HEARING EXAMINER
A G E N D A
Thursday, May 23, 2019
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 Skyler Beebe at sbeebe@pocatello.us; 208.234.6248 or 5815 South 5th Avenue, Pocatello, ID.

HEARING EXAMINER: James Mullen

1. Disclose who was talked to, the basic substance of the conversation, and whether the conversation had any influence. Disclose if there is anything personally or professionally that would not allow an impartial or unbiased decision. Disclose if a site visit was done, location(s) of the visit, and what was seen.

2. Jill Gibson requests a variance from the accessory structures standards in Municipal Code 17.06.200 that states accessory structures shall not be larger than the square foot area of the primary structure. The applicant is proposing to construct an accessory structure that is 1,520 square feet where the primary structure is 740 square feet at 2425 Bannock Highway. The property is located within a Residential Medium Density Multi-Family zoning district. **(ACTION ITEM)**
Hearing Examiner
Staff Report
Variance

Hearing Date: May 23, 2019

AGENDA# 2

OWNER:
Jill Gibson
2425 Bannock Highway
Pocatello, ID 83204

REQUEST: The applicant is requesting a variance to allow an accessory structure to exceed the size of the primary structure (dwelling unit) at 2425 Bannock Highway. The property is located within a Residential Medium Density Multi-Family zoning district. Municipal Code 17.06.200 does not allow accessory structures to exceed the square foot area of the primary structure.

LEGAL DESCRIPTION: The east 112 feet of the south 135 feet of Tract 4, First Addition to Mirabella Tracts, Bannock County, Idaho, as the same appears on the official plat thereof recorded October 30, 1940 as Instrument No. 211767

SITE CHARACTERISTICS: Zoning designation: Residential Medium Density Multi-Family Property size: The lot measures 15,130 square feet (more or less) Existing structures: Single family residence that is 740 square feet and three accessory structures that total approximately 677 square feet

SURROUNDING LAND USES AND ZONING:
North: Residential dwellings in a Residential Medium Density Multi-Family zoning district South: Residential dwellings in a Residential Medium Density Multi-Family zoning district East: Union Pacific Railroad in a Light Industrial zoning district West: Residential dwellings in a Residential Medium Density Multi-Family zoning district

COMPREHENSIVE PLAN LAND USE MAP DESIGNATION: Residential

PROCEDURES AND NOTICES:
1. In accordance with Municipal Code §17.02.170, §17.02.300(A)(3) and Idaho Code §67-6512, a complete variance application was filed with the Planning and Development Services department at least four weeks prior to the public hearing.
2. The application was scheduled to be heard at the May 23, 2019 Hearing Examiner at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512.
3. Notice of the public hearing was in accordance with Municipal Code §17.02.170 and Idaho Code §67-6512.
   a. Notices were provided to political subdivisions on May 7, 2019.
   b. Notices to property owners of record within 300 feet of the subject site were mailed on May 7, 2019.
   c. A sign was placed on the property on May 8, 2019.
   d. The agenda and supporting documentation were posted to the City’s website on May 16, 2019.
APPLICABLE LAWS AND PLANS:
1. Municipal Code §17.02.170, §17.02.300 and §17.06.200
2. 2015 City of Pocatello Comprehensive Plan
3. Idaho Code §67-6512

Type of Action: Quasi-Judicial. The Hearing Examiner may approve with or without conditions or may deny the application.

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 provisions of Idaho Code Section §67-6521 to the City Council, using the process outlined in Municipal Code Section §17.02.400, Appeals.

Municipal Code §17.02.300 states that variances shall be heard and decided on by the Hearing Examiner with an appeal to City Council.

VARIANCE ANALYSIS:
Municipal Code §17.02.170(F), Criteria for Review. The hearing body shall review the facts and circumstances of each proposal in terms of the following standards and determine whether there is adequate evidence showing that the requested use at the proposed location:

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.

   Applicant's response: "The only term of the ordinance that was not met was the sq. footage of the garage is larger than the sq. footage of the house. The house has an unusually small size and the garage although larger than the house is not absurdly big compared to other shops in the area."

   Staff analysis: Municipal Code 17.02.600 states, "Accessory structures shall be no larger than the square foot area of the primary structure." The applicant cannot meet the strict terms of the ordinance. The primary structure is 740 square feet and she currently has approximately 677 square feet in accessory structures.

