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21610447

No. 21610447
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Bannock County Recorder
Fee Ø Deputy KD

Hearing Examiner's Report and Findings

DATE: **August 1, 2016**

APPLICANT NAME: **BBAD Investments, LLC/Billy B. Isley**

MAILING ADDRESS: 2227 E. Center Street ~~**1517 City Creek Road**~~ **Pocatello, Idaho 83201**

PROPERTY OWNER: **BBAD Investments, LLC**

MAILING ADDRESS: **2227 E. Center Street, Pocatello, ID 83201**

LOCATION OF REQUEST: 2784, 2790, 2794 and 2800 Via Valdarno

LEGAL DESCRIPTION: **Lots 25, 26, 27, and 28, Block 1, Hidden Valley Subdivision, 3rd Addition**

TYPE OF REQUEST: Variance to allow single family homes to be constructed 15 feet from the front property line

CONCLUSIONS AND CONDITIONS:

Based on review of the Application for the variance and analysis of the staff report, applicants presentation, citizen comments neutral to the variance the Hearing Examiner **approves the variance** with the following conditions:

1. All right-of-way improvement installation and/or repair, such as but not limited to, curb, gutter, sidewalk, planter strip, street patch back, shall be made as determined necessary by and in accordance with City Engineering Department standards.
2. Placement of Block Retaining Wall to the sidewalk shall be approved as determined necessary by and in accordance with City Engineering Department standards.
3. All City standards not specifically exempted or varied by the Hearing Examiner shall be adhered to.
4. A retaining wall will be placed to mitigate drainage concerns of property owner Ruby Walsh who resides at lot 29, the lot next to lot 28. The placement and size of the retaining wall shall be agreed upon in advance by property owner Ms. Walsh.

ANALYSIS AND FINDINGS OF FACT:

1 On July 25, 2016 the hearing examiner visited the site, walked up and down the street and was able to get a relative idea of the land slope and hillside disturbance from cutting in to make room for the homes and yards.

The Hearing Examiner has had no "ex-parte contacts and has no conflicts of interest with the variance request. One email was received by City Staff and was presented to the Hearing Examiner a couple minutes before the opening of the Public Hearing.

2 Public Hearing

The public Hearing was opened at 5:31 p.m. The applicant presented the request for conditional use permit. The staff gave their report and recommendations. The applicant approached the bench to show the hearing examiner the exact location of a specific lot line being discussed to address a drainage concern. There were no comments in favor of the variance, there was one neutral comment concerning the variance. The hearing examiner asked the citizen making comment to approach and indicate on the map the location of her home. The applicant was asked to approach and indicate the placement of the retaining wall that would relieve the concerns of the landowner in lot 29. The citizen, Ruby Walsh seemed comfortable with the drainage solution presented by the applicant and there were no comments in opposition to the variance. No questions were directed at staff.

The applicant spoke during the rebuttal time and reinforced the commitment of BBAD Investments to install a retaining wall to the satisfaction of the landowner in lot 29.

The hearing was closed at approximately 5: 50 PM.

The Hearing Examiner stated that the report and findings will be submitted to the City staff by Tuesday, August 02, 2016 at 5:00. If a party disagrees with the decision, they may appeal it to City Council within 10 days, which ends on August 12th at 5 pm.

MUNICIPAL CODE PROVISIONS

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 Medium Density Single Family Districts requires a front setback of 20 feet for the residence and 25 feet for the garage.

PUBLIC NOTICE

Notice of this application was mailed to adjoining property owners on July 12, 2016 and signage was posted on the subject property. This report was completed on, July 21, 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 they had the site topography surveyed and attempted to locate the four homes in a standard way. It is possible but requires substantial cutting into a steep hill. They have reduced the depth of their plan from 36 feet to 27 feet to help with the layout.

Staff analysis: The applicant is able to build the homes without the requested variance. However, in order to do so, they will have to cut into the hillside and build several retaining walls for each home. In granting the variance, less of the hillside will be used and only one retaining wall per home will be needed.

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

Applicant's response: The unusual condition is the steep hill which comes down over the back of 50%+ of the lots.

Staff analysis: The lots are at the bottom of a steep hill. In order to have "buildable" areas for the homes, the hillside will need to be cut into.

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: The undue hardship is not being able to construct single family residences on the four lots.

Staff analysis: The hardship in this case is due to the steep hillside that is located on the back portion of each of the lots.

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 is a natural hillside that has not been moved or disturbed by them or their predecessors.

Staff analysis: The hardship is the steep hillside at the back portion of the lots. It is not a result of the applicants' actions.

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

Applicant's response: The variance does not adversely impact adjacent property owners. It does not increase density. The driveway lengths and widths are the same as any lot with standard setbacks and longer. The footprint of the homes is smaller than adjacent homes and will result in more yard area and greater distance between the homes creating a more spacious setting. Minimizing the cuts into the hill will positively impact adjacent properties in the neighborhood.

Staff analysis: The proposed variance does not adversely affect nearby property.

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

Applicant's response: It will not affect health, safety or welfare of the public. The driveways will not be shortened. There is not an increase in density.

Staff analysis: Granting the variance for a reduced front setback for the homes will not be detrimental to the public health, safety, or general welfare. The garage will have the setback required by Municipal Code.

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 shown the burden of proof based on the characteristics of the site in question. Therefore, staff is recommending approval.

Hearing Examiners Conclusion

I am **approving this request** as per staff recommendation. The proposal meets all the required standards for a variance. The applicant and the owner of lot 27 are in agreement as to how the drainage will be addressed. I see no reason to deny the Variance Request.

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Respectfully submitted this 1st day of August, 2016

Susan Lorenz

Susan Lorenz
Hearing Examiner

APPLICANTS NOTICE:

Notice is hereby given that the applicant has the right to challenge this Decision and request a regulatory taking analysis pursuant to Idaho Code Section 67-8003 within 10 days after the Decision.

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STATE OF IDAHO)
ss:
County of Bannock)

On this 1st day of August, 2016, before me, the undersigned, a Notary Public in and for the State, personally appeared Susan Lorenz, known to me or proved to me to be the person whose name is subscribed to the foregoing instrument, and being duly sworn, acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

TERRI NEU
NOTARY PUBLIC
STATE OF IDAHO

Terri Neu

NOTARY PUBLIC FOR IDAHO
Residing in Pocatello
My commission expires: 1/18/2019