

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

In the Matter of the 2024)
Administrative Appeal of:)
Nicholas & Stephanie Osborn) **FINDINGS OF FACT,**
(Appellant) related to 121 Badger Lane) **CONCLUSIONS OF LAW, AND**
(Applicant)) **DECISION**
Of a Planning Director Determination)
on a Floodplain Development Permit,)

This matter comes before the Planning and Zoning Commission of the City of Ketchum ("Commission"), pursuant to Ketchum City Code 17.144.010, as an appeal by an affected party of a Planning Director determination. An appeal hearing on the matter was held before the Commission on August 13, 2024. The matter was further heard for adoption of this written Decision on August 27, 2024. The Commission does hereby make and set forth the following Record of Proceedings and the Commission's Decision as follows:

I. RECORD OF PROCEEDINGS

The Appellants in this matter are Nicholas and Stephanie Osborne ("Appellant"), neighboring property owners and an affected party, related to development and a floodplain development permit at 121 Badger Lane ("Project"), owned by 121 Badger Lane, LLC ("Applicant"). The Applicant served as primary Respondent in replying to the issues raised on administrative appeal. Both parties were represented by legal counsel. Both parties provided briefing in support of their arguments and positions.

A Record of Documents before the Ketchum Planning Department and upon administrative appeal ("Record") was prepared and submitted to the Commission. That Record, including briefs and memos filed by the parties, is hereby referenced and incorporated in full into the Record and this Decision.

This matter was previously heard on administrative appeal on substantially the same issues on December 12, 2023. The Decision at that time, finalized on January 9, 2024, provided for a remand to the Planning Department for further review and analysis on certain information. That Record, including briefs and memos filed by the parties, is hereby referenced and incorporated in full into the Record and this Decision. The result of that remand was further submission of information, additional technical and engineering review, and the issuance of a new Planning Director Determination, which is now the subject of this 2024 administrative appeal.

An appeal hearing on this matter was held on August 13, 2024, at which hearing the Commission heard oral arguments by the Parties, deliberated, and made a verbal determination. Such hearing was recorded and that recording is made a part of the Record in this matter. The City Attorney was directed to prepare a draft written decision based upon the verbal determination for the final review and approval in writing by the Commission.

II. JUDICIAL NOTICE AND REVIEW STANDARD

The Commission takes judicial notice of the Ketchum Municipal Code (KMC).

Pursuant to KMC § 17.144.010 (C), the Commission makes its determination considering the administrator determination below along with written and oral legal arguments by the Parties. New facts or evidence are not considered in the appeal. The Commission may affirm, reverse or

modify, in whole or in part, the order, requirement, decision or determination of the administrator. The Commission reviews the determination for clear error or abuse of discretion.

III. FINDINGS, CONCLUSIONS, AND DECISION

1. The Administrator's Determination was not in error.

Upon review of the Record and the argument of the Parties, the Commission finds that the Applicant appropriately submitted further required information and the Planning Department reviewed the application appropriately. There is no clear error by the Planning Department that would be cause for a reversal of the Determination.

The Planning Department appropriately required and the Applicant appropriately submitted significant additional technical information, analysis, and evaluation to support the Application. While this Commission is understanding of the Appellants' general concerns with development in this area, this particular floodplain development permit application has been thoroughly reviewed and the review process is in compliance with the City Code.

Appellants assert that City Code requires further evaluation of alternative approaches. However, upon presentation of argument and information, this Commission finds that the Applicant and Planning Department did appropriately discuss and evaluates alternatives to the extent required based upon the development circumstances associated with this site. As was found by the Planning Department, alternatives for the subject driveway were constrained by the limited locations for building construction without causing different flood-related concerns.

Appellants argue that the proposed culverts system is inadequate. However, Applicant and the Planning Department have shown substantial technical review and modelling of the

culvert system sufficient to satisfy the requirements of City Code. Additionally, the Planning Department provided appropriate clarifying information on enforcement mechanisms to address Appellants' argument about blockages and enforcement.

Based on the above, this Commission finds no error or abuse of discretion by the Planning Department to warrant a reversal or further remand. Based upon the foregoing review and analysis, and good cause appearing from the record in these proceedings, the Commission AFFIRMS the Administrator Determination as presented in this matter and authorizes the Chair to sign this Decision on behalf of the Commission.

Neil Morrow, Chair

ATTEST:

By: _____
, Deputy City Clerk

NOTICE OF APPEAL RIGHTS:

This Decision constitutes the written decision of the Commission pursuant to KMC 17.144.010(D). The City Clerk is directed to transmit this Decision to the Appellant and any other affected person who has requested a copy in writing. All parties and affected persons are hereby notified of this decision and their option to consider further action, including further appeal, pursuant to the proceedings set forth in KMC 17.144.020 and Idaho Code § 67-6521.

A copy of this Decision has been provided to the Appellant, Planning Director, and City Attorney, and the original has been retained in the records of this City on this ____ day of _____, 2024.

By: _____
, Deputy City Clerk