



BOARD OF ADJUSTMENT

MEETING AGENDA

**Thursday, April 28, 2022
4:30 p.m.**

- *Pledge of Allegiance*
- *Roll Call*

Regular Agenda Items

1. Minutes: November 4, 2021

2. BOA 2021-09: A request for a 53-foot variance (leaving a 22-foot setback) to the 75-foot stream corridor setback requirement from a year-round stream on a lot of record located at 3390 N 5100 E, in Eden to allow for the construction of a single-family residence. **Staff Presenter: Scott Perkes**

Adjournment

The Board of Adjustments meeting will be held in the Weber County Commission Chambers, in the Weber Center, 1st Floor, 2380 Washington Blvd., Ogden, Utah.

&

Zoom Video Conferencing at the following link <https://us02web.zoom.us/j/81137866679> Meeting ID: 811 3786 6679

In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8761

BOARD OF ADJUSTMENTS

November 4, 2021

Minutes of the Board of Adjustments meeting of November 4, 2021, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 pm & via Zoom Video Conferencing.

Member Present: Jannette Borklund – Chair
Bryce Froerer
Rex Mumford
Laura Warburton

Staff Present: Rick Grover, Planning Director; Steve Burton, Principle Planner; Scott Perks, Planner; Brandon Quinney, Legal Counsel; Courtlan Erickson, Legal Counsel; June Nelson, Secretary

- Pledge of Allegiance
- Roll Call

1. Minutes: September 16, 2021: minutes for September 16, 2021 were approved as presented.

MOTION: Bryce Froerer moves to approve the minutes as presented. Rex Mumford Seconds. Motion carries (4-0) Minutes were approved as presented.

2. BOA 2021-10: Consideration of an appeal on the Planning Division decision to deny a land use permit based on the County Stream Corridor Setback Requirements **Applicant: Scott Bracken; Staff Presenter: Steve Burton**

This appeal was accepted by the Planning Division on August 12, 2021. The appellant asserts that the Planning Division erred in denying a land use permit for a dwelling. The Planning Division issued a written decision explaining the denial on July 27, 2021. The written decision (Exhibit A) states that the decision to deny was based on the owner's site plan which showed the home 50 feet to the stream classified by the county as year-round. Year-round streams, under LUC 104-28-2, have a setback of 75 feet, in which no structures can be built.

The appellant's narrative and supplemental information are included in the staff report as Exhibit B.

The stream setback ordinance (LUC 104-28-2) and adopted stream corridor map are included as Exhibit C.

The appellant did not include the original proposed site plan in their appeal narrative. Planning Staff has added the original proposed site plan as Exhibit D.

Planner Steve Burton states that the stream is considered year round. Applicant claims that the stream is not year round Steve Burton states that the county uses a map that shows the streams and if they are year round, seasonal or a river. The map show this this is a year round stream. Laura Warburton asks if there are any grandfather provisions for this property. Steve Burton says that this property does not qualify. Jannette Borklund states that exceptions have been made for other land owners in the area. Rex Mumford said that this property has been before the Board of Adjustments before for a variance for another reason. Jannette Borklund asks what the difference is between a stream and canal. Planning states that the County considers this a year round stream. Attorney Brandon Quinney reminds the Board that they are the final arbiters of the definition of words.

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The applicants attorney (Mr. Hammond) states that the definition of year round as something that happens continuous through the year. This is a channel to move water to a reservoir, not a year round stream, but an irrigation facility. There is no water in the channel year round. It was dug to convey water from the stream to the reservoir. The owner of the canal say that water can't flow November 1-February 28. Wolf creek has no right to the water during that period. This is not a stream. Year round is not defined by the county. There is a map that was put together by the engineers that identifies each waterway. Staff is bound by the ordinance. The Board of Adjustments is not bound. Your job is to interpret. No water is in the channel year round.

Bryce Froerer asks if there is a year round stream nearby. Attorney for applicant states that from what the irrigation company says, there is one nearby, but this is a diversion area not a year round stream. Applicant states that there is not an engineer or anyone from the water company to testify. Rex Mumford says that in the correspondent it says that the water company does not have a right to the water for a period of time. Not that the water is cut off. Attorney for applicant suggest to table the discussion until we can hear from an irrigation person. Laura Warburton asks Mr. Bracken how many feet do you need. Mr. Bracken says that when he purchased the lot county records said 50 feet was the setback. When he applied for a permit, he found out that it was 75 feet. He states that this was hidden information. He did look this up himself. Ms. Warburton says that this was not hidden, but just that he didn't find it. She also asks how big is the house that he intends to build. Mr. Bracken says that ii is 2200 square feet. Not very big. The lot is an odd shape. Which is why the variance is being requested. Mr Bracken states the stream has been dry since March 1, up until the first of this month (November). It is shut off. It was shut off earlier this year because it was a dry year. There is a physical barrier that shuts off the water. The subdivision was approved in 2003. All the neighbors who built earlier have 50 foot variance. New properties have a 75 foot variance. Planner Steve Burton states that the overlay zone impacts the property differently than it did in 2003. Chair Borklund asks if other properties did get the 75 foot variance. Steve Burton says that he doesn't know, but could probably look it up. He is not sure how relevant it is for the Land Use Permit. Applicant says the property next door belongs to his brother and is 50 feet. No other questions.

Board member Froerer motions to close the meeting so the Board can go into a "quasi-judicial deliberation" to discuss the matter. Motion is seconded by Rex Mumford. All vote in favor of the closed deliberation.

The Board of Adjustment returns to chambers and Bryce Froerer motions to open the meeting. Laura Warburton seconds the motion to open the meeting. All vote in favor.

Chairman Borklund asks if there are any motions. Rex Mumford motions to deny the appeal, affirming that the county staff did not err in decision and accept the engineering map that shows this as a year round stream. Laura Warburton seconds the motion. Laura Warburton votes yes, Rex Mumford votes yes, Bryce Froerer votes yes. Chair Borklund votes yes. Motion carries 4-0.

3. BOA 2020-04: Consideration and action on a request for a 15-foot variance from the rear

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yard setback in the FR-1 zone. *Applicant: Doug Neilson, Staff Presenter: Scott Perkes*

The applicant has submitted a second UPDATED variance request for a rear yard setback on a nonconforming and irregularly shaped lot in the FR-1 Zone (see **Exhibit A**). This second updated request is for a **15-foot** variance from the rear yard setback to allow for a **15-foot** setback on a reconfigured one-lot subdivision. Previously the applicant had requested an 11-foot variance from the side yard setback as well as a 19-foot variance from the rear yard setback for one of the lots in a proposed 3-lot subdivision. These originally requested variances were granted by the Board of Adjustment during the June 11, 2020 meeting (see **Exhibit B**).

Following the approval of the side and rear yard setback variances, the applicant proceeded to plat the originally proposed 3-lot subdivision. However, during review of the subdivision, the Weber-Morgan Health Department found that only one 20,000 sq. ft. minimum lot size could be accommodated due to septic permitting constraints. Accordingly, the applicant reconfigured the property into a single lot, rather than 3 smaller lots. This one-lot subdivision was approved and recorded in August of 2021.

Since the original variance requests were granted under a three-lot subdivision configuration, the applicant has been asked by the Planning Division to resubmit an updated variance request to accommodate a reduced rear yard setback that will be needed to accommodate a single-family residence on the revised 1-lot subdivision. The applicant submitted an alternative request for just 19-foot variance to the rear-yard setback on the single-lot subdivision. This alternative request was tabled during the Board's September 16, 2021 meeting to allow the applicant to explore additional adjustments to the final placement of the proposed single-family home. The applicant has since worked with their septic designer and pushed the home as far east as possible on the lot while still fitting the septic system components adjacent and in front of the home. This reconfiguration exercise allowed the home to be 15-feet away from the rear property line rather than the previous 11-feet.

Scott Perks says that applicant is required to use a modern septic system and plated a single lot subdivision.

Now that it is a single lot, we can request a variance for rear year setback. A 15 foot variance. Rex Mumford asks if the Forest Service objects to how close it is to the river. Is the north property line the river bank or a setback? Scott Perks states that the required setback is 30 feet. The Health Department is most concerned about the placement of the septic system, not the home. Rex Mumford asks if the drawing is acceptable to the Health Department. Scott Perks says that he assumes that it is acceptable. Plat is recorded.

Applicant Doug Neilson says that the home is just over 2000 square foot footprint. Home setbacks were moved to the east to provide more room for a yard. Drain field needed to be 5 foot away from the home and also needs room for the tanks. Rex Mumford asks about measurements on the rear property line. Applicant says that it was measured from the front east spot. Rex Mumford says that the property was an eyesore and is now much improved. The applicant states that he could have used grandfather status. He gave up the grandfather status in order to clean up the property. All the

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neighbors have thanked us.

