

Blaine County Hearings Examiner
Public Hearing Date: July 29, 2021 & September 23, 2021

THIS IS NOT A FINAL DECISION

This Staff Report is based only upon the evidence in the record as of September 8, 2021 and is *subject to change*. The final Finding of Fact, Decision and Conditions will be issued after the public hearing and after a decision is made.

REGARDING THE APPLICATION OF: Stuart Campbell for variance requests to the east and west side yard setbacks, front yard setback, and State Highway 75 setback.	Staff Report By: Allison Kennedy Dated: September 8, 2021
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Requested Action: Public hearing and consideration of an application by Stuart Campbell for a variance request to the following property setbacks: 1) West side-yard setback from 25' to 15' to accommodate a new attached garage structure. 2) Front yard setback from 25' to 22'11" to accommodate 3 structural posts for a roof addition over the front porch. 3) East side-yard highway setback from 100' to 40-46' for an at grade 192 sf expansion (384 sf total) of the rear deck and second floor deck addition (192 sf). The entire proposed project is within the 100' State HWY 75 setback which also requires a variance for added encroachments. The lot is located within the Rural Residential District (R-2.5) and the Scenic Highway Overlay District (SHO). The property is 0.45 acres and located at 310 Eagle Creek Loop, Lot 6, Block 5, Eagle Creek Meadows Subdivision, approximately 4 miles north of Ketchum.

Issues/background for consideration are summarized below:

- The property is almost entirely encumbered within the 100' State Highway setback (Exhibit: A7 Site Plan; Sheet: AS101; 8.27.2021)
- Setbacks within the R-2.5 are 25' side & rear and 25' front setback for the Rural Minor Access Road.
- The Eagle Creek Meadows Subdivision was recorded in 1960 and the Scenic Highway Overlay adopted in 1999.
- Septic system and drainfield are located within the rear vacant land behind the proposed garage. (Exhibit A-7 Site Plan; Sheet: AS101; 8.27.2021)
- On July 29, 2021 the applicant had a public hearing with a side yard setback variance request from 25' to 11' to accommodate an 834 sf detached garage. This hearing was continued to a date uncertain in order to clear up notice issues and allow the applicant to explore more options for an attached garage structure or alternative designs on the site.

- The applicant has submitted new application materials on August 31, 2021 requesting an attached 836 sf garage and additions to the front and rear of the primary dwelling. The entire primary dwelling is non-conforming due to its location within the 100' setback of the Highway ROW setback.
- Additions include:
 - 1: A 836 sf, 13' tall attached storage garage/shop proposed at 15' from western side yard property line. The side yard setback in the R-2 is 25'.
 - 2: A replacement of the existing 176 sf front deck. A variance request for 3 posts to support a second level roof in front of the upper level 6' pop out. The setback variance is for the posts specifically, which encroach 2'11" into the front yard 25' setback on the eastern corner of the deck/piling and 11.5" on the western corner of the deck/piling. (See Exhibit A-8: A2 Annotated Plan Level 01)
 - 3: Two decks: One at grade, proposed to expand to 16' x 24' (384 sf from the existing 192 sf) and a second deck, one located at the second floor 8' x 24' (192 sf). The proposed bottom deck is located from 40-46' from the eastern property line within the 100' Highway 75.

I. Application, Notice, Exhibits & General Facts

1. Application- A variance application was received on April 27, 2021, and certified as being generally complete on April 27, 2021. A modified application was received August 31, 2021, and certified as generally complete on August 31, 2021.
2. Disclosures: Site Visits? Ex. Parte Communications? Economic Conflicts? Other Conflicts?
Ex parte contacts involve a decision-maker's receipt of any information pertaining to an open application on a quasi-judicial matter. (ie: emails, phone calls, conversations) The undisclosed receipt and consideration of *ex parte* information denies interested persons their right to review and respond to this off the record information, resulting in a due process violation and more generally, an unfair process.
3. Notice- Public Notice for the July 29, 2021 application hearing was as follows:
 - a. Legal notice was published in the Idaho Mountain Express on July 14, 2021
 - b. Notice was mailed on July 13, 2021 to surrounding landowners within 300' of the exterior boundary of the property and on July 12, 2021 to all Blaine County political subdivisions.
 - c. An on-site notice is to be posted on the applicant's property by July 13, 2021, at least 7 days before the scheduled public hearing, to be evidenced by an affidavit of posting in the record.

