

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

APPLICATION FOR: Variance to the setback requirement from an easement to two (2) existing structures

APPLICANT: George Kimball

PROPERTY OWNERS: George Kimball and Daniel and Angela Kimball

Requested Action: Property owner George Kimball requested a variance of approx. 14-feet to the required 20-foot setback from an easement to two (2) existing structures (Daniel and Angela Kimball’s residence/care facility and an accessory structure) pursuant to Bingham County Code Section 10-6-3 to allow for the development of a private easement/road extending access to the northerly parcel he owns for a future single-family residence, located north of 56 E River Road, Blackfoot, Idaho, on lands zoned “A” Agriculture. The variance is requested as creating a new approach to George Kimball’s property will not meet the Bingham County Approach Spacing Standards for required spacing between driveway approaches and therefore an existing access through Daniel and Angela Kimball’s property will need to be utilized. Pursuant to Bingham County Code Section 10-10-5 *Variances*, the Applicant must show an undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest.

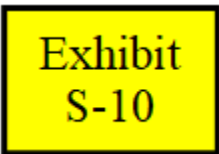
Property Locations: George Kimball, North of 56 E River Road, Blackfoot, Idaho, Parcel No. RP RP0413207 consisting of 1.43 acres.
Daniel and Angela Kimball, 56 E River Road, Blackfoot, Idaho, Parcel No. RP0413205 consisting of 1 acre.

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

Public Hearing Date: October 9, 2024

I. PUBLIC HEARING MEETING 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 Surveyor had no comments or concerns on the Application.
 - (T-2) Bingham County Public Works stated East River Road is a major collector and the speed limit is not posted, therefore the required spacing between approaches is 190 feet and the current measurement between the two approaches is only 112 feet. Only the west approach can be used and the east approach must be blocked off.

2. After the Staff Report was presented testimony was provided by:

(T-3) Applicant, George Kimball, 54 East River Road, Blackfoot, ID, didn't have much to add to the record presented other than he is working on removing two structures in the back of his property that are half-way taken down and he expected to finish demolition in the next few weeks.

Commissioner Bingham, Butler, Adams, and Chairman Aullman discussed the location of the easement and distance from the easement to existing structures, the location of an existing septic system preventing the access from being relocated, required removal of an existing approach that has been utilized for approx. 50+ years as required by Bingham County Public Works in order for the desired access to George Kimball's parcel to be approved by Public Works, and if adequate access for emergency services can exist with the termination of the easterly approach or alternatively, if adequate access for emergency services could be better met by allowing the easterly driveway access to remain.

3. Testimony presented at the Public Hearing in support included:

(T-4) Von Cornelison, 66 E River Road, Blackfoot, ID, advised the Commission he is a neighbor to the subject property and is aware of the Application. Mr. Cornelison said he was surprised that the second driveway needed to be abandoned. He supports the Application and noted the service the Kimballs' have in their residence is operated very well and they should be commended for what they do.

(T-5) Clint Loosli, 127 S. Lavaside Road, Blackfoot, ID, confirmed that you shouldn't get too close to a septic system with an easement because that will create issues which he has seen occur in his construction experience. Mr. Loosli commented in reference to previously asked questions by the Commission that Daniel and Angela Kimball have plenty of access for the care facility, and reiterated Mr. Kimball needs the variance to access his home for his personal use. He believed requiring Mr. Kimball's parents to remove an access that has been there for as long as it has been was not right. Mr. Loosli suggested that Road and Bridge post the speed limit on East River Road, which has long been needed, at a speed that would also decrease the distance between approaches likely

allowing both of Daniel and Angela Kimball's existing approaches to remain and improving safety on that roadway. Mr. Loosli stated the Approach Spacing Standards have caused him to have issues with access to one of his own parcels which substantially affected its resale value. He has also had access issues on properties where he is the construction contractor.

Commissioner Bingham responded stating with the information provided in the Applicants materials, he wasn't aware the septic system was a hindrance to moving the access to a distance that would comply with the setback from a structure to an easement.

Testimony presented in a neutral position included:

(T-6) Dallen Worthington, 695 W 300 S, Blackfoot, ID, questioned if there was a permit for the residential care center to exist in an Agricultural Zoning District and clarified the parcel sizes subject to the Application. He also expressed the importance of preserving agricultural land.

5. With no testimony being presented in opposition, Mr. Kimball returned to the podium for rebuttal. He responded to the question by Mr. Worthington in that the care center was in existence as early as the 1980's in Daniel and Angela's name/ownership and in his grandparents prior to that. Additionally, that allowing the circular driveway (comprised of both existing approaches) to remain is safer and more effective for loading and unloading residents of the care facility in vans and ambulances when needed as they can enter either approach necessary to place the sliding door towards the entrance of the home and the passenger of the ambulance can also have more direct access providing quicker response.
6. Director Olsen provided clarification and responses to questions raised during the Public hearing by explaining the residential care facility is a legal non-confirming land use meaning that it was in existence prior to Bingham County Code requiring permitting or special conditions for its operation. Additionally, she added that Mr. Kimball has been working with her office for approx. the last 6-8 months so he could acquire legal access to his parcel. Director Olsen said she advocated for both approaches to remain because there isn't a change of use to Daniel and Angela's property by extending access to a single-family residential parcel and that an increase in traffic for this use will not be noticeable as the westerly approach is already providing access to a residential care facility which has far more traffic than a single-family residence meaning the impact would be low with Mr. Kimball's request. Director Olsen added that she understands the access to the east is there for circular flow for the safety of vehicles entering or leaving the care facility but in order for Public Works to approve access to Mr. Kimball's parcel, the Kimballs' have agreed to terminate the easterly access. She concluded with letting those in attendance know that a Speed Study can be requested by any citizen to Public Works for roads that are not posted with a speed limit or rather if the speed limit should be reduced. She encouraged Mr. Loosli or anyone else to contact Public Works and initiate this Study.

