



DEPARTMENT OF COMMUNITY DEVELOPMENT

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Grand County Board of Adjustment

Certificate of Recommendation 7/23/15

PROJECT NAME: McKnight Minimum Lot Area Variance and Minimum Setback Variance
APPLICANT: Tabernash Properties LLC
LOCATION: 72287 US Hwy. 40 / Proposed McKnight Outright Exemption Parcels A & B
APPLICABLE REGULATIONS: Zoning Regulations
ZONING: Business
EXHIBITS: McKnight Outright Exemption Planning Commission Certificate of Recommendation, Letter of Application, Photo of the Site, Outright Exemption Plat, Site Plan, Vicinity Map
STAFF PLANNER: Brett Hanlon
REQUEST: The Applicant is requesting a variance to the minimum lot area and the minimum setbacks required in the Business Zone District.

DISCUSSION:

The Applicant is requesting a Minimum Lot Area Variance and a Minimum Setback Variance that are to be considered in conjunction with the proposed McKnight Outright Exemption. The McKnight Outright Exemption proposes the conversion of a three lot property into a two lot property in Downtown Tabernash. All of the buildings on these two parcels—Parcel A and Parcel B—will be demolished with the exception of the “Little Brown House” that currently exists on Parcel A. The creation of these two new lots will help facilitate redevelopment in the area, but will need the approval of these two variances.

The first variance that is needed is the Minimum Lot Area Variance. The minimum lot area in the Business Zone District is 1 acre. The proposed outright exemption will create Parcel A which will be 0.11 acres and Parcel B which will be 0.19 acres. Both of these parcels are smaller than the Business Zone District minimum lot area and will therefore need approval of a Minimum Lot Area Variance.

The second variance that is needed is the Minimum Setback Variance. The westerly side yard setback line of Parcel A is adjacent to a public right-of-way and therefore—according to Section 9.5 of the Grand County Zoning Regulations—it shall have a side setback of 10 feet. Currently the existing “Little Brown House” on Parcel A is located 8.72 feet from the westerly property line and consequently it encroaches into the setback. Therefore, an approved Minimum Side Yard Setback Variance is needed to allow the “Little Brown House” to be in compliance with the setback requirements of the Business Zone District.

GRAND COUNTY ZONING REGULATIONS SECTION 16.2 - BOARD OF ADJUSTMENT POWERS AND DUTIES

According to Section 16.2 of the Grand County Zoning Regulations, the Board of Adjustment has the following powers and duties:

- (1) To hear and decide appeals taken by any person aggrieved by his inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of these regulations. Appeals to the Board of Adjustment may be taken by any officer, department, board or bureau of the County affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of this zoning regulations. Provided however, no appeal shall be allowed for building use violations that may be prosecuted pursuant to Section 19.1(2) of these regulations. The concurring vote of three (3) members of the Board of Adjustment shall be necessary to reverse a decision made by an administrative officer or agency.
- (2) To authorize, upon appeal in specific cases, variance to the:
 - (a) Minimum area of lot;
 - (b) Minimum lot width;
 - (c) Minimum front yard;
 - (d) Minimum side yard;
 - (e) Minimum rear yard;
 - (f) Maximum height of buildings;

Regulations where, by reason of exceptional shape, size or topography of lot, or other exceptional situation or condition of the building or land, practical difficulty or unnecessary hardship would result to the owners of said property from a strict enforcement of these regulations.

- (3) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any provisions of this regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, the Board of Adjustment, upon an appeal relating to said property, may grant a variance from the strict application of these regulations so as to relieve such difficulties or hardships if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and these regulations.
- (4) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district.

Staff has determined that this proposal fits under the Board of Adjustment's powers and duties under number two (2) letter (a) and (d) and also number three (3).

COMPLIANCE WITH GRAND COUNTY ZONING REGULATIONS SECTION 9.2 – MINIMUM AREA OF LOT

The minimum lot area for property within the Business Zone District is one (1) acre. The McKnight Outright Exemption is proposing the creation of Parcel A, which will be 0.11 acres in area and Parcel B, which will be 0.19 acres in area. Both of these parcels are smaller than the Business Zone District minimum lot area and therefore will need a Minimum Lot Area Variance to be legally created.

