



# BOARD OF ADJUSTMENT

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## MEETING AGENDA

**Thursday, January 23, 2025  
4:30 p.m.**

- Pledge of Allegiance
- Roll Call

### Regular Agenda Items

1. **Minutes: October 24, 2024**
2. **BOA2024-08:** Request for a 7' variance to the minimum 20' side setback standard in the FV-3 zone.  
**Staff Presenter: Tammy Aydelotte**
3. **BOA 2024-05:** Consideration and action on a variance request from street and access easement width standards, located at approximately 4680 E 2650 N, Eden, UT, 84310  
**Staff Presenter: Tammy Aydelotte**
4. **Voting for new Chair and Vice Chair for the year 2025**
5. **Rules of Order**

*The Board of Adjustments meeting will be held in the Weber County Commission Chambers, in the Weber Center, 1<sup>st</sup> Floor, 2380 Washington Blvd., Ogden, Utah*

Join Zoom Meeting

<https://webercountyutah.zoom.us/j/89337684156>

Meeting ID: 893 3768 4156

***In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8374***

October 24, 2024

Minutes of the Board of Adjustments meeting of October 24, 2024, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 pm.

Member Present            Laura Warburton – Acting Chair  
                                     Rex Mumford  
                                     Marshall McGonegal

Staff Present: Charlie Ewert, Long Range Planner; Tammy Aydelotte, Planner; Lauren Thomas, Legal Counsel; Tiffany Snider, Secretary

- Roll Call
- Pledge of Allegiance
- Laura Warburton verified if any public was present (no public present)

1. Minutes: August 8, 2022. Approved as presented

**2. BOA 2024-06:**

Consideration and action on a request for a 7.11 foot variance to the front yard setback in the FR-1 zone, to facilitate the construction of an attached awning to an existing water treatment facility for Pineview Water, located at approximately 880 Ogden Canyon Rd, Ogden, UT, 84401.

Tammy Aydelotte cites ordinance for projections (LUP108-7-2) but indicates the variance is still required as the request projects 2 feet beyond what ordinance allows.

**Questions for Tammy Aydelotte:**

**Q:** Rex Mumford asks if there is an additional rear lot setback variance request and if any other portion of the building or buildings will require an awning.

**A:** Tammy Aydelotte has stated the only variance requested is for the front lot line and only the portion outlined on the site plan will require an awning.

**Q:** Are the small squares in the site plan toward the south supports for the awning? Does LUP108-7-2 (ordinance) allow for support structures within the projections?

**A:** Question is deferred to Ogden City representative regarding site plan. Footings are not allowed into projections.

**Q:** Laura Warburton asks about a government entity requesting a variance and the lack of similar requests to compare this to. She feels this should be a Planning Commission decision instead of the BOA. Because this doesn't have residences close, she wants to know why the BOA wouldn't approve it.

**A:** Each zone has its own development standards based on the zone, not the use. This request is for a main use building. Regardless if it is a residence or another main building the development standards are the same. Government agencies and utility companies are not exempt and are held to the same standards as anyone else in that zone.

**Q:** Rex Mumford asks if the development standards are for all structures within a zone and there are no exceptions, regardless of government agency or personal use.

**A:** Charlie Ewert verified what Tammy Aydelotte said with the exception that public utilities have some different setbacks for the side lot lines only.

**Q:** LW looking for reasons to approve this request based on most recent training.

**A:** TA offers LW the reasons stated in ordinance to approve variance.

October 24, 2024

Representative Brady Herd from Ogden City Water

Stated this request does not negatively impact the General Plan. Ogden City Water serves 90,000 people daily. The building in question is a critical part of the water infrastructure and the ability to produce clean water to Ogden City. The main reason for the request is for the safety of the workers. It will prevent the necessity of backing a large truck into a structure lined with heavy equipment. Instead the trucks can stay under the canopy. It also will aid with snow removal challenges.

Q: LW asks if the variance request is granted, will the canopy inhibit snow removal for the state on Ogden Canyon road.

A: BH states it will not.

Q: How long will the truck sit under the canopy?

A: It depends on how quickly the waste water gets processed.

Q: Where are the support beams?

A: Up against the grassy area. The roof projection will be 1' 2".

Q: How big is the awning?

A: 39'6"x32'

Q: Can the city build a permanent structure there in the future?

A: They would have to apply to build for a different use. Be specific in the motion.

Q: What are the materials of the building and the pitch of the roof?

A: Steel. 1.50 x 12

Q: How long has the building been there?

A: 10 years

Q: Will you be able to run two trucks.

A: Depending on production, yes.

Q: Were neighbors notified? Was the meeting posted?

A: No neighbors to notice. The meeting was posted.

Discussion:

Rex Mumford: Not uncomfortable with request due to lack of neighbors, no comparable, functionality makes sense, safety is a good reason. Special circumstances attached to the property. Is there a concern for precedence?

Lauren Thomas: There is a five part criteria for approval. Consider code.

LW: Does not go against the General Plan.

RM: Makes a motion to approve BOA 2024-06 in the FR-1 zone a request for a 7.11 foot variance based on:

- Not self-imposed
- Not against general plan
- Does alleviate a hardship
- Special circumstances geographically with property due to location of the river to the north.
- Not contrary to public interest.
- Limited to the existing awning as proposed

Motion draws a 2<sup>nd</sup>.

Marshall McGonegal Aye

Marshall McGonegal: Aye

Rex Mumford: Aye

Motion carries (3-3)

Rex Mumford questions if we should select a vice chair. Cannot because it wasn't noticed.

Adjourned

October 24, 2024

**Respectfully Submitted,  
Tiffany Snider**



# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on a request for a 7 foot variance to the 20 foot side yard setback, in the FV-3 zone. This request comes from a lot of record located at 4116 East, 4100 North, Liberty, UT, 84310.

**Agenda Date:** Thursday, ~~January 23, 2025~~

**Applicant:** Robert Heslop

**File Number:** BOA 2024-08

### Property Information

**Approximate Address:** 4116 East 4100 North, Liberty, UT, 84310

**Project Area:** 1.40 acres

**Zoning:** Forest Valley (FV-3)

**Existing Land Use:** Vacant

**Proposed Land Use:** Residential

**Parcel ID:** 22-015-0084

**Township, Range, Section:** T7N, R1E, Section 21, NW 1/4

### Adjacent Land Use

<b>North:</b> Residential	<b>South:</b> 4100 North St
<b>East:</b> Vacant	<b>West:</b> Forest

### Staff Information

**Report Presenter:** Tammy Aydelotte  
 tayelotte@webercountyutah.gov  
 801-399-8794

**Report Reviewer:** FL

## Applicable Codes

- Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Title 104 (Zones) Chapter 17 (Forest Residential Zone FR-3)

## Background

In September of 2022, this parcel was deemed a lot of record. A document was recorded to title reflecting this determination.

