



BOARD OF ADJUSTMENT

MEETING AGENDA

**August 21, 2012
12:00 – 1:00 p.m.**

1. Approval of the April 12, 2012 Meeting Minutes

Meeting adjourned for Training Session.

2. Training Board of Adjustment Training Session

- 2.1. Discussion Review of recent amendments to the Weber County Zoning Ordinance Chapter 29 (Board of Adjustment)**

3. Adjournment

The meeting will be held in the Weber County Commission Chambers, Pre-Meeting Room 108, in the Weber Center, 1st Floor, 2380 Washington Blvd., Ogden, Utah



In compliance with the American with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8791.

Minutes of the Board of Adjustment Meeting held April 12, 2012, in the Weber County Commission Chambers, Room 108, 1st Floor, 2380 Washington Blvd, commencing at 4:30 p.m.

Present: Phil Hancock, Chair; Deone Smith; Rex Mumford; Max Hohman

Staff Present: Rob Scott, Planning Director; Sean Wilkinson, Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

Pledge of Allegiance

Regular Agenda Items

1. **Minutes:** Approval of the February 22, 2012 meeting minutes

MOTION: Deone Smith moved to approve the minutes with the noted corrections. Max Hohman seconded the motion. A vote was taken and Chair Hancock declared the minutes approved.

2. **BOA 2010-08:** Consideration and action on a request for a special exception to allow a dwelling to be built on a lot without frontage using access by a private right-of-way in the Forest F-5 Zone (Christina Williams, Applicant)

Sean Wilkinson said this case was originally heard by the Board of Adjustment back on January 27, 2011. At that time the applicant requested a special exception to build a summer cabin on a lot without frontage using access by a private right-of-way, at 1800 South in the East Huntsville area. The right-of-way travels approximately 2.4 miles to the applicant's property and passes through property owned by the Monastery, Bally Watts, and the Allen family. At the time the property was sold to the applicant, the legal description for that property stated that the property had a dedicated unrestricted 60 foot easement for ingress and egress, access on the existing road leading from county road 1800 South to subject property. The proposed right-of-way currently provides access to at least one dwelling, which existed prior to zoning regulations, and several agricultural structures on an adjacent parcel.

At that hearing the Planning Division determined that the applicant had presented insufficient information to establish their right to use the existing road through parcels owned by the Monastery and Bally Watts LLC to access their property. Although the applicant's legal description described an access easement, there was nothing on the ownership plat or the abstract of title that showed a right-of-way access existed. The Planning Division recommended approval of the request based on its compliance with applicable ordinances with the stipulation that the applicant work with the adjacent property owners to obtain documents that clearly establish the right-of-way. The Board of Adjustment made a decision to recommend approval of the request with the following two conditions: 1. that the applicant would have to work with representatives from the Monastery and Bally Watts to establish the right to use the existing dirt road, prior to moving forward with the subdivision process to pursue building the summer cabin; and 2. that the applicant had to sign a covenant agreeing to participate in the cost of future road improvements that may be required.

The applicant is requesting that the Board of Adjustment reconsider its decision regarding the imposition of the first condition. The applicant stated that they have been unable to reach an agreement with the other property owners mentioned in the notice of decision. They have provided new information regarding the right to use the existing access as a private right-of-way that includes an amended warranty deed from the former property owner to the applicant which was filed and recorded in June 2011. The legal description includes an unlimited established right and easement across the Bennett Creek Roadway, at its present location, at any and all times as a means to access the Grantee's property. The affidavit included a 1970 Gate Agreement between the Allen's who sold the property to Christina Williams and the other property owners.

When the Board of Adjustment first heard this, back in January 2011, it was indicated that one of the criteria, was that the lot does not have frontage on the street but has access by a private right-of-way. The Planning Division does not guarantee that the applicant has the right to use the existing road; that is a private matter between the applicant and the other property owners. Therefore, the Board of Adjustment should focus on the zoning ordinance criteria associated with the request, rather than trying to determine which representation is correct. The applicant is representing, based on the new information that she has the right to use the existing road as access to her property, despite being unable to work out an agreement with the other property owners. The Board has a couple of options; first, the applicant has provided new information that was not available at the last meeting; they are claiming that this information is sufficient for approval, and that the previous condition established by the Board of Adjustment should be removed.

