



I D A H O

CITY OF DOVER – BUILDING AND PLANNING DEPARTMENT

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**STAFF REPORT
DOVER CITY COUNCIL
FILE #SUBM21-22, McAULIFFE/RYAN**

PREPARED BY: Lisa Adair and Clare Marley, AICP
City Contract Planners, Ruen-Yeager & Associates
219 Pine Street
Sandpoint, ID 83864

PROJECT DESCRIPTION: Keegan McAuliffe and Samantha Ryan are requesting a modification to the approved, recorded Pristine Heights subdivision to remove the building envelope restrictions on Lot 1 of the plat to allow future structures to meet city code minimum setbacks rather than the more restrictive building setbacks shown on the plat.

LOCATION: Pristine Heights Lot 1, located at 211 Daybreak Drive in Section 20, Township 57 North, Range 2 West Assessor's parcel number: RPD37910000010A

APPLICANT: Keegan McAuliffe and Samantha Ryan
548 Prospector Rd
Naples, ID 83847

PROPERTY OWNER: Same as applicants

APPLICANT REPRESENTATIVE: N/A

DATE APPLICATION RECEIVED: May 23, 2022

HEARING DATE: July 14, 2022

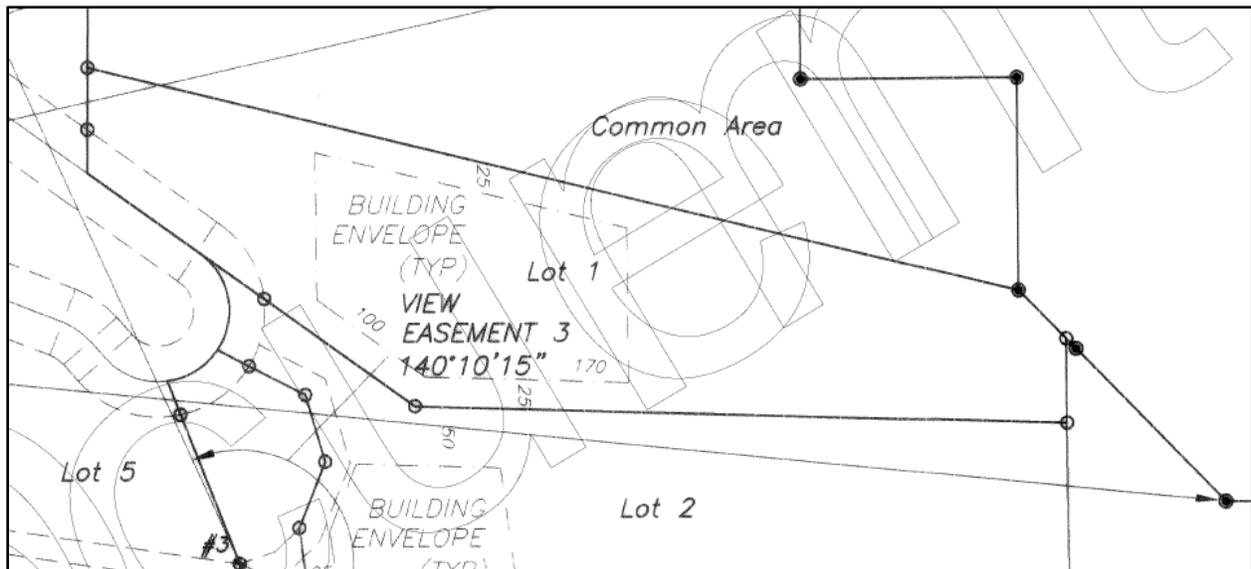
LEGAL NOTICE PROVIDED: Newspaper notice for Council: June 24, 2022;
Notice mailed to political subdivisions, media, landowners within 300' of subject tract, school district, and airport: June 28, 2022;
Site Posted: June 29, 2022.

STAFF REPORT ATTACHMENTS: Application, recorded plat
(UNDER SEPARATE COVER)

PROJECT SUMMARY:

The plat of Pristine Heights is located in the north-central section of the City of Dover, south of Pine Street. The subdivision was approved by the City of Dover in 2005 and recorded at Book 8 of Plats, Page 3, of Bonner County records in 2006.

