

BLAINE COUNTY HEARING EXAMINER
Public Hearing Date: March 2, 2023

REGARDING THE APPLICATION OF: Windy Hill Haven LLC for an Accessory Dwelling Unit Conditional Use Permit at 114 Magic Mountain Road.	Staff Report by Rachel Martin Dated: March 2, 2023
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Requested Action: Public hearing and consideration of an application by Windy Hill Haven LLC for a conditional use permit (CUP) to construct an 849 square foot Accessory Dwelling Unit. The 1.061 acre property is located at Tax Lot 7788, within T3N, R18E, SEC 8, B.M., Blaine County and is zoned Low Density Residential District (R-1) with areas of Floodplain (FP) and potential Wetland (WE) Overlay Districts.

Representative(s): Scape Design Studio, Gretchen Wagner.

Applicable Regulations: Blaine County Zoning Ordinance Chapters 2, 3, 10, 17, 19, 25, 29A, and Blaine County Comprehensive Plan.

I. Application, Notice, Exhibits & General Facts

1. Application: An Accessory Dwelling Unit Conditional Use Permit application was received by the Administrator on January 11, 2023. After reviewing the application, the Administrator certified the applications to be generally complete on January 23, 2023.

2. Notice: Public notice for this application was as follows:

- A. Legal notice was published in the Idaho Mountain Express on February 8, 2023.
- B. Notice was mailed on February 8, 2023 to all Blaine County political subdivisions
- C. Notice was mailed on February 8, 2023 to surrounding landowners within 300' of the exterior boundaries of the property.
- D. An on-site notice was posted by February 23, 2023, at least 7 days prior to the hearing. Affidavit of posting was received on March 2, 2023.

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.

3. Any disclosures (i.e. conflicts of interest, site visits or *ex parte* communications)?

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.

4. Background

Property and project descriptions:

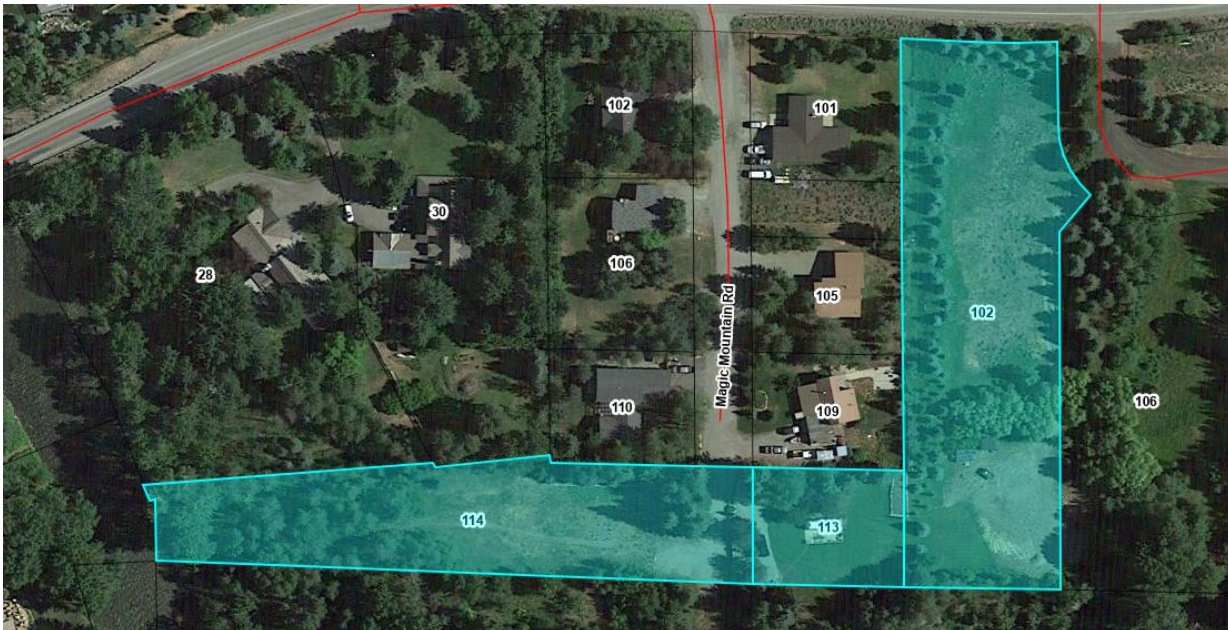
- The underlying zoning district is R-1.
- The lot is 1.061 acres in size.
- There are no existing structures on the lot.

