



BOARD OF ADJUSTMENT

MEETING AGENDA

**Thursday, October 24, 2019
4:30 p.m.**

****Pledge of Allegiance***

Regular Agenda Items

1. Minutes: Approval of the July 11, 2019 meeting minutes.
2. BOA 2019-03- Consideration and action on an appeal of an administrative decision, made by the Weber County Planning Division, to grant an approval of an Access Exception (AAE#2019-04) for access to a rear lot in a future two-lot subdivision.
Applicant: Kristen Zaugg, Represented by Zane Froerer; Staff Presenter, Tammy Aydelotte
3. Adjournment

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

Please enter the building through the front door on Washington Blvd. if arriving to the meeting after 5:00 p.m.

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

Minutes of the Board of Adjustments meeting of July 12, 2019, held in the Weber County Commission Chambers, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 p.m.

Members Present: Bryce Froerer-Chair
Laura Warburton-Vice Chair
Phil Hancock
Rex Mumford
Neal Barker

Staff Present: Charlie Ewert, Acting Planning Director; Tammy Aydelotte; Planner II; Chris Crockett, Legal Counsel; Marta Borchert, Secretary

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

Chair Froerer states that as this is the first meeting of the year, the board has agreed to rearrange the items on the agenda and start with the election for Chair and Vice-Chair of 2019.

1. Election: Election for Chair and Vice-Chair 2019

Mr. Crockett notes that the rules state that the Board shall elect a Chair and Vice Chair annually during the first regularly scheduled meeting in January a Chair and a Vice-chair who may be elected to succeed themselves for an additional term only. Mr. Crockett adds that it is a one year term. Ms. Warburton states that the Board can suspend the rules.

MOTION: Rex Mumford moves to suspend the rules and to allow Bryce Froerer to serve for an additional term. He notes that the term started in January but was made official at the first meeting of the year July 11, 2019. Phil Hancock Seconds. Motion carries (5-0)

MOTION: Laura Warburton moves to reelect Bryce Froerer. Phil Hancock seconds. Motion carries (5-0)

MOTION: Bryce Froerer moves to elect Laura Warburton as Vice-Chair. Neal Barker seconds. Motion Carries (5-0)

2. Presentation: Douglas Dickson

Charlie Ewert states that the Board and Planning staff wanted to make sure and acknowledge the service that Douglas Dickson has provided. His term has expired. Normally there is a clock to present, but it is was not ready for the meeting. Mr. Dickson was notified and it will be sent to him in the mail. Phil Hancock states that he would like to applaud Douglas Dickson for his years of service and congratulate him. The other board members agree.

3. Minutes: Approval of the May 10, 2018 meeting minutes. Mr. Hancock notes that in the minutes it states that the meeting started at 5 pm. It needs to be amended to 4:30 pm.

MOTION: Phil Hancock moves to approve minutes with noted corrections. Rex Mumford seconds. Motion carries (5-0).

4. BOA 2019-02 Consideration and action on a request for a variance to the 100ft stream corridor setback for the purpose of building a single-family dwelling.

Tammy Aydelotte states that in May of 2018 the lot in question was approved as a legal lot of record. The owners are in the process of applying for building permits. They are requesting a variance to see if they can build on the lot.

Ms. Aydelotte notes that one of the roles of the Engineering department is to find suitable building areas near bodies of water. They look at streams and they determine setbacks from high watermarks. In this case, 100 ft from the high water mark would push the buildable area to outside the parcel boundaries. They would not be able to build on it. They are proposing to build 52 ft. from the high watermark instead of the proposed 100 ft. They are also in the process of acquiring a neighboring parcel; this will allow them to put the footprint well within the setbacks. She notes that Engineering has no objections to this request. The Fire District has no objections to this request. There have been some phone calls from neighbors, regarding well and septic. She notes that at this point that information is not available and is not required yet. The owners have requested water share from Weber Basin, that approval has not yet been granted. Currently, they are trying to find out if they can build on the lot.

Chair Froerer asks how high the water gets in the spring. Ms. Aydelotte states that this is a good question for Engineering. The building height is set above the high watermark and there was no indication that the water levels would reach that height without other circumstances involved.

Mr. Ewert states that Engineers determine this by vegetation delineation. It allows the water to flow at different capacities, it will over time increase or decrease. The vegetation fills and the high water mark changes.

Ms. Aydelotte states that Engineering can require more specific design elements to mitigate potential issues.

Chair Froerer asks what the requirements for the septic are.

Ms. Aydelotte states that the applicant can address these issues.

Mr. Hancock states that the board is usually reluctant to approve changes of this magnitude. He asks if it was submitted to the Fire District. Has staff considered the repercussions of this large of an adjustment?

Mr. Ewert states one of the things that is looked at is whether the ordinance denies fundamental rights applicable to other properties in the area. He asks if a particular size of the home is a right?

Mr. Hancock asks if there is an average size of homes in the area.

Mr. Ewert states that they do not have this information, but it's important to note that the homes are fairly spread out in the area. Mr. Ewert suggests that the Board members look at whether the granting of this is essential for preserving a fundamental property right. The lot in question is a lot of records it predated the rules. It is a nonconforming lot that is lawfully existing, the rules were applied over the top of them. The setback and area rules are different from when it was created. He asks what size of the home is appropriate to preserve substantial justice and not go against the intent of the ordinance.

Mr. Mumford states that the rear and side setbacks aren't being addressed. Ms. Aydelotte states that the purchase of the additional piece is so that they may comply with setbacks on both sides. Mr. Ewert states that it is possible for this to be adjusted on side setbacks or rear setbacks.

