

Minutes of the Board of Adjustments meeting of July 8, 2021, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1 Ogden UT at 4:30 pm & via Zoom Video Conferencing.

Member Present: Jannette Borklund – Chair
Neal Barker
Rex Mumford

Staff Present: Steve Burton, Principle Planner; Felix Lleverino, Planner II; Chris Crockett, Legal Counsel; Marta Borchert, Secretary

- Pledge of Allegiance
- Roll Call

Steve Burton states that Director Rick Grover is out of town and he will be taking his place.

1. Minutes: April 22, 2021: minutes for April 22, 2021 were approved as presented.

MOTION: Rex Mumford moves to approve the minutes as presented. Neal Barker Seconds. Motion carries (3-0) Minutes were approved as presented.

2. 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.

Felix Lleverino states that this is a request for a variance. Any Request or a variance that is written into the standard code. In this case, the variance request is from the stream corridor setback standard. He notes that the Ogden Valley sensitive lands code lays out the minimum distances from the high watermark of the stream. In this case, it is a year-round stream it is called Wolf Creek and the minimum distance from the high watermark is 75 ft. the applicant is requesting to reduce the minimum setback down to 50ft. Neal Barker asks if it has always been 75 ft. He asks if it was 50 ft. prior. Mr. Lleverino states that it was 50 ft. at some point this is the way it was drawn on the dedication plat when it was recorded. Neal Barker asks when the change was adopted. Steve Burton states that this subdivision was recorded a few years before the stream corridor setback ordinance was recorded. Previously there was a 50 ft. setback for this stream. The ordinance was adopted in 2005 at this point it changed from 50 to 75 feet from the high watermark. Neal Barker asks if the plat was recorded before 2005. Mr. Burton states that it was recorded on September 12, 2003. He adds that the stream corridor code does not offer any exceptions for previously existing lots. Mr. Lleverino states that the reason that the applicant requested this variance is to build a home. One of the duties of the Board of Adjustments is to hear and review variances based on the 5 criteria listed in the staff report. All 5 criteria must be met before the Board of Adjustments can approve the variance. If the applicant can show literal enforcement of the ordinance it would cause an unreasonable hardship for an applicant that is not necessary to carry out the general plan. If The Board determines that all 5 criteria are met the board may to choose grant the request variance. It is recommended by staff that before any decision the Board discusses and considers each of the criteria. As they relate to the site and specific proposal.

Chair Borklund asks if the house was rotated and moved forward would it need the full 20 ft. setback. She states that they could reduce it a little bit but not the full amount. She adds that it does not line up with the street it is possible that it could meet the setback requirement.

Rex Mumford asks if the stream is year-round. He asks if this stream is currently flowing. Mr. Lleverino states that this is a good question. He adds that the planning staff has maps that they refer to. The County engineer goes out to determine where the high-water mark will be. Rex Mumford states that there are some streams in the upper valley that are depicted as year-round and they are not. He states that it seems that there is some self-imposed factor. He states that the size of the house and the configuration can be changed. Mr. Burton states that according to the map and the ordinance this is a year-round stream. Mr. Mumford states that acting on this item tonight might be premature if engineering has not had a chance to look at it and establish the high-water mark.

Mr. Burton states that Engineering has looked at this item and the applicant has submitted a building permit. The Engineers have approved this building permit subject to the variance.

Neal Barker asks if it is lot 6 that has been built and is next to the applicant's lot. He notes that Engineering must have already decided where the high-water mark is if the neighbor's house has already been built. He asks if the neighbor's house was built before 2005 as well. Mr. Lleverino states that the neighbor's house was built in 2020. He notes that lot 8 was also granted a variance.

Chair Borklund states that the intent of the ordinance was likely public safety. She adds that if the stream is a year-round stream it makes a difference. Rex Mumford states that the purpose is for riparian habitat and to protect the stream corridor encroachment. Mr. Burton states that I had to do with the riparian habitat not as much the public safety.

Rex Mumford asks if this was a new purchase since 2005, if so this lot was purchased with the knowledge that there is a 75. Ft. setback. Mr. Lleverino states that he is not sure when it was purchased by Mr. Bracken.

Neal Barker states that by not granting the variance are they depriving the property owner of the privileges granted to the other property owners. Chris Crockett states that they cannot base their decision on what has previously been done for other property owners.

Chair Borklund states that the property right to build is a given but the size and orientation can be modified. The intent of the ordinance needs to be satisfied.

Rex Mumford states that each lot is independent and they need to look at each lot individually. They need to look at lot 7 and look at it independently from the surrounding lots. Chris Crockett states that from a legal perspective they are confined to the application and what is particular to this specific property.

Neal Barker asks if any neighbors opposed this. Mr. Lleverino states that he did receive one phone call from a nearby resident, but he did not get a chance to follow up. He adds that if they had a concern they are welcome to attend the meeting public notice was sent out and a Zoom link was shared.

