



BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS

In re:

Application of

Project No. 201600210 PBA-V, Brian Callahan

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 Board 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. 201600210 PBA-V.

B. As to procedural items, the Board 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 December 30, 2015.
2. In accordance with Section 8-7A-3 of the Ada County Code, the applicant held a neighborhood meeting on January 26, 2016.
3. On February 18, 2016, Development Services accepted Project No. 201600210 PBA-V and scheduled it for public hearing before the Board of Ada County Commissioners on April 6, 2016.
4. On February 22, 2016, 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.
5. On March 3, 2016, property owners within 1,000 feet of the site were notified of the hearing by mail. Legal notice of the Commission's hearing was published in The Idaho Statesman on March 22, 2016. Notices of the public hearing is required to be posted on the property ten days prior to the public hearing and a sign posting certification is required to be submitted to the Director seven days prior to the public hearing.

C. As to the project description, the Board finds based on the application materials found in the file for Project No. 201600210 PBA-V the following:

1. PROPOSED USES: None.
2. PROPOSED STRUCTURES: None.
3. PROPOSED SITE IMPROVEMENTS: None

D. Based on the materials found in the file for Project No. 201600210 PBA-V, the Board finds the following concerning the project description:

1. PARCEL NUMBER AND LOCATION: The parcel numbers are: R1060700500 (1230 S. Braithwait Ln.), R1060700400 (1300 S. Braithwait Ln.), R1060700300 (1360 S. Braithwait Ln.) and R1060700210. There are also three parcel numbers that were created illegally: R1060700250, R1060700240 and R1060700230. The properties are located at on S. Braithwait Lane in the Braithwait Subdivision, Section 29, T.2N, R.1E.
2. OWNERSHIP: Brian & Heather Callahan, Mark & Janelle Munson, and Bennie & Heather Howard.
3. SITE CHARACTERISTICS:
Property sizes: R1060700500 (1.0 acre) - Callahan
R1060700250 (1.81 acres) - Callahan **illegally create parcel*
R1060700400 (1.0 acre) - Munson
R1060700240 (2.02 acres) - Munson **illegally create parcel*
R1060700300 (1.0 acre) - Howard
R1060700230 (1.01 acre) – Howard **illegally create parcel*
R1060700210 (10.26 acres) – Callahan **remainder of ag lot*

Existing structures: There is an existing 5,131 square foot single family dwelling with a 2,037 square foot attached garage on the site.

Existing vegetation: The majority of the parcels contain residential landscaping, however, there is also agricultural as well.

Slope: The majority site is relatively flat with slopes less than 15% on a majority of the site. There are a few small areas with steep slopes between 15-50% on the north property line of Lot 5, Block 1, on the property line between Lots 2 and 3, Block 1, and along the east property line for Lot 3, Block 1.

Irrigation: Surface.

Drainage: Drainage will be retained on site.

Views: The site is generally visible from all directions.

Other Opportunities and/or Constraints: None.

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

The properties are currently zoned Rural Residential (RR) District. The properties are single family residential use, with the 10+ acre lot used as agricultural.

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

North: The property is agricultural and single family residential use in the Rural Residential (RR) District.

South: is agricultural and single family residential use in the Rural Residential (RR) District in the Rabbit Run Subdivision.

East: The property is agricultural use in the Rural Residential (RR) District.

West: The property is agricultural and single family residential use in the Rural Residential (RR) District.

G. Based on the officially adopted Ada County land use maps and materials found in the file for Project No. 201600210 PBA-V, the Board finds the following concerning services:

Access Street and Designation: Access is off S. Braithwait Lane. S. Braithwait Lane is designated as a private roadway.

Fire Protection: Kuna Rural Fire District.

Sewage Disposal: Septic.

Water Service: Individual well.

Irrigation District: Boise Kuna Irrigation District and the New York Irrigation District, and the Boise Project Board of Control.

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 Board finds the following:

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 all legal parcels (R1060700500, R1060700400, R1060700300, and R1060700210) are located in the Rural Residential (RR) District. The lots were created as part of the Braithwait Subdivision, a non-farm subdivision.

