

**Minutes of the Board of Adjustments meeting of June 11, 2020, held via Zoom Video Conferencing, at 4:30 p.m.**

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

**Staff Present: Rick Grover, Planning Director; Steve Burton, Principle Planner; Scott Perkes, Planner I; Chris Crockett, Legal Counsel; Marta Borchert, Secretary**

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

**1. Approval of minutes for April 16, 2020.** Chair Warburton moves to approve minutes as presented. Motion carries (4-0)

**2. BOA 2020-04 – Consideration and action on a request for an 11-foot variance to the 20-foot side setback, and a request for a 19-foot variance to the required 30-foot rear setback for a future residential dwelling in the FR-1 zone.**

***Applicant: Doug Neilson, Staff Presenter: Scott Perkes***

Scott Perkes states that there is a little over a half an acre in total area. The Hermitage subdivision was platted in 1921. Doug Neilson is the applicant and the owner owns 4, 5, 6, and additional land on a separate parcel to the East. They are a couple of existing structures on both lots. Lots 5 and 6 are the parcels being looked at for modification. He notes they are looking to submit a subdivision application that it will be a joint application concerning these variances. They are proposing to bring some land from an additional piece into the subdivision boundary and reconfigure some of the lot lines. This will allow for greater separation to improve the lot width of the lots. The variance that is being proposed is for the rear, side setbacks. There is an additional building that would be torn down. The extra land on the parcel to the West is being pulled in to give additional area. He notes that they are not reducing the lot to get extra areas. Overall the request for a reduction for the rear setbacks. The rear setback in the FR- 1 zone is 30 ft. They are looking to reduce that by 19 ft to allow for and 11 ft rear setback. Concerning the side setback, it is in the FR-1 zone which is 20 ft and they are asking for a setback of 8 ft. In the amended subdivision, it will be labeled as lot 3. He notes that what is unique about this lot is the shape and configuration, they are both nonstandard and nonconforming. The nonconforming is that the area is smaller than the zoning requirements. The shape is unique because it doesn't have a traditional side yard or rear yard. Since it is a nonconforming lot and it is irregular in shape the code does allow for the side yard setbacks to be reduced.

Doug Neilson 301 Ogden Canyon, states that there are 3 existing dwellings, and two will be torn down to make room for a new structure. He notes that the big issue is the rear setback.

Scott Perkes states that staff recommends approval based on the findings listed in the staff report. In addition to the requirement, the approval would be conditioned on the subdivision plat being recorded.

Chair Warburton opens the public comment.

Christen Mitchell 307 Ogden Canyon, there had previously been some debris discarded in the river by the previous property owner in an attempt to change the river line. She notes that this was before her living in the area. She asks how this was reflected in the current drawing. She asks if the current plat is accommodating the change in the riverbank. Has that been addressed in how the replating is happening and the setbacks?

Mr. Perkes states that this question would be better addressed when the application goes before the Planning Commission for subdivision approval.

Chair Warburton closes the public comment.

**MOTION:** Bryce Froerer moves to approve the 11-foot variance from the side yard setback and a 19-foot variance from the rear yard setback in the FR-1 zone. This recommendation is conditioned upon the approval of an associated subdivision amendment to the Hermitage Block 10 subdivision. Rex Mumford seconds. Motion carries (4-0)

### **3. BOA 2020-03 – Consideration and action on a request for a variance to the parcel area requirements for the AV-3 zone.**

**Applicant: Jack Clawson, Staff Presenter: Tammy Aydelotte**

Steve Burton states that he is presenting in place of Tammy Aydelotte. The Planning Division has received a request for a variance to the lot area requirements of the A-V3 zone. This property is located at 3641 N Rivers Edge Road. The applicant has stated that the hardship and the special circumstances are the Utah Power and Light Corridor property that is between the two. Looking at lot 2 of the future subdivision, one side of it is 1.84 acres, and the other is 1.16 acres. AV-3 zone requires a minimum of 3 acres in a lot. If you add the pieced two together, it meets that the 3-acre minimum. It also requires 150 ft of frontage, this requirement is also met. These things are typically considered. He notes that the Planning Office had issues approving this item because it does not meet the lot area requirement of 3 acres unless there is some variance granted. Staff recommends approval of the variance to the lot area requirements of the AV-3 zone, based on the proposed lot 2 layouts, including one portion with 1.84 acres and the other portion with 1.16. The recommendation is based on the applicant's demonstrated compliance with the variance criteria outlined in LUC 102-3-4(b). Mr. Burton goes over the variance criteria as listed in the Staff Report. Staff feels that granting this request would permit substantial justice to all the current owners to allow them to develop their land following the existing zoning.

