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21907141

Hearing Examiner's Report
VAR 19-1076

RECORDED AT REQUEST OF
FEE DEPT. *gm*

CITY OF POCA TELLO

DATE: May 28, 2019 21907141 2019 MAY 29 A 10:16

APPLICANT NAME: Jill Gibson

MAILING ADDRESS: 2425 Bannock Highway, Pocatello, ID 83204

PROPERTY OWNER: Jill Gibson

LOCATION OF REQUEST: 2425 Bannock Highway, Pocatello, ID 83204

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

TYPE OF REQUEST: Variance

I. 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 accessory structure would be 1520 square feet (38-feet by 40-feet). Municipal Code 17.06.200 does not allow accessory structures to exceed the square foot area of the primary structure.

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 Multi-Family
4. Property size: 15,130 square feet

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5. Existing structures: Single family dwelling that is 740 square feet and three accessory structures that total approximately 677 square feet
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 at the May 23, 2019 Hearing Examiner 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 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.
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. Applicant indicated that their plan is to add an addition to their house which would make this application unnecessary.

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

15. Public Input:

- a. Public Comment: No written public comment was received prior to the Hearing.
- b. Public Hearing:

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

No comments were heard.

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

16. Hearing Examiner noted that the decision would be available to public on Wednesday, May 29, 2019 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.

Municipal Code 17.02.600 states, "Accessory structures shall be no larger than the square foot area of the primary structure." The applicant will not meet the strict terms of the ordinance. The primary structure is 740 square feet and which is less than 50% the size of the proposed accessory structure.

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

There are no physical characteristics of the site that are unusual. Applicant indicated that there are plans to add on to the house. It has not been demonstrated that the addition to the home could occur with the installation of this structure.

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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.

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.

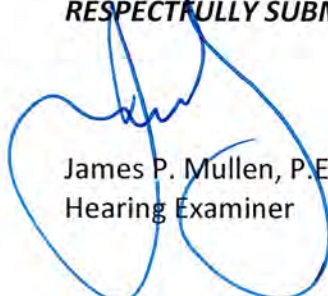
The accessory structure will not adversely affect the adjacent/nearby property.

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 19-076) for subject facility is sufficiently compliant 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 approve the Variance as requested subject that the following criteria are met:

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.
4. Applicant successfully demonstrates to City of Pocatello Planning Department that the remodel to the home (to be more than 1520 square feet) can occur once the accessory structure is constructed.

RESPECTFULLY SUBMITTED this 28th day of May 2019,



James P. Mullen, P.E.
Hearing Examiner

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STATE OF IDAHO)
 ss:
County of Bannock)

On this 28th day of May, 2019, 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.



Hailey Hansen
NOTARY PUBLIC FOR IDAHO
Residing in
My commission expires: