

# Daniel Board of Appeals

Tuesday, July 11, 2023 at 7:00 PM

Wasatch County Services Building, Conference Room B

55 South 500 East, Heber City, UT

## Minutes

**Quorum Present:** Board members Heber Taylor, David Hilton, and Jordan Woodbury

**Excused:** Adam Knight and Ryan Simpson

**Staff:** Daniel Planning Director Eric Bunker and Kim Crittenden, Daniel Clerk/Recorder

**Applicant:** Jeff and Emily Smith and attorney Corbin Gordon

**Public:** Merry Duggin

### Item 1 and 2. Swearing in of board members and election of chair and vice chair

As this was an organizational meeting with newly appointed board members, Planner Bunker called the meeting to order at 7PM. Clerk/Recorder Crittenden administered the oath of office to the three new members, and the members elected their officers. Member Heber Taylor was nominated to act as chair and David Hilton was nominated to serve as vice chair by member Woodbury and seconded by member Hilton. The motion passed with the following vote: Woodbury, yes; Taylor, yes; Hilton, yes.

### Item 3. Approval of by laws

Board chair Taylor opened the third item on the agenda with a short discussion regarding by laws for the Board of Appeals. The bylaws should be considered as an executive summary of the Utah and Daniel codes regarding the conduct of Board of Appeal hearings. The Board approved the bylaws with a motion by Member Hilton and seconded by Member Woodbury. The motion passed: Woodbury, yes; Hilton, yes; Taylor, yes.

### Item 4. Consideration of Jess and Emily Smith appeal of building permit denial

Mr. Corbin Gordon representing the Smiths explained the situation that the Smiths have applied for a building permit to expand their home and the permit has been denied by the Planning Commission. He explained that the RA 5 zone required a 60 foot setback. Mr. Gordon gave a short history of the Storm Haven subdivision from 1960 through 1974 and explained that at the time of creation of this subdivision, Wasatch County required a 20 foot setback. Daniel annexed the area in 2008 and many of the homes do not comply with the 60 foot setback and may have a setback as small as 30 feet as they were built prior to annexation into Daniel's RA 5 zoning. Mr. Gordon went on to imply that many of the residents may not have realized that this would make every lot in this subdivision non conforming as none of the lots are 5 acres and more than half of them do not have the 60 foot setback requirement. He stated that

these residents will not be allowed to add on to their homes or rebuild if the home is destroyed by fire. Everyone would be required to disclose this non conforming status to their financiers. This problem is unique and no one really intended for this to happen.

Mr. Gordon indicated that Daniel Code 8.22.10 (he read the code aloud to the Board) addresses this issue. He stated that subdivisions that existed prior to the enactment of the code but do not comply with current requirements of the zone could be developed subject to the current building, fire, health, and safety laws, but the code does not say current zoning laws. Five acre minimum zoning should not be applied to lots that are one or 2 ½ acre. He stated that he did not disagree with the analysis of the city, but on a lot by lot basis his applicants have the right to develop their property in accordance with the current building, fire, health, and safety standards and there is nothing that requires a 60 foot setback. According to Mr. Gordon, some of the residents have a 30 foot or even a 15 foot setback. His clients just want to be treated like everyone else in the subdivision. Whatever the prior existing zoning and building requirements were should be applied subject to fire, health, and safety code. Storm Haven does not meet the standard of the 5 acre zone. Their application should be approved based on 8.22.10 because they are not violating fire, health or safety requirements.

Chair Taylor wanted to see a map of the subdivision showing the property lines. The Smiths shared that they were new residents to the Town, and when they submitted their plan to Daniel Planning, they were told that the setback was 30 feet from the edge of the road. Planner Bunker confirmed that the setback requirement is 30 feet from the edge of the road or 60 feet from the center of the road, whichever is greater. Mr. Smith was concerned about the non conforming status that would not allow adding onto the residence or changing anything. Chair Taylor said that he did not know what the project was, and it was explained that the Smiths were asking for an expansion of their garage extending toward the road.

Chair Taylor asked Mr. Gordon if the annexation of Storm Haven into the Town of Daniel was something that the residents asked for or did the Town force them into the annexation? Mr. Gordon noted that there had to be a petition and application by the people of Storm Haven, but he didn't believe that the residents knew that all of their lots would become non conforming under the 5 acre zoning. Chair Taylor pointed out that the 5 acre zoning was already in effect prior to the annexation, and he stated that it looked to him that the people of Storm Haven wanted to be protected but not live under the rules of the 5 acre zoning. Mr. Gordon still believed that no one understood that the residents would not be able to add onto their homes.

Chair Taylor asked if this plan was the applicant's only option. Mr. Smith said that he has only a small portion of his property that could be built on due to code and slope. Again, he was concerned about the non conforming status which "shuts everything down". Chair Taylor pointed out that all three of the board members live on acreage less than 5 acres, and there is only so much you can do with it.

