



## STAFF REPORT

**To:** Board of Adjustment  
**From:** Sean Lewis, County Planner  
**Date of Meeting:** October 24, 2019  
**Type of Item:** Variance - Public Hearing, Possible Action  
**Process:** Judicial Review

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**RECOMMENDATION:** Staff recommends that the Board of Adjustment review the proposed variance to increase the maximum height limit for a single family home, conduct a public hearing and make a determination as to whether a variance is warranted in this instance.

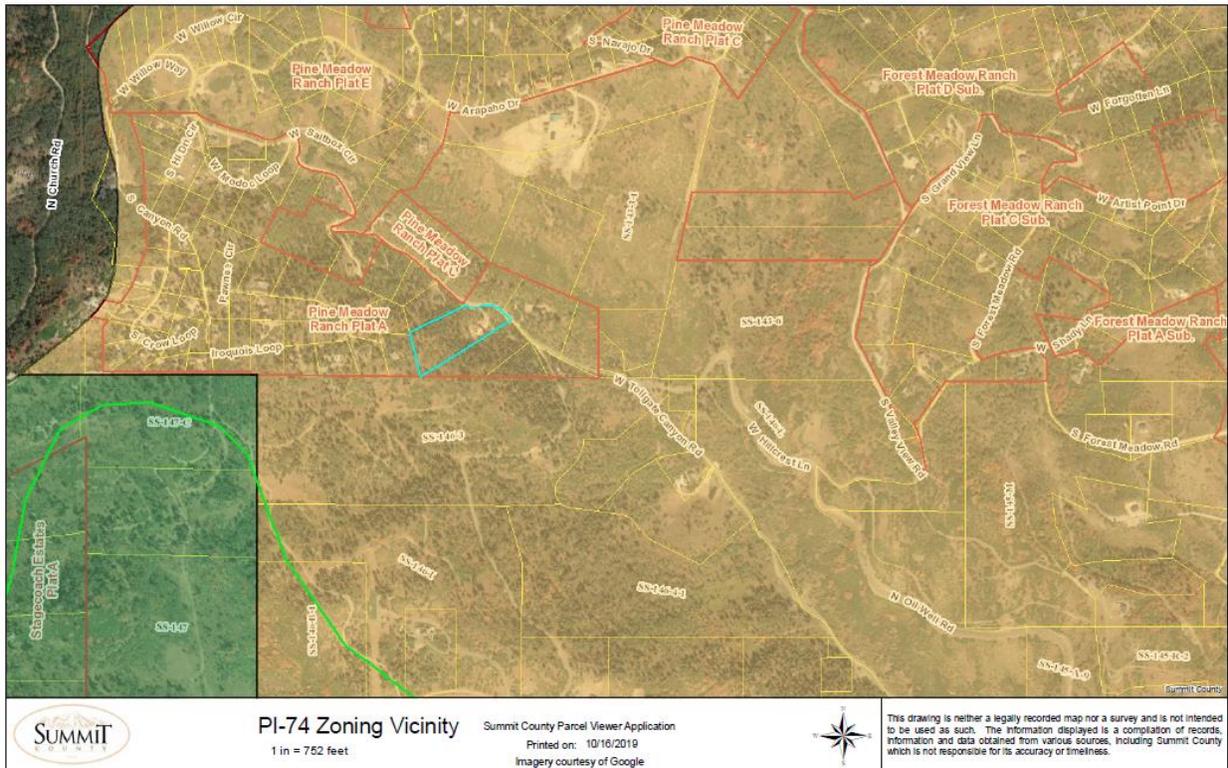
### Project Description

**Project Name:** Menez Height Variance  
**Applicant(s):** Justin Keys, Timothy Menez  
**Property Owner(s):** Timothy Menez  
**Location:** 1667 W Tollgate Canyon Road  
**Zone District:** Agriculture - 80 (AG-80)  
**Parcel Number and Size:** PI-74, 4.36 Acres  
**Type of Process:** Variance  
**Final Land Use Authority:** Board of Adjustment

### Proposal

The applicant requests that the Board of Adjustment grant a variance from Eastern Summit County Development Code Section 11-3-4.B, that establishes a 32 foot height limit for all structures in the Agriculture-80 (AG-80) zone. The variance would increase the maximum height limit for a home on the lot from 32 feet to 38 feet above existing grade. The Board of Adjustment has final decision authority for a variance.

## Vicinity Map



## Background

The applicant is the owner of a platted lot located at 1667 W Tollgate Canyon Road.

Summit County issued a building permit for the construction of a single family home on November 28, 2017. The plans showed that the cabin would have a maximum height of 32 feet, conforming to Eastern Summit County Development Code Section 11-3-4.B. At the point of construction where the applicant's contractor submitted a certificate of elevation and survey verifying the location of the structure relating to property lines and building height, it was discovered that the structure exceeded the maximum height by 5.5 feet.

The applicant states that the original intent was to build a home that complied with the 32 foot height limit but a fraud was committed where the original contractor falsified the plans submitted to Summit County to show compliance (see exhibit A). At the time the fraud was discovered the building was substantially complete.

