

BOARD OF ADJUSTMENT

MEETING AGENDA Thursday, February 27, 2014 4:30 p.m.

**Pledge of Allegiance*

Regular Agenda Items

1. **Minutes** **Approval of the August 8, 2013 and September 26, 2013 meeting minutes**
2. **BOA 2014-01** **Consideration and action on a variance request for a new dwelling to encroach up to nineteen (19) feet into the required seventy-five (75) foot year around stream corridor setback of the Forest Residential FR-3 Zone on Lot 6 of Hidden Oaks at Wolf Creek Subdivision located at 5001 Fairways Drive (Elias Harik, Applicant)**
3. **BOA 2014-02** **Consideration and action on a variance request for a detached garage to encroach 2.08 feet into the 30 foot rear yard setback of the Forest F-40 Zone on property located at 950 Ogden Canyon in the Wilcox Camping and Boating area of the Ogden Canyon (Michael Sherman, Applicant)**
3. **Election:** **Election of Chair and Vice Chair for 2014**
4. **Schedule & Information:** **2014 Meeting Schedule and Member Information List**
5. **Rules of Order:** **Consideration and Action the Board of Adjustment Rules of Order**
6. **Discussion** **Names to be added to Website**
7. **Adjournment:**

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



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Minutes of the Board of Adjustment Meeting held August 08, 2013 in the Weber County Commission Chambers, 1st Floor, 2380 Washington Blvd, commencing at 4:30 p.m.

Present: Deone Smith, Chair; Phil Hancock; Douglas Dickson; Rex Mumford

Absent/Excused: Celeste Canning

Staff Present: Rob Scott, Planning Director; Ben Hatfield, Planner; Dave Wilson, Legal Counsel; Kary Serrano, Secretary

**Pledge of Allegiance*

Regular Agenda Items

1. **Minutes:** Approval of the March 23, 2013 meeting minutes

MOTION: Phil Hancock moved to approve with meeting minutes with the prior changes made and noted. Douglas Dickson seconded.

VOTE: A vote was taken with all members voting aye. Chair Smith declared the meeting minutes approved.

2. **BOA 2013-07:** Consideration and action on an appeal request to the approval of the Edgewater Beach Resort PRUD site plan located at 6350 East Highway 39 in the Commercial Valley Resort Recreation Zone (CVR-1) Zone. (Marion Martin, Applicant)

Ben Hatfield reviewed the staff report and said that staff recommends denial of this appeal of a site plan (CUP 2012-02 and CUP 2013-08) for the Edgewater Beach Resort PRUD by the Ogden Valley Planning Commission (OVPC) and the Weber County Commission (WCC) with the recommendation based on the following:

- The appellant's untimeliness in filing an appeal in 2012 for decisions that were made in 2012.
- The appellant's admission that notice was received prior to the meeting, allowing more than the 15 days of time in which to make an appeal.
- The superior design as determined by the OVPC and WCC was presented which met the criteria for development and did not require any additional setback requirements from adjacent property owners.

Chair Smith asked if there was anything in the appeal that pertained to the last hearing within the 15 days appeal period. Ben Hatfield replied the applicant and her representative was at that hearing with the County Commission and spoke not in opposition of the approval of that site plan. They supported the vacation and the change of not having those roads stubbed to 6300 East.

Chair Smith asked so what this board is looking at today is information from 2012, if they decline to listen to that what would the applicants course of action. Dave Wilson replied that if this board decides not to hear this today, the applicant's recourse is to take action by going through the judicial process.

Mike Malmborg, the Applicant's Representative, said that years ago Ms. Martin put her property in a conservation easement so that it would remain as it is. Celtic Bank is looking to develop the land to the east of this property and they just want to make sure that proper procedures are followed. There are three issues he will raise as follows:

Mike Malmborg said the first issue was the notice. There is a disagreement about whether or not it was proper. The notice was mailed on the 20th, the letter sent was postmarked on the 23rd, and the hearing was held on the 27th. The statute requires a seven day notice before any hearing, and in their opinion this notice was not timely sent within seven days of the hearing. After several years of development, Ms. Martin was always received notice, was able to comment, and attended when possible. There has always been a 50 foot setback between Ms. Martin's property and the development to the east. In this case, because of the untimely notice, she was given the opportunity to comment, object, or attend the hearing. Without any public comment, the amendment was passed and the setbacks were reduced from 50 feet to 35 feet.

Mike Malmborg said the second issue is whether the appeal was timely. There is not a dispute that there was an

appeal filed within 15 days of the decision in 2013. So the dispute comes from the 2012 decision and the appeal was not filed within the 15 days of that decision, and as indicated by staff the 2012 application is not before the board.

Mike Malmberg said as to the third issue should this have passed is in regard to the setbacks. There were two parts to the request; vacating 6300 East and amending the site plan so they don't have two stubs coming off of 6300 East because that is no longer a public road, a hammerhead turnaround, and reducing the setbacks. When setbacks were reduced due to the road vacation, the boundary went from approximately the middle of the road and shifted to the east toward the new development. Ms. Martin attended the hearing and did not object to vacating 6300 East, but objected to the reduced setbacks which had gone from 50 feet to 35 feet and now less than 35 feet. She was told that the setback was not the issue in 2012. When Celtic Bank brought the amended plan before the Planning Commission, they changed the setbacks and it would have been appropriate for Ms. Martin to listen to the comments and make any objection, but she was not allowed to. The only way the Planning Commission could have made that determination would have been to allow Ms. Martin the opportunity to comment on this development amendment. This board can hear the merit of this appeal because when Celtic Bank amended their plan, this opened the door for comments on that plan.

Mike Malmberg said staff recommends that this board not hear the merit of this matter because in their view, we are not challenging anything. Ms. Martin is not challenging the vacating of the road but did object at the hearing to the setbacks in 2013. Our believe is that this board should make a determination that the Planning Commission erred in not allowing Ms. Martin to comment, and should be sent back to the Commission, allowing Ms. Martin to at least present her comments so it's on record, or this board should vacate the Planning Commission's order.

Doug Dickson asked for clarification of the road 6300 East setback that was originally 50 feet from the center of the road. Mike Malmberg replied that it was 50 feet from the property boundary that was on the section line, and the section line was approximately on the center of the road and further down the road it was further east of the road. The entire property boundary was shifted so now the new boundary after vacating of the road would be on the east side of the dirt road which would become a private driveway.

Chair Smith asked, to clarify, that in 2012 each party owned up the edge of the road. Mike Malmberg replied each party owned up to the section line, that was the boundary, but there was a right-of-way for the road that spanned that boundary and 30 feet in each direction. The boundary is no longer the section line; as a result of the hearing, the boundary shifted to the east. They approved the setback in 2012 of 35 feet, a reduction of what they previously approved, and reduced the setback to whatever the difference is.

Doug Dickson asked what is the core of the issue; is the issue the ground or is the issue not having the opportunity to comment? Mike Malmberg replied Ms. Martin has not contested the vacating of 6300 East, but with the vacation of 6300 East where the boundary between the properties was shifted to the east. That boundary to the nearest building and the development is no longer 35 feet, and the setback was reduced because the boundary was moved.

Dave Wilson said Weber County did not own that road as it has not been a fully dedicated road. It was owned by the two landowners up to the section line, the public (Weber County) has a prescriptive right of use over the land. The vacation would release this right, and full ownership will be restored to each owner. Mike Malmberg responded that's correct the property owners each owned up to the section line.

Chair Smith asked why the boundaries changed; wouldn't the line still be down the middle? Mike Malmberg replied yes, it would be but part of the proposal by Celtic Bank was that the County vacates that road so it's no longer a public road, and recommended that the boundary be shifted because it's now a private driveway. In 2012 when it was approved, the setback was on that line, and that the boundary to the east made the setback smaller because it was 35 feet from the middle of the road and not the edge of the road, so it reduced the setback.

Chair Smith asked Mr. Malmberg if the issue that he has been discussing was never a topic of the June 12, 2013

meeting. Mike Malmberg replied that in the 2013 hearing, the Planning Commission allowed a discussion about whether or not they would vacate 6300 East. Ms. Martin was there and she consented to vacating 6300 East, but they objected to the setbacks and to the plan. At that point, the Planning Commission said they would not hear any comments on the plan or on the setbacks because that had been decided in 2012.

Chair Smith asked if there was ever an appeal filed prior to this one. Mike Malmberg replied no, there was not an appeal filed in 2012. Ms. Martin did not know that the setbacks had been changed until after the appeal period had run for the 2012 meeting. The main crux of their argument is that in 2013 when Celtic Bank asked to amend the plan and when the plan was amended, the setbacks were reduced. In the Planning Commission meeting, they had indicated they would not discuss about the plan or setbacks, and they would not allow any comments because that was done in 2012.

Phil Hancock said if the whole basis of your appeal is that you feel that the agenda should have included adjustments of the setbacks, even though it was not allowed to be discussed. Mike Malmberg replied that is correct, the agenda included vacating 6300 East and amending the development plan. They were allowed to comment on the vacating of 6300 East but were told they would not take any comments on the development plan or the setbacks because that had been decided in 2012.

Doug Dickson said lets address the issues; the issue of whether the appeal was filed in a timely manner. Was the postdated letter submitted was in regard to the 2012 decision? Mike Malmberg replied that it is undisputed that there was a timely appeal from the 2013 Commission decision. It is also undisputed that there was not a timely appeal for the 2012 Commission decision.

Doug Dickson asked staff for clarification on this issue. Ben Hatfield replied the appeal for 2013 was filed in a timely manner on June 12th, which was 15 days from the date the County Commission heard the item.

Phil Hancock asked in looking at the minutes of the March 27, 2012 meeting, Exhibit B, the agenda indicated that the agenda items was for an amendment to the subdivision, but it didn't specify any particular items. It just has Edgewater Beach Resort PRUD. Was there anything else published for the item? Ben Hatfield replied no, that's all that would have been said on the notice.

Marion Fowers Martin, Applicant who resides in Billings Montana, said she would like to give a brief history for considering this appeal. Chair Smith said that for right now this Board needs to decide if they are going to hear the information. What they need to know was if the appeal was filed in a timely manner. If they decide to move forward, then they will hear the rest of the history.

Marion Martin said basically in March 2012, Ogden Valley Planning Commission meeting; that is the meeting the notice was mailed on March 23rd for the March 27th meeting. She did not receive that in time to respond to the issues in that meeting. The history goes back to 2003-2004, where other times she received timely notice, and she was able to respond by writing to the Planning Commission. She had help from the Planners in the Planning Division in getting more information into the packet. At times she attended the Weber County Commission meetings. In this case of March 2012, she did not receive notice, and was unable to respond in a timely manner of the Ogden Valley Planning Commission meeting. Since there was no notice that the issue was going before the Weber County Commission, she didn't know that it had gone to them. The minutes of the March 23, 2012 meeting didn't come out until after the County Commission meeting had already occurred. This whole decision about this new site plan, without any input from her, was based on the report from the Planning Staff. There was not input from the public for the County Commission meeting and from the Weber County Planning Commission meeting.

