



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on a variance for a reduction to the required 30 foot front yard setback up to 2 feet 6 inches on Lot 14 of Ogden Canyon Wildwood Estates.

Agenda Date: Thursday, May 22, 2014

Applicant: Jerry and Kathy Burgess

File Number: BOA 2014-07

Property Information

Approximate Address: 673 Ogden Canyon; Ogden UT

Project Area: 9,243 square feet

Zoning: Forest Residential Zone (FR-1)

Existing Land Use: Residential

Proposed Land Use: Remain as existing

Parcel ID: 20-047-0014

Township, Range, Section: T6N, R1E, Section 17

Adjacent Land Use

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

Staff Information

Report Presenter: Steve Parkinson
sparkinson@co.weber.ut.us
801-399-8768

Report Reviewer: SM

Applicable Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 13 (Forest Residential Zone FR-1)

Background

The applicant is requesting a variance for a reduction to the required 30 foot front yard setback of up to 2 feet 6 inches on Lot 14 of Ogden Canyon Wildwood Estates. The yard setback requirements for this zone are as follows:

- Setbacks Front – 30 ft, sides – 10/14 ft, rear – 30 ft.

This subdivision was originally part of a Power Utility encampment, used by the employees of the company as a temporary residence. When the power company was done with their project many of those employees stayed, divided up the area amongst themselves and built more permanent structures. Although none of the lots meet current zoning requirements such as lot area, lot width, etc., it was approved and recorded as a subdivision in 1976, making legal all of the non-conformities that existed.

In 2001, the Burgess family tore down the original summer home on Lot 14, which consisted of two (2) sheds placed side-by-side, and applied for and received approval to construct a new single-family dwelling. The front setback requirement was 30 feet and a Land Use Permit was issued stating that requirement. Typically the setbacks are measured by the Building Department during the footing inspection. In this case staff is unsure how the setbacks were measured but according to the notes written by the inspector (see Exhibit “B”) the “Front yard setback was 33”, as determined from an explanation of property lines by contractor”. This error was not discovered until recently when the applicant applied for a building permit to construct an attached garage to the south of the existing home.

Summary of Board of Adjustment Considerations

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

- a. *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Code.*
 1. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*
 2. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
- b. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
 1. *In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.*
- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- d. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- e. *The spirit of the land use ordinance is observed and substantial justice done.*

The applicant has submitted a narrative addressing the above criteria, which is attached as Exhibit "A". Staff's analysis and findings are discussed below:

- a. Literal enforcement of the Land Use Code would require the removal of 2' 6" of the home from the front door to the northern end. The home was constructed 13 years ago and until recently was believed to have been built in accordance to the front yard setback requirements. The intent was to build the home at the required setback as is evident to the permit. This request is not self-imposed but rather a correction to an error made 13 years ago.
- b. The special circumstances attached to this property are based on the fact that the inspection that determined the setbacks was not accurate, or only measured a point on the southern half of the footing, the intent was to meet the required 30 foot setback.
- c. Zoning gives the property owner rights to construct a dwelling unit. The county verifies that the dwelling unit was constructed correctly and in accordance to applicable building codes. The property owner then receives a Certificate of Occupancy (C of O) as the final step of the process.
- d. The General Plan indicates this area should allow and be preserved for single-family dwellings, no changes are proposed.
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code, but to correct a mistake that occurred several years ago, and render the reduced setback legal. Granting the request would serve as substantial justice to allow the current dwelling unit to remain as is without further issues.

Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the FR-1 Zone and granting this request will not increase the number of dwelling units in the area. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Ogden Valley General Plan.

Conditions of Approval

- Meet all other applicable review agency requirements.
- Obtaining a land use permit and a building permit prior to construction of the garage

Staff Recommendation

Staff recommends *approval* of the variance for a reduction to the required 30 foot front yard setback of up to 2 feet 6 inches on Lot 14 of Ogden Canyon Wildwood Estates Subdivision, based on it's compliance with the applicable variance criteria discussed in this staff report.

Exhibits

- A. Applicant's Narrative
- B. Inspection Report
- C. Pictures of Neighborhood

Location Map



Exhibit "A"

Applicant Narrative

Please explain your request

The property at 763 was originally occupied by 2 sheds, converted to a summer home located about 10 ft from the roadway, violating the existing 30 ft setback.

In 2001 the summer home was torn down and plans were submitted and approved for the construction of the current home an improvement in the type of home. The current home was approved and inspected by the County of Weber as being in compliance with all laws and rules. Certificates of Occupancy were given and the home was occupied.

