



Valley County Planning & Zoning Commission

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Ed Allen, Commissioner
Johanna Defoort, Commissioner
Scott Freeman, Commissioner

MINUTES

Valley County Planning and Zoning Commission

October 19, 2017

Valley County Court House - Cascade, Idaho

PUBLIC HEARING - 6:00 p.m.

A. OPEN: Meeting called to order at 6:00 p.m.

P&Z Administrator - Cynda Herrick:	Present
P&Z Chairman - Rob Garrison:	Absent - Excused
P&Z Commissioner - Ed Allen:	Present
P&Z Commissioner - Bryan Cooley:	Present
P&Z Commissioner - Scott Freeman:	Present
P&Z Commissioner- Johanna Defoort:	Present
P&Z Assistant - Lori Hunter:	Present

B. MINUTES: Commissioner Freeman moved to approve the minutes of September 14, 2017. Commissioner Defoort seconded the motion. Motion carried unanimously.

C. OLD BUSINESS:

- 1. C.U.P. 02-14 Eagle Nest Subdivision No. 2 – Amended Plat:** A final plat has been submitted by property owners to amend elements of Eagle Nest Subdivision No. 2. This plat consists of 17 single-family residential lots currently platted as Lot 11, Blk 2, Lots 1-6 Blk 3, and Lots 1-10, Blk 4, Eagles Nest Subdivision No. 2. No new roads are proposed. The site is accessed via Joshua Drive, a private road. It is approximately 64 acres located in Section 20, T.14N, R.3E, Boise Meridian, Valley County, Idaho. [*Not a public hearing – POSTPONED to December 14, 2017*]

D. NEW BUSINESS:

[06:02:10 PM \(00:02:02\)](#)

- 1. V-7-17 Soelberg Setback Variance:** Heather and Joseph Soelberg are requesting a variance to relax the side yard setback from the required 7.5 feet and to relax the 30' setback from the high water line of Campbell Creek. The applicants' home and pump shed were built in 1968. The existing buildings and deck do not meet the setback requirements. The applicants assert

that a hardship exists as a result of the locations of the previously built structures; that other structures in the area encroach upon the high water line; and it is common for property line locations to be disputed in this subdivision. The site is the west part of Lot 106 of Gratton-Barnard Subdivision addressed at 672 West Mountain Road. The 0.278 acre lot is located in SESE Section 33, T.14N, R.3E, Boise Meridian, Valley County, Idaho

Vice Chairman Cooley introduced the item. Vice Chairman Cooley asked if there was any *ex parte* contact or conflict of interest. There was none.

Vice Chairman Cooley asked for the Staff Report. Staff presented the staff report and summarized the following exhibits:

- Exhibit 1 – two pictures of side property line submitted this evening by applicant

This subdivision and the house predated any subdivision or building requirements. It is the recently built roof structure over the deck that is the issue.

The Commissioners had multiple questions for Staff. In regards to the allegations from Mr. Odom about the carport, it was relocated to the site from a nearby property. The applicants are aware they need a building permit for the carport and it will need to meet setbacks.

Construction of deck was done without a building permit; a permit is not needed if under three feet in height. As soon as our office became aware of the setback violations, we informed the applicant. They applied for a variance after they learned one was needed.

There was a discussion of the pictures that were included in the application. These pictures are of nearby properties to show that the applicants are not asking for special privileges compared to their neighbors. Administrator Herrick stated that the Valley County building inspectors have done recent site visits to the properties in the pictures. The bridge is moveable and not attached. Other structures have existed for a number of years. The pictures attached to the staff report are of the Soelbergs' property, deck, and carport and were taken in May 2017 by the Building Official. The deck and roofing over the deck are what we are concerned about tonight.

Administrator Herrick will let applicant answer regarding any questions about property line disputes. The house is within two feet of the property line and the pump shed is built over the lot line. Administrator Herrick is aware that subdivisions on the west side of the lake have had lot line disputes but is unaware of any particular disputes in this location.

The Commissioners had questions of staff regarding setbacks. Administrator Herrick stated that this subdivision was platted prior to 1971 which is when Valley County's first subdivision ordinance went into effect. Building regulations requiring setbacks went into effect in the 1970's. Setbacks are not required for things less than three feet in height, such as a low deck. Per Valley County Code 9-4-3-2, setbacks are for buildings exceeding three feet in height; those less than three feet can be built up to the property line.

Valley County Code 9-4-3-2 also states that all residential buildings shall be set back at least thirty feet from high water lines and ditches. This creek is not identified on a FEMA floodplain

map (FIRM); therefore, building is allowed as this site is not designated as in a floodplain according to the special flood area hazard maps. The creek is not considered in the floodplain as per our ordinance (Title 11 Valley County Code); it is "outside of flood study area". The ordinance prohibits building in the mapped floodplain areas. The 30-foot setback from high water lines allows protection of waterways that are not in mapped floodplain areas.

Vice Chairman Cooley asked for the applicant's presentation.

Joseph Soelberg, 672 West Mountain Road, stated that the placement of the existing home would prohibit the building of a deck. He believes there are special circumstances which exist and are not a result of their doing, specifically the placement of the existing structure relative to the creek. The granting of the variance would not result in special privileges that may have not already been granted in similar circumstances. Additionally this is their full-time residence and they require access to our shed pump year round. Last winter, due to heavy snow, accessing the pump would have been impossible without the roof over the deck.

Commissioner Allen asked the applicant to clarify the hardship.

Mr. Soelberg replied that there were a couple of hardships. The snow coming off the roof would pile up right in front of the pump shed. The buildings already existed on the property when they purchased the property. He requested the Commissioners refer to the diagram in the application.

Heather Solberg, 672 West Mountain Road, explained the site plan map in application. The home does not meet the setback requirement as a portion was built less than two feet from property line. They would like to keep the cover on the deck to be able to access the pump house via a covered deck. Last winter four feet of snow would have blocked the doorway if the deck roof did not exist. The roof they are asking a variance for is less intrusive than the existing buildings which do not conform to the setbacks. The property line that the pump house is built over is shared with Mr. Odom.

In response to Commissioner Allen's question, the applicant said they did not get a building permit for the structure. The deck was under three feet high; therefore, a permit was not required. When the roof was added, the applicant was told by two different contractors that they would not get a permit for the roof. The applicant did know that a permit was needed.

Vice Chairman Cooley asked for opponents.

Ken Odom, 670 West Mountain Road, is directly affected by this request and is bothered by the fact that over the past year Joe Soelberg has avoided building permits and challenged the property lines. The property pins have been there for 18 years and were recently resurveyed. Mr. Odom contacted the Building Department regarding the new structure on October 29, 2016, and understands that Mr. Soelberg was told to get a building permit. A structure was added to an existing cabin without a building permit. Valley County would be creating a liability issue if this is allowed to continue. Just because Mr. Odom's old house doesn't meet setbacks, doesn't mean he is allowed to add on to the building. Mr. Odom asked if the

Soelbergs provided any blueprints to the County for the building? He doesn't believe so. Last spring, the Soelberg's had the area surveyed. They delayed the building permit and then asked for variance permit. Valley County Code requires an "undue hardship as a result of characteristics of the site." The Soelbergs' hardship is self-inflicted. The carport issue was caught by the Building Official during a site visit. The pump line is a portable pump getting water from the creek. No well exists on this property and it has been a dry cabin prior to the Soelbergs' purchase. He doesn't believe they have water rights. The snow is not a hardship as others also deal with the snow. Granting a variance is allowing a special privilege. Mr. Odom is frustrated by the arrogance and dishonesty of Mr. Soelberg. The Commission should require that the roof structure be removed to the point it does meet the setback.

Vice Chairman Cooley asked for proponents. There were none.

Vice Chairman Cooley asked for undecided. There were none.

Vice Chairman Cooley asked for a rebuttal from the applicant. Ms. Soelberg said she won't waste time responding to the character slams and lies in Mr. Odom's letter. Mr. Odom did not state how allowing this variance would impact him or his property. The water right for the property is 65-68-28, not to exceed 13,000 gallons per day. There is not a sump pump in the creek. The house was not a dry cabin when purchased but was plumbed. If a variance is granted, then the applicant will get a building permit and have an engineer review it. If a variance is not granted, there is no reason to continue with the engineering review and building permit. She stated that they weren't notified until the spring of 2017 as opposed to Mr. Odom stating October 2016. The deck was built in 2015. The applicant will work with the building department to get the building permit; they are asking the Commission for a setback variance from property line and high water line. She stated that prior to purchasing the home it was disclosed that the roof needed repaired. Mr. Odom was the one who fixed the roof; however, he did not get a building permit at that time.

Commissioner Defoort asked for clarification of the building timeline. Ms. Soelberg replied that the deck structure was built in 2015 and the roof cover built in 2016. Two contractors told them they would not bother to get a building permit. The Soelbergs did build it personally, without a contractor.

Administrator Herrick clarified that if a structure is less than 200 square feet and free standing then a building permit is not needed. In this case, it is free standing and not attached to the house. However, residential structures require a permit; therefore, there is some confusion on if a permit was needed.

Commissioner Cooley asked for clarification on the water rights and how water is obtained. Ms. Soelberg said they have water rights to pump water from the creek and the pump is located in the pump house.

