



**ROY CITY**

**Zoning Adjustments Meeting**

**April 26, 2022 – 11:00 a.m.**

Community Development Conference Room  
5051 South 1900 West, Roy UT

The meeting was a special meeting. Notice of the meeting was provided to the Standard Examiner and the *Public Notice Website* at least 24 hours in advance. A copy of the agenda was posted at the Municipal Building and on the Roy City website..

The following were in attendance:

Melven Smith, Hearing Officer

Steve Parkinson, City Planner

Matt Wilson, City Attorney

Terry Wilson, Applicant

Others in attendance: None

1. CONSIDER A VARIANCE REQUEST, BY TERRY WILSON FOR PROPERTY LOCATION AT 3819 FOXGLEN DRIVE, ROY UT TO REDUCE THE SIDE YARD SETBACK FROM EIGHT (8) FEET TO ZERO (0) FEET.

Hearing Officer Melven Smith: I will give you a summary of what I understand, and then we will follow the outline that was sent out by the Planning Staff of Roy City.

Mr. Wilson, I understand you are the applicant.

Applicant Terry Wilson: "Yes."

Mr. Smith: I will give you an idea of the facts, and the things I am particularly wanting to hear. I understand that you live at the property located at 3819 Foxglen Drive in Roy.

Mr. Wilson: "Yes sir."

Mr. Smith: The property is in a zoned area, R-1-8 which requires an 8 foot setback on both sides of the home. You attached a shed to the north of the garage. The shed was installed just a couple years ago. Apparently, a building permit was not obtained in that process.

Mr. Wilson: "No."

Mr. Smith: I'd like to understand why, it might just be you didn't know so I'm not asking for anything in particular.

Mr. Wilson: "No, you're fine."

Mr. Smith: The shed goes to the property line or within inches of the property line, which is a violation of the ordinance for which you're seeking an adjustment according to the zoning ordinances in this hearing. The standards we are looking at come from Utah law and Roy City

has adopted ordinances that follow Utah law. I have read the Roy City ordinances and they do not contradict 10-9A-702, which is the section in Utah code that governs variances. There are five criteria that have to be met in order to get a variance, each one of the criterion has to be met. As the applicant, you bear the burden of showing that you meet the criteria. I have read Roy City's response in which it maintains you have not complied with the requirements and therefore a variance should be denied. I've read your response where you are requesting the variance and you included your analysis. That being said, that is a summary of what I understand from the documents submitted. I will soon turn the time over to you for your presentation.

We will focus on the elements of Utah law that help us in applying the Roy City ordinance. You must show:

First, that literal enforcement of the ordinance, which would probably mean removal of the shed, would cause an unreasonable hardship to you that is not necessary in carrying out the general purpose of the ordinance, meaning an 8-foot side yard requirement. That is the first problem.

Second, that there are special circumstances which are not applicable to other properties which make this property more unique. Many times the facts would be something unique to the land itself. Sometimes a drop off or something that prohibits you from building on your property similar to what other properties in the area can build, so keep that in mind.

Third, the granting of the variance is essential to the enjoyment of your property, meaning that the shed in its location is essential to you and to your enjoyment of your property.

Fourth, that it will not do harm to the General Plan, it generally follows the General Plan.

Fifth, a variance will maintain the spirit of the ordinance.

Those are the five areas that I'd like you to address. With that said, go ahead and explain your side.

Mr. Wilson: "This was back in probably September of 2021 I went to the Roy City people and this is new to me like I said and I asked how much feet do I need between my shed and the property line and the gentleman explained 8 feet and I was a little puzzled because if you take a drive around Roy you can see several garages and sheds that are right on the property line and I said how long has this been enforced and he said for as long as he can remember and I told him look there are several people that's either I don't see how they could get a permit if its not 8 feet. I said I don't want them to tear theirs down I just want to have what they have and he said sir we don't really check but if you ever have a fire and the fire department comes they might have to tear into it to get to the fire and I was willing to take that risk so a little bit after that I went to Home Depot and I had them subcontract out to TuffShed and they came out and built me the shed there. I have a dispute with the neighbors just north of me."

Mr. Smith: "The adjacent property?"

Mr. Wilson: "Yeah they have a cat and my better half, her name was Irene, she's allergic to cats so we pleaded with them to please keep their cat off of our property and our cat will never come onto your property. Well, I was explaining it to these guys that I came home from work on a

Saturday, left the garage open, went in to talk to Irene for a minute, when I came out their cat was in my car in the garage with a bird eating a bird. Like I say [Irene] is allergic to cats so it kind of got a little heated there. We told them this and we never got along with them since. So when the shed was done they waited for me to build my shelves and do everything and get it loaded and then they decided to make it real pretty and call these gentlemen here and like I said I'm not mad at these people they're just doing their job okay."