Vice chair Hilton asked about the aerial maps submitted to the Board, and Mr. Bunker clarified the measurements of the building setback and to the existing structure. A red line indicated the approximate location of the town waterline. Chair Taylor showed concern that the structure would be too close to the waterline and interfere with it. Mr. Bunker stated that if the setback is 30 feet, the

waterline would be accommodated and there would be room to work on it. Mr. Smith stated that he believed that the structure could be built with a 30 foot setback. Chair Taylor stated that his biggest concern was the waterline.

Mr. Smith stated that he could shrink the garage size somewhat (perhaps to 35 feet), but his biggest concern was the non conforming status of his lot and coming to a solution on this concern that he would not be able to rebuild if the house burned down. Chair Taylor asked if there was some room to work on this problem. Mr. Gordon quoted the code regarding rebuilding on a non conforming lot. Chair Taylor agreed that there should be some adjustment, but that is not the Board of Appeals role.

Planner Bunker responded to a question from Chair Taylor that the applicant could shorten the building to comply with the setback. There is no room for planning to make adjustments from the code.

Daniel Staff report:

Planning director Eric Bunker presented for the town citing Daniel code 8.07.08 requiring a front setback of not less than 60 feet from the center of the road or 30 feet from the road. The 5 acre zoning was put in place by Wasatch County in 2002, way before the Town annexed Storm Haven and before the Town was incorporated. The zoning was to protect the pristine water designation of the county due to septic systems. The zone indicates the building code that will be applied. The lots may be non conforming but the owner is still allowed to use the property.

According to Mr. Bunker, the town did not own any property in the area. The residents of Storm Haven petitioned to annex into the Town under the 5 acre zoning, and there was no hostile takeover. The new garage would encroach into the setback area, and the appeal is over the denial of the application because it did not meet the setbacks. There has been no mistake made. If the applicant had adjusted the setback to conform as we are talking tonight, we would not be here. The whole subdivision has a 30 foot setback, and no one is being treated differently. If anything has been built within those setbacks, it was not approved by the Town.

Member Woodbury stated that the role of the Board is to decide if there had been an error made in denying the application. Mr. Bunker said that if the applicant had applied for a variance, that would be a different situation, but this was an appeal of a permit denial.

**Rebuttal by Applicant:**

Mr. Gordon stated that the appeal is about the setbacks, but the Daniel code says that the preexisting subdivision is not subject to the setbacks. He could not verify that the Storm Haven residents had requested annexation into the Town, but he believed that they did not understand they would become non conforming. He discussed "vested" development rights, and he stated that Storm Haven had rights based on prior approvals of the County. He stated Storm Haven did not become non conforming just because they were rezoned under RA 5. It should be subject to the development code under which the subdivision was approved. The Town code should be concerned with only current fire, health, and safety code. Mr. Gordon also discussed "zoning estoppels" that would apply in this case (according to

him) that would keep the Town from undoing the rights of the residents who were already developed prior to the annexation.

There being no further questions, Chair Taylor asked for discussion by the Board members. The Board's role is only to decide if a mistake was made by the Planning Commission. The Council may need to take up some discussion involving the non conforming status of lots, but that is not the role of the Board of Appeals. Chair Taylor stated that Daniel is a tough place to live. The applicants are being treated as a residential agricultural lot, but they are not being taxed for 5 acres. That 5 acre zoning means that you still have to follow the rules of the 5 acre zone including the setbacks. Chair Taylor stated that people should be able to use their property as they want to, but in this instance we are just considering the appeal. Board member Hilton was concerned about the encroachment on the waterline.

**Board member Woodbury made the motion: I would make the motion that we concur with the Planning Dept that it does not meet with the setback requirements of Daniel code 8.07.08 (1) Front setback and 8.22 Non Conforming uses. The motion was seconded by Vice chair Hilton. The motion passed with the following vote: Taylor, yes; Hilton, yes; Woodbury, yes. The appeal was denied.**

The applicant was asked why he did not apply for a variance. Mr. Smith answered that he did not believe that the non conforming status would allow for a variance. He stated that he believes that he cannot sell his home without disclosure of that status.

Mr. Bunker stated that the Town has not limited additions except for code compliance and lot coverage. A discussion of non conforming lots ensued in which Mr. Bunker disclosed that a non use of 12 months will end that use of the property. If you change the use of the property, you now have to conform to the new restrictions. The Town has allowed additions because it is not changing the use of the property.

#### **Item 5. Open and Public Meeting Training**

Merry Duggin presented a short training emphasizing that the quorum for the Board of Appeals is 3. It will meet as required with proper noticing as per Utah state code. The members should always come prepared, but not having determined how they will vote. The discussion should always be open and public before coming to a conclusion and vote.

#### **Item 6. Other Business**

It was determined that in future meetings, the Board should allow the applicant to present first, and the Town staff would follow with the applicant being allowed opportunity to rebut. Certain items of the code were discussed and clarified for the Board as a follow up for the new members.

#### **Item 7. Adjourn**

The meeting was adjourned at 8:30 PM.

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