

Town of Lake Santeetlah

Special Meeting Minutes (Zoom Meeting)

July 27, 2020

Mayor Jim Hager called the meeting to order at 10:15AM. Council Members Roger Carlton, Diana Simon, and Keith Predmore and Clerk Emily Hooper were present for the meeting. Kim Matheson was not available.

Councilmember Carlton made a motion to approve the agenda. Councilmember Simon seconded. All other members were polled. All approved. The motion carried.

New Business:

1. Continued Public Hearing for Variance Request – 310 Thunderbird Trail: Councilmember Roger Carlton made a motion to open the continued Public Hearing. Councilmember Simon seconded. All others were polled. The motion passed. There are currently four Councilmembers due to Craig Keith's resignation therefore in a variance hearing the vote must be unanimous in order for approval. Dr. Hutsell agreed to continue and stated after observations and new evidence the front variance is not necessary, he will only be seeking a height and side variance.

Attorney Gulden reviewed that all four elements of the variance must pass unanimously. Dr. Hutsell asked to proceed.

Two additional parties that neighbor Dr. Hutsell are joining the hearing today. The Councilmembers must decide if those parties have standing.

Chris Brickell, son of Thomas Brickell (neighboring property) Brickell stated he had been a neighbor of Dr. Hutsell for years, his father as the property owner is not efficient with electronic meetings and ask that he attend on his behalf. Mr. Brickell would like to see a plat and be clear of what is being proposed.

Does Mr. Brickell have standing:

Roger Carlton – yes

Keith Predmore – no

Diana Simon – yes

Jim Hager – yes

Marc Modica is another neighbor and is only joining for information to be clear of what is Dr. Hutsell plans to build.

Mayor Hager asked Dr. Hutsell if he had any additional evidence. Hutsell acknowledged that he had drawn his home on the Town map as requested to provide a visual aid for those making the decision. This was also sent to neighboring property owners. The white line on the map is the property line. According to the 1989 ordinance under 401.03 front yard definition is measured from side line to side line. Based on this definition Dr. Hutsell stated that he will not need a front variance.

Dr. Hutsell acknowledged that he had recently made a request for every variance requested and approved or denied since 1989. Town Administrator Matheson was only able to provide the past five years within the time frame of the request and the meeting. These include: Mary Williams, The Santeetlah Lakeside Condominium Project, 7 Santeetlah Point and Mr. Hutsell. Mr. Hutsell questioned why 147 Snowbird Trail had not needed a variance hearing. After reading the 89 Ordinance Dr. Hutsell argued that many homes are not in compliance and may not have been addressed while others were.

He feels singled out and questions why this is the case. Attorney Gulden read a section from the ordinance and confirmed that Dr. Hutsell would not need a front variance if the new home would be built in the same foot print as the one destroyed by fire.

Dr. Hutsell also reiterated that the new home would be an improvement to what was there. It would conform to all updated building codes. The tax value and revenue would increase which would benefit the Town. If the lot allowed him to build down he would do so which would keep him from building higher, but that isn't an option according to Dr. Hutsell.

Councilmember Predmore asked the exact height variance the individual is requesting. Mr. Hutsell stated, 5ft. Councilmember Carlton asked if a height variance was granted would it be acceptable if worded that it would not exceed Mr. Brickell's ridge line measuring from the existing pad. Dr. Hutsell did not accept this wording.

Carlton asked if the Town Council agreed to grant a variance, could two cars fit in the driving area and remain two feet from the road. According to the plat provided the parking lot will be increased in size and there will be space for more than two vehicles. The septic or repair area will not be interfered in any way by parking.

Dr. Hutsell explained that he had spoken with the Graham County Health Department in the planning stages of the re-build and there were no changes needed to his septic to be in compliance. Dr. Hutsell did not agree to supply a letter from the Health Department with this information as Mr. Carlton asked. Hutsell explained that this was not needed in order to seek a variance and would not agree to such request.

Attorney Gulden reminded the Council of the four specific factors to be addressed when considering a variance: Unnecessary hardship would result from the strict application of the regulation, the hardship results from conditions that are peculiar to the property (such as size, location and topography), the hardship did not result from actions taken by the applicant or the property owner, the requested variance is consistent with the spirit, purpose and intent of the regulation. Those four factors are what Dr. Hutsell must prove in order for the Council to make a decision.

After the evidentiary portion of the hearing is closed the Council will deliberate and can add conditions at that time if they wish to do so.

Diana Simon asked Dr. Hutsell to please clarify the side where he would like to build steps. The side near Mr. Brickell's parking area or the side nearest to Mr. Brickell's house. Dr. Hutsell explained the steps would be near the parking area where an existing wall is at this time.

Simon asked if the plans submitted of the four story home would not require more than a five ft. variance. According to Mrs. Simon she is also concerned about a proposed deck. Dr. Hutsell explained that he will not need a variance for the deck that is being built in the same footprint as before.

