

Madison County  
Planning and Zoning Commission  
**Wednesday October 26, 2022**  
Public Meeting



MADISON COUNTY  
PLANNING & ZONING COMMISSION

**PUBLIC MEETING**

Wednesday October 26, 2022 6:30 PM  
Madison County Commissioner's Room

# AGENDA

6:30 p.m.	Welcome:	Commission Chair, Sharon Oakey Roll Call Attendance
	Routine Business:	<b>BOCC Public Meeting Review</b>  <b>Approve October 12, 2022 Public Meeting Documents</b> Meeting Minutes Albertson CUP Findings of Fact Madison County Zone Change Findings of Fact
6:35 p.m.	Public Hearings	<b>October 26, 2022</b> <i>CUP Dave &amp; Robin Wold – Accessory Building w/ Living Space</i>  <i>Madison County UDC Update – Accessory Dwelling Units</i>
7:00 p.m.	Adjourn:	Commission Chair, Sharon Oakey  <b>Upcoming Meetings:</b>  <b>November 9, 2022</b> CUP – Reggie Wight – Accessory Building w/ Living Space. CUP – Madison County Landfill.

Please contact Madison County Planning and Zoning Office prior to any meeting if assistance is required for disabled persons planning to attend.

<https://zoom.us/j/96202049064>



**OCTOBER 12, 2022**

*PUBLIC MEETING DOCUMENTS*



**PLANNING & ZONING COMMISSION**  
**Wednesday September 28, 2022**  
 Public Meeting Minutes

Meeting Commenced at 6:30

All present were invited to participate in a Pledge of allegiance by Chair Oakey, who conducted the meeting.

<b>October 12, 2022 Attendance</b>			
Roll Call	Present	Absent	Excused
Arlene Anderson	X		
Clint Hansen			X
Eric Miller		X	
Kort Black	X		
Mark Hansen	X		
Shane Ruebush	X		
Chair Oakey	X		
Troy Thurgood	X		

**Routine Business**

**BOCC Meeting Reviewed:**

Kevin Cook and Brandon Hawkes CUPs approved.

Appeal to Edstrom Gravel Pit CUP. Requesting mediation, issues with process, requesting Commissioner Todd Smith recuse. Tentative hearing scheduled for November 14. To be discussed at next Board Meeting.

**Routine Business:**

*Approve September 28, 2022 Public Meeting Documents:*

*Meeting Minutes*

- Motion: Shane Ruebush
- Second: Troy Thurgood

*Thueson Findings of Fact*

- Motion: Troy Thurgood
- Second: Kort Black

*Craner Findings of Fact*

- Motion: Troy Thurgood
- Second: Shane Ruebush



PLANNING & ZONING COMMISSION  
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**Public Hearing**

ALBERTSON CUP – Accessory Building with living space

**Chair:** CUP for accessory building. Blane and Sandy Albertson. Addresses the audience. Public hearing. Recommendation only. Public comment sign up instructions.

**Administrator Armstrong:** Report. Site Plan. Location. Second dwelling to property.

**Mike Allen** – representing applicants Blane and Sandy Albertson. Expresses that they are wishing to purchase a home to move onto property. Two homes will be on one property. Septic permit has been obtained after test hole. No conflicting issues with power. Shared well, separate septic.

**Troy Thurgood:** canal from south?

**Mike Allen:** directs commission to map in packet.

**Chair Oakey:** share a well, separate septic. No additional well drilled.

**PUBLIC COMMENT:**

*In Favor:* NONE

*Neutral:* Kirsten Ruebush - 1893 W 5353 S.

Clarifying questions – moving home. Same well, separate septic. Neutral. Concerned that CUPs are being given on things that aren't on the same septic. Are we changing density?

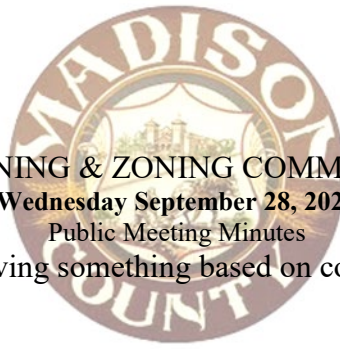
*Opposed:* NONE

*Written Correspondence:* NONE

**DISCUSSION:**

**Troy Thurgood:** nothing against the applicant. The way the code reads, the code allows for second dwelling. To Kirsten's point, the CUP feels like a work around. Odd to double the density without doing anything but getting a CUP.

**Shane Ruebush:** Difficulty of this conversation is that in two weeks, we will be discussing a possible change to the code for accessory dwelling units with living space. Accessory dwelling units with living space indicate there is an additional use other than just living space. Most of the ones we have looked at before include a shop or something to that nature. Not opposed to the idea. Having another house is different than having an accessory dwelling with a secondary use



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than living space. Difficulty approving something based on code that we have the intention of changing in two weeks.

**Troy Thurgood:** take it as what the law allows now. Consider in our conversations about changing the code. Density issues.

**Kort Black:** each one of these, the owner of the entire parcel has a vested interest in the second unit. They are not splitting it, selling it off, etc. It is closely managed and maintained. Owners of the property are interested in what happens with the secondary residence.

**Troy Thurgood:** Goes back to property rights. We have to be very careful about what we tell people can and cannot do on their property.

**Shane Ruebush:** applicant has gone through proper channels for water use and disposal. Conflict of being two weeks away from changes, and we have to look at it for what the code says now.

**MOTION:**

Troy Thurgood moves to recommend approval of the Conditional Use Permit Application of Blane and Sandy Albertson as presented.

Arlene Anderson votes to second the motion.

**Roll Call Vote**

**Shane Ruebush:** Votes no for the reason that he doesn't see it as an accessory dwelling with living space. Two weeks from potential code changes.

October 12, 2022 Albertson CUP Voting			
Roll Call	In Favor	Opposed	Excused
Arlene Anderson	X		
Clint Hansen	EXCUSED		
Eric Miller	ABSENT		
Kort Black	X		
Mark Hansen	X		
Shane Ruebush		X	
Chair Oakey	Chair		
Troy Thurgood	X		



PLANNING & ZONING COMMISSION  
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**Public Hearing**

ZONE CHANGE – State Lands to Agriculture

**Chair Oakey:** briefly introduces the application. Inquires if proper notice of the hearing was provided. Staff answers in the affirmative.

**Administrator Armstrong:** Staff report. Purpose of application is to apply zoning. We need to apply zoning to the parcel. 947 acres. Full application for the CUP to operate landfill on property. Landfill will include 45 acres. 10 acres of landfill pits that will be constructed. Serve Fremont, Madison, possibly Jefferson... all surrounding private lands are zoned AG. Currently farmed. Summary of why zone is being assigned.

**Troy Thurgood:** is state giving land to Madison County? Is a landfill allowed in AG zoning.

**Administrator Armstrong:** A landfill would be allowed with a CUP.

**Arlene Anderson:** Can we see the waterways near that area?

**Administrator Armstrong:** shows property and waterways on GIS maps.

**Arlene Anderson:** where does the underground water move from that?

**Administrator Armstrong:** details of that will be in CUP application. This is strictly a hearing to assign zoning to the property.

**Troy Thurgood:** read application materials. Numerous test holes were dug to measure ground water. Findings included complex groundwater at 300 feet.

**Administrator Armstrong:** currently used as large-scale AG.

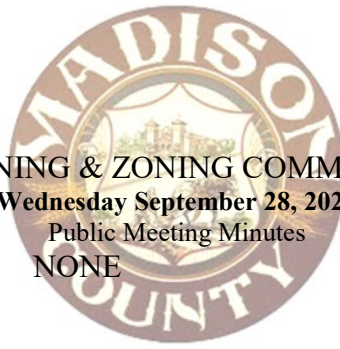
**PUBLIC COMMENT**

*In Favor:* NONE

*Neutral:* Deloy Ward – 1305 S 2<sup>nd</sup> E Rexburg

In the past, there is a spring that is just to the south. Spring would run through July. Water would run down that draw. Fill trench full of water. Concerned about the roads going for access. Not consulted. County was building a road and did not have a permit from the state. County Road needs to be changed. Have issues and questions. Wish someone would look into them. Snow... where is the drainage going to go? Wondering if they could look into this before getting too hasty.

*Opposed:* NONE



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Written Correspondence: NONE

**DISCUSSION:**

**Shane Ruebush:** State vacating land. No grounds to even consider future use, as it has no land use designation. Rezoning a large portion of land.

**Arlene Anderson:** is it in proximity to any sensitive lands overlay.

**Administrator Armstrong:** over 200 pages of information collected over a long period of time. All included in this application. Details that will also be part of the land use permit.

**Troy Thurgood:** designating agriculture.

**Administrator Armstrong:** multi county effort. Fremont, Jefferson. Future landfill will potentially serve this region.

**Chair Oakey:** regional landfill?

**Kort Black:** plans to shut down current landfill with this as the replacement? Reclamation plans?

**Administrator Armstrong:** unaware of what they are.

**MOTION:**

**Shane Ruebush:** Motion to recommend approval of the application from Madison County/ Eastern Idaho Solid Waste District to assign an Agriculture Zone to the 947 acres as proposed in application materials.

Troy Thurgood votes to second the motion.

Voting unanimous to apply AG zoning to property.

October 12, 2022 Zone Change Voting			
Roll Call	In Favor	Opposed	Excused
Arlene Anderson	X		
Clint Hansen	EXCUSED		
Eric Miller	ABSENT		
Kort Black	X		
Mark Hansen	X		
Shane Ruebush	X		
Chair Oakey	Chair		
Troy Thurgood	X		





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**UPCOMING MEETINGS:**

October 17 - Sunset Estates Preliminary plat with Board of County Commissioners. Okay for PZ Commission to attend.

October 26 - UDC update for accessory dwellings.

**Troy Thurgood:** Has information been provided to us in the past?

**Administrator Armstrong:** Multiple work sessions to discuss. We will distribute materials later this week, ad posted online.

**Chair Oakey:** A few hearings scheduled for CUPs for accessory dwellings scheduled.

**Troy Thurgood:** if an applicant files under the current code, they have to be held to the standard of the current code?

**Administrator Armstrong:** If it changes before the application is finalized, we can proceed with the new code.

**Troy Thurgood:**

**Administrator Armstrong:** considering a code change, it is not changed until it is. Could proceed under old or new code.

Shane: the reverse would be true if we approved something more restrictive.

**Administrator Armstrong:** it would be up to the applicant to move forward under the old code, or to re-apply under the new code once approved.

**Chair Oakey:** Not looking at a second meeting in November.

**Troy Thurgood:** adjourn

**Arlene Anderson:** Second.

**Meeting Adjourned.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMENDATIONS OF THE  
MADISON COUNTY PLANNING AND ZONING COMMISSION**

*Re: Zone Change Request by Madison County and Eastern Idaho Regional Solid Waste District  
from Transitional Agriculture to Master Planned Community*

The Madison County Planning and Zoning Commission held a public hearing on Wednesday October 12, 2022 in the Madison County Courthouse, 159 E Main, Rexburg, Idaho, 83440, regarding the proposed Zone Change from State Lands to Agriculture on property owned by Eastern Idaho Regional Solid Waste District, located at approximately Baseline Road and 11000 E Rexburg Idaho, 83440. The property is more generally described as RP06N42E290600 as defined by deed number 448312.

The following members of the Madison County Planning and Zoning Commission (“commission”) were present at the public hearing convened on October 12, 2022:

<b>October 12, 2022 Attendance</b>			
Roll Call	Present	Absent	Excused
Arlene Anderson	X		
Clint Hansen			X
Eric Miller		X	
Kort Black	X		
Mark Hansen	X		
Shane Ruebush	X		
Chair Oakey	X		
Troy Thurgood	X		

Planning and Zoning Administrator, Gary Armstrong and Planner Melissa VanSlochteren were also in attendance. Melissa VanSlochteren acted as Clerk for the meeting.

The meeting was recorded to allow for a transcribable record. There was no media in attendance at the October 12, 2022 public hearing.

The public hearing was called to order at 6:30 p.m. by Planning and Zoning Commission Chair, Sharon Oakey. Chair Oakey inquired of staff to ensure proper notice of the public hearing had been properly published, posted, and provided. Staff stated that all required legal notices had been given. Chair Oakey asked if there were any commission members that needed to note any conflict of interest.

A transcript of the discussion and testimony at this public hearing is attached hereto and incorporated herein. See the attached October 12, 2022 meeting minutes/testimony. A staff report was given by Administrator Gary Armstrong of the Planning and Zoning staff regarding the zone change request. An opportunity was given to the public to give public testimony.

Those in favor were:           None  
Those neutral were:           See Attached

Those opposed were: None  
Written Correspondence: None

Having given due consideration to the application and evidence presented, the Planning and Zoning Commission hereby makes the following findings of fact:

**I. FINDINGS OF FACT**

1. A public hearing was held October 12, 2022 to take the testimony on a requested Zone change. This proposed amendment was consistent with the goals and objectives of the Comprehensive Plan.
2. Notice was published in the legal County Newspaper, the Standard Journal on September 27, 2022 and October 4, 2022 as required. The published notice included an appropriate and accurate summary of the issues to be heard. Copies of the notice were sent to all residents within 300 feet of the property line, as required on September 27, 2022.
3. At the beginning of the hearing, Chair Oakey inquired if proper notice of the hearing had been provided. The planning and zoning staff answered in the affirmative.
4. The public hearing was scheduled for 6:30 p.m. on October 12, 2022. All as set out in the published notices as described above.
5. The meeting agenda was available prior to the meeting, and the public hearing followed the order of events listed on the agenda. Planning and Zoning staff explained the subject of the hearing. An opportunity was provided for the applicant and members of the public to present testimony, which was followed by discussion between the commission. Public comment was closed after all present had been given an opportunity to submit an oral or written testimony. No time limits were placed on the testimonies given.
6. The following points were factors in the recommendation by the Commission for the approval to the Madison County Board of County Commissioners. Part II Unified Development Code, section 118, Factors, Madison County Code Book, outlines the purpose of the Zone Change standards as follows:
  - a. To protect property rights and enhance property values;
  - b. To provide for the protection and enhancement of the local economy;
  - c. To ensure that important environmental features are protected and enhanced;
  - d. To encourage the protection of prime agriculture lands for the production of crops;
  - e. To avoid undue concentration of population and overcrowding of land;
  - f. To ensure the development on land is commensurate with the physical characteristics of the land;

- g. To protect life and property in areas subject to natural hazards and disasters;
  - h. To protect recreational resources;
  - i. To avoid undue water, air and noise pollution;
  - j. To ensure safety from fire and provide adequate open spaces for light and air; and
  - k. To implement the Madison County Comprehensive Plan.
7. Based upon this review, Commission member **Shane Ruebush** recommends approval of the application from Madison County/ Eastern Idaho Solid Waste District to assign an Agriculture Zone to the 947 acres as proposed in application materials. Commission Member Troy Thurgood votes to second the motion.

October 12, 2022 Zone Change Voting			
Roll Call	In Favor	Opposed	Excused
Arlene Anderson	X		
Clint Hansen	EXCUSED		
Eric Miller	ABSENT		
Kort Black	X		
Mark Hansen	X		
Shane Ruebush	X		
Chair Oakey	Chair		
Troy Thurgood	X		

**I. CONCLUSIONS OF LAW AND RECOMMENDATIONS**

1. A Notice of the Public Hearing held to consider approval of the Zone Change was published and provided as is required by Idaho Code §§67-6509 and 67-6511.
2. The Public Hearing was held to consider approval of the proposed Zone Change and was conducted in accordance with the requirements of Idaho Code §§ 67-6509 and 6511 as well as Part II, Unified Development Code, Madison County Code Book.
3. A transcribable record was made and kept of the public hearing held to consider approval of the zoning map change, in accordance with the requirements of Idaho Code §§ 67-6536.
4. The proposed Zone Change is an appropriate exercise of the planning and zoning responsibilities established by Idaho Code §§ 67-6501 et. seq.
5. Findings of Fact and Conclusions of Law are maintained and submitted in accordance with Idaho Code § 67-6509.

**III. CONCLUSION**

1. Based upon the foregoing Findings of Fact, Conclusions of Law and Recommendations, the planning and zoning procedures conducted throughout the county, the comments received at the public hearing held hereon, and the deliberation of the Planning and Zoning Commission, the Commission hereby recommends **approval** of the requested Zone Change for the above-described property.

2. The applicant may appeal, in writing, this decision of the Commission, as long as the appeal is submitted to the Board of County Commissioners within twenty-eight (28) days from such Commission action, per Part II, Unified Development Code, Chapter 101 General and Administrative Provisions, Article III, Appeals.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

PLANNING AND ZONING COMMISSION  
MADISON COUNTY, IDAHO

\_\_\_\_\_  
SHARON OAKEY, *Commission Chair*

ATTEST:

\_\_\_\_\_  
GARY ARMSTRONG, *P&Z Administrator*

**Adoption of Findings of Fact by the Madison County**

**Board of County Commissioners**

1. Based upon the foregoing Findings of Fact, Conclusions of Law and Recommendation of the Planning and Zoning Commission, and based upon the Madison County Board of County Commissioners' review thereon, pursuant to Part II, Unified Development Code, Chapter 101 General Provisions, Section 102-14, 102, land use map and zoning map change and Idaho State Code §§ 67-6509, 67-6511, et seq., the Board hereby approves the Findings of Fact and Conclusions of Law presented by the Commission and approves this action based thereon.
2. The applicant's request to change their property as listed herein in the Madison County Zoning Map from Transitional Agriculture to Master Planned Community is hereby approved.
3. The applicant is hereby given notice that it has the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF COMMISSIONERS  
MADISON COUNTY, IDAHO

\_\_\_\_\_  
Todd Smith, Chairman

\_\_\_\_\_  
Brent Mendenhall, Commissioner

\_\_\_\_\_  
Doug Smith, Commissioner

ATTEST:

\_\_\_\_\_  
Kim H. Muir, Clerk

**CLERK'S CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2022. I mailed a true and correct copy of the foregoing documents to the parties named below, by the means and address below as follows:

- Hand Delivery
- Facsimile
- U.S. Mail

Others, if any, please see attached sheet.

/s/ Kim H. Muir  
Clerk

**EXHIBIT A**

*October 12, 2022 Public Meeting Minutes*

**Public Hearing**

**ZONE CHANGE – State Lands to Agriculture**

**Chair Oakey:** briefly introduces the application. Inquires if proper notice of the hearing was provided. Staff answers in the affirmative.

**Administrator Armstrong:** Staff report. Purpose of application is to apply zoning. We need to apply zoning to the parcel. 947 acres. Full application for the CUP to operate landfill on property. Landfill will include 45 acres. 10 acres of landfill pits that will be constructed. Serve Fremont, Madison, possibly Jefferson... all surrounding private lands are zoned AG. Currently farmed. Summary of why zone is being assigned.

**Troy Thurgood:** is state giving land to Madison County? Is a landfill allowed in AG zoning.

**Administrator Armstrong:** A landfill would be allowed with a CUP.

**Arlene Anderson:** Can we see the waterways near that area?

**Administrator Armstrong:** shows property and waterways on GIS maps.

**Arlene Anderson:** where does the underground water move from that?

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**Troy Thurgood:** read application materials. Numerous test holes were dug to measure ground water. Findings included complex groundwater at 300 feet.

