



BOARD OF ADJUSTMENT

AMENDED MEETING AGENDA

Thursday, October 24, 2019
4:30 p.m.

**Pledge of Allegiance*

Regular Agenda Items

1. Minutes: Approval of the July 11, 2019 meeting minutes.
2. BOA 2019-03- Consideration and action on an appeal of an administrative decision, made by the Weber County Planning Division, to grant an approval of an Access Exception (AAE#2019-04) for access to a rear lot in a future two-lot subdivision.
Applicant: Kristen Zaugg, Represented by Zane Froerer; Staff Presenter, Tammy Aydelotte
3. Review and Approval of the Board of Adjustment's Rules of Order.
4. Adjournment

The regular meeting will be held in the Weber County Commission Chambers, in the Weber Center, 1st Floor, 2380 Washington Blvd., Ogden, Utah.

Please enter the building through the front door on Washington Blvd. if arriving to the meeting after 5:00 p.m.

In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8791

Minutes of the Board of Adjustments meeting of July 12, 2019, held in the Weber County Commission Chambers, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 p.m.

Members Present: Bryce Froerer-Chair
Laura Warburton-Vice Chair
Phil Hancock
Rex Mumford
Neal Barker

Staff Present: Charlie Ewert, Acting Planning Director; Tammy Aydelotte; Planner II; Chris Crockett, Legal Counsel; Marta Borchert, Secretary

- **Pledge of Allegiance**
- **Roll Call**

Chair Froerer states that as this is the first meeting of the year, the board has agreed to rearrange the items on the agenda and start with the election for Chair and Vice-Chair of 2019.

1. Election: Election for Chair and Vice-Chair 2019

Mr. Crockett notes that the rules state that the Board shall elect a Chair and Vice Chair annually during the first regularly scheduled meeting in January a Chair and a Vice-chair who may be elected to succeed themselves for an additional term only. Mr. Crockett adds that it is a one year term. Ms. Warburton states that the Board can suspend the rules.

MOTION: Rex Mumford moves to suspend the rules and to allow Bryce Froerer to serve for an additional term. He notes that the term started in January but was made official at the first meeting of the year July 11, 2019. Phil Hancock Seconds. Motion carries (5-0)

MOTION: Laura Warburton moves to reelect Bryce Froerer. Phil Hancock seconds. Motion carries (5-0)

MOTION: Bryce Froerer moves to elect Laura Warburton as Vice-Chair. Neal Barker seconds. Motion Carries (5-0)

2. Presentation: Douglas Dickson

Charlie Ewert states that the Board and Planning staff wanted to make sure and acknowledge the service that Douglas Dickson has provided. His term has expired. Normally there is a clock to present, but it is was not ready for the meeting. Mr. Dickson was notified and it will be sent to him in the mail. Phil Hancock states that he would like to applaud Douglas Dickson for his years of service and congratulate him. The other board members agree.

3. Minutes: Approval of the May 10, 2018 meeting minutes. Mr. Hancock notes that in the minutes it states that the meeting started at 5 pm. It needs to be amended to 4:30 pm.

MOTION: Phil Hancock moves to approve minutes with noted corrections. Rex Mumford seconds. Motion carries (5-0).

4. BOA 2019-02 Consideration and action on a request for a variance to the 100ft stream corridor setback for the purpose of building a single-family dwelling.

Tammy Aydelotte states that in May of 2018 the lot in question was approved as a legal lot of record. The owners are in the process of applying for building permits. They are requesting a variance to see if they can build on the lot.

Ms. Aydelotte notes that one of the roles of the Engineering department is to find suitable building areas near bodies of water. They look at streams and they determine setbacks from high watermarks. In this case, 100 ft from the high water mark would push the buildable area to outside the parcel boundaries. They would not be able to build on it. They are proposing to build 52 ft. from the high watermark instead of the proposed 100 ft. They are also in the process of acquiring a neighboring parcel; this will allow them to put the footprint well within the setbacks. She notes that Engineering has no objections to this request. The Fire District has no objections to this request. There have been some phone calls from neighbors, regarding well and septic. She notes that at this point that information is not available and is not required yet. The owners have requested water share from Weber Basin, that approval has not yet been granted. Currently, they are trying to find out if they can build on the lot.

Chair Froerer asks how high the water gets in the spring. Ms. Aydelotte states that this is a good question for Engineering. The building height is set above the high watermark and there was no indication that the water levels would reach that height without other circumstances involved.

Mr. Ewert states that Engineers determine this by vegetation delineation. It allows the water to flow at different capacities, it will over time increase or decrease. The vegetation fills and the high water mark changes.

Ms. Aydelotte states that Engineering can require more specific design elements to mitigate potential issues.

Chair Froerer asks what the requirements for the septic are.

Ms. Aydelotte states that the applicant can address these issues.

Mr. Hancock states that the board is usually reluctant to approve changes of this magnitude. He asks if it was submitted to the Fire District. Has staff considered the repercussions of this large of an adjustment?

Mr. Ewert states one of the things that is looked at is whether the ordinance denies fundamental rights applicable to other properties in the area. He asks if a particular size of the home is a right?

Mr. Hancock asks if there is an average size of homes in the area.

Mr. Ewert states that they do not have this information, but it's important to note that the homes are fairly spread out in the area. Mr. Ewert suggests that the Board members look at whether the granting of this is essential for preserving a fundamental property right. The lot in question is a lot of records it predated the rules. It is a nonconforming lot that is lawfully existing, the rules were applied over the top of them. The setback and area rules are different from when it was created. He asks what size of the home is appropriate to preserve substantial justice and not go against the intent of the ordinance.

Mr. Mumford states that the rear and side setbacks aren't being addressed. Ms. Aydelotte states that the purchase of the additional piece is so that they may comply with setbacks on both sides. Mr. Ewert states that it is possible for this to be adjusted on side setbacks or rear setbacks.

Mr. Barker asks if the property owner has acquired that small parcel. Can the Board of Adjustments vote on this if they haven't acquired the rights? Mr. Ewert states that they will want to make sure they have property owner consent. The variance approval can be conditioned on along with the owner's consent.

Ms. Warburton states that her understanding is that they can grant the variance but that does not grant the right to build the house. They will need to go through all the departments to get final approval. Ms. Aydelotte states that at this point they are okay with the conceptual site plan. She notes that it does lie outside of the geologic study area and the flood plain.

Mr. Hancock asks if staff has discussed rotating the site plan with the applicant? Ms. Aydelotte states that their impression is that the applicant is fairly set on the site plan. This can be addressed by the applicant.

Ms. Barker asks what the high-water mark is of the other homes in the area. Ms. Aydelotte states that she is not sure. She has not been able to find a similar variance in the last few years. Mr. Barker asks if was setback 80ft what the elevation would be. Ms. Aydelotte responds that it should be similar, but the distance would be increased.

Chair Froerer states he would like to hear from the applicant.

Brent Whetton 5989 N 2250 E: states that they purchased the lot about a year ago. They were under the impression that it was a buildable lot, they were not aware of the setbacks. The bottom part of the home is 1800 sq. ft. the rest of it is above. The small piece that sticks out on the bottom is the garage. He states that they are not opposed to flipping it. Regarding the septic and the well permit. He has acquired the water well permit from the states of Utah.

