Jefferson County
Planning and Zoning Public Hearing
January 7, 2021 6:00 PM


Staff Present: Weston Davis — Legal Counsel

    Kevin Hathaway — Planning and Zoning Administrator
    Jenny Kerr — Planner
    Erik Stout — Assistant Planner
    Tyson Schwartz — Code Compliance Coordinator
    Samantha Farr — Administrative Assistant

6:00:14 PM Chairman Albertson opened the meeting. Commissioner Ashcraft led the Pledge of Allegiance. The staff was introduced.

Commissioner Clark moved to approve the minutes from the December 10, 2021 Planning and Zoning meeting. Commissioner Lewis seconded. All in favor. Motion Carries.

Commissioner Lewis moved to approve the written decisions for a Preliminary/Final Plat for Lori Wasden, a Conditional Use Permit for Harvestview Baptist Church, and a Zone Change for Lonnie and Brenda Boyd from the December 10, 2020 meeting. Commissioner Clark seconded. All In favor. Motion Carries.

6:03:34 PM Chairman Albertson asked if there was any potential conflict with any of the hearings. Commissioner Steel recused himself on the Grover Variance. Commissioner Clark asked legal counsel if his situation precluded him. Clark rents a different property to the Grovers. Davis counselled that it might create conflict but might also affect the quorum and stated that he would look into it during the first hearing.

6:05:51 PM Chairman Albertson read the proceedings of the public hearing.

Prior to the hearing, Agenda Item No. 2 was postponed due to significant changes in the submitted materials. The numbering of the hearings have been adjusted accordingly.
6:11:27 PM Public Hearing No. 1 Preliminary & Final Plat/ Jill Park & Family/ Park Place/ Located approximately at 4656 E 100 N, Rigby, Jefferson County, Idaho/ To propose a 3 lot subdivision.

6:11:50 PM Davis requested to make an opening statement. Davis explained the nature of the Area of Impact (AOI) agreement between the City of Ririe and Jefferson County. He explained that, due to misunderstandings, the City of Ririe’s Commission had received late notice of the case. Davis asked Mayor Lovell if any of the Planning and Zoning Commission were present or attending via Zoom. Trevor Arnold was attending via Zoom. Davis noted a Memorandum of Understanding as it pertains to this subdivision and verified with Mayor Lovell. Davis—With the City of Ririe’s consent, we could hear this today and make a recommendation for the commissioners. It appears that we have the authority from the City of Ririe to move forward with this hearing. Davis asked if Trevor Arnold was involved in the memorandum, Mayor Lovell didn’t believe he was. Davis—we have a difficult way of putting this Commission together. We have attempted to obtain information or consent with the City of Ririe to move forward. It’s my understanding that, based on this information that I’ve received, the City of Ririe is okay with us moving forward today.

Davis—Is it your understanding that the Planning and Zoning Commission for Jefferson County, with the appointees that are here in the AOI, are we authorized to move forward, despite what the AOI says? The AOI requires for the standing commission. Mayor Lovell submitted a letter to Davis. Davis read an email written by Sharron Parry, approved and signed by Mayor Lovell. It appears that the email authorized the Jefferson County Planning and Zoning Commission to move forward with the hearing. This email is marked Exhibit A.

6:21:23 PM The Staff report was read by Planner Jenny Kerr. It is noted that the City of Ririe ordinances would be the ones used. Tyrel Bingham asked for clarification on how the AOI worked and how it was decided which ordinances were applied. Davis explained the ways those laws can be applied in an AOI.

6:25:36 PM Presenting: Kody Thompson (215 Farnsworth Way)—In case it does come up, I do have an application from the Health Department that has been signed off. We’ve got a 3 lot subdivision. Originally, we’ve been working on this for years, we tried to do parcel line adjustment. That didn’t work. Lot 1 and 2, on paper and through recording, we’re trying to add 1 acre to two existing homes. Thompson indicated Lot 1 and 2 on the map. There are two existing houses that have both been there for over 30 years. All we’re trying to do is adjust the property lines to what was agreed upon years ago and now we’re taking care of it through deeds. Albertson—So it’s just expanding the lots? Thompson—Yes, of what the family had already agreed upon. Now we’re following through with it. We’ve tried to do it other ways without the subdivision that didn’t work, so now we’re here.

