

Thursday, February 4, 2021



# BOARD OF ADJUSTMENT

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## MEETING AGENDA

**Thursday, February 11, 2021  
4:30 p.m.**

Zoom Meeting

<https://us02web.zoom.us/j/87549394924>

Meeting ID: 875 4939 4924

One tap mobile

+16699006833,,87549394924# US (San Jose)

+12532158782,,87549394924# US (Tacoma)

- *Pledge of Allegiance*
- *Roll Call*

### Regular Agenda Items

**1. Minutes:** Approval of the October 22, 2020 meeting minutes.

**2. BOA2021-01:** Consideration and action on a request for a 15-foot variance to the 50' natural ephemeral stream corridor setback for property located at 3488 N. Elk Ridge Trail in Eden.

**Staff Presenter: Scott Perkes; Applicant: Dennis Barrett**

**3. Election: Election for Chair and Vice Chair 2021**

**4. Schedule & Information: 2021 Meetings**

**5. Rules of Order: Approval of Rules of Order**

**6. Review of Open Meetings Act - Brandan Quinney**

**Adjournment**

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

*&*

*Via Zoom Video Conferencing at the link listed above.*

***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***

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**Minutes of the Board of Adjustments meeting if October 22, 2020, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1 Ogden UT at 4:30 pm & via Zoom Video Conferencing.**

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**Members Present:** Laura Warburton – Chair  
Rex Mumford  
Neal Barker

**Staff Present:** Rick Grover, Planning Director; Felix Lleverino, Planner II; Matt Wilson, Legal Counsel; Marta Borchert, Secretary

**1. Minutes: Approval of October 8, 2020 minutes.** Approved as presented.

**2. BOA 2020-07: Consideration and action on a request for a 22' variance to the front yard setback, a 10' variance to the west side, a 15' variance to the east side, and a 20' variance to the rear yard setback.**

Felix Lleverino states that he would like to make some corrections. He states that he would like to restate the applicant's request. This is a request for consideration and action for an 8 ft. variance to the front yard setback, a 10 ft. variance to the Westside a 15 ft. variance to the Eastside, and a 10 ft. variance to the rear yard.

This the second time this item is before the Board. It was seen on October 8<sup>th</sup> and there were some disruption and confusion due to some technical issues. This lot is not currently vacant. The owner of the home is looking to build a home. To accommodate the size of the home and the orientation, they are requesting variances. The minimum setbacks are established by the zoning code. The Forest Valley – 3 zones requires a minimum of 30ft from the front yard property line a minimum of 30 ft. from the rear property line and 20 ft. on both sides. The floor and house plans have been included there is also a narrative, of why the variances should be granted. It is located off of Old Snowbasin Road.

Mr. Lleverino goes over the criteria for granting a variance. He explains the floor plan. He adds that one thing to point out is that in this request for a variance and, the burden of proof lies with the applicant to state why they think variance is necessary.

Chair Warburton asks if there are any questions for Mr. Lleverino.

Rex Mumford asks once the proposed variances are granted what would they be changed to. Mr. Lleverino states that there are roughly 10 ft. in the front 10 ft. on the Westside, 16 ft. on the East, and 20 ft. on the rear.

Neal Barker asks if they can address criteria number 1. It says that circumstances peculiar to the property not from conditions that are general to the neighborhood. He asks what makes this property peculiar that would require these setbacks, or is it just that they want a large house. Mr. Lleverino state that he will the applicant answer the question.

Robert McArthur 85 E 2200 S, states that he the architect for the applicant. He appreciates the opportunity to discuss this issue. It is a small parcel, but for some reason, the setbacks are the same as the larger parcels. He states that this is about 6/10<sup>th</sup> of an acre. In the area of the setback compared to the buildable area, there is more setback than the buildable area. That portion that overlaps into the west side setback is an open deck it comes 10 ft. to the property line. On the Eastside, there is a patio that goes about 5 ft. into the setback. He adds that he designed the house to step with the grades. They did not want to set the house too high for the neighbors. They met with the neighbors to make sure that everyone's concerns were considered. The views are so spectacular that they wanted to make sure that they were not impacting the neighbor's views. The other challenge with the rear lot is 54 ft. wide and it tapers to a larger 200 ft. on the road. He states that because of this they could build a house up towards the road, but they would have to do a two-story above grade. This would impact the neighbor's views. If they build too close to the Eastside, what gets built there would be towering over the neighbors to the east. He states that they pushed it to the West because that is National Forest property. They felt that that would be a safe position for the long term. At the October 8<sup>th</sup> meeting the neighbors attended the meeting because they had some concerns. These concerns have been addressed and the Board of Adjustments should have received

a letter from one of the neighbors regarding this. He adds that there is some disparage on the lot because of the size in relationship to the other homes in the area.

Neal Barker states that there was some mention concerning the easement and that the size of the house was restricted because of the easements. He asks if he has any information on the easements attached to the property. He asks if Mr. McArthur can address this. Mr. McArthur states that the terms easements and setbacks might have been confused. Susan Muse 5055 Old Snowbasin RD. states that she used the term appropriately because she believes a part of her lot was given away to Sundance Ridge which is the neighboring community for their entrance. She adds that they have a site plan dated back to 2005, which shows this being a bigger lot. The new site plan shows it a little differently. She states that they do not feel that the setbacks are congruent to their property. She wants to make it clear that none of the neighbors are present because all of their concerns have been addressed. They were concerned about the size of the home, she states that the home is 3700 sq. ft. it is not a large home. They want to build a home that fits into the landscape. They want to build into the configuration, they want to integrate it into the mountain top. The neighbor that is most impacted by the project has written an email that was sent to all the Board members. He is 100 percent ok with the project because he has seen the plan. The president of Sundance Ridge is also very happy that the house has been oriented towards the National Forest. All of the neighbors are happy with what is being done.

Chair Warburton states that the staff report says that the applicant has proposed a home that is 7,000 sq. ft. and they said it was 3700. Mr. Lleverino states that when staff looks at the size of the home they don't just look at the living area. They looking at everything including decks, garages, and porches. All of this is part of the building footprint, this is probably where the main discrepancy is. Also, the measurement is calibrated based on the scale at the bottom of the page. The scale that was provided by the applicant may be wrong.

Chair Warburton asks what the sizes of the homes are in the area on average. Mr. Lleverino states that based on the imagery they are around 4500 sq. ft. Chair Warburton states they are not asking for a bigger home they are asking for a smaller home relative to the surrounding homes. She notes that she was quite pleased to get the letter from one of the neighbors Mr. Boyle who stated that he was happy with the proposal. She asks if there were any other letters of public comment submitted. Mr. Lleverino states that the other public comments that were received were presented at the meeting on the 8<sup>th</sup> of October. Those issues have been addressed.

Rex Mumford states that he would like more clarification on the actual size of the home. There is a discrepancy concerning the actual footprint and the footprint of the surrounding homes. Mr. Lleverino states that if the applicant believes that the 7,000 sq. ft. stated in the staff report is incorrect They are welcome to present any information that the 3500 sq. ft. is indeed the actual footprint. Mr. McArthur states that the square footage of the home is 3750 sq. ft. He adds that to his knowledge the surrounding homes are around 8000 sq. ft. with garages.

Neal Barker asks if there was no variance given and they were required to stick with the setbacks what would the size of the house be. Mr. McArthur states that they would have to build the house up, the square footage would be the same. The shape and the elevation make the limit the buildable area of the lot. He adds that he feels confident that the proposal is within the confines of the buildable area. He adds that the only thing that is overlapping in the corners. There is a shower that overlaps into the back 3 ft. part of the deck overlaps, and the corner of the front garage overlap. The corner of the master bedroom overlaps. He states that they are not asking for a huge variance. The configuration of the lot would not change what can be placed there. He states that he feels very confident that it was designed within the parameters set forth. Chair Warburton states that they were to say that they need to stick to the rules they can still build a home with the same footprint, but it would be a two-story house. It is not what the petitioners want and it would cause conflict with the neighbors.

Rex Mumford states that he has a concern that this has nothing to do with the size of the home it is the size of the lot. If they are providing setback variances because the lot in question is .6 of an acre compared to the neighborhood, none of those encroached on the other setbacks. He states that he struggling with them trying to remove the setbacks from the lot simply because it is a small lot. It is not the neighbors that set the setbacks. Chair Warburton states that she agrees. She adds that they are not supposed to look at that, but it is part of the criteria. Looking at the lot it is limited.

