

1 BOARD OF ADJUSTMENT MINUTES OF MEETING
2 Monday, June 27, 2022
3 6:00 p.m.
4

5 A quorum being present at Centerville City Hall, 250 North Main Street, Centerville, Utah,
6 the meeting of the Board of Adjustment was called to order at 6:00 p.m.
7

8 **MEMBERS PRESENT**

9 Dan Ditto
10 David Hirschi
11 Brian Hulse, Chair
12 Paula Tew, Vice Chair
13 Scott Sappenfield
14

15 **STAFF PRESENT**

16 Lisa Romney, City Attorney
17 Cory Snyder, Community Development Director
18 Jennifer Robison, City Recorder
19

20 **VISITORS**

21 Pam and Todd Hilton
22 Amy Walker
23 Guy Haskell
24

25 **SELECTION OF CHAIR AND VICE CHAIR**

26
27 Board Member Tew **moved** to nominate Brian Hulse to continue as Board of Adjustment
28 Chair. Board Member Hirschi seconded the nomination, which passed by unanimous vote (5-0).
29 Chair Hulse **moved** to nominate Paula Tew to serve as Vice Chair. Board Member Sappenfield
30 seconded the nomination, which passed by unanimous vote (5-0).
31

32 **VARIANCE REQUEST – REDUCTION OF SIDE YARD SETBACK – LOT 5**
33 **BAMBERGER STATION 2 SUBDIVISION – HILTONS, PETITIONERS**
34

35 Pam Hilton, Petitioner, explained her property was located just south of an unpaved, dead
36 end City right-of-way, which rendered the lot a corner lot subject to a 20-foot setback. She argued
37 that since the City had no future plans to use and expand the unimproved right-of-way, the
38 required street side yard setback was an unnecessary hardship to designing and building a home
39 on the lot. Ms. Hilton requested a variance to allow the street side yard setback to be reduced
40 from 20 feet to 8 feet (the minimum interior lot side setback requirement).
41

42 Community Development Director Cory Snyder confirmed the City had no plans to
43 improve or continue the roadway farther to the west. However, the City did have a culinary water
44 line, and the right-of-way served as a drive access to the large parcel located farther west. If the
45 City were to vacate the right-of-way, a public utility easement and cross access agreement would
46 be needed. Mr. Snyder said staff suggested the Hiltons seek a variance to the side street setback
47 for Lot 5, which would leave the right-of-way in place. He said staff recommended granting the
48 requested variance. Mr. Snyder explained reasons for the difference in setback for corner lots
49 versus interior lots. The Board of Adjustment considered the location of Lot 5 and surrounding
50 properties/roads on a map.

1 Board Member Tew **moved** for the Board of Adjustment to approve a variance to the R-L
2 Zone street-side yard setback, as follows:

- 3
4 1. This variance is limited to Lot 5 of the Bamberger Station 2 Subdivision.
5 2. The variance is limited to the main/primary building to be located along the north
6 property line fronting the unimproved right-of-way.
7 3. The street side yard setback, along the right-of-way, is reduced from 20 feet to 8 feet.

8
9 Reasons for Action:

- 10 a. The Board of Adjustment finds that there is an existing unimproved right-of-way along
11 the north property line.
12 b. The Board of Adjustment finds that the City does not have plans to improve or continue
13 the roadway farther to the west.
14 c. The Board of Adjustments finds that, in this case, the required street side yard setback
15 creates an unnecessary hardship that is not necessary to carry out the general
16 purpose of the Zoning Code.
17 d. The Board of Adjustment finds that the unimproved right-of-way creates a special
18 circumstance attached to the property that does not generally apply to other properties
19 in the same zoning district.
20 e. The Board of Adjustment finds that the variance will not substantially affect the General
21 Plan and will not be contrary to the public interest.
22 f. Therefore, the Board of Adjustment finds that the variance is essential to the
23 enjoyment of a substantial property right possessed by other property in the same
24 zoning district, and the spirit of the Zoning Code continues to be observed and
25 substantial justice will be done.
26

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28 Board Member Hirschi seconded the motion, which passed by unanimous vote (5-0).
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30 **APPEAL – ZONING ADMINISTRATOR DECISION – LOT 4 BAMBERGER STATION 2**
31 **SUBDIVISION – UPDWELL INVESTMENTS, LLC AND GUY HASKELL, APPELLANTS**
32