6:28:10 PM Lewis—To clarify, the dotted line is the old boundary? Thompson—Yes, that’s the existing deed line. It better matches fence lines now. It takes care of what was agreed upon. Lewis—And the three parties are all in. Thompson—they’re all family. It was originally homesteaded to this family.

6:29:13 PM Davis asked to clarify ownership on the property. Thompson indicated that Jill Park would best be able to answer the questions on ownership. Davis—I want to be sensitive, but I want to make sure that the application that was submitted by the owner itself and they’re just continuing it. I just want to make sure we have a clear record of the proposed action. Thompson—if you turn the page, every family member that is involved is going to sign the plat.

2019-2
6:31:13 PM  Jill E. Park (4656 E 100 N) Park clarified the ownership having been deeded to the original owner’s daughter through a trust. Davis – So the property is presently owned by a trust? What is the name of the trust? Park – The Park Trust. Peter Christofferson is the attorney that wrote all of that. My husband is the personal representative, the trustee. We’ve been living on these two acres for 35 years. When we first bought them, they were recorded as one acre and a year later, each brother bought another acre. Four years ago when my Father-in-Law was doing his will, he found out that they weren’t recorded legally. That’s when we started the process so we could get the land that we’ve been living on and farming for 30+ years legally recorded. There will be no new buildings, nothing will change except those lines on the paper.

6:34:27 PM  Public Testimony Portion Opened:

6:34:46 PM  In favor: Larry Lovell (520 E Ririe Highway) – As the mayor, the City of Ririe is in favor. It’s something that they’ve had in place for a number of years, anyone who has lived there very long would attest to that. As Larry Lovell, I’ve known this family all my life. They’re just trying to settle their estate. If they had known that it hadn’t been recorded years ago, they wouldn’t be here. I’m in support of what they’re doing. It doesn’t have any impact on anyone around. Davis asked Mayor Lovell to explain the Memorandum of Understanding. Lovell explained that, while the Parks’ property is not currently contiguous with the city, it was expected that someday it would be. The Memorandum of Understanding addresses the ingress and egress of the properties and future right-of-ways for future utilities. It has been signed by the Park family and the City to protect and support each other. Davis – So, it’s you’re understanding that this Memorandum is for future application when these individuals may be annexed into the City. Lovell – Yes, we’re just trying to address those kind of things ahead of time. Memorandum of Understanding is marked Exhibit B.

Neutral: None

Speaking in Opposition: None

Discussion of the Board:

6:39:17 PM  Bingham asked clarification on annexing and what effect this would have on future annexation/development in the AOI in the future. The basic process and limits of annexation was explained by the board and staff.

6:44:56 PM  Kerr read in letter from Central Fire and noted the application from East Idaho Public Health that was approved.

6:47:16 PM  Clark moved to reopen public testimony portion of the meeting to allow any additional testimony based on the letter. Lewis seconded. All in favor. Motion carries.

6:48:17 PM  No one had anything new based on that.

6:48:51 PM  Aschraft asked about a recommendation from Central Fire. Davis noted a 25 foot access to lots 1 and 2 that was noted on the plat.

6:49:58 PM  Jill E. Park (4656 E 100 N) – Park explained the existing access and that they have two entrances and two exits that are approved for fire and utility access.
Discussion of the Board Reopened:

Lewis – According to Ririe’s ordinances, it’s pretty simple. From what we’re supposed to look at.

Clark – I’ll jump right in to Ririe Subdivision Regulations, Title 9-3-2-d-3, the findings to consider in the evaluation. I believe it does conform to the Comprehensive Plan. It looks like the existing infrastructure supports it. To me it looks like it meets the Ririe Subdivision Regulations. It brings an actually non-conforming lot into conformance by bringing them into the R2 size requirement. And looking at the City of Ririe, Article B, nothing in this would cause any issues with the R2 residential district definitions. It appears that it meets the requirements.

Lewis – I appreciate the City of Ririe and the fire district being here.

Bingham – A couple of questions. Is staff or anyone else aware of anything that doesn’t fit according to the City of Ririe and its rules? I think that’s what I’m hearing you say, is that it seems that everything fits. Albertson – It seems to align with Article B and the final plat. Bingham – By calling it a subdivision, is that going to create opportunities for easier places to put in more subdivisions? Or is that going to fall back on going to the City of Ririe first? What effects of doing this is going to happen for the surrounding areas?

Steel – If anything, it brings more into compliance with what is already there.

