



BOARD OF ADJUSTMENT

MEETING AGENDA Thursday, April 10, 2014 4:30 p.m.

**Pledge of Allegiance*

Regular Agenda Items

1. Minutes Approval of the February 27, 2014 meeting minutes
2. BOA 2014-03 Consideration and action on a 7 foot variance request to the frontage requirement of the Forest Valley (FV-3) Zone located at 4311 N 2900 E in Liberty (Brandon Lewis, Applicant)
3. BOA 2014-04 Consideration and action on a variance request for a reduction of lot area of 171 sq. ft. on Lot 34 of Woodland Estates Subdivision Unit 2, in the Residential Estates (RE-20) Zone located at approximately 2275 E Woodland Drive (Stan Booth, Applicant)
4. Other Business:
5. Adjournment:

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



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

Minutes of the Board of Adjustment Meeting held February 27, 2014 in the Weber County Commission Chambers, 1st Floor, 2380 Washington Blvd, commencing at 4:30 P.M.

Present: Deone Smith, Chair; Rex Mumford; Phil Hancock; Doug Dickson;

Absent: Celeste Canning;

Staff Present: Jim Gentry, Planner; Steve Parkinson, Planner; Charles Ewert, Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

****Pledge of Allegiance***

Regular Agenda Items:

1. **Minutes:** Approval of the August 8, 2013 and September 26, 2013 meeting minutes

MOTION: Phil Hancock moved to approve the meeting minutes as written. Rex Mumford seconded. A vote was taken with all members presenting aye. Motion Carried (4-0)

2. **BOA 2014-01:** Consideration and action on a variance request for a new dwelling to encroach up to nineteen (19) feet into the required seventy-five (75) foot year-around stream corridor setback of the Forest Residential FR-3 Zone on Lot 6 of Hidden Oaks at Wolf Creek Subdivision located at 5001 Fairways Drive (Elias Harik, Applicant)

Steve Parkinson said the applicant is requesting a variance for a new dwelling to encroach up to 19 feet into the required 75 foot year-around stream corridor setback on Lot 6 of Hidden Oaks at Wolf Creek Subdivision. The lot has a total area of 21, 292 sq. ft. When this subdivision was approved in 2003, the setback requirement from the stream high water mark was 50 feet. In 2008 a new sensitive lands ordinance was created that required a larger setback of 75 feet from the high water mark. The applicant has arranged the home on the property in such a way to limit the encroachment into the stream corridor setback to 19 feet and that no other setback requirements are being encroached upon. After many attempts, staff has confirmed that the applicant's proposed layout is the best to minimize the encroachment on all required setbacks. The applicant has submitted a narrative addressing the criteria which is attached as Exhibit "A" single-family dwellings are allowed as a permitted use in the FR-3 Zone. If the requested variance is granted, it will not affect the goals and policies of the Ogden Valley General Plan. Staff recommends approval of the variance for a new dwelling to encroach up to 19 feet into the required 75 foot year-around stream corridor setback on Lot 6 of Hidden Oaks at Wolf Creek Subdivision, based on its compliance with the applicable variance criteria.

Rex Mumford asked how much the elevation changes from the homes down to the year-around stream. The front setback is only 8 feet and is that driveway common or shared? Steve Parkinson replied that he was not sure of the elevation changes; the front yard setbacks are off of Fairway Drive so it is off of the main road. Staff and the applicant has actually tried to manipulate this house on the property just to see if there were other ways to put the house without asking for a variance to encroach or asking for a variance on the front yard and side yard setback reduction; there was no feasible way other than the requested variance.

Steve Parkinson stated the front yard setback is 25 feet.

Chair Smith asked if that was a new construction. So in 2003, the setback requirement for this stream high water mark was 50 feet that was recorded in the past. She asked if there has been any water issue in this area. Steve Parkinson replied that is correct, and he was not aware of the water issues.

Carl Lundeen, the applicant's representative, said they are about 10 feet from where the living level of the house will be, down to where the stream is going to be and it's quite an elevation change. Some years ago, he was not sure when it was done, this stream has been diverted and it only runs in the winter. In the summer time the stream gets diverted above.

Phil Hancock asked if that was 10 feet from the main high waterline. Carl Lundeen replied that it depends on where you

take that elevation from; if you take the south end of the property, it gradually rises as you go around the back of the property line.

Carl Lundeen said they designed this house as small as it can be; its less than 2,400 sq. ft. of living area, and he would like the variance approved to encroach into that setback.

MOTION: Phil Hancock moved for approval for BOA 2014-01 based upon the applicant's presentation and staff's comments and recommendations, with the findings that this does not adversely affect the intent of the ordinances. Douglas Dixon seconded.

VOTE: A vote was taken and Chair Smith indicated that the Motion carried by a 4-0 vote.

3. **BOA 2014-02:** Consideration and action on a variance request for a detached garage to encroach 2.08 feet into the 30 foot rear yard setback of the Forest F-40 Zone on property located at 960 Ogden Canyon in the Wilcox Camping and Boating area of the Ogden Canyon (Michael Sherman, Applicant)

Jim Gentry stated that was done back in the 1920's. These are legal non-conforming lots, and are very small. The applicant is requesting an encroachment into the rear yard setback. The applicant has three lots; one is vacant, one the applicant's house, and this is where he wants to build a garage. There is a footing foundation on this property that was built by the previous owner. A land use permit was issued but not building permits, so this applicant would have to correct that situation. This lot is also encumbered by a 75 foot stream corridor, and the frontage is actually here but it is separated by the stream. The rear of the lot has a 20 foot existing driveway access, but the rear of the lot goes up the hillside so it's unusable. The applicant is requesting a 2.08 foot encroachment into the rear yard which is closer to the access strip. The applicant is going to stay out of the stream corridor by removing the additional setbacks in the front of it and the stream corridor. It's easier to establish the stream corridor and build a structure. If this is approved, the applicant is proposing to combine these three lots into a bigger lot. In the staff report the applicant has submitted a narrative addressing the above criteria and staff has recommend approval of the 2.08 variance into the rear yard setback because of constraints to the lot.