Mr. Barker asks if the property owner has acquired that small parcel. Can the Board of Adjustments vote on this if they haven't acquired the rights? Mr. Ewert states that they will want to make sure they have property owner consent. The variance approval can be conditioned on along with the owner's consent.

Ms. Warburton states that her understanding is that they can grant the variance but that does not grant the right to build the house. They will need to go through all the departments to get final approval. Ms. Aydelotte states that at this point they are okay with the conceptual site plan. She notes that it does lie outside of the geologic study area and the flood plain.

Mr. Hancock asks if staff has discussed rotating the site plan with the applicant? Ms. Aydelotte states that their impression is that the applicant is fairly set on the site plan. This can be addressed by the applicant.

Ms. Barker asks what the high-water mark is of the other homes in the area. Ms. Aydelotte states that she is not sure. She has not been able to find a similar variance in the last few years. Mr. Barker asks if was setback 80ft what the elevation would be. Ms. Aydelotte responds that it should be similar, but the distance would be increased.

Chair Froerer states he would like to hear from the applicant.

Brent Whetton 5989 N 2250 E: states that they purchased the lot about a year ago. They were under the impression that it was a buildable lot, they were not aware of the setbacks. The bottom part of the home is 1800 sq. ft. the rest of it is above. The small piece that sticks out on the bottom is the garage. He states that they are not opposed to flipping it. Regarding the septic and the well permit. He has acquired the water well permit from the states of Utah.

Chair Froerer asks if there is anyone in the audience, who would like to speak.

Craig Oberg 5937 N Four Rd.: states that they have property adjacent to this.. They have used an easement for 50 or 60 years. He asks if configuration changes, what happens to the road. Mr. Ewert states that he can get in touch with staff to address his concerns.

Mr. Hancock notes that this is quite a change, but he does not believe it will adversely affect the neighborhood, nor the intent of the ordinance. He does not see the harm to the County or surrounding area.

Mr. Mumford states that the purpose of the set back isn't necessarily for people, it can be for riparian habitat. Mr. Ewerts adds that the purpose is to protect anything within 100 ft. of the riparian corridor. Mr. Mumford states that this is what makes him uncomfortable. Mr. Hancock asks if his concern is regarding the slope or the grade. Mr. Mumford states that it is strictly the distance. Mr. Mumford states that he is not comfortable with the configuration. He notes that they may not be a body to dictate but they are a body to evaluate. The rivers migrate and change if the river altered itself after the home is built the encroachment on the riparian habitat is greater.

Mr. Barker asks if the property will be fenced. Ms. Aydelotte states that one of the conditions is that the vegetation and the wildlife not be disturbed a fence would disturb the wildlife. Mr. Barker asks, Is it within the boards purview to add contingencies? For example it is the applicants intent to acquire the neighboring property, would it be out of line to make that a requirement of approval. Mr. Ewert states that they may impose conditions of approval, but it is important to make sure they speak to the five criteria and the ordinance. Regarding variances sometimes you are talking about a setback but sometimes it effects other ordinances that would be applicable as well. Mr. Hancock states that any condition added needs to be evaluated and the Board is not qualified to approve items such as septic tank, engineering, zoning. These type of items are all part of the site plan approval process. He does not believe it is within their purview to impose those kinds of conditions.

Mr. Mumford states the distance of the setback is less than an irrigation ditch, and it is near a major river that has riparian habitat. Chair Froerer asks if this is something that is taken into account for final approval. Ms. Aydelotte states that they do. The health department is involved in giving the final say on a well permit. The well has to have a hundred ft protection around it that must be contained within the final boundaries of the parcel. There are setbacks from the residents for the septic, and the type of septic is determined by the water levels and the proximity to the river. The health department will go through the review process and will impose their conditions based on what is submitted by the applicant, the proposal and the site plan.

Ms. Warburton states that she would like to check with legal but it is her understanding that any conditions that are imposed or if they want to deny it need to have a legal basis it has to be in code and it needs to be supported, otherwise it puts the County and the petitioner in jeopardy to spend more money to defend what he would like to do. Mr. Crockett states that he agrees with this regarding imposing conditions. There has to be a factual basis,

otherwise, there is a risk having it overturned if challenged in court. Mr. Ewert states that this is a quasi-judicial decision, and the building permit is an administrative decision, there is a very limited ability to say no. As Ms. Aydelotte stated all the other agencies will ensure all their laws are upheld.

Mr. Mumford states that it is his understanding based on legal opinion that if they don't grant the variance they will be somehow establishing precedence. He notes that the setback was established years ago. He asks would that jeopardize the setback policy for the future. Mr. Ewert states that it is hard on a judicial decision to say you are setting up precedence because every fact of every case is different. He adds that it is unlikely that the decision made for this case will be made applicable in the next case. Mr. Crockett agrees and states that the criteria for evaluating a variance are for circumstances that are peculiar property. Each case will be evaluated on its own individual merits.

Ms. Aydelotte states that she is willing to get them more information so they can make an informed decision. She appreciates the thought that is being put into this.

MOTION: Laura Warburton moves to approve BOA 2019-02 Consideration and action on a request for a variance to the 100ft stream corridor setback for the purpose of building a single-family dwelling-based the findings and conditions listed in the staff report. Mr. Hancock seconds. Motion carries (4-1) with Rex Mumford voting nay.

5. Schedule & Information: 2019 Meetings and Information List-A meeting calendar for 2019 and a members information list was given to the Board members. Chair Froerer and Mr. Mumford state that their home numbers are no longer active.

6. Rules of Order Approval of Rules of Order. Mr. Ewert states that it has been brought to his attention Mr. Crockett that Rules of order in the packet require a quarterly meeting to approve minutes in accordance open public meeting act. He notes that they may need to meet quarterly, it is in the bylaws. Mr. Crockett states that one thing he would like to check in the open meetings law is if there is a certain time limit. Mr. Mumford states that he believes that they had addressed this at a prior point and that minutes could be approved by phone. Mr. Crockett states that he will need to check to see if there is approval to have electronic meetings. He notes that they might not be able to take a vote through email. Mr. Ewert states that they will look into the matter, if possible the rule of order to state that the meetings will be held as needed. Mr. Mumford states that if a meeting needs to be held to approve minutes they would likely be able to find the time. Mr. Crockett states that perhaps there is a provision that allows the posting pending minutes until they are formally approved. Chair Froerer states that based this request and the previous year it could be another year before another meeting is called. He adds that it is not fair to the applicants. He would like to request that the minutes be prepared expeditiously and be approved via email by the Board members present at the meeting.

MOTION: Laura Warburton moves to change the bylaws of the rules of order to states that the Board of Adjustments is allowed to schedule meetings as needed and that minutes be approved via email or conference call. Subject to legal review. Phil Hancock seconds. Motion Carries (5-0).

MOTION: Neal Barker moves to change the rules of order to state that the Chair Vice-chair election be done at the first meeting of the year, rather than the first meeting in January. Rex Mumford seconds. (5-0)

MOTION: Laura Warburton moves to adjourn. Neal Barker seconds. Motion carries (5-0)

Adjourn-5:41

Respectfully Submitted,
Marta Borchert



Staff Report for Administrative Approval

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action on an appeal of an administrative decision, made by the Weber County Planning Division, to grant an approval of an Access Exception (AAE#2019-04) for access to a rear lot in a future two-lot subdivision.

Agenda Date: Thursday, October 24, 2019

Applicant: Kristin Zaugg, represented by Zane Froerer

File Number: BOA 2019-03

Property Information

Approximate Address: 3958 N 3175 W, Ogden, UT, 84404

Project Area: 2.58 Acres

Zoning: Agricultural Zone (A-1)

Existing Land Use: Vacant

Proposed Land Use: Vacant/Residential

Parcel ID: 19-010-0085

Township, Range, Section: T7N, R2W, Section 22

Adjacent Land Use

| | |
|---------------------------|----------------------------------|
| North: Residential | South: Residential |
| East: Residential | West: Vacant/Agricultural |

Staff Information

Report Presenter: Tammy Aydelotte
taydelotte@co.weber.ut.us
801-399-8794

Report Reviewer: RG

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 15 (Agricultural A-1 Zone)
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations)
- Weber County Land Use Code Title 106 (Subdivisions)

Background

Request and General Project Information

The applicant (Kristin Zaugg) is requesting an appeal of a land use decision by the Weber County Planning Division on September 4, 2019. The decision in question is an approval of an Access Exception application (AAE 2019-04 submitted by William and Jana Colvell) where, in lieu of constructing a full public-standard street, a 30 foot private access easement that would serve as the primary access for a future residential lot. See Exhibit A for the Planning Division staff report packet that provides Mr. & Mrs. Colvell's Access Exception information and findings that form the basis for the approval granted on September 4, 2019.

The property is in the Agricultural A-1 Zone located at approximately 4186 N 3175 W and is 2.58 acres. The private right-of-way is located just off 3175 West, of Section 16 of Township 7 North, Range 2 West.

Alternative access applications such as the Colvell's are reviewed and approved administratively by the Weber County Planning Director. It is essential to note that this request was an administrative application and is not a variance or an exception to the standards and criteria outlined in the Uniform Land Use Code of Weber County (LUC). The request conceptually meets the standards as outline in LUC §108-7-29 and meets the criteria for the request as required in LUC §108-7-31.

The outcome, if the Planning Division's decision to approve Colvell's Access Exception is upheld, would be the division of an existing parcel (located within an existing Subdivision) into two lots. The A-1 Zone requires a minimum lot size of 40,000 square feet and a lot width of 150 feet (fronting on a private or publically dedicated street) when not approved for an Access Exception. An Access Exception is required when a landowner (developer) feels that it is more feasible or practical to access building lots from something that resembles a private driveway rather than a two-lane (public) county street. To be considered for an approval of an Access Exception, a landowner must demonstrate that it is unfeasible or impractical to extend a street to serve proposed lots. Property characteristics that may support an approval of an Access Exception may include, but not be limited to, things like unusual soils, excessive topography, or odd boundary conditions. Applicable language within Section 108-7-31 (Access to a lot/parcel using a private right-of-way or access easement) is marked in bold text and reads as follows:

Sec. 108-7-31. - Access to a lot/parcel using a private right-of-way or access easement.

Lots/parcels which do not have frontage on a street, but which have access by a private right-of-way or access easement may, under certain circumstances, use a private right-of-way or access easement as the primary access. Approval is subject to the applicant demonstrating compliance with the following criteria and conditions:

(1) Criteria.

- a. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use; or*
- b. The lot/parcel is a bona fide agricultural parcel that is actively devoted to an agricultural use that is the main use and is the subject parcel of an approved agri-tourism operation; or*
- c. Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions.***

(2) Conditions.

- a. It shall be demonstrated that the agricultural parcel or other lot/parcel has appropriate and legal access due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right; and*
- b. The landowner of record or authorized representative shall agree to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the county deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.***

Role of Board of Adjustment

The Board of Adjustment's role, in this appeal, is described in §102-3-3 (Duties and powers of the board) and §102-3-4 (Decision criteria and standards) of the Weber County Land Use Code and is provided below with bold text marking applicable language:

Sec. 102-3-3. - Duties and powers of the board.

The board of adjustment shall have the following duties and powers:

(1) To act as the appeal authority from decisions applying and interpreting this Land Use Code and Zoning Maps.

(2) To hear and decide variances from the requirements of the Land Use Code.

Sec. 102-3-4. - Decision criteria and standards.

(a) Appeals from decisions applying and interpreting the Land Use Code and Zoning Maps.

(1) The board of adjustment shall determine the correctness of a decision of the land use authority in its interpretation and application of the Land Use Code and Zoning Maps.

(2) The board of adjustment may hear only those decisions in which the land use authority has applied the Land Use Code or Zoning Maps to a particular application, person, or parcel.

(3) The appellant has the burden of proof that the land use authority erred.

(4) 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.

(5) 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.

(b) Variances from the requirements of the Land Use Code.

Procedural History

The following project history is provided:

| | |
|-----------|--|
| 6-26-2019 | William and Jana Colvell submit an Access Exception application (AE#2019-04) to the Weber County Planning Division. |
| 8-21-2019 | 1 st administrative public meeting held for Access Exception application (AE#2019-04). Acting Planning Director tables item for further review. |
| 9-4-2019 | 2 nd administrative (Planning Director approval) public meeting held for Access Exception application (AE#2019-04). Planning Director approves application. |
| 9-5-2019 | Notice of Decision posted. |
| 9-19-2019 | Appeal of approval for AAE 2019-04 is submitted to Planning Division. |

Alternative access applications should be approved as long as the design standards can be implemented during the development process. The application met the criteria in LUC §108-7-31(1)(b) which states:

“Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions.”

The Planning Director, acting as the Land Use Authority in this case, agreed that it is not feasible to extend/create a road, given the location of residences and outbuildings in the direct path of a proposed road that would extend from along the southern boundary of the subject parcel from 3175 West St. to 2975 West St.

Summary of Board of Adjustment Considerations

- Do the items described in Ms. Zaugg's appeal warrant overturning the Weber County Planning Division (9-4-2019) decision to approve Mr. and Mrs. Colvell's Access Exception (AAE#2019-04).
- Based on §108-7-31 (provided above), can the BOA find (in the record) that the Planning Division erred in appropriately identifying circumstances (including but not be limited to unusual soil, topographic, or property boundary conditions) that exist which support the Planning Division's (9-4-2019) decision to approve Mr. and Mrs. Colvell's request for an Access Exception?
- Based on §108-7-31 (provided above), can the BOA find (in the record) that the Planning Division erred by determining that financial adversity is not the motive behind the Colvell's request for an Access Exception?
- Based on the information provided (the substantial evidence), can the BOA find that the Planning Division erred by determining that it is unfeasible or impractical to extend a public street to serve Mr. and Mrs. Colvell's proposed lot?

Staff Recommendation

Based on information presented in this staff report (including exhibits), and compliance with the Weber County Land Use Code, the Planning Division Staff recommends that the administrative decision, to approve Mr. and Mrs. Colvell's request for an Access Exception, be upheld.

Exhibits

- A. Ms. Zaugg's appeal to the Weber County Board of Adjustment. This Exhibit includes Ms. Zaugg's BOA application form, Ms. Zaugg's appeal to the BOA, a copy of Mr. and Mrs. Colvell's Notice of Decision for the Access Exception approval, a copy of Mr. and Mrs. Colvell's Access Exception application, and Ms. Zaugg's comments and objections provided during the Planning Division administrative meeting held on 9-4-2019.
- B. Planning Division staff report packet that provides Mr. and Mrs. Colvell's Access Exception information and findings that form the basis for the approval granted on September 4, 2019.

Vicinity Map



Exhibit A - Application & Narrative

| 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 09-08-2019 | Fees (Office Use) | Receipt Number (Office Use) | File Number (Office Use) |
| Property Owner Contact Information | | | |
| Name of Property Owner(s) Elwood Powell on Behalf of Bayview and Kristin Zaugg | | Mailing Address of Property Owner(s) 4834 Van Buren Ave. Ogden, Utah 84403 | |
| Phone 801-499-9763 | Fax | Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail | |
| Email Address elwood.powell@gmail.com | | | |
| Authorized Representative Contact Information | | | |
| Name of Person Authorized to Represent the Property Owner(s) Zane S. Froerer | | Mailing Address of Authorized Person 2661 Washington Blvd., #201 Ogden, Utah 84401 | |
| Phone 801-621-2629 | Fax | Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail | |
| Email Address zane.froerer@froererlaw.com | | | |
| Appeal Request | | | |
| <input type="checkbox"/> A variance request: ___ Lot area ___ Yard setback ___ Frontage width ___ Other: _____ | | | |
| <input checked="" type="checkbox"/> An Interpretation of the Zoning Ordinance <input type="checkbox"/> An Interpretation of the Zoning Map <input checked="" type="checkbox"/> 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 <input type="checkbox"/> Other: _____ | | | |
| Property Information | | | |
| Approximate Address 3960 N. 3175 W. Ogden, Utah 84404 | | Land Serial Number(s) 190100085 | |
| Current Zoning A-1 | | | |
| 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) |

Exhibit A - Application & Narrative

Applicant Narrative

Please explain your request.

That the alternate access approved by revoked. The approval violates Weber County Ordinances for the A-1 Zone. Specifically, it is in violation of 108-7-30 and 108-7-31. The applicant failed to show proof of a legal right to access the agricultural parcel, the parcel is in a recorded subdivision and the applicant has failed to submit an application to amend that subdivision. The county has yet to create or approve the subdivision of the lots therefore it failed to properly consider the factors in 108-7-32. The approval is in violation of 23-30, 23-31, 23-32. The proposed subdivision of these lots does not have sufficient frontage for a dedicated street or a flag lot. The County failed to take into account that the road from which access was approved is a private road maintained by Bayview Community Association and the County may not simply designate or dictate how the public accesses or uses that private drive. The approval creates a defacto approval of a flag lot in violation of the County's ordinances and the zoning requirements for the A-1 zone. It also is a violation of the County's fire code regulations. The Application failed to provide the appropriate site plan and map, reusing a subdivision plan from another application. Even though the application did not seek approval of the future anticipated subdivision, the staff's recommendation relied upon the conclusion that the future division was in compliance with all county ordinances. Until an application for subdivision and amendment of the existing subdivision is submitted, this decision is wholly improper and beyond the scope of the application. The Planning Staff's recommendation for approval was flawed. It failed to comply with 108-7-31 by finding that it is impractical and unfeasible for the applicant to extend the street to the existing lot. The Staff cannot make a recommendation regarding a lot that does not yet exist. This is nothing short of the Staff blatantly disregarding the county's own ordinances to rubber stamp a land use application. No evidence or analysis of how the Staff arrived at this decision is provided and they do nothing to document their "substantial evidence." This is wholly conclusory and without any actual evidence. In the Notice of Decision, the Staff approved the application citing to the finding that "the proposed subdivision conforms to the Western Weber Plan" and applicable ordinances. This is absurd since there is no "proposed subdivision." An applicant of a land use decision may not be vested with any rights until an application for a land use has been properly filed with the County. This finding is incorrect on its face and exceeds the scope of the land use application on its face. The application was for a Flag lot access for a lot that does not have frontage on a street. The lot in question does have such access. Until a subdivision is approved, granting the application would be improper. Further, the access strip may be no longer than 800 feet. Because the "street" is a private drive, the application seeks approval of a private right of way which is cumulatively longer than 800 feet. Finally, the lot is within a recorded subdivision, therefore, a flag lot is not permitted.

Variance Request

The Board of Adjustment may grant a variance only if the following five criteria are met. Please explain how this variance request meets the following five criteria:

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.

Exhibit A - Application & Narrative

Variance Request (continued...)

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

This allowance will affect the land owners substantially in this Subdivision. And it is contrary to the interests of all land owners in the area. As well as the consistency of residential buildings.

5. The spirit of the land use ordinance is observed and substantial justice done.

The Spirit of the Land ^{use} Ordinance has not been observed & justice has not been granted to all land owners of interest. If this easement is allowed.

Property Owner Affidavit

I (We), Kristin Zaugg, depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.

Kristin Zaugg
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 18th day of September, 20 19



CHERYL L. HONSTEIN
NOTARY PUBLIC • STATE of UTAH
COMMISSION NO. 687214
COMM. EXP. 02-12-2020

Cheryl L. Honstein

(Notary)

Authorized Representative Affidavit



Weber County Planning Division
www.co.weber.ut.us/planning_commission
2380 Washington Blvd., Suite 240
Ogden, Utah 84401-1473
Voice: (801) 399-8371
Fax: (801) 399-8862

Weber County Planning Division
NOTICE OF DECISION

September 5, 2019

William & Jana Colvell
3502 N 3900 W
Ogden, UT, 84404

You are hereby notified that your application for final approval of an alternative access request for a future two lot subdivision, located at approximately 4212 N 3175 W, UT, was heard and approved by the Weber County Planning Division in a public meeting held on September 4, 2019. Final approval was granted conditioned upon meeting all requirements from county reviewing agencies, and the following condition:

1. Irrigation easements, water approval, hydrants, secondary water, ditch maintenance, address issues, utilities and road access are addressed when an application for subdivision has been submitted.

This recommendation is based on the following findings:

1. The proposed subdivision conforms to the Western Weber Plan.
2. Based on substantial evidence, it has been found that it is unfeasible or impractical to extend a street to serve such lot/parcel based on topographic and property boundary conditions which limits typical access requirements in a unique way.
3. The proposed subdivision complies with applicable County ordinances.

The next step in the process is to ensure complete compliance with the above listed conditions of approval. This letter is intended as a courtesy to document the status of your project. If you have further questions, please contact me at taydelotte@co.weber.ut.us or 801-399-8794.

Sincerely,

Tammy Aydelotte, Planner
Weber County Planning Division

Exhibit A - Application & Narrative

Basis for Issuance of Access to a lot/parcel at a location other than across the front lot line

Access to lots/parcels at a location other than across the front lot line may be approved as the primary access, subject to the following criteria:

Sec. 108-7-32. - Access to a lot/parcel at a location other than across the front lot line.

- (1) The applicant demonstrates that special or unique boundary, topographic, or other physical conditions exist which would cause an undesirable or dangerous condition to be created for property access across the front lot line.
- (2) It shall be demonstrated that appropriate and legal access exists due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right.

Please provide the following information to support your request for Access to a lot/parcel at a location other than across the front lot line:

- ☐ Attach proof that appropriate and legal access exists due to historic use, court decree, or the execution of an easement, right-of-way, or other instrument capable of conveying or granting such right.
- ☐ The landowner of record or authorized representative agrees to pay a proportionate amount of the costs associated with developing a street if, at any time in the future, the County deems it necessary to have the landowner replace the private right-of-way/easement with a street that would serve as a required access to additional lots. The agreement shall be in the form considered appropriate and acceptable to the office of the Weber County Recorder and shall recite and explain all matters of fact, including a lot/parcel boundary description, which are necessary to make the agreement intelligible and show its successive nature.

Property Owner Affidavit

I (We), William Colvell, depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (We) understand that an approval of an alternative access application does not grant a legal right to access property that I (we) currently do not own.

William Colvell

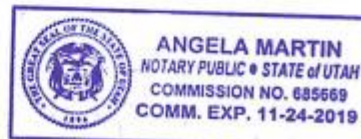
Property Owner

Property Owner

Subscribed and sworn to me this 26 day of June, 2019.

