



**CITY OF TONTITOWN PLANNING OFFICE**

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Meeting: **October 17, 2022**  
Project: **Sloan Crest SD**  
**Variances**  
Planner: Courtney McNair, Garver

**BOARD OF ZONING ADJUSTMENTS AGENDA ITEM**

**PH 3&4, BZA 2&3**

**VARIANCE REQUEST**

Parcel #: 830-37774-000

**SUMMARY:** The applicant is requesting a variance to allow the lot depth requirement to be varied for several lots, and to allow one lot within the subdivision to have less street frontage than is required as a part of the proposed Sloan Crest Subdivision

**CURRENT ZONING:** R-3 Residential; 3 units / Acre

**CITY WARD:** 3, Penny Baskin, Tim Burress

**FLOODPLAIN:** No

**INFRASTRUCTURE SERVICE AREAS** (not a guarantee of service availability):

**Water:** Tontitown Water

**Electric:** Ozarks Electric

**Sewer/Septic:** Individual Septic Systems

**Phone:** AT&T

**Natural Gas:** Black Hills Energy

**Cable:** Cox Communications

**School District:** Springdale

**PROJECT SYNOPSIS:**

The applicant is requesting Preliminary Subdivision Plat approval for 31 lots: 30 single-family, 1 detention, on 13.19 acres. The project is located on the west side of Barrington Rd. at its intersection with Taldo Loop, approximately 0.80 miles south of Hwy. 412. There is an existing detached dwelling at the property, addressed as 859 S. Barrington Rd. This property is owned by McDonald Building Group, LLC.

The applicant is requesting two (2) Variances:

- **VARIANCE 1:** Proposed lots 1-10, 12-28 do not meet the minimum 120-foot depth requirements.  
**The applicant is requesting a variance to allow lot depths less than the min. required in the R3 Zoning District**
- **VARIANCE 2:** Proposed lot 31 does not meet minimum 80 feet lot width along a public street requirement.  
**The applicant is requesting a variance to allow this lot to have approximately 50 feet of lot width / road frontage in lieu of the required 80 feet as required in the R3 Zoning District**

## **VARIANCE REQUEST 1:**

### **Variance from Appendix B of the Zoning Code to allow lot depths less than the min. required in the R3 Zoning District**

#### *Section 153.262 Powers and Duties:*

*(B) To authorize upon appeal, in specific cases, such variance from the terms of this zoning chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations would result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved. **A variance from the terms of these zoning regulations, shall not be granted by the Board of Zoning Adjustment unless and until:***

- (1) The applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.*

#### **Applicant's Letter:**

Due to the size/shape of this parcel and the proposed width of the street right-of-way, the lots along the north south sides of the proposed east/west street will be approximately 10 feet short of this requirement. The applicant contends, however, that the widths of these lots have been increased to ensure that they will all meet the minimum overall lot size requirement (9,600 square feet). The lots along the proposed north/south street will all meet the required minimum street depths.

**Staff's Response:** The applicant has ensured that the lots will meet the minimum lot sizes required in R3 zoning.

*that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations.*

**Staff's Response:** A large portion of this site could not be developed within the rules of the R3 zoning district if the minimum depth of the lots is not waived.

*that special conditions and circumstances do not result from the actions of the applicant.*

**Staff's Response:** The applicant purchased an existing parcel of land. The shape and layout of the land is not a result of the applicant's actions.

*and that granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning regulations to other lands, structures, or buildings in the same district.*

**Staff's Response:** Granting this waiver will not prevent the orderly subdivision or development of other land in the area. However, future owners for those proposed lots needing reductions in their depth should be made aware that these lots would be constrained with respect to needing variances for setbacks for accessory structures, and other possible additions in the future. Any granting of variances for reduction in lot depth should not be construed as support for granting variances for setbacks and other bulk / area standards that may be applied for in the future.

- (2) *No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.*

**Staff's Response:** There are no nonconforming uses in the surrounding area.

- (3) *The Board of Zoning Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.*

**Staff's Response:** The lots are in conformance with the required lot size for this zoning district.

- (4) *The Board of Zoning Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

**Staff's Response:** Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

- (5) *In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations.*

**Staff's Response:** No additional conditions are recommended at this time.

- (6) *Under no circumstances shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of these zoning regulations in the district involved, or any use expressly, or by implication, prohibited by the terms of these regulations in said district.*

**Staff's Response:** Granting this request will not allow a use that is not permissible by code.

**STAFF RECOMMENDATION:**

Staff recommends **APPROVAL** of the applicant's variance request to allow certain lots to be platted with less than the otherwise required minimum depth in the R3 zoning district.

## **VARIANCE REQUEST 2:**

**Variance from Appendix B of the Zoning Code to allow a lot to have less than the min. required width in an R3 Zone.**

*Section 153.262 Powers and Duties:*

*(B) To authorize upon appeal, in specific cases, such variance from the terms of this zoning chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations would result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved. **A variance from the terms of these zoning regulations, shall not be granted by the Board of Zoning Adjustment unless and until:***

- (1) The applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.*

### **Applicant's Letter:**

The applicant states that, due to the required size and location of the pond, the frontage for this lot measured at the street will not be as wide as the other lots or as required by zoning code. However, the applicant states that the main portion of this lot south of the detention pond will be much larger (wider and deeper) than any other lots in the development and have an area of approximately 1.75 acres. The applicant states that this area of the project cannot be feasibly reached by extending a public road, and that the only practical way to provide access to this land is by winding the driveway around the pond.

**Staff's Response:** It will not be possible to develop this lot as a residential lot without the requested variance.

*that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations.*

**Staff's Response:** A portion of this site would be inaccessible if this variance is not granted.

*that special conditions and circumstances do not result from the actions of the applicant.*

**Staff's Response:** The applicant purchased an existing parcel of land. The shape and layout of the land is not a result of the applicant's actions.

*and that granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning regulations to other lands, structures, or buildings in the same district.*

**Staff's Response:** Granting this waiver will not prevent the orderly subdivision or development of other land in the area.

- (2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.*

**Staff's Response:** There are no nonconforming uses in the surrounding area.

- (3) *The Board of Zoning Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.*

**Staff's Response:** This is the only lot that is unable to meet the lot width requirements.

- (4) *The Board of Zoning Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

**Staff's Response:** As long as all conditions required by the Fire Marshal are met, granting this waiver will not be detrimental to the public health, safety, and welfare in the area.

- (5) *In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations.*

**Staff's Response:** Hydrants shall be spaced no more than 400 feet apart. The Fire Marshal specifically asked the developer to provide information showing that this lot will have adequate fire protection.

- (6) *Under no circumstances shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of these zoning regulations in the district involved, or any use expressly, or by implication, prohibited by the terms of these regulations in said district.*

**Staff's Response:** Granting this request will not allow a use that is not permissible by code.

**STAFF RECOMMENDATION:**

Staff recommends **APPROVAL** of the applicant's waiver request to allow lot 31 to be platted with less than the otherwise required minimum width along a public road in the R3 zoning district.