HEARING EXAMINER
AGENDA
Thursday, April 14, 2016
5:30 p.m.
City Council Chambers
911 N. Seventh Avenue
Pocatello, ID

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three (3) days' advance notice by contacting Dave Hunt at dhunt@pocatello.us; 208.234.6248 or 5815 South 5th Avenue, Pocatello, ID.

HEARING EXAMINER: Keeven Shropshire

1. Disclosure of ex parte communication and site visit. Disclose who was talked to, the basic substance of the conversation and whether the conversation had any influence. Disclose if a site visit was done, location(s) of the visit and what was seen.

2. Jon Thuernagle, representing Net Prophet, LLC, requests a lot size variance to allow a duplex at 1205 S. 4th Avenue. Municipal Code 17.03.240 requires 6,720 square feet for a duplex and the lot is 6,334 square feet. The property is located within a Residential High Density zoning district with an Original Townsite Overlay.

AGENDA ITEM NO. 2

HEARING EXAMINER
Staff Report

APPLICANT/REPRESENTATIVE: Net Prophet, LLC/Jon Thuernagle
MAILING ADDRESS: 146 E. Chubbuck Road, Suite C, Chubbuck, ID 83202
LOCATION OF REQUEST: 1205 S. 4th Avenue, Pocatello, ID 83201
LEGAL DESCRIPTION: Lot 1 and the Northwesterly ½ of Lot 2, Block 313, Pocatello Townsite, Bannock County, Idaho
ASSIGNED STAFF: Terri Neu, Assistant Planner
HEARING DATE: April 14, 2016

DESCRIPTION OF REQUEST

Jon Thuernagle, representing Net Prophet, LLC, requests a lot size variance to allow a duplex at 1205 S. 4th Avenue. Municipal Code 17.03.240 requires 6,720 square feet for a duplex and the lot is 6,334 square feet. The property is located within a Residential High Density zoning district with an Original Townsite Overlay.

BACKGROUND

This property was brought to staff's attention through Code Enforcement with the report of an illegal duplex. The lot in question is 386 square feet smaller than what Municipal Code allows for a duplex. However, only 4,356 square feet is required for a triplex.

This residence was originally constructed as a single family dwelling. Due to the fact that no building permits were issued, it is unsure when it was converted to a duplex.

STAFF RECOMMENDATION

Based upon staff review and analysis of the application material, subject site and surrounding area, and applicable Municipal Code sections, Planning Division staff finds that this proposal doesn't meet all of the required standards for a variance which is a requirement under Municipal Code 17.02.170(H). However, Planning Staff recommends ***approval*** of the application, based on the fact that a triplex is permitted outright on the same lot, with the following conditions:

1. Must meet dwelling unit separation standards according to current building codes.
2. Must conform to life safety issues (egress windows in basement, smoke alarms and CO2 detectors) according to current building codes.
3. Must provide a minimum of four (4) off-street parking spaces.

A public hearing is to be held regarding the request and staff's recommendation is made in advance of this hearing and prior to any public input at the hearing. Therefore, the decision of the Hearing Examiner may differ as deemed appropriate.

MUNICIPAL CODE PROVISIONS

A variance is subject to Municipal Code 17.02.170. Municipal Code Section 17.02.170(A) defines variances as: "A variance is a modification of the bulk and placement requirements of this ordinance as to lot size, lot coverage, lot width, lot depth; front yard, side yard rear yard setbacks; parking space requirements, height of buildings, or other ordinance provisions adversely affecting the development or use of property. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of the characteristics of the site and that the variance is not in conflict with the public interest."

Municipal Code Section 17.03.240 Development Standards in Residential High Density Districts requires 6,720 square feet for a duplex.

Municipal Code Section 17.04.220 Original Townsite Overlay relaxes some standards listed in Section 17.03.240 but only for setbacks.

PUBLIC NOTICE

Notice of this application was mailed to adjoining property owners on March 29, 2016 and signage was posted on the subject property. This report was completed on April 7, 2016 and as of this date no public comments either for or against have been received. Any letters or comments received after the completion of this report will be presented at the scheduled hearing.

VARIANCE ANALYSIS

Municipal Code 17.02.170(E), "Authority to Grant: The hearing examiner may approve, approve with conditions, or modification, or deny an application for a variance. The decision may be appealed by the applicant or other affected persons according to the provision of Idaho Code Section 67-6521. Said appeal is to the City Council pursuant to the process outlined in Section 17.02.400, 'Appeals', of this Chapter."

Municipal Code 17.02.170(F), Criteria for Review: The hearing examiner shall review the facts and circumstances of each proposal and render a decision based on written findings of fact that address all of the following criteria:

A. The applicant shall have taken all reasonable steps to comply with the strict terms of the ordinance from which he or she requests the variance.

Applicant's response: Applicant states that when they purchased the property, it had a separate entrance and a small kitchen in the basement. They didn't notice that the property was zoned for a single family dwelling so they made a few minor repairs to update the basement.

Staff analysis: The applicant has reasonable use as a single family residence. Due to the fact that no building permits were issued for the conversion to a duplex, it is undetermined whether or not the applicant has taken all reasonable steps to comply with the strict terms of the ordinance.

B. The variance sought must be the result of unusual physical characteristics of the site in question.

Applicant's response: Physical characteristics of the lot are not addressed by the applicant.

Staff analysis: The site in question is a legally established lot in the Pocatello Townsite. These lots are typically smaller than other areas of town. This lot is approximately 6,334 square feet. Municipal Code 17.03.240 requires 4,200 square feet in this zoning district for a single family dwelling, 6,720 square feet for a duplex but 4,356 for a triplex.

C. The circumstances surrounding the variance request shall be due to an undue hardship as related to the characteristics of the land and the applicant shall show that, absent a variance he/she would be deprived of rights commonly enjoyed by other properties in the identical zoning district.

Applicant's response: Undue hardship relating to the characteristics of the land are not addressed by the applicant.

Staff analysis: The hardship in this case is a result of the second dwelling unit that has been added to the residence. Reasonable use of the home remains without the additional unit.

D. The undue hardship cited as the basis of a variance request did not result from the actions of the applicant, or the current or prior landowner or any of their agents.

Applicant's response: The applicant states that the undue hardship did not result from the actions of the applicant. When they purchased the property, it had a separate entrance and a small kitchen in the basement.

Staff analysis: Due to the fact that no building permits were issued for the additional dwelling unit, it is unsure who caused the hardship.

E. The applicant shall demonstrate that the proposed variance does not adversely affect adjacent/nearby property.

Applicant's response: The applicant doesn't address whether or not the variance will adversely affect the nearby properties.

Staff analysis: The proposed variance does not adversely affect nearby property. The area is comprised of a variety of housing types. The lot is big enough to accommodate four (4) off-street parking spaces, so it shouldn't cause any parking congestion.

F. Granting the variance will not be detrimental to the public health, safety, or general welfare.

Applicant's response: The applicant has not specifically addressed the public health, safety or general welfare. However, they have updated the basement apartment which can be viewed as beneficial to the public health, safety and general welfare.

Staff analysis: Granting the variance for the duplex to remain will not be detrimental to the public health, safety, or general welfare. However, due to the fact that no building permits were issued it is unclear if the duplex meets building department standards for safety for the residents.

Municipal Code 17.02.170(G), Precedents: The granting of a prior variance or referencing property developed under prior regulations is not admissible evidence for the granting of a new variance. Each request for a variance shall be judged on its own facts and circumstances.

Municipal Code 17.02.170(H), Burden of Proof: The burden of proof that the proposed variance complies with all of the variance criteria as described under Section F above is the responsibility of the applicant. The applicant must support their case with substantial and competent evidence.

CONCLUSION

Staff finds the applicant has not shown the burden of proof based on the characteristics of the site in question. However, based on how the code is written, requiring 6,720 square feet for a duplex and only 4,356 square feet for a triplex, it is inconsistent with the intent of the purpose of the Residential High Density zoning district. Therefore, staff is recommending approval.

Attachments: A – Application
B – Overhead view of the property

PLANNING & DEVELOPMENT SERVICES
PO Box 4169, 911 North Seventh Avenue
Pocatello, Idaho 83205
(208)234-6184 FAX (208)234-6586
6278

VARIANCE APPLICATION

Submittal Date: 3/15/16
Contact Person: TN
Meeting Date: 4.14.16

Permit #: 16-508
Receipt #: 85847
Receipt Date: 03.16.16

Dates for public hearing will not be scheduled until application is deemed complete.

Filing Fee: $400.00 + 6 address labels x $3.00 = $ 18 for a **Total Due $** 418.00

Applicant Information:
Net Prophet LLC
Name/Firm
146 E. Chubbuck Rd. Suite C
Mailing address Chubbuck ID 83202
208-406-9190
Phone (work/cell/home)

Representative Information:
Jon Thuernagle
Name/Firm
Same
Mailing address
Same
Phone (work/cell/home)

Project Information:

Zoning District: ALE

Street Address: 1205 S. 4th Street Pocatello Idaho Zip: 83201

Legal Description (attach documentation—see C, below): Lot 1, N15' Lot 2, Block 313 Pocatello Townsite

Brief Description of Proposed Variance: we are hoping to turn the single family dwelling @ 1205 S. 4th into a duplex!

THE FOLLOWING INFORMATION MUST ACCOMPANY EACH APPLICATION TO BE COMPLETE

A. All necessary filing fees must be paid and other required plans and information in support of the application.

B. **Two sets of typed**, gummed mailing labels with the names and addresses of all property owners which share a common boundary line, minus public right-of-way, with the subject property. A charge of $3.00 per property owner address is required in addition to the application fee. A signed Affidavit of Mailing List must also be submitted (attached).

C. The complete and accurate legal description for the subject property (recorded deed, title report or other legal documentation of ownership) shall be submitted. RPPOC202100

D. Two (2) site plans, one (1) measuring 8-1/2" x 11" and one (1) 18" x 24" (or larger), which describes the proposal and contains the following information:

1. Drawn to scale.
2. Location of buildings, landscaping, setbacks, parking areas, existing and proposed fencing.
3. Location of adjoining streets (including any public improvements), alleys, driveways, and property lines.

E. PURSUANT TO MUNICIPAL CODE 17.02.170 VARIANCES, ALL OF THE FOLLOWING CRITERIA FOR REVIEW **MUST** BE ADDRESSED IN A WRITTEN NARRATIVE:

1. The applicant shall have taken all reasonable steps to comply with the strict terms of the ordinance from which he or she requests the variance.
2. The variance sought must be the result of unusual physical characteristics of the site in question.
3. The circumstances surrounding the variance request shall be due to an undue hardship as related to the characteristics of the land and the applicant shall show that, absent a variance he/she would be deprived of rights commonly enjoyed by other properties in the identical zoning district.
4. The undue hardship cited as the basis of a variance request did not result from the actions of the applicant, or the current or a prior landowner or any of their agents.
5. The applicant shall demonstrate that the proposed variance does not adversely affect adjacent/nearby property.
6. Granting the variance will not be detrimental to the public health, safety, or general welfare.

F. Precedents. The granting of a prior variance or referencing property developed under prior regulations is not admissible evidence for the granting of a new variance. Each request for a variance shall be judged on its own facts and circumstances.

G. If a representative will be submitting the application, an affidavit, power of attorney, or other document evidencing the right of the representative to appear and submit items on behalf of the property owner is required.

H. Burden of Proof: The burden of proof that the proposed variance complies with all of the variance criteria as described above is the responsibility of the applicant. The applicant must support their case with substantial and competent evidence.

A variance must be established within one (1) year of the granting of the variance. Actual construction of the permitted building shall constitute such establishment. This period may be extended by the staff for an additional six (6) months upon request submitted at least thirty (30) days prior to its expiration (Municipal Code Section 17.02.170(J)).

The approval of this application does not permit the violation of any federal or state codes, any section of the Building Code, or other Pocatello Municipal Codes as adopted. Approval of this land use permit does not exempt applicant from the provisions of the Federal Fair Housing Act or ADA requirements. Further, other conditions, requirements, etc. may be imposed as part of the building permit process.

I hereby acknowledge that I have read this application and state that the above information, including all submitted materials, is correct and I agree to the above terms and conditions. I further agree to abide by any and all conditions the Hearing Examiner and/or City Council may impose on my use of this property. I also understand that non-conformance with these conditions in a timely manner will result in automatic forfeiture of my permit. I am also aware that the applicant or a representative must be present at the public hearing and that the decision on this request will be recorded in the official records of Bannock County.

By signing this application, I hereby consent to allow the City to place a sign giving public notice regarding this application on the subject property during the course of these proceedings.

Signature of Applicant:_____ Date: 01/12/2016

Signature of Representative:_____ Date:_____

To whom it may concern,

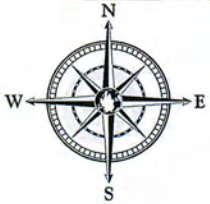
I am writing this letter to explain our situation on the property located at 1205 S 4th Pocatello Idaho. We purchased this property with the intent of utilizing it as a duplex. When we purchased it, the home had a spate entrance in to the basement and a small kitchen down there as well. I did not look close enough at the tax records to notice that it was zoned single family, so we proceeded in completing a few minor repairs to the home to update some of the electrical, carpet, paint, and kitchen cabinets in the basement. We have since found out that we need to go through another process to get a variance to get a duplex approved. We are willing to comply with the city of Pocatello codes and want to work with them to get this resolved. I have spoken to Dave and Steve from the city to try and get this resolved. I hope we can work through this misunderstanding and get it resolved so we can be compliant and also so we can learn how to properly approach this in the future. I also hope we have included all of the needed information requested. If not, please feel free to contact me via email or phone. Thank you for your time.

Sincerely,

Jon Thuernagle

jon@myopatriot.net

208-406-9190



City of Pocatello Web Map

16-508

3/16/2016

10m
40ft
584295.494 434082.274 Scale 1:323

Pocatello
A MUNICIPAL CORPORATION OF IDAHO

The City of Pocatello does not Guarantee the information contained In this map to be an accurate Representation of actual existing Conditions