

**Minutes of the Board of Adjustments meeting of July 9, 2020, held via Zoom Conferencing, at 4:30 p.m.**

**Members Present:**       **Laura Warburton-Chair**  
                                  **Bryce Froerer-Vice Chair**  
                                  **Rex Mumford**  
                                  **Neal Barker**  
                                  **Janette Borklund**

**Staff Present:** **Charlie Ewert, Principle Planner; Scott Perkes, Planner; Chris Crockett, Legal Counsel; Marta Borchert, Secretary**

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

**1. Approval of minutes for June 11, 2020.** Rex Mumford noted that there was a comment on page 4 paragraph 3, which he believes was made by another member of the Board. He asks if the recording can be reviewed, to ensure the correct person gets credit for comment. He also notes that he had asked if it was a utility easement he did not state it.

**MOTION:** Bryce Froerer moves to approve minutes with the noted correction. Motion carries (5-0)

**2. BOA 2020-05:** Consideration and action on a request for a 30-foot variance to the intermittent stream setback of 50-feet from the high watermark, at 840 North Yacht Club Dr., Eden, UT.

**Applicant Representative:** *David Anhder*; **Staff Presenter:** *Scott Perkes*

This subdivision was recorded on June 6, 1994, the lot has remained undeveloped. The applicant applied, on behalf of the owner, who is Larkin Revocable Trust. Mr. Anhder is looking to purchase the property, but he wanted to make sure he could place a home on the property, before purchasing it. The easement is 10 ft from the centerline, of the ephemeral stream, it is not year-round and typically flows at the spring runoff. In 2005 Ordinance 2005-19 was approved by the County Commission, which established river and stream corridor setback requirements. The requirements were put in place to protect the waterways. In the ordinance, it established a 50 ft from high water mark setback from this type of stream. It came about after the subdivision was recorded and required additional stream setbacks than was anticipated when the subdivision was designed. This stream affects 2 lots in the neighborhood. Lot 28 was developed in 1996 shortly after the plat was recorded and they have a home that is placed towards the back of the lot but is closer to the stream than would have otherwise been allowed. He notes that other than the two lots no other lots have the encumbrance. This is a unique consideration for lot 21 as far as the placement of the home is concerned. The applicant has submitted a variance request to be allowed to place a home on lot 21 but more centrally located to be closer to the stream than the 50ft set back requires. The request is for the variance to go from 50ft from high water mark to 20 ft from each side high watermark, which would result in a 30 ft variance. They would still be observing the easement that was recorded with the plat. There would still be quite a bit of setback for the stream. Staff feels that there is a unique hardship. Staff recommends approval of this request based on the request listed in the staff report.

Janette Borklund asks what the difference is between the high water mark and the centerline of the stream. Mr. Perkes states that the high-water mark is verified by the County Engineers, if requested they would go out and mark where those high watermarks are. The 50 ft setback has been drawn from the centerline. He notes that this drawing is a conservative depiction of the area that is available. The high-water mark could be a couple of feet in either direction that would further reduce the setbacks. He notes that they currently do not have that data the engineers have not gone out to see where the high watermarks are. The applicant is requesting a setback of 20 ft. from high-water, they are still being conservative in that regard, instead of measuring from the centerline. They would exceed the easement by at least 10 ft on either side plus a foot or 2 depending on the high-water mark. Ms. Borklund asks where the stream goes when it hits 5200. Mr. Perkes states that it continues Westward until it gets to the highway

then southward to the ditch. It follows the tree line. There is a drainage easement to the West. He notes that it is not natural steam in its journey. It has been altered in the past.

Rex Mumford states that this was one of his questions. He wondered if they altered the stream, and now it goes down between lot 23 and 24. Mr. Perkes states that this is his understanding they had to adjust it during the subdivision process. Mr. Mumford asks how much water flows during the flowing season. Mr. Perkes states that he does not have a record of this; he pulls up the Ogden Valley sensitive land map. It maps out the known intermittent streams. He states that based on this, the stream is intermittent seasonal. Mr. Mumford states that in the staff report there is mention that this is a drainage easement, does it drain like the street or something else that created an actual easement. He notes that typically a stream does not require an easement. If it was drainage perhaps, it needs an easement. Mr. Perkes states that he is not sure; he knows that the stream does follow this. He notes that he is not sure if the intention was to allow the stormwater to enter the stream. He states that he does not believe that this was the intention, but he does not have an answer to this question.

Neal Barker states that he went up to look at the lot. He notes that he ran into one of the neighbors who stated that there is a reservoir where the overflow from this channel goes. He adds that this is probably why there is an easement is because of the irrigation reservoir that collects the water. He states that he looked at the stream and there is no water going in it. There were still leaves in from last fall. The water does not flow very much. It is very dry, and there is a steep incline there. The neighbor stated that the water flowed when the reservoir was filled and went away when water was drawn from the reservoir.

Rex Mumford asks where this reservoir might be. Mr. Perkes states that he is not sure where it is, and he wonders if it is a tank to the West.

