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ERNEST D ROWLEY, WEBER COUNTY RECORDER
27-AUG-13 1144 AM FEE \$0.00 DEP SGC
REC FOR: WEBER COUNTY PLANNING

Weber County Planning Division
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Weber County Board of Adjustment
NOTICE OF DECISION

Larry and Denise Montgomery
7869 East 1300 North
Huntsville, Utah 84317

May 24, 2013

File Number: BOA 2013-06

You are hereby notified that your variance request was heard by the Weber County Board of Adjustment during an appropriately noticed public meeting held on May 23, 2013.

The Board of Adjustment, as a result of a 5 to 0 vote, approved your request for a variance to the front yard setback requirement of the Agricultural Valley-3 (AV-3) Zone by allowing the front yard setback to be measured from the west property line and the side yard setback to be measured from the north property line. Pertinent information (e.g., findings, conditions of approval, etc.) related to this approval can be found in the application file (case #BOA 2013-06) and meeting minutes.

Minutes from the meeting will be available to you through the Weber County Planning Division Office in approximately one month. To obtain a copy of the minutes you may contact Sherri Sillitoe at 801-399-8794.

Sincerely,

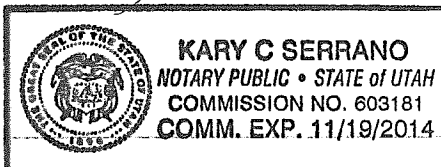
Sean Wilkinson
Weber County Planning Division

STATE OF UTAH)
 :SS
COUNTY OF WEBER)

On the 27th day of AUGUST, 2013, personally appeared before me SEAN WILKINSON the signer(s) of the foregoing instrument, who duly acknowledged to me that he/she/they executed the same.

Notary Public

Residing at:



BOARD OF ADJUSTMENT

MAY 23, 2013

East.

Rex Mumford asked in your opinion coming off of 4100 N. is more hazardous than going off of 3800 East. Chad Meyerhoffer replied that according to UDOT, they like to limit the amount of accesses that they do have on the main road. So it is better with the idea that the more traffic you have going back and forth; the more access, the more chance you have people of turning left or accidents occurring.

Nathan Buttars asked if he could address the bus and the kid traffic. Chad Meyerhoffer replied he was not sure that he could address that issue, but if there is an access or a bus stop with more kids and traffic there, that could be a hazard.

Chair Smith asked if the applicant came up with this plan or did the Engineering Department. Chad Meyerhoffer replied the applicant came up with the plan. The Engineering Department was asked for consultation on what would be a safe option off of that access right next to the intersection. We looked at it and found that it is not a safe access and most of our conversation has been with the Planning Department.

Garet Jones, Applicant, said that he would address some the questions that were brought up. As far as the seasonality of the business, they are talking six trips a day and that would be in the fall months. The other animals that would be butchered, the maximum would be a few in a week. This is a new access and all those pictures with the semi traffic are not relevant. As for the hill that has always been there, it wasn't pushed up as it was mentioned. In reference to Mr. Marriott's point, if you are standing there taking pictures while the operation is going on, and are able to get pictures of a truck with an elk on the back, a normal passerby would not see one or more trucks a day dropping off an elk. This does not go on 100 times a day when the children are walking to the bus.

Nathan Buttars said so in your opinion the kids at the bus stop, kid traffic on that road, that wouldn't be affected by the access road. Garet Jones replied that is correct.

Chair Smith asked if it was feasible to have a delivery period for drop off and pickups during a certain period of time. Garet Jones replied yes and that would be something that could be discussed with the Ogden Valley Planning Commission.

MOTION: Rex Mumford moved to approve BOA 2013-05 granting a variance from the zoning ordinance requiring the access to be directly from the collector and allow it to be on the 3800 East local road for purpose of accessing the Jones property. Phil Hancock seconded.

VOTE: A vote was taken with Chair Smith, Nathan Buttars, Rex Mumford, and Phil Hancock voting aye and Bryce Froerer voting nay. Motion Carried (4-1)

→ 4. **BOA 2013-06: Consideration and action on a variance request for a new garage to encroach 15 feet into the required 30 foot front yard setback on Lot 1 of Montgomery Ranch Subdivision Phase 1 located at 7869 East 1300 North in the Agricultural Valley-3 (AV-3) Zone. (Larry & Denise Montgomery, Applicants)**

Sean Wilkinson reviewed the staff report and stated that the applicants have stated that they cannot locate the garage further to the south due to the location of the existing septic tank and leach field. They further state that locating the garage to the west of the dwelling would block their front windows and doors and would disrupt the look and integrity of the neighborhood. Due to these conditions, the applicants believe that the garage cannot meet the 30 foot front yard setback required by the AV-3 Zone. Therefore, they have requested this variance in order to obtain permits to build the garage.

