

PLANNING & ZONING MEETING

July 25, 2012

ROLL CALL Roll Call showed the following Board members present: Chairman Bruce Hodges, Commissioner Clair Thomas, Commissioner Roger Woolley, Commissioner Cedar Hodges, Commissioner Terry Petterborg, Commissioner Linda Hansen

Staff present: Attorney Clyde Nelson, Engineer Darek Kimball, Clerk Linda Acock, Public Works Director John Balls

Others: Bailey Beckstead, Leah Thompson, Scott Schofield, Kay Coburn

REVIEW & APPROVAL MINUTES OF 07/11/2012 It was moved by Commissioner Roger Woolley and seconded by Commissioner Cedar Hodges to approve the Planning and Zoning Minutes of July 11, 2012. The motion received unanimous approval.

REPORT OF APPROVED BUILDING PERMIT Engineer Darek Kimball reported on the following approved building permit:
Janel Boehme 140 S 2nd W Accessory Building

BUILDING PERMIT S. BECKSTEAD 32 W. ONEIDA Bailey Beckstead presented a building permit, for a metal storage building at 32 West Oneida.

After discussion, it was moved by Commissioner Cedar Hodges and seconded by Commissioner Roger Woolley to approve the building permit for a metal storage accessory building at 32 West Oneida, as presented. The motion received unanimous approval.

PRELIMINARY SITE PLAN 157 S. State Engineer Darek Kimball presented a preliminary site plan for O'Reilley Auto Parts at 157 South State.

No action is necessary on this matter, until the building permit is presented.

PUBLIC HEARING REQUEST FOR VARIANCE KEVIN & LEAH THOMPSON Chairman Bruce Hodges called for the public hearing to give consideration to the Request for a Variance by Kevin and Leah Thompson at 4th South between 8th and 9th East, as follows:

NOTICE OF PUBLIC HEARING

Notice is hereby given that a Public Hearing will be held before the Planning and Zoning Commission of the City of Preston, Idaho, at 70 West Oneida Street, Preston, Idaho on July 25, 2012, at 6:15 P.M. The purpose of the Public Hearing is to consider an Application for Variance submitted by Kevin and Leah Thompson, 550 Aspen Circle, Preston, Idaho, seeking a variance to the requirements of Section 17.28.065, Preston Municipal Code which require an owner of property desiring to construct a building or other structure upon property to construct all improvements as would be required for a subdivision as set forth in Chapter 16.28, Preston Municipal Code.

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Specifically, the applicants

are asking the City to waive requirements for curb, gutter, sidewalk, and asphalt paving of adjoining streets. A copy of the Application for Variance is on file with the City Clerk at the above stated address, and may be reviewed upon request to the City Clerk.

All persons present at the Public Hearing will be heard. Written comments or objections may be submitted to the Office of the City Clerk, 70 West Oneida Street, Preston, ID 83263. The legal description of the property affected by the Application for Variance is attached hereto and made a part of this Notice.

Dated: 6-28-12

/s/ _____
JERRY C. LARSEN
Preston City Clerk

(The following Variance Application has been typed into these Minutes verbatim)

VARIANCE APPLICATION

- A. Kevin & Leah Thompson
550 Aspen Cir
Preston ID 83263
208-852-0798
- B. LEGAL DESCRIPTION
SEE ATTACHED
- C. DESCRIPTION OF NATURE OF VARIANCE
I am seeking a variance in regards to Chapter 17.28 of Preston Idaho City Code. In 17.28.065 it requires an owner occupying any property within the city limits to construct all improvements as would be required for a subdivision as stated in Chapter 16.28. This includes utility improvements, curb, gutter, sidewalk and asphalt.
- D. 1. The special conditions and circumstances which exist and are peculiar to this land are:
- a. This land is zoned transition and is meant to be a buffer between agriculture and residential. This zoning is not intended to eliminate agriculture within the city, but is intended to discourage new agricultural operations. If the Thompsons are required to comply with this ordinance it will eliminate their opportunity to continue to farm this ground.
 - b. The roads that are required in Ordinance 17.28 will likely never connect to their counterparts already existing in the more dense

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residential parts of the city. These connections are unlikely because of the following reasons. The first being, Worm Creek

running at the bottom of the hollow would require at least two bridges and second, the city taking eminent domain of over a mile and a half of private already developed residential property from the old school marker north of the hollow on 4th S to 3rd E. The expense of stabilizing the side hill, that has lands slides yearly and the bridges and acquiring private property seems very unlikely.

- c. The road that exists in front of the property on 4th S is an unimproved road and the city has had requests by residents to improve parts and has never improved the road.
- d. We are asking to build one house just inside the boundaries for the city. The east boundary for this property is 9th E which is the boundary between the city and the county. This complies with the city's stated goal to have high density residential towards the city center and to become gradually less density towards the city boundaries. So these requirements for curbing, guttering and paving these roads only make sense if they will be used for high density residential which is contrary to the city's stated plan for zoning.
- e. The requirement to sidewalk, curb gutter and pave 4th S to the middle of the road is impractical and unfeasible. The road itself is very steep and the side hill that runs between the roads and the flat top of the hayfield is very steep and unstable. So unstable that a telephone pole cannot stay tethered, so it seems impractical to put a sidewalk on something so steep. The sidewalk would not connect until the block of 2nd E starts which is over 1 ½ away. I also have concerns about paving half way into a road that is so steep. This road is constantly washboarded. So much so that 10 miles an hour could bounce you off the road. It seems impractical and possibly unsafe to have half of a car's tires on one type of surface and half on another type of surface. Also, this paving would in one direction start at the crest of a hill. Which would not allow for drivers to make adjustments for the different types of road surfaces.
- f. The land involved is farm ground. We wish to build a homestead for this farm. The land that would be paved for the 4 platted roads on it would prevent proper drainage of the land next to our. Our neighbor Carl Swainston has a pivot on 120 acres and his water run off drains to ours and then to the hollow below. This paving would adversely affect the drainage.
- g. The cost of this ordinance has been calculated. To improve the road that fronts their property on 4th S which is 660 feet long. The cost to the family would be \$125,000 (bid by their contractor). The bid for the 4 road easements on their property was \$886,000. These improvements are not comparable to any

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single home lot in the city, and require the Thompsons to shoulder a disproportionate share of infrastructure.

2.
 - a. The literal interpretation of the provisions of this ordinance would deprive us of the ability to use this land for farming, as is one of the stated goals of transitional zoning. Many land owners in the outlying areas of the city limits have one house and have large acreages for farming.
 - b. We would also be deprived of our right to privacy. Are these city roads or Thompson's roads? We don't want a neighborhood we want to live in a natural rural setting which many of our neighbors enjoy.
 - c. We would also be deprived of being able to use and shape the land as we want to. The enjoyment of being able to use the land the way we see fit is totally destroyed if roads and sidewalks are what you see instead of nature.
 3. The special conditions and circumstances which are peculiar to this land are not the result of any actions the Thompsons have taken. The transitional zoning, the roads never feasibly connecting, the unimproved road, the unstable, unsuitable conditions of the land, the flooding that may result on neighbors property, and the easements for roads on such a large lot are all not the result of any actions taken by the Thompsons.
 4. Granting this variance will not confer on the applicant any special privilege that is denied other property owners. No special gains will exist, it will only allow us a single home and the ability to continue to farm this land.
- E. In summary, we are seeking a variance requesting that the requirement for infrastructure improvements be waived. The right of ways will be maintained for the future, when something other than a single family home is seeking permission. The requirements are a hardship monetarily in two ways. Over one million dollars is the cost of the infrastructure. The cost is unreasonable for a single family and could only be shouldered by a developer. We are not developing this land. The other hardship is that this development of infrastructure will prevent us from farming this land and the money it provides.

After giving guidelines for holding a public hearing, Chairman Bruce Hodges asked Leah Thompson, the applicant, to present the request for a variance.

Leah Thompson stated that the property is located in the Transitional Zone. City Code describes the Transitional Zone as a buffer between agricultural and residential neighborhoods, intended to eliminate new agriculture within the city limits, but not to eliminate existing agriculture. Houses are an allowed use in the Transitional Zone. Going with the idea that a subdivision is one house, it is a

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conflict that curb, gutter and sidewalk would be required within the Transitional Zone, as a buffer being agricultural use. The curb, gutter and sidewalk would just go to waste.

As to the requirement of running continuous sidewalk, it is not until 2nd East that there is continuous sidewalk, so the Thompsons would be required to build over ½ mile of sidewalk.

The property has unique size and topography. There is very steep side hills. Ms. Thompson suspects that is why there has not been any residential neighborhood development in that area. Ms. Thompson further pointed out that because of the topography and size of this property, the requested variance is warranted because the circumstances are unique to this property and cannot be duplicated within the Preston City limits. There is no likelihood that any of the streets they are being required to build will ever connect to other roads because of the topography of the property. The roads will be within their property, and go nowhere.

Ms. Thompson stated that she has talked with neighbors adjoining this property and has neighborhood support. One neighbor stated that they have asked for improvements on the road, and because of the slope and the giant drop offs on both sides, it was deemed too expensive and has never been undertaken.

The Thompsons are seeking a variance because literal enforcement creates undue hardship, financially, with the large frontage and multiple road easements. Building roads within the property will also cause financial loss, as this property will continue to be farmed. They received a bid for the street improvements, and if the street were on even ground, costs would be over a million dollars. The ordinance is more in line for developers who are building neighborhoods, but requiring this of one house builder is cost prohibitive.

Farm equipment stills runs on the 4th South street, and it would seem harmful to pave one half of the road, and leave the other half unimproved. It seems that it could cause damage to vehicles or lives, because people will drive on the wrong side of the road to drive on the paved section instead of the unimproved section.

Ms. Thompson read from Element 12 of the Preston City 2003 Comprehensive Plan, stating that the Board needs to evaluate new ordinance proposals, to ensure land use policies, restrictions and conditions do not violate private property rights.

- A. Does the regulation or action result in the permanent or temporary physical occupation of the property? Ms. Thompson stated no to this question.
- B. Does the regulation or action require a property owner to dedicate a portion of property or grant an easement? Ms. Thompson stated that there were easements there and they were aware of them when they bought the property.
- C. Does the regulation deprive the owner of all economically viable uses of

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the property? Ms. Thompson stated that yes, it does. If they have to curb, gutter and turn it into a grid, they lose valuable farming property.

- D. Does the regulation have a significant impact on the landowner's economic interest? Ms. Thompson stated yes.

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- E. Does the regulation deny a fundamental attribute of ownership? Ms. Thompson agreed that it does. She doesn't want to turn this property into a neighborhood. They want to keep the property agricultural, with a feeling that they are in the country, not a residential neighborhood.
- F. Does the regulation serve the same purpose that would be served by directly prohibiting the use or action; and does the condition imposed substantially advance that purpose? Ms. Thompson stated that she wasn't certain this applies in their situation.

Chairman Bruce Hodges asked for questions from the Board.

Chairman Bruce Hodges asked, Ms. Thompson, in regard to the ground movement, where they are going to put the house, if the ground sloughs off.

Ms. Thompson replied that the house is away from the edge, and there isn't any concern about sloughing or movement.

Engineer Darek Kimball explained the topography and position of the proposed 8th East and 9th East streets.

Chairman Bruce Hodges asked Public Works Director, John Balls to comment on the maintenance of the roads and if there had been requests to improve the road.

John Balls stated that other than comments that the road is rough and it's always been rough, there haven't been a lot of people asking for the road to be improved.. He further stated that his concern is that the slope is steep going up the east side of the hill, and he doesn't know if he can get a vehicle out there to pick up the trash. Another problem is that this is one of the last roads because nobody's down there to do anything with it, and the county barely gets to the monument. Often times they don't make it clear through, because that's not a road that is used often, and it does pose a problem for the city in plowing. Coming down is not too bad, but going up the other side will be difficult. Snow removal usually stops at the bottom, by the Scott Beckstead turn-around, because going up the other side is difficult.

Attorney Clyde Nelson asked Mr. Balls if it is unlikely the public works department would be able to provide snow clearance.

Mr. Balls stated it would be one of those where maneuvering the snow plow on the gravel road, and pushing the snow up the steep hill would prove difficult.

Ms. Thompson stated that she travels the road a lot in the winter.

Commissioner Cedar Hodges stated that the chances of 8th East, 2nd South and 3rd South ever being developed is very minimal, especially with the hollows. The variance application asks the city to waive the requirements for curb, gutter, sidewalk and asphalt paving on the adjoining streets. It doesn't address any other issues, although the applicant should be aware of issues, like maintenance

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of the road, garbage service, school buses, etc. Commissioner Hodges asked

Ms. Thompson if she was concerned with any of these other issues.

Ms. Thompson stated the concern is the street easements, improvements and frontage. That is what the request and hearing was for.

Commissioner Cedar Hodges stated that the easements could be dedicated right-of-ways, that they possibly wouldn't have to improve them, but that they could never build on them. They could continue to farm on the easements, they just couldn't build on them.

Ms. Thompson stated that they are aware of that, and their plan has avoided building on any of the easements. She stated that if she had to comply with the ordinance, and pave the roads, she couldn't farm the land.

Commissioner Cedar Hodges agreed that the view of the valley is beautiful, but other issues will need to be addressed.

Chairman Bruce Hodges stated that they way the variance is addressed, the petition brings up more issues than just the paved roads.

Attorney Clyde Nelson asked Ms. Thompson if the interference with farming meant just the interior streets, and not 4th South.

Ms. Thompson stated that 4th South would not interfere with farming.

Attorney Nelson stated that the driveway itself is quite lengthy, and asked how it would interfere with their farming.

Ms. Thompson stated that the driveway is designed to avoid the farm land. The east side of the driveway will be farming, and on the west side of the driveway, they will pasture horses and landscape.

Attorney Clyde Nelson asked if the Thompson ever intend to sale or gift any other parcels out of the twenty acres.

Ms. Thompson stated no.

Attorney Clyde Nelson asked, if the Commission were to approve the variance, would the Thompsons be willing to enter into an agreement, that would run with the land, indicating that they will not develop any other portions of the ground, without complying with the subdivision ordinance.

Ms. Thompson said that they would like to build a shop or horse shed, and asked if this only applied if they were going to build another house.

Attorney Clyde Nelson answered that if they were to gift, transfer or sell, any portion of the twenty acres to a third party, whether it be a child or a relative.

Ms. Thompson stated that if this property were ever developed with other houses, they would expect to comply as a subdivision.

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Attorney Clyde Nelson asked where they were going to get their water from, and if they want to connect to city water.

Ms. Thompson explained that they have discussed this matter with City Of Preston staff, as well as researching the ordinances, and they know that it is their responsibility and burden to make those connections. If it works out that they can get city water, they would like city water.

Attorney Clyde Nelson then asked if they were aware that they would be required to build an 8" main line across the hollow up to the front of the property.

Ms. Thompson stated that, yes, they are aware of the requirement.

Attorney Clyde Nelson asked if the million dollar cost for improvements, that has been discussed, was for development of all streets.

Ms. Thompson stated that the million dollar bid is priced separately from the frontage. The frontage was bid at \$125,000., but also bid as if it were on flat ground. It didn't include digging out the side hill and securing it for sidewalks.

Attorney Clyde Nelson asked, if the Commission were to waive the requirement for them to develop the interior streets, 2nd and 3rd South, 8th and 9th East, would the Thompsons be agreeable to doing the improvements to 4th South.

Ms. Thompson stated that she did have issues with developing 4th South, in that, from a logical standpoint, if they pave half the road, people are going to drive on the wrong side of the road, to drive on the improved side, and people are going to be killed.

Chairman Bruce Hodges thanked Ms. Thompson, and asked for comments from those in attendance.

Bailey Beckstead stated that he grew up in the area, and also has intentions of purchasing property in the area in the near future.

He thinks it would be illogical to require the Thompsons to develop the road in the hollow. It would be hazardous to have half a road going down the hollow.

Engineer Darek Kimball clarified that the required improvements would be on the frontage of the property between 8th and 9th East, and would not require improvements beyond their frontage.

Kay Coburn, adjoining property owner to the north of the Thompson's property, stated that she does not have any problems with the variance being granted.

There being no further comments, Chairman Bruce Hodges closed the public hearing and opened the meeting to the Commission for discussion.

Commissioner Cedar Hodges stated that, in his opinion, there are two options open to the Planning and Zoning Board, dealing with the request for a variance. They can stick with the ordinance, and require the Thompsons to follow the

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ordinances as they are written, or the Board can grant the variance and waive the requirements for curb, gutter, sidewalk and asphalt paving. Although the Board can table and discuss the matter at a later meeting, he felt that the Thompsons

have waited long enough for a decision, and suggested that the Board make a decision, and not keep them waiting any longer.

Commissioner Cedar Hodges stated that he was in agreement with requiring an agreement to include that all the streets be dedicated to the city and that no construction of permanent structures be built on those dedicated street easements. He further agreed that if there were any future development to the property, all streets and improvements would have to be done at that time.

Clair Thomas agreed that it definitely presents a financial hardship to require the streets and improvements for one house.

Attorney Clyde Nelson instructed the Board that, to validate their decision, they will have to make findings along with their decision. He further advised that a variance cannot be granted for convenience or profit and the special conditions which must exist in order to grant the variance must be peculiar to this particular property and not applicable to other lands in the district. Denying the variance must assure that literal interpretation does not deprive the applicant of the rights commonly enjoyed by other properties in the same district. They also must find that granting the variance will not confer on the applicant any special privilege that is denied to other lands, structures or buildings in the same district.

There being no further comments from the Board, it was moved by Chairman Bruce Hodges and seconded by Commissioner Roger Woolley to accept Kevin and Leah Thompson's Request for a Variance, with no future bindings or conditions tied to the application, as the improvements create unnecessary hardship peculiar to their property as granted in code 17.30.040(D1) and (D2). The motion received unanimous approval.

Attorney Clyde Nelson asked for clarification on the basis of the Board's decision, so he could prepare the Findings Of Facts and Decision.

Chairman Bruce Hodges stated that his basis for the motion is that it isn't reasonable or prudent to expect the Thompsons to build streets and improvements within the 19 ½ acres, nor to require the frontage improvements.

PRELIMINARY Scott Schofield presented a preliminary site plan for Preston Gardens Floral
SITE PLAN Design & Nursery at 28 South State.
28 S. State

No action is necessary on this matter, until the building permit is presented.

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ADJOURN Meeting was adjourned at 7:29 P.M. by Chairman Bruce Hodges.
MEETING

Bruce Hodges, Chairman

Linda Acock, Clerk