



Land Use and Building Department

Findings of Fact, Conclusions of Law, and Order

Application: Variance VAR-2024-03

Hearing Date: July 25, 2024

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In the matter of a variance application to)	VAR-2024-03
allow setback of four hundred (400') feet)	
rather than the one thousand (1,000') feet)	FINDINGS OF FACT,
and a fence height of six (6') foot instead of)	CONCLUSIONS OF LAW,
a ten (10') foot fence in General Agricultural)	AND ORDER
(AG) Zone per Elmore County Zoning)	
Ordinance §7-3-13 Located at Tax 1 in Lot)	
7 Desert Edge Ranch in Elmore County.)	

In Re: Variance VAR-2024-03: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), on July 25, 2024, for a public hearing held pursuant to public notice as required by law, on a request for a Variance VAR-2024-03 (the “**VAR**”) in a General Agriculture (AG) zoned property (the “**Application**”) on Parcel RP00044000007B. The Application is for a variance from the one-thousand-foot (1000’) setback requirement to a four hundred (400’) foot setback off the right-of-way of Old Grand View Highway and a variance from the ten foot (10’) fence requirement to a fence height of six feet (6’). The property consists of four (4) acres located at Tax1 in Lot 7 Desert Edge Ranch and is zoned General Agriculture (the “**Site**”). The Commission heard from staff and the applicant in support of the Application. No one had signed up to testify in neutral or opposition to the proposal, but Tarl Smith and Lori Smith spoke in favor of the Application. Upon conclusion of the public hearing, the Commission closed the record to additional evidence and commenced deliberations on the Application, and after making conclusions in accordance with the applicable law, approved the Application with conditions, as hereafter defined.

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the Application and the analysis and recommendations of the Elmore County Land Use and Building Department (the “**Department**”) record.

I. The Commission finds that Application is comprised of:

1. Application form prepared and submitted by William Geib of Boise Off-Road Towing (the “**Applicant**”) for a variance; and
2. Payment of Application Fees in the amount of \$400 as required by the Land Use and Building Department’s Fee Schedule.

II. The Commission finds that the Applicant is:

William Geib/Boise Off-Road Towing
7079 SW Old Grand View Highway
Mountain Home, ID 83647

III. The Commission finds the following facts as to the procedural matters pertaining to the Application:

- I. In accordance with section § 7- 3 -13 of the Elmore County Zoning and Development Ordinance (“**Zoning Ordinance**”), on May 24, 2024, the Applicant completed a pre-application conference with the department in the Land Use Building Department office prior to the submission of the application.
- II. In accordance with section § 7-3-3 of the Zoning Ordinance, the Applicant mailed out Neighborhood Meeting Letters on March 24, 2024, to neighboring property owners within three hundred (300’) feet, giving notice of the time, date, and location of the meeting.
- III. In accordance with section § 7-3-3 of the Zoning Ordinance, the Applicant conducted the required neighborhood meeting on June 3, 2024.
- IV. On June 25, 2024, the Land Use and Building Department accepted a Variance application, and the required fees per § 7-9-3 (A) (B) of the Zoning Ordinance.
- V. On July 2, 2024, the Department deemed the Application complete and set the matter for a Public Hearing on July 25, 2024.
- VI. In accordance with sections § 7-3-5 (C) of the Zoning Ordinance, the Department mailed Notice of the Public Hearing to landowners within the required three hundred (300’) foot radius of the property on July 3, 2024.
- VII. In accordance with section § 7-3-5 (A) of the Zoning Ordinance, the Department mailed Public Hearing Notices to agencies on July 3, 2024.
- VIII. In accordance with section § 7-3-5 (A) of the Zoning Ordinance, the Public Hearing Notice was published in the Mountain Home News (newspaper) on July 10, 2024.

- IX. In accordance with section § 7-3-5 (B) of the Zoning Ordinance, the Public Hearing Notice was posted on the property on July 17, 2024.
- X. The Commission opened the public hearing on July 25, 2024. There were five (5) written letters submitted by the public. Four (4) were in support and one (1) had questions about the Application. There were two (2) verbal comments made regarding the Application in support of the proposed use.
- XI. At the conclusion of the testimony, the Chairperson closed the public hearing.
- XII. The Commission commenced deliberations on the Application.
- XIII. Thereafter, the Commission approved the Variance Application to allow a four hundred (400') foot set back from Old Grand View Highway right-of-way and to allow a six (6') foot high fence in the General Agricultural (AG) base zone and the Commission's decision on the Application is as set forth below.

IV. The Commission finds the proposed use of the Application as follows:

The submitted Variance application is to allow a setback of four hundred (400') feet from Old Grand View Highway right-of-way and a six (6') foot high fence, in the General Agriculture (AG) base zone in Elmore County.

V. The Commission finds the following facts and circumstances pertaining to the Site:

A. Site Description: Tax 1 in Lot 7 Desert Edge Ranch

Parcel Number: RP00044000007B

B. The "Owner" of the Site is:

Rose Geib
7079 SW Old Grand View Highway
Mountain Home, ID 83647

C. Applicant's Right to the Site is: Owner of the Property

D. Site Characteristics:

Property Size: 4 acres

Existing Structures: 40'L X 45'W sea container with cover
56'L X 30'W residential

Existing Vegetation: Gravel

Slope: None

Flood Zone Status: Not in a Flood Zone

Irrigation: No irrigation lines on site

Views: Desert

VI. The Commission finds the current zoning of the Site is as follows:

Based on the officially adopted Elmore County land use maps 2017-01, the Comprehensive Plan, and the Zoning Ordinance, the current zoning for the site is General Agricultural (AG).

VII. The Commission finds the surrounding land use and zoning designations are as follows:

- A.** Based on the officially adopted Elmore County land use maps, the Comprehensive Plan, and the Zoning Ordinance, the surrounding land use and zoning are as follows:
- a) North: Desert; Zoned AG General Agricultural
 - b) East: Residential; Zoned AG General Agricultural
 - c) South: Out building Zoned AG General Agricultural
 - d) West: Residential; Zoned AG General Agricultural

VIII. The Commission finds the existing services and access to the proposed site are as follows:

- A.** Based on the officially adopted Elmore County land use map 2017-01 and materials found in the Department's file for Application, VAR-2024-03, the following facts concerning services and infrastructure, are not in dispute and are adopted as finding of fact in the Commission's Findings of Fact, Conclusions of Law, and Order (FCO):
- a) Access Street and Designation: Old Grand View Highway
 - b) Highway District: Mountain Home Highway District
 - c) Fire Protection: Mountain Home Rural Fire District
 - d) Sewage Disposal: Existing structure has a private septic system.
 - e) Water Service: Existing structure has a private well.
 - f) Refuse Disposal: Applicant will be responsible for obtaining and maintaining appropriate refuse disposal.

- g) Drainage Structures: No drainage structures for the proposed use are planned or required at this time.

The Application, and its proposed use, will be adequately served by available public facilities and services such as highways, streets, law enforcement, fire protection, and Emergency Services due to the agency coordination conducted for this application.

IX. The Commission finds the following are among the relevant and applicable statutes, ordinances, and land use regulations for consideration of the Application:

- a) Requirement for variance process Zoning Ordinance 7-3-13-(A) have been met; and
- b) Zoning Ordinance, 7-3-13-(C) 1,2,3 have been met; and
- c) The Local Land Use Planning Act, Idaho Code § 67-6516 et seq.

X. The Commission finds the following regarding the Comprehensive Plan.

- A. That the Comprehensive Plan Future Land Use Map (Map 4) has the proposed property classified as General Agricultural.
- B. The Application is in conformance with the Comprehensive Plan vision and policies for property owner rights.

XI. The Commission finds the following regarding the Zoning Ordinance.

- A. The Elmore County Zoning Ordinance is the document governing the Site.
- B. In order to approve a Variance application, the Zoning Ordinance provides that the Planning and Zoning Commission make a decision. The variance standards are found in Section 7-3-13 of the Zoning Ordinance.

REQUIRED FINDINGS FOR IDAHO CODE 67-6516. VARIANCE — DEFINITION — APPLICATION — NOTICE — HEARING.

Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a

variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section 21-501, Idaho Code. Denial of a variance permit, or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

Commission Finds:

As required in the State of Idaho Local Land Use Planning Act (LLUPA) a variance shall be granted by Elmore County for the setback and fence only upon a showing of undue hardship and that such variance is not in conflict with the public interest.

The location of Applicant's parcel is only five hundred (500') feet to the back of the property line from the SW Old Grandview Highway. The Applicant is seeking a conditional use permit for an existing use to ensure compliance with the Zoning Ordinance. This situation creates an undue hardship to continue this use, a vehicle impound yard, as this parcel is not able to meet the one thousand feet (1,000') setback per Zoning Ordinance § 7-2-214 (B)(2).

In addition, the Applicant has already installed a locking six-foot (6') fence around the property to screen the use. This current fence does not meet the requirements of the ten-foot (10') fence as required in the Zoning Ordinance § 7-2-214 (A). The Applicant believes that the industry standard fence height available for construction in the market is six feet (6') tall, and therefore, it would be an undue burden on him if the County enforces the ten-foot (10') requirement of the Zoning Ordinance. A six foot (6') high fence will be tall enough to meet the requirements of containing the property that is behind the locked gate. The surrounding neighbor testified during the Planning and Zoning Commission Hearing that the current fence height of six feet (6') is adequate to screen the use.

REQUIRED FINDINGS FOR VARIANCES PER ZONING ORDINANCE SECTION 7-3-13:

- 1. The variance shall not grant a right or special privilege that is not otherwise allowed in the base zone; and**

Commission Finds: Most of the unincorporated land in Elmore County has a base zone of Agriculture. The parcel is currently zoned agriculture and is intended to remain designated as agriculture according to the Elmore County future land use map. In addition, the property does have an existing primary dwelling currently on the site, therefore, the variance shall not grant a right or special privilege. It will allow the Applicant to use his property for a vehicle impound yard. The Applicant has submitted a concurrent Conditional Use Permit ("CUP-2024-16"), which is approved by the Planning and Zoning Commission and awaiting approval for this Variance (VAR-2024-03).

2. The variance relieves an undue hardship due to the characteristics of the site; and

Commission Finds: The Applicant's parcel is approximately four hundred seventy-two feet (472') wide by five hundred feet (500') deep. The proposed use would not be able to comply with the one thousand (1,000') foot set back from the right-of-way from nearest main roadway (SW Old Grand View Highway), per Zoning Ordinance § 7-2-214 (B)(2).

The fence that has already been installed is six-foot (6') high and for the applicant to tear out or add more height to the fence would make it easier for the wind to bend it over and cause the applicant to continue replacing or fixing the fence. So, a ten-foot (10') high fence at this point would cause the applicant to put more money into something he has already had installed. Ten-foot (10') fence is the required by Zoning Ordinance § 7-2-214 (A).

3. The variance shall not be detrimental to the public health, safety, and welfare.

Commission Finds: The proposed variance will not be detrimental to public health, safety, and welfare. The Applicant will do his due diligence to keep the noise and light pollution to a minimum while loading and unloading vehicles. Any spills will be cleaned up and disposed of properly. The use will continue to adhere to the Mountain Home Rural Fire District standards, Mountain Home Highway District, and Central District Health regulations as required in CUP-2024-16.

CONCLUSIONS OF LAW

Based on the aforementioned findings of fact, the Commission concludes that the proposed VAR-2024-03 has complied with the following legislative documents governing the proposal:

- A.** Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014; and
- B.** Zoning Ordinance, adopted as Ordinance 2018-03 on May 18, 2018, and all amendments thereof; and
- C.** The Local Land Use Planning Act, Idaho Code § 67-6516 et seq.

ORDER

1. Variance 2024-03 shall be granted to Mr. William Geib for a Vehicle Impound Yard to be located in the Agriculture Zone on Parcel RP00044000007B with a setback of less than the one thousand feet (1,000') from the road right-of-way of SW Old

Grandview Highway. The setback shall not be closer than four hundred feet (400') of road right-of-way.

2. Variance 2024-03 shall be granted to Mr. William Geib for a Vehicle Impound Yard, for a fence height of six feet (6'), which is less than the ten feet (10') required in Agricultural Zone on Parcel RP00044000007B. The fence shall not be less than six (6') feet in height.
3. The Applicant shall commence operations in compliance with the applicable conditions of approval within a year of this approval; otherwise, this variance expires and will be null and void.
4. The use shall comply with all requirements of Title 7, Chapter 2, Section 214, and Title 7, Chapter 9 of the Elmore County Zoning and Development Ordinance 2018-03 at all times.
5. The Vehicle Impound Yard shall not have any employees except the Applicant at the site. The Vehicle Impound yard shall not have any customers on the site except the owner of the vehicle or insurance company employees.
6. Any wrecked vehicle shall be removed from the site within ninety (90) days of its arrival. Unless there is an ongoing investigation of the vehicle by any State, County, or City law enforcement. Applicant must submit a letter from that agency that there is an ongoing investigation with a vehicle if such an investigation exists. Storage of excessive vehicles that cannot be locked behind the vehicle laydown yard fence is not permissible.
7. The Applicant shall obtain a building permit for an Office Building/Shop prior to commencement of the use as well as any other permits for structures and/or improvements on the property.
8. The Applicant shall maintain the property in a manner that uses activities, processes, materials, equipment, and conditions of operation is not detrimental to any persons or property.
9. The Applicant shall operate the use in compliance with all local, state, and federal regulations and requirements.
10. The Applicant shall ensure all property taxes are kept current.
11. Failure to comply with any of the above conditions of approval may result in the revocation of the Variance.

Dated this _____ day of _____ 2024,

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN	VOTED	AYE
VICE CHAIRMAN K.C. DUERIG	VOTED	AYE
SUSAN FISH	VOTED	AYE
ED OPPEDYK	VOTED	AYE
JEFF BLANKSMA	VOTED	AYE
MITCH SMITH	VOTED	AYE

Patti Osborn, Chairperson

ATTEST:

Mitra Mehta-Cooper, Director

NOTICE PURSUANT TO IDAHO CODE § 67-6519(5)(c)

The Applicant shall have the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. An applicant denied an application or aggrieved by a final decision concerning matters identified in Idaho Code § 67-6521(1)(a) may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by Title 67, Chapter 52, Idaho Code.

NOTICE PURSUANT ZONING ORDINANCE SECTION 7-3-10 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within fourteen (14)

calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.