



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 variance to the 100-foot stream corridor setback for the purpose of building a single-family dwelling

Agenda Date: TBA

Applicant: Brent & Jennifer Whetton

File Number: BOA 2019-02

Property Information

Approximate Address: 2463 E 5950 N, Liberty UT

Project Area: 1.24 acres

Zoning: Forest Valley Zone (FV-3)

Existing Land Use: Residential

Proposed Land Use: Remain as existing

Parcel ID: 22-003-0008

Township, Range, Section: T7N, R1E, Section 6 SW

Adjacent Land Use

North: 5950 North St	South: Forest
East: Residential	West: Forest

Staff Information

Report Presenter: Tammy Aydelotte
taydelotte@co.weber.ut.us
801-399-8794

Report Reviewer: SB

Applicable Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 14 (Forest Valley FV-3 Zone)
- Weber County Land Use Code Title 104 (Zones) Chapter 28 (Ogden Valley Sensitive Lands Overlay Districts)

Background

The applicant is requesting a variance for a reduction to the stream corridor setback requirements of the Ogden Valley Sensitive Lands Ordinance in order to build a single-family residence.

The application and an explanation of the request (Exhibit A) have been prepared by the applicant. Exhibit B is a site plan from the applicant. Exhibit C is the recorded Buildable Parcel Letter, showing the legal status of the subject parcel. Exhibit D is a map locating drainages requiring a setback. Exhibit E is the applicable portion of the Land Use Code regarding stream corridor setbacks.

This property was first approved and recorded in May of 2018 as a lot of record. This 1.47-acre lot is accessed by a public right of way (5950 North St.). This site plan shows the intended area for the proposed residence, in Exhibit B, which lies upslope from the North Fork River, and outside of the floodplain, that runs from the northwestern corner to the southeastern corner of the parcel. Adhering to a 100-foot setback from the high water mark would push the buildable area well within the required setbacks for the FV-3 zone.

On December 20, 2005 the Weber County Commission approved an ordinance amendment (2005-19) which created setback requirements from natural ephemeral streams (drainages) such as this. On January 22, 2008 this text was moved to a separate chapter for properties in the Ogden Valley and included in the Ogden Valley Sensitive Lands Overlay Districts (2008-4). This later amendment included maps of those streams for which the setbacks were to be applied (see Exhibit E).

The request for the 48 foot variance to build within the stream corridor is based on the following items:

- There is no suitable building area within the 1.24 acre lot, if the required stream corridor setbacks are enforced. Much of the lot is covered in a stream corridor and its' setbacks.
- The applicant is in the process of acquiring the adjacent parcel (22-003-0004), to increase their buildable area.
- The proposed building site lies outside of the nearby FEMA flood zone.
- County Engineering has no concerns with this request.

Summary of Board of Adjustment Considerations

Title 102 Chapter 3 of the Weber County Land Use Code states that one of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Land Use Code. In order for a variance to be granted it must be shown that all of the following criteria have been met:

- a. *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 Land Use Code.*
 1. *In determining whether or not literal enforcement of the land use code 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.*
 2. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
- b. *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.*
- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- d. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- e. *The spirit of the land use ordinance is observed and substantial justice done.*

Staff's analysis and findings are discussed below:

- a. Although the lot area is large enough to develop, the location of the year-round river makes it difficult, if not impossible, to meet the minimum county requirements for a single-family dwelling. While many other owners in the FV-3 Zone have properties similar in size, most do not have the unique challenge of developing around a stream corridor. This lot has a limited buildable area, and a specific point of access.
- b. The special circumstances attached to this property are based on the slope, access, and reduced buildable area created by the presence of a natural, year-round stream.
- c. Zoning gives the property owner rights to construct a single-family dwelling. Without an approved variance request, this lot may not be further developed.
- d. No changes to the General Plan will result if the variance is granted
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code, but to allow a property owner the right to develop this parcel according to permitted uses for the FV-3 zone. Granting the request would serve as substantial justice to allow the current owners continued enjoyment of their property.

Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the FV-3 Zone. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Ogden Valley General Plan.

Conditions of Approval

- That proposed dwelling maintains a minimum distance of 52 feet to the stream at the nearest location, and that the proposed site plan be followed.
- 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.
- Meet all other applicable review agency requirements.

Staff Recommendation

Staff recommends *approval* of the variance for a 48-foot encroachment into a 100' stream corridor setback based on its compliance with the applicable variance criteria discussed in this staff report.

Exhibits

- A. Application and narrative
- B. Applicants early site plan
- C. Recorded Buildable Parcel Letter
- D. Map of stream corridors
- E. Applicable sections of the Sensitive Lands Ordinance

Maps



Exhibit A - Application and narrative

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)	Receipt Number (Office Use)	File Number (Office Use)
Property Owner Contact Information			
Name of Property Owner(s) BRIAN & JENNIFER WHETTON		Mailing Address of Property Owner(s) 5989 N. 2250 E. LIBERTY UT 84310	
Phone 801-710-6276	Fax —		
Email Address BULWHEET99@GMAIL.COM		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) BRIAN KEITH - ENVISION HOMES		Mailing Address of Authorized Person P.O. Box 1114 EDEN UT 84310	
Phone 801-390-3909	Fax		
Email Address ENVISIONHOMES@HOTMAIL.COM		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Appeal Request			
<input checked="" type="checkbox"/> A variance request: ___ Lot area ___ Yard setback ___ Frontage width Other: <u>STREAM CORRIDOR SETBACK</u>			
<input type="checkbox"/> An Interpretation of the Zoning Ordinance <input type="checkbox"/> An Interpretation of the Zoning Map <input type="checkbox"/> 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 <input type="checkbox"/> Other: _____			
Property Information			
Approximate Address 2463 E. 5950 NO. LIBERTY UT 84310		Land Serial Number(s) PANEL # 22-003-0008	
Current Zoning FV-3			
Existing Measurements		Required Measurements (Office Use)	
Lot Area	Lot Frontage/Width	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback SEE SITE PLAN	Rear Yard Setback SEE SITE PLAN	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.

THE WHITTONS WOULD LIKE TO BUILD A HOUSE ON THIS PARCEL & ARE REQUESTING A VARIANCE FROM THE REQUIRED SET BACK OF 100' FROM THE HIGH WATER MARK OF THE RIVER. THE WHITTONS RECEIVED A "NOTICE OF BUILDABLE PARCEL" DATED 5/4/2018 THE WHITTONS ARE PURSUING PURCHASING AN ADJACENT LOT/PARCEL OWNED BY LIBERTY WATER TO TRY AND COMPLY TO THE SET BACK AS COMPLETELY AS POSSIBLE. THE ATTACHED SITE PLAN SHOWS THE HOUSE LOCATED AS FAR AWAY FROM THE RIVER AS POSSIBLE & ON THE ADJACENT PROPERTY THEY ARE PURCHASING AT ITS CLOSEST THE HOUSE WOULD BE 52' TO THE HIGH WATER MARK. BY LOOKING AT THE SITE PLAN YOU CAN ALSO SEE THAT IT WOULD BE IMPOSSIBLE TO MEET THE 100' SET BACK, FOR ANY SIZE HOUSE. IT SEEMS REASONABLE AND JUST TO ALLOW A VARIANCE IN THIS SITUATION IN ORDER TO ALLOW THE WHITTONS THE SAME LEVEL OF USAGE OF THEIR LOT AS THEIR NEIGHBORS.

THINGS TO CONSIDER -

1. LOTS UNIQUE SHAPE LIMITS BUILDABLE SPACE
2. LOT HAS BEE IN EXISTANCE SINCE FIG. PER NOBP
3. THE LOT SITS SUBSTANTIALLY HIGHER THAN RIVER (Foundation elevation closest to river is 7 feet above the high water mark)
4. WOULD NOT SIT IN THE FLOOD ZONE
5. RIVER DOES NOT RUN YEAR AROUND

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.

NOT BUILDABLE -

NO LOCATION ON THE LOT CAN MEET THE 100' REQUIREMENT

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:

RIVER —

THE RIVER SET BACK WOULD PREVENT USAGE OF THE LOT.

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

THE VARIANCE IS ESSENTIAL TO ALLOW THE HOMEOWNER TO BUILD ON THE LOT THAT IS DETERMINED BY THE COUNTY "BUILDABLE".

Variance Request (continued...)

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

LOT EXISTS & WILL NOT EFFECT GENERAL PLAN

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

BECAUSE OF THE UNIQUE SHAPE OF THE LOT & THE RIVER SET BACK, A VARIANCE SHOULD BE GRANTED. THIS LOT IS A GOOD EXAMPLE OF THE NEED FOR THE "VARIANCE" PROCESS.

Property Owner Affidavit

I (We), Brent and Jennifer Whetten, 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.

Brent Whetten (Property Owner)

Jennifer A Whetten (Property Owner)

Subscribed and sworn to me this 5 June, 2019



Andraya Fuller (Notary)

Authorized Representative Affidavit

I (We), _____, the owner(s) of the real property described in the attached application, do authorize as my (our) representative(s), _____, 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.

