

January 23, 2025

Minutes of the Board of Adjustments meeting of January 23, 2025, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 pm.

Members Present **Rex Mumford, Chair**
 Marshall McGonegal, Vice Chair
 Ben Peterson
 Neal Barker, Alternate

Staff Present: Tammy Aydelotte, Planner; Rick Grover, Planning Director; Tiffany Snider, Secretary

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

Acting Chair Laura Warburton was not present, and Rex Mumford moved to item 4 on the agenda to give the Board the ability to vote for a new Chair and Vice Chair for 2025.

4. Voting for new Chair and Vice Chair for the year 2025

Ben Peterson moved to elect Rex Mumford as Chair of the Board of Adjustments for 2025. Neal Barker seconded the motion. Board Members Barker, Peterson, McGonegal, and Mumford voted in favor. There were no opposing votes, and the motion carried.

Neal Barker moved to elect Marshall McGonegal as Vice Chair. Ben Peterson seconded the motion. Board Members Barker, Peterson, McGonegal, and Mumford voted in favor. There were no opposing votes, and the motion carried.

1. Minutes: October 24, 2024. Approved as presented

2. BOA 2024-08: Request for a 7' variance to the minimum 20' side setback standard in the FV-3 zone. Staff Presenter: Tammy Aydelotte.

Planner Aydelotte explained the applicant is requesting a 5' 8" variance to the minimum 20-foot side yard setback required in the FV-3 Zone, leaving a 14'4" foot setback from the east side lot line. The applicant feels that a variance is necessary to build their desired home. The applicant explains that the current zoning setbacks, and the seasonal stream that runs through a portion of the lot, make it difficult to construct a single-level, ADA compliant home. The applicant's narrative is included as Exhibit B to the staff report and application. The applicant is also requesting a 25-foot variance to the 50' stream corridor setback. The County Engineer, who determines the high-water mark of these stream corridors, has outlined suggestions for the applicant to help mitigate concerns from the County Engineer regarding this variance request. These include locating the home right to the front setback line (30'), to avoid additional encroachment into the stream setback, a front-facing garage, to avoid having a portion of the driveway encroach into the stream setback, as well as fill and retaining walls. If the applicant follows suggestions from County Engineering, then there are no concerns from the County Engineer. The applicant has provided a site plan to help visualize applicable setbacks and encumbrances to the property. The second page of Exhibit B shows encroachment of the proposed building, by, side setback of 8 feet, side adjacent to a street of 20 feet, and a front setback of 20 feet. It should be noted that on the first page of Exhibit B, the front setback should be shown at 25 feet, further reducing the area within the triangle. Pages 3 and 5 of Exhibit B show where a 1050 square foot house could be located on the lot, should the BOA grant the variance. Ms. Aydelotte offered a summary of the duties and powers of the Board of Adjustment and used the aid of a PowerPoint presentation to review staff's analysis of the application:

1. Literal enforcement would prevent the property owner from enjoying a substantial property right and developing this parcel in accordance with the Ogden Valley General Plan.
2. Special circumstances surrounding this lot of record include a stream runoff area that cuts across the lot. The location of this stream, the configuration of this lot, and the setbacks standards for the FV-3 zone create a unique challenge in developing this lot.
3. The applicant's narrative indicates that granting a variance is needed in order to enjoy a substantial property right that includes construction of a home that meets unique needs.

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4. The General Plan indicates that this area should be developed as is planned and zoned. The applicant states that a variance to the setback will allow the construction of a home that is coherent to the neighborhood and will not be a detriment to adjacent property owners.
5. The applicant is exhausting their remedies, under the land use code, for the potential of a lesser setback and is requesting that substantial justice be done, considering the unique conditions of the lot.

Board Member Barker inquired as to any liability the County may have if the variance is approved, and the property owner suffers damages from a flood in the future. Planning Director Grover indicated the County would be indemnified from such liability as long as the appropriate review agencies have considered the application and offered their support for the variance. Ms. Aydelotte indicated County Planning staff has worked closely with engineering to evaluate foundation issues, appropriate lot grading, and other mitigations to prevent future flooding issues.

High level discussion among the Board and Planning staff centered on the seasonality of the stream near the subject property, peak flows, and the appropriate setback from the stream for the building lot. Ms. Aydelotte indicated that engineering has indicated they would like the eastern boundary of the lot to be at least 10 feet from the stream. Engineering's job is to consider the worst-case scenario for the subject property and then work backward from that scenario.

Chair Mumford invited input from the applicant.

Robert Heslop, 3145 N. Big Piney Drive, Eden, stated the subject property is at 4116 E. 4100 N., Liberty. He expressed a willingness to answer any questions the Board may have that were not answered by Ms. Aydelotte's presentation.

Board Member Barker asked Mr. Heslop to identify the location of the septic system, which must have 100 feet of clearance from the stream. Mr. Heslop stated the septic system has been approved by the Health Department and is located on the south side of the property closest to the street. He added there is a culvert for the stream that goes under 4100 North.

Board Member Peterson asked Mr. Heslop his thoughts about moving his home further to the east to meet setback requirements. Mr. Heslop stated he is fine with that way forward; when he designed the lot and home, he was trying to meet all setbacks as close as possible without going too far to one side or the other.

Vice Chair McGonegal referenced the design of the home and asked if the 'jog' of the roofline is an encroachment into the easement, to which Mr. Hunter answered yes. That part of the design is an attempt to break up the roof line for aesthetic reasons; the 'jog' extends 6.5 feet into the easement and the total square footage of the home is 4,500 square feet. This includes the garage space, not just living space. This led to discussion regarding different design options that could help to reduce or eliminate the encroachment into the easement.

Board Member Barker asked if it would be an option to reroute the seasonal stream or dig deeper to help to mitigate flooding risks. Ms. Aydelotte stated that is typically something that would need approval from the Army Corps of Engineers, but she deferred to the applicant to answer the question. Mr. Heslop stated it was his original plan to move the stream to the west, but after discussing that concept with County Engineering, he learned of the regulations and permitting standards from the Army Corps of Engineers. He chose to pursue a variance before attempting to work with Army Corps of Engineers to reroute the stream.

Board Member Peterson asked Mr. Heslop if he has spoken with the adjacent property owner to see if he would be willing to sell as small sliver of his property that would help him to move his building to the east and comply with all required setbacks. Mr. Heslop stated he has approached his neighbor and was told that their land is tied up in a dispute with the trust that manages it, and it may be a few years before they are able to sell any portion of the land.

The Board continued to review the site plan for the property to consider other modifications that could be made to the lot layout and building design to help eliminate the encroachment; the Vice Chair McGonegal asked Mr. Heslop when he purchased the lot and if he was aware of the presence of the stream and the imitations that may place on the building envelope of the property. Mr. Heslop stated he purchased the lot in February of 2024 and was aware of the stream, but was under the impression that it could be rerouted to the west. He has completed all the paperwork to move the stream to the west and that was when he was contacted by County Engineering about other options for addressing the issue.

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Chair Mumford facilitated discussion among the Board regarding the powers and duties they have when considering an application for a variation. He stated he cannot make a motion given his role as the Chair, but he would be more comfortable moving the structure further to the east than he would be approving the encroachment into the stream corridor setback. This led to high level discussion among the Board, Planning staff, and Mr. Heslop regarding the options available to him, after which Chair Mumford called for a motion.

Vice Chair McGonegal moved to deny application BOA 2024-08, request for a 7' variance to the minimum 20' side setback standard in the FV-3 zone, based upon the following findings:

- 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.
- The variance would be too great a deviation from the General Plan and would be contrary to the public interest.
- The hardship is self-imposed.

Board Member Peterson seconded the motion; voting aye: Board Members Barker, Peterson, Vice Chair McGonegal, and Chair Rex Mumford. Motion carried (4-0)

3. BOA 2024-05: Consideration and action on a variance request from street and access easement width standards, located at approximately 4680 E 2650 N, Eden, UT, 84310. Staff Presenter: Tammy Aydelotte.

Planner Aydelotte reviewed the development history for the subject property and explained the applicant is requesting the variance to allow for possible approval of a three-lot subdivision on the subject parcel. The parcel is accessed off of Clark Land (2650 North Street), a dedicated public right-of-way. 2650 North Street is a 60-foot-wide right-of-way. However, as this public street approaches the applicant's property, the dedicated width changes. The developer of the parcel directly east of the subject parcel did not own to the centerline of the roadway. As such, the County can only ask for dedication of property that is owned by the developer. The right-of-way width as it approaches the subject parcel varies from 16' to 19.68' wide. This width does not meet the minimum width standard for access to the parcel. Per Weber County LUC 106-2-2.010 Public Street Requirement "The standard method of ensuring ease of access, efficient mobility, reduced response time for first responders, effective emergency management, strong neighborhood relationships through interconnectivity, and a more equitable means of access to community opportunities, is by requiring Public Streets and Public Street connectivity at the time new development is proposed. As such, the default requirement for each subdivision Lot is to provide Lot Frontage on a street dedicated to the County as a public right-of-way and thoroughfare.

1. Public Street dedication. Each street in a subdivision shall be dedicated to the county as a Public Street, except when a Private Street is allowed or required as provided in this Section 106-2-2.
2. Standard street cross-sections. All proposed Public Streets shall conform to the county street cross-section standards, unless explicitly specified otherwise. "

A typical right-of-way width for a public roadway required by Weber County is between 60 feet and 66 feet. Applicant cannot meet this requirement. Weber County LUC 106-2-2.020 Private Street Option. In some cases, the County may find benefit from a street being temporarily or permanently private. However, an applicant is not entitled to make a street private. The Land Use Authority has full discretion, subject to regulations in the ordinance, to allow a street to be private. According to the street standards enforced by Weber County Engineering, 50' is the narrowest width permitted by the County Engineer, for a potential private right-of-way. This standard is below the norm typically requested by County Engineering. However, the applicant cannot meet this requirement.

Weber County LUC 106-2-2.030 Shared Private Lane Option This option is only permitted in areas where no public streets are planned. While there is no connection shown in the Ogden Valley General Plan, development is ongoing to the west and will necessitate connectivity to 2650 North Street. However, the minimum standards for a shared private lane cannot be met. The following standards apply to a shared private lane, Weber County LUC 106-2-2.030 states:

- (a) Shared private lane design, configuration, and construction requirements. A shared private lane shall be:
 1. Design. Designed and constructed to have a minimum right-of-way width of 24 feet, with a minimum improved surface width of 20 feet. A greater right-of-way width may be required by the County Engineer for a cross-slope easement.
 2. Configuration. Configured and constructed so that any curve will safely facilitate the turning radius and weight of the Fire Authority's largest fire apparatus."

Ms. Aydelotte offered a summary of the duties and powers of the Board of Adjustment and used the aid of a PowerPoint presentation to review staff's analysis of the application:

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- (b) Literal enforcement of the ordinance would prevent a subdivision going in at this time, until the required roadway width can be secured. This is not a variance to setbacks or the stream corridor setback standards, this is a request to bypass County standards related to safe access to property.
- (c) This may fall under a self-imposed hardship, as the current owner divided their land in such a way as to limit access to their parcel.
- (d) County staff have encouraged the applicant to work with adjacent landowners in order to secure the required access for a subdivision. As such, the property right sought by the applicant may not necessarily be enjoyed by the property owner at this time, unless the Board finds special circumstances that would allow them to grant a variance to these street standards.
- (e) Approval of this variance request may compromise safety standards, unless a solution can be reached by the applicant and the County to mitigate any detriment."

Ms. Aydelotte fielded questions from the Board regarding the characteristics and conditions of the subject property as well as future plans for the surrounding properties and general vicinity, and the specific actions that led to the creation of the hardship on the property.

The applicant was not physically, and the Board and Planning staff discussed whether to give him the opportunity to participate in the discussion of his application via Zoom. Chair Mumford offered the applicant the opportunity to provide input. Kody Holker, 11148 Zealand Avenue North, Chandler Arizona, stated he would have made an effort to attend the meeting in person but was told he could participate virtually. He stated he appreciates Ms. Aydelotte's recital of the facts but wished to offer a few clarifications regarding the situation. He stated he was the individual who recorded the development agreement that regulates his property; this was arrived at through negotiations with the Planning staff and was recorded with the County Recorder's Office as a matter of public record. In working with Planning staff, it was of paramount importance to them to keep Clark Lane on the same trajectory it was on; he could have dedicated a larger public easement greater than 16-feet and he takes issue with the conclusion that the hardship is self-imposed because that implies he has the ability to dictate to County engineers the trajectory of County roads. He was not certain this was the proper venue for his application because he is not asking for a variance, but is asking for the County to honor the development agreement that they required in order to allow the rezone and the development. The reason the public access easement is only 16 feet is that is the width that is required to keep Clark Lane on the same trajectory and the language in the development agreement reads as such. Every measurement was dictated to him by the County and County staff indicated to him that a public access was adequate for accessing his property. He would not have done something that landlocked this property and would have challenged the County's position in the past if he had any reason to believe he could not rely upon their representations. The County should be required to appear before a judge in a court of law and explain why they do not want to honor the agreement they entered into. The decision at this time is if the County is willing to honor the agreement it made. He then referenced the ordinance that gives the Board of Adjustment the ability to decide any road width they feel is adequate given any special circumstances that may exist. The special circumstances that exist in this situation is that the 16-foot width is what the County asked for in the beginning of this process. All parties were in agreement that the width was sufficient, so he was surprised to hear objections from the County when he began working on his development application. He stated it is not a good faith argument to indicate that this is a condition that he created and imposed on himself. He is not asking for a variance on his property, but that the Board of Adjustment find that the access is adequate to access his property. He discussed the private road allowances in the County's ordinance and indicated it is silent on the exact width of an access; this is intentional because the writers of that ordinance were wise enough to know that under certain circumstances, a decision should be arrived at that is in the best interest of all parties. He concluded by emphasizing that his request is that the County honor the development agreement is entered into, which dictates the establishment of the public access.

Chair Mumford explained the role of the Board of Adjustment and identified the specifics of the application that is before the Board this evening. Ms. Aydelotte added that the ordinance that County Planning staff has relied upon when considering Mr. Holker's application was adopted in 2022 and it replaced the access exception Mr. Holker has referenced. The access exception allowed for access widths to be as narrow as 16 feet, so it is likely that at the time Mr. Holker was working on the development agreement, those standards were in place. However, the ordinance has changed since that time. Chair Mumford clarified that as ordinances change, they take precedence over ordinances that were previously in place. Ms. Aydelotte stated that is the case unless there is a development agreement for a specific parcel that memorializes the ordinances that were in place at the time the agreement was executed. Planning Director Grover asked if the subject property was part of the development agreement referenced by Mr. Holker, to which Ms. Aydelotte answered no. Chair Mumford stated that given the subject property was not part of the development agreement, the property would need to comply with the current ordinances, which require a 24-foot public access. Mr. Holker stated he is not asking for a variance for his property; once the road hits his parcel, he is willing to widen the access to 24 feet, but he is asking for consideration of maintenance

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of the public right of way that was created as a result of the development agreement. He added he has spoken with the Fire Marshall regarding his position on the matter and was told that he misunderstood the specifics of the application; he hoped that the Fire Marshall has spoken with Ms. Aydelotte because he does not see a public safety issue with his request. The only harm that could arise would be due to denial of his application. He noted the bridge for Clark Lane is not the bridge he is building and it will not cross his land. The current bridge from the landowner to the south would be located where the Clark Lane bridge would go. He stated that he is basically asking for a driveway to one to three homes, with a bridge that complies with County standards. The main question today is if the Board will allow entry onto his property using the public access of record, which is only 16 feet. He was encouraged to talk to his neighbors about his request, which he did, but even if the landowner of the land directly north of the public access were willing to grant him the ability to widen the road eight feet into his property, that would infringe upon the existing development agreement and the two parties are not able to unilaterally alter the development agreement. It would also change the trajectory of Clark Lane, which is contrary to the development agreement.

Chair Mumford facilitated discussion among the Board regarding their powers and duties regarding the application before them; Mr. Grover added that the application would need to meet all criteria offered by Ms. Aydelotte in order for the variance to be granted. The Board discussed with staff the intent of the original development agreement and the intended purpose of the 16-foot access.

Vice Chair McGonegal addressed staff; he stated it is his understanding the property was purchased by the applicant in 2019 and if he had developed the subdivision at that time, he would have been granted access with the 16-foot access width. Ms. Aydelotte stated that is likely.

Board Member Barker stated the access to his home is about 19 feet wide and it is a 'nightmare'; the road is not wide enough and there have been instances of vehicles breaking down and stopping all traffic in both directions. He stated he sees Mr. Holker's point about the harm that will be done to him if the application is denied, but he can also see the potential for future harm to the residents who will live on the lots that Mr. Holker plans to develop is the access to their property is only 16 feet.

Chair Mumford again attempted to guide the Board in their decision-making process by reviewing the criteria that must be met in order for the variance to be granted.

Board Member Peterson moved to deny application BOA2024-05, variance request from street and access easement width standards, located at approximately 4680 E. 2650 N., Eden, UT, based upon the following findings:

- The hardship could be considered self-imposed because the applicant did have the opportunity to develop the land previous to 2022 when the ordinance was changed to require a 24-foot access.

Vice Chair McGonegal seconded the motion. voting aye: Board Members Barker, Peterson, Vice Chair McGonegal, and Chair Rex Mumford. Motion carried (4-0).

5. Rules of Order

Planning Director Grover informed the Board that their Rules of Order have been approved by the Legislative Body for the County.

The meeting adjourned at 6:01 p.m.

**Respectfully Submitted,
Cassie Brown**