Chair Warburton states that they may have done things differently but there needs to be a motion before they can have a discussion.

**MOTION:** Rex Mumford moves to deny BOA 2020-07: Consideration and action on a request for an 8' variance to the front yard setback, a 10' variance to the Westside, a 5' variance to the Eastside, and a 10' variance to the rear yard setback in the FV-3 zone. There is not second. The motion dies.

Rex Mumford states that the reason for the motion to deny is that he feels this needs to be discussed. He states that there is a reason for setbacks to be there. Some of the reasons include access, encroachment on neighboring properties, or the forest and riparian areas. If there needs to be work done on the house there needs to be accessed for the equipment to go in. He notes that he is not able to see the neighboring properties to see how the modifications to the setbacks would affect the surrounding properties.

Chair Warburton asks if this is denied if it would cause unreasonable hardship on the applicant. She states that her personal opinion is that it would. She states that if she were building a retirement home she would not want a two-level home, and it seems all the neighbors don't mind. Matt Wilson states that looking at the code it states that the Board 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 in circumstances peculiar to the property and from conditions general to the neighborhood. Neal Barker states that the first criteria were the one that he was hung up on. It states that the circumstances are peculiar to the property. He states that the shape of the property is peculiar. He states that he feels this could be a hardship for the applicant. Also, it is not in the best interest of the neighbors for the applicant to build a two-story. He notes that by looking at it should have access to the forest service side that is direct to the west. He adds that he feels that it is peculiar in that it is different than the other neighbor's lots. Chair Warburton states that it is important to keep in mind that it has not gone through the review process. Just because the Board approves does not mean it will get built. I will have to go through the review agencies, to make sure it meets all of the criteria. She notes that all of the Board members have to agree for a decision to be approved because there is only three board member.

Rex Mumford states that he understands the stair issue that she mentioned earlier. The Board members can not approve or deny based on their feelings concerning the stairs. He asks if this is a self-imposed hardship because of the size of the structure, or is it a hardship because of the size of the lot. Chair Warburton states that she can see his point, they could shorten part of the deck and it would be fine. She states that she may be caught up in what the whole neighborhood wants, and how the whole neighborhood would be best benefited. She states that for a ridgeline home it would be best as a single-story home. She states that they could cause more problems if they deny the variance. She asks if maybe the rules don't apply to this lot.

Director Grover states that looking at the criteria. One of the criteria talks about the special circumstances attached to the property that may not generally apply to other properties in the same zone. In this situation, they can look at the lot configuration. It is an odd-shaped lot in that area and those things are going to need to be looked at as they make the findings. This included things that are specifically associated with the lot. Whether or not the owners are looking at retiring are not things that cannot be included when looking at the criteria to make the decision. It has to do with physical things on the land because the house will sell at different times throughout its stage of existence. The Board will need to look at the physical land and the land configuration. If they are looking at the lot configuration and the slopes thing that are unique to the parcel not associated with other properties in the area are things they need to look at as they review the criteria.

Chair Warburton thanks Director Grover for the clarification and states that they purchased the lot they should have known what they could do with it.

Rex Mumford asks what staff recommended. Director Grover states that the legal department has asked that staff not set a recommendation. The Board must use the five criteria to make their determination. Mr. Wilson states that concerning the hardships the code states that in determining whether or not enforcement of the land use ordinance would cause unreasonable hardship the appeal authority may not find an unreasonable hardship when the hardship is self-imposed or economic. Rex Mumford states that from his perspective if they bought a lot that had less acreage in an area where the neighboring lots are bigger, one would think that they need to figure out what they want to put on the smaller footprint anything bigger than that is self-imposed. Chair Warburton

states that she agrees, she does not agree with the comment in the application that stated that there was a hardship because of the easement granted to Sundance Ridge. This lot stands on its own. She notes that she is still inclined to grant the variance. Looking at the proposed structure compared to the surrounding houses it is a reasonable request. She asks if Rex Mumford if he believes this is a reasonable request. Mr. Mumford states that looking at the actual footprint of the 7000 sq. ft. it still feels like a self-imposed hardship. They are asking for a variance on all four sides of the structure, it makes him feel that there is something there that is self-imposed. Chair Warburton asks if the request is unreasonable.

Neal Barkers states that he agrees with everything that Mr. Mumford has stated. This is a difficult decision. Looking at criteria one is he feels that it is self-imposed. He adds that he feels that it also has a peculiar shape. Looking at the fourth criteria states that the variance will not substantially affect the general plan, and will not be contrary to the public interest. He adds that it was the neighbor's letter that turned it for him. They are the only ones that would be affected and they are in favor of it.

Chair Warburton states that she appreciates everything that is being said. She does not see how this will hurt the spirit of the land-use code.

Susan Muse 5505 Old Snowbasin Rd, states that she feels that they are going off of a number that is not accurate. The 7,000 sq. ft. is coming from Mr. Lleverino, not the architect and he would like to correct it. Robert McArthur states the conditioned space is 3700 sq. ft. the double garage is approximately 650 sq. ft. the single car garage is 300 sq. ft. one deck off to the west is approximately 300 sq. ft. the porch off of the master bedroom is 60 sq. ft. the total square footage is 5010. Chair Warburton asks if there is any way to get the deck and bump it back a little? Mr. McArthur states that they designed the layout toward the East with a two-story elevation and the neighbors did not want that. In other jurisdictions, they have setbacks that as long as there are no structural elements supporting the structure it can go into the setback. He states that this is something that can be considered, the deck is covered and it wouldn't have to have structural columns on the end. Rex Mumford asks if the 10 ft. variance on one side and the 5 ft. variance on the other side are other of those strictly for nonstructural parts of the dwelling. Mr. McArthur states that both are unconditioned spaces. Mr. Mumford asks if they are a structural part of the building, are they cantilevered. Mr. McArthur states that they are not at the moment it is more economical to build columns for it. At the moment to hold the structure of the deck and the roof is in the variances. Mr. Mumford asks if on both sides it would be possible to mitigate those by cantilevering. Mr. McArthur states that it would.

Rex Mumford notes that based on Mr. McArthur's comments they could remove both of the side setback requests, by cantilevering the porch or deck, they would rather not do that because it is more expensive. Mr. McArthur states that the structural post off of the master bedroom is within the 20 ft. setback. It is the patio overhang that goes into the setback. The main deck off of the main great room is covered. There is a den with another deck that is also covered and it protrudes to the West. Mr. Mumford states that if they removed those two setback requests it would eliminate the self-imposed element on at least two sides. He states that he is not uncomfortable with the front or the back.

**MOTION:** Neal Barker moves to approve consideration and action on a request for an 8' variance to the front yard setback, a 10' variance to the west side, a 5' variance to the east side, and a 10' variance to the rear yard setback in the FV-3 zone. Chair Warburton second. Rex Mumford votes aye. Neal Barker votes aye. Chair Warburton votes aye. Motion carries (3-0).

Director Grover states that he knows it is difficult when the staff doesn't make a recommendation. The burden of proof of hardship falls on the applicant, not on staff.

Chair Warburton thanks everyone involved.

**MOTION:** Neal Barker moves to Adjourn.

Adjourned: 6:00 PM

Respectfully submitted,  
Marta Borchert



# Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

## Synopsis

### Application Information

<b>Application Request:</b>	Consideration and action on a request for a 20-foot variance to the 50' natural ephemeral stream corridor setback.
<b>Agenda Date:</b>	Thursday, February 11, 2021
<b>Applicant:</b>	Dennis Barrett (Applicant & Owner)
<b>File Number:</b>	BOA2021-11

### Property Information

<b>Approximate Address:</b>	3488 N Elk Ridge Trail, Eden, UT
<b>Project Area:</b>	0.45 acres
<b>Zoning:</b>	Residential Estate (RE-15)
<b>Existing Land Use:</b>	Vacant Developable Lot
<b>Proposed Land Use:</b>	Residential
<b>Parcel ID:</b>	22-130-0009
<b>Township, Range, Section:</b>	T7N, R1E, Section 22, NE

### Adjacent Land Use

<b>North:</b>	Residential	<b>South:</b>	Residential
<b>East:</b>	Residential	<b>West:</b>	Residential

### Staff Information

<b>Report Presenter:</b>	Scott Perkes sperkes@co.weber.ut.us 801-399-8772
<b>Report Reviewer:</b>	SB

## Applicable Codes

- Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Title 104 (Zones) Chapter 3 (Residential Estates Zones RE-15 and Re-20)
- Title 104 (Zones) Chapter 28 (Ogden Valley Sensitive Lands) Section 2 (Stream Corridors, Wetlands, and Shorelines)

## Development History

On July 2, 1996, the Elkhorn Subdivision Ph. 2 plat was recorded. The subject property of this application is depicted as lot 29 of this subdivision (see **Exhibit B**). This lot is currently undeveloped. However the applicant has submitted for a Land Use Permit and a Building Permit for a single family residence.