Chair Froerer asks if there is anyone in the audience, who would like to speak.

Craig Oberg 5937 N Four Rd.: states that they have property adjacent to this.. They have used an easement for 50 or 60 years. He asks if configuration changes, what happens to the road. Mr. Ewert states that he can get in touch with staff to address his concerns.

Mr. Hancock notes that this is quite a change, but he does not believe it will adversely affect the neighborhood, nor the intent of the ordinance. He does not see the harm to the County or surrounding area.

Mr. Mumford states that the purpose of the set back isn't necessarily for people, it can be for riparian habitat. Mr. Ewerts adds that the purpose is to protect anything within 100 ft. of the riparian corridor. Mr. Mumford states that this is what makes him uncomfortable. Mr. Hancock asks if his concern is regarding the slope or the grade. Mr. Mumford states that it is strictly the distance. Mr. Mumford states that he is not comfortable with the configuration. He notes that they may not be a body to dictate but they are a body to evaluate. The rivers migrate and change if the river altered itself after the home is built the encroachment on the riparian habitat is greater.

Mr. Barker asks if the property will be fenced. Ms. Aydelotte states that one of the conditions is that the vegetation and the wildlife not be disturbed a fence would disturb the wildlife. Mr. Barker asks, Is it within the boards purview to add contingencies? For example it is the applicants intent to acquire the neighboring property, would it be out of line to make that a requirement of approval. Mr. Ewert states that they may impose conditions of approval, but it is important to make sure they speak to the five criteria and the ordinance. Regarding variances sometimes you are talking about a setback but sometimes it effects other ordinances that would be applicable as well. Mr. Hancock states that any condition added needs to be evaluated and the Board is not qualified to approve items such as septic tank, engineering, zoning. These type of items are all part of the site plan approval process. He does not believe it is within their preview to impose those kinds of conditions.

Mr. Mumford states the distance of the setback is less than an irrigation ditch, and it is near a major river that has riparian habitat. Chair Froerer asks if this is something that is taken into account for final approval. Ms. Aydelotte states that they do. The health department is involved in giving the final say on a well permit. The well has to have a hundred ft protection around it that must be contained within the final boundries of the parcel. There are setbacks from the residents for the septic, and the type of septic is determined by the water levels and the proximity to the river. The health department will go through the review process and will impose their conditions based on what is submitted by the applicant, the proposal and the site plan.

Ms. Warburton states that she would like to check with legal but it is her understanding that any conditions that are imposed or if they want to deny it need to have a legal basis it has to be in code and it needs to be supported, otherwise it puts the County and the petitioner in jeopardy to spend more money to defend what he would like to do. Mr. Crockett states that he agrees with this regarding imposing conditions. There has to be a factual basis,

otherwise, there is a risk having it overturned if challenged in court. Mr. Ewert states that this is a quasi-judicial decision, and the building permit is an administrative decision, there is a very limited ability to say no. As Ms. Aydelotte stated all the other agencies will ensure all their laws are upheld.

Mr. Mumford states that it is his understanding based on legal's opinion that if they don't grant the variance they will be somehow establishing precedence. He notes that the setback was established years ago. He asks would that jeopardize the setback policy for the future. Mr. Ewert states that it is hard on a judicial decision to say you are setting up precedence because every fact of every case is different. He adds that it is unlikely that the decision made for this case will be made applicable in the next case. Mr. Crockett agrees and states that the criteria for evaluating a variance are for circumstances that are peculiar property. Each case will be evaluated on its own individual merits.

Ms. Aydelotte states that she is willing to get them more information so they can make an informed decision. She appreciates the thought that is being put into this.

MOTION: Laura Warburton moves to approve BOA 2019-02 Consideration and action on a request for a variance to the 100ft stream corridor setback for the purpose of building a single-family dwelling-based the findings and conditions listed in the staff report. Mr. Hancock seconds. Motion carries (4-1) with Rex Mumford voting nay.

5. Schedule & Information: 2019 Meetings and Information List-A meeting calendar for 2019 and a members information list was given to the Board members. Chair Froerer and Mr. Mumford state that their home numbers are no longer active.

6. Rules of Order Approval of Rules of Order. Mr. Ewert states that it has been brought to his attention Mr. Crockett that Rules of order in the packet require a quarterly meeting to approve minutes in accordance open public meeting act. He notes that they may need to meet quarterly, it is in the bylaws. Mr. Crockett states that one thing he would like to check in the open meetings law is if there is a certain time limit. Mr. Mumford states that he believes that they had addressed this at a prior point and that minutes could be approved by phone. Mr. Crockett states that he will need to check to see if there is approval to have electronic meetings. He notes that they might not be able to take a vote through email. Mr. Ewert states that they will look into the matter, if possible the rule of order to state that the meetings will be held as needed. Mr. Mumford states that if a meeting needs to be held to approve minutes they would likely be able to find the time. Mr. Crockett states that perhaps there is a provision that allows the posting pending minutes until they are formally approved. Chair Froerer states that based this request and the previous year it could be another year before another meeting is called. He adds that it is not fair to the applicants. He would like to request that the minutes be prepared expeditiously and be approved via email by the Board members present at the meeting.

MOTION: Laura Warburton moves to change the bylaws of the rules of order to states that the Board of Adjustments is allowed to schedule meetings as needed and that minutes be approved via email or conference call. Subject to legal review. Phil Hancock seconds. Motion Carries (5-0).

MOTION: Neal Barker moves to change the rules of order to state that the Chair Vice-chair election be done at the first meeting of the year, rather than the first meeting in January. Rex Mumford seconds. (5-0)

MOTION: Laura Warburton moves to adjourn. Neal Barker seconds. Motion carries (5-0)

Adjourn-5:41

Respectfully Submitted,
Marta Borchert



Staff Report for Administrative Approval

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on an appeal of an administrative decision, made by the Weber County Planning Division, granting approval of an Access Exception (AAE#2019-04) for access to a rear lot in a future two-lot subdivision.

Agenda Date: Thursday, October 24, 2019

Applicant: Kristin Zaugg, represented by Zane Froerer

File Number: BOA 2019-03

Property Information

Approximate Address: 3958 N 3175 W, Ogden, UT, 84404

Project Area: 2.58 Acres

Zoning: Agricultural Zone (A-1)

Existing Land Use: Vacant

Proposed Land Use: Vacant/Residential

Parcel ID: 19-010-0085

Township, Range, Section: T7N, R2W, Section 22

Adjacent Land Use

North: Residential	South: Residential
East: Residential	West: Vacant/Agricultural

Staff Information

Report Presenter: Tammy Aydelotte
taydelotte@co.weber.ut.us
 801-399-8794

Report Reviewer: RG

Applicable Land Use Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 15 (Agricultural A-1 Zone)
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations)
- Weber County Land Use Code Title 106 (Subdivisions)

Background

Request and General Project Information

The applicant (Kristin Zaugg) is appealing a land use decision by the Weber County Planning Division on September 4, 2019. The decision in question is an approval of an Access Exception application (AAE 2019-04 submitted by William and Jana Colvell) where, in lieu of constructing a full public-standard street, a 30 foot private access easement that would serve as the primary access for a future residential lot. See Exhibit A for the Planning Division staff report packet that provides Mr. & Mrs. Colvell’s Access Exception information and findings that form the basis for the approval granted on September 4, 2019

The property is in the Agricultural A-1 Zone located at approximately 4186 N 3175 W and is 2.58 acres. The private right-of-way is located just off 3175 West, of Section 16 of Township 7 North, Range 2 West.