Chair Smith asked if this cement slab was there prior. Jim Gentry replied that there was an old house on this lot and the previous owners were actually going to rebuild it, they applied for a land use permit, but never did build the house, they tore the existing home down but the foundation is still there. The applicant wants to use the existing structures to build on.

Rex Mumford asked on that map you show the existing footings that are back in the 75 foot zone; is that where he is not going to build? On the existing road, the existing driveway is on the back of the property. So from the edge of the garage to the rear property line, it looks like its 27.92 feet. Does the existing driveway factor into the right-of-way or easement of the 30 foot setback? Jim Gentry replied that is correct, the applicant is proposing to stay out of the stream corridor setback and just build a garage on that slab which is smaller than a two-car garage. The access is in this area on Wheeler Road and the stream is in this area, so the applicant can't really access from this area. From this point it goes up the existing hillside from the edge of the access and the applicant is requesting a 2.08 variance. He owns this property so it's just an easement that goes through his property and provides access to the other lots.

Douglas Dickson asked if there are parcels to be combined. Jim Gentry replied yes, if this is approved, he would combine Lots 7-9 and make it a larger half or quarter acre lot. The zoning there right now is at 40 acres but these lots were all created prior to zoning back in the 20's.

Michael Sherman, applicant who resides in Ogden Canyon, said he concurred with what staff said. If he is granted the variance, that will allow him a 19.8 foot deep garage and the standard garage is 24 feet. The footing is already there and what the Planning Commission had said when it was measured originally, it was measured from the property line to the footings. The footing is 30 feet from the property line but it was measured up the hill that is an erect angle. When the surveyor talked to him, it should have been measured from the footing on a straight line to the hill and is why it's shorter than it should have been. They bought two lots, completely demolished the house that was on one lot, moved

into the house in the middle, and they are going to use the lot on the other side to create a garage. They are going to create a subdivision with those three lots to tie everything up and make it work.

Rex Mumford said on the garage that is going on that exiting foundation, and it seems there is plenty of property that you wouldn't need to encroach that 2.08 feet. Michael Sherman replied it would be squeezed between the stream corridor and the front of the property.

Chair Smith asked if he was going to marry the tax parcels together to make it as one. Michael Sherman replied yes and they are required to create a subdivision.

Chair Smith asked if there were any questions for staff.

Rex Mumford asked is the hardship simply to put this on the same original foundation or is the high water stream the problem. In order to use that space would he have to fill that 10 foot drop; is the hardship the contours on that property? Jim Gentry replied that the hardship is the stream corridor, the steep hillside, and the size of the lot. This wall drops off 10-15 feet and that is another hardship. The other issue is the lots already have existing homes encroaching into the side yard setbacks, and stream corridors, and the applicant is trying to remedy that.

Phil Hancock said what the applicant is willing to do is to bring it closer to compliance with current zoning. For minimal encroachment in the setback a couple of feet, it offers in favor of current zoning requirements. Jim Gentry replied that is correct.

MOTION: Rex Mumford moved to approve BOA 2014-02 consideration and action on a variance request for the detached garage to encroach 2.08 feet into the 30 foot rear yard setback of the Forest F-40 Zone at the location 960 Ogden Canyon in the Wilcox Camping and Boating area based on the findings that the hardship is evident to approve this. Doug Dickson seconded.

VOTE: A vote was taken and Chair Smith indicated that the motion carried by a 4-0 vote.

4. Election: Election of Chair and Vice Chair for 2014

MOTION: Phil Hancock moved to nominate Rex Mumford as Chair for 2014. Chair Smith seconded.

MOTION: Rex Mumford moved to nominate Deone Smith as Chair for 2014. Doug Dickson seconded.

VOTE: A vote was taken to elect Deone Smith as Chair for 2014 with a 2-2 vote.

VOTE: A vote was taken to elect Rex Mumford as Chair for 2014 with a 2-2 vote.

DISCUSSION: There was a discussion on how to break the tie for chair and it was decided that Deone Smith would be the chair again.

VOTE: A vote was taken and Chair Smith indicated that the motion carried by a 4-0 vote.

MOTION: Chair Smith moved to nominate Rex Mumford for Vice Chair. Phil Hancock seconded.

VOTE: A vote was taken and Chair Smith indicated that the motion carried by a 4-0 vote.

5. Schedule &

Information: 2014 Meeting Schedule and Member Information List

Jim Gentry said if there are any changes or problems with the meeting schedule the members should let Kary know.

6. Rules of Order: Consideration and Action the Board of Adjustment Rules of Order

MOTION: Rex Mumford moved to approve the Rule of Order as written. Phil Hancock seconded.

VOTE: A vote was taken and Chair Smith indicated that the motion carried by a 4-0 vote.

7. Discussion: Names to be added to Website

Jim Gentry asked if the members wanted to just list their names on the website or if they wanted additional information? The Planning Commissions have elected to add their names, titles, and terms to the website, with no other information provided so they don't get contacted by the public individually. The board members had a discussion and agreed to add their names, terms, and positions to the website.

Jim introduced the new planners in the Planning Division: Charles Ewert and Steven Parkinson.