**Administrator Armstrong:** currently used as large-scale AG.

**PUBLIC COMMENT**

*In Favor:* NONE

*Neutral:* Deloy Ward – 1305 S 2<sup>nd</sup> E Rexburg

In the past, there is a spring that is just to the south. Spring would run through July. Water would run down that draw. Fill trench full of water. Concerned about the roads going for access. Not consulted. County was building a road and did not have a permit from the state. County Road needs to be changed. Have issues and questions. Wish someone would look into them. Snow... where is the drainage going to go? Wondering if they could look into this before getting too hasty.



*Opposed:* NONE

*Written Correspondence:* NONE

**DISCUSSION:**

**Shane Ruebush:** State vacating land. No grounds to even consider future use, as it has no land use designation. Rezoning a large portion of land.

**Arlene Anderson:** is it in proximity to any sensitive lands overlay.

**Administrator Armstrong:** over 200 pages of information collected over a long period of time. All included in this application. Details that will also be part of the land use permit.

**Troy Thurgood:** designating agriculture.

**Administrator Armstrong:** multi county effort. Fremont, Jefferson. Future landfill will potentially serve this region.

**Chair Oakey:** regional landfill?

**Kort Black:** plans to shut down current landfill with this as the replacement? Reclamation plans?

**Administrator Armstrong:** unaware of what they are.

**MOTION:**

**Shane Ruebush:** Motion to recommend approval of the application from Madison County/ Eastern Idaho Solid Waste District to assign an Agriculture Zone to the 947 acres as proposed in application materials.

Troy Thurgood votes to second the motion.

Voting unanimous to apply AG zoning to property.

October 12, 2022 Zone Change Voting			
Roll Call	In Favor	Opposed	Excused
Arlene Anderson	X		
Clint Hansen	EXCUSED		
Eric Miller	ABSENT		
Kort Black	X		
Mark Hansen	X		
Shane Ruebush	X		
Chair Oakey	Chair		
Troy Thurgood	X		

**FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS  
OF THE MADISON COUNTY PLANNING AND ZONING COMMISSION**

*Re: Blane and Sandy Albertson –  
Conditional Use Permit for an Accessory Dwelling with Living Space*

The Madison County Planning and Zoning Commission held a public hearing on Wednesday October 12, 2022, at 6:30 p.m. at the Commissioner’s room in the Madison County Courthouse, Rexburg Idaho, to consider the request of Blane and Sandy Albertson for a conditional use permit for an accessory building with living space in a Transitional Agriculture zone. The property is located at approximately 6959 S 3100 W Idaho. The property consists of approximately 3.4 acres, and is further described as RP05N39E353003, as defined by Deed Number 225352.

The following members of the Madison County Planning and Zoning Commission (“Commission”) were present at the public hearing convened on Wednesday, October 12, 2022:

<b>October 12, 2022 Attendance</b>			
Roll Call	Present	Absent	Excused
Arlene Anderson	X		
Clint Hansen			X
Eric Miller		X	
Kort Black	X		
Mark Hansen	X		
Shane Ruebush	X		
Sharon Oakey	X		
Troy Thurgood	X		

Planning and Zoning Administrator Gary Armstrong, and Planner Melissa VanSlochteren, were also in attendance. Melissa VanSlochteren acted as clerk for the meeting.

The meeting was recorded to allow for the preparation of a transcribable record. There was no media in attendance at the October 12, 2022 public meeting.

A transcript of the proceedings and testimony at this public hearing is attached hereto and incorporated herein. See the attached October 12, 2022 meeting minutes/testimony, incorporated herein by reference. A staff presentation was given by Administrator Armstrong regarding the conditional use permit request.

Time then was allowed for public comment.

Those in Favor:                   None  
Those Neutral:                   See Attached  
Those Opposed:                   None  
Written Correspondence:       None

Having given due consideration to the application, and evidence presented, the Planning and Zoning Commission hereby makes the following findings of fact:

## **FINDINGS OF FACT**

1. A public hearing was held on October 12, 2022, to take the testimony on a requested conditional use permit.
2. Notice was published in the legal county newspaper, the Standard Journal, September 27, and October 4, 2022 as required. The published notice included an appropriate and accurate summary of the issues to be heard. Copies of the notice were sent to all property owners/residents within 300 feet of the property line, as required on September 27, 2022.
3. At the beginning of the hearing, Commission Chair Oakey asked if proper notice had been provided. Planning and Zoning Staff answered in the affirmative. No conflicts of interest were given by any members of the Commission.
4. The public hearing was scheduled at or after the hour of 6:30 p.m. on October 12, 2022. All was set out in the published notice as described above.
5. The meeting agenda was available prior to the meeting, and the public hearing followed the order of events listed on the agenda. The planning and zoning staff explained the subject of the public hearing. An opportunity was provided for the applicant and members of the public to present testimony, which was followed by members of the planning and zoning commission. Public testimony was closed after all present had been given an opportunity to submit an oral or written testimony. No time limits were placed on the testimonies given.

## **CONCLUSIONS AND RECOMMENDATIONS**

1. Notice of the Public Hearing held to consider approval of the Conditional Use Permit was published and provided as is required by Idaho Code §§67-6509 and 67-6511.
2. The Public Hearing was held to consider approval of the proposed Conditional Use Permit and was conducted in accordance with the requirements of Idaho Code §§ 67-6509 and 6511 as well as Madison County Code Book, Unified Development Code, Part II, Article V, sections 101-135, Conditional Use Permit.
3. Madison County Code Book, Unified Development Code, Part II, Article V, section 101-137, Conditional Use Permit standards as follows:
  - A. Will, in fact, constitute a conditional use for the zoning designations involved, in that it is not already defined as a permitted use.
  - B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and the Unified Development Code.
  - C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.

- D. Will not be hazardous or disturbing to existing or future neighboring allowed uses.
  - E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
  - F. Will not create excessive additional requirements at public cost for public facilities or services, and will not be detrimental to the economic welfare of the community.
  - G. Will not involve uses, activities, processes, materials, equipment or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
  - H. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.
  - I. Will not result in the destruction, loss or damage of a natural scenic or historical feature of major importance.
4. A transcribable record was made and kept of the Public Hearing held to consider approval of the Conditional Use Permit, in accordance with the requirements of Idaho Code §§ 67-6536.
  5. The proposed Conditional Use Permit is an appropriate exercise of the planning and zoning responsibilities established by Idaho Code §§ 67-6501 *et. seq.*
  6. Approval of the proposed Conditional Use Permit change is in the best interests of the people of Madison County, Idaho.
  7. These Findings of Fact and Conclusions of Law are maintained and submitted in accordance with Idaho Code § 67-6509.