This Board needs to look at whether that information is sufficient to overturn the previous condition, and you may want to

ask the applicant what actions they took in speaking with the neighbors and trying to work out an agreement. The option was also available to request some type of court action to have a judge make an order granting them the right to use that right-of-way. When we look strictly at the zoning criteria, if the Board determines that the zoning requirements have been met, and sufficient information has been presented, then the special exception should be approved, with the second condition the applicant must sign the covenant agreeing to participate in the cost of future road improvements. Even if condition one is removed, the applicant still has to go through the subdivision process to eventually build a summer cabin. Approval of the proposed right-of-way does not guarantee approval of a future subdivision application, nor does it guarantee that the applicant's alleged right to use the existing road is valid.

Staff is recommending that if the Board chooses to remove condition one, that this would technically meet the zoning requirements in Chapter 29 of the zoning ordinance for special exceptions. However if the Board chooses to approve this new request, the Planning Division would like to see a condition placed on that approval, that the applicant enter into an agreement with the county that essentially holds the county harmless, should the applicant not be able to use that right-of-way.

Max Hohman asked if the right-of-way goes across the Monastery's land, should this Board be concerned that they do recognize that as a legal right-of-way. Mr. Wilkinson replied it does go across their land, but it is not something that the Board can determine. The applicant claims, based on the deed when they purchased the property, that they actually have the right to use the right-of-way.

Chair Hancock asked the difference between an appeal and reconsideration. Chris Allred, Legal Counsel, replied ordinarily there isn't a second appeal to the Board of Adjustment, and the applicant's position is that they provided you some significant new information they felt changed the circumstances to merit an additional look. On an appeal the Board would be limited to only review the original submitted information. In your opinion, if the applicant have provided you with information significantly different from what you have already seen, then you could determine to revisit the issue, if not, then there would be no basis another review. Even with the new information, you may still come to the same conclusion as before.

Chair Hancock asked staff to clarify the process if the appeal is approved. Mr. Wilkinson replied they have to come to the Board of Adjustment first because they have to establish the right-of-way access prior to the subdivision and the County Commission is the appeal authority of the subdivision ordinance.

Deone Smith asked staff to clarify that the applicant is just building on a ten-acre lot they already own and are not changing boundary lines of the lot. Mr. Wilkinson replied that technically it's an agricultural parcel that has no building rights associated with it. In order to establish that, the applicant would need to plat and record a subdivision to establish those building rights.

Rex Mumford said land can be subdivided up to three times before a subdivision is required. In this particular case because they have no frontage on a county road, he asked if approval to build on a private right-of-way would come before the Board of Adjustment. Is there a width requirement by the county on a right-of-way, and if the permit had a clear right-of-way, would this even be before this Board. Mr. Wilkinson replied that was the case prior to 1992, but state law and the county ordinance now states that every division of land requires a subdivision. The right-of-way is currently correct, but that may change in the near future because the process is being amended and there is not a width requirement, but if these amendments go through, they will establish that. As long as it meets the requirements of the Engineering Division and the Fire District, the right-of-way could be 20 feet or 30 feet.

Max Hohman said he noted there was no proof indicating that the Monastery agreed the applicant has approval to use this right-of-way. This needed to be worked out with the Monastery before the Board can approve the application. Mr. Wilkinson replied that previously the Board wanted the applicant to go back and work with the Monastery and Bally Watts to create documents that would grant them access to the right-of-way. However the documents were never received. Therefore, the applicant is asking to have that condition be removed and for this Board to reconsider and amend that decision. The applicant claims that they have tried working with the property owners to no avail. The Board of Adjustment and Planning Division cannot say whether they do or don't have a right to use this road. The applicant is asking this Board to reconsider that decision and eliminate the requirement that they have to get an agreement with those property owners. They want this Board to allow them to move forward, but if a private legal issue arises then they have to address it. It cannot be decided by the Board of Adjustment or the Planning Division.

