

# 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) Lowell and Carole West Trust		Mailing Address of Property Owner(s) 4309 West 400 South Ogden, Utah 84404	
Phone	Fax		
Email Address		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Mail	

## Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s) Stevan R. Baxter and Kevin M. Bischoff		Mailing Address of Authorized Person Olsen, Skoubye & Nielson, LLC 999 E. Murray Holladay Road, Suite 200 Salt Lake City, Utah 84117	
Phone 801-365-1030	Fax 801-365-1031		
Email Address stevan@osnlaw.com; kevin@osnlaw.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: \_\_\_\_\_
- 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: Appeal of Decision of Administrative Application for Final Approval of Shannon Nielson Subdivision by Weber County Planning Division

## Property Information

Approximate Address 4391 West 400 South Ogden, Utah 84404		Land Serial Number(s) 15-049-0053	
Current Zoning A-1			
Existing Measurements		Required Measurements (Office Use)	
Lot Area n/a	Lot Frontage/Width n/a	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback n/a	Rear Yard Setback n/a	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback n/a	Side Yard Setback n/a	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

## **Applicant Narrative**

Please explain your request.

Lowell and Carole West (the "West") are owners of real property located at approximately 4309 West 400 South in Ogden, Weber County, Utah. Their property is adjacent to property owned by KN&LN, LLC located at approximately 4391 W. 400 S. A subdivision called the "Shannon Nielson Subdivision" (the "Subdivision") has been proposed by the Applicant KN&LN, LLC, to the Weber County Planning Division for approval. The Wests received notice of the administrative hearing for the approval of the proposed subdivision. The Wests appeared at the hearing and objected on the record to the approval of the hearing. The reason for this objection is that at least 60 feet of frontage of the proposed subdivision actually belongs to the Wests and not to the Applicant, therefore approval of the Subdivision would result in a taking of 60 feet of the Wests property. The Wests claim of ownership of the disputed property is supported by a doctrine known as "boundary by acquiescence." Title to property "is obtained by operation of law at the time the elements of boundary by acquiescence are satisfied." See *Q2 v. Hughes*, 2016 UT 8, P10. The elements of boundary by acquiescence require "(i) occupation up to a visible line marked by monuments, fences, or buildings, (ii) mutual acquiescence in the line as a boundary, (iii) for a period of at least 20 years, (iv) by adjoining landowners." *Id.* at P10, Note 15. In this case, for over 40 years, there has been a fence in place between the two properties, which has signified the agreed upon property line between the two landowners. The Subdivision as proposed takes property away from the Wests, which property they have owned and operated on for many years.

Despite the evidence set forth by the Wests at the administrative hearing, after taking the matter under advisement for some time, the Weber County Planning Division (the "Planning Division") issued its decision on the Subdivision application on October 20, 2016 and gave final approval for the Subdivision. However, the Planning Division conditioned approval by stating that "[a]pproval is conditioned upon Applicant actually owning the entire parcel as represented to the Planning Division." Decision, p. 4. The Planning Division then stated that "[i]f it is subsequently determined that ownership of the 60 feet of frontage actually belongs to the Wests, approval is void." *Id.* This decision places the parties in a difficult position and oversteps the authority of the Planning Division. The Planning Division has essentially adjudicated the property rights of the Parties and taken property from the Wests. As such, the decision should be reversed.

In its decision the Planning Division states that it does not make a finding as to actual ownership of the disputed land. However, in approving the Subdivision, the Planning Division has essentially made such a finding. By granting the approval, even if conditional, the Applicant has been given the green light to proceed with the development of the Subdivision on property that it does not own. The Planning Division acknowledges a dispute regarding the ownership of the land and that it has no "legal authority to adjudicate property rights," yet still granted the final approval. The Planning Division then points the parties to themselves or the Courts to resolve the dispute over ownership. The Wests acknowledge that the Courts is the appropriate place for the land ownership dispute to be resolved. However, the "conditional" approval acts as an adjudication of the Parties' rights in the disputed land. Under this scenario, the Applicant can begin developing the Subdivision, even though the Planning Division acknowledges that it is not clear who is the actual owner of the underlying real property. The Planning Division has overstepped its bounds in making this ruling and goes beyond its administrative authority. Instead of granting a "conditional" approval, the Planning Division should have withheld approval until the land dispute between the Applicant and the Wests is resolved. Granting approval when there is a genuine dispute of fact as to ownership of property that is part of the Subdivision essentially puts the proverbial "cart before the horse."

The Planning Division committed error when it issued the conditional approval of the Subdivision. It should have withheld approval until the land dispute is resolved. It is our understanding that the Property Rights Ombudsman generally advises administrative bodies to withhold approval until the property dispute is resolved, rather than granting a conditional approval. Based on the foregoing, the Wests respectfully request that the Board of Adjustment reverse the ruling of the Planning Division and withhold approval of the Shannon Nielson Subdivision until the land dispute is resolved by settlement or court order.

## **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.

**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:

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

**Variance Request (continued...)**

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

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

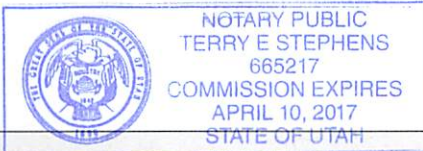
**Property Owner Affidavit**

I (We), Lowell & Carole West, 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.

Lowell West  
(Property Owner)

Carole F West  
(Property Owner)

Subscribed and sworn to me this 4 day of November, 2016,



Terry E Stephens  
(Notary)

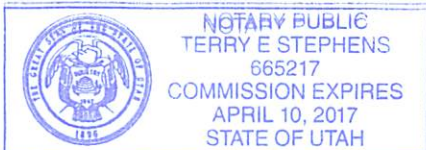
**Authorized Representative Affidavit**

I (We), Lowell & Carole West, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), Stevan R. Baxter & Kevin M. Bischoff, 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.

Lowell West  
(Property Owner)

Carole F. West  
(Property Owner)

Dated this 4 day of November, 20 16, personally appeared before me Lowell and Carole West, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.



Terry E Stephens  
(Notary)



**Weber County Corporation**

Weber County  
2380 Washington Blvd  
Ogden UT 84401

Customer Receipt	
Receipt Number	27594

Receipt Date
11/04/16

Received From:  
CAROLE WEST

Time: 13:52  
Clerk: amartin

Description	Comment	Amount
ZONING FEES	BOA	\$225.00

Payment Type	Quantity	Ref	Amount
CHECK		620102167	

AMT TENDERED: \$225.00  
 AMT APPLIED: \$225.00  
 CHANGE: \$0.00