



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on a request for a special exception to allow a dwelling to be built on a lot without frontage using access by a private right-of-way.

Agenda Date: Thursday, April 12, 2012

Applicant: Christina Williams

File Number: BOA 2010-08

Property Information

Approximate Address: N/A

Project Area: 10 Acres

Zoning: Forest Zone (F-5)

Existing Land Use: Agriculture

Proposed Land Use: Residential Summer Cabin Lot

Parcel ID: 21-043-0005

Township, Range, Section: T6N, R2E, Section 34

Adjacent Land Use

North:	Agriculture	South:	Agriculture
East:	Agriculture	West:	Agriculture

Staff Information

Report Presenter: Sean Wilkinson
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801-399-8765

Report Reviewer: JG

Applicable Ordinances

- Weber County Zoning Ordinance Chapter 8 (F-5 Zone)
- Weber County Zoning Ordinance Chapter 29 (Board of Adjustment)

Background

This case was originally heard by the Board of Adjustment on January 27, 2011. At that time the applicant requested a special exception to build a summer cabin on a lot without frontage using access by a private right-of-way. The lot is located near the monastery in Ogden Valley, south and east from the end of 1800 South Street. The proposed right-of-way is an existing dirt road that travels approximately 2.4 miles through four separately owned parcels before reaching the applicant's property. The legal description for the applicant's property stated that the property had an "unrestricted, dedicated 60-foot easement for ingress and egress, access on the existing road leading from County Road 1800 S. to subject property. Seller reserves the right at his sole discretion to move the access easement to a different location so long as it provides reasonably similar access to buyer's parcel, or for the purpose of accommodating an improved road." The proposed right-of-way currently provides access to at least one dwelling (which existed prior to zoning regulations) and several agricultural structures on an adjacent parcel. The approximate location of the proposed right-of-way is shown in Map 1.

At the January 27, 2011 hearing it was the Planning Division's determination that the applicant had presented insufficient information to establish their right to use the existing road through parcels owned by the Monastery and Bally Watts LLC as access to their property. Although the applicant's legal description described an access easement, there was nothing on the ownership plat or in the abstract of title that showed a right-of-way actually existing. The Planning Division was very clear in stating that if the special exception was approved, it made no guarantee that the right to use the road through these properties existed. The Planning Division recommended approval of the request based on its compliance with applicable ordinance requirements (See Exhibit C for January 27th Staff Report – Summary of Board of Adjustment Considerations) with the stipulation that the applicant work with these property owners to obtain documents that clearly establish the right-of-way.

At the January 27, 2011 hearing, the Board of Adjustment recommended approval of the request with the following two conditions:

1. The applicant must work with a representative from the Monastery and Bally Watts LLC to establish the right to use the existing dirt road through their properties. The right to access must be established prior to final subdivision approval.
2. The applicant must sign a covenant agreeing to participate in the cost of future road improvements that may be required if the private right of way is turned into a road for the purpose of development.

The applicant is requesting that the Board of Adjustment reconsider its decision regarding the imposition of condition number 1. The applicant has been unable to reach an agreement with the other property owners mentioned in the Notice of Decision, but she has provided the following new information regarding her represented right to use the existing road as a private right-of-way:

- An amended warranty deed from the former property owner to the applicant was filed in June 2011. The legal description attached to this deed includes "an unlimited established right and easement across the Bennett Creek Roadway at its present location at any and all times as a means to access the grantee's property."
- An affidavit with information about the right-of-way was also recorded in June 2011. The affidavit included a 1970 gate agreement between the Allen's who sold the property to Christina Williams, and the other property owners mentioned previously.

Summary of Board of Adjustment Considerations

One of the criteria considered by the Board of Adjustment on January 27th was that the lot does not have frontage on a street, but has access by a private right-of-way. While the Planning Division does not guarantee that the applicant has the right to use the existing road, this issue is a private matter between the applicant and other property owners that cannot be settled by the Planning Division or the Board of Adjustment. Therefore, in making a decision the Board of Adjustment should focus on the Zoning Ordinance criteria associated with the request rather than trying to determine which representation is correct. The applicant is representing, based on the new information, that she has a right to use the existing road as access to her property despite being unable to work out an agreement with the other property owners.

The question that the Board of Adjustment needs to determine is whether the right-of-way the applicant claims she has satisfies the zoning requirements for a special exception. If the Board determines that the zoning requirements have been met, then the special exception should be approved with the second condition mentioned in the Notice of Decision: "The applicant must sign a covenant agreeing to participate in the cost of future road improvements that may be required if the private right of way is turned into a road for the purpose of development." If this special exception for access by a private right-of-way is granted by the Board of Adjustment, the applicant will still be required to go through the subdivision process in order to make the parcel a legal building lot. Subdivision approval is required prior to the issuance of a land use or building permit for a single family dwelling. Approval of the proposed right-of-way by the Board of Adjustment does not guarantee approval of a future subdivision application, nor does it guarantee that the applicant's alleged right to use the existing road is valid.

Conditions of Approval

- Before approval by the Board of Adjustment to build on any private right-of-way, the land owner of record shall place a covenant to run with the land agreeing to participate in the cost of developing any future road required by the county to replace the private right-of-way as required access to additional lots.

Staff Recommendation

Staff recommends approval of removing condition number 1 from the Notice of Decision based on the new information provided by the applicant and conformance with applicable zoning criteria. Again, the Planning Division does not guarantee that the applicant has access on the proposed right-of-way.

Exhibits

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| A. Applicant's request | D. January 27, 2011 Board of Adjustment meeting minutes |
| B. New right-of-way information | E. Notice of Decision |
| C. January 27, 2011 staff report and exhibits | |

Map 1

