

Valley County Planning and Zoning Commission

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Katlin Caldwell, Chairman
Ken Roberts, Vice-Chairman

Sasha Childs, Commissioner
Scott Freeman, Commissioner
Gary Swain, Commissioner

MINUTES

Valley County Planning and Zoning Commission

May 11, 2023

Valley County Court House - Cascade, Idaho

PUBLIC HEARING - 6:00 p.m.

A. OPEN: Meeting called to order at 6:00 p.m. by Acting Chairman Roberts. A quorum exists.

PZ Director – Cynda Herrick:	Present
PZ Commissioner – Katlin Caldwell	Excused
PZ Commissioner – Sasha Childs:	Present
PZ Commissioner – Scott Freeman:	Present
PZ Commissioner – Ken Roberts:	Present
PZ Commissioner – Gary Swain:	Present
PZ Assistant Planner – Lori Hunter:	Present

B. MINUTES: Commissioner Freeman moved to approve the minutes of April 13, 2023, and April 20, 2023. Commissioner Swain seconded the motion. Motion passed unanimously.

C. OLD BUSINESS:

1. C.U.P. 21-06 Moon View Ranch Subdivision Amended – Final Plat: Sound Holding LLC and Leaway Investments LLC are requesting an amendment to Moon View Ranch Subdivision in accordance with Valley County Code 10-3-4.B in order to expand two lots and correct scrivener's errors. The site is 9.3 acres in Section 29, T.18N, R.3E, Boise Meridian, Valley County, Idaho. Action Item. [Not a public hearing.]

Acting Chairman Roberts introduced the item and asked if there was any exparte contact or conflict of interest; there was none. Director Herrick presented the staff report, displayed the site and GIS map on the projector screen, and summarized the following exhibit:

- **Exhibit 1** – Email correspondence between Mike Reno of Central District Health, Director Herrick Cynda, and applicant Matt Falvey regarding release of sanitary restrictions. (May 9-11, 2023)

Sanitary Restrictions will be released prior to recording the final plat. The FAA form and requirements were discussed.

Commissioner Childs moved to approve the final plat of C.U.P. 21-06 Moon View Ranch Subdivision Amended and authorize the Chairman to sign. Commissioner Freeman seconded. Motion carried unanimously.

There is a 10-day appeal period to the Board of County Commissioners in accordance with Valley Code 9-5H-12.

- 2. V-1-23 Franklin Building Supply Setback Variance:** Franklin Building Supply CO is requesting a variance to relax the setback from the property line along Highway 55 and the southwest portion of the site. The site, addressed at 23 Johnson Lane and 14047 Highway 55, includes parcels RP18N03E330606, RP18N03E330621 and RP18N03E330645, and is located in the NWNE Section 33, T.18N, R.3E, Boise Meridian, Valley County, Idaho. **[Tabled from March 9, 2023]** Action Item.

Commissioner Freeman moved to remove V-1-23 from the table for consideration. Commissioner Swain seconded the motion. Motion passed unanimously.

Acting Chairman Roberts asked if there was any exparte contact or conflict of interest; there was none. Acting Chairman Roberts reopened the public hearing. Director Herrick presented the staff report addendum and displayed the site, GIS map, and site plan on the projector screen.

The three alternatives listed in the staff report and the site plan were discussed. The fence is on the property line. Director Herrick's recollection is that the area was blacktopped for equipment to use, not for storage of materials.

Acting Chairman Roberts asked for the applicant's presentation.

Abby Germaine, Boise, represented Franklin Building Supply. This process started with discussions relating to enforcement efforts of setback requirements along Highway 55. Ms Germaine submitted 11 x 17" copies of the site plan from 99-1 (**Exhibit 1**) to each Commissioner. The applicant is requesting to use the area with 100-ft of the property line for staging and short-term storage, not long-term storage. Franklin Building Supply will not use the setback area for vehicle parking. The area is used for loading and unloading of trucks. Franklin Building Supply is amenable to either Alternative 1 or the Commission making a finding that the original site plan approved for C.U.P. 99-1 allowed for this temporary storage and staging area. Franklin Building Supply would like the record to show that the use that has historically happened is allowed.

The idea of a variance was brought to Franklin Building Supply by Staff and the Valley County Deputy Prosecutor as a way to provide protection to the County as enforcement efforts move forward. Therefore, Franklin Building Supply applied for a variance.

