

BLAINE COUNTY PLANNING & ZONING COMMISSION
PUBLIC HEARINGS 7-12-2018 and 8-23-2018

REGARDING: An application by SDRTR LLC to remove an area of mapped Mountain Overlay District from Lot 1C, Block 1, Warfield Hot Springs Sub.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION
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REQUESTED ACTION: Public hearing and consideration of an application by SDRTR LLC to modify the mapped Mountain Overlay District (MOD) based on site specific topography. The property is zoned Rural Remote (RR-40), is within the Seasonal Use (SU) and Floodplain Overlay (FP) Districts and within the Riparian (R) setback district. The 11.89 acre property is Lot 1C, Block 1, Warfield Hot Springs Sub., also known as 1039 W. Warm Springs Rd.

APPLICABLE REGULATIONS:

- Idaho Code, Title 67, Chapter 65, Local Land Use Planning Act
- Title 8, Chapter 1, Comprehensive Plan & Comprehensive Plan Land Use Map
- Title 9, Zoning Regulations, including Chapter 26, Reclassification of a Zoning District (Rezone), and Chapter 31, Amendments.

I. GENERAL BACKGROUND, NOTICE AND EXHIBITS

1. The application was received on April 30, 2018 and noted as generally complete on June 21, 2018.
2. NOTICE of the July 12, 2018, public hearing before the Planning & Zoning Commission was provided pursuant to § 9-26-3 and § 9-31-4(D), Blaine County Code, and Idaho Code §67-6509 and § 67-6511, as follows:
 - A. Published in the Idaho Mountain Express on 6-27-2018;
 - B. Sent with Rezone Map submittal to all property owners within 300 feet of the external boundaries of the rezone property and expanded notice to additional property owners as shown on Exhibit C-3 on 6-28-2018;
 - C. Sent to all Blaine County political subdivisions on 6-25-2018;
 - D. Posted on the subject property on or before 6-28-2018, as evidenced by affidavit in file;
 - E. Posted in five public places on 6-27-2018;
 - F. Public Service announcement request sent area media on 6-26-2018;
 - G. Application materials were posted on the Blaine County Website on 6-27-2018.

Pursuant to I.C. 67-6512 and Zoning Ordinance regulations, the Commission shall review the above notice procedure and make a finding regarding adequacy of notice.

► **FINDING AS TO NOTICE:** Upon a motion by Commissioner Pynn, a second by Commissioner Fosbury, and a vote of 6 to 0 (Commissioner O’Farrell is absent), the Commission determines notice is in compliance with State and County code.

3. The July 12, 2018 public hearing was continued on the record to August 9, 2018. Staff met with Bruce Smith and County Engineer Jeff Loomis on July 31 to discuss the materials needed and what Loomis would be reviewing and why. It was determined that the August 9 continuation date was unrealistic as materials wouldn't be ready to mail to the P&Z in time for them to review.

Land Use staff sent a notice to the surrounding landowners originally noticed to inform them of the change.

4. **NOTICE of the August 23, 2018, public hearing before the Planning & Zoning Commission was provided pursuant to §9-26-3 and §9-31-4(D), Blaine County Code, and Idaho Code §67-6509 and §67-6511, as follows:**
 - A. Published in the Idaho Mountain Express on August 8, 2018;
 - B. Sent to all property owners within 300 feet of the external boundaries of the rezone property and expanded notice to additional property owners as shown on Exhibit C-3 on August 6, 2018;
 - C. Sent to all Blaine County political subdivisions on August 6, 2018;
 - D. Posted on the subject property on August 10, 2018, as evidenced by affidavit in file;
 - E. Posted in five public places on August 9, 2018;
 - F. Public Service announcement request sent area media on August 7, 2018;
 - G. Application materials were posted on the Blaine County Website on June 27, 2018, July 3, 2018 and August 16, 2018.

Pursuant to I.C. 67-6512 and Zoning Ordinance regulations, the Commission shall review the above notice procedure and make a finding regarding adequacy of notice.

► **FINDING AS TO NOTICE:** Upon a motion by Commissioner Pynn, a second by Commissioner O'Farrell, and a vote of 4 to 0 (Commissioners Giannettino, Fosbury and Murphy are absent), the Commission determines notice is in compliance with State and County code.