Marion Martin said for a period of eight years, where the Ogden Valley Planning Commission and the Weber County Commission had reviewed multiple applications from Dr. Catanzaro and Celtic Bank. Upon reviewing these applications, both commissions consistently from 2004 to 2011 had decided for this to meet the requirements of the General Plan; that it made the transition from her property to the development and it kept the view corridors around the reservoir and along Hwy 39. They allowed only two buildings on the west side of the property with

setbacks of 50 feet from the property line. In March 2012, they made this drastic change to the site plan which allowed for three buildings on the west side of the property where there were only supposed to be one more, and they reduced the setbacks. That was the one decision that she did not get to appeal because she had not received the notice, and the Weber County Commission does not mail out notices. It was not until later that she found from Ben Hatfield that it was too late to appeal that decision.

Marion Martin said in 2013 there is a different issue of when Celtic Bank applied for an amendment to vacate 6300 East. Celtic Bank had originally developed a plan where they had two entrances to their development off of 6300 East. To her understanding, UDOT didn't like their entrance to their subdivision to be so close to the 6300 East causing traffic problems; so they decided to vacate 6300 East and get rid of the two entrances to the subdivision from 6300 East and make that a hammerhead turnaround.

Chair Smith asked if she had got the letter prior to the 27th meeting. Marion Martin replied that she believed she had received it the day of around 5 or 6 pm after work, and by that time the meeting had already occurred.

Chair Smith said this board cannot get into any of this history until they decide if they are going to hear anything. Marion Martin replied that the reason she did not do anything was because there were four phases and it was presented that this was Phase 1 where the existing fourplex is, and where they add pools and things like that. When she talked to Mr. Hatfield, he indicated that there were four phases, and the staff letter had talked about the four phases. She thought she would have an opportunity to object to what would be Phase 3 where the buildings are and the setbacks.

Ben Hatfield said for the record, he did not have any contact with Ms. Martin until 2013. Marion Martin replied that was not true, in September 25, 2012 they had a conversation at that time where they talked about phases.

Chair Smith asked if they were talking about the March 27th meeting, and after that meeting did you see into what the outcome was? Marion Martin replied that she did not do that within the 30 day time frame. Chair Smith said so staff did not notify Ms. Martin of the meeting on the day of, she did not have time to get there, she knew that there was a meeting, and at that meeting they changed the setbacks. She did not look at what the outcome of that meeting was within that time period. Marion Martin replied that she did not get the information of the minutes of that meeting until the end of April or May, and she did not find out until much later when she talked to Mr. Hatfield. There was this issue about the phases and she thought when Phase 3 came up she would have a chance to appeal at that point, because that is the part where the setbacks occurred and where they added the extra buildings.

Marion Martin stated that Celtic Bank indicated that if she vacated 6300 East they would deed over to her a 12 foot strip along the east side of the road from the center line. This would put all the road onto her property, the property line would move over, and it reduced the setbacks even further in 2013. Ms. Martin referred to Exhibit H and gave a brief explanation on the map of how the section lines were moved over and how the setbacks were changed from her property line.

Doug Dickson asked Ms. Martin to clarify the distance of the four-plexus that were built. Marion Martin replied that four-plex when it was measured in 2006 was 50 feet from the property line. The other buildings are what she is concerned about, because they added these extra buildings from center line of the road, so each one of those buildings is less than the distance of the four-plex to the center line of the road. Ms. Martin stated that she agreed to vacate 6300 East so Celtic Bank wouldn't have to deal with UDOT, but they offered to do the 12 feet which she agreed upon. Chair Smith asked if she agreed knowing that was going to change the setback. Ms. Martin replied that she did not think about it at that time.

Rex Mumford asked Mr. Hatfield if he agreed that the appeal that Ms. Martin is making in which she filed a timely appeal of the 2013 meeting. Upon reading the May 21st County Commission minutes, the only thing that he could see was that there was a discussion and an approval to shift the road. Did that meeting also include changing the site plan? Ben Hatfield replied that is correct and referred to the information on the minutes regarding the vacation and the approval of the site plan. The testimony has been given that Ms. Martin and her representative were not

given the opportunity to make this appeal at the meeting at that time. During the meeting, Mr. Taggart walked out of the room to speak with Mr. Malmborg, and when it became open to the public for anybody to comment about the amendment to the site plan, no one stepped forward. What proceeded was the County Commission moved to approve the proposal and changed the site plan. Later on when public comment was open at the meeting, that was when they proceeded to make comments, but it was denied because the decision had already been made

Douglas Dickson asked for clarification. In reading through this material, it seemed that it had a lot to do with technicality. Ben Hatfield replied there were a lot of questions about the setbacks and he wanted to address that. In 2003, there was a completely different plan approved. In 2012, this new plan was presented and the locations of the buildings were established. In 2013, the amendment was presented and the location of the buildings never changed. To be technical, the distance from the 50 foot setbacks in previous plan in 2003, would have been from the future property line, not the section line, or the center of the road, but 30 feet from the center of the road, so that would be 80 feet from the center of the road and that is why that building is located where it is. With the vacation of the road that goes to the center of the line of ownership, in 2012 the 25 foot setback had increased to 30 feet minus the 12 feet that would be deeded over to Ms. Martin for the road.

Ben Hatfield stated that in 2012 the plan completely changed; the number of units, the size of the building, the colors, the architectural style, etc.

Chair Smith said in 2012 a new plan was approved and 35 feet began the setback. In 2012, new rules were applied that included new setbacks.

Rex Mumford said in 2012 the setbacks were based on where the boundary was at that time before the road was vacated. Ben Hatfield replied that in 2012, the boundary was measured the width of the right-of-way was based on that.

Rex Mumford clarified that the buildings did not change location in 2013. Ben Hatfield replied that was correct and the other notable information is that this property is in the CVR-1 Zone, the side yard requirement is 20 feet, and in 2012 and 2013 both plans met the minimum side yard requirement.

Chair Smith opened the floor to comments in support of the applicant.

Keith Rounkles, who resides in Ogden Canyon, said he was on the Planning Commission for six years and every time that they heard this, they always received a letter from Ms. Martin with her comments, so if she said that she did not receive notification, then she did not get it. In 2003 and 2004, the Planning Commission worked very hard with landscaping and trees to help stop that wall affect.

Chair Smith opened the floor for the opposing side.

Leslie Rinaldi, Counsel for Celtic Bank, said she has worked with the Utah Land Open Land Trust, was a photographer for Aquwatch, and has conservation credit of her own. In attendance for this meeting is Chris Reeves, Reeves Engineering, and Ray Bertoldi, Bertoldi Architecture. She understands that this is a very emotional issue for the people of the Ogden Valley and why there are people that are opposition to any development on any adjacent property to the farm; Celtic Bank has taken that into consideration in their development plans. They have worked with the County to minimize the impact on the adjacent property. The road and buildings are where they always have been since 2012.

Leslie Rinaldi said the appeal is an attempt to back through the back door of the statute to allow all citizens including Celtic Bank to go back and change decisions upon which they depended on. They have spent time and energy trying to conform to the General Plan and Mr. Hatfield has repeatedly done an excellent job of helping them conform to the General Plan and as depicted on the plan. As for timely manner of the appeal, it is uncontested that Ms. Martin had notice, and nothing was preventing Ms. Martin from putting forth another letter after the 2012 meetings. She had plenty of time to do so, and it would have been a much closer issue if Ms. Martin would have

seen the minutes even if they had been outside the 15 or 30 day time period and put forth an appeal right then stating she has problems with the setbacks back in 2012.

Leslie Rinaldi said now its 2013 more than a year later, Celtic Bank has moved on with the best of faith, and part of the consideration was not some bold idea that they were going to dump on Ms. Martin. They had concerns for the neighbor on the farm that they would have increased traffic up and down in accordance with the traffic in a development; with the vacation of 6300 East would make things easier. Now it seems that it's being used as a pretext to reopen this issue with setbacks. On Exhibit G of the County Commission minutes of May 21, 2013, and the issue that Ms. Martin wants use is Item 3, request to amend the site plan, and conveniently not reading the remainder which says removing secondary access due to vacation of 6300 East. They can't vacate the road and reduce Ms. Martin's traffic without the standards from the Fire Marshall that included the hammerhead turnaround, the sprinkler systems, and accommodations to vacate 6300 East making the intersection safe for the residents of Ogden Valley.

Leslie Rinaldi said this board should follow Mr. Hancock and Mr. Dickens' recommendation to follow staff's list of items. Was the appeal to reconsider the setbacks and was it filed in a timely manner? Their answer is a resounding no. Ms. Martin had plenty of time to appeal; it's a year later to appeal on decision that was decided long ago. They would join the County's opinion that the time for appeal on those issues is long since passed. As for the notice given per statute, there were several series of appeal opportunities that Ms. Martin did not avail herself of one of them.

Douglas Dickson asked in her opinion, if she had received a letter the day that it happened, how she would feel. Leslie Rinaldi replied that she would feel that she was getting short notice but that would not prevent her from making a phone call. It would not prevent her from exercising her rights by calling the County Planners. Ms. Martin has been involved with this project for years, she knows Mr. Hatfield, the Planners, and she could have let them know that she hadn't received notice and let them know that she would like to add a comment. If you are talking about due process, Ms. Martin has had ample opportunity to be heard.

Marion Martin said when she had received that notice, she didn't know what they were deciding on, she didn't have an attorney at that time, she was not aware of the appeal process, even though she had written letters for years, she did know that there was any way to appeal it. It wasn't until she had talked to Mr. Hatfield later on that she was under the impression that it was going to come up in phases. She thought that when Phase 3 would come up, that was the phase that had these buildings with the changed setbacks. She thought she would have an opportunity at that time to present her case. She didn't know that she could appeal it, and thought she had to wait for another hearing to come up.

Mike Malmborg said for the record, the vacating of the road was not an agreement that Celtic Bank and Ms. Martin got together and agreed to vacate the road. Celtic Bank had applied for two requests, one being to vacate 6300 East, and two to approve the amended plan. Ms. Martin had a choice and she didn't object to vacating the road but she did object to the amended plan but her comments were never allowed.

Phil Hancock said in reviewing staff comments and addressing the first comments with the filing that involves two issues. The first issue is that it is quite clear that the first one was not filed in a time for the 2012 meeting; the dates speak for themselves, even though late notice was given, an appeal could have been made but it wasn't. The second issue where a question could be raised, that is if in fact the vacating the area of the road changed the setbacks, and because of that change, whether it was part of the agenda or not, it did materially affect the setbacks, and would the appeal be appropriate based on the 2013 meeting.

