



BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS

In re:

Application of

Project No. 201601663 CU-MSP-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 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. 201601663 CU-MSP-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 February 16, 2016.
2. In accordance with Section 8-7A-3 of the Ada County Code, the applicant held a neighborhood meeting on March 24, 2016.
3. On September 23, 2016, Development Services accepted Project No. 201601663 CU-MSP-V and scheduled it for public hearing before the Board of Ada County Commissioners on November 9, 2016.
4. On September 27, 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 September 28, 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 October 18, 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.

6. On November 9, 2016, the Board voted to deny Project NO. 201601663 CU-MSP-V and directed staff to prepare Findings of Fact and Conclusions of Law consistent with their decision.
- C. As to the project description, the Board finds based on the application materials found in the file for Project No. 201601663 CU-MSP-V the following:
1. PROPOSED USES: Contractor's Yard (Cabling business).
 2. PROPOSED STRUCTURES: None.
 3. PROPOSED SITE IMPROVEMENTS: None.
- D. Based on the materials found in the file for Project No. 201601663 CU-MSP-V, the Board finds the following concerning the project description:
1. PARCEL NUMBER AND LOCATION: The parcel number is R7977000060. The property is located at 4664 N. Skyline Road, on the east side of Skyline Drive, north of Homer Road.
 2. OWNERSHIP: Tony Brown.
 3. SITE CHARACTERISTICS:
 - Property size: 5.24-acres
 - Existing structures: There is an existing 3,208 square foot single family dwelling and a 648 square foot garage on the site.
 - Existing vegetation: The majority of the site is residential landscaping and natural vegetation.
 - Slope: The majority of the site is has with slopes between 15%-33%.
 - Irrigation: Surface.
 - Drainage: Drainage will be retained on site.
 - Views: The site is generally visible from all directions.
 - Other Opportunities and/or Constraints: The property is located in the Wildland Urban Fire Interface (WUFI).
- E. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the current land use and zoning:
- The property is in the Rural Residential (RR) District. The property is a single family residential use in the Skyline Acres Subdivision.
- 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 to the north is in the Rural Residential (RR) District. The property is a single family residential use in the Skyline Acres Subdivision.
- South: The property to the south is in the Rural Residential (RR) District. The property is a single family residential use in the Skyline Acres Subdivision.

East: The property to the east is in the Rural Residential (RR) District. The property is a single family residential use in the Skyline Acres Subdivision.

West: The property to the west is in the Rural Residential (RR) District. The property is a single family residential use in the Skyline Acres Subdivision.

- G. Based on the officially adopted Ada County land use maps and materials found in the file for Project No. 201601663 CU-MSP-V, the Board finds the following concerning services:

Access Street and Designation: Access is off N. Skyline Drive. N. Skyline Drive is designated as a local roadway.

Fire Protection: Eagle Fire District.

Sewage Disposal: Septic.

Water Service: Individual well.

Irrigation District: None.

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 that the **Ada County Comprehensive Plan as adopted by Ada County** is applicable because the subject property is not located within any City's Area of Impact. The Board finds the application does not comply with the **Ada County Comprehensive Plan as adopted by Ada County**. Regarding the Ada County Comprehensive Plan as adopted by Ada County, the Board finds the following:

The Board finds that the property is designated as Rural Residential (RR) in the Ada County Comprehensive Plan and the proposed use is in conformance with the Plan in the following ways:

Goal 5.7: Allow for a limited amount and range of commercial uses in rural areas, consistent with rural character.

Policy 5.7-1: Neighborhood commercial uses may be considered at selected locations outside Areas of Impact, but must meet specific development criteria in those areas related to availability of existing services, impact on surrounding agricultural or residential uses and impacts on traffic.

The Board finds that the proposed use would not preserve the rural identity of the area as the use is not compatible with nearby residential uses and the contractor's yard would increase noise and traffic in this residential area and would be aesthetically out of character for the neighborhood. A number of the neighbors had submitted written testimony and provided verbal testimony at the November 9, 2016, public hearing and expressed their concerns for the noise, traffic, and aesthetic character of the use.

2. The Board finds that **Title 8, Chapter 3B of the Ada County Code** is applicable as the proposed development is located in the Wildland Urban Fire Interface Overlay District.

