BEFORE THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BONNEVILLE, STATE OF IDAHO

IN RE:
The Application was an appeal to a variance (FINDINGS OF FACT, To allow an Events Center in a R-1 and R-3 (CONCLUSIONS Zone for property owned by Ralph and Deanna (AND DECISION Ockerman located at 3966 E 1st St.)

This matter was before the Bonneville County Planning and Zoning Commission for the purpose of a variance to allow an Events Center in an R-1 and R-3 Residential Zone. The variance request to the Planning and Zoning Commission was filed by Ralph and Deanna Ockerman for a property located at 3966 E. 1st Street. The appeal request is filed as an administrative appeal by the Zoning Office. The Planning and Zoning Commission heard this matter on August 31, 2016 and recommended approval of the variance for use request on a vote of 6-1. A subsequent hearing was held by the County Commissioners on October 5, 2016. It was also requested that the minutes of the August 31, 2016 hearing for the property be included in the record for this hearing. After having reviewed the testimony of both hearings, the County Zoning Ordinance, the County Comprehensive Plan and all the reference information and affidavits submitted for the hearings the Bonneville County Commissioners make the following findings.

1. That the property is designated as an area for Urban Residential development on the county’s comprehensive map.

2. That the parcel is rectangular in shape and limited for agricultural use because of its limited size and adjacent uses. The original zoning given to the parcel was A-1 Agricultural.

3. There was a rezone request for R-1 and R-3 Zoning made on the property in 1999 by the then owners John and Deon Heath and were represented by Michael Armstrong.

4. After rezoning of the property agricultural uses could continue to be allowed so long as they were not abandoned.

5. The testimony verified that the current owners of the property were made aware prior to their purchase of the land that an event center was not an allowed use within the current zoning designations.
6. That during the hearing before the Planning and Zoning Commission it was read into the record from Section 1417 "the uses of land which are not expressly permitted within the zone are expressly prohibited within a zone." The commission was also notified that unless it found a similar use to an event center in the allowed uses listed within the two zones that it could not approve the variance request. The commission also had read into the record part of Section 1-511 "the Planning Commission may grant other special exceptions or other special use permits if it is expressly authorized to do so by the provisions of this ordinance, but it shall not grant a special use permit whether temporarily or permanent, for any use in a zone if the use is not listed therein as a permitted use or is not similar to such permitted uses as determined by Section 1-511.4(c) of this ordinance." It was noted in the minutes by commission members that the use is not allowed in the zone. The minutes show that the Ockerman’s also acknowledged that the proposed use is not allowed in the R-1 or R-3 zones.

CONCLUSIONS

The Zoning Ordinance of Bonneville County provides a procedure for the granting of a variance. A variance may be granted, provided the applicant can justify compliance with the items listed in Section 1-511 of the ordinance.

1. "The Planning and Zoning Commission shall hear and decide appeals in cases where it is alleged that there is error in any order, requirement, decision, or determination made by the zoning administrator or other administrative officers in the enforcement of this ordinance, and shall decide questions involving interpretation of this ordinance including the determination of zone boundary lines."

Based upon the testimony received it was the administrator and other administrative officers opinion and interpretation that the proposed use of an events center was not an allowed use found within the R-1 or R-3 Zones of the Zoning Ordinance. It was their opinion also that a variance could not be granted in that to do so would in effect either amend the ordinance or grant a rezone. The applicant's testimony acknowledged that they were also aware that the proposed use was not allowed within either of these two zones. The minutes also show that the planning Commission members were also aware that the use was not allowed. Upon the Board of County Commissioners review of the ordinance it concurs with the administrator’s interpretation of the zoning ordinance that an event center is not an allowed use within either the R-1 or R-3 Zones.

2. "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 narrowsness, 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.”

It is the Board’s opinion as was noted above that this is not an allowed use within the R-1 or R-3 Zones and that there is nothing peculiar about this parcel that would allow a change of use to occur.

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.

It is the Board’s opinion as was noted above that this is not an allowed use within the R-1 or R-3 Zones and that there are no special circumstances about this parcel that would allow a change of use to occur.

(b) Because of some special circumstances the appellant's property is deprived of privileges possessed by the properties in the same zone.

It is the Board’s opinion that during the testimony that there was no evidence that this property was being deprived privileges possessed by others within the same zone.

(c) The granting of such variance will not substantially affect the comprehensive plan of zoning in the county.

It is the Board’s opinion that this variance would affect the zoning ordinance in that if it were granted it would violate Section 1417 where “the uses of land which are not expressly permitted within a zone are expressly prohibited”. It would also violate Section 1-511 “the Planning Commission may grant other special exceptions or other special use permits if it is expressly authorized to do so by the provisions of this ordinance, but it shall not grant a special use permit whether temporarily or permanent, for any use in a zone if the use is not listed therein as a permitted use or is not similar to such permitted uses as determined by Section 1-511.4(c) of this ordinance.” The planning commission cannot grant a variance which is in affect a rezone of the property or in affect an amendment of the zoning ordinance. As was noted during the testimony there are court cases which specifically address this situation, Gay vs Bonneville County and Cooper vs Ada County.

(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.
The only rationale presented in the motion from the planning commission to justify the variance related to this section; "The hardship to the community is that this is a historical barn that should be preserved and that a hardship exists because there is no other route for the use to be granted." It is the Board's opinion that this argument is flawed in that if the proposed use change were denied it does not mean that the barn must be removed, it has a grandfather right to remain in existence. It is also flawed in that the Planning Commission also has the option to consider the process of amending the Zoning Ordinance to allow for such a use to be permitted. One choice could be to look at utilizing an amended LNC Zone. It is the Board's decision that the Planning Commission erred in granting this variance based on the criteria cited as it being a hardship. The Planning Commission cannot grant a variance that is in violation of court cases as well as its own ordinance as is cited above.

(e) The hardship is not the result of any action by the property owner taken after the effective date of this ordinance.

The applicants failed to show there is a documented hardship in relationship to this property.

Based on the testimony and the evidence submitted it is the opinion of this Board that the findings of the Planning and Zoning Commission were improper and that the variance of Ralph and Deanna Ockerman be denied.

DECISION

Based upon the above facts it is the decision of the Bonneville County Commissioners that the request for variance be denied. The Zoning Administrator is to hereby notify the applicant of the decision of this board.

Dated this 9th day of November 2016.

BONNEVILLE COUNTY COMMISSIONERS

Roger S. Christensen  Chairman

Lee Staker  Member

Dave Radford  Member