Doug Dickson said that he agreed that it wasn't filed within the 15 days, but the minutes did not come out until the end of April or the first of May of 2012, then how could she make an appeal. If she has a legitimate argument, she could have at least been heard in a public forum and that is her issue.

Phil Hancock said most systems aren't perfect on the appeal process, it was designed to allow a process and that's

why there is a time limit. If that was opened for years and years, then the applicant would not be able to move forward with any degree of confidence, because it could be continually be challenged. So pleading ignorance unfortunately does not give latitude to disobey and that is unfortunate but it's up to the public to be informed.

Rex Mumford said that he agreed with Mr. Hancock, even receiving notice as late as it was, there were still other means that could have happened to find out what took place in that meeting prior to the 15 day time frame to file an appeal. The appeal could have been filed to this Board 15 days after that meeting. Dave Wilson replied that is correct; there is a 30 day appeal and it's been raised that Ms. Martin was unaware that she could do it but ignorance of the law unfortunately doesn't excuse it most of the time. She should have immediately made comments, immediately looked at the appeal rights, and moved forward with the 2012 issue.

Rex Mumford said to follow up with the action to appeal the request from the 2013 meeting, he could see what took place in that meeting amending the property by removing the secondary access road. There were no other setbacks changed at that time.

MOTION: Rex Mumford moved to deny BOA 2013-07 which is a consideration and action on the appeal. Phil Hancock seconded.

DISCUSSION: Rex Mumford asked if needed to better identify his reasoning for the denial. Rob Scott replied yes. Phil Hancock stated that he should address why it was untimely instruction to access usage. Rex Mumford replied that it was not disputed that the 2013 appeal was timely. Phil Hancock suggested including some of staff's comments as well. Rex Mumford replied that in addition there was no new information and the only change that is appealable, when the decision that was made in 2013, was simply to remove the secondary access.

AMENDED MOTION: Rex Mumford moved to deny on an appeal request of BOA 2013-07 Edgewater Beach Resort site plan with the findings that the question of whether the appeal of the site plan from 2012 was timely not a consideration. Notice was provided according to statute and a new review of the 2012 decision should not be conducted. Phil Hancock seconded.

VOTE: A vote was taken and Chair Smith declared the motion to deny approved by a unanimous vote.

3. **Adjourn:** The meeting was adjourned at 6:20 pm.

Respectfully Submitted,



Kary Serrano, Secretary
Weber County Planning Commission

Minutes of the Board of Adjustment held September 26, 2013 in the Weber County Commission Chambers, 2380 Washington Blvd., Ogden UT

Members Present:

Deonne Smith, Vice Chair
Celeste Canning
Nathan Buttars
Phil Hancock
Douglas Dickson
Rex Mumford

Staff Present: Robert Scott, Planning Director, Sean Wilkinson, Planner, Sherri Sillitoe, Secretary

1. BOA 2013-08 Consideration and action on a variance request for a new dwelling to encroach up to 65 feet into the required 75 foot front yard setback and up to 30 feet into the required 40 foot side yard setback on Lot 101 of Green Hill Country Estates Phase No. 6 (Tracy and Sherie Frehner, Applicants)

Sean Wilkinson presented a report and indicated that this subdivision is at the top of Maple Canyon on Maple Drive. In answer to a question by Phil Hancock, Sean Wilkinson indicated that using the contours it shows the lot

The majority of the parcel is zoned F-5 but the majority of the buildable area is zoned F-40. The lot has a total area of 2.9 acres; however only one acre can be built on with slopes less than 25%. There is a stream corridor 50 ft. setback which according to the ordinance is an area that is not to be disturbed. Various requests also have to meet Title 102 Chapter 3 of the Land Use Code. There are five criteria a variance requests has to meet. The special circumstances attached to the property include steep slopes, stream corridor and the large setbacks of the F-40 Zone that all impose the hardship on the applicant.

Chair Smith reported that an email was received from a gentleman who his concern that the home would be 10 ft. from the property line. Sean Wilkinson indicated that the home would be 10 ft. from the property line where typically there is a 40 ft. setback requirement. The neighbor felt that the home would be too close. Sean Wilkinson indicated that this neighbor has a restricted lot and would probably not be able to build in one area and would have to build on the other side of the stream corridor.

Chair Smith stated that it appears that the setbacks are changing to a 10 ft. setback.

Rex Mumford asked the zoning on lot 102, and Sean Wilkinson replied the zoning is F-5. Mr. Mumford asked if the stream corridor changed the building envelope, and Mr. Wilkinson replied yes. The stream corridor protection zone came into play after this lot was recorded. The width is 20 ft.

Celeste Canning asked if the F-40 Zone came into play after the subdivision was recorded, and Sean Wilkinson replied no. They still may have had to apply for a variance. The Hillside Development Ordinance was changed after the subdivision was recorded.

Chair Smith asked how far back the house will be from the front. Are they requesting that they could go all the way up to 10 ft. from the road? Sean Wilkinson replied yes, only in two points; as it gets further back it is close to 30 ft. The way the home is designed, a driveway can be built in front of the garage.

Rex Mumford indicated that he shows there was an option b so was there an option a?

Phil Hancock indicated why would you not request some variance from the stream corridor? Sean Wilkinson indicated that the stream corridor is also down the hill so it made better since to vary the front setback closer to the road. Mr. Hancock asked if he is familiar with the flows of that spring. Sean Wilkinson indicated that the stream flows in the spring. The 30 ft. drainage easement starts at the property.

Rex Mumford said Maple Road is a private drive, and what goes into a private road different from a public road. Sean Wilkinson indicated that a private road right of way width is reduced and the county does not maintain that road. A private road will be maintained by a homeowners association.

In answer to a question by Phil Hancock, Sean Wilkinson indicated that there would be no properties above this that would need to have access through this road. There are probably 6 more homes that could be built.

Kelly Nelson is the architect of record on the project and stated that given the fact that there have been other homes in the subdivision allowed to encroach, they believe they could receive a variance. The property is steeper than it shows on paper.

Celeste Canning stated that she believes the 10 ft. setback is a little extreme and it seems it is based on the size of the home. Can they move it closer to the neighboring property? It was pointed out that the neighbor has the 40 ft. but he will be 60 ft. to the buildable section. She is a little less concerned about the setback in the cul-de-sac. She knows that they should be allowed to build but that doesn't mean that they can build what they want.

Kelly Nelson said the design of the home progressed and was oriented down the canyon to capture the views. It can be redesigned, but he cannot speak for the home owner whether that was desired.

Celeste Canning asked how this home compares to others in the subdivision, and Kelly Nelson replied that it is smaller with 1,600 sq. ft. livable area on the main floor. It is comparable to what is being built in that neighborhood.

Chair Smith asked the size of the garage. Mr. Nelson replied that it is a two car garage.

Rex Mumford replied that he is familiar with the cul-de-sac. He believes the home could be built as is further to the west and to the south essentially in an F-5 envelope. Kelly Nelson replied yes, it could.

At the request of Celeste Canning, Kelly Nelson showed what he felt was the buildable areas on the lot.

Phil Hancock replied that it seems like an I shaped home is a stretch from the start. Kelly Nelson indicated that they designed the home and then became aware of the F-40 restrictions on the lot. The homeowners association expressed their agreement with the requested setbacks.

Celeste Canning asked Sean Wilkinson how the size of the homes fits in with the other homes of the subdivision. Sean Wilkinson indicated that he can say that 1,600 sq. ft. homes are smaller than other homes you could build in the Ogden Valley. Celeste Canning indicated that 1,600 sq. ft. home seems substantially smaller than other homes in the Greenhills Subdivision and Chair Smith agreed.

Douglas Dickson asked staff if they recommend approval. Sean Wilkinson indicated that their recommendation is for approval. Perhaps where there is a concerned neighbor 20 ft. may be more

reasonable. Staff believes a variance is warranted, but that is a decision that the board would have to make.

Celeste Canning said it doesn't seem like they are overreaching with the smaller 1,600 sq. ft. size of the home. Even in the F-5 Zone, she struggles with the 10 ft. setback.

Rex Mumford indicated that he agrees. He is uncomfortable with the 10 ft. setbacks.

Phil Hancock indicated that he doesn't have a problem going into the drainage easements.

Rex Mumford asked if there is sidewalk there and Sean Wilkinson replied no.

Celeste Canning stated that essentially they would have 20 ft. from the edge of asphalt and a building.

Douglas Dickson indicated that because the neighbor's ground is higher, he doesn't want the neighbor to be restricted and pushed against. He doesn't have a problem with adjusting the front property line. Once you disturb soils, you don't gain back the integrity. Sean Wilkinson replied that that is the purpose of the stream corridor setback. If they are not comfortable with 10 ft., they need to find what is practical based on the lot's circumstances.

Chair Smith indicated that if you had a 20 ft. side yard setback, you would only be 10 ft. off the garage. Could they move the house a little bit to the south side? Brent Nilson indicated that they could shift the house to the west and pull it further away from the front property line. They have no interest in getting close to the drainage easement as it is 70 ft. down. Chair Smith asked if they shifted, could they give five more feet on each of the two points, and Mr. Nilson replied yes.

Douglas Dickson asked if they could twist the house and leave the one on the frontage.

Chair Smith stated that she agrees the cul-de-sac is a buffer for the front point but the other point is right on the public utility easement and that her concern. An extra 5 ft. would be more appropriate for all the neighbors to enjoy the subdivision's lifestyle.

Sean Wilkinson indicated that the cul-de-sac would remain. There is a gated temporary turn around further up.

Doug Dickson asked if it would be appropriate to have a site visit. The other members indicated that they are familiar with the area.

Rex Mumford indicated that if the neighbor came to staff they would potentially be able to build a small house and that could affect his building envelope. Lot 102 is subject to the F-5 Zone for a 30 ft. setback and 20 ft. side yards. He is concerned with giving more a variance than the setbacks allowed in the F-5 Zone.

Celeste Canning asked if the whole street would ask for variances, and Sean Wilkinson replied that they may have five more variance requests.

Sean Wilkinson indicates that he would be concerned with pushing the home further back down the hill. A variance to 14 ft. to 20 ft. would be more appropriate.

MOTION: Celeste Canning moved that this lot qualifies for a variance in that we allow that variance but with instead of the 10 ft. setback they require a 15 ft. in the side and in the front otherwise they approve it as requested. Phil Hancock seconded the motion.

DISCUSSION:

Douglas Dickson felt that they could just amend the side yard setback.

VOTE: A vote was taken and Chair Smith indicated that the Motion carried by a 4-2 vote.

- Rob Scott indicated that the Annual Dinner would be held on Wednesday December 4th at 6:30 P.M. at Ruby River.
- Staff tentatively received a resignation from a member on the OVPC. If anyone has interest they may apply when the resignation is formalized. He will send an email.
- Next week is the fall conference of the Utah APA and we will receive an award for the Agri-tourism ordinance.

