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## A G E N D A

**Planning Commission  
Regular Meeting**

**January 4, 2016  
6:30 p.m.**

**A. Changes to the Agenda**

**B. Minutes of the October 5, 2015 Planning Commission meeting.**

**C. Citizen Comments**

**Citizens who have comments on items that do not appear on the agenda are asked to make their comments at this time. Comments on an agenda item will be taken at the time that item is under discussion.**

**D. Change in Non –Conforming Use Request at 810 15.25**

- **Open the Public Hearing**
- **Staff Report and Recommendations**
- **Public Comment**
- **Close Public Hearing**
- **Planning Commission Motion**

**E. Variance Request – Setbacks at 810 15.25 Rd**

- **Open the Public Hearing**
- **Staff Report and Recommendations**
- **Public Comment**
- **Close Public Hearing**
- **Planning Commission Motion**

**F. Commissioner Comments**

**G. Staff Comments**



A regular meeting of the City of Delta Planning Commission was held on Monday, October 5, 2015 at 6:30 p.m. in the City Council Chambers of City Hall at 360 Main Street, Delta, Colorado. Said meeting was posted in accordance with the Sunshine Law.

PRESENT: Gerald Roberts, Chairman; Tish Oelke, Vice-Chairman; Carl Jahn, Commissioner; Ginni Selby, Commissioner; Glen Black, Director of Community Development; David McConaughy, City Attorney; Sharleen Walker, Planning Technician.

ABSENT: Richard Simmons, Commissioner; Lynn Williams, Commissioner.

GUESTS: Stan Park, Katie Sickles, Bob Michaels, Ray Penick,

**CHANGES TO THE AGENDA**

There were no changes to the agenda.

**MINUTES**

A motion was made by Tish Oellke, seconded by Carl Jahn to approve the minutes of the Planning Commission held on Monday, June 1, 2015 as written. All voted yes. Motion passed.

**CITIZEN COMMENTS**

None

**PUBLIC HEARING DELTA MUNICIPAL CODE SIGN CODE PROPOSED REVISIONS 17.68**

Chairman Roberts opened the public hearing on the Delta Municipal Code 17.68 Sign Code Proposed Revisions.

David McConaughy, City Attorney, asked Sharleen to verify that the public notice was published in the newspaper and the affidavit of publication had been received. Ms. Walker stated that the public notice was published in the newspaper and the affidavit of publication has been received.

Mr. McConaughy reviewed the recent Supreme Court decision Reed vs. Gilbert. Mr. McConaughy informed the Planning Commission that the decision comes down to the fact that sign content cannot be reviewed, that a municipality cannot have a different set of rules for signs based upon content.

Additionally, Mr. McConaughy stated that the direction to staff from the City Council was to tweak the sign code and not reinvent the wheel. There are other sign codes around the State that can be used as examples, such as Centennial's sign code which is based on sign type and sign construction, not content.

Mr. McConaughy reviewed the procedure for the public hearing. The procedure will be to review staff suggestions, receive public comment or to start from scratch on a proposed sign code. The role of the Planning Commission is to make a recommendation to the City Council and the reason the Planning Commission is holding the public hearing is because the sign code is located in the land use code in the Delta Municipal Code.



The attorney reviewed the proposed changes to the sign code with the Planning Commission.

Stan Park, President of First Colorado Bank, stated that he has some concerns with some of the current sign code sections, specifically, the size of the temporary banners allowed. Mr. Park showed some examples of banner sizes. Mr. Park stated that the bank is in the process of enlarging their current electronic message sign. Mr. Park informed the Planning Commission that he is in favor of controls, however enforcement needs to be consistent and that he will happy to help in any way in drafting sign code revisions. The Planning Commission thanked Mr. Park for his comments.

Bob Michaels, Planning Commission Chairman for the Town of Cedaredge, stated that sign codes are very complex issues and that signs will become more and more of an issue. He stated that the goal of Cedaredge is to make everything as fair as possible and promote/support businesses.

Councilman Ray Penick, stated that the standard size of the American Flag that the Veteran's use, could be used as a reference. The Planning Commission asked Mr. Penick what his thoughts were about tabling the proposed sign code revisions and reviewing the Centennial code further. Mr. Penick stated that he liked the idea of the charts in the Centennial code and that the code appears to be more readable that what the City currently has.

Chairman Roberts closed public hearing.

The Planning Commission discussed what they liked about the Centennial sign code and what changes that they would like to see in the sizes of signs. The Planning Commission liked the matrix of Centennial's sign code; it is simple and straight forward and adding material/construction aspect to signs and reconsider the square footage of signs, possibly making the sandwich signs larger and the banners larger.

