

Rec 1-23-24
PS2 2-20-2024

APPLICATION FOR VARIANCE
(Not a business license or building permit)

NAME: TKO Homes, Bone LLC PHONE NO. (H) (208) 731-2080
(Property Owner) (W) (208) 320-8265
ADDRESS: ~~7700 Highway Rd~~ 7211 Moon Valley Rd Eagle ID 83616

PROPERTY ADDRESS AND LEGAL DESCRIPTION:
Lot 4 Block 1-2 through 6-2
Olds Ferry Subdivision

GENERAL LOCATION: Just south on 9th Street from the intersection
of 9th Street & Indian Head Rd.

This application is to permit: The use of the 5ft of common
property at the front of these properties as part of our setback

FEE: A \$200.00 FEE MUST ACCOMPANY THIS COMPLETED APPLICATION.

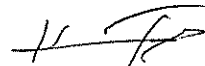
PLAN: A plan that is drawn to scale which shows the property that is under consideration, location of all improvements and the specific information concerning the requested variance.

NARRATIVE: A narrative statement demonstrating that the requested Variance conforms to the following standards:

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
2. That a literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
3. That special conditions and circumstances do not result from the actions of the applicant; and
4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.

The Administrator reserves the right to not officially accept this application until total review is accomplished and all required information is submitted. The date of public hearing will be established by the Administrator upon the acceptance of a complete application.

SIGNATURE:



Application For a Variance

TKO Homes Boise LLC.

1. We are asking today that we have a variance for 6 of the lots that we own in Old's Ferry Subdivision. These lots include lots 1 through 6 of Block 2 of the subdivision. We are asking to be able to use the 5 ft of common property at the front of the lots which would still be a 25ft setback from the sidewalk, just not from our property pins which are placed roughly 5ft behind the sidewalk. We are asking this because of the peculiarity of the land on all of these lots due to the infringement by the canal in the back of the property. Given that our property extends to the inside of the canal itself at some points and the asked 26ft of setback by the irrigation company we are going to deeply struggle to put quality attractive homes on these lots. Given this setback from the canal of 26ft that has to do with the lay of the land we are going to be very restricted on putting in the small homes that are going to be in the rest of the subdivision due to the already large setbacks paired with the canal at the rear of the homes.
2. If we were to follow the literal interpretation of what the code says on these homes we would not only be putting the homes 36 ft back from the road on the front, we would also have to place the fence that we are putting throughout the subdivision 26ft from the toe of the canal which would put the fence within 5 ft of the back of even our smallest models of homes. This due to the lay of the land and how it works on these homes, not allowed the same liberties due to the canal setbacks in the back. By gaining these extra 5 ft in the front we will be able to give these lots more adequate backyards that will be closer to what is experienced by the rest of the subdivision.
3. These special conditions are not the result of us due to the fact that we just bought lots within this subdivision, we did not do the development or have any sort of affect on the products that we have bought. As well this problem has been placed on us by the lay of the land of these lots due to the canal being so close to the back of these lots, which is not a problem for the rest of the subdivision or our neighbors within weiser.
4. By granting this variance there will be no special privilege granted to the applicant, this would just be bringing the rights to these lots that all other lots in our subdivision and other lots within town already have to begin with. These lots are encumbered by the canal to the north to the point of where we might as well chop off the back 26ft of the lot, because as of right now we are not able to even put a fence in that section of space.

A REPLAT OF A PORTION OF BLOCK P AND Q OF BUTTERFIELD TRACT OF THE CITY OF WEISER OLD'S FERRY SUBDIVISION

A PORTION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 11 NORTH, RANGE 5 WEST, 64M, CITY OF WEISER, WASHINGTON COUNTY, IDAHO
-2023-

NARRATIVE:

THIS SURVEY WAS MADE AT THE REQUEST OF BDD DEVELOPMENT LLC TO ESTABLISH THE BOUNDARY AS SHOWN. BOUNDARY WAS DEFINED FROM FOUND MONUMENTS OF RECORD. THE BOUNDARY LINES WERE DEFINED AS FOLLOWS:

1. THE SOUTHWEST BOUNDARY CORNER WAS DEFINED BEING 388 FEET NORTH OF THE SOUTHWEST CORNER OF BLOCK "P" OF BUTTERFIELD TRACT AS DESCRIBED IN THE DEED. AND, THE SOUTH BOUNDARY IS PARALLEL WITH THE SOUTH BOUNDARY OF SAID BLOCK "P".
2. THE WEST BOUNDARY LINE IS PARALLEL WITH AND 48.50 FEET EAST OF THE SECTION LINE WHEN MEASURED PERPENDICULAR TO THE SECTION LINE.
3. THE NORTH BOUNDARY LINE IS BASED ON THE DEED CALL, "TO THE RIGHT OF WAY OF THE WEISER IRRIGATION DISTRICT CANAL, AND A VERBAL STATEMENT FROM THE IRRIGATION DISTRICT MANAGER, LOCATION IS BASED ON THE CANAL RIGHT-OF-WAY IS 30.00 FEET WIDE. THE RE-SUBDIVISION OF OF PART OF BLOCK "P" OF BUTTERFIELD TRACT.

LEGEND:

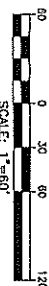
1. THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 11 NORTH, RANGE 5 WEST, BOISE MERIDIAN, TAKEN AS NORTH 30°43'40" EAST AND DISTANCE BETWEEN MONUMENTS FOUND TO BE 2664.16 FEET.
1. 1/4 COR. MONUMENT AS NOTED
2. SET 1/2" REBAR W/ CAP "KHC PLUS 8895"
3. SET 5/8" REBAR W/ CAP "KHC PLUS 8895"
4. SET 1" BRASS CAP "KHC PLUS 8895"
5. FOUND 8/8" REBAR AS NOTED
6. CALC POINT
7. POINT OF BEGINNING
8. WITNESS CORNER
9. BOUNDARY LINE
10. SECTION LINE
11. RIGHT OF WAY LINE
12. EASEMENT LINE
13. LOT LINE

CURVE	RADIUS	DELTA	LENGTH	TANGENT	BEARING	CHORD
C1	125.00'	0°50'57"	1.95'	0.53'	N88°50'45"W	1.95'
C2	125.00'	10°26'57"	42.43'	21.42'	N78°41'49"W	42.23'
C3	65.00'	69°42'02"	79.07'	48.28'	N4°07'19"W	74.28'
C4	33.00'	90°00'00"	83.25'	53.00'	N40°43'41"E	74.95'
C5	150.00'	18°14'28"	42.82'	21.40'	N81°09'00"W	42.38'
C6	150.00'	4°03'26"	10.62'	5.31'	N71°00'03"W	10.82'
C7	90.00'	4°26'14"	6.97'	3.48'	N86°45'13"W	6.97'
C8	90.00'	34°15'54"	53.82'	27.74'	N47°24'09"W	53.83'
C9	90.00'	26°33'40"	41.72'	21.24'	N16°59'21"W	41.35'
C10	90.00'	4°26'13"	6.97'	3.48'	N101°29'25"W	6.97'
C11	78.00'	27°20'35"	37.22'	18.87'	N14°23'59"E	38.87'
C12	78.00'	27°43'56"	37.75'	19.25'	N41°56'15"E	37.38'
C13	78.00'	34°55'27"	47.54'	24.54'	N7°15'59"E	46.81'
C14	28.00'	89°59'56"	43.89'	28.00'	N44°16'16"W	38.80'
C15	28.00'	110°17'58"	53.89'	40.23'	N65°52'41"E	45.96'
C16	40.00'	63°27'33"	44.30'	24.73'	N37°14'34"W	42.07'
C17	40.00'	8°14'23"	4.35'	2.18'	N82°28'33"W	4.36'
C18	28.00'	90°00'00"	43.89'	28.00'	S45°43'41"W	38.80'
C19	28.00'	90°00'00"	43.89'	28.00'	N44°16'16"W	38.80'
C20	28.00'	90°00'00"	43.89'	28.00'	N45°43'41"E	38.80'

