



**BOARD OF ADJUSTMENT**  
**May 19, 2010 – 7:00 PM**  
**Council Chambers**

Board Member in attendance: Ron Fakler; Blaine Hadley; and Tom Wroe

Board Members excused: Robert Freeman and Don Olsen

Staff in attendance: Planner Brandon Snyder and Secretary Darlene Gray

Council Representative: Dean Olsen

**Call to Order**

Chairperson Fakler called the meeting to order at 7:00 PM. He asked BM Hadley to offer the invocation. BM Fakler explained the process of the meeting. He stated that the Board of Adjustment operated as a quasi-judicial board. If the applicant disagrees with the Board's decision they must appeal within 30 days to the court and not the City Council. He reported that staff would present information and then there would be questions addressed to staff by the Board Members. The Board would then ask the petitioner to present any additional information or comments. The meeting would then be closed to the public during discussion by the Board Members. The motion will be called for and voted on.

**Approval of Meeting Minutes – January 20, 2010**

BM Hadley moved to approve the minutes for the January 20, 2010 meeting. BM Wroe seconded the motion. The vote to approve the January 20, 2010 meeting minutes was unanimous.

Allen Morris seeking a variance for the property located at 247 West 1400 North to reduce the 50 foot setback along Spring Creek to 30 feet; Springville City Code, Title 11 Section 11-6-130(3).

BM Fakler read the agenda item. Planner Snyder expressed appreciation for the Board Members present and recognized City Council Representative Dean Olsen. He reported that the applicant was present. He presented the staff report information to the Board Members. Planner Snyder explained that the property was annexed into the City in 1983 and the home had been built in 1963. City records show the residence is connected to the water and electrical system, but is on a septic tank. Planner Snyder explained how the item came to be reporting that the applicant had submitted for a demolition permit. Planner Snyder explained that Little Spring Creek was a City conveyance system and Little Spring Creek was under the State's jurisdiction, but added that it was not a designated floodway. BM Fakler indicated that he tried to get into the area, but the gate was locked. He questioned what might happen if Spring Creek floods, asking if there would be liability to the City or was there a contract that holds the City harmless. He stated that sometimes people come back and try to hold the City liable. Planner Snyder stated that there could be a potential of flooding, but as far as a release of liability that would have to be

negotiated with the City Attorney. He indicated that a release of liability could be a contingency in their motion. BM Fakler commented that in dealing with foothills and houses sliding, the owners usually look to the City for losses. He asked if there would be any protection in having the fifty-foot setback as opposed to thirty-feet. Planner Snyder reported that the property was fairly flat and added that the house would be elevated. He informed the Board Members that he could not legally state that the City would require any type of agreement. BM Fakler asked if the existing house was not there, would the City authorize a building permit for a new home. Planner Snyder stated that according to the current Code, the front setback requirement would not allow for a building permit, but the City had to recognize that the lot is a legal, non-conforming lot of record. He stated that the City would not require a maintenance easement because of the size of the lot. He reported that there were no trails along Little Spring Creek. Planner Snyder referred to page three of the staff report stating that the intent was to establish a buffer along the creek which gives a chance for pollution to run off before going into the creek.

BM Wroe asked if the home was currently occupied. Planner Snyder indicated that it was not. He reported that the meters are in place, but have not been read since 2005. BM Wroe expressed his concern with the access for emergency response; i.e. fire; police; ambulance; etc. and asked if the City would require access. Planner Snyder indicated that Title 11, Motor Vehicle Access addresses those issues and added that if the setback is far from the street, there needs to be an unobstructed access. Planner Snyder stated that he was not sure that the City would require the entire driveway to be improved. He asked Mr. Morris for the width of the bridge. Mr. Morris indicated that the bridge was twelve feet wide with twin pipes. He reported that the bridge had been replaced about four or five years ago. Planner Snyder indicated that he would discuss BM Wroe's concerns with the Building Official. BM Wroe commented that he would hate to see a nice home destroyed because of access issues. Mr. Morris stated that the gate is locked because there are horses on the property, but indicated that the road is in good condition.