8. Adjourn: The meeting was adjourned at 5:15 p.m.

Respectfully Submitted,



Kary Serrano, Secretary,
Weber County Planning Commission



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on a 7 foot variance request to the frontage requirement at 4311 North 2900 East, Liberty

Agenda Date: Thursday, April 10, 2014

Applicant: Brandon Lewis

File Number: BOA 2014-03

Property Information

Approximate Address: 4311 North 2900 East, Liberty

Project Area: 3-acres

Zoning: Forest Valley (FV-3) Zone

Existing Land Use: Vacant

Proposed Land Use: Dwelling

Parcel ID: 22-008-0071

Township, Range, Section: T7N, R1E, Section 18

Adjacent Land Use

North:	Agricultural	South:	Agricultural
East:	Agricultural	West:	Agricultural

Staff Information

Report Presenter: Jim Gentry
jgentry@co.weber.ut.us
801-399-8767

Report Reviewer: SW

Applicable Land Use Codes

- Weber County Land Use Code, Title 102 Administration, Chapter 3 Board of Adjustment
- Weber County Land Use Code, Title 104 Zones, Chapter 14 Forest Valley (FV-3)

Background

The applicant is requesting a 7 foot variance to the frontage requirement at 4311 North 2900 East Liberty in order to build a single family dwelling. The Forest Valley FV-3 zone requires 3-acres and 150 feet of frontage at the 30 foot front yard setback. The lot, when divided off of the larger parcel had 3-acres and 150 feet of frontage according to the recorder's plat maps. The southern property line of the new lot was created and established by a deed in 1942. The earliest recorder plat maps for the Ogden Valley are from 1966. The recorder plat maps show graphic representation of property descriptions for tax purposes. This representation of the southern property line has been shown in error since 1966 and was discovered as part of the review for this subdivision. The recorder plat maps shows a 16.5 foot wide by 240 foot long strip of ground. The 1942 deed calls for this strip of ground to go to 2900 East, not just 240 feet as currently shown. The applicant was able to acquire an additional 16.5 feet from the property to the north, which gives him enough land to meet zoning area requirements but not enough for frontage.

The Weber County Surveyor in his letter dated March 18 (exhibit C) explains the following concerning the narrowing of the frontage: "Several years ago when other subdivisions were being developed to the north of this area on 2900 East street the county surveyor's office established an alignment for the road. This alignment is what we are holding to for dedications along this road. This dedication creates a difference in the distance of the road, based on the historical deed and what we are requesting to be utilized in this subdivision.

The main reason is that the bearing of the center line of the road is described in the deed as being South 2107'37" West. The alignment we are requesting is more perpendicular to the north and south boundaries of the properties. The difference in the perpendicularity and the deed bearing causes the shortening of the frontage as it relates to the right of way which is being requested by the county".

Summary of Board of Adjustment Considerations

- 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 Codes. Weber County Land Use Code, Section 102-3-4 states that *"the Board of Adjustment may grant a variance only if the following 5 criteria are 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 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 B. The Planning Staff's analysis and findings are provided below:

1. The are hardship with this property are a deed that was recorded in 1942 was not correctly reflected on the recorder's plat maps since 1966, and 2900 East has not been dedicated so the road alignment for dedication is slightly different from the actual location of the road.
2. The hardship is not self imposed in that a deed that was recorded in 1942, and then reflected incorrectly by the recorder's plat maps since 1966. The hardship is not economic in that the property owner has worked with the property owners to the north to obtain additional property to give the subdivision the required 3-acres. The road (2900 East) has never been dedicated. The County Surveyor is asking for a different road alignment than the alignment proposed by the property owner's surveyor.
3. The circumstances attached to this property are special and do not generally apply to other properties in the same zone. The problems associated with this property are due to a deed that was recorded in 1942 being reflected incorrectly. The existing road alignment on 2900 East is being changed with the road dedication as part of the subdivision.
4. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. The applicant will be able to build a single family dwelling on a 3-acre parcel.
5. If the variance is granted it will not affect the goals or objectives as outlined in the Ogden Valley General Plan, and the spirit of the Land Use Code will be observed by maintaining the 3-acre area requirements.

Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the Forest FV-3 Zone. If the requested variance is granted, it will not affect the goals and policies of the Ogden Valley General Plan.