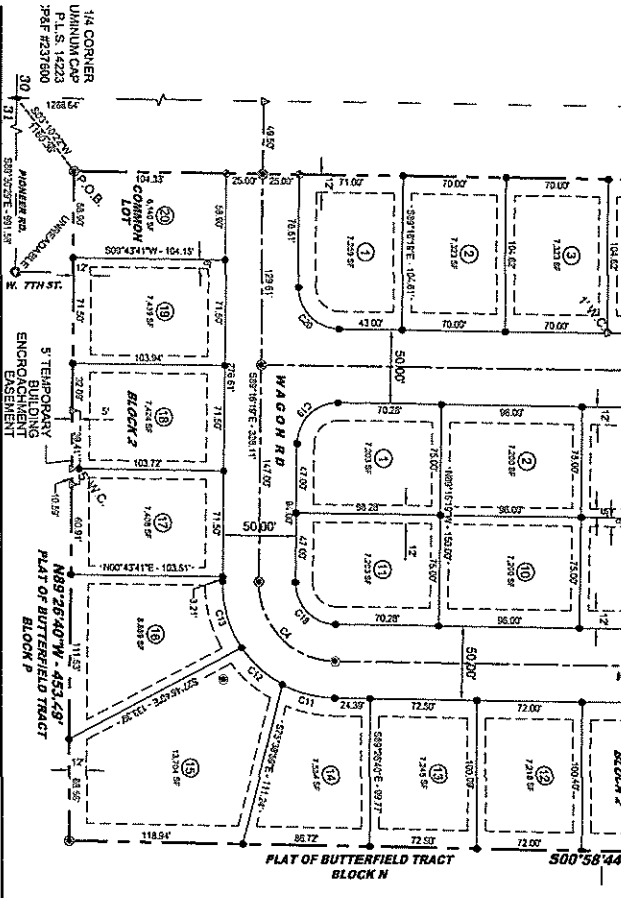


NOTES:

1. BUILDING SETBACKS SHALL CONFORM TO THE APPLICABLE ZONING REGULATIONS AT THE TIME OF ISSUANCE OF THE BUILDING PERMIT. NO PERMANENT STRUCTURES SHALL BE LOCATED CLOSER THAN SEVENTY FEET TO ANY SECTION LINE OR QUARTER SECTION LINE UNLESS THE HIGHWAY DISTRICT WAIVES THE SEVENTY FEET SET BACK REQUIREMENT.
2. ALL LOT LINES HAVE A TWELVE (12) FOOT WIDE EXTERNAL AND SIX (6) FOOT INTERNAL PERMANENT PUBLIC UTILITIES, DRAINAGE, IRRIGATION AND IDAHO POWER EASEMENT UNLESS OTHERWISE SHOWN. CONSTRUCTION WITHIN THE EASEMENTS SHALL BE LIMITED TO UTILITIES, WOOD, WIRE, OR REMOVABLE SECTION TYPE FENCING.
3. THIS DEVELOPMENT RECOGNIZES SECTION 22-4903 OF IDAHO CODE, RIGHT TO FARM ACT, WHICH STATES AGRICULTURAL OPERATION, AGRICULTURAL FACILITY OR EXPANSION THEREOF, NOT A NUISANCE, EXCEPTION, NO AGRICULTURAL OPERATION, AGRICULTURAL FACILITY OR EXPANSION THEREOF, NOT A NUISANCE, BECOME A NUISANCE, PRIVATE OR PUBLIC, IF THE ACTS AFTER IT HAS BEEN IN OPERATION FOR MORE THAN ONE (1) YEAR, WHEN THE OPERATION, FACILITY OR EXPANSION WAS NOT A NUISANCE AT THE TIME IT BEGAN OR WAS CONSTRUCTED. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY WHEN A NUISANCE RESULT FROM THE IMPROPER OR NEGLIGENCE OPERATION OF AN AGRICULTURAL OPERATION, AGRICULTURAL FACILITY OR EXPANSION THEREOF.
4. ANY RE-SUBDIVISION OF THIS PLAT SHALL COMPLY WITH THE APPLICABLE ZONING REGULATIONS IN EFFECT AT THE TIME OF RE-SUBDIVISION.
5. THIS SUBDIVISION IS SUBJECT TO COMPLIANCE WITH THE IDAHO CODE SECTION 31-3809(1)(b) CONCERNING IRRIGATION WATER.
6. EXISTING ZONING OF SUBJECT PROPERTY IS B1 RESIDENTIAL WITH ANIMALS.
7. THE CITY OF WEISER SHALL BE RESPONSIBLE FOR ROAD MAINTENANCE.
8. LOTS 1 THRU 19 BLOCK 1, LOTS 1 THRU 19 BLOCK 2 AND LOTS 1 THRU 5 AND 7 THRU 11 BLOCK 3 IN THIS SUBDIVISION ARE FOR RESIDENTIAL USE.
9. NO ACCESS SHALL BE ALLOWED TO LAND IN A PLATTED SUBDIVISION OTHER THAN THE INTERNAL SUBDIVISION STREETS OR AS OTHERWISE SHOWN ON THE PLAT.
10. RESPONSIBILITY OF THE PROPERTY OWNER OR PLATTEE FOR THE STORM DRAINAGE FACILITIES OUTSIDE THE PUBLIC RIGHT OF WAY SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER OR PLATTEE. STORM DRAINAGE FACILITIES INCLUDE ALL DRAINAGE BOTH ROUTINE AND NON-ROUTINE. ALL SURFACE DRAINAGE WILL BE REMAINED ON SITE.
11. NO NEW DEVELOPMENT OR REDEVELOPMENT OF LAND MAY DISCHARGE STORM WATER ONTO HIGHWAY DISTRICT RIGHT OF WAY OR INTO THE DISTRICTS SEPARATE STORM SEWER SYSTEM.
12. THE TEMPORARY BUILDING ENCROACHMENT EASEMENT SHOWN IN SOUTHERN PORTION OF LOTS 17 AND 18 BLOCK 3 SHALL REMAIN IN PLACE AND SHALL VACATE UPON BUILDING DEMOLITION, CONDEMATION, OR DESTRUCTION.
13. LOT 20 BLOCK 3 & LOT 6 BLOCK 3 SHALL BE OWNED AND MAINTAINED BY THE HOME OWNERS ASSOCIATION AND IS SUBJECT TO A NON-RECURRING DRAINAGE AND UTILITIES EASEMENT.
14. SUBDIVISION IS 8.88 ACRES.
15. THERE ARE 37 BUILDABLE LOTS AND 2 COMMON LOTS FOR A TOTAL OF 39 LOTS.



