

6-1

Hearing Examiner's Report
OFFICIAL RECORD BOOK
VAR 20-3276
IDAHO

22023830

RECORDED AT REQUEST OF
FEE DEPUTY *GM*

CITY OF POCATELLO

DATE: December 10, 2020 22023830 2020 DEC 14 P 2:23

APPLICANT NAME: Taylor Wood

MAILING ADDRESS: 752 N 10th Avenue, Pocatello, ID 83201

PROPERTY OWNER: Taylor Wood

LOCATION OF REQUEST: 752 N 10th Avenue, Pocatello, ID 83201

LEGAL DESCRIPTION: LOT 16 – LOT 20 BLOCK 122 POCATELLO TOWNSITE

TYPE OF REQUEST: Variance

I. REQUEST

The applicant is requesting a variance from Pocatello Municipal Code section 17.04.220 which requires a ten (10) foot side street setback on a corner lot. The applicant seeks to construct a single-family home on a legal-nonconforming corner lot and is requesting the variance to allow for a five (5) foot setback rather than ten (10) feet.

The subject property is zoned Residential Medium Density Multi-Family (RMM) and is approximately 4,200 square feet in size. The subject property is currently developed with a single-family dwelling that is built on five (5) legally created lots in the Original Pocatello Townsite. These lots are thirty (30) feet wide by one hundred forty (140) feet deep.

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.
3. Zoning designation: Residential Medium Density Multi-Family (RMM)
4. Property size: 0.096 acres (4,200 square feet)

U-2

22023830

VAR: 20-3276: Taylor Wood, 752 N 10th Ave.

Hearing Date: December 10, 2020

Page 2 of 6

5. 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.
6. The application was scheduled to be heard before a Hearing Examiner at the City of Pocatello City Council Chambers on December 10, 2020 at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512.
7. 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 November 20, 2020.
 - b. A sign was placed on the property on November 24, 2020.
8. Type of Action: Quasi-Judicial. The Hearing Examiner may approve with or without conditions or may deny the application.
9. 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.'"
10. Municipal Code §17.02.300 states that variances shall be heard and decided on by the Hearing Examiner with an appeal to City Council.

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. **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.

11. Applicant Presentation: The Applicant, presented the purpose of the application. Details of which are outlined in the actual application.
12. Staff Analysis: Jim Anglesey, Assistant Planner, presented the staff report.

6-3

22023830

13. 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 5:39 PM.

No comments were heard in opposition to the application.

No comments were heard neutral to the application.

One comment was heard in favor of the application.

The Public Hearing was closed at approximately 5:40 PM.

14. Hearing Examiner noted that the decision would be available to public on Monday, December 14, 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.

It is this Examiner's opinion that the applicant has taken reasonable steps to comply with the ordinance. The applicant seeks to construct five (5) single-family homes, each on their own legally created lot. The subject property is currently developed with one single-family home that is built over Lots 16-20, Block 122 of the Original Pocatello Townsite. The applicant seeks to demolish the current structure on the property and build new single-family homes on each individual lot. These five legally created lots are thirty (30) feet wide by one hundred forty (140) feet deep (4,200 sq. ft.). Current dimensional standards per Pocatello Municipal Code section 17.03.600 require 5,000 sq. ft. for a single-family home in the RMM zoning district. Due to these current standards, the parcels of land would be considered legal-nonconforming lots. The variance request is due to both the size of the lot and the current setback requirements for the corner lot (Lot 20) which requires a 10-foot street side setback

22-4

22023830

on a corner lot. If the applicant were to adhere to this requirement the new home would be fifteen (15) feet wide instead of the desired twenty (20) feet width.

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

It is this Examiner's opinion that the site has unusual physical characteristics. The Original Townsite Lots are smaller than what is permitted in the current zoning ordinance. These lots located at the subject property are considered legal-nonconforming. The interior lots on the subject property (Lots 16-19) would permit the 20' wide single-family homes as proposed. The corner lot requires a street side setback of ten (10) feet which would only allow for a fifteen (15) foot wide home. In order to accommodate the twenty (20) foot wide home, that applicant seeks a variance to allow for a five (5) foot street side setback.

- 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.

It is this Examiner's opinion that the request is due to an undue hardship related to the narrow characteristics of the lot in question. The Original Townsite Lots are smaller than what is permitted in the current zoning ordinance. These lots located at the subject property are considered legal-nonconforming. The interior lots on the subject property (Lots 16-19) would permit the 20-foot wide single-family homes as proposed. The corner lot requires a street side setback of ten (10) feet which would only allow for a fifteen (15) foot wide home. To accommodate the twenty (20) foot wide home, that applicant seeks a variance to allow for a five (5) foot street side setback.

- 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.

According to City Staff, The Original Pocatello Townsite was approved by the United States Congress in 1888, surveyed in 1889 and finalized in 1890. The Townsite includes 600 blocks of Pocatello's most central neighborhoods, including Downtown. Each block contains 20 parcels with a thirty (30) foot by one hundred forty (140) foot dimension. Today, the Original Townsite Overlay per Pocatello Municipal Code section 17.04.220 sets forth current standards for the Townsite. These current standards on corner lots only permit a maximum structure width of fifteen (15) feet which, in the opinion of this Examiner presents an undue hardship which did not result from the actions of the applicant, or the current, or prior landowner, or any of their agents.

6-5

22023830

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

According to City Staff, most properties in the Original Townsite are considered legal-nonconforming due to previous building setback standards that do not align with current standards. The variance request is for a setback of five (5) feet between a structure and the public right of way which poses no adverse effects to adjacent or nearby properties. In the opinion of this Examiner, the proposed variance does not affect adjacent or 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 20-3276) 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 setbacks of the primary structure shall not encroach the property line more than what is proposed. Building projections such as eaves, bay windows, and chimneys may extend a maximum of two feet (2') into the designated five-foot (5') setback; and
- 3. All applicable standards of the City of Pocatello Municipal Code Title 17 Zoning Regulations not herein listed and applicable shall apply.

RESPECTFULLY SUBMITTED this 14th day of December 2020,

James P. Mullen, P.E.
Hearing Examiner

6-6

22023830

STATE OF IDAHO)
)
County of Bannock)

On this 14th day of December, 2020, 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 James 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.



Jamie Kerbs
NOTARY PUBLIC FOR IDAHO
Residing in Pocatello, ID
My commission expires: 7/2/2021