



Staff Report
Cathy Smith Variance, VAR-23-002

Hearing Date: April 8, 2024

Development Services Department

Applicant:

Cathy Smith

Property Owner:

ACT Holdings, LLC

Representative:

Same

Planner:

Jennifer Kharrl

Parcel Number:

RP07N01W331401

Parcel Address:

1111 E Idaho Boulevard

Lot Size/Project Area:

139 acres

Impact Area:

N/A

Current Zone:

"A-1" (Prime Agriculture)

Comprehensive Plan:

2007 Comprehensive Plan
Future Land Use: Priority
Growth Area #1

Current Uses:

Irrigated Agricultural Land, Single-
Family Residence

Applicable Zoning Land Use

Regulations: GCC 11-13

Notification:

3/15/24-Agency
3/15/24-Neighbor
Mailing
3/20/24-Publication
3/15/24-Posting

Exhibits:

1. Variance Application

Brief Summary of Request

The applicant, Cathy Smith, on property owned by ACT Holdings, LLC of which she is a member, has applied for a Variance (VAR) to the minimum lot size in the A-1 zone per Gem County Code 11-4-1.B. The minimum lot size in the A-1 zone is 40 acres and the applicant is requesting to be allowed to create up to a 1 acre parcel. The subject property is located at 1111 E Idaho Boulevard, which has a single-family dwelling, and designated as Priority Growth Area #1 on the 2007 Gem County Future Land Use Map and could have applied for a rezone under that designation. The entire site is approximately 139.23 acres in size. The current deed to the property includes 4 separate legal descriptions that would allow the applicant to build a residence on one of those without having to rezone or subdivide and could include the area listed in the application. *Note: this application was submitted under the prior 2007 Comprehensive Plan.*

Effects of Approval or Denial of the Application

If approved, the applicant would be allowed to proceed with a Subdivision application for a substandard parcel. If the Commission decides to deny the application, the applicant would have to move forward with the current zoning and build a home on one of her existing parcels. The Commission is the final decision-making body on Variance applications. The applicant also has the option to file an Appeal of the Commission's decision to the Board of County Commissioners.

According the Gem County Code 11-13-2, the Commission may authorize a variance from the terms of the Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. No nonconforming use of lands, structures or buildings in other zones shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit.

	COMP PLAN	ZONING	LAND USE
North	Priority Growth Area #2	A-1 and A-2	Irrigated agricultural land; rural residential
South	Priority Growth Area #1 across the river	A-2 across the river	Payette River
East	Priority Growth Area #1 across the river	R-3 across the river	Payette River
West	Priority Growth Area #1	A-1 and A-2	Irrigated agricultural land; rural residential

COMPREHENSIVE PLAN POLICIES & GOALS [Staff comments and analysis are shown in *italics*.]

The Comprehensive Plan defines the “County Residential Area, Priority Growth Area 1” category as follows:

The Comprehensive Plan Future Land Use Map identifies the subject property as **County Residential Area, Priority Growth Area 1**. The County Residential Area is set aside for primarily residential development. The long-term vision for this planning area is to maintain the uniquely rural character and to preserve non-conforming uses. The Priority Growth Area 1 allows densities down to one (1) unit per one (1) acre, or as the Zoning and Subdivision Ordinances currently allow.

This property is located in an A-1 zone and within the Priority Growth Area #1 designation of the 2007 Future Land Use Map which had the option to apply for a rezone for 1-acre parcels. The applicant had submitted a rezone application under the 2007 Future Land Use Map but rescinded it.

RELEVANT ORDINANCES & STAFF COMMENTS (Staff comments shown in *italics*)

Below is the specific ordinance section from Title 11 (Zoning Ordinance), Chapter 4, Section 1, that is the subject of this Variance application:

- A. Setback Regulation: **GCC 11-4-1. B: A-1 Prime Agricultural (PRAG)**, minimum size: forty (40) acre minimum lot size.

This ordinance is applied to every property zoned A-1 per the official zoning map.

REQUIRED FINDINGS & STAFF ANALYSIS [Staff comments and analysis are shown in *italics*.]

In addition to the analysis provided below, the Commission should reference the applicant's letter of intent. The Commission should also consider all written and oral testimony offered into the public record before making any final motion.