Chair Borklund as if there was any public comment. There was none.

Rex Mumford motions to approve the variance and include all of the staff findings. Bryce Froerer seconds the motion. All vote in favor 4-0.

4. BOA 2021-11: Consideration of an appeal of several permits issued by Weber County including a Weber County Stormwater Construction Activity Permit, Building Permit Number 21U388, and Land Use Permit LUP232-2021. **Applicant: Angelika Spaey; Staff Presenter: Steve Burton**

Bryce Froerer needs to recuse himself because the attorney for the applicant is in the same office as he is.

Courtlan Erickson, attorney for the County, would like to make a motion to dismiss the appeal for lack of subject matter jurisdiction. Only the Land Use Permit appeal applies to the Board of Adjustments. 12-2 of the code establishes different chapters and other mechanisms of appeal. Two of the appeals should be dismissed because this Board does not have authority under the ordinance. The Land Use Permit appeal should be dismissed because the appeal was untimely. The facts show that the Land Use Permit was issued July 14, 2021. The appeal was governed by Weber County Code 102-3-4A4 which says all appeals to the Board of Adjustments shall be filed with the Planning Division not more than 15 calendar days after the date of the written decision of the land use authority. The appeal was filed on August 26, which was more than 40 days after the written decision was issued. For those reasons the County asserts that is was untimely. It is expected that the appellant will probably have arguments potentially that the appeal date was extended or the time didn't start running until a later date. If the Board denies, then the County requests a chance to rebut. Additionally, if the Board ends up deciding to deny this motion to dismiss then staff would request the opportunity to discuss the merits of the appeal itself. To talk about the record and to go over that. For now we believe that this is straight forward and should be dismissed because of lack of jurisdiction on two of the appeals, that don't belong to the Board of Adjustments and lack of timeliness of the appeal that would belong to the Board of Adjustments.

Chair Borklund asks if this is just based on timing. Mr Erickson says yes. He also stated that he is here representing the County Planning Division that made the decision on the land use permit. He feels that he can motion to dismiss. Laura Warburton asks if he is here also doing the staff report. Mr Erickson says that he is just here about the request for the dismissal. Steve Burton is available for any questions on the staff report. Chair Borklund asks if the applicant was informed that she had missed the 15 days to file. The attorney did not know. The ordinance is clear.

Zane Froerer, attorney for the applicant states that the County ordinance says that the appeal must be filed within 15 days. The problem is that the county ordinance have to

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give way to due process. In the Utah Court of Appeals in Fox verses Park City has said that the appeals process begins when the agreed party have actual or constructive notice that a permit has been issued. They have 15 days after they know or should know. The 15 days started when my client saw her neighbor digging a hole in their yard. Within 15 days of that hole being dug, we filed our appeal. The appeal was timely. These is nothing that the ordinance can do to override that fact. We filed as soon as we had constructive notice. In the staff report they indicate that they published on Frontier. As if that somehow gave a notice. The Supreme Court said you have to have some kind of actual notice. The court went on to say the Utah Code does not require municipalities to provide notice to neighboring land owners that a building permit has been issued. Thus, neighboring land owners do not receive actual notice of the permits issued. Additionally neighboring land owners often do not receive constructive notice until construction begins. And generally if a party does not receive actual notice of the issuant of the permit, The party receives constructive notice that a building permit has been issued when construction begins. A party must not only have notice that a building permit has been issued, but must also have knowledge of the fact that formed the basis of the parties objection to the permit before the appeal period begins. The argument that you just heard is without merit. It should be rejected. When my client saw the construction started, that when she finally had notice. The Planning Staff have not provided any evidence that they sent her personal notice, that they mailed her any notice. In fact, we were told when I went on Frontier to find this project, I couldn't find it. I had to be sent a special link to find this project. We were told that was because the County allowed the land owner to file it confidentially. So even if it was published on Frontier, even if that was some kind of notice. The question that I would have with the County if it was filed confidentially, how is my client supposed to know that there is a land use permit? So the County's position is, we are going to issue a land use permit. We are not going to tell you that we issued a permit, but within 15 days of issuance, your opportunity to appeal is gone. That's literally their position. That is in direct conflict with the law. Let me next address the scope of what can be reviewed. In their Staff Report they say only a land use permit is considered a land use decision reviewable by the Board of Adjustments. Once again going to the law, the Supreme Court from my prior reading was address a building permit. A building permit is considered a land use decision. In fact, Weber County's building permits have been treated as land use permits in the past. You may be familiar with a case (Green V Brown) from a few years ago where we were challenging a building permit. We brought it before this body. That eventually went into the court system. I don't have to go to case law. I can go to the County's own ordinance. By their own ordinance they have eliminated this Board of Appeals from even being able to consider these building permits on the issue that we are here for today. Weber County code section 1-10-2 which does not limit the definition of land use decisions to a land use permit. Nor does it exclude building permits or storm water construction, it simply means that this is the definition of land use decision. A decision applying a state or county land use code to an application required by the land use code made by a person or body authorized by the land use code to make the decision. So there are a couple of elements there. One, they are applying the land use code. Two, the body that is authorized to make the decision. Those are the two operative facts that we are going to be looking at. to decide if this is a land use decision. If it is a land use decision, this is the board who reviews land use decisions. Section 12-2-5, powers and authority. This is

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powers and authority of the Board of Appeals. It is right here plain as day in their ordinance. *The Board of Appeals shall have power and authority to hear and decide appeals of orders, decisions or determinations made by the county building official relative to the application and interpretation of the above cited technical codes, to determine the suitability of alternate materials and methods of installation and as otherwise authorized or limited in those codes.* The question is what are those codes? The codes are the international building code, international fire code, and the wildland urban interface code. The land use code is not within their jurisdiction. So if the building permit decision touches upon the land use code and the application of the land use code, this is the board. It is not the Board of Appeals. The Board of Appeals jurisdiction is narrowly limited to building construction practices. What the Board of Appeals is dealing with is did you use the right material. It does not deal with setbacks, zoning and other land use issues. The issuance of the building permit is a land use decision. The inspections that happen underneath the building permit to make sure that the construction is going along according to these technical codes, that goes to the Board of Appeals. That is the difference between the Board of Appeals and the Board of Adjustments. CLUDMA (County Land Use Development and Management Act) is the overarching statute that authorizes the county to exercise this land use authority. CLUDMA is consistent with this ordinance. It states "Only a decision in which a land use authority has applied a land use regulation to a particular land use application, person or persons may be appealed to an appeal authority. Further shows that if it is a land use decision, it goes to the land use appeal authority. We have already established that the Board of Appeals is not a land use appeal authority. The Board of Appeals have no authority over land use regulations. It's authority extends to technical building, codes and practices. The Land Use code determine if the building can be built at all. This appeal is challenging the original land use approval not the building materials. In conclusion, this appeal has nothing to do with any of those codes, the technical codes. Not within the scope of the building official, or the Board of Appeals. Rather the issuance of the building permit that authorized the proposed construction to commence. It is a land use decision involving the application of the county land use code to lot 23 at the subdivision.

No questions from the Board of Adjustments.

Courtlan Erickson. I would like to start with the last argument that was made. County Code 12-2-3 is broad. *It says that any person adversely affected by any decision of the county building official must petition the board of appeals for a review of the decision within 30 days from the date the decision is final.* Our position is as it states that any person adversely affected by any decision of the county building official goes before that other board of appeals. That power and authority in 12-2-5 those specific things are included among the power and authority, it does not say that the board of appeals shall not have power and authority to hear and decide appeals only of the following. That can be read as , a, specific numeration of the some of the powers of the board of appeals. Our position is that it would not be limited. The general rule for appealing in 12-2-3, is what would be listed or what would be appropriate here, any person adversely affected by any decision the county building official goes to that other board of appeals.

Rex Mumford asks if there any board of appeals. Courtlan Erickson states that it is set

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up by the ordinance. This talks about who serves on that board. Are they set up or do they function? I do not know. It is established by ordinance. The state law does allow the county to set up multiple appeal authority for different types of things. Board Members clarify information about the Board of Appeals. No other questions about the two appeals.