The applicant is requesting a 5’ 8” variance to the minimum 20-foot side yard setback required in the FV-3 Zone, leaving a 14’4” foot setback from the east side lot line. The applicant feels that a variance is necessary to build their desired home. The applicant explains that the current zoning setbacks, and the seasonal stream that runs through a portion of the lot, make it difficult to construct a single-level, ADA compliant home. The applicant’s narrative is included as **Exhibit B**.

The applicant is also requesting a 25-foot variance to the 50’ stream corridor setback. The County Engineer, who determines the high water mark of these stream corridors, has outlined suggestions for the applicant to help mitigate concerns from the County Engineer regarding this variance request. These include locating the home right to the front setback line (30’), to avoid additional encroachment into the stream setback, a front-facing garage, to avoid having a portion of the driveway encroach into the stream setback, as well as fill and retaining walls. If the applicant follows suggestions from County Engineering, then there are no concerns from the County Engineer.

The applicant has provided a site plan to help visualize applicable setbacks and encumbrances to the property. The second page of **Exhibit B** shows encroachment of the proposed building, by , side setback of 8 feet, side adjacent to a street of 20 feet, and a front setback of 20 feet. It should be noted that on the first page of Exhibit B, the front setback should be shown at 25 feet, further reducing the area within the triangle. Pages 3 and 5 of Exhibit B show where a 1050 square foot house could be located on the lot, should the BOA grant the variance.

## Summary of Board of Adjustment Considerations

LUC §102-3 states that one of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Land Use Code. For a variance to be granted it must be shown 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.*
- b. *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. 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 is done.*

## Staff Analysis

Below is staff analysis:

- a. Literal enforcement would prevent the property owner from enjoying a substantial property right and developing this parcel in accordance with the Ogden Valley General Plan.
- b. Special circumstances surrounding this lot of record include a stream runoff area that cuts across the lot. The location of this stream, the configuration of this lot, and the setbacks standards for the FV-3 zone, create a unique challenge in developing this lot.
- c. The applicant's narrative indicates that granting a variance is needed in order to enjoy a substantial property right that includes construction of a home that meets unique needs.
- d. The General Plan indicates that this area should be developed as is planned and zoned. The applicant states that a variance to the setback will allow the construction of a home that is coherent to the neighborhood, and will not be a detriment to adjacent property owners.
- e. The applicant is exhausting their remedies, under the land use code, for the potential of a lesser setback and is requesting that substantial justice be done, considering the unique conditions of the lot.

## Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the FV-3 zone. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Ogden Valley General Plan.

## Exhibits

- A. 2024 Recorder's Plat
- B. Applicant-written Narrative and Site Plans

# Area Map

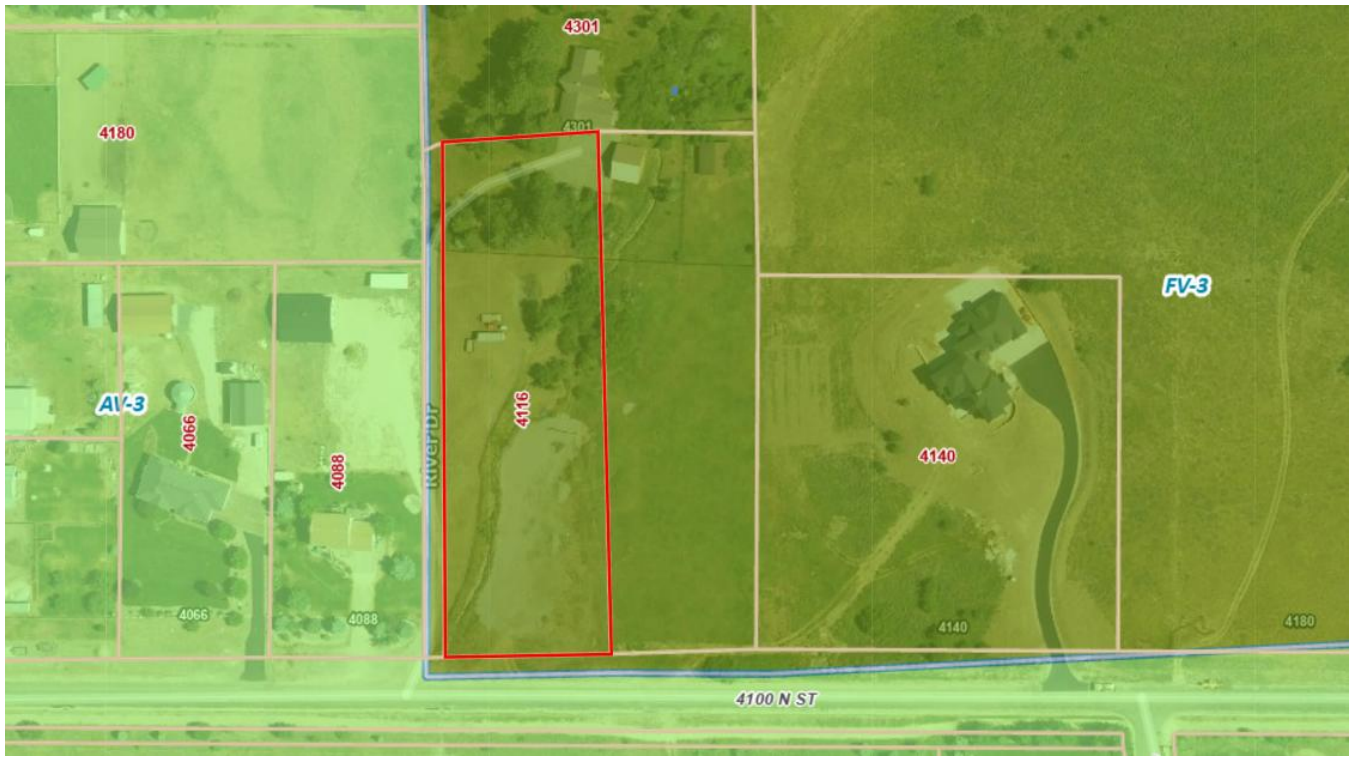


Exhibit A - Recorder's Plat

5/9.11

ROBERT HESLOP ET 220150083 7,860 SQ FT

426.00'

155.00'

ROBERT HESLOP &  
ALEXIS HESLOP

4116 E

155.00'

220150084 1.40 AC±

426.00'

550.00



## Exhibit B- Application and Request

### Heslop -Robert -Board of Adjustment

[+ Add Follower](#)[Change Status](#)[Change Review Due Date](#)[Edit Project](#)

**Address:** 4116 E 4100 N , Liberty , UT, 84310  
**Maps:** [County Map](#), [Google Maps](#)  
**Project Type:** Board of Adjustment  
**Sub Type:** Board of Adjustment  
**Created By:** [robert heslop](#)  
**Created On:** 10/25/2024

**Project Status:** Accepted  
**Status Date:** 10/30/2024  
**File Number:** BOA-2024-08  
**Project Manager:** [Tammy Aydelotte](#)

[Application](#)[Documents 6](#)[Comments 1](#)[Reviews 1](#)[Followers 9](#)[History](#)[Reminder 0](#)[Payments 1](#)[Internal 0](#)

### Application

[+ Add Building](#)[+ Add Parcel](#)[+ Add a Contractor](#)[Edit Application](#)[Print](#)[Building Permit](#)

**Project Description** Single Family Dwelling Unit

**Property Address** 4116 E 4100 N  
Liberty , UT, 84310

**Property Owner** Robert Heslop  
801-430-1456  
[robert@all-proelectric.net](mailto:robert@all-proelectric.net)

<b>Accessory Dwelling Unit</b>	False
<b>Current Zoning</b>	R-1-10
<b>Subdivision Name</b>	
<b>Number of new lots being created</b>	0
<b>Lot Number</b>	
<b>Lot Size</b>	1.5 acre
<b>Frontage</b>	155'
<b>Culinary Water Authority</b>	Health Department (Well)
<b>Secondary Water Provider</b>	
<b>Sanitary Sewer Authority</b>	Health Department (Septic)
<b>Nearest Hydrant Address</b>	41.333487,-111.849290
<b>Signed By</b>	Owner, Robert Heslop

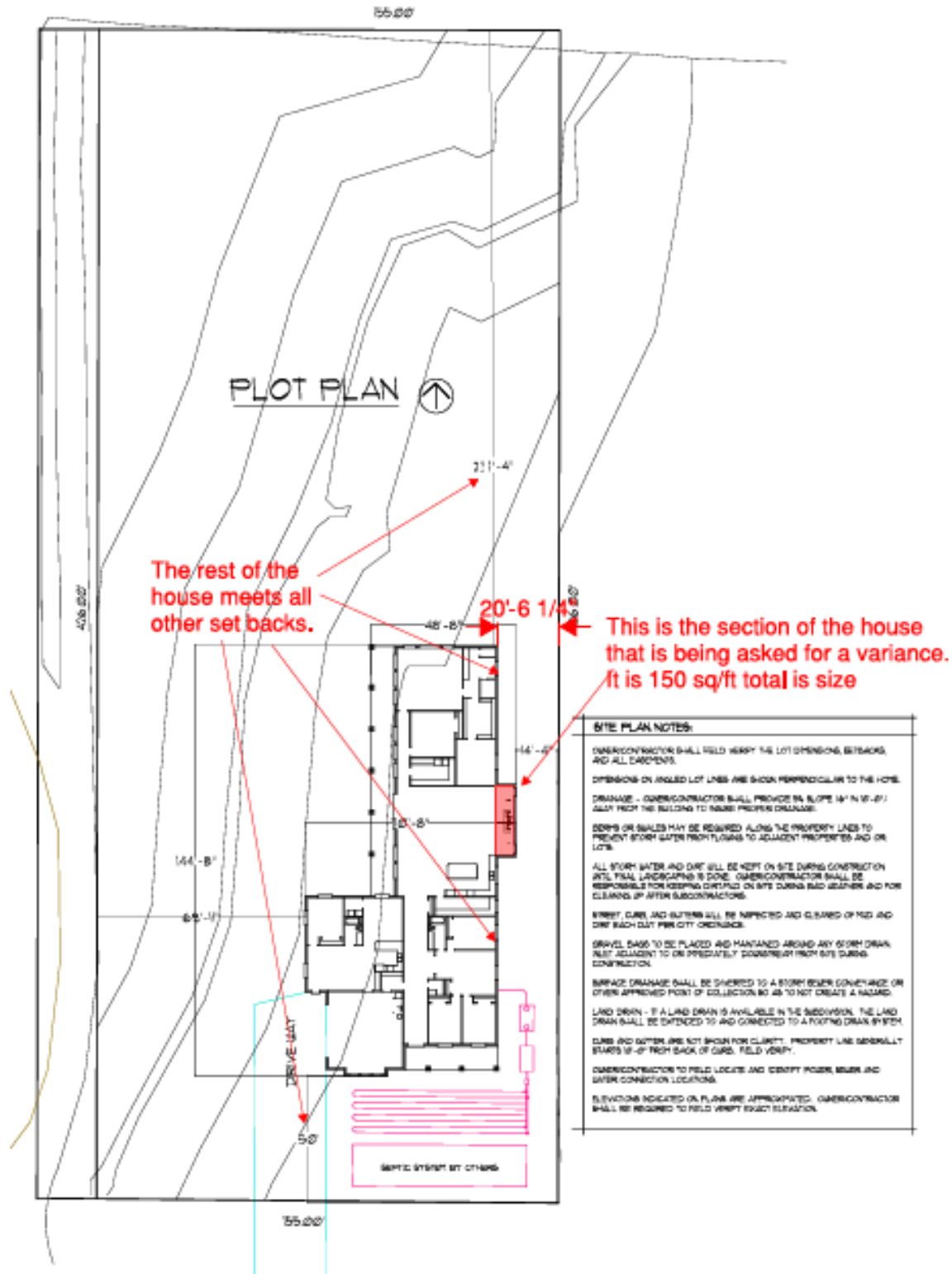
### Parcel Number

[✕ Remove](#) 220150084 - [County Map](#)

# Heslop Residence Narrative

The purpose of this narrative is to explain the reason a variance is being requested for Parcel #220150084 located in the Ogden Valley. If you refer to the provided documents you will see that there is a seasonal run off stream that divides this parcel into 2. Because of this run off stream and the set back requirements of it, it has made it difficult to place a residence to meet all required set backs. To add to the difficulty of the design I had to make it ADA compliant (single level) since the purpose of the residence is to not only house my family but also my wifes elderly mother. Our intent is to have a single level house that also fits the surrounding appearance of the neighboring houses. We added the small additional space to the living area to give dimension to the east side of the house. Our intent of this is that it would help break up the long straight wall and add an extra focal point so the roof isn't all one plane. We understand that our distant neighbor to the east will have to look at this side of our roof line and wall side and wanted something more appealing. I would simply shift the house to the west 6' and avoid this set back issue but we are already more limited that way and as close to the run off stream as we can be. For the majority of the house we are right at the set back requirements as you can see in the additional documents.

The Parcel to the east and north (220150085, 220150036) are owned by the same person. The one to the east is a 1.4 Acre lot and the one north is 2 Acre. The lot to the north has an existing home on it while the one to the east has only ever been open field. It is my understanding that the lot to the east isn't a building lot and could only ever be used for livestock or possibly an outbuilding. Also if the lot to the east was sold separately from the one to the north, it doesn't meet the required 3 acre minimum to become a building lot.



The rest of the house meets all other set backs.

This is the section of the house that is being asked for a variance. It is 150 sq/ft total in size

SITE PLAN NOTES:	
OWNER/CONTRACTOR SHALL FIELD VERIFY THE LOT DIMENSIONS, SETBACKS, AND ALL EASEMENTS.	
DIMENSIONS ON ANGLED LOT LINES ARE SHOWN PERPENDICULAR TO THE HOME.	
DRAINAGE - OWNER/CONTRACTOR SHALL PROVIDE 5% SLOPE 14" IN 10'-0" GUTT FROM THE BUILDING TO MAINTAIN PROPER DRAINAGE.	
SEDS OR SAILS MAY BE REQUIRED ALONG THE PROPERTY LINES TO PREVENT STORM WATER FROM FLOWING TO ADJACENT PROPERTIES AND ON LOTS.	
ALL STORM WATER AND DIRT WILL BE KEPT ON SITE DURING CONSTRUCTION UNTIL FINAL LANDSCAPING IS DONE. OWNER/CONTRACTOR SHALL BE RESPONSIBLE FOR KEEPING COVERED ON SITE DURING BAD WEATHER AND FOR CLEANING UP AFTER SUBCONTRACTORS.	
SPRINK, CURB, AND GUTTERS WILL BE INSPECTED AND CLEARED OF MUD AND DIRT EACH DAY PER CITY ORDINANCE.	
GRAVEL BAGS TO BE PLACED AND MAINTAINED AROUND ANY STORM DRAIN, JUST ADJACENT TO OR PROXIMATELY DOWNSTREAM FROM SITE DURING CONSTRUCTION.	
SURFACE DRAINAGE SHALL BE DIRECTED TO A STORM SEWER CONVEYANCE OR OTHER APPROVED POINT OF COLLECTION SO AS TO NOT CREATE A HAZARD.	
LAND DRAIN - IF A LAND DRAIN IS AVAILABLE IN THE SUBDIVISION, THE LAND DRAIN SHALL BE EXTENDED TO AND CONNECTED TO A FOOTING DRAIN SYSTEM.	
CURB AND GUTTER ARE NOT SHOWN FOR CLARITY. PROPERTY LINE GENERALLY STARTS 18"-0" FROM BACK OF CURB, FIELD VERIFY.	
OWNER/CONTRACTOR TO FIELD LOCATE AND IDENTIFY POLES, SEWER, AND WATER CONNECTION LOCATIONS.	
ELEVATIONS INDICATED ON PLANS ARE APPROXIMATE. OWNER/CONTRACTOR SHALL BE REQUIRED TO FIELD VERIFY EXACT ELEVATION.	

4100 NORTH STREET

SCALE 1" = 30' 476 EAST

TYPE B GRADING 5% GRADE 10' AWAY FROM HOUSE



Parcel #220150036  
Thomas Hannum  
2 Acre Lot

Parcel #220150085  
Thomas Hannum  
1.4 Acre Lot

RIVER DR

4301

4301

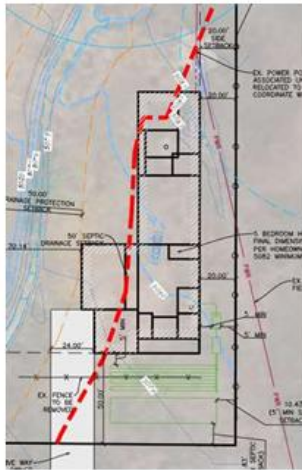
4116

In addition to the variance for the east side property boundary we are requesting that the stream set back on the west of the residence be changed from 50' to 25'. This is not needed for the whole west side but for certain areas (see below). This stream is a season run off stream and is only affected from the snow run off. I have done a study on this stream and in the 100 year data pulled it shows this stream to have a flow of less than 180 cubic feet per second (1346 gallons per second). After discussing this with a civil engineer he said a 24" culvert pipe would be a sufficient size pipe to handle that size flow. He also said that with at least a 10% grade from the high water mark to the top of foundation that I would be out of the 100 year flood path and that is why he didn't have a problem designing the site plot plan and septic system the way that he did it.

I also believe that the existing high water mark to be a faults indication of how this stream flows under normal or even flood conditions. I know in the past there have been some concerns that this area has high water problems. I believe these problems are due to clogged culverts and water backing up not natural forces. I have attached some images of these issues so that you can see the reason the high water mark is so high is due to puddling and that if these issues were fixed water would flow like it should.

Thank You and I hope you take all of this into consideration for you decision.