Scott Williams, the Applicant's Spouse, said that they approached the neighbors and obtained an amended deed. They received a response from the Monastery stating they want the gate agreement to be sufficient and in the best interest of the Monastery. The Byram family was contacted by their lawyer and they appear to be opposing this particular point. They have acted in good faith in terms of working with the neighbors. When they bought the ground 40 years ago, they agreed that if in the event this road was improved down the road, they would participate in the cost of improving the road. So in good faith, they have met the requirements of the Board, and they are asking that any more stipulations be removed so they could move forward with the subdivision process.

Matt Jensen, Attorney for the Allen Trust, said they are speaking in favor of the applicant on this matter. This is an interesting procedural posture the Board of Adjustment is looking at. This Board of Adjustment will determine whether the subdivision process can go forward and if the applicant can build a cabin on this lot. The Land Use Code and the Zoning Code provides a specific set of criteria that the Board is required to apply. In a previous proceeding there wasn't any recorded document that suggested there was a 60-foot easement. Following that hearing, the applicant went back to his client, and they did some additional research to find the basis of this easement and the right-of-way. As for the gate agreement, it's explicit as to what the Monastery and Bally Watts LLC have already agreed to. This is no different than if someone had come with a recorded easement and the Board was asked to determine only whether it was reasonable to have them pave up to their lot. The essence of the zoning code asks if it is reasonable to ask for additional restrictions to build on this lot because of its remoteness.

The staff report refers to an affidavit for Ross Allen, the person who talked about the gate agreement that his brother entered into on behalf of the Allen Ranch. On page 5 of 9, I would like to direct the Board's attention to paragraph 3, which states "*the installation and maintenance of the locked gate across the Bennett Creek Roadway in no way affects or diminishes the unlimited and established right of easement of the undersigned or their successors in interest to use the roadway at its present location at any and all times as a means of access to their respective properties.*" This is black letter Utah Law that an easement favoring a dominant estate or property accrues the entirety of the lot so all portions of the lot are entitled to use that easement. The agreement was signed by Abbey of the Holy Trinity Monastery, Basin Land & Livestock, Allen Trust, and Robert Byram & Sons who conveyed their property to Bally Watts LLC, and acknowledged that there is an unlimited and established right and easement of the undersigned or their successors to use the roadway at its present location at any and all times as a means of access.

There will probably be more of the legal issues, i.e., is there an easement, and can the Williams have that easement. However, that is not within the providence of the Board of Adjustment. That is a legal determination for the courts. Essentially, the applicant just has to establish that there is an easement. At that point, the Board needs to apply the zoning code and determine whether it would typically be required, or whether they need to have a special exception, to allow the use of this private right-of-way. That in no way guarantees the Williams access, and at any point they could go to court. If this Board agrees that the first condition is not required, that doesn't do anything to prejudice the rights of Bally Watts LLC or the Monastery to go forward and decide that this request exceeds the scope of the easement. The Williams have to go through the subdivision process, and the Planning Commission has to review other issues, so it is not appropriate at this point to prevent them from going through that process.

The Williams tried to approach the other owners and also filed an affidavit to further establish a recorded document that shows this easement. He would suggest that a special exception is appropriate in this instance, and that the Williams should be allowed to proceed with the subdivision process.

Rex Mumford asked Mr. Jensen if he represents the Williams directly or indirectly. Staff has made an additional request that the Williams family be willing to sign a legal agreement stating that if the Board were to approve this, that the county is held harmless; are the Allen's willing to sign such an agreement? Mr. Jensen replied he had not talked to his clients specifically about that, but in reading the previous minutes and rulings, it's been made very clear any decision the Board makes does not guarantee right of access. Rex Mumford asked legal counsel if he agreed with that. Chris Allred replied that the county would require a defend and indemnification agreement from the party. Even though it is clear as previously mentioned, people still want to sue the county afterwards if they don't like the way things go later on. The Board needs to make sure it is abundantly clear that we are not guaranteeing anything or making any decisions on the scope of that easement. We would require that agreement be signed by the Williams before we could go forward.