Conditions of Approval

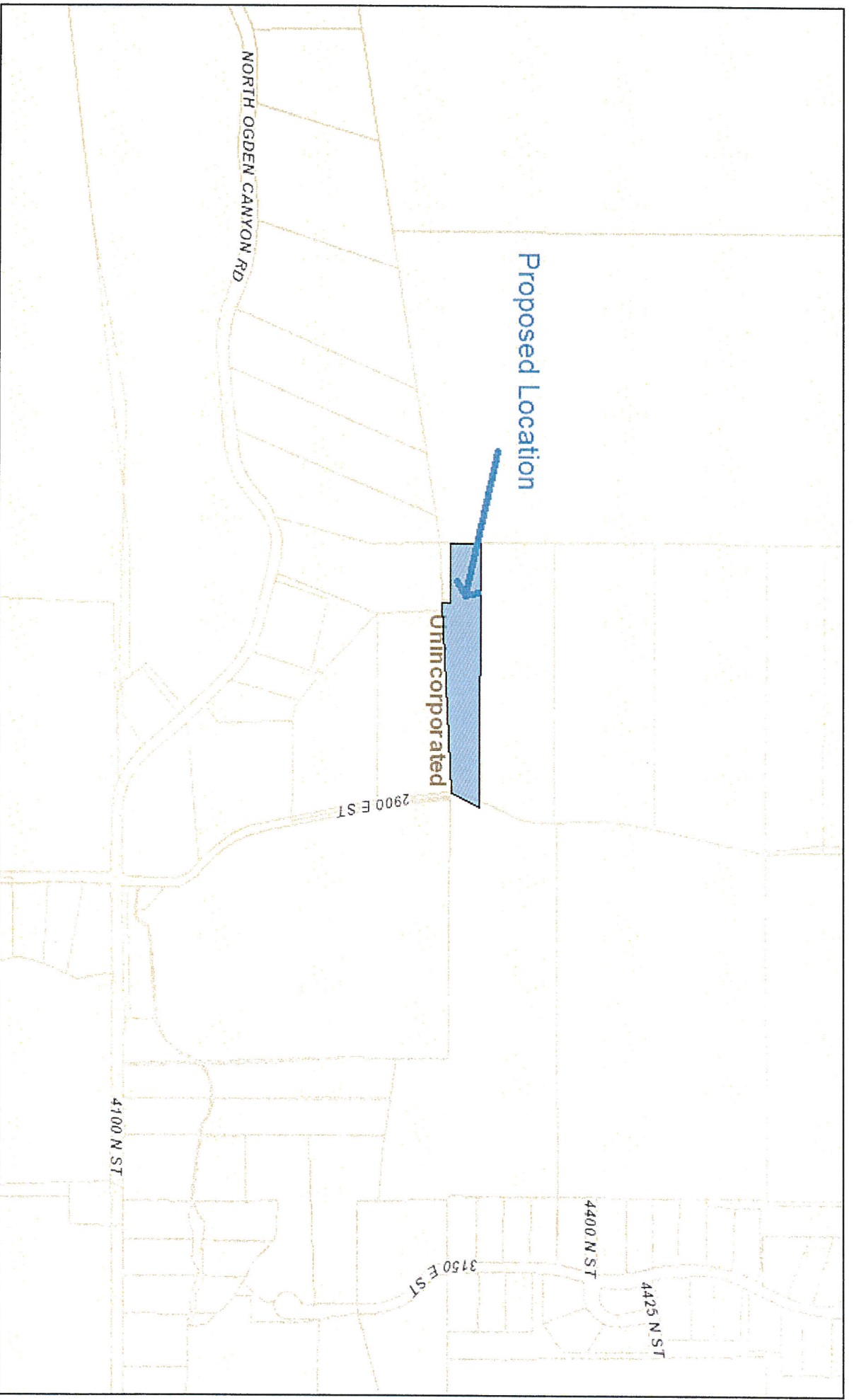
- Meeting the requirements of applicable County review agencies.
- Completing subdivision process.
- Obtaining a land use permit and a building permit prior to construction.

Staff Recommendation

Staff recommends approval of the variance request for a seven foot variance to the lot width at the 30 foot yard setback, based on its compliance with the applicable variance criteria discussed in this staff report and the detailed explanation by the County Surveyor/Recorder.

Exhibits

- A. Location Map
- B. Applicant's Application and Narrative
- C. County Surveyor/Recorder Memorandum
- D. 1966 Recorder's Plat Map
- E. 2014 Recorder's Plat Map



March 18, 2014

Street Labels

City Labels

Variance request narrative for 4311 North 2900 East, Liberty, UT

1-

In early July 2013, I purchased the piece of land located at approximately **4311 North 2900 East, in Liberty Utah**. This parcel of land was created by Entry # 2545886 and #2545887, and as noted by the county plat maps, does not comply with State Code. The previous land owner had submitted drawings for a Subdivision Application to the County under the name "Steve Rich Subdivision", so we continued the subdivision process under that name. County Records had shown this parcel as being 150 feet Northeasterly along the centerline of the county road from the South Section line. At the beginning of the review process for this subdivision it was discovered the 150 foot frontage needed to be at the 30 foot setback line. The previous land owner negotiated with the land owners to the North to purchase a small sliver of land to gain the required frontage to the setback line.

Shortly after me purchasing the property, the owner of the adjacent land to the West (Mike Rhodes) informed me and the County offices, that he had a right-of-way easement through the Southern 16.5 feet of the lot. After months of investigation and meeting with real estate attorneys, all parties agreed that not only did Mr. Rhodes have a right-of-way, but he actually owned the Southern 16.5 feet of the lot which I had just purchased. The County Maps were incorrect, and seemed to have been that way for many years.

I negotiated with the land owners to the North again, and purchased another sliver of land to replace the 16.5 feet taken from the South. Thinking that I finally had done everything to make the lot compliant, I asked my surveyor (Landmark Surveying) to submit the revised survey to the Weber County Surveyors office.

Through this next review process my surveyor was given a new alignment of the centerline of the road which changed the angle along my land from the current recorded centerline. This change caused my frontage to fall below the 150' requirement. My surveyor worked with the County Surveyor to find an alignment that would allow this property to meet the frontage requirement, but neither found a solution. Why this new alignment wasn't mentioned or made aware in the previous several months this subdivision was under review I do not know, but with the suggestion from the County Surveyor this variance is being requested. I am not a land developer or investor. I am a private owner and I simply want to build a home for myself. I have been doing my absolute best for the last 7 months to keep this parcel in compliance with the zoning requirements but now ask that a variance be granted to allow my 143.3 feet of frontage so that I may continue in the process of building my home.

2-

This variance will not affect the comprehensive plan of zoning. This land is in an FV-3 zone and according to the site standards me land will meet or exceed all other minimum requirements. This lot contains over the minimum 3 acres which will allow me to build a home as well as protect the naturalistic environment as is the zones objective. If the frontage requirement is strictly enforced this parcel will never be allowed to have a home on it for me or any future land owners to enjoy.