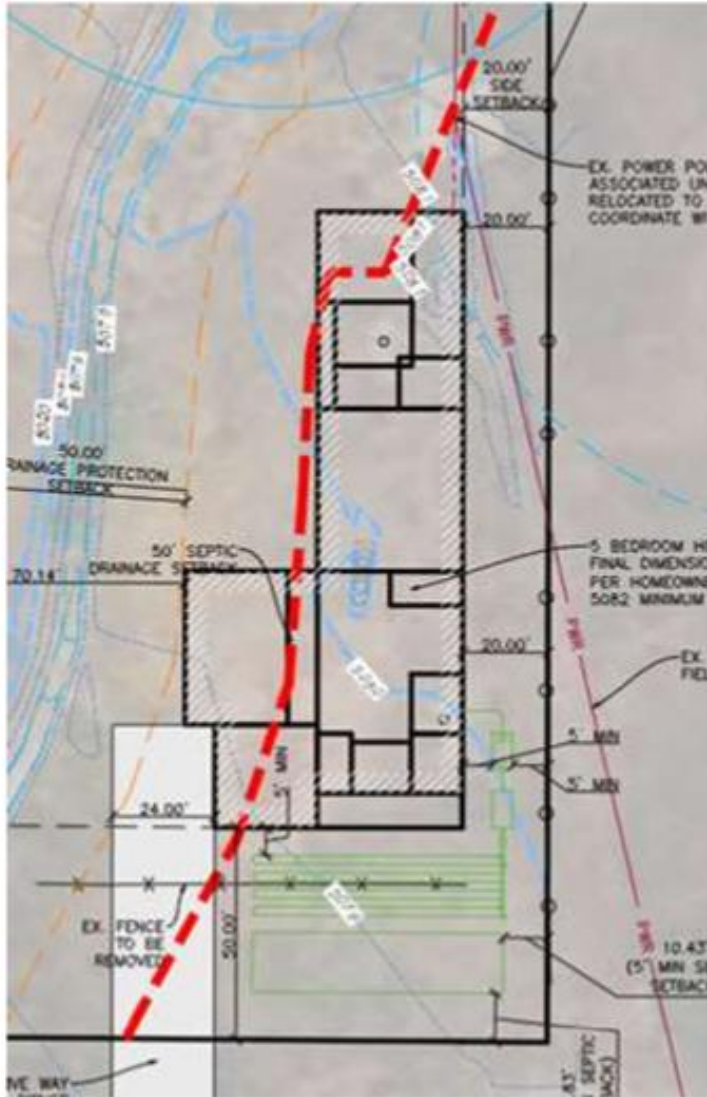
The red dotted line is the 50' set back. This shows the area of the residence affected.

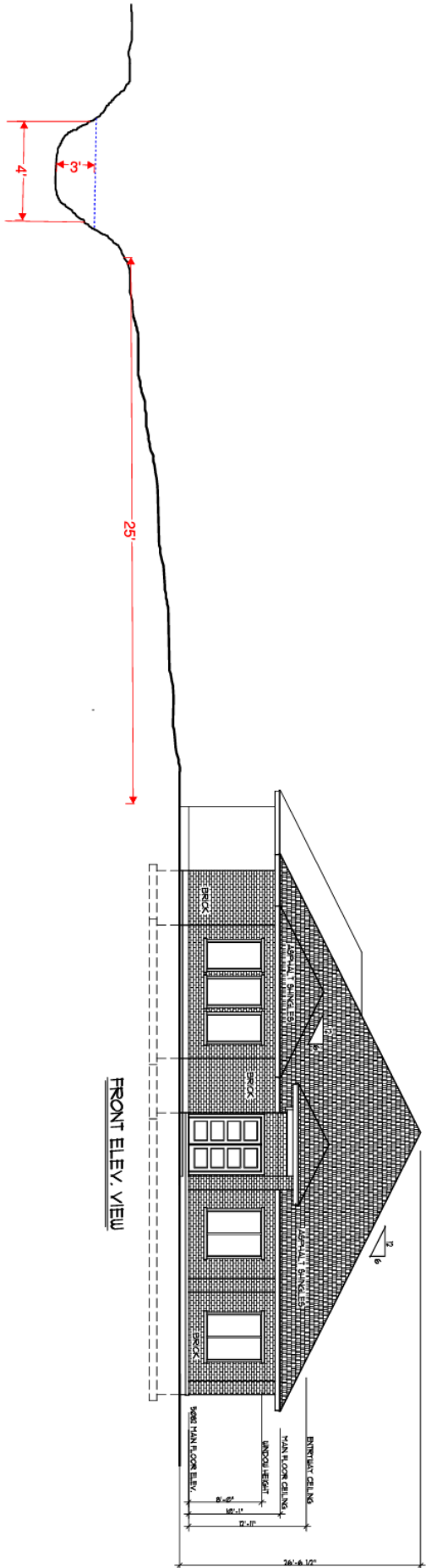


These 2 images show the 36" culvert going under the street to the south. As you can see it is more than half full and is causing the water back up and even eventually overflow over the road. I believe this is giving a faults high water mark up stream.



The red dotted line is the 50' set back. This shows the area of the residence affected.







# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** Consideration and action on a request for a variance from street and access easement width standards, located at approximately 4680 E 2650 N, Eden, UT, 84310.

**Agenda Date:** Thursday, November 07, 2024

**Applicant:** Kody Holker

**File Number:** BOA 2024-05

### Property Information

**Approximate Address:** 4680 E 2650 N, Eden, UT, 84310

**Project Area:** 9.68 acres

**Zoning:** Agricultural Valley (AV-3) Zone

**Existing Land Use:** Vacant

**Proposed Land Use:** Vacant Residential (3-lot subdivision)

**Parcel ID:** 22-040-0037

**Township, Range, Section:** T7N, R1E, Section 33, NE qtr & Section 28, SE qtr

### Adjacent Land Use

<b>North:</b> Vacant	<b>South:</b> Agricultural
<b>East:</b> Commercial	<b>West:</b> Agricultural

### Staff Information

**Report Presenter:** Tammy Aydelotte  
 tayelotte@webercountyutah.gov  
 801-399-8794

**Report Reviewer:** FL

## Applicable Codes

- Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Title 104 (Zones) Chapter 2 (Agricultural Zone AV-3)

## Development History

The applicant is requesting a variance to public and private right-of-way minimum width standards, as well as minimum width standards to a private access easement. The applicant’s narrative and site plan are included as **Exhibit A**.

County records indicate the following relevant development history. This history indicates that the hardship stated by the applicant may have begun with the division of land executed by the current owner (applicant), back in 2021.

2019 – Ownership changed to current owner.

2021 – Current owner deeded off parcel 22-407-0001 (parcel directly east of subject parcel) and sold to Noal Holdings LLC.

4/8/2024 – Subdivision application submitted to Weber County. Application deemed incomplete by Weber County, and access issues noted that could prevent approval of the subdivision.

9/13/2024 – Application to the Board of Adjustment, for a variance request was accepted by Weber County.