Alternative access applications such as the Colvell’s are reviewed and approved administratively by the Weber County Planning Director. It is essential to note that this request was an administrative application and is not a variance or an exception to the standards and criteria outlined in the Uniform Land Use Code of Weber County (LUC). The request conceptually meets the standards as outlined in LUC §108-7-29 and meets the criteria for the request as required in LUC §108-7-31.

The outcome, if the Planning Division’s decision to approve Colvell’s Access Exception is upheld, would be

the division of an existing parcel (located within an existing Subdivision) into two lots. The A-1 Zone requires a minimum lot size of 40,000 square feet and a lot width of 150 feet (fronting on a private or publically dedicated street) when not approved for an Access Exception. An Access Exception is required when a landowner (developer) feels that it is more feasible or practical to access building lots from something that resembles a private driveway rather than a two-lane (public) county street. To be considered for an approval of an Access Exception, a landowner must demonstrate that it is **unfeasible or impractical** to extend a street to serve proposed lots. Property characteristics that **may** support an approval of an Access Exception may include, but not be limited to, things like unusual soils, excessive topography, or odd boundary conditions. Applicable language within Section 108-7-31 (Access to a lot/parcel using a private right-of-way or access easement) is marked in bold text and reads as follows:

Sec. 108-7-31. - Access to a lot/parcel using a private right-of-way or access easement.

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:

(1) Criteria.

- a. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use; or*
- b. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use and is the subject parcel of an approved agri-tourism operation; or*
- 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.***

(2) 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*
- b. The landowner of record or authorized representative shall agree to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the county deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.***

Role of Board of Adjustment

The Board of Adjustment's role, in this appeal, is described in §102-3-3 (Duties and powers of the board) and §102-3-4 (Decision criteria and standards) of the Weber County Land Use Code and is provided below with bold text marking applicable language:

Sec. 102-3-3. - Duties and powers of the board.

The board of adjustment shall have the following duties and powers:

(1) To act as the appeal authority from decisions applying and interpreting this Land Use Code and Zoning Maps.

(2) To hear and decide variances from the requirements of the Land Use Code.

Sec. 102-3-4. - Decision criteria and standards.

(a) Appeals from decisions applying and interpreting the Land Use Code and Zoning Maps.

(1) The board of adjustment shall determine the correctness of a decision of the land use authority in its interpretation and application of the Land Use Code and Zoning Maps.

(2) The board of adjustment may hear only those decisions in which the land use authority has applied the Land Use Code or Zoning Maps to a particular application, person, or parcel.

(3) The appellant has the burden of proof that the land use authority erred.

(4) All appeals to the board of adjustment shall be filed with the planning division not more than 15 calendar days after the date of the written decision of the land use authority.

(5) Appeals to the board of adjustment shall consist of a review of the record. In cases where there is no record to review, the appeal shall be heard de novo.

(b) Variances from the requirements of the Land Use Code.

Procedural History

The following project history is provided:

6-26-2019	William and Jana Colvell submit an Access Exception application (AE#2019-04) to the Weber County Planning Division.
8-21-2019	1 st administrative public meeting held for Access Exception application (AE#2019-04). Acting Planning Director tables item for further review.
9-4-2019	2 nd administrative (Planning Director approval) public meeting held for Access Exception application (AE#2019-04). Planning Director approves application.
9-5-2019	Notice of Decision posted.
9-19-2019	Appeal of approval for AAE 2019-04 is submitted to Planning Division.

Alternative access applications should be approved as long as the design standards can be implemented during the development process. The application met the criteria in LUC §108-7-31(1)(b) which states:

“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.”

The Planning Director, acting as the Land Use Authority in this case, agreed that it is not feasible to extend/create a road, given the location of residences and outbuildings in the direct path of a proposed road that would extend from along the southern boundary of the subject parcel from 3175 West St. to 2975 West St.

Summary of Board of Adjustment Considerations

- Do the items described in Ms. Zaugg's appeal warrant overturning the Weber County Planning Division (9-4-2019) decision to approve Mr. and Mrs. Colvell's Access Exception (AAE#2019-04).
- Based on §108-7-31 (provided above), can the BOA find (in the record) that the Planning Division erred in appropriately identifying circumstances (including but not be limited to unusual soil, topographic, or property boundary conditions) that exist which support the Planning Division's (9-4-2019) decision to approve Mr. and Mrs. Colvell's request for an Access Exception?
- Based on §108-7-31 (provided above), can the BOA find (in the record) that the Planning Division erred by determining that financial adversity is not the motive behind the Colvell's request for an Access Exception?
- Based on the information provided (the substantial evidence), can the BOA find that the Planning Division erred by determining that it is unfeasible or impractical to extend a public street to serve Mr. and Mrs. Colvell's proposed lot?

Staff Recommendation

Based on information presented in this staff report (including exhibits), and compliance with the Weber County Land Use Code, the Planning Division Staff recommends that the administrative decision, to approve Mr. and Mrs. Colvell's request for an Access Exception, be upheld.

Exhibits

- A. Ms. Zaugg's appeal to the Weber County Board of Adjustment. This Exhibit includes Ms. Zaugg's BOA application form, Ms. Zaugg's appeal to the BOA, a copy of Mr. and Mrs. Colvell's Notice of Decision for the Access Exception approval, a copy of Mr. and Mrs. Colvell's Access Exception application, and Ms. Zaugg's comments and objections provided during the Planning Division administrative meeting held on 9-4-2019.
- B. Planning Division staff report packet that provides Mr. and Mrs. Colvell's Access Exception information and findings that form the basis for the approval granted on September 4, 2019.

Vicinity Map



Exhibit A - Application & Narrative

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 09-08-2019	Fees (Office Use)	Receipt Number (Office Use)	File Number (Office Use)
Property Owner Contact Information			
Name of Property Owner(s) Elwood Powell on Behalf of Bayview and Kristin Zaugg		Mailing Address of Property Owner(s) 4834 Van Buren Ave. Ogden, Utah 84403	
Phone 801-499-9763	Fax		
Email Address elwood.powell@gmail.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 2661 Washington Blvd., #201 Ogden, Utah 84401	
Phone 801-621-2629	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			
<input type="checkbox"/> A variance request: __ Lot area __ Yard setback __ Frontage width __ Other: _____			
<input checked="" type="checkbox"/> An Interpretation of the Zoning Ordinance <input type="checkbox"/> An Interpretation of the Zoning Map <input checked="" type="checkbox"/> 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 <input type="checkbox"/> Other: _____			
Property Information			
Approximate Address 3960 N. 3175 W. Ogden, Utah 84404		Land Serial Number(s) 190100085	
Current Zoning A-1			
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)

Exhibit A - Application & Narrative

Applicant Narrative

Please explain your request.