Albertson – It doesn’t necessarily mean that it’s going to bring about more subdivisions. Albertson and Davis explained that a subdivision comes into play when there are no further splits available on a parcel and that the density is dictated by the zoning. Albertson – In this case, it is cleaning up property lines and fixing something that was done some time ago. That’s my understanding of why this falls under a subdivision.

Clark moves to recommend approval of this plat, based on the Ririe Subdivision Regulations, Title 9-3-2-D-3 items (a) and (b) for the Preliminary Plat as well as 9-3-3-C for the Final Plat. Albertson added Article B “Residential 2 District” 10-38-1 (a). Clark – I would add that it brings existing non-conforming lots into conformance with the existing zone in the area. Lewis seconds. Bingham clarifies his role on the Commission. Davis explained that he is an equal member of the Commission. All in favor. Motion carries.

Commissioner Clark’s potential conflict with the Grover Variance was addressed. Davis stated that he would need more time to ensure the hearing was handled correctly. Clark moved to change the order of the hearings. Lewis Seconded. All in Favor. The Variance for Stephen & Diana Grover will now be Public Hearing No. 3 and the Plat Amendment for Jim Bernard will be Public Hearing No. 2.

Public Hearing No. 2 Plat Amendment/ Jim Bernard/ County Line Commercial Park/ Located approximately at 3863 E 12 N, Rigby, Jefferson County, Idaho/ To change the boundary on 2 lots to allow for storage buildings.

The Staff report was read by Planner Jenny Kerr.
Presenting: Jim Bernard (4500 E 337 N) – The north property line on the small lot, we’re building storage units. There is a setback on that lot line and we’re wanting to combine the lots, the small one on the west side with the big one on the top. Also, it will leave us an easier path eventually when we develop further to leave a 60 foot easement for the county with some access back to the airport when we get to that point. We’re not making any more lots, we’re making a bigger lot, Lot 13 will go to a two acre lot. Bernard indicated on the map what he had just explained. We’re trying to eliminate this lot line to allow building the storage units in that area.

7:11:44 PM Lewis asked questions to clarify the boundaries as marked on the plat as well as identifying Bernard as the owner of both lots involved. Bernard also explained the un-platted area surrounding the Plat.

7:12:58 PM Public Testimony Portion Opened:

In favor: None

Neutral: None

Speaking in Opposition: None

7:13:12 PM Discussion of the Board:

7:13:41 PM Clark – I want to make sure that we comply with the amended subdivision. Lewis – I don’t see anything that’s not allowing us to do that. Albertson clarified that this falls under the previous subdivision ordinance according to how it was noticed and applied for.

7:16:38 PM Lewis – It’s considered a minor change, isn’t it? Albertson – Yes, nevertheless it is still considered a Plat Amendment and all things should be considered.

7:17:33 PM Clark – Based on our staff findings, they direct us to Section 3-2-2, Subdivision Plats and Procedures. I can’t see anything that would prevent this particular change. The applicant isn’t changing the intent of any of the parcels. He’s basically rearranging it. It really brings it more into line with future development, which I think does fit with our Comprehensive Plan. Indicating we want to organize or plan the development to allow future development and to make the most beneficial use of the property. I believe the applicant is doing that. That would be my input.

7:18:42 PM Albertson – All things must be considered. We’re changing boundary lines on two lots to allow for storage units, which are allowed in a C2 zone. Clark – To add to that, it’s not just to allow it, they can build storage units now. It makes a more beneficial use of the parcel. Is the submitted plat complete? Does it have all the information that we need? Albertson – It appears to me that everything is in there, including everything the presenter spoke of and the 60 foot access.

7:20:42 PM Lewis – It’s actually improving it.

7:21:19 PM Lewis moved to recommends approval of this Plat Amendment based on Section 3-2-2 and the Comprehensive Plan. Albertson added that they are dedicating a 60 foot right-of-way for ingress and egress. Steel seconded. All in favor. Motion carries.
Davis clarified Clark’s potential conflict as well as any impact that recusing would have on the constitution of a quorum. He can participate without conflict according to Davis’ findings. Disclosure of conflict does not affect the constitution of the quorum.

Public Hearing No. 3 Variance/ Stephen & Diana Grover / Located approximately at 4111 E 465 N, Rigby, Jefferson County, Idaho/ To adjust the lot lines on two pre-existing non-conforming lots.

