



BOARD OF ADJUSTMENT

MEETING AGENDA

Thursday, August 13, 2020

4:30 p.m.

Join Zoom Meeting

<https://us02web.zoom.us/j/82525094397>

Meeting ID: 825 2509 4397

One tap mobile

+12532158782,,82525094397# US (Tacoma)

+13462487799,,82525094397# US (Houston)

- *Pledge of Allegiance*
- *Roll Call*

Regular Agenda Items

1. Appreciation of Service Presentation: Phil Hancock

2. Minutes: Approval of the July 9, 2020 meeting minutes.

3. BOA 2020-06: Consideration and action on a request to appeal the construction of a home located at 3946 N 3175 W.
Applicant: Kristen Zaugg; Staff Presenter: Steve Burton

4. Adjournment

Minutes of the Board of Adjustments meeting of July 9, 2020, held via Zoom Conferencing, at 4:30 p.m.

Members Present: Laura Warburton-Chair
Bryce Froerer-Vice Chair
Rex Mumford
Neal Barker
Janette Borklund

Staff Present: Charlie Ewert, Principle Planner; Scott Perkes, Planner; Chris Crockett, Legal Counsel; Marta Borchert, Secretary

- Pledge of Allegiance
- Roll Call

1. Approval of minutes for June 11, 2020. Rex Mumford noted that there was a comment on page 4 paragraph 3, which he believes was made by another member of the Board. He asks if the recording can be reviewed, to ensure the correct person gets credit for comment. He also notes that he had asked if it was a utility easement he did not state it.

MOTION: Bryce Froerer moves to approve minutes with the noted correction. Motion carries (5-0)

2. BOA 2020-05: Consideration and action on a request for a 30-foot variance to the intermittent stream setback of 50-feet from the high watermark, at 840 North Yacht Club Dr., Eden, UT.

Applicant Representative: David Anhder; **Staff Presenter:** Scott Perkes

This subdivision was recorded on June 6, 1994, the lot has remained undeveloped. The applicant applied, on behalf of the owner, who is Larkin Revocable Trust. Mr. Anhder is looking to purchase the property, but he wanted to make sure he could place a home on the property, before purchasing it. The easement is 10 ft from the centerline, of the ephemeral stream, it is not year-round and typically flows at the spring runoff. In 2005 Ordinance 2005-19 was approved by the County Commission, which established river and stream corridor setback requirements. The requirements were put in place to protect the waterways. In the ordinance, it established a 50 ft from high water mark setback from this type of stream. It came about after the subdivision was recorded and required additional stream setbacks than was anticipated when the subdivision was designed. This stream affects 2 lots in the neighborhood. Lot 28 was developed in 1996 shortly after the plat was recorded and they have a home that is placed towards the back of the lot but is closer to the stream than would have otherwise been allowed. He notes that other than the two lots no other lots have the encumbrance. This is a unique consideration for lot 21 as far as the placement of the home is concerned. The applicant has submitted a variance request to be allowed to place a home on lot 21 but more centrally located to be closer to the stream than the 50ft set back requires. The request is for the variance to go from 50ft from high water mark to 20 ft from each side high watermark, which would result in a 30 ft variance. They would still be observing the easement that was recorded with the plat. There would still be quite a bit of setback for the stream. Staff feels that there is a unique hardship. Staff recommends approval of this request based on the request listed in the staff report.

Janette Borklund asks what the difference is between the high water mark and the centerline of the stream. Mr. Perkes states that the high-water mark is verified by the County Engineers, if requested they would go out and mark where those high watermarks are. The 50 ft setback has been drawn from the centerline. He notes that this drawing is a conservative depiction of the area that is available. The high-water mark could be a couple of feet in either direction that would further reduce the setbacks. He notes that they currently do not have that data the engineers have not gone out to see where the high watermarks are. The applicant is requesting a setback of 20 ft. from high-water, they are still being conservative in that regard, instead of measuring from the centerline. They would exceed the easement by at least 10 ft on either side plus a foot or 2 depending on the high-water mark. Ms. Borklund asks where the stream goes when it hits 5200. Mr. Perkes states that it continues Westward until it gets to the highway

then southward to the ditch. It follows the tree line. There is a drainage easement to the West. He notes that it is not natural steam in its journey. It has been altered in the past.