The submitted certificate of survey also showed that the built structure did not comply with building setbacks. The applicant recently completed a plat amendment process to remedy the situation and the structure is now compliant with setback regulations.

## Analysis and Findings

The standards required for granting a variance are set forth in Utah Code 17-27a-7-702 and the Eastern Summit County Development Code Section 11-4-10, which standards are provided below. If the Board of Adjustment finds that the standards are met, then a variance to grant additional height may be approved.

**Standard 1:** 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 land use ordinance. **COMPLIES**

**Analysis:** Staff finds that if not for the fraud where compliant plans were submitted to and approved by Summit County, the applicant would not have issued a building permit for construction on a home that did not comply with the Eastern Summit County Development Code Standards.

Staff finds that the fraud case perpetrated by a third party creates an unusual hardship on the applicant that is peculiar to the property and not general to other homes within the AG-80 zone.

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

**Analysis:** Staff finds that the circumstances surrounding the fraud creates a special circumstance not general to other properties in the zone.

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

**Analysis:** Per the Eastern Summit County Development Code, a lot within a platted subdivision constitutes a Conforming Parcel which is eligible for development of a single family home.

Staff finds that granting the variance is essential to the enjoyment of a substantial property right as the applicant would otherwise be asked to remove or modify a substantial portion of the already built structure to comply.

**Standard 4:** The variance will not substantially affect the general plan or be contrary to the public interest. **COMPLIES**

**Analysis:** The Eastern Summit County General plan encourages developers to “Work to ensure that new development is suitably located to minimize impacts to surrounding areas.” The is not readily visible from the County roadway. As a result, the impact of the

extra 6 feet will have little visual impact on the surrounding property owners and will not be contrary to the policies and goals of the general plan.

**Standard 5:** The spirit of the Zoning Ordinance is observed and substantial justice done.

**COMPLIES**

**Analysis:** Section 11-1-1 of the Eastern Summit County Development Code states that one of the purposes of the Code is to “Allow appropriate flexibility with regard to the location of land uses and other zoning matters, so long as the resulting use of the land is compatible with its surroundings and generally consistent with the general plan”

The structure is located in a secluded area away from other homes. The purpose statement of the Code states that it was written to allow flexibility of location. By granting the variance, the Board of Adjustment will allow the applicant to build a home 6 feet higher than what is allowed by Code while meeting the purpose and intent of the Development Code. Thereby it will be compatible with the spirit of the Zoning Ordinance, and substantial justice will be done.

**Recommendation**

Staff recommends that the Board of Adjustment review the proposed variance to increase the maximum height limit for a single family home, conduct a public hearing and make a determination as to whether a variance is warranted in this instance. Should the Board find that a variance is warranted, Staff has drafted the following Findings of Fact, Conclusions of Law, and Conditions of Approval to assist the Board in their decision making.

**Findings of Fact:**

1. The applicant is owner of parcel #PI-74.
2. Parcel #PI-74 is approximately 4.36 acres in size.
3. Parcel #PI-74 is located at 1667 W Tollgate Canyon Road.
4. Parcel #PI-74 is platted lot 74 of the Pine Meadow Ranch Plat A Subdivision
5. There is a single family home under construction on the lot.
6. The structure was built per plans submitted and approved by Summit County. It was later learned that the approved plans had been forged by a third party.
7. Upon a regular inspection of the property and review of a submitted certificate of elevation and certificate of survey, it was determined that the structure was not compliant with the Eastern Summit County Development Code Standards regarding building height.
8. The home is sited so that it is difficult to see from any public roadway.

**Conclusions of Law:**

1. If not for the fraud where compliant plans were submitted to and approved by Summit County, the applicant would not have been allowed to begin construction on a home that did not comply with the Eastern Summit County Development Code Standards. The fraud case perpetrated by a third party creates an unusual hardship on the applicant that is peculiar to the property and not general to other homes within the AG-80 zone.
2. The circumstances surrounding the fraud creates a special circumstance not general to other properties in the zone.
3. Granting the variance is essential to the enjoyment of a substantial property right as the applicant would otherwise be asked to remove or modify a substantial portion of the already built structure to comply.
4. the impact of the extra 6 feet will have little visual impact on the surrounding property owners and will not be contrary to the policies and goals of the general plan.
5. By granting the variance the Board of Adjustment will allow the applicant to build a home 6 feet higher than what is allowed by Code while meeting the purpose and intent of the Development Code and thereby it will be compatible with the spirit of the Zoning Ordinance, and substantial justice will be done.

**Conditions of Approval:**

1. The maximum height of the building shall not exceed 38 feet above existing grade as required by the Eastern Summit County Development Code.

**Public Notice, Meetings and Comments**

This item was publicly noticed as a public hearing with possible action by the Board of Adjustment. Notice of the public hearing was published in the October 11, 2019 issue of *The Summit County News*. Courtesy postcards were mailed to all property owners within 1,000 feet of the subject Parcel.

**Attachments**

Exhibit A – Applicant Attorney Brief