

Hearing Examiner's Report and Findings

DATE: April 18, 2022

APPLICANT: Pat T. Rowley
REQUEST: Variance
LEGAL DESCRIPTION: Submitted and reviewed
GENERAL LOCATION: 950 N. 10th Avenue

Instrument # 22207012
Bannock County, Pocatello, Idaho
04/20/2022 04:21:07 PM No. of Pages: 5
Recorded for: CITY OF POCA TELLO
Jason C. Dixon Fee: \$0.00
Deputy: vhall

Request: Pat Rowley requests a variance from Pocatello Municipal Code section 17.04.220 which requires: 1) a fifteen (15) foot front setback, 2) a ten (10) foot corner street side setback, 3) a twenty (20) foot garage setback, 4) off-street parking to be accessed from the adjacent alley. The applicant seeks to construct a new primary dwelling and a garage on the subject property. The applicant is proposing that the new primary dwelling unit have a front setback of fourteen (14) feet, a corner street side setback of one (1) foot, and a garage setback of one (1) foot.

Physical Characteristics of the Site: The subject property is zoned Residential Medium Density Multi-Family (RMM) and is 4,200 square feet (more or less) in size. The subject property is located at the corner of North 10th Avenue and East Custer Street and is currently developed with a single-family dwelling.

Notification: The application was scheduled to be heard before a Hearing Examiner on April 14, 2022 at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512. Notice of public hearing was mailed to all adjacent property owners of the subject property on March 25, 2022, in order that they may provide comment on the proposed application. A sign was posted on the subject property on March 29, 2022. All notices herein described have been provided at least fifteen (15) days prior to the public hearing or as otherwise required by Idaho State Code. There was no public comment received prior to the completion of this report.

Hearing Examiner Authority to Grant: The hearing examiner may approve, approve with conditions, or modifications, 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. Applicable regulations include the following:

1. Municipal Code §17.02.160, §17.02.300, §17.01.150, §17.03.600, and §17.04.220
2. 2015 City of Pocatello Comprehensive Plan

I. CONCLUSIONS AND CONDITIONS:

Based on review of the Application for the variance, analysis of the staff report and the applicants' presentation, the Hearing Examiner **approves the variance request with modifications of a new primary dwelling and garage requiring: 1) a fifteen (15) foot front setback, 2) a five (5) foot corner street side setback, 3) a twenty (20) foot garage setback, 4) off-street parking to be accessed from the adjacent alley.**

II. FINDINGS OF FACT

1. The Hearing Examiner discloses that she visited the site to observe the physical
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character and relationships of the subject property and surrounding area. No ex-parte communications took place with anyone prior to the public hearing or during the writing of this report beyond the information gathered or requested at said public hearing. The Hearing Examiner has no personal or professional interest that would not allow an impartial or unbiased decision.

2. A public hearing was held on Thursday, April 14, 2022, beginning at approximately 5:31 p.m. and closing at approximately 5:54 p.m.
3. 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.

VARIANCES: 17.02.170: A. A variance is a modification of the bulk and placement requirements of this title 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. **G.** 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. **H.** The burden of proof that the proposed variance complies with all of the variance criteria as described under subsection F of Title 17, Chapter 17.02.170, is the responsibility of the applicant. The applicant must support their case with substantial and competent evidence.

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:

Table 1. Zoning Map Amendment Review Criteria Analysis

REVIEW CRITERIA (17.02.160.F):				
Compliant			City Code and Staff Review	
Yes	No	N/A	Code Section	Analysis
			17.02.160.F1	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 Response	"I have taken all steps to comply with the current zoning."
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Staff Review	An Original Townsite Lot is 30' wide by 140' deep (4,200 square feet) which is enough to accommodate a single-family home. The property is subject to the bulk and placement standards as identified in Pocatello Municipal Code section 17.04.220 "Original Townsite Overlay" (OTO). These include a front setback of fifteen (15) feet or the average of the existing setbacks of the abutting block face; an interior side setback of five (5) feet; a corner street side setback of ten (10) feet; a rear setback of ten (10) feet and a street-loaded garage of twenty (20) feet. If the applicant strictly adhered to these standards, a 15-foot-wide home could be developed on the property. Additionally, code requires that off-street parking be located off of the alley when access is available. Due to the location of power line poles along the alley facing property line, it has become cost prohibitive for the applicant to locate off-street parking off of the alley. As proposed, the applicant seeks to construct a garage that faces E. Custer Street which would require a twenty (20) foot setback. With the five (5) foot interior side setback this would only leave five (5) feet which is not