Notice- Public Notice for the September 23, 2021 hearing modified application was as follows:

- a. Legal notice was published in the Idaho Mountain Express on September 8, 2021

- b. Notice was mailed on September 7, 2021 to surrounding landowners within 300' of the exterior boundary of the property
- c. Notice was mailed on September 7, 2021 to all Blaine County political subdivisions.
- d. An on-site notice is to be posted on the applicant's property by September 16, 2021, at least 7 days before the scheduled public hearing, to be evidenced by an affidavit of posting in the record.

► Pursuant to Idaho Code §67-6512 and Blaine County Zoning Ordinance regulations, the Hearing Examiner shall review the above notice procedures and make a finding as to compliance with the requirements of Blaine County Zoning Ordinance §9-30-3.

4. Exhibits- The following are attached hereto as referenced:

A Exhibits- Applicant submittals (received on April 27, 2021, unless otherwise noted)

- A-1: Completed application form and responses to criteria for review.
- A-2: Architectural Site Plan
- A-3: Plans & Elevations
- A-4: Surveys and Legal Description
- A-5: Vicinity Map
- A-6: Septic Permit

New materials received for the September 23, 2021 modified application:

- A-7: Modified Site Plans 8-30-21
- A-8: Updated Modified Sheet A101 showing front & rear deck dimensions 8-31-21
- A-9: Campbell Survey 8-31-21
- A-10: Project Narrative 8-30-21

B Exhibits-Agency Comments

- B-1: Blaine County Road and Bridge Department 7-22-21

C Exhibits- Blaine County Supplements

- C-1: Subdivision Plat November 1960
- C-2: Lots with Granted Setback Variances
- C-3: Campbell Site Visit Photos 7-21-21

D Exhibits- Public Comment

- D-1: Bobby Noyes 7-26-21
- D-2: Ben & Paula Buckendorf 7-27-21

II. Criteria for Review and Evaluation under §9-30-4 of the Zoning Ordinance for Variance Applications

The criteria for review and evaluation of variance applications are found in the Blaine County Zoning Ordinance §9-30-4. The Hearing Examiner shall consider these criteria, as well as factors specified in other sections of the Zoning Ordinance and in the Blaine County Comprehensive Plan, in ruling on the applicant's request for a variance.

1) Applicant response: The applicant has submitted written responses to the criteria; see Exhibits A-1 & A-10.

A. Whether the granting of the variance will conflict with the public interest as expressed in the Blaine County Comprehensive Plan.

Staff comment and recommendation: Compliance; the proposed variance does not appear to conflict with any portions of the Comprehensive Plan. Specifically, the granting of the waiver is not foreseen to have adverse effects related to hazardous areas, natural resources, or public services and facilities.

B. Whether there are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not generally apply to the property or class of use in the zone or district?

Staff comment: The 0.45 acre lot is encumbered by the 100' Highway setback and the backyard septic system (Exhibits A-1, A-2, A-6, A-7, A-9). The applicant is requesting a 2 car attached garage to: store recreational equipment and household items, add space to the primary dwelling by putting the mechanical room into the garage space, and have a place to store vehicles. By attaching the garage, the applicant has reduced the July variance request by 4' from 11' to 15' from his western neighbor.

Front: The posts will be placed at the footprint of the existing front deck which encroaches 2'11" into the front yard 25' setback on the eastern corner of the deck/posts and 11.5" on the western corner of the deck/posts. (See exhibit A-8; A2 annotated Plans- Level 01). The posts will support a small pitched roof to protect the front deck/entry which will be replaced in the existing footprint. The purpose of this deck/entry cover is to protect the front entrance from winter and wet weather.

Side/Rear: The deck expansion and addition is encumbered by the 100' highway setback.

C. Whether the granting of such relief will be detrimental to the public health, safety, or welfare.

Staff comment and recommendation: Compliance with conditions. No detriment is foreseen to public health, safety or welfare. Suggested Condition: An access permit shall be obtained from Blaine County Road and Bridge Department for a second access onto Eagle Creek Loop, a County maintained road. Suggested Condition: Only one access shall be permitted. If the original access is abandoned it shall be reclaimed and incorporated within the front yard-scape. The access shall be blocked off while being reclaimed.

D. Whether the owner can derive a reasonable use of the owner's land without a variance.

Staff comment: A garage may be considered to be a component of "reasonable use." The lack of adequate storage to house vehicles, recreational vehicles, tools, etc. may be considered a reasonable use in our mountain community. The primary dwelling (1,350 sf) and carport (400 sf approved in 2011) are modest for this neighborhood. (The existing carport, which is the nearest to and visible from the highway, is proposed to remain.) There are 31 lots within the Eagle Creek Meadows Subdivision & 14 setback variances granted. (Exhibit C-2). The front yard setback variance request to support a roof structure to protect the front entryway, may also be considered a "reasonable use" due to our longer winter weather conditions. Questions to consider: The back decks are proposed within the 100' setback from the highway and proposed to be added onto a non-conforming structure and lot. The proposed expansion and addition of the decks appear not to be visible from the highway due to a large cottonwood tree, does this make the request more reasonable? (See C-3: site visit photos)

E. Whether the variance will effect a change in zoning.

Staff comment: The zoning will remain R-2.5 & SHO Overlay District. Almost the entire property is within the 100' Highway 75 ROW setback, Scenic Highway Overlay District (See Site Plan A-7). The proposed structure is sited behind the existing dwelling and will be somewhat hidden from the Highway 75. The placement of the garage away from the highway is preferred in these types of non-conforming lots along the scenic highway. The front and rear setbacks are compliant with the R-2.5 standard of 25' with the exception of front entry posts. (Exhibit A-7) The proposed decks, garage, and front entryway are all encroaching within the HWY 75 100' setback and are proposed to be added on a non-conforming structure.

F. Whether the variance will be injurious to the property or improvements of others.

Staff comment and recommendation: No injury to the property or improvements of others is foreseen. No injury is perceived due to placement of the storage on the lot. The proposed structure is 15' from the neighboring lot line and the neighboring primary dwelling is roughly 40' from the shared property line. There is adequate area for snow to slide without encroaching into the neighbor's property. (See attached site photos of spacing between lots: C-3) The front entry posts and back decks appear to not be injurious to the property or others.

G. If the applicant or landowner with respect to an application for a variance under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof, . . .

Staff Comment: Not applicable.

III. Decision and Conditions

Pursuant to Zoning Ordinance §9-33-8, the Hearing Examiner shall enter an order approving, conditionally approving, or disapproving an application within fourteen (14) days after conclusion of the public hearing together with the reasons therefore. The public hearing on this application is set for Thursday, July 29, 2021.

Any approval or denial of this application will be based upon the information provided as part of this application and upon any additional information which may be provided before or during the scheduled public hearing.

The Hearing Examiner shall also, pursuant to Zoning Ordinance §9-33-8, attach conditions to the approval of a variance request as are deemed necessary to protect the rights of all affected property owners and the general welfare.

If approved: The hearing examiner shall state the permitted encroachments and distance of encroachments. Approval or denial of this application may be conditioned upon the following conditions, among others:

1. Any modifications to the plans shall require further zoning review, and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance.
2. Any modifications to the structure shall require further zoning review, and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance.
3. An Approach Permit shall be obtained from the Blaine County Road and Bridge Department before creating a driveway access onto Eagle Creek Loop, a County maintained road.
4. Only one access shall be permitted. If the original access is abandoned it shall be reclaimed and incorporated within the front yard-scape. The access shall be blocked off while being reclaimed.
5. A foundation and grade certificate shall be completed by a licensed surveyor or engineer prior to concrete inspection & pour and added as a condition within the Blaine County building permit, to ensure approved setbacks are met.

The final Findings of Fact, Decision, and Conditions of the Hearing Examiner may be appealed to the Board of County Commissioners in the manner prescribed by Chapter 32 of the Blaine County Zoning Ordinance, specifically within twenty (20) days of the issuance of the Findings of Fact, Decision, and Conditions.

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