

**CLINTON CITY BOARD OF ZONING ADJUSTMENT MINUTES**

**Jim Cox, Chair  
Dennis Henry, Vice Chair  
Nathan Schow  
Ronnie Duncan  
PC Representative Bob Buckles  
Blair Bateman,**

<b>BZA Meeting</b>	<b>December 6, 2016</b>	<b>Call to Order: 6:00 P.M.</b>	<b>2267 N 1500 W Clinton UT 84015</b>
<b>Staff Present</b>	Community Development Director Will Wright and Lisa Titensor recorded the minutes.		
<b>Citizens Present</b>	Jacob Briggs, Spence Barber, Adam Benard, Dan Nison, Dan Gardiner, Ron Hardy, Ryan Nilson, Elyse Nilson,		
<b>Pledge</b>	Ronnie Duncan		
<b>Prayer or Thought</b>	Nathan Schow		
<b>Roll Call and Attendance</b>	Board Members' Schow, Duncan, Henry and Bateman were present. PC Representative Bob Buckles was present.  Board Member Cox was excused.		
<b>Approval of Minutes</b>	The Board of Zoning Adjustment has reviewed the minutes of the last BZA meeting and responded to the Secretary by e-mail for approval.		
<b>6:00 P.M. – REQUEST FOR A VARIANCE: REVIEW OF AND ACTION UPON A PETITION FROM TROY BARBER, OWNER, REPRESENTED BY JACOB BRIGGS, ATTORNEY WITH BENTLEY &amp; BRIGGS REGARDING A CONFLICT BETWEEN BUFFERYARD REQUIREMENTS IN 28-18-9(2) AND LEGAL ACCESS TO PARCEL(S) 14-53-0057 AND 0050 ON WHICH APPLICANT DESIRES TO INSTALL STORAGE UNITS AT ABOUT 2263 WEST 1300 NORTH, CLINTON.</b>			
<b>Petitioner:</b>	Troy Barber, owner, represented by Jacob Briggs, attorney		
<b>Public Hearing and Discussion</b>	<p>Attorney Jacob Briggs referred to the following letter he wrote on November 11, 2016 to Clinton City regarding this variance request:</p> <p><u>Type of Variance requested:</u> confirmation that the bufferyard requirements Title 28 Chapter 18 will not apply to the right of way access to the subject property. 28-18-9(2) contemplates that a bufferyard will “be located at the perimeter of light manufacturing lots where the lot abuts against a zone other than light manufacturing.”</p> <p>Table 18.7 provides that the narrowest bufferyard is with a solid vinyl fence and 10 feet of bufferyard.</p> <p><u>Property characteristics:</u> the subject property is located south of 1300 West street with no frontage on that street, but with a right of way access point at approximately 2263 West 1300 North. The subject property is located behind the Lock It Up Storage on 1300 North, and has access by means of a 26 foot right of way along the east boundary of that Lock It Up parcel.</p> <p><u>Legal description of subject property</u> (comprised of two parcels): Parcel Number 14-053-0057: THE S 786.65 FT OF THE E ¼ OF THE NW ¼ OF THE NE ¼ OF SEC 33-T5N-R2W, SLM. CONT. 5.96 ACRES. TOGETHER WITH R/W Parcel Number 14-053-0050: BEG AT A PT 60 RODS E &amp; 50 RODS S FR NW COR OF NE ¼ OF SEC 33-T5N-R2W SLM; TH S 30 RODS; TH W 16 RODS M/L; TH N 30 RODS; TH E 16 RODS TO POB. CONT. 3.00 ACRES.</p> <p><u>Relevant considerations:</u></p> <ol style="list-style-type: none"> <li>1. The portion of the subject property for which the applicant has fee simple can and will meet the bufferyard requirements, it is only the right of way access area that is in question.</li> </ol>		

2. The 26 foot right of way is located along the east boundary line of the Lock It Up parcel. In that area, the distance between the existing chain link fence on the east boundary of the Lock It Up parcel and the existing building on that parcel is approximately 35 feet.
3. Some vegetation exists in the 8-10 feet next to the Lock It Up building, but it is not clear that this vegetation satisfies the bufferyard requirements of Table 18.7.
4. The Lock It Up "bufferyard" does not satisfy the requirements of 28-19-9(2) in that the vegetation which is there is not located against the perimeter of the parcel but instead next to the building. But because of the 26 foot right of way, Lock It Up would not be able to put a bufferyard at the perimeter.
5. The applicant has no legal right of access to anything other than the 26 feet on the east boundary line of the Lock It Up parcel. Accordingly, applicant has no right to alter or construct any landscaping in the 8-9 feet between the right of way and the Lock It Up building.
6. Clinton City has indicated that the entire 26 foot right of way is required for construction of the access driveway to the subject property.

