



## Planning and Zoning Commission Staff Report

### Ken Volovsek – Variance – PH2017-51

Hearing Date: September 21, 2017

Development Services Department

<p><b><u>Owner/Applicant:</u></b> Ken Volovsek</p> <p><b><u>Staff:</u></b> Kyle McCormick, Planner (208) 455-5958 kmcormick@canyonco.org</p> <p><b><u>Tax ID:</u></b> R30763</p> <p><b><u>Current Zone:</u></b> “AG” (Agricultural)</p> <p><b><u>Comprehensive Plan:</u></b> 2020 Canyon County Comprehensive Plan</p> <p><b><u>City Impact Area:</u></b> City of Nampa</p> <p><b><u>Lot Size:</u></b> .5 Acres</p> <p><b><u>Current Uses:</u></b> Single Family Residential</p> <p><b><u>Applicable Regulations:</u></b> §07-10-21: Setbacks §10-08-6C: City of Nampa Setback Requirements §07-10-23: City Impact Areas §07-08-03: Variance Criteria</p> <p><b><u>Notification:</u></b></p> <ul style="list-style-type: none"><li>• August 18, 2017 – Agencies/JEPA</li><li>• August 18, 2017 – Property Owners</li><li>• September 3, 2017 – Legal Publication</li><li>• September 14, 2017 – Posting</li></ul> <p><b><u>Exhibits:</u></b></p> <ol style="list-style-type: none"><li>1. Draft FCO’s</li><li>2. Letter of Intent/Site Plan</li><li>3. Aerial Map</li><li>4. Canyon County Future Land Use Map</li><li>5. Nampa Transportation Master Plan Required Right-of-Way Map</li><li>6. Letter from Robert Hobbs on setbacks and classification for subject address</li><li>7. Zoning and Classification Map</li><li>8. Nampa Transportation Master Plan 2035 Functional Classification Map</li><li>9. Site Photos</li><li>10. Nampa Fire District</li><li>11. Southwest District Health permit</li></ol>	<p><b><u>Request</u></b></p> <p>The applicant, Ken Volovsek, is requesting a <b>variance</b> to reduce the required 20 foot front yard setback to 0 feet (City of Nampa Zoning Ordinance Section 10-8-6C). Section 07-10-23 of the Canyon County Zoning Ordinance allows the applicant to apply the applicable city setbacks within the adopted city impact areas. The property is located at 17540 11<sup>th</sup> Avenue Nampa, ID 83687. The property is also known as tax parcel R30763 in the NW quarter of Section 1, Township 3N, Range 2W, BM, Canyon County, Idaho.</p> <p><b><u>Background</u></b></p> <p>The subject parcel was created through a conditional use permit which split this .56 acre parcel from the remaining 40 acre parcel. The property has frontage on 11<sup>th</sup> Avenue which is designated as a collector road with an 80 foot total right-of-way with 40 ft. from the centerline on both sides (Exhibit 4, 5). The speed limit is 35 MPH. If this request is approved the applicant plans to build a shop that will be located 40 ft. from the centerline of 11<sup>th</sup> Avenue (Exhibit 2) instead of the required 60’ from the centerline (40’ Right-of-Way + 20’ Front Yard Setback). This variance is to vary the front yard setback from 20’ to 0’. They have submitted a building permit for the attached shop (BP2017-190). The applicants previously pulled a building permit for a single family residence, which currently sits back 70’ from the centerline of 11<sup>th</sup> Avenue (See Site Plan, Exhibit 2).</p> <p>The property has frontage on 11<sup>th</sup> Avenue North. 11<sup>th</sup> Avenue North is designated as a collector road (Exhibit 8) with an 80 foot total right-of-way with 40 ft. from the centerline on both sides (Exhibit 4). The required 20’ front setback is measured from the 40 ft. half width right-of-way line. Within City Impact Areas, the Canyon County Zoning Ordinance allows property owners to utilize the applicable city setbacks, in this case the property owner is desiring to utilize City of Nampa setbacks which are the following for a residential property:</p> <p>Front Yard Setback: 20’ from Right-of-Way Line (Right-of-Way is One side yard: 5’ One side yard: 10’ Rear Yard Setback: 5’</p> <p>Robert Hobbs of the City of Nampa Planning and Zoning Department stated in a letter to the property owners regarding city setbacks that this property would be classified as RS (Single Family Residential) 8.5 if annexed by the City (Exhibit 6). This zone requires the property owner to utilize the above mentioned setbacks.</p> <p>The proposed shop will be located approximately 42 ft. from the centerline of 11<sup>th</sup> Avenue North (see letter of intent &amp; site plan, Exhibit 2). The structure will meet all other required setbacks.</p>
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<p>12. City of Nampa Engineering Department Comments</p> <p>13. City of Nampa Construction Drawings, cross section of a new collector road</p> <p>14. City of Nampa Construction Drawings: Clear Vision Triangle</p> <p>15. Clear vision diagram drawn on site plan</p>	<p>A collector road is defined in the Canyon County Comprehensive Plan as roads providing traffic circulation within residential, commercial and industrial areas. Collectors carry trips to and from arterials. Single-family homes are normally discouraged from having driveways onto collectors. Urban collector standards are generally two to three traffic lanes with sidewalks. The local roadway jurisdictions are responsible for the classification of collector designations, as collectors are considered more local in nature (Page 59, Canyon County Comprehensive Plan).</p> <p><b><u>Analysis</u></b></p> <p>To approve a variance, Canyon County Code §07-08-03(2) requires the Commission to make the following findings:</p> <p style="padding-left: 40px;">A. <i>Will granting the variance be consistent with the comprehensive plan;</i></p> <p style="padding-left: 40px;">B. <i>Do characteristics of the site create an undue hardship; and</i></p> <p style="padding-left: 40px;">C. <i>Is the variance in conflict with the public interest?</i></p>
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**§07-10-23: CITY IMPACT AREA**