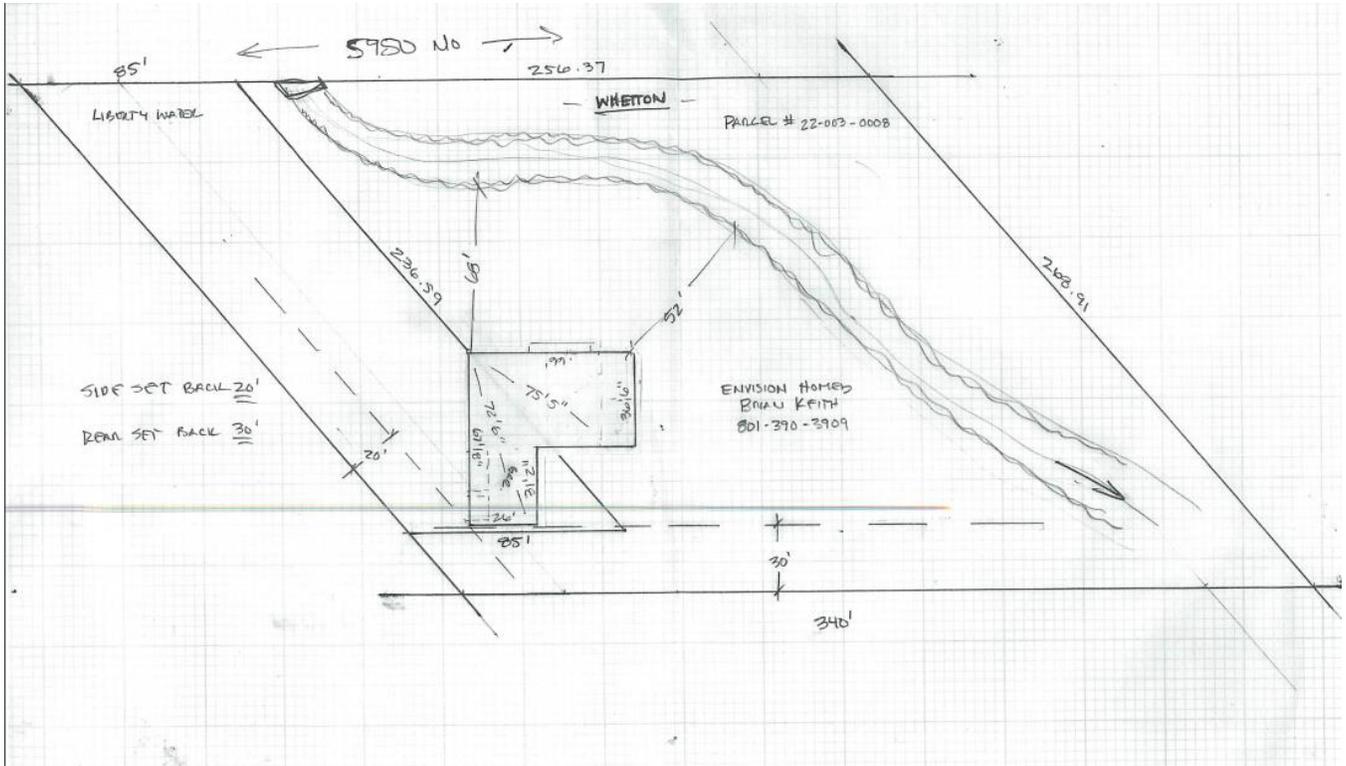
(Property Owner)

(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)

Exhibit B - Applicant's Early Site Plan





Weber County

Notice of Buildable Parcel



W2919405

EH: 2919405 PG 1 OF 3
LEANN H KILTS, WEBER COUNTY RECORDER
08-MAY-18 2:19 PM FEE \$1.00 DEP TH
REC FOR: WEBER COUNTY PLANNING

5/4/2018

Re: Property identified as Parcel # 22-003-0008

Legal Description: See attached Exhibit "A"

To whom it may concern,

The land with Parcel Number 22-003-0008 is currently zoned Forest Valley (FV-3) which allows for a variety of uses, including a single-family dwelling, when located on a "Lot of Record" as defined in Title 101 of the Weber County Land Use Code (LUC). The subject parcel was found to be a "Lot of Record" as defined in LUC§101-1-7 paragraph 1 below:

Lot of record. A lot of record is defined as any one of the following circumstances:

- (1) A parcel of real property identified as a building lot on an unrecorded subdivision plat that has been approved by Weber County and is on file in the Weber County Planning Office; or*
- (2) A parcel of real property identified as a building lot on a subdivision plat that has been approved by Weber County and recorded in the office of the Weber County Recorder; or*
- (3) A parcel or lot described in a deed, sales contract or survey that was recorded in the office of the Weber County Recorder before January 1, 1966; or*
- (4) A parcel or lot described in a deed, sales contract or survey that was recorded in the office of the Weber County Recorder in between January 1, 1966, and June 30, 1992, which complied with the zoning requirements in effect at the time of its creation and was shown to be the first or second division of a larger parent parcel; or*
- (5) A parcel or lot that was created in its current size and configuration and contained a lawfully permitted single family dwelling prior to July 1, 1992; or*
- (6) A parcel/lot that does not fall within any one of the previously listed circumstances but has received a variance from the Weber County Board of Adjustment which has otherwise deemed a particular parcel/lot as a lot of record.*

The Weber County Planning Division can issue a Land Use Permit to develop this parcel, as it exists today; provided that all applicable standards are met and that the parcel's legal description is not altered without receiving approval from the Land Use Authority.