TIMBERLINE SURVEYING
601 RANNEYVILLE ROAD, SUITE 100, BOISE, IDAHO 83706
P: 208-465-5687 F: 208-465-5620
T: 208-465-5687
JOSHUA W. WASHINGTON
SHEET 1 OF 2
INDEX NO. 1051-02-0-00-00
REVISIONS
DATE
DESCRIPTION



CURVE	RADIUS	DELTA	LENGTH	TANGENT	BEARING	CHORD
C1	125.00'	0°50'57"	1.95'	0.53'	N88°50'45"W	1.95'
C2	125.00'	10°26'57"	42.43'	21.42'	N78°41'49"W	42.23'
C3	65.00'	69°42'02"	79.07'	48.28'	N4°07'19"W	74.28'
C4	33.00'	90°00'00"	83.25'	53.00'	N40°43'41"E	74.95'
C5	150.00'	18°14'28"	42.82'	21.40'	N81°09'00"W	42.38'
C6	150.00'	4°03'26"	10.62'	5.31'	N71°00'03"W	10.82'
C7	90.00'	4°26'14"	6.97'	3.48'	N86°45'13"W	6.97'
C8	90.00'	34°15'54"	53.82'	27.74'	N47°24'09"W	53.83'
C9	90.00'	26°33'40"	41.72'	21.24'	N16°59'21"W	41.35'
C10	90.00'	4°26'13"	6.97'	3.48'	N101°29'25"W	6.97'
C11	78.00'	27°20'35"	37.22'	18.87'	N14°23'59"E	38.87'
C12	78.00'	27°43'56"	37.75'	19.25'	N41°56'15"E	37.38'
C13	78.00'	34°55'27"	47.54'	24.54'	N7°15'59"E	46.81'
C14	28.00'	89°59'56"	43.89'	28.00'	N44°16'16"W	38.80'
C15	28.00'	110°17'58"	53.89'	40.23'	N65°52'41"E	45.96'
C16	40.00'	63°27'33"	44.30'	24.73'	N37°14'34"W	42.07'
C17	40.00'	8°14'23"	4.35'	2.18'	N82°28'33"W	4.36'
C18	28.00'	90°00'00"	43.89'	28.00'	S45°43'41"W	38.80'
C19	28.00'	90°00'00"	43.89'	28.00'	N44°16'16"W	38.80'
C20	28.00'	90°00'00"	43.89'	28.00'	N45°43'41"E	38.80'

