



# BOARD OF ADJUSTMENT

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## VIRTUAL MEETING AGENDA

Thursday, April 16 , 2020  
4:30 p.m.

**Premeeting at 3:30 pm to discuss options on accepting public comment**

*\*Pledge of Allegiance*

### Regular Agenda Items

1. Minutes: Approval of the February 27, 2020 meeting minutes.
2. BOA 2020-02: Consideration and action on a request for a 25-foot variance to the 75 foot stream corridor setback at 4243 N Powder Mtn Rd, Eden Utah
3. Review and Approval of the 2020 Board of Adjustment's Rules of Order
4. Adjournment

Join Zoom Meeting

<https://zoom.us/j/703683540>

Meeting ID: 703 683 540

**The Virtual meeting will be held via Zoom.**

*In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8791*

**Minutes of the Board of Adjustments meeting of February 27, 2020, held in the Weber County Commission Chambers, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 p.m.**

**Members Present:** Bryce Froerer  
Laura Warburton  
Rex Mumford

**Staff Present:** Charlie Ewert, Principle Planner; Felix Lleverino, Planner II; Chris Crockett, Legal Counsel; Marta Borchert, Secretary

- Pledge of Allegiance
- Roll Call

**Approval of minutes for October 24, 2019.** Minutes were approved as presented.

**BOA 2020-01 - Consideration and action on a request for a 15-foot variance to the 50' stream corridor setback.**

Felix Lleverino gives an overview of the proposal. The purpose of the variance request is for the applicant to be able to build a 13 sq. ft. structure, He owns both properties in the subdivision. The subdivision was recorded in 1972. In May of 2019, Michael Randy was approved for a building parcel designation. This allows for an owner who owns both lots within a subdivision to look at it as being one lot. The pole structure would be on the north lot. On any application to build a structure staff makes sure that it meets the setbacks and ensures it is not encroaching on to any easements and that it meets instream corridor setbacks. In this case, there is a 50 ft corridor setback which is measured from the high-water mark of the stream. This is written into the code. On the dedication plat, there is drainage, and it shows a 35ft setback. That is where the discrepancies lay.

Laura Warburton asks if they are only allowed to put the structure to the back of the property. Mr. Lleverino states that it can be placed at the front or the side if it meets the architectural style of the home.

Michael Randy 559 N 5150 E, states that he does not live the property, but he owns the two lots. There is a home on the south side of the property. The property has a lot of steep hills and woods. He states that he could put the building on the adjacent property. Regarding the creek it dry most of the time. It runs intermittently He wants to put the structure near the ravine, by the high watermark. He states that he feels that 50 ft is excessive because it puts it clear out in the field. He notes that he would to conserve as much area as possible and would like to keep the building to the side. It is a deer migratory area and other animals travel through there as well. He would like to have it in an area where it cannot be seen from the road. He is asking for a 15 ft encroachment.

Ms. Warburton states that the water in the area is very clean and beautiful and she would like to protect that. She asks if he is going to be put anything in that would affect that. Mr. Randy states that he will not be doing anything that will affect the water there won't be any drains on the floor and the floors will be concrete. Mr. Mumford asks if the lot can be separated down the road. Mr. Lleverino states that they haven't been combined. Mr. Mumford states with joint ownership it allows for an accessory building be built before the home. He notes that on exhibit B with the cat on page 10 it's hard to tell there is a stream there. He states that he is not sure it qualifies as a stream. Mr. Lleverino states that they used a broad range to protect some of the riparian areas. If it were streams, drainages or waterways that run intermittently would still be considered something worth protecting. Mr. Mumford notes that if the lots are separated down the line there is enough room to build a home on the second lot. Mr. Randy states that he bought the second lot when it was inexpensive. He bought it as a buffer. There are only 2 pieces where they can build anything. It would have to be placed above or below the drainage. He wants to place the accessory building below the drainage. Above the drainage is steeper he does not intend to build there. He states that he feels that it is not buildable because of the encumbrance of the stream. Ms. Warburton asks if it would be reasonable to ask the applicant to add gravel to protect the stream. Mr. Lleverino states that this request could fall in line with maintenance. Mr. Ewert states that as point an of clarification a variance can come with conditions, it is not a conditional use permit. The Board of Adjustments is working in a quasi-judicial manner. There is some difference when it comes to objectivity and subjectivity. He notes that the Board of Adjustments can add some principles or guidelines. The code does allow for a building parcel combination without it amending the subdivision plat, when it comes to building things on adjacent

parcels that are not the primary home. The other parcel that has the accessory on it is sold off into separate ownership it will be a nonconforming use on the parcel. It has to either run with both or there has to be a main building on the adjacent parcel before it can be considered lawful. If this is located, where it is being proposed at least 10 ft off of both property lines and 30 ft off of all side property lines he could potentially call the ag. building the main building.

Chair Froerer asks if there is anyone in the audience that would like to speak to this issue. There is no one.

Mr. Mumford asks if from a County perspective this building will have the same setbacks as if it were a separate lot. Mr. Ewert states that it would be legal for the owner to combine the two lots he would have to file a subdivision plat amendment. It would go through the whole plating process, it would need to be plated and recorded that way. Mr. Ewert states that some changes are coming down the pipeline that would make it unnecessary to even file where Mr. Randy would be able to combine them without changing the plat. If a home were built right on, the property line between the two lots that would ensure the two lots would not be able to be separated. He does not have to observe the southern boundary of the lot in question. He can build it right over the lot line because he did the building parcel designations. He doesn't have to comply with the setbacks on the lot line because he filed the building parcel designation.

Mr. Mumford asks if the building is put closer to the creek to hold back with the required setbacks. Mr. Ewert states that it is not, on page 12 there are 37.3 ft it is well over the 10 ft minimum requirement for this area. There is potential for him to move closer to the southern lot line and still comply with the existing setbacks. He notes that the applicant doesn't need to comply with the setback on that lot line because he filed the building parcel designation.

Chair Froerer asks what the elevation of the bottom of the stream to where the build will be. Mr. Randy states that it is about 7 ft.

Mr. Mumford notes that he doesn't feel that this proposal would have any negative effect.

Mr. Lleverino states that staff recommends that approval of the 15-foot variance to the 50 ft variance setback. The recommendation is based on compliance with the applicable variance criteria and is conditioned on meeting all other applicable review agency requirements.

**MOTION:** Laura Warburton moves to approve BOA 2020-01 - Consideration and action on a request for a 15-foot variance to the 50' stream corridor setback. On property 595 N 5150 , Parcel # 20-46-0005, 20-046-0006. This recommendation is based on compliance with applicable variance criteria and conditioned upon meeting all other applicable review agency requirements. It does not inhibit the General Plan and it supports the property rights and is based on all other agency's approval. Rex Mumford seconds. Motion carries (3-0)

#### **Election for Chair and Vice-Chair 2020**

**MOTION:** Rex Mumford moves to recommend Laura Warburton as Chair. Bryce Froerer seconds. Motion carries (3-0)

**MOTION:** Laura Warburton moves to recommend Bryce Froerer as Vice-Chair. Rex Mumford seconds. Motion carries (3-0)

**Schedule & Information: 2020 Meetings and Information List:** Board members review the schedule, the information list was emailed to board members at a later time.

**Rules of Order: Approval of Rules of Order:** Mr. Crockett states that he made the changes that were requested at the last meeting. He adds that he could add some clarification to the first sentence of Section A so that it matched the language of the ordinance exactly.

**MOTION:** Rex Mumford moves to approve the Rules of Order for 2020 subject adding clarification to the first sentence of Section A regarding the first meeting of the year to match the ordinance. Bryce Froerer Seconds.

**Review of Open Meetings Act-Chris Crockett-**Chris Crockett gives a presentation of the open meetings act.

Mr. Mumford states that the Board of Adjustments meets infrequently. He asks if it is crucial to have minutes approved before the County can grant certain actions? Mr. Ewert states that the bylaws have been updated for electronic meetings to be possible. It is important to have them when there is legal action coming down the road. Mr. Crockett goes over the legal provision regarding minutes. He states that the County is not a specified public body. Minutes need to be done within a reasonable time, preferably within 30 days.

Mr. Ewert states that he believes that the ordinance refers to all Board of Adjustments meetings as hearings. He asks if it is considered a public hearing. Mr. Crockett states that it might be in the best interest of the Board to amend the ordinance to remove the word hearing from the bylaws.

MOTION: Bryce Froerer moves to amend the bylaws to remove the word hearing. Rex Mumford seconds. Motion carries (3-0)

Mr. Crockett states that it is important to build a solid record by allowing public comment. He states he will look into the public comment issue regarding the Board of Adjustments. He states that he will review some case law and see how it relates to the Board of Adjustments.

Mr. Crockett states that he would like to point out that violating the closed meeting provision has the biggest consequence it carries potential criminal liability. The penalty for violating closed meeting provision is to have a decision overturned.

Chair Warburton states that she is confused regarding ex parte communications and conflicts of interest regarding the Board of Adjustments. She asks Mr. Crockett to clarify. Mr. Crockett states that as a general rule ex parte communications are prohibited in administrative matters but permissible in legislative matters. He states that the best thing to do is to air on the side of caution, if they have been ex parte communication they should disclose it, it might not require a recusal it can help remove the appearance of impropriety.

Following the quiz, Mr. Crockett noted that they had completed the Open meetings Act training and they can print out a certificate. Chair Warburton states that she would like Mr. Crockett to send the link to the video and quiz for Board members who were not able to attend. She notes that she would like them to complete the quiz and send the certificate of completion to Mr. Crockett.

Bryce Froerer moves to Adjourn. Rex Mumford seconds. Motion carries (3-0).

**Adjournment- 5:47 PM**

**Respectfully Submitted,**

**Marta Borchert**



# 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 25-foot variance to the 75 foot stream corridor setback.

**Agenda Date:** Thursday, April 16, 2020

**Applicant:** Robert Bracken

**File Number:** BOA 2020-02

### Property Information

**Approximate Address:** 4243 N Powder Mtn Rd

**Project Area:** 1.07 acres

**Zoning:** Forest Residential (FR-3)

**Existing Land Use:** Residential

**Proposed Land Use:** Residential

**Parcel ID:** 22-209-0008

**Township, Range, Section:** T7N, R1E, Section 22

### Adjacent Land Use

<b>North:</b>	Residential	<b>South:</b>	Residential
<b>East:</b>	Residential/ Open Space	<b>West:</b>	Residential

### Staff Information

**Report Presenter:** Steve Burton  
sburton@webercountyutah.gov  
801-399-8766

**Report Reviewer:** RG

## Applicable Codes

- Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Title 104 (Zones) Chapter 17 (Forest Residential (FR-3 Zone)
- Title 104 (Zones) Chapter 28 (Ogden Valley Sensitive Lands) Section 2 (Stream Corridors, Wetlands, and Shorelines)

## Background

The applicant is requesting a 25-foot variance to the required 75-foot stream corridor setback for the placement of a single-family dwelling. The parcel on which the variance is sought is Lot 8 of Hidden Oaks at Wolf Creek Subdivision. This subdivision was recorded in September of 2003, and showed a 50 ft stream corridor rather than a 75 ft corridor from the

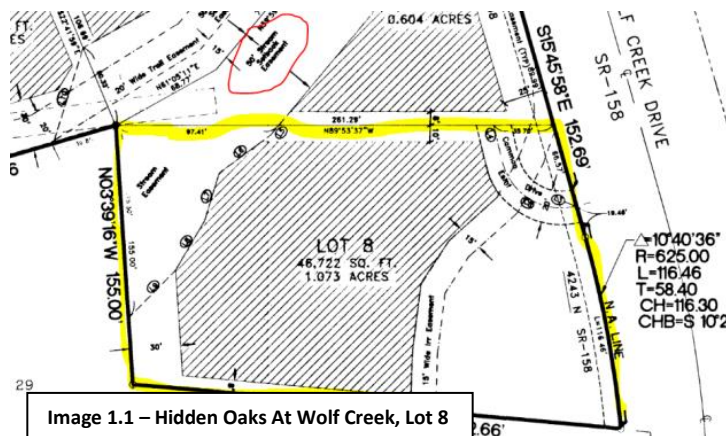


Image 1.1 – Hidden Oaks At Wolf Creek, Lot 8

high-water mark. Upon review of the applicant's building permit, the county has determined this stream to be a 'year-round stream' requiring a 75 ft setback. There is also a 15 ft wide irrigation easement running north/south near the middle of the property. The applicant has cited this irrigation easement as a site specific hardship, restricting where he can place a home on this lot.

The Land Use Code (Sec. 104-28-2(b)), states the following regarding stream corridor 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...*

***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.***

The application provided by the applicant is included in this report as Exhibit A. The Hidden Oaks at Wolf Creek Subdivision plat is included as Exhibit B. The site plan submitted by the applicant is included as Exhibit C.

The following is staff's analysis of this request reviewed against the variance criteria outlined in LUC §102-3-4.

## **Analysis**

LUC §102-3-4 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 feels that a hardship exists on this property, including the Wolf Creek Stream and the Irrigation easement shown on the subdivision plat. In reviewing the other lots in this subdivision, they are not impacted by the 15 ft irrigation easement as much as this lot. Staff does not feel that the hardship is self-imposed or economic, as irrigation easements are necessary to ensure proper irrigation services to the surrounding area.

The proposed dwelling is a single story, 2,502 square foot living area with an 869 square foot garage, a total footprint area of 3,371 square feet. The other lots within this subdivision have a similar home and garage footprint. Staff feels that the granting of the proposed variance would allow the owner to enjoy the residential property right possessed by other properties in the same zone and neighborhood.

The proposed use is permitted within the existing zoning and the proposed dwelling will remain 50 feet outside of the stream, providing some protection for the stream. Due to these reasons, staff feels that granting the variance would not go against the goals and recommendations of the general plan. After reviewing the proposal, the Weber County Engineering has no concerns with the requested variance.

## **Staff Recommendation**

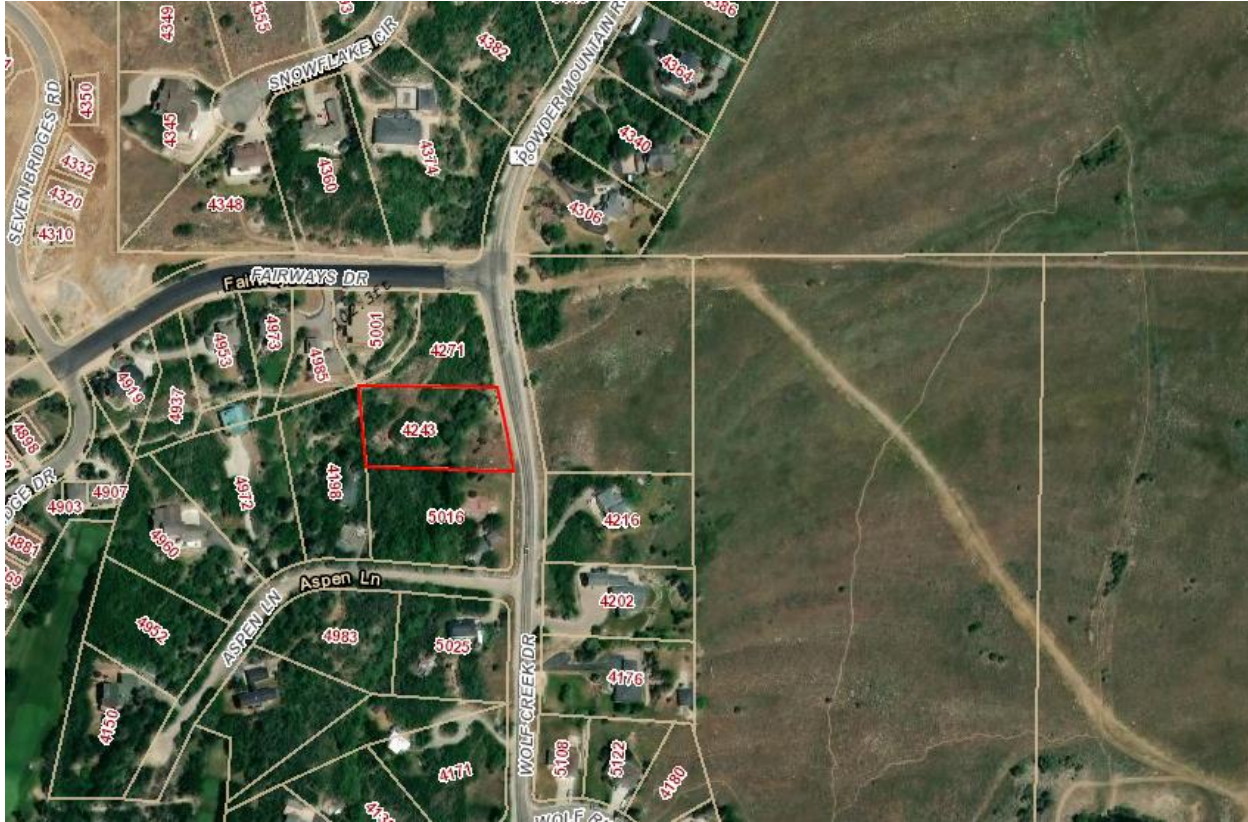
Staff recommends approval of a 25-foot variance to the 75-foot stream corridor setback, as stated in the application. This recommendation is based on the following findings.