Based upon this review, a motion was made by **Commission member Troy Thurgood to recommend approval of the Conditional Use Permit Application of Blane and Sandy Albertson as presented.**

Commission member Arlene Anderson votes to second the motion. Commission member Shane Ruebush votes to oppose the motion for the reason that he doesn't see it as an accessory dwelling with living space. Two weeks from potential code changes. Motion carries.

**CONCLUSION**

Based upon the foregoing Findings of Fact, Conclusions and recommendations, the planning and zoning procedures conducted throughout the County, the comments received at the public hearing held thereon, and the deliberation of the Planning and Zoning Commission, the Commission hereby **recommends approval** for the request for a Conditional Use Permit for an accessory building with living space.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Planning and Zoning Commission  
Madison County, Idaho

\_\_\_\_\_  
Sharon Oakey  
*Commission Chair*

Attest:

\_\_\_\_\_  
Gary Armstrong  
*Planning and Zoning Administrator*

**Adoption of Findings of Fact by the Madison County  
Board of County Commissioners**

Based upon the foregoing Findings of Fact, Conclusions and Recommendations of the Planning and Zoning Commission, and based upon the Madison County Board of County Commissioners (Board) review thereon, pursuant to Unified Development Code, Part II, Chapter 101, section 101-105 through 101-141 and Idaho State Code § 67-6509, 67-5511 *et seq.*, the Board hereby approves the Findings of Fact and Conclusion of Law presented by the Commission and approves the action based thereon.

2. The applicant's request for a conditional use permit for an accessory building with living space in a transitional agriculture zone is hereby **APPROVED**.
3. The applicant is hereby given notice that it has the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003.
4. The applicant may appeal, in writing, this decision of the Commission, as long as the appeal is submitted to the Board of County Commissioners within twenty-eight (28) days from such Commission action, per Part II, Unified Development Code, Chapter 101 General and Administrative Provisions, Article III, Appeals.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF COMMISSIONERS  
MADISON COUNTY, IDAHO

\_\_\_\_\_  
Todd Smith, *Chairman*

\_\_\_\_\_  
Brent Mendenhall, *Commissioner*

\_\_\_\_\_  
Doug Smith, *Commissioner*

ATTEST:

\_\_\_\_\_  
Kim H. Muir, *Clerk*

**CLERK'S CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this \_\_\_ day of \_\_\_\_\_, 2022. I mailed a true and correct copy of the foregoing documents to the parties named below, by the means and address below as follows:

PLACE MAILING  
LABEL HERE:

- Hand Delivery
- Facsimile
- U.S. Mail

Others, if any, please see attached sheet.

/s/ Kim H. Muir  
Clerk

## Exhibit A

October 12, 2022 Public Meeting Minutes

### Public Hearing

ALBERTSON CUP – Accessory Building with living space

**Chair:** CUP for accessory building. Blane and Sandy Albertson. Addresses the audience. Public hearing. Recommendation only. Public comment sign up instructions.

**Administrator Armstrong:** Report. Site Plan. Location. Second dwelling to property.

**Mike Allen** – representing applicants Blane and Sandy Albertson. Expresses that they are wishing to purchase a home to move onto property. Two homes will be on one property. Septic permit has been obtained after test hole. No conflicting issues with power. Shared well, separate septic.

**Troy Thurgood:** canal from south?

**Mike Allen:** directs commission to map in packet.

**Chair Oakey:** share a well, separate septic. No additional well drilled.

### PUBLIC COMMENT:

*In Favor:* NONE

*Neutral:* Kirsten Ruebush - 1893 W 5353 S.

Clarifying questions – moving home. Same well, separate septic. Neutral. Concerned that CUPs are being given on things that aren't on the same septic. Are we changing density?

*Opposed:* NONE

*Written Correspondence:* NONE

### DISCUSSION:

**Troy Thurgood:** nothing against the applicant. The way the code reads, the code allows for second dwelling. To Kirsten's point, the CUP feels like a work around. Odd to double the density without doing anything but getting a CUP.

**Shane Ruebush:** Difficulty of this conversation is that in two weeks, we will be discussing a possible change to the code for accessory dwelling units with living space. Accessory dwelling units with living space indicate there is an additional use other than just living space. Most of the ones we have looked at before include a shop or something to that nature. Not opposed to the idea. Having another house is different than having an accessory dwelling with a secondary use than living space. Difficulty approving something based on code that we have the intention of changing in two weeks.



**Troy Thurgood:** take it as what the law allows now. Consider in our conversations about changing the code. Density issues.

**Kort Black:** each one of these, the owner of the entire parcel has a vested interest in the second unit. They are not splitting it, selling it off, etc. It is closely managed and maintained. Owners of the property are interested in what happens with the secondary residence.

**Troy Thurgood:** Goes back to property rights. We have to be very careful about what we tell people can and cannot do on their property.

**Shane Ruebush:** applicant has gone through proper channels for water use and disposal. Conflict of being two weeks away from changes, and we have to look at it for what the code says now.

**MOTION:**

Troy Thurgood moves to recommend approval of the Conditional Use Permit Application of Blane and Sandy Albertson as presented.

Arlene Anderson votes to second the motion.

**Roll Call Vote**

**Shane Ruebush:** Votes no for the reason that he doesn't see it as an accessory dwelling with living space. Two weeks from potential code changes.

October 12, 2022 Albertson CUP Voting			
Roll Call	In Favor	Opposed	Excused
Arlene Anderson	X		
Clint Hansen	EXCUSED		
Eric Miller	ABSENT		
Kort Black	X		
Mark Hansen	X		
Shane Ruebush		X	
Chair Oakey	Chair		
Troy Thurgood	X		



Madison County  
**CONDITIONAL USE PERMIT**

**Planning and Zoning Recommendation:** Wednesday October 12, 2022  
**Board Approval:** Monday November 14, 2022  
**28-Day Appeal Period:** November 14, 2022-December 2, 2022

**Name:** Blane and Sandy Albertson  
**Address:** 6959 S 3100 W Rexburg ID 83440  
**Zone:** Transitional Agriculture

**Property:** RP05N39E353003, as defined by Deed Number 225352.

**Description of need for Conditional Use Permit:** request of Blane and Sandy Albertson for a conditional use permit for an accessory building with living space in a Transitional Agriculture zone.