DISCLAIMER: Timberline Surveying assumes no responsibility for present or future compliance with applicable laws, codes, ordinances, rules, regulations, or other governmental requirements. The user of this plat is advised to consult with the appropriate governmental authorities for the latest requirements. The user of this plat is advised to consult with the appropriate governmental authorities for the latest requirements. The user of this plat is advised to consult with the appropriate governmental authorities for the latest requirements.

NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING: On February 20, 2024 in the City Council Chambers at 55 West Idaho, Weiser, ID 83672 at 6:00p.m. the Weiser Planning and Zoning Commission will hold a public hearing to receive comment on a variance request on front setbacks in the Old's Ferry Subdivision Lots 1-6 Block 2 by owner Todd Ostrom.

GENERAL DESCRIPTION: East side of West 9th Street and South of the Galloway Canal.

LEGAL DESCRIPTION

All that part of Block "P" and "Q" of Butterfield Tract, as shown on the official plat of said Tract on file in the Office of the County Recorder of Washington County, Idaho, described as follows:

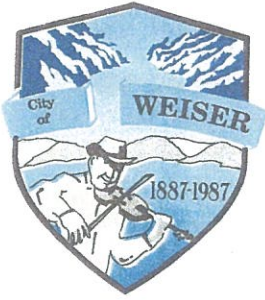
Commencing at a point on the West line and 385 feet North of the Southwest corner of said Block "P"; Thence East parallel to the South line of said Block "P" 456.8 feet; Thence North parallel to the West line of said Block "P" to the right-of-way of the Weiser Irrigation District Canal; Thence Northwesterly along said right-of-way to the West line of said Block "Q"; Thence South along the West line of said Block "Q" and "P" 934.6 feet, more or less, to the place of beginning. All of the above described real estate being situation in Section 30, Township 11 North, Range 5 West of the Boise Meridian, Washington County, Idaho.

ALL INTERESTED PERSONS: are invited to attend the hearing, or submit written comment seven (7) days prior to the hearing.

FOR MORE INFORMATION: Please contact Dave Loos, Planning and Zoning Administrator, at Weiser City Hall, 8:00 a.m. to 5:00 p.m. at (208)414-1965.

Any persons needing special accommodations to participate in the above notice meeting contact Dave Loos four (4) days prior to the meeting at Weiser City Hall, 55 West Idaho, Weiser, Idaho 83672.

DRAFT



**CITY OF WEISER
PLANNING & ZONING MEETING
CITY COUNCIL CHAMBERS
55 WEST IDAHO
WEISER, IDAHO
PUBLIC HEARING
February 20, 2024
6:00pm**

Roll Call 6:00:51 PM

PRESENT:

Jay Edwards, Heather Dryden, Mark Christensen, Clarence Stark and Tony Edmondson.

ABSENT:

John Jensen and Ken Lukehart.

STAFF:

Brianna Chaney and Dave Loos.

GUESTS:

Hunter Ostrom, Kerigan Moms and Susan McCoy.

1. TKO Homes LLC Application for Variance 6:01:42 PM

6:01:44 PM Hunter Ostrum from TKO Homes introduced himself and said they are requesting a variance for the Old's Ferry Subdivision for the lots against the irrigation canal. The reason for the request is to be able to bring these houses forward 5ft to be able to give them a back yard.

6:03:26 PM Tony Edmondson asked if the fence they would be installing at the rear of these properties will be placed at the foot of the canal. Hunter said they are waiting for a meeting with the guy that is the head of the irrigation cleanout so they can get an exact location. He said there is nothing put in place for where it is supposed to be. Tony asked what the purpose of the fence would be. Hunter said it is for privacy as well as aesthetics for the rest of the subdivision. He said most of their buyers also have kids, and they do not want to have the back yard open to the canal.

Tony said he went out and looked at the site and when he came back and looked at the lot, most of them just make the requirements classified by that zoning. He said he would imagine that if they put the fence in, it would effectively reduce the back yard. Hunter said yes, the property pins are set in the canal so they are already losing 14 feet roughly.

