

**CITY OF PRESTON PLANNING AND ZONING MEETING**

April 25, 2018

**ROLL CALL** Roll Call showed the following Board members present: Chairman Linda Hansen, Commissioner Penny Wright, Commissioner Charles Chesney, Commissioner Steve Call, Commissioner Brock Alder, Commissioner Vern Purser

Staff present: Wendy Merrill

Others: Trish Checketts, Heather Crockett, Tony Crockett, Cameron Rounds, Bobbi Jo Ware, Jeff Ware, Afton Winn, Berni Winn

Meeting was called to order at 6:00 p.m. by Chairman Linda Hansen

**REVIEW AND APPROVAL OF PLANNING & ZONING MINUTES 04/11/18** It was moved by Commissioner Steve Call and seconded by Commissioner Brock Alder to approve the minutes of April 11, 2018. The motion received unanimous approval.

**REPORT OF APPROVED BUILDING PERMITS** Chairman Linda Hansen reported on the following approved building permits:

Clint Matthews	353 South 2 <sup>nd</sup> West	House
Dennis Sessions	625 East 8 <sup>th</sup> South	House
Michael Funk	385,387,389,391 South 440 West	Townhomes

**PLANNING & ZONING COMMISSION DECISION SPECIAL USE PERMIT K. GEISBRECHT 435 S. 1<sup>ST</sup> E.** It was moved by Commissioner Charles Chesney and seconded by Commissioner Vern Purser to approve the Planning and Zoning Commission Decision to the City Council to approve the special use permit for Kari Giesbrecht to operate a child care center at 435 South 1<sup>st</sup> East, and to have Chairman Linda Hansen sign the decision. The motion received unanimous approval

A copy of the Planning and Zoning Commission Decision – Special Use Permit – Kari Giesbrecht, 435 South 1<sup>st</sup> East follows minutes.

**PUBLIC HEARING JEFFERY & BOBBI WARE 357 E. ONEIDA VARIANCE** Chairman Linda Hansen called for the public hearing to give consideration to the application of Jeffery and Bobbi Ware, 357 East Oneida, for a variance to the height requirements of Section 17.08.030(C), Preston Municipal Code, which requires buildings to be erected no higher than twenty-five feet from existing grade, as follows:

**NOTICE OF PUBLIC HEARING**

Notice is hereby given that a public hearing will be held on April 25, 2018, before the City of Preston Planning and Zoning Commission at the hour of 6:05 P.M., or as soon thereafter as the matter can be heard, at the city hall located at 70 West Oneida St., Preston, Idaho, to give consideration to the application of Jeffery and Bobbi Ware, 357 East Oneida, for a Variance to the requirements of Section 17.08.030(C), Preston Municipal Code, which requires buildings to be erected no higher than twenty-five (25) feet from existing grade. Specifically, the applicants are requesting a six (6) foot encroachment in height for their proposed building. A copy of the Application

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for Variance is on file with the City Clerk at the above stated address, and may be viewed upon request to the City Clerk.

All persons present will be given the opportunity to be heard in regard to said Application. Written comments or objections to said variance may be submitted to the City Clerk at the above stated address, and the same will be considered if received prior to said public hearing.

Dated this 22nd day of March, 2018

s/Linda Acock, Clerk

Publish: March 28, 2018

Chairman Linda Hansen gave guidelines for holding a public hearing, and asked if any Board member needed to declare a conflict of interest, or had any ex-parte contact in this matter. Chairman Linda Hansen stated that she had a conversation with the Wares regarding the height of the roof, but that it would not influence her ability to render a non-partial vote, so she had had some ex-parte contact in this matter. There being no other ex-parte contact and no conflicts of interest, Chairman Linda Hansen opened the public hearing and asked Jeffery Ware to present his request for a variance to the twenty-five foot height requirement set forth in Preston Municipal Code 17.18.030(C).

Jeffery Ware presented his request for a variance to the height requirements of Section 17.08.030(C), Preston Municipal Code, which requires buildings to be erected no higher than twenty-five feet from the existing grade, in order to construct a residence thirty-one feet in height at 357 East Oneida. He stated that on February 22<sup>nd</sup> his contractor paid for and picked up the building permit for them to be able to proceed with construction of the home. On March 5<sup>th</sup>, he received a phone call from his contractor informing him that the City had a height ordinance of twenty-five feet, so his house was too high, and he needed to contact City Inspector Randy Henrie. He called City Inspector Randy Henrie, who told him that it was the City enforcing the ordinance, not him, so he needed to contact the City. He contacted a member of the City Council to relate what he had learned, and ask for some guidance and/or help with this issue. The Council member told him that he/she would call the City office the next morning to verify the height requirements. He then received a text from this City Council member telling him that he would need to obtain a Variance to the height requirement. Mr. Ware stated his contractor had checked with other contractors in the area and none of them had ever heard of this height ordinance, and that he himself had talked with other home builders and none of them had heard of it either. He presented three pictures of homes in Preston City, two of them currently under construction, and one finished, that are all over twenty-five feet in height, in fact one of them was close to forty feet high. Likewise, his architect, Craig Kunz, a former contractor, had never heard of this ordinance. Mr. Ware stated he had worked with Former City Engineer, Mark Owens, for several months on this project and that Mark Owens had been very diligent in making sure that he was in compliance with all ordinances and laws of the City, but never mentioned a height ordinance or the possibility that it might cause a problem. He concluded by asking the Board to grant his request for a Variance to the height ordinance, and allow him to build a house that would be thirty-one feet in height.

Commissioner Penny Wright asked Mr. Ware how he knew he needed to call Randy Henrie, to which Commissioner Steve Call responded that Randy Henrie is the City Inspector.

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Jeffery Ware replied that City Inspector Randy Henrie had called his contractor asking him if he had seen the notation made on the plans regarding the height requirement, to which his contractor responded that he had not. His contractor then called him and told him he needed to contact City Inspector Randy Henrie.

Commissioner Penny Wright then asked him if he had spoken to anyone at the City regarding this issue, or if anyone from the City had gone out to the site to assess the situation.

Jeffery Ware replied that he did not know what took place at the City, and all he knew was that his contractor called him and told him to contact Randy Henrie about the fact that his house was over twenty-five feet in height, which he did. That was when City Inspector Randy Henrie told him it was the City enforcing the ordinance, not him.

Chairman Linda Hansen asked for clarification on whether or not he had received an approved building permit, to which Mr. Ware responded that he obtained an approved building permit on the 22<sup>nd</sup> of February, 2018.

Chairman Linda Hansen asked if there was anyone in attendance to provide testimony in favor of granting the request for a special use permit.

Trish Checketts, 353 East Oneida, spoke in favor of granting the Variance, stating that she was surprised this issue had come before the Board. She explained she has a neighbor whose home is over twenty-five feet high and that home has been there at least fifteen years, so she was wondering why the City was choosing to enforce this ordinance now. She stated that the home will be built right behind hers, that she would be a neighbor to the Wares, and that she had no objection to the height of their home.

Chairman Linda Hansen asked if there was anyone in attendance to provide neutral testimony in regard to the special use permit.

There being none, Chairman Linda Hansen asked if there was anyone in attendance to provide testimony against granting the request for a special use permit.

There being none, Chairman Linda Hansen asked if any written comments, either for, or against this matter had been received. There were none.

There being no further testimony, Chairman Linda Hansen closed the public hearing and opened the meeting up to the Board for discussion.

Commissioner Brock Alder asked if the neighbors were okay with the height of his home, to which Mr. Ware replied that to his knowledge there were no issues.

After Board discussion, it was moved by Commissioner Steve Call and seconded by Commissioner Charles Chesney to recommend to Preston City Council the approval of the Variance for Jeffery and Bobbi Jo Ware, allowing them to construct a home in excess of twenty-five feet, namely thirty-one feet in height. The motion received unanimous approval.