Ms. Germaine referred to the alternatives listed in the staff report. Alternative 1 would approve the variance and allow staging and short-term storage materials. She does not believe that the Commission would be determining that the site plan is dominant to the adopted ordinance [first bullet point]. The 100-ft setback is shown on the site plan. However, the site plan clearly shows that storage is allowed all the way to the fence line. The setback is indicated to prohibit permanent structures within the setback and is not applicable to short-term storage or staging or ingress/egress. Parking did occur in the past in this area, but Franklin Building Supply agrees that parking will not occur in the setback area in the future. Mr. Leavitt has pictures that show that current short-term storage of materials up to the fence line does not block the view of on-coming traffic from Johnson Lane [second bullet point]. The company has been conscious that anyone coming from Johnson Lane has a clear view of sight. Ms. Germaine disagrees that approval of this variance would allow other businesses along Highway 55 to not abide with the setbacks [third bullet point]. Other businesses can be told that the use of the setback area at Franklin Building Supply is allowed because the Company has met the criteria and the use is allowed on the approved site plan.

Ms. Germaine stated that Alternative 3 is a solution. Franklin Building Supply will work with the

Commission to allow the current operations. The 100-ft setback area would be used as staging area and for short-term storage. Materials may sit there for a day or more awaiting the next truck to remove them from site. The definition of “staging” does not specify how long materials can stay. Limiting the storage to only a 24-hour time frame would be difficult, particularly due to deliveries on Friday and pick-up the following Monday. Franklin Building Supply has no objections to the 15-ft height limit of stacks. Franklin Building Supply will commit to no permanent structures within the 100-ft setback from the property line. Franklin Building Supply does use the 14-ft area from the fence to turn vehicles and place materials. The Idaho Transportation Department (ITD) comments do not make a recommendation that 14-ft distance is required. The applicable statute states that 14-ft “may be necessary”. The right-of-way is not infringed on as there is a large amount of space between the fence and the asphalt of Highway 55 at this location.

Ms. Germaine understands the possibility that the road width of Highway 55 may increase in the future; however, this variance request is what they want for operations today.

Ken Leavitt, Star, Idaho, Regional Manager for Franklin Building Supply, replied to questions from Commissioners. It is not possible to know exactly how long materials are staged at the site before being loaded on truck, sometimes circumstances could result in approximately a week. The staging area is constantly being added to. A specific time frame would be hard to determine. Loads can be cancelled or truck delayed. Mr. Leavitt discussed the differences between staging versus storage. He admits that a few years ago, the setback area was used for storage. In response to conversations with the Planning and Zoning Staff, Franklin Building Supply began using it only as a staging area. He would need to look at data to determine the average length of staging orders. Special orders are stored long-term in a different part of the property. This specific setback area site along the road is only used for short-term orders. The staging area has materials stored in it every day, although the specific materials change regularly.

Acting Chairman Roberts stated that all other businesses in Valley County are not allowed to use the 100-ft setback along Highway 55. This road is a designated Scenic Byway. No structures are allowed within 100-ft of the property line.

Mr. Leavitt believes that the existing conditional use permit allows the current use of the area for staging of materials. Ms. Germaine stated that established case law says that if you are granted an entitlement and then ordinances or code changes, you are “grandfathered in for that use”. In this case, there is a clearly defined allowable use. Acting Chairman Roberts stated that the 100-ft setback existed in 1999 when the conditional use permit was granted. Ms. Germaine agreed that no permanent structures were allowed in the setback area; however, it was noted on the site plan that storage would occur up to the fence line.

Acting Chairman Roberts asked for proponents. There were none.

Acting Chairman Roberts asked for undecided. There were none.

Acting Chairman Roberts asked for opponents. There were none.

Acting Chairman Roberts closed the public hearing. The Commission deliberated. The 100-ft setback from Highway 55 was discussed. The purpose of the setback includes future highway expansion, the scenic byway, and increased safety by reducing distractions near the roadway. Commissioner Childs asked Staff about future implications for other sites if the listed alternatives were approved. Director Herrick believes the approval of the variance allows flexibility and clear decisions. The Commissioners will make a recommendation to the Board of County Commissioners. Director Herrick and Acting Chairman Roberts were present at the 1999 public hearing. There were conversations between Staff, Deputy Prosecutor Brian Oakey,

and Franklin Building Supply's legal counsel and employees. These discussions lead to this variance application. Director Herrick recalls that the area was allowed to be blacktopped to allow employees to drive in the area. Storage was to be between the buildings and not in the setback area. Alternative 3 includes the ability to identify temporary storage by the use of a "packing slip". The applicant expressed that expanding the operation area west of the existing buildings is not practical due to the topography. Commissioner Swain has considered Staff's recollection and the wording on the site plan. The "grandfathered" use is an issue. The area has been blacktopped, fenced, and used for storage. Commissioner Swain says the storage seems to have been an acceptable use for the past 24 years. He prefers Alternative 3 and granting of a variance. He does have concerns about implications for other sites along Highway 55. Commissioner Childs concurred. There was discussion regarding the time allowed for short-term storage. Franklin Building Supply did not object to a 15-ft height limit of materials. The storage of materials within 14-ft from the fence was discussed. Commissioner Childs and Commissioner Freeman agree that storage should be allowed within 14-ft from the fence line; prohibiting that would be unreasonable as there is a good distance between the roadway and the fence line. Commissioner Roberts disagreed as he is concerned about long-term implications. Commissioner Childs replied that the variance recommendation would not override eminent domain procedures by the State of Idaho. Commissioner Childs concurs with Commissioner Swain that for 24 years, the fence, asphalt, and use has been allowed; the applicant is completing the correct procedures for a solution.

