



BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS

In re:

Application of Clair Bowman

Project No. 201504172 PBA-V

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law section.

A. The Commission finds that the record is comprised of:

1. Exhibits to the Staff Report.
2. Exhibit A to the Findings of Fact, Conclusions of Law and Order.
3. All other information contained in Ada County Development Services File for Project No. 201504172 PBA-V.

B. As to procedural items, the Commission finds the following:

1. In accordance with Section 8-7A-2B of the Ada County Code, the applicant completed a pre-application conference with the director prior to the submittal of the application on October 15, 2015.
2. In accordance with Section 8-7A-3 of the Ada County Code, the applicant held a neighborhood meeting on November 12, 2015.
3. On December 17, 2016, Development Services accepted Project #201504172 PBA-V and scheduled it for public hearing before the Board of Ada County Commissioners on March 2, 2016.
4. On December 22, 2015, staff notified other agencies of this application and solicited their comments. Any comments received were incorporated into the staff report and are attached as Exhibits.

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5. On February 5, 2015, property owners within 300 feet of the site were notified of the hearing by mail. Legal notice of the Board's hearing was published in The Idaho Statesman on February 16, 2016. Notices of the public hearing were posted on the property on February 18, 2016 and a certification sign posting was submitted to the director by February 23, 2016.
6. On March 2, 2016, the Board tabled this application to their April 6, 2016 public hearing.

C. As to the project description, the Board finds based on the application materials found in the file for Project No. 201504172 PBA-V the following:

1. PROPOSED USES: A property boundary adjustment between common property lines of four (4) platted lots.
2. PROPOSED STRUCTURES: Single-family dwelling.
3. PROPOSED SITE IMPROVEMENTS: None.

D. Based on the materials found in the file for Project No. 201504172 PBA-V, the Board finds the following concerning the project description:

1. PARCEL NUMBER AND LOCATION: Parcel #R1928150020 is located at 4400 W. Legacy Lane. Parcel #R1928150035 the former open space lot is located at W. Legacy Lane. Parcel #R1928150040 is located at 4260 W. Legacy Lane. Parcel #R1928150055 is located at 4050 W. Legacy Lane.
2. OWNERSHIP: Parcel #R1928150020 is owned by the Clair & Barbara Bowman Trust. Parcel #R1928150035 is owned by the Clair & Barbara Bowman Trust. Parcel #R1928150040 is owned by Jeffrey & Monique Kezar. Parcel #R1928150055 is owned by Lowell & Carla Glover.
3. SITE CHARACTERISTICS

Property size: The property consists of approximately 12 acres.

Existing structures: Parcel #R1928150020 has a 3,272 square foot single-family dwelling with an 858 square foot attached garage. Parcel #R1928150040 has a 5,166 square foot single-family dwelling with a 1,038 square foot attached garage. Parcel #R1928150055 is a 3,918 square foot single-family dwelling with 886 square foot attached garage and a 1,728 square foot accessory structure.

Existing vegetation: Residential landscaping.

Slope: The majority of the site is relatively flat with the majority of the slopes less than 15%.

Irrigation: The site is located within the jurisdictional boundaries of the Nampa & Meridian Irrigation District and the Boise Project Board of Control.

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Drainage: The site generally drains towards the northwest.

Views: The site is generally visible from all directions.

Other Opportunities and/or Constraints: Existing septic drainfields are not wholly on the properties that they serve. The existing private road is only improved 18 feet wide.

- E. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the current land use and zoning:

The site is rural residential in the Dreamcatcher Subdivision and is located in the Rural-Urban Transition (RUT) District.

- F. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the surrounding land use and zoning:

North: The site is agricultural and is an open space lot of Bittercreek Meadows Subdivision and is located in the Rural-Urban Transition (RUT) District.

South: The site is agricultural and is located in the Rural-Urban Transition (RUT) District.

East: The site is agricultural in Dreamcatcher Subdivision and is located in the Rural-Urban Transition (RUT) District.