Conclusion: because the applicant has no legal right to anything other than the 26 foot right of way, the bufferyard requirement should not apply to applicant in this right of way area, as it would have no legal ability to satisfy the requirement or to construct or maintain such bufferyard even if the requirements were modified.

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Jacob D. Briggs  
Bentley & Briggs PLLC

He explained the site plan was previously approved under another name. The BZA is not being asked to address the issue of the validity of the right of way itself. He identified that documents have been provided by the applicant showing the chain of title. He then reviewed the following factors:

Factor 1

Literal enforcement would cause unreasonable hardship because it would prevent any development.

Factor 2

There are special circumstances attached to this property; other properties in the district do not suffer from these specific circumstances.

Factor 3

Property right enjoyment, this property cannot be developed without a variance.

Factor 4

General Plan compliance, nothing in the General Plan should be substantially impacted by granting this variance.

Factor 5

Substantial justice, granting the variance will allow the property to be developed.

He explained the hardship is the special circumstance and it is not self imposed or purely economic.

Mr. Briggs referred to the deed documents dated May 11, 1984 that identifies when the easement was granted. The parcel at the time was landlocked, therefore the

hardship was not self imposed because the buffer yard requirements did not exist. The 26 foot right of way would have been sufficient to gain legal access. The validity of the right of way is illustrated in the deed documents. The prior approval contributes to the current situation because the building is not moveable; there is some vegetation but it does not appear to meet the requirement.

He is of the opinion that the statutory requirement for variance has been satisfied.

Mr. Henry asked if there is access to the existing building on the south end.

Mr. Briggs responded no.

Mr. Bateman asked if there is a potential ingress/egress for Fenway Estates.

Mr. Briggs responded it is not ideal to access a light manufacturing through residential.

Mr. Henry asked for clarification on the setback.

Mr. Wright responded it is approximately 35 feet.

Mr. Briggs clarified there is only legal access to the 26 foot easement not the other nine feet.

Mr. Schow opened the public hearing at 6:29 p.m.

Tim Thompson said his backyard faces this area, he asked for clarification of what the variance is for.

Mr. Wright responded they are seeking to install storage buildings on this property. They are asking to install a drive way to allow access to the property.

Mr. Thompson said he is okay if there is a buffer requirement and a road but he is not okay if the storage sheds are built closer to his property. He would like the City to make sure it is well maintained. He wants the City to protect his rights as a property owner.

Mr. Briggs confirmed that the site plan identified by the red line will not be seeking variance from the Zoning Ordinance regarding the buffer yard.

Mr. Schow clarified the buffer and easement to access the Gardner property is what is being discussed.

Dan Gardiner the husband of the owner of the property said the 26 foot easement was critical to the purchase of this property; when the subdivision to the east was planned he sought access and was denied because it was residential. There is no access available to this property; the taxes of over \$7,000.00 have been paid for many years on this property to maintain the zoning.

Mr. Bateman said that the Fire Chief has accessed the property on the opposite side.

Mr. Gardiner said the access there is extremely limited.

Ryan Nilson said he is not in favor of having a road directly behind his yard; he would like a green well maintained buffer space between the access road and the residential properties.

Mr. Wright referred to the property outlined in red on the map and said that all zoning buffer requirements will be required to be adhered to. The Fire Department

will require access around the development.

Dan Nixon one of the owners of Lock it Up Storage stated he has not seen a record of an easement on the 26 foot area. He clarified the road is 26 feet to 30 feet. The Gardner's should be required to meet the buffer requirement outlined in the code with vegetation on the boundary line to protect the homeowners. He does not think the variance should be granted, he feels the Gardiners should access their property from the West.

Mr. Schow clarified that the easement established in 1984 sits on the property line making it a flag lot, the hardship is there is no way to meet the buffer requirements.

Mr. Gardner said the 26 foot easement is vital to the development of this property.

Ron Hardy asked what will happen after the property is developed; he asked if there will be a fence installed. He is concerned that the lights will be a nuisance to the existing homes.