Pursuant to §07-10-23 of the Canyon County Zoning Ordinance, structures within City Impact areas may utilize the applicable City setback and height requirements. Section 10-1-02 of the Nampa City Code defines the front yard setbacks as “The distance (typically expressed in measurements in feet) that buildings or uses must be removed from the property lines of the lot or parcel upon which they rest or will be placed...Front yard setbacks for any property are and shall be established when and where said property abuts a public street/right of way..” The applicant is seeking a variance to reduce the front setback from twenty (20) feet to zero (0) feet in order to place a shop building on the property (Exhibit #2).

**§07-08-03(2)(A) CONSISTENCY WITH COMPREHENSIVE PLAN**

The subject property is currently designated “Agricultural” with a designation of “Agricultural” on the Canyon County Comprehensive Plan Future Land Use Map (Exhibit #4). The property is agriculture with a residence which is an allowed use in the agricultural zoning district. Therefore, the proposed variance will not conflict with agricultural and residential uses within the vicinity.

In addition, staff has determined the following Comprehensive Plan Goals and Policies are relevant to this case:

- Property Rights Policy No. 1- “No person shall be deprived of private property without due process of law.” The proposed variance does not deprive property owners of private property.
- Property Rights Policy No. 11- “Property owners shall not use their property in a manner that negatively impacts upon the surrounding neighbors or neighborhoods.” There is no evidence on the record that a variance for a front setback reduction will negatively impact surrounding neighbors or neighborhoods.

**§07-08-03(2)(B) UNDUE HARDSHIP AND IDAHO CODE 67-6516 VARIANCE**

Canyon County Code or Idaho Code does not define undue hardship for the purposes of a variance. However, undue hardship can be deduced from the criteria for a variance listed in Idaho Code §67-6516. Section 67-6516 allows the County to grant a variance if the characteristics of the site create a hardship that prevents an applicant from complying with a portion of county code eligible for a variance. Should the characteristics of the site prohibit the applicant from complying with Canyon County Code §07-10-21, staff would support the approval of the applicant’s request.