That the alternate access approved by revoked. The approval violates Weber County Ordinances for the A-1 Zone. Specifically, it is in violation of 108-7-30 and 108-7-31. The applicant failed to show proof of a legal right to access the agricultural parcel, the parcel is in a recorded subdivision and the applicant has failed to submit an application to amend that subdivision. The county has yet to create or approve the subdivision of the lots therefore it failed to properly consider the factors in 108-7-32. The approval is in violation of 23-30, 23-31, 23-32. The proposed subdivision of these lots does not have sufficient frontage for a dedicated street or a flag lot. The County failed to take into account that the road from which access was approved is a private road maintained by Bayview Community Association and the County may not simply designate or dictate how the public accesses or uses that private drive. The approval creates a defacto approval of a flag lot in violation of the County's ordinances and the zoning requirements for the A-1 zone. It also is a violation of the County's fire code regulations. The Application failed to provide the appropriate site plan and map, reusing a subdivision plan from another application. Even though the application did not seek approval of the future anticipated subdivision, the staff's recommendation relied upon the conclusion that the future division was in compliance with all county ordinances. Until an application for subdivision and amendment of the existing subdivision is submitted, this decision is wholly improper and beyond the scope of the application. The Planning Staff's recommendation for approval was flawed. It failed to comply with 108-7-31 by finding that it is impractical and unfeasible for the applicant to extend the street to the existing lot. The Staff cannot make a recommendation regarding a lot that does not yet exist. This is nothing short of the Staff blatantly disregarding the county's own ordinances to rubber stamp a land use application. No evidence or analysis of how the Staff arrived at this decision is provided and they do nothing to document their "substantial evidence." This is wholly conclusory and without any actual evidence. In the Notice of Decision, the Staff approved the application citing to the finding that "the proposed subdivision conforms to the Western Weber Plan" and applicable ordinances. This is absurd since there is no "proposed subdivision." An applicant of a land use decision may not be vested with any rights until an application for a land use has been properly filed with the County. This finding is incorrect on its face and exceeds the scope of the land use application on its face. The application was for a Flag lot access for a lot that does not have frontage on a street. The lot in question does have such access. Until a subdivision is approved, granting the application would be improper. Further, the access strip may be no longer than 800 feet. Because the "street" is a private drive, the application seeks approval of a private right of way which is cumulatively longer than 800 feet. Finally, the lot is within a recorded subdivision, therefore, a flag lot is not permitted.

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.

Exhibit A - Application & Narrative

Variance Request (continued...)

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

This allowance will affect the land owners substantially in this Subdivision. And it is contrary to the interests of all land owners in the area. As well as the consistency of residential buildings.

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

The Spirit of the Land ^{use} ordinance has not been observed & justice has not been granted to all land owners of interest. If this easement is allowed.

Property Owner Affidavit

I (We), Kristin Zaugg, 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.

Kristin Zaugg
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 18th day of September, 2019



Cheryl L. Honstein
(Notary)

Authorized Representative Affidavit



Weber County Planning Division
www.co.weber.ut.us/planning_commission
2380 Washington Blvd., Suite 240
Ogden, Utah 84401-1473
Voice: (801) 399-8371
Fax: (801) 399-8862

Weber County Planning Division
NOTICE OF DECISION

September 5, 2019

William & Jana Colvell
3502 N 3900 W
Ogden, UT, 84404

You are hereby notified that your application for final approval of an alternative access request for a future two lot subdivision, located at approximately 4212 N 3175 W, UT, was heard and approved by the Weber County Planning Division in a public meeting held on September 4, 2019. Final approval was granted conditioned upon meeting all requirements from county reviewing agencies, and the following condition:

1. Irrigation easements, water approval, hydrants, secondary water, ditch maintenance, address issues, utilities and road access are addressed when an application for subdivision has been submitted.

This recommendation is based on the following findings:

1. The proposed subdivision conforms to the Western Weber Plan.
2. Based on substantial evidence, it has been found that it is unfeasible or impractical to extend a street to serve such lot/parcel based on topographic and property boundary conditions which limits typical access requirements in a unique way.
3. The proposed subdivision complies with applicable County ordinances.

The next step in the process is to ensure complete compliance with the above listed conditions of approval. This letter is intended as a courtesy to document the status of your project. If you have further questions, please contact me at taydelotte@co.weber.ut.us or 801-399-8794.

Sincerely,

Tammy Aydelotte, Planner
Weber County Planning Division

Exhibit A - Application & Narrative

Basis for Issuance of Access to a lot/parcel at a location other than across the front lot line

Access to lots/parcels at a location other than across the front lot line may be approved as the primary access, subject to the following criteria:

Sec. 108-7-32. - Access to a lot/parcel at a location other than across the front lot line.

- (1) The applicant demonstrates that special or unique boundary, topographic, or other physical conditions exist which would cause an undesirable or dangerous condition to be created for property access across the front lot line.
- (2) It shall be demonstrated that appropriate and legal access exists 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.

Please provide the following information to support your request for Access to a lot/parcel at a location other than across the front lot line:

- Attach proof that appropriate and legal access exists 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.
- The landowner of record or authorized representative agrees to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the County deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.

Property Owner Affidavit

I (We), William Colvell, 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. I (We) understand that an approval of an alternative access application does not grant a legal right to access property that I(we) currently do not own.

William Colvell Property Owner _____ Property Owner

Subscribed and sworn to me this 26 day of June, 2019.

[Signature] Notary



Authorized Representative Affidavit

Exhibit A - Application & Narrative

Weber County Alternative Access Application

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

Date Submitted /Completed	Application Fee: \$350.00	Receipt Number (Office Use)	File Number (Office Use)
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Application Type

- Flag lot access strip
- Access by Private Right of Way
- Access at a location other than across the front lot line

Property Owner Contact Information

Name of Property Owner(s) William Colvell		Mailing Address of Property Owner(s) 3502 N 3900 W Ogden, UT 84404	
Phone 389 3726 801 430 0374	Fax		
Email Address (required) Jana-Fred@hotmail.com		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Mail	

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s) Jana Colvell		Mailing Address of Authorized Person 3502 N 3900 W Ogden, UT 84404	
Phone 801 430 0374	Fax		
Email Address (required) Jana Colvell G@gmail.com		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Mail	

Property Information

Project Name FJ subdivision	Total Acreage 2.5	Current Zoning A-1
Approximate Address 4212 N 3175W	Land Serial Number(s) 19-010-0035	
Proposed Use Legal access for 2 lot subdivision		

Project Narrative

I currently have a lot that is 2.58ac in size. I would like to subdivide that lot into two lots. One lot would be 1ac and the other would be 1.58ac. The larger of the two lots would be located behind the other with no way to access it. I would like to get approved for an access by private right of way before I submit the subdivision application to ensure there wont be any issues accessing the larger lot. *Also, There is a 20ft x 14ft deep irrigation ditch to the East of my property that prevents access and Two other Houses on the property that is backed up to mine that boundes my lot to the East.*

Exhibit A - Application & Narrative

Minutes from the Administrative Approval Meeting granting approval for the alternative access request on 9-4-2019:

AAE2019-04: Consideration and action on an alternative access request to use a private right-of-way as the primary access for the rear lot of a future two lot subdivision in the Agricultural (A-1) Zone. William & Jana Colvell, Applicants (Tammy Aydelotte, Presenter)

Tammy Aydelotte reviewed the staff report and said staff recommends approval of the request for an alternative access for a 30' x 269' private right-of-way as the primary access for the rear lot of a future two lot subdivision, subject to the following conditions:

1. That approval is based on the concept layout as listed in Exhibit C of this staff report.
2. That the future division of the land is in compliance with all relevant Weber County Land Use and Development ordinances.
3. The in the event evidence is presented that would prohibit the division of land (not otherwise listed in the Weber County Land Use and Development ordinances), this approval is void.
4. That the approval offers no explicit or implicit rights of access along any connected private streets, roads or rights of way serving access to the property.

Director Grover said in previous meeting there was some discussion, and you are doing some research on looking at the past minutes, and also as far as there was a recorded plat that shared a private access road with property owner signatures. Do you have that, that you can show me? Ms. Aydelotte replied yes, this was recorded in 2001, it's a private road easement and it includes both roads going into this subdivision. It is signed by all of the property owners on record at that time.

Director Grover asked if the applicant was present and asked if there was anything you would like to add. William Colvell replied no. Director Grover opened up for public comment and limit your comments to three minutes. Once I close for public comment, it will come back to deliberation. When you make your comments, state your name and address for public record.

Christin Zaugg, 3944 N 3175 W, said according to A-1 Zone, on this staff report, and on this application; it is required that they have at least 3 acres of agriculture parcel, that is needing to be access in order to gain access. This particular parcel does not have a back property, so there's no need for it to have an alternative access. It is required in the A-1 Zone, 150 ft. frontage already on a private road that is in this particular subdivision. As Ms. Aydelotte stated we own the road; and if that were to be subdivided, we would have the right to not let those people use the road because we have all paid and taken care of that road. We planned accordingly with the agreement with Weber County of two houses can be put on each five acre lot; as long as it was in the A-1 Zone qualifications of 150 ft. frontage. At that meeting that was held in February 2000, it states in their application that they have to show proof why they need an access. The survey that was on the application, was not the correct address that was put in Miradi. We as a whole are not in favor of this project.

Elwood Powell, 3881 N 3175 W, said there are restrictive covenants on this property; when the Higley's first subdivided this property. One of the covenants says that they only subdivide it once in 2-1/2 acre parcels. It was called the Higley Farm Land Owner Agreement that was recorded in Book 1394, Page 863 to 865. For some reason the legal description did not get attached with this entry number. The legal description immediately followed this entry at 866-867 was recorded and it runs with the land. This 4-Lot subdivision doesn't meet the restrictive covenants on the property, and it doesn't meet the zoning requirements. There is also a requirement with Weber County, that after 80% of the lots are developed, we have to dedicate the land of the roadway to the county and pay for the oiling of that road. There is also easements on the west side for irrigation water; and anytime that road gets developed, that has to be taken care of.

Exhibit A - Application & Narrative

Steve Wells, 3951 N 2975 W, said this is within 500 feet of this subdivision. In Bayview we actually water that lot east to west; and we have one lot in front of another lot. The lot closest to the road will not give water unless a two foot culvert is put into the back ditch for secondary water. There is a drainage ditch in the back that was put in by the Corp of Engineers; that cannot be filled in that drains off the surface water. Just want to make sure that there's no finish drain place in that ditch and that it's kept clean. The other concern is animals that walk on the bank of that ditch and clutters that up. It's key and important because we experience flooding in our area; and Weber County put in a culvert to divert some of the water down ditch and if you have that diverted with a block in any way, it could cause flooding in our area.

Derek Kennedy, 3932 N 3175 W, said I asked about the address earlier to confirm that address. First off the address is 4-1/2 blocks off and that needs to be fixed. Ms. Aydelotte replied that is an approximate address. I agree with everything that Mr. Powell said, he brought up all the important points. It's an 18 ft. wide dirt road and technically I own the first piece of that road; so any density changes will affect me. We try and take care of that road, and this is not a 25 mile road. To see the density change of 100 ft. of frontage width affect all of us. The density of having a private access on top of another private access; the owners would have to sign off of that to have a new piece of land, a new serial number, and to create more density from which it was not intended. I think the utilities a something that needs to be addressed.

Close public comment and bring back for deliberation.

Director Grover asked about the 3-acre agriculture access. Ms. Aydelotte replied typically that is not required for flag lot access. They are required to have 3-acres, not including the stem of that in to be designated as a flag lot, and they are not requesting flag lot designation.

Director Grover said so there are two different types of flag lots access exception, and they are requesting not the flag lot but the access. Ms. Aydelotte replied that is correct.

Director Grover said the next one is the 100 feet of frontage. Ms. Aydelotte replied so the A-1 Zone requires 150 ft. of width to every lot, with a minimum of 40,000 sq. ft., and 150 ft. of width and their lot has 162 feet so they would meet their requirement.

Exhibit A - Application & Narrative

Director Grover said the next concern is a road access, as far as no proof of access. Ms. Aydelotte replied there is a private road easement recorded with every property in this subdivision along with a description. So this is the easement with the description; and then the abstract when you pull up the document doesn't give a whole lot of information. It does reference this private road easement as surveyed that was done, but that is all that was said.

Director Grover asked what about the restrictive covenant on the property, indicating that it can be subdivided once, legal do we enforce restricted covenant, and how does that work? Mr. Crockett replied do we enforce restrictive covenant; generally no we don't get involved in that because it's not something that it's the county's a party to. It would be the property owners that are all party to that agreement. If we were a party to that, that would be one thing, but on restrictive covenant we are not a party to. Director Grover asked is that anything that we can consider as part of this review process. Mr. Crockett replied something that you can consider, is the rights of the other property owners that you are considering, but it is not something that we would enforce.

Director Grover asked are you aware of an agreement with Weber County, to dedicate the road and improve it? Ms. Aydelotte replied the only agreement that I have seen, is a reference in the minutes. I haven't seen anything recorded in the abstract of any of these properties with regards to an agreement. There is reference in these commission minutes, but I haven't seen a recorded document. Director Grover said if it's mentioned there but has not been recorded, we can't enforce that.

Director Grover said talk to me about the irrigation easements; are all of those easements being maintained on the property? Ms. Aydelotte replied as far as I know, I am not sure if they are being maintained.

Director Grover said what about it said in the commission minutes, to allow one subdivision, was there something that reference to that, as part of the motion, it may have referenced in the minutes, but was anything said in the motion? Ms. Aydelotte replied no, the motion was strictly for the road.

Director Grover asked what about water approval that the Fire District said that the fire hydrants meeting code. Ms. Aydelotte replied they said they would not be addressing that until subdivision. Where we don't have a subdivision application, we haven't required a water feasibility yet, and they will be required provide that.