On December 5, 2005, the Board of County Commissioners adopted Ordinance 2005-19, which established river and stream corridor setback requirements (see **Exhibit E**).

This request to the Board of Adjustment was submitted on February 1, 2021 (see **Exhibit A**).

## Background and Project Summary

The applicant is requesting a 20-foot variance to the required 50-foot ephemeral stream setback to facilitate the placement of a single-family detached home on the lot. The special circumstance on the property that is driving this variance request is a seasonal/intermittent stream running through the rear of the lot, as shown within a detention basin easement on the Elkhorn Subdivision Ph. 2 subdivision plat (see **Exhibit C**). This stream requires a 50-foot setback from its high water mark, thus creating a large encumbrance on the property.

The Land Use Code (Sec. 104-28-2(b)(1)), states the following 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 water mark of the river or stream. The high water mark 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 water mark of a natural ephemeral stream.*

This section of code was first implemented in 2005 through the adoption of Ordinance 2005-19 (see **Exhibit E**). For reference, the Elkhorn Subdivision Ph. 2 was recorded in July of 1996. As such, this subdivision was originally designed for adequate sizing and configuration of building lots for residential footprints and did not contemplate additional setback requirements beyond the depicted detention basin easement.

For reference, seven total lots within this subdivision (lots 29-34) are affected by this stream. However, only lot 29 (applicant's lot) and lot 33 remain undeveloped. The developed lots 30-32 were either developed prior to Ordinance 2005-19 being adopted, or were permitted without going through the variance process.

The granting of a 20-foot variance would allow the applicant to build a home to within 30 feet of the stream's high water mark.

## Summary of Board of Adjustment Considerations

LUC §102-3 states that one of the duties and powers of the Board of Adjustment is to hear and decide variances from the requirements of the Weber County Land Use Code. 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 Land Use Code.*
  1. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought, and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*
  2. *In determining whether or not literal enforcement of the land use code would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.*
- 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.*

## Staff Analysis

Listed below is staff's analysis:

- a. Literal enforcement of the 50-foot ephemeral stream setback would limit the placement of a single-family detached home on the lot.
- b. The special circumstance that exists on the property is the location of the ephemeral stream and its required 50-foot setback from high water marks. As mentioned above, this setback requirement was adopted 9 years following the recording of the associated Elkhorn Subdivision Ph. 2. As such, the lot was not designed during the subdivision process to accommodate additional setbacks to the ephemeral stream. The stream's 50-foot setbacks from high water marks, coupled with the required structural setbacks of the RE-15 zone, significantly reduces the lot's developable area (see **Exhibit C**). Thereby limiting the placement of a single-family home as compared to the placement of homes on other residential lots in the subdivision.
- c. Granting the variance would allow the owner of the parcel to build a single-family home in a location on the lot that would be similar to adjacent residences and other single-family lots found in the RE-15 zone.
- d. The General Plan indicates that this area should be developed as is planned and zoned; thereby the variance and future residential development is not contrary to any public interest.
- e. This variance request is not an attempt to avoid or circumvent the requirements of the County Land Use Code. The applicant has gone through the proper channels in applying for a variance. The proposal still observes the detention basin easement, as was originally required at the time of subdivision.



**Exhibit A: Variance Application & Narrative**

<b>Weber County Board of Adjustment Application</b>			
<b>Application submittals will be accepted by appointment only. (801) 399-8374. 2380 Washington Blvd. Suite 240, Ogden, UT 84401</b>			
Date Submitted / Completed	Fees (Office Use)	Receipt Number (Office Use)	File Number (Office Use)
<b>Property Owner Contact Information</b>			
Name of Property Owner(s) <i>Dennis &amp; Ellen Barrett</i>		Mailing Address of Property Owner(s) <i>3488 N. Elk Ridge Trail Eden, UT 84310</i>	
Phone <i>435-559-1047</i>	Fax	Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Email Address <i>dennispbarrett1958@gmail.com</i>			
<b>Authorized Representative Contact Information</b>			
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	
<b>Appeal Request</b>			
<input checked="" type="checkbox"/> A variance request: ___ Lot area    ___ Yard setback    ___ Frontage width    Other: _____			
<input type="checkbox"/> An interpretation of the Zoning Ordinance <input type="checkbox"/> An interpretation of the Zoning Map <input 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: _____			
<b>Property Information</b>			
Approximate Address <i>3488 N. Elk Ridge Trail Eden, UT 84310</i>		Land Serial Number(s) <i>22-130-0009</i>	
Current Zoning <i>Single Family Residence</i>			
<b>Existing Measurements</b>		<b>Required Measurements (Office Use)</b>	
Lot Area <i>.45 acre</i>	Lot Frontage/Width <i>128.54 ft.</i>	Lot Size (Office Use)	Lot Frontage/Width (Office Use)
Front Yard Setback <i>30 ft.</i>	Rear Yard Setback <i>30 ft.</i>	Front Yard Setback (Office Use)	Rear Yard Setback (Office Use)
Side Yard Setback <i>10 ft.</i>	Side Yard Setback <i>20 ft.</i>	Side Yard Setback (Office Use)	Side Yard Setback (Office Use)

### Applicant Narrative

Please explain your request.

We are requesting a variance to the Weber County Land Use Code. Our property is in a developed area (subdivision) where other homes have the same controlled runoff stream. The stream is at the back of our property and is controlled by a valve approximately 1 mile away from our property that releases water from one retaining pond. The lowest portion of our proposed home is 5 feet above the high water mark. To be able to build our home on the property, we are requesting a variance to the code stating the home must be 50 feet away from the high water mark.

### 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.

Without the variance, we will not be able to build our proposed home on our lot. We have looked into shifting the home on the lot, but that won't work. We would be unable to accommodate the setback regulations.

**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:

In order to be able to build our home and meet Weber County Land Use Code, a variance of 20 feet is being requested.

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

We purchased this lot in 2018. It was marketed, sold, and purchased by us as a building lot. We purchased the lot with the understanding that we would be able to build a home on this lot. We have since learned of the 50 feet from house to high water mark ordinance. Without the variance, we will be unable to build our home.

**Variance Request (continued...)**

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

The property is listed as a single family home building lot. It is expected for a home to be built on this lot. Granting the variance will not affect the general plan or be contrary to the public interest. There is already curb and gutter and utilities stubbed to the property.

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

We measured 4 points from the back of the home to the high water mark. The 4 points are 46', 36', 35' and 30'. The home will still sit substantially away and above the high water mark. This should be well within the spirit of the land use ordinance.

**Property Owner Affidavit**

I (We), \_\_\_\_\_, 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.

\_\_\_\_\_  
(Property Owner)

\_\_\_\_\_  
(Property Owner)

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary)

**Authorized Representative Affidavit**

I (We), \_\_\_\_\_, the owner(s) of the real property described in the attached application, do authorize 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.