Courtlan Erickson address the Board about the timing. Counsel raised a case of Fox v Park City. It dealt with a code that did not include a specific triggering event for when the appeal period will begin. They decided that the section at issue in that appeal, "We must now determine when the appeal period begins. Section 10-9A-704 is ambiguous on this point. The plain language of the statute provides that an adversely effected party shall have 10 calendar days to appeal to an appeal authority, but does not provide the triggering event that commences the 10 day period. We conclude that section 10-9A-704 does not provide a triggering event for the 10 day appeal period. We must determine what commences the appeal period. We join other courts in concluding that the interest of both the permit holder and the neighboring land owners are best balanced by the rule that the appeal period begins when the aggrieved party has actual or constructive knowledge of the issuance of the permit." That is what counsel referred to. If they don't have actual knowledge then their appeal period doesn't start until they have actual knowledge. That was because the statue did not provide a triggering event for the beginning of the appeal period. In contrast, our case is dealing with Weber County Code, Section 102-3-4, subsection A4 which says "All appeals to the Board of Adjustments, shall be filed with the Planning Division not more than 15 calendar days after the date of the written decision of the land use authority. That part was missing in the statute of Fox V Park City. Our case has a triggering event. It is the date of the written decision of the land use authority. Since the code is clear, It would be improper for a court or the Board of Adjustments to get into that balancing of interest and all the policy considerations. The courts have stated that when a statute or ordinance is clear, the plain language governs. In our case, the language is plain. It is clear. The appeal period starts to run when a written decision is issued, and there are 15 calendar days to appeal. There are many other cases that talk about that. If you look at the staff report, it states in a declaration by Angelika Spaey (page 16 of 186, paragraph 8) on July 20 2021, " I did not hear that they were planning to build without HOA approval because Steve Burton had approved their plan."

She knew the building was moving forward. In Paragraph 9 also states that she knew that building was happening 7-28-21. August 12 would be the latest. This appeal was not filed until August 26, 2021. The County's position is that was untimely. The County has no responsibility to alert neighbors of building permits being issued.

The Board states that they do not make decisions on HOAs. Attorney Brandon Quinney says that we should give attorney Froerer a chance to rebut.

Attorney Froerer, the distinction in Fox is irrelevant. The court held that the party has to have actual constructive notice. It has nothing to do with a triggering mechanism. Fifteen days is a notice requirement. Nothing in the ordinance says that the board has to rush this decision. Evidence that they county provided is not constructive notice that a building permit has been issued. We don't know what was discussed by the HOA and

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the land use applicant. My client wasn't there. She thought that the HOA was taking care of it. If the board dismisses this, it will go to court. This is black letter law. My client gets actual notice. They don't have to mail her notice. That could be up to the land owner. There are many ways to get constructive notice. One is construction. Or you could post a sign on your property. It may not be the county's obligation to do that, but if a party gets a land use permit and then waits 6 months before anything happens, does that mean that the affected property owners have no right to appeal if they had no idea that it happened. If the Board adopts the County's interpretation, not only will it be violating Utah Supreme Court law, it will be setting up scenarios where that's exactly what would happen. A party can get a land use permit, and months down the road, the first indications are made that a permit has been issued are physical indications giving someone constructive notice. Only then would people around that property be aware of what's going on. Under the County's interpretation of the ordinance regarding the elements of due process, Under *Brigham Young v Tremco* everyone is entitled to due process, including my client. CLUDMA requires this Board to respect my client's right to due process. 17-27A-706 each appeal authority shall conduct each appeal and variance request as described by the ordinance. Each appeal authority shall respect the due process right of each of the participants. Due process features meaningful notice. An opportunity to be heard and a process of inquire upon the facts and the law prior to rendering a decision. None of that has been met here. My client never got meaningful notice until they started digging the hole. Once they started digging the hole, my client filed her appeal within 15 days. A dismissal would be improper where the county is arguing meaningful notice is not required. What meaningful notice is provided to adversely affected property holders?

Rex Mumford asks if the client was aware of on July 14. Attorney Froerer states that his client was aware that the land owner was trying to get building permits. She was aware that they were in the process. Her understanding was that the applicant at the time was working with the HOA to get HOA approval to build. She was not involved in that. She was letting the HOA carry that out. I think that was on the 20th (July 20, 2021). On the 20th she was told that Mr Burton has approved their plans. I don't know what that means. There are several steps to getting a land use permit. She did not know that there was a land use permit at that time.

Rex Mumford asks if that was a direct discussion with Mr Burton. The applicant Angelika Spaey states that she was told by the HOA that they had gotten approval by the County over the objections of **(not understandable)** due to size and proximity to my property. Laura Warburton asks if she called at that time when you heard that. Did you make the effort to call and find out if there was a permit? On the statement from the attorney on July you say that you had heard that they were planning to build without HOA approval. MS Spaey states that she was in constant contact with Mr Burton. Mr Burton instructed her to look on Frontier. Everyone looked on Frontier and it was listed as confidential. Laura Warburton asks if Ms. Spaey called to tell Mr Burton that it was listed as confidential, that you could not tell. Ms. Spaey says that she did not know who to call. How to go through a process. I did what I could to seek counsel, but due to Covid, people were not available. Ms Warburton says that Mr Burton was available by phone. Ms. Spaey states that Mr Burton would tell her to look at Frontier. Ms Spaey says that she was told to work with the HOA. Mr Mumford says that it appears according to the record that the client knew that the permit had been issued. Mr Froerer says that they must have constructive notice. A party must not only have notice that a

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building permit has been issued, but must also have knowledge of the fact that formed the basis of the parties objection to the permit before the appeal period begins. This Board is faced with a tough decision. The Board needs to determine weather the appeal period began when the permit was issued, or on July 20, or when digging began. Those are the three choices that the Board really has. Which one has meaningful notice? The Board says that this is due process. We are only discussing if this appeal is timely. Attorney Froerer states that the County is trying to avoid the merit, the substance of the case. If it is not timely, my client has waved her right to challenge that. The county staff did not provide some of our information. One was even submitted on Frontier. You do not have all the facts. There is no record. There is a balance. The Board is going to determine that this is untimely, the Board would need to specify the basis of facts as to why they made the decision. I do think that the County ordinance is flawed in light of Supreme Court findings. Ms Warburton states that for us, we are here to interpret the code. Mr Froerer says to remember that you have to honor due process.

Attorney Quinney says that we do have an applicant whose attorney is present and asks if the Board would like to hear from this person. I would suggest that the Board allow this person (attorney for Heidi Christensen-land owner). Ms Christensen refers to her attorney for now. She may have a comment later.

Attorney for Heidi Christensen, Lincoln Hobbs, 466 E 500 S SLC, UT. I represent property owners and building permit holder. I have looked at the Fox case. I agree with the County's interpretation of that case. You have to appeal within 15 days of the issuance. Constructive is when the person knows or should know of an action and they have to take action. The reason that you have constructive notice is the flip side of what Mr Froerer said. If you don't have the requirement of constructive notice, you could have a developer or contractor receive a permit, wait a reasonable period of time, start constructing, expend considerable amounts constructing, which my client actually did. Then somebody comes forth and appeals. It is the flip side. The contractor is delayed by virtue of the lack of appeal. In this case, the constructive verses actual knowledge isn't even an issue because as has been pointed out, Ms Spaey says that on July 20, she heard that my clients were planning to build without HOA approval because Steve Burton had approved their plan. She knew as of July 20, she had actual notice by her own admission, as of July 20 that my client had been approved, that Steve Burton had told her that and she acknowledges that.

No comments from Heidi Christensen. Brandon Quinney states that there is one neighbor who would like to speak. Mr Erickson objects to neighbors commenting unless it has something to do with the timeless issue. Otherwise, it would be irrelevant to the timeliness issue.

Rex Mumford makes a motion to close for a closed session. Laura Warburton seconds the motion. All vote in favor. This is to adjourn for private discussion and deliberation.

Laura Warburton moves to open the meeting again. Rex Mumford seconds the motion. All vote in favor 3-0.

Rex Mumford make a motion on BOA 2021-11: Consideration of an appeal of several permits. My motion is as follows, The Board of Adjustments does not have the jurisdiction to look at

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Weber County storm water construction activity permit, or building permit as an appeal authority. I would move that we dismiss both of those on the fact that we do not have authority to consider either of those. On the third one, the land use permit, which we do have authority to consider an appeal, I would move that we dismiss the appeal based upon the fact that it was, in fact, untimely filed by the actual statute which would be 15 days, literal or even if we go from the point that the applicant was aware, on approximately July 20. In both cases, they did not meet the 15 days. I would move that under both circumstances, it was untimely filed and to dismiss. Rex Mumford seconds the motion. Laura Warburton votes yes, Rex Mumford votes yes, Jannette Borklund votes yes. All vote yes, 3-0.

Laura Warburton motions to adjourn. Rex Mumford seconds. All vote yes. Meeting is adjourned

Adjourn

**Respectfully Submitted,
June Nelson
Lead Office Specialist**



BOARD OF ADJUSTMENT

MEETING AGENDA

**Thursday, April 28, 2022
4:30 p.m.**

- *Pledge of Allegiance*
- *Roll Call*

Regular Agenda Items

1. Minutes: November 4, 2021

2. BOA 2021-09: A request for a 53-foot variance (leaving a 22-foot setback) to the 75-foot stream corridor setback requirement from a year-round stream on a lot of record located at 3390 N 5100 E, in Eden to allow for the construction of a single-family residence. **Staff Presenter: Scott Perkes**

Adjournment

The Board of Adjustments meeting will be held in the Weber County Commission Chambers, in the Weber Center, 1st Floor, 2380 Washington Blvd., Ogden, Utah.

