



**PLANNING & ZONING COMMISSION**  
**FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

In the matter of the application of:

**[Bustos] – [ZV2023-0001]**

The Canyon County Planning & Zoning Commission considers the following:

- 1) Variance- CCZO §07-10-03 Easement width reduction from 60' to 24' for Memory Lane.

[ZV2023-0001, 12732 Memory Ln (R33116), a portion of the NE¼ of Section 36, T3N, R3W, BM, Canyon County, Idaho]

### Summary of the Record

1. The record is comprised of the following:

A. The record includes all testimony, the staff report, exhibits, and documents in Case File ZV2023-0001.

### Applicable Law

1. The following laws and ordinances apply to this decision: Canyon County Code §01-17 (Land Use/Land Division Hearing Procedures), Canyon County Code §07-05 (Notice, Hearing and Appeal Procedures), Canyon County Code §07-08 (Variance), Canyon County Code §07-02-03 (Definitions), Canyon County Code §07-10-21 (Setbacks; Minimum Parcel or Lot Size; Height Regulations), and Idaho Code §67-6516 (Variance-Definition-Application-Notice).
  - a. Notice of the public hearing was provided per CCZO §07-05-01.
  - b. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. See Idaho Code §67-6516.
2. The commission shall have those powers and perform those duties assigned by the board that are provided for in the local land use planning act, Idaho Code, title 67, chapter 65, and county ordinances. CCZO §07-03-01, 07-07-01.
3. The burden of persuasion is upon the applicant to prove that all criteria, including whether the proposed use is essential or desirable to the public welfare, are satisfied. CCZO §07-05-03.
4. Idaho Code §67-6535(2) requires the following: The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.
5. The County's hearing procedures adopted per Idaho Code §67-6534 require that final decisions be in the form of written findings, conclusions, and orders. CCZO 07-05-03(1)(I).

**The application (ZV2023-0001) was presented at a public hearing before the Planning and Zoning Commission. Having considered all the written and documentary evidence, the record, the staff report, oral testimony, and other**

evidence provided, including the conditions of approval and project plans, the Planning and Zoning Commission decide as follows:

### VARNIANCE CRITERIA – CCZO §07-08-03(2)

#### A. Will granting the variance be consistent with the comprehensive plan?

**Conclusion:** The variance request is consistent with the following Comprehensive Plan Goals and Policies:

- Findings:**
- (1) Property Rights Goal No. 1: “Protect the integrity of individual property rights while safeguarding public health, safety, and welfare.”
  - (2) Property Rights Policy No.1: “No person shall be deprived of private property without due process of law.”
  - (3) The proposed variance does not negatively impact individual property rights at this time. The request allows for more homes to access from a nonconforming private road easement, but does not affect the driving surface width requirements, and will conform with fire district requirements if conditions are added (Exhibit B Attachment 5b). The private road driving surface requirement for a road estimated to serve 100 total daily trips or less for the total dwellings entitled on properties using any segment of a private road, Memory Lane’s classification, is a surface width of twenty ft (20’) (§07-10-03).
  - (4) The proposed variance does not deprive property owners of private property. The request will affect the access for property owners living off of Memory Lane and the future owner of the potential parcel created by the subsequent land division on R33116, however opposition has not been expressed and no change to private property will occur as a result of this variance.
  - (5) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. ZV2023-0001.
  - (6) Evidence includes associated findings and evidence supported within this document.

#### B. Do characteristics of the site create an undue hardship?

**Conclusion:** No, characteristics of the site do not create undue hardship. Canyon County Code or Idaho Code does not define undue hardship for the purposes of a variance. However, undue hardship can be deduced from the criteria for a variance listed in Idaho Code §67-6516. Section 67-6516 allows the county to grant a variance if the characteristics of the site create a hardship that prevents an applicant from complying with a portion of county code eligible for a variance.