6:07:39 PM Mark Christensen asked if there was any testimony in favor of the application. There was none. He asked if there was any neutral to the application. There was none.

6:07:48 PM Mark asked if there was any testimony against.

6:08:01 PM Susan McCoy stated the problem she has is the streets were narrowed. If you look at the subdivision on 11th and Pioneer it is a nightmare with cars parked in the road, it is barely a one way road. If you don't have as much off street parking as possible you will get the same result. She said she thinks maybe they should try to replat those properties to get some decent building sites. She said she feels the original plat was flawed.

6:09:40 PM Ken Lukehart Joined meeting

6:09:49 PM Dave Loos said replatting that would not make any difference in the setback. Making them wider would not fix the problem.

6:10:23 PM Hunter Ostrum said when it comes to the street parking they do have it written that no one will be able to park on the street for more than a day. He said that will be up to the Home Owners Association but they have addressed that issue. Their goal is essentially to add 5 feet of backyard for the people that are going to live there.

6:12:22 PM Tony Edmondson asked if they would be able to meet front and back setbacks on all of the lots, including the ones that are much shallower. Discussion followed.

6:15:59 PM Hearing Closed.

Dave Loos, P&Z Administrator

Bri Chaney, P&Z Secretary

"Any person needing special accommodations to participate in the above noticed meeting should contact the Weiser City Clerk four(4) days prior to the meeting at Weiser City Hall, 55 West Idaho, Weiser, Idaho 83672."

DRAFT



**CITY OF WEISER
PLANNING & ZONING MEETING
CITY COUNCIL CHAMBERS
55 WEST IDAHO
WEISER, IDAHO
PUBLIC HEARING
February 20, 2024
7:00pm**

Roll Call [7:00:12 PM](#)

PRESENT: Jay Edwards, Heather Dryden, Ken Lukehart, Mark Christensen, Clarence Stark and Tony Edmondson.

ABSENT: John Jensen.

STAFF: Brianna Chaney and Dave Loos.

GUESTS: Hunter Ostrom, Kerigan Moms and Susan McCoy.

MINUTES

Minutes of Planning and Zoning Meeting- Action Item Motioned by Tony Edmondson and seconded by Ken Lukehart to approve the minutes from the January 16, 2024 meeting.

[7:01:07 PM](#)

AYES: Jay Edwards, Heather Dryden, Ken Lukehart, Mark Christensen, Clarence Stark and Tony Edmondson

NAYES: None

ABSTAINED: None

MOTION CARRIED.

.

New Business

1. TKO Homes LLC Application for Variance- Action Item [7:01:11 PM](#)

[7:01:23 PM](#) Jay Edwards said the irrigation district will not let anyone put fence in their right of way. The fence would have to be below. He said there is an agreement in place from the prior developer that bought the property.

[7:02:40 PM](#) Mark Christensen said when they met on this topic before Tony read some language in the code that suggested that a variance was the way that they could get this approved. He asked if there was anyone else that needed to hear that again or to reaffirm what they are trying to do.

7:03:11 PM Tony Edmondson said he feels it is useful to go through the practice of how they came to their decisions.

He read from state code and case law.

Motioned by Heather Dryden and seconded by Tony Edmondson to approve the request for TKO Homes for the 5ft variance.

7:09:07 PM

AYES: Jay Edwards, Heather Dryden, Ken Lukehart, Mark Christensen, Clarence Stark and Tony Edmondson

NAYES: None

ABSTAINED: None

MOTION CARRIED.

2. Comprehensive Plan Update 7:10:23 PM

7:10:25 PM Mark said he feels like there is room for improvement with the Comprehensive plan. Discussion followed.

7:16:52 PM Tony Edmondson said there is a zoning map for city limits and there should be language somewhere in Ordinance that was adopted that has those specific boundaries.

7:17:33 PM Natasha McDaniel said she will look for that verbiage because there should be a legal description somewhere.

7:18:21 PM Tony Edmondson said if you look in code under the different zoning there is a reference to an ordinance and a date in there.

Discussion followed regarding the Land Use Map.

