

April 28, 2022

Minutes of the Board of Adjustments meeting of April 28, 2022, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 pm & via Zoom Video Conferencing.

Member Present **Bryce Froerer**
 Rex Mumford
 Laura Warburton (Voted temporary chair for this meeting.)

Rex Mumford motioned to have Laura Warburton serve as temporary Chair for this meeting. Bryce Froerer seconded the motion. Motion passed 3-0

Staff Present: Rick Grover, Planning Director; Scott Perkes, Planner; Brandon Quinney, Legal Counsel; June Nelson, Secretary

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

1. Minutes: November 4, 2021 Approved with change.

- 2. BOA 2021-09:** A request for a 53-foot variance (leaving a 22-foot setback) to the 75-foot stream corridor setback requirement from a year-round stream on a lot of record located at 3390 N 5100 E, in Eden to allow for the construction of a single-family residence. **Staff Presenter: Scott Perkes**

Scott Perkes presented the following:

County records indicate that the subject property contains a single-family dwelling that was constructed in 1900 (highlighted in blue in **Exhibit D**). Records also indicate that the property boundaries match those which were present in 1966 when zoning was enacted in the Ogden Valley. These two pieces of information allowed the County to classify the parcel as a "Lot of Record" per the land use code definition of LUC Sec. 101-2-13 resulting in the issuance of a Notice of Buildable Parcel (see **Exhibit E**)

On December 5, 2005, the Board of County Commissioners adopted Ordinance 2005-19, which established river and stream corridor setback requirements (see **Exhibit F**). Per this Ogden Valley Sensitive Lands ordinance and its associated map of stream corridors (see **Exhibit B**), a "Stream" or "Braided Stream" is depicted traversing the subject property from its northwestern boundary through to its southeastern boundary.

Due to this encumbrance, the applicant submitted a request to the Board of Adjustment on June 23, 2021 for a 53-foot variance (leaving a 22-foot setback) to the 75-foot stream corridor setback (see **Exhibit A**).

The applicant is requesting this variance to facilitate the placement of a new single-family detached home and detached garage on the lot. The existing home built in 1900 is proposed to remain on the property and will be converted into an art studio or storage shed.

The special circumstance on the property that is driving this variance request is the unique path that this stream runs through the middle of the historical lot of record. Per the Ogden Valley Sensitive Lands ordinance, this stream requires a 75-foot setback from its high water mark, thus creating a large encumbrance on the property.

The Land Use Code (Sec. 104-28-2(b)(1)), states the following regarding 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 water mark of the river or stream. The high water mark shall be determined by the Weber County engineer. The areas within the setback shall be maintained in a manner that protects the

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quality of water in the river or stream and the habitat of native vegetation and wildlife along the river or stream...

b. Structures, accessory structures, roads, or parking areas shall not be developed or located within 75 feet on both sides of year-round streams, as determined from the high water mark of the stream.

This section of code was first implemented in 2005 through the adoption of Ordinance 2005-19 (see **Exhibit F**). As mentioned above, this lot of record dates as far back as at least 1966, predating the stream setback requirements.

The granting of a 53-foot variance would allow the applicant to build a structures to within 22 feet of the stream's high water mark.

Scott Perkes stated that the County Commission just passed an ordinance stating that if you own a lot in a Subdivision that was recorded prior to December 5, 2005, then the stream corridor setbacks would not be applicable, and the new buildings constructed would be exempt from the setback requirements. This property is NOT in a subdivision. So this does not apply. The owner was not aware of the year round stream setback requirement when they bought the lot. . A new survey has been done by Landmark Survey. It has not been filed with the surveyor's office yet. Laura Warburton asked why they can build when it is in an AV-3 area. When was the lot purchased? Scott Perkes stated that when the lot was purchased it was classified as a "buildable lot" by the County. The request is to put 1 house and use the "old" structure there as an art studio or shed, not a home. It is also not a Flag lot. This was grandfathered in.

