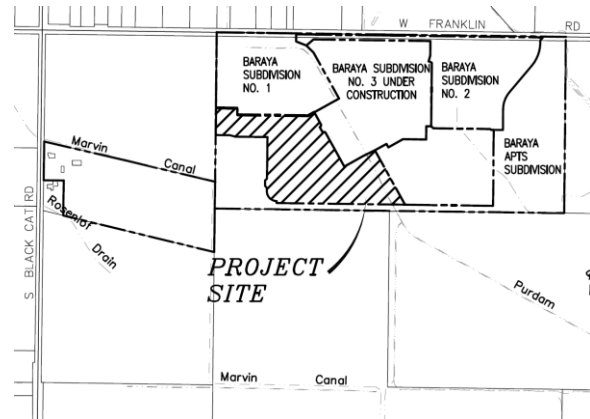


STAFF REPORT
COMMUNITY DEVELOPMENT DEPARTMENT



HEARING DATE: 4/20/2021
DATE: *Continued from: March 9, 2021*
TO: Mayor & City Council
FROM: Sonya Allen, Associate Planner
208-884-5533
SUBJECT: MFP-2021-0003
Baraya No. 5
LOCATION: South of W. Franklin Rd. and east of S. Black Cat Rd., in the north ½ of Section 15, T.3N., R.1W.



I. PROJECT DESCRIPTION

Modification to the previously approved final plat for Baraya No. 5 (H-2020-0088) to remove the requirement for fencing to be installed between the multi-use pathway and the Purdam Drain.

II. APPLICANT INFORMATION

A. Applicant:

Matt Schultz, Schultz Development – 8421 S. Ten Mile Rd., Meridian, ID 83642

B. Owner:

Corey Barton, Challenger Development – 1977 E. Overland Rd., Meridian, ID 83642

C. Representative:

Same as Applicant

III. STAFF ANALYSIS

The UDC ([11-3A-6C.3](#)) requires waterways such as the Purdam Drain to be fenced with an open vision fence at least six (6) feet in height and having an 11-gauge, two (2) inch mesh or other construction, equivalent in ability to deter access to the drain; fencing along natural waterways such as creeks are exempt from this requirement. The only exception to this requirement is if it can be demonstrated by the Applicant to the satisfaction of the Director that said drain serves as or will be improved as part of the development to be a water amenity as defined in UDC [11-1A-1](#). Construction drawings and relevant calculations prepared by a qualified licensed professional registered in the State of Idaho are required to be submitted to both the Director and the authorized representative of the water facility for approval.

The landscape plan approved with the preliminary plat (PP-06-062) proposed wrought iron fencing between the pathway and the Purdam Drain in accord with UDC 11-3A-6C.3. A condition of

approval (#1.2.14) of the preliminary plat requires all fencing constructed on the site to be in accord with that depicted on the landscape plan. The landscape plan submitted with the final plat (H-2020-0088) for Phase 5 did *not* depict fencing along the drain as required. Therefore, a condition of approval ([#5.b](#)) was included in the staff report for fencing to be depicted on a revised landscape plan between the multi-use pathway and the Purdam Drain for public safety.

The Applicant requests removal of that condition based on the information in the application [narrative](#). The Applicant believes the landscape architect erred by depicting the fence on the plan originally and that the code in effect at that time may not have required the fence – Staff verified the same code was in effect at that time. Previous Phases 1 (FP-13-047) and 3 (H-2018-0047)] did not show the fencing on the plans, nor were conditions requiring such included in the staff reports (Staff missed it); thus, fencing wasn't constructed along the drain in those phases. This is the last phase of development in Baraya that includes a pathway along the drain and would be the only portion in this development with fencing between the pathway and the drain.

A [letter](#) was submitted from NMID stating they do not have parallel fences put at the top of bank on drains and the approved license agreement for this phase does not include a fence, therefore, a fence is not allowed. However, the drain has not been improved per the required UDC standards to qualify as a water amenity for a waiver and this section of code is not eligible for Alternative Compliance or a Variance. Therefore, Staff cannot support a waiver to this requirement.

Update: At the last hearing, the City Council directed Staff to work with the Irrigation District on a possible code change to meet the District's needs as well as the City's so that Applicants aren't placed in the middle of two different jurisdiction's conflicting requirements. Staff has done so and changes to UDC 11-3A-6 are proposed to go before the Commission on April 15th that will allow certain waterways, including drains, to *not* be fenced if they're improved as a linear open space (see [ZOA-2021-0002](#)). If approved by City Council, this change would allow the fencing to not be required along the Purdam drain.

IV. DECISION

~~Staff recommends denial of the proposed final plat modification as the proposal is not consistent with UDC 11-3A-6C.3, which requires fencing along the Purdam Drain to deter access to the drain for public safety.~~ Staff recommends approval of the requested modification based on the proposed amendment to UDC 11-3A-6C currently in process. Since this code change was supported and directed by City Council, Staff recommends the City Council go ahead and approve the requested modification with the caveat that Certificates of Occupancy for this phase will not be released until the proposed code amendment is in effect.

A. Landscape Plan Approved with Preliminary Plat (PP-06-062) (dated: January 22, 2007)