A motion was made by Ginni Selby, seconded by Carl Jahn to make a recommendation to the City Council to reject the proposed sign code revisions and start over based upon the City of Centennial's sign code. All voted yes. Motion passed.

Mr. McConaughy informed the Planning Commission that the City Council will consider the recommendation under staff reports at the City Council meeting to be held tomorrow night, October 6, 2015.

**COMMISSIONER COMMENTS**

None.

**STAFF COMMENTS**

None.

**ADJOURNMENT**

A motion was made by Carl Jahn , seconded by Ginni Selby to adjourn the regular Planning Commission meeting. All voted yes. Motion passed. The meeting was adjourned at 7:44 p.m. with no further action taken.

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Sharleen R. Walker, Planning Technician



## Staff Report Change in Non-Conforming Use

**Staff:** Glen L. Black                      **Date:** 01-04-2016  
**Owner:** Connie Rosengren              **Applicant:** Connie Rosengren  
**Location:** 810 15.25 Rd                  **Parcel #** 3457-013-00-014  
**Zone District:** A-1                          **Parcel Size:** 2.15+

**Subject: Change in Non-Conforming Use**

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### **Background:**

The property was annexed in the Oak Tree No. 9 Addition in 2006 and was zoned A-1. At the time of annexation the property was being used commercially and was annexed as a lawful non-conforming use.

### **Request:**

The applicant requests a change in non-conforming use. There are two change in non-conforming uses to consider. The applicant erected an additional building, which was built without a building permit and the applicant desires to add an additional commercial building to the property. The Delta Municipal Code 17.04.280 states:

#### 17.04.280 Nonconforming uses.

A. Any use, building, structure or premises which was lawfully existing and maintained in accordance with the previously applicable County or City regulations and ordinances but which does not conform or comply with all of the regulations provided in this Chapter may continue to be maintained and used as a lawful nonconforming use only in compliance with the provisions and limitations imposed by this Section. Uses, structures, buildings or premises which were unlawful or illegal and not in compliance with previously applicable regulations shall remain unlawful, illegal and subject to abatement or other enforcement action.

B. If a use, building, structure or premises is lawfully nonconforming in that it is not a use by right or an approved conditional use which has been approved pursuant to the review procedures of Sections 17.04.250 and 17.04.290, the following shall apply:

4. The extent or area of the premises utilized for or by the nonconforming use, building or structure may not be materially extended or enlarged, or substantially structurally altered, unless the Planning Commission determines, following the review procedure of

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Section 17.04.290, that the criteria set out in Section 17.04.250 will be met.

The following is an excerpt from the Delta Municipal Code regarding the A-1 zone district:

17.04.040 A-1 District.

A. INTENT: The intent of this District is to provide a district with a rural atmosphere for residential uses and agriculturally related uses.

B. USES BY RIGHT:

1. Single family homes and duplexes.
2. Farms and ranches, including keeping livestock and poultry.
3. Farming and truck gardening, including sales of produce grown on the premises.
4. Golf courses.
5. Grange halls.
6. Public utility service facilities.
7. Government buildings and facilities.
8. Parks and recreation facilities owned or operated by a homeowners' association.
9. Churches.
10. Rodeo grounds.
11. Accessory uses.
12. Assisted living facilities with no more than 8 residents.
13. Cemeteries.
14. Horse training facilities with adequate offstreet loading and parking areas, and dust control, and no more than one horse per acre on the site at any time.

C. CONDITIONAL USES:

1. Greenhouses, turf and sod farms, nurseries.
2. Fur farms, kennels, commercial poultry farms, and commercial feed yards and lots.
3. Bed and breakfast operations.
4. Child care facilities not allowed as an accessory use.
5. Horse training facilities with more than one horse per acre on the premises at any time.
6. Adult care facilities.

D. PERFORMANCE STANDARDS: Both site built and factory built housing shall be constructed in compliance with applicable provisions of Chapters 15.04 or 15.05 of the Delta Municipal Code, shall be permanently attached to a permanent foundation, shall have brick, wood, masonry, stucco or cosmetically equivalent exterior surfaces, shall have a minimum width and length of not less than 20' each, and a minimum eave overhang of 12 inches. Provided, however, if a lawfully existing factory built or site built structure is determined by the City to be unsafe pursuant to §102 of the Uniform Building Code, or substantially substandard with respect to current provisions of the

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building, plumbing, mechanical, fire, and electrical codes, it may, if removed from the premises, be replaced by a site built or factory built house which meets all of the above minimum criteria other than the width and length and eave overhand requirements. (Ord. 4, §1, 1999; Ord. 31, §5, 2000; Ord. 9, §5, 8 & 9, 2004; Ord. 9, §3, 2005)

### **Criteria for Approval of a Non-Conforming Use:**

According to section 17.04.250 of the City Municipal Code, no conditional use or change in a non-conforming use will be allowed unless the Planning Commission determines the following criteria are substantially met with respect to the type of use and its dimensional features:

1. The use will not be adverse to the public health, safety or welfare.
2. The use is not inconsistent with the City's Master Plan.
3. Streets, pedestrian facilities, water, sewer and other public improvements in the area are adequate.
4. The use is compatible with existing uses in the area and other allowed uses in the district and the type, bulk, height and location of any buildings or structures is compatible with other buildings, structures and the character of the area.
5. The use will not have an adverse effect upon other property values.
6. Adequate off-street parking will be provided for the use.
7. The location of curb-cuts and access to the premises will not create traffic hazards.
8. The use will not generate light, noise, odor, vibration, or other effects which would unreasonably interfere with the reasonable enjoyment of other property.
9. Landscaping of the grounds and architecture of any buildings will be reasonably compatible with that existing in the neighborhood.
10. Any other criteria specified by other City ordinances or regulations are met.

The Planning Commission may impose conditions as necessary to ensure that the above criteria are met.

### **Discussion**

The A-1 zoning district does not allow for the type of commercial or industrial use currently being conducted upon the property. The use is a lawful non-conforming use, but according to the Delta Municipal Code the lawful non-conforming use may not be materially extended or enlarged without going through the review process as stated in the Delta Municipal Code 17.04.290 and meeting the criteria as stated in 17.04.250.

There were 10 petitions delivered and 8 petitions were returned, all approving the change in non-conforming use.

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There are two changes in non-conforming use to consider:

- 1) The already constructed additional building, which was built without planning commission approval or a building permit.
- 2) The proposed new commercial building.

### **Staff Recommendation**

Staff recommends that Planning Commission carefully review the criteria for a conditional use.