GCC 11-13-2. A states the Commission shall not grant a Variance until the following standards are met:

- A. Special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the same district;

All properties within the A-1 zone are subject to the 40-acre minimum lot size. There are situations where a deed has more than one legal description included, that would be substandard, and those would be allowed to become a separate legal parcel. The applicant states that the special condition that pertains to this property are, that the property is nonfarmable with no irrigation water rights. As mentioned above, a parcel can be created through her deed that includes this section of the property where she can build a residence and not interrupt the farming operation.

The Commission must find there are special conditions and circumstances for the substandard parcel that are not applicable to other lands in the A-1 zone.

- B. A literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title;

A literal interpretation of the minimum lot size would not deprive the applicant of the opportunity to build a residence. Other properties in the A-1 zone with a similar setting as the subject parcel would be subject to the minimum lot size or the legal descriptions included in their deed.

The Commission must find that the applicant would be deprived of rights commonly enjoyed by other properties in the A-1 zone to meet the minimum parcel size.

C. Special conditions and circumstances do not result from the actions of the applicant;

The application states that there are not any conditions or circumstances that exist of the applicant's actions but are due to the parcel's existing placement and features. Gem County adopted a new Comprehensive Plan in June 2023 and prior to that the subject property was eligible to apply for a rezone for a minimum lot size due to being in the Priority Growth Area #1. As mentioned above, a parcel can be created through her deed that includes this section of the property where she can build a residence and not interrupt the farming operation.

D. That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures or buildings in the same district.

Granting the requested variance would allow the applicant to create a substandard parcel when other properties in the A-1 zone would not be able to create a substandard lot unless their deed included a legal description for one.

The Commission must determine if this is a "special privilege" or not.

Comments

Public Comments

Public hearing notices were mailed to fifteen (15) parcels in the immediate vicinity. At the time of this report staff received one (1) letter of support.

County Agency Comments

Staff informed applicable agencies of the proposed development and the responses are attached as exhibits.

Decision Options

- The Commission may **approve** the VAR; or
- The Commission may **approve with conditions of approval**; or
- The Commission may **deny** the VAR.

STAFF RECOMMENDATION

As noted above, the Commission's decision must be made entirely upon the required findings. Staff's analysis is provided above for the Commission's consideration. Based upon the information presented in the application, staff cannot find that the application meets the mandatory findings. The Commission should consider all written and oral testimony provided during the public hearing and factor that information into your decision.

Stephanie Crays

From: Timothy Walker <timothylwalker@msn.com>
Sent: Saturday, March 23, 2024 6:38 AM
To: Stephanie Crays
Cc: actholdingsID@gmail.co; clsmith365@msn.com
Subject: Application for Variance for ACT Holdings

Gem County Development Services,

Cathy Smith's request to create a one acre buildable parcel at 1111 East Idaho Boulevard 7N.01W.sec33 is the best possible use of the property. We are very much in support of Cathy's proposed split as long as the access point to the parcel is from 1111 East Idaho Boulevard and not the lane leading to other properties.

Cathy Smith and Gary Smith have been very good neighbors and friends to us and our family for many years. We will do everything we can to help and support them. We hope Gem County Planning and Zoning will grant this request.

We plan to attend the 4/8/2024 public hearing at 6:00 PM.

Thank you,
Tim and Sylvia Walker
1330 Edgemont Road
Emmett, Idaho 83617
(208)369-0433
timothylwalker@msn.com



MASTER PUBLIC HEARING APPLICATION

GEM COUNTY DEVELOPMENT SERVICES

109 SOUTH MCKINLEY, EMMETT, IDAHO 83617 WWW.GEMCOUNTY.ORG PHONE: (208) 365-5144

TYPE OF APPLICATION: (PLEASE CHECK ALL THAT APPLY.)

- | | | |
|--|--|---|
| <input type="checkbox"/> APPEAL | <input type="checkbox"/> PLANNED COMMUNITY | <input type="checkbox"/> SUPPLEMENTAL AMENDMENT |
| <input type="checkbox"/> COMPREHENSIVE PLAN TEXT AMENDMENT | <input type="checkbox"/> REZONE | <input type="checkbox"/> VACATION |
| <input type="checkbox"/> COMPREHENSIVE PLAN MAP AMENDMENT | <input type="checkbox"/> SPECIAL USE PERMIT | <input checked="" type="checkbox"/> VARIANCE |
| <input type="checkbox"/> DESIGN REVIEW | <input type="checkbox"/> SPECIAL USE PERMIT (MINERAL EXTRACTION) | <input type="checkbox"/> ZONING TEXT AMENDMENT |
| <input type="checkbox"/> DEVELOPMENT AGREEMENT | <input type="checkbox"/> SUBDIVISION, PRELIMINARY | |
| <input type="checkbox"/> PLANNED UNIT DEVELOPMENT | <input type="checkbox"/> SUBDIVISION, MODIFICATION | |

PROJECT NAME: ACT Holdings LLC - Cathy Smith

SITE INFORMATION:

(This information can be found on the Assessor's property information assessment sheet.)