3-

This property did meet the frontage requirements as did all other properties in this area until the road realignment by the County Surveyors office caused this parcel to be non-compliant.

4-

All other land owners in this area still have the comfort of knowing they have or can build a home on their land, which comfort I no longer have because of this realignment.

5-

The special circumstances associated with my parcel are not self-imposed, but in my opinion is the cause of two errors on the County's part. The first being not having the plat maps reflecting the 16.5 foot strip of land on the South as belonging to the Rhodes, which once the documents were found and analyzed caused the subdivision application to be delayed. Once that error had been rectified and I thought my land would be in compliance, the county road had been realigned without any forewarning to me though the County knew about my land and the subdivision application.

March 18, 2014



INTERNAL MEMORANDUM

SURVEYING

Ernest D. Rowley, P.L.S.

County Recorder / Surveyor

Debra A. Conley

Recorder / Surveyor

Administrative Assistant

2380 Washington Blvd., Suite 370

Ogden, Utah 84401

Office: (801) 399-8441 or (801) 399-8020

FAX (801) 399-8316

RE: Steve Rich Subdivision

Weber County Planning, Sean Wilkinson:

This letter is to help the planning office and if necessary the Board of Adjustments, to understand the circumstances surrounding this subdivision application and variance request. Because of the issues surrounding frontage on this subdivision I have suggested to the land owner that they petition the BOA for a variance because I believe that this circumstance is not a self imposed hardship, in fact, it is just the opposite.

The land owners have made efforts to comply with the county requirements for area and frontage after learning that they did not have as much property as they were lead to believe at the time of purchase and have supplied to my office a letter titled "Explanation of events concerning the Steve Rich Subdivision" that gives some of the history on how they have tried to resolve a deed matter that has been mis-represented by the county recorders office for many decades.

Attached you will find a copy of the 1966 Ownership plat. This map is produced by the County Recorder's office for tax purposes. The purpose of the map is to accurately show the configuration of the tax record for weber county properties for the use of the county assessor. The maps are also used by the public in general to see what the county has on record as a basis for taxation.

In the bottom-left side of the plat you will see a parcel that is shown to be 240 feet long (east to west). The deed for this parcel reads:

A part of the Southeast Quarter of Section 18, Township 7 North, Range 1 East, Salt Lake Base and Meridian, Unites States Survey: Beginning at the Southeast corner of the Southwest Quarter of Section 18, and running thence East 240 feet, more or less, to the

West line of the County Road; thence Northeasterly along the West line of County Road to a point 1 rod North and 240 feet, more or less, East from the point of beginning; thence West 240 feet, to the West line of said Southeast Quarter Section ; thence South 1 rod to the place of beginning. (Dee book 154 page 265 dated January 1942)

I have highlighted the important part of the text of this description. The Utah courts have (virtually without exception) interpreted the language of a metes and bounds descriptions (which this is, the metes are the compass direction and distances, the bounds part is the call for the West line of the County Road) when conflicts arise between the metes portions and the bounds portions so that the bounds of a description take precedence.

¶8 When the Wards obtained their parcel, the eastern boundary was described in two different ways in the deed - - with metes and bounds and by reference to a natural landmark, the Epperson Ditch.[FN1] Because both descriptions are equally legitimate ways in which property can be described in a deed, a legal presumption has developed to resolve conflicts when two such descriptions do not match: “[F]ixed monuments or markers of a permanent nature which can be definitely identified and located take precedence over calls of courses or distances, or plats, or amounts of acreage . . . because it is reasonable to assume that the parties are more apt to be familiar with such monuments or markers.” *Scott v. Hansen*, 18 Utah 2d 303, 422 P.2d 525, 527-28 (1966) (footnotes omitted). Thus, we must assume that reference to the Epperson Ditch sets the eastern boundary of the Ward parcel unless this assumption is unreasonable. See *Neeley v. Kelsch*, 600 P.2d 979, 982 (Utah 1979) (failing to apply the presumption where a general description of all land north of a county road would encompass two parcels clearly owned by someone else); *Williams v. Oldroyd*, 581 P.2d 561, 563 (Utah 1978) (holding that if using a monument as a boundary “drastically” changes what the parties intended, then legal presumption does not govern).

¶9 There is nothing unreasonable in taking Epperson Ditch to form the eastern boundary of the Ward parcel. On the contrary, it is undisputed that after acquiring their parcel and while Ellsworth still owned what is now the Khalsa parcel, the Wards occupied the land right up to the Epperson Ditch. Therefore, the Epperson Ditch sets the eastern boundary of the Ward parcel.

FN1 The deed reads, in relevant part: “thence South 0754'36" West along a ditch 680.80 feet (207.51 meters) to the point of beginning.”

Khalsa v. Ward, 2004 UT App 393

This particular court case the portions that pertain to the situation at hand I have again highlighted. Bounds control over metes, the contrary must be proven by evidence. We have done some research to see if there was a county road at the 240 foot distance location and we have found no records that would lead us to believe that any road existed at this location that could be called a county road.

In this court case the Wards also occupied the land. In the case of the Steve Rich Subdivision, the James Lewis property has been subject to a two track road that runs on the south side of this parcel for a long time indicating occupation.

The property now owned by Rhodes which was originally deeded to Charles Rhodes in a January 1942 deed which would cover this two track road by description holding to the bounds of the deed which is the call to the county road. Mr. Lewis makes the following statement regarding the strip and the road.