Mr. Smith: "Sure."

Mr. Wilson: "Its just the way the planning of that thing went. I went to a Roy City Council thing a little bit after that, and I talked to the Mayor and he told me to go to that. He told me to go to the City Council and explain your part and so I did I got about two thirds of the way through my presentation and they kind of cut me off; the Mayor wasn't there he was out of town but he was watching it via satellite thing or whatever and he says look um we have these other issues we have to take care of you can take it up with our lawyer Andy Blackburn is the lawyer when this meeting is over with so I sat through the meeting there I was a little butthurt but when I heard the issues they had up there it was the floats when the people were throwing saltwater taffy over they don't want the kids getting ran over by the floats so I you know to be fair I think that was a lot more important than my shed even though I want to keep my shed. And they had a thing about Roy Days and they don't want people bringing guns and alcohol there anyway when this thing drug out and it got done that Andy Blackburn guy was just too busy just said I'll have to get with you later or something so I kind of thought I kind of got brushed off on that too so I'm just trying to go through each step so when I talked to the Mayor about it he said yeah I just watched it on the satellite and he says Terry I seen what happened and I wish i would have been there I would have handled it a little bit differently not saying I would have got it but it would have been handled differently so I asked him well what steps what can I do and that's when he was talking to me about the deviation the variance he says you can file them and do this thing but you gotta meet these criteria and stuff like that. So he goes take this home read it over so when I got home and did it all and got everything out there I was taking it back to him for his advice if it looked good or not or whatever and he goes and I know he's kind of stuck between a hard spot for you know working fair but also serving the people so he just gave me a little bit of advice to look these things over so that's when I went through and I got it all done there and I turned it in. There you know the shed is not really attached to the house. Its got a 3-inch gap, I got a flashing up against it to keep birds, mice, and everything out of there if you want to consider that being attached. Its not attached to the ground, you can take a jack and jack it up in air and bring it down.

"I was going to put a gutter on the side that is slings down to but that's when Chance came and visited me and told me that somebody had filed. I know it's not his job to tell me but I already knew because I heard them talking to their neighbors behind me about it and stuff. So I stopped and didn't do the gutter, but I was going to do a gutter. I was going to have Lowe's do it for me and, then like I say, I've just gone through all these steps. There is no place on my property where you could put it in the back. There is an easement, a seven foot fence there with an easement. There is a cement thing for a little fire pit thing that's in the way and then my deck, the steps come right down into the backyard not down the side of the house and then you come around to the south side and which would probably be the only other place you could maybe put it but then the problem is my chimneys there, the gas and the power lines is there, the water main for my sprinkler goes down through the middle there, and I just couldn't see it going there. One thing, Chance did say

when he was out there was that it would have been nice if they had moved the when they were doing the house if they had about eight feet more south. It was just the placement of the house.”

Mr. Smith: So how much land do you have on the south side in between the home and the property line?

Mr. Wilson: “I don’t know exactly what it is.”

Mr. Smith: “Approximately. Is it less than what you have on the other side?”

Mr. Wilson: “It’s more than the north side. So it probably would have worked if they would have moved it that way some.”

Mr. Smith: “Okay.”

Mr. Wilson: “Like I say, the chimney and fireplace is on that side, the gas lines goes there, the power, and then my segment of water, and my sprinkler system goes down there, and it would be too much stuff to damage up.”

Mr. Smith: “Anything else?”

Mr. Wilson: “Everything else is in what I typed up and it’s the truth.”

Mr. Smith: “Okay thank you. Anything else? I think no but just for the record to make sure that we’ve heard everything you have to say. Okay the City.”

City Planner Steve Parkinson: I’ll just go through not necessarily the history; I think he’s shown that already. I’ll go through the City’s answers to those questions. For the first one the hardship in exhibit C which is the subdivision plat, it shows that the parcel is 80 ft by 100 ft and that several of those other parcels in the same subdivision are of the same size. The easement portion is only on the west side of the property. Our ordinance does allow buildings within the easement, you need to provide letters from all the utility companies allowing it. Generally, if a shed is less than 200 square feet, we don’t request such letters. It its only if the shed is going to be bigger than 200 square feet.

Mr. Smith: So, if its less than 200 they don’t need a building permit?

Mr. Parkinson: Correct, and that’s per building code. If it’s less than 200 square feet and it’s in the backyard, the shed can be within three feet.

Mr. Smith: “So what’s the square footage of this shed?”

Mr. Wilson: “It’s a ten foot by twenty.”

Mr. Smith: “So its 200 sq. ft., so you’re right there. So from the City’s point of view, did he need a building permit?”

Mr. Parkinson: “Yeah, its 200 and over that requires a permit.”

Mr. Smith: "So technically it required a building permit?"

