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WEBER COUNTY BOARD OF ADJUSTMENT

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DAROLD AND CAROL HARRIS,  
Applicants,

DECISION ON APPLICATION FOR  
A VARIANCE REQUEST  
BOA 2015-03

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Applicants Darold and Carol Harris (“Applicants”) submitted a request for a 3 foot variance to a required 10 foot side yard setback for a building. The Weber County Board of Adjustment held a hearing to consider the request on June 18, 2015. Having considered the staff report, included attachments, and oral arguments, the Board now finds as follows:

FINDINGS

1. Applicants request a three foot variance to a 10 foot side yard setback at 3319 North Highway 162 in Liberty, Utah. This property is located in the Agricultural AV-3 zone.
2. In approximately 1991, Applicants built a storage building on this property. At that time, a land use permit was issued by Craig Barker that showed a side yard setback of 10 feet. A fence located on the property was used to represent the property line and determine setback measurements.
3. A survey was subsequently conducted in 2007, which indicated that the fence line was not on the actual property line and that the building did not meet the required 10 foot side yard setback.
4. Applicants contend that they, and the adjoining property owners, have treated the original fence line as the boundary line and believe it complies with the legal requirements of a

boundary by acquiescence or boundary by agreement. The neighboring property owners disagree with this assertion for a number of reasons.

5. The Applicants state they have considered moving the corner of the building, but concluded that it would be too expensive. Applicants have not sought other legal remedies, such as a district court action, to determine the actual property line. When asked, counsel for the Applicants estimated that costs and attorney's fees for such an action, exclusive of appeals, would conservatively range from \$20,000 - \$30,000.

### CONCLUSIONS

An application for a variance may only be granted if an applicant demonstrates the following: 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 land use ordinances; 2) special circumstances attach to the property that generally do not apply to other properties in the same zone; 3) a variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone; 4) a variance will not substantially affect the general plan and will not be contrary to public interest; 5) the spirit of the land use ordinance is observed and substantial justice done. UTAH CODE ANN. § 17-27a-702(2)(a); *see also* WEBER COUNTY CODE § 102-3-4(b). It is the Applicants' burden to prove that all of the above mentioned elements have been satisfied. *Id.* at § 17-27a-702(3).

Having considered the evidence presented, the Board concludes that the Applicants have not met their burden of establishing that literal enforcement of the ordinance would create an unreasonable hardship.<sup>1</sup> Applicants have not pursued other available remedies, including but not

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<sup>1</sup> There can be no unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought. *Id.* at § 17-27a702(b)(i). In addition, any hardship must come from circumstances peculiar to the property, not from conditions that are general to the neighborhood. *Id.* Finally, when determining whether or not enforcement of the

limited to, a boundary by acquiescence claim. Such remedies could resolve the situation without the need of a zoning variance. As such, the request for a variance is denied.

DATED this 10 of July, 2015.

  
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Weber County Board of  
Adjustment Chair

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land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic. *Id.*