

**BEFORE THE PLANNING AND ZONING COMMISSION  
OF THE CITY OF KETCHUM**

In the Matter of the )  
Application of: ) **Appeal #20-028**  
)  
**Craig A. Nalen** ) **FINDINGS OF FACT,**  
) **CONCLUSIONS OF LAW, AND**  
For Appeal of Administrator Decision ) **ORDER ON APPEAL OF**  
) **ADMINISTRATOR DECISION**  
)  
\_\_\_\_\_ )

This matter having come for an administrative appeal hearing pursuant to Ketchum Municipal Code 17.144.010 on June 8, 2020, and June 22, 2020, and then for adoption on July 13th, 2020, the City of Ketchum Planning and Zoning Commission does hereby make and set forth their Findings of Fact, Conclusions of Law, and Order on Appeal as follows:

**I. FINDINGS OF FACT**

1. The City of Ketchum is a duly formed municipal corporation organized and existing by virtue of the laws of the State of Idaho, and is organized, existing, and functioning pursuant to Title 50, Idaho Code.
2. That the Subject Real Property is as follows: 201 Garnet Street, Ketchum, Idaho.
3. That the Subject Real Property is located in the Limited Residential (LR) zoning district.
4. The owner of Subject Real Property is Craig A. Nalen
5. The attorney for the Applicant is Fritz X. Haemmerle, Haemmerle Law, P.L.L.C.
6. The architect for the Applicant is Janet Jarvis, The Jarvis Group Architects, AIA, P.L.L.C.
7. The Subject Real Property does not have frontage along a dedicated public right-of-way.

Instead, the Subject Real Property contains a 15’ public access easement, governed by the

Garnet Street Agreement (instrument #403847) through which a paved vehicular street traverses.

8. Garnet Street is not a dedicated public street but the City has historically performed snow plowing operations and maintenance on Garnet Street.
9. Standard front setbacks from front property line are defined in Section 17.13.030 of Ketchum Municipal Code.
10. The Applicant's architect met with the City regarding the proposed location for a new single-family residence with respect to front yard setback requirements because the access easement traverses the Subject Real Property.
11. Citing Minimum Standards for One-Family Dwellings contained in Sections 17.124.170.A and 17.124.170.C of Ketchum Municipal Code, and based on calculations for minimum swale and snow storage widths needed along the Subject Real Property's front property line to accommodate basic city operations such as snow plowing, the Planning and Building Director (Administrator) sent a determination letter dated March 9, 2020 (Administrator's Determination) regarding the minimum setback needed for structures and vertical impediments from front property line to the Applicant's architect, Janet Jarvis, via certified mail postmarked March 12, 2020.
12. The Administrator's Determination letter refers to the site plan dated January 14, 2020 and analyzed by the City Engineer and the City Engineer's snow storage calculations and found:
  - a. The proposed snow storage area west of the driveway to be generally adequate for the storage of snow for the two driveway parking stalls and front door exterior entry area.

- b. The proposed 111.17' (132.17' of frontage minus the 21'-0" for the new 12" culvert under the driveway) borrow ditch recontour area along the Subject Real Property's Garnet Street frontage to be too narrow as shown. As noted by the City Engineer, the proposed 2' to 3' wide drainage ditch is insufficient and needs to be improved to 15' in width (8' permeable material and 7' grasses) based on city standards and unique characteristics of the site.
  - c. A new snow storage area needs to be added to the proposed site plan. Subject designated snow storage area may be co-located with the revised 15' wide borrow ditch required for drainage and toward the Applicant's proposed home along the entire length of his Garnet Street frontage, excepting the driveway and front entry. Based upon evidence provided by the Ketchum Street Department, City Engineer drainage and snow storage calculations, the aforementioned ordinance provisions, the need to maintain 20' of free clear and unobstructed fire access along Garnet Street for safety reasons, and the minimum requirement provisions set forth in KMC §17.04.040.B, it is the Administrator's finding that 15', as measured from edge of asphalt, is necessary for drainage and snow storage purposes.
  - d. Vertical improvements, such as trees and fences, are not allowed within subject 15' wide drainage swale and snow storage area adjacent the Garnet Street edge of asphalt on the Subject Real Property.
13. The Applicant appealed the Administrator's decision on March 23, 2020 pursuant to Ketchum Municipal Code 17.144.010.
14. Administrative appeal hearings were held before this Commission on June 8, 2020 and June 22, 2020 at 5:30 p.m.

15. At the June 8, 2020 hearing the Commission requested the City Engineer review the revised site plan submitted at the meeting by the Applicant. The revised site plan, dated June 9, 2020, indicates the proposed new structure to be located as close as 11'-8" from the edge of the Garnet Street asphalt. The revised site plan, dated June 9, 2020, did not reflect additional vertical impediments, such as a fence within 2'-7" of the edge of the pavement, that were indicated previously on the site plan dated March 6, 2020.
16. The City Engineer's calculations for swale and snow storage sizing are based on roadway widths. Adjustments made to the proposed encroachments by the Applicant do not influence the swale and snow storage calculations.

## **II. CONCLUSIONS OF LAW**

1. The City shall exercise the powers conferred upon it by the State of Idaho in the "Local Land Use Planning Act", codified at Chapter 65 Title 67 Idaho Code .
2. The Planning and Building Director (Administrator) has the authority to administer and enforce the City zoning regulations pursuant to Title 17 of Ketchum Municipal Code.
3. A decision of the Administrator may be appealed to the Planning and Zoning Commission pursuant to Ketchum Municipal Code 17.144.010. The Commission may affirm, reverse, or modify, in whole or in part, a determination of the Administrator. A decision of the Planning and Zoning Commission may be appealed to the City Council per Section 17.144.020 of the Ketchum Municipal Code.

## **III. ORDER**

Based upon the above Findings of Fact, Conclusions of Law, and good cause appearing from the record, the Planning and Zoning Commission makes the following Orders:

1. The 15' setback from the edge of asphalt contained within the Subject Real Property as required by the Administrator is modified as follows:
  - a. A 10' unobstructed easement measured from the edge of asphalt of Garnet Street for the purpose of snow storage shall be dedicated to the City prior to issuance of a building permit for new development; and
  - b. The Owner of the Subject Real Property shall enter into an indemnification agreement with the City to indemnify the City for any damages to structures or any other feature located within 15' of the edge of the Garnet Street asphalt; and
  - c. The existing fence located on the Subject Real Property within the 10' of the edge of asphalt of Garnet Street shall be removed.

A majority of the Commission hereby adopts these Findings of Fact, Conclusions of Law, and Order and authorizes the Chair to execute the same with the record of the June 8, 2020 and June 22, 2020 appeal hearings reflecting Commissioner Neil Morrow, Commissioner Jennifer Cosgrove, Commissioner Matthew Mead, Commissioner Kurt Eggers and Commissioner Tim Carter in favor of modifying the Administrator's Decision and no Commissioner opposed.

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Chairman,  
Neil Morrow  
Ketchum Planning and Zoning Commissioner

A copy of these Findings of Fact, Conclusions of Law, and Order has been provided to the Applicant and the City Attorney, and the original has been retained in the records of this City on this 13th day of July, 2020.

By: \_\_\_\_\_  
Suzanne Frick, Planning and Building Director

### **NOTICE OF RIGHT TO APPEAL**

An appeal may be taken to the City Council from this Order by the applicant, by any officer or department of the City, or by an affected person as defined by Idaho Code § 67-6521. The time for filing the appeal is within fifteen days from the date of this Order. An appeal is filed

by physically filing a notice of appeal with the City pursuant to the procedures of Ketchum Municipal Code 17.144.