BLAINE COUNTY PLANNING AND ZONING COMMISSION
Public Hearing Date: May 10, 2007

ORIGINAL

REGARDING THE APPLICATION OF	)	
	)	
William E. Green for a Mountain Overlay District Site Alteration Permit, Affecting 121 N. Colorado Gulch Road, a.k.a. Commodore Lode Mining Claim located Within Section 19, T2N, R18E B.M.	)	**Findings of Fact, Decision and Conditions**

Requested Action: The applicant proposes to develop an approximately 3,300 sq. ft. residence, with an attached 1,700 sq. ft. garage and shop, and additional cantilevered decks on this 18.39 acre parcel. The **Site Alteration Permit** is requested to allow the residential structure and driveway with retaining walls and portion of the septic to encroach into the hillside slope. The property was zoned A-10 (Unproductive Agricultural District) and MOD (Mountain Overlay District), though would be considered R-10 (UIB) (Rural Residential District, urban influence boundary) by the current zoning references. The unplatted parcel is referred to as **the Commodore Lode Mining Claim**, and is located at T2N, R18E, Section 19, B.M. The property address is **121 N. Colorado Gulch Road.**

Applicable Regulations: Title 9 (Zoning Ordinance), Chapters 2, 6, and 21; Title 8, (Comprehensive Plan). (Applicable regulations are attached hereto by reference).

Representatives: William E. Green, Owner
Kurt Eggers, Landscape Architect
David Barovetto, Architect
Fritz Haemmerle, Attorney

Section I. General Facts

The Planning Office received Mountain Overlay District Site Alteration Permit application (this redesigned version) on April 20, 2007. The application was certified as being generally complete on April 20, 2007.

1. Public notice for the May 10, 2007 public hearing on the Site Alteration application was provided as follows:

    1. Legal notice was sent to the Idaho Mountain Express on April 20, 2007 for publication on, April 25, 2007;
    2. Notice to surrounding property owners within three hundred (300) feet of the subject property, all county political subdivisions and area media was mailed April 25, 2007;
    3. An on-site notice was posted for at least 7 days prior to hearing, as evidenced by the Posting Notice Affidavit, dated as of May 2, 2007;
    4. Additional notice as was provided to the property owners west of the parcel illustrated by the map labeled Exhibit B-14 and mailed on April 25, 2007;
    5. Notice of the meeting of May 10, 2007 was sent for posting on the website on April 25, 2007.

    ►**Motion:** **Upon motion by Commissioner Peck, second by Commissioner Rice, and by a unanimous vote of 5 to 0, the Commission finds notice to be adequate for the May 10, 2007 hearing, and in compliance with I.C. § 67-6512 and § 9-25-4 of the Zoning Ordinance.**

D-2
EXHIBIT

2. The following information and exhibits are attached hereto or by reference:

Exhibits A **Application**

- A-1 Mountain Overlay Site Alteration Permit Application signed April 23, 2007;
- A-2 Assessor's Map and surrounding land owner's list within 300' of parcel;
- A-3 Assessor's Maps and surrounding land owner's lists for expanded notice, stamped received February14, 2006;
- A-4 Vicinity map;
- A-5 Vicinity maps with topographic modeling;
- A-6 Lot illustrated on topographic map;
- A-7 Site photo from Croy Creek Road, and telephoto close-up of site from same vantage;
- A-8 Description of Colorado Gulch Road;
- A-9 Map and descriptions of four possible home sites ("Site Alteration Report");
- A-10 Responses to the Standards of Evaluations, dated April 23, 2007;
- A-11 Architectural Site Plans, Floor Plans and Elevations stamped received February 28, 2007 (3 sheets dated rev. January 22, 2007);
- A-12 Landscape Plan signed February 26, 2007, and received February 28, 2007;
- A-13 Exterior Lighting Plan and associated fixture cut sheets;
- A-14 Color photo illustrating fascia and stucco colors;
- A-15 (not assigned);
- A-16 (not assigned);
- A-17 Warranty Deed conveying land to William E. Green, recorded September 5, 2003;
- A-18 Letter from Bruce Smith of Alpine Enterprises, Inc. stamped received October 25, 2006;