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

   Applicant's response: "The house on the property probably does not have unusual characteristics because it is much smaller than any of the other houses in the surrounding area. A remodel of the house within the next 2 years will substantially increase the sq footage of the home, but the garage needs to be built first for storage and construction organization."

   Staff analysis: There are not physical characteristics of the site that are unusual.

The applicant can attach the detached garage to the primary structure but she desires to remodel and add onto the primary structure. Attaching the garage will make adding onto the home difficult. There is a 15 foot setback required from Sue Road and the home appears to be approximately 20 feet. A 15 foot rear setback and the home is approximately 48 feet from the rear property line. The interior side setback is 6 feet and there is approximately 85 feet. An addition onto the interior side and rear would be the most logical place but in doing so, attaching the garage at this point would make that difficult.
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 under the terms of this title.

Applicant’s response: “The characteristics of the land has no undue hardships, the lot is plenty big enough to support a garage/shop of this size and there is plenty of area to allow for the remodel of the home. There are other garages close to this size in the area. Not to mention a much larger facility used for a dog kennel.”

Staff analysis: There is no undue hardship as related to the characteristics of the land.

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.

Applicant’s response: “This home was built back in the forties and has maintained the same size throughout all these years.”

Staff analysis: There is no undue hardship. This home was built in the 40s. The home is small. It is only the applicant’s desire to build a 1,520 square foot garage that is causing the need for the variance. This will result in approximately 2,197 square feet of accessory structures on the property. This is almost three times the size of the home.

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

Applicant’s response: “The only term of the ordinance that we cannot comply to is the sq. footage of the garage being larger than that of the house. This difference will be equaled with the addition of sq. footage added to the house during the remodel. We are in strict compliance of all the other terms of the ordinance including height and boundary specifications.”

Staff analysis: The accessory structure will not adversely affect the adjacent/nearby property. Many in this area contain large detached structures.

PUBLIC COMMENTS: No comments either in support of in or opposition to the application have been received as of the completion of this report.

STAFF CONCLUSION: Staff finds the request does not meet the standards for a variance. If the Hearing Examiner should choose to approve the request staff recommends the following conditions:

1. Approved building permits must be obtained and the accessory structure must meet appropriate standards according to current building codes.
2. All life safety issues must be addressed according to current building codes.
3. All other applicable City Code requirements not herein stated shall be met prior to occupancy of the buildings.

REPORT BY: Terri Neu
rneu@pocatello.us
208.234.6500

REPORT DATED: May 16, 2019

ATTACHMENT: A. Overhead view of the property
B. Application materials
VARIANCE APPLICATION

Submittal Date: 4/29/19  
Meeting Date:         
Application #: 19-1014  
Receipt Date:         

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

Filing Fee: $400.00 + (4) address labels x $3.00 = $412.00 for a Total Due $412.00

Applicant Information:

Name/Firm: Jill Gibson  
Mailing address: 2425 Bannock Hwy.  
Phone (work/cell/home): 208-251-3977 (c)

Representative Information:

Name/Firm: 
Mailing address: 
Phone (work/cell/home):

Project Information:

Zoning District: 
Street Address: 2425 Bannock Hwy.  
Zip: 83204

Legal Description (attach documentation—see C, below):

Brief Description of Proposed Variance:

Detached garage for storage - First Phase of Home Renovation and other property improvements.

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.

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.

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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.

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: 4/25/19

Signature of Representative: ___________________________ Date: __________________
Pursuant to municipal code 17.02.170 variances, all of the following criteria for review must be addressed in a written narrative.

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The only term of the ordinance that was not met was the sq. footage of the garage is larger than the sq. footage of the house. The house has an unusually small size and the garage although larger than the house is not absurdly big compared to other shops in the area.

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The house on the property probably does have unusual characteristics because it is a much smaller than any of the other houses in the surrounding area. A remodel of the house within the next 2 years will substantially increase the sq footage of the home, but the garage needs to be built first for storage and construction organization.

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The characteristics of the land has no undue hardships, the lot is plenty big enough to support a garage/shop of this size and there is plenty of area to allow for the remodel of the home. There are other garages close to this side in the area. Not to mention a much larger facility used for a dog kennel.

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This home was built back in the forties and has maintained the same size throughout all these years.

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