The meeting was adjourned at 5:29 P.M.

Respectfully Submitted,

Sherri Sillitoe, Secretary
Weber County Planning Commission



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on a variance request for a new dwelling to encroach up to nineteen (19) feet into the required seventy-five (75) foot year around stream corridor setback on Lot 6 of Hidden Oaks at Wolf Creek Subdivision.

Agenda Date: Thursday, February 27, 2014

Applicant: Elias Harik

File Number: BOA 2014-01

Property Information

Approximate Address: 5001 Fairways Drive; Eden UT

Project Area: 21,292 Sq.-ft

Zoning: Forest Residential Zone (FR-3)

Existing Land Use: Vacant lot

Proposed Land Use: Construction of a new single-family dwelling

Parcel ID: 22-209-0006

Township, Range, Section: T7N, R1E, Section 22

Adjacent Land Use

North:	Residential	South:	Residential
East:	Residential	West:	Residential

Staff Information

Report Presenter: Steve Parkinson
sparkinson@co.weber.ut.us
801-399-8768

Report Reviewer: JG

Applicable Ordinances

- Weber County Land Use Code Title 104 (Zones) Chapter 17 (Forest Residential Zone FR-3)
- Weber County Land Use Code Title 104 (Zones) Chapter 28 (Ogden Valley Sensitive Lands Overlay Districts)
- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)

Background

Consideration and action on a variance request for a new dwelling to encroach up to nineteen (19) feet into the required seventy-five (75) foot year around stream corridor setback on Lot 6 of Hidden Oaks at Wolf Creek Subdivision. The lot has a total area of 21,292 Sq.-ft, When the subdivision was approved in 2003 there was a setback requirement from the stream high water mark of fifty (50) feet, which was identified on the original plat (see exhibit "C"). In 2008, a new sensitive lands ordinance was created (Title 104, chapter 28) that required an even larger setback of seventy-five (75) feet from the high water mark for year around streams. The setbacks for the FR-3 zone are = Front 25', Side(s) 8'/10'; Rear 30'.

The applicant has arranged the home on the property in such a way to limit the encroachment into the stream corridor setback to nineteen (19) feet and that no other setback requirements are being encroached upon. Staff has reviewed other arrangements (layouts for the house) that would not encroach into the stream corridor and without also asking for a variance for encroachment into the other setbacks. After many attempts, staff has confirmed that the applicants proposed layout is the best to minimize the encroachment on all required setbacks, including the stream corridor setback.

Summary of Board of Adjustment Considerations

Title 102 Chapter 3 of the Weber County Land Use Code 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 Zoning Ordinance. In order 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 Zoning Ordinance.*
 1. *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.*
 2. *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.*
- b. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
 1. *In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.*
- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- d. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- e. *The spirit of the land use ordinance is observed and substantial justice done.*

The applicant has submitted a narrative addressing the above criteria, which is attached as Exhibit "A". Staff's analysis and findings are discussed below.

- a. Based on the odd shape of this property and the additional setback requirements described above, it is unnecessary to strictly enforce the seventy-five (75) foot stream corridor setback requirements. Literal enforcement of this requirement would place an unreasonable hardship on the applicant by not allowing a dwelling to be built. While other properties in this area have similar hardships associated with steep topography, many lots within the subdivision are deeper thus giving them more room to accommodate the increased setback that occurred several years later.
- b. The special circumstances attached to this property are the physical attributes of the property associated with the odd shape of the lot, and the increased stream corridor setback imposed on the property years after it was platted.
- c. The physical constraints of the property (lot shape) along with the increased stream corridor setback requirements would deprive the applicant of the ability to build a dwelling if the setback requirements are strictly enforced. Single-family dwellings are allowed in the FR-3 Zone, other properties in this area have dwellings, and the applicant will be denied a right to build that others have built.
- d. The General Plan will not be adversely affected by this variance request because single-family dwellings are called out for this area, and that is what is being proposed.
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code. Approval of the variance allows the applicant to build a dwelling.

Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the FR-3 Zone. If the requested variance is granted, it will not affect the goals and policies of the Ogden Valley General Plan.

Conditions of Approval

- Meet all other applicable County review agencies requirements.
- Obtaining a land use permit and a building permit prior to construction.

Staff Recommendation

Staff recommends approval of the variance for a new dwelling to encroach up to nineteen (19) feet into the required seventy-five (75) foot year around stream corridor setback on Lot 6 of Hidden Oaks at Wolf Creek Subdivision, based on it's compliance with the applicable variance criteria discussed in this staff report.

Exhibits

- C. Applicant's Narrative B. Applicant's Site Plans C. Hidden Oaks at Wolf Creek subdivision recorded plat

Location Map



Exhibit "A"

Applicant Narrative

Please explain your request

The purpose of this application is to be granted a variance due to undue hardship caused by the 75' Seasonal Stream Corridor Setback (SSCS) for the property at 5001 Fairways Dr, Eden, UT 84310. The proposed design of the home meets all required Weber County setbacks and has been placed in a manner to encroach minimally into the SSCS. The shape of this particular property creates an irregular building envelope which is further hindered by the SSCS. When this property was first subdivided, the SSCS was not in existence and likely not a consideration. Had it been a consideration at the time when the property likely would have been platted differently as to allow a better property shape upon which to build on.

Variance Request

Explain how the variance will not substantially affect the comprehensive plan of zoning in the County and that adherence to the strict letter of the ordinance will cause unreasonable hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.

The variance will not substantially affect the comprehensive plan of zoning in that it meets all of Weber County's typical ordinances regarding setbacks, size and mass. The general plan will not be contrary to public interest in that the home is designed to take into consideration as much of the properties buildable area as possible. Of the home total developed area we are requesting a variance to allow less than 400 sq.-ft of developed area to encroach into the SSCS. A review of sheet "C1.2 - Site Plan Shaded" (Exhibit "B-1") shows to corner of the home and the areas of the home that encroach into the SSCS. The solid shaded areas are enclosed areas of the home and the cross hatch area is open covered veranda area.

Variance Request (continued...)

List the special circumstances attached to the property covered by the application which do not generally apply to the other property in the same zone.

For demonstration purposes I have attached site plans for comparison review. For the comparison I have used the 50' rear setback for all the calculations. The first illustration is the "Typical Site Plan" (Exhibit "B-2") and shows a 110' wide x 193.55' deep (21,291 sq.-ft) with the same setbacks as is required for the parcel in this matter. The net building area is 10,906 sq.-ft. The Fairways property by comparison contains only 7,582 sq.-ft of buildable area as can be seen on sheet "C1.3 - Site Plan Net Area" (Exhibit "B-3"). There is 3,324 sq.-ft less than a standard property of the equal size and setbacks. This is a direct result of the very irregular shape of the property. The variance is essential to the enjoyment of this property. The property owner in this instance is one who believes that his home will be an asset to the community and will fit in harmony and style with his fellow neighbors. The home has been designed with the owner's minimal area needs for a one story home.

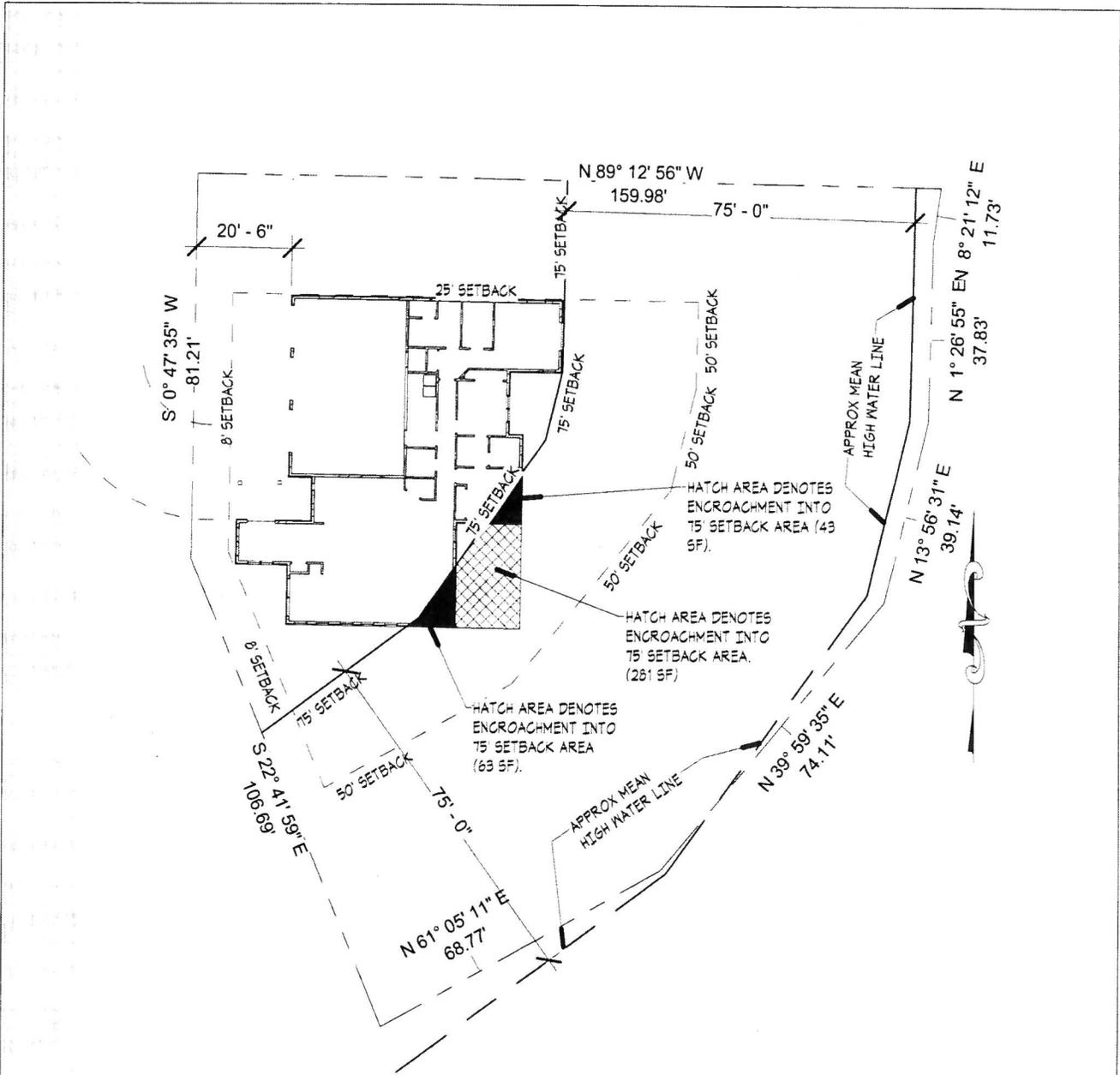
Based upon the previously stated special circumstances, clearly describe how the property covered by this application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone.