In 2014 plans were submitted to add a much needed garage to be located within the defined setbacks. Plans were denied due to the original home violating the 30 ft front setback rule.

This was news since the County of Weber in 2001 accepted, approved, inspected, and made no comment on the location of the home and nothing has changed relative to the location of the boundary lines or home since that date. It is not practical to have either the home or the property lines moved.

It now appears the center of the front of the home is at 30 ft and appeared to be the intent to build the home parallel to the lane / front set back line. However, the contractor laid the foundation and rotated it a couple degrees on its front center causing the north corner of the home to violate into the setback by 2 ft while the other (south) end of the home went 2 ft away from the setback.

As property owner, I need to add a garage for my vehicle and equipment necessary to accommodate the home.

I am asking for the Board to grant a variance to allow the front of the existing home to legally exist in the front setback by approximately 2 ft to allow the legal construction of the garage.

Variance Request

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 Land Use Code.

a. 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.

b. 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.

1. The literal enforcement of the zoning and setback rules have caused a complete work stoppage on the garage addition which has no issues. I have been of the belief that my home that was built and inspected in 2001 by the County of Weber, and had no issues because it was approved. Now, due to a plan review 13 years after the original home was approved, there is an enforcement action being taken for violation of the setback by the existing home. This violation is preventing my much needed garage from being built. The reason given is understandable, but is also unreasonable due to the process that was afforded to and taken by the County of Weber in 2001. To permanently halt all legal additions to the home is an incredible hardship for me financially as well as preventing me from enjoying the functional use of a garage.

a: The location of my current home is located entirely on my property. The older summer home that was built in the early 1900's was in violation of the newer front setback requirements, similar to some of other older homes still in the grove. The new home was an improvement home and met the newer setback standards by being built farther back on the lot. The Weber County officials approved the construction of the newer home in 2001 with on-site inspections, and, following their inspections, they approved the home and deemed it as being legal.

Now, it seems unreasonable to enforce the standards in 2014 when the home was built in 2001 under the same guidelines and nothing was said or done in 2001 relative to the enforcement of the front setback standards.

So, the peculiar problem lies with the inspection, review and approval process that was supposed to catch this error in 2001 by the County of Weber. This makes my problem unique to my property today.

b: The current violation in the setback is neither self-imposed nor economic, but a result of, or failure of, the actions of the County of Weber in 2001 to act on the error through review or inspections. Now, in 2014 they acted by noting the error.

Variance Request (continued...)

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.

a. 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.

a: The special circumstances attached to this property that don't apply to other properties in the area would be the approval of the home by the County of Weber in 2001, now being reviewed and being claimed as non-compliant. The current plan review is preventing me from adding a very much needed garage to store materials and a vehicle. I have no other means to store tools and materials except in the living quarters of my home. Since the home was approved in 2001, it would be assumed that I was legally situated and like other homes in the grove, would be able to have a garage. The home can't move, and since it is now noted to violate the setback, I can't build the garage.

Whereas, other residents living in homes in the grove are able to utilize garages, sheds and even live in their homes which are currently in gross violation of the current setback rules. The garage being added in this request is not the violation, and complies with all the building standards and setback requirements, the focus of this variance deals with the house built 13 years ago.

To deny the garage addition based entirely on the location of the existing home, approved in 2001 by the County of Weber would not be reasonable in light of the fact that had the garage been built in 2001 with the home, I would not be here today trying to obtain a variance, still believing the home was legally built and placed.

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

As mentioned above, other residents living in homes in the grove are able to utilize garages, sheds and even live in their homes which are currently in gross violation of the current setback rules. The garage being added in this request is not the violation and complies with all the building standards and setback requirements currently in place.

I am in great need of a location to store materials, yard tools, and bring equipment to work on the property without fear of theft and to provide security of my personal equipment. I currently have to borrow tools and large pieces of equipment from neighbors because I have no place to store them at home. When I do have equipment, I have to chain and cable lock the equipment to trees in lieu of placing them inside my home. I am in need of a garage.

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

The structure complies with the type of structure allowed in this zone. The structure is of the type allowed and was approved to be located on this lot. The only concern is the placement of the original home on the lot, that is, we discovered 13 years after being built, that it is skewed by 2 feet from what was expected and accepted. This mal-alignment is not perceptible until measured. This request for variance will not affect the general plan and will not be in conflict with public interest.