This letter addresses the legal status of the parcel and the findings provided are based upon the parcel's conformance with the Weber County Land Use Code as described above. The site has not been inspected to ensure that existing uses are allowed and existing structures meet required yard setbacks. These factors can affect a land owner's ability to obtain a Land Use Permit and Building Permit. There may also be additional requirements that need to be met prior to the issuance of future permits.



Weber County

Dated this 4 day of May, 2018

Felix Lloverino

Felix Lloverino, Planner
Weber County Planning Division

STATE OF UTAH)

:SS

COUNTY OF WEBER)

On this 4 day of May, 2018 personally appeared before me, Felix Lloverino, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Angela Martin

Notary Public

Residing at:





Weber County

Exhibit "A"

Parcel # 22-003-0008

PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT NORTH 85D39' EAST 953.02 FEET ALONG THE SECTION LINE FROM THE SOUTHWEST CORNER OF SAID SECTION 6, AND RUNNING THENCE NORTH 48D34'40" WEST 32.85 FEET; THENCE NORTH 85D39' EAST 85 FEET; THENCE NORTH 45D31'20" WEST 236.50 FEET TO THE SOUTH LINE OF A COUNTY ROAD; THENCE NORTH 85D30' EAST ALONG SAID SOUTH LINE 256.37 FEET; THENCE SOUTH 45D34'54" EAST 268.91 FEET TO THE SECTION LINE; THENCE SOUTH 85D39' WEST ALONG SAID SECTION LINE 340 FEET TO THE POINT OF BEGINNING. TOGETHER WITH THE FOLLOWING DESCRIBED RIGHT OF WAY OVER AN EXISTING 8 FOOT WIDE GRAVEL ROADWAY DESCRIBED AS FOLLOWS: A PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT ON THE WESTERLY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING NORTH 85D39' EAST, ALONG THE SECTION LINE, 953.02 FEET, NORTH 48D34'40" WEST, 32.85 FEET AND NORTH 85D39' EAST, 4.25 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 6; RUNNING THENCE ALONG THE WESTERLY LINE OF SAID GRAVEL ROAD THE FOLLOWING FIVE COURSES, NORTH 36D46'59" WEST, 47.04 FEET; THENCE NORTH 39D43'50" WEST, 53.75 FEET; THENCE NORTH 28D36'50" WEST, 33.99 FEET; THENCE NORTH 13D58'46" WEST, 34.89 FEET; THENCE NORTH 02D21'33" WEST, 29.34 FEET TO THE EASTERLY LINE OF THE GRANTORS PROPERTY; THENCE ALONG THE EASTERLY LINE SOUTH 45D31'20" EAST, 11.69 FEET TO THE EASTERLY LINE OF SAID GRAVEL ROAD; THENCE ALONG SAID GRAVEL ROAD THE FOLLOWING FIVE COURSES; SOUTH 02D21'33" EAST, 20.00 FEET; THENCE SOUTH 13D58'46" EAST, 33.05 FEET; THENCE SOUTH 28D36'50" EAST, 32.18 FEET; THENCE SOUTH 39D43'50" EAST, 53.18 FEET; THENCE SOUTH 36D46'59" EAST, 52.33 FEET; THENCE LEAVING SAID EASTERLY LINE SOUTH 85D39' WEST, 9.47 FEET TO THE WESTERLY LINE OF SAID GRAVEL ROAD AND THE POINT OF BEGINNING. (E# 1519632 BOOK 1905 PAGE 2266)

Exhibit D - Map of Stream Corridors



Exhibit E – Applicable Sections of the Sensitive Lands Ordinance

Sec. 104-28-2. - Stream corridors, wetlands, and shorelines.



- (a) *Reports.* At the request of the county an approved jurisdictional wetland delineation report and concurrence report from the United State Army Corps of Engineers shall be required.
- (b) *Development standards.*
 - (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.
 - b. Structures, accessory structures, roads, or parking areas shall not be developed or located within 75 feet on both sides of year-round streams, as determined from the high water mark of the stream.
 - c. Structures, accessory structures, roads, or parking areas shall not be developed or located within 50 feet from the high water mark of a natural ephemeral stream.
 - d. Structures, accessory structures, roads, or parking areas shall not be developed or located within 100 feet on all sides of Pineview Reservoir, as determined from the high water mark of Pineview Reservoir.