

July 21, 2022

Minutes of the Board of Adjustments meeting of July 21, 2022, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 pm & via Zoom Video Conferencing.

Member Present **Jannette Borklund**
 Laura Warburton
 Neal Barker

Staff Present: Charlie Ewert, Principal Planner; Steve Burton, Principal Planner; Felix Lleverino, Planner; Brandon Quinney, Legal Counsel; June Nelson, Secretary

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

1. Minutes: April 28, 2022 approved

- 2. 2.1 BOA 2022-02:** A variance request for an eight-foot fence to be located along the south side of lot 2 of the Hadley Homestead Subdivision. **Presenter is Felix Lleverino.**

The applicant is requesting a two-foot variance to the maximum fence height of six feet. The eight-foot fence would be located on the property line adjacent to a planned high school parking lot (see Exhibit B). The fence material will be formed concrete that looks like wood (see Exhibit E). Construction on the high school directly south is due to begin soon. The applicant feels that a variance is necessary for them to have privacy and to enjoy the use of their backyard. The applicant cites special circumstances that will result from a vehicle intensive use such as a high school. See Exhibit A for the applicant's narrative.

The list below are points taken from the applicant's narrative as compared to the above-listed point of BOA consideration (see **Exhibit A** for the full narrative):

- a. The applicant's narrative states that literal enforcement of the maximum fence height of six feet will result in limited privacy for activities within the backyard.
- b. The applicant names special circumstances presented with the new high school plan. The location of the planned parking area is adjacent to the rear yard of the existing home. There is an existing swimming pool in the backyard, from which, the owners feel they could benefit from extra privacy. Strict enforcement would limit the use and enjoyment of the backyard and swimming pool.
- c. The applicant's narrative indicates that granting a variance is needed to enjoy a substantial property right that is possessed by other properties in the area.
- d. The General Plan does not contain statements contrary to this specific request. This request is not contrary to the public interest.
- e. The applicant has taken the appropriate measures to submit a variance request and believes that granting the variance does not harm the goals and policies of the General Plan.

Staff recommends the Board of Adjustment review the staff's analysis and compare the applicant's request against the five points of consideration listed in LUC §102-3-4(b)(2) (presented above). If the Board finds that the applicant's request meets the criteria, a two-foot variance to the maximum six-foot fence height could be granted. The result would be an eight-foot fence along the south side of lot 2 of the Hadley Homestead Subdivision, with the exception that any portion of the fence in the front yard setback cannot exceed 4 feet in height.

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Motion made by Jannette Borklund. I move that we grant, that we approve BOA2022-02 to grant them the permission to build the fence 2 foot higher, just in that one particular area that is written in the staff report. The reason for that is because we don't have any say as people/residents as to where schools are built. We can't just say that they knew that was going to happen. I have looked at the property and they have a beautiful yard. The property behind them is vacant land. If I were to have a bunch of kids that were going to be in the parking lot, as a Board, we should use our authority to grant her this request. Motion is seconded by Neal Barker. All vote in favor 3-0 for the variance.

2.2 BOA 2022-03: A variance request to allow a driveway within the 100 foot stream corridor setback. **Presenter is Steve Burton**

This variance request was submitted on June 22, 2022. The applicant recently applied for a subdivision called Sunshine Valley Estates Phase 3 which includes a proposed shared driveway within the 100 foot stream corridor setback. The following sections of the county's stream corridor setback ordinance apply:

- 1) *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 water mark of the river or stream. The high water mark shall be determined by 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.
 - a. **Structures, accessory structures, roads, or parking areas shall not be developed or located within 100 feet on both sides of the North Fork, South Fork, and Middle Fork of the Ogden River, from the high water mark of the river.**

The subdivision cannot be approved as proposed unless a variance is granted. The following are the Board Considerations and an analysis of the variance request.

The following narrative was submitted as part of the applicant's submittal:

