



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 07/22/2016	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) Green Hills Estates Home Owner's Association		Mailing Address of Property Owner(s) Zane S. Froerer 2510 Washington Blvd. #200 Ogden Utah 84407	
Phone (801) 389-1533	Fax		
Email Address zane.froerer@froererlaw.com		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s) Zane S. Froerer		Mailing Address of Authorized Person Zane S. Froerer 2510 Washington Blvd. #200 Ogden Utah 84407	
Phone (801) 389-1533	Fax		
Email Address zane.froerer@froererlaw.com		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	

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: _____

Property Information

Approximate Address 9686 E Maple Rd. Lot 6, Huntsville, Utah 84317	Land Serial Number(s) 211300003
Current Zoning FR-40	

Existing Measurements		Required Measurements (Office Use)	
Lot Area 40.29 Acres	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.

Applicant Tim Charlwood as owner of the above identified parcel applied for a Conditional Use Permit (CUP) on May 25, 2016 seeking to have granted a CUP for a recreational lodge to be permitted on Lot 6 of the Sanctuary Subdivision on . Such a use is a "conditional" use under the FR-40 zone and was such at the time the Sanctuary Plat application was made and when said Plat was recorded on July 16, 2013. All of Sanctuary, including Lot 6, is accessed through a private road owned and maintained by Green Hills. That access, the scope, the rights, and all use is determined between Green Hills and Sanctuary through a Declaratory Judgment and Easement Agreement And Declaration of Covenants. That Agreement limits development on any Sanctuary lot to a single family dwelling and there would be no applications for higher density. This limitation was to define the scope of use of the shared private road commonly known as Maple Drive. In the approved Sanctuary Plat, Maple Drive is identified as a private right-of-way that provides the exclusive access to the Sanctuary Lots. Further, the Plat specifically refers to the agreements that define reciprocal access rights to trails within Sanctuary. Further, the Agreement imposes upon Sanctuary lot owners a duty to contribute to the maintenance and repair costs of the road with the rates being calculated on a rate equal to that of a single family dwelling. The CUP permits the construction of a 16 bedroom recreational lodges with rental and repair shop as accessory uses. It is anticipated, by the representations in the Application, that dining services and hotel guest services will also be operated out of this lodge. The Application for the CUP failed to provide the Easement Agreement and Declaration of Covenants, a copy of the 2013 Plat. Instead, the Application relied upon the Declaratory Judgment, which referred to the Agreement for all terms of use and rights, and Mr. Charlwood's own personal proffer that he had access approved to mitigate any change in use occurring with the CUP. In making its decision, the Ogden Valley Planning Commission failed to actually review the Agreement or the Plat yet determined that Sanctuary had access to Lot 6 sufficient to meet the mitigation requirements of the CUP Ordinance. Because the Commission did not have the Plat and did not consider the language of the Agreement, it lacked sufficient evidence to support a finding that access to Lot 6 was sufficient and of a nature to permit any mitigation under the Ordinance. Further, the Commission relied upon an erroneous legal position in reaching its conclusion. Both the Commission and the Staff determined that when the 2013 Plat was approved and recorded that access was granted for all prospective uses either "permitted" or "conditional" within the FV-40 zone. The Vesting Doctrine clearly states that land use rights do not vest until application is made. Mr. Charlwood did not file his application for the CUP until 2016, three years after the 2013 Plat was recorded. According to Sec. 108-4-2, a CUP is required for conditional uses and application is required as per Sec. 108-4-3. Therefore, the decision that the 2013 Plat approved access for the proposed CUP use is in error. Further, the Commission failed to adequately consider design review requirements under Sec. 108-1-3 of the Ordinance when it granted the CUP. Specifically, the Commission failed to adequately consider "vehicle and pedestrian circulation" and roads when it determined that the terms of the Agreement did not affect its determination. Further, the Commission failed to address the specific mitigation considerations in Sec. 108-1-4 of the Ordinance. This includes traffic safety, traffic congestion, the effect on traffic conditions on Maple Drive, whether a separate ingress/egress may be required. The Commission's determinations are not supported by substantial evidence and are in error. Particularly, the Commission's determination that the terms of the Agreement do not affect their decision is in error because the terms of access in the Agreement was the basis for the approval of the 2013 Plat. In effect, the Agreement is integral to the Plat both by implication and by express reference. Further, the Commission's review of the CUP was erroneously narrowed to whether the access allowed for emergency access. The Ordinance is not so limited and the Commission failed to follow the proper review procedures. Under Sections 108-1-4 and 108-4-4, the Commission is specifically directed to consider certain deficiencies that include traffic issues, but is also mandated to consider "other" matters when applicable, and must also consider mitigation to "reasonably anticipated detrimental effects" with "any" portion of the Land Use Code. Further, the Commission failed to even consider the Conditional Use Standards including right-of-way conflicts, standards related to infrastructure, The Agreement and the limits on the development is one such "other" matter. The Commission therefore made an error in not taking into consideration the "deficiencies" in access to Lot 6 for a Recreational Lodge. Further, the Application was incomplete because it failed to identify the location and width of existing roads, Maple Dr., that applied. Therefore, the CUP should be reversed.

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.

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:

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

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) BRIAN SEE (GREEN HILLS) 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.

