

**Minutes of the Board of Adjustments meeting of July 12, 2019, held in the Weber County Commission Chambers, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 p.m.**

**Members Present:** Bryce Froerer-Chair  
Laura Warburton-Vice Chair  
Phil Hancock  
Rex Mumford  
Neal Barker

**Staff Present:** Charlie Ewert, Acting Planning Director; Tammy Aydelotte; Planner II; Chris Crockett, Legal Counsel; Marta Borchert, Secretary

- **Pledge of Allegiance**
- **Roll Call**

Chair Froerer states that as this is the first meeting of the year, the board has agreed to rearrange the items on the agenda and start with the election for Chair and Vice-Chair of 2019.

**1. Election: Election for Chair and Vice-Chair 2019**

Mr. Crockett notes that the rules state that the Board shall elect a Chair and Vice Chair annually during the first regularly scheduled meeting in January a Chair and a Vice-chair who may be elected to succeed themselves for an additional term only. Mr. Crockett adds that it is a one year term. Ms. Warburton states that the Board can suspend the rules.

**MOTION:** Rex Mumford moves to suspend the rules and to allow Bryce Froerer to serve for an additional term. He notes that the term started in January but was made official at the first meeting of the year July 11, 2019. Phil Hancock Seconds. Motion carries (5-0)

**MOTION:** Laura Warburton moves to reelect Bryce Froerer. Phil Hancock seconds. Motion carries (5-0)

**MOTION:** Bryce Froerer moves to elect Laura Warburton as Vice-Chair. Neal Barker seconds. Motion Carries (5-0)

**2. Presentation: Douglas Dickson**

Charlie Ewert states that the Board and Planning staff wanted to make sure and acknowledge the service that Douglas Dickson has provided. His term has expired. Normally there is a clock to present, but it is was not ready for the meeting. Mr. Dickson was notified and it will be sent to him in the mail. Phil Hancock states that he would like to applaud Douglas Dickson for his years of service and congratulate him. The other board members agree.

**3. Minutes:** Approval of the May 10, 2018 meeting minutes. Mr. Hancock notes that in the minutes it states that the meeting started at 5 pm. It needs to be amended to 4:30 pm.

**MOTION:** Phil Hancock moves to approve minutes with noted corrections. Rex Mumford seconds. Motion carries (5-0).

**4. BOA 2019-02 Consideration and action on a request for a variance to the 100ft stream corridor setback for the purpose of building a single-family dwelling.**

Tammy Aydelotte states that in May of 2018 the lot in question was approved as a legal lot of record. The owners are in the process of applying for building permits. They are requesting a variance to see if they can build on the lot.

Ms. Aydelotte notes that one of the roles of the Engineering department is to find suitable building areas near bodies of water. They look at streams and they determine setbacks from high watermarks. In this case, 100 ft from the high water mark would push the buildable area to outside the parcel boundaries. They would not be able to build on it. They are proposing to build 52 ft. from the high watermark instead of the proposed 100 ft. They are also in the process of acquiring a neighboring parcel; this will allow them to put the footprint well within the setbacks. She notes that Engineering has no objections to this request. The Fire District has no objections to this request. There have been some phone calls from neighbors, regarding well and septic. She notes that at this point that information is not available and is not required yet. The owners have requested water share from Weber Basin, that approval has not yet been granted. Currently, they are trying to find out if they can build on the lot.

Chair Froerer asks how high the water gets in the spring. Ms. Aydelotte states that this is a good question for Engineering. The building height is set above the high watermark and there was no indication that the water levels would reach that height without other circumstances involved.

Mr. Ewert states that Engineers determine this by vegetation delineation. It allows the water to flow at different capacities, it will over time increase or decrease. The vegetation fills and the high water mark changes.

Ms. Aydelotte states that Engineering can require more specific design elements to mitigate potential issues.

Chair Froerer asks what the requirements for the septic are.

Ms. Aydelotte states that the applicant can address these issues.

Mr. Hancock states that the board is usually reluctant to approve changes of this magnitude. He asks if it was submitted to the Fire District. Has staff considered the repercussions of this large of an adjustment?

