

**FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS
OF THE MADISON COUNTY PLANNING AND ZONING COMMISSION**

Re: Darnell Weekes Variance

The Madison County Planning and Zoning Commission held a public hearing on January 10, 2013 at 7:15 p.m. at the Madison County Commissioners' Room in the Madison County Courthouse, Rexburg, Idaho, to consider the Darnell Weekes' request for a Variance for the purpose of dividing off a piece of his parcel to sell to his daughter. The parcel is naturally separated by 400 West and the Lenroot Canal in Agricultural zoning located approximately 9880 South 400 West in the Archer area.

Testimony was taken during the January 10, 2013 public hearing. At issue is a section of the Unified Development Code, Part II, Article VI, Sections 101-171 *et seq.*, entitled Variances.

The entire meeting was recorded to allow for preparation of a transcribable verbatim record of the hearing. No media were in attendance at the meeting.

The following members of the Madison County Planning and Zoning Commission ("Commission") were present at the public hearing: Chairman Bill Squires, Vice Chairman Anthony Merrill, Ed Williams, Mike Munns, Rick Robertson, Matt Hartline, Dean Peterson, Kevin Willmore and Doug Sakota. Those excused were: Millie Andrus and Jolene Sutton. Planning and Zoning Administrator Brent G. McFadden, Coordinator Shauna J. Ringel and Legal Counsel Troy Evans also attended.

The public hearing was called to order by Chairman Squires. Shauna J. Ringel acted as clerk for the meeting. Chairman Squires questioned Mr. McFadden as to whether or not notices of the hearing had been properly published, posted and provided. Mr. McFadden stated all required legal notices had been given. The Chairman asked if there were any conflicts of interest with members on the Commission. Chairman Squires indicated that the applicant was a neighbor and had discussed this variance with him and that they both expressed their opinion about it to each other. As such, Chairman Squires declared a conflict and removed himself from the Commission for this hearing. No other conflicts were stated. The Vice Chairman resumed the meeting.

A summary of this discussion at the hearing is attached hereto and incorporated herein (see attached January 10, 2013 testimony).

Administrator Brent McFadden explained that Mr. Weekes' parcel was naturally separated by the Lenroot canal and is also divided by 400 West. Mr. Weekes' daughter lives on the parcel above the county road and canal, while he has a feedlot business that occupies the lower parcel. Mr. Weekes would like to sell the top portion to his daughter without having to sell her the feedlot.

Darnell Weekes of 8831 South 600 East, Rexburg, then gave the presentation on behalf of his Variance request. The presenter was asked questions by the Commission.

After hearing the presentation by the Planning and Zoning staff, and from the applicant on behalf of the Darnell Weekes Variance request, the Chairman asked for those in favor, in neutral, or opposed to the proposal to come forward and be heard. Chairman Squires reminded the citizens in attendance that they must sign up on the appropriate lists if they wished to speak.

Those in favor were: None
Those in neutral were: None
Those opposed were: None
No written correspondence was received.

There being no further comments, the public hearing was closed. The Planning and Zoning Commission noted that any recommendations they would make would be tentative, pending final approval from the Board of County Commissioners. The Commission then deliberated the Darnell Weekes request for a Variance to split his parcel that is naturally divided so his daughter can purchase the top portion in Agriculture zone.

The Commission reviewed the factors set forth in Madison County Code section 101-166. A discussion was had that the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive Plan in that a balance is in place between private interests and the community, and that this variance is in conjunction with the County's land use regulations and zoning. The Commission discussed that granting this request would not result in a loss of property values. That granting the request would preserve the property rights of the owner and allow the Weekes' reasonable enjoyment of their property. That the two property parcels are separated by a road, a canal and a steep grade from the top parcel to the bottom parcel. That granting this relief will not be detrimental to the public health and welfare, or the other quiet enjoyment of the property because the Weekes' do not plan on building on the lower portion, but rather want to sell the upper land to their daughter that already has a home located upon it.

Based upon this discussion, Kevin Willmore made the motion to approve the Darnell Weekes' Variance request to split his parcel so he can sell the top portion to his daughter, and that the lower portion will not be turned into a buildable lot. Dean Peterson seconded the motion. Vote was unanimous.

Having given due consideration to the application and evidence presented, the Planning and Zoning Commission hereby makes the following findings of fact:

FINDINGS OF FACT

1. A public hearing was held January 10, 2013 to take the testimony on a requested Variance. This proposed amendment is consistent with the goals and objectives of the Comprehensive Plan.
2. Notice was published in the legal County newspaper, the Standard Journal, December 27, 2012 as required. The published notice included an appropriate and accurate summary of the issues to be heard. Copies of the notices were made available as requested and were provided to political subdivisions within the planning jurisdiction at least 15 days prior to the hearings. Copies of the notice were sent to all residents within the 350 feet, as required by Idaho law, on December 20, 2012.
3. At the beginning of the hearing, Chairman Squires asked whether proper notice of the hearing had been provided. The Planning and Zoning staff answered in the affirmative, discussing what notices had been provided. The Chairman then disqualified himself from the proceedings because of a conflict of interest. No other conflicts were reported.
4. The Public hearing was scheduled at 7:15 p.m. all as set out in the published notice, as described above.
5. The meeting agenda was available prior to the meeting, and the public hearing followed the order of events listed on the agenda. The Planning and Zoning Administrator gave an explanation of the subject of the public hearing. An opportunity was provided for the applicant and members of the public to present testimony, which was followed by members of the Planning and Zoning Commission. Public testimony was closed after all present had been given an opportunity to submit oral or written testimony. Reasonable time limit was imposed on oral testimony.

CONCLUSIONS AND RECOMMENDATIONS

1. Notice of the Public Hearing held to consider approval of the Variance was published and provided as is required by Idaho Code §§67-6509 and 67-6511.
2. The Public Hearing was held to consider approval of the proposed Variance and was conducted in accordance with the requirements of Idaho Code §§ 67-6509 and 6511 as well as Unified Development Code, Part II, Article VI, Sections 101-171 regarding Variances.
3. Per the standards applicable to variances, section 101-166 of the Unified Development Code the following findings are made:
 - A. The proposed use of the parcel does constitute a Variance per Unified Development Code, Part II, Article VI, Sections 101-171 of the Madison County Code Book.

B. That the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive Plan and/or this part and will not effect a change in zoning.

C. That there are exceptional or extraordinary circumstances or conditions, applicable to the property involved which do not apply generally to the property or class of use in the zoning designation, so that a denial of the relief sought will result in:

- i. Undue loss in value of property;
- ii. Inability to preserve the property rights of the owner; or
- iii. The prevention of reasonable enjoyment of any property rights of the owner.

D. The granting of such a relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property improvements.

4. A transcribable verbatim record was made and kept of the Public Hearing held to consider approval of the Variance, in accordance with the requirements of Idaho Code §§ 67-6536.

5. The proposed Variance is an appropriate exercise of the planning and zoning responsibilities established by Idaho Code §§ 67-6501 *et sec.*

6. Approval of the proposed Variance change is in the best interests of the people of Madison County, Idaho.

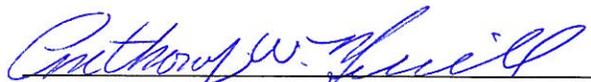
7. These Findings of Fact and Conclusions of Law maintained and submitted in accordance with Idaho Code §67-6509.

CONCLUSION

Based upon the foregoing Findings of Fact, Conclusions and Recommendations, the planning and zoning procedures conducted throughout the county, the comments received at the public hearing held thereon, and the deliberation of the Planning and Zoning Commission, the Commission hereby recommends approval of the request for a Variance.

Dated this 17th day of February, 2013

Planning and Zoning Commission
Madison County, Idaho


Anthony Merrill, Vice-Chairman

Attest:



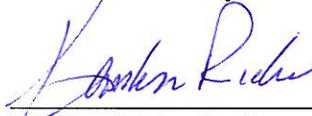
Brent G. McFadden
Planning and Zoning Administrator

**Adoption of Findings of Fact by the Madison County
Board of County Commissioners**

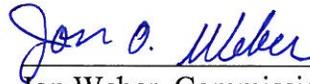
Based upon the foregoing Findings of Fact, Conclusions and Recommendations of the Planning and Zoning Commission, and based upon the Madison County Board of County Commissioners (Board) review thereon, pursuant to Unified Development Code, Part II, Part II, Article VI, Section 171, *et seq.*, and Idaho State Code §§ 67-6509, 67-5511 *et seq.*, the Board hereby approves the Findings of Fact and Conclusion of Law presented by the Commission and approves the action based thereon.

Dated this 17th day of February, 2013

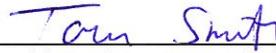
Board of County Commissioners



Kimber Ricks, Chairman

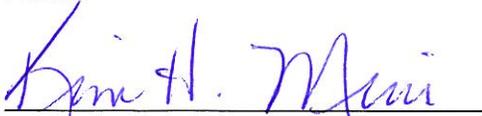


Jon Weber, Commissioner



Todd Smith, Commissioner

Attest:



Kim H. Muir, County Clerk

CLERK'S CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of February, 2013, I mailed a true and correct copy of the foregoing to the parties named below, by the means shown, and addressed as follows:

Darnell Weekes
8831 South 600 East
Rexburg, ID 83440

Hand Delivered
 Facsimile
 U.S. Mail

/s/ Kim H. Muir


Shauna J. Ringel, Deputy Clerk