1. The applicant has demonstrated that the proposal meets the variance criteria outlined in LUC §102-3-4

## Exhibits

- A. Application with Narrative
- B. Hidden Oaks at Wolf Creek Subdivision plat
- C. Proposed site plan
- D. Stream Corridor map

## Area Map



## 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)
<b>Property Owner Contact Information</b>			
Name of Property Owner(s) <b>Robert, Tammy Bracken</b>		Mailing Address of Property Owner(s) <b>2193 n. 500 e. North Ogden, ut 84414</b>	
Phone <b>801-388-5015</b>	Fax		
Email Address <b>Brackenplace@msn.com</b>		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
<b>Authorized Representative Contact Information</b>			
Name of Person Authorized to Represent the Property Owner(s) <b>Self</b>		Mailing Address of Authorized Person	
Phone	Fax		
Email Address		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
<b>Appeal Request</b>			
<input checked="" type="checkbox"/> A variance request: ___ Lot area    ___ Yard setback    ___ Frontage width    Other: <u>Stream corridor set back</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 checked="" type="checkbox"/> Other: <u>Change stream variance from 75' to 50'</u>			
<b>Property Information</b>			
Approximate Address <b>4243 north Powder Mtn Rd Eden, Utah 84310</b>		Land Serial Number(s) <b>222090008</b>	
Current Zoning <b>Residential</b>			
<b>Existing Measurements</b>		<b>Required Measurements (Office Use)</b>	
Lot Area <b>46,686</b>	Lot Frontage/Width <b>183</b>	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback <b>25'</b>	Rear Yard Setback <b>30'</b>	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback <b>8'</b>	Side Yard Setback <b>10'</b>	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)



**Applicant Narrative**

Please explain your request.

To get a variance on the river setback from 75' back to 50', which is what it was understood to be when we purchased the lot, this way we can build the house between river and irrigation setback without disrupting the more mature trees and shrubs

**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.

By following the ordinance we have to remove more of the natural look and vegetation, which is in direct conflict with the bylaws that request it to be left as natural as possible.

**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:

**We have both a river and irrigation setback with the buildable area between them. The irrigation shows arching away from the house, but actually arches towards the house. our lot is 20 feet above the high water mark of the river, higher than any of our neighbors. The plat is correct but the irrigation is not actual and does not allow us to place the house where it is shown on the plat. To make the house fit would require us to move a lot of the mature trees and large boulders, plus making a larger foundation for the house.**

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

**If we can be granted the variance, we will be able to keep the grounds more natural and abide to the bylaws of the community. Other property owners in the subdivision are within the 50' variance and are much lower than our lot. So granting us the 25' variance brings us more in line with them.**

Variance Request (continued...)

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

If we can be granted the variance we will be able to keep the grounds more natural and abide to the bylaws of the community.

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

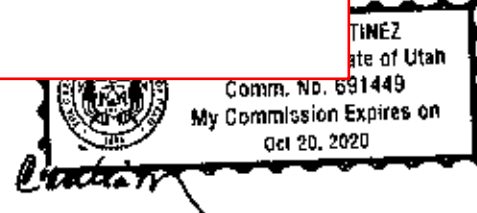
We have a lot that is 20 feet above the high water mark of the river, it has barren spots on it that if allowed the 25 variance would prevent us from taking down more trees.

