

ORIGINAL

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BLAINE COUNTY HEARING EXAMINER  
Public Hearing Date: November 1, 2018

NOV 13 2018

BLAINE COUNTY  
LAND USE & BUILDING SERVICES

REGARDING THE APPLICATION OF: )  
)  
Louise and Trent Stumph, )  
)  
For Variance from the 50' Setback from )  
Warm Springs Creek )  
)  
385 West Warm Springs Rd. )  
Lot 9, Block 1 of Board's Lower Ranch Sub. )  
Blaine County. )

FINDINGS OF FACT, CONCLUSIONS,  
OF LAW & DECISION

**SUMMARY OF APPLICATION AND DECISION:** Louise and Trent Stumph seek a Variance to allow incursion into the riparian setback of Warm Springs Creek to add a larger kitchen/dining area to their existing, nonconforming, residence, on a non-conforming lot, located in the Low Density Residential District (R-1) zoning district. The applicant has made the required showing of undue hardship, deprivation of reasonable use without a variance and lack of conflict with the public interest. The criteria for review and evaluation for this application have been satisfied, and a Variance Permit is by this decision issued, as conditioned herein.

**APPLICABLE REGULATIONS:** Title 9 (Zoning Ordinance), Chapters 1, 2, 3, 10, 30 and 33; Title 8, (Comprehensive Plan).

**REPRESENTATIVE:** None.

**DISCLOSURES:** None known. The Hearing Examiner has no conflict of interest preventing a fair and impartial hearing and decision herein.

**REGULATORY TAKINGS NOTICE:** Pursuant to Idaho Code §67-6512 and Blaine County Zoning Ordinance regulations, the Hearing Examiner shall review the above notice procedures and make a finding as to compliance with the requirements of Blaine County Zoning Ordinance §9-30-3.

**Section I. General Background, Application, Pre-Hearing Exhibits & Notice of Hearing**

**Description of the Property & Application:** Louise and Trent Stumph have applied for a Variance Permit to allow a five foot (5') intrusion into the otherwise required fifty foot (50') riparian setback from Warm Springs Creek. The purpose for the application is to construct an addition to their existing, nonconforming residence. The Stumph's desire to expand their kitchen/dining area to accommodate a growing family. The existing home, which is partially within the riparian setback is situated on a 0.45-acre lot located in the Low Density Residential District (R-1). The property, commonly known as 385 West Warm Springs Road, is more particularly described as Lot 9, Block 1 of Board's Lower Ranch Subdivision. The proposed addition would slightly further the non-conformity.

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2. **Exhibits:** The following exhibits were attached to the Staff Report, as revised, and reviewed together with said report prior to hearing, unless otherwise noted:

“A” Exhibits: Applicant Submittals (Received on September 17, 2018 unless otherwise noted).

A-1: Completed application form and responses to criteria for review.

A-2: Responses to criteria

A-3: Vicinity maps

A-4: Adjoiner’s map and property owners notified

A-5: Photo exhibit of proposed addition

A-6: revised Riparian Management and Mitigation Plan; rec’d 10-15-2018

A-7: Survey by Benchmark Associates

A-8: Architectural Drawings by Brunelle Architects, Inc.

3 sheets: Cover, A-102 and A-103

A-9: revision email; rec’d 10-15-2018

“B” Exhibits-Agency Comments

B-1: South Central Public Health District

“C” Exhibits- Blaine County Supplements

C-1: Findings of Fact document from Variance granted in 2001.

“D” Exhibits- Public Comment

D-1: Ray and Pam Franco; neighbor to 385 W Warm Springs

D-2: Jerry Seiffert and Pam Morris; neighbor to 385 W Warm Springs

3. **Notice:** Public notice for the November 1, 2018 Public Hearing was as follows:

A. Legal notice was sent to the Idaho Mountain Express for publication on October 17, 2018;

B. Notice was mailed to surrounding property owners within three hundred (300) feet of the subject property on October 23, 2018 and to all Blaine County political subdivisions on October 22, 2018;

C. An on-site notice was posted on or before October 23, 2018, at least 7 days prior to hearing as evidenced by the Posting Notice Affidavit; and

D. Application materials were posted on the Blaine County web site.

## **Section II. Public Hearing & Summary of Testimony Received**

4. Public hearing on this application was called to order at approximately 6:30 p.m., on Thursday, November 1, 2018. The applicants were present in person, without representation. Following a brief introduction the floor was offered to the applicant. Mr. Stumph provided an over view of the application, and a short history of the property. No public comment was made and therefore the public hearing was closed. A preliminary finding of compliance was made on the record.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION STUMPH VARIANCE**

### Section III. Findings of Fact & Conclusion of Law

5. Legal notice of Public Hearing provided was adequate under I.C. 67-6509 and Blaine County Code Section 9-30-3. Both statute and ordinance require publication in a newspaper of general circulation and notice to land owners within 300 feet of the borders of the subject property fifteen (15) days, and seven days, respectively, prior to hearing. The Blaine County Ordinance also requires onsite posting seven (7) days prior to hearing. Notice provided was adequate as a matter of law.
6. The criteria for review and evaluation of a variance application are found in the Blaine County Zoning Ordinance §9-30-4. The Hearing Examiner shall consider these criteria, as well as factors specified in other sections of the Zoning Ordinance and in the Blaine County Comprehensive Plan, in ruling on the applicant's request for a variance. The criteria presented by the code are quoted below in bold, followed by a brief analysis and statement of compliance.

***A. Whether the granting of the variance will conflict with the public interest as expressed in the Blaine County Comprehensive Plan.***

**FINDING: Compliance.** Granting the requested variance will not be in conflict with the public interest.

***B. Whether there are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not generally apply to the property or class of use in the zone or district.***

**FINDING: Compliance.** The original structure was built in 1986, prior to the adoption of the riparian setback district in 1991, making the existing house legally non-conforming for the district, creating an exceptional condition and an undue hardship. In 2001, a proposed remodel was granted a Variance for the riparian setback. The Findings of Fact from that Variance are in the record as Exhibit C-1. The lot is .45 acres in the R-1 zoning district making the lot size also legally, nonconforming for size in this district, adding to the exceptional conditions for this lot. All of these together, are exceptional conditions creating an undue hardship, applicable only to this property and the intended use thereof that do not generally apply to the property or class of use in the district.

***C. Whether the granting of such relief will be detrimental to the public health, safety, or welfare.***

**FINDING: Compliance.** Granting the requested variances will not be detrimental to the public health, safety or welfare.

***D. Whether the owner can derive a reasonable use of the owner's land without a variance.***

**FINDING: Compliance.** Accommodating a dining table large enough to seat the whole family is a reasonable use and a variance enables room for the proposed expansion. Therefore, the owners could not derive a reasonable use of the land without issuance of a variance.

***E. Whether the variance will effect a change in zoning.***

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**FINDING: Compliance.** Granting of a variance in this case will not affect a change in zoning.

*F. Whether the variance will be injurious to the property or improvements of others.*

**FINDING: Compliance.** Nothing about the covered storage will be injurious to the property or improvements of others.

*G. If the applicant or landowner with respect to an application for a variance under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof...*

**FINDING: Not applicable.**

### **III. Decision and Conditions**

Pursuant to §9-33-8 of the Zoning Ordinance, the Hearing Examiner shall enter an order approving, conditionally approving, or disapproving an application within fourteen (14) days after conclusion of the public hearing together with the reasons therefore. Adequate and sufficient evidence has been presented that the requirements of fact and law have been met. The Application for Variance is granted, stipulated upon the following conditions:

1. Prior to Certificate of Occupancy, Financial Security shall be retained by Blaine County in the amount of 30% of the estimated landscaping cost for a period of five growing seasons or until it has been demonstrated to the Land Use Director that the approved landscaping is has been implemented and adequately established. See Exhibit A-6 for the approved Riparian Management and Mitigation Plan; rec'd 10-15-2018. Allow 2-3 weeks for processing.
2. The applicant shall obtain a building permit within one (1) year of the date of the Findings of Fact, Decision and Conditions, or the approvals contained herein shall be null and void.
3. The applicant shall comply with all other applicable Federal, State and County regulations and conditions.
4. The Variance permit issued is conditioned upon compliance with plans submitted approving an additional five foot (5') incursion into the otherwise required fifty foot (50') riparian setback. Any deviation from the submitted plans will require an amended permit application.

IT IS SO ORDERED



CHRISTOPHER P. SIMMS  
HEARINGS EXAMINER

11/13/18

**The final Findings of Fact, Decision, and Conditions of the Hearing Examiner may be appealed to the Board of County Commissioners in the manner prescribed by Chapter 32 of the Blaine County Zoning Ordinance, specifically within twenty (20) days of the issuance of the Findings of Fact, Conclusions of Law and Decision.**

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**CERTIFICATE OF MAILING**

The undersigned person hereby certifies that on the 13<sup>th</sup> day of Nov, 2018, she served a true and correct copy of the foregoing document by depositing the same in the U.S. Mail addressed as follows or by service otherwise as noted:

Trent Stumph  
Box 2707  
Ketchum, ID 83340  
[trentstumph@cox-internet.com](mailto:trentstumph@cox-internet.com)

  
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Land Use Services Staff