Mr. Perkes states that before the meeting Staff sent out public notices the surrounding neighbors within 500 ft. there were a couple of neighbors that called in. There was a neighbor that lives at 794 and a different neighbor at 857 across the street and he mentioned something about a pond or reservoir somewhere above them. He states that from the aerial it is hard to tell. Mr. Mumford states that in the staff report item B on page 2 it states that the setback was adopted 11 years ago. He states he believes it was adopted 15 years ago in 2005. Mr. Perkes states that this is correct it has been amended a few times but the setback of 50 ft has not changed. Mr. Mumford states that Director Grover once mentioned that on a small stream like this if it, not exposed steam the setback would not be required. Mr. Perkes states that according to (Sec. 104-28-2(b)(1)), it states that regarding ephemeral 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 watermark of the river or stream. The high watermark 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...*

*C. Structures, accessory structures, roads, or parking areas shall not be developed or located within 50 feet from the high watermark of a natural ephemeral stream.)* Mr. Perkes states that he does not recall language that states that if it were piped the setback would not be required. Mr. Ewert states that the ordinance does not discuss when the steam is piped and when it is not. He notes that at some point the drainage ditch is no longer an ephemeral stream, the underground. He asks when does it stop being a stream and starts being a channelized body of water. It is one of the ambiguous questions. The stream in question is clearly and historically as an ephemeral stream. It has been operated as a drainage ditch in the area and especially if it has been controlled from above by a tank. It is on the map as an ephemeral stream and it needs to be treated as such but it is an odd situation.

Chair Warburton asks if there are any other questions from the Board Members.

Chair Warburton states that on the original application it states that it is for a home or an accessory dwelling building. She asks why accessory dwelling is listed on there. Mr. Perkes states that looking at the encumbrance on steam on the property if half of the area was encumbered in an undevelopable area. The purpose is for the owner to have a place to adequately place them logically. Chair Warburton asks if an average home could be placed here appropriately in this area if they didn't have an accessory dwelling building. She asks if it is for a home or an accessory dwelling building. Mr. Perkes states that the primary intent is a home. Looking at the neighborhood all the lots were designed with similar widths and styles. This particular lot would not be able to be developed the same way. This is part of the unique hardship. Chair Warburton asks how this affects septic placement. She asks if the 50 ft setback

applies to septic. Mr. Perkes states that he is not sure what the requirements from the Health Department in 1994 were when it was originally plated. He adds that he is not sure if the neighborhood is on sewer but if it is on septic and gets on septic they would have to get a permit from the Health Department and the plans would need to be reviewed to pull that permit. Chair Warburton states that she just wants to make sure they don't contaminate the water coming through.

Jannette Borklund states that the accessory dwelling building would be able to be closer than a home. She notes that she feels it would be safer for them to have an accessory structure than a home.

David Anhder states that they are trying to make a small home it will be between 66 to 70 ft wide with a 2 car garage. He notes that they plan to situate the home in the center. Concerning the reservoir that was mentioned he states that he believes it is a small pond. He does not believe that the pond drains to the area in question. He is not sure if this is what they are referring to. The draining is caused by a pipe that goes under the road, it is piped from the neighbors uphill. Concerning the sewer, there is a common sewer easement. There is the primary septic, they don't have the leech field because they can leech into the sewer line that is already there, it is on the property to the south on the lot in question. There is a sewer easement and they were told they need to drain into that. He states that they are just trying to do their due diligence, they don't own the lot yet. The house they want to build is only 1600 sq. ft. it won't be a big house but they do not want to put it right on the edge. It would look better to be centrally located on the lot.

Chair Warburton asks if there are any questions for the applicant David Anhder. There are none.

Mr. Perkes states that he spoke to two neighbors who received a notice. He adds that after he explained the proposal neither of them had any concerns.

Chair Warburton opens the public comment.

Bryan Mecham 865 N HWY 158, states that he is to the North and adjacent to the stream. The stream does run and runs following storms and during the spring runoff. He adds that based on what has been discussed he has no concerns about what is being proposed.

Chair Warburton closes the public comment.

**MOTION:** Bryce Froerer moves to approve BOA 2020-05: Consideration and action on a request for a 30-foot variance to the intermittent stream setback of 50-feet from the high watermark, at 840 North Yacht Club Dr., Eden, UT.

Jannette Borklund seconds. Bryce Froerer votes aye. Rex Mumford votes nay. Jannette Borklund votes aye. Chair Laura Warburton votes aye. Neal Barker votes aye. Motion carries (4-1).

Mr. Mumford states that 30 ft on a 50 ft setback is excessive, especially after hearing from Bryan Mecham who said that the stream does run intermittently. He states that based on this it is a real stream, not just a drainage ditch.

**Comments:** Staff and Board of Adjustments members welcome Neal Barker and Jannette Borklund to the Board of Adjustments.

Adjournment: 5:17 PM

Respectfully submitted,

Marta Borchert