Appeal to Approval of Ockerman Variance

On the Commissioners’ level on October 5, 2016 at 5:00 p.m., a meeting was held as advertised for the purpose of a Public Hearing in relation to the Appeal to the Planning and Zoning Commission’s approval of the Ralph & Deanna Ockerman Variance to allow an event center in an R-3 and R-1 Zone. General Location: 3966 E. 1st St., Bonneville County, Idaho

Present were Commissioner/Chairman Christensen, Commissioner Staker, Commissioner Radford, Zoning Administrator Steve Serr, and Administrative Assistant Betsy Hanks. No Public Works representative was present. Chairman Christensen conducted the hearing, made introductions, read the legal notice, and outlined the procedures and guidelines for the hearing. He commented the minutes from the Zoning Hearing will be made part of the record. He explained the information regarding the barn and its historic value have been discussed. This hearing will pertain to the technical reasons the variance is being appealed.

Administrator Serr presented the application and pointed out the location of the property on the map. The site is located off 1st Street which has an old barn on the property. The front portion of the parcel is zoned as Residential R-3 and a small portion of the rear property is zoned as Residential R-1. The application before the Zoning Commission was for the barn to be used as an event center. The Zoning Office told the owners that the event center is not an allowed use under the current zoning. The request for a variance asked the Zoning Commission to determine whether an event center could be allowed or if there was another way to approve it. He explained the R-3 zone has no allowance for commercial uses and an event center would be a full commercial use of the facility. The Zoning Ordinance specifically states a use has to be a listed allowed use to be able to grant the use or an interpretation has to be made by the board that the use is similar or compatible with another allowed use in that zone. The only uses allowed in the R-3 zone are residential uses. There are no allowed uses compatible or consistent with an event center. Administrator Serr explained the Zoning Commission justified approval of the variance because denial would be a hardship to the community as this is a historical barn which should be preserved and there was no other route for this use to be granted. He discussed with the Zoning Commission that if the use is not allowed, then they need to either make changes to the ordinance, to create a new zone, or to adjust an existing zone. Bonneville County was involved in allowing a Use permit which came from a variance for a commercial use in an agriculture zone. The case went to the Idaho Supreme Court who determined that approval cannot be granted for a use that is not specifically allowed through the variance process. The Zoning Commission discussed the possibility of a rezone. The Comprehensive Plan designation would have to be changed to be able to rezone to Commercial. There is no Commercial adjacent to this property and approval of Commercial would create a spot zone. He clarified the only other option would be to amend the zone and rewrite the allowed uses in the zone. They could contact the City of Ammon to see if this use could be allowed by their ordinances. He sees no current option to be able to grant this variance and no way to substantially justify this proposal as an allowed use in this zone. He explained the Comprehensive Plan includes a Mixed Use designation that allows an intermix of zoning. The Mixed Use designation does not exist in this general area. A general land use change would have to be requested for a large area to be Commercial, but he does not see a way to overcome a single zone request which is not adjacent to another Commercially zoned property.

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The County has an LNC zone which is designed for a commercial node in a residential area. The LNC zone is a limited zone of two acres which is very specific about the allowed uses and an event center is not listed as an allowed use. It may be possible to amend the LNC zone which is allowed in an Urban Residential designation.

Commissioner Staker asked how long it may take to amend the LNC zone.

Administrator Serr estimated the change would take a minimum of three months. He explained the Shelton reception facility is in an Agriculture zone and it was previously a church and weddings were held there. It was a grandfathered use.

Administrator Serr clarified that if the LNC zone were used, there would have to be a determination the proposed use would be compatible with the allowed uses or to amend the zone to include a similar use.

Commissioner Radford commented there has been many events held at this barn which include many family or public type gatherings.

Administrator Serr clarified those occasional gatherings do not pre-date the Zoning Ordinance. This facility has not been used in this manner for some time. The local granges are in an Agricultural zone.

Chairman Christensen called upon the applicant to present their application.

Ralph Ockerman, 5070 E. 41 North, Iona, stated he is the property owner. He clarified that when they purchased the property that it was in an Agriculture zone where livestock is permitted. They were aware there were issues to overcome, but then they found the zone was R-3 and R-1. After contacting the Zoning Office, the variance appeared to be their best option. He stated any other zone choice would be a spot zone and spot zoning is illegal.

Chairman Christensen stated buyers need to check property zoning, etc. for themselves. This is not a justification for a hardship.

Administrator Serr explained the RA-1 zone is simply a larger lot zone which allows animals and some home occupations. An accessory use up to 1000 square feet could be allowed on the property. The RA-1 zone could be approved, but this barn is much larger than 1000 square feet. A home occupation in the ordinance is to be secondary and incidental to the existing residential use.

Chairman Christensen asked how the existing property is being used.

Ralph Ockerman stated the mobile homes, small home, and primary home are rentals. He currently considers the barn as a shed.

Chairman Christensen explained they will take the historical value of the barn into account, but they need to explore ways to make it a legal use.

Ralph Ockerman read from Section 1-442 #12(a)" The Planning and Zoning Commission may authorize a variance from the requirements contained in this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. Also in Chapter 35, Section 1-the Permits Section 3514 #4. Variances. Any person desiring to... use his property not in accordance with the regulations prescribed in the chapter may apply to the Planning and Zoning Commission for variance from such regulations. Such variances shall be allowed where it is duly found that a
literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but will do substantial justice and be in accordance with the spirit of this chapter. He also read from 1-511 #22. "The Planning and Zoning Commission may grant variances from the strict letter of this ordinance where a property owner can show that: (a) Because of unusual narrowness, shallowness or shape of a specific lot or parcel of land, or (b) By reason of peculiar topographical features or other special circumstances peculiar to the particular lot or parcel of land, the strict application of the terms of this ordinance would prohibit the use of the applicant's property in a manner reasonably similar to that of other lots in the same zone." He believes his proposal is peculiar.

Chairman Christensen asked if there are any similar uses in the surrounding area.

Mr. Ockerman answered no. He then read 3. "Before a variance can be granted, the Planning and Zoning Commission must find upon the evidence before it that: (a) Special circumstances do actually attach to the particular property covered by the application, which do not apply generally to the other properties in the same zone." He commented he has a barn, outbuildings, and a granary, but they cannot have animals there because of the zone. There is no other R-1 or R-3 zoned property in the area with older structures. This property has existing structures which do not meet the R-1 or R-3 zone. He believes this property is non-conforming to the letter of the law. The barn is over 45 feet tall and an existing mobile home that would not be allowed there.

Administrator Serr explained the mobile home was originally installed as a caretaker dwelling so it and the existing home are grandfathered.

Mr. Ockerman read (b) "Because of some special circumstances the appellant's property is deprived of privileges possessed by the properties in the same zone. (c) The granting of such variance will not substantially affect the comprehensive plan of zoning in the county." He asked if approval of their variance for an event center would change the Comprehensive Plan. Mr. Ockerman then read (d) "Adherence to the strict letter of the ordinance will cause difficulties and hardships, the imposition of which is unnecessary in order to carry out the purposes of the zoning plan. (e) The hardship is not the result of any action by the property owner taken after the effective date of this ordinance."

Chairman Christensen asked if the hardship is that the use of the barn cannot be changed to commercial. They will consider various options to see if there is a way to approve the use.

Mr. Ockerman stated the hardship is not being able to make the change to commercial. They purchased the property because it had the potential for three rentals. The rentals pay their mortgage. If any of the rentals are removed, he will not be able to pay the mortgage. They would like to be able to have receptions, etc., and they have the support of the entire community. He does not know how to get approval. He read the description of the buffer zone from the Zoning Ordinance. Mr. Ockerman wondered if this zone is a possibility.

Administrator Serr estimated the rezone to R-1 and R-3 was approximately 15 years ago. The ownership of the parcel did not change for some time after the rezone was approved. He commented the County recognizes the continued use of the structures. There is nothing that says the buildings have to be abandoned or to come down. They are allowed to continue as a non-conforming use. Any use pre-existing prior to the effective date of the ordinance has a right to

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continue.

Chairman Christensen stated the Ockerman proposal is to change the use to commercial and not for continuing the existing use.

Ralph Ockerman read Title 1 Zoning Ordinance Chapter 1-103 Declaration "due and careful consideration has been given to such factors as the suitability of land for particular uses and the need to preserve the value of the land and buildings and to encourage the most appropriate use of land within the county." He commented that if the Commissioners look at the picture he submitted, there is a stub to the edge of his property. He has been told that with any use of his property, he would have to have a 60’ right-of-way with a cul-de-sac which would be in the middle of his barn.

Chairman Christensen asked if he would agree the Zoning Ordinance is for all people including your neighbors to preserve the value of their property.

Ralph Ockerman stated yes and that his neighbors all agree they do not want apartments to be built there.

Chairman Christensen stated they will consider his change request and the grandfather use along with exploring other options. If they uphold the variance, some of the issues discussed today will be moot points.

Ralph Ockerman explained they had approached this issue using the variance process. He is concerned if they recommend a different zone, then would he have to go through entire process and then be denied because the use does not meet the letter of the law.

Chairman Christensen suggested they focus on the options and the facts in the ordinance. They will review the testimony from both hearings.

Chairman Christensen called upon the public for any testimony.

Cinda Hammond, 420 Clary Ave., stated her parents and grandparents owned the barn. She clarified that the barn was used publically for dances, spook alleys melodramas from 1970’s to the 1980’s. These were community events. She believes they did charge for the melodramas. She stated they had horses, llamas, and other animals on the property until it was sold. She does not understand why animals are not allowed there now. She explained in 1985 Mike Armstrong developed Warm Spring Subdivision after buying property from her father in sections. She is not sure how the rezone extended into this property. The mobile home was placed there in approximately 1985 and it was used for farm labor. She commented near this property along 1st Street there is a duplex, a used car lot, dog wash, and storage buildings. She wonders how these uses fit with the zone.

Commissioner Staker explained the rezone to R-1 and R-3 removed the allowance for animals.

Administrator Serr explained the intersection she referred to are designated for commercial use and have been rezoned several years ago. The multi-family units are not commercial and are zoned R-3. A caretaker dwelling can be allowed in a commercial zone.

Cinda Hammond stated the barn is 89 years old and has held many animals.

Ralph Ockerman commented there are 8-plexes possible in this area. There are
two homes in the area zoned for multi-family. He believes the public interest needs to be considered as is stated in the Zoning Ordinance. This property is in the middle of several different zones. Part of the problem for his property is that there is no other commercially zoned property adjacent. The adjacent railroad tracks are zoned Agriculture A-1. The A-1 zone does not allow a home occupation like an event center either.

Deanna Ockerman, 5070 E. 41 N., explained if they can use the barn for an event center, they will have the money to preserve the barn. If not, they will not have the money to maintain the historical barn.

Chairman Christensen commented there was similar testimony included at the Zoning hearing. They appreciate the testimony. He stated there has been several options presented which they will consider if this variance cannot be approved.

Chairman Christensen called for any additional testimony. There being no additional testimony, Chairman Christensen closed the public hearing and informed those present the Commissioners will review the information and the facts submitted prior to the close of this hearing and a decision will be rendered and posted with the appropriate notice on the Commissioners’ agenda. The applicants will be notified of the decision and a copy of the decision will be available through the Planning and Zoning office.