



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: 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.

Agenda Date: Thursday, May 23, 2013

Applicant: Larry and Denise Montgomery

File Number: BOA 2013-06

Property Information

Approximate Address: 7869 East 1300 North

Project Area: 1.16 Acres

Zoning: Agricultural Valley Zone (AV-3)

Existing Land Use: Residential

Proposed Land Use: Residential with a new garage

Parcel ID: 21-005-0033

Township, Range, Section: T6N, R2E, Section 6

Adjacent Land Use

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

Staff Information

Report Presenter: Sean Wilkinson
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Report Reviewer: JG

Applicable Ordinances

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 6 (AV-3 Zone)

Background

The applicants are requesting a variance to allow 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. The subdivision was approved as a 1.16 acre flag lot and the existing dwelling was built in 1994. The applicants recently submitted building plans for a 2,480 square foot garage to be located northeast of the existing dwelling, but in reviewing the site plan it was determined that the garage would encroach 15 feet into the required 30 foot front yard setback. The architectural front of the dwelling faces west, but the Weber County Land Use Code defines the front lot line of a flag lot as “the lot line parallel to a dedicated public street and at the end of the stem.” Based on this definition, the north lot line where the flag stem ends is the front lot line and the west lot line is a side lot line, despite the architectural front of the home facing west.

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.

Summary of Board of Adjustment Considerations

Title 102 (Administration) Chapter 3 (Board of Adjustment) 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 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 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.
 2. 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.
- 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.

Planning Division Analysis and Findings

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. As mentioned in the Background section above, 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 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 Planning Division contacted the Weber-Morgan Health Department regarding this issue, but there was no additional information available. 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. However, special circumstances must relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone. 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. Insufficient information has been submitted with the application for the Planning Division to determine that special circumstances exist.

- 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. The 1994 Land Use Permit for the dwelling showing the required setback is attached as Exhibit D.
- 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 front yard setback on a typical lot is intended to keep structures away from the road right-of-way and provide for safety. 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. The burden of proof is on the applicants to prove that all of the conditions justifying a variance have been met. 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.

Conformance to the General Plan

Detached accessory buildings are allowed as a permitted use in the AV-3 Zone. Approval or denial of the requested variance will not substantially affect the goals and policies of the Ogden Valley General Plan.

Conditions of Approval

- Meeting the requirements of applicable County review agencies
- Obtaining a land use permit and a building permit prior to construction if the variance is approved
- Compliance with any additional conditions imposed by the Board of Adjustment

Staff Recommendation

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. If additional information is provided to prove that the criteria have been met, then the Planning Division is willing to reconsider its recommendation.

Exhibits

- A. Applicants Narrative
- B. Montgomery Ranch Phase 1 Subdivision Plat
- C. Garage Site Plan and Building Plans
- D. 1994 Land Use Permit for Existing Dwelling
- E. Aerial Photographs of Property
- F. Recent Photographs of Property

Map