## Background and Project Summary

The applicant is requesting the variance to allow for possible approval of a three-lot subdivision on the subject parcel. The parcel is accessed off of Clark Land (2650 North Street), a dedicated public right-of-way. 2650 North Street is a 60’ wide right-of-way. However, as this public street approaches the applicant’s property, the dedicated width changes. The developer of the parcel directly east of the subject parcel did not own to the centerline of the roadway. As such, the County can only ask for dedication of property that is owned by the developer. The right-of-way width as it approaches the subject parcel varies from 16’ to 19.68’ wide. This width does not meet the minimum width standard for access to the parcel. Per Weber County LUC 106-2-2.010 **Public Street Requirement** “The standard method of ensuring ease of access, efficient mobility, reduced response time for first responders, effective emergency management, strong neighborhood relationships through



interconnectivity, and a more equitable means of access to community opportunities, is by requiring Public Streets and Public Street connectivity at the time new development is proposed. As such, the default requirement for each subdivision Lot is to provide Lot Frontage on a street dedicated to the County as a public right-of-way and thoroughfare.

- (a) **Public Street dedication.** Each street in a subdivision shall be dedicated to the county as a Public Street, except when a Private Street is allowed or required as provided in this Section 106-2-2.
- (b) **Standard street cross-sections.** All proposed Public Streets shall conform to the county street cross-section standards, unless explicitly specified otherwise. "

Typical right-of-way width for a public roadway required by Weber County, is between 60' and 66'. Applicant cannot meet this requirement.

Weber County LUC 106-2-2.020 **Private Street Option.** In some cases, the County may find benefit from a street being temporarily or permanently private. However, an applicant is not entitled to make a street private. The Land Use Authority has full discretion, subject to regulations in the ordinance, to allow a street to be private. According to the street standards enforced by Weber County Engineering, 50' is the narrowest width permitted by the County Engineer, for a potential private right-of-way. This standard is below the norm typically requested by County Engineering. However, the applicant cannot meet this requirement.

Weber County LUC 106-2-2.030 **Shared Private Lane Option** This option is only permitted in areas where no public streets are planned. While there is no connection shown in the Ogden Valley General Plan, development is ongoing to the west and will necessitate connectivity to 2650 North Street. However, the minimum standards for a shared private lane cannot be met. The following standards apply to a shared private lane, Weber County LUC 106-2-2.030 states:

***“(a) Shared private lane design, configuration, and construction requirements.*** A shared private lane shall be:

1. ***Design.*** Designed and constructed to have a minimum right-of-way width of 24 feet, with a minimum improved surface width of 20 feet. A greater right-of-way width may be required by the County Engineer for a cross-slope easement.
2. ***Configuration.*** Configured and constructed so that any curve will safely facilitate the turning radius and weight of the Fire Authority's largest fire apparatus.”

## Summary of Board of Adjustment Considerations

LUC §102-3 states that one of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Land Use Code. For a variance to be granted it must be shown 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.*
- b. *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. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
- c. *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.*
- d. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- e. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- f. *The spirit of the land use ordinance is observed and substantial justice is done.*

## Staff Analysis

Listed below is staff's analysis:

- a. Literal enforcement of the ordinance would prevent a subdivision going in at this time, until the required roadway width can be secured. This is not a variance to setbacks or the stream corridor setback standards, this is a request to bypass County standards related to safe access to property.
- b. This may fall under a self-imposed hardship, as the current owner divided their land in such a way as to limit access to their parcel.
- c. County staff have encouraged the applicant to work with adjacent land owners in order to secure the required access for a subdivision. As such, the property right sought by the applicant may not necessarily be enjoyed by the property owner at this time, unless the Board finds special circumstances that would allow them to grant a variance to these street standards.
- d. Approval of this variance request may compromise safety standards, unless a solution can be reached by the applicant and the County to mitigate any detriment.

## Conformance to the General Plan

Single-family dwellings are allowed as permitted use in the AV-3 zone. If the variance request is granted, it may not have a negative impact on the goals and policies of the Ogden Valley General Plan.