5. **EXHIBITS** attached to the staff report and incorporated by reference include:

A Exhibits —Application Materials rec'd 4-30-2018 unless noted otherwise:

- A-1: Cover letter
- A-2: Completed application and responses to Criteria for Review
- A-3: Vicinity Map
- A-4: Zoning Map
- A-5: MOD Rezone Map
- A-6: Updated site plan rec'd at Public Hearing on 7-12-2018

Submittals for 8-23-2018 rec'd on 8-13-2018 unless noted otherwise:

- A-7: Cover Letter
- A-8: revised Rezone Map
- A-9: preliminary plat from 2000 (prior to any development)

B Exhibits – Agency Comment

- B-1: County Eng. Comments on new submittals, rec'd 8-15-2018

C Exhibits —County Supplements

- C-1 Lot history of applications with Land Use and Building Services
- C-2 Governing plat
- C-3 Expanded notice list and map

D Exhibits —Public Comments

- D-1 Ann Parry, 993 W Warm Springs; rec'd July 10, 2018
- D-2 Arthur I. Dahl, 997 W Warm Springs Rd; rec'd 8-20-2018
- D-3 Ann Parry, 993 W Warm Springs Rd; rec'd 8-21-2018

Public Comments received after the P&Z Recommendation

- D-4 Susan Michael, 409 Warm Springs Rd; rec'd 8-27-2018 (to be included in materials for the Board of County Commissioners for their Public Hearing on this matter)

II. GENERAL AMENDMENT CRITERIA

Idaho Code §67-6511 and Blaine County Code §9.31.4

Note: The positive Findings below reflect the majority of the Planning and Zoning Commission.

A. Idaho Code §67-6511(a) and Blaine County Code §9.31.4 (A):

Commission shall evaluate the facts and circumstances of the proposed to determine:

- *The nature and extent of the amendment;*
- *The reasons therefor;*
- *Whether it is in accordance with the Comprehensive Plan;*
- *The effects on potable water sources; and,*
- *The impacts of the proposal upon the delivery of services by any political subdivision providing services, including school districts, within the County.*

► Findings:

Extent: The amendment would remove the mapped MOD of less than 25% slopes from the subject property only, as shown on Exhibit A-8, MOD revised rezone map.

Reasons: The area within the currently mapped MOD is not as accurate as actual, site specific topography using recent aerial mapping and ground-verified by a licensed surveyor.

Accordance with Comp Plan: See criteria (A) under the rezone criteria of §9-26-4, below. It appears that the proposal to remove the inaccurately mapped MOD is in accordance with the current Comprehensive Plan and Land Use Map.

Effects on potable water sources: None. See also criteria §9-26-4 (B)-9 below.

Delivery of services: No change to delivery of services would result from the removal of the mapped MOD of less than 25% slopes from the subject property.

B. Idaho Code §67-6511(b) and Blaine County Code §9.31.4 (B):

If the proposal is in conformance with the Plan and it is found that the proposal will not result in demonstrable adverse impacts upon the delivery of services, the Commission may recommend adoption of the amendment.

► **Conclusion:** A majority of the commission found that based on §9-26-4 (A), below, the proposal to remove the less precise mapped MOD is in accordance with the current Comprehensive Plan and Land Use Map.

Commissioner Ranill did not find compliance because he stated there was not enough information submitted to make a proper evaluation due to the altered topography on the site.

III. REZONE CRITERIA

Zoning Ordinance §9-26-4

(A) *In acting upon an application for a Reclassification or a Reclassification with a Development Agreement, the Commission shall first determine whether the proposal is in accordance with the Comprehensive Plan Text and Map.*

► **Finding:** The newly adopted Natural Environment chapter of the Comprehensive Plan includes the following related Desired Outcomes:

C-10: *Mountain Overlay District (MOD)*

a. *Continue policies and regulations governing hillside development for natural and scenic resource reasons, erosion management and public safety.*

► **Finding:** The proposed removal of inaccurately mapped MOD will not negatively impact any natural or scenic hillside resources.

D-5: *Erosion*

a. *Continue to protect steep slopes and erosive soils from development. Require adequate on-site mapping of slopes, alluvial fans, and other erosion and debris flow hazard areas in development submittals.*

► **Finding:** The MOD for the subject property shall delineate the areas of 25% slope today.

► **Conclusion:** Based on the above, the proposal is in accordance with the Comprehensive Plan.