Rex Mumford stated that with the stream corridor setbacks, the buildable area is down to .84 acre. We have had similar requests in the past. Is this stream a year round stream? Does irrigation water come out of the stream? How big is the proposed home to be built?

The property owner- Mark Grant 3163 Us Hwy 17 Fleming Island, Florida. He states that the home is approximately 1200 square feet. We are excited to build. We found out about the stream and did our best to fit things in.

Rex Mumford said that the biggest variant is for the garage. The owner is also using a 20 foot setback on the east when only a 10 foot is required. Bryce Froerer says the he is struggling with the variance and being fair to others who have requested a variance under similar circumstances. The owner Mark Grant states that the garage could possibly be a little closer to the home.

There was some discussion about the home and garage size. The owner- Mark Grant says that we would like to build the size of house and garage that we want. The existing old home was closer to the stream, so we thought that it would be ok. The deck extends over the stream. Rex Mumford says the ordinance was there before purchase.

The owner Mark Grant states that they are just trying to do the right thing and follow the correct county procedures. We want to do this the right way. Laura Warburton stated the owner may want to have the garage attached to the house. Our job is to be fair. The reason that I am ok with this is because of the ordinance that the County Commission just passed. Attorney Brandon Quinney reminded the Board that the ordinance ONLY applied to subdivisions. The property is not a subdivision. The owner Mark Grant asks that if the property were a subdivision could he build anywhere. Brandon Quinney stated that they could build, but must abide other county rules. Scott Perkes stated that the County Engineers are ok with the placement as they are now. It is possible for the owner to move the home back 10 feet. Mark Grant states that the property owner to the east is planning on building. If not for the stream we would place more in the middle of the parcel.

Laura Warburton invited an online guest to speak: Valerie 3428 Wolfcreek Drive. Has the survey been considered? Laura Warburton says that we are not considering the survey. Only what we have on record.

Rex Mumford states that his concern as stated before is that we have had others come before this Board with similar requests and we need to be fair to all. Bryce Froerer states that he has the same concern. Laura Warburton states that she feels that we need to help the owner. We could give them less of a setback.

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Scott Perkes states that on February 24, 2012 there was a buildable Parcel notice that would have come up for the owner who did his due diligence. There was no notice of a stream corridor. Laura Warburton asks what we should do. Rick Grover states that it might be helpful to ask the owner. Laura Warburton goes on to explain that if we table this item, that it can be brought to a future meeting. Mark Grant states that he would rather settle on a number. I am ok to move or attach the garage if needed.

Bryce Froerer ask what number that Rex Mumford would be comfortable with. Mr Mumford states that he would be ok with a 25 foot variance (50 foot setback from stream). The house would be fine, but the garage would need some change.

Bryce Froerer motions: I would move that with the discussions that we have had, a 25 foot variance and that the petitioner's structure, weather it is the house and the garage or just the house fit within that variance. The support is that we have rules regarding the open stream, and we have been dealing with this stream several times and I feel strongly that we need to be consistent. I also feel strongly with you, Ms Warburton that the property owner should be able to do with their property as they wish, subject to the rules that govern us. In an effort to help the petitioner here, be able to build the home that he would like to build, I am suggesting as we have indicated that he have a 25 foot variance and that everything fits within that variance and that we protect the stream corridor to the extent that we are able to with that variance.

Ms Warburton asks for a second: Rex Mumford seconds the motion. Bryce Froerer-yes, Rex Mumford, yes, Laura Warburton, yes. The motion passes with 3 in favor.

Rex Mumford states that at the first meeting of the year, we usually vote on a new chair and vice chair for the year. The secretary was instructed to add it to the next agenda.

Director Rick Grover reminded the Board that they will need to have 4 hours of training sometime during the next year. June Nelson will keep track of it. Please let her know when you have completed any training.

Laura Warburton thanked June Nelson for the reminders and notices about the meeting.

Bryce Froerer motioned to adjourn. Rex Mumford seconded the motion. Motion passes 3-0.

Adjourn

Respectfully Submitted,
June Nelson
Lead Office Specialist