

**Hearing Examiner's Report
VAR 23-539**

DATE: April 13, 2023

APPLICANT NAME: Nathan Stewart

MAILING ADDRESS: 132 S. 12th Avenue, Pocatello, ID 83201

PROPERTY OWNER: Nathan Stewart

LOCATION OF REQUEST: 423½ N. 9th Ave., Pocatello, ID, 83201

LEGAL DESCRIPTION: See Application

TYPE OF REQUEST: Variance

I. REQUEST

The applicant requests a variance from Pocatello Municipal Code section 17.03.600 which requires a minimum lot size for three-family units in RMM at 3,630 square feet per unit or a total of 10,890 square feet. The applicant seeks to rebuild an existing three-family unit which does not conform to the lot size standards. The applicant is proposing that lot size for three-family units is reduced to 6,300 square feet. The units are considered legal, nonconforming and are subject to Administrative Provisions found in Pocatello Municipal Code 17.01.170.

II. FINDINGS OF FACT

1. The Hearing Examiner disclosed there were no ex-parte communications regarding this request.
2. The Hearing Examiner disclosed that he visited the site prior to the Public Hearing to observe the physical character and relationships to subject property.
3. The Hearing Examiner disclosed that he does not have any conflicts of interest regarding this application.
4. Zoning designation: Residential Medium Density Multi-Family (RMM)
5. The existing dwelling unit in which the applicant is seeking to expand is considered a legal nonconforming three-family dwelling.

6. The applicant requests a variance from Pocatello Municipal Code §17.03.600 which requires a minimum lot size for three-family units in RMM at 3,630 square feet per unit or a total of 10,890 square feet. The applicant seeks to rebuild an existing three-family unit which does not conform to the lot size standards. The applicant is proposing that lot size for three-family units is reduced to 6,300 square feet. The units are considered legal, nonconforming and are subject to Administrative Provisions found in Pocatello Municipal Code §17.01.170.
7. The existing dwelling unit in which the applicant is seeking to expand is considered a legal nonconforming building. Pocatello Municipal Code §17.01.170: Administrative Provisions, addressed situations regarding nonconforming situations. §17.01.170.2b states that “Permits to replace or expand existing nonconforming structures by up to a total of fifty percent (50%) of the original building area may be sought through the variance process regardless of the underlying zoning district. Any modification to bulk or placement of a nonconforming structure, including increased building height or decreased setbacks, will require a variance.” Further, §17.01.170.2c sets out the following criteria for variances regarding the expansion of a nonconforming structure:
 - a. The lot or parcel was legally created.
 - b. All bulk and placement standards such as height, setbacks, etc., shall be met, except as specifically varied through this process.
 - c. The proposed development shall not adversely impact the public's health, safety, or general welfare and the visual appearance of the development will not produce an effect inconsistent with adjacent and surrounding architecture and site development patterns.
8. Property size: 6,300 square feet (more or less)
9. In accordance with Municipal Code §17.02.300 and Idaho Code §67-6512, a complete variance application was filed with the City of Pocatello Planning and Development Services Department at least four weeks prior to the public hearing.
10. The application was scheduled to be heard before a Hearing Examiner at the City of Pocatello City Council Chambers on April 13, 2023 at a public hearing in accordance with Municipal Code §17.02.300 and Idaho Code §67-6512.
11. Notice of the public hearing was in accordance with Municipal Code §17.02.170 and Idaho Code §67-6512. All notices herein described have been provided at least fifteen (15) days prior to the public hearing or as otherwise required by Idaho State Code. There was no public comment received prior to the completion of this report.
 - a. Notices to adjoining property owners were mailed on March 23, 2023.
 - b. A sign was placed on the property on March 23, 2022.
12. Type of Action: Quasi-Judicial. The Hearing Examiner may approve with or without conditions or may deny the application. The decision may be appealed by the applicant or other affected persons according to the provisions of Idaho Code Section §67-6521 to the City Council, using the process outlined in Municipal Code Section §17.02.400, Appeals.
13. Municipal Code §17.02.300 states that variances shall be heard and decided on by the Hearing Examiner with an appeal to City Council.

Municipal Code Section §17.02.170(A) defines variances as: “A variance is a modification of the bulk and placement requirements of this ordinance as to lot size, lot coverage, lot width, lot depth; front yard, side yard rear yard setbacks; parking space requirements, height of buildings, or other ordinance provisions adversely affecting the development or use of property. 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 the characteristics of the site and that the variance is not in conflict with the public interest. **G.** The granting of a prior variance or referencing property developed under prior regulations is not admissible evidence for the granting of a new variance. Each request for a variance shall be judged on its own facts and circumstances. **H.** The burden of proof that the proposed variance complies with all of the variance criteria as described under subsection F of Title 17, Chapter 17.02.170, is the responsibility of the applicant. The applicant must support their case with substantial and competent evidence.