33 Amy Walker, attorney for the Appellant, stated storage spaces were excluded from the
34 definition of “lowest floor elevation” in the Building Code adopted by Centerville City. She said the
35 Appellant was requesting a building permit for plans that included a below-grade storage space,
36 and pointed out that in situations of ambiguity, the decision should favor the applicant. Ms. Walker
37 said if language in Plat Note 4 is considered ambiguous, the decision should favor her client. Ms.
38 Walker commented that the high water table in the area was the reason given for the initial Plat
39 Note 4 requiring lowest floor elevation to be above top back of curb, but the water table has
40 lowered with development of the Florentine Villas Subdivision.
41

42 Mr. Snyder said a first building permit for Lot 4 of Bamberger Station 2 Subdivision was
43 issued in 2021 with plans for slab-on-grade construction without a crawl space. Over-excavation
44 of the lot drew the attention of the building inspector, and the applicant was given notice to correct
45 the over-excavation. Plans submitted with a second building permit request showed a below-
46 grade structure labeled as storage, with a below-grade depth of 7 feet 9 ½ inches. The Zoning
47 Administrator, Mr. Snyder, issued a denial of the second building permit request based on Plat
48 Note 4. Mr. Snyder stated Plat Note 4 stood as a condition of approval established by the City
49 Council. Mr. Snyder stated it is not the role of the Zoning Administrator to change or reconsider
50 the Plat Note. It is the Zoning Administrator’s duty in an administrative matter to ensure

1 compliance with the land use authority's conditions of approval. Mr. Snyder stated the proper
2 process to change the Plat Note is to request a Plat Amendment.
3

4 Mr. Snyder said the condition of approval did not rely on the International Building Code
5 (IBC) definition of lowest floor elevation, and said staff considered application of the IBC definition
6 retroactive to the established Plat Note to be irrelevant. Plat Note 4 prohibits construction of
7 basements, and specifies that all lowest floor elevations shall be above top back of curb. Mr.
8 Snyder argued that the condition of approval did not restrict the right of the property owner to build
9 a single-family home. All other homes in the subdivision were slab-on-grade. Mr. Snyder
10 acknowledged the Zoning Administrator's suggestion to allow a below grade permeable crawl
11 space may have overreached the Plat Note. Staff provided findings to uphold the decision of the
12 Zoning Administrator.
13

14 Responding to a question from Board Member Sappenfield, Mr. Snyder said evaluation of
15 the water level and risk involved would be part of a plat amendment process, which was separate
16 from the appeal. City Attorney Lisa Romney stated the decision before the Board of Adjustment
17 was whether or not to uphold the Zoning Administrator's decision to deny the building permit
18 based on the language of Plat Note 4. Discussion of the water table is irrelevant and inconclusive
19 to the question before the Board of Adjustment.
20

21 Board Member Hirschi asked how it was determined that Plat Note 4 was a condition of
22 approval. He asked if the subdivision was originally approved by ordinance, and if that ordinance
23 contained the plat note. Ms. Romney responded that it is currently the City's practice to approve
24 a plat by motion not by ordinance. She said it had not been the practice of Centerville City in
25 recent years to approve a subdivision by ordinance. The plat was approved in 2002.
26

27 Ms. Walker stated the IBC was incorporated into City Code and was inextricably linked.
28 She said the request was for approval of building plans. Ms. Walker stated a basement was a
29 living space, and a lowest floor elevation was something different in both CMC Section 9.08, and
30 the IBC adopted by Centerville City. She said the applicant would need to rely on building code
31 for his building plans to be approved, and said she did not consider it crazy to rely on the IBC
32 definition of lowest floor elevation. She argued that ambiguity did exist, and that the ambiguity
33 should be decided on the side of the Appellant.
34

35 Guy Haskell, Appellant, said it had been necessary to dig down seven feet to remove trees
36 and root systems from the property. He said the geotechnical engineer dug deeper to find the
37 water table, which he found to be 38 inches below what would be finished basement elevation.
38 Mr. Haskell said he was requesting a storage space, not a basement. Mr. Haskell said he could
39 not find a requirement for slab-on-grade anywhere in Code.
40

41 Board Member Ditto asked how the appellant interpreted lowest floor elevation to be
42 allowed below grade, when the plat note stated lowest floor elevation shall be above top back of
43 curb. Ms. Walker argued that a storage space was not a "lowest floor" because the building code
44 adopted by the City specifically excluded storage space.
45

46 Board Member Hirschi said he was interested in further discussion about the portion of
47 Centerville Ordinance that referred to storage space below ground and whether it did in fact
48 constitute what was meant by "floor below grade". He said he believed the issue was raised to a
49 level of ambiguity if no record of discussion by the City Council was found regarding the definition
50 of "lowest floor". Board Member Hirschi pointed out the applicant was aware of the plat note all

1 along, and the first building permit was for slab-on-grade. Chair Hulse said he did not see
2 ambiguity.