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Zoom Video Conferencing at the following link <https://us02web.zoom.us/j/81137866679> Meeting ID: 811 3786 6679

In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8761



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: A request for a 53-foot variance (leaving a 22-foot setback) to the 75-foot stream corridor setback requirement from a year-round stream on a lot of record located at 3390 N 5100 E, in Eden to allow for the construction of a single-family residence.

Agenda Date: Thursday, April 28, 2022

Applicant: Mark and Angelina Grant (Applicant & Owner)

File Number: BOA2021-09

Property Information

Approximate Address: 3390 N 5100 E, Eden, UT 84310

Project Area: 1.1 acres

Zoning: Agricultural Valley 3 (AV-3)

Existing Land Use: Lot of Record, Residential

Proposed Land Use: Residential

Parcel ID: 22-021-0033

Township, Range, Section: T7N, R1E, Section 27, NW

Adjacent Land Use

North: Vacant	South: Residential
East: Vacant	West: Vacant

Staff Information

Report Presenter: Scott Perkes
sperkes@co.weber.ut.us
801-399-8772

Report Reviewer: SB

Applicable Codes

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

Development History

County records indicate that the subject property contains a single-family dwelling that was constructed in 1900 (highlighted in blue in **Exhibit D**). Records also indicate that the property boundaries match those which were present in 1966 when zoning was enacted in the Ogden Valley. These two pieces of information allowed the County to classify the parcel as a “Lot of Record” per the land use code definition of LUC Sec. 101-2-13 resulting in the issuance of a Notice of Buildable Parcel (see **Exhibit E**)

On December 5, 2005, the Board of County Commissioners adopted Ordinance 2005-19, which established river and stream corridor setback requirements (see **Exhibit F**). Per this Ogden Valley Sensitive Lands ordinance and its associated map of stream corridors (see **Exhibit B**), a “Stream” or “Braided Stream” is depicted traversing the subject property from its northwestern boundary through to its southeastern boundary.

Due to this encumbrance, the applicant submitted a request to the Board of Adjustment on June 23, 2021 for a 53-foot variance (leaving a 22-foot setback) to the 75-foot stream corridor setback (see **Exhibit A**).

Background and Project Summary

The applicant is requesting this variance to facilitate the placement of a new single-family detached home and detached garage on the lot. The existing home built in 1900 is proposed to remain on the property and will be converted into an art studio or storage shed.

The special circumstance on the property that is driving this variance request is the unique path that this stream runs through the middle of the historical lot of record. Per the Ogden Valley Sensitive Lands ordinance, this stream requires a 75-foot setback from its high water mark, thus creating a large encumbrance on the property.

The Land Use Code (Sec. 104-28-2(b)(1)), 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.

This section of code was first implemented in 2005 through the adoption of Ordinance 2005-19 (see **Exhibit F**). As mentioned above, this lot of record dates as far back as at least 1966, predating the stream setback requirements.

The granting of a 53-foot variance would allow the applicant to build a structures to within 22 feet of the stream's high water mark.

Summary of Board of Adjustment Considerations

LUC §102-3 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 Analysis

Listed below is staff's analysis:

- a. Literal enforcement of the 75-foot stream setback would limit the placement of a single-family detached home and detached garage on the lot.
- b. The special circumstance that exists on the property is the location of the stream and its required 75-foot setback from high water marks. As mentioned above, this setback requirement was adopted several decades following the creation of this lot of record. As such, the lot was not designed to accommodate additional setbacks to the stream. The stream's 75-foot setbacks from high water mark, coupled with the required structural setbacks of the AV-3 zone, significantly reduces the lot's developable area (see **Exhibit D**). Thereby limiting the placement of new structures as compared to the placement of homes on other residential lots in the area.
- c. Granting the variance would allow the owner of the parcel to build a single-family home and detached garage in a location on the lot that would be similar to adjacent residences and other single-family lots found in the AV-3 zone.
- d. The General Plan indicates that this area should be developed as is planned and zoned; thereby the variance and future residential development is not contrary to any public interest.

- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code. The applicant has gone through the proper channels in applying for a variance.

Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the AV-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.

Exhibits

- A. 2021 County Recorder's Plat
- B. Ogden Valley Sensitive Lands - Stream Corridor Map
- C. Variance Application & Narrative
- D. Site Plan Showing Setbacks
- E. Notice of Buildable Parcel
- F. Excerpts of the 2005 Ogden Valley Sensitive Lands Ordinance

Area Map

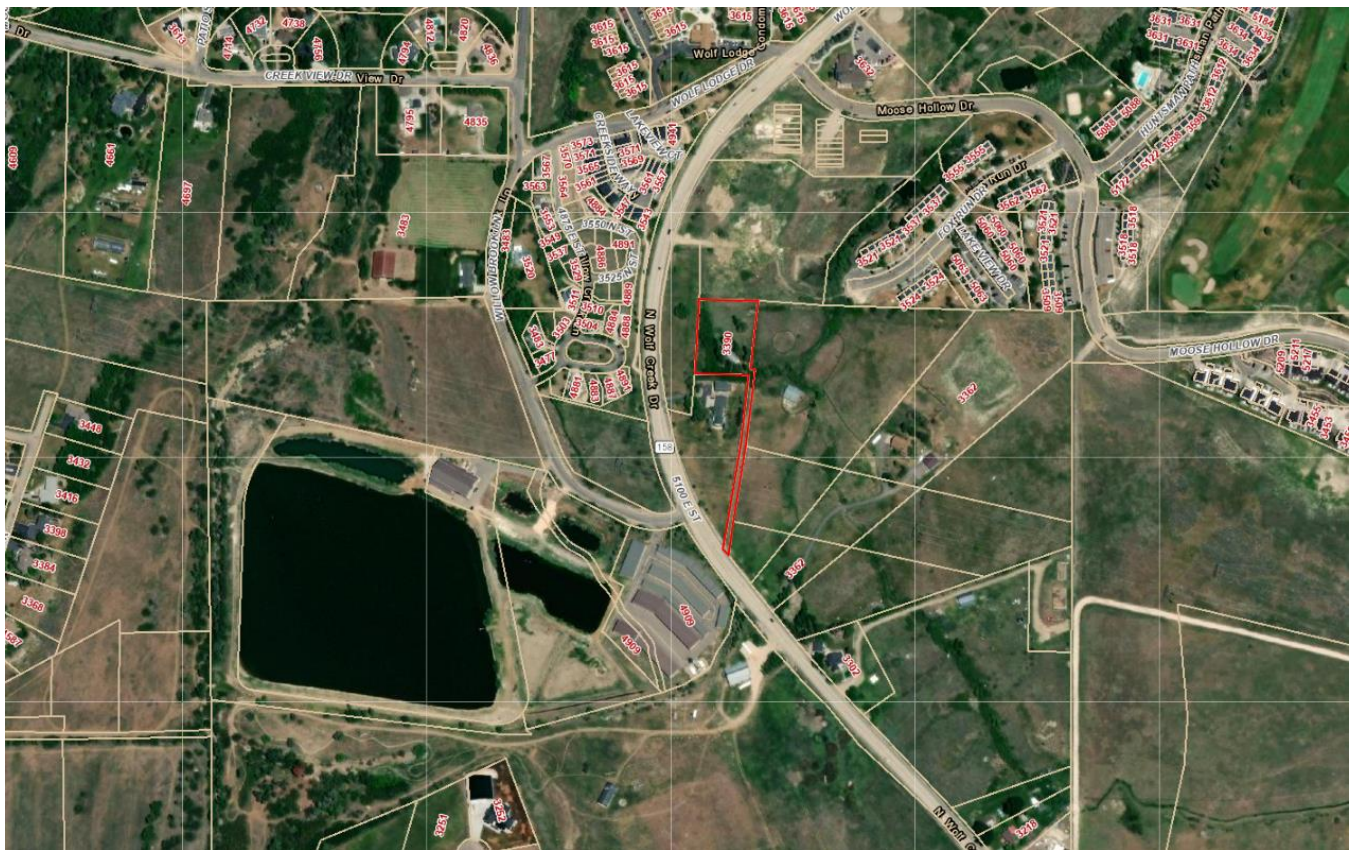


Exhibit A: 2021 Recorder's Plat

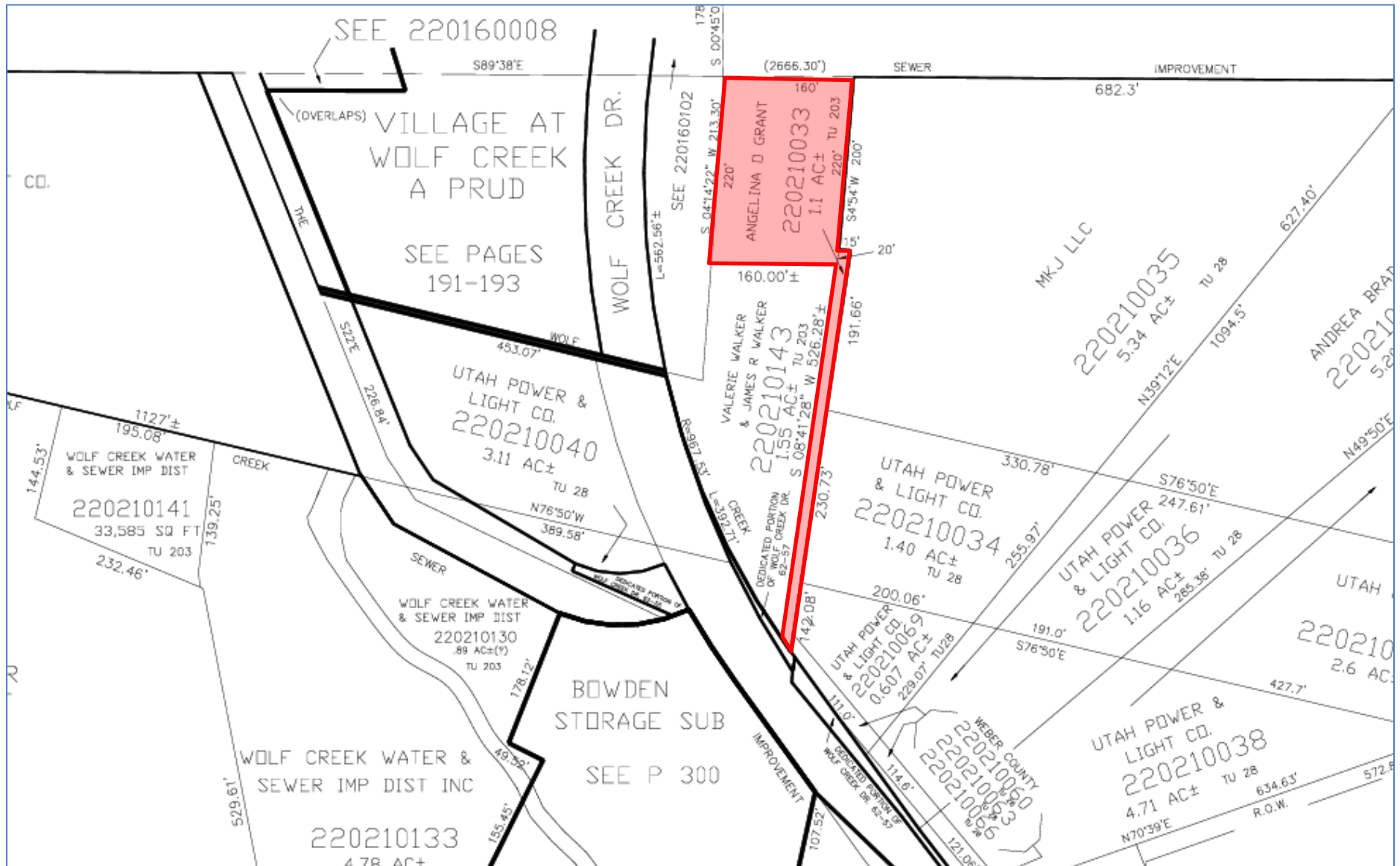


Exhibit B: Ogden Valley Sensitive Lands – Stream Corridor Map

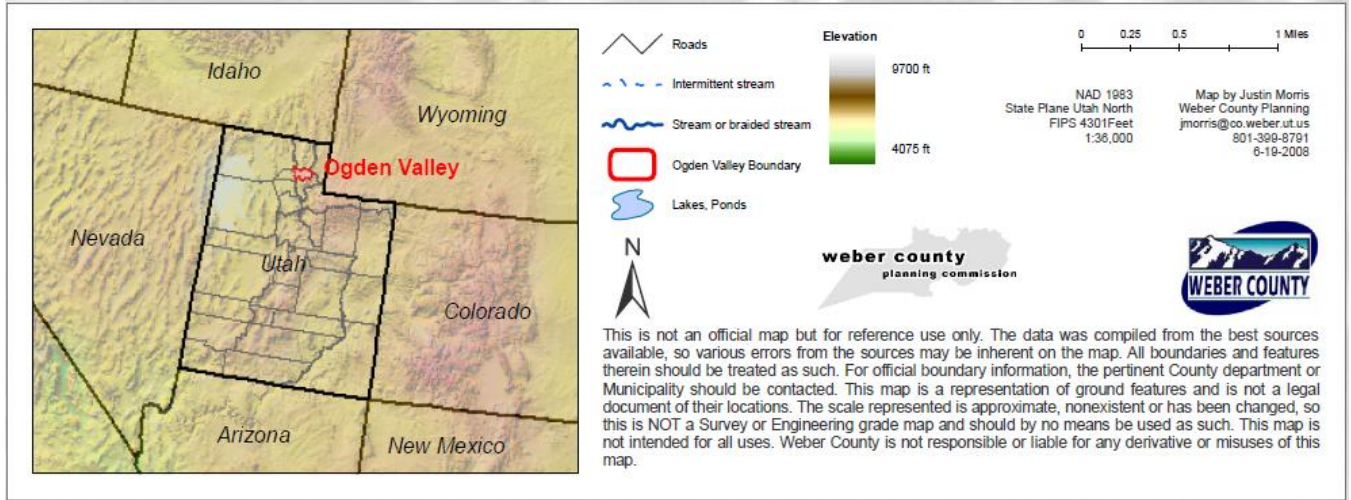
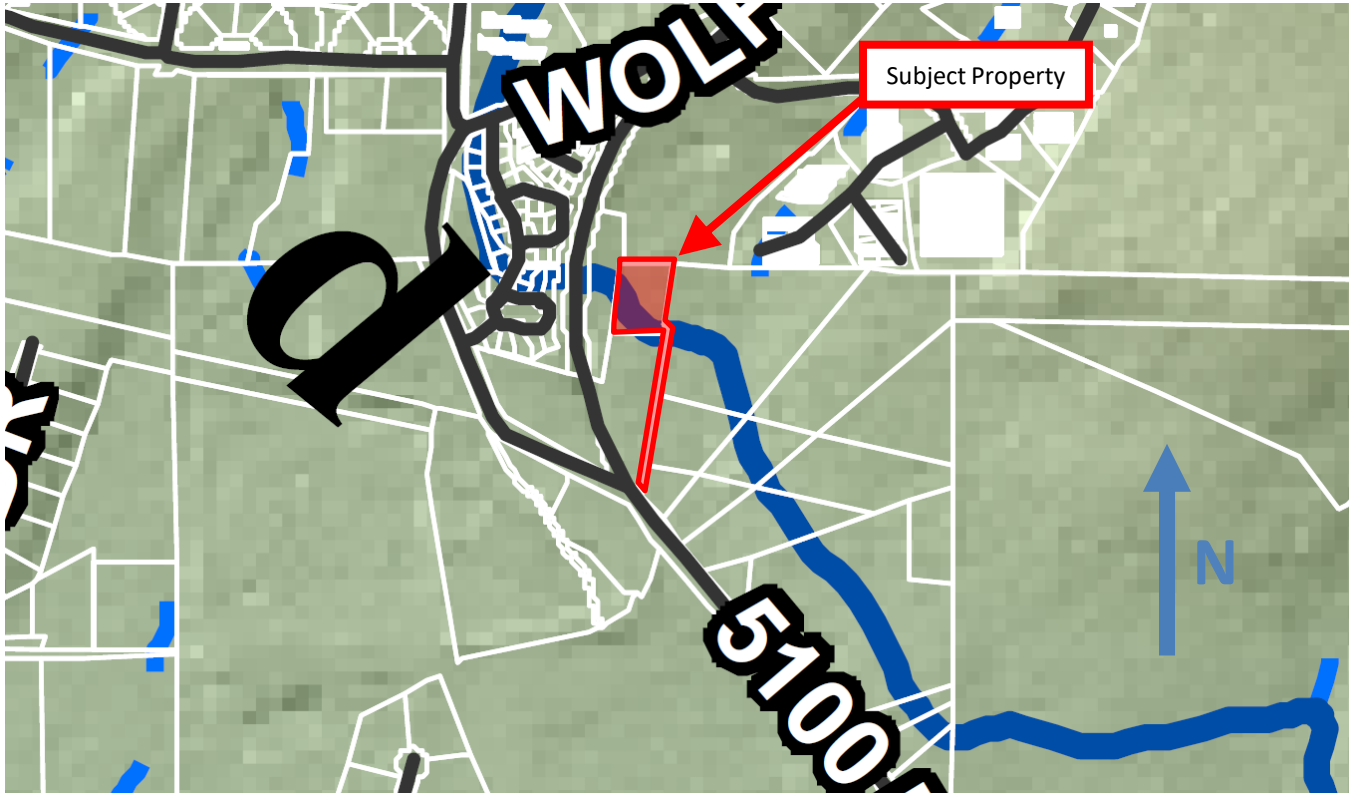