West: The site is agricultural and is located in the Rural-Urban Transition (RUT) District.

- G. Based on the officially adopted Ada County land use maps and materials found in the file for Project No. 201504172 PBA-V, the Board finds the following concerning services:

Access Street and Designation: Access is on W. Legacy Lane and it is designated as a private road.

Fire Protection: Meridian Fire District.

Sewage Disposal: Individual Septic Systems.

Water Service: Individual Wells.

Irrigation District: Nampa & Meridian Irrigation District.

Drainage District: None.

- H. As to the applicable law, the Board finds the following:

This section details the comp plan goals, objectives and policies; the zoning ordinance regulations; and other applicable standards regarding development of the subject property.

1. The Board finds **Section 8-4C-5 of the Ada County Code** is applicable because the applicant has applied for a property boundary adjustment. The Board finds the application complies with **Section 8-4C-5 of the Ada County Code**. Regarding Section 8-4C-5 of the Ada County Code the Director finds the following:

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- A. *A property boundary adjustment shall not reduce the property size below the minimum dimensional standards prescribed by this title including regulations for individual wastewater treatment systems and wells as set forth in section 8-4A-22 of this chapter.*

The Board finds that the properties are located in the Rural-Urban Transition (RUT) District and the parcels are existing RUT Cluster Lots because they were created when the property was zoned Rural Residential (RR). These lots were created from the approval of a non-farm subdivision (Dreamcatcher Subdivision) File #98-26-PDR-NF. Non-farm subdivisions allowed for residential lots to be less than ten (10) acres.

The Board finds that the resultant parcels of the property boundary adjustment will be in compliance with the dimensional standards of the RUT District for a RUT Existing Cluster Lot.

- B. *If one or more of the properties is nonconforming as to the minimum dimensional standards prescribed by this title, the property boundary adjustment shall not increase the nonconformity.*

The Board finds as evidenced in the record, that the properties are conforming to the minimum dimensional standards for RUT existing cluster lots in the RUT District.

- C. *A property boundary adjustment shall not increase the original number of properties.*

The Board finds as evidenced in the record, that the property boundary adjustment will be between common property boundary lines of existing parcels and said adjustment will not create any additional parcels after the adjustment.

- D. *A property boundary adjustment shall not change or move any public streets, private roads, easements, or publicly dedicated areas in any manner.*

The Board finds as evidenced in the record, that the property boundary adjustment does not change or move any public streets, private roads, easements, or publicly dedicated areas in any manner.

The Associate Surveyor replied in Exhibit #22 that the extent of the “A” Flood Zone along Mason Creek needs to be depicted and noted on the Record of Survey. Also, the “Individual Sewage Disposal Easement Area to benefit Lots 4 & 5, Block 1” as shown on the recorded plat of Dreamcatcher Sub., affecting Lot 3, Block 1, needs to be shown on the Record of Survey. It may be necessary to vacate a portion of said easement in order to build on Lot 3. As conditioned, the applicant and/or owner shall depict and note the extent of the “A” Flood Zone along Mason Creek on the Record of Survey. In addition, the “Individual Sewage Disposal Easement Area to benefit Lots 4 & 5, Block 1” also needs to be shown on the Record of Survey unless the said easement is vacated from the plat.

- E. *The property boundary adjustment shall not constitute a relocation of a property.*

The Board finds as evidenced in the record, that the property boundary adjustment does not constitute the relocation of a property.

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- F. *For platted lots, the property boundary adjustment shall be in substantial conformance to the recorded plat.*

The Board finds that the properties are platted lots in the Dreamcatcher Subdivision. Substantial conformance in the RUT District only allows for a deviation of dimensional standard up to twenty five percent (25%). The applicant has applied for a variance from this development standard in order for the property boundary adjustment to have a deviation greater than 25%. Approval of the variance would allow for the property boundary adjustment to exceed substantial conformance.