Shortly after purchasing the property, the owner of the adjacent land (Mike Rhodes) informed me and the county offices, that he had a right-of-way easement through the southern 16.5 feet of the lot. After months of investigation and meeting with real estate attorneys, all parties agreed that not only did Mr. Rhodes have a right-of-way, but he actually owned the southern 16.5 feet of the lot which I had just purchased. The county records were incorrect, and seemed to have been that way for many years.

This statement brings the matter of an error to the county record. Having examined the deeds and plat records it is evident that the recorders ownership plats were drawn incorrectly based on a long standing practice of the office to use metes over bounds. This is a practice that I am attempting to correct with my mapping staff. Had the county mapped the deed book 154 page 265 correctly when this originated in accordance with legal principles of deed interpretation the county maps would have shown the 16.5 foot strip separated from the parent tract decades ago and when Mr. Lewis purchased the property and it was severed from the larger parcel it would have been purchased without trying to include the 16.5 foot strip of ground.

Mr. Lewis, in the process of trying to correct this problem purchased 16.5 feet of ground from the neighbor to the north. This purchase essentially traded the 16.5 feet on the south of the parcel for the additional 16.5 feet on the north of the property. Now, to understand the issue relating to the request for a variance for frontage we need to examine some of the circumstances relating to the descriptions of the frontage and the mathematics of the parcels relating to the street dedication which is being required by the county.

When Mr. Lewis purchased this property it was described in document Entry Number 2644026 as follows:

Part of the Southeast 1/4 of Section 18, Township 7 North, Range 1 East, Salt Lake Base and Meridian, U S Survey, described as follows:

Beginning at a point on the west line of Section 18, Which point lies North 00°11'09" East along the 1/4 section line 130.5 feet; thence south 89°24'28" East 1060.04 feet to the center of a county road; thence along the center of said road south 21°07'37" West 150 feet to the south line of Section 18, thence along said south line North 89°46'46" West 766.4 feet; thence North 00°11'10" East 16.50 feet; thence North 89°46'46" West 240.00 feet to the point of beginning.

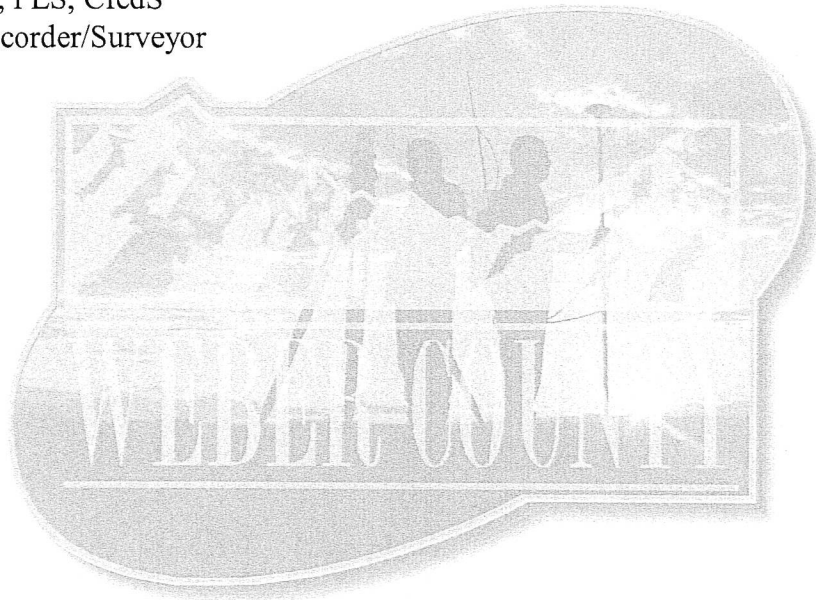
Notice from the description that the distance of 150 feet is called to be along the center of the county road. Several years ago when other subdivisions were being developed to the north of this area on 2900 East street the county surveyor's office established an alignment for the road. This alignment is what we are holding to for dedications along this road. This dedication creates a difference in the distance of the road based on the historical deed and what we are requesting to

be utilized in this subdivision.

The main reason is that the bearing of the center line of the road is described in the deed as being South 21°07'37" West. The alignment we are requesting is more perpendicular to the north and south boundaries of the properties. The difference in the perpendicularity and the deed bearing causes the shortening of the frontage as it relates to the right of way which is being requested by the county.

Therefore, due to the fact that the land owner has been trying to resolve the issues caused by the error in mapping of the parcels by the county recorders office and the requirement of the county surveyor's office on the alignment of the right of way for 2900 East Street differing from what the deed has assumed the road right of way to be, it is my recommendation that a variance be granted.

Respectfully,
Ernest D. Rowley, PLS, CfedS
Weber County Recorder/Surveyor



2014

WOLTHUIS FAMILY PARTNERSHIP

220080063

13.01 AC±

1168.63'

ANN W CHAMBERS 1/2 ETAL

220080060

11.045 AC±

S 89°46'46" E 1134.54'
S 89°46'46" E 1134.54'

ANN W CHAMBERS 1/2 ETAL

220080072

7.772 AC±

TRANSACTION E/2343986 & E/2343987 DO NOT COMPLY WITH STATE CODE.
S 89°24'28" E 1060.04'

BRANDON JAMES LEWIS & WF NATALYN O

220080071

3.32 AC±

776.4'

130.5'
240'

16.5'

POWELL G RHODES
& GWEN S RHODES TR=1/3 ETAL
22 220080016

N 15°30' E 250'
Q OF ROAD

249.19'

176.63'

100.52'
111.96'

64.78 A

372.12'
372.12'

SEE PAGE

1513 AC.±

6. 1155'

