

BLAINE COUNTY HEARING EXAMINER

Public Hearing Date: April 4, 2019

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BLAINE COUNTY
LAND USE & BUILDING SERVICES

REGARDING THE APPLICATION OF:)
)
Robert Joseph Short & Beverly Ann Family Trust,)
Application for,)
Accessory Dwelling Unit Conditional Use Permit)
)
Lot 10 River Grove Ranch Subdivision)
Address: 109 Mountain View Lane)
Blaine County, Idaho)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
& DECISION

SUMMARY OF APPLICATION AND DECISION: The applicant seeks a Conditional Use Permit (CUP) to allow construction of a second Accessory Dwelling Unit (ADU) on a 35.09 acre lot. The application meets all applicable criteria and the ADU-CUP is, by this Decision, issued, with conditions.

APPLICABLE REGULATIONS: Title 9, Blaine County Zoning Ordinance, Chapters 1, 2, 3, 10, 19, 25, and 33; and the Blaine County Comprehensive Plan.

REPRESENTATIVE: The applicant is represented by Jolyon H. Sawrey, of Vital Ink Architecture.

REGULATORY TAKINGS NOTICE: Notice: Pursuant to I.C. Section 67-6535(c), the owner of the property subject to this Decision may request a regulatory taking analysis Pursuant to I.C. Section 67-8003.

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

General Background & Application: A conditional use permit application for an accessory dwelling unit was received by the Administrator, certified as generally complete, and set for public hearing on April 4, 2019. The property in question is 35.09 acres in size, and has mixed zoning; including Rural Residential (R-10 UIB), Residential/Agricultural (R-5), with areas of Floodplain District, Riparian Setback, and Mountain Overlay Districts. The underlying districts that pertain to the proposed building location are Low-Density Residential (R-1), Wetland Overlay District, Wellhead Protection, and the Hailey/Blaine County Area of City Impact (ACI). Previously developed and existing on the property are a primary residence with an attached Accessory Dwelling Unit.

The applicants propose an eleven hundred fifty-two (1,152) square foot, second detached ADU above an eleven hundred fifty-two (1,152) square foot garage, including the mechanical system area of approximately thirty (30) square feet. The ADU will include two bathrooms, two bedrooms, kitchen, and living area. The application includes plans for an exterior stair entrance and a second floor uncovered porch. The building height will be thirty-one feet, seven and one half inches. (31'7.5"). The side yard setbacks are proposed to be sixty-nine feet (69'). A portion of the proposed location is within the wetland overlay district. Sawtooth Environmental has done a preliminary evaluation and does not classify this low area as a jurisdictional wetland. A second ADU on lots over five (5) acres may be

allowed with conditional use permit approval as specified in Blaine County code, Title 9, Chapter 3, Section 11.

1. **Exhibits:** The following exhibits were received and reviewed by the Hearings Examiner together with the staff report unless otherwise noted.

“A” Exhibits- Application:

- A-1: Condition Use ADU Permit Application
- A-2: Building plans, site plans, & vicinity map
- A-3: Adjoiners List
- A-4: Parcel Information
- A-5: Title Information
- A-6: Wetland Preliminary Evaluation, Sawtooth Environmental

“B” Exhibits- Agency Comments:

- B-1: South Central Public Health District

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

4. **Notice:** Public notice for this application was as follows: Legal notice was published in the Idaho Mountain Express on March 20, 2019. On March 11, 2019 notice was given to surrounding landowners within 300’ of the exterior boundary of the property and to all Blaine County political subdivisions. An additional notice was mailed to the City of Hailey on March 6, 2019. An on-site notice was posted by or on March 11, 2018.

Section II. Public Hearing & Summary of Testimony Received

5. This application for Accessory Dwelling Unit Conditional Use Permit came on for public hearing on April 4, 2019. The applicant was represented by its architect, Jolyon Sawrey. The Hearing was called to order at approximately 6:30 p.m., by the Blaine County Hearing Examiner. Following brief introductory comments relating to procedure, the floor was offered to the applicant. Ms. Sawrey provided a general description of the property, its zoning and the application. A discussion was had concerning the septic system and the low lying land on the property. The architectural design and site layout were presented. A discussion was had concerning the history of the property relating to a manmade water course and soil conditions in the area near the proposed septic drain field of the proposed second ADU. The applicant concluded his presentation.

In that no members of the public were present for public hearing, no public comment was offered, and the hearing was closed. The hearing was concluded upon a preliminary finding that the project required an ADU-CUP and that the criteria for approval were met.

Section III. Findings of Fact & Conclusion of Law

6. Legal notice of Public Hearing provided was adequate under I.C. 67-6509 and Blaine County Code. Both statute and ordinance require publication in a newspaper of general circulation and notice to all Blaine County Political Subdivisions and land owners within 300 feet of the borders of the subject property fifteen (15) days, or more, before hearing. The Blaine County Ordinance also

requires onsite posting seven (7) days prior to hearing, which requirement has been met. Notice provided was adequate as a matter of law.