## Exhibits

- A. 2024 Recorder's Plat
- B. Variance Application and Narrative
- C. Site Plan

## Area Map

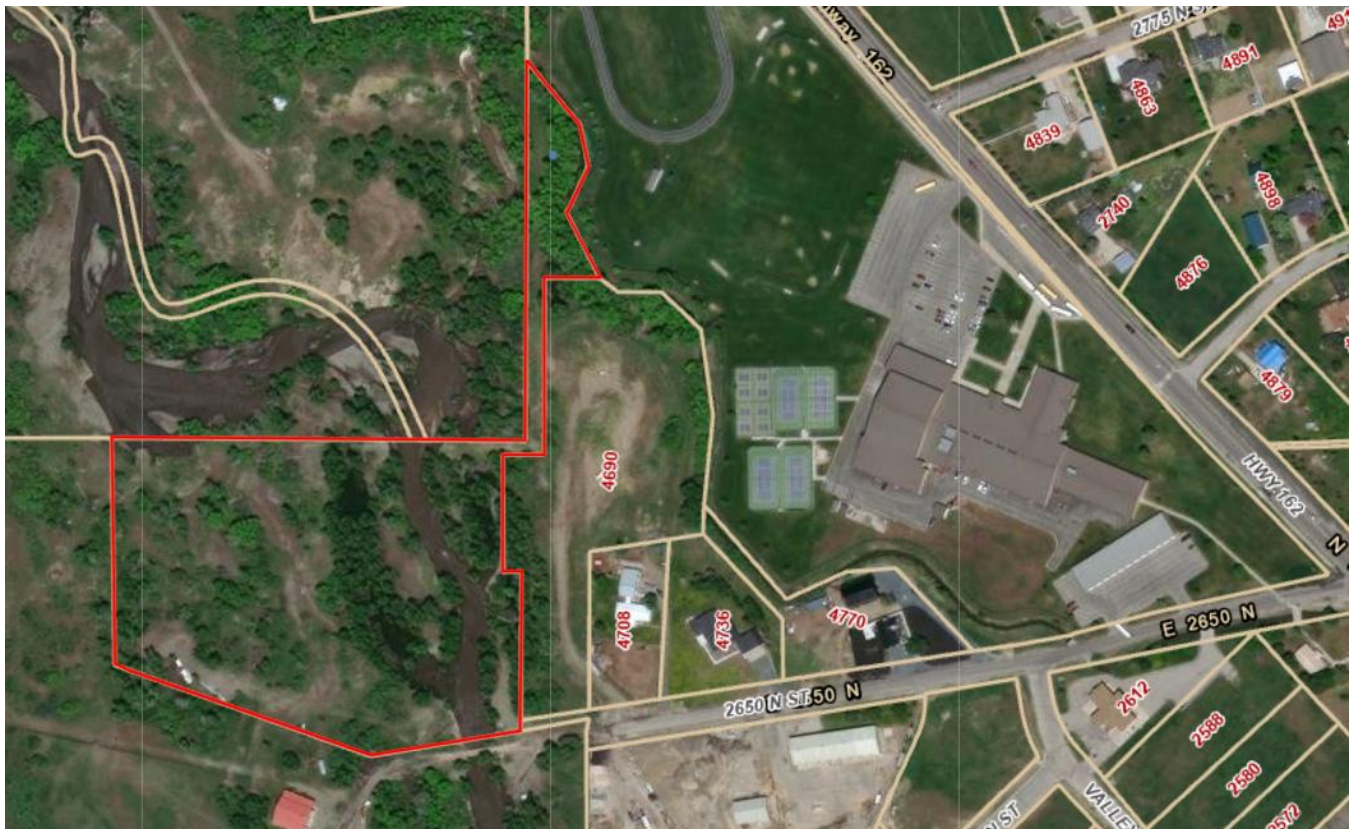
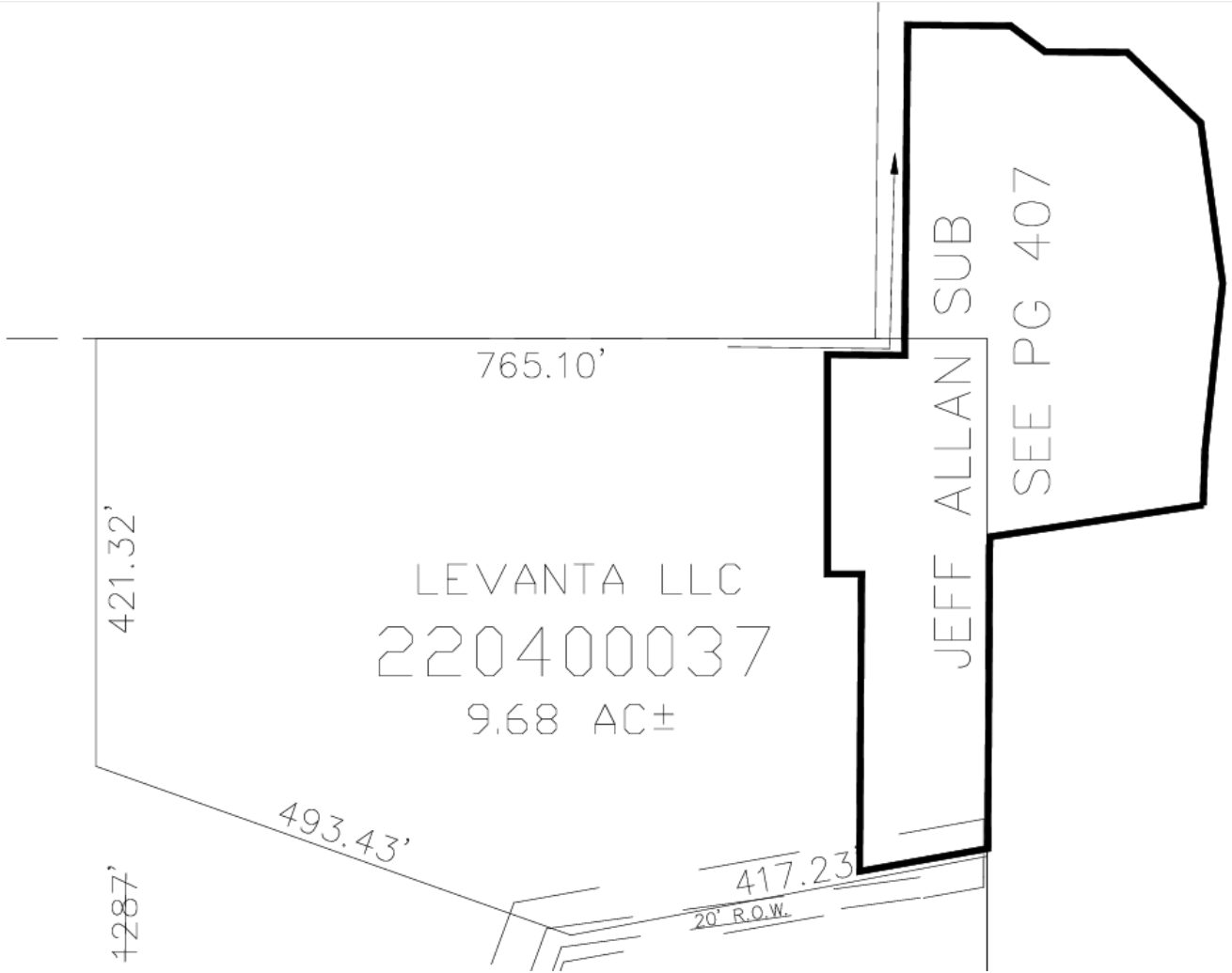


Exhibit A - 2024 Recorder's Plat



## Exhibit B – Variance Application and Narrative

### Holker-Kody-Board of Adjustment

[+ Add Follower](#)[✎ Change Status](#)[✎ Change Review Due Date](#)[✎ Edit Project](#)

**Address:** Addresses TBD Parcel ID: 220400037, Eden, UT, 84310  
**Maps:** [County Map](#), [Google Maps](#)  
**Project Type:** Board of Adjustment  
**Sub Type:** Board of Adjustment  
**Created By:** [Kody Holker](#)  
**Created On:** 9/3/2024

**Project Status:** Accepted  
**Status Date:** 9/13/2024  
**File Number:** BOA 2024-05  
**Project Manager:** [Tammy Aydelotte](#)

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### Application

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#### Project Description

Holker Haven Estates is a 3 lot subdivision from a 10 acre parcel. This application is for a variance on specific code requirements that are impossible in the given situation.

#### Property Address

Addresses TBD Parcel ID: 220400037  
Eden, UT, 84310

#### Property Owner

Kody Holker  
612-518-7629

[Kody@holkerlawoffices.com](mailto:Kody@holkerlawoffices.com)

#### Representative

Luke Kennard  
385-321-0570  
[luke@mccleerycompany.com](mailto:luke@mccleerycompany.com)

#### Accessory Dwelling Unit

False

#### Current Zoning

AV-3

#### Subdivision Name

Holker Haven Estates

#### Number of new lots being created

3

#### Lot Number

3

#### Lot Size

3 acres

#### Frontage

160 ft

#### Culinary Water Authority

Eden Water Company

#### Secondary Water Provider

Wolf Creek Irrigation Company

#### Sanitary Sewer Authority

Health Department (Septic)

#### Nearest Hydrant Address

4770 E 2650 N, Eden, UT, 84310

#### Signed By

Representative, Luke Kennard

#### Parcel Number

[✕ Remove](#) 220400037 - [County Map](#)

To: Board of Adjustments

Subject: **Variance Request for Private Street and Easement Width Requirements**

Dear Members of the Board,

We are thankful for the opportunity to apply for this variance, and for your service to the community in considering our variance request.