Rex Mumford asked if the 40 year old document has any validity with regards to the other signees of the gate agreement. Mr.

Jensen replied as to this agreement and those who have notice to this agreement, it's binding. The real issue with recording is third parties, as between the Allen's, Byram's, and Monastery; it's a binding agreement and they have all agreed that it's an easement.

Deone Smith asked if the original was recorded, or just a copy, and was there anything else recorded. Mr. Jensen replied that it's the gate agreement, the affidavit, plus the corrective warranty deed. The Board did not have that benefit of viewing those documents during the January 2011 hearing, and that's the new information that the Williams have presented. There is a document recorded that shows the easement.

David Allen said he had facilitated the sale of the property to the Williams on behalf of the Ross and Allen Family Trust, and as a good faith effort, tried to work out a solution with the neighbors. They have had a long-standing relationship with the Byram's, Monastery, and Basin Land & Livestock which is now Rocking HR Ranches. After the Board of Adjustment meeting, he approached the Monastery to try and work out a more specific definition of what the easement is, and they chose not to do that. They sent him a letter from Father David, and the Williams received a similar letter, which states that they are satisfied with the language of the gate agreement. He didn't know if they accept the gate agreement that they signed, but it acknowledges that the easement was established and is in place, and that is strong evidence that there is an easement.

In talking to Scott Williams, they felt the Board of Adjustment put a burden on them to work out an agreement with the Monastery, but in fact the agreement was worked out 42 years ago. He has a copy of the affidavit that his father signed, that talks of the relevance of the gate agreement. The importance of this document cannot be understated; this is an access agreement, the whole purpose of this gate agreement document was to control access on the road. If the Byram's and the Monastery don't believe this document is binding they are free to contest it in a court of law. Right now, the burden has been put upon us to get a second agreement. The Board of Adjustment should accept the recorded document that was established prior to 1970 with the right-of-way that acknowledged they have an unlimited easement. If the other parties don't want to live with this agreement, the burden should be on them. The other part of the good faith effort, was that the attorney from the Monastery took exception in the language in the Williams deed. That read the Williams had a 66-foot unrestricted right-of-way, and they modified that deed's language from the gate agreement that was recorded so there was no inconsistency between the contracts that were signed 42 years ago and the deed that exists today. He is just surprised that he is here today considering the history, the use, and the documentation.

Christina Williams, applicant said that she agreed with everything David Allen said.

Chair Hancock said that the Board received an email with additional information, and he asked if that needed to be made clear that was part of the record. Mr. Wilkinson replied that they did receive a request from the Byram's attorney that the meeting be postponed so that he would have an opportunity to be at this meeting. After discussing it with our Legal Counsel, it was decided that it was appropriate that the meeting be held. The Board can make whatever decision they like, including tabling this for additional information, but staff felt it was not appropriate to hold up the meeting since the Byram's are not the applicant in this case.

Brother Nicolas, Monastery resident since 1949, said they have never discriminated with any of the property owners. They have great relationships with all of them and they were always free to go through their property. The reason they went to a locked gate was that it became a very popular hunting place and so many were people going through the place to hunt, and would trash the land, so they had to put control on the access. They worked with the other landowners and determined that it was best to have the gate locked; however, it serves the purpose to keep the cattle in. They object to the Williams having a 60 foot easement, because it would be extremely expensive to maintain.

Chair Hancock asked if they oppose the Williams building a cabin up there. Brother Nicolas replied no; they feel that anyone that has property there can do what they want with it. There is an objection on record that they cannot have a septic tank because the whole property sits right on the source of Huntsville's water.