Article 8-3B of the Ada County Code sets forth the purpose, applicability, standards and prohibited uses for development in the Wildland Urban Fire Interface Overlay District.

The Board finds the proposed site is located in the Wildland Urban Fire Interface Overlay District and would have been subject to all applicable requirements of the Ada County Code Section 8-3B (Wildland Urban Fire Interface Overlay District). The applicant and/or owner identified in the detailed letter (Exhibit #3) that they will comply with the requirements for the WUFI overlay district.

The Board finds that the application was transmitted to the Eagle Fire District (Exhibit #22) which they responded that they have no comments or concerns.

3. The Board finds **Article 8-4E-5 of the Ada County Code** is applicable because the applicant has applied for a master site plan for a contractor's yard. The Board finds that as the application does not comply with **Section 8-4E-5 of the Ada County Code**. Regarding Section 8-4E-5 the Board finds the following with regard to the master site plan:

1. *The master site plan complies with this title and the applicable comprehensive plan;*

The Board finds that the master site plan for the contractor's yard does not comply with Title 8 of the Ada County Code because it does not meet the applicable required findings of fact as outlined herein. As evidenced in Finding H1, the Board finds that the master site plan does not comply with the Ada County Comprehensive Plan as adopted by Ada County.

2. *The applicant has submitted a natural features analysis (subsection 8-4E-4D of this article) identifying constraints presented by such natural features, and the proposed development sufficiently addresses such features;*

The Board finds that the applicant has submitted a natural features analysis (Exhibit #5) for the project that identifies constraints presented by such natural features and shows how the development sufficiently addresses such features. The natural features analysis has detailed narratives regarding hydrology, soils, topography, vegetation, sensitive plant and wildlife species, hazardous areas, and impact on natural features. In addition, the Idaho Department of Fish and Game provided a letter stating that their department has no records of any federally threatened or endangered species or critical habitat within or immediately adjacent to the proposed project area; nor do they anticipate undue adverse effects to fish and wildlife resources from the proposed project.

3. *The proposed landscaping meets the requirements of article F of this chapter;*

The Board finds that the applicant did not submit a landscape plan with the application, however the detailed letter (Exhibit #3) the applicant stated that there is existing landscaping along the west property line, a portion of the south property line and adjacent to the existing residential dwelling.

4. *The proposed parking and loading spaces meet the requirements of article G of this chapter;*

The Board finds that as part of the variance application, the applicant is requesting relief from the parking requirements. The required number of parking spaces for a contractor's yard is one (1) per 1,000 square feet of gross floor area plus one (1) per employee. The applicant has identified that they have six (6) employees; however, they work out of the primary location on State Street in Eagle and only visit this site when driven there to pick up a truck by the owner. Therefore, with the variance approval, no additional parking would be required.

The Board finds that the parking area would have been subject to the requirements and standards of Ada County Code Article G for all parking areas and any proposed alternative parking surface.

5. *The proposed lighting plan meets the requirements of article H of this chapter;*

The Board finds that the applicant is not proposing any new outdoor lighting. If there is any new outdoor lighting installed on the property, then a lighting plan will be required to comply with Article 8-4H of the Ada County Code.

6. *The proposed master site plan complies with the applicable base district standards, overlay district standards, and specific use standards of this title;*

The Board finds that the master site plan does not comply with the specific use standards for setbacks which require the use to be located a minimum of 100-feet from any property line within. The Board finds as evidenced in Finding #H3 that the master site plan does not comply with the specific use standards for a contractor's yard listed in Section 8-5-3-30 of the Ada County Code. The Board finds that the variance request should be denied as the use is not appropriate for the area and the parking area should be accommodated in an appropriate area and a large enough parcel that would not necessitate a variance request.

7. *The proposed master site plan is consistent with the APA ridge to rivers pathways plan, and;*

The Board finds that the proposed master site plan is consistent with the Ada County Ridge-To-Rivers Pathway Plan because this section of Skyline Drive is not identified on the Plan.