Director Grover said Mr. Kennedy referred to the address, and that would be addressed at subdivision. Ms. Aydelotte replied that would be addressed at subdivision. The addressing official assigns those, we don't have any say with the addresses.

Director Grover said as far as road access and utilities; when will those be addressed. Ms. Aydelotte replied at subdivision as well. We address the private road access, in looking at whether or not they have legal access to this property, and that's as far as we go with an access exception.

Director Grover said there are still some concerns that I have, but a lot of those will be addressed at subdivision, and the other ones you have addressed. So based upon that, I am going to add some additional conditions; so based on the information that was provided, I am going to recommend approval of the request for alternative access for a 30' x 269' private right-of-way as the primary access for the rear lot of a future two lot subdivision with the following conditions:

1. Approval is based upon the concept layout list as Exhibit C of the August 21, 2019 staff report.
2. That the future division of the land is in compliance with the relevant Weber County Land Use Development Ordinances; based upon it meeting access exception and not being a flag lot.
3. That in the event evidence is presented that would prohibit division of land, not otherwise listed in the Weber County Land Use Development Ordinance this approval is void.
4. That this approval offers no explicit or implicit rights of access along any connected private streets, roads, or right-of-way serving access to the property.
5. That irrigation easements be addressed at time of subdivision.
6. That water approval that meets code; that fire hydrants be addressed at the time of subdivision.
7. That secondary water be addressed at time of subdivision.
8. That the ditch be kept clean and maintained, and addressed at time of subdivision.
9. That the address issue be addressed at the time of subdivision.

Exhibit A - Application & Narrative

10. That the utilities needs to be addressed at time of subdivision.
11. That the road access needs to be addressed at time of subdivision.

Director Grover said a lot of these will need to be addressed at time of subdivision; but if any additional information as I have indicated in Condition 3, is otherwise brought forward this approval will be void. I recommend approval of this based on the findings outlined in the staff report. That is based on the substantial evidence; it has been found that it is unfeasible or impractical to extend the street to serve such lot or parcel. Based on topography of the property boundary conditions which limits typical access requirement in a unique way. This has to do with the waterway in this situation. This stands approved based on those specific conditions.



Staff Report for Administrative Approval
Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on an alternative access request to use a private right-of-way as the primary access for the rear lot of a future two lot subdivision.

Agenda Date: Wednesday, September 4, 2019

Applicant: William & Jana Colvell

File Number: AAE 2019-04

Property Information

Approximate Address: 3502 N 3175 W, Ogden, UT, 84404

Project Area: 2.58 Acres

Zoning: Agricultural Zone (A-1)

Existing Land Use: Vacant

Proposed Land Use: Vacant/Residential

Parcel ID: 19-010-0085

Township, Range, Section: T7N, R2W, Section 22

Adjacent Land Use

North: Residential	South: Residential
East: Residential	West: Vacant/Agricultural

Staff Information

Report Presenter: Tammy Aydelotte
taydelotte@co.weber.ut.us
801-399-8794

Report Reviewer: RG

Applicable Land Use Codes

- Weber County Land Use Code Title 104 (Zones) Chapter 15 (Agricultural A-1 Zone)
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 29 Flag lot access strip, private right-of-way, and access easement standards
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 31 Access to a lot/parcel using a private right-of-way or access easement

Background

The Planning Division is recommending approval of the request for an alternative access for the rear lot of a future two lot subdivision.

The property is in the Agricultural A-1 Zone located at approximately 4186 N 3175 W and is 2.58 acres. The private right-of-way is located just off 3175 West, of Section 16 of Township 7 North, Range 2 West.

Alternative access applications such as this are reviewed and approved administratively by the Weber County Planning Director. It is essential to note that this request is an administrative application and is not a variance or an exception to the standards and criteria outlined in the Uniform Land Use Code of Weber County (LUC). The request conceptually meets the standards as outline in LUC §108-7-29 and meets the criteria for the request as required in LUC §108-7-31.

Alternative access applications should be approved as long as the design standards can be implemented during the development process. The application meets the criteria in LUC §108-7-31(1)(b) which states:

"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."

Exhibit B- Planning Division Staff Report Packet

Analysis

General Plan: The General Plan for Western Weber is intended to preserve private property rights while also preserving the rural characteristics of the area. This proposal conforms to the Western Weber General Plan.

Zoning: The subject property is located in the Agricultural Zone more particularly described as the A-1 zone. The purpose and intent of the A-1 zone is identified in the LUC §104-5-1 as:

"The purpose of the A-1 Zone is to designate farm areas, which are likely to undergo a more intensive urban development, to set up guidelines to continue agricultural pursuits, including the keeping of farm animals, and to direct orderly low-density residential development in a continuing rural environment."

The application has been forwarded to the applicable review agencies and based on the limited criteria and conditions that govern alternative access application and after a thorough review of the applicant's proposal, staff feels that the applicant has provided adequate evidence to show that it is unfeasible or impractical to extend a street to serve such parcel due to topographic, or property boundary conditions. This determination is based on the review and analysis of the information provided by the applicant.

Prior to any further development considerations on this site, the applicant will have to provide a complete application that adheres to all Federal, State and County ordinances.

Review Agencies: To date, the proposed alternative access has been approved by the Weber County Engineer. Weber Fire District has not yet approved this proposal. All review agency requirements must be addressed and completed prior to this alternative access being recorded.

Tax Clearance: The 2018 property taxes have been paid in full. The 2019 taxes are will be due in full November 30, 2019.

Public Notice: A notice has been mailed not less than seven calendar days before final approval to all property owners of record within 500 feet of the subject property regarding the proposed small subdivision per noticing requirements outlined in LUC §106-1-6.

Summary of Administrative Considerations

- Based on substantial evidence, has it been 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

Staff Recommendation

Staff recommends approval of the request for an alternative access for a 30' x 269' private right-of-way as the primary access for the rear lot of a future two lot subdivision, subject to the following conditions:

1. That approval is based on the concept layout list as Exhibit C of the August 21, 2019 staff report.
2. That the future division of the land is in compliance with all relevant Weber County Land Use and Development ordinances.
3. That in the event evidence is presented that would prohibit the division of land (not otherwise listed in the Weber County Land Use and Development ordinances), this approval is void.
4. That this approval offers no explicit or implicit rights of access along any connected private streets, roads or rights of way serving access to the property.

This recommendation is based on the following findings:

1. Based on substantial evidence, it has been found that it is unfeasible or impractical to extend a street to serve such lot/parcel based on topographic, and property boundary conditions which limits typical access requirements in a unique way.

Exhibit B- Planning Division Staff Report Packet

Administrative Approval

Administrative final approval of an alternative access as the primary access for parcel # 23-007-0003 is hereby granted based upon its compliance with the Weber County Land Use Code. This approval is subject to the requirements of applicable review agencies and the conditions of approval listed in this staff report.