Variance Request: We request that a variance be granted based on the determination that the 75' SSCS encroaches onto this property with adverse effects. This property is composed of 8 separate perimeter lot line segments creating a one of a kind irregular shape. The SSCS covers 14,029 sq.-ft of the 21,291 total sq.-ft of this property area of which we would like to encroach into it with less than 400 sq.-ft of the proposed home or less than 3% of its area.

Variance Request (continued...)

Explain how the previously listed special circumstances are not considered to be economic or self-imposed hardships.

The special circumstances in this matter are not considered to be self-imposed as the design of the home has utilized all of the area available on the property. The size of the home which is 2,399 sq.-ft of living area is in my opinion a small home compared to what is typically requested and even at that size it does not fit on a one half acre lot. All considerations have been taken into account and the home situated on the property to minimally encroach into the SSCS. The home has been designed as small as possible to maintain the majority portion of the house outside the SSCS. The home meets all other criteria set forth by Weber County rules and regulations. It is confirmed by the site plan demonstration that the home has been laid out in a manner to effectively stay out of the SSCS. Of the homes overall 2,399 sq.-ft living area, 106 sq.-ft of enclosed area and 281 sq.-ft of open area are what is being requested to be granted this variance.



1 Site Plan With Shading 1-30
1" = 30'-0"

LUNDIN DESIGN GROUP

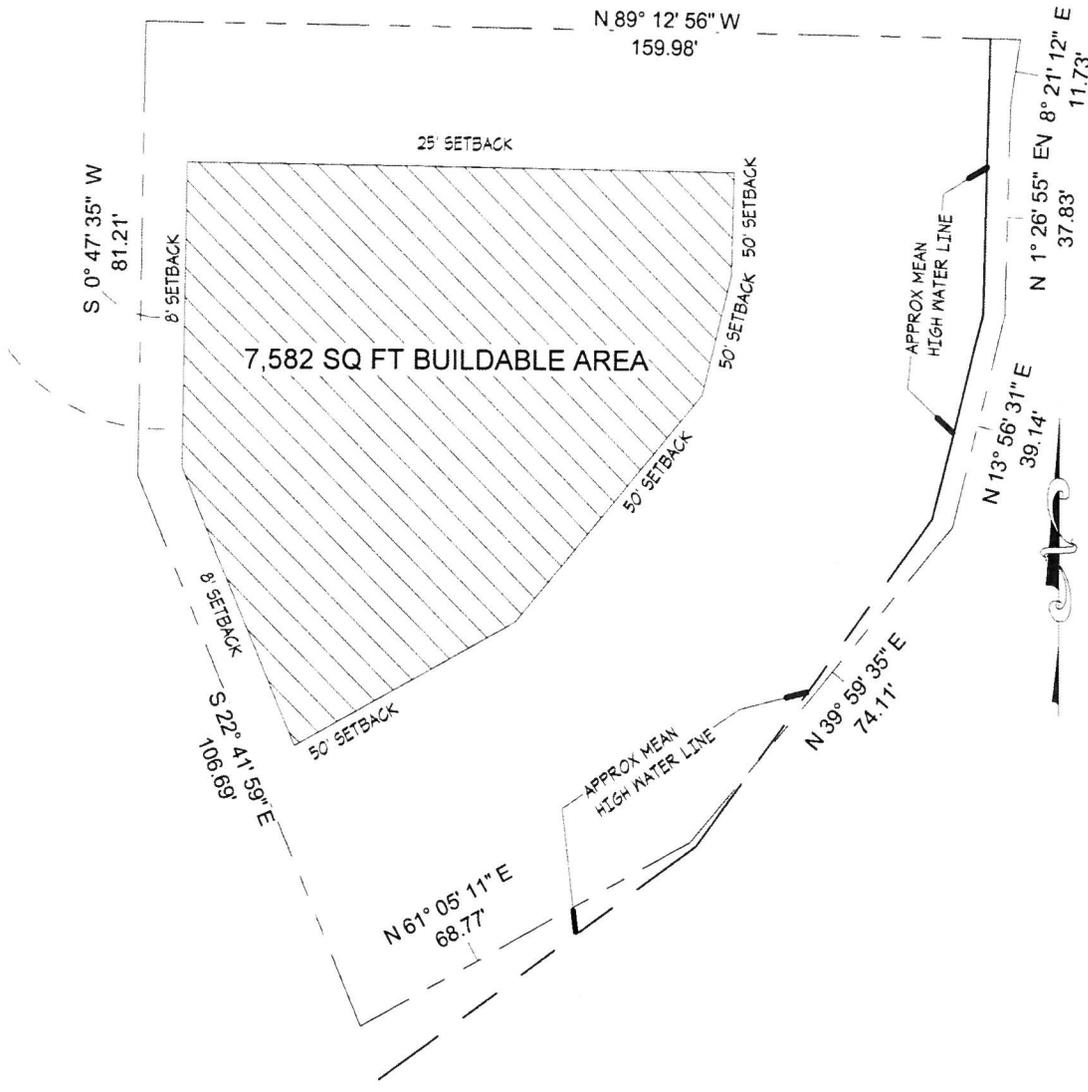
2409 GRANT AVENUE SUITE #212 - GORDON UT 84401
P: (801) 345-1560 F: (801) 345-1561

DESIGN

Eli Harik

The "69" er

Site Plan Shaded		C1.2
Project number	Project Number	
Date	02/04/2014	
Drawn by	Karl Lundin	
Checked by	Karl Lundin	
Scale		1" = 30'-0"



1 Site Plan Net Area 1-30
1" = 30'-0"

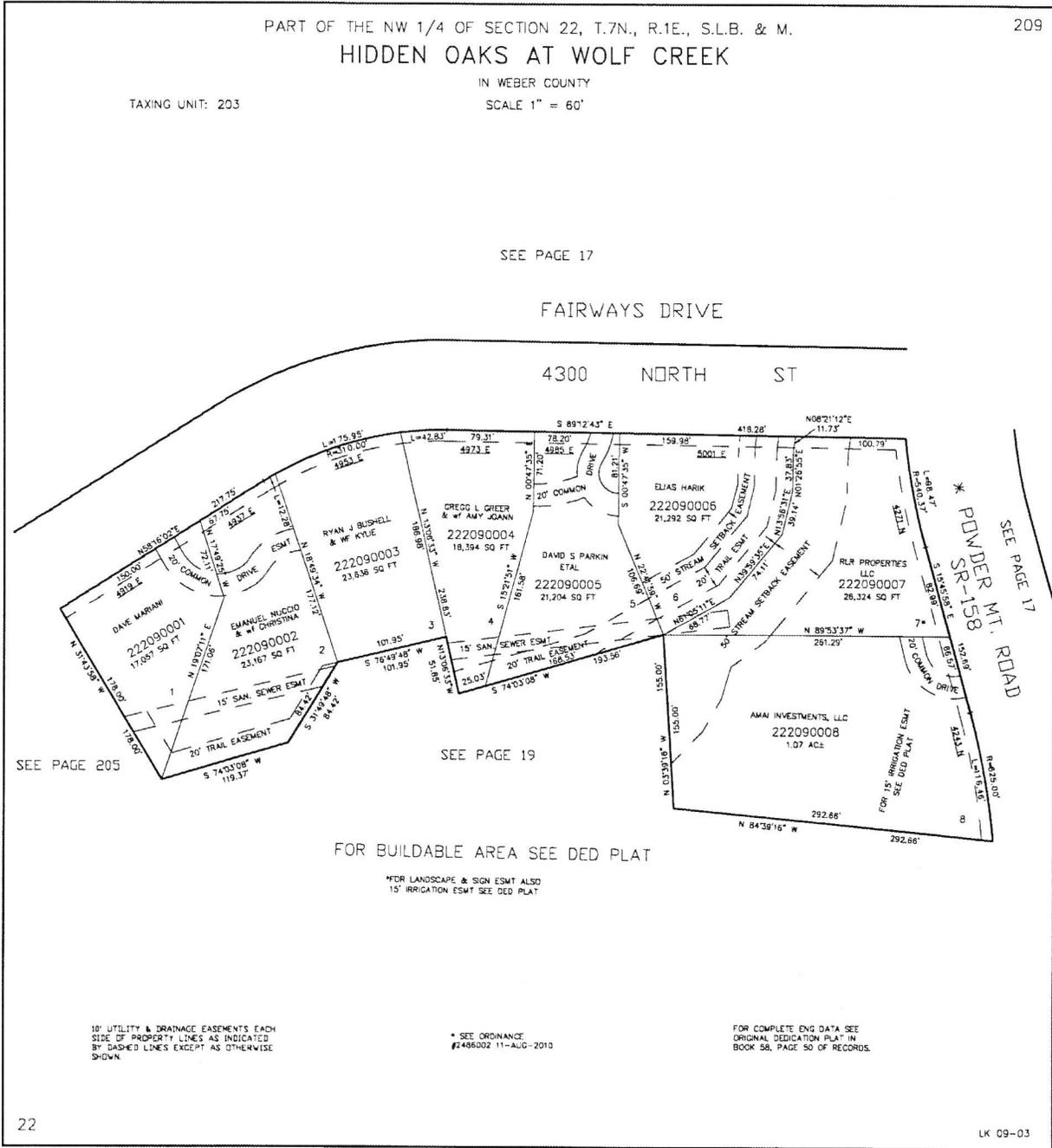
LUNDIN DESIGN GROUP

2405 GRANT AVENUE SUITE #212 - OGDEN, UT 84401
P: 1 (801) 395-1500 F: 1 (801) 395-1501
DESIGN

Eli Harik
The "69" er

Site Plan Net Area	
Project number	Project Number
Date	02/04/2014
Drawn by	Author
Checked by	Checker
Scale	1" = 30'-0"