Quarter: SE 1/4 of NW 1/4 Section: 33 Township: 7N Range: 1W Total Acres: 139

Subdivision Name (if applicable): N/A

Site Address: Current Parcel address 1111 E Idaho Blvd Lot: _____ Block: _____ City: Emmett

Tax Parcel Number(s): RP07N01W331401 Current Zoning: AG Current Land Use: AG

PROPERTY OWNER:

Name: ACT Holdings LLC

Address: PO Box 140355

City: Garden City State: ID Zip: 83714

APPLICANT:

Name: Cathy Smith

Address: PO Box 140355

City: Garden City State: ID Zip: 83714

Telephone: 208 365 8050

Email: ACTholdingsID@gmail.com

Telephone: 208 365 8050

Email: CLSMITH.365@MSN.COM

I consent to this application and allow Development Services staff to enter the property for site inspections related to this application.

I certify this information is correct to the best of my knowledge.

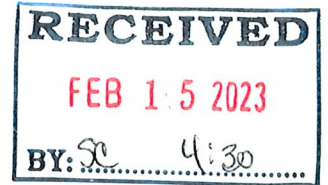
By: ACT Holdings LLC
Cathy L Smith 5/22/2023
Signature: (Owner) Date

Cathy L Smith 5/22/2023
Signature: (Applicant) Date

OFFICE USE ONLY

File No.: _____ Received By: SC Date: 6-5-23 Fee: 355 Receipt No: 2023-00272

old Comp Plan



February 15, 2023

Ms. Jennifer Kharri
Planning Director
109 South McKinley
Emmett, ID 83617

Re: Variance of 1 acre (parcel #RP0701W331401)

Dear Ms. Kharri

I am submitting a variance application request to split up to a 1 acre buildable parcel from the above referenced parcel located at 1111 E Idaho Blvd.

Please find enclosed the supporting documentation.

Please feel free to contact me with any questions you may have at 208.365.8050.

Best regards,

ACT Holdings LLC

A handwritten signature in black ink that reads "Cathy L Smith".

By: Cathy L Smith
Manager/Owner

ACT Holdings LLC

PO Box 140355, Garden City, ID 83714

March 4, 2024

Gem County Planning and Zoning
109 South McKinley
Emmett, ID 83716

Re: Variance Application

Dear Commissioners:

Thank you for your consideration of my Variance Application filed with the Planning and Zoning Department on June 5, 2023.

In my application, I am requesting a split up to 1 acre from the existing parcel #RP07N01W331400. The proposed parcel borders Idaho Blvd. and is located separately from the existing farming operations by a hillside, an access lane to the farm, and an irrigation ditch. The 3 properties bordering the proposed parcel are residences in size from ½ acre to just over 1 acre. The proposed parcel is separated by unique topography and yet has no irrigation water rights.

I am requesting this split to accommodate a residence, in order for me to care for a relative with dementia, and to be close to the farming operations of the remaining parcels owned by me.

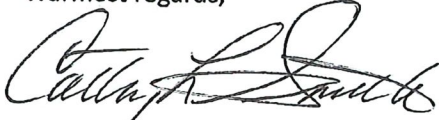
With these features noted and reasons for the application, I am providing you my understanding of the following standards:

1. The property is nonfarmable, no irrigation water rights exist to the property, and there are no existing structures on the property. The adjoining bordering properties are .50 acre to 1.5-acre parcels. Beyond these parcels there are 5-acre zoned parcels and residences in surrounding the ½ mile to ¾ area.
2. The literal interpretation does provide for unique parcels to be considered for a variance, and a denial of the application would deprive the applicant of the enjoyment as is commonly comparable and enjoyed, and "benefitted" by other parcels in the area.
3. I don't believe there are any conditions or circumstances that exist of the applicant's actions but are due to the parcel's existing placement and features, (i.e. the parcel is separated by a hillside, the access road and the canal.)