Exhibits B **Agency Communications**

- **B-0 Order remanding the application from the Board of County Commissioners signed February 12, 2007;**
- B-1 Letter from Tom Bergin regarding "Lot of Record" determination, June 23, 2000;
- B-2 Individual Sewage Site Evaluation signed by South Central District Health on April 25, 2003;
- B-3 Letter from Bart Lassman, Fire Chief of Wood River Fire & Rescue dated and stamped received August 31, 2005;
- B-4 Letter from David Parrish, Magic Valley Regional Supervisor dated September 22, 2005 and stamped received September 26, 2005;
- B-5 Letter from Jim Koonce, Blaine county Engineer dated February 9, 2006 and stamped received February 10, 2006;
- B-6 Letter from Lori Armstrong of BLM dated February 21, 2006 and stamped received February 22, 2006;
- B-7 (not assigned);
- B-8 (not assigned);
- B-9 Blaine County Consolidated Road Ordinance #95-6 Permit Application signed by Dale Shappee on September 7, 2005 (referenced map not attached);
- B-10 Subsurface Sewage Permit Application approved by Bob Erickson on August 7, 2006 stamped received October 25, 2006;
- B-11 Memo from Jim Koonce dated December 1, 2006, stamped rec'd December 4, 2006;
- B-12 Memo from Dale Shappee dated and stamped received December 6, 2006;
- B-13 Memo from Tim Graves dated and stamped received December 7, 2006;
- B-14 Map of adjacent surrounding land owners;
- B-15 Staff report dated May 3, 2007;

Exhibits C **Public Comment**

- C-1 Letter from Kevin Kittleson stamped received February 28, 2006;
- C-2 Letter from William F. Hughes stamped received December 1, 2006;
- C-3 Letter from Barbara Acker dated December 6, 2006.

3. The applicant owns an 18.39 acre patented mining claim currently referred to as the **Commodore Lode Mining Claim**, located at T2N, R18E, Section 19, B.M.

4. The subject property is primarily zoned A-10 (Unproductive Agricultural District), and also affected by the Mountain Overlay District (MOD). There are two perennial streams shown on the site for which Class 3 Riparian Setback shall be maintained; no development is proposed for these two riparian areas.

5. Pursuant to §9-21-2 (B) a site alteration permit is required for any development within the Mountain Overlay District though it would be considered R-10 (UIB) (Rural Residential District, urban influence boundary) by the current zoning references. The area within the MOD was determined by the 25% slope line illustrated by Exhibit A-15, and the resulting toe of slope [per §9-21-2 (B)], however the newly approved mapping also includes the entire site within the MOD.

6. Written agency comment received to date is set forth in exhibits B-0 through B-13:
   Planning/Zoning/Building Department: A parcel determination was made in 2000 which determined the lot was recognized as a "Lot of Record", and therefore allowed to be considered for development.

   Health District: The health district has indicated approval of the septic design via Permit #704612 (Exhibit B-10).

   Fire District: The proposal is subject to certain conditions that will need to be satisfied by the applicant as set forth in Exhibit B-3. All other building and fire codes shall also apply.

   Idaho Fish and Game: David Parrish recommended that certain conditions be included in the approval of this application. His comments are found on Exhibit B-4.

   Blaine County Engineer: See Exhibit B-5, and updated via Exhibit B-11. Mr. Koonce describes his concern for the visibility, and that the comments from Fish and Game be considered.

   Bureau of Land Management: Letter from Lori A. Armstrong provides comment in Exhibit B-6.

7. Water: The property will be served by individual well.

8. Electric, phone and gas: The application illustrates the routing of the underground utility line. There is no reference to phone or gas service on the document.

9. Access: North Colorado Gulch Road cuts across the property to provide access to the site. The proposed driveway extends approximately 180' off of the road to the proposed residence. Substantial cuts into the hillside allow minimal height impact by the residence, but retaining walls are integral with the development.

10. Residence: The proposed residence is illustrated as not exceeding the 35' allowable overall building height, as illustrated on Section A-A of Exhibit A-16. Not shown on the plans are guardrails which may be required by the Building Official, along the retaining walls at the driveway and decks.

11. Application history: Two hearings (February 23, 2006 & December 7, 2006) were held upon the original application and design for a residence on this site. The application was not approved due to a tied vote, and thereby denied. The Applicant's legal representative made a request to the Board of County Commissioners on February 6, 2007 for the Planning and Zoning Commission to consider a revised design, and the Board did so (Exhibit B-0). This noticed hearing is a response to that Order.
12. Disclosures made during the February 23, 2006 and December 7, 2006 hearings are described in the previous application materials (Application #05-115). Though this is treated as a separate application, the previous communications relative to the development of the site are hereby included (by reference only).