Mr. Mumford asks if there is access to the smaller parcel underneath the power lines. Are they connected by a trail or a road? Mr. Burton states he is not aware of existing access to the lot. There is a possibility that they would not be able to build anything on the backlot. He notes that he's not aware if they have any legal access to that lot. Mr. Burton states that this is a good question for the applicant.

Chair Warburton asks if there are any more questions from the Board. There are none.

Jason Peterson states that he is representing the Clawson's. There is not a trail or road leading to smaller parcels. About 20 years ago the Clawson's had a verbal agreement with Rocky Mountain Power and they were able to farm that area as one piece with a verbal agreement. 2 years ago a neighbor that also adjoins the Rocky Mountain Power Corridor made a lease for that strip. When that lease was made there was a fence put up on the north boundary and a gate has been put in for the Clawson's. The area is owned by Rocky Mountain Power and is being farmed by another property owner. In the future, there is a possibility that it might become blocked and there might not be access it would be landlocked. Concerning the 1.84 acres, it should not affect the other residents, if it was sold in the future the new owners would have to be aware, there may be some strings attached to that. Currently, it is accessible.

Chair Warburton asks if there are any questions for Mr. Peterson.

Bryce Froerer asks if is this something that has been done before? Where one lot is separated by a utility easement. Director Grover state this is unusual. Lots are typically all contiguous and this is the reason that it was brought before the Board. He notes this

situation is unusual because of the utility easement, it could meet the spirit of the code with the variance, but typically lots are contiguous. He states they don't want to make this a norm with the utility easement could be noted as a hardship.

Kari Gutiss 3129 N Rivers Edge Road, states she is concerned if North Rivers Edge Road is going to be the only access.

Nisha Riggs, asks if they are talking about dividing 1 lot into 2, and therefore there would only be one additional home at the end of the street. Proposed lot 2 would only have 1 home on it. She wants to make sure only one home is going in on the parcel.

Rodney Evan 3802 N Rivers Edge Rd, notes that this does not qualify for a variance underneath the power lines. This covers a lot of area through the valley. He states that he is concerned this will set a precedent. This concerns him as a resident in the area but also as a Valley resident. He notes that he concerned for the Valley piece of that. He and some of the neighbors believe that the power line is not a valid reason to split the property. The property is going to be useless and it is going to sit out there will be all kinds of issues with Rocky Mountain Power. The 1.16 acres that are separated will have no access. It offers no value to the area. It doesn't offer any pathways, recreation, or animal sanctuary. It should not be granted because of the Valley and the Area.

Chair Warburton closes the public comment.

Jason Peterson states that concerning Kari's question, they have spent many months working with the County to try and come up with a proposal to be able to build a home for the Clawson's on the proposed lot number 1 of the Subdivision. There were 2 possible options for access to the property and the Planning Staff felt that this proposed subdivision proposal was the best scenario. He states that this will be the primary access to this parcel. There is secondary access on a dirt road coming up River Road. The County did not want that to be alternative access, they wanted it to have frontage like all the other new lots. This is why the proposed extension to what was already a stubbed road, Rivers Edge even though there was a cul de sac that was there. The primary access is Rivers Edge road as proposed and as recommended for the County. Concerning the second question about lot 2 the lot in question for the variance, it can only be one home. The reason it is split and the reason it is proposed this way is that for a new lot in Ogden Valley there is a 3-acre minimum. This was a 13-acre piece originally owned by the Clawson's. The Clawson's have owned this piece for 20+ years. It is one parcel and it has one parcel number. The whole 13 acres were split and that parcel was created by the utility easement. Only one home can be on the parcel. The parcel was already split, it no different than what it was. The only difference is that they are trying to create 2 new lots. One of which will be split like the original parcel. Even though it doesn't fall under the County's ordinance it is a unique situation, it was already split as the 13-acre parcel. He states that it does not set a precedent for everybody else, there are no other pieces that are split like this Concerning the inaccessible piece of the parcel. There is now an agreement with another property owner and the Clawson's that are currently farming that whole triangle that is split on the other side. The Clawson's have given them the right and the future property owner may or may not want to make such arrangements, it might work out in their favor to make that kind of arrangement. He states that that parcel is being used as it was intended to be used, and as listed in the Ogden Valley General Plan which is agriculture. He does not feel that it will negatively affect the Ogden Valley.