Modifications to Alternative 3 were discussed. Materials do not always go into storage buildings. A 0-ft setback would be allowed instead of 14-ft from the property line. Staff stated approving a variance allowing a 0-ft setback instead of including the stipulations as tracking the time materials are stored would be difficult to monitor. Commissioner Childs prefers the stipulations regarding the 15-ft height restriction and short-term storage / staging use.

Commissioner Childs moved to recommend approval of V-1-23 to the Board of County Commissioners, specifically approving Alternative 3 with modifications:

Alternative 3: Allow the 100-ft setback area to be used as a "staging" area.

- to temporarily store orders that are waiting to be picked up.
- ~~to allow drop off of merchandise to be placed in the storage buildings.~~
- These stacks are limited to the height of 15-ft.
- ~~These stacks could be no closer than 14' to the fence as per the request of ITD.~~
- Temporary storage is allowed up to seven (7) days per order ~~could be for a specified amount of time, such as 24 hours or identified by a packing slip for pickup within a specified time.~~

Commissioner Swain seconded the motion.

The Commissioners discussed reasons to recommend approval. These include:

- The use for this purpose was in place prior to the 1999 conditional use permit.
- The site is a short-term storage and lay-down area for materials.
- Commissioner Swain believes approval of the use was given in 1999 and the use is being confirmed today.

Motion approved unanimously.

7:00 p.m.

D. NEW BUSINESS:

1. **C.U.P. 22-20 CAT Rental Store – Extension Request:** VP Properties – The Terteling Company INC is requesting a one-year extension of the conditional use permit for an equipment rental store, office, and shop facility that expires on July 6, 2023. The 7.6-acre site is parcel RP16N03E269809, addressed at 10 Davis Creek Lane, and located in the SESE Section. 26, T.16N R.3E, Boise Meridian, Valley County, Idaho. Action Item **[Postponed from April 13, 2023]**

Acting Chairman Roberts excused himself for this item due to a conflict of interest and left the meeting room. Acting Chairman Childs introduced the item and opened the public hearing. Acting Chairman Childs asked if there was any additional exparte contact or conflict of interest; there was none. Director Herrick presented the staff report and displayed the site and GIS map on the projector screen.

Acting Chairman Childs asked for the applicant's presentation.

Dave McKinnon, Boise, represented the applicant. The applicant concurs with the staff report. The septic system location change has delayed the building permit application; however, he has a meeting with Mike Reno of Central District Health on May 19, 2023. The road development agreement was discussed. Director Herrick stated Davis Creek Lane is already paved and turning lanes exist at the intersection with Highway 55. Director Herrick read from the Road Superintendent's letter of May 26, 2022.

Acting Chairman Childs stated that the record should show there was no one in the audience other than the applicant's representative.

Acting Chairman Childs closed the public hearing. The Commission deliberated. The Commissioners agreed that the applicant has begun the work and is going through the correct process.

Commissioner Freeman moved to approve the extension request for C.U.P. 22-20 CAT Rental Store with the stated conditions. Commissioner Swain seconded the motion. Motion carried unanimously.

There is a 10-day appeal period to the Board of County Commissioners in accordance with Valley Code 9-5H-12.

7:08 p.m.

Acting chairman Roberts returned to the Commission. The below changes to public hearings have been noticed.

2. **C.U.P. 23-12 Moss Landing Subdivision – Preliminary Plat: [Postponed to June 8, 2023]**
3. **C.U.P. 23-14 Big Boy Toys: [Postponed to May 18, 2023]**
4. **C.U.P. 23-15 Mullin Multiple Residences: [Postponed to August 17, 2023]**
5. **C.U.P. 23-16 Forge Landworks: [Postponed to May 18, 2023]**

6. **Tamarack Resort P.U.D. 98-1 Amendment and C.U.P. 23-17 Phase 3.5 - The Cottages at Trillium Creek – Preliminary Plat: [Postponed to May 18, 2023]**
7. **C.U.P. 23-18 Montego Properties Multiple Residences and Solar Panels – Amendment to C.U.P. 22-03: [Postponed to May 18, 2023]**
8. **C.U.P. 23-19 Cascade Valley Estates – Preliminary Plat: [Postponed to May 18, 2023]**

E. OTHER ITEMS:

- 1) **Amendment Recommendations:** Should the PZ Commission reconsider due to lack of information and a response that did not get into the Staff Report? Would inclusion change your recommendation? Action Item.