Exhibit C: Variance Application & Narrative

Weber County Board of Adjustment Application			
Application submittals will be accepted by appointment only. (801) 399-8374. 2380 Washington Blvd. Suite 240, Ogden, UT 84401			
Date Submitted / Completed	<i>Fees (Office Use)</i>	<i>Receipt Number (Office Use)</i>	<i>File Number (Office Use)</i>
Property Owner Contact Information			
Name of Property Owner(s) Angelina Grant		Mailing Address of Property Owner(s)	
Phone 904-334-1377	Fax	Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Email Address IMAngelaFL@gmail.com			
Authorized Representative Contact Information			
Name of Person Authorized to Represent the Property Owner(s) Mark Grant (husband)		Mailing Address of Authorized Person	
Phone 904-806-7730	Fax	Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Email Address Mgrant8875@aol.com			
Appeal Request			
<input checked="" type="checkbox"/> A variance request: ___ Lot area Yard setback Frontage width Other: <u>Stream corridor offset</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 3390 N 5100 E, Eden UT 84310		Land Serial Number(s) 22-021-0033	
Current Zoning AV-3			
Existing Measurements		Required Measurements (Office Use)	
Lot Area 1.1 Ac	Lot Frontage/Width 160'(limited frontage)	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback 40'	Rear Yard Setback 145'	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback 96'	Side Yard Setback 48'	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

Applicant Narrative

Please explain your request.

The purpose of this variance request is to enable construction of a single-family residence on parcel 22021003, while considering the Ogden Valley Sensitive Lands Ordinance. This is a legal, non-conforming parcel. The applicant is requesting a variance for the required 75' setback from the high-water mark of a small stream that runs across the property (refer to attached diagram 1). The parcel is only one acre, making it impossible to build the desired structure on the property while maintaining the required setback from the stream and the property boundaries. The property does have a small (640 sq ft) existing structure which is located near the stream. According to the Weber County property records, the structure dates to the year 1900. This structure is approximately 21' from the high-water location of the stream on the SW corner. The plan for the property is to build a single-family residence located near the northeast corner of the property, as well as a detached garage. That residence is planned to be approximately 49' wide by 34' deep. The garage is planned to be 30' wide by 22' deep. The planned locations are shown on diagram 2. This location will maintain a setback of approximately 22' from the high-water mark of the stream, while maintaining a reasonable setback of 20' from the side property boundary. The existing small structure will remain in the current location. The stream appears to be dry the majority of the time based on observations during a variety of seasons. Granting the variance will allow the applicant to construct a residence on the property, consistent with current land use ordinances and zoning, while still maintaining a 22' setback from the stream, which is greater than the setback for the existing structure on the same property.

Key considerations regarding site hardship:

- Stream is small, normally dry, and routes near the center of the property.
- Lot is build-able, but unusually small compared to others with the same zoning (1.1 versus 3 ac).
- Required setbacks make it impossible to build the structure without a variance.
- Proposed structure will maintain 22' setback from stream, greater than existing structure dating to 1900.

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.

Proposed structure is NOT BUILDABLE with literal enforcement of the ordinance. There is no feasible location on the lot that allows for building and maintaining 75' setback and property boundary setbacks.

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:

1. The required stream setback would prevent usage of the lot for the desired construction.
2. The lot is only 1.1 ac, compared to many of the lots with the same zoning that are larger than 3 ac, limiting the options for placement of structure.

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 owner to build on the lot, which is determined "buildable" by the county. The classification of the lot as "buildable" was discussed with the county prior to the purchase of the lot and before the identification of the stream was known. The property was deemed buildable in Weber County documents labelled "Notice of Buildable Parcel" dated February 24, 2012. This understanding also supported by existence of structure already on the property.

Variance Request (continued...)

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

The lot exists with a structure already in place. The variance will not substantially affect the general plan. Setback from stream will be sufficient given the small stream size and infrequent flow. The proposed structure is located at the furthest point from the stream.

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

Because of the limited space available to build and the location of the stream, a variance should be granted. The spirit of the ordinance is observed since the placement of the residence will maintain a 22' clearance from the high water mark.

Property Owner Affidavit

I (We), _____, 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.

(Property Owner)

(Property Owner)

Subscribed and sworn to me this _____ day of _____, 20_____.

(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.

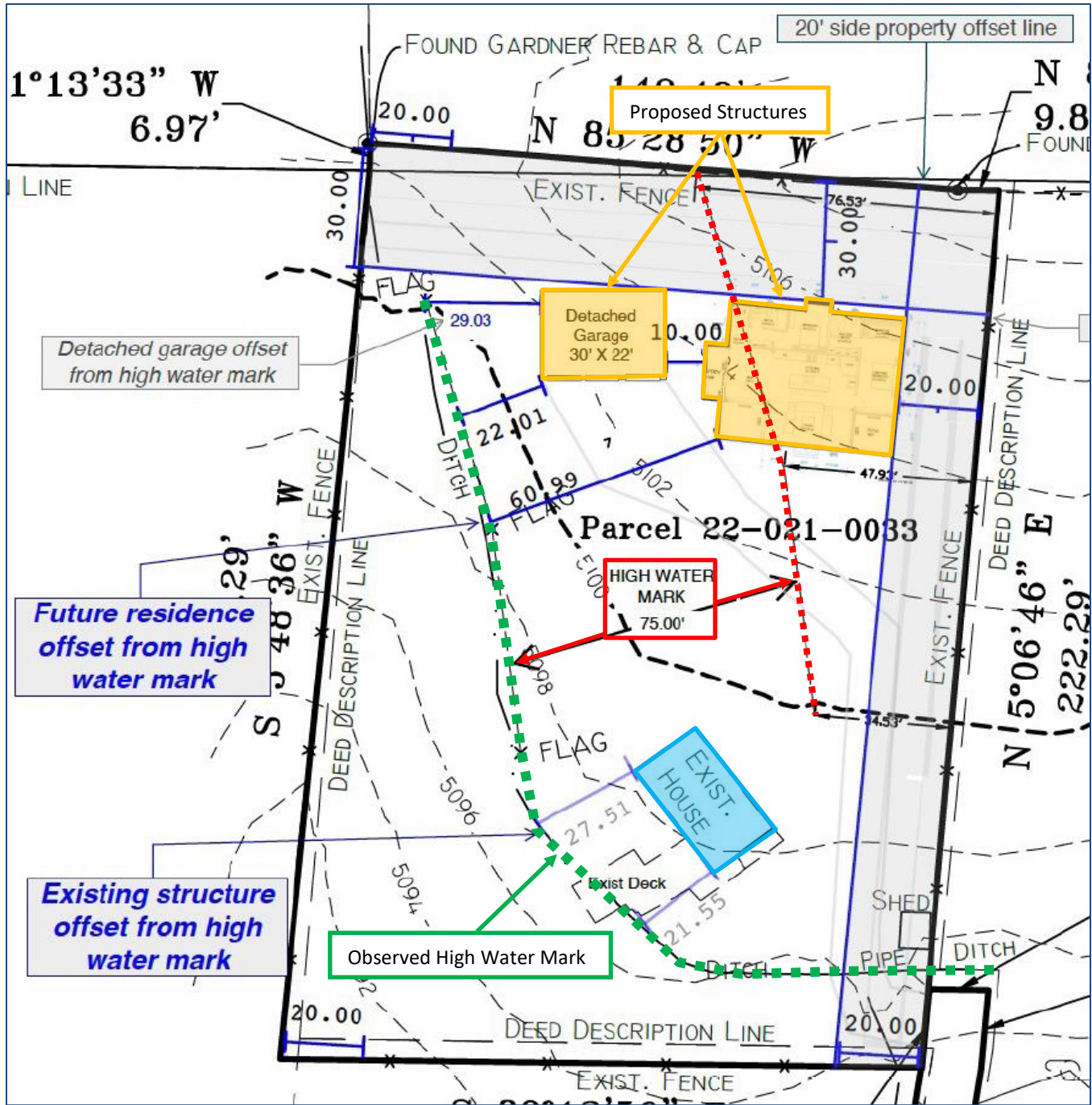
(Property Owner)

(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)

Exhibit D: Site Plan Showing Proposed Setbacks





Weber County

February 24, 2012



W2563860

EN 2563860 PG 1 OF 5
ERNEST D ROWLEY, WEBER COUNTY RECORDER
24-FEB-12 401 PM FEE \$1.00 DEP SPY
REC FOR: WEBER COUNTY PLANNING