**Conditions for Conditional Use Permit:** None.

BOARD OF COMMISSIONERS  
MADISON COUNTY, IDAHO

\_\_\_\_\_  
Todd Smith, *Chairman*

\_\_\_\_\_  
Brent Mendenhall, *Commissioner*

ATTEST:

\_\_\_\_\_  
Kim H. Muir, *Clerk*

\_\_\_\_\_  
Doug Smith, *Commissioner*

**CONDITIONAL USE PERMIT**

*Dave & Robin Wold*

Accessory Building w/ Living Space

# **STAFF REPORT**



# Madison County Planning and Zoning

## Application Summary and Staff Report

<b>Application Type:</b>	<b>CONDITIONAL USE PERMIT</b>
<b>Applicant:</b>	<b>Dave &amp; Robin Wold</b>
<b>Surveyor/Engineer:</b>	<b>N/A</b>
<b>Location:</b>	<b>976 E Butte Road, Menan</b>
<b>Date for Consideration:</b>	<b>October 26, 2022</b>

<b>Project Description:</b>	The applicant is applying for a Conditional Use Permit to construct primary residence on a 5.8 acre lot in the Menan Butte Subdivision. The parcel is Zoned Trans Ag. There is already a primary home on the lot. The building permit application is for a 1,500 manufactured home. It will be served by the existing well, and a new septic system. The proposed structure will be located in the northern corner of the lot, with its own driveway off of East Butte Road.
<b>Staff Recommendation:</b>	Staff recommends a provisional approval of the CUP, pending the currently proposed amendment to Madison County Code relative to accessory dwelling units. While the proposed building will have its own septic system, the nature of the site, especially the slope, as the new building is located downhill of the primary house, it would not make sense to require the new building to share a septic system with the main house, as effluent would need to be pumped uphill to the existing septic. Were this a smaller lot, say less than 2 acres, it may be an issue. But on a 5.8 acre lot, the lot size is conducive to the second septic. Additionally, in light of the code changes under consideration, this application would meet all of the proposed criteria of the proposed change, and would be approved administratively. The PZC may consider a provisional approval, pending approval of the proposed change to County Code relative to accessory dwelling units.

### Possible Motions

<p><b><u>Approval</u></b> I move to recommend APPROVAL of the application from Dave and Robin Wold for a Conditional Use Permit for Accessory Building with Living Space as proposed in application materials received October 4, 2022, with the following conditions:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>	<p><b><u>Denial</u></b> I move to recommend DENIAL of the application from Dave and Robin Wold for a Conditional Use Permit for Accessory Building with Living Space as proposed in application materials received October 4, 2022, for the following reasons:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>	<p><b><u>Tabled</u></b> I move to TABLE the application from Dave and Robin Wold for a Conditional Use Permit for Accessory Building with Living Space as proposed in application materials received October 4, 2022, and request additional information from the applicant, including:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>
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Description/Definition of Current and Proposed Zoning – Madison County Code Section 101-137

**Sec 101-137 Standards Applicable To Conditional Uses**

*The commission shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location will:*

1. *In fact, constitute a conditional use as established in this part for the zoning designation involved, in that it is not already defined as a permitted use;*

2. *Be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or this part;*
3. *Be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;*
4. *Not be hazardous or disturbing to existing or future neighboring allowed uses;*
5. *Be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;*
6. *Not create excessive additional requirements at public cost for public facilities or services, and will not be detrimental to the economic welfare of the community;*
7. *Not involve uses, activities, processes, materials, equipment or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;*
8. *Have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and*
9. *Not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.*

*(Prior Code, title 10, § 1.4.3; Ord. No. 384, § 1.4.3, 3-12-2012)*

**In consideration of accessory dwellings on lots within subdivisions, the following section of Madison County Code also applies**

