
Minutes for the Board of Adjustments meeting of May 27, 2021, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 p.m.

Members Present: **Kevyn Grimes – Acting Chair**
 Bryce Froerer
 Laura Warburton
 Rex Mumford

Staff Present: **Charlie Ewert, Principle Planner; Tammy Aydelotte, Planner II; Scott Perkes, Planner III; Brandan Quinney, Legal Counsel; Angela Martin, Secretary**

Pledge of Allegiance

Roll Call

Charlie Ewert states that he will be covering for Director Grover in this meeting.

1. BOA #2021-05 Consideration and action on an appeal of an administrative decision, made by the Ogden Valley Planning Commission, to deny an application of a conditional use request for a short term rental in a single-family dwelling in the Village at Wolf Creek 1st Amendment Subdivision (CUP 2021-03) located at 3563 North Creekside Way

Tammy Aydelotte states that this is an appeal of an administrative decision that was made by the Ogden Valley Planning Commission on March 23rd to deny an application of a conditional use request for a short-term rental in a single-family dwelling. She adds that on page 2 of the packet it goes over the conditional use requirements. This was brought before the Planning Commission. She adds that in case there was some confusion about the decision made by the Ogden Valley Commission, they made a blanket decision for two applications, it may not be clear in the minutes both of the appeals were covered by one motion at that meeting. She adds that short-term rentals are allowed as conditional use in the FR-3 zone. The Board must consider if the Planning Commission erred in their decision regarding this conditional use application.

Mr. Quinney states that conditional use is an allowed use that is allowed even though it may not fit the zoning. It is allowed only if there are conditions that can mitigate any detrimental effects and there are certain standards that will need to be met with that mitigation that will need to be substantial. Certain standards will be discussed that will help decide what conditions may be appropriate and whether those conditions will be substantial to mitigate any detrimental effects.

Laura Warburton states that it is her understanding that it is an allowed use and the Planning Commission can place conditions upon it. Mr. Ewert notes that the state code states “shall be approved provided that” and it goes on to talk about the mitigating circumstances. It used to be more subjective on whether or not it can or cannot be denied. It gave the appearance that the land-use authority has more discretion than it had. Through different court cases and subsequent state code changes. There has to be some compelling evidence that detrimental effects cannot be mitigated

Laura Warburton states that in the Planning Commissions reasoning it stated that it seems very presumptuous using a lot of “ifs”. She states that she feels that they decided that the applicant was guilty already of the detrimental effects. She adds that when the applicant files their application they should know what the requirements are. The Planning Commissions' personal opinions should not be the applicant's concerns. The decision should be based on factual evidence. What is important is if they have a license. When the license is signed they agree to certain things, if those requirements are not followed the conditional use permit can be revoked. She asks what the parking requirements are. Ms. Aydelotte states that they are allowed to park up to three it depends. She notes that some of the driveways allow for on-street parking and some are too narrow. Both applicants indicated that parking would be allowed in the garage. The Fire District has approved and they will look at access. She notes that they have capped the capacity at 10 occupants. Some of the units have 3 or 4 four bedrooms.

Laura Warburton asks what the difference between these two applications is. Ms. Aydelotte states that their requests were for short-term rentals and the requests were identical and located in the same neighborhood. Mr. Froerer notes that both were denied based on parking. He asks if the parking potential was the same Ms. Aydelotte states that this is correct the parking potential is the same.

Laura Warburton asks if the Chair would consider putting the two items together and taking action on both.

MOTION: Bryce Froerer moves to combine items BOA #2021-05 Consideration and action on an appeal of an administrative decision, made by the Ogden Valley Planning Commission, to deny an application of a conditional use request for a short term rental in a single-family dwelling in the Village at Wolf Creek 1st Amendment Subdivision (CUP 2021-03) located at 3563 North Creekside Way and BOA 2021-01 Consideration and action on an appeal of an administrative decision, made by the Ogden Valley Planning Commission, to deny an application of a conditional use request for a short term rental in a single-family dwelling in the Village at Wolf Creek 1st Amendment Subdivision (CUP 2021-01) located at 3563 North Creekside Way owned by Christian Manion. The allegation is that the Planning Commission erred in its decision to deny the request for a short-term rental into a single motion. Laura Warburton seconds. Motion carries (4-0)

Chair Grimes asks if they should take any public comment. Mr. Quinney states that this is an appeal and the Board must base their decision on the facts presented. Public comments would put the Board in danger of considering facts outside of the record.

Bryce Froerer states there was a comment from the Fire District that they had no issues with the projects. Their review show approval. Ms. Aydelotte states that the Fire District will look at access and occupancy, they look at all of the standards for a potential emergency.

Rex Mumford states that the safety and parking is addressed he has no issues with reversing the decision made but the Planning Commission

MOTION: Laura Warburton moves to pass and allow BOA #2021-05 Consideration and action on an appeal of an administrative decision, made by the Ogden Valley Planning Commission, to deny an application of a conditional use request for a short term rental in a single-family dwelling in the Village at Wolf Creek 1st Amendment Subdivision (CUP 2021-03) located at 3563 North Creekside Way and BOA 2021-01 Consideration and action on an appeal of an administrative decision, made by the Ogden Valley Planning Commission, to deny an application of a conditional use request for a short term rental in a single-family dwelling in the Village at Wolf Creek 1st Amendment Subdivision (CUP 2021-01) located at 3563 North Creekside Way owned by Christian Manion. The allegation is that the Planning Commission erred in its decision to deny the request for a short-term rental into a single motion, reversing the decision made by the Ogden Valley Planning Commission. This is based on the following conditions 1. A business license shall be obtained prior to the issuance of this conditional use permit. 2. Parking shall occur only in designated areas within the development. This recommendation is based on the following findings 1. The proposed use is allowed in the FR-3 Zone and meets the appropriate site development standards. 2. The criteria for issuance of a conditional use permit have been met because mitigation of reasonably anticipated detrimental effects can be accomplished and that they are conditional use permits and the Planning Commission provided no findings that show substantial reasoning to deny both of these property owners the right to use their property as a short term rental. Bryce Froerer seconded the motion. Motion carries (4-0)

2. Consideration and action on an appeal of an administrative decision, made by the Ogden Valley Planning Commission, to deny an application of a conditional use request for a short term rental in a single-family dwelling in the Village at Wolf Creek 1st Amendment Subdivision (CUP 2021-01) located at 3563 North Creekside Way owned by Christian Manion. The allegation is that the Planning Commission erred in its decision to deny the request for a short-term rental. Staff Presenter Tammy Aydelotte

This item was approved as a part of item 1's motion, items 1 and 2 were combined due to the nature of the applications being similar in location and request. See the above motion.

3. BOA2021-02: Consideration and action on a request for a 12-foot variance to the front yard setback for a future residential dwelling in the FR-3 zone at approximately 6706 E 6675 N, Eden (Powder Mountain West). Applicant: James DePiano; Staff Presenter: Scott Perkes

4. BOA2021-07: Consideration and action on a request for a 34-foot variance to the 50-foot natural ephemeral stream corridor setback for property located at 3488 N. Elk Ridge Trail in Eden. Applicant: Dennis Barrett; Staff

Scott Perkes states The applicant is requesting a 12-foot 20-foot to the minimum front yard setback required in the FR-3 Zone (25 feet) leaving a 13-foot 5-foot setback from the front lot line. The applicant feels that a variance is necessary to build their desired home. The applicant cites peculiar circumstances that constrain the lot's buildable area and reduces their ability to build a reasonable home that would match development within the neighborhood (see Exhibit A). The applicant initially submitted a variance request for a 20-foot setback. This request was reviewed by the BOA during their March 18th, 2021 meeting. However, the Board did not believe a variance of this size allowed for adequate separation of the home and potential improvements within the adjacent right-of-way. As such, the Board voted to table the item to allow the applicant to explore options for repositioning or redesign the proposed home that could allow for additional separation and a larger setback. The applicant revised their plans and have resubmitted for an increased setback (12-foot variance equating to a 13-foot setback) as compared to the original request (20-foot variance equating to a 5-foot setback) (see Exhibit G) Planning staff has provided three site plans exhibits to help visualize applicable setbacks and peculiar encumbrances to the property. Exhibit C depicts the minimum zoning setbacks along with the applicable encumbrances. Exhibit D depicts the site should a 12-foot 20-foot variance be granted concerning the proposed single-family residence footprint. He notes that there were some slight modifications to the garage and the driveway. He notes that this applicant was previously approved for a 12 ft. but the applicant did not act on it and it expired. This request is more restrictive.

Rex Mumford asks what the width of the road is. What is the width of the right of way? Mr. Perkes states that he would estimate that it is about 60 ft. Mr. Mumford notes that looking at the photo with the 3 cars parked in the driveway the third is parked in the right of way. Mr. Perkes states that only a car would not be in the right of way. Mr. Mumford notes that the County has a minimum spec for a 66 ft. right of way, the one in question is a private right of way and it is only a 50 ft. He adds that there is not a single vehicle that can completely park in the right of way.

James Depiano states that looking at some of the other pictures the road is private. It will never pass County standards it will remain private. To make substantial improvements. He notes that because of the slope there are already existing culverts and there are already existing driveways with pipes going through. This is not a brand new association, there are quite a few houses that have been built. He notes that one of the major concerns in the area is parking and part of the reason for the request is to allow for parking. He notes that they lose a lot of buildable areas because of the Slow Poke trail. Concerning the snow, in some cases, the snow ends up, up and over the eaves in some seasons. They are concerned about having enough room between Slow Poke and the house for snow and proper drainage in the spring. He adds that from the road to the driveway would be there is a 12 percent grade. The trail is a hardship, the steepness is a hardship, and parking in the community is also a concern.

Rex Mumford states that he does not see anything that has changed that has become a hardship beyond what it was when it was purchased. He adds that he is struggling with the fact that they can't even park a car. It would have to be a small car. A full-sized SUV would be sticking into the right of way. Mr. Depiano states that when the road was paved they left some frontage, but the road is not going to get any wider. They are 40 ft. on one side of the road. They are 36 ft. from the road on one side and 40 from the other. With the steepness of the lot, there is nothing that they can physically do to the road. To widen or improve it. When they bought the lot they were told that the lot has a hardship because of the Slow Poke trail. The house cannot be pushed further back. They have done what they can to keep the house within the limits of the zone as much as possible. They are 36 to 40 from the road physically. Engineering will look at the home once it is built, right now they are looking at the structure and variance.

Laura Warburton asks if Engineering has signed off on this application. Mr. Perkes states that Engineering does not typically look at these types of requests. Mr. Depiano states that this has gone through Hillside review and Engineering has reviewed the plans. He notes that they have applied for a building permit. Laura Warburton states that she appreciates Rex Mumford's comments. It was approved before and she states that she does not understand why the Board is asking for less of the variance. They are not setting precedence and she does not believe that everyone in the area will be asking for a variance. She adds that she is inclined to approve this item.

Rex Mumford states that prior approvals should not direct the Board in their decision. They have had several property owners make comments and state as a part of their reasoning that neighbors have been granted a variance. The Board cannot base their decision on this. He states that he is uncomfortable with the parking issue and the visitor having to park in the road right of way. The right of way is narrow.

Mr. Perkes states that the applicant is stating that because of the layout of the slowpoke trail easement their lot is more encumbered than the surrounding lots.

Mr. Ewert states that this is a conversation worth having because help either the ordinance means something or it does not. Ordinances are supposed to be narrowly tailored to avoid regulatory takings and if the ordinance is applied is regulatory taking in essence occurring. Does it deny the applicant the opportunity to use the land the way that everyone else in the area gets to? Laura Warburton states that they should also be looking at other homes in the area to determine if they are similar in size and if the hardship could be self-imposed. Mr. Perkes states that the surrounding home has a similar footprint. Mr. Ewert states that if the hardship of the applicant is not self-imposed due diligence might have exposed the rest however it is severely complicated by the steepness of the lot. This is a challenge that may or may not have been on the record when the applicant was doing their due diligence. He adds that sometimes they do not fully understand this until an architect and engineer review gets involved. He adds this is a quasi-judicial board and they get to make the judgment. They need to determine if it follows the intent and the spirit of the law. They must take determine if it meets all five of the criteria listed in the staff report. Laura Warburton asks if the applicant has feedback concerning the slope and the garage.

Rex Mumford states that this is one of the more restricting lots and at the of purchase they should not expect that they will be able to build the same as everyone else. Mr. Depiano states that he would be happy to compromise and see if they could fit a vehicle fully on the driveway. There are other houses in the driveways with retaining walls. The County will not take the road and it won't be extended or improved.

Laura Warburton states that there is a hardship and sometimes the applicant cannot do their due diligence until they have bought the lot. She feels that a 10 ft variance would be reasonable. Looking at the right of way and how it is being used, it is hard to tell if it will be expanded in the future or if it will remain private. She adds that he will still need to make adjustments with the house, it is not going to fit.

Rex Mumford asks if this was originally a substandard lot. Mr. Perkes states that this plat was approved well before they were listed as restricted lots. The question did the applicant know about the restriction when he purchased the lot. It does not seem that this is the case.

MOTION: Laura Warburton moves to approve BOA2021-02: Consideration and action on a request for a 10-foot variance to the front yard setback for a future residential dwelling in the FR-3 zone at approximately 6706 E 6675 N, Eden (Powder Mountain West). This is based on the following findings, that it is reasonable. The landowner has a lot that is substantially hinder lot. Bryce Froerer seconds. Laura Warburton votes aye, Bryce Froerer votes aye, Rex Mumford votes nay, Chair Grimes votes aye. Motion carries (3-1)

4. BOA2021-07: Consideration and action on a request for a 34-foot variance to the 50-foot natural ephemeral stream corridor setback for property located at 3488 N. Elk Ridge Trail in Eden.

The applicant is requesting a 34-foot 20-foot variance to the required 50-foot ephemeral stream setback to facilitate the placement of a single-family detached home on the lot. The special circumstance on the property that is driving this variance request is a seasonal/intermittent stream running through the rear of the lot, as shown within a detention basin easement on the Elkhorn Subdivision Ph. 2 subdivision plat. This stream requires a 50-foot setback from its high watermark, thus creating a large encumbrance on the property. The Land Use Code (Sec. 104-28-2(b)(1)), states the following regarding ephemeral stream corridor setbacks: No structure, accessory structure, road, or parking area shall be built within the required setback from a river or stream as measured from the high watermark of the river or stream. The high watermark shall be determined by Staff Report to the Weber County Board of Adjustment Weber County Planning Division the Weber County Engineer. The areas within the setback shall be maintained in a manner that protects the quality of water in the river or stream and the habitat of native vegetation and wildlife along the river or stream. C. Structures, accessory structures, roads, or parking areas shall not be developed or located within 50 feet from the high watermark of a natural ephemeral stream. This section of code was first implemented in 2005 through the adoption of Ordinance 2005-19. For reference, the Elkhorn Subdivision Ph. 2 was recorded in July of 1996. As such, this subdivision was originally

designed for adequate sizing and configuration of building lots for residential footprints and did not contemplate additional setback requirements beyond the depicted detention basin easement. For reference, seven total lots within this subdivision (lots 29-34) are affected by this stream. However, only lot 29 (applicant's lot) and lot 33 remain undeveloped. The developed lots 30-32 were either developed before Ordinance 2005-19 being adopted or were permitted without going through the variance process. The granting of a 34-foot 20-foot variance would allow the applicant to build a home within 16-feet 30 feet of the stream's high watermark. When the original variance request was submitted, a high watermark was incorrectly depicted on a site plan submitted by the applicant's builder. Per this erroneous site plan, the applicant's proposed building plans only necessitated a 20-foot variance to contain the home's foundation walls and an exterior deck's footings 30 feet away from the high watermark. However, once excavation of the lot was underway, the Building Inspection department notified the Planning and Engineering Divisions that the new setbacks (30-feet) allowed under the approved variance appeared to have encroached. Upon investigation, it was found that the home was properly placed on the lot per the front and side setbacks. However because the high watermark was incorrectly depicted on the original site plan, the rear of the home was several feet closer to the stream than was allowed by the modified setbacks. Unfortunately, the Building Inspection Department found that the home and deck footings were placed outside of the storm drain easement that is depicted on the plat. As such, the Building Department allowed the applicant to pour the home's foundation footings and walls. However, they requested that the exterior deck footings be postponed until Planning and Engineering had a chance to inspect the site. Upon inspection, Engineering verified the high watermark to be within 16-feet of the rear-most deck footing and within 22- feet of the rear-most corner of the home's foundation wall. Due to these measurements, the applicant has re-submitted to amend their original variance request to allow for a 34-foot variance to the 50-foot setback.

Rex Mumford asks if this stream is regulated upstream. Mr. Perkes states that it is and it is a natural drainage. Mr. Mumford states that the applicant is not asking to go outside of the easement.

MOTION: Rex Mumford moves to approve BOA2021-07: Consideration and action on a request for a 34-foot variance to the 50-foot natural ephemeral stream corridor setback for property located at 3488 N. Elk Ridge Trail in Eden. This is based on the findings that it is already under construction to stop it at this point would impose a hardship and that the stream is man-made. a. Literal enforcement of the 50-foot ephemeral stream setback would limit the placement of a single-family detached home on the lot. b. The special circumstance that exists on the property is the location of the ephemeral stream and its required 50- foot setback from high watermarks. As mentioned above, this setback requirement was adopted 9 years following the recording of the associated Elkhorn Subdivision Ph. 2. As such, the lot was not designed during the subdivision process to accommodate additional setbacks to the ephemeral stream. The stream's 50-foot setbacks from high watermarks, coupled with the required structural setbacks of the RE-15 zone, significantly reduces the lot's developable area (see Exhibit C). Thereby limiting the placement of a single-family home as compared to the placement of homes on other residential lots in the subdivision. c. Granting the variance would allow the owner of the parcel to build a single-family home in a location on the lot that would be similar to adjacent residences and other single-family lots found in the RE-15 zone. d. The General Plan indicates that this area should be developed as is planned and zoned; thereby the variance and future residential development is not contrary to any public interest. e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code. The applicant has gone through the proper channels in applying for a variance. The proposal still observes the detention basin easement, as was originally required at the time of subdivision. Laura Warburton seconds. Motion carries (4-0)

MOTION: Laura Warburton moves to adjourn. Bryce Froerer Seconds. Motion carries (4-0)

Adjournment: 6:00pm

Respectfully submitted,

Marta Borchert