

CITY OF NORTH SALT LAKE
LAND USE APPEAL AUTHORITY
NOVEMBER 17, 2021

FINAL

Glenn Bronson called the meeting to order at 5:00 p.m.

STAFF PRESENT: Sherrie Pace, Community Development Director; Glenn Bronson, Appeal Authority/Hearing Officer; Mackenzie Bennett, Planner.

OTHERS PRESENT: Hayley Pratt, Russell Harris, Castlewood Development.

1. CONSIDERATION OF AN APPLICATION FOR A VARIANCE TO RETAINING WALL HEIGHT AND TERRACING REQUIREMENTS AT 256 SOUTH HIGHWAY 89, WILLIAMSBURG LUXURY APARTMENTS (CODE SECTIONS: 10-2-2 AND 9-1-3)

Mackenzie Bennett reported that Castlewood Development has applied for a variance pertaining to the Williamsburg Luxury Apartments located at 256 South Highway 89. The variance is related to retaining wall height and terracing requirements set by City code. The subject property, which is currently vacant, but previously consisted of several buildings most of which have been demolished. Castlewood Development is proposing to construct a maximum of 246 apartment units that were approved by City Council on May 18, 2021.

Ms. Bennett said that the property, located in the Planned (P) District, will be used as a mixed use development consisting of multi-family and commercial. To ensure the best and most productive use of the property, the developer would need to construct retaining walls to work with the natural topography of the land. She showed an aerial view of the property and explained that the property sloped steeply to the west. City code 9-1-3 specified that retaining walls could not exceed 8 feet in height for a single wall. Terracing walls were permitted if the total height did not exceed 16 feet. There would also need to be a minimum separation of one and a half the height of the tallest wall measured from the back of the lower wall to the face of the taller wall for terraced walls. An example of this would be two 8-foot terraced walls requiring a separation of a minimum of 4 feet, which is half the height of the tallest wall.

Mackenzie Bennett stated that Utah State code 10-9a-702 detailed five criteria that would allow an appeal authority to grant a variance related to the developer's request. She explained that all five criteria need to be met for the variance to be granted. Ms. Bennett detailed each criteria and whether City staff felt this application met the requirement. The first criteria states, "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". Staff reviewed unreasonable hardships found in the Utah Municipal Code which clarified the term

“unreasonable hardship” as “located on or associated with the property for which the variance is sought; and “comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.” The code also stated that “in determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Section (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.” City staff determined that the circumstances occurring on the property were unique as identified due to natural physical features such as steep slopes which prevent the property owner from enjoying a right to use their property like other owners in the same neighborhood. The slope on the property did not currently support multi-family and retail land uses without construction of the proposed 13 foot retaining walls. The shape of the property was influenced by the development of both Highway 89 and I-215 which also constrained the property.

The second criteria is “there are special circumstances attached to the property that do not generally apply to the other properties in the same zone”. The Planned District zone allows for some standards and regulations to be negotiated as part of a development agreement to promote diverse development and allow for more residential density or mixed uses. Mackenzie Bennett said the property across the street, which is also located in a P District, includes multi-family and commercial space. That property did not have the same topographic conditions and was able to utilize the property per the zone. Staff determined that if the variance was not approved that the proposed property would not have the same privileges to develop and be used like other properties in the P District zone which allowed flexibility with residential density and mixed uses.

Mackenzie Bennett said that the third criteria asserted that “granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone”. Special circumstances on this property included the slope and no other properties in the P District had the same slope issues. She then explained that criteria four states that “the variance will not substantially affect the general plan and will not be contrary to the public interest”. The proposed variance to the retaining wall and terracing would not affect the general plan and would not be contrary to the public interest. The Development Review Committee (DRC) was in support of allowing the variance as it would allow the property to be developed in a way that was more complimentary to the general plan including adding housing and active transportation opportunities with multifamily housing and trail connections. The proposed development would improve the area and compliment the neighboring properties. The general plan for this area included an emphasis on active transportation and additional housing. Staff found that the retail and housing opportunity offered by this development would make for a more vibrant and diverse community which would be a benefit to the general public. The approval of the variance would not have a negative impact on the property owners to the west (UDOT), or the north (City’s Edge a multifamily development). The approval of this variance would be positive for the neighbors to the north as it would allow a trail connection to be established and used by both developments.

The fifth criteria states that “the spirit of the land use ordinance is observed and substantial justice is done.” The DRC found that the spirit of the land use ordinance was to protect all members of the public equally and substantial justice, in this case, meant that all property owners should be able to rely on the proper application of the laws that protect their property rights as well as the applicants. This also meant that the interest of the City at large was protected in maintaining the appearance and property values of existing neighborhoods in the City. The DRC determined that the variance application followed the spirit of the land use ordinance while allowing equal property rights to be shared by the subject property and others in the City.

