

March 13, 2025

Minutes of the Board of Adjustments meeting of March 13, 2025, held in the Weber County Commission Chamber, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 pm.

Members Present **Marshall McGonegal, Acting Chair**
 Laura Warburton
 Ben Peterson

Staff Present: Rick Grover, Planning Director; Felix Lleverino, Planner; Lauren Thomas, Legal Counsel; Tiffany Snider, Secretary

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

Chair 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.

1. BOA 2025-01: Consideration and action on a request for a variance to the minimum lot area of the Agricultural Valley (AV-3) zone. This would allow for the owner to subdivide Lot 2 of the Gillespie Subdivision into two building lots. Staff Presenter: Felix Lleverino

Planner Lleverino explained the applicant is requesting variances to the minimum area requirements of the AV-3 Zone. This variance would allow for the owner to subdivide lot 2 of the Gillespie Subdivision through the county subdivision process, thereby creating two building lots that would possess all of the development rights of the Agricultural Valley AV-3 zone code. The current acreage of lot 2 is 5.866 or 255,530 SF. The square foot area of 3 acres amounts to 130,680. This request of the board is for a 5,830 SF variance. The applicant has provided a detailed narrative with exhibits to help inform the board's decision. Mr. Lleverino offered a summary of the duties and powers of the Board of Adjustment and stated that 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 relating 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 is done.

Mr. Lleverino then noted the following list are points taken by staff from the applicant's narrative:

1. The applicant's narrative states that literal enforcement of the 3-acre minimum should be varied because the owner contributed, for free, an easement for an underground storm water system.
2. The applicant's narrative does not provide details specifying circumstances that apply to this lot that do not generally apply to other properties in the same zone.
3. The applicant's narrative does not provide details arguing that granting a variance is essential to enjoy a substantial property right possessed by other properties in the same zone.
4. The applicant's narrative does not include statements regarding the general plan, however, the owner's narrative states that an additional building lot would add to the property tax revenue, thereby aligning with the public interest.
5. The board may find that the spirit of the land use ordinance is observed and substantial justice is done because approving this

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variance with such a thin margin would not appear to adversely affect the community, or impinge upon the easement or setbacks.

Acting Chair McGonegal invited input from the applicant.

Mike Gillespie, 2300 N. 5688 E., Eden, stated he is not here for the same reasons that most applicants ask for a variance; he does not want to build on the subject property at this time, nor further subdivide it, but he would like to have a variance in hand in the event he decides to develop or sell the property in the future. If the variance were approved, it would increase the value of the property and he could even borrow against it, if necessary, and he could secure more money if it were considered a three-acre building lot. He noted the only hardship is that the property has little to no value because he can only grow hay on it at this time. He then reviewed the narrative he provided to Planning staff and oriented the Board to the location of an additional property that he owns nearby; if that property were added to the subject property, he would have 5.93 acres in total and he is only asking for a variance based on .07 acres of ground and that is such a small piece of property that would not have a significant impact on the total acreage. He stated he sold some of his property to his neighbor in the past and he understood he would be left with six acres of ground, but due to road dedications and easements, the size of his property was reduced by .07 acres. He stated his request will not impact any other property owner, nor the environment and he asked that the Board consider his request favorably.

Board Member Peterson stated that the Board must find that all criteria are present in order to grant the variance; the only item that he is struggling to find is an actual hardship that would be caused by literal enforcement of the County's LUC. Mr. Gillespie stated that the hardship is that he is being limited in maximizing the value of his property due to enforcement of the acreage requirements. The property is devalued compared to what it would be if it were a buildable property. He stated he feels this is such an easy variance to approve.

Board Member Warburton stated she understands Mr. Gillespie's concerns and his position; she questioned him about the easements that essentially reduced the buildable acreage of his property. Mr. Gillespie stated that he did not understand that granting the easement would reduce his buildable area. Board Member Warburton asked Planning staff if the easement was part of a 'taking action' that Mr. Gillespie did not have a choice to grant. Planning Director Grover stated that he does not know the history of that easement. Board Member Warburton stated that having that information would be helpful in the decision-making process regarding this application. She then noted that regardless of the size of the easement, the County must consider its impact on a given property; a small easement is the same as a large easement for the purposes of LUC enforcement and the Board should not consider this situation to be different just because the property is .07 acres shy of meeting acreage requirements. Mr. Gillespie stated that in his opinion, not all easements are the same; the larger they get, the bigger the impact they have on a property. Board Member Warburton agreed, but noted the rules are the same for all easements regardless of their size. She noted that every decision the Board makes must be legal and if any decision is found to be unsupported by law, the Board can be held accountable personally and she is not willing to take that risk.

Mr. Lleverino reviewed the dedication plat for the subject property and facilitated the Board's review of the conditions impacting the property as well as the condition of the surrounding property; he also reviewed the history of the ownership of the property and the points in time that certain portions of the property were dedicated for public improvements. Board Member Warburton stated she may not have read the application and Mr. Gillespie's narrative correctly; she asked Mr. Lleverino to again explain the purpose of the request. Mr. Lleverino stated that Mr. Gillespie does not plan to subdivide the property at this point in time, but he would like the variance in hand so that at the time that he is ready to subdivide the property, he can legally create two lots from the 5.886 acres. Board Member Warburton stated the Board would essentially be granting approval for two lots that are each less than three acres in size. Mr. Lleverino stated that is correct.

Mr. Grover drew the Board's attention to a small piece of property on 2300 North, which is owned by Mr. Gillespie; he asked if the property was part of lot two at one point in time. Mr. Lleverino answered no. Mr. Grover asked if the subject property would be increased to a size that satisfies the minimum acreage requirements if the two properties were combined, to which Mr. Lleverino answered no, but it would get the property size close to the minimum acreage. Mr. Grover advised the Board to ask why the smaller piece of property was separated from the larger piece.

Acting Chair Warburton asked Mr. Gillespie to approach. Mr. Gillespie referenced Mr. Grover's questions about his smaller parcel of property, which is .113 acres in size; if it were added to his larger parcel, he would still be .07 acres shy of the minimum requirement. He added that it is not marketable, but he would be willing to combine it with the larger parcel. He then stated that he understands

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that easements do not necessarily subtract from his property, but the road dedication that occurred in 2005, when he created lots one and two, did reduce the size of the property. He did not understand that process when he subdivided and did not know that his property size would be reduced. He feels this was no fault of his own and is the basis for the variance request.

Board Member Warburton presented a hypothetical scenario under which Mr. Gillespie had not performed a previous subdivision of his property; she asked if Mr. Gillespie were pursuing a subdivision at this time with exactly six acres of property, if the subdivision into two lots would be granted with the understanding that the size of the two lots would be reduced due to the road dedication. Mr. Grover stated that once the road dedication occurs, the remaining acreage is considered for the subdivision; each subdivision in Weber County must have certain access, which comes by way of public or private roads. For Mr. Gillespie's properties, there is a road dedication for lot one, and lot two has two frontages. The remaining acreage is what is left to determine lot sizes. In this specific zone, the lot area requirement is three acres per lot. Board Member Warburton stated that means that when the road dedication occurred, the total area was reduced, and Mr. Gillespie no longer meets the acreage requirement. Mr. Grover stated that is correct; he added that any variance granted by the Board of Adjustments is only valid for 18 months; if Mr. Gillespie does not proceed with subdivision or the sale of his property in that time, the variance will expire. Additionally, at the end of this year, Mr. Gillespie's property will be incorporated into the new city that was created in the Ogden Valley and that entity may have different acreage requirements for subdivision in this area.

The Board and staff engaged in high-level discussions regarding the options available to them responsive to the application; this included an option to grant conditional approval of the variance. Acting Chair McGonegal reviewed the criteria that must be met in order for the variance to be granted; he feels the spirit of the land use ordinance is observed and substantial justice done by approving the variance. Board Member Warburton noted that a counterpoint to that would be that there have been public concerns in the Valley in recent months regarding density and granting this variance would essentially increase the density of the area. Acting Chair McGonegal then stated that it is his opinion that the variance will not substantially affect the General Plan and will not be contrary to the public interest. Board member Warburton agreed and stated that if that were the case, there would be members of the public present to oppose the variance. Acting Chair McGonegal then stated that granting variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. Board Member Warburton agreed. Acting Chair McGonegal cited criteria 'b' and indicated this criterion is a bit more difficult to determine; he is not sure there are special circumstances attached to the property that do not generally apply to other properties in the same zone. Board Member Warburton agreed and noted the Board would be setting a precedent by approving the variance given that fact. Legal Counsel Thomas noted that she is not sure a precedent would be set; each variance is unique, and each should be considered on its own merits without consideration of previous variance actions. Acting Chair McGonegal stated that 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 relating to the hardship complained of and deprive the property of privileges granted to other properties in the same zone. Board Member Warburton stated that she does believe there will be a hardship and that it was not created by the applicant's actions. Vice Chair McGonegal then moved to the final criterion, which is that 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. Legal Counsel Thomas stated that the most important distinction to make is whether the hardship is self-imposed and/or if it is an economic hardship. An economic hardship should not be considered as a reason to grant the variance. Board Member Warburton stated that she does not think that the applicant brought this situation on to himself and that the variance he is requesting is so minor in nature that it will not create a situation where the subdivision of the property into two lots will seem out of place when compared to other properties in the same zone.

Board Member Warburton moved to approve application BOA 2025-01, variance to the minimum lot area of the Agricultural Valley (AV-3) zone. This would allow for the owner to subdivide Lot 2 of the Gillespie Subdivision into two building lots, based upon the following findings:

- Granting a variance of 5,830 feet will increase the total property size to six acres.
- All criteria for granting a variance are present for the subject property.

Board Member Peterson seconded the motion; voting aye: Board Members Peterson, Warburton, and Acting Chair McGonegal. Motion carried (3-0)

Mr. Gillespie stated that he did not understand that his variance will expire in 18 months. Mr. Grover advised Mr. Gillespie to meet with Mr. Lleverino to understand the County's ordinance regarding the validity of variances. Mr. Gillespie stated that he would have liked to know that before he paid \$600 for his variance application. Mr. Gillespie stated that he does not understand the basis of the policy behind the 18-month time frame; this led to high-level discussion among the group regarding legislative decisions that result in these types of policies.

Approved 9.11.2025

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The meeting adjourned at 5:29 p.m.

**Respectfully Submitted,
Cassie Brown**