

**BINGHAM COUNTY PLANNING & ZONING COMMISSION
REASON AND DECISION**

APPLICATION OF: 1st Amended Estella Rose Estates Subdivision, consisting of 4 lots and Variance from the setback requirement from an easement to a structure, in a Residential/Agriculture Zoning District

**PROPERTY OWNERS &
DEVELOPERS:** Terry & Penny Fowler

Requested Action: Property owners Terry and Penny Fowler requested a replat of Lot 1 Block 1 of the Estella Rose Estates Subdivision pursuant to Bingham County Code Title 10, Chapter 14 *Subdivision Regulations* to create a four (4) lot subdivision consisting of the Fowler’s existing residential lot, two (2) new residential lots at approx. 1 acre each, and one (1) small non-buildable utility lot, approx. 25’ x 25’, encompassing an existing 98-foot tall wireless communication tower which the Planning & Zoning Commission approved on March 13, 2024. The Application is in conformance with the Bingham County Comprehensive Plan Map designation which is Residential Agriculture.

Property Location: 134B N 150 W, Blackfoot, Idaho, Parcel No. RP8267490, Township 2 South, Range 35 East, Section 26 consisting of 3.79 acres

Applicable Regulations: Bingham County Comprehensive Plan, Dated November 20, 2018
Bingham County Zoning Ordinance 2012-08

Public Hearing Date: July 10, 2024

I. MEETING NOTICE AND INFORMATION

1. The following was reviewed by the Commission:
 - a. Application;
 - b. Staff Report; and
 - c. Testimony presented prior to the Public Hearing which included:
 - (T-1) Bingham County Treasurer; and
 - (T-2) Corbet Slough President, Robert Olsen; and
 - (T-3) Bingham County Surveyor; and
 - (T-3A) Bingham County Surveyor Supplemental; and
 - (T-3B) Bingham County Surveyor Supplemental; and
 - (T-4) Bingham County Public Works; and
 - (T-5) Department of Environmental Quality.



2. After the Staff Report was presented, testimony presented at the Public Hearing included (T-6) Chris Street, Professional Land Surveyor with HLE, Inc. 800 West Judicial, Blackfoot, Idaho, who reviewed the plat commenting there is currently a 50-foot shared driveway easement between the two existing residences off of Rose Road and this private driveway will be converted to a private road and will continue towards the back of the Fowler's property to serve the two new residential lots and one small utility lot. Mr. Street explained the variance requested is only for an area where the existing outbuildings are perpendicular to the to-be constructed private road where the distance between the structures will not meet the required 20 feet between a structure and an easement/private road. Mr. Street added the hardship is that Rose Road has a Functional Road classification of a Minor Arterial which requires 360 feet between approaches and at that significant distance, there is not a possibility of adding a new approach to serve the proposed lots.

Mr. Street commented during the original platting of Estella Estates there was a 20 feet existing irrigation easement along the westerly boundary but there was not an irrigation system placed at that time. With this Application, there is a proposal for a new irrigation system to be placed within the easement which would provide pressurized irrigation to the three residential lots.

3. Testimony in support was offered by (T-7) Terry Fowler, 134B N 150 W, Blackfoot, Idaho, who explained the reason for the variance is this Subdivision was not foreseen at the time he built his home or he would have placed his home more north. The proposed Subdivision is to have his family relocate to the two lots he wishes to create and live near each other, for care purposes, stating the lots would not be commercially marketed. He added that he wishes to improve the driveway that currently exists which will be a benefit to all. Mr. Fowler expressed that his neighbor has no issues with the Application and he sees no issues with the public as there will be low traffic and it will meet all County standards in development.
4. No testimony was received on the Application and the Public Hearing portion for this item was closed after Mr. Fowler's testimony.
5. Commission discussion included Commissioner Adams who questioned the monopole tower that has been placed and the fencing requirement; he would recommend the monopole facility be fenced with the addition of one-acre lots being added and that obtaining an easement to the utility parcel shouldn't be an issue to add to the plat. Chairman Aullman clarified that Commissioner Adams would like to see the Developer place the fence to which Commissioner Adams states yes as it was their personal property and they are leasing the utility lot. Commissioner Adams acknowledged the lots are proposed for family at this time but perhaps that could change in the future. Chairman Aullman asked the height of the proposed fence. Commissioner Bingham questioned if Bingham County Code has a height requirement for the fence; Director Olsen stated Bingham County Code Section 10-7-35(B)(3) contains the requirement of an 8-foot tall fence for tower facilities.

II. REASON

The Planning and Zoning Commission found:

1. The Subdivision Application met the requirements in Bingham County Code Section 10-4-2(C) as the purpose of “R/A” zone is to permit the establishment of low-density single-family dwellings with lot sizes sufficient for individual sewer and water facilities. The Application contains lot sizes compatible with the surrounding area and will be accessed from 150 W Rose Road with the development of a shared driveway to a private road, built to the applicable Fire Code construction standards, to provide legal access to four (4) lots as required by Bingham County Code Section 10-6-8; and
2. the Subdivision Application met the requirements of Bingham County Code 10-14-4(A) because the Application was completed and included all items listed in 10-14-4(A) 1-23; and
3. the Subdivision Application met the requirements in Bingham County Ordinance Section 10-6-6(B)(1) and 10-14-4(B) because proposed lots meet the 1 acre minimum for the Residential/Agriculture Zoning District. Further, the Subdivision supports the installation of individual wells and septic systems, with irrigation water delivered by the Fairview Lateral in a new pressurized system utilizing 5 shares of water; and
4. the Variance Application met the requirements of Bingham County Code Section 10-10-5 as the Application was complete; and
5. the Applicant provided in their Narrative that in order to facilitate the Subdivision development, there is only one location for the placement of a private road. The Commission found the current location of the shared driveway may be utilized as a private road to extend access to four (4) residential parcels but fails to meet the distance requirements from a private road/easement to a structure as an existing accessory structure on the Applicants’ property is within the setback area;
6. the existing accessory structure fails to meet the required setback by measuring approximately 11.9 feet from the structure to the edge of the private road. The Commission determined the structure’s location does not create a harm to the public as the traffic will be limited and the approach is existing. Additionally, the Commissioner heard from the Applicant that the property is such that a new approach would not be approved due to the Functional Classification of 150 W Rose Road; and
7. the Application is consistent with the Bingham County Comprehensive Plan which supports residential development in areas adjacent to or surrounding proposed applications where sanitary sewer connection to a district or municipal system can be attained. Further, the Comprehensive Plan Map area designation of Residential Agriculture supports single-family residential development in the Residential/Agriculture Zoning District; and

8. the Application met the notice requirements of Idaho Code Title 67, Chapter 65 and Bingham County Code Section 10-3-6.

III. DECISION

COMMISSIONERS DECISION: Based on the record, Commissioner Adams moved to recommend approval of 1st Amended Estella Rose Estates Subdivision consisting of three (3) residential lots, and one (1) small non-buildable utility lot, located at 134B N 150 W, Blackfoot, Idaho on approx. 3.79 acres in a Residential/Agriculture zoning designation as proposed by Terry and Penny Fowler, as presented which includes approval of the Applicants request for a variance to the setback requirements between a structure and an access easement/ private road pursuant to Bingham County Code Section 10-6-3 on Lot 1 at 11.9 feet.

Conditions of recommended approval are:

1. that a fence be placed on Lot 4 which encompasses a 98' tall monopole wireless communication facility with an 8-foot tall chain link security fence as set forth in Bingham County Code Section 10-7-35(B)(3).

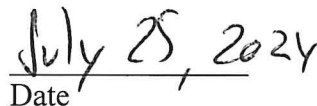
Commissioner Jewett seconded the amended motion. Commissioners Adams, Jewett, Butler, Bingham, Carroll, Johns, and Jolley voted in favor and the motion carried.

Director Olsen clarified the finding for the Variance approval to which the Motion was amended to reflect the finding for granting the variance request is that the site is unique and that this variance is not contrary to public interest where a literal enforcement of would result in unnecessary hardship.

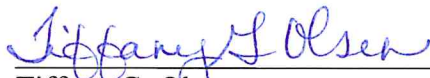
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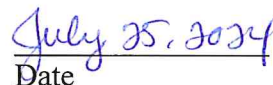
William Aullman, Chairman
Bingham County Planning and Zoning Commission



Date



Tiffany G. Olsen
Planning & Development Director



Date