[Signature]

Notary



Authorized Representative Affidavit

Exhibit A - Application & Narrative**Weber County Alternative Access Application**

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

| | | | |
|---------------------------|-------------------------------------|-----------------------------|--------------------------|
| Date Submitted /Completed | Application Fee: \$350.00 | Receipt Number (Office Use) | File Number (Office Use) |
|---------------------------|-------------------------------------|-----------------------------|--------------------------|

Application Type

- ☐ Flag lot access strip
☒ Access by Private Right of Way
☐ Access at a location other than across the front lot line

Property Owner Contact Information

| | | | |
|--|-----|--|--|
| Name of Property Owner(s) William Colvell | | Mailing Address of Property Owner(s) 3502 N 3900 W Ogden, UT 84404 | |
| Phone 389 3726 801 430 0374 | Fax | | |
| Email Address (required) Jana-Fred@hotmail.com | | Preferred Method of Written Correspondence <input type="checkbox"/> Email <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Mail | |

Authorized Representative Contact Information

| | | | |
|---|-----|---|--|
| Name of Person Authorized to Represent the Property Owner(s) Jana Colvell | | Mailing Address of Authorized Person 3502 N 3900 W Ogden, UT 84404 | |
| Phone 801 430 0374 | Fax | | |
| Email Address (required) Jana Colvell G@gmail.com | | Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Mail | |

Property Information

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|---|---|------------------------------|
| Project Name FJ subdivision | Total Acreage 2.5 | Current Zoning A-1 |
| Approximate Address 4212 N 3175W | Land Serial Number(s) 19-010-0035 | |
| Proposed Use Legal access for 2 lot subdivision | | |
| Project Narrative | | |

I currently have a lot that is 2.58ac in size. I would like to subdivide that lot into two lots. One lot would be 1ac and the other would be 1.58ac. The larger of the two lots would be located behind the other with no way to access it. I would like to get approved for an access by private right of way before I submit the subdivision application to ensure there wont be any issues accessing the larger lot. Also, There is a 20ft x 14ft deep irrigation ditch to the East of my property that prevents access and Two other Houses on the property that is backed up to mine that boundes my lot to the East.

Exhibit A - Application & Narrative

Minutes from the Administrative Approval Meeting granting approval for the alternative access request on 9-4-2019:

AAE2019-04: Consideration and action on an alternative access request to use a private right-of-way as the primary access for the rear lot of a future two lot subdivision in the Agricultural (A-1) Zone. William & Jana Colvell, Applicants (Tammy Aydelotte, Presenter)

Tammy Aydelotte reviewed the staff report and said staff recommends approval of the request for an alternative access for a 30' x 269' private right-of-way as the primary access for the rear lot of a future two lot subdivision, subject to the following conditions:

1. That approval is based on the concept layout as listed in Exhibit C of this staff report.
2. That the future division of the land is in compliance with all relevant Weber County Land Use and Development ordinances.
3. The in the event evidence is presented that would prohibit the division of land (not otherwise listed in the Weber County Land Use and Development ordinances), this approval is void.
4. That the approval offers no explicit or implicit rights of access along any connected private streets, roads or rights of way serving access to the property.

Director Grover said in previous meeting there was some discussion, and you are doing some research on looking at the past minutes, and also as far as there was a recorded plat that shared a private access road with property owner signatures. Do you have that, that you can show me? Ms. Aydelotte replied yes, this was recorded in 2001, it's a private road easement and it includes both roads going into this subdivision. It is signed by all of the property owners on record at that time.

Director Grover asked if the applicant was present and asked if there was anything you would like to add. William Colvell replied no. Director Grover opened up for public comment and limit your comments to three minutes. Once I close for public comment, it will come back to deliberation. When you make your comments, state your name and address for public record.

Christin Zaugg, 3944 N 3175 W, said according to A-1 Zone, on this staff report, and on this application; it is required that they have at least 3 acres of agriculture parcel, that is needing to be access in order to gain access. This particular parcel does not have a back property, so there's no need for it to have an alternative access. It is required in the A-1 Zone, 150 ft. frontage already on a private road that is in this particular subdivision. As Ms. Aydelotte stated we own the road; and if that were to be subdivided, we would have the right to not let those people use the road because we have all paid and taken care of that road. We planned accordingly with the agreement with Weber County of two houses can be put on each five acre lot; as long as it was in the A-1 Zone qualifications of 150 ft. frontage. At that meeting that was held in February 2000, it states in their application that they have to show proof why they need an access. The survey that was on the application, was not the correct address that was put in Miradi. We as a whole are not in favor of this project.

Elwood Powell, 3881 N 3175 W, said there are restrictive covenants on this property; when the Higley's first subdivided this property. One of the covenants says that they only subdivide it once in 2-1/2 acre parcels. It was called the Higley Farm Land Owner Agreement that was recorded in Book 1394, Page 863 to 865. For some reason the legal description did not get attached with this entry number. The legal description immediately followed this entry at 866-867 was recorded and it runs with the land. This 4-Lot subdivision doesn't meet the restrictive covenants on the property, and it doesn't meet the zoning requirements. There is also a requirement with Weber County, that after 80% of the lots are developed, we have to dedicate the land of the roadway to the county and pay for the oiling of that road. There is also easements on the west side for irrigation water; and anytime that road gets developed, that has to be taken care of.