Canyon County Code states “perpetual easement, having a minimum width of sixty feet (60’) from width requirement may be reduced to a width not less than twenty-eight ft (28’) in accordance with subsection (1)D of this section” CCZO §07-10-03.

- Findings:**
- (1) The hardship expressed to staff is that at least three surrounding property owners would have to provide additional footage for an expansion of the easement on neighboring property and that at least two of the three neighbors are unwilling to do so (Exhibit B Attachment 3). Currently a 24 ft easement does exist from the entrance of Memory Lane off of Iowa Ave up to the south property line on parcel R33116. A power pole currently exists within the existing twenty-four ft (24’) easement for Memory Lane. Staff conducted a site review and measured the driving surface of Memory Lane to find it being sixteen ft (16’) in width at the entrance off of Iowa Ave. This measurement was taken from the power pole on the corner to the western fence line (Exhibit B Attachment 2). The applicant and/or his representative have discussed this with Idaho power and were informed the relocation may not be possible and/or feasible. Canyon County Staff reached out to Idaho Power during noticing process and additionally through email requesting comment and did not receive a response.



- (2) Staff does not find adequate evidence that there is an undue hardship restricting the easement from meeting CCZO 07-08-05. Power poles are movable objects and there is no evidence of topographic or terrain characteristics that would restrict an expansion of the twenty four ft (24') easement to meet Canyon County Code CCZO 07-10-03 that required having a minimum width of sixty feet (60') from the right-of-way of a public street to the property for the purpose of ingress/egress. The easement width requirement may be reduced to a width not less than twenty-eight ft (28') in accordance with a directors decision width reduction application.
- (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. ZV2023-0001.
- (4) Evidence includes associated findings and evidence supported within this document.

**C. Is the variance in conflict with the public interest?**

**Conclusion:** The variance is not in conflict with the public interest. Staff did not receive any public comments. Memory Lane currently exists and is serving the existing residential traffic. Memory Lane, a private road, does not have characteristics of the site that creates an undue hardship. Granting of the variance has the ability to allow further development, additional residential parcel(s), on a non-conforming private road; potentially creating challenges for emergency response.

- Findings:**
- (1) Canyon County Code states “perpetual easement, having a minimum width of sixty ft (60') from the right-of-way of a public street to the property for the purpose of ingress/egress. The easement width requirement may be reduced to a width not less than twenty-eight ft (28') in accordance with subsection (1)D of this section” CCZO §07-10-03
  - (2) Staff finds that the fire district does not oppose the variance application and they find it to meet requirements with the addition of conditions (Exhibit B Attachment 5b). ITD and Nampa Engineering did not have any concerns with the proposed variance (Exhibit B Attachment c and d).
  - (3) Staff did not receive any public comments in opposition or support of the variance application.
  - (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. ZV2023-0001.
  - (5) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on June 22, 2023. Newspaper notice was published on June 20, 2023. Property owners within 600' were notified by mail on June 22, 2023. Full political notice was provided on June 22, 2023. The property was posted on June 30, 2023.
  - (6) Evidence includes associated findings and evidence supported within this document.

**Order**

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Planning and Zoning Commission **denies** Case ZV2023-0001, a variance for an easement reduction from sixty ft (60') to twenty four ft (24') for a private road serving more than three (3) residences.

Pursuant to Idaho Code Section 67-6519, the following actions may be taken to obtain approval:

1. Re-apply for an administrative land division once the following has occurred:
  - a. Create a 28 ft ingress/egress easement for Memory Ln through an easement reduction application.
  - b. Comply with all requirements of CCZO §07-10-03.

DATED this 3 day of August, 2023.



Planning and Zoning Commission  
CANYON COUNTY, IDAHO

[Signature]  
Robert Sturgill, Chairman

State of Idaho )

SS

County of Canyon County )

On this 3<sup>rd</sup> day of August, in the year 2023, before me Bonnie Puleo, a notary public, personally appeared Robert Sturgill, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she) executed the same.

Notary: Bonnie Puleo  
My Commission Expires: 12/10/2027