114 Magic Mountain Road is currently a vacant lot. A parcel determination was performed in 2002 and found that 114 is a lot of record, 2 adjoining small parcels were not determined to be buildable. The owner combined the smaller lots into 114 as suggested in the parcel determination, creating Tax Lot 7788 and the current property boundaries (Exhibit C-1: Parcel Determination Letter 02-094 and Exhibit C-2: Parcel Determination Map 02-094).

The existing property owner, Windy Hill Haven LLC., owns 3 adjacent lots, 114 and 113 Magic Mountain Road and 102 Grove Creek Court, as seen below. The primary family dwelling is located on 102 Grove Creek Ct, east of Magic Mountain Road. The applicant is proposing to build a primary dwelling (residence 3) and an 849 square foot accessory dwelling unit (residence 4) on the subject lot, 114 Magic Mountain Road.

The Lot contains floodplain overlay, riparian and wetlands along the Bigwood River on the west property boundary (Exhibit C-3: GIS Aerial with Floodplain Layer). No development is proposed within these hazard areas. A wetland delineation was performed (Exhibit B-1: Sawtooth Environmental Consulting Wetland Delineation).

Tax Lot 7788 cannot contain a drain field for the proposed dwellings, per South Central Public Health District, due to required 300 foot setback from The Big Wood River and proximity to wells. A drain field is proposed on 102 Grove Creek Ct. (Exhibit A-6: Drain Field Site Map).



5. Exhibits: The following Exhibits are attached hereto as referenced.

“A” Exhibits—Application Materials

All application materials were received on January 11, 2023, unless indicated otherwise.

- A-1:** Completed ADU CUP Application Form
- A-2:** Residence 4 (ADU) Plan Set
- A-3:** Residence 3 and 4 Landscape Plan, Received January 26, 2023
- A-4:** Residence 3 Plan Set
- A-5:** South Central Public Health Septic Permit and Variance
- A-6:** Drain Field Site Map
- A-7:** Response to Standards of Evaluation

“B” Exhibits—Agency Comments

- B-1:** Sawtooth Environmental Consulting Wetland Delineation

“C” Exhibits—Additional Information

- C-1:** Parcel Determination Letter 02-094
- C-2:** Parcel Determination Map 02-094
- C-3:** GIS Aerial with Floodplain Layer

“D” Exhibits—Public Comments (none as of the date of this report)

- D-1:** Michael Murphy, March 2, 2023
- D-2:** Mary Jameson, March 2, 2023

II. 9-3-11 Accessory Dwelling Units
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Note: *Code sections are in italics; Staff comments are in bold*

9-3-11: The purpose of the accessory dwelling unit regulations is to define an accessory dwelling unit address under what circumstances it is appropriate to allow increased density on a lot; and address the impacts an accessory dwelling unit may have on the surrounding area such as sanitation, increased traffic and compatibility with the neighborhood.

A conditional use permit obtained from the commission or hearing examiner may be required for an accessory dwelling unit as required below in sections [9-3-11A1](#), [A2](#) and [A4](#). Notice and hearing procedures contained in chapter 25 of this title shall be followed. The application shall be subject to the provisions contained herein and the standards of evaluation contained in subsections [9-25-3A3](#) and [A4](#) of this title.

A. Standards: The following standards shall be met prior to issuance of a building permit for an accessory dwelling unit:

1. On lots of less than one acre in size and on an Idaho Department of Environmental Quality regulated community water system or municipal water system, where allowed by South Central Public Health District (a variance from South Central Public Health District may be required) and with a will-serve letter from the Certified Water Operator for the system, one accessory dwelling unit may be allowed under a conditional use permit.

2. On lots of one acre to less than two (2) acres in size, where allowed by South Central Public Health District (a variance from South Central Public Health District may be required), one accessory dwelling unit may be allowed under a conditional use permit.

3. On lots of two (2) acres to less than five (5) acres in size one accessory dwelling unit shall be a permitted use.

4. On lots of five (5) acres or greater in size:

a. One accessory dwelling unit shall be a permitted use.

b. A second accessory dwelling unit may be allowed under a conditional use permit.

► **Staff comment:** The proposed ADU falls under item 2. On lots of one acre to less than two (2) acres in size, where allowed by South Central Public Health District (a variance from South Central Public Health District may be required), one accessory dwelling unit may be allowed under a conditional use permit. Tax Lot 7788 is 1.061 acres. The applicant applied for and received a septic variance from South Central Public Health (Exhibit A-5 South Central Public Health Septic Permit and Variance).

B. Restrictions: All accessory dwelling unit(s):

1. Shall be limited to a maximum one thousand two hundred (1,200) square foot floor area. Said floor area shall be the total of all floor areas as measured from the exterior face of the exterior walls. ADU garage space up to an additional one thousand two hundred (1,200) square feet is allowed.

a. The area encompassing the mechanical system shall be included in the square footage calculation. If the mechanical equipment is located in the crawl space or the ADU garage, it shall be exempt from the square footage calculation.

b. Stairs shall be excluded from the square footage calculation.

c. When an attic roof truss system creates an unusable and inaccessible attic space between the interior and exterior wall, the floor area measurement shall be taken from the outside of the interior wall;

► **Staff comment:** The proposed ADU is 849 sq ft and does not have a garage.

2. Shall be allowed in the A-20, A-40, R-10, RR-40, R-5, R-21/2, R-2, R-1, R-.4, R-1/4, and RD zoning districts and shall not be allowed in any designated overlay district; except where an accessory dwelling unit is proposed in the floodplain overlay district (see subsection B3 of this section) or on property located within the CH overlay district that is not part of a CH-PUD; or within the MOD and within a platted building envelope or categorically excluded pursuant to section 9-21-4 of this title;

► **Staff comment:** The Lot contains floodplain overlay, riparian and wetlands. A 25 foot setback is required from any designated wetland area. This setback is achieved with proposed siting (Exhibit A-3: Residence 3 and 4 Landscape Plan, Received January 26, 2023). A small portion of an existing boardwalk is in the wetland setback.

3. *May be allowed in the floodplain overlay district as a residential use only upon approval by the commission or the hearing examiner of a conditional use permit pursuant to chapter 17 of this title and these provisions;*

► **Staff comment:** N/A Although the lot contains floodplain, the ADU is outside the floodplain boundary.

4. *Shall meet setbacks for the zoning district in which it is located;*

► **Staff comment:** The lot is in the R-1 zoning district. Zoning setbacks are indicated on Exhibit A-2: Residence 4 Plan Set. Required setbacks are met.

5. *Shall require a building permit;*

► **Staff comment:** Possible condition 3 requires a building permit.

Possible Condition: The applicants shall apply for and obtain a building permit for the ADU and shall comply with all applicable zoning, building, fire and health district regulations and requirements.

6. *Shall be located on the same lot as the principal residential dwelling unit;*

► **Staff comment:** The proposed primary residence on Tax Lot 7788, described as Residence 3, is located to the east of the proposed ADU and can be seen in Exhibit A-3: Residence 3 and 4 Landscape Plan, Received January 26, 2023.

7. *Shall provide for one parking space in addition to the minimum required for the principal residential dwelling unit;*

► **Staff comment:** Three parking spaces are proposed on Tax Lot 7788. Two spaces in a gravel area in front of the primary dwelling, and one in the access to the adjacent lot, 113 Magic Mountain Road. The applicant indicated that the lot will contain more opportunity for parking in the grass on the south side of the access road. A fire cistern has been provided. Access to the cistern is indicated in red at the south end of the driveway access on Exhibit A-3: Residence 3 and 4 Landscape Plan, Received January 26, 2023.

Possible Condition: Fire cistern access shall not be blocked by vehicle parking or other uses.

Possible Condition: All parking must be contained on-site. No parking is allowed on the street.

8. *All parking for an ADU must be contained on-site. No parking is allowed on the street.*

► **Staff comment:** See above Standard 7 and proposed condition.

9. *Shall be prohibited on any lot less than one acre in size, regardless of the applicable zoning district, unless on an Idaho Department of Environmental Quality regulated community water system or*

municipal water system, has approval from South Central Public Health District and obtains a conditional use permit;

► **Staff comment: N/A. Tax Lot 7788 is 1.06 acres.**

10. May be part of an accessory building containing other accessory uses, as allowed in the zoning district provided that: a) the gross floor area of the non-ADU portion of the accessory building does not exceed seventy five percent (75%) of the gross floor area of the primary residence; b) the accessory dwelling unit portion of the building satisfies all applicable regulations; c) the floor area of the accessory dwelling unit and garage associated therewith is separate and distinct from other accessory uses contained within the same building.

► **Staff comment: N/A. The ADU is detached from all other buildings on Tax Lot 7788.**

III. 9-25-3: Conditional Use Permit (Applicable Standards for Evaluation)
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A. Review: The commission or the board (or hearing examiner) shall review the particular facts and circumstances of each proposed conditional use in the terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

3. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area. All outdoor lighting shall comply with title 9, chapter 29A of this code. All exterior lighting is reviewed at time of building permit application for compliance with the Outdoor Lighting chapter of the county’s Zoning regulations, which now includes existing lighting as well as proposed new lighting.

Applicant Comments: The ADU will be finished with vertical wood siding, board form concrete and will have a combination of flat and pitched roofs which is similar to the three adjacent buildings owned by Wendy Hill Haven. The two buildings on 114 Magic Mtn Road will be similar in scale and proximity to other residences on Magic Mtn Rd.

► **Staff comment:** The surrounding uses are residential. All lots on Magic Mountain Rd are less than one acre except Tax Lot 7788, which is 1.06 acres. The proposed primary residence on Tax Lot 7788 is 1489. The proposed ADU is 849 sq. ft. The combined sq. footage of the two building on Tax Lot 7788 are 2,338 sq. ft. This density is consistent with the scale in the neighborhood. Design appears to be consistent with existing character. Proposed outdoor lighting is in compliance with Chapter 29A.



4. *Will not be hazardous or disturbing to existing or future neighboring uses;*

Applicant Comments: There will be no change in hazard to existing or future neighboring uses. The ADU will be located in an area on the property that is heavily screened from the neighbor to the north. There are heavy trees to the river to the west and the south. The property to the east is also owned by Wendy Hill Haven.

Staff comment: The ADU should not be hazardous. South Central Public Health District approved a permit (Exhibit A-5) for the septic system and drain field on 102 Grove Creek Ct. On Exhibit A-6: Drain Field Site Map, all shaded areas are not available for a septic drain field due to proximity and required 300 foot setback from the Big Wood River and 100 foot setback from domestic wells. This shaded area includes all of Tax Lot 7788. The only available area for a drain field on all three adjacent lots owned by Windy Hill Haven is the northern most portion of 102 Grove Creek Court. A utility easement is suggested through 113 Magic Mountain and onto 102 Grove Creek Ct to secure future drain filed access for Tax Lot 7788. Uses are residential in nature. The required riparian and wetland setbacks are met.

1. **Possible Condition:** A utility easement shall be recorded for access to drain field and drain field location prior to issuance of a building permit.

IV. 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, March 2, 2023.

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 as deemed necessary to protect the rights and the general welfare of all affected property owners.

Approval or denial of this application may be conditioned upon the following conditions, among others:

2. Any modifications to the plans shall require further zoning review, and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance.
3. The applicants shall apply for and obtain a building permit for the ADU and shall comply with all applicable zoning, building, fire and health district regulations and requirements.
4. All existing and future lighting is subject to review for compliance with County Code, Title 9, Chapter 29A, Outdoor Lighting
5. All parking must be contained on-site. No parking is allowed on the street.
6. Fire cistern access shall not be blocked by vehicle parking or other uses.
7. A utility easement shall be recorded for access to drain field and drain field location prior to issuance of a building permit.

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.