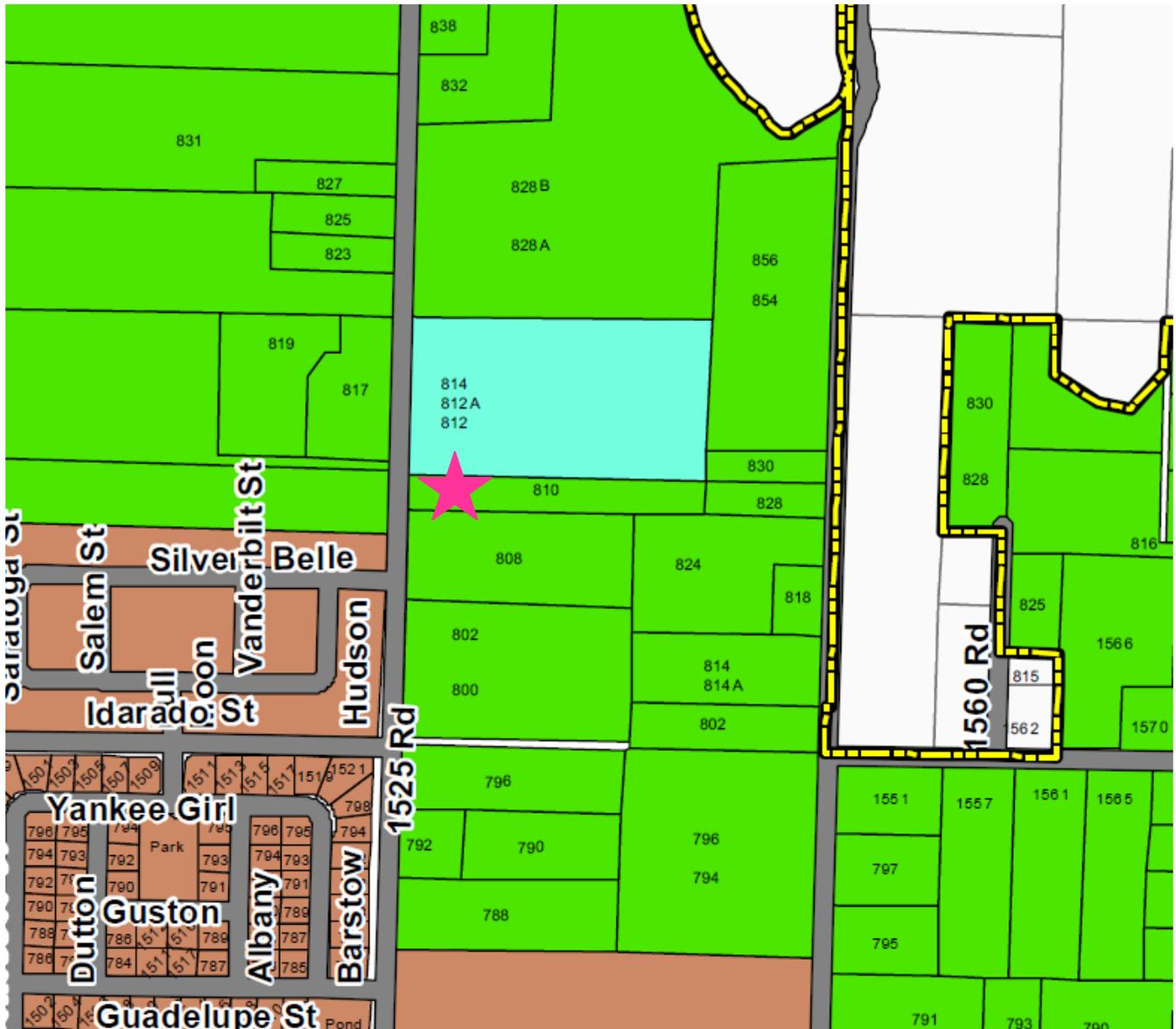
### **Example Motions**

I move that Planning Commission **approve/deny** the change in non-conforming use request for the already constructed building.

I move that the Planning Commission **approve/deny** the change in non-conforming use request for the proposed new commercial building.

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### Zoning Map



### Aerial Map



December 15, 2015

## Change in Nonconforming Use

### Members of Delta Planning Comm.

C & R Kustom Powder Koting was opened in November of 1999 at 810 1525 Road and was definitely located in the county of Delta.

We have done several projects for the city of Delta including sandblasting and powder coating the cannon in Cleland Park, the flag poles and water memorial at Heddles Rec. Center, banner sign at Fair lamb Center, the big wheel bicycle on Main Street and numerous equipment up dates for the city shop.

When the annexation of North Delta began, we preferred to remain in the county of Delta along with several other properties in the immediate area. However even in 2001, C & R Kustom Powder Koting would still have grandfathered in as an existing business.

In 2006 to 2007 when annexation was forced upon us, I requested a B-3 business zoning as we were already zoned industrial by the county, the request was denied as the city was not going to do spot zoning and since everything else around us was already zoned agricultural that would be out zoned as well. I really feel like this is an oxymoron as now in 2015 C & R Kustom Powder Koting is considered to be nonconforming agriculture but in 2007 when I requested a B-3 business zoning I was told no – you're agricultural.

C & R Kustom Powder Koting is requesting a building permit to construct a small, new Quonset hut which is only 20 feet wide x 20 feet long and 10 feet tall for sandblast containment purposes. This is not an expansion of our business but an improved replacement of an old existing shed. Although we do encompass 2 ½ acres of land, the dimensions of our property are extremely unusual and difficult to work with. We are only 100 feet wide but 750 feet deep. This new building will be located in the center of our property and will be very simple in construction requiring only two concrete footers or staked railroad ties and premanufactured hoops. There will be no concrete floor as media blasting into concrete even 6 inches thick only creates holes and creates a work place hazard. Instead we will use heavy rubber mine belting causing the media to bounce instead of penetrating. In place of end walls we will use commercial grade heavy plastic freezer strips which will allow for both light and forklift access but at the same time contain most of the media dust. C & R Kustom Powder Koting has already invested in a new state of the art dustless blast system which injects a very small amount of water into the media to help with dust control. This is a very experimental system yet and especially in subzero temperatures.

There will be no public access to this building so no public improvements are necessary.

Since this is an agricultural area, there are many existing sheds, shops, and barns for both animals and machinery located in the existing area.

As far as noise is concerned this is again an agricultural area where tractors sometimes run day and night so an air compressor running during the day is really not an issue.

Hopefully, C & R Kustom Powder Koting has met all of the criteria required by the city of Delta.