Property Owner Affidavit

I (We), Robert & Tammy Bracken 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.



Subscribed and sworn to me this 25 day of March, 2020



(Notary)

Authorized Representative Affidavit

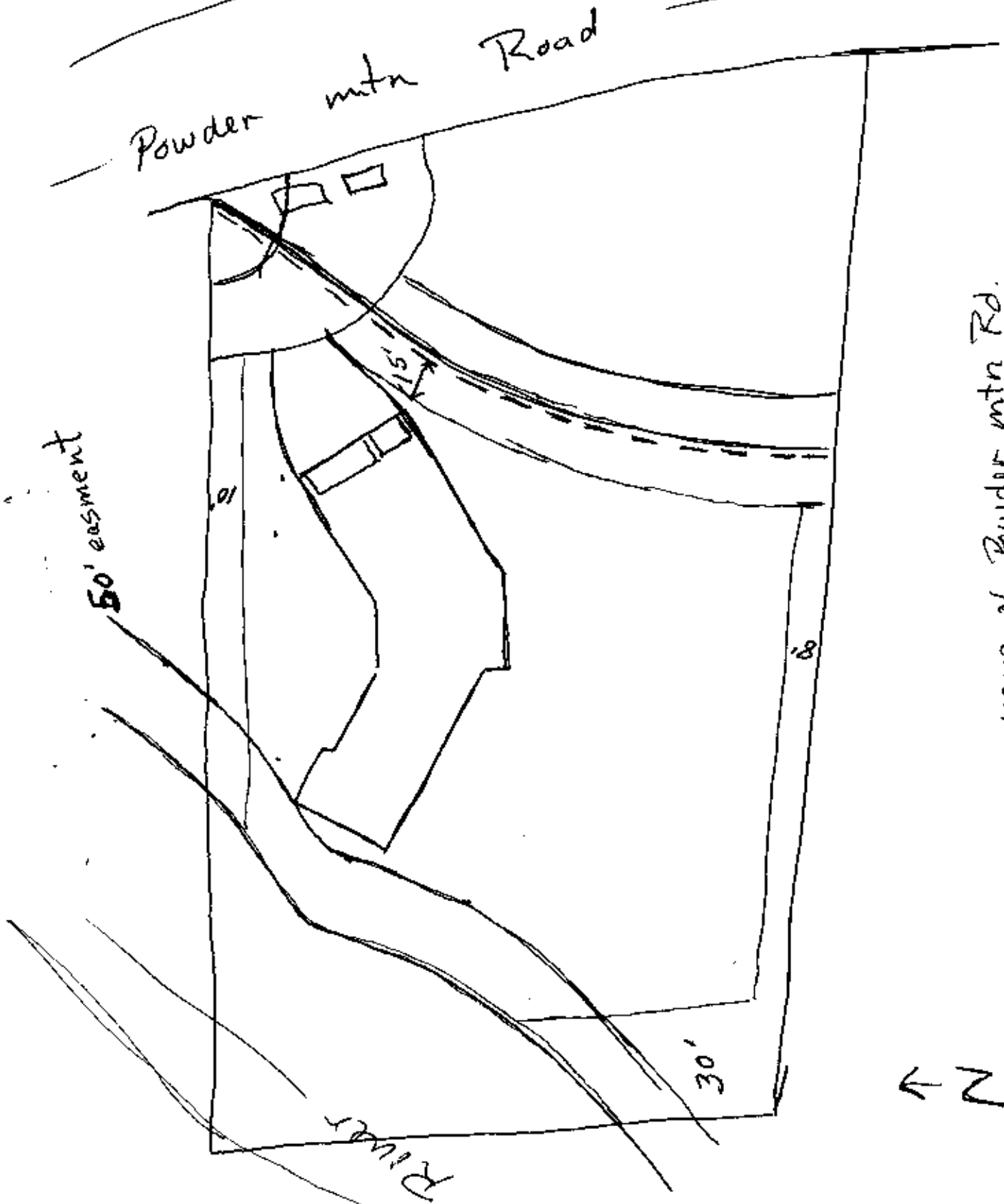
I (We), \_\_\_\_\_, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), \_\_\_\_\_, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering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