Commissioner Defoort asked the applicant if there had been any discussion with the neighbor about purchasing adjoining land to own the land where the pump house is located.

Administrator Herrick replied that they are not able to do so, as the lot sizes are too small and

nonconforming. However, a lot line adjustment with an equal exchange between lots is possible.

Vice Chairman Cooley asked if there were any other comments at this time.

Mr. Odom said it sounds like the deck is not attached. However, the roof structure may be attached to the home.

Vice Chairman Cooley closed the public hearing. The Commissioners deliberated.

Commissioner Allen said that the Valley County Code is clearly written to state hardships are based on terrain and physical obstacles. Administrator Herrick read directly from the code. Commissioner Allen doesn't think that snow qualifies as an undue hardship; the roof structure needs to meet setbacks and should be engineered.

Administrator Herrick reminded the Commission that the request is for two setbacks: property line and distance from the high water line of the creek.

The Commissioners further deliberated. The house and shed, as originally constructed, are grandfathered as nonconforming structures. However, just because you have a nonconforming use, doesn't mean you have a right to expand the nonconforming use. As long as the deck is less than three feet high, it is ok. The roof is not. This is not an undue hardship; granting the variance would not be right for those who do follow the rules. Snow is not a characteristic of the site. A roof may make things easier but is not a reason to grant a variance.

There was discussion on pictures supplied by the applicant of nearby properties. Administrator Herrick has already spoke to the Building Department to follow up on these properties.

Commissioner Allen moved to recommend denial of V-7-17 Soelberg Setback Variance to the Board of County Commissioners due to a lack of undue hardship; and, if any portion of the roof remains, it must follow the proper permit process of the Building Department. Commissioner Freeman seconded the motion. No further discussion. Motion carried unanimously.

Administrator Herrick stated that the Board of County Commissioners will hold a public hearing once it has been properly noticed.

Vice Chairman Cooley explained the ten day appeal period.

[06:52:31 PM \(00:52:23\)](#)

- 2. C.U.P. 17-14 Kesler Office and Shop:** Kesler Properties LLC is requesting approval to establish an office and shop. A new 3,893 sq. ft. shop addition is proposed to be attached to the existing 3,510 sq. ft. storage building. The single-family home will remain on the site. The 2.5-acre site is the west half of Lot 3, Pleasant Acres Subdivision, addressed at 13862 Highway 55. It is located in the SWSW Section 3, T.17N, R.3E, Boise Meridian, Valley County, Idaho.

Vice Chairman Cooley introduced the item. Vice Chairman Cooley asked if there was any *ex parte* contact or conflict of interest. There was none.

Vice Chairman Cooley asked for the Staff Report. Staff presented the staff report. There were no questions of staff at this time.

Vice Chairman Cooley asked for the applicant's presentation.

Rod Kesler, 13801 Stewart Court, stated that they are proposing adding a shop onto the rear of the existing storage units and enclose it all. They will add a western-style front with walking porch. He responded to the Staff questions listed in the Staff Report. The shop will be used for personal mechanic work, not for public. The office and shop will be for both the use of their personal and business use. The public will not be visiting the site. Outdoor storage will include trucks and equipment. There will be no set hours of operation as it would be just Rod and his wife. The lighting will be fully shielded and meet code. No uses are proposed in the setback from Highway 55. He will improve access with gravel. A clearer site plan will be made. He has not previously talked to Idaho Transportation Department as he understood both accesses were previously given a permit. A traffic plan won't be needed due to low expected daily trip counts. Central District Health Department has approved the site for two bathrooms. Existing home has one restroom, so a permit will be obtained for the additional one in the shop. Only employees on-site will be Rod and his spouse.

Administrator Herrick asked for clarification on the outdoor storage request. Mr. Kesler responded that he owns 11 pieces of "portable iron": skid steer, backhoes, dumptruck, loaders, and transport trailer. This equipment will be stored in parking area along north property line boundary. Administrator Herrick reminded the applicant and Commissioners that parking areas for conditional uses cannot be located in the setback areas. Existing trees along both the north and south property lines will screen the property. Low decorative rocks will be added to front along highway so the view from the driveways will not be obstructed.

Vice Chairman Cooley asked for proponents. There were none.

Vice Chairman Cooley asked for undecided. There were none.

Vice Chairman Cooley asked for opponents. There were none.

Vice Chairman Cooley closed the public hearing.

The Commission deliberated. Commissioner Allen stated that this is basically a request to expand and clean up current site. Commissioner Defoort said this is a good spot for this use. Commissioner Cooley added that there are similar uses on adjacent properties and the proposal should improve the aesthetics of the area.

Commissioner Allen moved to approve C.U.P. 17-14 Kesler Office and Shop with the stated conditions. Commissioner Defoort seconded the motion. No further discussion. Motion carried unanimously.

Vice Chairman Cooley explained the ten day appeal period.

[07:08:56 PM \(01:08:48\)](#)

3. C.U.P. 17-15 Gilbert Storage: Faron Gilbert is requesting approval to establish a commercial storage facility. The proposal includes four poly-fabric buildings with pony walls: three 30'x96' buildings and one 40'x80' building. A grandfathered gravel pit and an excavating business currently exist on the property. The storage units would be accessed from the existing approach. The 10.8-acre site is currently addressed at 45 East Lake Fork Road and is Lot 1 of Quarry Run Subdivision, NWNE Section 10, T.17N, R.3E, Boise Meridian, Valley County, Idaho.

Vice Chairman Cooley opened the public hearing and introduced the item. Vice Chairman Cooley asked if there was any *ex parte* contact or conflict of interest. There was none.

Vice Chairman Cooley asked for the Staff Report. Staff presented the staff report. There were no questions for staff at this time.

Vice Chairman Cooley asked for the applicant's presentation.

Aleta Gilbert, 300 Vista Point Blvd, stated that the request is for property they own at 45 East Lake Fork Road. Pictures were included in the application. The buildings will not be visible from the road. There will be one employee who will move the equipment onto the property, which will stay parked for the winter. The public will not be moving equipment into or out of the buildings. Motion lights will point downward. A building permit has been applied for; a structural engineer needs to sign off on plans before the Building Department will issue a permit.

Vice Chairman Cooley asked for proponents. There were none.

Vice Chairman Cooley asked for undecided. There were none.

Vice Chairman Cooley asked for opponents. There were none.

Vice Chairman Cooley closed the public hearing.

The Commission deliberated. This is a reasonable plan. The buildings are not in public view. This proposal is a good use of area and boat storage is a needed use in the County.

Commissioner Defoort moved to approve C.U.P. 17-15 Gilbert Storage with the stated conditions. Commissioner Allen seconded the motion. No further discussion. Motion carried unanimously.

Vice Chairman Cooley explained the ten day appeal period.

E. FACTS AND CONCLUSIONS:

- C.U.P. 17-12 Sharon's Place Event Venue
- C.U.P. 17-13 Karysn Business Park
- V-4-17 Carroll Setback Variance

Commissioner Freeman moved to approve the Facts and Conclusions for the C.U.P. 17-12, C.U.P. 17-13, and V-4-17 and authorize the Chairman to sign. Commissioner Defoort seconded the motion. No further discussion. Motion carried unanimously.

F. COMMISSION DISCUSSION:

- Blue Mountain Subdivision is located within the boundaries of the Tamarack Resort P.U.D. If somebody applied for a building permit on a legally platted lot, it would have to be issued if they had adequate septic or sewer. If this happened it would nullify the Tamarack PUD.
- Blackhawk Event Venue: Letter of appeal from wedding party for October 28 event; appeal time has ended. Responses regarding the site are being saved for the 2018 review by the P&Z Commission.
- Highway 55 north of Lake Fork:
 - Brad Dyrud knows a conditional use permit is needed and an application is expected.
 - On a parcel south of ION Electric, many cars for sale and vehicles parked, etc. P&Z Administrator has been told the family is cleaning the site and that it is not a business. P&Z Staff will continue to watch the site.
- Lighting Violations
 - Mountain Life Church - Administrator Herrick will contact McCall as the Church is in the McCall Impact Area.
 - Letters have been sent to various areas in County to follow-up on violations.
- Hwy 55 and Pearson Lane - Zane Magnum shop is being cleaned up after snow damage.
- Idaho American Planning Association conference – Administrator Herrick stated that the hot topics discussed were affordable housing, vacation rentals (new state code effective January 2018), park models, National Flood Insurance Program (NFIP) and floodplains, and tiny house standards.
- Proposed zipline on State lands in Boulder Creek area. There is neither a building permit application nor a conditional use permit application. Questions exist regarding parking and bathroom.
- Shooting range proposed on State lands off Warm Lake Road near Horsethief Reservoir. Again, no information has been received from the State of Idaho.
- The Idaho Department of Lands has said that County approval is not needed for activities on State Land; however, State statute says they have to comply (Idaho Code 67-6528). There was a brief discussion on Endowment lands and other State property. Administrator Herrick will request a response in writing regarding this issue.
- Discussion of fencing in the more remote subdivisions and the effect on wildlife.

Vice Chairman Cooley adjourned the meeting at 7:50 p.m.