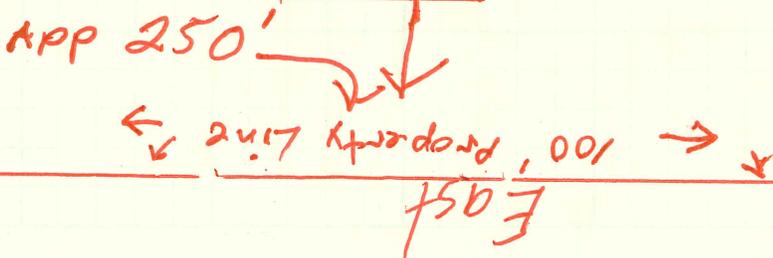
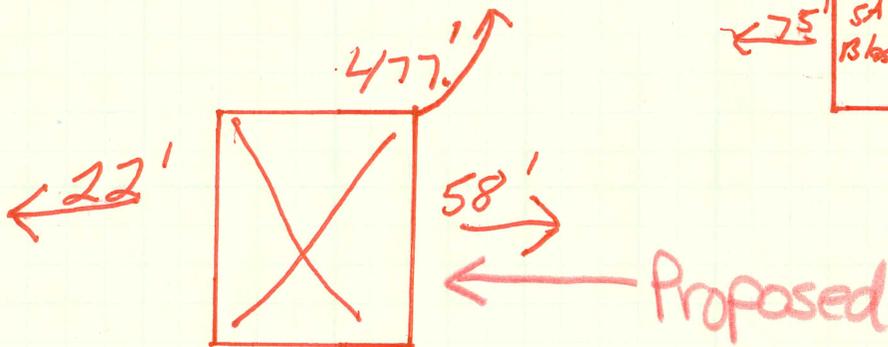
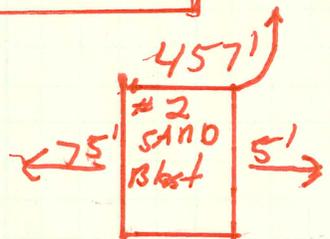
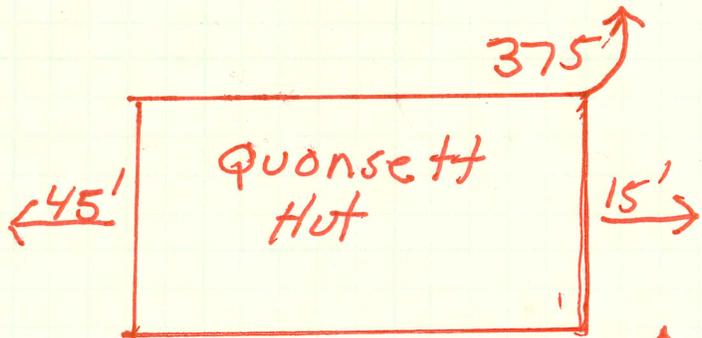
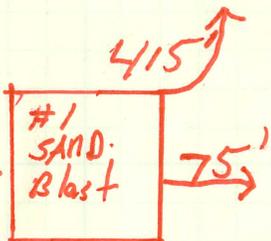
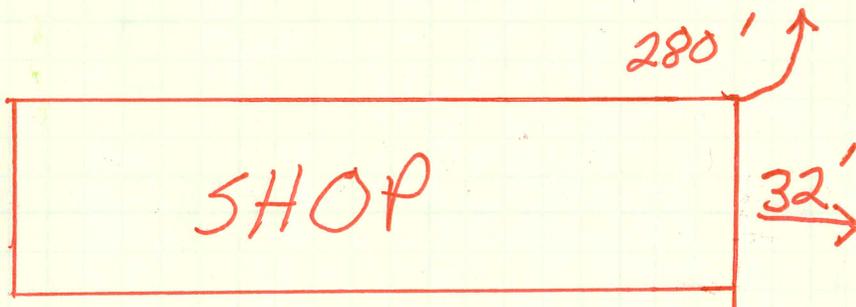
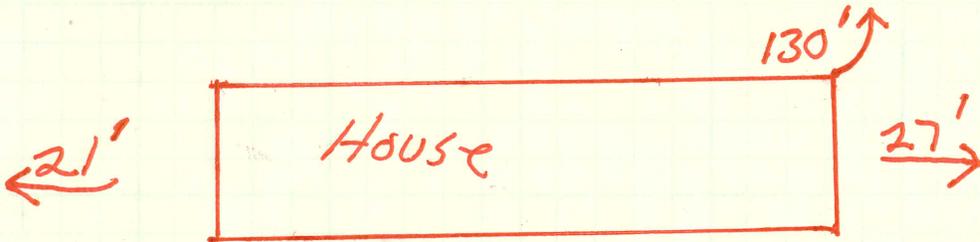
  
Connie Rosengren

810

1525 RD

WEST

← 100' wide → Property Line ↑



South Property Line ↑

North Property Line ↓



## **Staff Report Variance to the Setback**

**Staff:** Glen L. Black                      **Date:** 01-04-2016  
**Owner:** Connie Rosengren              **Applicant:** Connie Rosengren  
**Location:** 810 15.25 Rd                  **Parcel #** 3457-013-00-014  
**Zone District:** A-1                          **Parcel Size:** 2.15+

**Subject: Variance to the Setback for a Building Erected Without a Permit**

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### **Background:**

It came to staff's attention that a building had been erected on the subject property without a building permit. The building is located within the side setbacks.