BART

W

1966

165'

1-240'

CHASLES PHOES

106264

.09 AC

Aug 1/64

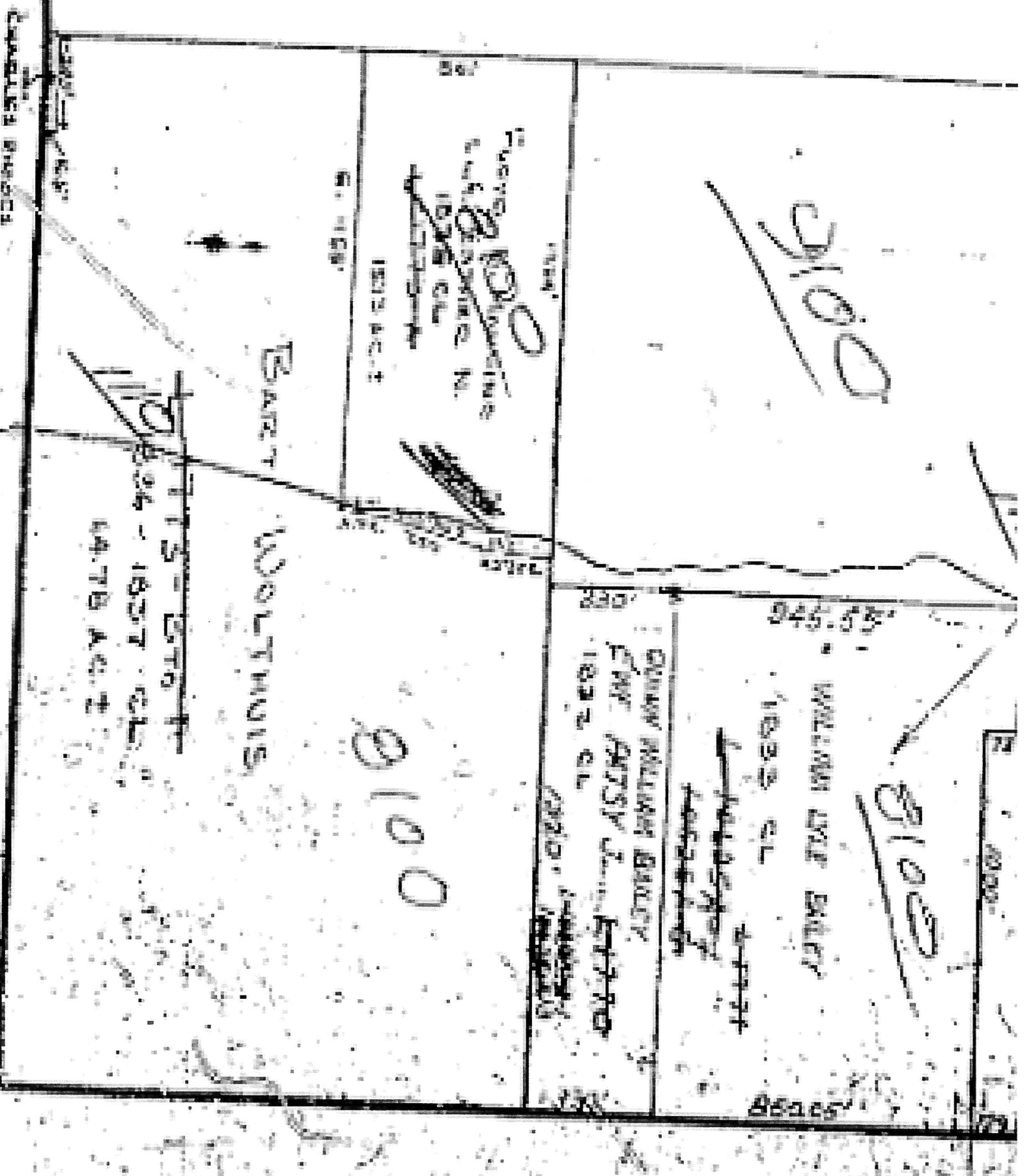
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64.

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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 reduction of lot area of 171 square feet on Lot 34 of Woodland Estates Subdivision Unit 2, in the Residential Estates RE-20 Zone.

Agenda Date: Thursday, April 10, 2014

Applicant: Stan Booth

File Number: BOA 2014-04

Property Information

Approximate Address: 2575 East Woodland Drive; Ogden UT

Project Area: 19,978 square feet

Zoning: Residential Zone (RE-20)

Existing Land Use: Vacant lot

Proposed Land Use: Construction of a new single-family dwelling

Parcel ID: 07-089-0010

Township, Range, Section: T5N, R1W, Section 23

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: JG

Applicable Codes

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 3 (Residential Estates Zone RE-20)

Background

The applicant is requesting a variance for a reduction of lot area of 171 sq. ft. on Lot 34 of Woodland Estates Subdivision Unit 2, in the RE-20 Zone. Requirements for this zone are as follows:

- Lot area 20, 000 sq. ft.
- Lot width 100 ft.
- Setbacks Front – 30 ft, sides – 10/14 ft, rear – 30 ft.

Woodland Estates Subdivision Unit 2 was approved as a subdivision in 1959. Lot 34 had enough lot area at the time, however, over the past 55 years the property lines between Lot 34 and Lot 35 have moved several times leaving the property as it exists today. The lot currently has a total area of 19,978 square feet, which is 22 square feet short of the required lot area.