**Specific Codes from Which We Seek a Variance:**

- Street Width Requirement (Sec 106-2-1 and Sec 106-2-2):

The land use code mandates that streets, whether public or private, maintain certain width standards to ensure safety and access. The minimum requirement for a public street is a 60-foot right-of-way. For shared private lanes, the requirement is a minimum improved surface width of 20 feet on a 24-foot right-of-way. Our current access point bottlenecks to approximately 16 feet in width, making compliance with these requirements impossible.

The ordinance does not state specifically what road width standard is required under Sec 106-2-2.020 for a Private Street Option. The ordinance is clear that an applicant is not entitled to make a street private, however an option does exist for the Land Use Authority (LUA) to allow or require a street to be made private. While seeking this solution does not constitute a variance in the typical sense, in the alternative to a variance to the Private Lane Option (Sec 106-2-2.030), we would ask the LUA to consider utilizing Sec 106-2-2.020 as a solution should the LUA deem it a better solution. If in fact it is determined that the same road with standards apply to both options, then we would likewise seek a variance of the Private Lane Option road width requirements.

- Easement Width for Future Public Street (Sec 106-2-2.030(b)):

According to this section, a shared private lane must include a recorded easement of at least 60 feet in width to allow for future conversion into a public street. Given the physical constraints of the property, particularly due to the presence of a river that limits available land for expansion, providing a 60-foot easement is not possible. This point is mitigated by the reality that Clark Lane is already set on its current trajectory, with curb and gutter already required to be installed at the 16 foot mark under the Development Agreement, which makes the need for additional land beyond the 16 foot mark illogical at best, or capricious and overly onerous at its worst. Absolutely no justification exists to require Clark Lane to widen beyond the current width of the public easement as required under the existing Development Agreement, for if a justification did exist, the County would have required it under the Development Agreement. The County only requested/required a 16 foot public access easement because that is what was required to keep the Clark Lane on the same Vector as it presently sits.

### **Efforts to Obtain Easements for Access:**

Over the past several months, we have actively sought solutions with neighboring property owners, EJ and Jeff, to obtain a wider access easement, understanding that this would likely provide the best overall solution for the development.

- Engagement with EJ:

EJ owns the land directly to the West and the South of our property. We discussed possible easement options with EJ, but the current bridge, which he recently improved, does not meet the necessary capacity for a public road or a bridge that would comply with existing ordinances, particularly those regarding weight requirements of 75,000 pounds.

- Engagement with Jeff:

Jeff, the neighbor to the northeast, has been unresponsive to all our attempts to negotiate an easement, despite persistent efforts through various methods.

The river to the north of our property also blocks access, leaving EJ and Jeff as the only possible parties from which to obtain additional land or easements. Unfortunately, neither option has proven viable, which leaves us with no other option than to apply for this variance.

### **Justification for the Variance:**

- Unreasonable Hardship:

Literal enforcement of the ordinance creates an unreasonable hardship. Our property has unique geographical constraints due to its location near a river, proximity to a neighbor's bridge, and only 16 feet of public access to the property. The 16 foot public access easement was arrived at through a Development Agreement with the County that is recorded with the County. While Utah State law grants, by operation of law, a private easement of access to their property across the public easement (Gilmor v. Wright, 850 P.2d 431, 437 (Utah 1993)), the public easement reserved in favor of the County under the Development Agreement only reserved a 16 foot public access, which access under the ordinance, is inadequate for a Shared Private Lane, and presumably for a Private Street Option. Given that no surrounding neighbor is allowing additional easement access, the project cannot meet the width and easement requirements. Given the involvement of the County in arriving at the 16 foot public easement under the Development Agreement, it seems to be an unreasonable hardship for the County to now deny access across the public easement, which is why a variance is necessary. Likewise, under Carrier v. Lindquist, 2001 UT 105, landowners whose property abuts public streets, alleys and public ways that appear on a plat map are entitled to a private easement over those public ways. The 16 foot public easement appears on the plat map. These constraints are specific to our property and do not generally apply to other properties in the same zone.

- Special Circumstances:

The presence of the river and the resulting limited space for road construction are special circumstances that do not apply to other properties. These natural barriers prevent us from meeting the standard road width and easement requirements. The County involvement in the Development Agreement, wherein the 16 foot easement was arrived at, also gives rise to Special Circumstances that are unique and particular to this property. The fact that a public easement exists to the property, however the public easement is in itself inadequate, creates Special Circumstances that create the need for a variance.

- Public Interest and General Plan:

Granting the variance will not negatively affect the public interest or the general plan. In fact, our proposed solution, which includes widening the road where possible and providing bump-outs every 150 feet as requested by the Fire Marshal, maintains safety and access for emergency services while accommodating the unique constraints of our site. Additionally, we agree to dedicate a portion of our land along the same trajectory as Clark Lane for a public right-of-way, allowing for the future extension of the road.

In the converse, the public is not benefited by having the land sit dormant and inaccessible, nor would the public be served in spending time and resources sorting the matter out in Federal Court. It is in the public interest to allow access to the property, so that a family can build a home on the property.

- Substantial Property Right:

The variance is essential for the enjoyment of a substantial property right possessed by other property owners in the same zone. Without the variance, we cannot proceed with the development, which would deny us the same opportunities enjoyed by neighboring properties. Furthermore, under the terms of the development agreement for the five acres to the east of our property, curb and gutter are set to be installed at the 16-foot mark. Extending the private easement beyond this point would be illogical, as curb and gutter belong at the edge of the street, not in the middle. Therefore, a 16-foot-wide road variance is the only solution that is consistent with the existing development agreement on record with the county.

We appreciate your consideration of this variance request and believe that granting it aligns with the spirit of the land use ordinance and ensures substantial justice is done. In the alternative, should the Land Use Authority deem it appropriate, we would welcome the opportunity to accomplish the same outcome of obtaining access to the property by way of the Private Street Option, if required by the LUA.

Sincerely,

Kody Holker, President of Levanta, LLC  
Property Owner  
612-518-7629  
kody@holkerlawoffices.com