Rex Mumford states that this was one of his questions. He wondered if they altered the stream, and now it goes down between lot 23 and 24. Mr. Perkes states that this is his understanding they had to adjust it during the subdivision process. Mr. Mumford asks how much water flows during the flowing season. Mr. Perkes states that he does not have a record of this; he pulls up the Ogden Valley sensitive land map. It maps out the known intermittent streams. He states that based on this, the stream is intermittent seasonal. Mr. Mumford states that in the staff report there is mention that this is a drainage easement, does it drain like the street or something else that created an actual easement. He notes that typically a stream does not require an easement. If it was drainage perhaps, it needs an easement. Mr. Perkes states that he is not sure; he knows that the stream does follow this. He notes that he is not sure if the intention was to allow the stormwater to enter the stream. He states that he does not believe that this was the intention, but he does not have an answer to this question.

Neal Barker states that he went up to look at the lot. He notes that he ran into one of the neighbors who stated that there is a reservoir where the overflow from this channel goes. He adds that this is probably why there is an easement is because of the irrigation reservoir that collects the water. He states that he looked at the stream and there is no water going in it. There were still leaves in from last fall. The water does not flow very much. It is very dry, and there is a steep incline there. The neighbor stated that the water flowed when the reservoir was filled and went away when water was drawn from the reservoir.

Rex Mumford asks where this reservoir might be. Mr. Perkes states that he is not sure where it is, and he wonders if it is a tank to the West.

Mr. Perkes states that before the meeting Staff sent out public notices the surrounding neighbors within 500 ft. there were a couple of neighbors that called in. There was a neighbor that lives at 794 and a different neighbor at 857 across the street and he mentioned something about a pond or reservoir somewhere above them. He states that from the aerial it is hard to tell. Mr. Mumford states that in the staff report item B on page 2 it states that the setback was adopted 11 years ago. He states he believes it was adopted 15 years ago in 2005. Mr. Perkes states that this is correct it has been amended a few times but the setback of 50 ft has not changed. Mr. Mumford states that Director Grover once mentioned that on a small stream like this if it, not exposed steam the setback would not be required. Mr. Perkes states that according to (Sec. 104-28-2(b)(1)), it states that regarding ephemeral stream corridor setbacks: *No structure, accessory structure, road, or parking area shall be built within the required setback from a river or stream as measured from the high watermark of the river or stream. The high watermark shall be determined by the Weber County engineer. The areas within the setback shall be maintained in a manner that protects the quality of water in the river or stream and the habitat of native vegetation and wildlife along the river or stream...*

C. Structures, accessory structures, roads, or parking areas shall not be developed or located within 50 feet from the high watermark of a natural ephemeral stream.) Mr. Perkes states that he does not recall language that states that if it were piped the setback would not be required. Mr. Ewert states that the ordinance does not discuss when the steam is piped and when it is not. He notes that at some point the drainage ditch is no longer an ephemeral stream, the underground. He asks when does it stop being a stream and starts being a channelized body of water. It is one of the ambiguous questions. The stream in question is clearly and historically as an ephemeral stream. It has been operated as a drainage ditch in the area and especially if it has been controlled from above by a tank. It is on the map as an ephemeral stream and it needs to be treated as such but it is an odd situation.

Chair Warburton asks if there are any other questions from the Board Members.

Chair Warburton states that on the original application it states that it is for a home or an accessory dwelling building. She asks why accessory dwelling is listed on there. Mr. Perkes states that looking at the encumbrance on steam on the property if half of the area was encumbered in an undevelopable area. The purpose is for the owner to have a place to adequately place them logically. Chair Warburton asks if an average home could be placed here appropriately in this area if they didn't have an accessory dwelling building. She asks if it is for a home or an accessory dwelling building. Mr. Perkes states that the primary intent is a home. Looking at the neighborhood all the lots were designed with similar widths and styles. This particular lot would not be able to be developed the same way. This is part of the unique hardship. Chair Warburton asks how this affects septic placement. She asks if the 50 ft setback

applies to septic. Mr. Perkes states that he is not sure what the requirements from the Health Department in 1994 were when it was originally plated. He adds that he is not sure if the neighborhood is on sewer but if it is on septic and gets on septic they would have to get a permit from the Health Department and the plans would need to be reviewed to pull that permit. Chair Warburton states that she just wants to make sure they don't contaminate the water coming through.

Jannette Borklund states that the accessory dwelling building would be able to be closer than a home. She notes that she feels it would be safer for them to have an accessory structure than a home.