(Property Owner)

(Property Owner)

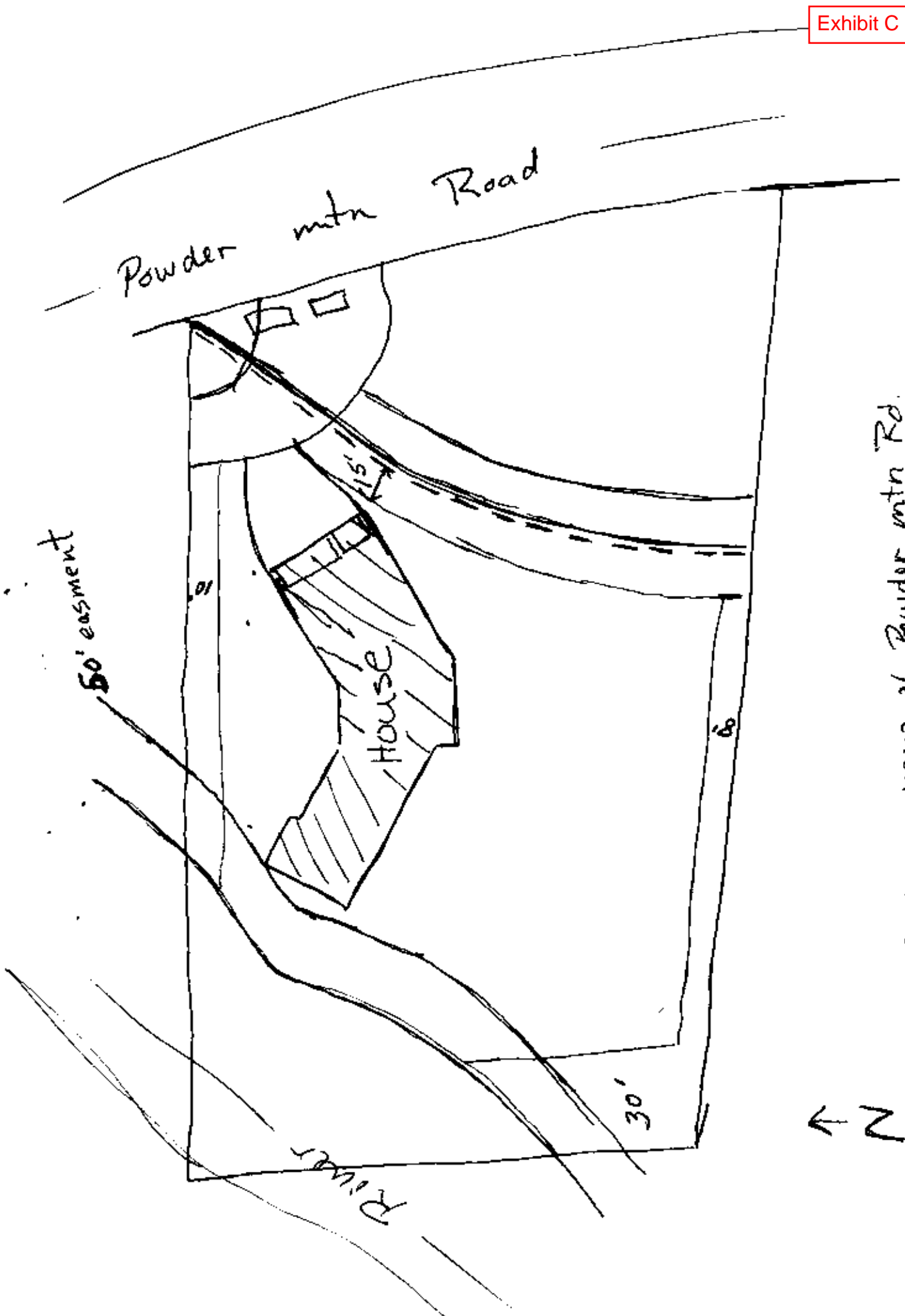
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

(Notary)



Bracken 4243 N. Powder mtn Rd.





Bracken 4243 N. Powder mtn Rd.