C1.3



PART OF THE NW 1/4 OF SECTION 22, T.7N., R.1E., S.L.B. & M.
HIDDEN OAKS AT WOLF CREEK

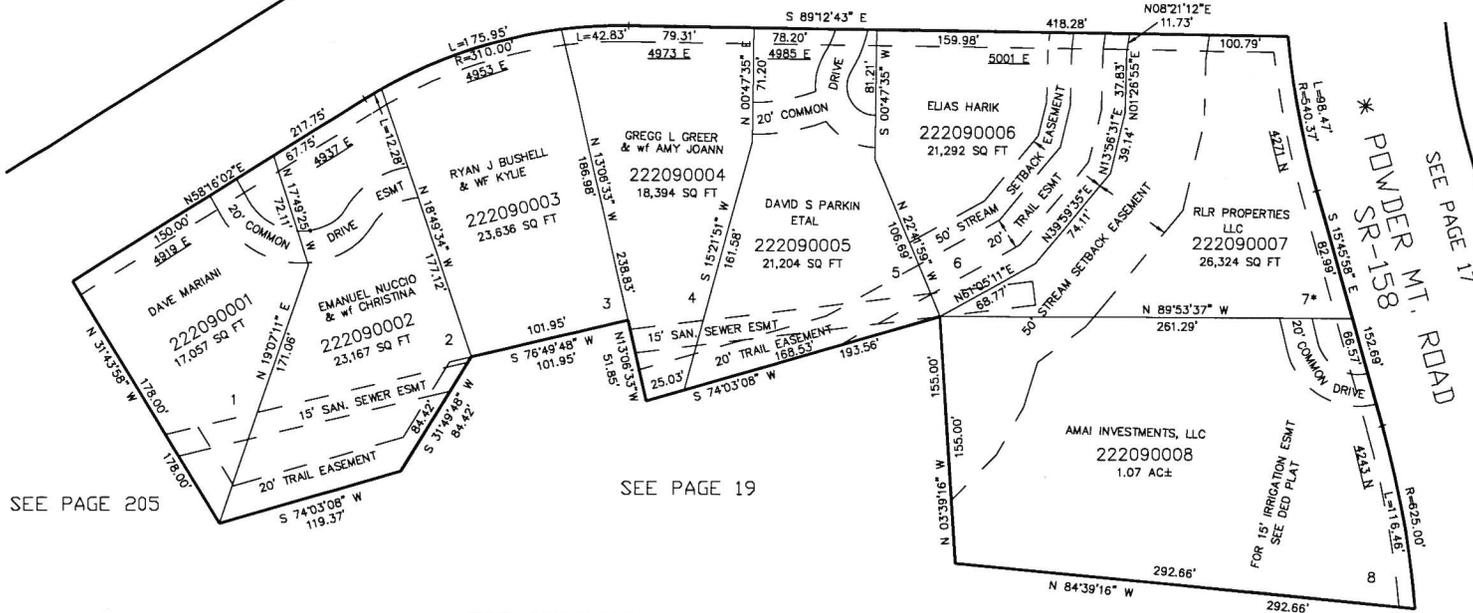
TAXING UNIT: 203

IN WEBER COUNTY
 SCALE 1" = 60'

SEE PAGE 17

FAIRWAYS DRIVE

4300 NORTH ST



SEE PAGE 205

SEE PAGE 19

SEE PAGE 17

FOR BUILDABLE AREA SEE DED PLAT

*FOR LANDSCAPE & SIGN ESMT ALSO
 15' IRRIGATION ESMT SEE DED PLAT

10' UTILITY & DRAINAGE EASEMENTS EACH
 SIDE OF PROPERTY LINES AS INDICATED
 BY DASHED LINES EXCEPT AS OTHERWISE
 SHOWN.

* SEE ORDINANCE
 #2486002 11-AUG-2010

FOR COMPLETE ENG DATA SEE
 ORIGINAL DEDICATION PLAT IN
 BOOK 58, PAGE 50 OF RECORDS.



Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on a variance request for a detached garage to encroach 2.08 feet into the 30 foot rear yard setback on property located at 950 Ogden Canyon in the Wilcox Camping and Boating Resort area of the Ogden Canyon.

Agenda Date: Thursday, February 27, 2014

Applicant: Michael Sherman

File Number: BOA 2014-02

Property Information

Approximate Address: 950 Ogden Canyon

Project Area: 6806 square feet

Zoning: Forest F-40 Zone

Existing Land Use: Foundation

Proposed Land Use: Garage

Parcel ID: 200190016 (200190006)

Township, Range, Section: T6N, R1E, Section 16

Adjacent Land Use

North: Vacant USA Property	South: Residential
East: Vacant USA Property	West: Residential

Staff Information

Report Presenter: Jim Gentry
jgentry@co.weber.ut.us
801-399-8767

Report Reviewer: SM

Applicable Land Use Codes

- Weber County Land Use Code, Title 102 Administration, Chapter 3 Board of Adjustment
- Weber County Land Use Code, Title 104 Zones, Chapter 9 Forest Zones F-5, F-10, and F-40

Background

The applicant is requesting a variance to allow a garage to encroach 2.08 feet into the 30 foot rear yard setback located at 950 Ogden Canyon in the Wilcox Camping and Boating Resort area of the Ogden Canyon. The property is zoned Forest F-40 which requires 40 acres and 660 feet of frontage. These lots were created prior to zoning and are significantly smaller. The garage will be 19.8 feet deep. A standard garage is usually 24 feet deep.

The applicant recently purchased the lot on the north side of his property which has an existing foundation and wall on it. The applicant had the property surveyed and discovered the existing foundation will need a variance in order to be able to be used. If the applicant pushes the structure towards the front of the property, the structure would encroach into the 75 foot stream corridor setback. A part of an old foundation or wall already encroaches into the stream corridor setback which the applicant will remove. The survey showed that the existing foundation the applicant wants to use is encroaching 2.08 feet into the 30 foot rear setback. The applicant's property is located between Wheeler Creek in the front of the property and the access road which serves other lots to the rear of the property. The applicant would like to keep the structure out of the stream corridor setback and therefore is requesting this variance. The encroachment will be no further than the access road through the property. Many of the other existing structures in this subdivision encroach into the required setbacks.

Summary of Board of Adjustment Considerations

- 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 Codes. Weber County Land Use Code, Section 102-3-4 states that "the Board of Adjustment may grant a variance only if the following 5 criteria are 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 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.*
 - 2. *In determining whether or not enforcement of the Land Use Code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
- B. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone.*
 - 1. *In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.*
- C. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.*
- D. *The variance will not substantially affect the general plan and will not be contrary to the public interest.*
- E. *The spirit of the land use ordinance is observed and substantial justice done.*

The applicant has submitted a narrative addressing the above criteria, which is attached as Exhibit B. The Planning Staff's analysis and findings are provided below:

- 1. Based on the location of the property and the physical characteristics (e.g. steep slopes to the east, stream to the west) of Wilcox Camping and Boating Resort area, it is unnecessary to strictly enforce the 30 foot rear yard setback requirement. By allowing the garage to encroach 2.08 feet into the rear yard setback the applicant's garage will not encroach into the stream corridor setback.
- 2. This lot had an old home on the property which was torn down by the previous owner who was going to rebuild the house. A permit was issued by the Planning Division for the home to be rebuilt. The foundation and wall structure were built by the previous land owner without building permits and could be considered a self imposed hardship; however, this lot has 6,806 square feet and is a legal non-conforming lot meaning that a house could be built on the parcel if all building requirements could be met. The impact of this accessory use is far less than having a house built on the lot. If approved, the applicant will combine three lots to form one bigger lot eliminating two lots from the subdivision. The structures that are currently encroaching in the stream corridor will be removed and the 2.08 foot encroachment will have no impact on any of the surrounding lots. Many of the surrounding lots have structures that encroach into the setbacks.

There are physical characteristics of the lot such as the size, the stream, the road, zoning, and the fact that the lot was created prior to zoning which makes a variance necessary.

- 3. The circumstances attached to this property are special and do not generally apply to other properties in the same zone. There are physical characteristics of the lot such as the size, the stream, the road, zoning, and the fact that the lot was created prior to zoning. The lot size is far less than the 40 acres required by zoning. Many of the surrounding lots have structures that encroach into the setbacks.
- 4. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. The applicant would like a place to store vehicles, equipment, and a snow blower. The challenge is that the temperature in Wheeler Canyon does not rise above freezing for several months; this makes it difficult to start cars and

equipment. It is approximately 150 yards to the trail head and the road is cleared with a snow blower which is difficult to start when left outside in the cold temperatures.

5. If the variance is granted it will not affect the goals or objectives as outlined in the Ogden Valley General Plan.
6. If granted, the variance will maintain a 75 foot setback from the stream corridor. There is already an access road through the rear of the property and this variance will encroach no further than the access road. This variance will provide relief from the physical hardships associated with the property.

Conformance to the General Plan

Single-family dwellings are allowed as a permitted use in the Forest F-40 Zone. If the requested variance is granted, it will not affect the goals and policies of the Ogden Valley General Plan.

Conditions of Approval

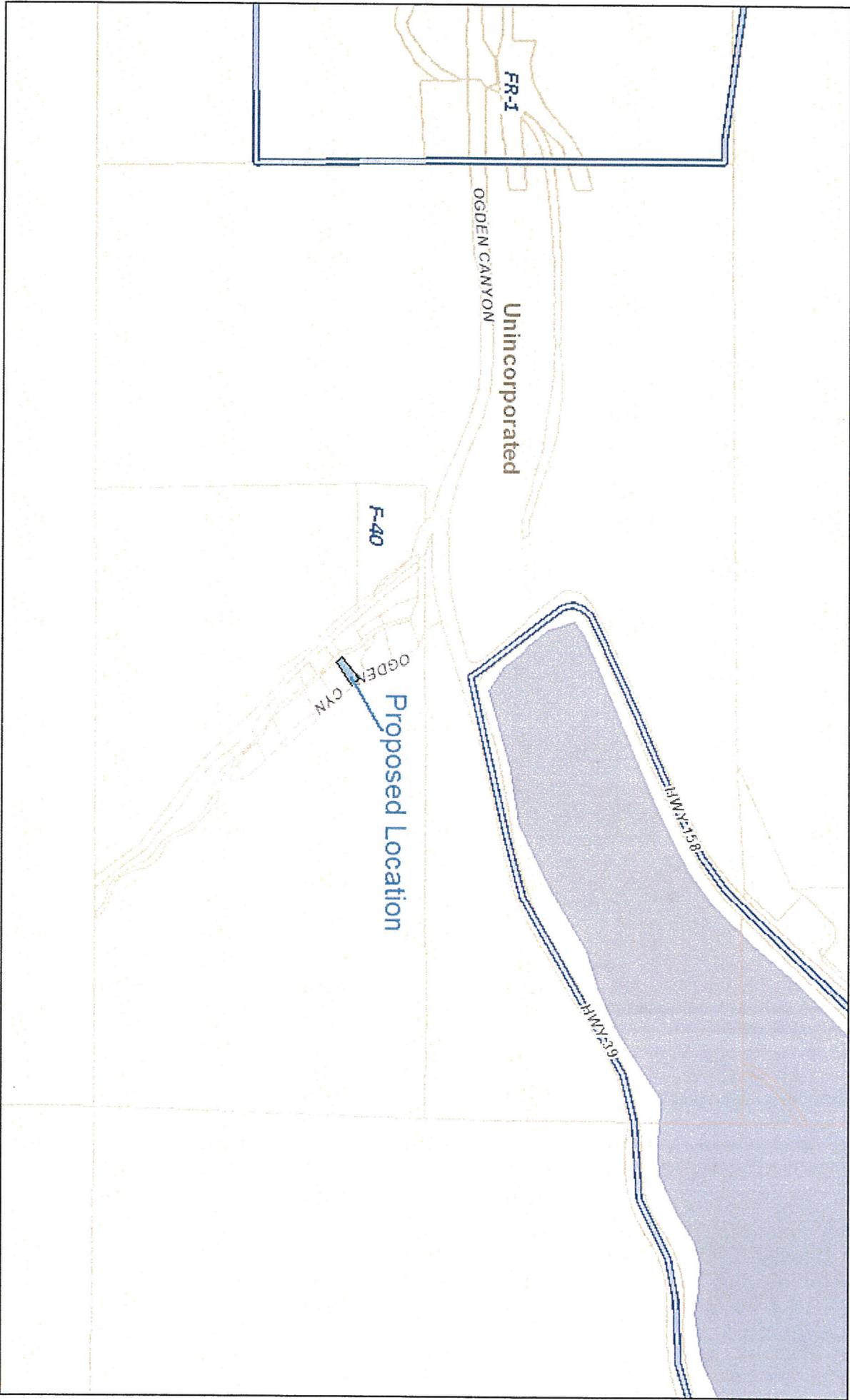
- Meeting the requirements of applicable County review agencies.
- Obtaining a land use permit and a building permit prior to construction.
- Submitting a one lot subdivision combining the applicant's three legal non-conforming lots into one lot prior to the construction of the garage.