Exhibit A - Application & Narrative

Steve Wells, 3951 N 2975 W, said this is within 500 feet of this subdivision. In Bayview we actually water that lot east to west; and we have one lot in front of another lot. The lot closest to the road will not give water unless a two foot culvert is put into the back ditch for secondary water. There is a drainage ditch in the back that was put in by the Corp of Engineers; that cannot be filled in that drains off the surface water. Just want to make sure that there's no finish drain place in that ditch and that it's kept clean. The other concern is animals that walk on the bank of that ditch and clutters that up. It's key and important because we experience flooding in our area; and Weber County put in a culvert to divert some of the water down ditch and if you have that diverted with a block in any way, it could cause flooding in our area.

Derek Kennedy, 3932 N 3175 W, said I asked about the address earlier to confirm that address. First off the address is 4-1/2 blocks off and that needs to be fixed. Ms. Aydelotte replied that is an approximate address. I agree with everything that Mr. Powell said, he brought up all the important points. It's an 18 ft. wide dirt road and technically I own the first piece of that road; so any density changes will affect me. We try and take care of that road, and this is not a 25 mile road. To see the density change of 100 ft. of frontage width affect all of us. The density of having a private access on top of another private access; the owners would have to sign off of that to have a new piece of land, a new serial number, and to create more density from which it was not intended. I think the utilities a something that needs to be addressed.

Close public comment and bring back for deliberation.

Director Grover asked about the 3-acre agriculture access. Ms. Aydelotte replied typically that is not required for flag lot access. They are required to have 3-acres, not including the stem of that in to be designated as a flag lot, and they are not requesting flag lot designation.

Director Grover said so there are two different types of flag lots access exception, and they are requesting not the flag lot but the access. Ms. Aydelotte replied that is correct.

Director Grover said the next one is the 100 feet of frontage. Ms. Aydelotte replied so the A-1 Zone requires 150 ft. of width to every lot, with a minimum of 40,000 sq. ft., and 150 ft. of width and their lot has 162 feet so they would meet their requirement.

Exhibit A - Application & Narrative

Director Grover said the next concern is a road access, as far as no proof of access. Ms. Aydelotte replied there is a private road easement recorded with every property in this subdivision along with a description. So this is the easement with the description; and then the abstract when you pull up the document doesn't give a whole lot of information. It does reference this private road easement as surveyed that was done, but that is all that was said.

Director Grover asked what about the restrictive covenant on the property, indicating that it can be subdivided once, legal do we enforce restricted covenant, and how does that work? Mr. Crockett replied do we enforce restrictive covenant; generally no we don't get involved in that because it's not something that it's the county's a party to. It would be the property owners that are all party to that agreement. If we were a party to that, that would be one thing, but on restrictive covenant we are not a party to. Director Grover asked is that anything that we can consider as part of this review process. Mr. Crockett replied something that you can consider, is the rights of the other property owners that you are considering, but it is not something that we would enforce.

Director Grover asked are you aware of an agreement with Weber County, to dedicate the road and improve it? Ms. Aydelotte replied the only agreement that I have seen, is a reference in the minutes. I haven't seen anything recorded in the abstract of any of these properties with regards to an agreement. There is reference in these commission minutes, but I haven't seen a recorded document. Director Grover said if it's mentioned there but has not been recorded, we can't enforce that.

Director Grover said talk to me about the irrigation easements; are all of those easements being maintained on the property? Ms. Aydelotte replied as far as I know, I am not sure if they are being maintained.

Director Grover said what about it said in the commission minutes, to allow one subdivision, was there something that reference to that, as part of the motion, it may have referenced in the minutes, but was anything said in the motion? Ms. Aydelotte replied no, the motion was strictly for the road.

Director Grover asked what about water approval that the Fire District said that the fire hydrants meeting code. Ms. Aydelotte replied they said they would not be addressing that until subdivision. Where we don't have a subdivision application, we haven't required a water feasibility yet, and they will be required provide that.

Director Grover said Mr. Kennedy referred to the address, and that would be addressed at subdivision. Ms. Aydelotte replied that would be addressed at subdivision. The addressing official assigns those, we don't have any say with the addresses.

Director Grover said as far as road access and utilities; when will those be addressed. Ms. Aydelotte replied at subdivision as well. We address the private road access, in looking at whether or not they have legal access to this property, and that's as far as we go with an access exception.

Director Grover said there are still some concerns that I have, but a lot of those will be addressed at subdivision, and the other ones you have addressed. So based upon that, I am going to add some additional conditions; so based on the information that was provided, I am going to recommend approval of the request for alternative access for a 30' x 269' private right-of-way as the primary access for the rear lot of a future two lot subdivision with the following conditions:

1. Approval is based upon the concept layout list as Exhibit C of the August 21, 2019 staff report.
2. That the future division of the land is in compliance with the relevant Weber County Land Use Development Ordinances; based upon it meeting access exception and not being a flag lot.
3. That in the event evidence is presented that would prohibit division of land, not otherwise listed in the Weber County Land Use Development Ordinance this approval is void.
4. That this approval offers no explicit or implicit rights of access along any connected private streets, roads, or right-of-way serving access to the property.
5. That irrigation easements be addressed at time of subdivision.
6. That water approval that meets code; that fire hydrants be addressed at the time of subdivision.
7. That secondary water be addressed at time of subdivision.
8. That the ditch be kept clean and maintained, and addressed at time of subdivision.
9. That the address issue be addressed at the time of subdivision.

Exhibit A - Application & Narrative

10. That the utilities needs to be addressed at time of subdivision.
11. That the road access needs to be addressed at time of subdivision.

Director Grover said a lot of these will need to be addressed at time of subdivision; but if any additional information as I have indicated in Condition 3, is otherwise brought forward this approval will be void. I recommend approval of this based on the findings outlined in the staff report. That is based on the substantial evidence; it has been found that it is unfeasible or impractical to extend the street to serve such lot or parcel. Based on topography of the property boundary conditions which limits typical access requirement in a unique way. This has to do with the waterway in this situation. This stands approved based on those specific conditions.



