

Blaine County Hearings Examiner
Public Hearing Date: December 2, 2021

THIS IS NOT A FINAL DECISION

This Staff Report is based only upon the evidence in the record as of November 9, 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.

<u>REGARDING THE APPLICATION OF:</u> Michael Winther for a variance to the 100' Highway 75 setback at 105 McKenzie Lane	Staff Report By: Kathy Grotto Dated: November 22, 2021
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Requested Action: Michael Winther requests a variance for additions on the east and west sides of an existing house on Lot 1, Block 1, Booth Subdivision. The existing house lies entirely within the 100' Highway 75 setback. A 6.5' roof extension is proposed on the west side, changing the highway setback from 42' (existing) to 35.5' (proposed). Additions to the east side of the house are also proposed, which would not change the existing 64' setback from the east lot line. The 1-acre property is located at 105 McKenzie Ln, within the Low Density Residential District (R-1) and a small area of Medium Density Residential District (R-.4), with Scenic Highway Overlay District (SHO).

Issues for consideration are summarized below:

The existing house lies entirely within the 100' Highway setback. The lot is only 134 feet wide along the front portion of the lot where the house is located. Also located on the lot are a shed and a second small dwelling (non-conforming); no changes proposed to those structures.

A roof extension for the west side of the house is proposed along the length of the house. On the east side, the applicant proposes to build new walls to remove two "indented" areas, following the existing wall line of the house. One of the purposes of the proposed improvements is to prevent snow from piling up against the house when sliding from the metal roof. See more responses by the applicant in Exhibit A-2.

The required setbacks are as follows:

- Front: 25',
- Hwy 75 Side: 100'
- East Side and Rear: 10' for the first 10' of building height and 1' for each additional 2' of building height. For this 14' high house: 12'.

The requested setbacks are as follows:

- Front: 40' (existing, no change)
- Hwy 75 Side: 35.5' (existing is 42')
- East Side: 64' (no change)
- Rear: 170' (no change)

I. Application, Notice, Exhibits & General Facts

1. Application- A variance application was received on September 28, 2021 and certified as being generally complete on November 1, 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 this application was as follows:
 - a. Legal notice was published in the Idaho Mountain Express on November 17, 2021.
 - b. Notice was mailed on November 18, 2021, to surrounding landowners within 300' of the exterior boundary of the property and to all Blaine County political subdivisions.
 - c. An on-site notice was posted on the applicant's property on November 22, 2021, more than 7 days before the scheduled public hearing, as 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 September 28, 2021, unless otherwise noted)

- A-1. Completed application form
- A-2. Applicant responses to criteria for review
- A-3. Site plan (received 11-1-21)
- A-4. Footprint - plan view
- A-5. Proposed roof extension - elevation view
- A-6. Proposed roof extension - plan view
- A-7. Proposed east side wall extensions - plan view
- A-8. Site photographs
- A-9. Booth Subdivision plat

B Exhibits-Agency Comments - No agency comments sought

C Exhibits- Blaine County Supplements - None

D Exhibits- Public Comment- No comments received as of the date of this report.

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.

➤ Applicant response: The applicant has submitted written responses to the criteria; see Exhibit A-2.

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: The proposed variance does not conflict with the Comp Plan. It is supported in the Housing chapter's Desired Outcomes:

B. Types of Housing

B-7: Support efforts to address the age and condition of existing housing stock in the unincorporated County through a variety of land use, building and incentive programs. Consider more flexible regulations for existing nonconforming buildings and lots that provide housing for year-round residents, including zoning changes, flexibility in energy codes and other modifications, recognizing that continuing to live in existing homes is the most sustainable practice.

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 and recommendation: The applicant's undue hardship is the fact that the entire house is located within the 100' highway setback, such that any addition requires a variance. This lot is quite narrow being 134' in the location of the house. See site plan, Exhibit A-3.

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

Staff comment and recommendation: No detriment is seen. Safety for the inhabitants of the dwelling is cited as one of the reasons for the proposed improvements. The applicants state that snow sliding from the roof could break windows and a glass door, as well as potential flooding of the basement.

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

Staff comment and recommendation: The existing dwelling was built in 1940. No remodels have been noted by the Assessor's Office. The applicant seeks the variance to make improvements to the 80-year old house. The proposed improvements are not extensive and may be considered necessary to derive reasonable use of this particular lot while maintaining the existing dwelling. See photographs, Exhibit A-8.

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

Staff comment and recommendation: The existing R-1 and R-.4 zoning includes single family dwellings as primary permitted uses.

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

Staff comment and recommendation: The proposed additions are not closely adjacent to other properties. Roads separate the lot from other lots to the west and south; other structures on the lot separate the house from the lot to the east, and 170' separate the house from the lot to the north. As such, no injury to others is foreseen.

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: N/A.

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 December 2, 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. The applicant shall apply for and obtain a building permit prior to commencement of any site preparation work or construction, and shall comply with all other applicable zoning, building, fire and health district regulations and conditions.
2. The applicant shall obtain a building permit within one (1) year of the date of the Findings of Fact, Decision and Conditions, or the approvals contained herein shall be null and void.
3. This variance is approved for the following: Additions to the east side of the house (not extending past existing walls) and a new 6.5'-wide roof structure on the west side of the house, as shown on plans in the Exhibits submitted.
4. Any modifications to the plans shall require further zoning review, and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance.

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.