### **Request:**

The applicant requests a variance to the setback requirements of The Delta Municipal Code 17.04.220. The property is zoned A-1 the side setback is 15'.

### **Criteria for Approval of a Variance:**

According to section 17.04.260 of the City Municipal Code:

#### 17.04.260 Criteria for approval of a variance.

A. The Planning Commission may approve a variance from the provisions of this Chapter other than the uses specified for any District or restrictions on the location of factory built housing only if it determines following review pursuant to Section 17.04.290 that the following criteria are substantially met:

1. The variance will not adversely affect the public health, safety and welfare.
  2. Unusual physical circumstances exist, such as unusual lot size or shape, topography, or other physical conditions peculiar to the affected property which make it unfeasible to develop or use the property in conformity with the provisions of this Chapter in question.
  3. The unusual circumstances have not been created as a result of the action or inaction of the applicants, other parties in interest with the applicant, or their predecessors in interest.
  4. The variance requested is the minimum variance that will afford relief and allow for reasonable use of the property.
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5. The variance will not result in development incompatible with other property or buildings in the area, and will not affect or impair the value or use or development of other property.

B. The Planning Commission may impose conditions of approval as necessary to insure that the above criteria are met including limitations on the effective term of the variance.

C. The City Manager or designee may approve *di minimus* variances from the dimensional requirements of Section 17.04.220, fence height requirements, 17.04.240(B)(1), sign height and sign area requirements in Section 17.68 which meet the following criteria:

1. The variance is unnoticeable off the premises or would take a survey or measurements to detect;
2. The variance is not more than 5% of the applicable measurement; and
3. No practical alternative exists.

D. The burden shall be on the applicant to show that the applicable criteria are met. (Ord. 4, §1, 1999)

### **Discussion**

If the Planning Commission approves the previous change in conditional use request and this variance request, the applicant will be required to get a building permit, meet building permit requirements and pay an investigation fee as per Resolution No. 11, 2004. If the Planning Commission does not approve the previous change in conditional use request, or this variance request, this request is null and void and the building will have to be removed; the same investigation fee will apply.

There were 10 petitions delivered and 7 were returned, all approving of the variance request.