Most of the lots within the 11-lot Pristine Heights contain view easements or building envelopes. Building envelopes are delineated on the plat. All structures must be placed within these building envelopes, as a condition of the plat. The building envelope (shown below) established 25-foot setbacks to the north and south property lines of Lot 1, where 10-foot setbacks to side yards are required by Dover City Code within the subject Rural Residential zone. A view easement affects the lots south of Lot 1, but does not encompass Lot 1. The plat label "view easement 3" refers to land within Lots 2 and 4.

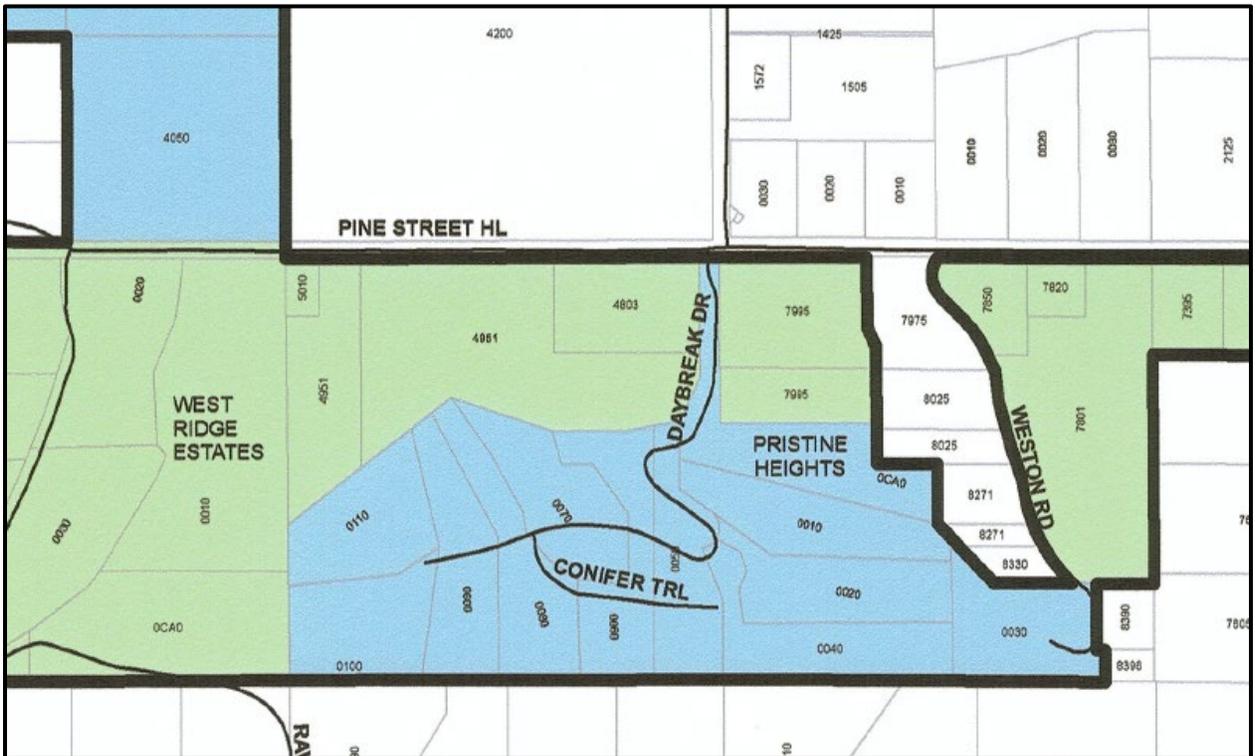


In 2006, the developers of the subdivision recorded a document appending the subdivision declaration of covenants that declared the setbacks for Lot 1 from the south and southwestern edges of Lot 1 shall be 5 feet rather than 25 feet. Although the current landowners relied upon the lifting of that restriction to plan their residential construction, the City of Dover had never given approval to amend the plat. Both the plat itself and Dover City Code (DCC) require City Council approval to amend the plat or conditions in order for them to become effective. The plat states: "...said covenants and restrictions cannot be modified as to plat approval without City Council approval of such modifications." In addition, DCC Section 11-13-1 states the terms and conditions of an approved final plat can only be modified by City Council.

The landowners are seeking relief from the restrictive plat building envelope to allow construction of a single-family dwelling meeting minimum Dover setbacks, according to the application. Although the amendment to the CC&Rs allowed a 5-foot setback, the landowners acknowledged in writing that they are aware Dover City Code Section 12-6-4 requires 10-foot side yard setbacks in the Rural Residential zone and the declaration cannot supersede city codes. Determinations of front and side yards will be made by planning staff at the time of building permit application. Information on the reasons for the original building envelope could not be located in subdivision records.