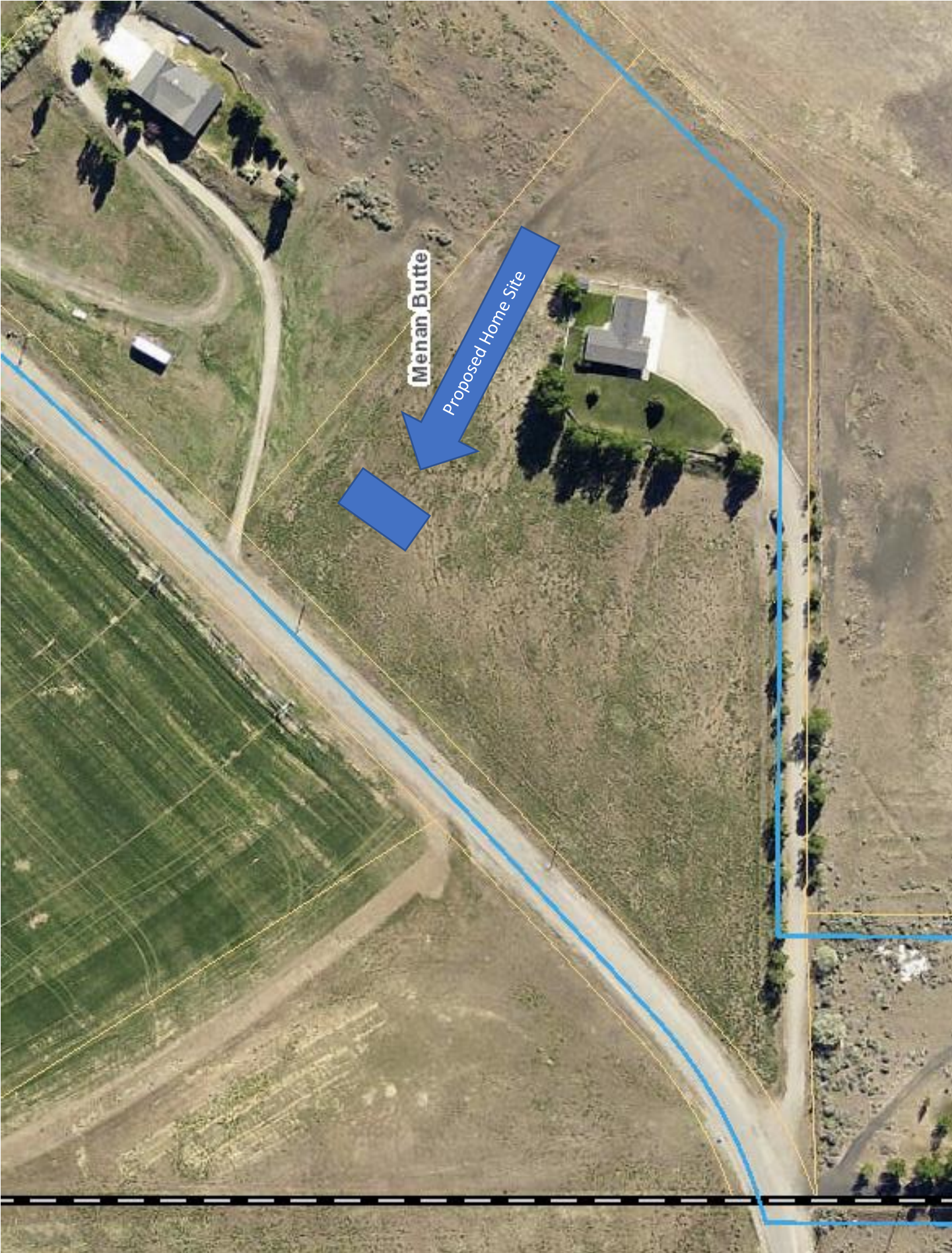
**Sec 115-63 Lots**

Lots shall conform to the following requirements:

1. *Side lot lines.* Side lot lines shall be essentially at right angles to straight streets and shall conform to the radius of curved streets.
2. *Shape.* Narrow, deep lots shall be avoided.
3. *Corner lots.* Corner lots shall have sufficient extra width to permit appropriate building setback from either streets or orientation to both streets.
4. *Uninhabitable areas.* Uninhabitable areas including lands subject to instability or flooding, or which shall otherwise be deemed to be uninhabitable, shall not be platted for residential purposes or for any other use that may increase or create a danger to health, life or property, or which may increase or create a surface failure or flood hazard. Such land within a subdivision shall be set aside for other use such as parks or other open space.
5. *Backup lots.* Lots with their rear lot line adjacent to a county road shall be prohibited.
6. ***Number of dwellings.*** There shall not be more than 1 dwelling constructed on each subdivided lot. **With a conditional use permit a detached garage may be allowed to have a living space with no more than 3 bedrooms. This will be counted as separate living space for septic sizing but septic must be part of the primary residence's septic system. This living area may only be occupied by a single family and shall only be allowed if in conformance with the covenants of the subdivision.**

Zoning – The subject property is in the Trans Ag Zone.





Menan, Butte

Proposed Home Site



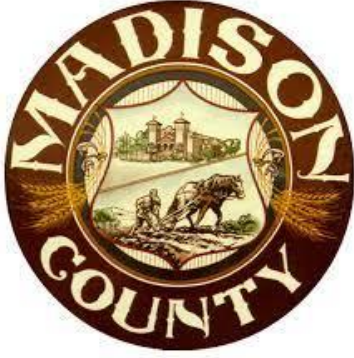
# **APPLICATION**

# **WRITTEN CORRESPONDENCE**

**UNIFIED DEVELOPMENT CODE  
UPDATE**

Accessory Building w/ Living Space

# **STAFF REPORT**



# Madison County

## Planning and Zoning

### Application Summary and Staff Report

<b>Application Type:</b>	<b>Code Change</b>
<b>Applicant:</b>	<b>Madison County</b>
<b>Date for Consideration:</b>	<b>October 26, 2022</b>

<b>Code Change Description:</b>	Madison County is proposing a change to the Uniform Development Code to allow accessory dwelling units through an administrative permitting process. This would be a change from the current process which requires a conditional use permit. The application considers a number of changes to the Code in order to provide definitions, inclusion in the land use table, changes to density language in appropriate zones, and criteria for approval in a new section of code devoted just to accessory dwelling units.
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<b>Staff Recommendation:</b>	<p>The demand for accessory dwelling units in Madison County has surged in recent years. As families consider such things as providing housing for aging parents, adult children trying to get established, or utilizing an accessory dwelling for increased income through rental, the demand for accessory units is great. In 2022 alone, several dozen applications for accessory dwellings have been received. Under current code, each requires a conditional use permit application process, which can take 6-8 weeks to complete due to public hearings and notification requirements. Upon review of this, the Planning and Zoning Commission recommends that the process be streamlined by establishing standardized criteria that can be reviewed administratively. Additionally, if criteria cannot be met and approved administratively, the Planning and Zoning Commission felt that allowing for an appeal to the Planning Commission for a waiver of certain criteria may be appropriate.</p> <p>This proposed code change is the result of multiple work sessions by the Planning and Zoning Commission, and extensive research and development by planning staff. Where this proposed change is the result of this collaborative effort, the Planning Administrator recommends approval of the proposed code change.</p>
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#### Possible Motions

<p><b><u>Approval</u></b> I move to recommend APPROVAL of the proposed changes to Madison County Code, to allow accessory dwellings to be approved through an administrative permit, as presented.</p>	<p><b><u>Denial</u></b> I move to recommend DENIAL of the proposed changes to Madison County Code, to allow accessory dwellings to be approved through an administrative permit, as presented for the following reasons:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>	<p><b><u>Tabled</u></b> I move to TABLE the proposed changes to Madison County Code, to allow accessory dwellings to be approved through an administrative permit, as presented, and request additional information including:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>
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#### **Sec 101-13 Amendment Procedures**

The board may, from time to time, amend, supplement, or repeal the regulations and provisions of this part in the manner prescribed by Idaho Code, § 31-715. A proposed amendment, supplement or repeal may be originated by the board, commission or by petition. All proposals not originating with the commission shall be referred to it for a report thereon before any action is taken on the proposal by the board.

# **APPLICATION**

## **Proposed Change to Madison County Code – Accessory Dwelling Units**

Section to be added as Chapter 109-IX – Accessory Dwelling Units

(This will appear as a subsection of Chapter 109 – Miscellaneous Provisions)

Article 109-IX - Accessory Dwelling Units

Section 109-224 – Purpose

Section 109-225 – Definitions

Section 109-226 – Permitted Uses and Zones

Section 109-227 – Administrative Permit and Application Process

Section 109-228 – Conditions of Approval

Section 109-229 – Petition for Waiver of Condition(s)

### **Article 109-IX - Accessory Dwelling Units**

#### **Section 109-224 – Purpose**

The purpose of this article is to establish a clear process and criteria for integrating accessory dwelling units as a recognized and necessary land use in Madison County. This article recognizes the need for accessory dwelling units to fill housing needs including but not limited to intergenerational family support, housing market demands, rental, and short-term rental uses. It is intended that accessory dwelling units are allowed in any residential zone, upon demonstration that such use does not compromise the health, safety and welfare of property owners in the general area of the use.

