APPEALS AND VARIANCE OFFICER AGENDA

Wednesday, July 15, 2026, 3:00 PM
1020 East Pioneer Road
Draper, UT 84020
Administrative Conference Room

1. Approval of Previous Meeting Minutes

1.a March 31, 2026 MInutes

2. Items for Consideration

2.a Hyde Administrator Interpretation Appeal
On the request of Taylor and Kelsey Hyde for an appeal of a Zoning Administrator Interpretation regarding non-conforming setbacks for the property at 1159 East 13400 South, located in the RA2 (Residential Agricultural) zone. Application 2026-0121-APPL. Staff contact is Jennifer Jastremsky, 801-576-6328, jennifer.jastremsky@draperutah.gov.

3. Adjournment

I, the City Recorder of Draper City, certify that copies of this agenda for the **Draper Appeals and Variance Officer** meeting to be held **July 15, 2026**, were posted at Draper City Hall, Draper City website www.draperutah.gov, and the Utah Public Notice website at www.utah.gov/pmn.

Nicole Smedley, CMC, City Recorder
Draper City, State of Utah

In compliance with the Americans with Disabilities Act, any individuals needing special accommodations or services during this meeting shall notify Nicole Smedley, City Recorder at (801) 576-6502 or nicole.smedley@draperutah.gov, at least 24 hours prior to the meeting.

MEMO

To: Appeals and Variance Officer
From:
Date: 2026-07-15
Re: March 31, 2026 MInutes

Comments:

ATTACHMENTS:

033126 Draper AVO Hearing- Draft for approval.pdf

MINUTES OF THE DRAPER CITY APPEALS AND VARIANCE OFFICER MEETING HELD ON TUESDAY, MARCH 31, 2026, IN THE DRAPER CITY COUNCIL CHAMBERS

PARTICIPATING: Tim Pack of Clyde, Sessions & Snow

STAFF: Jennifer Jastremsky, Community Development Director
Spencer DuShane, Assistant City Attorney
Todd Draper, Planning Manager
Matt Symes, Building Official
Lori Stout, Executive Assistant

11:00 AM Business Meeting

Appeals and Variance Officer, Tim Pack, called the meeting to order at 11:00 a.m.

1. Approval of Previous Meeting Minutes.

A. Approval of January 9, 2026, Meeting Minutes.

Mr. Pack reviewed the Meeting Minutes from January 9, 2026, and found them to be correct.

Mr. Pack APPROVED the Meeting Minutes from January 9, 2026.

2. Items for Consideration.

A. Chris Gardner Variance.
On the Request of Chris Gardner for a Variance to the Rear Yard Setback Standards for a Detached Accessory Building and the Distance Requirement from Buildings Located upon an Adjoining Lot on the Property Located at 11674 South Douglas Vista Drive in the R3 (Single-Family Residential) Zone. Application 2026-0024-VAR. Staff Contact is Jennifer Jastremsky, 801-576-6328, jennifer.jastremsky@draperutah.gov.

Mr. Pack introduced the agenda item and explained that it relates to property located at 11674 South Douglas Vista Drive. It was noted that the applicant is Chris Gardner and Legal Counsel for the applicant is Chad Hutchings. Mr. Hutchings explained that the firm stepped into this case somewhat last minute, as the prior Legal Counsel for the applicant became a judge. Mr. Hutchings will be handling the documents that were prepared on behalf of the applicant, but he did not prepare the documents himself. Mr. Pack reported that he has read all of the submitted documents.

Mr. Hutchings stated that this is a variance request, as the City states the building does not comply with the setbacks. He explained that the applicant hired someone to handle the construction and relied on the knowledge and expertise of that individual. While there have been statements made that construction was done in ignorance of the law, the reality is that this situation occurred because of what turned out to be an unlicensed contractor. This is not a situation where there was ignorance of the law, but there was a mistake of fact. Mr. Hutchings noted that Legal Counsel for the City would like the Appeals and Variance Officer to believe that this is a self-imposed and economic hardship, but it was not self-imposed. The applicant relied on an expert to handle the work correctly. While there is some economic hardship involved, there is much more than that to consider.

