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No. 21615768
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Hearing Examiner's Report
VAR 16-2322 Carson

DATE:	November 1, 2016
APPLICANT NAME:	Jeff and Jessica Carson
MAILING ADDRESS:	1354 N. Garfield Avenue
PROPERTY OWNER:	Jeff and Jessica Carson
LOCATION OF REQUEST:	1354 N. Garfield Avenue
LEGAL DESCRIPTION:	Westerly 90 feet of Lots 19 and 20, Block 474, Pocatello Townsite, Bannock County, Idaho, as the same appears on the official plat thereof
TYPE OF REQUEST:	Variance

I. REQUEST

Applicant requests a variance to expand an existing legal non-conforming shed at 1354 N. Garfield Avenue. The shed has a rear setback of 2 feet and a side setback of 2 feet, 3 inches where Municipal Code 17.06.200 requires a 5 foot setback for both the side and the rear. The property is located within a Residential High Density (RH) zoning district.

II. FINDINGS OF FACT

1. The Hearing Examiner disclosed there was no ex-parte communication regarding this request.

2. The Hearing Examiner disclosed that he visited the site prior to the Public Hearing to observe the physical character and relationships to subject property.

3. Municipal Code 17.01.170(A)(2) addresses legal nonconforming building/structures and expansion of up to 50% requires a variance. Municipal Code 17.01.170(A)(2)(c) lists the criteria for nonconforming structure expansion or replacement.

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4. 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."

5. The properties to the north, south and east are zoned Residential High Density (RH). The properties to the west are zoned Residential Medium Density Multi-Family (RMM). The current setbacks as noted above are considered legal nonconforming.

6. Applicant testified that the original construction occurred several decades ago.

7. Staff Analysis: Terri Neu presented the staff report.

8. Public Hearing: A noticed Public Hearing on this request was scheduled on October 27, 2016 at 5:30 PM at Pocatello City Hall.

9. Public Notice: Notice of this application was mailed to adjoining property owners on October 11, 2016 and signage was posted on the subject property. No written correspondence on subject was received by the City prior to this Public Hearing.

10. Public Input:

    a. Public Comment: Prior to the meeting no verbal or written comments were received by the City.

    b. Public Hearing:

       The Public Hearing was opened at approximately 5:37 PM.

       No public testimony was received.

       The Public Hearing was closed at approximately 5:38 PM.

11. Hearing Examiner noted that the decision would be available to public on November 1,2016 by 12:00 PM. Idaho Code Section 67-6521 allows the applicant and/or other affected persons who do not agree with the decision of the Hearing Examiner to appeal in writing to the City Council within ten (10) days from the date of the Hearing Examiner's decision. At that time, additional fees may be required and a new timeline may be established for the City Council consideration of the appeal.

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III. MUNICIPAL CODE/COMPREHENSIVE STANDARDS APPLICABLE TO ISSUANCE OF A VARIANCE, HEARING EXAMINER FINDINGS.

The following Municipal Code Sections are relevant to this request:

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 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 17.01.170(A)(2)(c), 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:

1. *The lot or parcel was legally created.*

   The lot was legally created.

2. *All bulk and placement standards such as height, setbacks, etc., shall be met except as specifically varied through this process.*

   All other bulk and placement standards appear to be met except for the setbacks on the rear and the side.

3. *The proposed development shall not adversely impact the public's health, safety, or general welfare and the visual appearance of the development will not produce an effect inconsistent with adjacent and surrounding architecture and site development patterns*

   The development will not adversely impact the public's health, safety, or general welfare and will blend with the neighborhood.

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:

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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.*

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

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.*

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.*

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

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

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.

IV. VARIANCE FINDINGS

Findings for how the proposed use complies with standards for a variance (Section 17.02.170) are as follows:

1. The applicant is able to rebuild the shed without the requested variance. However, applicant desires to enlarge the shed. In order to build a larger shed, a variance is required. As such, the setbacks remain the same
2. The lot is relatively small and the house takes up a large portion of the lot. In order to have an adequately sized shed/garage the applicant needs to have a variance from the current setbacks.
3. The hardship is the fact that the lot is relatively small and the home is relatively large. There is not much space for a detached structure. There is currently one on the property that the applicant would like to enlarge
4. The hardship is from prior to the current Zoning Ordinance. It is unclear when the shed was built originally but it does not conform to the current Zoning Ordinance

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5. The proposed variance will not adversely affect nearby property.
6. The proposed variance will not be detrimental to the public health, safety or general welfare.

V. CONCLUSIONS AND DECISION

Based on the review of the application, staff analysis, site visit, and public comment, it is the opinion of the Hearing Examiner that the application for a Variance (VAR14-1014) for subject facility meets the requirements as set forth in municipal code and ordinances. As Hearing Examiner, I hereby approve the Variance as requested 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. Proper building permits shall be obtained and the expansion shall meet all building codes.
3. All City standards not specifically exempted or varied by the Hearing Examiner shall be adhered to.
4. Stormwater runoff generated from the construction of the shed must remain on subject property.

RESPECTFULLY SUBMITTED this 1st day of November 2016,

James P. Mullen, P.E.
Hearing Examiner

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STATE OF IDAHO)
ss:
County of Bannock)

On this 2nd day of November, ~~2014~~ 2016, before me, the undersigned, a Notary Public in and for the State, personally appeared James Mullen, 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 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.

ZOE LIPTAK
Notary Public
State of Idaho

Zoe A Liptak
NOTARY PUBLIC FOR IDAHO
Residing in Chubbuck ID
My commission expires: 10/6/2020

Hearing Examiner's Report
SE16-2170
249 Yellowstone Avenue

DATE:	November 1, 2016
APPLICANT/OWNER NAME:	Lamar Outdoor Advertising
MAILING ADDRESS:	2250 Empire Way, Boise, ID 83709
LOCATION OF REQUEST:	249 Yellowstone Avenue
LEGAL DESCRIPTION:	NA
TYPE OF REQUEST:	Sign Exemption

I. REQUEST

Lamar Outdoor Advertising (mailing address: 2250 Empire Way, Boise, ID 83709) requests a sign exception to install an off-premise sign at 249 Yellowstone Avenue. The new sign is proposed to be 35 feet tall and 238 square feet in size. The property is located within a Commercial General zoning district and is within 250 feet of a park and residential zoning district.

FINDINGS OF FACT

1. The Hearing Examiner stated that there was no ex-parte communication regarding this request.

2. The Hearing Examiner disclosed that he visited the site prior to the Public Hearing to observe the physical character and relationships to the subject property.

3. Staff Analysis: Teri Neu presented the staff report.

    - The subject site is located on Yellowstone Avenue.

    - Notice of this application was mailed to adjoining property owners and occupants of adjacent properties.

4. Public Input.

    - Notice of this application was mailed to adjoining property owners and tenants.

    - One letter in opposition was received by the City of Pocatello on October 7, 2016.

5. Comments from the Public

    - Public Hearing: A noticed Public Hearing on this request was conducted on October 27, 2016 in the City Council Chambers.

    - The Public Hearing was opened at approximately 5:42 PM.

        - No comments were received from the public.

    - Correspondence from the Public.

        - No additional written correspondence was received from the Public.

        - The Public Hearing was closed at approximately 5:44 PM.

6. Hearing Examiner noted that the written decision would be available to the public by noon on November 1, 2016. If the applicant and/or other affected persons (according to the provisions of Idaho Code Section 67-6521) do not agree with the decision of the Hearing Examiner, they have ten (10) days from the date of the Hearing Examiner decision to appeal in writing to the City Council. At that time, additional fees may be required and a new timeline may be established for the City Council consideration of the appeal.

II. MUNICIPAL CODE/COMPREHENSIVE PLAN APPLICABLE TO ISSUANCE OF A SIGN EXEMPTION, HEARING EXAMINER FINDINGS.

Municipal Code Section 15.20.240 governs off premises/billboard signs and Municipal Code Sections 15.20.250 and 15.20.260 outlines the requirements for sign exceptions.

The following Comprehensive Plan goal(s) and objective(s) are applicable to this application:

Community Design Goal 1. Improve the physical image of the city.
Objective 1.2. Regulate the use of signs to enhance public safety and aesthetic character.

III. SIGN EXEMPTION FINDINGS

Findings regarding compliance with standards for a Sign Exception (Section 15.20.260) are listed below:

A. An exception sought should be the result of unique physical characteristics of the site in question.

The subject property does not have unique physical characteristics. The west is bordered by railroad tracks and a heavily wooded park. The east is bordered by Yellowstone Avenue.

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

Due to separation standards, the applicant is unable to comply with the terms of the ordinance.

C. The circumstances surrounding the request shall be extraordinary as related to the applicant's land and the reasonable use thereof.

The owner of the property still has reasonable use of the property.

D. The applicant should show that, absent an exception, no reasonable identification of the subject land remains.

Due to the fact that the request is for an off-premises sign it will not be able to advertise the business located on the property. Thus, reasonable identification of the land is not an issue.

E. The applicant for an exception shall show how the proposed exception has been designed to minimize adverse effects on adjoining land.

The subject property is separated from the park and residential district by the railroad tracks and the sign will be facing north and south rather than east and west making the sign less visible at the park or neighborhood. However, sign will be visible to north and south bound vehicles on Yellowstone.

F. The proposal must be in conformance with the purpose set forth in this chapter.

Section 15.20.010 lists the purpose of the sign code is to protect and enhance the physical appearance of the community, reserve scenic and natural beauty, provide an

enjoyable and pleasing community, protect property values, and create an attractive economic and business climate. It is further intended to reduce sign or advertising distractions and obstructions that may contribute to safety hazards. Additional signage does not reduce sign or advertising distractions and obstructions in this area and does not comply with the purpose of this chapter.

IV. CONCLUSIONS AND DECISION

Based on the review of the application, staff analysis, site visit, and public comment, it is the opinion of the Hearing Examiner that the application for a Sign Exemption request does not meet the requirements as set forth in municipal code and ordinances. As Hearing Examiner, I hereby deny the Sign Exemption as requested.