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**PUBLIC  
HEARING  
AMENDING  
CHAPTER 16  
PRESTON  
MUNICIPAL  
CODE**

Chairman Linda Hansen called for the public hearing to consider a proposed ordinance amending Chapters 16.08, 16.16, 16.20, 16.28, and 16.34, of the Subdivision Ordinance, Preston Municipal Code, as follows:

## **NOTICE OF PUBLIC HEARING**

Notice is hereby given that a public hearing will be held on the 25<sup>th</sup> day of April, 2018, at the hour of 6:10 P.M. at the City Hall located at 70 West Oneida St., Preston, Idaho, before the City of Preston Planning and Zoning Commission to consider a proposed ordinance amending Chapters 16.08, 16.16, 16.20, 16.28, 16.34, as follows:

**16.08.150 – ENGINEERING PLANS, AMEND DEFINITION TO INCLUDE DIGITAL FILES; 16.16.010 – APPLICATION, ADD PLAT DIMENSIONS AND ALLOW FOR COPIES IN ELECTRONIC FORMAT SPECIFIED BY CITY; 16.16.070 - REVIEWING FEE, DELETE FEE SCHEDULE AND SPECIFY FEES TO BE ESTABLISHED BY RESOLUTION; 16.16.110 – AGENCY REVIEW, AMEND TITLE AND ADD PROCESS FOR NOTICE TO ADJOINING OWNERS; 16.20.020 – METHOD AND MEDIUM OF PRESENTATION, CLARIFY PLATS TO BE PREPARED ACCORDING TO TITLE 50, CHAPTER 13, IDAHO CODE, AND ALLOW FOR COPIES IN ELECTRONIC FORMAT SPECIFIED BY CITY; 16.20.060 – DEDICATION AND ACKNOWLEDGEMENT, ADD OPTION FOR MINOR SUBDIVISIONS TO SATISFY SECONDARY WATER BY HOA OR AGREEMENT; 16.20.070 – CERTIFICATIONS, DELETE COMMISSION REVIEW FOR FINAL PLATS; 16.20.090 – ACCEPTANCE OF FINAL PLAT, PROVIDE FOR STAFF REVIEW FOR COMPLIANCE WITH PRELIMINARY PLAT BEFORE PLACING FINAL PLAT ON COUNCIL AGENDA; 16.20.100 – AGENCY REVIEW, AMEND TITLE AND ALLOW FOR ADDITIONAL NOTICE AS CITY DEEMS NECESSARY; 16.20.110 – CITY COUNCIL ACTION, CLARIFY WHEN COUNCIL WILL REVIEW FINAL PLAT AND DELETE REFERENCE TO COMMISSION; 16.28.010 – GENERALLY, PARAGRAPH H, SPECIFY WATER AND SEWER CONNECTION FEES BE PAID ACCORDING TO TITLE 13 OF CITY CODE; 16.28.020 – REQUIRED IMPROVEMENTS, CLARIFY MINOR SUBDIVISIONS ARE SUBJECT TO SECONDARY WATER REQUIREMENTS; 16.34.200 – CONTENTS OF APPLICATION OF FINAL DEVELOPMENT PLAN, PARAGRAPH K, SPECIFY ALL FEES BE PAID BEFORE BUILDING PERMIT IS ISSUED. ALLOWING PUBLICATION BY SUMMARY; DISPENSING WITH READING ON THREE SEPARATE DAYS AND ESTABLISHING AN EFFECTIVE DATE.**

A copy of a proposed ordinance is on file with the city clerk at the above address and copies of the same may be obtained from that office from and after March 28<sup>th</sup>, 2018.

All persons present at the public hearing will be given the opportunity to be heard. Written comments and objections may be submitted to the City Clerk at the above address prior to the public hearing, and the same shall be considered by the Commission in its deliberations.

s/Linda Acock, City Clerk

Chairman Linda Hansen gave guidelines for holding a public hearing, and asked if any Board member needed to declare a conflict of interest, or had any ex-parte contact in this matter. There being none, Chairman Linda Hansen opened the public hearing to consider a proposed ordinance amending Chapters 16.08, 16.16, 16.20, 16.28, and 16.34, of the Subdivision Ordinance, Preston Municipal Code.

In a Staff Report prepared by City Attorney Tyler Olson, dated April 25, 2018, it states that on March 14, 2018 the commission reviewed draft amendments to the Subdivision Ordinance, Title 16, Preston Municipal Code. The commission recommended the amendments be set for public hearing with one modification – that the opportunity for adjacent property owners to submit

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written comment not be included. However, to satisfy minimal due process, both notice and an opportunity to be heard must be included in the ordinance. Therefore, to correct this oversight, and prevent further delay in hearings at the council level I recommend reinsertion of the provision for comment as originally presented to and reviewed by the commission as follows:

### 16.16.110 – ~~Agency review~~Procedures.

The city shall transmit, fourteen (14) days in advance of its consideration by the commission, one (1) copy of the application to the city departments and such other agencies that have jurisdiction or an interest in the proposed subdivision for their review and recommendations. In addition, the city will provide written notice to the owners of property adjacent to the property proposed for development. The notice shall provide the adjacent property owners a plan of the subdivision, general information concerning the proposal, and the time frame for submitting written comments. The period of time for comment or response for adjacent property owners shall not be less than fourteen (14) days from the date of notice.

Chairman Linda Hansen asked if there was anyone in attendance to provide testimony in favor of approving the proposed ordinance amending Chapters 16.08, 16.16, 16.20, 16.28, and 16.34, of the Subdivision Ordinance, Preston Municipal Code.

There being none, Chairman Linda Hansen asked if there was anyone in attendance to provide neutral testimony in regards to the proposed ordinance amending Chapters 16.08, 16.16, 16.20, 16.28, and 16.34, of the Subdivision Ordinance, Preston Municipal Code.

There being none, Chairman Linda Hansen asked if there was anyone in attendance to provide testimony against the proposed ordinance amending Chapters 16.08, 16.16, 16.20, 16.28, and 16.34, of the Subdivision Ordinance, Preston Municipal Code.

There being none, Chairman Linda Hansen asked if any written comments, either for, or against this matter had been received. There were none.

There being no further testimony, Chairman Linda Hansen closed the public hearing and opened the meeting up to the Board for discussion.

After Board discussion, it was moved by Commissioner Penny Wright and seconded by Commissioner Steve Call to recommend that City Council adopt the amendments to the subdivision ordinance with the correction in the staff report. The motion received unanimous approval.

**PRELIMINARY  
PLAT COUNTRY  
CLUB #5  
SUBDIVISION**

At the February 14, 2018 Planning and Zoning meeting, Tony Crockett presented a preliminary plat for Country Club Estates Division #5, and was advised at that time to make corrections to the preliminary plat addressing issues of water drainage and secondary water. He met with former City Engineer Mark Owens on April 12, 2018, at which time they were able to resolve these issues. Tony Crockett presented the modified preliminary plat for Country Club Estates Division #5.

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After Board discussion, it was moved by Commissioner Penny Wright and seconded by Commissioner Charles Chesney to recommend to Preston City Council the approval of the preliminary plat for Country Club Estates Division #5. The motion received unanimous approval.

**FINAL PLAT** Cameron Rounds presented the final plat for Arbor View Subdivision, at  
**ARBOR VIEW** approximately 100 North 4<sup>th</sup> East.  
**SUBDIVISION**  
**APPX. 100 NORTH** Commissioner Vern Purser stated that he would abstain from voting on this  
**4<sup>TH</sup> EAST** issue due to the fact that he is related to one of the developers of the Arbor View Subdivision.

In a Staff Report prepared by City Attorney Tyler Olson, dated April 25, 2018, it states that the proposed final plat depicts 22 single family Residential lots zoned residential A1 and B. All of the lots meet the minimum lot size of 12,500 square feet and meet required setbacks and density. On August 28, 2017, City Council adopted an ordinance vacating a portion of the future 4<sup>th</sup> East which intersected the proposed final plat on the Southeast. The proposed final plat conforms to the master street plan. Open space is not depicted on the proposed final plat. On April 9, 2018, City Council reviewed/approved Applicant's proposal to satisfy open space with a voluntary contribution of \$40,000 subject to entering into a development agreement.

After Board discussion, it was moved by Commissioner Steve Call and seconded by Commissioner Charles Chesney to recommend approval to City Council of the final plat for Arbor View Subdivision as presented in the staff report. The vote was as follows:

Chairman Linda Hansen	Aye
Commissioner Penny Wright	Aye
Commissioner Charles Chesney	Aye
Commissioner Steve Call	Aye
Commissioner Brock Alder	Aye
Commissioner Vern Purser	Abstain

Motion received majority approval.

**ADJOURN** Meeting was adjourned at 6:55 P.M. by Chairman Linda Hansen.

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Linda Hansen, Chairman

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Linda Acock, Clerk