Chris Brickell spoke on behalf of his father, Thomas Brickell, neighbors to Dr. Hutsell. Mr. Brickell simply asked to see a plat or drawing that portrayed exactly what was being built. Dr. Hutsell explained that he would be certain that the Brickell's received the preliminary drawings. He also noted that the new building would not encroach in any way more than the previous home other than the potential steps. Mr. Brickell will look on the Town of Lake Santeetlah website for drawings and other information but has no further questions at this time.

Ralph Fette read the general provisions of the current Zoning Regulations 1101.00 and pointed out the section of non-conforming vacant lots and re-construction of damaged buildings. Fette explained that according to his readings he does not feel that Dr. Hutsell has the ability to request for a variance when re-building his home that was destroyed by fire. Fette is also concerned about the height of the proposed structure and would like Mr. Hutsell to build further down towards the water rather than higher.

Howard Serena has extensive background in building and does not approve of the drawings provided. Serena stressed if the dimensions were increased he feels that more accurate drawings should be provided.

There were no further questions or evidence.

Councilmember Carlton made a motion to close the evidentiary portion of the hearing. Councilmember Predmore seconded. All others were polled. The motion passed.

Public Comment:

Tina Emerson stated that she had recently attended the Planning Board sessions and hopes that the board will readdress the setbacks and height when updating the ordinance. Emerson looked up other mountain communities to determine the average height requirement for similar areas. Emerson reported that Murphy has a 50ft height limit, Asheville 40ft, Banner Elk and Grandfather Mountain have 35ft.

Ralph Fette pointed out that other homes around Thunderbird Trail have all been built closer to the water rather than higher.

Jack Gross feels that the most important factor in this variance request is the increase in dimensions and according to the ordinance this non-conforming home does not have the ability to do so.

Councilmember Carlton made a motion for the Town Council to move into deliberation. Councilmember Simon seconded. All others were polled. The motion passed.

Councilmember Carlton offered a set of conditions to attach to the variance if approved.

- The new home would be built on the same foot print as listed on the County tax scroll.
- A letter from Mr. Brickell be provided showing no objection.
- A letter from the Graham County Health Department stating the septic on this lot has been reviewed and approved.
- The variance for height be granted to all 32 feet total above the existing pad.

Diana Simon agreed that there should be approval from the Graham County Health Department confirming adequate septic capacity for the proposed home.

The two variances needed are height and side. It has been confirmed that a front set back is not needed.

Attorney Gulden does not agree that a letter from the Brickell's should be included as a condition. The approval must be based on facts that were presented at today's hearing.

Councilmember Carlton agreed to remove condition #2. Carlton made a motion to approve the variance that would include 32ft total from the existing pad (a variance needed of 2ft.), with the condition that the structure would be replaced according to the footprint shown on the Graham County tax scroll, and a letter from Graham County Health Department demonstrating approval that adequate septic is available for the new structure. If the variance was approved the conditions would be attached as part of the approval. Councilmember Simon seconded. All others were polled. Keith Predmore opposed. The motion must pass unanimously. The motion failed.

Applicant Dean Hutsell asked to withdraw his variance request at this time. Attorney Gulden confirmed that if the applicant desires to withdraw he can do so at this time, no vote has been taken regarding the variance. Dr. Hutsell stated he would like to withdraw all request for variance, both height and side.

2. **Motion to Close Public Hearing:** Councilmember Simon made a motion to close the Public Hearing. Councilmember Keith seconded. All others were polled. The motion passed.
3. **Resolution to hire Zoning Administrator:** The Resolution has been sent to Council and posted on the website for review. Mayor Hager has talked with Brain Farley concerning the position. Councilmember Roger Carlton made a motion to pass the resolution to allow hiring a Zoning Administrator. Councilmember Simon seconded. All others were polled. The motion passed. The Town Council will approve the hiring of a Zoning Administrator at a later date.
4. **TOLS Representative for Southwest Commission:** This item will be deferred to the August Council meeting.
5. **Status of Legal Review Zoning Compliance Form and Fee Schedule:** Councilmember Carlton stated that this fee schedule and application from has been sent to legal counsel for review and would like to have prepared for approval in August. Councilmember Predmore stated that he had some concerns. Attorney Justus will to provide a report in August.
6. **Motion for Closed Session:** Councilmember Predmore read the motion to move into closed session. Councilmember Simon seconded. All others were polled. The motion passed.
7. **Action for Closed Session:** The Town Council returned to open session at 12:23. All members were polled and present. Councilmember Carlton made a motion to release the redacted closed session minutes requested by Jack Gross. Councilmember Predmore seconded. All others were polled. The motion passed.

With no further business at this time Councilman Simon made a motion to adjourn, Councilman Predmore seconded. All others were polled. The motion carried. Mayor Hager adjourned the meeting at 12:26AM.

Jim Hager, Mayor

Emily Hooper, Town Clerk