

Weber County Board of Adjustment Application

Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed 06 May 2016	Fees (Office Use) \$225.00	Receipt Number (Office Use)	File Number (Office Use)
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Property Owner Contact Information

Name of Property Owner(s) Carol Browning		Mailing Address of Property Owner(s) 6182 South 2855 East Ogden, Utah 84403	
Phone Legal counsel: 801-389-9733	Fax	Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Email Address Legal counsel: rreeve@reevelawgroup.com			

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s) Richard Reeve (Legal Counsel)		Mailing Address of Authorized Person 1957 Maple Grove Way Ogden, Utah 84401	
Phone 801-389-9733	Fax	Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Email Address rreeve@reevelawgroup.com			

Appeal Request

- A variance request:
 __ Lot area __ Yard setback __ Frontage width __ Other: _____
- An Interpretation of the Zoning Ordinance
- An Interpretation of the Zoning Map
- A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning Ordinance
- Other: **An appeal from a decision of the Land Use Authority in regards to an Application for Access Exception (see the attached for substance of appeal)**

Property Information

Approximate Address		Land Serial Number(s)	
Current Zoning			
Existing Measurements		Required Measurements (Office Use)	
Lot Area	Lot Frontage/Width	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback	Rear Yard Setback	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback	Side Yard Setback	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)



Applicant Narrative

Please explain your request.

see attached

Variance Request

The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:

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 Zoning Ordinance.
 - a. In determining whether or not enforcement of the land use ordinance 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.
 - b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

N/A



Variance Request (continued...)

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

a. In determining whether 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.

Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:

N/A

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

N/A

Variance Request (continued...)

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

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

Property Owner Affidavit

I (We), _____, depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.

- Already on file with the County
in regard to this matter

(Property Owner)

(Property Owner)

Subscribed and sworn to me this _____ day of _____, 20 _____,

(Notary)

Authorized Representative Affidavit

I (We), _____, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), _____, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

- Already on file with the County in
regard to this matter

(Property Owner)

(Property Owner)

Dated this _____ day of _____, 20 _____, personally appeared before me _____, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

(Notary)



Weber County Corporation

Weber County
2380 Washington Blvd
Ogden UT 84401

Customer Receipt	
Receipt Number	12474

Receipt Date
05/09/16

Received From:
Reeve Law Group PC

Time: 15:58
Clerk: ssillitoe

Description	Comment	Amount
BOA Filing Fee	BOA Filing Fee	\$225.00

Payment Type	Quantity	Ref	Amount
CHECK		109	

AMT TENDERED: \$225.00

AMT APPLIED: \$225.00

CHANGE: \$0.00



**APPEAL TO THE WEBER COUNTY BOARD OF ADJUSTMENT
OF
PLANNING DIVISION NOTICE OF DECISION
OF
THE REQUEST FOR AN ACCESS EXCEPTION (#2013-03)**

I. DECISION BEING APPEALED

This is an appeal to the Weber County Board of Adjustment of the Planning Director's Notice of Decision, dated April 18, 2016, granting an Application for an Access Exception (the "Application") in connection with the proposed development of the Pas De Calais Subdivision. The Application was submitted by Matthew Rasmussen (the "Applicant"). Mr. Rick Grover, acting director of the Planning Department, is the designated land use authority under Weber County Code (the author of the decision at issue in this appeal shall be referred to herein as the "Planning Department" or the "Department"). Although the decision is dated April 18, 2016, the decision was not mailed until April 22, 2016.

For the Board's reference, copies of the following documents have been provided:

- (1) A copy of the Notice of Decision;
- (2) A copy of the Application; and
- (3) A copy of Appellant's written submittal to the Planning Department.

II. IDENTITY OF APPELLANT

The appellants herein are owners of real property immediately adjacent to the Pas De Calais Subdivision and the public land on which the private access will run. The appellant is:

Carol C. Browning
6182 South 2855 East
Ogden, Utah 84403

This matter was previously before the Weber County Board of Adjustments. The matter was brought before the Board of Adjustments in or about April of 2014. At the time, the Board of Adjustments declined to hear the appeal by ruling that they did not have jurisdiction to hear the appeal. That decision was appealed to the District Court, which found that the Board of Adjustments was in error and remanded the case back to the Planning Department so that Ms. Browning could be heard and have a procedural right to have her comments and arguments considered. Ms. Browning now appeals the substance of the Notice of Decision.



III. RELEVANT CODE SECTION

The Application must be construed under Weber County Code § 108-7-31. Utah Courts have consistently held that County government must interpret code sections to give meaning to all the words and provisions of the Code. See *Carrier v. Salt Lake County*, 104 P.3d 1208 (Utah 2004). The Code, in relevant part, reads as follows:

Lots/parcels which do not have frontage on a street, but which have access by a private right-of-way or access easement may, under certain circumstances, use a private right-of-way or access easement as the primary access. Approval is *subject to the applicant demonstrating compliance* with the following criteria and conditions:

....

c. Based on *substantial evidence*, it shall be shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. *Financial adversity shall not be considered*; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to *unusual soil, topographic, or property boundary conditions*...

a. It shall be demonstrated that the agricultural parcel or other lot/parcel has *appropriate and legal access* due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right; and...

