
Minutes of the Board of Adjustments meeting of July 22, 2021, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 p.m.

Members Present: Jannette Borklund – Chair
Rex Mumford
Bryce Froerer

Staff Present: Rick Grover, Planning Director; Steve Burton, Principle Planner; Courtlan Erickson, Legal Counsel; Marta Borchert, Secretary

- Pledge of Allegiance
- Roll Call Regular

1. BOA 2021-08 Consideration and action on a request for a 25-foot variance to the 75’ stream corridor setback for Lot 7 of Hidden Oaks at Wolf Creek.

Steve Burton will be presenting the item in Felix Lleverino’s stead. Mr. Burton states the item was previously tabled at the previous meeting. This is a request to receive a 25 ft. stream corridor setback in the Wolf Creek area. When this item was last heard the Board of Adjustments unanimously tabled the item so that the applicant could reevaluate the self-imposed hardship aspects and come back with a site plan that would more closely conform with the sensitive lands ordinance the site plan should also show the driveway location and how it is connected to the home. The last time it was submitted there was some thoughts about seeing how far the house could be pushed to the front lot line. Mr. Burton notes that in the revised submittal the applicant did push the home closer to the front lot line, but the house did not change in size. The request is the same. Looking at the drawings the driveway is not very big. He notes that on the subdivision plat there are 25 ft on the neighbor to the souths property the owner will have to use this as access. He adds that the owner is proposing to build within the buildable area on their plat. A year or two after the subdivision was recorded the County adopted the stream corridor setbacks standards. Even though they are proposing to build within their buildable area they are still required to meet the stream corridor setback. The elevation is higher than the stream. He states that staff recommendation is that the variance can be approved if the Board decides that it meets all of the variance criteria.

Rex Mumford states that it appears that some of the surrounding homes have shared driveways he asks if they are restricted lots. Director Grover states he does not believe that they are restricted, they do have the buildable pad. He notes that there are shared driveways in the area. Mr. Mumford states that it is common in the area to have the shared areas. He states that the footprint has been moved but it is still at 50 ft., on the drawing it shows 55 ft. He asks if this is because of the patio. He asks if it is cantilevered or if it has a footprint. Mr. Burton states that the building itself is 55 ft. but the patio needs to be considered. The image shows 55ft to the foundation wall and the patio is within 50 ft. Mr. Mumford asks if part of a home is cantilevered if it is counted if it encroaches into the protection zone. Director Grover states that occasionally the HOA will allow for cantilevers, a lot of the time it is taken into the footprint. Mr. Burton notes that the patio is not cantilevered. Chair Borklund asks if there is any structure with the patio.

Bryce Froerer asks looking at lot 7 how far into the corridor will the house sits. Mr. Burton states that the applicant has stated the stream is below, it is 15 ft. below the house.

Chair Borklund stated that at the last meeting there was some discussion about rotating the house. She asks if this was taken into consideration when the plans were revised. Mr. Burton states that this was discussed but it does not appear that it was rotated. The building was moved up. He adds that it would be up to the applicant to do that.

Rex Mumford asks when the application was submitted. Mr. Burton states that the application was accepted on June 14th. Mr. Mumford asks if the stream corridor setback was approved by the County in 2003. Director Grover states that he is not sure about the exact date but this subdivision and the buildable area and plat were approved before that. Chair Borklund states that if the home were built at the time it was recorded it would be a nonconforming lot. Director Grover states that this is correct.

Darrin Hammond 2225 Washington Blvd, states that he is Scott Bracken's attorney. He states that he would like to address some of the legal issues that have been brought up. He adds that in this case there is compliance because literal enforcement of this ordinance would cause unreasonable hardship, because of the way the home is situated. This is not a self-imposed hardship, it is something that happened because of the shape of the lot and the timing. There is no other way to situate this home even if it is rotated, this would cause problems with the driveway and UDOT. It would have to be 25ft away from the road. This is the best way to situate this home, it is not an overly large home. If this home is not allowed to be built, the property right to build a home cannot be enjoyed. He adds that the General Plan is being followed and the public interest is not affected, there is still 50 ft. between the stream corridor and the home. He notes that the spirit of the land-use code is being observed, Mr. Bracken is the best that he can do to live by the spirit of the land-use code. There is a 15 ft. of elevation and he is allowing 50ft between the home and the stream corridor. Given the circumstances, there is no other way to resolve this other than the Board granting the variance.

Scott Bracken, states that the first plan, the intent was to meet the setbacks and meet the needs of UDOT and meet the guidelines of the buildable area. He states that he went to UDOT to try and get it approved. He notes that off of the corner of his lot, his brother's home is next door and they will need to share the driveway. On the corner of the lot Rocky Mtn. power out two power plants. He notes that he got rejected by UDOT and will have to use a common driveway. He states that he will have a common driveway and will stay within the buildable driveway and leave the 25 ft. front setback. To cut back anywhere else he would have to go outside the boundaries of the buildable area. He notes that the reason for the orientation of the house is to better access the house and the garages.

Bryce Froerer asks about the elevation change from the stream bottom to where the house will sit. Mr. Bracken states that there is a vertical 15 ft. from the high water mark to the low part of the home. Mr. Froerer states that the requirement is 25ft from the road to the home. He asks if based on the diagram this is what is shown. Mr. Bracken states that in doing his due diligence. He looked into everything before the purchase and spoke to someone in the County office to see if there would be anything affecting the home being built. The answer was no at the time. He asks where he would have found that information. There was nothing that indicated that requirement otherwise he would not have purchased the lot. Mr. Froerer asks how often the stream flows. Mr. Bracken states that it flows between October and January. He notes that this year it has been shut off for two months because of the drought.

Rex Mumford asks when the lot was purchased. Mr. Bracken states that he purchased the lot in April. Mr. Mumford asks if when he approached the County the stream setback ever came up. Mr. Bracken states that it did not, if it had he would not have purchased the lot. Mr. Mumford asks if they have approached Engineering. Mr. Bracken states that it has been approved by Engineering. Mr. Mumford states that it seems to him that a home could be built to fit the built lot without the variance. Mr. Bracken states that it would be a very unique home, it would be very narrow and would not be acceptable by the HOA.

Chair Borklund asks if the HOA has building standards for the area. Mr. Bracken states that they do have standards but he is not sure what those standards are. Chair Borklund asks if he can describe the patio. Mr. Bracken states that it is just a concrete patio but there is a deck above it. The deck does have an overhang.

Rex Mumford states that Mr. Bracken indicated that the Planning Office did not inform him about the stream corridor setback. He asks how this is possible. Director Grover states that when an applicant comes in over the counter staff looks at generalities but they do not look deeper into the specific details until a full application is submitted. He notes that the information is open and available to the public. It is up to the applicant to do their due diligence. The staff tries to give the public as much information as possible. Mr. Mumford asks if the stream setback is published somewhere. He asks if he buys a lot, could he easily find that information. Director Grover states that it is easy to find if you know what you are looking for. It is on the Planning site. Mr. Mumford asks if staff shares the opinion that this is a non-buildable lot. Director Grover states that it is not a non-buildable lot but it is more restricted and looking at the configuration compared to the other lots in the area it necks down at the north side. This does provide some constraints that some of the other lots do not have. It is a unique lot. Chair Borklund adds that the buildable area is smaller. Director Grover notes that it is also constrained because it is a corner lot and it has two front yard setbacks.

Rex Mumford asks if it is Engineering that determines the stream setback. Director Grover states that typically they look at Engineering. He notes that the Board gave staff some guidance to look at some alterations to the stream setback. He states that this is something that they are looking into.

Chair Borklund asks if the Army Corp of Engineers regulates the streams. Director Grover states they do work with the Army Corp of Engineers. Mr. Mumford states that he does not believe the Army Corp of Engineers has any jurisdiction. Director Grover states that they usually do not have any jurisdiction, this is usually something that the County Engineers will determine.

Bryce Froerer states it appears that all of the other homes in the area appear to be closer than the 75 ft. Director Grover states that this is correct, he notes that he believes there were some variances granted in that area. It is also possible that some of the homes were built before the ordinance. He does not have this exact information.

Rex Mumford asks who determined that this was a year-round stream versus a seasonal stream. Director Grover states that it is the County Engineer that determines this.