### **Staff Recommendation**

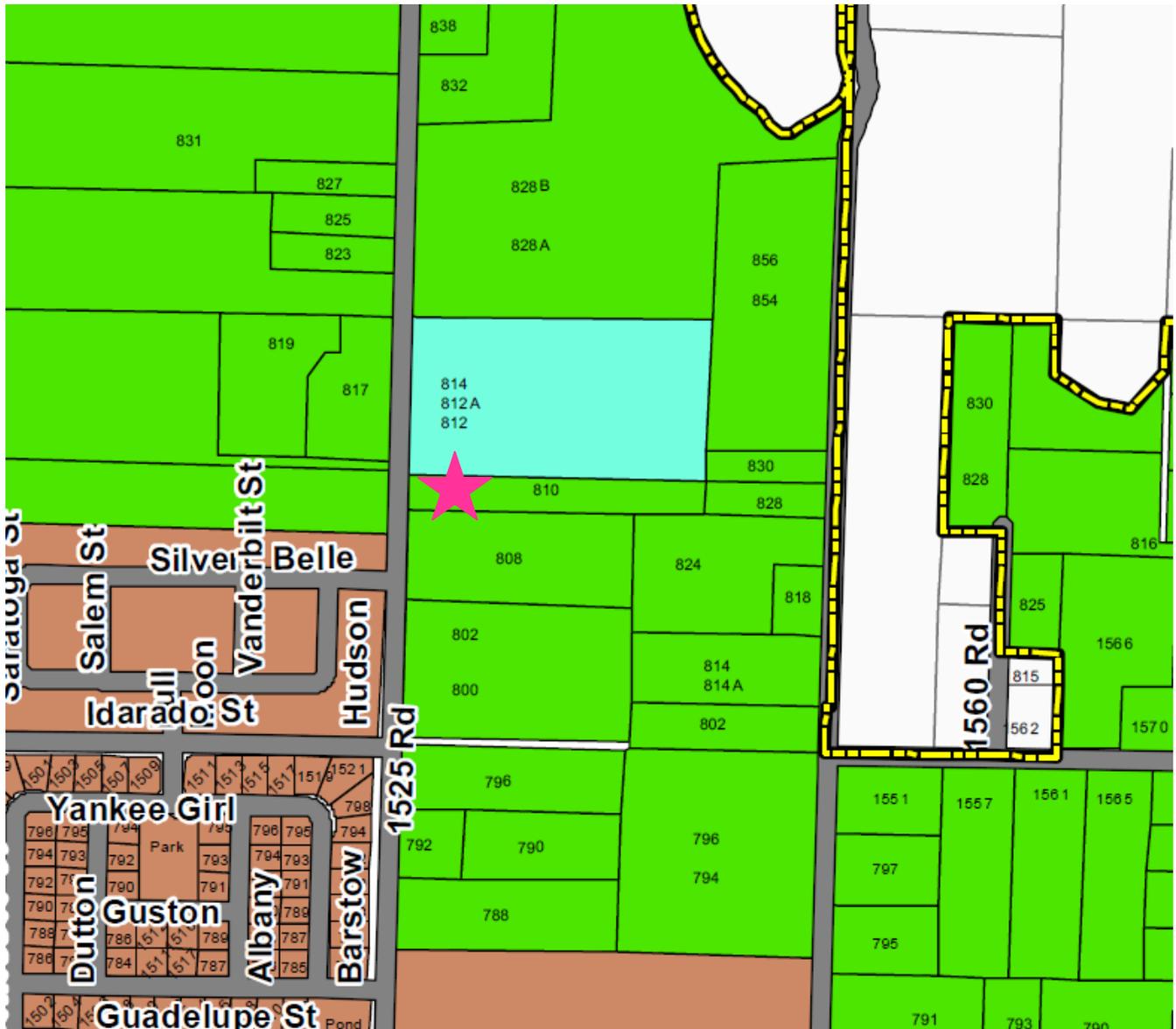
Staff recommends that Planning Commission carefully review the criteria for a variance.

### **Example Motion**

I move that Planning Commission **approve/deny** the variance request to the side setbacks for the building as constructed.

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### Zoning Map



### Aerial Map



Dec. 15, 2015

Variance Request

To Members of the Planning Commission,

C & R Kustom Powder Koting is requesting a variance for an existing shed which according to Mr. Reardon does not meet the setback requirements of 15 feet from a property line. The shed requiring the variance is only 16 feet wide by 21 feet long and 9.5 feet tall so it is not a huge building. While C & R Kustom Powder Koting is located on 2 ½ acres, the dimensions of the property are extremely unusual and difficult to work with especially where we need to have the ability to turn trucks and trailers around. The property is only 100 feet wide but 750 feet deep. Therefore a 15 foot setback on each side of our property consumes almost a third of our land and makes a very narrow piece of property even narrower.

When we purchased the property in 1999, we were county and were not annexed until 2006 to 2007. Therefore our buildings grandfathered in and were definitely not 15 feet from the property lines.

The building requiring the variance is set back 5 feet from the property line of Pam Hall who has no problem with the location of it. Please see acceptance sheet. The shed does not interfere or affect her property which is now leased for summer pasture.

This shed started out to be a carport but we decided to enclose it and I honestly did not think we needed to do things differently that we had ever done. I now understand and definitely will not forget it again. I do apologize and am willing to pay for my mistake.

This shed is currently being used to media blast in but as discussed in the new building permit request C & R Kustom Powder Koting has also purchased a new dustless blast system along with putting in 500 feet of new privacy fence. This is all done in an effort to control any nuisance dust even though we are in an agriculturally owned area where farmers plow, harrow, plant, and harvest crops. Because of the area we are located in, this shed does definitely not stand out from other sheds, barns, and shops.

I hope I have satisfied all the necessary criteria.

