard. It requires a showing that the “variance will not substantially affect the general plan and will not be contrary to the public interest.” Utah Code § 10-9a-702(2)(a)(iv). The Town’s General Plan, at chapter 6, sub-goal C, states that one of the Town’s goals is to “Ensure that important infrastructure in essential utility facilities are maintained and protected.” The requested variance aligns with this goal in permitting important infrastructure to be installed to serve and protect the public interest. Thus, granting the variance will not substantially affect the general plan and will not conflict with the public interest. The opposite is true: granting the variance is consistent with the general plan and essential to protect the public interest.

### **V. Preserving the Spirit of the Ordinance and Doing Substantial Justice.**

The final standard requires that “the spirit of the land use ordinance is observed and substantial justice done.” Utah Code § 10-9a-702(v). As explained above, one of the purposes of Section 10-15B-9(A) is to avoid visual scarring of hillsides with large cuts and to limit disturbance on sensitive slopes. The Town's plan for the proposed improvements has reduced the amount of disturbance on slopes with a 30%-or more grade. By reducing the scope of the project and, by extension the amount of disturbance on these slopes, the Town has sought to observe the spirit of the grading ordinance to limit disturbance on these slopes and any visual scarring that might result from such disturbance. In addition, the slopes the Town proposes to disturb are not part of a significant community viewshed. And while the disturbed slopes will be visible from the immediate surrounding area, the disturbance is hidden from view from most of the Town, will not impact the Town’s signature viewsheds, and will be mitigated by the Town through restoration and revegetation.

Thus, the spirit of the grading ordinance which seeks to preserve the aesthetics of the Town through preservation of significant viewsheds will be observed while substantial justice done by providing the much needed infrastructure, as explained above.

**RULING**

For the reasons stated above, the AHO grants the variance as to application of Section 10-15B-9(A) of the Springdale Town Ordinances to allow disturbance on slopes that exceed 30% in grade for the purpose of improving Lion Boulevard as set forth in the Town's application.

DATED: September 30, 2022.

Town of Springdale Appeal Authority



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By: Bryan Pattison  
Administrative Hearing Officer