The Board finds that the property boundary adjustments will not reduce the parcels below the minimum dimensional standards because they are increasing the size of each residential lot by including the agricultural areas as show on the recorded plat for Braithwait Subdivision and the resulting parcel will be 10.26-acres, which also meets

the minimum dimensional standards of 10-acres for the Rural Residential (RR) District.

- 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 that the subject properties are less than the minimum lot size of 10.0 acres for the Rural Residential (RR) District. However, the properties were not considered nonconforming properties as they were created as part of a platted nonfarm subdivision (Braithwait Subdivision) indicating that they are legal lots of record.

- 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 not increase the original number of properties.

- 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 conditioned, that the property boundary adjustment does not change or move any public streets, private roads, easements, or publicly dedicated areas in any manner.

- 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 property.

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

The Board finds that the lots were platted as part of the Braithwait Subdivision. Substantial conformance in the rural districts allows for a deviation of dimensional standards 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 8-4D-3 of the Ada County Code** is applicable because the application would result in the creation of a building lot accessed by an existing private road. The Board finds that the application complies with **Section 8-4D-3 of the Ada County Code**. Regarding Section 8-4D-3 the Board finds the following:

- A. *When Application Required:*

1. *An application for a private road shall not be required when an existing private road has had prior written approval and said private road provides adequate access for additional lots being proposed; provided however, documents demonstrating approval and adequate access must be submitted as part of the lot development application. Submitted documents shall include: a copy of the recorded perpetual easement that demonstrates the easement is appurtenant to the additional lots; the recorded maintenance agreement that demonstrates it is*

applicable to the additional lots; and the original approval from Ada County or the city which approved the existing private road.

The Board finds that the existing private road (Braithwait Lane) was approved with Braithwait Subdivision in 1998. CC&R's were recorded for the subdivision (Inst#98020488) on March 5, 1998 that identified the maintenance for the private road (Exhibit #14). The property boundary adjustment will result in a buildable lot (Lot 2, Block 1) that was not previously identified in the original CC&R's for responsibility for maintenance of the private road. The Board finds as conditioned, that the applicant will need to submit a maintenance agreement that demonstrates it is applicable to the additional lot.

3. The Board finds **Section 8-7-6C of the Ada County Code** is applicable because the application involves a variance to grant relief from a development standard requiring accessory structures to not exceed 24-feet in height. The Board finds that the application complies with **Section 8-7-6C of the Ada County Code**. Regarding Section 8-7-6C the Board finds the following in regards to 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 a variance 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% up to 1.25 acres. However, this adjustment allowance does not provide enough land to adjust the common property line between. Adjusting the property lines would help to eliminate the illegally create lots and include the agricultural easement areas with each lot as shown on the recorded plat for Braithwait Subdivision. The applicant stated in their detailed letter (Exhibit #3) that the "requested variance does no seek special privilege. The objective of the residential property owners in the Braithwait Subdivision is to make better use, and take better care, of deed-restricted property which was never used for its intended purpose, and has mostly remained dormant since the inception of the Subdivision. Currently, the allocated parcel is not property administered on the Ada County tax roll. The title conveyance of deed-restricted Lot 2 to the residential properties will provide the condition in which taxing responsibility can be corrected." The Board finds that the variance does not grant a right or special privilege that is not otherwise allowed in the Rural Residential (RR) District because other variances have been granted within the County for similar relief of development standards. Adjustments of platted lot lines of a subdivision are allowed through Article 8-4C of the Ada County Code. It should be noted that the Board has approved similar variances in the past. The Board also finds that variances for relief from the development standard for platted lots that are part of a property boundary adjustment; specifically for the property boundary adjustment to not be in substantial conformance by having a deviation greater than 25% in dimensional standards have been approved in the past.