Commissioner Bingham asked if there was a variance process to the distance between approaches and not between the easement and structures. Director Olsen stated it wasn't necessarily a variance but there is language in the Road Approach Standards Manual that addresses deviation from the required distance. She then read Section 1.7 of the Road Approach Standards which provides "An applicant may challenge the sight distance requirements by submitting an official request to the Public Works Director. At the discretion of the Public Works Director, he/she may approve the approach spacing or require the Applicant to hire a licensed professional engineer to complete a sight stopping distance and safety study for the proposed location; said study shall make recommendations to the Bingham County Public Works Director, who may accept or reject the recommendations for decreased sight distance requirements." Chairman Aullman asked if she knew what the cost for this Study would be. Director Olsen said she has heard anywhere from approx. \$200 to \$1,000 in some instances. Chairman Aullman replied that is an awful lot of money with no guarantee if the Public Works Director is going to accept the Study's recommendation. Director Olsen said the cost to file a Variance Application was \$350 and likely less time consuming than a required Study.

7. Following Director Olsen's statements, the Public Hearing for this Application was closed. Commission discussion included Chairman Aullman stating he believed the County has made a mistake in requiring the second access to be terminated as testimony received stated it has been in place for 50+ years and is used to benefit the flow of traffic for the residential care facility. He expressed that adding a few more vehicle trips for a single-family residence isn't near significant enough added traffic to pose a concern. Additionally, the property is surrounded by agriculturally farmed land with no adjacent neighboring approaches causing congestion. He also found the Kimball's neighbors, who should be the most affected, testified in support of the Application and were opposed to removing the easterly access as well. Chairman Aullman felt that the unique characteristic is a misapplied County standard. Commissioner Adams agreed with Chairman Aullman and determined granting the variance is the only way Mr. Kimball can access his parcel. Commissioner Adams added the location of the septic system may also be a hardship preventing the west access from being moved to the east by fourteen (14) feet.

II. REASON

The Planning and Zoning Commission found:

1. the Application met the requirements of Bingham County Code Section 10-10-5 as the Application was complete. The Commission identified that unique site characteristics exist which are peculiar to the land involved which were (1) a misapplied County standard, and (2) an existing septic system which prevents the option to relocate the westerly access to the east in order to meet the setback distance to existing structures; and

2. that a literal interpretation of the provisions of Bingham County Code Section 10-10-5 would deprive the Applicant the right to access his property for the construction of a single-family residence. Additionally, Daniel and Angela Kimball would be deprived of their right to continue utilizing an existing access (the easterly access) for their residence/care facility at its current location which creates a circular driveway proven to be safer and more effective for their residents and emergency services traffic flow onto E. River Road; and
3. granting the Variance requested will not confer on the Applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same zone and that the public interest will not be harmed with the desired location of the easement; and
4. the Applicant provided that the property was evaluated by Bingham County Road and Bridge (Public Works) and only one of the two existing access options were considered viable due to the easterly access being unable to meet the 190-foot minimum distance between approaches per Bingham County Code Approach Spacing Standards. Further, the Commission found the Variance is necessary as a private road/easement requires a 20-foot setback from all structures per Bingham County Code Section 10-6-3; two existing structures are only six (6) feet from the edge of the proposed private road/easement and cannot be relocated to meet the setback distance due to an existing septic system near the westerly approach access onto E. River Road; and
5. that Bingham County requiring the removal of an existing approach that creates a circular access is not in the best interest of property owners Daniel and Angela Kimball nor their residential care facility clients for safety and emergency services. The Commission agreed that the circular driveway, consisting of two existing approaches, should be allowed to remain. The Commission recognized allowing the existing approaches to remain isn't within their authority or as part of the Variance Application but asked that their position be relayed to Bingham County Public Works/Road and Bridge; and
6. the Applicant provided in his Application that private road/easement will only be used to access a single-family dwelling through the parcel owned by his family and traffic would be minimal, at best; and
7. the Application met the notice requirements of Idaho Code Title 67, Chapter 65 and Bingham County Code Title 10 Chapters 3 and 5.

III. DECISION

Based on the record, Commissioner Adams moved to approve the request of George Kimball and Daniel and Angela Kimball for a variance to the 20-foot setback requirement from an easement to two (2) existing structures of approx. 14-feet located at 56 E River Road, Blackfoot, Idaho for the development of a new private road/easement through Daniel and Angela Kimball's property to the Applicant's parcel, as presented based on the unique characteristics of the property is the

location of the existing septic system and the inability to change the approach due to the Road and Bridge Approach Standards. Commissioner Bingham seconded the motion.

Chairman Aullman asked for the motion to be amended and include that the desired location will not cause harm to the public.

Commissioner Adams amended the motion to include that the desired location will not cause harm to the public. Commissioner Bingham seconded the amended motion. Commissioners Adams, Bingham, Butler, Jewett, and Johns voted in favor and the motion carried.

William Aullman

William Aullman, Chairman
Bingham County Planning and Zoning Commission

10/29/24

Date