As stated in the applicant’s letter of intent and site plan (Exhibit #2), the site is constrained by septic and well placement requirements due to open water (canal on the north side of the property) which requires a the drain field and replacement drain field to be located on the back side of the property. Placement of the shop in the back of the property could not occur due to the location of the drain field and replacement drain field (See SWDH Permit diagram, Exhibit 11). The lot is narrow and small which constrains access to the back of the property. Access to the back of

the property must be maintained for irrigation purposes, therefore the applicants cannot build closer to the side property lines.

### **§07-08-03(2)(C) CONFLICTS WITH THE PUBLIC INTEREST**

Staff defines the public interest to be the welfare or well-being of the public. Staff finds no evidence that the placement of the structure zero (0) feet from the Right-of-Way line would create conditions that conflict with the welfare or well-being of the public. The front of the shop will be on the wall opposite of the road and there will be no windows on the side of the building adjacent to 11<sup>th</sup> Avenue. Brent Hoskins from the Nampa Fire District stated in an e-mail that there is no fire district regulation that will require any setbacks or other requirements from the build out of the road (Exhibit 9). Nampa's Transportation Master Plan calls for improvements to occur on this section of 11<sup>th</sup> Avenue in 2025 (Exhibit 10, Nampa Transportation Plan Future Conditions Map). According to the City of Nampa Standard Construction Specifications, Standard Drawing N-821A for a new collector street the edge of the curb for a full build out of the collector street will be 24 ft. from the center of the road to the edge of the curb (Exhibit 13). From the edge of the curb will be 8' minimum planter and then a 5' sidewalk and then a 3 ft. space. The proposed structure will be located around that 42' from the centerline of the road which leaves a 5' space in-between the sidewalk and the side of the proposed structure. The side of the structure will not have any windows or other wall fenestration. The location of the proposed structure appears to be adequately spaced from the sidewalk to still allow the purpose of the front yard setback to be fulfilled. As stated by Daniel Badger, City of Nampa Engineer, the purpose of the setback and front yard requirements are established to ensure that arterial and collector streets that traverse through the zone to attain an aesthetically pleasing and symmetrically pleasing and symmetrical character, provide a buffer area for protection from smells, sounds, and lights, pedestrian walkways, and to establish landscape corridor vistas, etc. (Exhibit 12). From the construction drawing provided on a new collector street, staff feels that the requested setback variance will still allow the setback to achieve its purpose of providing aesthetically pleasing buffers and protection of impacts to pedestrian walkways and landscaping as well as sounds and smells.

Additionally, it was the concern of staff that this requested variance may impose a sight obstruction of oncoming traffic for the driveway location. According to Nampa Standard Construction Specifications manual, Standard Drawing N-828, Clear Vision Triangle diagram, the proposed structure will not obstruct sight distances required (See Exhibit, 14). The location of the proposed structure will be located outside of the clear vision triangle as staff has demonstrated in Exhibit 15. 11<sup>th</sup> Avenue North has a 35 MPH speed limit which requires a minimum sight distance of 250'. According to the diagram in exhibit 14, measurements begin 13 ft. back from the face of the curb. For the projected build out of a new collector road, the measurement for sight distances shall be measures 37 ft. from the centerline of the road. With the proposed structure being located 40' from the centerline, and 13 ft. from the side, the clear vision triangle will remain unobstructed.

The variance does not appear to create material injury or unsafe conditions to adjacent property owners or deprive them from the use of their property.

### **Comments**

Property owners within 300 feet from the exterior boundaries of the subject parcel were notified on August 18, 2017.

Affected agencies and the City of Nampa were notified on August 18, 2017. Comments from applicable agencies are attached as exhibits.

### **Options**

The Commission has the following options in this case:

- 1) The Planning and Zoning Commission may approve the variance;
- 2) The Planning and Zoning Commission may deny the variance and direct staff to make findings of fact to support this decision; or
- 3) The Planning and Zoning Commission may continue the discussion and request additional information on specific items.

**Recommendation**

Staff recommends the Planning and Zoning Commission open a public hearing and discuss the proposed variance. Staff is recommending **approval** of variance application and has provided findings of fact, conclusions of law and decision for the Planning and Zoning Commission's consideration (Exhibit #1).