

**JUNE 24, 2010**

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The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, June 24, 2010, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

There were present:

Mayor Jared D. Fuhriman  
Councilmember Ida Hardcastle  
Councilmember Michael Lehto  
Councilmember Karen Cornwell  
Councilmember Thomas Hally  
Councilmember Sharon D. Parry  
Councilmember Ken Taylor

Also present:

Dale Storer, City Attorney  
Rosemarie Anderson, City Clerk  
All available Division Directors

Mayor Fuhriman requested Boy Scout Troop No. 7, which included Jimmy Droegemueller, Sammy Droegemueller, and Nick Heeding, to lead those present in the Pledge of Allegiance.

Mayor Fuhriman requested representatives from the Mayor's Youth Advisory Council to come forward and report to the City Council on the Association of Idaho Cities Conference held in Idaho Falls from June 16-18, 2010.

Ericka Gianotto, President and Megan Casper, Vice President Elect, appeared to report to the Mayor and City Council regarding the Association of Idaho Cities Conference. They were able to spend time getting to know others that were in attendance. They had team-building activities and motivational speakers. Trust games and brainstorming activities were conducted throughout the three-day conference. The students were also part of a service project conducted at the Development Workshop. Ericka and Megan provided a detailed account of the conference.

Mayor Fuhriman requested those to come forward who had issues for the City Council that were not otherwise listed on the Council Agenda.

Tim Urling, 1115 Killarney Court, appeared to state that he was the Chairman of the Issues Committee on the Bonneville County Republican Central Committee. He submitted a Resolution adopted by the Bonneville County Republican Central Committee Chairman, as follows:

**Resolution to Amend Idaho Falls Municipal Code Section 7-9-23**

WHEREAS, the Idaho Falls City Code 7-9-23 reads: It shall be unlawful for any person to fasten or attach, paint or place, any sign, handbill, poster, advertisement or notice of any kind or sort, whether political or otherwise, or to cause the same to be done in or upon curbstone, lamp post, telephone pole, electric light, or power pole, hydrant, bridge or tree, or in or upon any portion of any sidewalk or street. It shall be unlawful to paste, place, paint, or attach any sign defined in this Code on any building, street, or property of the City of Idaho Falls.

WHEREAS, the ordinance is clearly a violation of political free speech; and,

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WHEREAS, the ordinance is an unconstitutional law of the Idaho State Constitution; and,

WHEREAS, City property is paid for and maintained by the Idaho Falls City Taxpayer; and,

WHEREAS, the ordinance is difficult to enforce, can result in selective enforcement and is draconian law; and,

WHEREAS, the signs pose no threat to safety of drivers or pedestrians.

NOW, therefore, be it resolved by the Bonneville County Central Committee:

THAT the City Code be amended to allow candidates' political signs to be placed on City property.

Bonneville County Republican Central Committee Chairman

s/ Don Schanz

Date: June 3, 2010

Mr. Urling explained that he believed that lawmakers should spend less time doing and more time undoing. He stated, further, that as government grows, freedom and liberty contract. He reviewed the principles explained in the Resolution above. One opponent made a point that candidates should be able to place their signs on the Greenbelt. Mr. Urling stated that this would be legal, but he thought that individual responsibility should play a part. When people are asked to do or not do something, and not forced to, they will use good judgment. Freedom always works better than bureaucratic planning. The Planning and Building Director sent a letter to all candidates in the recent primary election. In response to that, Mr. Urling had a conversation with the Planning and Building Director regarding this issue. The Supreme Court had already settled this matter with a similar case in Los Angeles. Mr. Urling disagreed with this analysis. He stated that the Supreme Court cannot make law. The Constitution of the United States shows that all legislative power should be vested in a Congress of the United States. The Supreme Court can only offer opinions. Mr. Urling stated that as a matter of fact, the Supreme Court is the weakest of all branches of government as they are no co-equal in authority. Mr. Urling requested the Mayor and City Council to consider amending the Ordinance to allow candidates to post their signs on City property.

Mayor Fuhrman stated that the City has a good Ordinance in place regarding signs and their placement. He stated, further, that it is the prerogative of the City Council to make any comments if necessary.

Councilmember Parry stated that until someone on the City Council comes forward to request a change, the Ordinance stands as written.

### **CONSENT AGENDA ITEMS**

Mayor Fuhrman requested Council confirmation for the Appointment of Ryan Peterson, Project Engineering Consultants, to serve on the Traffic Safety Committee (Term to Expire on December 31, 2011); and, the Appointment of Matt Davison to serve on the Traffic Safety Committee (Term to Expire on December 31, 2010).

The City Clerk requested approval of the Minutes from the June 8, 2010 Council Work Session and the June 10, 2010 Regular Council Meeting.

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The City Clerk presented several license applications, all carrying the required approvals, and requested authorization to issue those licenses.

The City Clerk requested Council ratification for the publication of legal notices calling for public hearings on June 24, 2010.

The Municipal Services Director submitted the following memo:

City of Idaho Falls  
June 15, 2010

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: S. Craig Lords, Municipal Services Director  
SUBJECT: AUTHORIZATION TO BID THE CITY OF IDAHO FALLS/  
BONNEVILLE COUNTY JOINT USE FUEL FACILITY

It is respectfully requested that City Council authorize Municipal Services to bid the City of Idaho Falls/Bonneville County Joint Use Fuel Facility.

s/ S. Craig Lords

The Public Works Director submitted the following memos:

City of Idaho Falls  
June 16, 2010

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Chad Stanger, Public Works Director  
SUBJECT: BID AUTHORIZATION – WELL NO. 13 LANDSCAPING

Public Works requests authorization to advertise to receive bids for the Well No. 13 Landscaping Project.

s/ Chad Stanger

City of Idaho Falls  
June 16, 2010

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Chad Stanger, Public Works Director  
SUBJECT: BID AUTHORIZATION – STORM TUNNEL CLEANING

Public Works requests authorization to advertise to receive bids for the Storm Tunnel Cleaning Project.

s/ Chad Stanger

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Councilmember Parry stated that she was excited that the Joint Use Fuel Facility is going forward.

Councilmember Hally stated that this is an efficiency issue for the City, as well as a security issue for the City.

It was moved by Councilmember Taylor, seconded by Councilmember Parry, to approve the Consent Agenda in accordance with the recommendations presented. Roll call as follows:

Aye: Councilmember Parry  
Councilmember Cornwell  
Councilmember Hally  
Councilmember Taylor  
Councilmember Hardcastle  
Councilmember Lehto

Nay: None

Motion Carried.

**REGULAR AGENDA**

The Idaho Falls Power Director submitted the following memo:

City of Idaho Falls  
June 14, 2010

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Jackie Flowers, Idaho Falls Power Director  
SUBJECT: ORDINANCE AMENDING SECTIONS 8-5-2 AND 8-5-9 OF THE CITY CODE OF IDAHO FALLS RELATED TO MASTER METERING AND SUB-METERING OF ELECTRICAL SERVICE

Attached for your consideration is an Ordinance amending Sections 8-5-2 and 8-5-9 of the Idaho Falls City Code related to master metering and sub-metering of electrical service. The amendments clarify sub-metering specifically as it relates to re-sell of Idaho Falls Power electricity.

Idaho Falls Power respectfully requests that City Council approve the Ordinance amending Sections 8-5-2 and 8-5-9 of the Idaho Falls City Code.

s/ Jackie Flowers

At the request of Councilmember Lehto, the City Clerk read the following Ordinance by title only:

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**ORDINANCE NO. 2841**

AN ORDINANCE AMENDING SECTIONS 8-5-2 AND 8-5-9 OF THE CITY CODE OF THE CITY OF IDAHO FALLS, IDAHO; RELATING TO MASTER METERING AND SUB-METERING OF ELECTRICAL SERVICE; PROVIDING FOR PRESERVATION OF PRIOR ORDINANCE; PROVIDING FOR METHODOLOGY; PROVIDING FOR SEVERABILITY AND PROVIDING FOR EFFECTIVE DATE.

The foregoing Ordinance was presented by title only. Councilmember Lehto moved, and Councilmember Parry seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Lehto  
Councilmember Taylor  
Councilmember Hardcastle  
Councilmember Cornwell  
Councilmember Hally  
Councilmember Parry

Nay: None

Motion Carried.

The Municipal Services Director submitted the following memos:

City of Idaho Falls  
June 15, 2010

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: S. Craig Lords, Municipal Services Director  
SUBJECT: BID IF-10-19, ONE (1) NEW OR NEWER ICE RESURFACER

Attached for your consideration is the tabulation for the above subject bid.

It is the recommendation of Municipal Services to accept the sole bid of Becker Arena Products, Inc. to furnish a 2010 Resurface Corporation Olympia Millennium Ice Resurfacer for an amount of \$104,295.00 without trade-in.

s/ S. Craig Lords

Councilmember Taylor requested the Municipal Services Director to come forward and further explain the method of this purchase.

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The Municipal Services Director appeared to explain that all advertisement requirements were made to invite bids for this resurfacers. The Invitation for Bids was also mailed to any vendors who are capable of bidding on this piece of equipment. Further, it was explained that the City of Idaho Falls has decided to keep the existing Zamboni, as it was used in the 1960 Olympics in Sun Valley, Idaho. It is an antique. That is the reason for no trade-in for the purchase of the ice resurfacers.

It was moved by Councilmember Taylor, seconded by Councilmember Parry, to accept the sole bid of Becker Arena Products, Inc. to furnish a 2010 Resurface Corporation Olympia Millennium Ice Resurfacers for an amount of \$104,295.00 without trade-in. Roll call as follows:

Aye: Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Cornwell  
Councilmember Hally  
Councilmember Parry  
Councilmember Taylor

Nay: None

Motion Carried.

City of Idaho Falls  
June 15, 2010

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: S. Craig Lords, Municipal Services Director  
SUBJECT: BID IF-10-20, ONE (1) NEW 2010 OR NEWER SIDE LOAD REFUSE CONTAINER BODY – MINIMUM 29 CUBIC YARD MOUNTED ON ONE (1) NEW 2009 OR NEWER CAB AND CHASSIS

Attached for your consideration is the tabulation for the above subject bid.

It is the recommendation of Municipal Services to accept the low bid of Southern Idaho Freightliner to furnish One (1) New 2010 Southwest Equipment Company Challenger Model Side Load Refuse Container Body Mounted on a New 2009 American LaFrance Condor 880S Cab and Chassis for an amount of \$126,304.00 with Trade-In Unit No. 7005.

s/ S. Craig Lords

It was moved by Councilmember Taylor, seconded by Councilmember Parry, to accept the low bid of Southern Idaho Freightliner to furnish One (1) New 2010 Southwest Equipment Company Challenger Model Side Load Refuse Container Body Mounted on New 2009 American LaFrance Condor 880S Cab and Chassis for an amount of \$126,304.00 with Trade-In Unit No. 7005. Roll call as follows:

Aye: Councilmember Taylor  
Councilmember Hally

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Councilmember Lehto  
Councilmember Parry  
Councilmember Cornwell  
Councilmember Hardcastle

Nay: None

Motion Carried.

The Planning and Building Director submitted the following memo:

City of Idaho Falls  
June 21, 2010

MEMORANDUM

TO: Mayor and Council  
FROM: Renee R. Magee, Planning and Building Director  
SUBJECT: RESOLUTION ADOPTING SIXTH ANNUAL REPORT,  
COMMUNITY DEVELOPMENT BLOCK GRANT

Attached is the Resolution adopting the Annual Report for the Fiscal Year 2009-2010 for Community Development Block Grant Funds. This report was the subject of a public hearing on June 10, 2010, and the public notice, dated May 27, stated comments would be received through June 24, 2010. The Department respectfully requests approval of the Resolution.

s/ Renee R. Magee

**RESOLUTION NO. 2010-14**

**RESOLUTION OF THE CITY OF IDAHO FALLS**

**ADOPTING THE SIXTH ANNUAL REPORT  
FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT**

WHEREAS, the City of Idaho Falls became an Entitlement City under the criteria of Title I of the Housing and Community Development Act of 1974, as amended;

WHEREAS, the City of Idaho Falls receives annual grant funding as an Entitlement City;

WHEREAS, the Act requires an Annual Report describing how the grant funds were used and the resulting benefits;

WHEREAS, the required public notice was given and the public hearing on the Sixth Annual Report held before City Council on June 10, 2010 to receive public comments and the public comment period of fifteen days was opened.

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WHEREAS, the comment period has closed and no comments were received to be considered or incorporated into the Plan;

WHEREAS, all requirements for adopting the report have been met;

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of Idaho Falls to adopt the Sixth Annual Report and submit it to the U. S. Department of Housing and Urban Development.

Dated: June 24, 2010

s/ Jared D. Fuhriman  
Jared D. Fuhriman, Mayor

ATTEST:

s/ Rosemarie Anderson  
Rosemarie Anderson, City Clerk

(SEAL)

It was moved by Councilmember Parry, seconded by Councilmember Taylor, to approve the Resolution Adopting the Sixth Annual Report for the Community Development Block Grant and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Hally  
Councilmember Hardcastle  
Councilmember Parry  
Councilmember Lehto  
Councilmember Taylor  
Councilmember Cornwell

Nay: None

Motion Carried.

The Public Works Director submitted the following memo:

City of Idaho Falls  
June 23, 2010

MEMORANDUM

TO: Honorable Mayor and City Council  
FROM: Chad Stanger, Public Works Director  
SUBJECT: EASEMENT VACATIONS - EASTERN IDAHO REGIONAL  
MEDICAL CENTER

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As previously authorized, the City Attorney has prepared documents to vacate certain easements located at the Eastern Idaho Regional Medical Center. These vacations are necessary to allow for expansion of the facility.

Public Works recommends approval of these vacations; and, authorization for the Mayor and City Clerk to sign the documents.

s/ Chad Stanger

Councilmember Parry stated that she would abstain from any discussion or vote on this matter.

At the request of Councilmember Lehto, the City Clerk read the following Ordinances by title only:

**ORDINANCE NO. 2842**

AN ORDINANCE VACATING A 20 FOOT WATER LINE EASEMENT WITHIN THE CITY OF IDAHO FALLS, IDAHO; PARTICULARLY DESCRIBING THE SAID EASEMENT; AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER ON BEHALF OF THE CITY A QUITCLAIM DEED CONVEYING THE WATER LINE EASEMENT TO THE OWNER OF THE ADJACENT LAND, AND NAMING IT; PROVIDING FOR EFFECTIVE DATE OF ORDINANCE.

The foregoing Ordinance was presented by title only. Councilmember Lehto moved, and Councilmember Hardcastle seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Taylor  
Councilmember Hally  
Councilmember Lehto  
Councilmember Cornwell  
Councilmember Hardcastle

Nay: None

Abstain: Councilmember Parry

Motion Carried.

**ORDINANCE NO. 2843**

AN ORDINANCE VACATING A 12 FOOT POWER LINE EASEMENT WITHIN THE CITY OF IDAHO FALLS, IDAHO; PARTICULARLY DESCRIBING THE SAID EASEMENT; AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER ON BEHALF OF THE CITY A QUITCLAIM DEED CONVEYING THE POWER LINE EASEMENT TO THE OWNER OF THE ADJACENT LAND, AND NAMING IT; PROVIDING FOR EFFECTIVE DATE OF ORDINANCE.

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The foregoing Ordinance was presented by title only. Councilmember Lehto moved, and Councilmember Hally seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Hally  
Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Taylor  
Councilmember Cornwell

Nay: None

Abstain: Councilmember Parry

Motion Carried.

**ORDINANCE NO. 2844**

AN ORDINANCE VACATING AN EXISTING 20 FOOT WATER LINE EASEMENT WITHIN THE CITY OF IDAHO FALLS, IDAHO; PARTICULARLY DESCRIBING THE SAID EASEMENT; AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER ON BEHALF OF THE CITY A QUITCLAIM DEED CONVEYING THE WATER LINE EASEMENT TO THE OWNER OF THE ADJACENT LAND, AND NAMING IT; PROVIDING FOR EFFECTIVE DATE OF ORDINANCE.

The foregoing Ordinance was presented by title only. Councilmember Lehto moved, and Councilmember Hally seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Cornwell  
Councilmember Taylor  
Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Hally

Nay: None

Abstain: Councilmember Parry

Motion Carried.

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Mayor Fuhriman requested Councilmember Parry to conduct a public hearing, as legally advertised, to consider of an appeal from a decision by the Board of Adjustment to the City Council regarding the denial of a request for a variance to reduce the required side setback (Buckboard Lane) from 30 feet to 20 feet to allow an existing structure on property that is located generally south of Grandview Drive, north and adjacent to Plaza Street, east of Neptune Avenue, west and adjacent to Buckboard Lane and legally described as Lot 1, Block 4, Old Fashion Way Addition (2344 Plaza Street). At the request of Councilmember Parry, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls  
June 16, 2010

MEMORANDUM

TO: Mayor and City Council  
FROM: Renee R. Magee, Planning and Building Director  
SUBJECT: REQUEST FOR A VARIANCE TO REDUCE THE SETBACK FROM 30 FEET TO 20 FEET – LOT 1, BLOCK 4, OLD FASHION WAY ADDITION (2344 PLAZA STREET)

Attached is the request for a variance to reduce the setback from a public street from 30 feet to 20 feet for a garage addition constructed at 2344 Plaza Street. The addition was constructed without a building permit. The Board held a public hearing on January 14, 2010, and voted 4 to 3 to deny the variance. Under the Zoning Ordinance, the Board is required to have five concurring votes to take an action on any matter before it. With the applicant present, the Board made a second motion on April 22, 2010, to approve the variance. The motion failed in a 2 to 5 vote. The staff recommends denial of the variance since the property is not unique and the need for a variance is not created by the physical features of the property. This variance request is now being submitted to the Mayor and Council for consideration.

s/ Renee R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this variance request:

Slide 1	Vicinity Map showing surrounding zoning
Slide 2	Criteria for Variance from Idaho State Code 67-6516
Slide 3	Criteria for Variance from Idaho Falls City Code
Slide 4	Aerial Photo
Slide 5	Aerial Photo – Close Up
Slide 6	Close-Up of Property
Slide 7	Site Plan drawn by Applicant
Slide 8	Site Photo of Front View of Home
Slide 9	Site Photo of Front View of Home
Slide 10	Site Photo of Front View of Home (More Recent)
Slide 11	Site Photo of Side View from Buckboard Lane
Slide 12	Site Photo of Overall View
Slide 13	Site Photo of view from the North on Buckboard Lane
Slide 14	Site Photo of Southwest Corner of Plaza and Buckboard

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- Slide 15 Site Photo of Southeast Corner  
Slide 16 Site Photo from West Corner of Evans Drive  
From Applicant:  
Slide 1 Site Photo of Garage Addition  
Slide 2 Site Photo of Fence  
Exhibit 1 Board of Adjustment Minutes dated April 22, 2010  
Exhibit 2 Board of Adjustment Minutes dated January 14, 2010  
Exhibit 3 Findings of Fact and Conclusions of Law dated April 22, 2010  
Exhibit 4 Staff Report dated January 14, 2010  
Exhibit 5 Vicinity Map  
Exhibit 6 Aerial Photo  
Exhibit 7 Variance Application  
Exhibit 8 Application for the Appeal of the Decision of the Board of Adjustment  
Exhibit 9 Letter from Larry Friedman, as follows:

January 13, 2010

Zoning Commission  
City of Idaho Falls

Dear Commissioners:

I am writing in support of a variance for the extension of Doug Illum's dwelling/garage. I understand that the City requires a minimum set-back from the street and that the extension does not meet criteria. My understanding is that the Commission has authority to grant variances from the requirement.