Mr. Burton states that there seemed to be some confusion, this is not a subdivision application. This is a variance application so that the applicant can submit a subdivision application. When a subdivision application submitted a subdivision application notices will be sent out to property owners within 500 ft. A subdivision application would go to the Planning Commission or the Planning Director.

Kari Gutiss 3129 N Rivers Edge Road, states that she is confused. The applicant says that only one home is going to be built, but Mr. Burton stated there was a possibility of a subdivision. A subdivision implies multiple homes. Chair Warburton states that they can only put a home on a 3 acres parcel in the AV-3 zone.

Chair Warburton closes the public comment.

Mr. Mumford asks if utility easement the area that separated the two parcels is owned by another entity. He states that this would like owning a parcel in one location and another in another area and trying to put them together to make 3 acres. If it was an easement that would be different, but it is actual ownership separating the two parcels.

Mr. Froerer states that he would not want to establish a precedent. He is not comfortable having 2 pieces of land on 1 lot.

Chair Warburton notes that if the variance is not granted the applicant still has enough room to build a house. Mr. Peterson states that if the variance is not granted they cannot have a second lot. Originally they were going to try and have a 1 lot subdivision. The owners wanted the full road extension, and to get frontage on the 1 lot the County said they would have to put in a full road at the owner's expense. The purpose of the request for a variance was to help offset that, it would allow the Clawson's the ability to sell an additional building parcel to someone. This can not be done without 3 acres. This would allow for the front portion to be farmed. The parcel number is the same for the 13.39 acres which are split. As far as he can tell this is the only parcel that is split this way, he does not feel that it will set a precedent. He feels that the staff helped them come up with something that was well thought out. It is a reasonable request to be able to obtain the frontage. The original parcel was split and was an approved building lot. The split was done years ago. He states that it is a unique hardship.

Director Grover states that the main reason it was brought before the Board of Adjustments is that at one time it was all one piece, the Rocky Mountain Power came through and separated it. He adds that there was one piece on one side of the Valley and another on the other side, it would not have been brought before the Board of Adjustments. It was all one piece at one time and was then separated by a utility corridor. He notes that he understands the concern and they do not want to set a precedent in the Valley. This is not how development should happen but because of the unique situation, it was brought before the Board of Adjustments.

Mr. Froerer asks when the Rocky Mountain Power bought the Utility Corridor. Chair Warburton asks if it was after the Clawson bought their property. She asks if it was taking. Mr. Burton states that he is not sure. The Clawson might have that information. Mr. Mumford states that he believes that it was taken in 1962. He adds that he is not sure if that is when Rocky Mountain Power acquired the land. Mr. Peterson states that the Clawson's bought the property as a whole piece, but it was already separated by the Utility corridor. At the time they purchased it Rocky Mountain Power told them they could farm the land and have access, the corridor was just to carry the overhead power lines. For 20 years they farmed and had cattle on the land until 2 years ago a neighbor went and got a lease.

**MOTION:** Bryce Froerer moves to deny consideration and action on a request for a variance to the lot area requirements of the AV-3 zone. Based on the findings that it does not meet the intent of the Ogden Valley General Plan and does not meet the requirement to have 3 contiguous acres that would allow a home to be built. Phil Hancock seconds. Motion (4-0)

Director Grover states that the Board handled the item very well. The staff was trying to be creative because it was one contiguous piece. This is an odd situation that typically doesn't occur. Chair Warburton notes that the applicants stated that they felt some of the requirements from the County were steep. She asks if anything can be adjusted without doing a variance. Director Grover states

that there will be some dialogue to look at possible scenarios that might work for the applicant. He added that the County is sympathetic to development, and wants to preserve development rights. Mr. Froerer states that in looking at this he wondered if Rocky Mountain Power might consider granting an easement.

Mr. Crockett states that if the Board member felt that granting the variance was not in conformity with the General Plan this is a valid reason to deny, the request. It is one of the criteria that have to be met to grant a variance.

Adjournment-5:43 pm

Respectfully submitted,

Marta Borchert