Scott Bracken states that concerning the orientation of the house lots 7 and 8 are required by UDOT to have a common driveway. This is one reason for the angle. Because there is a small buildable area they designed the home specifically for the lot. He states that there was some other thing that was taken into consideration. He adds that the reason for the size was that it has to be approved by Wolf Creek. He notes that lining the house the street puts it too close to the street and UDOT won't approve it. The other thing to consider is that not only is there a 50 ft. setback from the high water mark there is a vertical rise of 15ft evenly from the high watermark. The geological study showed it is not a hazardous zone. The stream does not run year-round. It was shut down for at least a month because of the drought. It shuts down every year around July. Chair Borklund asks what the stream is fed by. Mr. Bracken states that it is fed by snowmelt. Rex Mumford asks if this is because it is diverted. Mr. Bracken states that it is diverted for irrigation. It has been dry now for 3 or 4 weeks. He states that without the home he does not feel that it is possible to build a home there to meet Wolf Creeks requirements. Neal Barker asks what the square footage of the home is. Mr. Bracken states that it is 2236. He adds that it is a rectangle home 60x40. He adds that UDOT will not allow him a private road for his driveway it has to be shared.

Rex Mumford states that the placement would put the driveway at a sharper angle, he notes that part of this is that he has a 4 car garage. The house could be reoriented and there would be plenty of access to turn in. Mr. Bracken states that the other reason for this placement is that it would give him a better view. He adds that if he changes the orientation would make things very tight.

Chair Borklund asks if any members of the public would like to speak. There is none.

Neal Barker asks why the code was changed. He asks if this lot meets the requirements before the code change. He asks if the change was meant to be a fix-all. Mr. Burton states that he is not sure about the intent of the change but states that they could look at minutes and see what was discussed.

Rex Mumford states that looking at the stream setbacks the challenge is whether it is a year-round stream. This is something that the applicant would have to challenge. Rather than seeking a variance, they could challenge the engineering maps. Mr. Burton states the applicant could challenge the engineering maps, and the County would have to come up with a new map. Mr. Mumford states that he feels the hardship is self-imposed. The applicant mentioned the view. The view is not a protected right. He adds that if this was a two-car garage the angle would not be as steep. The request could be 10 ft. less or 8 ft. less. There seem to be some self-imposed aspects. He states that it is confusing that Wolf Creek wants the homes to be built a certain way and why did Wolf Creek approve the lots in the first place if a certain size house needs to be built and it won't fit on the lot. Buying a lot in Wolf Creek after 2005 the lot owner needs to know what their limitations are, they have to do their due diligence.

Neal Barker asks how this home compares in size to the other homes in the area. Mr. Lleverino states that it looks to be around the same size as the surrounding lots.

Rex Mumford states that they should have the same opportunities as the other owners in the area to build a home, they do not want to deny this from the applicant, but the four-car garage and the view are self-imposed aspects.

Chair Borklund states that there are some special circumstances because it is an odd-shaped lot. She states that the slope is a possible hardship, but there are five criteria that they have to meet and they need to make sure they meet all five criteria.

Neal Barker states that if the applicant were to orient the house slightly differently he could still have a great view, but he would still need a variance. There is no way that the house would fit within the 75 ft. setback. He adds that he is worried that the applicant is being punished because he likes the view. This may not be the main focus of the variance request. If there is a slight tweak he still has a view but he is just picking the optimal view.

Chair Borklund states that she might be comfortable granting a variance but maybe not the full variance. She adds that they could table it so that the applicant can come back with other options. She states that she would like the applicant to come closer to meeting the ordinance so that they can protect the stream. Mr. Mumford states the advantage to tabling it is that it allows the applicant to come back to the Board without having to pay the fees. Chair Borklund states that she does not believe that the request should be denied but she is not sure it should be approved either. The property right is still there. Chris Crockett states that in taking the action that follows the middle approach where they might grant some of the variances this reduced the self-imposed approach if there is a self-imposed factor the law requires that the variance be denied and it has to meet all of the criteria. He adds that tabling the item is a good option if the applicant can reconfigure the house and reangle it. If they could preserve something like 60 ft, tabling could be a good option.

MOTION: Rex Mumford moves to table 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 to allow the applicant to reevaluate the self-imposed aspect of the application and come back to the Board with a modified site plan that would more closely reflect the intent of the ordinance and try to mitigate the self-imposed aspect. The new site plan should show where the driveway is and how it is connected to the home. Neal Barker seconds. Motion carries (3-0).

MOTION: Rex Mumford moves to adjourn. Neal Barker seconds. Motion carries (3-0)

Adjournment: 5:25 pm
Respectfully submitted,
Marta Borchert