#### **Section 109-225 – Definitions**

*Accessory Dwelling Unit* means a dwelling unit that includes sleeping area, kitchen facilities, bathroom and an entrance that is separate from the primary dwelling on the lot or parcel.

*Accessory Uses and Buildings* means any use or building that is secondary to the primary permitted use both in size and type.

*Apartment* means a room or a suite of rooms in a multiple-family structure which is arranged, designed, or used as a single-dwelling unit and has complete kitchen and sanitary facilities permanently installed.

*Building, Accessory*, means a building which is subordinate to, and incidental to the principal building on the same lot, but does not include any building containing a dwelling unit (DU) as hereinafter defined.

*Duplex* means a residential structure separated into two (2) independent living units with a common owner and a shared yard. Two (2) living units in one structure with one (1) lot underneath.

*Primary Dwelling* means either the first dwelling unit constructed on a parcel or lot. If a second dwelling is constructed on the parcel or lot, the larger dwelling unit becomes the primary dwelling and the smaller dwelling unit becomes the accessory dwelling

#### Section 109-226 – Permitted Uses and Zones

Accessory dwellings and duplexes area allowed with an administrative permit in the following zones:

- Agriculture
- Agriculture/Recreation
- Residential
- Township
- Transitional Agriculture

#### Section 109-227 – Administrative Permit and Application Process

The applicant will submit an application for an “Accessory Dwelling Unit” prior to obtaining the building permit. The application will be reviewed by the Planning Administrator. If the Administrator determines that the application meets the conditions of approval, a certificate of approval will be issued. If the application does not meet any of the criteria, the Administrator will deny the application, and provide a written explanation for the denial to the applicant. The application may appeal the denial to the Planning Commission for Consideration. Upon appeal, the Planning Commission may waive any of the conditions of approval if it is determined that waiver of the conditions does not diminish the health, safety and welfare of the applicant and potentially impacted nearby landowners.

#### Section 109-228 – Conditions of Approval

The application for Accessory Dwelling Unit shall be approved if all of the following conditions are met:

1. Lot is at least 1 acre in size.
2. Accessory dwelling unit can be serviced with a single shared well with the primary residence
3. Must demonstrate approval of the proposed septic system as approved by East Idaho Public Health.
4. May be attached or detached to the primary residence, or part of an accessory building (detached garage or shop).
5. May not exceed half the size of the primary residence (including basement), or 1,500 square feet, whichever is larger. If the lot is 2 acres or larger, there is no size restriction on the accessory dwelling



6. Must remain in the same ownership as the lot and primary dwelling on the lot (may not be condominiumized).
7. No more than one primary dwelling and one accessory dwelling is allowed per lot. (For example, a basement apartment with a separate entrance would qualify as an accessory dwelling. Therefore no additional dwelling unit would be allowed on the lot.)
8. Any enforcement of the neighborhood covenants regarding accessory dwelling units is the responsibility of the Home Owners' Association and not the responsibility of Madison County. Approval by Madison County does not constitute conformance with covenants in place.
9. If the lot is in a platted subdivision, notice of the application for the accessory dwelling unit and pending building permit will be sent to all lot owners within the subdivision.

#### Section 109-229 – Petition for Waiver of Condition(s)

1. If any of the above criteria are not met, the application will be denied by the Administrator. The denial may be appealed to the Planning Commission, which may approve the application by waiving any of the conditions of approval. To appeal the decision of the Planning Administrator, the applicant shall file an "Application for Waiver of Condition(s)" with the planning department. The application will be considered as an agenda item at the next available regularly scheduled meeting of the Planning Commission.
2. An appeal of the decision of the Planning Commission may be made to the Board of County Commissioners by filing an appeal with the Planning Office. The appeal will then be considered as an agenda item at the next available regularly scheduled meeting of the Board of County Commissioners.

#### Additional Changes to Madison County Code regarding Accessory Dwelling Units

Section 101-2 – The following definitions will be added:

*Accessory Dwelling Unit* means a dwelling unit that includes sleeping area, kitchen facilities, bathroom and an entrance that is separate from the primary dwelling on the lot or parcel.

*Accessory Uses and Buildings* means any use or building that is secondary to the primary permitted use both in size and type.

*Apartment* means a room or a suite of rooms in a multiple-family structure which is arranged, designed, or used as a single-dwelling unit and has complete kitchen and sanitary facilities permanently installed.

*Building, Accessory*, means a building which is subordinate to, and incidental to the principal building on the same lot, but does not include any building containing a dwelling unit (DU) as hereinafter defined.

*Duplex* means a residential structure separated into two (2) independent living units with a common owner and a shared yard. Two (2) living units in one structure with one (1) lot underneath.

*Primary Dwelling* means either the first dwelling unit constructed on a parcel or lot. If a second dwelling is constructed on the parcel or lot, the larger dwelling unit becomes the primary dwelling and the smaller dwelling unit becomes the accessory dwelling

**Section 117-51 – Land Use Table will be amended as follows:**

Accessory building with Living Space shall be removed from the Land Use Table.

Accessory Dwelling Unit shall be added to the Land Use Table as a Permitted Use in Agriculture, Agriculture/Recreation, Residential, Township, and Transitional Agriculture zones.

**Section 117-52 – Agriculture Zone**

**Subsection (e) (3) shall be amended as follows:**

There is no minimum lot area requirement, but division of land must maintain an average of at least 16 acres per lot or parcel. ~~but overall development density shall be an average of 1 dwelling unit per 16 acres.~~

**Section 117-60 – Transitional Agriculture (TAG) Zone**

**Subsection (e) shall be amended as follows:**

*Area/density requirements.* There is no minimum lot area requirement, but overall development density shall be an average of ~~1 dwelling unit per 2 acres~~ at least 2 acres per lot or parcel

**Section 115-63 Lots (Subdivision Code)**

**Subsection (f) shall be amended as follows:**

*Number of dwellings.* Each lot may have a primary dwelling. An accessory dwelling may be built after obtaining an Administrative Permit, having proven that criteria outlined in Section 109-228 have been met. ~~There shall not be more than 1 dwelling constructed on each subdivided lot. With a conditional use permit a detached garage may be allowed to have a living space with no more than 3 bedrooms. This will be counted as separate living space for septic sizing but septic must be part of the primary residence's septic system. This living area may only be occupied by a single family and shall only be allowed if in conformance with the covenants of the subdivision.~~

# **WRITTEN CORRESPONDENCE**