Staff Report for Administrative Approval

Weber County Planning Division

Synopsis

Application Information

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|----------------------|---|
| Application Request: | Consideration and action on an alternative access request to use a private right-of-way as the primary access for the rear lot of a future two lot subdivision. |
| Agenda Date: | Wednesday, September 4, 2019 |
| Applicant: | William & Jana Colvell |
| File Number: | AAE 2019-04 |

Property Information

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|---------------------------|---------------------------------|
| Approximate Address: | 3502 N 3175 W, Ogden, UT, 84404 |
| Project Area: | 2.58 Acres |
| Zoning: | Agricultural Zone (A-1) |
| Existing Land Use: | Vacant |
| Proposed Land Use: | Vacant/Residential |
| Parcel ID: | 19-010-0085 |
| Township, Range, Section: | T7N, R2W, Section 22 |

Adjacent Land Use

| | |
|--------------------|---------------------------|
| North: Residential | South: Residential |
| East: Residential | West: Vacant/Agricultural |

Staff Information

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|-------------------|---|
| Report Presenter: | Tammy Aydelotte taydelotte@co.weber.ut.us 801-399-8794 |
| Report Reviewer: | RG |

Applicable Land Use Codes

- Weber County Land Use Code Title 104 (Zones) Chapter 15 (Agricultural A-1 Zone)
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 29 Flag lot access strip, private right-of-way, and access easement standards
- Weber County Land Use Code Title 108 (Standards) Chapter 7 (Supplementary and Qualifying Regulations) Section 31 Access to a lot/parcel using a private right-of-way or access easement

Background

The Planning Division is recommending approval of the request for an alternative access for the rear lot of a future two lot subdivision.

The property is in the Agricultural A-1 Zone located at approximately 4186 N 3175 W and is 2.58 acres. The private right-of-way is located just off 3175 West, of Section 16 of Township 7 North, Range 2 West.

Alternative access applications such as this are reviewed and approved administratively by the Weber County Planning Director. It is essential to note that this request is an administrative application and is not a variance or an exception to the standards and criteria outlined in the Uniform Land Use Code of Weber County (LUC). The request conceptually meets the standards as outline in LUC §108-7-29 and meets the criteria for the request as required in LUC §108-7-31.

Alternative access applications should be approved as long as the design standards can be implemented during the development process. The application meets the criteria in LUC §108-7-31(1)(b) which states:

"Based on substantial evidence, it shall be shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions."

Exhibit B- Planning Division Staff Report Packet

Analysis

General Plan: The General Plan for Western Weber is intended to preserve private property rights while also preserving the rural characteristics of the area. This proposal conforms to the Western Weber General Plan.

Zoning: The subject property is located in the Agricultural Zone more particularly described as the A-1 zone. The purpose and intent of the A-1 zone is identified in the LUC §104-5-1 as:

"The purpose of the A-1 Zone is to designate farm areas, which are likely to undergo a more intensive urban development, to set up guidelines to continue agricultural pursuits, including the keeping of farm animals, and to direct orderly low-density residential development in a continuing rural environment."

The application has been forwarded to the applicable review agencies and based on the limited criteria and conditions that govern alternative access application and after a thorough review of the applicant's proposal, staff feels that the applicant has provided adequate evidence to show that it is unfeasible or impractical to extend a street to serve such parcel due to topographic, or property boundary conditions. This determination is based on the review and analysis of the information provided by the applicant.

Prior to any further development considerations on this site, the applicant will have to provide a complete application that adheres to all Federal, State and County ordinances.

Review Agencies: To date, the proposed alternative access has been approved by the Weber County Engineer. Weber Fire District has not yet approved this proposal. All review agency requirements must be addressed and completed prior to this alternative access being recorded.

Tax Clearance: The 2018 property taxes have been paid in full. The 2019 taxes are will be due in full November 30, 2019.

Public Notice: A notice has been mailed not less than seven calendar days before final approval to all property owners of record within 500 feet of the subject property regarding the proposed small subdivision per noticing requirements outlined in LUC §106-1-6.

Summary of Administrative Considerations

- Based on substantial evidence, has it been shown that it is unfeasible or impractical to extend a street to serve such lot/parcel. Financial adversity shall not be considered; however, circumstances that may support an approval of a private right-of-way/access easement as access to a lot/parcel may include but not be limited to unusual soil, topographic, or property boundary conditions

Staff Recommendation

Staff recommends approval of the request for an alternative access for a 30' x 269' private right-of-way as the primary access for the rear lot of a future two lot subdivision, subject to the following conditions:

1. That approval is based on the concept layout list as Exhibit C of the August 21, 2019 staff report.
2. That the future division of the land is in compliance with all relevant Weber County Land Use and Development ordinances.
3. That in the event evidence is presented that would prohibit the division of land (not otherwise listed in the Weber County Land Use and Development ordinances), this approval is void.
4. That this approval offers no explicit or implicit rights of access along any connected private streets, roads or rights of way serving access to the property.

This recommendation is based on the following findings:

1. Based on substantial evidence, it has been found that it is unfeasible or impractical to extend a street to serve such lot/parcel based on topographic, and property boundary conditions which limits typical access requirements in a unique way.

Exhibit B- Planning Division Staff Report Packet

Administrative Approval

Administrative final approval of an alternative access as the primary access for parcel # 23-007-0003 is hereby granted based upon its compliance with the Weber County Land Use Code. This approval is subject to the requirements of applicable review agencies and the conditions of approval listed in this staff report.

Date of Administrative Approval: Wednesday, September 4, 2019

Rick Grover
Weber County Planning Director

Exhibits

- A. Map of Location
- B. Application and Narrative
- C. Site Plan