Bryce Froerer asks what the setback would be if the stream was considered a seasonal stream versus a year-round stream. Mr. Burton states that he spoke to the Engineers about this specific application and they were not willing to designate the stream as seasonal but they are comfortable with the requested setback. He notes that it is possible that they made this determination because there are portions of this stream that flow year-round. Mr. Mumford asks if this stream wasn't diverted, would it be a year-round stream. Mr. Burton states that this is correct. Chair Borklund asks if it would depend on the amount of snow that there is in a particular year. She adds that for example this year there is no water because of the drought so it is dry. Mr. Burton states that he is not sure, but he is aware of a group that diverts water from this stream and occasionally the stream dries up.

Rex Mumford states while it seems that the literal enforcement of the land-use code seems that it would cause a hardship. It seems that the hardship is partly self-imposed due to the size and configuration of the home. He notes that if someone purchases a piece of property there is due diligence. He notes that as Director Grover states staff is not able to site every circumstance before an application is filed the information is out there.

Chair Borklund states that someone can call the Planning office and ask what the setbacks are but it is not likely that they will think about the stream corridor setback.

Rex Mumford states that the purpose of the stream setback is riparian. Director Grover states that this is correct it is to protect the riparian watershed.

Steve Burton shows the Board the application and building permit application on Frontier so that they can see Engineering comments and reviews. He notes that the Engineering's review doesn't say anything about the stream. Mr. Mumford states that it does not seem that Engineering approves stream setbacks. Mr. Burton states that the County Engineer determines the high-water mark. He notes that both Engineering and Planning look at the stream setback in their reviews. Chair Borklund notes that it is in the Land-use code so it would be enforced by Planning. Director Grover notes that when a case like this comes up staff will go directly to engineering and consult with them.

Rex Mumford states that he does not understand why Engineering would not change the 75 ft. setback but are okay with the 50 ft. setback request. Director Grover states that this has happened in the past, it is not setting precedence. He notes that he can speak to Engineering and bring back more information on this. Chair Borklund states that in this instance where the stream is lower it might not be as much of an issue. Director Grover states that this could be one reason why Engineering was looking at it this way because it was indicated that there was a 15 ft distance between the high-water mark and the lower level of the house. Mr. Mumford notes that Engineering looks at the safety and stability of the home. They might not look at the riparian habitat. Director Grover states that the reason it is in the land use code is that Planners tend to be more sensitive to those issues. Mr. Mumford states that he is struggling with this because at the last meeting the applicant was asked to come back to the Board with modifications. It does not seem that the applicant did this. There don't seem to be any major changes. He adds that he is not encouraged by what was presented. He states that a lot was purchased in 2021 and the ordinance was passed in 2003 there was some due diligence that was missed and he does not fault Mr. Bracken, but everyone has due diligence. He is not in favor of this because the applicant did not come back with what was asked, which is a reduction to the variance request. To that extent, it is still a self-imposed hardship.

MOTION: Bryce Froerer moves to approve BOA 2021-08 Consideration and action on a request for a 25-foot variance to the 75' stream corridor setback for Lot 7 of Hidden Oaks at Wolf Creek. Subject to the conditions and requirements 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 relating 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. Listed below is the applicant's argument for the approval of a variance: a. Literal enforcement would cause an unreasonable hardship due to the resulting minimal buildable area, since the last meeting the applicant has shifted the building to be as close to the front lot line as possible. b. The special circumstances that exist on the property are the unusual lot configuration, the 75' Stream Corridor setback that is 25' greater than what is depicted on the dedication plat, and the shared driveway to the south, which requires the southeast side of the building to be pushed more toward the stream. c. Granting the variance would allow the owner to increase the distance of the home and driveway from Powder Mountain Road and increase the amount of natural foliage preserved. d. The 50' setback depicted on the plat for lot 7 of Hidden Oaks at Wolf Creek met the standards at the time of its creation for the preservation of riparian and other natural areas (See page 7 on the 2016 Ogden Valley General Plan). e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code. The applicant has gone through the proper channels in applying for a variance. The proposal still observes a 50' ft. setback from the stream. And that County Engineering had no objection to the proposal. Chair Borklund seconds. Chair Jannette Borklund votes aye, Bryce Froerer votes aye, Rex Mumford votes nay. The motion fails because there are only 3 members present and a vote with 3 members requires a unanimous vote to approve or deny an application. The request is denied.

Director Grover states that Fall Conference is coming up he will have information sent out in case they are interested in attending. He notes that concerning the Planning Dinner it was decided that there will not be one for 2022 and they can instead look forward to it in January 2021.

Meeting Adjourned 5:45 pm

Respectfully submitted,

Marta Borchert