John Grey, Monastery volunteer, said he is not really in opposition of them building a cabin up there. The City of Huntsville built a million gallon water tank and they didn't have a problem with that either. As previously stated by Brother Nicolas, all of sudden there is a 60 foot easement, and that's what brings up the problems. Apparently, there is an unlimited scope of the word easement. Does the word easement include the requirements to be able to build a four-lane highway? Isn't the U.S. standard for a lane 12 feet, and 60 feet would allow four lanes? The word "60 foot easement" raises a lot of flags like is there

going to be a subdivision, a community? Are they going to have the Monastery pave a four lane road there, and why a 60-foot easement is so important that it was never envisioned by the signers? In the gate agreement, the Monastery issues keys, so who has authorization to issue keys?

Max Hohman asked where that 60-foot easement mentioned in this agreement was located. Mr. Wilkinson replied that the 60 feet comes from the previous legal description given in the original Williams deed, and it included, *"an unrestricted dedicated 60-foot easement for ingress and egress access on the existing road from County Road 800 South to subject property."* The 60 feet is no longer part of the deed and was removed when the corrected warranty deed was recorded. The county does not require 60 feet for a right-of-way for this special exception. Chair Hancock indicated that this is not an issue for the Board to consider tonight.

Deone Smith said they have two items they have to look at on Exhibit B. On Item #2, *"The applicant must sign a covenant agreeing to participate in the cost of future road improvements that maybe required as a private right-of-way is turned into a road for the purpose of development."* Has that been done or agreed upon? Mr. Wilkinson replied that has to be agreed upon prior to moving forward. Deone Smith said on Item #1, *"The applicant must work with a representative from the Monastery and Bally Watts LLC to establish the right to use the existing dirt road through their property. The right to access must be established prior to final subdivision approval."* The question here is do we feel that the right has been established. They did record the original agreement, and the agreement was given to them when they purchased this property. They do not have to record the document in order for the agreement to be legal and binding; however, they now have it as a record against that property.

Rex Mumford said that he agrees with Ms. Smith, that their duty is asking if there is a right-of-way, would we grant this exception for that to become a subdivision. If our position is that we don't have to guarantee that right-of-way exists, he doesn't see a reason to oppose this.

Chris Allred said that part of the reason the Board reached Condition #1 was because representatives from Bally Watts LLC, took the position that the scope of the easement wasn't as black and white as it's been represented. He noticed representatives from Bally Watts are not here tonight but Mr. Froerer spoke last time and could possible speak as to what the objections were and if they still exist.

Bob Froerer, representing the Monastery, said the objection last time has to be addressed at the next level. There's the protection area to protect the springs in that area where this property is located. The question is, are we allowing development to occur piecemeal, rather than a subdivision? The recording of this gate agreement is meaningless on its own; it is not a recordable document because it doesn't have a legal description. The applicant simply attached it to an affidavit and recorded it. In his opinion, it gives it no more or less credence whether it's recorded. The gate agreement was simply a reflection of four owners to use a dirt road as access to their property. When you look at the language of the gate agreement, it says; *"In no way it affects or diminishes the unlimited and established right and easement of the undersigned or their successors to use the roadway at its present location anytime at any and all time."* It's not unlimited as to scope, to the use, or the size, and it is subject to interpretation. He didn't know that two representatives of the Monastery would be here, and they don't object to the Williams accessing their property. Father David's communication to him was that they are not ready to agree to the building of a structure, but that's not the purview of this Board.

Chair Hancock said when this previously came before the Board he was adamant that the Board should be referring to the ordinance. Upon close review, the ordinance isn't very clear the way it's currently written, and based upon the information that they have been given, he feels somewhat limited on what they can do.

MOTION: Deone Smith made a motion on BOA 2010-08 on a request for a special exception to allow a dwelling to be built on a lot without frontage using access by a private right-of-way. This Board agrees with the following conditions; if they are met to allow the Williams to go forward with Item #1. The applicant has in our mind satisfied their efforts to establish a right-of-way with the Monastery and Bally Watts. With Item #2; the petitioner must sign a covenant and agree to participate in the cost of future road improvements that may be required if a private right-of-way is turned into a road for the purpose of development, and they must sign a Hold Harmless Agreement. Max Hohman seconded the motion.

