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OFFICIAL RECORD BK#  
BANNOCK COUNTY IDAHO  
Hearing Examiner's Report  
VAR 20-1264

RECORDED AT REQUEST OF  
DEPUTY *KP*

*City of Pocatello*

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2020 JUN 16 P 12:11

**DATE:** June 11, 2020

**APPLICANT NAME:** Mike Heath

**MAILING ADDRESS:** 1787 Cottage Avenue, Pocatello, ID 83204

**PROPERTY OWNER:** Mike Heath

**LOCATION OF REQUEST:** 1787 Cottage Avenue, Pocatello, ID 83204

**LEGAL DESCRIPTION:**

**TYPE OF REQUEST:** Variance

**I. REQUEST**

The applicant is requesting a variance from Pocatello Municipal Code 17.06.200.A.1a which requires that the combined total footprint of all accessory structures on the subject property be no larger than the square foot area of the primary structure. The applicant seeks to construct an accessory dwelling unit attached to an existing accessory structure on the property.

The subject property is zoned Residential Medium Density Single-Family (RMS) and is approximately .89 acres in size. The subject property is currently developed with a single-family dwelling (approx. 784 sq. ft. footprint) and two accessory structures (approx. 1,894 sq. ft. total footprint).

The proposed addition to the existing accessory structure total footprint would be 750 square feet making a total footprint of accessory structures of 2,644 square feet. This would make the total footprint of accessory structures on the subject property 1,860 sq. ft. larger than what is permitted.

**II. FINDINGS OF FACT**

1. The Hearing Examiner disclosed there were no ex-parte communications 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.

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3. Zoning designation: Residential Medium Density Single Family (RMS)
4. Property size: 0.89 acres (38,700 square feet) **22J10113**
5. Existing structures: The existing single-family dwelling unit with a footprint that is approximately 784 square feet. There are two additional accessory structures with footprints totaling approximately 1,894 square feet.
6. In accordance with Municipal Code §17.02.300 and Idaho Code §67-6512, a complete variance application was filed with the City of Pocatello 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 June 11, 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 mailed on May 22, 2020.
  - b. A sign was placed on the property on May 26, 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.

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14. Staff Analysis: Jim Anglesey, Assistant Planner, presented the staff report.

15. Public Input:

a. Public Comment: There were no written comments received by the City of Pocatello prior to this Hearing.

b. Public Hearing:

The Public Hearing was opened at approximately 5:34 PM.

No 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 5:37 PM.

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

*The applicant seeks to increase the combined total footprint of accessory buildings on the subject property which would further exceed the square foot area of the primary structure.*

*Based on analysis of the general area, it is not out of character with the neighborhood to have a small single-family dwelling with large accessory structures on a large parcel of land.*

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

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*The subject property is large as described above. The additional accessory structure will not limit access to or diminish usability of the property and will not impede upon the adjacent property owners. The additional accessory structure does not appear to be significantly different than existing uses and facilities on adjacent properties.*

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.

*While no hardship has been determined by the applicant, the variance requested would not be out of character for the adjacent/nearby properties and neighborhood.*

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.

*The variance requested is not a result from the actions of the applicant, current or prior landowner, or any of their agents.*

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

*The variance requested will not adversely affect adjacent/nearby properties.*

## 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 20-1264) for subject facility complies 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 to the following conditions:

1. Applicant shall obtain an approved building permit prior to construction
2. The height of accessory structures shall not exceed the height of the primary structure
3. The total combined footprint of accessory structures on the subject property shall not exceed the proposed and approved amount

**RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of June 2020,

James P. Mullen, P.E.  
Hearing Examiner

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STATE OF IDAHO )  
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ss:  
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County of Bannock )

On this 16<sup>th</sup> day of June, 2020, before me, the undersigned,  
a Notary Public in and for the State, personally appeared James P. Miller, 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: