

## PLANNING & ZONING MEETING

September 12, 2012

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**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 Randy Harris, Commissioner Linda Hansen

Staff present: Clerk Linda Acock, Council Liaison Sandra Hubbard

**REVIEW & APPROVAL MINUTES OF 07/25/2012** It was moved by Commissioner Roger Woolley and seconded by Commissioner Terry Petterborg to approve the Planning and Zoning Minutes of July 25, 2012. The motion received unanimous approval.

**REVIEW & APPROVAL MINUTES OF 08/22/2012** It was moved by Commissioner Roger Woolley and seconded by Commissioner Linda Hansen to approve the Planning and Zoning Minutes of August 22, 2012. The motion received unanimous approval.

**REPORT OF APPROVED BUILDING PERMITS** Clerk Linda Acock reported on the following approved building permits:

Jane Pyfer	340 East 2 <sup>nd</sup> North	House
Kevin & Leah Thompson	875 East 4 <sup>th</sup> South	House

**STATEMENT OF FACTS FINDINGS AND DECISION THOMPSON** After brief discussion in the matter of the Variance presented by Leah Thompson in public hearing on July 25, 2012, for property at 875 East 4<sup>th</sup> South, it was moved by Commissioner Cedar Hodges and seconded by Commissioner Clair Thomas to accept the Statement Of Facts Findings And Decision as written, and have Chairman Bruce Hodges sign the document. The motion received unanimous approval. (A copy of the Statement Of Facts Findings And Decision follow these Minutes)

**BUILDING PERMIT COMMUNITY FOOD PANTRY 580 W ONEIDA** Chairman Bruce Hodges presented a building permit for the Preston Community Food Pantry, at 580 West Oneida.

The Preston Community Food Pantry intends to build a 1,500 square foot addition to the Bear River Archery Building, which is owned by the City Of Preston. Lease agreements and conditions for the addition on city property has been worked out with Preston City Council.

It was moved by Commissioner Cedar Hodges and seconded by Commissioner Roger Woolley to approve the building permit for the Preston Community Food Pantry for an addition to the Bear River Archery Building at 580 West Oneida. The motion received unanimous approval.

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**ADJOURN MEETING** Meeting was adjourned at 6:19 P.M. by Chairman Bruce Hodges.

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Bruce Hodges, Chairman

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Linda Acock, Clerk

**BEFORE THE PLANNING AND ZONING COMMISSION  
OF PRESTON, IDAHO**

IN THE MATTER OF THE APPLICATION )  
FOR A VARIANCE )  
 ) STATEMENT OF FACTS  
 ) FINDINGS AND DECISION  
 OF )  
 )  
 KEVIN AND LEAH THOMPSON )  
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 )  
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**STATEMENT OF FACTS**

1. The Applicants are Kevin and Leah Thompson, 550 Aspen Circle, Preston, Idaho 83263.
2. The Applicants seek a Variance to the requirements of Section 17.28.065, Preston Municipal Code which requires 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. Specifically, the Applicants are requesting the City to waive requirements for curb, gutter, sidewalk and asphalt paving of adjoining streets.
3. Attached to these findings and considered by the Planning and Zoning Commission (Commission) is an Application for Variance submitted by the Applicants together with a letter to Darek Kimball, City Engineer, from the Applicants. Also attached hereto and considered by the Commission is a copy of the Notice of Public Hearing.
4. A Public Hearing was held before the Commission on July 25, 2012. Leah Thompson was present at the meeting and made comments concerning the request of Applicants. Various persons also were present to make comments upon said Application.

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A recording of the Public Hearing is on file with the City Hall. The Commission has considered Section 17.28.065, and chapter 16.28, Preston City Code as to the improvements required. The Commission also considered the provisions of Section 17.30.030 and 17.30.040, Preston City Code as to the requirements to be shown by the Applicants in order to grant a variance. The Commission has also considered the definition of variance under Section 67-6516, Idaho Code.

### **FINDINGS**

1. The Applicants desire to construct a home on property located in the City of Preston, Idaho. Said property is more specifically described in the application of the Applicants.
2. Section 17.28.065, Preston City Code, requires any person desiring to construct or erect 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 City Code. These include utilities, curb and gutter, drainage swales, concrete sidewalks, sanitary sewer systems, and connection to the central water supply of the City and secondary water where available. In addition, the Applicant is required to lay asphalt plant mix pavement on the street or streets adjoining the property.

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3. There are several undeveloped streets located on the applicants property to include 8<sup>th</sup> East, 9<sup>th</sup> East, 2<sup>nd</sup> South, and 3<sup>rd</sup> South Streets. Literal interpretation of the Ordinance would require the Applicants to develop those streets as well as improve 4<sup>th</sup> South Street fronting their property. 8<sup>th</sup> East, 9<sup>th</sup> East, 2<sup>nd</sup> South, and 3<sup>rd</sup> South Streets are undeveloped. 4<sup>th</sup> South Street is a developed city street, but would require substantial improvement for the Applicants to comply with the Code.

4. Variances are addressed in Section 17.30.030 and 17.30.040 of the Preston City Code.

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Planning and Zoning Commission can grant a variance where it finds:

A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, or structures in the same district.

B. That a literal interpretation of the provisions of the Zoning Ordinance would deprive the Applicants of the rights commonly enjoyed by other properties in the same district under the terms of the Zoning Ordinance.

C. That special conditions and circumstances do not result from the actions of the Applicants.

D. That granting the variance will not confer on the Applicants any special privilege that is denied by the Zoning Ordinance to other lands, structures or buildings in the same district.

5. The term “variance” and the conditions for granting a variance are also defined in Section 67-6516, Idaho Code. There a variance is defined as a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, setbacks, and parking spaces, height of buildings or other ordinance provisions affecting the size and shape of structures or the placement of structures upon lots or the size of lots. Thus, the state statute is much narrower in its application than is the Preston City Code. Regardless, the Zoning Commission has considered all terms and conditions of the Application in relation to the Zoning Ordinance, and although it cannot grant variances on the grounds of convenience or profit, it can grant a variance if strict application of the provisions of the Zoning Ordinance would result in unnecessary hardship.

6. The Commission finds that the Applicants’ property is approximately 19 acres in size on which the Applicants represent that they will only construct one home. The Applicants further represent to the Commission that they will not further divide the property for sale or transfer to any other person or party without complying with the Subdivision Ordinance of the City. The Applicants have further agreed that 8<sup>th</sup> East, 9<sup>th</sup> East, 2<sup>nd</sup> South, and 3<sup>rd</sup> South Streets are dedicated streets of the City and cannot be built upon or in any way obstructed by the Applicants.

7. The Commission further finds that reasons for granting a variance do not result from the actions of the Applicants, and that a literal interpretation of the provisions of the Zoning Ordinance would deprive the Applicants of rights commonly enjoyed by other properties in the same district (transitional) under the terms of the Zoning Ordinance. Thus, strict application of the provisions of the Zoning Ordinance would result in unnecessary hardship to the Applicants.

### DECISION

1. The Application for Variance submitted by the Applicants Kevin and Leah Thompson is

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hereby approved, and the requirements for curb, gutter, sidewalk, and asphalt paved streets are waived.

2. The Applicants have been advised that it will be difficult if not impossible to provide garbage service to their property due to the nature and condition of 4<sup>th</sup> South Street.
3. The Applicants have been further advised that due to the condition of 4<sup>th</sup> South Street and the lack of homes and improvements on 4<sup>th</sup> South Street, that minimal maintenance and snow clearance is presently provided to 4<sup>th</sup> South Street, and said road will be subject to minimal maintenance and snow clearance in the future.
4. The Applicants have been further advised, and by this Decision are advised that no culinary water or sanitary sewer service are supplied by the City to said property. If the Applicants desire such services, they will be required to construct mainlines and service lines to their property in accordance with State of Idaho and City specifications and standards at their own expense.
5. A copy of the Statement of Facts, Findings, and Decision shall be provided to the Applicants.

PASSED AND APPROVED THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2012, BY THE  
PLANNING AND ZONING COMMISSION OF THE CITY OF PRESTON, IDAHO

PLANNING AND ZONING  
COMMISSION OF PRESTON, IDAHO

By: \_\_\_\_\_  
BRUCE HODGES, Chairman