The applicants have submitted a narrative addressing the above criteria, which is attached as Exhibit A. The Planning Division's analysis and findings are discussed below.

a. The applicants believe that an unreasonable hardship exists due to the location of the existing septic tank and leach field, and that locating the garage west of the home would block their front windows and doors and disrupt the look and integrity of the neighborhood. While these are legitimate concerns, they are not peculiar to this property and could apply generally throughout the neighborhood. All of the dwellings in this neighborhood were required to locate a septic tank and leach field in an

BOARD OF ADJUSTMENT

MAY 23, 2013

appropriate area according to Health Department requirements and meet applicable yard setbacks for structures. Unfortunately, structures cannot be built within the lot area occupied by the septic tank and drain field on any of the lots in this neighborhood or in Weber County.

The applicants stated in their application that they were required by Health Department employees to locate the septic tank and leach field in its current location, but the application did not contain any supporting information. The applicants may have additional information that could distinguish this lot from others in the neighborhood and show that an unreasonable hardship exists, but any new information will have to be provided at the May 23rd meeting for the Board's consideration.

b. This lot is different from most of the lots in the AV-3 Zone because it is a flag lot with limited frontage on a road. The limited road frontage does not affect the location of the septic tank and leach field, nor does it require the dwelling to face a certain direction. Therefore, these hardships mentioned by the applicants cannot be considered special circumstances, unless additional information is provided as discussed previously. The applicants make a valid point in explaining that the dwelling was built facing west to match others in the neighborhood and preserve uniformity, but again, this circumstance does not relate directly to the hardship, as the garage was not planned when the dwelling was built. This lot has the same privileges as other lots in the AV-3 Zone that are required to meet setback requirements and avoid the septic tank and leach field area.

c. The lot is not being deprived of any property rights possessed by others in the AV-3 Zone. The applicants can still build a smaller garage in the same area that meets the 30 foot front yard setback, or the garage can be built in another location on the lot. The 30 foot front yard setback has not changed since 1994 when the dwelling was built.

d. Flag lots are exceptions to the typical lot frontage requirements and flag lot front lot lines are often located several hundred feet from the road. The flag lot front yard setback also provides for safety by allowing enough area for an emergency turnaround location or other safety measures in an unobstructed area. The Board should consider the safety, aesthetic, and other factors in determining whether or not the variance will substantially affect the general plan or be contrary to the public interest.

e. This variance request is not an attempt to avoid or circumvent the requirements of the Land Use Code. Rather it is an attempt to preserve uniformity and the general look of the neighborhood, while allowing the applicants to improve their lot. Based on the evidence submitted, the Board must determine if sufficient evidence has been presented. If there are unreasonable hardships caused by special circumstances related to the property then substantial justice would include approving the variance.

Detached accessory buildings are allowed as a permitted use in the AV-3 Zone. Staff recommends denial of the variance request for a new garage to encroach 15 feet into the required 30 foot front yard setback. The recommendation is based on the applicants providing insufficient information to prove that unreasonable hardships and special circumstances related to the property exist. The applicants are not being denied the right to build a garage on the property, and a smaller garage meeting the front yard setback could be built in this location or the same garage could be built elsewhere on the property.

Nathan Buttars asked for clarification of a flag lot and the purpose. Sean Wilkinson replied a flag lot is typically used when there is sufficient area to create a lot but there is not sufficient frontage to meet the 150 ft lot width on the road requirement of the zone. This used to come before the Board of Adjustment but currently it's an administrative decision. When this was approved by the Planning Commission; the purpose was to allow the development of the lots that didn't meet frontage requirements, and still meet area requirements. It would make sense to grant as an access exception and allow them to build rather than requiring a road to come in and serve the lot.

Nathan Buttars asked what would be the purpose of the front line lot of a flag lot and why does that matter? Sean Wilkinson replied that the ordinance states that and they have to follow that. As far as why, that is because that is where the access comes from the road. That is where the flag lot actually opens up to meet the width requirements of the zone, it makes the most sense to call that the front lot line, and the closest lot line to the road where access comes from.

Chair Smith asked if the applicant doesn't have an established line; do they get to pick and choose which way it faces, and where it's going to be. Chris Allred replied that part of the reason that it was established as a front lot line in a place like that is so that others who build in a subdivision and nearby will know what they are getting into.

BOARD OF ADJUSTMENT

MAY 23, 2013

They will know objectively when they build what the setbacks are going to be within that lot. It may not have any more practical value than that but it will put everyone else on notice of what they can expect as far as setbacks.

In response to a question by Nathan Buttars, Sean Wilkinson replied that is correct that at least two of the homes face to the south and for these homes they both have access from the west. Staff does understand the applicant's argument to keep the uniform of the neighborhood facing the house to the west, unfortunately based on what the ordinance says, staff can't find where that is an unreasonable hardship.

Rex Mumford asked if this is considered a large accessory building, and if it's in front of the home, and by definition this is, it has to have the characteristics of the home. Are there any characteristics that are being required by the county? Sean Wilkinson replied no, the building was completely designed by the applicant and there are renderings of what the building would look like.

Phil Hancock said as he recalled an accessory building has to be 10 feet behind the back of the house. Sean Wilkinson replied it depends on the zone and in some zones it is 6 feet and in other zones it is 10 feet. They can also locate the building to the side or the front as long as they meet other requirements.