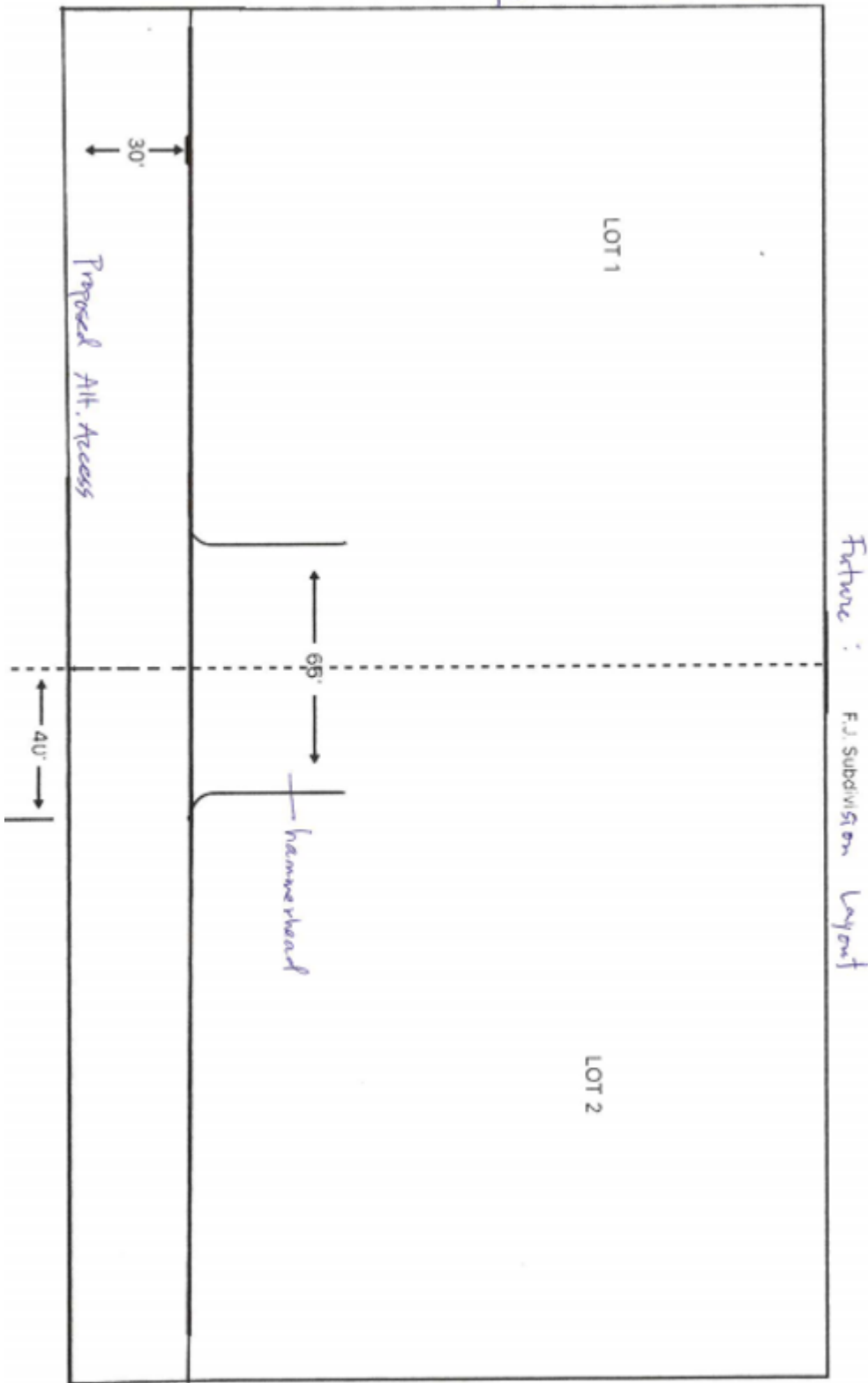
Date of Administrative Approval: Wednesday, September 4, 2019

Rick Grover
Weber County Planning Director

Exhibits

- A. Map of Location
- B. Application and Narrative
- C. Site Plan

3175 W. St.



**WEBER COUNTY BOARD OF ADJUSTMENT
RULES OF PROCEDURE AND ETHICAL CONDUCT**

A Board of Adjustment shall be governed by the provisions of all applicable Statutes, County Ordinances and these rules.

I

MEMBERS

The Board of Adjustment shall each consist of five voting members, and two alternates, all of whom shall be citizen members appointed by the County Commission in accordance with the provisions of Utah Code Annotated and Weber County Ordinances.

II

OFFICERS AND DUTIES

A. Chair and Vice Chair

The Board of Adjustment shall elect annually, during the first regularly scheduled meeting in January, a Chair and Vice Chair who may be elected to succeed themselves for one additional term only. The Chairman shall be elected from the voting members of the Board of Adjustment by a majority of the total membership. The Chair, or in his/her absence or incapacity, the Vice Chair, shall preside over all meetings and hearings of the Board of Adjustment and shall execute all official documents and letters of the Board of Adjustment.

B. Secretary

The Director of Planning or his/her designated Staff member shall be the Secretary of the Board of Adjustment.

III

MEETINGS

A. Quorum

Three (3) or more members shall constitute a quorum for the transaction of business and the taking of official action; however, in the case of only three members in attendance, a unanimous vote shall be required to approve or deny an application.

B. Time of Meeting

Regular meetings shall be held on the second and fourth Thursdays of each month, as needed, or at the call of the Chair, at a time to be scheduled by Staff in the Weber County Commission Chambers of the Weber Center, 2380 Washington Blvd., Ogden. The date of the regular meeting may be changed by the majority of the total membership of the Board of Adjustment provided at least one week notice is given each member of the new date of a regular meeting. ~~The Board shall meet at least once per calendar quarter, to ensure timely review of minutes from prior meetings, unless those minutes only addressed approval of minutes from prior meetings.~~

C. Meetings Open to the Public

All regular or special meetings of the Board of Adjustment shall be open to the public.

D. Electronic Meeting Option

The Utah Open and Public Meetings Act allows public bodies to hold electronic meetings, subject to certain requirements. The Board of Adjustment hereby adopts the following rules to allow electronic meetings and govern their use. If future changes in state law conflict with these rules, the conflicting provisions of the new state law shall be automatically incorporated into these rules by reference, superseding the conflicting provisions of these rules, until the rules can be amended to conform to the new state law.

1. The Board of Adjustment will only hold an electronic meeting in the following circumstances:
 - a. a matter coming before the Board requires prompt attention;
 - b. the Secretary of the Board determines that there will not be a quorum present for the next meeting unless the Board allows one or more members to attend electronically;
and
 - c. the Chair, or the Vice Chair in the absence of the Chair, determines that all items on the proposed agenda are appropriate for discussion and action in an electronic meeting.
2. Electronic meetings will originate from an “anchor location,” as required by state law. The anchor location will be the regular meeting location in the Weber Center, 2380 Washington Blvd., Ogden, Utah. As with regular meetings, interested persons and members of the public may attend and monitor the open portions of the meetings at that location.

3. In accordance with state law, public notice shall be given as required for a regular meeting, including posting written notice in the Weber Center. This public notice shall be given no less than 24 hours before the meeting. Notice of the electronic meeting shall also be given to members of the Board at least 24 hours before the meeting and shall include a description of how the members will be connected to the electronic meeting.