Many of the lots in Tabernash are exceptionally small because they were created before the County's current Subdivision Regulations and Zoning Regulations were in place. These lots can be viewed as a positive because they help produce a distinctively urban feel compared to other areas of Grand County, however the small lots make it difficult—if not impossible—for property owners to comply with the Zoning Regulations as they look to redevelop the Tabernash area. A Minimum Lot Area Variance would be justified in this situation because the Tabernash area presents an exceptional situation that results in practical difficulties and unnecessary hardships to the owners of the property as they look to adhere to the Minimum Lot Area Requirements of the Zoning Regulations.

It is also worth stating, that although the McKnight Outright Exemption requires a minimum lot area variance, it is actually proposing to increase the area of the lots as it is converting three lot property into a two lot property.

The approval of this variance is a condition of the McKnight Outright Exemption. If this variance is not granted, the McKnight Outright Exemption cannot be approved. Similarly, if the Outright Exemption is not approved, any Board of Adjustment approval shall become void.

COMPLIANCE WITH GRAND COUNTY ZONING REGULATIONS SECTION 9.5 – MINIMUM SIDE YARD SETBACK

The minimum setbacks for a property within the Business Zone District are as follows:

This property in question is located in the Business

Minimum Front Yard – 30 feet

Minimum Side Yard – 0 feet (except it shall be 10 feet when property is adjacent to residential use, public rights-of-way, and/or when roof drainage is to side yard)

Minimum Rear Yard – 10 feet

Parcel A of the proposed McKnight Outright Exemption has a westerly side yard property line that is adjacent to a public right-of-way and therefore has a minimum side yard setback of 10 feet. The existing "Little Brown House" on this parcel is located 8.72 feet from the westerly property line. This building is within the required setback and therefore the property is in violation of Section 9.5 of the Grand County Zoning Regulations.

Due to the small nature of this property and the fact that it is surrounded by three rights-of-way, it can be concluded that an exceptional situation exists. This situation presents practical difficulties and unnecessary hardships to the owners of the property as they look to adhere to the Side Yard Setback Requirements of the Zoning Regulations.

The approval of this variance is a condition of the McKnight Outright Exemption. If this variance is not granted, the McKnight Outright Exemption cannot be approved. Likewise, if the Outright Exemption is not approved, any Board of Adjustment approval shall become void.

STAFF COMMENTS

The Grand County Master Plan designates Tabernash as a Growth Area and highlights the importance of leveraging the existing infrastructure and promoting infill development. The Zoning Regulations as they are written are incompatible with this goal as they are prohibitive to any development / redevelopment. The Zoning Regulations did not do an adequate job of accounting for areas like Tabernash when they were written. Therefore, the only way to redevelop this area is through the variance process. The McKnight Outright

Exemption is reconfiguring lots in a way that will be advantageous to the eventual redevelopment and overall improvement of Tabernash. Approving the requested variances would help advance the McKnight Outright Exemption proposal.

STAFF RECOMMENDATION

Staff recommends that the Grand County Board of Adjustment approve the McKnight Variance requests. These requests include a variance from Section 9.2 of the Grand County Zoning Regulations to allow for two (2) lots below the allowed minimum area of lot within the Business Zone District; and also a variance from Section 9.5 of the Grand County Zoning Regulations to allow for the “Little Brown House” on Parcel A to legally exist within the required 10-foot side yard setback. Staff recommends approval of these variances with the following conditions:

1. This request and any resolution of approval shall be conditioned upon the Board of County Commissioners approving the McKnight Outright Exemption. If the outright exemption is not approved, any Board of Adjustment approval shall become void.
2. The westerly Side Yard Setback Variance is only applicable to the existing “Little Brown House” on Parcel A. All improvements to this building and all other structures on Parcel A will be subject to the required 10-foot westerly Side Yard Setback.
3. These variances will run with the land in perpetuity.