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4 Ms. Walker stated the City Code contained a clear definition of “lowest floor”. Mr. Haskell
5 emphasized that he removed windows from the building plans for the below-grade area so it would
6 not qualify as a basement, but only as a storage area. Chair Hulse responded he did not agree
7 with isolating a single definition and taking it out of context in such a way. He pointed out the City
8 Council recently denied Mr. Haskell’s request to amend the plat note, and said he would not be
9 in favor of overturning the decision of the Zoning Administrator.

10
11 Mr. Haskell said he had built many homes in Davis County with similar water table issues,
12 and he had been able to put in storage areas that had not been a problem. Chair Hulse responded
13 it would be appropriate to present such an argument to the City Council with a request for plat
14 amendment. Mr. Snyder repeated that it was not the role of the Zoning Administrator to question
15 the plat note. Mr. Haskell stated Centerville Code excluded storage space from the definition of
16 lowest floor. Mr. Snyder responded City Code also stated underground structures could be
17 restricted as seen fit by the approving body. Mr. Haskell said a geotechnical engineer told him he
18 could not build on the lot without taking the structure seven feet below ground.

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20 The Board of Adjustment and staff discussed definitions of “lowest floor” in IBC,
21 International Residential Code (IRC), and Centerville City Code regarding flood damage
22 prevention. Board Members Ditto and Tew said they did not see the ambiguity. Board Member
23 Ditto said he believed it was clear the intent of the City Council was for the lowest level to be top
24 back of curb.

25
26 Board Member Hirschi made a **motion** for the Board of Adjustment to uphold the decision
27 of the Centerville City Zoning Administrator’s denial of the second submitted building permit for a
28 below grade storage area, submitted by Updwell on April 21, 2022, for the development of Lot 4
29 located within the Bamberger Station 2 Subdivision, supported by the following findings and
30 evidence. Board Member Ditto seconded the motion.

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1. The Board of Adjustment finds that it must review an administrative decision for correctness determining whether there is substantial evidence in the record to support the order, decision, or determination of the person or body from which the appeal is taken.
 2. The Board of Adjustment finds that the person making an appeal shall have the burden of proving that an error has been made.
 3. The Board of Adjustment agrees that if a provision of the Zoning Code or other land use provision is ambiguous it shall be construed in favor of the property owner.
 4. The Board of Adjustment finds the language of Plat Note 4 regarding “lowest floor elevation” is not ambiguous given the context when reading the two sentences of Plat Note 4 together and giving full meaning to all words and phrases.
 5. The Board of Adjustment finds the language of Plat Note 4 regarding “lowest floor elevation” is not ambiguous given the broad language and authority of CMC 9.06.070 regarding construction restrictions for high water table areas.
 6. The Board of Adjustment finds the language of Plat Note 4 regarding “lowest floor elevation” is not ambiguous given the fact the City Council could have more specifically stated the “lowest finished floor elevation,” the “lowest habitable space floor elevation,” or any other more specific language to convey such meaning.