Planner Snyder continued with his presentation reviewing the applicant's proposal for the home and the five criteria that the Board Members follow in making their decision. He stated that the recommendation does not address the question of liability or the driveway approach. Planner Snyder explained that other options would be denial or continuance of the item. He indicated that the next meeting would be June 16, 2010 and that as per City Code 11-2-307, any appeal would move to the Fourth District Court within 30 days of final decision by the Board of Adjustment.

BM Fakler reiterated his concern regarding the issuance of a building permit if the lot did not have a structure prior to tonight. Planner Snyder indicated that staff would have to research when the lot was created and if it was created legally. He reported that the property information had been traced prior to 1963 and the City Attorney indicated that this was a legal lot of record. BM Fakler stated that he knows that Mr. Morris has the right to rebuild the house, but he was wondering about the location of the home between the two sides of the creek, a flood year and because of the non-conforming use, whether the City was protected from liability. Planner Snyder stated that there is an Ordinance which stated that any unimproved lot must be brought to current standards, but that would not preclude building on this property. BM Fakler asked if the Board were to approve the variance request through a non-conforming use permit, if the City would be liable in any way. Planner Snyder indicated that the City was not issuing a non-

conforming use to the applicant. He added that the City had not issued any permits for the property. Planner Snyder stated that he could not comment on whether or not the City would be liable.

Planner Snyder suggested the applicant approach the Board Members and give a history on the property. BM Wroe asked Planner Snyder if the parcel was in the designated flood plain. Planner Snyder indicated that it was not in a designated flood plain. BM Wroe questioned how far from an improved road way would the new house be. Mr. Morris indicated that the new house would be 150 yards from the improved road way.

BM Hadley asked who owned the property to the west. Planner Snyder indicated that the property was in the name of the Family Trust.

BM Wroe asked how long the lot had been an existing lot or when it was created into a new lot. Planner Snyder stated that the property information had been traced back to 1963.

BM Fakler invited the applicant to approach the Board Members. Allen Morris who resides at 177 South 400 West in Payson approached the Board Members. He indicated that his parents purchased the home on the 9.6 acre parcel in 1976. BM Fakler asked if the property had ever been flooded. Mr. Morris indicated that it had not. He noted that he had contacted the previous owner, Clyde Johnson who indicated that the creek had never flooded. He explained that there was a control gate that could send the water into Little Spring Creek. Mr. Morris indicated that Lanty Ross from the Utah County Health Department passed the percolation test, but indicated that they would have to monitor the ground water level for twelve months. He reported that he has an easement agreement with Questar Gas for the gas line to come from the development to the south up to his home. He stated that to his knowledge, the creek has never flooded. Mr. Morris stated that his mother would like them to live on the 2.1 acre parcel that she has given them.

BM Fakler asked how far down the water table was. Mr. Morris stated that they had dug a ten-foot test hole and were told by Mr. Ross that they were to monitor the water level. He stated that he would probably have to build up the ground, but indicated that the creek had not flooded in the 1983 flood. He stated that he would sign any agreement to release the City from any liability from flooding. Mr. Morris reported that in 1983, a lot of water came through Spring Creek, but it never flooded. If the creek were to back up, it would spill into the driveway and not near the house.

BM Hadley stated that there was no access from the south. BM Wroe stated that his concern was regarding the access in accordance with the driveway and the International Fire Code. He expressed concern for the volunteer firemen and stated that they would be taking a chance because of the access for them to get to a fire hydrant. He stated that he would want to be sure the Fire Chief would sign off on the distance of the driveway without turnouts, especially when the snow piles make vehicle access difficult. Mr. Morris stated that the current driveway is a looped driveway. BM Wroe commented that he liked what Mr. Morris has done, but he was concerned with the application because of what happened with a past application. He indicated that he did not want to be arbitrary and capricious.

BM Hadley indicated that all of his questions had been answered.