13. Disclosure was made at the hearing of May 10, 2007 which included a site visit with Commissioner Peck, Bill Green and staff (Linda L. Kelsey). Discussions were limited to orientation of the site, property lines, the area of disturbance, major corners of the building and the location of the septic. The Commissioner and staff then drove further west on Croy to view the site and staking from the road.

14. Public comment was heard by the Commissioners at the hearing.

Section II. Evaluation of Site Alteration Permit Design Review Standards of Evaluation Pursuant to §9-21-5 of the Zoning Ordinance

Pursuant to §9-21-5 (D) of the Zoning Ordinance, the applicant has the burden of demonstrating compliance with this Chapter, including each of the following design review standards of evaluation. Before approving or conditionally approving a site alteration permit, the Commission shall review and find adequate evidence that the proposed development or site alteration meets the following standards:

1. No sufficient available area for the site alteration exists on the lot outside of the Mountain Overlay District. "Available area" may be found to exclude land located within the 100-year floodplain, floodway, wetlands, and avalanche hazard created by off-site conditions where such environmental concerns outweigh the hillside concerns for the particular project. Existing structures that are nonconforming to this Chapter may be improved, moved, or replaced within the Mountain Overlay District, provided the Commission finds that the proposal is less nonconforming than what is existing and is in substantial compliance with subsections D2 through D11 of this Section.

► **Commission Finding**: The Applicant has provided thoughtful consideration of the optional sites for the parcel. As mentioned by the County Engineer, one means of reducing the impact of the original proposal to the MOD would be by moving the structure closer to North Colorado Gulch Road, and this redesign does so in response to that comment. The Commission found unanimously that this standard was met (5-0).

2. Visibility of the site alteration as viewed from reference roads shall be minimized through design, landscaping and siting. Except where extraordinary circumstances exist that are peculiar to the physical characteristics of the site, site alterations, particularly buildings, other structures, and hillside roads, are less visible the lower in elevation they are as determined by topographic contour lines. New development shall be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity. The maximum bulk of structures shall be hidden or minimized by design, landscaping and siting. Landscaping shall blend harmoniously with the surrounding area, and shall not create excessive contrast with the surrounding area.

►**Commission Finding**: Some concerns were expressed regarding this standard. Commissioners Rice, Bailey and Werth felt the landscaping as illustrated on Exhibit A-12 was not compatible with the generally sparsely vegetated hillside. In particular, the evergreen trees seemed out of context, and Commissioner Peck referenced the stands of aspen trees clustered further upstream of the site. It was agreed that proposed condition #21 could be amended to suggest landscaping more compatible with the hillside, and therefore compliant with this standard. All Commissioners felt that the residence was well sited on the parcel, and there was reason in placing the structure low on the parcel, but he septic kept lower and as an area that buffered the house from the road.

Commissioner Murphy also expressed concern for the language requiring that the development "*be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity*". By his interpretation, a residence that overall is approximately 5,000 s.f. is not "*minimized by design*", nor could it be "*hidden*". He therefore could not make a positive finding on this standard, so the vote was 4-1 for this standard, and therefore by a majority, compliant.

3. The site alteration, and any grading and excavation relating thereto, shall include measures or designs to mitigate the risk of soil erosion, silting of lower slopes, slide damage, flooding, severe scarring and any other geologic instability. All excavation, grading and fill shall be revegetated as provided herein (except for roadway surfaces) and otherwise stabilized to control erosion.

►**Commission Finding:** There was consensus for approval within the Commission regarding this standard, as the Landscape Architect had delineated a plan for the control of geological instability on Exhibit A-12, including retaining and drystack walls to terrace the slopes.

4. The site alteration shall comply with the requirements of the Avalanche Overlay District.

►**Commission Finding:** The Commission agreed unanimously that this standard had been met.

5. Any proposed building or other structure shall remain below the skyline and shall be sited in such a manner so as not to create a silhouette against the sky as viewed from any reference road.

►**Commission Finding:** The Commission agreed unanimously that this standard had been met.