7. In considering a Conditional Use Application for an accessory dwelling unit under Blaine County Code the proposed structure must meet both specific definitional criteria provided in chapters 2 and 3 of the zoning ordinance, and the general conditional use criteria provided in chapter 25. A proposed accessory dwelling unit must meet all of the requirements before a conditional use permit may be issued.

The purpose of an Accessory Dwelling Unit is provided by Blaine County Code Section 9-3-11, which provides, in pertinent part, as follows, *“The purpose of the accessory dwelling unit regulations is to define what an accessory dwelling unit is; address under what circumstances it is appropriate to allow increased density on a lot; and address the impacts an accessory dwelling unit may have on the surrounding area such as the need for potable water and sanitation, increased traffic and compatibility with the neighborhood... A.3. On lots of five (5) acres or greater in size: b. A second accessory dwelling unit may be allowed under a conditional use permit obtained from the commission. Notice and hearing procedures contained in chapter 25 of this title shall be followed. The application shall be subject to the provisions contained herein and the standards of evaluation contained in subsections 9-25-3A4 and A4 of this title.*

An accessory use is defined in Zoning Ordinance §9-2-1, as follows;

A use or structure subordinate to the principal use on the same lot or premises, and serving a purpose customarily incidental to the use of the principal building. The gross floor area of an accessory structure shall not exceed seventy-five percent (75%) of the gross floor area of the primary building containing the permitted use on the lot. Exceptions: The size limitation shall not apply to agricultural buildings, indoor riding arenas, or accessory dwelling units that are detached from any other building containing an accessory use. An accessory use is a use that is commonly, habitually and by long practice established or associated in Blaine County with such primary use.

A dwelling, accessory is defined in Zoning Ordinance §9-2-1 as follows:

A separate building or portion thereof or portion of a residential building excluding mobile homes which may, but is not required to, provide complete, independent living facilities for a single family or housekeeping group including permanent provisions for living, sleeping, cooking, eating, and sanitation. The primary factors which cumulatively may result in a building or portion of a building being classified as an accessory dwelling unit are that: (A) the area is not functionally integrated with the floor plan of the primary residence (i.e. the area does not share a common hallway); B) there is a kitchen consisting of a sink, counters, cabinets, refrigerator and cooking appliance; or electrical outlets and plumbing that would support kitchen facilities:

Other factors include, but are not limited to that the building or portion of the building:

(A) can be locked off from primary residence and used independently from the primary residence; B) has a separate entrance; C) has conditioned space or wood-burning stove; D) has a three quarter or full bath; E) has power and

plumbing for washer and dryer; F) has a separate mechanical system; G) has upper and lower cabinets; H) has counters.

Said accessory dwelling shall be clearly subordinate to the principal residential use on the lot and shall serve a purpose customarily incidental to the use of the principal residential use. Said unit shall meet criteria set forth in Section 9-3-11 of [the Zoning Ordinance]. Exception: A building or portion of building that does not exceed five hundred (500) square feet and does not have a kitchen (i.e. sink, counters, cabinets, refrigerator and cooking appliance; or electrical outlets and plumbing that would support kitchen facilities) and has no more than a half bath (i.e. sink and toilet) may be considered an accessory building and not an accessory dwelling unit.

Finding: Compliance. The proposed structure will be an accessory use and an accessory dwelling, as defined in Zoning Ordinance §9-2-1. The use and structure is, and has been, subordinate to the principal use on the lot or premises, and serves a purpose customarily incidental to the use of the principal use. The gross floor area does not exceed 75% of the gross floor area of the primary residence. Guest quarters are common accessory uses in Blaine County. What is proposed, is clearly an accessory dwelling unit.

8. All accessory dwelling units are required to comply with the criteria found in Zoning Ordinance §9-3-11, which provides, in pertinent part, as follows;

1. All accessory dwelling units shall be limited to a maximum of 1,200 square feet floor area with a maximum of 2 bedrooms. Said floor area shall be the total of all floor areas as measured from the exterior face of the exterior walls. Garage space up to an additional 1,200 square feet is allowed.

a. The area encompassing the mechanical system shall be included in the square footage calculation based upon the location of the mechanical system. If the mechanical equipment is located in the crawl space, it shall be exempt from the square footage calculation.

b. Exterior stairs that are not enclosed shall be excluded from the square footage calculation.

c. When an attic roof truss system creates an unusable and inaccessible attic space between the interior and exterior wall, the floor area measurement shall be taken from the outside of the interior wall.

2. Shall be allowed in the A-20, A-40, R-10, RR-40, R-5, R-2 1/2, R-2, R-1, R-.4, R-1/4, and RD zoning districts and shall not be allowed in any designated overlay district; except where an accessory dwelling unit is proposed on property located within the CH overlay district that is not part of a CH-PUD;

3. Accessory dwelling units may be allowed in the FP zoning district as a residential use only upon approval of a conditional use permit pursuant to Zoning Ordinance §9-17.

4. *Accessory dwelling units shall meet setbacks for the zoning district in which it is located.*
5. *Accessory dwelling units shall require a building permit.*
6. *Accessory dwelling units shall be located on the same lot as the principal residential dwelling.*
7. *Accessory dwelling units shall provide for one parking space in addition to the minimum required for the principal residential dwelling unit.*
8. *Accessory dwelling units shall meet requirements of South Central Health District evidenced by approval there from upon application for a building permit.*
9. *Accessory dwelling units shall be prohibited on any lot less than one acre in size, regardless of the applicable zoning district.*
10. *Accessory dwelling units may be part of an accessory building containing other accessory uses, as allowed in the zoning district, provided that: i) the gross floor area of the accessory building does not exceed 75% of the gross floor area of the primary residence; ii) the accessory dwelling unit portion of the building satisfies all applicable regulations; iii) the floor area of the accessory dwelling unit and garage associated therewith is separate and distinct from other accessory uses contained within the same building.*

Finding: Compliance with conditions. The proposed accessory dwelling unit, is within the maximum square footage, and all other requirements of scale, design and layout, permitted by code. Ample parking exists and all emergency response requirements are met. The required setbacks are met. A building permit has not yet been issued. South Central Health District has not yet issued its permit to expand the existing system. Approval is conditioned upon South Central Health District issuing a septic permit and the issuance of a building permit.

Additional Conditional Use Permit standards of evaluation are provided by § 9-25-3. Again, the standard is quoted in italics, followed by a reasoned statement of compliance.

1. Will, in fact, constitute a conditional use as established for the zoning district involved;

Finding: Compliance. See analysis provided above.

2. Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or this title;

Finding: Compliance. Accessory dwelling quarters are common uses on estate sized lots in Blaine County.

3. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area. All outdoor lighting shall comply with chapter 29A of this title;

Finding: Compliance. The accessory dwelling unit (ADU) complies with this standard. The general vicinity is zoned R-1 (Low Density Residential) and the area is rural-residential in character. The accessory dwelling unit (ADU) conforms in all respects in appearance and character of the area.

4. Will not be hazardous or disturbing to existing or future neighboring uses;

Finding: Compliance. Nothing about the application appears to be hazardous or disturbing.

5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

Finding: Compliance. The area is well provided for by Blaine County public services.

6. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

Finding: Compliance. There is no indication the proposed use will create excessive additional requirements at public cost or be in any way detrimental to the economic welfare of the community.

7. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, dust, odors, vibration, water pollution or safety hazards. Water pollution includes impact to surface and ground water and potable water sources. When the proposed use involves a potential contaminant source or potential contaminant as set forth in appendix A of this title, on file in the county, and is located within a wellhead protection area, the commission shall consider the impact of the project on potable water sources and determine whether there is sufficient information in the record to demonstrate that the project has been designed to mitigate adverse impact to potable water source(s);

Finding: Compliance with conditions. A portion of the property is within the Wetland Overlay District. Sawtooth Environmental has done a preliminary evaluation this winter and does not classify this low area as a jurisdictional wetland. As Spring weather conditions permit, a follow up site

visit and review shall be had to confirm the lack of wetland associated vegetative species. The Applicant shall, through Sawtooth or an alternative professional, submit a letter to confirm preliminary findings prior to building permit approval.

8. Will have vehicular approaches to the property which shall be designed as not to create an interference with traffic on surrounding public thoroughfares;

Finding: Compliance.

9. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance; and

Finding: Compliance with conditions.

10. If the applicant or landowner with respect to an application for a conditional use permit under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof, the commission or the board, in addition to all other applicable standards and criteria hereunder, shall take into account the plans and needs of the state, or any agency, board, department, institution or district thereof, as required by Idaho Code section 67-6528.

Finding: Compliance. The applicant is not the State.

III. Decision and Conditions

10. 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. The Hearing Examiner may also, pursuant to Zoning Ordinance §9-3-11.B, attach conditions to the approval of a conditional use permit for an accessory dwelling unit as are deemed necessary to protect the rights of all affected property owners and the general welfare. Adequate and sufficient evidence has been presented that the requirements of fact and law have been met. The application for Accessory Dwelling Unit Conditional Use Permit is granted, stipulated upon the following conditions:

1. Applicant shall receive and comply with a South Central Health District Subsurface Sewage Disposal Expansion Permit prior to and throughout construction and habitation of the improvements contemplated herein.

2. Any modifications to the approved plans shall require further zoning review, and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance.

3. A building permit is required prior to construction.

4. A confirmation letter from Sawtooth Environmental verifying the preliminary evaluation. Site visit to be conducted in the spring growing season and letter submitted

prior to the issuance of a building permit.

IT IS SO ORDERED

 

CHRISTOPHER P. SIMMS
HEARINGS EXAMINER

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, Decision, and Conditions.