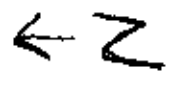
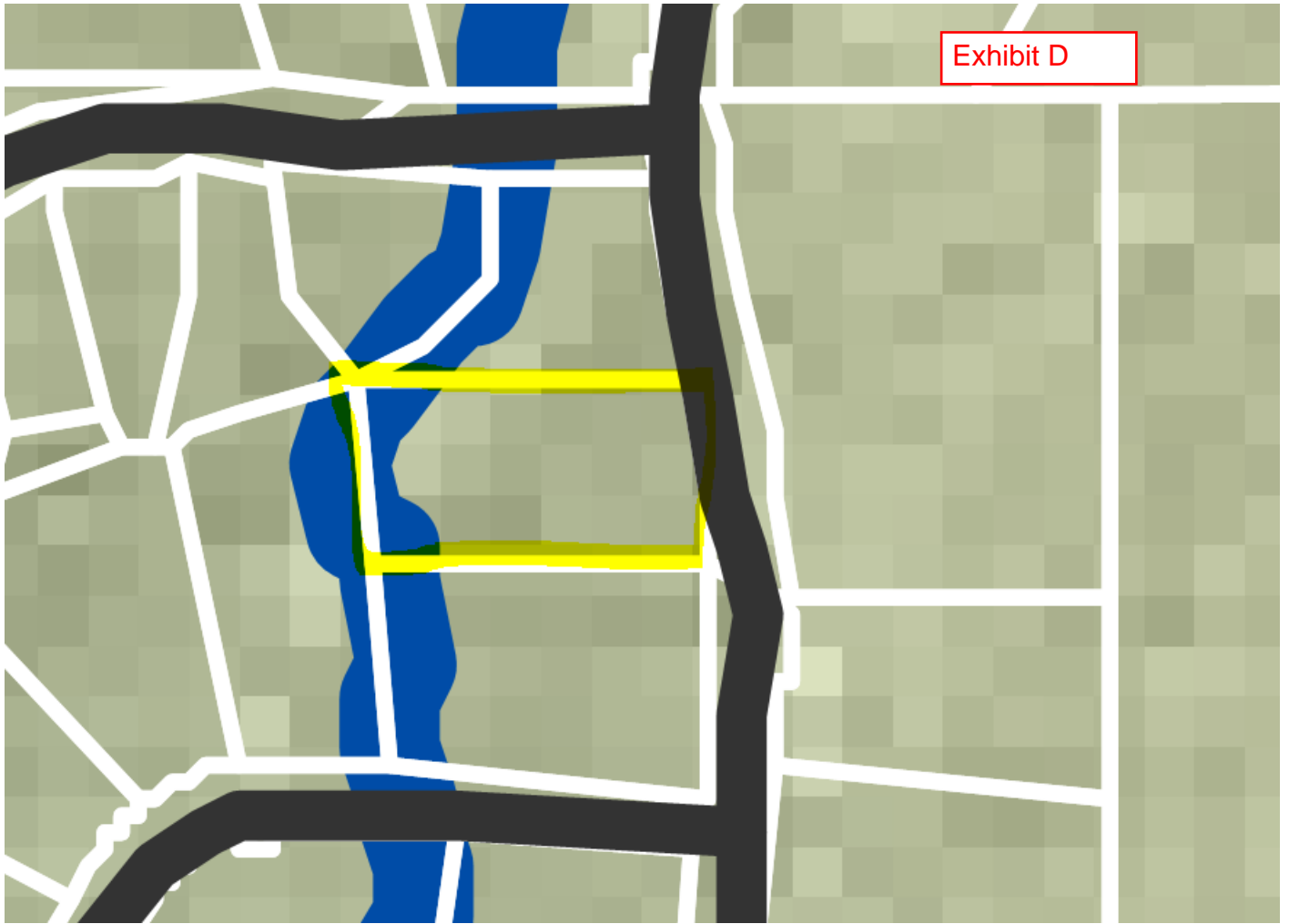


Exhibit D



Roads



Intermittent stream



Stream or braided stream



Ogden Valley Boundary



Lakes, Ponds



**Elevation**



9700 ft

4075 ft

State F