8. *Adequate utilities and public services are available or provided for the proposed development, and the development would not be premature by reason of lack of utilities, transportation, schools, fire protection, or other essential services.*

The Board finds that adequate utilities and public services are available or provided for the contractor's yard. The application was transmitted to applicable agencies and political subdivisions on September 27, 2016. The Building Division in Exhibit #16 stated that they have no objection to the proposed use; however, the applicant should be aware that if any structures are to be constructed on this parcel a building permit will required and if the building is to be used for the business the plans will have to designed by a licensed architect including a complete code analysis. The Eagle Fire Department in Exhibit #22 stated they have reviewed the above referenced application. The fire department has no comments or concerns. The Central District

Health Department responded in Exhibit #20 that they have no objection to the application and recommend that no parking occur over the drain field. Ada County Highway District in Exhibit #24 that they have determined that ACHD has no site specific conditions of approval for this application and there is no impact fee due for this application and an ACHD inspection is not required

4. The Board finds **Section 8-5-3-30 of the Ada County Code** is applicable because the applicant has applied for a contractor's yard. The Board finds that the application does not comply with the specific use standards found in **Section 8-5-3-30 of the Ada County Code**. Regarding Section 8-5-3-30 of the Ada County Code, the Board finds the following:

A. *General Standards:*

1. *If the structure is located in a residential or rural base district, all structures or outdoor storage areas shall be located a minimum of one hundred feet (100') from any property line abutting other property. The one hundred foot (100') buffer from the property line shall have a vegetative ground cover and shall be regularly maintained to prevent weed growth. All structures and outdoor storage areas shall be depicted on the master site plan.*

The Board finds that the contractor's yard is located in the Rural Residential (RR) District, which is a rural base district. The Board finds that the proposed parking area is not located a minimum of one hundred feet (100') from the property lines abutting other rural properties. The Board finds that the applicant has applied for a variance to grant relief from this development standard, which requires all structures and storage areas to be located a minimum of 100-feet from any property line because the subject property is located in a rural district. The Board finds that the variance shall not be granted because the proposed storage location would be highly visible to the adjacent property owners and would be aesthetically out of character for the neighborhood. Additionally, the Board finds that the parking area should be accommodated on an appropriately sized property that would not necessitate the need for a variance request.

2. *Outdoor storage areas shall be screened year round and comply with section 8-5-3-78 of this chapter.*

The Board finds that the applicant is proposing an outdoor storage area for the contractor's yard. The Board finds that the proposed outdoor storage area would have been subject to compliance with all applicable standards and regulations of Section 8-5-3-78 of this chapter.

3. *The site shall not be used as a "junkyard" or "automobile wrecking yard" as herein defined.*

The Board finds as evidenced in the applicant's detailed letter (Exhibit #3) that the contractor's yard is for a cable business that will use the property to store three (3) boom trucks and trailers for the use. The Board finds that the proposed use would have been required to not be used as a "junkyard" or "automobile wrecking yard".

4. *For the purposes of this title, a contractor's yard or shop is not a home occupation.*

The Board finds as evidenced in the record that the contractor's yard is a conditional use in the Rural Residential (RR) District and that the applicant has applied for a conditional use and master site plan to operate and construct a contractor's yard.

5. *The property shall have approved access from an improved public roadway for the use.*

The Board finds as evidenced in the record that the property has frontage and access to Skyline Drive, which is an improved public roadway.

6. *Maintenance of vehicles or machinery shall be incidental to the contractor's yard or shop and the incidental use shall only include minor repair.*

The Board finds that the proposed use would have been required to comply with a requirement that maintenance of vehicles or machinery be incidental to the contractor's yard and that the incidental use shall only include minor repair.

7. *Accessory office space shall comply with section 8-5-3-75 of this chapter can shall be identified on the master site plan.*

The Board finds that the applicant and/or owner did not identify any accessory office space in the principal permitted dwelling.

8. *Parking area improvements shall comply with the standards found in chapter 4, article G of this title and shall be delineated on the master site plan or parking plan. No on street parking of vehicles or equipment associated with the use is allowed.*

The Board finds that as part of the variance application, the applicant is requesting relief from the parking requirements. The required number of parking spaces for a contractor's yard is one (1) per 1,000 square feet of gross floor area plus one (1) per employee. The applicant has identified that they have six (6) employees; however, they work out of the primary location on State Street in Eagle and only visit this site when driven there to pick up a truck by the owner. Therefore, with the variance approval, no additional parking would be required.

The Board finds that the parking area would have been subject to the requirements and standards of Ada County Code Article G for all parking areas and any proposed alternative parking surface and on street parking of vehicles or equipment associated with the use would have been prohibited.