Mr. Schow responded the Planning Commission will review the site plan to ensure the requirements are met.

Mr. Thompson said this variance is taking away the buffer of existing homes; other ways for access from the south side should be considered. The existing homes should be considered. He would like to see a fence installed as a barrier for privacy from lights and noise.

Elise Nilson expressed concern that the backyard view of all the homes will be impacted and the lights will shine into their yards. She feels the buffer with green space is important. Having a road behind the homes will impact the privacy of the homes.

Mr. Briggs stated the property must be developable, a variance is necessary.

Mr. Bateman asked what type of buffer could be provided for the four existing houses.

Mr. Nixon said the Lock It Up owners feel the buffer zone including the easement should remain in its natural state; the homeowners should benefit from the buffer ordinance. They are willing to negotiate moving the right of way to the boundary line.

Mr. Briggs explained that the best way to encourage negotiation is to grant the variance to allow for equal negotiation between the property owners.

Mr. Schow closed the public hearing at 7:19 p.m.

Mr. Wright reviewed the information included in the staff report:

#### Zoning Ordinance References –

1. Section 28-18-9 (2) states that the bufferyard will “be located at the perimeter of light manufacturing lots where the lot abuts against a zone other than light manufacturing.”
2. Table 18.7 indicates that the narrowest bufferyard is only ten (10) feet;
3. Section 28-10-8 Variances states, “Any person or entity desiring a waiver or modification of the requirements of the Zoning Ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Board of Zoning Adjustments for a variance from the terms of the Zoning Ordinance.
4. The Board of Zoning Adjustments may grant a variance only if:
  - (i) Literal enforcement of the Zoning Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of

the Zoning Ordinance;

(ii) There are special circumstances attached to the property that do not generally apply to other properties in the same district;

(iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

(iv) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) The spirit of the Zoning Ordinance is observed and substantial justice done.

(vi) In determining whether or not enforcement of the Zoning Ordinance would cause unreasonable hardship under 28-10-8 (2)(a), the Board of Zoning Adjustments may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(vii) In determining whether or not enforcement of the Zoning Ordinance would cause unreasonable hardship under 28-10-8 (2) (a), the Board of Zoning Adjustments may not find an unreasonable hardship if the hardship is self-imposed or economic.

(viii) In determining whether or not there are special circumstances attached to the property under 28-10-8 (2)(a), the Board of Zoning Adjustments may find that special circumstances exist only if the special circumstances:

(A) relate to the hardship complained of; and

(B) deprive the property of privileges granted to other properties in the same district.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

**BACKGROUND:**

Jacob Briggs, attorney, representing Troy Barber, owner of parcel 14-053-0057 that is almost six (6) acres with an adjacent parcel of about 3 acres requests a variance for two aspects of the bufferyard requirements for these parcels in the Light Manufacturing (MP-1) zone located behind the Lock It Up Self Storage at 2277 W 1300 N. First, Section 28-18-9 Bufferyards states in subsection” (2) Bufferyards shall be located at the perimeter of light manufacturing lots where the lot abuts against a zone other than light manufacturing.” Secondly, Table 18.7 Bufferyard Standards and Fence Requirements show the minimum depth of a bufferyard of ten (10) feet with fencing and substantial landscaping, thereby allowing the depth of the bufferyard to be reduced to ten feet.

Applicant is unable to meet these bufferyard development standards because there is an existing easement on the Lock It Up Self Storage property that provides access to the applicant’s parcels. This easement is located along the property boundary, making any bufferyard between the adjacent properties impossible. Further, the width of this easement is only twenty-six (26) feet wide, while the actual area between the self storage units and the property line is only about 35 feet, making it impossible to accommodate a ten foot bufferyard per the development standards.

A review of the criteria for considering a variance request found the following results for the Barber request, namely:

- 1) The lack of sufficient space along the side yard of Lock It Up Self Storage, which provides the primary access to the applicant’s parcel(s) as required by the Fire Department, makes it impossible to comply with the bufferyard development standards;

	<ol style="list-style-type: none"> <li>2) The only special circumstance peculiar to these parcels is the fact that they're located behind the Lock It Up Self Storage and, therefore must rely on an easement in order to access these parcels;</li> <li>3) The enjoyment of a substantial property right would deprive this owner of being able to use this property without a variance that would allow legal access, thereby eliminating the bufferyard requirements noted above;</li> <li>4) This variance would not affect the general plan; and</li> <li>5) The spirit of the Zoning Ordinance would still be observed with substantial justice done with this request.</li> </ol> <p>Mr. Briggs report indicates that without a variance of these two aspects of the bufferyard requirement in the MP-1 zone then the property owned by Mr. Barber would be useless. The fact that these larger parcels do not have reasonable access is really not the fault of the property owner. State law states that property cannot be landlocked or rendered unusable due to a lack of access. In short, the City has some responsibility for this access issue and therefore, some obligation to assist the property owner in allowing the appropriate use of this parcel. It is also worth noting, the need for a 26' drive or access way to this rear property is a Fire Department requirement as well as additional turnarounds in any future development plans. It would therefore seem that substantial justice would be served to vary from the bufferyard requirements for the perimeter bufferyard as well as the minimum ten (10) foot bufferyard in order that the property owner can utilize their property located behind the Lock it Up Self Storage as allowed by the City's Zoning Ordinance.</p> <p>Mr. Gardner said he would put up an 8' or 10' vinyl fence to buffer the existing homes. He is willing to work with the Lock It Up property owners.</p> <p>Mr. Nixon said he would be in favor of the fence plus what the ordinance requires.</p> <p>Mr. Schow asked if the two property owners would be willing to negotiate moving the greenery to the east.</p> <p>Mr. Briggs suggested that clarification of where the 8' fence will be installed be identified.</p> <p><b><i>Board Member Bateman moved to grant the variance allowing a 26 foot access with a 9' buffer zone against the residential side with a stipulation there be an 8' fence placed in the buffer zone.</i></b></p> <p><b><i>There was no second to the motion.</i></b></p> <p>Mr. Wright clarified because of the location of the right of way, the buffer cannot be stipulated, just the fence.</p> <p>Mr. Briggs clarified that all the requirements of the variance have been satisfied, the BZA cannot force the property owners to exchange rights.</p> <p>Board Member Schow stated a recommendation can be made to grant the variance with the stipulation that an 8' solid fence be installed along the homeowners property line with a recommendation that the property owners of the right of way and this property come to an agreement to move the buffer zone to the east side.</p> <p>Board Member Bateman withdrew his motion.</p>
<p><b>CONCLUSION</b></p>	<p><b>Board Member Schow moved to grant a variance based on the following criteria identified in the staff report being met:</b></p> <ol style="list-style-type: none"> <li>1) <b>The lack of sufficient space along the side yard of Lock It Up Self Storage, which provides the primary access to the applicant's parcel(s) as required by the Fire Department, makes it impossible to comply with the bufferyard development standards;</b></li> <li>2) <b>The only special circumstance peculiar to these parcels is the fact that they're</b></li> </ol>

	<p>located behind the Lock It Up Self Storage and, therefore must rely on an easement in order to access these parcels;</p> <ol style="list-style-type: none"> <li>3) The enjoyment of a substantial property right would deprive this owner of being able to use this property without a variance that would allow legal access, thereby eliminating the bufferyard requirements noted above;</li> <li>4) This variance would not affect the general plan; and</li> <li>5) The spirit of the Zoning Ordinance would still be observed with substantial justice done with this request.</li> </ol> <p>Requiring a minimum 8 foot or what is required by code barrier between the houses and the current property and suggest the owners of the property and the owners of the right of way work together to move the buffer zone to the east side of the property. Board Member Henry seconded the motion. Voting by roll call is as follows: Board Member Bateman, aye, because he feels all the requirements are met; Board Member Duncan, aye; Board Member Henry, aye; Board Member Schow, aye.</p> <p>The BZA strongly encouraged the property owners to work together on moving the buffer zone to the east.</p>
<p><b>ADJOURNMENT</b></p>	<p>Board Member Henry moved to adjourn. Board Member Bateman seconded the motion. Board Members' Bateman, Duncan, Henry and Schow voted in favor. The BZA adjourned at 7:47 p.m.</p>
<p><b>Approval of Minutes</b></p>	<p>DRAFT minutes sent by e-mail to BZA for approval on December 19, 2016.          Notice of approval received by:</p> <ul style="list-style-type: none"> <li>• Board Member Schow</li> <li>• Board Member Henry</li> <li>• Board Member Duncan</li> <li>• Board Member Bateman</li> </ul>