The Staff report was read by Planner Jenny Kerr. Kerr read in a letter from Dave Walrath, Jefferson County Public Works Administrator.

Presenting: Dillon Anderson (49 Professional Plaza, Rexburg) – This was originally before the Commission as a Zone Change and that caused a bit of heartburn. Hopefully this is a better option. There are two existing buildable lots. They are in R-5. The smaller is a non-conforming, buildable lot. Access to that would be through the applicant’s other parcel. If they were to sell the smaller parcel, they would have to allow access through the other parcel. There are two parcels with access. All that is requested is a variance to allow that line to be adjusted to allow the same density and access, but two more equal parcel sizes, roughly 2-3 acre lots instead. All the lots surrounding this are 1 to 2 acre lots with some 3 acres. There are a few 5 acre lots below that. But most of the parcels in that area are in the range of 1-2 acres. I believe there was some concern that if the zone was changed, then it could be further subdivided. That’s not the intention of the owners, so that’s why we’re just doing a simple variance. Instead of pursuing the zone change so that it can’t be further subdivided. It’s not increasing density. The two lots is all that is there and all that will remain. Because that one lot is smaller and the access goes through their lot, the hardship is that they have to give up land with that parcel anyway, but now they could have land with that access. I don’t see how any neighbors would be effected by this. The invisible lines between the properties would move. The uses wouldn’t change that much. It would allow a home to be moved slightly instead of forced into the small lot. There would be no more increased density, access, or traffic than what is already there. I think this is an easy solution to what the Grovers what them to do and it makes it easy on their neighbors. Because they own both parcels, if they sold the small parcel, they would have to grant access or it would be landlocked.

Albertson – How was this nonconforming lot created? Anderson – The background is not clear. We checked on it and it was a non-conforming lot. Technically, I don’t think we need a variance on the smaller parcel. We’re taking a non-conforming use and making it more conforming. But to be safe, we’re asking that both parcels receive that variance to be safe. But it was done long before. I think that the zoning used to be different here, but everything changed as the R-5 came in.

Albertson – Right, but with some consideration, the present owner bought a nonconforming lot. Anderson – Right.

Davis – When was the smaller lot acquired? Anderson – About 5 years ago? Davis – And the larger lot? Anderson – Last year. Davis – What right does the larger lot have to use the private road? Anderson – It’s part of that connection. Davis – Is it part of a subdivided lot? Anderson – it is not part of a subdivision. They own the piece that stretches there. Davis – Who maintains that private road?

Diana Grover (4111 E 465 N) – The private road is maintained by the property owners. Davis asked for clarification from Grover that the road is privately maintained by the surrounding landowners. Anderson clarified the access. Davis – I need to make sure I’m understanding. What I’m seeing is that one residence accessing the property. The effect of the request is that two residences would
now be accessing, is that correct? **Anderson** – It’s already buildable there, so it has to have access. So even though a road isn’t built there, it would still have to have access. **Davis** – Understanding that, you would agree that both parcels are currently owned by the same property owner. Presently, there is not a required easement by necessity that would be a choice made by the Grovers when they sell. In other words, they would create their own necessity. **Anderson** – If that’s the case, then that would be undue hardship because they’d have a parcel they couldn’t sell.

7:38:26 PM **Davis** – They purchased that lot without having access, correct? The small lot. **Anderson** – They did. They actually live north of that, there’s no access through that. That’s their yard. **Davis** clarified which parcel on the map Anderson was referring to and asked when they purchased that property. **Anderson** – It was at the same time as the smaller parcel five years ago. Two different transactions, but roughly the same time.

7:40:19 PM **Anderson** – I will point out, a private road doesn’t have the same effect as a public road. Meaning if they own property there which is enough to gain access, even if it’s right next to that private road, that’s their access. I don’t think that access is really an issue here. Whether the county can grant it or not. They own the property that gets them there.

7:40:52 PM **Albertson** – Landlocked has been thrown out there. In this particular instance, where the same person owns two pieces of land, how does it become landlocked? **Anderson** – There are two different buildable lots, so if they sell it, that’s when they have to have that easement. It possibly becomes landlocked. As a parcel it’s landlocked. There would by necessity have to be access granted. **Albertson** – If they should sell it, then it could possibly become landlocked, but as it sits right now... **Anderson** – As far as road access, it’s not landlocked now. But as a parcel, you would consider it landlocked. Right now, they can walk across their lawn to it, but as a buildable parcel, it wouldn’t be landlocked, because if it was ever sold, there would have to be access granted.

7:42:17 PM Public Testimony Portion Opened:

In favor: None

**Neutral:** **Diana Thompson** (4142 E 465 N) – I have a couple of concerns or questions. From what I’m understanding, and what I’m finding out from recently moving to this neighborhood myself, is that the water ways that are through this neighborhood, some of them are actually stream channels. That does have some concerns for me. I think there is a marsh area that is on the land there. I don’t know if there’s been any kind of environmental studies for wildlife or birds. I’m dealing with it myself. The other concern is increased traffic. We get a lot of traffic either one way or the other on that bridge. This one won’t be as concerning, but it does concern me when the roads have to be maintained. Thompson indicated on the map where they live in relation to the parcel. **Thompson** – We recently had someone come through with a bulldozer through the riverbed, so I’m dealing with all of that kind of stuff myself. I just want to make sure that with the huge portion of marshland in the middle, are they going to backfill that? There are some environmental concerns, because we are supposed to adhere to the aesthetics of the neighborhood.

7:45:58 PM **Thomas Todd Thompson** (4142 E 465 N) – We are in the bottom corner. Basically, there are two bridges, one to the west of the Grovers and one to the east of us. When it first came up, my major thing was, it’s their property, let them do what they want. But we’ve talked to a lot of the neighborhood, the houses in between ours and then a little further past that bridge. Some of their concerns were about maintaining the roads and bridges as a community. There are concerns with increased traffic if it’s sold in
the future. There are concerns about making the existing lot a non-conforming lot by making it smaller. The fact that it’s not a county road that we’re all having to maintain is one of our concerns.

Speaking in Opposition: None

7:50:10 PM Rebuttal: Anderson – As the environmental questions are a concern, I don’t think they weigh into adjusting the property lines. I think that’s going to come into play when/if something is built. Right now we have two buildable lots, again, it’s not going to increase traffic by adjusting this line. What will increase traffic is when something is built there. Right now, nothing is restricting anything from being built there. The same concerns are there. These will be some of the biggest lots in the area.

7:51:47 PM Davis – If the Commission were to deny the request, would that make the lot any less buildable than when they purchased it? Anderson – Certain things have transpired. It would still be buildable. It would be less in keeping with the surrounding areas, it would be one of the smaller lots. It would require access through that 5 acre parcel. It would just be a necessity. If it was to be built on now, it would still use part of that property as an easement. If you denied it, they would still have to give part of their property through an easement. Davis – It could also be sold with the parcel to the east or the parcel to the north. Anderson – It could be, but it’s a buildable lot on its own. That’s why we’re treating it as a buildable lot. Davis – But if the Commission were to deny the request, it doesn’t make it any less buildable than when they acquired it, correct? Anderson – That is a difficult question to ask. Davis – But it is the question to ask, because ultimately if we deny this, one of the issues that will come up is, your clients will have the right to ask that we perform a takings analysis. So I have to make sure that I’m asking that question to determine what that value is. Anderson – That’s the analysis we’d have to go to if there was a taking. I don’t think that a taking analysis would be out of the question in the sense that, I’m still going to say that it’s landlocked. It is buildable and it does require access. I don’t know that that’s a big stretch here. Any time you sell a lot, you have to provide access to it. Davis – That same analysis is something that they would have had to take into account when they purchased this property in the first place. Anderson – I understand that, but we’re just asking for a simple lot line adjustment here. Davis – But you’re asking a variance. We have to show that there’s a hardship that’s unique to this property. If you walk yourself into that hardship, that makes it difficult for the Commission to find a variance. Help us understand better why this fits into the classification of a variance request. Anderson – I understand. The hardship is in relation to the other neighbors and the surrounding area. I think that’s how it’s written in your code. This would be a small lot in relation to the surrounding areas. When you take into account the actual buildable area within this. There is the Dry Bed. There is limited area that you can actually build. If you were to do that, it’s not going to be a home in keeping with the surrounding area or a lot size. The variance puts it into greater conformity with the surrounding area.

7:57:29 PM Anderson cited Section 3.9.2. The zoning here, it’s obvious it wasn’t R5 in the past. It was changed after the subdivisions and parcels were created. I think the zoning change is the start of a lot of these issues and a lot of these limitations we find them in now.

7:58:47 PM Davis – I would note that all four of the circumstances of Section 3.9.2 need to be met. Anderson – This is the least effect on the neighbors. We tried another route with a zone change. I think this is the least hardship on anyone, the minimum variance. It doesn’t have a huge impact on anyone else and a variance can be used for lot size.

8:01:11 PM Thompson (4142 E 465 N) – Clarified where the private road is.
Rebuttal: Anderson — Mr. Grover fixed the road last time. The private road access is more important for people who are on the end. Where they own directly to the county road, it’s not as big of issue from them. They can drive next to the private road and still be on their property. You’re adding another person to maintain the road. But they could still access their own property without even using the private road.

Discussion of the Board:

Lewis — In my opinion the 3.9.2 (a)-(d), those requirements are met. We looked at this before on the zone change, and this is an easier pill to swallow for a lot of people. I think it’s a matter of housekeeping. They didn’t make the small lot. They bought it. I’m in favor of the variance. They didn’t create it on their own.

Ashcraft — I don’t know when the zone change happened. It seems odd that there are all those lots around there that are smaller in an R-5 zone. The fact that that is a buildable lot already complicates the issue. The lot already is R5, it just has a little piece that is buildable that is non-conforming. I’m waiting to hear more discussion.

Albertson — The variance would create another non-conforming lot. There is one that is in place pre-existing prior to the existing zoning. If you take a 5 acre parcel that is zoned R-5 and you split it up, you will be creating another non-conforming lot.

Lewis — Not necessarily, because we already have one. Davis — You create two non-conforming lots instead of the one that is already there. Lewis — But we’ve already shown that there are other lots in the surrounding area that are smaller. So is it detrimental to the area?

Clark — I’ll go down through the evidence and through 3.9.0, on the variances. Clark read from 3.9.1 and compared the following points. I believe there is a hardship by pointing out to the Commission if we look at the land values of the existing properties that abut up to this parcel. Those parcels are valued 3-4 times more by our own taxing entity, which says the County views that as less valuable. I believe it creates a financial hardship based on the value. I believe it does show that there is a financial hardship that is detrimental to the valuation of the property as a third of the value of the surrounding parcels. The variance is not in conflict with the public interest in maintaining the character of the surrounding areas. I don’t believe that it does impact that public interest. Is it less buildable? Another part of this hardship is that it’s less beneficial use based on the configuration. You could put a home there, but it would result in a parcel that is not the same character. Is it detrimental to the surrounding property owners? Exercising the building right in the existing configuration is probably more detrimental. Is it in conflict with the ordinance? Clark referenced 3.9.2 (a). Yes, there are similar properties that are just slightly over 1 acre up to 8 or 9 acres. 3.9.2 (b) I believe that that particular parcel does not have the same right. Will it be injurious to the surrounding property owners? 3.9.2 (c) I don’t see by granting that variance is in conflict with our county development plan. I believe this was rezoned in 2008. That revision was somewhat arbitrary based on what the county thought would be easier to work with. 3.9.2 (d) I don’t know what a minimum variance would look like. It creates two parcels of comparable size. That does address the minimum variance. There was a request to rezone. That would have been more detrimental. It really does not change building rights or potential density. In creating two non-conforming lots, that’s true. I don’t believe it creates a bigger issue for the county. I believe it increases the taxable value of the parcel.
8:12:01 PM  Clark – There was a question regarding the marshy areas. I think it was addressed. It is a
valid concern. There are what are considered wetlands. You can’t bulldoze wetlands. That would be an
issue if/when a building permit was applied for. You would have to address it, but it would be addressed
at the time of the request for a building permit. I think it comes back to being a more beneficial use of the
land to allow the variance.

8:13:06 PM  Albertson – I don’t know that in 3.9.2 that the variance is necessary for the preservation
property right of the applicant as the way the property sits right now. It is a buildable lot. It only becomes
landlocked if it becomes sold. The same owner owns the land on either side. If you go to the application,
the question is asked, what hardship you would have if you request is denied. Albertson referenced the
questions and answers from the application. They knowingly bought a pre-existing, non-conforming lot.
We’re considering granting a variance with that knowledge.

8:14:58 PM  Albertson – Referencing 3.9.1, I don’t think the interpretation is causing the hardship. The
hardship was caused by buying a nonconforming lot.