Staff Recommendation

Staff recommends approval of the variance request for a garage to encroach 2.08 feet into the required 30 foot rear yard setback, based on its compliance with the applicable variance criteria discussed in this staff report.

Exhibits

- A. Location Map
- B. Applicant's Application and Narrative
- C. Pictures of the site
- D. Site Plan

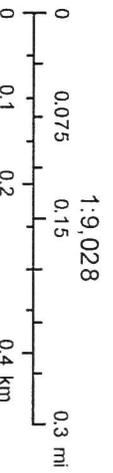


February 13, 2014

Street Labels

City Labels

 Zoning Area



Weber County Board of Adjustment Application

Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed	Fees (Office Use) \$225.00	Receipt Number (Office Use)	File Number (Office Use)
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Property Owner Contact Information

Name of Property Owner(s) <i>Michael & Carolyn Sherman</i>		Mailing Address of Property Owner(s) <i>960 Ogden Canyon Ogden, UT 84401</i>	
Phone <i>801-549-8483</i>	Fax		
Email Address <i>Michael.Sherman@hill.af.mil</i>		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	

Authorized Representative Contact Information

Name of Person Authorized to Represent the Property Owner(s)		Mailing Address of Authorized Person	
Phone	Fax		
Email Address		Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	

Appeal Request

- A hearing to decide appeal where it is alleged by appellant that there is an error in any order, requirement, decision or refusal in enforcing of the Zoning Ordinance
- A variance request:
 __ Lot area Yard setback __ Frontage width __ Other: _____
- A Special Exception to the Zoning Ordinance:
 __ Flag Lot __ Access by Private Right-of-Way __ Access at a location other than across the front lot line
- An Interpretation of the Zoning Ordinance
- An Interpretation of the Zoning Map
- Other: _____

Property Information

Approximate Address <i>960 Ogden Canyon Ogden 84401</i>	Land Serial Number(s)
Current Zoning <i>F-40</i>	

Existing Measurements		Required Measurements (Office Use)	
Lot Area	Lot Frontage/Width	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback	Rear Yard Setback	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback	Side Yard Setback	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

Attachment one:

Please explain your request.

During the past five years my wife and I have become full time residents in Wheeler Creek. We have made significant improvements to the area during that time and plan to continue to do so. We demolished a 1200 square foot home that had fallen into poor repair and turned the area it occupied into a flat gravel lot for parking and games. We demolished a shed that had once been used to pump water from the stream and removed all the pipes and the cistern. We have planted appropriate vegetation to reduce erosion. We have made significant improvements to the cabin we are occupying, a new roof and siding as well as rock work on the walls. The area is much improved since we have lived there and impact has been reduced from two houses and five bedrooms to one house and one bedroom.

The challenge that we are now facing is that we have no garage or storage and the winters here are harsh. We hit twenty below on several days last winter and did not rise above freezing for several months, this makes it difficult to start cars and get to work. It is approximately 150 yards to the trail head and I clear that road with my snow blower. All of my vehicles, equipment, and my snow blower have to remain outside since I have no garage.

Recently I purchased the lot on the north side of my property which has an existing foundation on it. The county informed me that if I wished to build on this foundation I would need to have it surveyed and create a subdivision consolidating my three lots. I went ahead with the survey part of the plan and have discovered in the process that the existing foundation will need a variance in order to be able to use it as planned.

Many of the existing structures in Wheeler creek pre date the F40 zoning and are much closer to the property lines than the variance I am requesting.

This garage will provide a place for property and tools to be protected and stored that will otherwise be stored outside creating an eye sore and contributing to their deterioration.

The F40 zoning reads – 30 feet in the rear yard, this will require a 2.08 foot variance

Attachment two: Variance request

1. Explain how the variance will not substantially affect the comprehensive plan of zoning in the county and that adherence to the strict letter of the ordinance will cause unreasonable hardships, the imposition of which up on the petitioner is unnecessary in order to carry out the general purpose of the plan

The variance will not substantially affect the comprehensive plan of zoning in the county because this area is an anomaly; all the structures were built and then the zoning was added after the fact. The area I would like to build on had a house on it at one time. Since none of the structures in this area are in compliance, and my request is only for a small variance, granting the variance will not affect the general purpose of the plan.

Unreasonable hardship: It will be very difficult to continue to endure the winters without a garage to work on vehicles, store snow removal equipment and keep vehicles ready for work and emergencies. This past winter it was necessary on a frigid day to bring the snow blower into the kitchen in the morning in order to repair it so that we could clear the road and get out of the canyon to go to work. I leave for work at 4.30 A.M. and if it is snowing my wife must deal with the cold and the snow alone in order to leave for work. A garage is very useful to all homes; it is a must in this environment. My garage will not impact any other property owners or make their property less accessible or valuable. On the contrary it will fit the landscape and enhance the area. The existing foundation is an eyesore and gives the area an unfinished appearance.

The General plan for the F40 forest zone was created long after the homes in Wheeler creek were established. The area is different since it falls within the zone but construction in the canyon was ninety percent finished when the ordinance was created. The remaining work that needs to be done to bring it up to acceptable living standards and allow residents to enjoy their properties will not affect the general plan or be contrary to the public interest. On the contrary, properties that have been deteriorating and have been an eyesore will now be fixed and maintained and will enhance the areas aesthetic appeal.

2. There are special circumstances attached to the property covered by the application which do not generally apply to other properties in the same zone. .

Special circumstances exist because existing foundation is on a lot that had a home on it at one time. The home was demolished and a new home was slated to be built. The lane use permit was issued. The person attempting to build the home poured the currently existing foundation but was not able to complete the project within the specified time allowed.

If I am successful in this variance application I am planning to consolidate the three lots I have purchased (which would have had three families) into one lot with one bedroom significantly reducing impact to the area.

Attachment 3

The property described is deprived of privileges possessed by other properties in the same zone.

Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

The property shown in the picture has a garage that is located 13 feet from the rear property line. The set back is 30 feet and so it is 17 feet within the setback and would require a 17 foot variance if it was built today. The departure from the F40 Zoning that this property enjoys does not negatively affect anyone; my request on the rear set back is only for a 2.08 foot variance.

My request is to build a garage, a privilege that other properties enjoy.

I was originally planning on asking for the 2.08 foot variance on the rear and a 6 foot variance on the front of the building. After extensive consultation with the planning department I have decided to only request the rear variance since they informed me that the stream setback is more crucial to the general plan.

Attachment 4

Explain how the previously listed special circumstances are not considered a self-imposed hardship

Please see new plat map survey.

The survey shows that the existing foundation is 2.08 feet over the rear set back. The Surveyor noted on the survey that the person who measured this measured thirty feet but did not take into account that the ground slopes which would explain the difference in measurements. If you measure from the property line to the foundation you have thirty feet, if you measure into the slope you have a difference of the 2.08 feet in question.





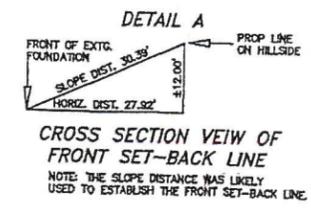
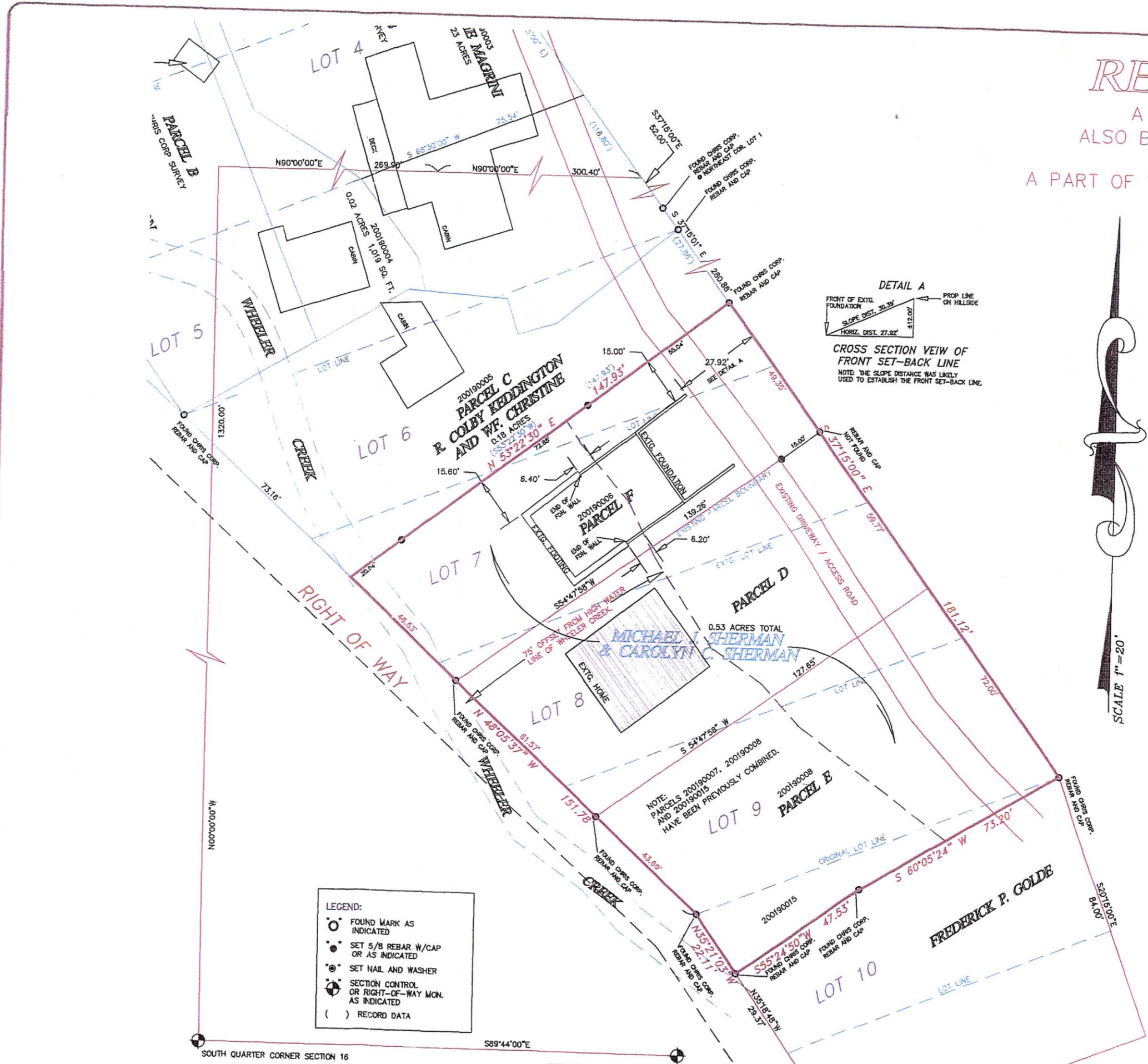