BM Fakler asked if the new house would be larger than the existing house and questioned if Mr. Morris could expand on the non-conforming use of the home. Planner Snyder indicated that Mr. Morris could not expand at the current location. Mr. Morris reported that the existing house was twenty-five feet by fifty-feet. He indicated that they would be expanding ten feet to the north and adding a two-car garage. Mrs. Morris stated that the house would be 2,500 square feet with two bedrooms and two bathrooms upstairs and a bonus room above the garage. BM Fakler stated that the existing house was ten feet from the creek. Mrs. Morris indicated that the existing house would be torn down and the new house would be built thirty-feet from the creek. Planner Snyder explained the process Mr. Morris has been going through. He confirmed that the existing house would be torn down and the new house built to replace it. BM Fakler questioned the new house being larger than the existing house. Mr. Morris stated that instead of the current ten-feet from the creek, they were asking for a reduction to thirty-feet from the creek. Mrs. Morris indicated that they had looked at modular homes to put on the existing foundation, but were told that if they demolish the existing they would lose their 'grandfather' status. BM Fakler indicated that he wanted the Morris' to be aware that a non-conforming building could not be expanded. He asked Planner Snyder to check into the Code this because he thought two variances may be needed. Planner Snyder stated that he would look at why the building would be considered as non-conforming, but believed it was because of the proximity to the creek. BM Fakler stated that Mr. Morris still had to go through the building requirements. Mr. Morris stated that they had to request that the property be rezoned from the LIM-Light Industrial Manufacturing designation to a single family designation.

Mrs. Morris, Mr. Morris' mother, asked if the variance request were not granted and they could not build a house, what could she do with the acreage? She stated that she would like her son and his wife to live where she had lived for twenty-five years. She expressed her appreciation for the Board Member's consideration.

BM Fakler closed the public hearing for discussion amongst the Board Members.

BM Wroe expressed his concerns regarding the access and stated that with any recommendation made, he would like to attach conditions that are stated broadly on page seven of the staff report regarding mitigation or harmful effects of the variance.

BM Hadley moved to approve a variance to Section 11-6-130, *Protection of Creek Corridors*, in order to reduce the required building setback off of all sections of Spring Creek from 50 feet down to 30 feet for the residence only on property generally located at 247 West 1400 North, in the Single-Family residential (R1-15) zone, with the following findings and contingencies:

1. The application meets all criteria for granting a variance as required by Springville City Code Section 11-2-306.
2. The applicant obtaining approval for septic system from the Utah County Health Department. Additionally, the applicant should be required to record an easement for

- any offsite improvements required for septic approval by the Utah County Health Department.
3. The applicant signing a future sewer connection agreement as required by Springville City Code 4-2A-201, to be drafted by the City Attorney.
  4. The proposed residence to be in compliance with all other applicable Building, Fire, Engineering, Utility and Planning and Zoning Code requirements.
  5. Obtaining a building permit and starting the alterations within six months from the date the variance.

BM Fakler stated that he was a proponent of the signing of a Hold Harmless Agreement with the City and that the agreement be recorded on the plat of ground. Mr. Morris agreed. BM Wroe suggested that the motion be expanded to require the Springville City Fire Chief approve the access road, the amount of water available for fire flow to the residence, meaning the available fire flow be available for the dwelling size, and an all weather access road be determined by the Fire Chief. These items were added as contingency numbers six and seven.

With the motion made, BM Wroe seconded the motion. The motion to approve the variance request was unanimous.

Mr. Morris asked if there was a pump on the fire truck. BM Wroe indicated that there was. Mr. Morris stated that the fire department could pump water out of the creek. BM Wroe stated that the truck must be able to drive up to within ten feet of the creek, but again, the Fire Chief would make that determination.

Mrs. Morris expressed her concern with their having to monitor the water level for one year, which would be April 2011 and the six-month time period before a permit expires. Planner Snyder stated that according to City Code 11-2-306, the Board of Adjustment could grant an extension. However, the applicant would need to file a request for an extension before they could act. BM Fakler stated that the request could be added to a future agenda. BM Wroe stated that if that had to occur, they should have to do without prejudice. Planner Snyder stated that he would have the City Attorney review it.

With nothing further to discuss, BM Fakler called for a motion to adjourn. He thanked the applicant for coming. BM Wroe moved to adjourn the meeting. BM Hadley seconded the motion. The vote to adjourn was unanimous. BM Fakler adjourned the meeting at 8:03 PM.