(B) *If the application is determined to be in accordance with the Comprehensive Plan, the Commission shall then consider, at least, the following criteria:*

1. *Whether there was a mistake in the original zoning.*

► **Finding:** Compliance. The area within the currently mapped MOD is not as accurate as actual site specific topography. The applicant presented a map, Exhibit A-8, showing pre-construction topography and the 25% slope line delineated at that time. The proposed MOD boundary is below that pre-construction 25% slope line.

2. *Whether there has been a change in the surrounding neighborhood since the existing zoning was adopted.*

► **Finding:** N/A

3. *Whether this or any adjoining property has been designated a "special planning area" on the Blaine County Zoning Map.*

► **Finding:** No.

4. *To what extent the public health, safety, or general welfare may be adversely affected by the Reclassification.*
 ► **Finding:** No adverse effect on public health, safety or welfare is foreseen.
5. *Whether present zoning classifications are in conformity with existing uses of adjacent property.*
 ► **Finding:** N/A – The subject of this application is an overlay district and not a zoning classification.
6. *Whether central water and sewer services are available.*
 ► **Finding:** N/A
7. *Whether the relevant sections of Chapter 31 regarding a map amendment have been satisfied.*
 ► **Finding:** Amendment criteria of Chapter 31 are reviewed in Section II above. Chapter 31 notice requirements have been met.
8. *Whether a development agreement that includes more strict regulations than those applicable to the proposed zoning district generally should be required as a condition of rezoning the subject parcel. See §9-26-8 for the additional requirements that apply to a Reclassification with a Development Agreement.*
 ► **Finding:** A development agreement is not proposed or needed.
9. *When the rezone is located within a wellhead protection area...*
 ► **Finding:** Not within a wellhead protection area.
10. *Additional criteria for proposed light industrial rezones...* ► **Finding:** N/A
11. *Mountain Overlay District (MOD) Rezones...*
Boundary modifications are of a topographic nature and therefore may impact more than one parcel or an area greater than identified in the current application. In addition to considering the general rezone standards set forth above in this section, before approving any rezone application for the mountain overlay district (including any land in the SC1), with or without a development agreement and after a site visit and a review of all pertinent materials, the board shall find that each of the following required standards are met:
 - a. *The rezone is in accordance with the intent and purposes of the MOD regulations described in chapter 21 of this title;*

See Conclusion in bold following the MOD ordinance intent and purpose sections below.

A. Intent: *It is important that current owners and potential purchasers of property that includes land within the mountain overlay district recognize the significance of the public policy and land use interests reflected in this chapter, and the additional requirements under this code applicable to that land. Unless a categorical exclusion applies, site alterations within the mountain overlay district require a site alteration permit, which is a type of special use permit authorized by Idaho Code section 67-6512.*

The intent of the mountain overlay district is to direct development to land outside of the mountain overlay district. Only when no sufficient available area for a site alteration exists outside of the mountain overlay district and all other criteria under this chapter have been met may a site alteration occur within the district. Site alterations should not include land within the 100-year floodplain, floodway, designated wetland areas, and avalanche hazard within "available area", as defined in the criteria. Even then, the site alteration must be located at the lowest point within the district which will minimize its disturbance and hillside visibility. The design review standards of evaluation of this chapter, and any conditions of approval, should be used to ensure that any site alteration will be limited in its bulk,

design, and use of materials to minimize its site disturbance and visibility from a reference road. The size of "sufficient available area" shall depend upon the facts and circumstances of each application for site alteration permit, and is not necessarily dependent upon the specific plans of an applicant. For example, an area may exist outside of the mountain overlay district that would be sufficient in all respects for a one-story, two thousand (2,000) square foot residential dwelling. The mere fact that the applicant's plans specify a ten thousand (10,000) square foot residential dwelling that could only be constructed within the mountain overlay district because of lot configuration and topography would not necessarily change the fact that a "sufficient available area" exists outside the mountain overlay district, albeit for a smaller home than the applicant desires. In other words, an applicant may not create a so called lack of "sufficient available area" outside of the mountain overlay district merely by enlarging the scope of the proposed site alteration.