David Anhder states that they are trying to make a small home it will be between 66 to 70 ft wide with a 2 car garage. He notes that they plan to situate the home in the center. Concerning the reservoir that was mentioned he states that he believes it is a small pond. He does not believe that the pond drains to the area in question. He is not sure if this is what they are referring to. The draining is caused by a pipe that goes under the road, it is piped from the neighbors uphill. Concerning the sewer, there is a common sewer easement. There is the primary septic, they don't have the leech field because they can leech into the sewer line that is already there, it is on the property to the south on the lot in question. There is a sewer easement and they were told they need to drain into that. He states that they are just trying to do their due diligence, they don't own the lot yet. The house they want to build is only 1600 sq. ft. it won't be a big house but they do not want to put it right on the edge. It would look better to be centrally located on the lot.

Chair Warburton asks if there are any questions for the applicant David Anhder. There are none.

Mr. Perkes states that he spoke to two neighbors who received a notice. He adds that after he explained the proposal neither of them had any concerns.

Chair Warburton opens the public comment.

Bryan Mecham 865 N HWY 158, states that he is to the North and adjacent to the stream. The stream does run and runs following storms and during the spring runoff. He adds that based on what has been discussed he has no concerns about what is being proposed.

Chair Warburton closes the public comment.

MOTION: Bryce Froerer moves to approve BOA 2020-05: Consideration and action on a request for a 30-foot variance to the intermittent stream setback of 50-feet from the high watermark, at 840 North Yacht Club Dr., Eden, UT.

Jannette Borklund seconds. Bryce Froerer votes aye. Rex Mumford votes nay. Jannette Borklund votes aye. Chair Laura Warburton votes aye. Neal Barker votes aye. Motion carries (4-1).

Mr. Mumford states that 30 ft on a 50 ft setback is excessive, especially after hearing from Bryan Mecham who said that the stream does run intermittently. He states that based on this it is a real stream, not just a drainage ditch.

Comments: Staff and Board of Adjustments members welcome Neal Barker and Jannette Borklund to the Board of Adjustments.

Adjournment: 5:17 PM



Staff Report to the Board of Adjustment

Weber County Planning Division

Synopsis

Application Information

Application Request:	Consideration and action on a request to appeal the construction of a home located at 3946 N 3175 W.
Agenda Date:	Thursday, August 13, 2020
Applicant:	Kristin Zaugg, represented by Zane Froerer
File Number:	BOA 2020-06

Property Information

Approximate Address:	3946 N 3175 W
Project Area:	1.50 Acres
Zoning:	Agricultural Zone (A-1)
Existing Land Use:	Residential
Parcel ID:	19-392-0002
Township, Range, Section:	T7N, R2W, Section 22

Adjacent Land Use

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

Staff Information

Report Presenter:	Steve Burton sburton@co.weber.ut.us 801-399-8766
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)

Background

The appellant submitted the appeal application on June 25, 2019. Under Weber County's Land Use Code (Sec 102-3-3), The Board of Adjustment has the following duties and powers:

- To act as the appeal authority from decisions applying and interpreting this Land Use Code and Zoning Maps.**
- To hear and decide variances from the requirements of the Land Use Code.

The appellant has not cited a specific land use decision of which they are appealing. As such, it is unclear what is being appealed. Under the board's decision criteria for appeals (Sec 102-3-4 (a)(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."

The parcel number provided in the appeal application is 19-392-0002. The Planning Division has neither record of land use decisions being made, nor any written decisions, for applications related to this parcel 15 days prior to June 25, 2019. The most recent land use decision made for the subject parcel was the issuance of a building permit and land use permit on May 6, 2019.

The building permit was for a single-family dwelling which received final occupancy from the county on October 18, 2019. The county does not issue written decisions for land use or building permits and an appeal application was not submitted within 15 calendar days from either the date of building permit issuance or occupancy.

The appellant states that the county made legal error in permitting a subdivision on the subject parcel. The property is part of the Schildhauer Subdivision. The written decision of final approval of the Schildhauer Subdivision was dated November 22, 2018. The current appeal application was not filed within 15 calendar days of that date.

The appellant states that notice was not mailed in a timely manner to property owners within 500 feet. The county does not send notice, nor does it have regulations requiring notice, to surrounding property owners for building permits. For subdivisions, the county does send a 7 day notice to property owners within 500 feet. Regardless of the timing of notices, an appeal application was not filed timely.

Staff Recommendation

Staff recommends that the appeal request BOA 2020-06 be denied. The recommendation is based on the following findings:

1. It is unclear which land use decision is being appealed.
2. The appeal application was not submitted within 15 calendar days from the date of a land use decision or the date of a written decision.