If the variance is not granted, the entire building will need to be demolished. The applicant would then need to decide whether it is possible to rebuild in some other way on the property. Mr. Hutchings reported that this would more than double the costs that were originally invested in the project. While it is possible to sue the contractor, based on his previous work experience, it is unlikely that money will actually be received by the applicant. Mr. Hutchings stated that there are special circumstances in this case. He shared information about the Post-Traumatic Stress Disorder ("PTSD") the applicant is living with. The building was intended to allow the applicant to deal with, treat, and live with his PTSD. There is a special circumstance, because the building is intended for treatment and care.

Mr. Hutchings mentioned the Draper City General Plan and a statement that the building does not conform to the General Plan, according to the City. In the brief that was submitted, there were comments about the semi-rural nature of the City. However, most of the farms are gone, and there are mostly residential houses and commercial sites. The nature of the City has changed over time.

Mr. Hutchings shared an aerial image of the neighborhood. The overall nature of the neighborhood would be described as a suburb, as there are houses in the neighborhood that are fairly close together. Some residents have sheds, pools, and other accessory uses. He pointed out that other houses in the area have large outbuildings on their properties. The outbuilding on the applicant property is not much of a deviation to what is already in the neighborhood. Discussions were had about the photographs that were submitted. It was clarified that 11674 South Douglas Vista Drive is the applicant property. There was a photograph of the structure submitted ahead of the hearing.

Mr. Pack referenced the photograph on Page 26 of the submitted materials. Mr. Hutchings explained that the photograph is an example of a non-conforming use in the neighborhood. Mr. Pack asked how many examples there are of non-conforming accessory buildings. Mr. Hutchings is not certain how many example photographs were submitted by the previous Legal Counsel. Mr. Gardner stated that the previous Legal Counsel submitted materials to indicate that there are both accessory buildings and homes that are not following the setback requirements. Mr. Hutchings reported that the outbuilding being discussed in this case is approximately 400 square feet in area. He shared a satellite view of the neighborhood and explained that this building is not overly large and is not visible from the street. None of the neighbors have an issue with the building that has been constructed. Several are supportive of it being there, as it increases the privacy and enjoyment of their own properties.

Mr. Hutchings stated that it is important to consider whether there is harm caused by this situation. There is no one being harmed by the building being on the applicant property. None of the adjacent property owners have complaints and the building is hidden by the house. He reiterated that this is not a semi-rural neighborhood, as it is a suburb with residential homes and accessory uses. Removal of the building would cause harm to the applicant. Mr. Pack reported that he read the submitted applicant statement as well as all of the submitted materials. He understands the current situation.

Mr. Gardner explained that his condition leaves him dealing with a lot and he does not have a normal existence. He has severe mental health problems, but is doing his best to provide for his two year old child. Mr. Gardner wanted this building to be multi-use. It was built after dealing with a flooding issue in his yard. There was a drain put around his property that pushes the water into the northwestern corner, which is where the structure is located. It was always swamped out back there, which caused

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a problem for his neighbor to the north. Experts stated that gravel and concrete would be beneficial there. Mr. Gardner shared information about his neighbors and their experiences living in the area.

Mr. Hutchings pointed out that the electricity was already there and there was no additional power run to the building. Additionally, the drainage was already in that location as well, so there was no additional sewer or plumbing work that needed to be done. The construction of the pad and the building has mitigated flooding problems for both the applicant and his neighbors. He reiterated that the structure provides mitigation and prevents flooding in this area, which is a benefit to the neighborhood. That is a special circumstance and a reason the variance should be granted.

