

March 27, 2025

Minutes of the Board of Adjustments meeting of March 27, 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
Neal Barker

Staff Present: Charlie Ewert, Principal Planner; Tammy Aydelotte, Planner; Lauren Thomas, Legal Counsel; Tiffany Snider, Secretary; Gary Myers, County Engineer.

- Roll Call
- Pledge of Allegiance

1. BOA 2024-08: Consideration and action on a request for a 15-foot variance to the minimum 50-foot stream corridor setback on the west side of the proposed building site and a 10-foot variance to the minimum 20-foot side yard setback to the east of the proposed building site. This property is a lot of record located in the FV-3 zone, located at 4116 East, 4100 North, Liberty, UT, 84310. Staff Presenter: Tammy Aydelotte, Planner

Planner Aydelotte explained in September of 2022, this parcel was deemed a lot of record. A document was recorded to title reflecting this determination. The applicant is requesting a 15' variance to the minimum 50' stream corridor and a 10' variance to the minimum 20' side setback in the FV-3 Zone. The applicant feels that a variance is necessary to build their desired home. The applicant explains that the current zoning setbacks, the limited space for the septic system, and the seasonal stream that runs through a portion of the lot, make it challenging to construct a single-level, ADA compliant home. The applicant's narrative is included as Exhibit B. 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 (50'), 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 County Engineer has reviewed the applicants' latest site plan and feels this is the best way to mitigate concerns from Weber County Engineering. The applicant has provided a site plan to help visualize applicable setbacks and encumbrances to the property. The only location possible for the septic system is within the front setback. The second page of Exhibit B shows encroachment of the proposed building into side setback of 10 feet, side adjacent to a street of 20 feet, and a front setback of 50 feet, where the proposed right-of-way is 80' or more. It should be noted that on the first page of Exhibit B, the front setback should be shown at 50 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 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.

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

Ms. Aydelotte then summarized 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.
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.

Ms. Aydelotte concluded single-family dwellings are allowed as a permitted use in the FV-3 zone. If the requested variance is granted, it will not have a negative impact on the goals and policies of the Ogden Valley General Plan.

Board Member Barker asked if there are any concerns regarding the application from the County Engineer. County Engineer Myers discussed the history of the property as it pertains to high water events within the channel. The County has worked with residents across the road to the south of the subject property as recent as the summer of 2024 to address challenges with the route of water channel. Construction occurred over the winter of 2024-2025 to adjust an elevation issue and provide for easier flow of the water through the channel. He noted there was flooding in the area a few years ago, but none of the flooding reached the area where the applicant is proposing to build his home; he clarified the flooding occurred prior to the adjustments to the downstream channel and now that there is a positive slope to provide for easy flow of the water all the way to the point where it ties into North Fork drainage, he is confident flooding issues have been mitigated.

Vice Chair McGonegal asked if the changes to the water channel have changed the high-water mark. Mr. Myers stated no changes were made to the FEMA flood plains and the high-water mark remains the same; however, obstacles downstream have been addressed and those obstacles were what had caused the high-water mark in the past. He would be surprised if the high-water mark is observed at the same level now that the obstacles have been removed.

Chair Mumford reviewed the staff narrative regarding the Engineer's recommendations for the construction of the home, and he noted that a few of the recommendations have not been incorporated into the latest plan for the project; this includes building a front-facing garage and not allowing the driveway to encroach into a 50-foot stream setback area. He also noted that Mr. Myers recommended retaining walls, but he asked if those are still necessary. Mr. Myers indicated the retaining walls would elevate the finished elevations to offset the encroachment into the high-water mark. However, now that the stream blockage has been removed, he is not sure the retaining walls are necessary. He would still like to see a front-facing garage, but the new design does include a 25-to-30-foot distance from the stream setback.

The Board reviewed the latest design of the home and discussed the presence of a septic leach field and appropriate setbacks from that element of the property.

Chair Mumford asked Mr. Myers if he is comfortable with the latest design of the subject property, to which Mr. Myers answered yes.

Chair Mumford then addressed Ms. Aydelotte and stated her staff report references a 1,050 square foot home on the lot; he asked if that is a typographical error and noted that he believes the current design of the home the applicant would like to build is closer to 7,000 square feet. Ms. Aydelotte stated that is a typographical error and she deferred to the applicant to discuss the size and footprint of his home.

Chair Mumford invited input from the applicant.

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Robert Heslop, 3537 Fox Drive, Eden, addressed Chair Mumford's question about the size of the home, noting it is roughly 5,400 square feet in size. The primary residence is 4,300 square feet and there other 1,100 square feet is a mother-in-law apartment. The garage is another 400 square feet approximately. He noted the septic design has been approved and his driveway will not be built on top of it; that is the reason the location of the driveway has been shifted, and the garage is a side-entry design. The current layout of the home and garage has been dictated somewhat by the Health Department as they are the entity that approved the septic system.

High level discussion among the Board and Mr. Heslop centered on other elements of the design of the home, including side setbacks, the use and ownership of surrounding properties.

Board Member Barker moved to approve application BOA 2024-08, 15-foot variance to the minimum 50-foot stream corridor setback on the west side of the proposed building site and a 10-foot variance to the minimum 20-foot side yard setback to the east of the proposed building site. This property is a lot of record located in the FV-3 zone, located at 4116 East, 4100 North, Liberty, UT, 84310.

Chair Mumford stated he feels it would be appropriate to clarify that the variance is actually 25 feet rather than 15 feet for the stream corridor setback, based upon the driveway encroachment, and 15 feet rather than 10 feet for the structure. He asked Ms. Aydelotte to address that matter. Ms. Aydelotte stated specificity is always good in motions regarding variances. Chair Mumford stated that the stream corridor is very specifically identified, and the map shows the driveway encroaching 25 feet into that corridor. He asked Board Member Barker to amend his motion to identify a 25-foot variance for the driveway and a 15-foot variance for the structure. Legal Counsel Thomas suggested that amendment would be helpful and provide clarity; she would also suggest that the motion include a reference to the statute that identifies the criteria for granting a variance.

Board Member Barker amended his motion as follows: the Board approves application BOA 2024-08, 15-foot variance to the minimum 50-foot stream corridor setback on the west side of the proposed building site, a 25-foot variance to the minimum 50-foot stream corridor setback for the driveway, and a 10-foot variance to the minimum 20 foot side yard setback to the east of the proposed building site. This property is a lot of record located in the FV-3 zone, located at 4116 East, 4100 North, Liberty, UT, 84310. The motion is based upon the following findings:

- 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.
- 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.
- 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.
- 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.
- 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 McGonegal seconded the motion.

Chair Mumford explained to Mr. Heslop that the motion is slightly different than what he requested, and he asked him if he is comfortable with the change that has been made. Mr. Heslop stated that he is comfortable with the motion.

Chair Mumford called for a vote; voting aye: Board Members Barker, McGonegal, and Chair Mumford. Motion carried (3-0)

2. BOA 2024-09: Request for consideration and action on an appeal of a conditional use permit determination made 11/19/2024.

Staff Presenter: Tammy Aydelotte, Planner

Legal Counsel Thomas indicated the Board has the ability to recess this meeting to convene in a closed session to discuss this application; she suggested that the Board do so after hearing from County staff as well as the applicant. She advised the Board on the points they should be considering in order to make their decision tonight. It is most important to focus on facts of record, and she advised them not to make a decision tonight, but to issue a written decision at a later date.

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Planner Aydelotte explained this appeal request was submitted on December 4, 2024. The applicant had applied for a conditional use permit on May 21, 2023. The applicant had requested approval of an agritourism operation in the FV-3 zone. This application was received under the previous agritourism ordinance, and was therefore reviewed against the ordinance previously in place before it was amended in December 2023. The applicant's property, at 4.61 acres, falls under the "market garden agricultural operation" which includes an agriculturally productive property consisting of three acres or more but fewer than five acres. The applicant grows produce on the property, in gardens and greenhouses. The proposal includes a glamping cabin, which is a permitted use under a market garden designation of the agritourism operation. Currently, the applicant proposes the following uses under agritourism: "Community Garden/Community supported agriculture, U-pick operation, glamping cabin." Though the Planning Commission acknowledged latitude in mitigating nuisance issues related to setbacks requirements (see attached minutes from the meeting), and possibly allowing the glamping cabin use on site, ultimately, they followed staff recommendations to approve all uses except the glamping cabin. The applicant is appealing denial of the glamping cabin use as part of his agritourism use.

Ms. Aydelotte offered a summary of the duties and powers of the Board of Adjustment; LUC §102-3 states that one of the duties and powers of the Board of Adjustment is to hear and decide appeals from decisions applying and interpreting the Land Use Code and Zoning Maps. The board of adjustment shall determine the correctness of a decision of the land use authority in its interpretation and application of the Land Use Code and Zoning Maps.

1. The board of adjustment may hear only those decisions in which the land use authority has applied the Land Use Code or Zoning Maps to a particular application, person, or parcel.
2. The appellant has the burden of proof that the land use authority erred.
3. All appeals to the board of adjustment shall be filed with the planning division not more than 15 calendar days after the date of the written decision of the land use authority.
4. Appeals to the board of adjustment shall consist of a review of the record. In cases where there is no record to review, the appeal shall be heard de novo.

The Board asked Ms. Aydelotte questions regarding the characteristics of the subject property and the existing building, which the applicant proposes to use as the 'glamping' cabin. There was discussion about whether the building meets the County's standards and requirements to be considered an accessory dwelling unit (ADU), and the Board reviewed a map of the property and surrounding properties, as well as access to the property.

Chair Mumford invited input from the applicant.

Jason Fuller, 4661 Creekview Drive, Eden, addressed the issues pertaining to setbacks; there was a grandfather provision for his property and according to the County Land Use Code, the Planning Commission could waive setback requirements for his property. He has a tree farm and there is basically a forest of trees between his home and the nearest home to the east, and he is also willing to erect a fence that would help to screen the proposed use of his property.

Chair Mumford stated that Mr. Fuller's appeal is based upon his feeling that the Planning Commission made an error in their decision making and he asked Mr. Fuller to expound on that thought. Mr. Fuller stated the Planning Commission spent a great deal of time debating his application, but they did not spend enough time discussing the setbacks and the fact that they had the right to waive setback requirements. Chair Mumford stated the Land Use Code requires a distance of 500 feet between existing dwellings and 'glamping' areas, but the distance between the existing building that Mr. Fuller desires to use as a 'glamping' cabin is less than 250 feet from the existing dwelling. Mr. Fuller stated he is not sure the meaning of that requirement. There are several uses in which overnight stays are allowed that are grandfathered under a previous ordinance; he would like the same to apply to his property. For example, a bed and breakfast use can be much more intense than a 'glamping' cabin, but the requirement distance for that use is much less than for a 'glamping' cabin. He feels that the inconsistency creates an unfair situation for him. Chair Mumford asked Mr. Fuller to explain what error he believes the Planning Commission made. Mr. Fuller stated he feels the Planning Commission did not allocate sufficient time to consider whether they could waive the setback requirement for the 'glamping' cabin. They also did not consider the unfairness of allowing larger accessory uses closer to an existing dwelling when compared to a 'glamping' cabin. He stated the 'glamping' use was actually added to the ordinance to help farmers find other ways to use their property to offset the cost of farming and recover their expenses. Chair Mumford clarified that the Planning Commission did approve the agritourism application but denied the 'glamping' use. Mr. Fuller stated that is correct, but the 'glamping' use would generate more income than the agritourism uses. He added that he had worked with a member of Planning staff who is no longer employed by the County and that individual told him that he needed to provide a will-serve letter from the water and sewer company, and he has pursued that at a cost of approximately \$10,000 to \$15,000.

Approved 9.11.2025

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He has gotten different and inconsistent answers from Planning staff since then and the issue has drug out over three years. He has the ability to continue to beautify the area and will do so if he is able to secure approval for the 'glamping' use.

Board Member Barker asked how large the shed is. Mr. Fuller stated it is eight by 15 feet, and it was brought onto the property to use in different ways, but it has evolved, and he now desires to use it as a 'glamping' cabin.

Vice Chair McGonegal stated that Mr. Fuller mentioned the Planning Commission had the authority to waive the setback requirements and he asked staff is that is accurate. Ms. Thomas stated she is reviewing the record of the meeting during which the decision on the original application was made in order to answer that question.

Board Member Barker added that he has tried to understand the difference between a 'glamping' cabin and an ADU given that both allow for overnight stays and shall only be served to guests; one is not allowed based upon acreage requirements, but he wants to know the difference between the two buildings. Ms. Thomas stated that in this case it is not appropriate to focus on that matter; it is appropriate to focus on the 'glamping' use because of the record of the application and Planning Commission denial. Board Member Barker stated he wants to know if the shed would be acceptable as a 'glamping' cabin if it were in a proper location and met required setbacks. Principal Planner Ewert answered yes; there is not a clear definition of a 'glamping' cabin, so there is some latitude in determining what types of structures can be denied as a 'glamping' cabin, but a decision of the County should err in favor of the applicant.

Ms. Thomas then responded to vice Chair McGonegal's question about whether the Planning Commission had the authority to waive setback requirements; the old version of the LUC, Section 108-21-6, states 'uses listed below are subject to additional standards beyond any provided in other codes and one or more of the additional standards may be waived by the Planning Commission...' It is true that the Planning Commission has the authority to waive certain standards, but as the appeal authority the Board of Adjustments is simply reviewing the correctness of the legal decision made by the Planning Commission.

Board Member Barker moved to adjourn into a closed session to consider application BOA 2024-09, an appeal of a conditional use permit determination made November 19, 2024. Board Member McGonegal seconded the motion; voting aye: Board Members Barker, McGonegal, and Chair Mumford. Motion carried (3-0)

The meeting recessed at 5:29 p.m. and reconvened at .

Chair Mumford stated the Board deliberated the merits of the appeal extensively and their decision is under advisement and a decision will be rendered in writing shortly.

The meeting adjourned at .

**Respectfully Submitted,
Cassie Brown**