14. Staff Analysis: William Klaver, Assistant Planner presented the Staff Report.
15. Applicant Presentation: The Applicant, presented the purpose of the application. Details of which are outlined in the actual application.
16. Public Input:
 - a. Public Comment: There were no written comments received by the City of Pocatello prior to this Hearing.
 - b. Public Hearing:

The Public Hearing was opened at approximately 5:43PM.

No comments were heard in opposition to the application.

No comments were heard neutral to the application.

No comments were heard in favor of the application.

The Public Hearing was closed at approximately 5:43 PM.
17. Hearing Examiner noted that the decision would be available to public on Tuesday, April 18, 2023, by 12:00 PM. Idaho Code Section 67-6521 allows the applicant and/or other affected persons who do not agree with the decision of the Hearing Examiner to appeal in writing to the City Council within ten (10) days from the date of the Hearing Examiner’s decision. At that time, additional fees may be required, and a new timeline may be established for the City Council consideration of the appeal.

III. VARIANCE FINDINGS

Findings for how the proposed use complies with standards for a variance (Section 17.01.170.A) are as

follows:

1. The lot or parcel was legally created.

The location is Block 173, Lot 7 and 15 feet of Lot 6 of the Original Townsite. This makes the lot 45 ft by 140 ft or 6,300 sq. ft. In 2017 and 2019, a Zoning Determination on the subject property was conducted. It was determined the property was legal, nonconforming with three (3) units based on the 1960 Polk directory and building permit records.

2. All bulk and placement standards such as height, setbacks, etc., shall be met, except as specifically varied through this process.

Currently, the building sits at or near the rear property line. To come further into compliance, the applicant has agreed that the building will come into compliance with the rear setback of ten (10') feet. Current and proposed structures meet the side setback requirement in the Original Townsite Overlay (OTO) of five (5') feet. All other requirements shall be met as outlined in 17.03.600, 17.04.220, and 17.05.610 of Pocatello Municipal Code.

3. The proposed development shall not adversely impact the public's health, safety, or general welfare and the visual appearance of the development will not produce an effect inconsistent with adjacent and surrounding architecture and site development patterns.

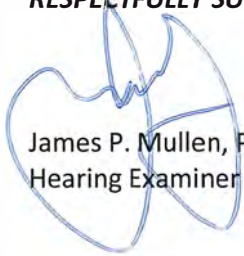
The request is to rebuild an existing unit. No expansion or change to the degree of noise, vibration, dust, odor, fumes, glare, or smoke. The amount and kinds of vehicular trips will remain the same. No expansion of the intensity of use is proposed. No change in the amount of outside storage, loading and parking will result in the variance requested. Parking will be pushed to the back and would cause less visual of the existing parking. The visual appearance will remain the same. The unit is existing and the height and square footage will not be increased with the approval of the requested variance.

V. CONCLUSIONS AND DECISION

Based on the review of the application, staff analysis, and site visit, it is the opinion of the Hearing Examiner that the application for a Variance (VAR 23-539) for subject property substantially complies with the standards of Pocatello Municipal Code §17.01.170(A)(2)(c) and as set forth in other municipal code and ordinances. As Hearing Examiner, I hereby approve the Variance as requested subject to the following conditions:

1. Landscape all areas from the front of the building to North 9th Avenue, not of concrete, with vegetative cover. Provide a landscaping plan for approval by City staff prior to approval of a building permit.
2. Remove the existing tree stumps and plant four (4) trees with a minimum of two (2") inch caliper in the front setback. Show these items on a landscaping plan prior to approval of a building permit. Complete the removal of tree stumps and plant trees within 1 year of approval.
3. Adhere to any standards/regulations not herein specifically noted but applicable to the proposed development.
4. Apply for and obtain a building permit prior to any construction activities on the subject property.

RESPECTFULLY SUBMITTED this 17th day of April 2023,


James P. Mullen, P.E.
Hearing Examiner

STATE OF IDAHO)

ss:

County of Bannock)

On this 17th day of April, 2023, before me, the undersigned, a Notary Public in and for the State, personally appeared James P. Mullen, known to me or proved to me to be the person whose name is subscribed to the foregoing instrument, and being duly sworn, acknowledged to me that James P. Mullen executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Jamie Kerbs
NOTARY PUBLIC FOR IDAHO
Residing in Pocatello, Idaho
My commission expires: 7/2/2027