Mr. Parkinson: "Yep."

Mr. Smith: "Okay."

\*Mr. Parkinson: "As for the easement on the west side of the property, it could be easily obtained letters we have them in several different locations where the utility companies have assigned it over saying they could build into it. There is no easement on the north or the south side. As for special circumstances his property is required to be 65 feet wide and it was currently 80, so it was 15 feet wider than what the ordinance requires. Essentially, I can understand a shed is important- I have a shed, I think most people do- but location matters, you know, so putting it in the rear yard on the south side of the property, next to the house, which has a lot greater distance can still satisfy the need for a shed. When you look at exhibit A, which is the aerial, it shows others in the same neighborhood that have sheds that are in the backyard. Then in the spirit of the General Plan, location is not compatible to the General Plan contrary to public interests, because the building is all the way next to the property line. Storm water flow is an issue and in the spirit of it the zoning ordinance is just requiring separation of buildings; Fire Code or Building Code would also require firewalls for anything closer than five feet, so none of these have been met."

Mr. Smith: "Okay, anything else?"

Mr. Parkinson: "Not from me."

Mr. Smith: "I take it there is no other testimony since no other people are here. You don't have any witnesses or anything like that? Okay, then your response to what the City just presented."

\*\*Mr. Wilson: "My response is like I said the first time I didn't know at the time was this gentleman here, Steve, he was the one that said we really don't check now if he had told me straight out no then we wouldn't be in here having this conversation right now because I wouldn't have built it. And, like I say, I don't blame these guys for when the neighbors called them they were just doing their job to come out and do that, but like I say, I just don't know what else to tell you about it I'm just going through the steps and trying to do this the right way. All I want is what 90% of the people in there have and they have a shed or a garage now, not all of them are wrong, but when I did a little drive around the other day, I found several garages right on the property line. Mine is about a foot away from the property line. These were right on the property line, and I found more sheds easily three times as many sheds that were on the property line and, like I said, I don't want them to tear theirs down, I just want to have what they have."

Mr. Smith: "Sure."

Mr. Wilson: "And that's all I'm looking for; I don't know what I would do with all the stuff and it would cause a big hardship to me because I don't know what I would do with all the stuff I've accumulated over the years."

Mr. Smith: "Just curious now. I think you said you built it- its not a Tuffshed?"

Mr. Wilson: "It's a Tuffshed."

Mr. Smith: " It's a TuffShed, okay."

Mr. Wilson: "Home Depot subbed it out for TuffShed to do and they built it for me."

Mr. Smith: "Okay. Okay anything else?"

Mr. Wilson: "I think that about all. I'm just throwing myself under the mercy, I'm going to say, of the court because that's all I can do."

Mr. Smith: Okay thank you. Well unless you have anything else, does the City have anything?

Mr. Parkinson: "Well the only dispute I would have would be on me saying no one checks. I mean, the unfortunate part is that many people do things in the City and we're unaware of it and it doesn't come to our knowledge until someone complains. So in his first testimony he said I told him it was eight feet and that's what it needed to be so if I don't check I don't know if it was an answer to a different question"

Mr. Smith: "You don't have any recollection?"

Mr. Parkinson: "No."

Mr. Smith: Okay. Well let me go ahead. I don't think this is a difficult case to be honest with you. To give you some background. Roy City is a political subdivision of the state of Utah. It exists because the State of Utah says it can exist. The State of Utah has the jurisdiction and the right to create standards that cities must follow. That is the law, and in this proceeding, sometimes you can get facts that are emotional and say you should have this right, and I may want you to be able to give you a right, but not if the law or the ordinance doesn't allow it. Ordinances are created through a political process. They are proposed, usually by the Planning Commission, and they end up having Public Hearings and then are passed or not by the Roy City Council. Proposed laws go through this Public process and then the Roy City Council creates the law. The law with Roy City has the same impact that a State law has, as long as it is consistent with State law. A State law may say something Roy can't go against. The city can add to Utah law but can't go against it. I've looked at the state statutory provisions and the Roy City ordinances and I don't see any conflict between Roy City ordinances. In fact, there is not a whole lot there. Roy City ordinances deal more with building permits than with existing structures, which means we can apply state law also. So, in the Board of Adjustment variance type hearing in which we are found, it doesn't give me the authority to go against state law or the ordinance unless we find these criteria that will give me the right to do that. So, in other words, I can't do what I want to do. I am bound by law just like you are and just like Roy City is. When I go through these five elements, which all five again have to be in the affirmative, for me to be allowed to grant a variance.

Utah State Code – Title 10 – Utah Municipal Code, Chapter 9a – LUDMA, Part 7 – Appeal Authority and Variances, section 702 – Variances:

1. 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

ordinance.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The granting of the variance will not substantially affect the General Plan and will not be contrary to the public interest; and
5. The spirit of the land use ordinance is observed, and substantial justice done.

