



Legal Descriptions

- 23-012-0017: *vd* EAST 1/2 OF SECTION 24, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALT LAKE MERIDIAN.
- 23-012-0018: *vd* SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24 AND ALL OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALTBASE AND MERIDIAN.
- 23-013-0026: *vd* ALL OF SECTION 19, TOWNSHIP 7 NORTH, RANGE 3 EAST, SALT LAKE MERIDIAN, U.S. SURVEY EXCEPT THAT PART DEEDED TO WEBER COUNTY (1375-1130).
- 23-018-0002: *vd* THE WEST 1/2 OF SECTION 30, TOWNSHIP 7 NORTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN. EXCEPTING THAT PORTION THEREOF CONTAINED WITHINEVERGREEN PARK SUBDIVSION NO. 1. SUBJECT TO A 20 FOOT RIGHT OF WAY FOR INGRESS ANDEGRESS OVER THE FOLLOWING DESCRIBED PROPERTY: BEGINNING AT A POINT NORTH 19D10'32" EAST 220.69 FEET FROM THE SOUTHWEST CORNER OF LOT 271, EVERGREEN PARK NO. 1 SUBDIVISION, BEING IN THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 7 NORTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN, U S SURVEY AND RUNNING THENCE NORTH 61D30' WEST 27.0 FEET; THENCE NORTH 23D38' WEST 235.0 FEET; THENCE NORTH 30D23' WEST 192.5 FEET TO THE POINT OF DIVERSION. (E#1454875 & 2103767)

Minutes of the Board of Adjustment Meeting held on July 31, 2008, in the Weber County Commission Chambers at 4:15 p.m.

Roll Call: Phil Hancock, Chair, Robert Heffernan, Sue Wilkins, Celeste Canning

Staff: Sean Wilkinson, Ben Hatfield, Iris Hennon, Rob Scott, Chris Allred, Legal Counsel, Sherri Sillitoe, Curtis Christensen, Weber County Engineer

Pledge of Allegiance

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1. Approval of the May 22, 2008 meeting minutes
 2. Board of Adjustment BOA #02-08 Request for a Variance to Allow a 15 Foot Maximum Encroachment into the Required 50 Foot Stream Corridor Setback for the Main Entry Road in the Ranches @ Monte Cristo Subdivision Located Northwest of Evergreen Park Subdivision
 3. Board of Adjustment BOA #05-08 Request for a Variance to Allow a 4 Foot Maximum Encroachment into a Side Yard Setback for a Single Family Residence in the Silver Bells Estates No 2 Lot 73 Located at 3750 Viking Drive, Nordic Valley Area
 4. Board of Adjustment BOA #06-08 Request for a Variance to Allow a 25 Foot Maximum Encroachment into a 75 Foot Stream Corridor Setback to the Original 50 Foot Footprint in the Hidden Oaks #7 at Wolf Creek Located at 4247 Powder Mountain Road
 5. Board of Adjustment BOA #07-08 Request for a Special Exception to Allow One (1) Flag Lot as Part of a Proposed Subdivision Located at 9215 E 500 S in the East Huntsville Area
 6. Adjourned

1. **Approval of the May 22, 2008 meeting minutes**

MOTION: Robert Heffernan moved to approve the May 22, 2008 meeting minutes as written. Sue Wilkins seconded the motion. A vote was taken and Chair Hancock said the motion carried with all members present voting aye.

2. **Board of Adjustment BOA #02-08 Request for a Variance to Allow a 15 Foot Maximum Encroachment into the Required 50 Foot Stream Corridor Setback for the Main Entry Road in the Ranches @ Monte Cristo Subdivision Located Northwest of Evergreen Park Subdivision**

Because there was a member in attendance tonight that was not present at that meeting, staff reviewed the case from the beginning.

Sean Wilkinson said the road has already been cut in, and the proposal is for a variance to encroach into the required 50' stream corridor setback that fluctuates from 2 ft. to 15 ft. On June 12, 2008, the Board tabled the variance request and discussed two options; 1) cutting further into the hillside or 2) encroaching into the stream corridor. The Board wanted to know which of the two options would have the largest impact. Because of the geotechnical issues, the County Engineer has recommended against further cutting into the hillside. The revegetation plan will need to be revised as part of the mitigation plan.

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Sean Wilkinson reviewed the petitioner's appeal justification and staff's response.

Robert Heffernan said they tabled this item at the June 12, 2008 meeting in order to give the applicant time to address three questions;

- Which option, cutting further into the hillside or encroaching into the stream corridor, would have the more harmful impact?
- If further cutting was required, would the cuts meet the requirements of the hillside review ordinance?
- Can the stream corridor setback be revegetated to reduce impacts?

Mr. Heffernan asked staff if sufficient information has been given to answer those three questions. Sean Wilkinson replied yes.

John Reeve, Reeve and Associates, Engineer for the petitioner, clarified that the revegetation plan was submitted with the plans. Mr. Reeve noted that the revegetation plan was prepared by a Landscape Architect who specializes in hillside revegetation plans. They tried their best to impact the stream and the corridor the least. They feel that they can revegetate the corridor to at least the previous state or to something that surpasses the previous state.

Chair Hancock asked if they are required to monitor a Storm Water Pollution Prevention Plan (SWPPP), and John Reeve said what is on the property now has been verified with their plans. He clarified that the petitioner feels that cutting into the hillside is less beneficial than encroaching into the stream in some areas. Mr. Reeve replied yes and indicated that the more you cut into the slope the greater chance there is for slope instability. Chair Hancock asked if this is the most efficient and practical access into the property? John Reeve identified the access points and replied that they have examined all accesses into the property and they feel this is the best access.

Robert Heffernan observed the information shows approximately one third of the road is out of compliance. Some parts of that one third are only 1 ft. out of compliance and others up to the 15 ft. encroachment.

Sue Wilkins said they need to consider the intent of the ordinance and ensure that it complies with the General Plan.

Sean Wilkinson said that the applicant did submit a revegetation plan; however, staff is concerned that if they have heavy snows and the seed washes away, what will they do if the seed and mitigation measures do not work? John Reeve said they will submit an escrow with the County Engineer for two years, and if something does not work, the County would be protected.

Rob Scott said staff's concern is they want to see what mitigation measures will be done so staff would have the ability to consider whether the proposal would work or not. They are recommending that this be a condition of approval. Chair Hancock said he believed it is the County's responsibility to review the proposed plans for roads, etc.

Curtis Christensen said they concur that moving into the hillside further is not a good option. Their existing cuts have left a marginally stable hillside. The environmental impacts are a big issue. Some areas that are already impacted shouldn't have been impacted so now they need to determine how to best handle it. Last year a lot of mud came down that hillside. Something should be required to be done this fall to stabilize those hillsides. The Engineering Office has not received a SWPPP for storm water review; that usually comes as part of the subdivision review.

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In answer to a question by Chair Hancock, Chris Allred, Legal Counsel, said the board members are being asked to what extent the variance will substantially affect the comprehensive zoning plan. That part of the ordinance applies regardless if it is a subdivision or not. Curtis Christensen said some of those requirements for restoration of the hillside should be done this fall.

Rob Scott commented that the variance request application did not address the criterion that the request is circumstantial and not self imposed, sufficient information wasn't provided to address this criterion. John Reeve said the revegetation has not taken place because they are in limbo until the Board acts so they will know whether they will need to cut further into the hillside.

Jason Allred said in response to whether the request is circumstantial and not self imposed, when they first bought the property they wanted to look for the best access and that led them to their current location which would cause the least amount of damage. It is mountainous property and they maintain a 15 ft. radius from the stream. It is because of the existing topography that the best access is at its current location.

Judy Niederhouser said they own property in Evergreen Estates, and asked if they received the proper permits, and who signed the affidavits stating there was a road there previously. They have lived there since 1978 and said there was no access. Chair Hancock said that is not a consideration at this time; they are just looking at the variance and whether the road can be that close to the stream. Mrs. Niederhouser asked what happens if the affidavits were signed fraudulently, and Chris Allred said that issue is not the issue before the Board at this time. Mrs. Niederhouser said she believes the road was built illegally to start with.

Robert Heffernan sated that he believes they need to make a decision today as it has been heard three times.

MOTION: Robert Heffernan said in his opinion, Chapter 29's criteria has been met marginally and therefore he moved to grant the variance subject to the four criteria listed to grant a variance and that the motion is subject to having an improvement installation timeline set by the petitioner, Planning and Engineering with the stipulation that the restoration of the hillside should begin before winter. They are not a precedent setting board and he believes this plan does not substantially affect the comprehensive zoning plan of the County. He believes this is a unique situation. The special circumstances are the stream corridor and topographic conditions of the property and that without some kind of designated road going through they would be deprived of enjoyment others would not have. He believes the variance is not self-imposed due to the topographic issues on the property. The motion is also subject to the following as listed in the staff report:

1. A mitigation plan for restoration of the stream corridor and hillside, which has been approved by the County, must be submitted and followed. The plan will include the areas included in the variance request and the areas which have been affected by construction of the road. The plan should provide for the restoration of these areas to their pre-disturbed state. Final approval of the subdivision will not be granted until the plan is in place.
2. A storm water pollution prevention plan must be submitted and followed.
3. The road must meet all of the engineering standards required by the County.
4. The variance does not allow a blanket 15 foot encroachment area. Rather, only the necessary variance is allowed in each area where encroachment is needed as identified in the improvement drawings for the Ranches at Monte Cristo Subdivision, with the understanding that 15 feet is the maximum variance needed.

Sue Wilkins seconded the motion.

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DISCUSSION: Sue Wilkins said she agreed that the proposal marginally met the criteria.

Chair Hancock agreed that a variance should be granted with the strict requirements that are listed in the staff report. Rob Scott said that typically the applicant would provide recommendations and then staff would review the timeline for concurrence and approval. Chris Allred said there is no variance without the applicant complying with the listed four staff conditions being met.

VOTE: A vote was taken and Chair Hancock said the motion carried with a unanimous vote.

Celeste Canning arrived at this time.

3. Board of Adjustment BOA #05-08 Request for a Variance to Allow a 4 Foot Maximum Encroachment into a Side Yard Setback for a Single Family Residence in the Silver Bells Estates No 2 Lot 73 Located at 3750 Viking Drive, Nordic Valley Area

Ben Hatfield reviewed the staff report and a copy of the proposed site plan.

Celeste Canning asked if they have received any comments from any of the neighbors and what type of deck is proposed. Ben Hatfield said it would be a raised deck built on pillars. The basement of the home has a walk out. If the road was in the proper place, they could have a larger building envelope and move the home forward.

Jason Peterson, Petersen Builders, is the contractor for this project. The deck is not covered and it is 2 ft. in front of the home and 4 ft. from the rear of the home. They are trying to stay as far from the road as they possibly can. If the road was where it was supposed to be, they wouldn't have this issue.

Rob Scott said there is significant slope off of this lot. Staff asked if the board would be disposed to grant an easement where the existing road has been constructed. Chair Hancock asked if the owner would object to that. Mr. Peterson said he cannot speak on the petitioner's behalf regarding this question. Celeste Canning asked if granting that easement would be a condition of approving this variance.

Chris Allred said he believes they could make that a condition. He believes it would be in the property owner's best interest.

After speaking to Legal Counsel off record for a moment because she thought she may have a conflict of interest, Mrs. Canning said she has no knowledge of this property and petitioner. Chris Allred said it does not appear she would have a financial conflict.

Sue Wilkins said based on what has been said she does not believe Mrs. Canning has a conflicted of interest. The other members agreed.

Recess: 5:40 p.m.

MOTION: Sue Wilkins moved to approve the variance based on the finding that a. It will not affect the comprehensive plan of the County, b. the special circumstance is topography and misplacement of the road, c. because of the aforementioned circumstances she believes it meets this requirement, and d) she doesn't believe it is a self-imposed hardship based upon where the road was already placed.

Robert Heffernan seconded the motion.

Phil Hancock said if this road has been there for 30 years and the owner has known that the road would be there for their use. He personally would like to see it part of the motion in order to prevent future problems. Celeste Canning said she believes they may be encroaching on another property's owner's future plans.