6. Manmade slopes, road alignments, driveways, improvements, grading, excavation, berming, and fill activities shall conform as closely as possible to the natural terrain. Alteration of the natural drainage of the site shall be minimized and mitigated. Hillside roads shall also meet all other applicable road or driveway standards under County ordinances and adopted codes, including, but not limited to, those for grades and emergency vehicles. Existing roads/driveways to existing nonconforming structures located within the Mountain Overlay District may be moved or improved to reduce the degree of noncompliance with requirements for grades and emergency vehicles.

►**Commission Finding:** The Commission agreed unanimously that this standard had been met.

7. Native or native-compatible vegetation shall be preserved to the greatest extent possible, and revegetation adjacent to residences shall be with low-combustible plant species. Revegetation of disturbed areas shall utilize plant materials harmonious and/or native to the area. The method for control and prevention of noxious weeds shall be demonstrated. Disturbed areas shall be landscaped or revegetated immediately after completion of the site alteration activities. Components of the revegetation plan shall include the techniques that will be used to ensure the establishment of the proposed vegetation for a period of not less than five (5) years.

►**Commission Finding:** With the edited version of Condition #21, the Commission found unanimous compliance with this standard.

8. Exterior building materials shall be of nonreflective materials. The visibility of hillside development shall be lessened by limited glazing and exterior lighting, and by use of materials and colors compatible with the natural surrounding setting. Roofs shall be designed to minimize the visibility of the structure. Reflective metal roofs are prohibited; nonreflective metal roofs may be approved.

►**Commission Finding:** The Commission found unanimously that this standard had been met.

9. Exterior lighting shall be directed downward and sited, hooded and shielded such that it minimizes visibility from any reference road. Shielding and hooding materials shall be composed of nonreflective, opaque materials.

►**Commission Finding:** As set forth in Exhibit A-13, the applicant plans to limit the lighting to compatible fixtures as shown. Shielding and hooding materials will be of non-reflective, opaque materials, as per the submitted cut sheets, and the Commission found this standard had been met, with the inclusion of the performance criteria written into Condition #6.

10. Construction proposed as part of a site alteration permit application shall comply with other applicable codes and ordinances, including, but not limited to, the Uniform Fire Code; Title 7, Chapter 3 of this Code; and the Uniform Building Code, as amended, in effect at the time.

►**Proposed Finding:** Compliance with this standard is a condition of approval.

11. Any proposed new road or driveway is necessary to access a building site or building that was lawfully approved under this Title.

►**Commission Finding:** The Commission unanimously found compliance with this standard.

12. (This criteria is not applicable, as the Applicant is not the State of Idaho, or any board or agency board, department, institution or district thereof.)

Section III. Decision and Conditions Pursuant § 9-21-5 (E) and § 9-25-5 (A) of the Zoning Ordinance:

Having considered the Mountain Overlay District Site Alteration Permit application for **Bill Green**, the evidence presented, and the evaluation criteria set forth by the standards of evaluation set forth in Section II, and upon motion by Commissioner Bailey, second by Commissioner Werth and a 4-1 vote (Commissioner Murphy opposed), the Commission hereby **approves** this application for a Site Alteration Permit, with the following conditions including, but not limited to:

CONDITIONS:

1. Construction proposed as part of these applications shall comply with other applicable codes and ordinances, including, but not limited to, the Uniform Fire Code; Title 7, Chapter 3 of this Code; and the Uniform Building Code, as amended, in effect at the time.
2. Prior to issuance of a Certificate of Occupancy for the residence, the restoration of disturbed areas shall be complete, including noxious weed control, and installation of new vegetation.