7:21:38 PM Clarence Stark said he knows the County has the software and means to print maps, so it is possible we can reach out to them and have them print maps for us.

7:23:17 PM Clarence Stark said he suggests if they want to put discussion on the Comp Plan on the agenda they should have specific sections they will be discussing so that they can prepare.

3. Education Plan Update 7:24:35 PM

7:24:40 PM Natasha McDaniel said they looked into the training that Mark had found.

They felt it was a good course, but when they went forward to try to purchase it the website was no longer available. She said she has a call into them.

7:25:51 PM Mark Christensen said the AIC organization is supposed to be produced a series of videos as well, but so far they have only produced one. Further discussion followed.

4. Design Committee Report 7:27:51 PM

7:28:03 PM Tony Edmondson said in our codebook it refers to our landscape design guidelines that did not exist. The Mayor created this design review committee. Discussion followed.

Unfinished Business

1. Traffic Study Discussion 7:34:06 PM

7:34:10 PM Mark Christensen it is nice when they can get some feedback on things that they recommend. He asked if Dave had any update on what was going on with the traffic study.

7:34:40 PM Dave Loos said he doesn't have information on what is going on with the traffic study, that is Mike Campbells area. He said he will speak with him and get that information back to them.

2. Outstanding Projects Discussion Including 9th Street Subdivisions, Maverik, RV Park & O'Reilleys. 7:35:25 PM

7:35:35 PM Dave Loos said the Old's Ferry Subdivision is complete. They have 8 houses going in and there are two permits ready for them to pick up. In the Sundance Pointe Subdivision it is finished, they have 3 foundations in and are getting permits issued. They plan to be finished before June.

On Maverik he believes they are ready to start. The RV Park just submitted a new set of prints. O'Reilleys said they still waiting on bidding.

More discussion followed.

3. Adjournment- Action Item 7:41:49 PM

Motioned by Heather Dryden and seconded by Tony Edmondson to adjourn the meeting.

7:42:11 PM

AYES:

Jay Edwards, Heather Dryden, Ken Lukehart, Mark Christensen, Clarence Stark and Tony Edmondson

DRAFT

NAYES: None
ABSTAINED: None
MOTION CARRIED.

Dave Loos, P&Z Administrator

Bri Chaney, P&Z Secretary

FINDINGS OF FACT TKO VARIANCE February 20, 2024

Lots 1-6 Block 2 Olds Ferry Subdivision is bordered by the Galloway Canal along the north boundary. The north 26 feet of each lot is covered by the canal limiting the buildable site. Tony Edmunson read the Idaho Code on granting variance to the set back. This request f fits its criteria.

A single objector said the lots need to be replatted because the actual user size is reduced by the Canal Bank.

The Commission voted unanimously to approve the variance.

March 2, 2024

Jay Edwards, Planning and Zoning Commissioner.

Finding of Fact and Conclusion

Before the City of Weiser

Planning and Zoning Commission

February 20, 2024

Reason for Application Request:

Application submitted by TKO Homes to request a variance for 6 lots on Old's Ferry Subdivision. Asking that they be allowed to use 5ft of the common property at the front of the lots so the 25ft. setback can be measured from this location instead of the pins.

Finding of Facts:

- Purpose of public hearing was to have all interested persons invited to give comment on zone change.
- No Testimony in favor.
- No testimony neutral.
- Susan McCoy was not in favor. She thinks they should replat the property.
- Variance fits what the state requires to be a reason to grant this request.

Comments:

TKO came back requesting a variance for the 6 properties that were most affected by the ditch and ascetics of the properties. We found that the properties fit what the state considers to be reason for asking for this variance. Characteristic, showing undue hardship and if granting will it cause hardship to the public. After discussion the ditch bank qualifies for the characteristic, The fence 5ft from the home shows undue hardship, and there is no detriment to the public by granting this 5ft.

Conclusion:

Recommendation is made to grant TKO homes a variance on the setback request. All in favor of request.

Heather Dryden

City of Weiser, P&Z Commissioner

Findings of Fact & Conclusions
Variance Request from TKO Homes 02-20-24
By Tony Edmondson

Findings:

State Code 67-6516 states; Variance was established to provide for a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of the lots. A variance shall not be considered a right or special privilege but may be granted to an applicant **only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest.**

Weiser City Code 11-8-2, section B states; The strict compliance with the requirements of this title would result in “**Extraordinary**” hardship to the subdivider because of unusual topography, other physical conditions or other such conditions which are not self-inflicted or that these conditions would result in inhibiting the achievement of the objectives of this title.