4. Because the zoning ordinances provide the granting of a Variance, it appears consideration is allowed for other like-featured properties, with similar topography, neighbors lot sizes and separation from the existing farm due to the features indicated. The parcel would not impose any material safety or health concerns in the area, is harmonious with the area and does not negatively impact the effects of emergency services already offered in the area.

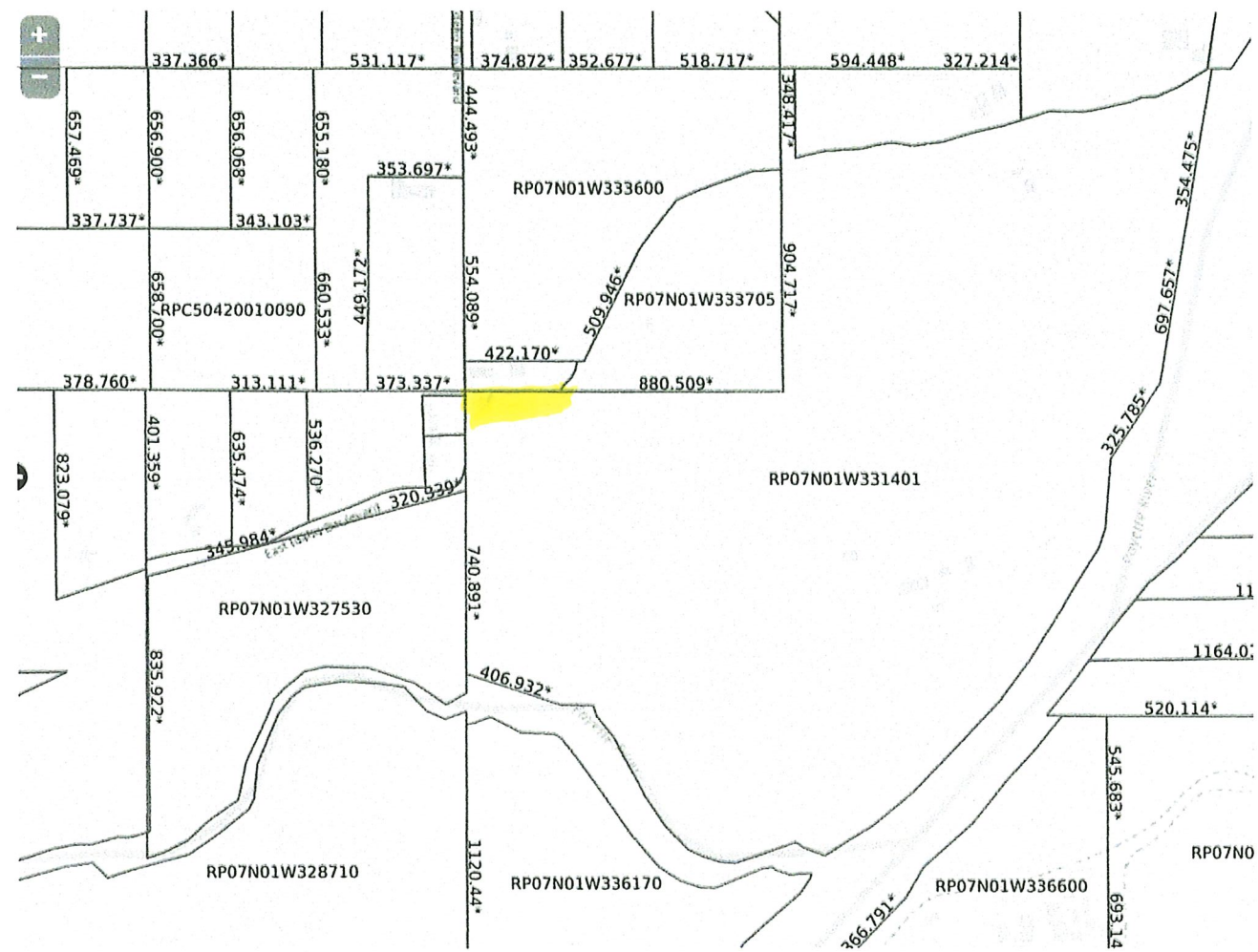
I respectfully request the Commissioners approval of the application.

Warmest regards,

A handwritten signature in black ink, appearing to read "Cathy Smith", written in a cursive style.

ACT Holdings LLC

By: Cathy Smith, Sole Proprietor







E Idaho Blvd

State Highway 52