

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	Fees (Office Use) \$225.00	Receipt Number (Office Use)	File Number (Office Use)
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Property Owner Contact Information

Name of Property Owner(s) Donald A. and Carol A. Harris		Mailing Address of Property Owner(s) 4840 North Highway 38 Brigham City, Utah 84302	
Phone	Fax		
Email Address		Preferred Method of Written Correspondence <input 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 Froerer		Mailing Address of Authorized Person 2755 Washington Blvd. Ogden, Utah 84404	
Phone 801-389-1533	Fax		
Email Address zane.froerer@froererlaw.com		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	

Appeal Request

- A variance request:
- Lot area Yard setback Frontage width Other: Location of a building on parcel no. 22-022-0179
- An Interpretation of the Zoning Ordinance
- An Interpretation of the Zoning Map
- A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning Ordinance
- Other: _____

Property Information

Approximate Address 3319 North Highway 162 Liberty, Utah 84310		Land Serial Number(s) 22-022-0179	
Current Zoning AV - 3			
Existing Measurements		Required Measurements (Office Use)	
Lot Area 42,253 square feet	Lot Frontage/Width	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback	Rear Yard Setback	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback	Side Yard Setback	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

Applicant Narrative

Please explain your request.

Please see Attachment.

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.

Please see Attachment.

Variance Request (continued...)

2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.

a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.

Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:

Please see Attachment.

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

Please see Attachment.

Variance Request (continued...)

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

Please see Attachment.

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

Please see Attachment.

Property Owner Affidavit

I (We), David Harris, 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.

David Harris
(Property Owner)

(Property Owner)

Subscribed and sworn to me this _____ day of _____, 20 _____,

(Notary)

Authorized Representative Affidavit

I (We), David Harris, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), James S. Frazier, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

David Harris
(Property Owner)

(Property Owner)

Dated this _____ day of _____, 20 _____, personally appeared before me _____, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

(Notary)

ATTACHMENT

Applicant Narrative:

Applicant is the owner of real property located within Weber County identified by Land Serial Number 22-022-0179. Currently, there is a garage located on the property and no other buildings. Construction of the garage commenced on [date]. The Applicant, the County, and the contractor all relied upon the existing fence line as the historically accepted boundary line to determine the appropriate location of the garage. The contractor even adjusted the location of the garage to the fence line based upon the historically treatment of the fence line by all property owners as the boundary line.

In 2007, the new owners of the adjacent lot removed this fence without any notice to the Applicant. The new owners also replaced this existing fence with a newer fence that was moved towards the garage. The Applicant paid for a survey and learned that the new fence line is also not on the actual property line.

Based upon the problems created by the new owner's refusal to recognize the existing fence line as the property line, the Applicant presented the new owner with a boundary line adjustment agreement to clear up any disputes or problems with the location of the boundary line. This adjustment would have resolved the historical reliance upon the fence line and adjusted the property lines to conform with all appropriate setbacks. However, to date, the neighbor, Mr. Foley, has refused to cooperate in this process.

As it currently stands, the garage no longer complies with the necessary 10 foot setback from the property line. The Applicant believes that the actual property line has been adjusted through the mutual agreement, use, and acquiescence of past property owners to the fence line and that granting a variance to permit the garage to continue in its location is appropriate under those circumstances regardless of Mr. Foley's refusal to acknowledge the prior fence line as the historically recognized property line.

Variance Request:

1. **Unreasonable Hardship:** Based upon the survey, which is presumed accurate, the garage currently fails to conform with the 10 foot side yard setback requirement. Curing this non-conformity would be a substantial financial burden. The Applicant has yet to fully explore whether it is possible to cut off a portion of the building, but has been told that this would be the minimum adjustment which would cost thousands of dollars. The Applicant is retired, 73 years old, and his only income is his social security. The reliance upon the fence is particular to this lot and the neighboring lot rather than the entire neighborhood. Because of the historical nature of the use of the property, farming, it was common for property owners to set a fence line to demarcate the estimated location of lot lines and then for both parties to accept that fence line as the definitive location of the lot line. Based upon the circumstances surrounding this fence line and the way it was treated

by prior property owners, it appears that the fence line has been historically treated as the property lines by the adjoining land owners.

Under Utah Law, the fence line should be treated as the true property line by the County per the doctrines of boundary by agreement or acquiescence. The Applicant has reviewed the origin of the fence line and has determined that it has historically been used and treated as the property line. Until 2007, both land owners had treated the fence as the property line. There is a history of treating this fence line as the property line for over twenty years. So even if this was by happenstance or acquiescence, the fence line was the property line at the time the garage construction commenced. Therefore, this is not a self-imposed hardship.

2. **Special Circumstances:** As detailed above, this property and the location of the garage are both governed and affected by special circumstances. Namely, the reasonable reliance upon the fence line as the property line when that was a common practice by landowners, contractors, and the County. This relates directly to the property and the garage. It would also create a hardship that deprives the Applicant of privileges granted to other properties where reliance upon fence lines, a frequent occurrence in the area, was permitted and is still ongoing. Other property owners were not required to get surveys but also relied upon the fence lines. Some of those fence lines did in fact turn out to be the actual property lines. Some of those fences, though not the actual property lines, were reasonably relied upon by amicable neighbors as the property lines. The disruption of this understanding would cause the Applicant hardship.
3. **Enjoyment:** As the garage exists, it cannot be legally used without the variance. Neither is it likely that the County can permit further improvement to the lot without the garage being torn down or the variance being granted. However, there are building permits, land use permits, numerous inspections, and approvals that have accepted the basic premise that the original construction of the garage was appropriate. Implicitly, the County also accepted and endorsed the reliance upon the fence line as the boundary line. The garage is precisely ten feet from the location of the prior fence line, in full compliance with the setback requirements.
4. **General Plan:** The garage is seven and a half feet from the actual property line. Therefore, the variance would be for an adjustment of a little more than two feet. The garage has existed harmoniously within the neighborhood as an accepted fixture for over twenty years. This de minimus adjustment will not affect the general plan and is a core function of this Board.
5. **Spirit of Ordinance:** This adjustment comports with the spirit of the Ordinance, the ten foot setback, because it the garage was originally set up and constructed to be ten feet from the accepted and then recognized property line. It is Mr. Foley's intervening act of moving the fence and refusing to recognize the boundary dispute issue that has caused this hardship and placed the location of the garage in conflict with the Ordinance. Therefore, substantial justice can be achieved by granting a variance that recognizes the

position taken by the County in approving ongoing updates, modifications, and improvements to the garage over a period to two decades and at great cost to the Applicant. All parties relied upon the fence line as the property line which was reasonable at the time. The Applicant complied with the Ordinance to the best of his ability and relied upon the contractor's judgment, the historical fence line as the property line, and the County's own land use decisions.