Phil Hancock asked if that still does not meet the distance to the back of the house. Sean Wilkinson replied that is correct, they still have to meet the setbacks from property lines but as far as being behind the home, they do not have to meet that setback because of these other restrictions that are placed on the larger buildings.

Brian Montgomery, the applicant's representative and a resident in Huntsville, said to clarify more on this land, all the family resides on this land with their own homes and it is maintained as a family farm. The reason for these flag lots, is that there is the barn where they store their equipment, and they didn't want to cut through their barn to get to the house. They own property all the way back to the canal and to the road. As far as the flat lot, he did not know anything about the setbacks when he built the house; he wanted it facing like everyone else, and the contractor told him that it had to be 40 feet back. The reason their access being that way to the back of the property is for their farm equipment being used and maintained. As for the Leach Line Sewer System, he had asked where would be the best place to put it, and was informed he should put it right behind the house with the three laterals going to the north, but he didn't have any written documentation for that. If he puts his garage 30 feet off, it will be behind his house, and right along those leach fields where he doesn't want to mess with that.

Chair Smith asked if he owned that land behind the property, why didn't he redraw his lot line 15 feet back. Larry Montgomery replied that he didn't know that he could do that.

Bryce Froerer said the problem wasn't the property to the east but the property to the north. Larry Montgomery discussed this with his brother in law Brian Knowles, who didn't have a problem with that 15 feet. So between his 10 feet and with the 15 feet, that makes a total of 25 feet of frontage for the flag lot. He is still about 600 feet off of the main road.

Rex Mumford asked on Exhibit C you show your leach field running out, are those actually to scale? If those leach field stops at the edge of your house, you already have 15 feet and you only have to move the garage another 15 feet. Larry Montgomery replied that he was just guessing, but it's close to that so if they put it 30 feet, it's going to be right on the edge, and he just didn't want a big space between his garage and the property line. That is why he wanted to center it, if he was given 15 feet, then he wouldn't have to do any of that.

Sean Wilkinson said with the flag lot being so far off the road, this Board may want to look at lot lines, and see what practical purposes could be served. The ordinance definition is what it is as far as what that lot line is but you have to consider the criteria and if it meets the criteria.

Phil Hancock asked if the applicant had applied for a variance for the location of the front property line that might have been a possibility. Chris Allred replied that was what he was thinking during the discussion whether it would be possible to apply for a variance from that provision to change the frontage. The way the house is facing to the

BOARD OF ADJUSTMENT

MAY 23, 2013

west would it still meet setbacks? If they were to be granted a variance from that requirement and all the setbacks were shifted then everything would fit in the setbacks. As far as the rationale for setbacks, the neighbors who are his family aren't being imposed upon.

Nathan Buttars asked if they could amend their application tonight orally. Chris Allred replied no because it doesn't put others on notice that might have an interest. It seemed to him that there ought to be a mechanism to make that work, whether they would have them reapply so they can look at that, and say can they grant a variance for frontage. He was not sure why they couldn't because they would be asking for a variance from a land use ordinance and it would meet all those other criteria.

Phil Hancock said that he didn't see how they could approve the way the applicant has it. Even though he understands their reluctance, the septic tank is an economic hardship, and if that is a conventional system he would have to vote against it. But if there is a way they could look at moving the front yard setbacks at the front of the house.

Sean Wilkinson asked Legal Counsel in the ordinance it does say if the variance is granted, the Board can impose other conditions that would meet the requirement of the zone or meet the intent of the zone. As part of this variance, could something like that be imposed rather than coming back? Chris Allred replied leaning more toward yes, and it seemed to him that is not an unreasonable way of looking at things for the Board in their position.

MOTION: Nathan Buttars moved that the applicants amend their application so that the front line of their lot faces west and by doing so approve their application. Bryce Froerer seconded.

Chris Allred said that was more of a recommendation and that they didn't necessarily need a motion or there could be a different motion made to be addressed.

DISCUSSION: Rex Mumford said the language would state that they would change their frontage to orient with the west boundary. Nathan Buttars said he would accept that amendment. Chris Allred asked if they are asking the applicant to come back? Chair Smith asked if you are asking the applicant to come back or are you approving that as long as they amend the paperwork. Nathan Buttars replied that they approve it tonight as long as they amend the paperwork. Chris Allred said that he was not sure that was going where Mr. Wilkinson had suggested and maybe that should be made clear before you vote on that motion.

AMENDED MOTION: After several amended motions, Nathan Buttars moved to grant this variance request and impose a condition that the front lot line be now the west lot line rather than the north lot line and that setbacks on that west lot line be maintained in the future as a front lot line with the 30 ft setbacks or whatever other setbacks apply to the lot line in the future and that this be recorded on the title. Bryce Froerer seconded.

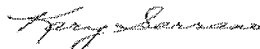
VOTE: A vote was taken with all members present voting aye. Motion Carried (5-0)

5. **Training: Making Motions:**

Sean Wilkinson said that there was no training at this time.

6. **Adjourn:** The meeting was adjourned at 6:45 p.m.

Respectfully Submitted,



Kary Serrano, Secretary,
Weber County Planning Commission