Sunshine Valley Phase 3 consists of three (3) lots: Lot 204, Lot 301, and Lot 302. Lots 301 and 302 are nestled in between two (2) forks of the South Fork River. The physical characteristics of the land in which the lots are located require creativity and deviation from the current ordinances. The proposed and preferable access to these lots is a shared driveway with access off of 850 S. Street just West past the county bridge. The engineered design of Lot 301 creates limited ability to adhere to the 100-foot setback from the driveway to each side of the fork of the river. The Utah well permit specifications also limits the overall design of the land use. The Property of lots 301 and 302 are bordered by both natural branches of the South Fork River which creates a unique and challenging area. Both forks at one point come within 200 feet of each other creating the request for the Variance. The alternative would be to access Lots 301 and 302 by constructing private bridges East of the county bridge. This would require (2) separate bridges and invasive disruption to the natural habitat in both locations. Two additional access points to/from 850 S. Street creates potential traffic safety concerns; ultimately leading to (3) separate access points along 850 S. Street as opposed to (1) Access point. Construction of the private bridges will require modification to the banks of the southern branch of the South Fork River in (2) separate locations. Natural erosion over the years becomes highly probable when the earth is moved or disturbed unnecessarily. To meet the 100-foot setback ordinance, multiple intrusive driveways would be required throughout the development for both residences rather than developing a cohesive shared driveway. Construction of the bridges compromises the overall integrity of the flood prevention work. According to the attached LOMR for Case No. 21-08-1088P, the area in question is deemed not to be a FEMA floodplain hazard. Our development is concerned about the environmental impact the construction of two bridges would have and is therefore: seeking a variance from the Board of Adjustment. We are requesting the Board of Adjustment approve a Variance to the Land Use Code in order to access Lots 301 and 302 with a shared driveway with a reduced setback from the southern branch of the South Fork River. The hardship imposed by the ordinance is 1) the disturbance of the natural environment and 2) the increased safety and potential traffic hazards of crossing multiple bridges and access

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points to 850 S. Street. Granting of the Variance will prevent significant disturbance of the natural environment and increase the safety of the lot owners and community.

The applicant does not specifically address each of the variance criteria in their narrative. The two branches of the South Fork river can be considered a hardship of these properties that do not generally apply to other properties in the same zone.

- a. ***There are special circumstances attached to the property that do not generally apply to other properties in the same zone.***
 1. ***In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.***
- b. ***Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.***
- c. ***The variance will not substantially affect the general plan and will not be contrary to the public interest.***
- d. ***The spirit of the land use ordinance is observed and substantial justice done.***

If the Board determines that all five criteria are met, the Board may choose to grant the requested variance. It is the staff recommendation that before any decision, the Board discusses and considers each of the criteria as they relate to the site and the specific proposal.

The owner is proposing that they use the current bridge and follow the current farm road to the current parcel configuration. It would be a shared drive. The Board asks how close the driveway would be to the stream. Steve Burton showed on a map that it varies at many different points. The owner is asking for there to be no specific number of feet for the variance attached to this request. Without the variance, there would need to be 3 bridges to access each individual parcel. They (the owners) are asking to be within the 100 feet. The parcel configuration has not come before the planning commission or for administrative review. That is not the question before the Board today. Just the variance request. The Board asks if there is slope to this area or if it is flat. Mr Burton states that he cannot speak to the slope, but he thinks that it is fairly flat. Mr Barker says that he is uneasy about this request. If there were specific distance requested that would be easier to consider, but with just throwing out the whole variance, my gut instinct is to decline. Ms Borklund states that it does not meet the spirit of the land use code.

Applicant, Steve Droste 458 Wild Willow Drive, Kamas, represents owner/developer. The current bridge was put in with a stream alteration permit which by the ordinance allows you to be within the 100 foot setback. The purpose of the stream alteration permit was to gain access to property. If the variance is not granted, we could do more stream alteration permits to grant access to the property. There is already an old ranch road. The hardship, as we see it is significance disturbance to the natural environment. The private bridges would alter the stream bank and cause loss of trees ect. It would be far less impactful to just use the one current bridge. That way, there would be no further disturbance to the natural environment. The special circumstance is the forked stream. The nature of the creeks there. The creek is bounded by dikes on both sides. We want to preserve the natural environment. We don't think that this effects the general plan nor is it contrary to the public interest. We are not in a flood hazard area. The road is mostly flat.

Lisa Woosley, Morgan Utah-representing Steve the owner. We don't want to disturb the natural environment.

Steve Burton was asked about the stream alteration permits. Steve explained that the land use code still says what the land use code says. Even if they get a stream alteration permit, our ordinance still requires them to be outside of the 100 foot setback. Upon looking at another section of the code, they could possibly get an exception. Charlie Ewert states that it is his understanding that the owner feels that they could put in 3 driveways, but it would be less impactful to keep 1 bridge.

Laura Warburton moves to deny the request for the variance. One reason is that it sets a precedent that affects the whole valley-as it stands with the information that we have, I can't in good conscience grant this variance. If I have more detail, such as a specific number for the set back. Then possible I could make a different decision. There are no special

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circumstances-it affects the general plan. I do think that it affects the General Plan. We need to keep the spirit of the general plan in protecting the setbacks. It does not inhibit the ability to build on or enjoy your property. You have the same rights as everyone around you who have had to deal with the same issues. Neal barker seconds the motion. Motion passes 3-0.

Adjourn

Respectfully Submitted,
June Nelson
Lead Office Specialist