In conclusion, the DRC and City staff were in favor of approving the variance request to allow an increase in retaining wall height and reduction in required terracing width at 256 South Highway 89. The City Engineer has found that with the engineering design provided, the added height/reduced terracing width will not make the walls more or less safe. This variance would allow the property to be used in the most efficient possible way given the zone, land uses, topographic conditions, and adopted City plans for the area.

Mackenzie Bennett clarified that per the submitted application the retaining walls would be located along the north, west, and south sides of the property. Along the north property line, the wall would start at a height of .06 feet and gradually increase to a maximum height of 13.36 feet, where it would then slope back down. That wall would be single, non-terraced retaining wall.

On the west side of the property, two different types of retaining wall were planned. The first one was a continuation of the single gravity wall that would slope to the tallest point of 12.68 feet. After that point, the western wall would separate into two terraced walls that were approximately 3.5-4 feet separated from one another. At the southwest corner of the property, the terraced wall would have a maximum height of 9.69 feet and 9.5 feet.

The retaining wall on the south side of the property would not require a variance to be granted as it did not exceed the maximum 8 feet regulated by City code and was not terraced.

Glenn Bronson clarified that there would be two separate terraced walls with one wall at a maximum height of 9.69 feet and then the second wall with a space in between the two walls. Mackenzie Bennett responded that this was correct and per her understanding, the tallest non-terraced wall would be 13.36 feet located on the north side of the property. The required maximum wall height was 8 feet per City code.

Hayley Pratt, Castlewood Development, clarified that much of the grading on the site was dictated by the access off Highway 89 and meeting those grades. She explained that this was one factor in why the property had to be filled so substantially and the second factor was a strong presence on the street. Ms. Pratt said that an attempt was made to mitigate some retaining with the building itself through podium parking which was built into the topography of the site.

Glenn Bronson commented that when the City made a recommendation it was not uncommon to follow that recommendation as they had expertise in the area. He said one aspect of the application did give him pause. Mr. Bronson explained that the statute required unreasonable hardship be shown. He said the appeal authority may not find an unreasonable hardship if the hardship was self-imposed or economic and the way this appeal was presented this was shown to be sustained as the grade was a substantial slope. Mr. Bronson said the grade was the unreasonable hardship which was not imposed. He asked the applicant if the hardship was economic and explained that the developer could build a development of lesser density to comply with the retaining wall requirement.

Hayley Pratt responded that she was not an expert in engineering of the development but connection to certain utilities was another factor to the developability of this property. She said the development was significantly reduced if the grade was not raised. Ms. Pratt explained that it was not economic but the feasibility of developing the site was the factor.

Sherrie Pace, Community Development Director, commented that due to the change in grade of the street access from the east side of the property adjacent to Highway 89 (which is a fixed elevation) down to west side adjacent to I-215 is required to meet maximum slope. She explained that to build retaining walls that did not require a variance, the building would have to be moved further to the east, thus shortening the distance available to the street access creating a steeper slope that exceeds the maximum slope. She also noted that bringing in more fill to bring the entire site to the same grade as Hwy 89 would require even taller retaining walls. Ms. Pace explained that the intent for height limitations for the retaining walls were due primarily for the safety of rockery walls, which are more difficult to engineer, given the nature of rocks and boulders, shapes and sizes. She said that the walls to be used by this development would be engineered walls, and not rockery, which would meet the intent of the regulation and addresses the concern for safety. The ordinance was partially for safety but also for aesthetics which is not a factor in that the abutting property is an interstate highway and it could argued that an engineered block wall is aesthetically pleasing.

Glenn Bronson determined that given this request was unopposed and given the City's clarification in regard to the requirement he would approve the variance request. He asked that the order be drafted with very specific language regarding what the request was and what was being approved. This included specifically the plans as presented with the maximum height of the north end and the maximum height of the two walls on the west side. He said the application did not need to be amended but the order needed to reflect exactly what was approved, and not carte blanche to do anything that the City Engineer approved.

Mackenzie Bennett clarified that the order must state the maximum wall height of 13 feet, etc. Glenn Bronson replied that the application was what the review committee and City Council approved and as he did not have those meeting minutes, he asked that those be included in the record. He said that the application was tied to the engineering diagram that was presented in this meeting and that it be included as this was what he had approved for the variance. Mr. Bronson explained that the developer was limited to what was presented in this plan which was then subject to the City Engineer's approval.

2. ADJOURN

Glenn Bronson adjourned the meeting at 5:24 p.m.

Approved as directed and reviewed by Administrative Law Judge, Glenn Bronson.



Linda Horrocks, City Record