DISCUSSION: Rex Mumford said he thought the purpose was to eliminate Item #1 as a condition but Deone put Item #1 as a condition in the motion. Deone Smith replied the Item #1 has been satisfied. Sean Wilkinson replied it could go either way, satisfied or removed. Chris Allred replied that he agreed with staff, and you have either concluded that the first condition was

that the applicant meets with the representative from the Monastery and Bally Watts to establish the right to use the existing dirt road through their properties. Apparently, Ms. Smith is concluding in the motion that the applicant has met and at least tried to work with them, and to some degree resolved some of that with the Monastery's concerns and also with Bally Watts. His understanding on the motion is that this Board would find that the applicant has taken proper steps to pursue an agreement even though it did not result in a clear cut agreement amongst the parties. The motion as he understands would permit the petitioner to go forward with a special exception, which does not guarantee any particular access or rights on that road, it only acknowledges from a zoning perspective that the Board of Adjustment doesn't have a problem with that and they could go on to submit a subdivision proposal next.

VOTE: A vote was taken and Chair Hancock indicated the motion was approved with all members present voting aye. Motion Carried (4-0)

3. Schedule & Information: Approval of 2012 Meeting Schedule and Member Information List

MOTION: Deone Smith moved to approve the 2nd and 4th Thursday's of the month for meetings as needed. Rex Mumford seconded the motion. A vote was taken and Chair Hancock indicated the motion was approved with all members present voting aye. Motion Carried (4-0)

4. Rules of Order: Review of the Board of Adjustment Policies & Procedures

Rob Scott said on an annual basis the Board of Adjustment reviews their policies and procedures and we will be reviewing them at the next meeting as they were not in the packet.

Chair Hancock asked how everyone feels about the opening statement just being printed on the back of the agenda where everyone can read through it. Mr. Scott replied that is already done. Mr. Hancock said instead of reading that just mention to the audience and have them read that. Ms. Smith said you could summarize it because there are some important things on there that they need to know. Mr. Allred said you could gauge your audience; sometimes you have the applicant only and it's not going to be necessary, but with a crowded house you may need to read it all.

5. Training: Discussion on Training Topics

Sean Wilkinson said that generally they hold 3-4 trainings every year for the Board of Adjustment on various topics. The first training session would probably be in the later part of May, because on May 24th, staff is taking the BOA Chapter to the County Commission for their approval based on the reviews that you have seen in the past year. All of your comments have been taken into account, but not all of them have been added. Hopefully the ordinance amendment will be approved and then we will have a training session on that new ordinance. That will be the first training. If the members have any topics that they would be interested in receiving additional training on, staff could prepare for that.

Deone Smith suggested that a Roberts Rules of Order discussion would be good, and training on how to "Keep on Topic" because it's so easy to stray off to places that have nothing to do with what they are supposed to be talking about.

Sean Wilkinson asked if there was anything else they have thought about, had questions about, or would like more information on regarding Board of Adjustment issues. Mr. Mumford replied that as a new Board member, he wonders when they have a lot of people in attendance and they have a presenter, where their presentation is not on their exact task, but there is sensitivity because it's a passion for them. He hates to feel like they are just brushing them off because it's not pertinent. There's a human side to our Board as well, and sometimes we get off task, so is that wrong? Mr. Allred replied that there's a balance and at some point you may have to bring the discussion back into focus. Sometimes staff will do that, sometimes the chair will do that, and he agrees that there has to be some degree of patience, where they gently and appropriately guide them back to where they are on task. Sometimes you have to be a little more forceful because you do need to stay on track and it could lead to confusion if you let it go too far, but they need to exercise some patience.