RECC

A PART
ALSO BEING
WILCC
A PART OF THE S



- LEGEND:
- FOUND MARK AS INDICATED
 - SET 5/8 REBAR W/CAP OR AS INDICATED
 - ⊙ SET NAIL AND WASHER
 - ⊕ SECTION CONTROL OR RIGHT-OF-WAY MON. AS INDICATED
 - () RECORD DATA



SOUTH QUARTER CORNER SECTION 16

SOUTHEAST CORNER SECTION 16

2014

JANUARY						
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CALENDAR KEY:

Western Weber County Township

Ogden Valley Township
(1st Tues. Work Session)

Board of Adjustment
(Scheduled only if a case is received)

WACOG

County Holidays

Pay Days

NOTES

APRIL						
S	M	T	W	T	F	S
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2014

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C A L E N D A R K E Y :

Western Weber County Township
Ogden Valley Township (1st Tues. Work Session)
Board of Adjustment (Scheduled only if a case is received)
WACOG
County Holidays
Pay Days

N O T E S

OCTOBER						
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DECEMBER						
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**WEBER COUNTY BOARD OF ADJUSTMENT
RULES OF PROCEDURE AND ETHICAL CONDUCT**

A Board of Adjustment shall be governed by the provisions of all applicable Statutes, County Ordinances and these rules.

I

MEMBERS

The Board of Adjustment shall each consist of five voting members, and two alternates, all of whom shall be citizen members appointed by the County Commission in accordance with the provisions of Utah Code Annotated and Weber County Ordinances.

II

OFFICERS AND DUTIES

A. Chair and Vice Chair

The Board of Adjustment shall elect annually, during the first regularly scheduled meeting in January, a Chair and Vice Chair who may be elected to succeed themselves for one additional term only. The Chairman shall be elected from the voting members of the Board of Adjustment by a majority of the total membership. The Chair, or in his/her absence or incapacity, the Vice Chair, shall preside over all meetings and hearings of the Board of Adjustment and shall execute all official documents and letters of the Board of Adjustment.

B. Secretary

The Director of Planning or his/her designated Staff member shall be the Secretary of the Board of Adjustment.

III

MEETINGS

A. Quorum

Three (3) or more members shall constitute a quorum for the transaction of business and the taking of official action; however, in the case of only three members in attendance, a unanimous vote shall be required to approve or deny an application.

B. Time of Meeting

Regular meetings shall be held on the second and fourth Thursdays of each month, or at the call of the Chair, at a time to be scheduled by Staff in the Weber County Commission Chambers of the Weber Center, 2380 Washington Blvd., Ogden. The date of the regular meeting may be changed by the majority of the total membership of the Board of Adjustment provided at least one week notice is given each member of the new date of a regular meeting.

C. Meetings Open to the Public

All regular or special meetings of the Board of Adjustment shall be open to the public.

D. Order of Business

The order of business shall be:

1. Approval of the minutes of previous meeting
2. Petitions for Variance, Special Exceptions or other applicable matters.
3. Other Business
4. Adjournment

The Board of Adjustment may change the order of business or consider matters out of order for the convenience of the applicants or other interested persons.

E. Voting

An affirmative vote of the three (3) or more of the voting members present at the meeting shall decide all matters under consideration by the Board of Adjustment unless otherwise provided for in these rules.

Voting shall be by voice vote. The Chair votes on all questions unless the Chair has declared a conflict of interest on a specific issue under consideration before the Board of Adjustment. No voting member of the Board shall be allowed to abstain from voting on any matter under consideration by the Board, unless that member has declared a conflict of interest on the matter under consideration before the Board of Adjustment.

F. Parliamentary Procedure

Parliamentary procedure in Board of Adjustment meetings shall be governed by Robert's Rules of Order, as revised.

G. Suspension of Rules

The Board of Adjustment may suspend any of these rules by a majority vote of the entire Board.

H. Record of Meetings

The Secretary of the Board of Adjustment shall keep an accurate record of the proceedings and perform other duties as the Board of Adjustment may determine.

J. Meeting Agenda

The Planning Director or his designated Staff member shall review items proposed for the Board of Adjustment meeting agenda to determine whether all requirements necessary for Board of Adjustment consideration have been complied with. The Board shall establish reasonable deadlines for submission of applications and other items for Board of Adjustment consideration prior to a Board of Adjustment meeting to allow sufficient time for staff and agency review.

K. Non Performance or Misconduct - Removal from Office

In the event any member of the Board of Adjustment shall fail to attend more than seventy percent of the Board of Adjustment meetings held during any one year, the member may be removed from office by an affirmative vote of the majority of the County Commission. Any member of the Board of Adjustment may be removed for cause, upon written charges, by an affirmative vote of the majority of the County Commission. The member shall be provided a Public Hearing, if requested.

IV

CONSIDERATION OF APPLICATIONS

A. Hearing Procedure

Any person may appear in person, by agent or attorney at any meeting of the Board of Adjustment. The order of procedure in the hearing of each application shall be as follows:

1. Presentation by the Planning Staff of the application, including staff recommendation.
Presentation shall include the reading of pertinent written comments or reports concerning the application.
2. Additional presentation by applicant or his/her agent.
3. Public comments in favor of application.

4. Public comments against application.
5. Rebuttals by invitation of the Chair.

B. Decisions

Decisions and/or recommendations of the Board of Adjustment shall be final at the end of the meeting at which the matter is decided. The Board of Adjustment Staff shall send a Letter of Decision to the applicant, his/her attorney or agent.

V

RULES OF ETHICAL CONDUCT FOR A BOARD OF ADJUSTMENT MEMBER

Preamble

1. Ethical practice has special relevance to all people who are charged with responsibilities in public service. Board members, whose decisions and actions have long-range consequences for later generations, must be keenly concerned to adhere to ethical principles.
2. Codes of ethics, as commonly adopted, present a catalog of temptations that are prohibited. It cannot be an exhaustive catalog: human imagination is sufficiently rich to discover new variations of old temptations. The existence of a code simply puts a challenge, to some, to find a gap or loop-hole. Emphasis must be put not on the letter of prohibition but on the spirit of observance. A performance standard of ethical behavior will be superior to a specification standard.

A. Conflict of Interest

A Board of Adjustment member to whom some private benefits may come as the result of a Board of Adjustment action should not be a participant in the action.

1. The private benefit may be direct or indirect, create a material, personal gain or provide a distinct advantage to relations or to friends or to groups and associations which hold some share of a person's loyalty. However, mere membership itself in a group or organization shall not be considered a conflict of interest as to Board of Adjustment action concerning such groups or associations unless a reasonable person would conclude that such membership in itself would prevent an objective consideration of the matter.
2. A Board member experiencing, in his/her opinion, a conflict of interest, should declare his/her interests publicly, abstain from voting on the action, and may excuse himself/herself from the

room during consideration of the action. He/she should not discuss the matter privately or with any other Board member. The vote of a Board member experiencing a conflict of interest who fails to disqualify himself shall be disallowed.

3. A conflict of interest may exist under these rules although a Board member may not believe he/she has an actual conflict; therefore, a Board member who has any question as to whether a conflict of interest exists under these rules should raise the matter with the other Board members and the County Attorney's representative in order that a determination may be made as to whether a conflict of interest exists.
4. No Board of Adjustment member should engage in any transaction in which he/she has a financial interest, direct or indirect, with the agency or jurisdiction that he/she serves unless the transaction is disclosed publicly and determined to be lawful.
5. The Board members that the County Commission, in making appointments to the Board of Adjustment, not attempt to exclude whole categories or associations of business, professional, or other persons in anticipation of conflict of interest problems. The service of competent people of good character need not be sacrificed. Their withdrawal from participation in planning matters is necessary only in those specific cases in which a conflict of interest arises.

B. Gifts and Favors

Gifts, favors or advantages must not be accepted if they are offered because the receiver holds a position of public responsibility.

The value of a gift or advantage and the relation of the giver to public business should be considered in determining acceptability. Small gifts that come in the form of business lunches, calendars or office bric-a-brac are often, not always, acceptable. In cases of doubt, refuse. In cases of marginal doubt, refuse.

C. Treatment of Information

It is important to discriminate between information that belongs to the public and information that does not.

1. Reports and official records of a public agency must be open on an equal basis to all inquiries. Advice should not be furnished to some unless it is available to all.

2. Information on private affairs that is learned in the course of performing planning duties must be treated in confidence. Private affairs become public affairs when an official action -- such as an application for Variance or Special Exception -- is requested with respect to them. Only then is a disclosure of relevant information proper.
3. Information contained in studies that are in progress should not be divulged except in accordance with established agency policies on the release of its studies.
4. Prearranged private meetings between a Board of Adjustment member and applicants, their agents, or other interested parties are prohibited. Partisan information on any application received by a Board of Adjustment member whether by mail, telephone, or other communication should be made part of the public record.

D. Political Activity

Membership in a political party and contributions to its finances or activities are matters of individual decision that should neither be required of nor prohibited to Board of Adjustment members.

1. The extent of participation in political activities should be governed by professional judgment as well as limited by any applicable civil service law or regulation.
2. The powers of the Board of Adjustment must not be exercised, nor their duties performed, in any way that will create special advantages for a political party. The special position of a Board of Adjustment member should not be used to obtain contribution or support for a political party and should not be used to obtain partisan favors.
3. Partisan debate of a community's planning program and the consideration of planning in a party's platform is proper. Planning Officials should, however, give political parties equal access to information.