Variance Request (continued...)

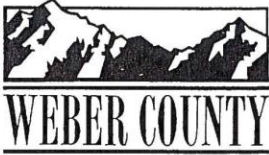
5. The spirit of the land use ordinance is observed and substantial justice done.

The home was built under the supervision of the County of Weber officials in 2001. The officials reviewed and approved the plans, the building of the home, and gave their approval for compliance and occupancy. All building was done in good faith and with compliance of known regulations according to the land use. The building of this home in 2001 required a movement of the home from the original 1900s position near the roadway back onto the lot to comply with a 30 ft setback herefore making the lot 'more in compliance' than it was before.

The funding for a garage in 2001 was not possible. Therefore, the placement of the home was made on the lot so as to leave sufficient space for the future garage at a later date. The current plans of 2014 were presented for the purpose of adding the garage for completion of the home.

The only objection to completing the garage portion is that the home was found to be built inside the front setback. To allow the completion of the garage, I can't proceed through the Planning Department unless a variance is given for the home that was built and approved as-built in 2001.

Since the County of Weber approved the home in 2001, it would only seem logical to accept the current (but incorrect) placement today. The justice should have been appropriately administered in 2001 as the officials had an opportunity to observe and inspect the home at different phases. However, they made no effort to stop or enforce an incorrect placement during their inspections. Therefore, justice would be served in 2014 by accepting the same approvals that were given in 2001 by the same entity, and, to do so would be accomplished with the granting of a variance to forgive the error that was not caught in 2001. There was no malice in building the home into the setback as it can be seen that it was centered at 30 ft on the plans.



ENGINEERING DEPARTMENT
 Inspection Division
 Ogden, Utah 84401 • (801) 399-8374

**BUILDING COMPLIANCE
 INSPECTION REPORT**

- BLDG. USE**
- Commercial
 - Residential
 - Garage/Carport
 - Addition/Remodel
 - Other

JOB ADDRESS 673 Ogden Canyon BLDG. PERMIT NO. 1F148

CONTRACTOR/OWNER BURGESS DATE 7-19-01 TIME 9:15

REASON FOR INSPECTION: Called Routine Complaint PHONE

- INSP. CATEGORY**
- | | | |
|--|----------------------------|----------------------------|
| <input checked="" type="checkbox"/> Building | <input type="checkbox"/> P | <input type="checkbox"/> F |
| <input type="checkbox"/> Plumbing | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Mechanical | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Electrical | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Demolition Moving | | |
| <input type="checkbox"/> Zoning | | |
| <input type="checkbox"/> Sign | | |
| <input type="checkbox"/> Housing (existing) | | |
| <input type="checkbox"/> Business License | | |
| <input type="checkbox"/> Mobile Homes | | |
| <input type="checkbox"/> Other | | |

COMMENTS

~~1) Remove all fill boulders, bricks, block etc. from footings - footings must be placed on "undisturbed" soil.~~

~~2) Plans call for 10"x24" footings, footings are 10"x20".~~

3) SET BACKS FRONT 33" BACK. 30+ - Sides 17' each side, determined from explanation of property lines by contractor.

- INSP. LEVEL**
- Set Backs
 - Footings
 - Foundations
 - Underground
 - Rough
 - Other
 - Roof Covering
 - Frame
 - Drywall/Lathe
 - Power to Panel
 - Insulation
 - Bond Beam
 - Progress
 - Final
 - Pipe

10/10

(1) Reinspected #1 has been completed, material removed to undisturbed soil.

(2) Plans have been amended to 10x20 footings.

OK TO POOR.

Next Required Inspection: found.

- WORK APPROVED**
- Work Passes - authorized to proceed
 - Prior violations corrected
 - Items listed in comments will be reinspected at the next regular inspection

- UNABLE TO MAKE INSP.**
- Cannot Locate Property
 - Building locked
 - Admittance Refused
 - Reinspection fee
 - Approved plans not available as required

- STATUS**
- Partial
 - Complete

- WORK IN VIOLATION**
- Make necessary corrections
 - Do not proceed with work
 - Prior violations uncorrected
 - Reinspection fee
 - Work must be completed with a call for inspection

ASSIGNED INSPECTOR

RSS

[Handwritten signatures]

Exhibit "C"



Picture # 1 – This is looking north along the private road. Applicant’s dwelling the on the right.

Approximate location of property lines



Picture # 2 – This is looking south along the private road. The applicant’s dwelling is on the left