



# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on a request for a variance to the 50 foot stream corridor setback for the purpose of building a barn

**Agenda Date:** Thursday, June 18, 2015

**Applicant:** Weston Loegering

**File Number:** BOA 2015-02

### Property Information

**Approximate Address:** 1958 N 3850 E, Eden UT

**Project Area:** 18.46 acres

**Zoning:** Forest Valley Zone (FV-3)

**Existing Land Use:** Residential

**Proposed Land Use:** Remain as existing

**Parcel ID:** 20-095-0001

**Township, Range, Section:** T7N, R1E, Section 4

### Adjacent Land Use

|                           |                      |
|---------------------------|----------------------|
| <b>North:</b> Residential | <b>South:</b> Forest |
| <b>East:</b> Forest       | <b>West:</b> Forest  |

### Staff Information

**Report Presenter:** Ben Hatfield  
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**Report Reviewer:** SW

## Applicable Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 14 (Forest Valley FV-3 Zone)
- Weber County Land Use Code Title 104 (Zones) Chapter 28 (Ogden Valley Sensitive Lands Overlay Districts)

## Background

The applicant is requesting a variance for a reduction to the stream corridor setback requirements of the Ogden Valley Sensitive Lands Ordinance in order to build a barn.

The application and an explanation of the request (Exhibit A) have been prepared by the applicant. Exhibit B is a site plan from the applicant. Exhibit C is the subdivision plat for the lot showing the drainage and the buildable area. Exhibit D is a map locating drainages requiring a setback. Exhibit E is the applicable portion of the Land Use Code regarding stream corridor setbacks.

This property was first approved and recorded in June of 2005 as Lot 1 of Loegering Subdivision. This 18.46 acre lot is accessed by a private right of way through other properties to the northwest. The access then crosses a drainage and opens to a buildable area (approximately 1.72 acres). This buildable area as shown in Exhibit C lies at the base of some steep slopes and between two draws, one of which has the aforementioned drainage and is to the northwest of the area, the other, which is much smaller, to the southeast. During some months of the year, soil in this area is wet and unsuitable for building.

On December 20, 2005 the Weber County Commission approved an ordinance amendment (2005-19) which created setback requirements from natural ephemeral streams (drainages) such as this. On January 22, 2008 this text was moved to a separate chapter for properties in the Ogden Valley and included in the Ogden Valley Sensitive Lands Overlay Districts (2008-4). This later amendment included maps of those streams for which the setbacks were to be applied (see Exhibit E).

In 2006 the applicant constructed a new home within the buildable area of Lot 1, well away from the drainage. On July 5, 2007 the applicant's contractor applied for a permit for a barn with an agricultural exemption. The site plan used for this permit (Exhibit F) did not show setback distances on the plan, and the permit was issued illustrating the setbacks for the zone but not the stream corridor.

In December of 2014 contractors representing the owner made application for permits to install solar panels. One set of panels were to be located on the ground and another would be located upon an addition to the barn. In March of 2015 different contractors made application for an addition to both sides of the barn (Exhibit G).

In reviewing these plans, Planning Division staff requested that setback distances be shown from the stream to the nearest portion of the addition. It was discovered that the barn was already built approximately 35 feet from the stream. Staff met with the contractor on site to verify if any encroachment had occurred, and if any addition would further encroach. It was apparent that a site plan with more detail would be needed. The applicant has provided that with Exhibit H.

This site plan shows the flattened buildable area which the owner had prepared with the subdivision in 2006. This left a sizable slope in the 28 feet of land in between the stream and any possible building area.

The request for the 22 foot variance to build within the stream corridor is based on the following items:

- The suitable 1.72 acre building area of the 18.46 acre lot was determined prior to the passing of the stream corridor standard. This preserved 91% of the lots area to be preserved with no development.
- Much of the lot is covered in steep slopes or drainage areas. Buildings are restricted to only that area next to the access turnaround.
- The applicant has voluntarily undergone extensive re-vegetation and beautification of the slope on either bank of the stream.
- The addition of the barn would be in an area already graded and disturbed. With the additional increased storage it is possible that additional buildings on the lot would not be needed.

## Summary of Board of Adjustment Considerations

Title 102 Chapter 3 of the Weber County Land Use Code states that one of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Land Use Code. In order for a variance to be granted it must be shown that all of the following criteria have been met:

- a. *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 Code.*
  1. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*
  2. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
- b. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
  1. *In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.*
- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- d. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- e. *The spirit of the land use ordinance is observed and substantial justice done.*

Staff's analysis and findings are discussed below:

- a. Although the lot area is large and many other owners in the FV-3 Zone have properties with some slope, most are at lower elevations with less extreme slopes. This lot also has a limited buildable area, access requirements, and the drainage. With a portion of the barn already built, literal enforcement of the Land Use Code would require an undesirable result. As the lot was designed prior to the additional stream standards and with the barn already built, this request is the best scenario to correct an error made seven years ago.

- b. The special circumstances attached to this property are based on the slope, access, and reduced buildable area created while platting the lot.
- c. Zoning gives the property owner rights to construct an accessory building. Based on the current situation the barn would need to be removed or replaced elsewhere on the lot.
- d. No changes to the General Plan will result if the variance is granted
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code, but to correct a mistake that occurred seven years ago. Granting the request would serve as substantial justice to allow the current owners continued enjoyment of their property as has been done for many years.

### Conformance to the General Plan

Accessory buildings are allowed as a permitted use in the FV-3 Zone and granting this request will not increase the number of existing dwelling units in the area. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Ogden Valley General Plan.

### Conditions of Approval

- That proposed addition maintain a minimum distance of 28 feet to the stream at the nearest location, and that the proposed site plan be followed.
- Meet all other applicable review agency requirements.

### Staff Recommendation

Staff recommends *approval* of the variance for a 22 foot encroachment into the stream corridor setback based on its compliance with the applicable variance criteria discussed in this staff report.

### Exhibits

- A. Application and narrative
- B. Applicants early site plan
- C. Subdivision plat
- D. Map of stream corridors
- E. Applicable sections of the Sensitive Lands Ordinance
- F. 2007 permit for the barn
- G. 2015 application for the addition to the barn
- H. Surveyed site plan

# Maps