8:15:43 PM  Lewis – I think you could argue it either way. It is still a buildable lot and it still need access.
Whoever did it before that didn’t make sure these guys had an access isn’t the Grover’s fault. This is the
proper way to do this. They’re trying to make this lot a buildable lot with an access. They’re trying to do it
the proper way.

8:16:42 PM  Ashcraft – the characteristic of the site was there before they bought it. It’s tied to the
site. It doesn’t matter who owns it.

8:17:02 PM  Lewis – They’re getting punished because they own it. If they didn’t own it, somebody
else would be getting the same go-around.

8:17:10 PM  Albertson – They knowingly bought a pre-existing, non-conforming lot. It’s not a
punishment.

8:17:24 PM  Lewis – That happens all the time. There’s non-conforming lots all around the county that
we make better for the people who own them and the neighborhood.

8:17:32 PM  Clark – Would it have made a difference if they didn’t own the surrounding lots? If
someone else owned it, would that change the argument?

8:18:01 PM  Albertson – It could. If two different people own the lots on either side, then it does
become a landlocked lot. I don’t think we can call it landlocked as it is.

8:18:24 PM  Clark – But it is property description and parcel description. Let’s suppose they sell one of
the adjoining lots. Does that mean that they created the hardship? And they didn’t create the hardship.
They knowingly acquired the hardship. That doesn’t mean that they created it.

8:19:02 PM  Lewis – There is a building right for that lot as it sits. Why not make it better for the
surrounding neighborhood, because that lot does not fit the surrounding neighborhood.

8:19:17 PM  Clark – I believe it was arbitrary of the county’s designation of the zones in this area.
Albertson – And that’s probable.
Clark – Instead of looking at the area’s lots and create a zone that reflects that, it was done as anything east of 4100 is R5 and anything west is an R-5. I believe some of this was created by the County. I think this seeks to correct some of those errors.

Albertson – When it comes to nonconforming uses, Section 3.8.1, it says “shall,” not “may” or “could”. What I don’t want to get into is that we’re absolutely going against the ordinances. Whether it’s the interpretation of the variance or non-conforming uses. We’ve discussed everything else, let’s discuss this.

Ashcraft – I would question the “use.” The lot size is the nonconforming part, not what they’re using it for.

Albertson – Whether it’s structures or lots, this applies to it. What we’re looking at with this variance is, it’s extending a nonconforming lot and creating a nonconforming lot. We need to be careful that we don’t go against the ordinances as they are written. It’s not our thoughts or our feelings or intentions. The ordinance is the rule here.

Lewis asked for the letter from Public Works again. Kerr read it again.

Albertson – we can’t force access Lewis – No, but the private property owners can give access. They can access on their own property from 465. Albertson – There’s no river bridge there, is there? Lewis – No, but they could put one in. There’s ways that they can access. I think they meet the criteria to allow the variance.

Davis – What I understand Commissioner Albertson to be saying is, if we meet the variance in the one spot, in granting the variance, you then create another nonconforming use. How often does the Commission taken action in granting a variance that creates another nonconforming use? That seems to be the conflict right now.

Clark – I come back to 3.8.1. There isn’t a structure or a use here. There isn’t a non-conforming use. It’s a nonconforming lot size. I understand what you’re saying, but I’m not sure that it necessarily applies. I do agree with the question about creating a second non-conforming lot, but I’m not going to alter the use of that lot. The use of that lot will change. Lewis – It’s not hurting the surrounding area, because it’s already that way.

Clark – And I agree, we want to be careful of setting precedence. I think we can show that there’s ample justification to support it.

Clark moved to grant the variance as requested based on 3.9.0. The hardship was created by the County and there is a financial hardship based on the valuation. (3.9.2 (a)-(d)): (a) The other lots are smaller in size than the R-5 zone; (b) I believe it’s a financial issue and it’s the same as what’s possessed by the other property owners; (c) Given that it’s an existing parcel, we’re making the parcel a more beneficial use and is supported by the Comprehensive Plan; and (d) It creates two parcels that are generally equal in size. Lewis seconded. Clark, Lewis, and Ashcraft vote in favor. Albertson votes nay. Motion Carries.

Hathaway and Davis address the need to clarify that an implied condition of the variance would be to have a legal description of the actual parcels that were granted a variance. Anderson – We will accept the condition of a survey reflecting what was presented on the map in the application.
Lewis moved to adjourn. Clark seconded. All in favor. Motion Carries.

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