The county is directed by its comprehensive plan and this chapter to protect its hillsides and closely regulate structural and other development within the mountain overlay district. "Visibility" is an important concept under this chapter. In reviewing visibility of a proposed site alteration within the mountain overlay district, a building one thousand five hundred (1,500) yards from a reference road but higher on a hillside would, except where extraordinary circumstances exist, be considered for the purpose of this chapter to be more visible than a building located only fifty (50) yards from the reference road. A building farther up a hillside may be visible from more vantage points on reference roads and therefore more visible under this chapter than a building directly adjacent to a reference road. This chapter shall not be construed to support the claim that buildings closer to reference roads are necessarily more visible than those located farther up a hillside.

The mapping of the mountain overlay district provides landowners with a more certain basis for determining the location of lands within the district and affords more certainty than the definitional approach used previously within this code. Any future proposals to rezone the mapped boundary of the mountain overlay district should not create a patchwork that excludes saddles, ridges, knolls, summits, or pockets or islands of flatter land between and including the applicable lowest slopes within the mapped district and the summit of the hillside. The district is intended to include all such areas.

This chapter is to be read as a whole, and construed to effectuate its purposes and the intent of this chapter.

B. Purpose: The purposes of the mountain overlay district are:

- 1. To preserve the natural character and aesthetic value of hillsides and mountains in the county by regulating development thereon;**
- 2. To maintain slope and soil stability;**
- 3. To prevent scarring of hillsides and mountains made by cuts and fills and/or by access roads to hillside and mountainous areas;**
- 4. To ensure accessibility by emergency vehicles on hillside roads;**
- 5. To prevent unsafe conditions for access, circulation, and road maintenance and unwarranted problems associated therewith in hillside and mountainous areas;**
- 6. To help ensure water quality and prevent deterioration due to sedimentation or inadequately performing septic systems;**
- 7. To prevent unsafe development into areas at risk to wildfires;**
- 8. To protect hillside and mountainous areas that function as essential wildlife habitat;**
- 9. To regulate site alteration and structural development in the mountain overlay district to assure that site alteration and development occurs in the mountain overlay district only when no sufficient available area for siting of the proposed site alteration or development exists outside of the district and all other criteria under this chapter have**

been met, and to assure that any site alteration and structural development within the district occurs in a manner that minimizes hillside visibility;

10. To carry out the provisions contained in the county comprehensive plan; and

11. To protect agricultural lands for productive agriculture while providing for necessary residential and other structural use within the context of productive agriculture.

12. If the applicant or landowner with respect to an application for a rezone under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof. . .

► **Conclusion:** The Mountain Overlay District was always intended to include and regulate lands above 25% slopes. (Blaine County Code 9-3-3 states that "No site alteration or structural use may occur on any hillside land whose slope exceeds twenty five percent (25%), or fifteen percent (15%) in the scenic corridor 1, except as authorized in chapter 21 of this title.") Mapped county-wide and not site specifically, using less precise data and technology by today's standards, the County made available a Rezone application process to site specifically amend the MOD boundary utilizing more accurate data if a property owner chose to pursue it. The owner presented site specific topography using recent aerial mapping and ground-verified by a licensed surveyor, Exhibit 8, along with a map, Exhibit A-9, showing the pre-construction 25% slope line. This proposal to amend the MOD boundary does not go against the intent and purposes section of the Mountain Overlay District.

Commissioner Ranill: The applicant violated 1-3 of the purpose section prior to this application.

IV. RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS

► **RECOMMENDATION REGARDING COMPLIANCE WITH COMPREHENSIVE PLAN:** Upon a motion by Commissioner Pynn, a second by Commissioner O'Farrell and a vote of 3-1 (Commissioner Ranill opposes), the Planning and Zoning Commission finds the proposal to be in accordance with the Comprehensive Plan.

► **RECOMMENDATION REGARDING APPLICATION:** Upon a motion by Commissioner Pynn, a second by Commissioner O'Farrell and a vote of 3-1 (Commissioner Ranill opposes), the Planning and Zoning Commission approves the proposed amendment to the MOD by SDRTR LLC.

IT IS SO ORDERED on this 6th day of September, 2018.

BLAINE COUNTY PLANNING AND ZONING COMMISSION



By: Rachel Martin, Chairman

CERTIFICATE OF MAILING

The undersigned person hereby certifies that on the 16th day of Sept, 2018, she served a true and correct copy of the foregoing document by depositing the same in the U.S. Mail addressed as follows or by service otherwise as noted:

Bruce Smith; Alpine Enterprises
Email: bsmith@alpineenterprisesinc.com

Gary Slette; Attorney
Email: gslette@rsidaholaw.com



Staff