9. *Use of the property shall comply with title 5, chapter 13, "Noise", of this code.*

The Board finds that the proposed use would have been subject to the requirements and standards of Title 5, Chapter 13, "Noise", of the Ada County Code.

10. *Hours of operation shall be limited between the hours of seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M. unless otherwise approved or restricted with a conditional use permit.*

The Board finds that the hours of operation for a contractor's yard as stated in the detailed letter (Exhibit #3) are proposed to be between the hours of seven o'clock (8:00) A.M. and ten o'clock (6:00) P.M. Monday through Friday. The proposed hours of operation would have been in compliance with Ada County Code.

11. *No retail sales associated with a contractor's yard or shop may occur on the property unless retail sales are approved with a different use that allows retail sales.*

The Board finds that the applicant is not proposing any retail sales associated with a contractor's yard. The Board finds that the applicant's proposal would have been in compliance with Ada County Code.

12. *A building permit may be required for the change in use or occupancy of any existing structure, or portion thereof, used in association with a contractor's yard or shop.*

The Board finds that there are no structures proposed with this application. The Board finds that if any structure were proposed, the applicant would have been required to obtain a building permit from the Ada County Building Division.

13. *For the duration of the approval, the use shall be subject to zoning inspection upon advanced notice and request by the Ada County development services department. If a permit holder refuses to allow inspection of the premises by the development services department, the approved zoning certificate or conditional use permit may be revoked.*

The Board finds that the proposed use would have been subject to compliance with zoning inspections upon advanced notice and request by the Ada County Development Services Department for the duration of the use of a property as a contractor's yard. If the permit holder refuses to allow inspection of the premises by the development services department then a zoning certificate may be revoked.

- B. *Additional Standards: Additional standards for a contractor's yard or shop permitted as a conditional use.*

1. *The following shall be considered as part of the review of an application for a conditional use permit for a contractor's yard or shop:*

- a) *The proximity of existing dwellings;*
- b) *The number of employees;*
- c) *The hours and days of operation;*
- d) *Dust;*
- e) *Noise;*
- f) *Outdoor loading;*
- g) *Traffic;*
- h) *Landscaping and screening;*

i) Other

The Board finds that the proximity of existing dwellings, number of employees, hours and days of operation, dust, noise, outdoor loading, traffic, landscaping and screening have been considered in the review of the conditional use application. The Board finds that the additional traffic and location of the storage area would create an undue adverse impact on nearby residences.

2. *The duration of a conditional use permit for a contractor's yard or shop shall be limited. The conditional use permit shall expire five (5) years following the approval date, or upon annexation of the subject property into a city, whichever occurs first. Upon expiration of the conditional use permit, all equipment and materials stored outdoors shall be removed within thirty (30) days from the subject property.*

The Board finds that the proposed use would have been subject to compliance with the time limitation for contractor's yards. The use would have been limited and would have expired five (5) years following an approval date, or upon annexation of the subject property into a city. Also, upon expiration of the conditional use permit, all equipment and materials stored outdoors would have to have been removed within thirty (30) days from the subject property.

5. The Board finds **Section 8-5B-5 of the Ada County Code** is applicable because the applicant has applied for conditional use for a contractor's yard. The Board finds that the application does not comply with **Section 8-5B-5 of the Ada County Code**. Regarding Section 8-5B-5 of the Ada County Code the Board finds the following:

A. The proposed use is not detrimental to the public health, safety, or welfare;

The Board finds that the contractor's yard would be detrimental to the public health, safety and welfare because it is not in conformance with the specific use standards for a (Contractor's Yard or Shop) and it is not appropriate for the area as it will increase the traffic and noise and would be in contrast with the residential nature of the area.

B. The proposed use shall not create undue adverse impacts on surrounding properties;

The Board finds that the contractor's yard does create undue adverse impacts to the surrounding properties due to the proposed location that will be visible to the adjacent property owners.

C. The proposed use is consistent with the applicable comprehensive plan;

The Board finds as evidenced in Findings of Fact Section H(1) herein that the contractor's yard is not consistent with the Ada County Comprehensive Plan as adopted by Ada County.

D. The proposed use complies with the purpose statement of the applicable base district and with the specific use standards as set forth in this chapter;

The Board finds that the contractor's yard complies with the purpose statement of the Rural Residential (RR) District because a contractor's yard is a conditional use in the RR District. The Board finds as evidenced in Findings of Fact Section H(3) that the contractor's yard does not comply with the specific use standards for a (Contractor's Yard or Shop).

E. *The proposed use complies with all applicable county ordinances;*

The Board finds that the proposed contractor's yard does not comply with all applicable county ordinances, specifically, the requirement that the contractor's storage areas to be a minimum of 100 feet of any property line.

F. *The proposed use complies with all applicable state and federal regulations;*

The Board finds that all uses are innately required to comply with all applicable state and federal regulations as a matter of law.

G. *The proposed use and facilities shall not impede the normal development of surrounding property;*

The Board finds that the proposed use does not impede the normal development of surrounding property because there is an approved access from a public road. Based on the five (5) year increment approval in Subsection 8-5-3-30(B2) and the applicant's detailed letter in Exhibit #3, the contractor's yard is not envisioned to add any structures or expand beyond the need for the three spaces for the boom trucks and will cease to be valid once the subject property is annexed into the City of Eagle.

H. *Adequate public and private facilities such as utilities, landscaping, parking spaces, and traffic circulation measures are, or shall be, provided for the proposed use; and*

The Board finds that the proposed use would have been required to provide adequate public and private facilities such as utilities, landscaping, parking spaces, and traffic circulation measures for the contractor's yard. The application was transmitted to applicable agencies and political subdivisions on September 27, 2016. The site is currently served by an existing individual well and septic systems. The Building Division in Exhibit #16 stated that they have no objection to the proposed use; however, the applicant should be aware that if any structures are to be constructed on this parcel a building permit will required and if the building is to be used for the business the plans will have to designed by a licensed architect including a complete code analysis. The Eagle Fire Department in Exhibit #22 stated they have reviewed the above referenced application. The fire department has no comments or concerns. The Central District Health Department responded in Exhibit #20 that they have no objection to the application and recommend that no parking occur over the drain field. Ada County Highway District in Exhibit #24 that they have determined that ACHD has no site specific conditions of approval for this application and there is no impact fee due for this application and an ACHD inspection is not required.

- I. *Political subdivisions, including school districts, will be able to provide services for the proposed use.*

The Board finds that there has not been any evidence submitted into the record to indicate that political subdivisions would not be able to provide services for the contractor's yard.

6. The Board finds **Section 8-7-6C of the Ada County Code** is applicable because the application involves a variance to grant relief from parking requirements and a development standard requiring all structures and storage areas to be located a minimum of 100 feet from any property line because the subject property is located in a rural district. The Board finds that the application does not comply 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 contractor's yard. Specifically, the standard requiring all structures and storage areas for a contractor's yard/shop to be located a minimum of 100 feet from any property because the subject property is located in a rural district. Additionally, the applicant is requesting a variance for relief from the parking requirements of a contractor's yard. 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. A contractor's yard is an allowed use through the approval of a conditional use application in the RR District and there have been a number of contractor's yards that have been approved in the RR District as well as variances granted for setback and parking relief.

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

The Board finds that the variance does not relieve an undue hardship due to characteristics of the site as there are other areas of the property that are not encumbered by hillside and which would meet the minimum setback requirements for the proposed use.

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

The Board finds that the variance is detrimental to the public health, safety, and welfare because the use is not appropriate for the residential nature of area due to the increase in traffic and noise. Additionally, the proposed location of the use would be in view of the surrounding property owners and would be aesthetically out of character for the residential area.

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. 201601663 CU-MSP-V does not comply with the Ada County Comprehensive Plan as adopted by Ada County.
2. The Board concludes that Project No. 201601663 CU-MSP-V complies with Section 8-3B of the Ada County Code
3. The Board concludes that Project No. 201601663 CU-MSP-V does not comply with Section 8-4E-5 of the Ada County Code.
4. The Board concludes that Project No. 201601663 CU-MSP-V does not comply with Section 8-5-3-30 of the Ada County Code.
5. The Board concludes that Project No. 201601663 CU-MSP-V does not comply with Section 8-5B-5 of the Ada County Code.
6. The Board concludes that Project No. 201601663 CU-MSP-V does not comply 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 **denies** Project No. 201601663 CU-MSP-V.

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