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OFFICIAL RECORD BK#
BANNOCK COUNTY IDAHO
Hearing Examiner's Report
VAR 20-126

RECORDED AT REQUEST OF
FEE DEPUTY *Brown*
CITY OF POCA TELLO

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2020 FEB 18 P 12:39

DATE: February 18, 2020

APPLICANT NAME: Travis Prather

MAILING ADDRESS: 193 Parkview Dr., Pocatello, ID 83204

PROPERTY OWNER: Travis Prather

LOCATION OF REQUEST: 300 Block, Park Avenue, Pocatello, ID

LEGAL DESCRIPTION: Lots 19 and 20 Block 10 Townsite of Fairview

TYPE OF REQUEST: Variance

I. REQUEST

The applicant is requesting a variance from the minimum lot size requirement to allow construction of a duplex dwelling on vacant land located on the 300 block of Park Avenue. The lot is 6,400 square feet in size, where Pocatello Municipal Code Section 17.03.040 requires a minimum lot size of 8,000 square feet for a duplex dwelling. Additionally, the applicant is requesting a variance to off-street parking requirements to allow off-street parking access from Park Avenue, where Pocatello Municipal Code Section 17.03.240.B.3 requires it be accessed from the ally when available.

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 via GoogleEarth prior to the Public Hearing to observe the physical character and relationships to subject property.
3. Zoning designation: Residential Medium Density Single Family (RMS)
4. Property size: 6,400 square feet

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5. Existing structures: The subject property is currently vacant and undeveloped.
6. 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.
7. The application was scheduled to be heard before a Hearing Examiner at the City of Pocatello City Council Chambers on February 13, 2020 at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512.
8. Notice of the public hearing was in accordance with Municipal Code §17.02.170 and Idaho Code §67-6512.
 - a. Notices to adjoining property owners were given notice on January 28, 2020.
 - b. A sign was placed on the property on January 28, 2020.
9. Type of Action: Quasi-Judicial. The Hearing Examiner may approve with or without conditions or may deny the application.
10. 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. Said appeal is to the city council pursuant to the process outlined in section §17.02.400, ‘Appeals.’”
11. Municipal Code §17.02.300 states that variances shall be heard and decided on by the Hearing Examiner with an appeal to City Council.
12. 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.”
13. Applicant Presentation: The Applicant, presented the purpose of the application. Details of which are outlined in the actual application.
14. Staff Analysis: Jim Anglesey, Assistant Planner, presented the staff report.
15. Public Input:
 - a. Public Comment: One written comment was written against the application and was received by the City of Pocatello on February 13, 2020.

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b. Public Hearing:

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

Several comments were heard in opposition to the application.

No comments were heard neutral to the application.

No comments were heard in favor of the application.

The Public Hearing was closed at approximately 5:43 PM.

16. Hearing Examiner noted that the decision would be available to public on Tuesday, February 18, 2020 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.

III. VARIANCE FINDINGS

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

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.

A lot size variance to allow the construction of a duplex where lot size of the subject property does not allow according to Pocatello Municipal Code.

Based on Municipal Code Section 17.03.240, Residential Medium Density Single Family (RMS) zoning allows duplexes with a minimum lot size of 8,000 square feet. The applicant desires to construct a duplex where the lot size is 6,400 square feet.

The 6,400 square foot lot size of the subject property would allow for a single-family dwelling to be constructed without a variance.

A variance to Municipal Code Section 17.03.240.B.3, to allow off-street parking with access from Park Avenue where parking requirements of the subject property does not allow.

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Municipal Code Section 17.03.240.B.3 states, "For single-family and two-family dwellings, when alley access is available, off street parking spaces shall be accessed from the adjacent alley per subsection 17.04.220.D.5 of this title."

The project could be designed to meet the current parking requirements whether single-family or two-family.

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

A variance is required to construct a duplex on the subject property due to lot size requirements. There are no further 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 under the terms of this title.

There is no undue hardship as related to the characteristics of the land. Variances for lot size requirements have been approved for previous applications within this neighborhood's RMS zoning district. Additionally, nearly all other properties within this neighborhood's RMS zoning district enjoy the right of off-street parking accessed from the primary street as approved under previous ordinances. However, 17.02.170.G states that, "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."

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.

There is no undue hardship that resulted from the actions of the applicant or prior landowners or agents.

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

Any construction must comply with all necessary setback and building requirements shall be met in conjunction with an approved variance.

V. CONCLUSIONS AND DECISION

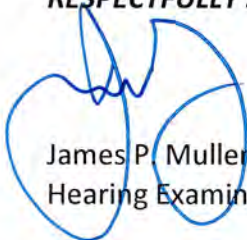
Based on the review of the application, staff analysis, and site visit, it is the opinion of the Hearing Examiner that the application for a Variance (VAR 20-126) for subject facility does not comply

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with the standards of Pocatello Municipal Code §17.01.170(A)(2)(c) and as set forth in other municipal code and ordinances. As Hearing Examiner, I hereby deny the Variance as requested.

RESPECTFULLY SUBMITTED this 18th day of February 2020,

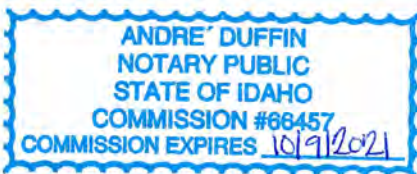


James P. Mullen, P.E.
Hearing Examiner

STATE OF IDAHO)
 ss:
County of Bannock)

On this 18th day of February, 2020, before me, the undersigned, a Notary Public in and for the State, personally appeared James P. 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 James P. Mullen 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.



Andre Duffin
NOTARY PUBLIC FOR IDAHO
Residing in Pocatello, ID
My commission expires: 10/9/2021