Notice of Buildable Parcel

Legal Description

PART OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING SOUTH 89D38' EAST 1524 FEET FROM THE NORTHWEST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 04D54' WEST 220 FEET; THENCE SOUTH 89D38' EAST 160 FEET; THENCE NORTH 04D54' EAST 220 FEET; THENCE NORTH 89D38' WEST 160.0 FEET TO THE POINT OF BEGINNING. ALSO; BEGINNING AT A POINT WHICH IS SOUTH 89D38' EAST 1524 FEET; SOUTH 04D54' WEST 220.0 FEET AND SOUTH 89D38' EAST 160.0 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 27 AND RUNNING THENCE SOUTH 8D36' WEST 554.2 FEET, MORE OR LESS, TO THE NORTH LINE OF THE COUNTY ROAD; THENCE SOUTH 39D53'30" EAST ALONG THE NORTH LINE OF THE COUNTY ROAD 20.02 FEET; THENCE NORTH 8D36' EAST 564.47 FEET, MORE OR LESS, TO A POINT WHICH IS SOUTH 89D38' EAST OF THE PLACE OF BEGINNING; THENCE NORTH 4D54' EAST 20 FEET; THENCE NORTH 89D38' WEST 15.0 FEET; THENCE SOUTH 4D54' WEST 20 FEET TO THE PLACE OF BEGINNING.

RE: Land Serial # 22-021-0033 Notice of Buildable Parcel

The parcel of land with the Land Serial Number 22-021-0033 is currently zoned Agricultural Valley 3 (AV-3) which requires a minimum lot size of three acres and a minimum lot width of 150 feet on a dedicated right of way for a single family dwelling. This parcel contains only 1.1 acres, and has minimal access to a public road. However, this parcel meets the requirements of the Weber County Zoning Ordinance Chapter 28 Section 10 which states: "Any legally created lot and/or parcel of land, which existed prior to adoption of the Weber County Zoning Ordinance/Zoning Map may apply to develop any of the permitted or conditional uses for which the lot and/or parcel qualifies, in the zone where the lot and/or parcel of land is located. In Western Weber County the 1962 ownership plats are used as the legal reference point, and in the Ogden Valley, the 1966 ownership plats are used as the legal reference point."

This parcel of land is shown on the 1966 ownership plat with the same access and legal description that exist today. Therefore, the Weber County Planning Division does consider this a nonconforming (legal) building parcel with the legal description shown above.

This letter addresses the legal status of the parcel based on area and frontage requirements only. 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 a Building Permit being issued.


Sean Wilkinson
Weber County Planning Division

Dated this 24th day of February, 2012



Weber County

STATE OF UTAH)
 :SS
COUNTY OF WEBER]

On the 24th day of FEBRUARY, 2012, 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

Kary C. Serrano
Residing at:



2012 ownership Plat

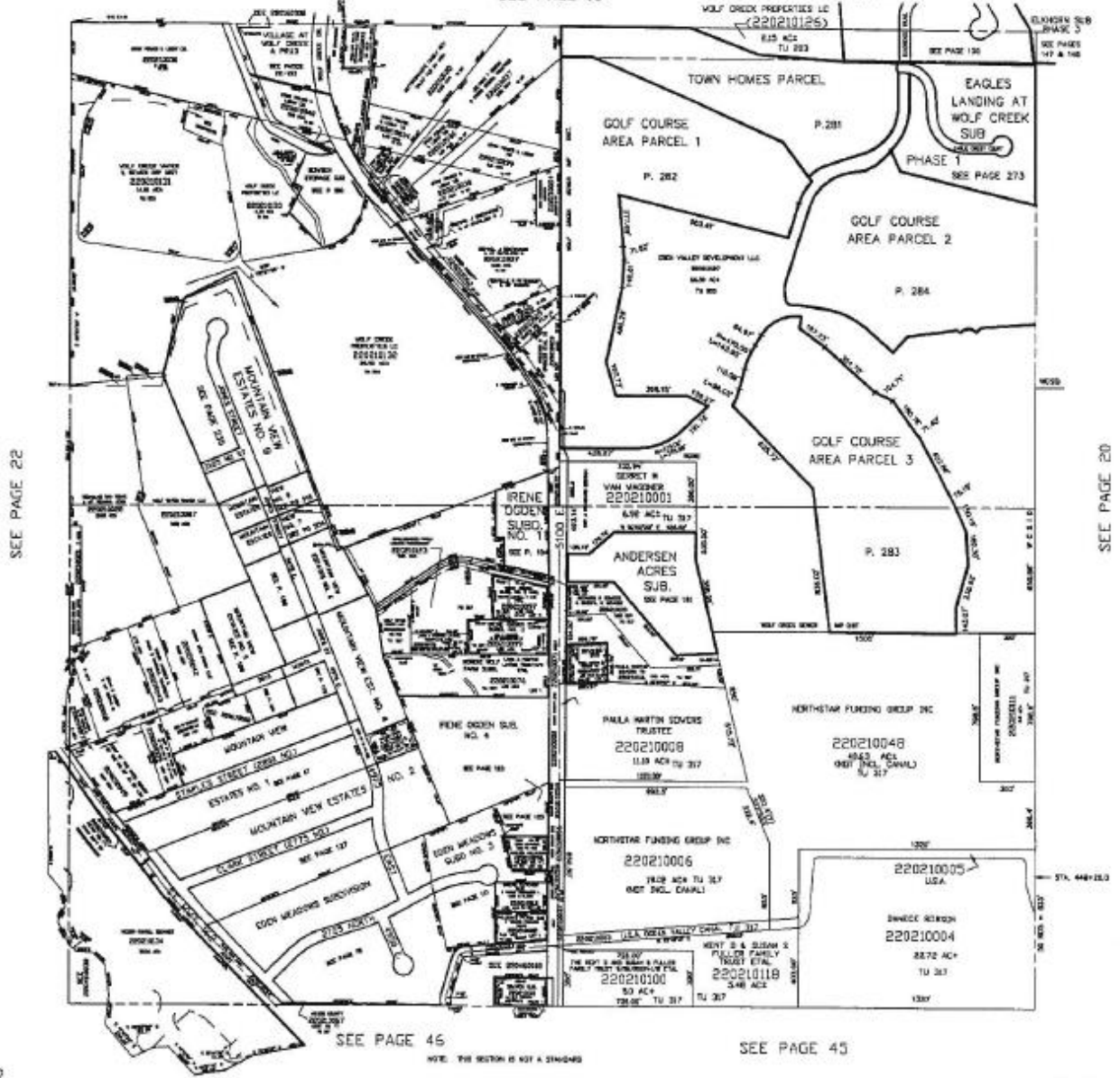
SECTION 27, T.7N., R.1E., S.L.B. & M.
IN WEBER COUNTY
SCALE 1" = 400'

21

TAXING UNIT: 203, 317

SEE PAGE 16

ELKHORN SUB PH 2
LOTS 24 TO 26 AMENDED



22

MTT 10-96

Abstract of Title showing 1964 legal description

WEBER COUNTY

ABSTRACT OF TITLE - SECTION LANDS

SECTION 22

T. N. R. 11

TRACT	GRANTOR	GRANTEE	ACRES	RECORDED	DATE	DESCRIPTION
1	W. J. & M. J.
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Weber County Rebuild Letter Request

Requests are recommended to be submitted with an appointment.
(801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed
February 7, 2012

Fees (Office Use)

Receipt Number (Office Use)

Requesters Contact Information

Name
Scott Conlin

Mailing Address
1974 East 1350 North
Layton, UT 84040

Phone
801-718-3490

Fax

Email Address
conlinsj@ldschurch.org

Preferred Method of Written Correspondence
 Email Fax Mail

Property Information

Address
3390 North 5100 East
Eden, UT 84310

Current Zoning
Residential

Land Serial Number(s)
22-021-0033

Property Owner Affidavit

I (We), SCOTT CONLIN, 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.


(Property Owner)



Subscribed and sworn to me this 21st day of Feb., 2012.