Weber County Code, §108-7-31 (emphasis added)

IV. BASIS OF APPEAL

As more specifically set forth below, the Planning Department erred in its decision approving the Application. The Department erred as a matter of law by failing to identify the “substantial evidence” that its decision was based upon, consider other practical and feasible alternatives for access, and consider “unusual soil, topographic, or property boundary conditions.” *See* § 108-7-31.

V. THE DEPARTMENT FAILED TO CORRECTLY APPLY THE CODE.

Appellant asserts that the Planning Department erred in its interpretation and application of Weber County Code § 108-7-31(1)(b) when it failed to find substantial evidence to support its decisions.

This Board has jurisdiction and authority over this appeal pursuant to Utah Code § 17-27a-701(1) and Weber County Code § 102-3-3. This Board must overturn the Department’s decision if the decision is not supported by substantial evidence in the record and is arbitrary, capricious, or illegal. *See Harmon City, Inc. v. Draper City*, 997 P.2d 321 (Ut. Ct. App. 2000). The Utah Supreme Court has held that government municipalities must comply with mandatory provisions of its own ordinance, substantial



compliance is not sufficient. *See Springville Citizens for a Better Community v. City of Springville*, 979 P.2d 332 (Utah 1999).

The Planning Department's decision is substantively deficient and arbitrary and capricious for the following reasons:

- (1) Section 108-7-31 is for "lots which do not have frontage on a street." As the decision makes clear in paragraph 5, the applicants do have frontage on Melanie lane through other property that the applicants own. The County should not be in the business of bailing property owners out of a bad investment where they have purchased property that is either land-locked or in which access will be difficult or expensive. Obtaining access across public land is almost always going to be the most cost-effective approach for an owner/developer and allowing such access in one case will set a precedent for access in other cases.
- (2) The Planning Department's focus on public roads is misleading because it does not compare apples to apples. The Department focuses several of its paragraphs on the potential impacts of a public, county-dedicated road. The Department's argument is that utilizing a public road for access through existing frontage or across a nearby empty lot would create unacceptable impacts. The focus on a public road is misleading, however, because the applicant has always focused on a private drive to access the proposed two-lot residential subdivision. Since the focus is, and always has been on a private drive, it is misleading to insert a discussion of a public road and its impacts into the analysis of the Application. Removing a public road from the discussion, as has always been the case, erases or substantially mitigates the potential for unsafe access on Melanie Lane through existing frontage. It also minimizes concerns about a public road creating disallowed double frontage or corner lots with modified setbacks.
- (3) The County Code requires the Planning Department to consider other alternatives to access and demonstrate that those alternatives are impracticable and unfeasible. In its decision, the Planning Department quickly, and without citation to any evidence, discounted Ms. Browning's argument for "alternative access" that could be obtained by acquiring frontage from an adjoining vacant lot that is on the market. The Department incorrectly assumes that using that lot for access would render it unbuildable and remove its taxable value. This is again misleading. The lot at issue has substantial frontage. The placement of a private access drive across that property, perhaps via a private easement, would not impact the residential use of the property. It could still be built upon. If not built upon the lot would actually generate a higher taxable value for the County than that of a primary residential residence.
- (4) The Code requires the County to consider a non-exclusive list of factors when evaluating the Application. These factors are listed as "soil conditions, topographic, or property boundary conditions." In addition, to these factors, Ms. Browning raised issues about water issues, the proximity of the proposed access to the supporting berm of a water catchment basin, the existence of



many runoff corridors and natural streams, the instability of the former pond bed, and the history of large scale landslides in the area. The County fails to address almost all of these issues even though they were raised by Ms. Browning. Not only are these issues not discussed, as required by code, there is no substantial evidence about any of these factors other than a link to a geology website. These are serious issues. The Code requires substantial evidence. The Planning Department has failed to follow the Code and provide the required evidence.

- (5) The applicant claims that there is data in place that addresses these issues; however, the section of the application in which the applicant is to list “substantial evidence” was left totally blank by the applicant. It is not the County’s job to come up with the evidence needed to support its decision. That burden rests on the Applicant and it has not been met.

VI. CONCLUSION

The decision of the Planning Department approving the Application for access across public land should be overturned. At a minimum, the matter should be remanded to County staff with instructions that they consider other feasible and practical ways to access the property. In the event that there is no other practical or feasible way to access the property, a record outlining the substantial evidence in support of such a determination should be provided. For all the foregoing reasons, the Board of Adjustment must reverse the decision of the Planning Department and deny the Application.

Respectfully submitted this 6th day of May, 2016.

Richard Reeve
Attorney for Appellant