Exhibits

- A. Appeal application and narrative.

Can only appeals IBC (International Bldg Code)
Appeal

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)	Receipt Number (Office Use)	File Number (Office Use)
----------------------------	-------------------	-----------------------------	--------------------------

Property Owner Contact Information

Name of Property Owner(s) Kelly & Kristin Zaugg		Mailing Address of Property Owner(s) 3944 N 3175 W Farr West UT 84404	
Phone 801-814-3740	Fax		
Email Address krzaugg69@gmail.com		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) Zane Froerer Froerer & Miles Law Firm		Mailing Address of Authorized Person 2661 Washington Blvd. Suite 261 Ogden UT 84401	
Phone 801-621-2690	Fax		
Email Address zane.froerer@froererlaw.com		Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	

Appeal Request

- A variance request:
 __ Lot area __ Yard setback __ Frontage width __ Other: _____
- An Interpretation of the Zoning Ordinance
- An Interpretation of the Zoning Map
- 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
- Other: _____

Property Information

Approximate Address 3946 N 3175 W (Property is 3928 N 3175 W Farr West/Ogden UT 84404 on record as) Ogden UT 8440 (NOTE: The address given by the county is already an existing home/business)	Land Serial Number(s) Parcel # 193920002
Current Zoning A-1	

Existing Measurements		Required Measurements (Office Use)	
Lot Area	Lot Frontage/Width 0	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)

Applicant Narrative

Please explain your request.

We are requesting construction be stopped on a lot located at approximately 3946 N 3175 W based on location in reference to other property addresses near this lot. Yet the lot in reference to was given the address of 3928 N 3175 W. by the county fairly recent. 3928 N is already an existing address with a home/business in this subdivision and has been an existing address more than 10 years with property tax records verifying this address already exists at a different location. Due to noncompliance with West Weber A-1 Codes and regulations, including but not limited to...

23-29-1 (2,3,4,5,6)

SWPPP 33-3-4 & 40-3-5

Along with No Signature of Approval on Weber County Stormwater Construction Activity Permit

We are also requesting Weber County to retract what has been allowed by Weber County against the Countys A-1 Zoning Codes and regulations.

And also due to Bay View Ranchettes Association by laws as to the Trustees have to review requests by land owners in changes made to their property. Which also complies with an agreement between Bay View Association and Weber County that we would make sure the land owners followed the regulations set forth by the county.

Including but not limited to:

101-1-7 104-11-6 9 (a&b)

106-2-4 (c & d) 108-7-30

108-7-31 108-7-32

23-29-1 (2,3,4,5,6) 23-29-2 (5)

23-29-3 (1,2,3,**4) 23-30 (1,2,6)

23-31-1 (1) 23-31-2 (1)

23-32 (2)

Other issues have arose due to notices not being mailed out in a timely manor to property owners of interest or that live within 500 feet of property referred to. The address on referred property was not the address or close to the address on the property referring to of being altered without complying to ordances for the area. Because of this, property owners that received the notices were mislead into believing it wasn't something that would affect them. When said property owners realized the issue that was being imposed many of them contacted the county by phone, email or in person at the County Offices to try to resolve the issues, concerns and codes that would be violated, but they were neglected and dismissed by the parties in the county of interest in decision making regarding zoning ordances, land use permits and building permits. This happened on multiple occations. Most recently the county has approved a building permit and a land use permit for the construction of a residence and approved an alternate access across a private road. The alternate access was just recently constructed and otherwise no notice was properly sent out. Also the decision to allow the residence to begin construction before the private road was properly built and approved to Ordiances and Code is improper. The County made a legal error in permitting the subdivision, in approving the alternate access and in issuing the building permit and associated land use decisions.

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.

Variance Request (continued...)

2. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone.

a. In determining whether there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances relate to the hardship complained of, and deprive the property of privileges granted to other properties in the same zone.

Please describe the special circumstances attached to the property that do not generally apply to the other properties in the same zone:

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

Variance Request (continued...)

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

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

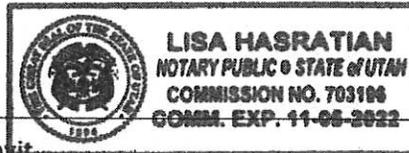
Property Owner Affidavit

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 21st day of May, 2019.



Lisa Hasratian
(Notary)

Authorized Representative Affidavit

I (We), _____, the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), _____, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

(Property Owner)

(Property Owner)

Dated this _____ day of _____, 20____, personally appeared before me _____, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

(Notary)