**1. 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 ordinance.**

Mr. Smith: The challenge with reasonable hardship is that Utah Code amplifies what that means, so it's not without a standard. It definitely is a hardship for you to have to tear down your shed or relocate it. That's why I'm glad to hear that it was built by Home Depot- it's a unit that could be moved if you can find a place. But the challenge is that a hardship cannot be self-imposed. If the hardship is self-imposed then there is no unreasonable hardship, so on that element, you lose. You can't show that this one is an unreasonable hardship because it is one that was created by you. Now the issue is that you came to get a building permit or to inquire, which is a good thing that you did, so thank you for doing that, but if Steve said the city does not check on it, let me just tell you how that goes. The Staff of Roy City can't approve something that doesn't comply with city ordinances, like if the city said you go ahead and build it, it fully complies with Roy City ordinances when it does not, that doesn't exempt you. That doesn't give you the right because neither Steve nor any officers within Roy City have the right to change the ordinance as enacted by the legislative body, which is the Roy City Council. So even if they made a mistake, it's like if I asked a police officer what the speed limit is from my home: if he says 40, and it's really 25, and I go 40, another police officer may pull me over. I am going to get a ticket and it's not a defense for me to go before the judge and say the police officer mislead me. If all the police officers say I can drive down Highway 89 at 90 miles per hour, that still does not help me because I am bound by the law, okay, and it is presumed that we understand the law. But what does help you here? You did know there was an eight-foot setback ordinance. Once you knew that, it doesn't matter. If you go ahead and ignore that, thinking that others had ignored the law so you should be exempt because they haven't been told to remove their structures. That doesn't excuse it. The other example is that if we are all driving down 1900- what is the speed limit there? 40 mph? Say it is 40 mph and we are all going 60 mph. If a police officer can only pull one of us over - there is just a practical limit - so if the police office pulled me over, it's not a defense for me to say to the judge that I was speeding but so were everyone else. I still violated the law, and because of that analogy, it is clear that I am going to deny the variance. Let me go through the rest of the issues so you understand them.

**2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Smith: This one also cuts against you as well because the required frontage of 65

feet, you have 80 feet, so if you take 65 feet from 80 feet, you actually have about 65 feet of buildable area from setback to setback, which is more than that which was contemplated by the zoning ordinance. Now, I get that you have a home, and because of the home width, you do not have room for the shed you want on the north side, but there is not a right to have what you want within a zoning area if the zone doesn't permit it. That's not what this element is talking about. So, the second element is not met.

**3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mr. Smith: You don't pass that requirement either. Your property has 65 feet between side yard areas, which allows you to enjoy your property to the extent of 65 feet. No one has the right to enjoy their property beyond that which is permitted by the ordinance. Some are, I'm sure that is the case, and if they are reported then we might be here again on some other cases like yours, or Roy City can be proactive with their enforcement arm, I don't know if Roy City has an enforcement officer, but they're subject to the same situation as you are. There is not a statute of limitations. If a shed has been there for five years, that's not the way it works. If others have sheds in violation of the ordinances, that does not excuse you. That is not what item number 3 is addressing.

**4. The granting of the variance will not substantially affect the General Plan and will not be contrary to the public interest;**

Mr. Smith: The process that the City Council goes through is they enact a General Plan required by state law. The General Plan will have a lot of issues in there for safety. This is a safety issue. With safety issues, we have to be a little more cognizant than with other issues. If homes are too close, there are fire issues and there are access issues. That is why there is a side yard requirement, and also to protect the general welfare of the public, so we don't have people that are able to shake hands through the windows. So that one does not apply either.

**5. The spirit of the land use ordinance is observed, and substantial justice done.**

Mr. Smith: With that in mind, I have gone over criteria one through four and now five. If your application doesn't pass criteria one through four, then the requested variance is really not keeping with the spirit of the land use ordinance. If I granted your variance, which I can't do, but if I could, maybe I'd think differently, but I can't. A variance would run afoul of what the legislative body has created. If variance after variance were granted, then we would not be following the very laws created by the legislative body that we must follow. A variance is not a doctrine created to allow us to ignore the law, it is to be able to say this law, if applied to this unique set of facts, would be unfair. But it wouldn't be unfair to hold you to the same standard as everyone else, particularly where your "hardship" is self-imposed and, to some degree, economic in nature. That is my holding. The requested variance is denied, and you are going to have to move the shed. The variance ordinance does not protect you in this case. Do you have any questions about my holding?

Mr. Wilson: "Nope."



Mr. Smith: "Does the City have any questions?"

Mr. Parkinson: "No."



Melven Smith  
Hearing Officer