Commission Swain has expressed concerns that the Commission did not have enough information to make a recommendation regarding the proposed ordinance changes to Valley County Code 6-1-9.G requiring Federal Aviation Administration (FAA) Form 7460-1. Director Herrick stated that the PZ Commission does not typically make decisions on Title 6 Building Regulations. However, this proposed code change was brought to the PZ Commission due to the number of requests the Commission has received to require it for specific conditional use permits.

Staff and Commissioners discussed the process for determining if a FAA Form 7460-1 would be required when someone applies for a building permit. Commissioner Childs does not believe this information would change the original PZ Commission recommendation. Commissioner Swain is concerned that everyone would be required to hire someone to complete this form.

The FAA does not have jurisdiction enforcement capability. Local enforcement occurs through ordinances. The FAA highly recommends that FAA Form 7460-1 be required within three miles of an airport if certain criteria are met. This is encouraged through airport funding. Staff showed the FAA Criteria Data Finder GIS located on the Valley County website. Director Herrick stated that an applicant could determine the latitude and longitude of the building site using Google Earth or the Valley County website. The FAA Criteria Tool is online. Typical result is “no form 7460-1 needed”. Last year the Board of County Commissioners adopted a policy that all properties within Valley County’s jurisdiction must complete FAA Form 7460-1 when applying for a building permit. The recommendation that the PZ Commission made on April 20, 2023, would require the FAA Criteria Tool be used only for those sites within three miles of an airport.

Commissioner Childs moved to make no changes to the PZ Commission recommendation made on April 20, 2023. Commissioner Freeman seconded the motion. Motion carried unanimously.

There is a 10-day appeal period to the Board of County Commissioners in accordance with Valley Code 9-5H-12.

Therese Gibboney sent an email response on April 12, 2023, regarding the proposed ordinance changes. This was not given to the PZ Commission for the public hearing on April 20, 2023. Commissioner Childs appreciates Ms. Gibboney’s comments but believes these specific matters were discussed and the additional comments would not change the Commission’s decision. The other Commissioners concurred.

Commissioner Freeman moved that Therese Gibboney’s comments would not change the Commission’s previous decision regarding ordinance changes for neighborhood meetings or P.U.D. densities. Commissioner Childs seconded the motion. Motion carried unanimously.

2) Appeal of Administrative Decision that a Conditional Use Permit is Required For Solar Panels at 13643 Morris Ranch RD – set a new date so we can notice. Action Item.

Commissioners agreed to schedule this matter for the Commission meeting on July 13, 2023, for the Appeal of Administrative Decision that a Conditional Use Permit is Required for Solar Panels at 13643 Morris Ranch RD.

3) Vault Privy Request: Crown Point Subdivision No. 2 Lot 1, 1246 Crown Point Parkway. Action Item.

Mike Reno, Central District Health, stated to Director Herrick that the land was scraped which ruined the possibility of a septic system on the lot. The property owner is requesting a vault privy and holding tank, not a porta-potty. Valley County Code Title 6 allows for an outdoor privy upon approval of the PZ Commission. Typically, approval has been based on the lack of ability to get a septic system. There are no CCRs for this subdivision. The vault privy is preferred for environmental and aesthetic reasons.

Commissioner Freeman moved to approve the vault privy request for Crown Point Subdivision No. 2 Lot 1 addressed at 1246 Crown Point Parkway. Commissioner Swain seconded the motion. Motion carried unanimously.

There is a 10-day appeal period to the Board of County Commissioners in accordance with Valley Code 9-5H-12.

F. FACTS AND CONCLUSIONS – Action Items:

- C.U.P. 23-06 Smith Family Camping Site and Multiple Residences
- C.U.P. 23-08 Fredriksen RV Rental Site
- C.U.P. 23-09 Frost Management Storage
- C.U.P. 23-11 South Ranch Subdivision
- C.U.P. 23-13 Coulegar Multiple Residences

Commissioner Childs moved to approve the Facts and Conclusions as presented and authorize the chairman to sign. Commissioner Swain seconded the motion. Motion carried unanimously.

Commissioner Freeman moved to adjourn the meeting. Commissioner Childs seconded the motion. Motion carried unanimously.

Acting Chairman Roberts adjourned the meeting at 7:35 p.m.