However, on Woodland Drive just south of 5950 South a large rock sits in the middle of the road. The County is requesting some additional right-of-way (149 sq. ft. – see Exhibit B) in order to make the street safer for vehicle traffic especially during the winter months. Because of this additional request from the County, the applicant has included the County's request into their variance request. Thus the total variance request is 171 sq. ft.

Staff has had discussion with the applicant regarding the possibility of asking the neighbor for some additional land back. The applicant has asked the neighbors to sell additional property, but the land owners have refused. This lot has always been intended to have a single-family dwelling built upon the parcel as is evident with the surrounding uses and design of the neighborhood.

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 deem this property as an un-buildable parcel and would, therefore, be an unreasonable hardship to the land owner. This issue is peculiar to this property and not associated to any other property in the neighborhood. The request for a variance is not a self-imposed hardship and allows the County to improve safety on a public road.
- b. The special circumstances attached to this property are based on the fact that the previous property owners had moved the southwestern property line several times thus making this particular parcel 22 square feet less than the required area, as well as the large rock in the middle of the road which created an additional request from the County for 149 sq. ft.
- c. When subdivisions are approved each lot is intended to have a single-family dwelling built upon it. In this case, this is the last parcel within the neighborhood that remains vacant.
- d. The General Plan indicates this area should allow and be preserved for single-family dwellings, which is what is being proposed.
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code. Approval of the variance allows the applicant to build a dwelling and allows the County to improve public safety.

Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the RE-20 Zone. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Western Weber General Plan.

Conditions of Approval

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

Staff Recommendation

Staff recommends *approval* of the variance for a reduction of lot area of 171 square feet on Lot 34 of Woodland Estates Subdivision Unit 2, in the RE-20 Zone, based on it's compliance with the applicable variance criteria discussed in this staff report.

Exhibits

A. Applicant's Narrative

B. Parcel plat with engineering's requested right-of-way

Location Map



APPLICANT NARRATIVE

The lot in question, on the corner of 5950 S Woodland Dr., is directly adjacent to the well known "ROCK IN THE MIDDLE OF THE ROAD". We are proposing a change to the radius of this corner, (see Woodland Estates Subdivision-Unit 2-2nd. Amendment), and dedicating 149 SqFt. to the county to make this cramped and unsafe roadway substantially safer for snow removal, vehicle passage and future curb, gutter & sidewalk for safer pedestrian travel (see exhibit A). We've consulted the County engineer with this proposal and he is supportive to this dedication of land as being a huge benefit to the public. This is certainly a unique situation, where else, in Weber Co., is there a giant boulder in the middle of the road substantially limiting safe and adequate usage. The dedication of land on the corner will not exceed 149 SqFt. but will make a substantial positive difference for the public.

We are asking for an overall variance that will not exceed 171 SqFt. This is to include the 149 SqFt. for the corner and an additional 22 sqft. , the small amount the lot is short of being a legal building lot.

VARIANCE REQUEST

Due to the special and UNIQUE circumstances of this "ROCK IN THE MIDDLE OF THE ROAD" and lot owner's willingness to dedicate 149 SqFt. to the county, which would allow more room for snow removal, vehicle passage, curb, gutter and sidewalk for safe pedestrian travel, the lot owner is requesting an overall variance to allow this reduced lot area as a legal building lot. This variance would be a huge benefit to the public and is supported by the County Engineer. By strictly adhering to the letter of the law would unquestionably cause an undue hardship to the lot owners who purchased the lot as a legal building lot and have been paying taxes as such ever since. The lot is easily large enough to accommodate most any house plans, certainly as well as any other 20,000 sq.ft. lot and well within parameters of current set backs.

Blue Spruce Investments Inc. are requesting a variance to the R-20 zoning their lot is in. They are asking the Board of Adjustments to allow their lot on the corner of 5950 S Woodland Dr to be considered a legal building lot. In doing so, they are offering to dedicate 149 sqft of their land to the county to create more space on the corner of 5950 S & Woodland Dr, (directly adjacent to THE ROCK IN THE MIDDLE OF THE ROAD)

The 5 criteria that needs to be met in order for the Board of Adjustments to grant a variance.

1. Literal enforcement of the ordinance would cause and unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance.
 - a. The unreasonable hardship associated with this particular lot is an inability to put a home on the lot due to the R-20 zoning. The circumstances peculiar to the property is the large rock in the middle of the road directly adjacent to the property. The applicant is offering to dedicate a portion of this lot, (not to exceed 149 SqFt.) directly adjacent to the rock, to the county, (see Woodland Estates Subdivision-Unit 2-2nd. Amendment). This extra surface area would give the county more, needed, room for snow removal, vehicle passage, future curb & gutter and sidewalk for safer pedestrian travel. The plan, supported by the Co. engineer, would substantially benefit the public and is unique to this particular property. It is the only lot that can offer these specific benefits to the neighborhood.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.
 - a. This is obviously a unique situation. Where else in Weber Co. is there a massive boulder in the middle of the road that substantially restricts the passage of cars, bikes and pedestrians'.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
 - a. Absolutely, the right of home ownership. There is currently an offer in on the property and the buyers are very anxious to get started on building their home. They have plans that have been designed specifically for the property.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
 - a. This variance we have requested will in no way substantially affect the general plan, on the contrary, it will greatly enhance the flow of the motorized travel, snow removal, pedestrian travel and general health and safety of the neighborhood. The general plan intended the lot to have a home on it and the variance will allow this.
5. The spirit of the land use ordinance is observed and substantial justice done.
 - a. The spirit of the land use ordinance will certainly be observed, that of being a residential lot with a home on it and substantial justice will be done in the fact that the whole community using this road will be much better served by having the extra space for the good and safety of the neighborhood.

Exhibit "B"