Aerial of Vicinity



Official Zoning Map, Showing Vicinity

APPLICABLE CODES:

The following codes apply to this application:

- Title 11, Dover City Code, Subdivision Regulations
- Title 11, Dover City Code, Chapter 13, Modifications
- Title 12, Dover City Code, Zoning Regulations
- Idaho Code §67-6513, Subdivision Ordinance

PROPERTY DESCRIPTION:

- A. Site acreage and description: 3 acres
- B. Access: Daybreak Drive, a private road easement as shown on the Pristine Heights plat
- C. Services: Private well and septic
- D. Environmental features: The site does not border any bodies of water and is not within a flood hazard zone. Bonner County GIS shows no streams present on this site.
- E. Surrounding uses and densities:

COMPASS	COMP PLAN DESIGNATION	CURRENT ZONING	USES/DENSITIES
Site	Compact Suburban Single-Family	Rural Residential	Vacant
North	Compact Suburban Single-Family	Rural Residential	Pristine Heights Homeowner’s Association common area
South	Compact Suburban Single-Family, County unincorporated	Rural Residential	Residential uses, 3 acre lots
East	Compact Suburban Single-Family and county unincorporated	Agriculture and County	Residential uses, 0.7-8.3 acre lots
West	Small-Scale Working Lands	Rural Residential	Residential uses, 3 acre lots

AGENCY COMMENTS:

Due to the nature of the request, this application did not need to be circulated to agencies for review and comment.

PUBLIC COMMENTS:

No written public comments had been submitted to the record at the time of this report.

STANDARDS REVIEW:

Zoning standards	Evidence of record, findings
Title 11, Chapter 14, Modifications, and Title 11, Chapter 4 – Processing Applications	A public hearing is required before City Council for all modifications that are not classified as minor. Notice has been provided at least 15 days prior to the public hearing in the official newspaper. The city mailed notice to landowners within 300 feet of the subject property. An application was received and processed in accordance with the public hearing requirements of Dover City Code Title

Zoning standards	Evidence of record, findings
	<p>11. The site has been posted for the City Council public hearing in accord with state and city requirements. Consideration of modifications shall be confined to the application request.</p>
<p>Former Title 11, Chapter 3, Standards for Approval A. Water Supply. Definite provisions Water Supply: Definite provisions have been made for a water supply system that is adequate in terms of quantity and quality for the type of subdivision proposed. B. Sewer Treatment: Adequate provisions have been made for servicing or treatment of sewerage by a public sewage system or other treatment as approved by Panhandle health district and the city. C. Street Plan: Proposed streets are consistent with the transportation element of the comprehensive plan. D. Hazardous Soil Conditions: All areas of the proposed subdivision which involve soil or topographical conditions presenting hazards have been identified and that the proposed uses of these areas are compatible with such conditions. E. Zoning: The area proposed for subdivision is zoned for the proposed use and the use conforms to other requirements found in the city ordinances. F. Mitigation For Impacts: The developer has made adequate plans to ensure that the community will bear no more than its fair share of costs to provide services by furnishing land or providing other mitigation measures for off-site impacts to streets, parks and other public facilities within the community. It is the expectation that in most cases, off-site improvements will be dealt with through the development agreement. (Section 11-3-11.)</p>	<p>No changes are being made to the proposed development of the site with private sewage disposal and private water services.</p> <p>There are no extensions or alterations of streets proposed.</p> <p>The division of Pristine Heights occurred in 2006 with the recording of the plat. The boundaries of the lots are not proposed for change.</p> <p>The site is zoned Rural Residential.</p> <p>The minimum setbacks for the Rural Residential zone are 25 feet for the front and rear yards; 10 feet for side yards, and 25 feet for side yards flanking a street.</p> <p>The modification is limited to a request to amend the plat building envelope to be the same as the minimum standards for the City of Dover.</p>
<p>Title 11 Chapter 13 Modifications The terms and conditions of an approved final plan may only be modified by city council Modifications shall be considered by city council Review and action to be in accord with procedures and standards of original plat application</p>	<p>A public hearing has been scheduled before City Council.</p> <p>The request is limited to removing the building envelope restrictions for Lot 1 of Pristine Heights.</p>
<p>Title 12- Standards for Zoning District. Rural Residential Minimum setbacks for Rural Residential zoning district: Front Yard: 25' Side Yard: 10' Flanking Street: 25' Rear Yard: 25'</p>	<p>An approved modification to the Pristine Heights CC&Rs allows for the setbacks of Lot 1 to be 5' from the south and southwestern property lines. Staff notes that the setback standards of Dover City Code section 12-6-4 prevail over this modification.</p> <p>The CC&Rs did not modify the north building envelope line.</p>

STAFF ANALYSIS:

The landowners are requesting a modification to the approved, recorded Pristine Heights subdivision to remove the building envelope restrictions on Lot 1 of the plat to allow future structures to meet city code minimum setbacks rather than the more restrictive building setbacks shown on the plat. Dover City Code section 11-13-1 allows the City Council to modify the terms and conditions of an approved final plat by City Council.

Change to the Pristine Heights CC&Rs were recorded at instruments #710176 on August 7, 2006, and #944595 on September 5, 2019. These expanded the building envelope of Lot 1 to be set back 5 feet from the south and southwestern property lines. Staff notes that this is a modification to the CC&Rs and a modification to the plat requires city approval. Staff also notes that while the modification to the CC&Rs allows for a 5’ setback distance, the setback distances of Dover City Code Section 12-6-4 prevail. A reduction to less than the minimum setback standard would require a variance. This application cannot override Dover setbacks.

DRAFT MOTIONS FOR GOVERNING BOARD:

MOTION TO APPROVE: I move to approve File #SUBM21-22, a request to modify the building envelope for Lot 1 of Pristine Heights, as shown on the recorded plat, finding that the request is in accord with the general and specific standards of the City of Dover as listed in the staff report reasoned statement and based upon the evidence of record and testimony received. I further move to adopt the findings and standards, and conditions of approval (as written or as amend as follows...) The actions to be taken to obtain approval are to complete the conditions of approval as adopted.

MOTION TO CONTINUE: I move to continue this file #SUBM21-22 to [date, time and place] to allow for additional time for [public comment, additional information, revisions etc.].

MOTION TO DENY: I move to deny File #SUBM21-22, a request to modify the approved building envelope for Lot 1 of Pristine Heights, as shown on the recorded plat, finding that it is not in accord with the general and specific standards of the City of Dover, I further move to adopt the findings and standards (as written or amended) and the following reasoned statements: [READ STATEMENTS, SPECIFYING WHICH FINDINGS SUPPORT APPROVAL OF THE FILE AND WHICH FINDINGS SUPPORT DENIAL.] The actions that could be taken to obtain approval are to:

1. Submit a new application that meets the standards of the City of Dover; or
2. Pursue such remedies as provided for in Title 67, Chapter 65, Idaho Code.

REASONED STATEMENTS:

The staff report and subsequent evidence of record and received at the hearing provide the basis for the findings and reasoned decision. Based upon the findings, the Dover City Council concludes the plat modification **IS IN ACCORD** with the following standards:

- A. Water Supply: Definite provisions have been made for a water supply system that is adequate in terms of quantity and quality for the type of subdivision proposed.
- B. Sewer Treatment: Adequate provisions have been made for servicing or treatment of sewerage by a public sewage system or other treatment as approved by Panhandle health district and the city.

- C. Street Plan: Proposed streets are consistent with the transportation element of the comprehensive plan.
- D. Hazardous Soil Conditions: All areas of the proposed subdivision which involve soil or topographical conditions presenting hazards have been identified and that the proposed uses of these areas are compatible with such conditions.
- E. Zoning: The area proposed for subdivision is zoned for the proposed use and the use conforms to other requirements found in the city ordinances.
- F. Mitigation For Impacts: The developer has made adequate plans to ensure that the community will bear no more than its fair share of costs to provide services by furnishing land or providing other mitigation measures for off-site impacts to streets, parks and other public facilities within the community. It is the expectation that in most cases, off-site improvements will be dealt with through the development agreement. (Section 11-3-11, DCC)

CONDITIONS OF APPROVAL:

1. The approval of the modifications to the plat affecting the building envelope shall not superseded the minimum zoning district standards and setbacks of Dover City Code.
2. The amendment of the building envelope for Lot 1 of Pristine Heights shall become effective upon the recording of an affidavit from the City of Dover confirming the approval of the modification.
3. The applicants shall pay to the City of Dover all fees incurred to the city for the processing of the application and affidavit prior to the recording of the document.