3. Expiration of Permit: This site alteration permit shall expire one year following the date of its approval if construction of the site alteration has not been substantially commenced. If good cause for delay in commencement of construction is shown, the Administrator may once only extend the period for commencement of construction for a period not exceeding one year, provided application is made for an extension before expiration of the permit.
4. Provide biodegradable filter fabric for soil stabilization on all disturbed slopes.
5. The approval granted herein is based on the application as submitted by the applicant and the conditions stated herein. Any material changes and substantial deviations in design from the proposal shall be subject to further zoning review and may result in further review at the applicant's expense by either the County Engineer or the Planning and Zoning Commission.
6. Any outdoor lights on the subject property shall be downcast or full cut-off, the light source shall be fully shielded, and the artificial light shall not trespass beyond the boundaries of the property. The two proposed flood lights shall also be pointed downward, and placed on a motion detectors and timers.
7. All Fire Department access requirements shall be approved and installed prior to any combustible construction on the site. The balance of Colorado Gulch Road shall be improved by the Applicant to support fire trucks (if required by the Fire Department) up to the driveway. The radius for the turn shall be 28' minimum so as to meet Fire Department requirements.
8. All pets shall be kept indoors, kenneled or leashed at all times.
9. Pet food shall be stored in secure locations so as to alleviate nuisance wildlife problems. All responsibility for controlling nuisance wildlife will belong with the property owner, and actions to alleviate these will be per those prescribed by the IDFG.
10. Fencing, if provided at all, shall be installed per the recommendations of IDFG and BLM. Feeding of game species or predatory wildlife is prohibited.
11. Applicant shall apply for and obtain a building permit prior to commencement of any site preparation work or construction, and shall comply with all agencies having jurisdiction, including but not limited to zoning, building, fire and health district regulations.
12. Construction fencing shall be installed prior to commencing construction along the "line of disturbance" as amended to Exhibit A-11/A-12, and shall be posted with signage stating its purpose for limiting access to protected areas. Any litter or debris crossing onto public lands shall be cleaned up immediately.
13. Prior to occupancy of the building, applicant is required to obtain a Certificate of Occupancy from the Building Official, as required by §9-3-6 of the Zoning Ordinance.
14. Applicant presents this application assuming that the well is capable of supporting the sprinkler system with little change or only minor upgrading. If, however upon testing, it is determined that the project will require a cistern or well relocation in such a manner that the Administrator determines is a material change to the impacts reviewed by this proposal, the Applicant shall resubmit the changes for the project. In this situation, the Applicant shall pay new application fees, notice, and Engineering and special inspection costs, as required for a new application.
15. All landscaping shall be retained on the private property, and not encroach onto public lands.
16. All construction and parking shall be retained on private property and not encroach onto public lands.
17. As described by Exhibit B-6, it is the responsibility of the Applicant to fence out livestock that are authorized on adjacent public land. Applicant is advised of the concerns expressed by the exhibit regarding other possible conflicts of uses for the area for the project.
18. Upon application for building permit the overall building height above natural grade shall be demonstrated as not exceeding 35', and shall be confirmed by an elevation and grade certificate prior to issuance of a Certificate of Occupancy.
19. Pursuant to the fire district's requirements, the Applicant shall provide snow removal from the balance of Colorado Gulch Road to the residence.
20. Prior to the issuance of a Certificate of Occupancy for the project, the Applicant shall demonstrate a recorded 20' easement with the County for public access across the parcel, centered on the existing Colorado Gulch Road.

21. Landscape design submitted as Exhibit A-12 shall be revised for submittal with the building permit to demonstrate materials emulative of the natural vegetation around a hillside spring, such as limited tree clusters (aspen), while maintaining native shrubs such as choke cherry, buck brush, and bitter berry, and excluding evergreen trees. However, if tree groves upstream of the residential site and within view of the proposed structure demonstrate additional tree species, including evergreens, they may be allowed to be included within the landscape plan at staff's discretion.
22. Upon submission of the design for building permit, applicant shall provide a finished grading plan with certification from a civil engineer or landscape architect that the slope does not exceed 2.5:1;
23. Glazing on the southern and western faces of the structure shall not be reflective glass (i.e.: not additionally reflective beyond the standard clear glass.)

Notice pursuant to I. C. §67-6535(c): The owner of the property subject to this application and decision may request a regulatory taking analysis pursuant to I. C. §67-8003.

As described by §9-32-4 of the Blaine County Code, any person aggrieved by any final action of the Commission may appeal such a decision to the Board of County Commissioners.

IT IS SO ORDERED on this 12th day of June, 2007.

BLAINE COUNTY PLANNING AND ZONING COMMISSION

By: Chip Bailey

Chip Bailey, Chairman

CERTIFICATE OF MAILING

The undersigned, being over eighteen years of age, a resident of Hailey, Idaho, and not a party to the above-entitled action, certified that on June 12th, 2007, he/she served a true and correct copy of the foregoing document by depositing the same in the U. S. Mail with postage prepaid addressed as follows:

William E. Green
P.O. Box 4726
Ketchum, ID 83340

P & Z Staff