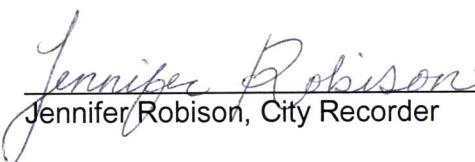
- 1 7. The Board of Adjustment finds that it may reverse or affirm, wholly or in part, or may
2 remand the administrative decision to the officer or body from whom the appeal was
3 taken.
- 4 8. The Board of Adjustment finds that Updwell did submit for and receive Building Permit
5 CEV211110-191 for Lot 4 which was issued on December 12, 2021. The building plans
6 depict a “slab-on-grade floor” structure with footings and foundation extending 4-feet
7 below grade. The lowest floor was conditioned to bring the slab floor just above top
8 back of curb (TBC).
- 9 9. The Board of Adjustment finds that there was extensive excavation, as noted by the
10 Building Inspector on March 3, 2022, that was performed by Updwell which was not
11 approved in the original issued building permit.
- 12 10. The Board of Adjustment finds that Updwell then resubmitted building plans to the City.
13 The building plans then depicted a “storage area” excavated to a depth of 7 feet 9 ½
14 inches.
- 15 11. The Board of Adjustment finds that on April 21, 2022, as a follow-up to a telephone
16 conversation, the Zoning Administrator indicated that the depicted “storage space” did
17 not comply with the approved subdivision plat note. The Zoning Administrator further
18 advised the applicant to re-submit for a “crawl space” with “no permanent floor.”
- 19 12. The Board of Adjustment finds that the Bamberger Station 2 Subdivision was recorded
20 on April 23, 2002. Therefore, the Final Plat and related notes are considered binding
21 for the subdivision approval granted by the City.
- 22 13. The Board of Adjustment finds that the Subdivision Plat Note 4 was a “condition of
23 Final Subdivision approval” by the City Council.
- 24 14. The Board of Adjustment finds that the Zoning Administrator’s decision to approve a
25 building permit is required to comply with the City Council’s “conditions of subdivision
26 approval.”
- 27 15. The Board of Adjustment finds that Plat Note 4 was related to preparation of the land
28 tract for future development of homes in accordance with City adopted subdivision and
29 subsurface drainage requirements. Therefore, using a building construction code
30 definition (IBC) is irrelevant to approval and enforcement of a subdivision plat note.
- 31 16. The Board of Adjustment finds Plat Note 4 was related to preparation of the land tract
32 for future development of homes in accordance with City adopted subdivision and
33 subsurface drainage requirements. Therefore, using a Flood Damage Prevention
34 definition is irrelevant to approval and enforcement of a subdivision plat note.
- 35 17. The Board of Adjustment finds that in accordance with CMC 9.06.070 (Construction
36 Restrictions) regarding subsurface drainage, the City may prohibit the construction of
37 structures, below grade structures, and/or structures with basements, as deemed
38 appropriate for public health and safety.
- 39 18. The Board of Adjustment finds that the City is not limited by or subject to IBC or Flood
40 Damage Prevention definitions of “lowest floor” given the broad authority in CMC
41 9.06.070 for the City to prohibit below grade structures in high water table areas.
- 42 19. The Board of Adjustment finds that the decision of the Zoning Administrator in
43 interpreting Plat Note 4 must use the “plain language” that is written.
- 44 20. The Board of Adjustment finds that Plat Note 4 contains two (2) parts. First, basements
45 are prohibited. Second, all lowest floor elevation allowed (other than basements) shall
46 be above top back of curb (TBC). Therefore, the plat note “plainly restricts” basements
47 and other floor elevations, including the proposed storage area.
- 48 21. The Board of Adjustment finds that if the City Council wanted to allow certain storage
49 areas below grade or to only prohibit finished floor area or habitable floor areas from
50 the top back of curb elevation requirement, the Council could have done so in Plat

- 1 Note 4. Since the Council did not make such exceptions, it is reasonable to interpret
2 "lowest floor elevation" in Plat Note 4 as any below grade floor (finished or unfinished).
3 22. The Board of Adjustment finds that the Zoning Administrator's decision does not
4 unreasonably prohibit the use of the lots in the subdivision for constructing single-
5 family homes. As the plat note indicates, it only prohibits basements and other floor
6 areas of the building to be constructed below top back of curb (TBC).
7 23. The Board of Adjustment finds that all other existing developed lots in the subdivision
8 have constructed homes with slab-on-grade construction and all floor elevations above
9 top back of curb in accordance with Plat Note 4.
10 24. The Board of Adjustment finds that if the Appellant disagrees with the language or
11 provisions of Plat Note 4, the appropriate remedy and proper process required by
12 ordinance is to submit for a Subdivision Plat Amendment to amend or remove the plat
13 note, in accordance with CMC 15.09.010 (Petition for Plat Amendment).
14 25. The Board of Adjustment, given the findings made, finds that the Appellant has not
15 met the burden of proving that an error has been made in the Zoning Administrator's
16 zoning compliance denial of the second building permit application.
17 26. The Board of Adjustment finds that there is substantial evidence in the record to
18 support the order, decision, and determination of the Zoning Administrator.
19 27. The Board of Adjustment directs Staff to prepare written findings and decision
20 consistent with this decision and to provide the Appellant with a copy of the same. The
21 Board of Adjustment Chair is authorized to sign such findings and decisions on behalf
22 of the Board of Adjustment.
23

24 Board Member Hirschi expressed the opinion that the plain language of the plat note is
25 not ambiguous and that any change to the plat note would require consideration by the City
26 Council through a plat amendment. Board Member Ditto said he believed the language in the
27 building permit was a confirmation of the Council's intention. The **motion to uphold the denial**
28 **passed** by unanimous vote (5-0).
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30 **ADJOURNMENT**

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32 At 7:29 p.m., Board Member Tew **moved** to adjourn the meeting. Board Member Hulse
33 seconded the motion, which passed by unanimous vote (5-0).
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38 Jennifer Robison, City Recorder

7-12-2022
Date Approved