Mr. Ewert states one of the things that is looked at is whether the ordinance denies fundamental rights applicable to other properties in the area. He asks if a particular size of the home is a right?

Mr. Hancock asks if there is an average size of homes in the area.

Mr. Ewert states that they do not have this information, but it's important to note that the homes are fairly spread out in the area. Mr. Ewert suggests that the Board members look at whether the granting of this is essential for preserving a fundamental property right. The lot in question is a lot of records it predated the rules. It is a nonconforming lot that is lawfully existing, the rules were applied over the top of them. The setback and area rules are different from when it was created. He asks what size of the home is appropriate to preserve substantial justice and not go against the intent of the ordinance.

Mr. Mumford states that the rear and side setbacks aren't being addressed. Ms. Aydelotte states that the purchase of the additional piece is so that they may comply with setbacks on both sides. Mr. Ewert states that it is possible for this to be adjusted on side setbacks or rear setbacks.

Mr. Barker asks if the property owner has acquired that small parcel. Can the Board of Adjustments vote on this if they haven't acquired the rights? Mr. Ewert states that they will want to make sure they have property owner consent. The variance approval can be conditioned on along with the owner's consent.

Ms. Warburton states that her understanding is that they can grant the variance but that does not grant the right to build the house. They will need to go through all the departments to get final approval. Ms. Aydelotte states that at this point they are okay with the conceptual site plan. She notes that it does lie outside of the geologic study area and the flood plain.

Mr. Hancock asks if staff has discussed rotating the site plan with the applicant? Ms. Aydelotte states that their impression is that the applicant is fairly set on the site plan. This can be addressed by the applicant.

Ms. Barker asks what the high-water mark is of the other homes in the area. Ms. Aydelotte states that she is not sure. She has not been able to find a similar variance in the last few years. Mr. Barker asks if was setback 80ft what the elevation would be. Ms. Aydelotte responds that it should be similar, but the distance would be increased.

Chair Froerer states he would like to hear from the applicant.

Brent Whetton 5989 N 2250 E: states that they purchased the lot about a year ago. They were under the impression that it was a buildable lot, they were not aware of the setbacks. The bottom part of the home is 1800 sq. ft. the rest of it is above. The small piece that sticks out on the bottom is the garage. He states that they are not opposed to flipping it. Regarding the septic and the well permit. He has acquired the water well permit from the states of Utah.

Chair Froerer asks if there is anyone in the audience, who would like to speak.

Craig Oberg 5937 N Four Rd.: states that they have property adjacent to this.. They have used an easement for 50 or 60 years. He asks if configuration changes, what happens to the road. Mr. Ewert states that he can get in touch with staff to address his concerns.

Mr. Hancock notes that this is quite a change, but he does not believe it will adversely affect the neighborhood, nor the intent of the ordinance. He does not see the harm to the County or surrounding area.

Mr. Mumford states that the purpose of the set back isn't necessarily for people, it can be for riparian habitat. Mr. Ewerts adds that the purpose is to protect anything within 100 ft. of the riparian corridor. Mr. Mumford states that this is what makes him uncomfortable. Mr. Hancock asks if his concern is regarding the slope or the grade. Mr. Mumford states that it is strictly the distance. Mr. Mumford states that he is not comfortable with the configuration. He notes that they may not be a body to dictate but they are a body to evaluate. The rivers migrate and change if the river altered itself after the home is built the encroachment on the riparian habitat is greater.

Mr. Barker asks if the property will be fenced. Ms. Aydelotte states that one of the conditions is that the vegetation and the wildlife not be disturbed a fence would disturb the wildlife. Mr. Barker asks, Is it within the boards purview to add contingencies? For example it is the applicants intent to acquire the neighboring property, would it be out of line to make that a requirement of approval. Mr. Ewert states that they may impose conditions of approval, but it is important to make sure they speak to the five criteria and the ordinance. Regarding varences sometimes you are talking about a setback but sometimes it effects other ordinances that would be applicable as well. Mr. Hancock states that any condition added needs to be evaluated and the Board is not qualified to approve items such as septic tank, engineering, zoning. These type of items are all part of the site plan approval process. He does not believe it is within their preview to impose those kinds of conditions.