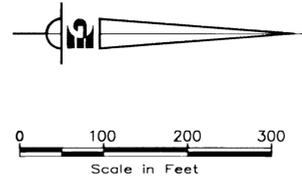
\_\_\_\_\_  
(Notary)

# Exhibit B

## ELKHORN SUBDIVISION, PHASE 2

### PART OF THE SOUTHEAST 1/4 OF SECTION 22 AND PART OF THE NORTHEAST 1/4 OF SECTION 27 T7N, R1E, SLB&M, U.S. SURVEY

#### WEBER COUNTY, UTAH JUNE 1996



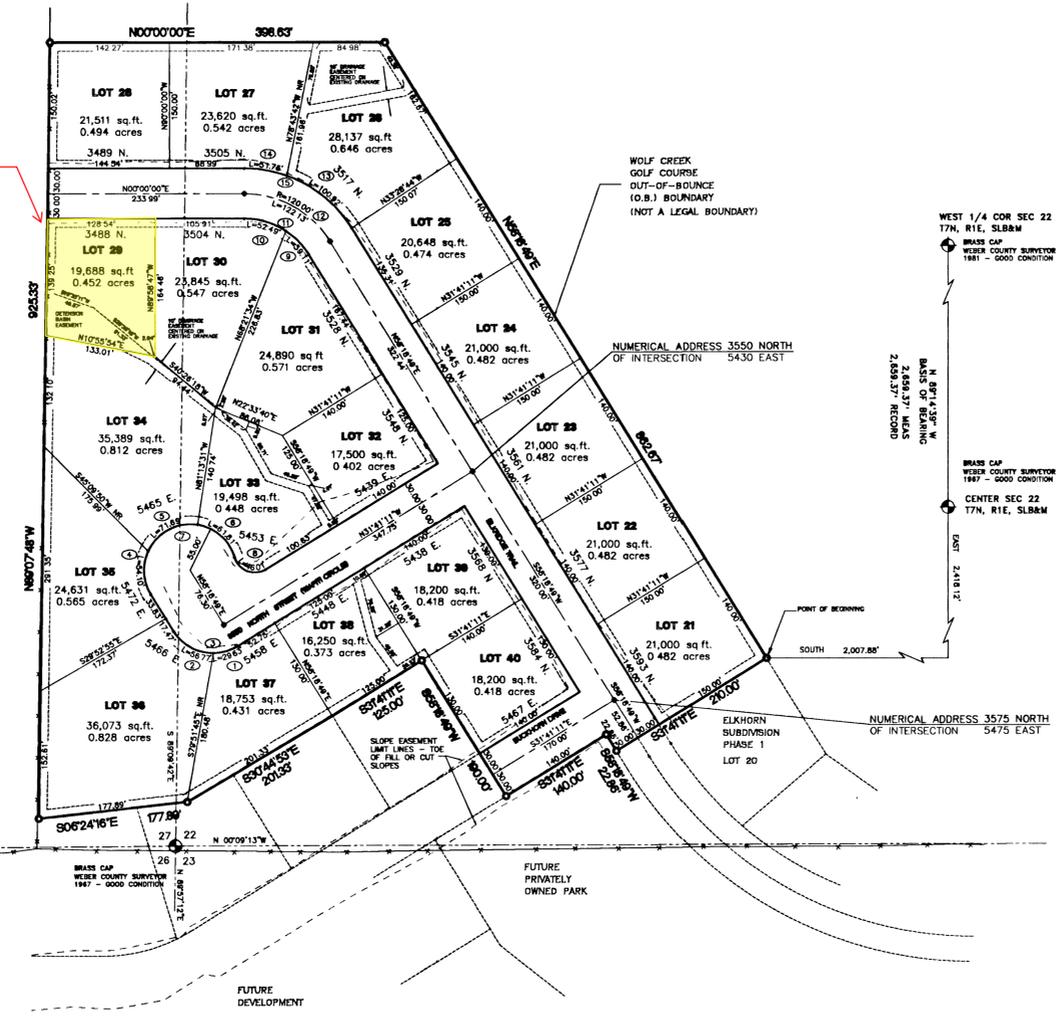
**NOTES**

1. REBAR AND YELLOW PLASTIC SURVEY CAPS (GARDNER ENG. LS 154270) TO BE SET AT ALL REAR PROPERTY CORNERS. NAILS TO BE SET IN CURB AT ALL FRONT PROPERTY CORNERS.

2. PUBLIC UTILITY EASEMENT TYPICAL AS SHOWN UNLESS OTHERWISE NOTED.

3. LOCATION OF STREET SURVEY MONUMENT TO BE SET NR = NON-RADIAL LOT LINE.

Subject Property



CURVE DATA TABLE

CURVE	RADIUS	DELTA	TANGENT	LENGTH	CHORD BRG.	CHORD DIST.
1	55.00'	30°51'42"	15.18'	29.63'	S16°15'20"E	29.27'
2	55.00'	59°08'18"	31.21'	56.77'	S28°44'40"W	54.28'
3	55.00'	90°00'00"	55.00'	86.39'	S13°18'49"W	77.78'
4	55.00'	56°21'45"	29.47'	54.10'	S86°29'41"W	51.95'
5	55.00'	74°41'11"	41.96'	71.69'	N27°58'51"W	66.72'
6	55.00'	64°23'35"	34.63'	61.81'	N41°33'32"E	58.61'
7	55.00'	195°26'31"	405.67'	187.61'	S23°57'56"E	109.00'
8	25.00'	105°26'31"	32.84'	46.01'	N21°02'04"E	39.78'
9	90.00'	24°53'57"	27.01'	39.11'	S45°51'51"W	38.80'
10	90.00'	33°24'52"	19.87'	52.49'	N16°42'26"E	51.75'
11	90.00'	58°18'49"	50.21'	91.60'	S29°09'25"W	87.70'
12	120.00'	58°18'49"	66.95'	122.13'	S29°09'25"W	116.93'
13	150.00'	38°32'50"	52.45'	100.92'	N39°02'24"W	99.02'
14	150.00'	19°45'59"	26.13'	51.75'	N09°52'59"W	51.49'
15	150.00'	58°18'49"	83.68'	152.66'	S29°09'25"W	146.16'

#### NARRATIVE

THIS SURVEY AND SUBSEQUENT SUBDIVISION PLAT WERE COMPLETED AT THE REQUEST OF THE "WOLF CREEK ASSOCIATES" FOR THE PURPOSE OF SUBDIVIDING THEIR PROPERTY TO CREATE RESIDENTIAL LOTS.

DEVELOPER  
WOLF CREEK ASSOCIATES  
LOWELL PETERSON

#### SURVEYOR'S CERTIFICATE

I, KEN E. GARDNER, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 154270, AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW AND THAT THE REFERENCE MARKERS SHOWN ON THIS SUBDIVISION PLAT ARE LOCATED AS INDICATED AND ARE SUFFICIENT TO RETRACE OR REESTABLISH THIS SURVEY, THAT THE INFORMATION SHOWN HEREIN IS SUFFICIENT TO ACCURATELY ESTABLISH THE LATERAL BOUNDARIES OF THE BELOW DESCRIBED TRACT OF REAL PROPERTY AND OF EACH OF THE LOTS LOCATED ON SAID TRACT AND THIS SUBDIVISION PLAT COMPLIES WITH THE PROVISIONS OF THE CURRENT SUBDIVISION AND ZONING ORDINANCE REGULATIONS OF WEBER COUNTY.

#### BOUNDARY DESCRIPTION

A PART OF THE SOUTHEAST 1/4 OF SECTION 22 AND A PART OF THE SOUTHWEST 1/4 OF SECTION 27, T7N, R1E, SLB&M, BEGINNING AT A POINT AT THE SOUTHWEST CORNER OF ELKHORN SUBDIVISION PHASE 1 LOT # 20 SAID POINT BEING EAST 2,418.12 FEET AND SOUTH 2,007.88 FEET FROM THE CENTER OF SECTION 22, T7N, R1E, SLB&M (BASIS OF BEARING: N 89°14'39" W FROM SAID CORNER TO THE WEST 1/4 CORNER OF SEC 22); THENCE

COURSES:		
S 31°41'11" E	210.00 FT.	ALONG SAID ELKHORN PHASE 1, THENCE
S 58°18'49" W	22.86 FT.	THENCE;
S 31°41'11" E	140.00 FT.	THENCE;
S 58°18'49" W	190.00 FT.	THENCE
S 31°41'11" E	125.00 FT.	THENCE;
S 30°44'53" E	201.33 FT.	THENCE;
S 06°24'16" E	177.89 FT.	TO AND EXISTING FENCELINE; THENCE
N 89°07'48" W	925.33 FT.	ALONG SAID FENCELINE; THENCE
N 00°00'00" E	398.63 FT.	TO THE WOLF CREEK GOLF COURSE (O.B.) BOUNDARY; THENCE
N 58°18'49" E	862.67 FT.	ALONG SAID (O.B.) BOUNDARY TO THE POINT OF BEGINNING.

CONTAINS: 12 716 ACRES / 553,915 S.F.



DATE

SIGNATURE

#### OWNER'S DEDICATION

WE, THE UNDERSIGNED OWNERS OF THE HEREON DESCRIBED TRACT OF LAND, HEREBY SET APART AND SUBDIVIDE THE SAME INTO LOTS AND STREETS AS SHOWN ON THIS PLAT AND NAME SAID TRACT ELKHORN SUBDIVISION, PHASE 2

AND DO HEREBY DEDICATE, GRANT AND CONVEY TO WEBER COUNTY, UTAH ALL THOSE PARTS OR PORTIONS OF SAID TRACT OF LAND DESIGNATED AS STREETS THE SAME TO BE USED AS PUBLIC THOROUGHFARES FOREVER, AND HEREBY GRANT AND DEDICATE A PERPETUAL RIGHT AND EASEMENT OVER, UPON AND UNDER THE LANDS DESIGNATED ON THE PLAT AS PUBLIC UTILITY, STORM WATER DETENTION PONDS, DRAINAGE AND CANAL MAINTENANCE EASEMENTS, THE SAME TO BE USED FOR THE INSTALLATION, MAINTENANCE, AND OPERATION OF PUBLIC UTILITY SERVICE LINES, STORM DRAINAGE FACILITIES, IRRIGATION CANALS OR FOR THE PERPETUAL PRESERVATION OF WATER DRAINAGE CHANNELS IN THEIR NATURAL STATE WHICHEVER IS APPLICABLE AS MAY AUTHORIZED BY WEBER COUNTY, UTAH, WITH NO BUILDINGS OR STRUCTURES BEING ERRECTED WITHIN SUCH EASEMENTS.

SIGNED THIS 2nd DAY OF July, 1996

WOLF CREEK ASSOCIATES  
LOWELL PETERSON, GENERAL PARTNER

Blaine Wade  
WOLF CREEK ASSOCIATES  
BLAINE WADE, GENERAL PARTNER

Prepared By:



5150 SOUTH WASHINGTON BLVD.  
OGDEN, UT 84405  
(801)476-0202

#### COUNTY RECORDER

ENTRY NO. 415847 FEE PAID \$50.00 FILED FOR RECORD AND RECORDED 02-01-96 AT 2:41 PM IN BOOK 42 OF OFFICIAL RECORDS, PAGE 43 RECORDED FOR WOLF CREEK ASSOC.  
Dana Crofts  
COUNTY RECORDER  
By: Carrie Warner DEPUTY

**WEBER COUNTY PLANNING COMMISSION APPROVAL**  
THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAT WAS DULY APPROVED BY THE WEBER COUNTY PLANNING COMMISSION ON THE 28th DAY OF June, 1996  
Dale D. Thompson  
CHAIRMAN, WEBER COUNTY PLANNING COMMISSION

**WEBER COUNTY ATTORNEY**  
I HAVE EXAMINED THE FINANCIAL GUARANTEE AND OTHER DOCUMENTS ASSOCIATED WITH THIS SUBDIVISION PLAT AND IN MY OPINION THEY CONFORM WITH THE COUNTY ORDINANCE APPLICABLE THERETO AND NOW IN FORCE AND EFFECT.  
SIGNED THIS 28th DAY OF June, 1996  
Monette Husted  
SIGNATURE

**WEBER COUNTY SURVEYOR**  
I HEREBY CERTIFY THAT I HAVE INVESTIGATED THE LINES OF SURVEY OF THE FOREGOING PLAT AND LEGAL DESCRIPTION OF THE LAND EMBRACED THEREIN, AND FIND THEM TO BE CORRECT AND TO AGREE WITH THE MONUMENTS ON RECORD IN THIS OFFICE.  
SIGNED THIS 26th DAY OF July, 1996  
Ken E. Gardner  
SURVEYOR  
DATE OF SURVEY

**WEBER COUNTY ENGINEER**  
I HEREBY CERTIFY THAT THE REQUIRED PUBLIC IMPROVEMENT STANDARDS AND DRAWINGS FOR THIS SUBDIVISION CONFORM WITH COUNTY STANDARDS AND THE AMOUNT OF THE FINANCIAL GUARANTEE IS SUFFICIENT FOR THE INSTALLATION OF THESE IMPROVEMENTS.  
SIGNED THIS 28th DAY OF June, 1996  
Curt Christensen  
SIGNATURE

**WEBER COUNTY COMMISSION ACCEPTANCE**  
THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAT, THE DEDICATION OF STREETS AND OTHER PUBLIC WAYS AND FINANCIAL GUARANTEE OF PUBLIC IMPROVEMENTS ASSOCIATED WITH THIS SUBDIVISION, THEREON ARE HEREBY APPROVED AND ACCEPTED BY THE COMMISSIONERS OF WEBER COUNTY, UTAH.  
THIS 1st DAY OF July, 1996  
Barry H. Anderson  
CHAIRMAN, WEBER COUNTY COMMISSION

TITLE: Commission Chair  
Admin. Assistant  
ATTEST: Thomas M. Bradford

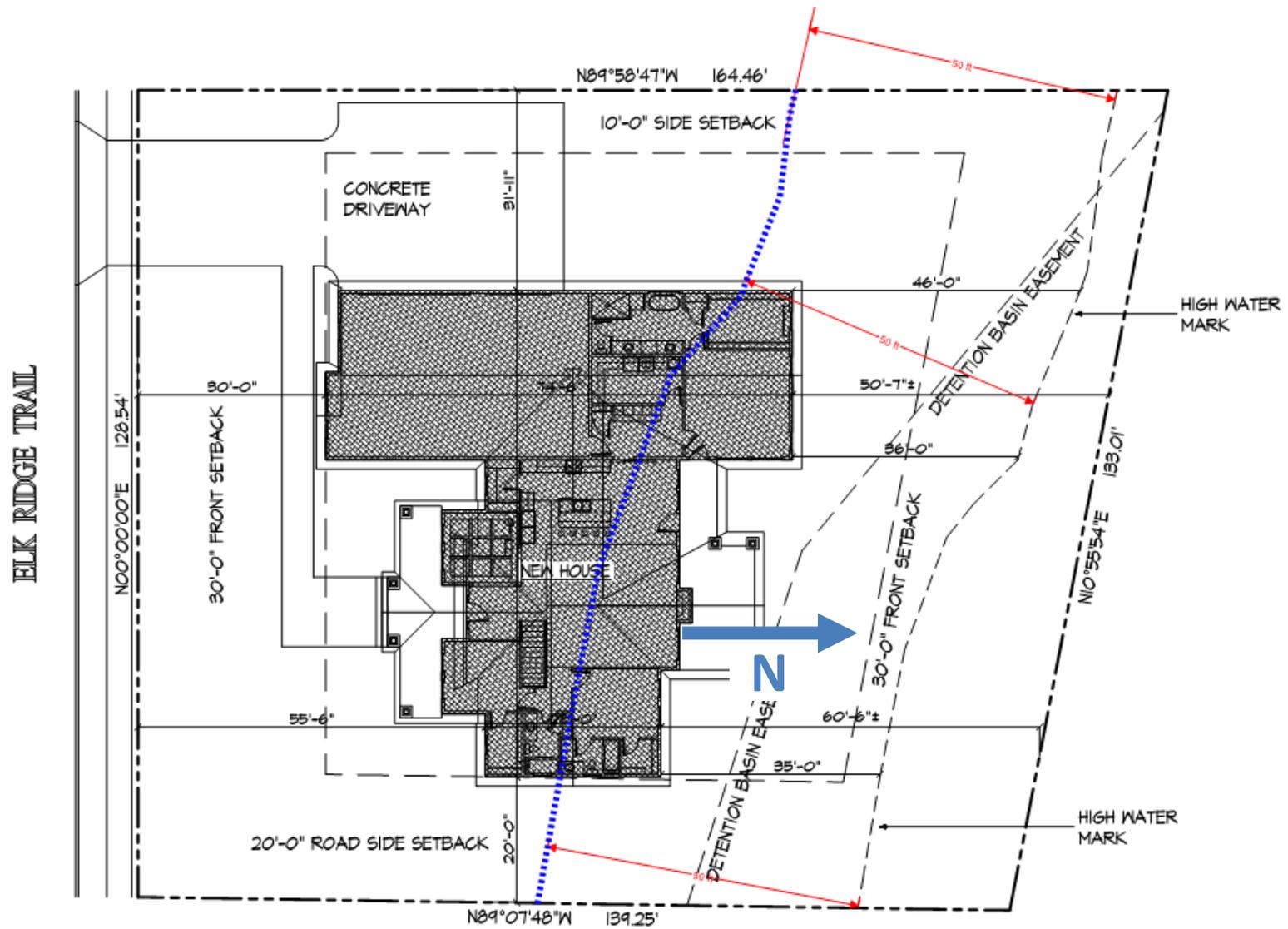
**ACKNOWLEDGEMENT**  
STATE OF UTAH )  
COUNTY OF WEBER ) SS  
ON THIS 2nd DAY OF July, 1996,  
PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID COUNTY OF WEBER, IN SAID STATE OF UTAH, THE SIGNER OF THE ABOVE OWNER'S DEDICATION, TWO (2) IN NUMBER, WHO DULY ACKNOWLEDGED TO ME HE SIGNED IT FREELY AND VOLUNTARILY AND FOR THE PURPOSES THEREIN MENTIONED.

Shari L. Sillitoe  
NOTARY PUBLIC

**ACKNOWLEDGEMENT**  
STATE OF UTAH )  
COUNTY OF WEBER ) SS  
ON THIS \_\_\_ DAY OF \_\_\_, 1996, PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID COUNTY OF WEBER, IN SAID STATE OF UTAH, BEING BY ME DULY SWORN, ACKNOWLEDGED TO ME THAT HE IS \_\_\_ OF SAID CORPORATION AND THAT HE SIGNED THE ABOVE OWNER'S DEDICATION AND CERTIFICATION IN BEHALF OF SAID CORPORATION BY AUTHORITY OF ITS BOARD OF DIRECTORS, AND SAID \_\_\_ ACKNOWLEDGED TO ME THAT SAID CORPORATION EXECUTED THE SAME.

STAMP  
NOTARY PUBLIC

Exhibit C: Site Plan Showing Setbacks



SITE PLAN  
SCALE 1"=10'-0"

**Exhibit D: Ogden Valley Sensitive Lands – Stream Corridor Map**



- Roads
- Intermittent stream
- Stream or braided stream
- Ogden Valley Boundary
- Lakes, Ponds

**Elevation**

9700 ft

4075 ft

0 0.25 0.5 1 Miles

NAD 1983  
State Plane Utah North  
FIPS 4301 Feet  
1:36,000

Map by Justin Morris  
Weber County Planning  
jmorris@co.weber.ut.us  
801-399-8791  
6-19-2008

**weber county**  
planning commission

This is not an official map but for reference use only. The data was compiled from the best sources available, so various errors from the sources may be inherent on the map. All boundaries and features therein should be treated as such. For official boundary information, the pertinent County department or Municipality should be contacted. This map is a representation of ground features and is not a legal document of their locations. The scale represented is approximate, nonexistent or has been changed, so this is NOT a Survey or Engineering grade map and should by no means be used as such. This map is not intended for all uses. Weber County is not responsible or liable for any derivative or misuses of this map.

Summary of Ordinance No. 2005-19

An Ordinance of Weber County, amending the zoning ordinance by adding Section 23-37 River and Stream Corridors. The new section places setback requirements for building adjacent to year-round and ephemeral streams, with the exception of a segment of the Ogden River below Pineview Reservoir. Was adopted and ordered published the 20th day of December 2005, by the Board of County Commissioners of Weber County, Utah, with Commissioners Bischoff, Cain and Dearden voting aye.

A copy of the complete ordinance is available for public inspection at the office of the Weber County Clerk/Auditor, 2380 Washington Blvd, Suite 320 Ogden, Utah.

**An Ordinance of Weber County, amending Chapter 23 of the Zoning Ordinance by adding Section 23-37, River and Stream Corridor Setbacks.**

**WHEREAS**, Weber County finds that river and stream corridors provide important aesthetic ecological and recreational resources, including wildlife habitat, and the protection of water quality in the County's rivers and streams; and

**WHEREAS**, these resources are put at risk of being lost or significantly impaired due to land development activities within river and stream corridors; and

**WHEREAS**, the need to protect river and stream corridors is identified in both the Ogden Valley and West Central Weber County General Plans.

**NOW THEREFORE**, The Board of County Commissioners of Weber County, State of Utah, Ordain as follows:

The Uniform Zoning Ordinance of Unincorporated Weber County is hereby amended by adding Section 23-37, River and Stream Corridor Setbacks:

**CHAPTER 23**

**SUPPLEMENTARY AND QUALIFYING**

- 23-1. Effect of Chapter
- 23-2. Lots in Separate Ownership
- 23-3. Yard Space for One Building Only
- 23-4. Every Dwelling to be on a "Lot"
- 23-5. Separately Owned Lots - Reduced Yards
- 23-6. Sale or Lease of Required Space
- 23-7. Creation of Lots Below Minimum Space Requirements
- 23-8. Yards to be Unobstructed - Projections Permitted into Required Yards
- 23-9. Wall, Fence, or Hedge May be Maintained
- 23-10. Area of Accessory Building
- 23-11. Deleted Section - 2002-9
- 23-12. Exceptions to Height Limitations
- 23-13. Minimum Height of Main Building
- 23-14. Deleted Section - 2002-9
- 23-15. Clear View of Intersecting Streets
- 23-16. Animals and Fowl
- 23-17. Water and Sewage Requirements
- 23-18. Effect of Official Map
- 23-19. Signs and Lighting
- 23-20. Lots and Dwellings on Private Rights-of-Way, Special Provisions

23-21.	Required Building Setb. from Designated Collector or Arterial Stree	
23-22.	Group Dwelling Special Regulations	
23-23.	Zero Side Yards	
23-24.	Dish Antennas	
23-25.	Towers	
23-26.	Residential Facility for Persons with a Disability - Facility Requirements	17-87
23-27.	Residential Facility for Troubled Youth - Facility Requirements	6-92
23-28.	Residential Facility for Elderly Persons - Facility Requirements	12-91
23-29.	Large Accessory Buildings	14-91,19-04
23-30.	Building in Newly Approved Subdivisions and Planned Residential Unit Developments	14-91, 2002-9
23-31	Deleted	
23-32.	Family Swimming Pool	14-92
23-33.	Building on Dedicated Streets or Public By Right of Use Roads which are below County Improvement and/or R.O.W. Width Standards	
23-34.	Dwelling or Sleeping in Recreational Vehicles	
23-35.	No Obstruction of Irrigation Ditches, Drains and/or Canals	2002-9
23- 36.	Temporary Real Estate Sales Office	2003-8
23-37.	<b>River and Stream Corridor Setbacks</b>	

**23-1. Effect of Chapter.**

The regulations hereinafter set forth in this Chapter qualify or supplement, as the case may be, the zone regulations appearing elsewhere in this Ordinance.

**23-2. Lots in Separate Ownership.**

The requirements of this Ordinance as to minimum lot area or lot width shall not be construed to prevent the use for a single-family dwelling of any lot or parcel of land in the event that such lot or parcel of land is held in separate ownership at the time this ordinance becomes effective.

**23-3. Yard Space for One Building Only.**

No required yard or other open space around an existing building or which is hereafter provided around any building for the purpose of complying with the provisions of this Ordinance, shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing a yard or open space on a lot whereon a building is to be erected or established.

**23-4. Every Dwelling to be on a "Lot".**

Every dwelling shall be located and maintained on a "lot" as defined in this Ordinance; such lot shall have the required frontage on a public or approved private street or on a right-of-way which has been approved by the Board of Adjustment.

**23-5. Separately Owned Lots - Reduced Yards.**

On any lot under a separate ownership from adjacent lots and on record at the time of passage of this Ordinance, and such lot having a smaller width than required for the zone in which it is located, the width of each of the side yards for a dwelling may be reduced to a width which is not less than the same percentage of the width of the lot as the required side yard would be of the required lot width provided that on interior lots the smaller of the two yards shall be in no case less than five (5) feet, or the larger less than eight (8) feet; and for corner lots the side yard on the side street shall be in no case less than ten (10) feet or the other side yard be less than five (5) feet.

23-36. Temporary Real Estate Sales Office

Exhibit E: Ordinance 2005-19 (Excerpt)

A temporary real estate sales office may, by Conditional Use Permit, be allowed within the model home or the garage area of a model home located within a residential subdivision development of ten (10) or more lots or phase of more than ten (10) lots, for the sale of real estate within that specific subdivision.

1. A Building Permit may be issued for the temporary sales office 15 days after approval of the Conditional Use Permit; however, prior to use, shall meet all requirements of the Zoning Ordinance and Subdivision Ordinance prior to issuance of a Certificate of Occupancy.
2. The front yard of the Model Homes with temporary sales offices shall be landscaped, as approved with the Conditional Use Permit.
3. If the sales office is established in the garage, the garage door may be temporarily replaced with French doors, sliding glass doors or as approved by the Planning Commission with the Conditional Use Permit. Permanent changes to the site are prohibited. When the temporary use expires, the applicant shall restore the structure to its originally intended use as a residence and/or garage.
4. Temporary Sales Office is limited to one per development or phase, if development is a minimum of ten (10) or more lots and if the phase is a minimum of ten (10) or more lots.
5. Permanent signs are prohibited. The size and location of signs shall be in compliance with applicable provisions of the Zoning Ordinance for the zone in which the use will be conducted and as approved with the Conditional Use Permit. All signs shall be removed when the Permit expires. Any zoning requirements for lighting shall be in compliance
6. Hours of operation shall be limited from 8:00 a.m. to 8:00 p.m.
7. A Conditional Use Permit for temporary sales office in a model home shall be limited to a five (5) year time period, from the time the Certificate of Occupancy is issued. Time Extensions to be considered on a case by case basis by the Planning Commission.
8. If construction of the model home temporary sales office is not completed within one (1) year of the approval by the Township Planning Commission, the Permits shall be considered to be null and void.

**23-37. River and Stream Corridor Setbacks**

No Structure, accessory structure or parking area shall be built within the required setback from a river or stream as measured from the high water mark of the river or stream. The high water mark shall be determined by the 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 flora and fauna along the river or stream.

1. Structures, accessory structures or parking areas shall not be developed or located within 100 feet on both sides of the Weber River and the North Fork, South Fork and Middle Fork of the Ogden River, from the high water mark of the river.
2. Structures, accessory structures, or parking areas shall not be developed or located within 75 feet on both sides of year-round streams, as determined from the high water mark of the stream.
3. Structures, accessory structures, or parking areas shall not be developed or located within 50 feet from the high water mark of a natural ephemeral stream.

Exceptions:

1. Bridges or stream alterations approved by the Army Corps of Engineers and Utah Department of Water Resources, Division of Water Quality.

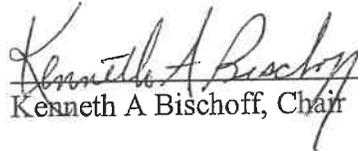
Exhibit E: Ordinance 2005-19 (Excerpt)

2. Trails built in conformance to Chapter 40, Ogden Valley Pathways, of the Zoning Ordinance.
3. The Ogden River below Pineview Reservoir to its' confluence with the Weber River.

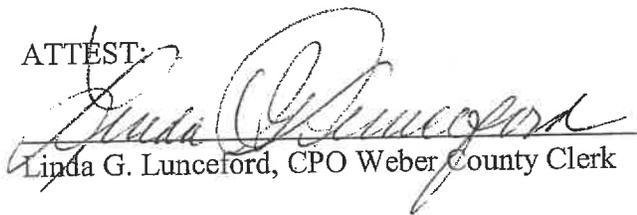
Streams are those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetation litter or loosely rooted vegetation by action of moving water. The channel or bed need not contain water year-round. This definition is not meant to include storm water runoff devices or entirely artificial watercourse unless they are used to store or convey pass through stream flows naturally occurring prior to construction of such devices. Stream water courses where the definition may apply are those that appear on the U.S.G.S. Quad maps.

Passed, Adopted and Ordered published this 20th day of December, 2005, by the Board of County Commissioners of Weber County, Utah,

Commissioner Bischoff	Voting	<u>aye</u>
Commissioner Cain	Voting	<u>aye</u>
Commissioner Dearden	Voting	<u>aye</u>

  
\_\_\_\_\_  
Kenneth A Bischoff, Chair

ATTEST:

  
\_\_\_\_\_  
Linda G. Luncelord, CPO Weber County Clerk





**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 annually elect a Chair and Vice Chair from its membership. Each officer shall hold office for a one-year period and not longer than two years consecutively. The Chair 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 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 and Place of Meetings**

Regular meetings shall be held on the second and fourth Thursdays of each month, as needed, 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. Special Meetings**

A special meeting may be called at any time by the Chair or by a majority vote of the Board at any regular meeting. Notice shall be given to each Board member of the time and purpose of every special meeting of the Board at least twenty four (24) hours prior to such meeting. Such notice shall be delivered to each member of the Board personally, by telephone, or by United States Mail, directed to the Board member to be notified, at the member's residence, and mailed not less than three (3) days prior to the time fixed for such special meeting. It is specifically provided, however, that any member may, in writing, waive prior notice of the time, place, and purpose of such meeting; and such waiver, if made, shall be deemed a waiver of prior notice of the time and purpose thereof.

**D. Work Sessions**

Work sessions may be held as part of a regular Board meeting or called in the same manner as a special meeting in order for the Board to discuss matters at greater length or to obtain additional background information. The Board shall take no vote during such work session, except to give directions to Staff regarding the presentation of options for future consideration.

**E. Length of Meetings**

At 8:30 p.m., the Board of Adjustment will finish the item presently being considered. All items remaining to be heard will be forwarded to the next agenda for consideration.

**FC. Meetings Open to the Public**

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

**GD. Electronic Meeting Option**

The Utah Open and Public Meetings Act allows public bodies to hold electronic meetings, subject to certain requirements. The Board of Adjustment hereby adopts the following rules to allow electronic meetings and govern their use. If future changes in state law conflict with these rules, the conflicting provisions of the new state law shall be automatically incorporated into these rules by reference, superseding the conflicting provisions of these rules, until the rules can be amended to conform to the new state law.

**Electronic Meeting Requirements.** The Board of Adjustment will only hold an electronic meeting in the following circumstances:

1. a matter coming before the Board requires prompt attention;
2. the Secretary of the Board determines that there will not be a quorum present for the next meeting unless the Board allows one or more members to attend electronically;  
and
3. the Chair, or the Vice Chair in the absence of the Chair, determines that all items on the proposed agenda are appropriate for discussion and action in an electronic meeting.

**Anchor Location.** Electronic meetings will originate from an “anchor location,” as required by state law. The anchor location will be the regular meeting location in the Weber Center, 2380 Washington Blvd., Ogden, Utah. As with regular meetings, interested persons and members of the public may attend and monitor the open portions of the meetings at that location.

**Notice.** In accordance with state law, public notice shall be given as required for a regular meeting, including posting written notice in the Weber Center, on the Utah Public Notice Website, and to at least one newspaper of general circulation within Weber County or a local media correspondent. This public notice shall be given no less than 24 hours before the meeting. Notice of the electronic meeting shall also be given to members of the Board at least 24 hours before the meeting and shall include a description of how the members will be connected to the electronic meeting.

**HE. Order of Business**

The order of business shall be:

1. Chair opens the meeting and welcomes those in attendance
2. Pledge of Allegiance
3. Roll call. At all meetings before proceeding to business, the roll of the Board members shall be taken and the names of those present and those absent shall be entered on the record.
4. Approval of minutes of prior meetings
5. Director of Planning reads opening meeting statement
6. Chair asks Board members if there are any exparte communications or conflicts of interest to disclose

- 7. Consent Agenda
- 8. Petitions, Applications and Public Hearings
  - a. Administrative Items
    - i. Old Business
    - ii. New Business
  - b. Legislative Items
    - i. Old Business
    - ii. New Business
- 9. Public Comment for Items not on the Agenda
- 10. Board Member Remarks
- 11. Planning Director Report
- 12. Legal Counsel Remarks
- 13. Chair Adjourns Meeting

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

On a motion supported by a majority of the members present, tThe 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.

**IF. Approval of Minutes from Prior Meetings**

Approval of Minutes In-Person. The Chair shall ask the Board if they have had the opportunity to read the minutes and if there are any additions or corrections. Upon hearing from the Board, the Chair shall declare the minutes approved either as presented or amended. If the Board has not had an opportunity to review the minutes, approval shall be postponed to the next meeting.

Approval of Minutes through Email. As an alternative procedure, the Board may approve minutes through email communication, when requested by staff or by any member of the Board. When such a request is made, the Secretary shall send the draft minutes to all Board members. After all members who were present at the meeting have responded, and after a majority of those members have given their approval, the Chair may declare the minutes approved. Otherwise, the minutes shall be placed on the

next meeting agenda for approval. If minutes get approved through email communication, the approval shall be stated on the record at the next meeting.

**J. Order of Consideration of Items**

Any person may appear in person, by agent or attorney at any meeting of the Board of Adjustment

The following procedure will normally be observed in a public hearing or other matter before the Board of Adjustment; however, it may be rearranged by the Chair for individual items, if necessary, for the expeditious conduct of business:

1. Chair introduces item;
2. Abstentions, conflicts of interest and challenges are entertained and any declaration of conflicts of interest and ex parte contacts;
3. Staff makes a presentation on the criteria, standards, and recommendations;
4. Applicant or applicant's agent presents evidence for the proposal;
5. Any opponents and/or proponents may comment;
6. Board members may question staff, applicant, or opponents on all the above;
7. Applicant's rebuttal if requested;
8. Closing of the public hearing, if applicable;
9. Concluding comments of Staff or Staff summary and recommendations;
10. Motion is made and seconded; the Board discusses the item and votes. Members are allowed to openly discuss the proposal and may further question any party appearing for or against the proposal as necessary, but generally questions should be asked while the public hearing is open. The Chair outlines possible actions: approval, disapproval, continue, or approval with conditions.

**K. Procedure of Motions**

**Making of Motions.** Upon review of the full public record on a request and due deliberation among the members of the Board of Adjustment, any Board member, except for the Chair, may make a motion; however, any Board member may second a motion. The motion shall include not only the direction of the motion, but shall also include the recitation of specific findings of fact supporting such motion. A second shall be required for each motion citing compatible findings. Other members of the Board may support the motion adding compatible findings. A motion shall die in the absence of a second. Discussion of the motion

should not take place until it has been seconded and the Chair has stated the motion and called for discussion.

**Withdrawing or Modifying a Motion.** When a motion has been made but not yet stated by the Chair, whether or not it has been seconded, it can be withdrawn or modified by the mover if the member simply says, “Chair, I withdraw the motion.” If the mover wishes to modify his/her motion, he/she should specify the modification. Any member may suggest that the mover withdraw or modify his/her motion, but only the mover may do so. If a motion is modified before being stated by the Chair, the second may withdraw his/her second. After the Chair states a motion, it is the property of the Board. It can be withdrawn or modified at any time before final voting by a majority vote to withdraw or modify.

**Motions in Order During Debate.** When a question is under debate, no motion shall be received except:

1. To fix the time to adjourn;
2. To adjourn;
3. To continue, table, or postpone indefinitely to a specified time;
4. To amend; to substitute;
5. Refer to committee;
6. Previous question (immediately close debate);
7. Limit or extend limits of debate;
8. Take a recess;
9. Call for orders of the day;
10. Suspension of the rules;
11. Appeal rulings by the Chair; or
12. Reconsider an undebatable motion.

**Motion must be Germane.** No motion or proposition on a subject different from that under consideration is in order and no such motion or proposition shall be admitted under color of amendment.

**Motions to Deny.** Where a motion to deny a request has been defeated, a Board member shall make another motion to dispose of the issue.

**Substitute Motions.** A motion to amend by striking out an entire section or paragraph of a main motion and inserting a different section or paragraph is called a motion to substitute. Substitute motions shall supersede the main motion upon receiving the approval of a majority vote.

**Amendments.** All amendments must relate to the same subject as the original motion, resolution, proposition or ordinance. All amendments to the main motion require a second. If any amendment is offered, the question shall be first upon the amendment. An amendment may be tabled without prejudice to the main motion or question. When an amendment is proposed to any pending measure shall be laid on the table, such action shall not carry with it or prejudice such measure. If any amendment be offered, the question shall be first upon the amendment.

**Friendly Amendments.** A Board member may make a friendly amendment without a formal motion with unanimous consent of the members present. Typically, such motions are appropriate for clean-up items or an issue discussed but inadvertently neglected by the maker of the motion.

**L. Procedure for Reconsiderations**

A motion to reconsider a motion must be made in the same meeting as the motion that was voted on. It can only be made by a member who voted on the prevailing side and must be seconded. Any Board member, regardless of vote on the main motion, may second the motion. It is a debatable motion. It can be made to a vote that was either affirmative or negative. This type of motion proposes no specific change in a decision but simply proposes that the original question be reopened. It requires a majority vote and cannot be reconsidered.

**M. Procedure for Debates**

No member of the Board shall interrupt or question another Board member without obtaining the other Board member's consent. To obtain such consent, the Chair shall be addressed requesting to interrupt or ask a question; e.g., "Chair (name) I would like to ask Board member (name) a question or make a comment." The Board member speaking has the discretion to allow an interruption.

**N. Voting**

**Deciding Votes.** 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.~~

**Commission Members Required to Vote - Late Voting.** No member may abstain from voting unless there is a conflict of interest or the member has not been present during the discussion of any matter and feels he/she has insufficient information on which to act may abstain. A member entering the Chamber after the question is put and before it is decided, may have the question stated, record his/her vote, and be counted. If one or more members lawfully abstain from voting, then an affirmative vote of the majority of voting members present at the meeting shall decide all matters under consideration.

**Roll Call on Final Passage.** The vote upon the final passage of all business shall be by aye (yeses) and nay (no's) given by members of the Board by voice vote. In recording votes on roll call, the Secretary shall record and report those absent or not voting. The Chair shall announce the result.

**Changing Vote Before Decision Announced.** Any member may change his/her vote before the decision of the question has been announced by the Chair, unless another member objects to the change, then the voting member must obtain the permission of the Board of Adjustment by general consent or motion.

**Changing Vote After Decision Announced.** When a vote is taken on roll call on any question, no member shall be permitted to vote or to change his/her vote after the decision is announced by the Chair.

**Tie Votes.** If a motion regarding any matter before the Board receives an equal number of votes in the affirmative and in the negative, the motion fails. The Board shall continue to make motions until a majority vote is obtained. The option of continuing an item with the possibility that an odd number of members of the Board would be at a subsequent meeting may be considered.

**Explaining Vote.** After the vote is taken, any member of the Board desiring to explain his/her vote shall be allowed an opportunity to do so.

**Not to Vote Unless Present.** No member of the Board may vote on any question unless the member is present when the vote is taken and when the result is announced. No member may give his/her proxy to any persons whomsoever.

#### **O. 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.**

#### **P. Time Limits**

**The Chair may impose equitable time limits if deemed necessary for the expeditious conduct of the public**

hearing.

**Q. Conduct of Persons Before the Board of Adjustment**

Proceedings shall at all times be orderly and respectful. The Chair may refuse to recognize or exclude from the hearing anyone who:

1. Is disorderly, abusive, or disruptive;
2. Takes part in or encourages audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive to the hearing;
3. Comments without first receiving recognition from the Chair and stating his/her full name and residence; or
4. Presents irrelevant, immaterial, or repetitious evidence.

Persons making presentations or providing comments to the Board of Adjustment shall address the Board from the podium or microphone and not from the audience; shall address all comments to the Board; and may not directly question or interrogate other persons in the audience.

**R. Document of the Board of Adjustment**

All materials submitted to the Board of Adjustment regarding a request shall be entered into the public record by the Chair by indicating that the material is "accepted for the record;" provided, however, that a staff report submitted to the Board as part of the agenda shall automatically become part of the public record. All notices, agendas, requests, agency or consultant letters or reports, staff reports, minutes of meetings, and resolutions of record shall constitute the documents of the Board of Adjustment and shall be indexed as public record.

**SG. Parliamentary Procedure**

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

**TH. Suspension of Rules**

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

**U. 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. The Secretary shall also prepare and post written minutes of meetings in accordance with the time requirements set forth in Utah Open and Public

Meetings Act. Upon completion of draft minutes, the Secretary shall circulate copies to the members of the Board of Adjustment for review. To expedite the approval of minutes, members of the Board of Adjustment are authorized to recommended corrections and approve minutes through email correspondence coordinated by the Chair.

**VJ. Preparing the 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.

**WK. 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. Meeting 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 meeting 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.~~

**IV**

**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.

Procedures Approved on: February \_\_\_\_\_, 2021