Thank you

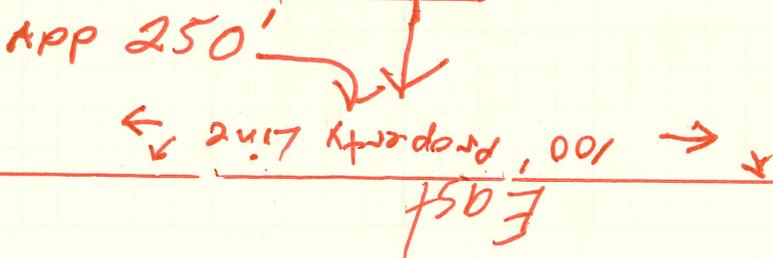
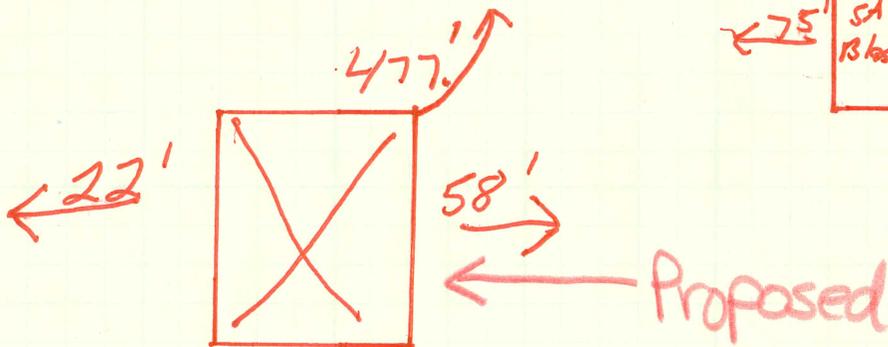
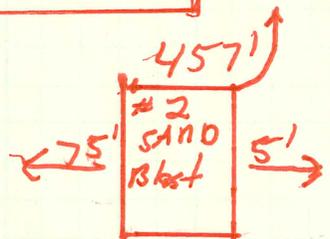
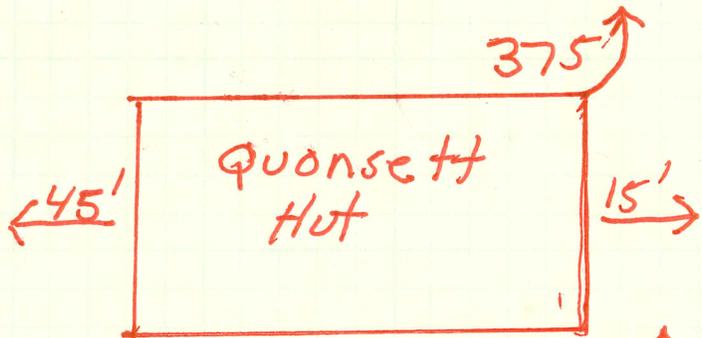
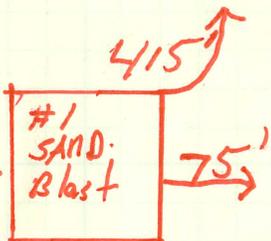
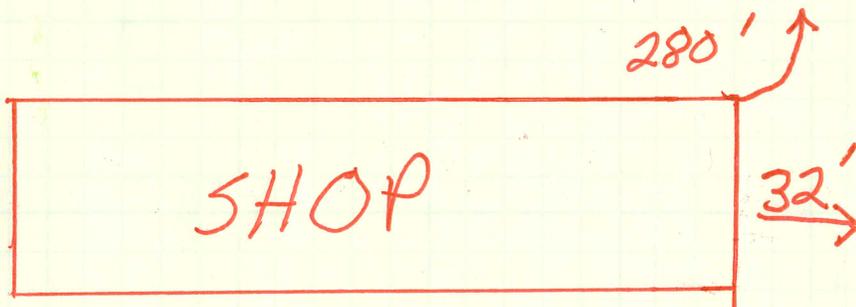
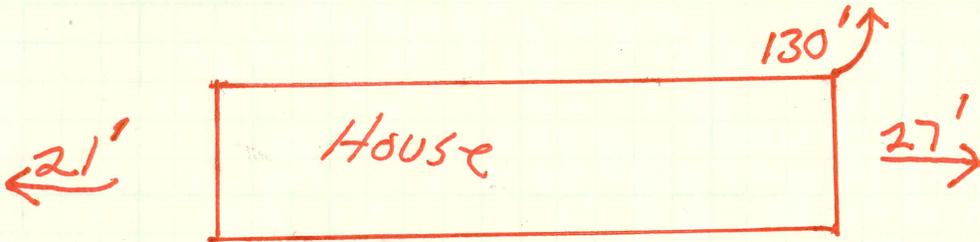
*Carmie Rasenger*

810

1525 RD

WEST

← 100' wide → Property Line ↑



South  
750' Property Line

North  
750' Property Line