Mr. Mumford states the distance of the setback is less than an irrigation ditch, and it is near a major river that has riparian habitat. Chair Froerer asks if this is something that is taken into account for final approval. Ms. Aydelotte states that they do. The health department is involved in giving the final say on a well permit. The well has to have a hundred ft protection around it that must be contained within the final boundries of the parcel. There are setbacks from the residents for the septic, and the type of septic is determined by the water levels and the proximity to the river. The health department will go through the review process and will impose their conditions based on what is submitted by the applicant, the proposal and the site plan.

Ms. Warburton states that she would like to check with legal but it is her understanding that any conditions that are imposed or if they want to deny it need to have a legal basis it has to be in code and it needs to be supported, otherwise it puts the County and the petitioner in jeopardy to spend more money to defend what he would like to do. Mr. Crockett states that he agrees with this regarding imposing conditions. There has to be a factual basis,

otherwise, there is a risk having it overturned if challenged in court. Mr. Ewert states that this is a quasi-judicial decision, and the building permit is an administrative decision, there is a very limited ability to say no. As Ms. Aydelotte stated all the other agencies will ensure all their laws are upheld.

Mr. Mumford states that it is his understanding based on legal's opinion that if they don't grant the variance they will be somehow establishing precedence. He notes that the setback was established years ago. He asks would that jeopardize the setback policy for the future. Mr. Ewert states that it is hard on a judicial decision to say you are setting up precedence because every fact of every case is different. He adds that it is unlikely that the decision made for this case will be made applicable in the next case. Mr. Crockett agrees and states that the criteria for evaluating a variance are for circumstances that are peculiar property. Each case will be evaluated on its own individual merits.

Ms. Aydelotte states that she is willing to get them more information so they can make an informed decision. She appreciates the thought that is being put into this.

**MOTION:** Laura Warburton moves to approve BOA 2019-02 Consideration and action on a request for a variance to the 100ft stream corridor setback for the purpose of building a single-family dwelling-based the findings and conditions listed in the staff report. Mr. Hancock seconds. Motion carries (4-1) with Rex Mumford voting nay.

**5. Schedule & Information: 2019 Meetings and Information List-**A meeting calendar for 2019 and a members information list was given to the Board members. Chair Froerer and Mr. Mumford state that their home numbers are no longer active.

**6. Rules of Order Approval of Rules of Order.** Mr. Ewert states that it has been brought to his attention Mr. Crockett that Rules of order in the packet require a quarterly meeting to approve minutes in accordance open public meeting act. He notes that they may need to meet quarterly, it is in the bylaws. Mr. Crockett states that one thing he would like to check in the open meetings law is if there is a certain time limit. Mr. Mumford states that he believes that they had addressed this at a prior point and that minutes could be approved by phone. Mr. Crockett states that he will need to check to see if there is approval to have electronic meetings. He notes that they might not be able to take a vote through email. Mr. Ewert states that they will look into the matter, if possible the rule of order to state that the meetings will be held as needed. Mr. Mumford states that if a meeting needs to be held to approve minutes they would likely be able to find the time. Mr. Crockett states that perhaps there is a provision that allows the posting pending minutes until they are formally approved. Chair Froerer states that based this request and the previous year it could be another year before another meeting is called. He adds that it is not fair to the applicants. He would like to request that the minutes be prepared expeditiously and be approved via email by the Board members present at the meeting.

**MOTION:** Laura Warburton moves to change the bylaws of the rules of order to states that the Board of Adjustments is allowed to schedule meetings as needed and that minutes be approved via email or conference call. Subject to legal review. Phil Hancock seconds. Motion Carries (5-0).

**MOTION:** Neal Barker moves to change the rules of order to state that the Chair Vice-chair election be done at the first meeting of the year, rather than the first meeting in January. Rex Mumford seconds. (5-0)

**MOTION:** Laura Warburton moves to adjourn. Neal Barker seconds. Motion carries (5-0)

**Adjourn-5:41**

Respectfully Submitted,  
Marta Borchert