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

The Board finds that the variance relieves an undue hardship due to characteristics of the site. As stated by the applicant in their detailed letter (Exhibit #3) the “non-farm development which allow rural residential (RR) development densities of one (1) acre lots are no longer allowed by Ada County Code (ACC). The 15 year time period which encumbered the beneficial use of the deed-restricted Lot 2 in the Braithwait Subdivision has passed. With the Lot 2 deed-restrictions, the residential property owners were not motivated stakeholders with regard to the ownership of an open-space property. This variance will relieve this condition, and present enhanced pride and right of ownership to property which was formerly not under direct stewardship of individual stakeholders.” The plat for Braithwait Subdivision identified areas that property owners of Lots 3, 4 and 5 were responsible for the maintenance of, without the benefit of the areas being part of their lot.

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

The Board finds that the variance is not detrimental to the public health, safety, and welfare. Information regarding the variance was transmitted to affected public agencies charged with the protection of the health, safety, and welfare of the public. A number of agencies responded to the proposed property boundary adjustment. The Ada County Building Official responded that in Exhibit #17 the Building Division has no objection to the proposed property boundary adjustment and variance. Boise Project Board of Control replied in Exhibit #19 that they have no objection to the mentioned property easement adjustment proposal. There are no Boise Project facilities located on the above mentioned properties; however, they do in fact possess a valid water right. Local irrigation/drainage ditches that cross this property, in order to serve neighboring properties, must remain unobstructed and protected by an appropriate easement. Central District Health replied in Exhibit #20 that they have no objection to the proposal. However, no buildings shall be allowed on these acquired areas until approved by CDHD. Any building may require ground water monitoring and Nutrient Pathogen Study. The Ada County Engineer stated in Exhibit #23 that the applicant shall submit a draft copy of the Record of Survey for the PBA to this office for review prior to recording. Said R.O.S. shall identify each resultant “Parcel” by a unique name (ie: Parcel A, Parcel B, etc.). The applicant shall submit a draft of the revised Maintenance Agreement for the Private Road (S. Braithwait Ln.) that updates the responsibilities established in the CC&R’s of Braithwait Subdivision (Inst# 98020488).

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. 201600210 PBA-V complies with Section 8-4C-5 of the Ada County Code.
2. The Board concludes that Project No. 201600210 PBA-V complies with Section 8-4D-3 of the Ada County Code.
3. The Board concludes that Project No. 201600210 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 No. 201600210 PBA-V, subject to the Conditions of Approval attached as Exhibit A.

DATED this _____ day of _____, 20____.

Board of Ada County Commissioners

By: Jim Tibbs, Chairman

By: Rick Yzaguirre, Commissioner

By: David L. Case, Commissioner

ATTEST:

Christopher D. Rich, Ada County Clerk

EXHIBIT A

REQUIRED ACTIONS. THE FOLLOWING LIST DETAILS THE TASKS THAT MUST BE COMPLETED BEFORE THE APPROVAL OF PROJECT NO. 201600210 PBA-V WILL BE CONSIDERED FINAL. THE APPLICANT AND/OR OWNER HAVE UNTIL APRIL 6, 2017 TO COMPLETE THE REQUIRED ACTIONS AND TO OBTAIN A FINAL APPROVAL LETTER. THIS TENTATIVE APPROVAL SHALL BECOME VOID IF A FINAL APPROVAL LETTER HAS NOT BEEN ISSUED BY THAT DATE.

1. The applicant and/or owner shall define the location and width of all easements (i.e, irrigation and private road) on the Record of Survey.
2. The applicant and/or owner shall submit a draft of the Record of Survey and legal descriptions for the proposed parcel configurations for review by the Director prior to recording the Record of Survey.
3. Record a maintenance agreement (or record an updated CC&R) for the existing private road that details ongoing maintenance activities, maintenance responsibilities and financial responsibilities to include Lots 2, 3, 4 and 5 of the Braithwait Subdivision. The maintenance agreement shall be recorded in the Ada County Recorder's Office.
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 County Recorder's office.
5. The applicant and/or owner shall obtain new tax parcel numbers for the Ada County Assessor.
6. The applicant and/or owner shall provide the following documentation to the Director:
 - a) One 8 ½ " x 11" copy of the recorded Record of Survey.
 - b) Proof of assignment of tax parcel numbers.
 - c) One copy of the recorded deed(s).
7. Upon completing the above tasks, the applicant shall request a letter from the Director stating that the Property Boundary Adjustment is final.