Deone Smith said they have to remind the presenters when they come up that they can't have redundancy and if they agree with someone else they really don't have to come up. Mr. Allred said that a lot of that falls to the chair to control the meeting and you have to exercise some discretion. Mr. Mumford said in our last meeting, we had an attorney that put four big pictures in front of us, and those pictures remained throughout the entire hearing and they were very biased to one side of the case, he felt that was inappropriate that the photos were allowed to stay there but he did not know that he could ask to have the pictures removed. Mr. Allred replied that you can control this area, and he agreed that the photos were very biased

to one side. If you feel strongly, and something like that comes up, you have some control of the meeting for those types of things.

6. **Adjourn:** The meeting was adjourned at 6:10 p.m.

Respectfully Submitted,



Kary Serrano, Secretary,
Weber County Planning Commission

DRAFT



Weber County

August 14, 2012

To: Weber County Board of Adjustment Members

From: Sean Wilkinson
Weber County Planning Division

Subject: August 21st Board of Adjustment Training: Review of recent amendments to the Weber County Zoning Ordinance Chapter 29 (Board of Adjustment)

Dear Board Members,

The Weber County Commission recently approved amendments to Chapter 29 of the Weber County Zoning Ordinance which governs the duties, powers, and procedures of the Board of Adjustment. A copy of the new ordinance is attached for your review. The work session will consist of an overview of the new ordinance, including highlights of the major changes and a discussion of how the duties, powers and procedures of the Board have changed. Please come prepared with any questions or comments regarding the new ordinance. The work session will be held at the Weber Center in Room 108 (just north of the Commission Chambers) from 12:00 PM to 1:30 PM and lunch will be served. Thank you for your dedicated service.

Sincerely,

A handwritten signature in black ink that reads "Sean Wilkinson".

Sean Wilkinson

CHAPTER 29

BOARD OF ADJUSTMENT

2012-7

- 29-1. Purpose and Intent**
- 29-2. Board Membership and Organization**
- 29-3. Duties and Powers of the Board**
- 29-4. Decision Criteria and Standards**
- 29-5. Procedure**

29-1. Purpose and Intent

The purpose and intent of this chapter is to establish rules and procedures, consistent with Utah state code, which govern the Board of Adjustment in considering appeals from decisions applying and interpreting the Weber County Zoning Ordinance and Zoning Maps, and variances from the requirements of the Weber County Zoning Ordinance. The Board of Adjustment serves as Weber County's final arbiter of issues involving the interpretation or application of the Weber County Zoning Ordinance.

29-2. Board Membership and Organization

1. The Board of Adjustment shall consist of five (5) members and two (2) alternate members from the unincorporated area of Weber County.
 - A. Board members shall be appointed by a simple majority vote of the County Commission.
 - B. Board members shall serve for a term of five years, and expirations of terms shall be staggered so that an overlapping of terms occurs.
 - C. Any vacancy(s) occurring on the Board shall be filled via appointment by a simple majority vote of the County Commission. Any vacancy occurring because of resignation, removal, disqualification, or other reason shall be filled for the unexpired term of the vacating member.
 2. The Board of Adjustment shall annually elect a Chairperson and Vice-Chairperson from its membership. Each officer shall hold office for a one year period and not longer than two years consecutively.
 3. Members of the Board of Adjustment shall be subject to all applicable County ordinances regarding conflicts of interest and ethics. A violation of these provisions shall be grounds for removal from the Board of Adjustment. The County Commission may remove or replace any board member for cause. Removal or replacement of a board member requires a majority vote of the full County Commission in a public meeting.
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The Board of Adjustment shall have the following duties and powers:

1. To act as the appeal authority from decisions applying and interpreting the Weber County Zoning Ordinance and Zoning Maps.
 2. To hear and decide variances from the requirements of the Weber County Zoning Ordinance.
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29-4. Decision Criteria and Standards

1. Appeals from decisions applying and interpreting the Weber County Zoning Ordinance and Zoning Maps
 - A. The Board of Adjustment shall determine the correctness of a decision of the land use authority in its interpretation and application of the Weber County Zoning Ordinance and Zoning Maps.
 - B. The Board of Adjustment may hear only those decisions in which the land use authority has applied the Weber County Zoning Ordinance or Zoning Maps to a particular application, person, or parcel.
 - C. The appellant has the burden of proof that the land use authority erred.
 - D. All appeals to the Board of Adjustment shall be filed with the Planning Division not more than 15 calendar days after the date of the written decision of the land use authority.
 - E. Appeals to the Board of Adjustment shall consist of a review of the record. In cases where there is no record to review, the appeal shall be heard de novo.
2. Variances from the requirements of the Weber County Zoning Ordinance
 - A. Any person(s) or entity desiring a waiver or modification of the requirements of the Weber County Zoning Ordinance as applied to a parcel of property that they own, lease, or in which they hold some other beneficial interest may apply to the Board of Adjustment for a variance from the terms of the Zoning Ordinance.
 - B. The Board of Adjustment may grant a variance only if the following 5 criteria are met:
 1. 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 Zoning Ordinance.
 - a. In determining whether or not enforcement of the land use ordinance 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 enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.
 - a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.
 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
 4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
 5. The spirit of the land use ordinance is observed and substantial justice done.
- C. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- D. Variances run with the land.
- E. The appeal authority may not grant a use variance.
- F. In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
1. Mitigate any harmful effects of the variance; or
 2. Serve the purpose of the standard or requirement that is waived or modified.

29-5. Procedure

The Board of Adjustment shall adopt rules and regulations, consistent with Utah state code and Weber County ordinances, for conducting its business and may amend such rules from time to time. Such rules may include policies and procedures for the conduct of its meetings, the processing of applications, the handling of conflict of interest and any other purpose considered necessary for the functioning of the board.

1. Application and Notice.
 - A. Any person or entity wishing to petition the Board of Adjustment for an appeal or interpretation of the Zoning Ordinance or Zoning Maps, or for a variance from the requirements of the Zoning Ordinance may commence such action by completing the proper application and submitting it to the Weber County Planning Division office. Applications must be submitted at least 30 days prior to the date of the meeting at which the application will be considered. The application must clearly explain the appeal, interpretation, or variance being requested, and must be accompanied by the required fee and applicable supporting information.
 - B. After a complete application has been submitted and accepted, the Planning Division shall prepare a staff report to the Board of Adjustment, schedule a meeting of the Board, and send notice to property owners within 500 feet of the parcel on which the request has been made. Notice may be sent to other interested persons or organizations upon written request.

2. Meeting.

A. The Board of Adjustment shall hold a public meeting to decide upon the appropriate action to be taken on an appeal, variance, or interpretation request. The concurring vote of at least three (3) of the five (5) Board members is required to decide in favor of the request.

3. Decision and Minutes.

A. After the Board of Adjustment has made a decision, a notice of decision shall be prepared by the Planning Division, signed by the Board of Adjustment Chair or the Chair's designee, and sent to the appellant in accordance with Chapter 31 Section 4 of the Weber County Zoning Ordinance. This notice acts as the Board's written decision for an appeal, variance, or interpretation request. Decisions of the Board of Adjustment shall be final at the time a notice of decision is issued.

B. The minutes of all meetings of the Board of Adjustment shall be prepared and filed in the Weber County Planning Division office. The minutes shall be available for public review and access in accordance with the Government Records and Access Management Act.

4. Expiration.

A. If the Board has decided in favor of a variance request, the approval is valid for a period of 18 months. If an approved variance request has not been acted upon within this timeframe, the approval shall expire and become void.

B. If the Board has made an interpretation to the Zoning Map or Zoning Ordinance, the interpretation is valid until an amendment to the Zoning Map or Zoning Ordinance is made which changes the conditions upon which the interpretation or decision was made.

5. Appeal of Decision.

A. Appeals from decisions of the Board of Adjustment are made directly to the District Court as designated in Utah state code.