2. The Board finds **Section 8-7-6C of the Ada County Code** is applicable because the application involves two variances. The first variance is to grant relief from a development standard for platted lots in a property boundary adjustment to be in substantial conformance to the recorded plat; specifically to allow for the property boundary adjustment to have a deviation greater than 25% in dimensional standards. The second variance is to grant relief from a development standard for private roads, specifically to allow for a private road that provides frontage or access to more than four (4) properties to have a travelway with a minimum improved width of less than 24 feet as the existing private road is only 18 feet wide. The Board finds that the first variance to grant relief from a development standard for platted lots in a property boundary adjustment to be in substantial conformance to the recorded plat; specifically to allow for the property boundary adjustment to have a deviation greater than 25% in dimensional standards complies with **Section 8-7-6C of the Ada County Code**. The Board finds as conditioned, that the second variance to grant relief from a development standard for private roads, specifically to allow for a private road that provides frontage or access to more than four (4) properties to have a travelway with a minimum improved width of less than 24 feet complies with **Section 8-7-6C of the Ada County Code**. Regarding Section 8-7-6C the Board finds the following in regards to the variances.

1. *The variance shall not grant a right or special privilege that is not otherwise allowed in the base district;*

The Board finds that the applicant is requesting two (2) variances. The first variance is for relief from a development standard for platted lots in a property boundary adjustment to be in substantial conformance to the recorded plat, specifically, to allow for the property boundary adjustment to have a deviation greater than 25% in dimensional standards. With substantial conformance the parcels can only be adjusted by just 25%, which is .25 acres for parcels R1928150020, R1928150040, and R1928150055 and 1.875 acres for parcel #R1928150035. However, this adjustment allowance does not provide enough land for the adjustment of common property lines between the lots with the existing residences and the former open space lot so that the existing drain fields are wholly on the same lot with the dwelling in which it serves.

The Board also finds that the applicant is requesting a variance to grant relief from a development standard for private roads, specifically to allow for a private road that provides frontage and or access to more than four (4) properties to have a travelway with a minimum improved width of less than 24 feet as the existing private road is only 18 feet wide.

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The Board finds that the approval of the first variance for relief from a development standard for platted lots in a property boundary adjustment would not constitute a granting of a special right or privilege as the property boundary adjustment would allow for the property owners to adjust their common property lines with the other properties resulting in an arrangement where the individual septic drainfields are not located on another owner's property.

The Board finds as conditioned that the approval of the second variance for relief from a development standard for private roads, specifically to allow for a private road that provides frontage and or access to more than four (4) properties to have a travelway with a minimum improved width of less than 24 feet would not constitute the granting of a special right or privilege as the existing private road was approved through File #98-09-PR, which only required for the private road to be 20 feet. Condition #17 for the subdivision and private road (Files #98-26-PDR-NF & 98-09-PR) stated that minimum improved width for the private road needed to be 20 feet. As conditioned, the applicant and/or owner shall improve the entire length of the private road (Legacy Lane) with a drivable surface consisting of a material approved by the County Engineer so that the minimum improved width for the majority of Legacy Lane is 20 feet with exception of those areas that are physically constrained.

2. *The variance relieves an undue hardship due to characteristics of the site; and*

The Board finds that the subject properties are a part of Dreamcatcher Subdivision that was developed as a non-farm subdivision with a private road (Files #98-26-PDR-NF & 98-09-PR). Dreamcatcher Subdivision was platted in 2000 and the plat has a plat note that states, "Lots 3 and 9, Block 1 are deed restricted lots and may only be used for agricultural purposes, natural open space (as defined by the Ada County Code) and the private road. These lots are ineligible for any development for a period of fifteen (15) years from the recording date of the final plat." It has been fifteen (15) years since the plat was recorded on June 9, 2000 and the applicant would like to build a home on Lot 3 of Block 1. In preparing to build a new home on Lot 3 the applicant has run into some adversities, which necessitates the first variance seeking relief from a development standard for platted lots in a property boundary adjustment to have a deviation greater than 25% in dimensional standards. When the homes on Lots 2, 4, and 5 were constructed they included septic drain fields that lay wholly or partially within Lot 3. Having septic drain fields that are not wholly within the lot serving the residence has presented some challenges. The applicant has stated in his detailed letter (Exhibit #8) that he had talked with his credit union about selling his existing home and constructing a new residence on Lot 3 and the credit union told him that they would not be able to finance a new home on Lot 3 because of the drain field incursions even if he granted permanent easements to all three (3) residences for their drain fields. The applicant also contacted the Central District Health Department and the Central District Health Department confirmed to the applicant that they have sanitary restrictions on Lot 3 because of the drain field incursions; and their preferred way to remove those restrictions was to re-title the drain field sites to adjacent residential properties.

The Board finds that the first variance relieves an undue hardship due to characteristics of the site because the individual septic drain fields for Lots 2, 4, and 5 were constructed

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either wholly or partially into the adjacent property (Lot 3). Also, the applicant will not be able to build a new residence on Lot 3 until a property boundary adjustment occurs between Lots 2, 3, 4, and 5 so that the common property lines are adjusted between the parcels so that the septic drain fields are wholly on the same parcels that they serve. The Central District Health Department responded in Exhibit #20 that they have no objection provided the existing septic systems are encompassed to their respective lots and dwellings and that they are provided with an updated plat map when completed.

The Board finds that allowing for relief from the development standard to allow for the property boundary adjustment to have a deviation greater than 25% in dimensional standards would allow for existing residences on Lots 2, 4, and 5 to have their septic drain fields to be wholly on their own properties.

The Board finds the second variance is seeking relief from a development standard for private roads, specifically to allow for a private road that provides frontage or access to more than four (4) properties to have a travelway with a minimum improved width of less than 24 feet as the existing private road is only 18 feet wide. The applicant has stated in the detailed letter (Exhibit #8) that the second variance became apparent at the preapplication meeting as the roadway was graded to approximately 19 foot width and 18 foot width of chip seal was applied in 2000 and again in 2006. The chip seal deteriorated and the road was recently paved 18 feet wide with asphalt. The cost for the recent pavement project was approximately \$93,000. The applicant also stated that there are limitations on both sides of portions of the roadway that prevent it being further widened.

The Board finds as conditioned that the second variance relieves an undue hardship due to characteristics of the site as the existing private road (Legacy Lane) was only required to have a minimum improved width of 20 feet according to a condition of approval in (Files #98-26-PDR-NF & #98-16-PR). The County Engineer has looked at the private road and noted in Exhibit #36 that the first portion of Legacy Lane would be difficult to widen much as it drops off quickly. The applicant has stated in his detailed letter (Exhibit #8) that there are limitations on both sides of portions of the roadway that prevent it from being further widened. As conditioned, the applicant and/or owner shall improve the length of the private road (Legacy Lane) with a drivable surface consisting of a material approved by the County Engineer so that the minimum improved width for the majority of Legacy Lane is 20 feet with the exception of those areas that are physically constrained.

3. *The variance shall not be detrimental to the public health, safety, and welfare.*

The Board finds that the first variance requesting relief from a development standard for platted lots in a property boundary adjustment to be in substantial conformance to a recorded plat, specifically to allow for the property boundary adjustment to have a deviation greater than 25% in dimensional standards is not detrimental to the public health, safety, and welfare because the variance would allow for the adjustment of the common property lines resulting in arrangement of lots where individual septic systems and drainfields are not located on another's owner property.