How I interpret all this comes down to three basic elements.

1. Is there a “characteristic” to the site that meets the variance intent?
2. Is there a showing of “undue or extraordinary hardship”?
3. Will granting this variance be detrimental to the public welfare or injurious to other property in the area.

In my view, there is indeed a unique characteristic to these lots that qualifies them for consideration to grant a variance. These lots extend into the Galloway ditch itself and are subject to a 26’ setback easement imposed by the Canal Company which extends to the foot of the ditch embankment where a fence will be erected just a few feet from the rear wall of the home unless

this is approved. This effectively reduces even the largest of these lots, to something less than the 7,200 SF minimum usable lot size envisioned in our zoning ordinance. In some cases, it represents a loss of nearly 2,000 SF! Even approving the 5' variance on front setback will not assure this minimum usable lot size is achieved for all lots in this request.

Neither can I determine any significant detriment to the public welfare if approved. Whether the front setback of these homes is 25' or 30' from the sidewalk will have minimal impact on the visual or functional qualities of these lots or the subdivision itself. Where I struggle is in determining a showing of "undue or extraordinary hardship". Three principal considerations for determining this come to my mind.

1. The original developer of this subdivision plated these lots with full knowledge of how the ditch would impact placement of structures while meeting required setbacks. I must assume he felt they were marketable as designed. The applicant has stated however, that even with their smallest home models, the rear fence could be as near as 5' from the rear of the home.
2. What insights does case law provide in defining "undue hardship"? I spent an hour searching the internet for some clarity in defining "undue hardship". There is plenty of variance case law involving the site characteristic and detriment to public welfare requirements that should encourage us to not take these requests lightly or capriciously. But I could find no clarity on establishing the threshold of undue or extraordinary hardship that would be applicable to this request.
3. Was the hardship self-inflicted? I found examples of waterfront property which was only accessible by building a stairway or dock that inherently bumped up against setback standards. Whether the purchase price reflected a reduced value due to this limitation or that the buyer should have known access was limited, wasn't a factor in sustaining a legal challenge to the approved variance. This leads me to interpret that the applicant's decision to purchase this property knowing these lots would be a problem, shouldn't be equated as a self-inflicted.

I've therefore concluded that requiring the applicant to substantially alter his standard home models or other enhancements to the lot would constitute an "undue or extraordinary hardship".

Conclusions:

Having met the standard for approval of a variance, I would move or support a motion to approve this request.

STAFF REPORT

TKO Homes Boise LLC. Variance

HEARING DATE: February 20,2024

ADDRESS: West 9th Street

PARCEL NUMBER:

LEGAL DESCRIPTION: Lots 1-6 Block 2 Olds Ferry Subdivision

APPLICANT:

SUMMARY OF THE PROPOSAL

Want a Variance on Front Setbacks do to the Slope of the Irrigation Canal cutting into the depth of these lots

**APPLICABLE ORDINANCE
11-8-2**

PROJECT DESCRIPTION

PROPOSED USE:B-1 Residential

ACCESS: Wagon Road

IRRIGATION: City Water

SEWER AND WATER:City of Weiser

AGENCY RESPONES:

RECOMMENDED FINDINGS OF FACT

SITE CHARACTERISTICS

- 1. Property Size: 7200 + S.F.**
- 2. Existing Structures: None**
- 3. Existing Vegetation:**
- 4. Soil Information:**

5. Slope:
6. Irrigation:
7. Access:

VICINITY CHARACTERISTICS:

8. Existing Homes in Area:
9. Average Lot Size:
10. Platted Subdivisions:
11. Comprehensive Plan Designation:
12. Current Land Use:
13. Current Zoning:
14. Surrounding Land Use:
15. Area of City Impact:
16. Area(s) of Concern:
17. Services:

PROCEDURAL HISTORY

RECOMMENDED CONCLUSIONS OF LAW

RECOMMENDED ORDER

The City Staff recommends the Approval of this Variance as it meets 11-8-2 Section B unusual topography of the land