				<p>sufficient to construct a garage. However, the applicant can still reasonably accommodate off-street parking without the construction of a garage or carport. These OTO lots present potential issues with the required ten (10) foot corner street side setback. Staff has had previous requests for variances regarding this standard on other OTO corner lots. It is the opinion of staff that a five (5) foot corner side yard setback is sufficient for the development of an appropriately sized single-family home for these OTO lots. This would allow for a twenty (20) foot wide home. The applicant desires to install a solar panel system in which he states that a twenty-four (24) foot wide roof is required. Current provisions of the zoning ordinance allows for roof eaves to extend a maximum of two (2) feet into the designated setbacks. If the applicant were granted a five (5) foot variance from the corner street setback, this would still allow a sufficient amount of roof area for the desired solar panel system. The requested variance to allow a fourteen (14) foot front setback could be permitted without a variance through an administrative adjustment application which allows a ten (10) percent variance from the required bulk and placement standards. The subject property is currently developed with a 480 square foot (more or less) single-family dwelling unit that does not conform to the current setback standards of 17.04.220. It is the opinion of staff that not all reasonable steps have been taken to comply with the strict terms of the Zoning Ordinance.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17.02.160.F2	The variance sought must be the result of unusual physical characteristics of the site in question.
			Applicant Response	"Variance is sought due to the unusual width of the lot as it is very narrow in comparison to surrounding lots."
			Staff Review	All OTO lots are 30' wide by 140' deep. There are no unusual physical characteristics of the site that would prevent the reasonable development of a single-family dwelling unit.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.02.160.F3	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 Response	"It could provide an undue hardship to me and family if unable to develop the lot due to a 2 or 3 foot setback and thus being unable to fully enjoy my lot due to limited space."
			Staff Review	The existing location of power lines on the alley facing property line presents an undue hardship of locating off-street parking off of the alley. The applicant can provide off-street parking without the construction of a garage. It is the opinion of staff that a the ten (10) foot corner street side setback could arguably present an undue hardship as well, but can be remediated with a five (5) foot variance to the setback. It is also the opinion of staff that additional setback variance requests are not due to an undue hardship.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.02.160.F4	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 Response	"The undue hardship is not a direct result from my actions rather from the previous layout of the city lots prior to my purchase of my said lot."
			Staff Review	The undue hardships as cited above are not the result of the current or prior landowner or any of their agents.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17.02.160.F5	The applicant shall demonstrate that the proposed variance does not adversely affect adjacent/nearby property.
			Applicant Response	"The proposed variance is very minimal and would not adversely affect the adjacent property owners in the area. I would only need a 4ft variance on the North side of property and no more than 4ft in the front of the home facing 10th Ave"
			Staff Review	The proposed setbacks do not encroach on adjacent private property. However, the

				proposed setbacks do encroach on the public right-of-way including the desire of the applicant to construct steps within the right-of-way. This desire would not be permitted by the City's Public Works Department who controls the right-of-way. (See Attachment B)
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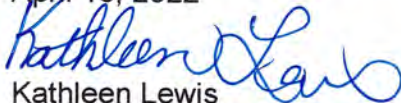
2015 CITY OF POCATELLO COMPREHENSIVE PLAN:

Staff finds that the following goals, objectives and policies from the Comprehensive Plan to be applicable to this application:

Land Use Goal 3: Develop and implement zoning designations and regulations that promote land uses and developments that complement the surrounding vernacular while utilizing the unique context and opportunities of each designated area. Objective 3.1: Develop zoning districts and regulations that focus on relationships between developments based on form, scale and function. Policy a: Explore all of the various planning options available to provide flexible, diverse and productive development options in their respective and proper locations.

Community Design Goal 2: Consider use of various planning tools available that are flexible and predictable which generally improve the overall appearance of Pocatello. Objective 2.2: Encourage development that is attractive and compatible and improves the quality of its surrounding environment, including established neighborhoods. Policy d. Allow flexible setbacks to enable infill and redevelopment to occur.

Respectfully Submitted
April 18, 2022


Kathleen Lewis
Hearing Examiner

STATE OF IDAHO)
)
) SS
County of Bannock)

On this 19 day of April, 2022, before me the undersigned, personally appeared Kathleen Lewis, known to me or proved to me to be the person whose name is subscribed to the within instrument, and 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.

(SEAL)



Lisa M. Smith
NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello, ID.
Commission Expires: 11/4/2025