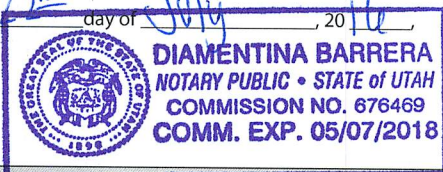
Brian See

(Property Owner)

(Property Owner)

* For the Board

Subscribed and sworn to me this 22nd day of July, 2016



Diamantina Barrera

(Notary)

Authorized Representative Affidavit

I (We) BRIAN SEE (GREEN HILLS) the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), Case 5, Procket, 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.

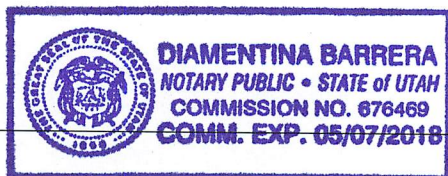
Brian See

(Property Owner)

(Property Owner)

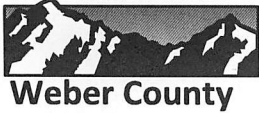
* For the Board

Dated this 22nd day of July, 2016, personally appeared before me Brian See, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.



Diamantina Barrera

(Notary)



Weber County Planning Division
2380 Washington Blvd., Suite 240
Ogden, Utah 84401-1473
Voice: (801) 399-8791
Fax: (801) 399-8862

Ogden Valley Planning Commission
NOTICE OF DECISION

July 8, 2015

Timothy Charlwood
PO Box 980400
Park City, UT 84098

RE: File Number: CUP 2016-11

You are hereby notified that your conditional use permit for a recreational lodge on Lot 6 of the Sanctuary subdivision, which is in the F-40 zone, was approved by the Ogden Valley Planning Commission on July 5, 2016. Approval was based on the following conditions and findings:

Conditions:

1. The limits of disturbance shall not exceed the building pad areas, as shown in the application. In the event building activities must exceed the building pad area, a de minimis planning division review of the changes shall be conducted.
2. That quiet hours shall be observed from 10 p.m. to 7 a.m. Daytime noises related to existence or the use of the lodge that are unreasonable, obnoxious, or out of character for a quiet residential neighborhood are prohibited.
3. All exterior lighting shall be downward directional and fully shielded in a manner that obstructs the visible light source from view from adjacent properties. The intensity of outdoor lighting, including any landscape lighting, shall be minimized so as not to create unnecessary reflection on the mountain side. Exterior lighting shall be configured in a manner that has minimal visual impact when viewed from other properties. The building permit application shall include, for staff approval, the specifics of the light fixtures to be used.
4. All lighting shall be inward directed so as not to create a light trespass on adjacent properties.
5. Delivery or pickup in a 14,001 pound or greater truck (Class 4 GVWR or greater, pursuant to 49 CFR 565.15), except for package delivery service at times and in intervals typical for a normal residential use, shall be limited to one delivery or pickup per day between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. A loading and unloading area, adequately sized to accommodate the type of truck and the size of the delivery or pickup, shall be provided on the site. No loading or unloading shall be permitted offsite.
6. The applicant shall either submit an updated letter from a qualified geologist indicating that the findings of the general geologic hazards report(s) previously conducted are still valid for the specific building location, or an updated building-specific report shall be submitted with the building permit application that provides any necessary mitigation measures.
7. Storm water drainage shall comply with typical engineering standards, as approved by the County Engineering Division during building permit review.
8. CUP approval shall be subject to final review and approval by the Weber County Engineering Division during building permit review.
9. CUP approval shall be subject to final review and approval of the culinary water and waste water systems, commercial kitchen, and pool or spa (if applicable), in accordance with Health Department requirements.



Weber County

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10. The colors of the facility shall be limited to general muted earth tones that are found in abundance on the site such that all man-made facilities have minimal visual impact and blend with the natural state of the property.
11. There shall be sufficient parking spaces, pursuant to the Weber County parking standards of LUC §108-8, to provide for 10 onsite parking spaces. Parking provisions shall comply with ADA standards. The building permit application shall include a specific parking plan for staff verification.
12. All affected streets shall be repaired to their current state upon completion of construction, as may be necessary.
13. CUP approval shall be subject to final review and approval by the Weber County Fire Marshal during typical building permit review.
14. CUP approval is based on legal access existing via Maple Drive. In the event it is proven that this access is not legal or valid for this use, then this CUP is invalid.
15. Windows or window treatments shall be provided on all windows to significantly reduce reflectivity and glare and reduce the light intensity of internal illumination.
16. The proposal shall maintain compliance with all other local, state, and federal laws.

Findings:

1. The proposed use is a recreational use and supports other recreational uses in the Ogden Valley, which is in compliance with the Ogden Valley Recreation Element of the General Plan.
2. The proposed use complies with the Land Use Code's definition of "Recreation Lodge."
3. Given the applicant's proposal and the conditions provided herein, the proposal reasonably mitigates the anticipated detrimental effects of the use.
4. That the applicant asserts that private legal access exists from the public right-of-way to the site. CUP approval is contingent on legal access to the site.

Strict adherence to these conditions is required. Please refer to them when designing building and site plans pursuant to building permit application preparation. Please contact the Planning Division Office if – and before – compliance with the conditions becomes too challenging so we can discuss permit amendment options.

This notice is a courtesy intended to inform you of the Planning Commission's decision. Please contact our office for a copy of the official Planning Commission meeting minutes.

The decision of the Planning Commission may be appealed to the Board of Adjustments by filing such appeal within 15 days after the date of this notice.

Respectfully,

Charles Ewert, AICP
Principal Planner