RESPECTFULLY SUBMITTED this 1st day of November 2016,

James P. Mullen, P.E.
Hearing Examiner

Hearing Examiner's Report
SE16-2169
415 East Oak Street

DATE:	November 1, 2016
APPLICANT/OWNER NAME:	Lamar Outdoor Advertising
MAILING ADDRESS:	2250 Empire Way, Boise, ID 83709
LOCATION OF REQUEST:	415 East Oak Street
LEGAL DESCRIPTION:	NA
TYPE OF REQUEST:	Sign Exemption

I. REQUEST

Lamar Outdoor Advertising represented by Kent Marbo requests a sign exception to install an off-premise sign at 415 E. Oak Street. The new sign is proposed to be 35 feet tall and 238 square feet. The property is located within a Residential Commercial Professional (RCP) zoning district and is less than 250 feet from a residential zoning district.

FINDINGS OF FACT

1. The Hearing Examiner stated that there was no ex-parte communication regarding this request.

2. The Hearing Examiner disclosed that he visited the site prior to the Public Hearing to observe the physical character and relationships to the subject property.

3. Staff Analysis: Teri Neu presented the staff report.

    - The subject site is located on East Oak Street.

    - Notice of this application was mailed to adjoining property owners and occupants of adjacent properties.

    - Municipal Code Section 15.20.240(A) does not allow off-premise signs in RCP zoning districts.

- The sign structure would be located approximately 40 feet from a residential zoning district which is a violation of Municipal Code 15.20.240(B)(8)(b) which requires 250 feet separation.

4. Public Input.

   - Notice of this application was mailed to adjoining property owners and tenants.

   - No written public comment was submitted to the City.

5. Comments from the Public

   - Public Hearing: A noticed Public Hearing on this request was conducted on October 27, 2016 in the City Council Chambers.

   - The Public Hearing was opened at approximately 5:50 PM.

     - No comments were received from the public.

   - Correspondence from the Public.

     - No additional written correspondence was received from the Public.

     - The Public Hearing was closed at approximately 5:51 PM.

6. Hearing Examiner noted that the written decision would be available to the public by noon on November 1, 2016. If the applicant and/or other affected persons (according to the provisions of Idaho Code Section 67-6521) do not agree with the decision of the Hearing Examiner, they have ten (10) days from the date of the Hearing Examiner decision to appeal in writing to the City Council. At that time, additional fees may be required and a new timeline may be established for the City Council consideration of the appeal.

II. MUNICIPAL CODE/COMPREHENSIVE PLAN APPLICABLE TO ISSUANCE OF A SIGN EXEMPTION, HEARING EXAMINER FINDINGS.

Municipal Code Section 15.20.240 governs off premises/billboard signs and Municipal Code Sections 15.20.250 and 15.20.260 outlines the requirements for sign exceptions.

The following Comprehensive Plan goal(s) and objective(s) are applicable to this application:

Community Design Goal 1. Improve the physical image of the city.

Objective 1.2. Regulate the use of signs to enhance public safety and aesthetic character.

III. SIGN EXEMPTION FINDINGS

Findings regarding compliance with standards for a Sign Exception (Section 15.20.260) are listed below:

A. An exception sought should be the result of unique physical characteristics of the site in question.

The subject property is not unique and is on a main thoroughfare which is why the applicant is seeking to put a billboard at this location.

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

Due to separation standards, the applicant is unable to comply with the terms of the ordinance.

C. The circumstances surrounding the request shall be extraordinary as related to the applicant's land and the reasonable use thereof.

The owner of the property still has reasonable use of the property.

D. The applicant should show that, absent an exception, no reasonable identification of the subject land remains.

Due to the fact that the request is for an off-premises sign it will not be able to advertise the business located on the property. Thus, reasonable identification of the land is not an issue.

E. The applicant for an exception shall show how the proposed exception has been designed to minimize adverse effects on adjoining land.

The subject property is located within a zoning district where off-premises signs aren't allowed and within 40 feet of a residential zoning district where Municipal Code requires a separation of 250 feet.

F. The proposal must be in conformance with the purpose set forth in this chapter.

Section 15.20.010 lists the purpose of the sign code is to protect and enhance the physical appearance of the community, reserve scenic and natural beauty,

provide an enjoyable and pleasing community, protect property values, and create an attractive economic and business climate. It is further intended to reduce sign or advertising distractions and obstructions that may contribute to safety hazards. Additional signage does not reduce sign or advertising distractions and obstructions in this area and does not comply with the purpose of this chapter.

IV. CONCLUSIONS AND DECISION

Based on the review of the application, staff analysis, site visit, and public comment, it is the opinion of the Hearing Examiner that the application for a Sign Exemption request does not meet the requirements as set forth in municipal code and ordinances. As Hearing Examiner, I hereby deny the Sign Exemption as requested.

RESPECTFULLY SUBMITTED this 1st day of November 2016,

James P. Mullen, P.E.
Hearing Examiner