(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)



WEBER COUNTY CMS RECEIPTING SYSTEM
OFFICIAL RECEIPT

cms314a
 Page 1 of 1

*** Save this receipt for your records ***

Date: 24-FEB-2012

Receipt Nbr: 606

ID# 2023

Employee / Department: ANGELA MARTIN - 4181 - PLANNING
 Monies Received From: REBUILD LETTER
 Template: PUBLIC WORKS
 Description: SCOTT CONLIN

The following amount of money has been received and allocated to the various accounts listed below:

Total Currency	\$	_____	.00
Total Coin	\$	_____	.00
Total Debit/Credit Card	\$	_____	.00
Pre-deposit	\$	_____	.00
Total Checks	\$	_____	25.00
Grand Total	\$	_____	25.00

Account Number	Account Name	Comments	Total
2012-01-4181-3419-0550-000	ZONING FEES		25.00
TOTAL \$			25.00
Check Amounts			
			25.00
Total Checks: 1		Total Check Amounts: \$	25.00

*** SAVE THIS RECEIPT FOR YOUR RECORDS ***

Summary of Ordinance No. 2005-19

An Ordinance of Weber County, amending the zoning ordinance by adding Section 23-37 River and Stream Corridors. The new section places setback requirements for building adjacent to year-round and ephemeral streams, with the exception of a segment of the Ogden River below Pineview Reservoir. Was adopted and ordered published the 20th day of December 2005, by the Board of County Commissioners of Weber County, Utah, with Commissioners Bischoff, Cain and Dearden voting aye.

A copy of the complete ordinance is available for public inspection at the office of the Weber County Clerk/Auditor, 2380 Washington Blvd, Suite 320 Ogden, Utah.

An Ordinance of Weber County, amending Chapter 23 of the Zoning Ordinance by adding Section 23-37, River and Stream Corridor Setbacks.

WHEREAS, Weber County finds that river and stream corridors provide important aesthetic ecological and recreational resources, including wildlife habitat, and the protection of water quality in the County's rivers and streams; and

WHEREAS, these resources are put at risk of being lost or significantly impaired due to land development activities within river and stream corridors; and

WHEREAS, the need to protect river and stream corridors is identified in both the Ogden Valley and West Central Weber County General Plans.

NOW THEREFORE, The Board of County Commissioners of Weber County, State of Utah, Ordain as follows:

The Uniform Zoning Ordinance of Unincorporated Weber County is hereby amended by adding Section 23-37, River and Stream Corridor Setbacks:

CHAPTER 23

SUPPLEMENTARY AND QUALIFYING

- 23-1. Effect of Chapter
- 23-2. Lots in Separate Ownership
- 23-3. Yard Space for One Building Only
- 23-4. Every Dwelling to be on a "Lot"
- 23-5. Separately Owned Lots - Reduced Yards
- 23-6. Sale or Lease of Required Space
- 23-7. Creation of Lots Below Minimum Space Requirements
- 23-8. Yards to be Unobstructed - Projections Permitted into Required Yards
- 23-9. Wall, Fence, or Hedge May be Maintained
- 23-10. Area of Accessory Building
- 23-11. Deleted Section - 2002-9
- 23-12. Exceptions to Height Limitations
- 23-13. Minimum Height of Main Building 2002-9
- 23-14. Deleted Section -
- 23-15. Clear View of Intersecting Streets
- 23-16. Animals and Fowl
- 23-17. Water and Sewage Requirements
- 23-18. Effect of Official Map
- 23-19. Signs and Lighting
- 23-20. Lots and Dwellings on Private Rights-of-Way, Special Provisions

23-21.	Required Building Setb. from Designated Collector or Arterial Street	
23-22.	Group Dwelling Special Regulations	
23-23.	Zero Side Yards	
23-24.	Dish Antennas	
23-25.	Towers	
23-26.	Residential Facility for Persons with a Disability - Facility Requirements	17-87
23-27.	Residential Facility for Troubled Youth - Facility Requirements	6-92
23-28.	Residential Facility for Elderly Persons - Facility Requirements	12-91
23-29.	Large Accessory Buildings	14-91,19-04
23-30.	Building in Newly Approved Subdivisions and Planned Residential Unit Developments	14-91, 2002-9
23-31.	Deleted	
23-32.	Family Swimming Pool	14-92
23-33.	Building on Dedicated Streets or Public By Right of Use Roads which are below County Improvement and/or R.O.W. Width Standards	
23-34.	Dwelling or Sleeping in Recreational Vehicles	
23-35.	No Obstruction of Irrigation Ditches, Drains and/or Canals	2002-9
23-36.	Temporary Real Estate Sales Office	2003-8
23-37.	River and Stream Corridor Setbacks	

23-1. Effect of Chapter.

The regulations hereinafter set forth in this Chapter qualify or supplement, as the case may be, the zone regulations appearing elsewhere in this Ordinance.

23-2. Lots in Separate Ownership.

The requirements of this Ordinance as to minimum lot area or lot width shall not be construed to prevent the use for a single-family dwelling of any lot or parcel of land in the event that such lot or parcel of land is held in separate ownership at the time this ordinance becomes effective.

23-3. Yard Space for One Building Only.

No required yard or other open space around an existing building or which is hereafter provided around any building for the purpose of complying with the provisions of this Ordinance, shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing a yard or open space on a lot whereon a building is to be erected or established.

23-4. Every Dwelling to be on a "Lot".

Every dwelling shall be located and maintained on a "lot" as defined in this Ordinance; such lot shall have the required frontage on a public or approved private street or on a right-of-way which has been approved by the Board of Adjustment.

23-5. Separately Owned Lots - Reduced Yards.

On any lot under a separate ownership from adjacent lots and on record at the time of passage of this Ordinance, and such lot having a smaller width than required for the zone in which it is located, the width of each of the side yards for a dwelling may be reduced to a width which is not less than the same percentage of the width of the lot as the required side yard would be of the required lot width provided that on interior lots the smaller of the two yards shall be in no case less than five (5) feet, or the larger less than eight (8) feet; and for corner lots the side yard on the side street shall be in no case less than ten (10) feet or the other side yard be less than five (5) feet.

23-36. Temporary Real Estate Sales Office

A temporary real estate sales office may, by Conditional Use Permit, be allowed within the model home or the garage area of a model home located within a residential subdivision development of ten (10) or more lots or phase of more than ten (10) lots, for the sale of real estate within that specific subdivision.

1. A Building Permit may be issued for the temporary sales office 15 days after approval of the Conditional Use Permit; however, prior to use, shall meet all requirements of the Zoning Ordinance and Subdivision Ordinance prior to issuance of a Certificate of Occupancy.
2. The front yard of the Model Homes with temporary sales offices shall be landscaped, as approved with the Conditional Use Permit.
3. If the sales office is established in the garage, the garage door may be temporarily replaced with French doors, sliding glass doors or as approved by the Planning Commission with the Conditional Use Permit. Permanent changes to the site are prohibited. When the temporary use expires, the applicant shall restore the structure to its originally intended use as a residence and/or garage.
4. Temporary Sales Office is limited to one per development or phase, if development is a minimum of ten (10) or more lots and if the phase is a minimum of ten (10) or more lots.
5. Permanent signs are prohibited. The size and location of signs shall be in compliance with applicable provisions of the Zoning Ordinance for the zone in which the use will be conducted and as approved with the Conditional Use Permit. All signs shall be removed when the Permit expires. Any zoning requirements for lighting shall be in compliance.
6. Hours of operation shall be limited from 8:00 a.m. to 8:00 p.m.
7. A Conditional Use Permit for temporary sales office in a model home shall be limited to a five (5) year time period, from the time the Certificate of Occupancy is issued. Time Extensions to be considered on a case by case basis by the Planning Commission.
8. If construction of the model home temporary sales office is not completed within one (1) year of the approval by the Township Planning Commission, the Permits shall be considered to be null and void.

23-37. River and Stream Corridor Setbacks

No Structure, accessory structure 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 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 flora and fauna along the river or stream.

1. Structures, accessory structures or parking areas shall not be developed or located within 100 feet on both sides of the Weber River and the North Fork, South Fork and Middle Fork of the Ogden River, from the high water mark of the river.
2. Structures, accessory structures, 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.
3. Structures, accessory structures, or parking areas shall not be developed or located within 50 feet from the high water mark of a natural ephemeral stream.

Exceptions:

1. Bridges or stream alterations approved by the Army Corps of Engineers and Utah Department of Water Resources, Division of Water Quality.

2. Trails built in conformance to Chapter 40, Ogden Valley Pathways, of the Zoning Ordinance.
3. The Ogden River below Pineview Reservoir to its' confluence with the Weber River.

Streams are those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetation litter or loosely rooted vegetation by action of moving water. The channel or bed need not contain water year-round. This definition is not meant to include storm water runoff devices or entirely artificial watercourse unless they are used to store or convey pass through stream flows naturally occurring prior to construction of such devices. Stream water courses where the definition may apply are those that appear on the U.S.G.S. Quad maps.

Passed, Adopted and Ordered published this 20th day of December, 2005, by the Board of County Commissioners of Weber County, Utah,

Commissioner Bischoff	Voting	<u>aye</u>
Commissioner Cain	Voting	<u>aye</u>
Commissioner Dearden	Voting	<u>aye</u>

Kenneth A. Bischoff
Kenneth A. Bischoff, Chair

ATTEST:

Linda G. Luncetford
Linda G. Luncetford, CPO Weber County Clerk