Assistant City Attorney, Spencer DuShane, explained that a variance is an extraordinary remedy and should be rare. Variances within the State of Utah are so rare that there are only a handful of cases where a variance has been granted and upheld. The City is sympathetic to the situation that has been described. Mr. DuShane understands that non-licensed contractors are hired from time to time, but the remedy for that situation is not necessarily to come to the City and ask for an extraordinary remedy. The remedy is to go after the contractor, even though that does not always work out. The City is not in a position to bail out residents when there is a negative situation that occurs with a contractor. The City is not necessarily opposed to the building, but the encroachment into setbacks.

Mr. DuShane acknowledged the comments made about other non-conforming structures. However, a lot of the buildings that were mentioned in the submitted materials are under 200 square feet. Sheds and outbuildings that are under 200 square feet are not required to meet the same setback standards. The applicant outbuilding is over 200 square feet and therefore needs to meet the setback standards.

Mr. DuShane explained that all of the elements required for a variance are attached to a property rather than to an individual. The reason for this is because people might move or leave the area. As an example, the current neighbors might support the building, but future neighbors might not.

Mr. DuShane shared a case out of Summit County, which stated that failure to enforce an ordinance in the past does not preclude ability to enforce an ordinance in the present or in the future. Mr. DuShane noted that if there are buildings that violate setbacks in the same area, failure to enforce previously does not mean the City cannot enforce now. As for earlier comments about this area in Draper not being semi-rural, he agrees with Mr. Hutchings. That being said, the General Plan identifies it as a semi-rural area. Until the General Plan changes, the evaluation must consider this.

Mr. DuShane noted that there are competing thoughts about substantial property rights. There are some who believe it is possible to do whatever they want with their private property. There are others who believe in a lot of restrictions, which can be seen when there are overly restrictive Homeowners Associations ("HOA"). He looks at zoning laws and land use laws as a balance between the two. The City enforcing the existing zoning laws does not interfere with a substantial property right.

Mr. DuShane described another scenario in the community. There is a situation elsewhere in the City where there is a legal non-conforming building that encroaches into the setbacks. That property owner built additions that further encroached into the setbacks. In that situation, the previous neighbor was supportive of the proximity, but the new neighbor is not and is asking the City why the ordinance has not been enforced. He noted that the City tries to enforce where possible.

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Mr. DuShane explained that the City is supportive of the applicant moving the building to match the setbacks, as long as all of the applicable zoning and land use laws are met. The City does not believe Mr. Gardner can show that all five criteria under the variance statute or City ordinances have been met. For that reason, the City asks that the variance at 11674 South Douglas Vista Drive be denied.

Mr. Pack asked if there is anything the Legal Counsel for the applicant would like to add. Mr. Hutchings reported that this building cannot be moved. It will either remain if the variance is granted or it will need to be demolished. The cost of moving this would be too high for it to be feasible. Mr. Hutchings stated that it is not appropriate to make a decision on the variance based on speculation about a hypothetical future neighbor. It was added that Mr. Gardner has no intention of relocating from the property for the remainder of his life. He reiterated that hypothetical future scenarios should not be taken into account by the Appeals and Variance Officer during this process.

Mr. Pack wanted to know if there was a condition on the property that might have prevented a contractor from constructing the building in accordance to the setback requirements. Mr. Hutchings was not certain. Theoretically, he believed a structure that met the same purpose but had a different floor plan could have been constructed on the property. His understanding is that the location was selected based on the existing conditions. Mr. Gardner shared information about the trees that have been added for privacy. There have already been screening efforts made in the neighborhood.

Mr. Pack reported that variances are difficult to obtain. As the Appeals and Hearing Officer, he is only able to grant variances in limited circumstances. This is a difficult decision, so he will study all of the documents that have been submitted, review the notes made, and consider the arguments. He will issue a written decision within the next week. Mr. Pack thanked everyone for their time.

Mr. Pack closed the hearing and reiterated that the written ruling will be issued within the next week.

3. Adjournment.

The meeting adjourned at 11:51 a.m.

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