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The Board finds as conditioned that the second variance requesting relief from a development standard for private roads, specifically to allow for a private road that provides frontage or access to more than four (4) properties to have a travelway with a minimum improved width of less than 24 feet as the existing private road is only 18 feet wide is not detrimental to the public health, safety, and welfare. The Meridian Fire District replied in Exhibit #37 that the road widths and base material were approved by the Meridian Fire Department via then Fire Chief Kenny Bowers. Since that time, the fire department has responded to various locations on W. Legacy Lane, without difficulty or issue. Fire Marshall, Perry Palmer, has physically visited the site and finds that the current condition of the road meets their needs to respond without difficulty or obstruction. The fire district also finds that the current width and shoulders would be sufficient to allow for a large fire apparatus and oncoming vehicle to pass one another. In Exhibit #36, the County Engineer provided observations of her site visit to the private road and recommends that the applicant widen the private road to twenty (20) feet with asphalt or with an approved alternative drivable surface. As conditioned, the applicant and/or owner shall improve the entire length of the private road (Legacy Lane) with a drivable surface consisting of a material approved by the County Engineer so that the minimum improved width for the majority of Legacy Lane is 20 feet with the exception of those areas that are physically constrained. This condition of approval will provide adequate road width for emergency vehicles.

CONCLUSIONS OF LAW

If any of these Conclusions of Law are deemed to be Findings of Fact they are incorporated into the Findings of Fact section.

1. The Board concludes that Project No. 201504172 PBA-V complies with Section 8-4C-5 of the Ada County Code.
2. The Board concludes that Project No. 201504172 PBA-V complies with Section 8-7-6C of the Ada County Code.

ORDER

Based upon the Findings of Fact and Conclusions of Law contained herein and the testimony from the public hearing, the Board approves Project #201504172 PBA-V, subject to the Conditions of Approval attached as Exhibit A and Site Plan Drawing dated November 6, 2015.

DATED this _____ day of _____, 20__.

Board of Ada County Commissioners

By: Jim Tibbs, Commissioner

By: Rick Yzaguirre, Commissioner

By: David L. Case, Commissioner

ATTEST:

Christopher D. Rich, Ada County Clerk

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EXHIBIT A

CONDITIONS OF APPROVAL

REQUIRED ACTIONS. THE FOLLOWING LIST DETAILS THE TASKS (IN ORDER) THAT THE APPLICANT AND/OR OWNER MUST COMPLETE BEFORE THE APPROVAL OF PROJECT #201504172 PBA-V WILL BE CONSIDERED FINAL. PLEASE NOTE THAT YOU HAVE UNTIL ONE YEAR TO COMPLETE THESE TASKS AND OBTAIN A FINAL APPROVAL LETTER. THIS TENTATIVE APPROVAL SHALL BECOME VOID IF A FINAL APPROVAL LETTER HAS NOT BEEN ISSUED BY THAT DATE. SEE SECTION 8-7-6 OF THE ADA COUNTY CODE FOR INFORMATION ON TIME EXTENSIONS.

1. The applicant and/or owner shall improve the entire length of the private road (Legacy Lane) with a drivable surface consisting of a material approved by the County Engineer so that the minimum improved width for the majority of Legacy Lane is 20 feet with the exception of those areas of the road that are physically constrained. Following the improvement of Legacy Lane the applicant and/or owner shall schedule an inspection of the private road from the Ada County Engineer.
2. The applicant and/or owner shall depict and note the extent of the “A” Flood Zone along Mason Creek on the Record of Survey.
3. The “Individual Sewage Disposal Easement Area to benefit Lots 4 & 5, Block 1” as shown on the recorded plat of Dreamcatcher Subdivision, affecting Lot 3, Block 1, needs to be shown on the Record Survey unless the said easement is vacated from the plat.
4. The applicant and/or owner shall have a Record of Survey completed by a professionally licensed surveyor, and record the Record of Survey with the Ada County Recorder’s office.
5. The applicant and/or owner shall obtain new tax parcel numbers from the Ada County Assessor.
6. The applicant and/or owner shall execute and record the necessary deeds for the properties.
7. The applicant and/or owner shall provide the following documentation to the Director:
 - a) One “8 ½ x 11” copy and/or one full size blueprint of the recorded Record of Survey.
 - b) Proof of assignment of tax parcel numbers.
 - c) One copy of the recorded deed(s).
8. Upon completing the above tasks, the applicant shall request a letter from the Director stating that the Property Boundary Adjustment is final.

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