

HEARING EXAMINER REPORT

DATE: April 19, 2016

APPLICANT/REPRESENTATIVE NAME: 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

TYPE OF REQUEST: **Variance**

I. 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.

II. CONCLUSION AND CONDITIONS

Based on review and analysis of the application material, subject site and surrounding area, and after gathering the Findings of Fact at the Public Hearing, the applicable Municipal Code sections and goals of the City's Comprehensive Plan, your Hearing Examiner finds that this proposal does meet the standards for a variance. The applicant has not met the burden of proof nor established any hardship 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 and your Hearing Examiner respectfully determines that the requested Variance is **Approved** with the following conditions (bold text, if any, indicates hearing examiner proposed modifications to City Staff 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 **with access off the alley.**
- 4) **All City standards not specifically exempted or varied by the Hearing Examiner shall be adhered to.**

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III. FINDINGS OF FACT

- 1) Your Hearing Examiner discloses that he has visited the site to observe physical character and surrounding relationships of the subject property. No ex-parte communications took place with anyone prior to the public hearing or during the writing of this report beyond the information gathered or requested at said public hearing.
- 2) City Staff reported they had received no comments in opposition or in favor of this application.
- 3) City Staff indicated that the Applicant has been working with the building department to remedy building code issues within the residence to make the occupants safer.
- 4) 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.
- 5) The existing property as a duplex will be required to have four (4) off-street parking spaces with access off the alley.
- 6) Refer to Staff Report of Variance Findings for description of request, Staff proposed Conditions, site plan, photos and applicants written narrative.

IV. MUNICIPAL CODE STANDARDS APPLICABLE TO THE REQUEST.

Pocatello Municipal Code 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."

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

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

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Pocatello 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.”

Pocatello 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 a 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.

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- 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.

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APPLICANT NOTICE:

Notice is hereby given that the applicant has the right to challenge this Decision and 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."

RESPECTFULLY SUBMITTED this 19th day of April, 2016.

R. Keeven Shropshire
Hearing
Examiner

STATE OF IDAHO)
 SS
County of Bannock)

On this 19th day of April, 2016, before me the undersigned, R. Keeven Shropshire personally appeared, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

OFFICIAL RECORD BK# 1002
BANNOCK COUNTY IDAHO

RECORDED AT REQUEST OF
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City of Pocatello

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Mandy Lindsay

NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello
Commission Expires: 5.10.18