E. Order of Business

The order of business shall be:

1. Approval of the minutes of previous meeting
2. Petitions for Variance, Special Exceptions or other applicable matters.
3. Other Business
4. Adjournment

The Board of Adjustment may change the order of business or consider matters out of order for the convenience of the applicants or other interested persons.

F. Voting

An affirmative vote of the three (3) or more of the voting members present at the meeting shall decide all matters under consideration by the Board of Adjustment unless otherwise provided for in these rules.

Voting shall be by voice vote. The Chair votes on all questions unless the Chair has declared a conflict of interest on a specific issue under consideration before the Board of Adjustment. No voting member of the Board shall be allowed to abstain from voting on any matter under consideration by the Board, unless that member has declared a conflict of interest on the matter under consideration before the Board of Adjustment.

G. Parliamentary Procedure

Parliamentary procedure in Board of Adjustment meetings shall be governed by Robert's Rules of Order, as revised.

H. Suspension of Rules

The Board of Adjustment may suspend any of these rules by a majority vote of the entire Board.

I. Record of Meetings

The Secretary of the Board of Adjustment shall keep an accurate record of the proceedings and perform other duties as the Board of Adjustment may determine. [The Secretary shall also prepare and post written minutes of meetings in accordance with the time requirements set forth in Utah Open and Public](#)

[Meetings Act. Upon completion of draft minutes, the Secretary shall circulate copies to the members of the Board of Adjustment for review. To expedite the approval of minutes, members of the Board of Adjustment are authorized to recommended corrections and approve minutes through email correspondence coordinated by the Chair.](#)

J. Meeting Agenda

The Planning Director or his designated Staff member shall review items proposed for the Board of Adjustment meeting agenda to determine whether all requirements necessary for Board of Adjustment consideration have been complied with. The Board shall establish reasonable deadlines for submission of applications and other items for Board of Adjustment consideration prior to a Board of Adjustment meeting to allow sufficient time for staff and agency review.

K. Non Performance or Misconduct - Removal from Office

In the event any member of the Board of Adjustment shall fail to attend more than seventy percent of the Board of Adjustment meetings held during any one year, the member may be removed from office by an affirmative vote of the majority of the County Commission. Any member of the Board of Adjustment may be removed for cause, upon written charges, by an affirmative vote of the majority of the County Commission. The member shall be provided a Public Hearing, if requested.

IV

CONSIDERATION OF APPLICATIONS

A. Hearing Procedure

Any person may appear in person, by agent or attorney at any meeting of the Board of Adjustment. The order of procedure in the hearing of each application shall be as follows:

1. Presentation by the Planning Staff of the application, including staff recommendation.
Presentation shall include the reading of pertinent written comments or reports concerning the application.
2. Additional presentation by applicant or his/her agent.
3. Public comments in favor of application.
4. Public comments against application.

5. Rebuttals by invitation of the Chair.

B. Decisions

Decisions and/or recommendations of the Board of Adjustment shall be final at the end of the meeting at which the matter is decided. The Board of Adjustment Staff shall send a Letter of Decision to the applicant, his/her attorney or agent.

V

RULES OF ETHICAL CONDUCT FOR A BOARD OF ADJUSTMENT MEMBER

Preamble

1. Ethical practice has special relevance to all people who are charged with responsibilities in public service. Board members, whose decisions and actions have long-range consequences for later generations, must be keenly concerned to adhere to ethical principles.
2. Codes of ethics, as commonly adopted, present a catalog of temptations that are prohibited. It cannot be an exhaustive catalog: human imagination is sufficiently rich to discover new variations of old temptations. The existence of a code simply puts a challenge, to some, to find a gap or loop-hole. Emphasis must be put not on the letter of prohibition but on the spirit of observance. A performance standard of ethical behavior will be superior to a specification standard.

A. Conflict of Interest

A Board of Adjustment member to whom some private benefits may come as the result of a Board of Adjustment action should not be a participant in the action.

1. The private benefit may be direct or indirect, create a material, personal gain or provide a distinct advantage to relations or to friends or to groups and associations which hold some share of a person's loyalty. However, mere membership itself in a group or organization shall not be considered a conflict of interest as to Board of Adjustment action concerning such groups or associations unless a reasonable person would conclude that such membership in itself would prevent an objective consideration of the matter.
2. A Board member experiencing, in his/her opinion, a conflict of interest, should declare his/her interests publicly, abstain from voting on the action, and may excuse himself/herself from the room during consideration of the action. He/she should not discuss the matter privately or with

any other Board member. The vote of a Board member experiencing a conflict of interest who fails to disqualify himself shall be disallowed.

3. A conflict of interest may exist under these rules although a Board member may not believe he/she has an actual conflict; therefore, a Board member who has any question as to whether a conflict of interest exists under these rules should raise the matter with the other Board members and the County Attorney's representative in order that a determination may be made as to whether a conflict of interest exists.
4. No Board of Adjustment member should engage in any transaction in which he/she has a financial interest, direct or indirect, with the agency or jurisdiction that he/she serves unless the transaction is disclosed publicly and determined to be lawful.
5. The Board members that the County Commission, in making appointments to the Board of Adjustment, not attempt to exclude whole categories or associations of business, professional, or other persons in anticipation of conflict of interest problems. The service of competent people of good character need not be sacrificed. Their withdrawal from participation in planning matters is necessary only in those specific cases in which a conflict of interest arises.

B. Gifts and Favors

Gifts, favors or advantages must not be accepted if they are offered because the receiver holds a position of public responsibility.

The value of a gift or advantage and the relation of the giver to public business should be considered in determining acceptability. Small gifts that come in the form of business lunches, calendars or office bric-a-brac are often, not always, acceptable. In cases of doubt, refuse. In cases of marginal doubt, refuse.

C. Treatment of Information

It is important to discriminate between information that belongs to the public and information that does not.

1. Reports and official records of a public agency must be open on an equal basis to all inquiries. Advice should not be furnished to some unless it is available to all.
2. Information on private affairs that is learned in the course of performing planning duties must be treated in confidence. Private affairs become public affairs when an official action -- such as an

application for Variance or Special Exception -- is requested with respect to them. Only then is a disclosure of relevant information proper.

3. Information contained in studies that are in progress should not be divulged except in accordance with established agency policies on the release of its studies.
4. Prearranged private meetings between a Board of Adjustment member and applicants, their agents, or other interested parties are prohibited. Partisan information on any application received by a Board of Adjustment member whether by mail, telephone, or other communication should be made part of the public record.

D. Political Activity

Membership in a political party and contributions to its finances or activities are matters of individual decision that should neither be required of nor prohibited to Board of Adjustment members.

1. The extent of participation in political activities should be governed by professional judgment as well as limited by any applicable civil service law or regulation.
2. The powers of the Board of Adjustment must not be exercised, nor their duties performed, in any way that will create special advantages for a political party. The special position of a Board of Adjustment member should not be used to obtain contribution or support for a political party and should not be used to obtain partisan favors.
3. Partisan debate of a community's planning program and the consideration of planning in a party's platform is proper. Planning Officials should, however, give political parties equal access to information.

Procedures Approved on: