

Minutes of the Board of Adjustments meeting of February 27, 2020, held in the Weber County Commission Chambers, 2380 Washington Blvd. Floor 1, Ogden UT at 4:30 p.m.

Members Present: Bryce Froerer
Laura Warburton
Rex Mumford

Staff Present: Charlie Ewert, Principle Planner; Felix Lleverino, Planner II; Chris Crockett, Legal Counsel; Marta Borchert, Secretary

- Pledge of Allegiance
- Roll Call

Approval of minutes for October 24, 2019. Minutes were approved as presented.

BOA 2020-01 - Consideration and action on a request for a 15-foot variance to the 50' stream corridor setback.

Felix Lleverino gives an overview of the proposal. The purpose of the variance request is for the applicant to be able to build a 13 sq. ft. structure, He owns both properties in the subdivision. The subdivision was recorded in 1972. In May of 2019, Michael Randy was approved for a building parcel designation. This allows for an owner who owns both lots within a subdivision to look it at as being one lot. The pole structure would be on the north lot. On any application to build a structure staff makes sure that it meets the setbacks and ensures it is not encroaching on to any easements and that it meets instream corridor setbacks. In this case, there is a 50 ft corridor setback which is measured from the high-water mark of the stream. This is written into the code. On the dedication plat, there is drainage, and it shows a 35ft setback. That is where the discrepancies lay.

Laura Warburton asks if they are only allowed to put the structure to the back of the property. Mr. Lleverino states that it can be placed at the front or the side if it meets the architectural style of the home.

Michael Randy 559 N 5150 E, states that he does not live the property, but he owns the two lots. There is a home on the south side of the property. The property has a lot of steep hills and woods. He states that he could put the building on the adjacent property. Regarding the creek it dry most of the time. It runs intermittently He wants to put the structure near the ravine, by the high watermark. He states that he feels that 50 ft is excessive because it puts it clear out in the field. He notes that he would to conserve as much area as possible and would like to keep the building to the side. It is a deer migratory area and other animals travel through there as well. He would like to have it in an area where it cannot be seen from the road. He is asking for a 15 ft encroachment.

Ms. Warburton states that the water in the area is very clean and beautiful and she would like to protect that. She asks if he is going to be put anything in that would affect that. Mr. Randy states that he will not be doing anything that will affect the water there won't be any drains on the floor and the floors will be concrete. Mr. Mumford asks if the lot can be separated down the road. Mr. Lleverino states that they haven't been combined. Mr. Mumford states with joint ownership it allows for an accessory building be built before the home. He notes that on exhibit B with the cat on page 10 it's hard to tell there is a stream there. He states that he is not sure it qualifies as a stream. Mr. Lleverino states that they used a broad range to protect some of the riparian areas. If it were streams, drainages or waterways that run intermittently would still be considered something worth protecting. Mr. Mumford notes that if the lots are separated down the line there is enough room to build a home on the second lot. Mr. Randy states that he bought the second lot when it was inexpensive. He bought it as a buffer. There are only 2 pieces where they can build anything. It would have to be placed above or below the drainage. He wants to place the accessory building below the drainage. Above the drainage is steeper he does not intend to build there. He states that he feels that it is not buildable because of the encumbrance of the stream. Ms. Warburton asks if it would be reasonable to ask the applicant to add gravel to protect the stream. Mr. Lleverino states that this request could fall in line with maintenance. Mr. Ewert states that as point an of clarification a variance can come with conditions, it is not a conditional use permit. The Board of Adjustments is working in a quasi-judicial manner. There is some difference when it comes to objectivity and subjectivity. He notes that the Board of Adjustments can add some principles or guidelines. The code does allow for a building parcel combination without it amending the subdivision plat, when it comes to building things on adjacent

parcels that are not the primary home. The other parcel that has the accessory on it is sold off into separate ownership it will be a nonconforming use on the parcel. It has to either run with both or there has to be a main building on the adjacent parcel before it can be considered lawful. If this is located, where it is being proposed at least 10 ft off of both property lines and 30 ft off of all side property lines he could potentially call the ag. building the main building.

Chair Froerer asks if there is anyone in the audience that would like to speak to this issue. There is no one.

Mr. Mumford asks if from a County perspective this building will have the same setbacks as if it were a separate lot. Mr. Ewert states that it would be legal for the owner to combine the two lots he would have to file a subdivision plat amendment. It would go through the whole plating process, it would need to be plated and recorded that way. Mr. Ewert states that some changes are coming down the pipeline that would make it unnecessary to even file where Mr. Randy would be able to combine them without changing the plat. If a home were built right on, the property line between the two lots that would ensure the two lots would not be able to be separated. He does not have to observe the southern boundary of the lot in question. He can build it right over the lot line because he did the building parcel designations. He doesn't have to comply with the setbacks on the lot line because he filed the building parcel designation.

Mr. Mumford asks if the building is put closer to the creek to hold back with the required setbacks. Mr. Ewert states that it is not, on page 12 there are 37.3 ft it is well over the 10 ft minimum requirement for this area. There is potential for him to move closer to the southern lot line and still comply with the existing setbacks. He notes that the applicant doesn't need to comply with the setback on that lot line because he filed the building parcel designation.

Chair Froerer asks what the elevation of the bottom of the stream to where the build will be. Mr. Randy states that it is about 7 ft.

Mr. Mumford notes that he doesn't feel that this proposal would have any negative effect.

Mr. Lleverino states that staff recommends that approval of the 15-foot variance to the 50 ft variance setback. The recommendation is based on compliance with the applicable variance criteria and is conditioned on meeting all other applicable review agency requirements.

MOTION: Laura Warburton moves to approve BOA 2020-01 - Consideration and action on a request for a 15-foot variance to the 50' stream corridor setback. On property 595 N 5150 , Parcel # 20-46-0005, 20-046-0006. This recommendation is based on compliance with applicable variance criteria and conditioned upon meeting all other applicable review agency requirements. It does not inhibit the General Plan and it supports the property rights and is based on all other agency's approval. Rex Mumford seconds. Motion carries (3-0)

Election for Chair and Vice-Chair 2020

MOTION: Rex Mumford moves to recommend Laura Warburton as Chair. Bryce Froerer seconds. Motion carries (3-0)

MOTION: Laura Warburton moves to recommend Bryce Froerer as Vice-Chair. Rex Mumford seconds. Motion carries (3-0)

Schedule & Information: 2020 Meetings and Information List: Board members review the schedule, the information list was emailed to board members at a later time.

Rules of Order: Approval of Rules of Order: Mr. Crockett states that he made the changes that were requested at the last meeting. He adds that he could add some clarification to the first sentence of Section A so that it matched the language of the ordinance exactly.

MOTION: Rex Mumford moves to approve the Rules of Order for 2020 subject adding clarification to the first sentence of Section A regarding the first meeting of the year to match the ordinance. Bryce Froerer Seconds.

Review of Open Meetings Act-Chris Crockett-Chris Crockett gives a presentation of the open meetings act.

Mr. Mumford states that the Board of Adjustments meets infrequently. He asks if it is crucial to have minutes approved before the County can grant certain actions? Mr. Ewert states that the bylaws have been updated for electronic meetings to be possible. It is important to have them when there is legal action coming down the road. Mr. Crockett goes over the legal provision regarding minutes. He states that the County is not a specified public body. Minutes need to be done within a reasonable time, preferably within 30 days.

Mr. Ewert states that he believes that the ordinance refers to all Board of Adjustments meetings as hearings. He asks if it is considered a public hearing. Mr. Crockett states that it might be in the best interest of the Board to amend the ordinance to remove the word hearing from the bylaws.

MOTION: Bryce Froerer moves to amend the bylaws to remove the word hearing. Rex Mumford seconds. Motion carries (3-0)

Mr. Crockett states that it is important to build a solid record by allowing public comment. He states he will look into the public comment issue regarding the Board of Adjustments. He states that he will review some case law and see how it relates to the Board of Adjustments.

Mr. Crockett states that he would like to point out that violating the closed meeting provision has the biggest consequence it carries potential criminal liability. The penalty for violating closed meeting provision is to have a decision overturned.

Chair Warburton states that she is confused regarding ex parte communications and conflicts of interest regarding the Board of Adjustments. She asks Mr. Crockett to clarify. Mr. Crockett states that as a general rule ex parte communications are prohibited in administrative matters but permissible in legislative matters. He states that the best thing to do is to air on the side of caution, if they have been ex parte communication they should disclose it, it might not require a recusal it can help remove the appearance of impropriety.

Following the quiz, Mr. Crockett noted that they had completed the Open meetings Act training and they can print out a certificate. Chair Warburton states that she would like Mr. Crockett to send the link to the video and quiz for Board members who were not able to attend. She notes that she would like them to complete the quiz and send the certificate of completion to Mr. Crockett.

Bryce Froerer moves to Adjourn. Rex Mumford seconds. Motion carries (3-0).

Adjournment- 5:47 PM

Respectfully Submitted,

Marta Borchert