I have lived across the street (at 2335) from the Illum's for twenty years. The Illums have been consistently thoughtful, helpful, caring neighbors. During this time, they have worked hard to enhance the value and appearance of their property, utilizing their available ground. The garage extension is finished in a manner consistent with the exterior décor of the balance of their home. The size of the extension is modest and poses no distraction to passers-by, nor to me. Since my home faces theirs, of all the immediately surrounding neighbors, I am the one that most consistently sees the Illum home. I find the extension done tastefully and matching the quality of the rest of the house.

Concerning the extension's encroachment on the street: It is not obvious in any way that does not involve precise measurement that the extension encroaches on the street. I have no problem with its dimensions or location. Indeed, the extension serves as the termination point for the fence that was erected at the same time. If the rationale for the set-back requirement is visibility for motorists entering the intersection of Buckboard and Plaza from the west or the north, the extension poses no impediment. Furthermore, I understand that the fence adjacent to the

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extension is in compliance with the City's Code, and yet it is unquestionably of greater consequence to motorists. My family frequently uses our property's frontage on Plaza for parking our vehicles. In keeping with local ordinances, we are obligated to park facing east, thus making our frequent approaches to the intersection from the west as we leave our home. As one of the neighbors most consistently affected by the Illum's extension and fence, I have no problems with either action.

In light of the above, I urge the Commission to grant Doug Illum a variance from the set-back requirement.

Sincerely,

s/ Larry K. Friedman  
Larry K. Friedman  
2335 Plaza  
Idaho Falls, Idaho 83401  
569-4868

The Planning and Building Director read from the State Land Use Planning Act, as follows:

"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."

The City of Idaho Falls City Code reads as follows regarding a variance:

"d. **Findings Required for Approval of a Variance.** To approve a variance, the Board of Adjustment must find, in writing, that the application for a variance fulfills all of the following conditions.

i. the need for a variance results from physical limitations on development that are unique to the lot upon which the variance is requested and that are not generally applicable to other properties in the same zone;

ii. failure to approve a variance will result in an undue hardship because no reasonable conforming use of the lot is possible without a variance;

iii. the alleged hardship has not been created by an action of the lot's owner or occupant;

iv. approval of the variance will not result in creation of a nuisance or other potential harm to the neighborhood in which the lot is located; and,

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v. the granting of the variance will not adversely affect the comprehensive plan.”

The Planning and Building Director explained, further, that the Board of Adjustment found that the addition involved in the variance request is not particularly in public interest and not in the clear site triangle. She stated that these issues are difficult. The staff explains to contractors, developers, and home owners, on a daily basis, certain setback requirements that the Zoning Ordinance mandates. The Building Inspector found this addition due to a citizen complaint.

Councilmember Taylor requested clarification that the fence is in compliance with the Zoning Ordinance, but the addition to their home is not in compliance with the Zoning Ordinance. The Planning and Building Director stated that the fence is in compliance with the Ordinance, but the addition is not. She stated, further, that a building permit has not been issued for the addition to the home. If the Mayor and City Council were to grant the variance as requested, the applicant will need to prove that the structure is in compliance and has a 30-inch footing and has been tied into the supporting wall of the existing structure. The Planning and Building Director explained, further, that anytime property or people are covered, unless it is less than 120 square feet, a building permit is required. The reason for this permitting process is to determine whether the structure is covered for wind load and for snow load. The applicant noted that there are other properties in Old Fashion Way Addition that have setbacks closer than 30 feet.

Councilmember Hardcastle requested to know whether a carport could have been acceptable at this location. The Planning and Building Director stated that the Zoning Ordinance requires that a yard be open clear to the sky. If a roof is put on a structure, then the yard becomes measured from the support for the structure. Councilmember Hardcastle requested, further, what it meant by “not in conflict with public interest”. The Planning and Building Director stated that the Board of Adjustment determined that people were not complaining about the addition, it was not obstructing the view, it was not dangerous, etc. The Planning and Building Director stated that the neighbors were actually stating that it was an attractive addition to the Illum’s home and it does not interfere with the clear site triangle. The Board of Adjustment could not find that the need was due to the physical limitations of the lot or that it was not created by the property owner. Councilmember Hardcastle requested to know whether the City Council could grant a variance based upon the “not in conflict with public interest” provision. The Planning and Building Director stated that a variance could not be granted based upon that provision.

Councilmember Parry requested to know whether other variances have been granted. The Planning and Building Director stated that five variances have been considered, with four of them being approved in Old Fashion Way Addition.

Councilmember Hardcastle brought the attention of the City Council to the ads that are placed in The Post Register reminding people that they might need a building permit if they are doing certain construction projects. The Planning and Building Director stated that people do not generally think about patios and carports needing building permits.

Maureen Illum, 2344 Plaza, appeared as the applicant. She stated that they thought that they were in compliance with all regulations. Further, they have found six properties in Old Fashion Way Addition that have exceeded the setback requirements. Mrs. Illum stated that they reviewed the City Code online and felt that their request for this building is well within the requirements. They have protected property values; provided adequate light, air, and fostered a wholesome serviceable and attractive city; and, have conserved the value of buildings and encouraged the most appropriate use of those buildings. She stated that she has been told that there are many of these variances

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throughout the City. Mrs. Illum stated that as they were building this addition, many friends and neighbors stopped and commented on the fact that it is a very nice looking building. They made sure to match the house in their construction. This does not provide any harm to anyone. Again, Mrs. Illum stated that she felt that they have met all of the requirements for the variance request.

Councilmember Taylor requested to know whether the Illums hired a contractor to complete this work. Mrs. Illum stated that she and her husband completed the addition.

Councilmember Taylor requested to know whether the Illums knew that they needed to take out a building permit for the structure and for the fence. Mrs. Illum stated that they were well under construction before they thought about a building permit.

Following a brief discussion, it was determined that the fence was built by a contractor and it complies with the Zoning Ordinance. The Illums built the garage addition by themselves.

Councilmember Lehto stated that if the Illums had taken out a building permit, they would have known that a variance was required to build their garage addition. The real purpose for a building permit would provide for inspectors to be on-site during the construction process. This would have ensured that the snow load and wind load requirements were determined and built into the structure. Councilmember Lehto questioned whether this structure was wired for electrical service. Mrs. Illum stated that it was wired. Councilmember Lehto stated that the electrical service should have been inspected to be sure that all wiring was correct and would not create a fire hazard.

Mrs. Illum stated that she understood that if a variance is granted, then they would still have to comply with all building regulations.

Councilmember Hardcastle requested to know what would happen if the City Council granted the variance and the building was not constructed to building regulations.

Councilmember Parry states that granting a variance such as this, turns the permitting process on its head. This opens the door for anyone to complete work and then ask for compliance inspections.

The Planning and Building Director stated should the variance be granted, there are ways under the building code that would allow the structure to comply with building regulations. There needs to be a 30-inch footing poured around the existing concrete slab. This will serve the purpose of preventing frost issues. The other issue is whether the structure is hanging on the rafters, whether it is supported by hangers or are the rafters on the supporting wall. The Planning and Building Director stated that she did not know that the structure was wired for electricity. The structure could have to be rewired. This is not going to be a simple project to bring it into compliance. The Planning and Building Director reminded the City Council that the decision is whether to allow a variance to encroach 10 feet into the required 30 foot setback requirement. She stated, further, that variances have been granted across the city, but those have been considered on a case-by-case basis.

Councilmember Taylor stated that he understood the reason for permits, codes and zoning. They provide for orderly construction and development within the City limits for safety purposes. He stated that the addition looks functional and attractive. It does not detract from the neighborhood or increase the risk to anyone. He stated that it would be a travesty to require the Illums to tear it down.

Councilmember Cornwell stated that she agreed with Councilmember Taylor. Further, she stated that people make mistakes. The Illums have come forward and stated that they did not have a building permit for this structure. Councilmember Cornwell stated that it is possible to find similar things in other neighborhoods. The City is not going to

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stop this and will not require people to tear down structures. It would be unfair for the City Council to require the Illums to tear down this garage addition.

Regarding procedure, the Planning and Building Director explained that the City Council needs to articulate why this particular property is unique in character and whether it has physical limitations due to the site. She explained, further, that there will have to be substantial work done to this structure to bring it into compliance with the building code. Further, the Illums have been through the building permit process in the past, as they built a two-story shed which is located in their back yard. Someone, in the future, may purchase this home. The new owners have the right to know that the structure was built to the building code and is safe.

Councilmember Hally shared his concern for the safety of the garage addition. This could be a big liability issue. He requested to know whether this being a corner lot would provide for an undue hardship to allow for this variance.

The Planning and Building Director explained that reasoning has been used before, but very rarely. This lot is 10% larger than other lots in the neighborhood. The lot is 11,300+ square feet in size.

Councilmember Lehto stated that the only undue hardship that he saw, if one were to apply, would be the way the neighborhood has developed in following the setback requirements. There are a number of people in this older development that have built in the setback areas.

The Planning and Building Director stated that the first step would be for the City Council to approve the variance. If that step is approved, then the second step would be to take out a building permit. There is no driveway to the third door that has been built. If there is a driveway built to this third door of the garage, it will be very close to the intersection of Plaza and Buckboard. There are some issues that can be addressed as conditions to the variance.

There being no further discussion either in favor of or in opposition to this variance appeal, Mayor Fuhrman closed the public hearing.

It was moved by Councilmember Taylor, seconded by Councilmember Cornwell, to approve the variance to reduce the required side setback (Buckboard Lane) from 30 feet to 20 feet to allow an existing structure on property that is located generally south of Grandview Drive, north and adjacent to Plaza Street, east of Neptune Avenue, west and adjacent to Buckboard Lane and legally described as Lot 1, Block 4, Old Fashion Way Addition (2344 Plaza Street). Roll call as follows:

Aye:            Councilmember Taylor  
                  Councilmember Cornwell

Nay:            Councilmember Hally  
                  Councilmember Hardcastle  
                  Councilmember Parry  
                  Councilmember Lehto

Motion Failed.

It was moved by Councilmember Parry, seconded by Councilmember Taylor, to deny the variance to reduce the required side setback (Buckboard Lane) from 30 feet to 20 feet to allow an existing structure on property that is located generally south of Grandview Drive, north and adjacent to Plaza Street, east of Neptune Avenue, west and adjacent to Buckboard Lane and legally described as Lot 1, Block 4, Old Fashion Way Addition (2344

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Plaza Street), due to the lot being rectangular, flat, and over 11,300 square feet in size; it is not unique physically; the addition was constructed by the owner without a building permit; there is not undue hardship due to physical limitations; the hardship is not economic in nature and was created by the action of the owner; granting this variance is not in conflict with the public interest; nor does it create a nuisance and potential harm to the neighborhood in which the lot is located. Roll call as follows:

Aye: Councilmember Parry  
Councilmember Hardcastle  
Councilmember Lehto  
Councilmember Hally

Nay: Councilmember Cornwell  
Councilmember Taylor

Motion Carried.

There being no further business, it was moved by Councilmember Hardcastle, seconded by Councilmember Lehto, that the meeting adjourn at 8:55 p.m.

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CITY CLERK

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MAYOR

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