1. Minutes: July 14, 2025

   Documents:

   7-14-25 BOA MINUTES.PDF

2. APP25-002:
   To Approve the Reasoned Statement of Relevant Criteria and Standards for the Appeal of Zoning Administrators Interpretation of the Zoning Ordinance

   Documents:

   7.14.2025 BOA REASONED STATEMENT (FINAL).PDF

IDAHO FALLS
Community Development Services

Planning Division
Office (208) 612-8276

BOARD OF ADJUSTMENT SPECIAL MEETING

July 14, 2025

Council Chambers
680 Park Ave

Members Present: Nathan Kennedy - Chair, Ron Johnson - Vice-Chair, Scott Larson

Staff Present: Naysha Foster, Current Planner, Michael Kirkham, City Attorney, Jacob Beck, Assistant City Attorney

Call to Order: Nathan Kennedy called the meeting to order at 5:32 p.m.

Appeal

App25-002: Appeal of Zoning Violation.

Applicant: Alexander Scott Kingsbury, the applicant and occupant of 1796 Charlene Street, Idaho Falls, ID, addressed the board, stating this is a quasi-legal proceeding and not a court of law which works out because he is not a lawyer. The city has a lawyer they can use against him. He said that he does not get to ask questions about not getting to face his accuser. He doesn't get to raise the question of why he must pay to have the right to defend himself. Kingsbury stated that the only thing that he has are the record that was provided to him and two points of discussion. Kingsbury clarified and corrected prior hearing records, asserting he remained calm and respectful in all interactions, contrary to previous claims. He disputed the city's characterization of the lawn as unmanaged, explaining it is intentionally cultivated, though non-traditional. He cited the Idaho Right to Farm Act, arguing it protects their activities and supersedes local ordinances declaring agricultural uses a nuisance. Kingsbury emphasized they are not growing anything illegal or hazardous and that similar uses (e.g., gardens, chickens, fruit trees) exist throughout the city without enforcement. Kingsbury questioned why they are being targeted while others are not and suggested it may be due to their past defense against false accusations. He concluded by stating he believes the law is on their side and that they are not harming anyone.

Foster presented the staff report, a part of the record.

Larson sought clarification regarding the interpretation of agricultural use in residential zones. He referenced current landscaping trends where residents replace traditional grass lawns with flowers or other vegetation. Larson asked whether, under the ordinance, it would be a violation if a resident grew produce in their yard—not for personal consumption, but to sell or give away at venues like a farmer's market. The question aimed to understand how such activity would be classified and whether it would be permitted under the same zoning regulations.

Foster clarified that in a previous hearing, the property in question was already determined to be used for agricultural (non-ornamental) purposes, which is not an allowed use in the R-1 (single dwelling

residential) zone. She emphasized that the appeal body interprets the code, and a prior interpretation established the property's use as agricultural, thereby making it non-compliant with zoning regulations.

Jacob Beck, Assistant District Attorney, provided a brief legal clarification regarding the Right to Farm Act. He emphasized that the Act must be interpreted in its entirety, not selectively, and that its primary legislative intent is to protect existing agricultural operations from being declared nuisances as urban areas expand around them. Beck cited multiple Idaho Supreme Court cases (including *Whitted v. Canyon County*, *Payne v. Scarr*, and *McVickers v. Christiansen*), Beck clarified that the Act is not meant to justify new or incompatible agricultural operations in long-established residential zones. He pointed out that the R-1 zoning of the property has existed for over 67 years, and there has been no recent urban encroachment—the change is occurring on the subject property itself**,** not in its surroundings. Therefore, he argued, the Right to Farm Act does not apply in this case.

Kingsbury acknowledged that the property has long been zoned residential but argued that this fact is irrelevant under the Right to Farm Act. He stated he intentionally omitted references to provisions about agricultural land later incorporated into city limits because those sections do not apply to their situation. Instead, he emphasized that the Act protects any agricultural operation conducted using generally recognized practices from being declared a nuisance—regardless of when it was established. Since the board previously deemed their use as agricultural, the operation is existing and active, and, he argued, therefore protected**.** Kingsbury disputed claims that their use of the land poses any public health or safety threat, suggesting that "unless someone is allergic to alfalfa," there is no harm. He urged the board to apply the law in full, not selectively, and accused the city of inconsistent enforcement**,** noting that other residents maintain gardens, fruit trees, or overgrown yards without issue. Kingsbury concluded that the city is "picking and choosing" whom it enforces these standards against, and that this selective enforcement is unfair.

Johnson asked Kingsbury whether the vegetation on the property was in violation of the city's ten-inch height limit for plant growth at the time it was inspected. The question sought to clarify if the yard complied with city code regarding maximum allowable plant height. Kingsbury stated he was never informed when the city inspected the property and has no knowledge of how or whether measurements were taken. He speculated the inspection may have been visual from a distance and noted that he does not regularly measure the plants**.** Kingsbury explained that he mowed the yard once since the last appearance before the board, and it was under 10 inches afterward. He emphasized that the 10-inch limit pertains to the weed ordinance**,** and the board previously found no violation of that ordinance. Kingsbury concluded by saying he mows the vegetation when it is ready for harvest, based on advice from someone with experience in horse feed.

Larson referenced photographic evidence showing the property's transformation since 2015—from a traditional yard with trees and grass to its current state with alfalfa planted. Larson asked Kingsbury to clarify whether he owned or occupied the property during the time it had a conventional lawn, or if they acquired it later, specifically in 2024. The question aimed to establish when the change in land use occurred relative to the appellant's ownership. Kingsbury confirmed he did not acquire the property in 2024 and that trees were present in the front yard

when they purchased it**.** He explained that due to previous sewer line issues resulting from roots, they chose to remove the trees as a preventative measure.

Board Discussion:

The Board expressed concern that the appellant's property is the only one in the neighborhood not complying with city codes, making it an unusual and isolated case. They noted a perceived unwillingness by the appellant to comply with regulations and acknowledged the frustration related of non-compliance. The property is in an R-1 residential zone where agriculture is not allowed**,** and that the neighborhood has been residential for a long time—not recently converted from farmland. While recognizing the value of personal gardening and its benefits to individuals and the community, the Board stressed the importance of regulation and noted that activities outside these rules are problematic. The Board agreed with the city's position on this matter, acknowledging the appellant's frustration but upholding that agricultural use in R-1 is a clear violation of city code 5-8-11. The Board concluded that the appellant's use had been previously identified as agricultural and that the violation is established under state law and local ordinance.

Johnson made a motion to deny the appeal. Larson seconded the motion. Kennedy, yes; Johnson, yes; Larson, yes. The motion passed unanimously.

Kirkham explained the process for finalizing the board's decision. The draft will be prepared by staff and brought back to the board for review and approval at a future meeting. Board members will have the opportunity to request edits to ensure the decision accurately reflects their intent. This draft aims to capture the board's articulated reasoning clearly before finalizing the official ruling.

Adjourned at 6:15 p.m.

Respectfully Submitted,
Ann Peterson, Recording Secretary

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS

AN APPEAL FROM THE ZONING ADMINISTRATOR TO OVERTURN THE INTERPRETATION OF THE ZONING ORDINANCE AND WEED ORDINANCE, AT 1796 CHARLENE STREET.

WHEREAS, the applicant filed an application for the appeal on June 27, 2025; and

WHEREAS, this matter came before the Idaho Falls Board of Adjustment (the "Board") during a duly noticed public meeting on July 14, 2025; and

WHEREAS, having reviewed the application, including all exhibits entered and having considered the issues presented:

I. RELEVANT CRITERIA AND STANDARDS

1. The Board considered the request pursuant to City of Idaho Falls (the "City") Comprehensive Plan, the City's Zoning Ordinance, the Local Land Use Planning Act, and the Right to Farm Act.
2. 1796 Charlene Street, Idaho Falls, Idaho (the "Property") is currently zoned R1, Single Dwelling Residential, and has been for over 65 years.
3. The Planning and Zoning Department sent a violation letter to the occupants of the Property regarding a violation of the Section 11-2-3 of the Comprehensive Zoning Ordinance of Idaho Falls City on June 13, 2025.
4. On June 27, 2025, Alexander Kingsbury (the "Appellant") applied for an appeal to the Board for its interpretation of the Zoning Ordinance.
5. In a previous appeal held on May 29, 2025, regarding an alleged violation of the City's code that pertains to litter and weed control (the "Weed Ordinance"), the Appellant stated that he was growing alfalfa in his yard, and proclaimed that it is not a weed. The Appellant defended growing alfalfa instead of grass within his front yard, claiming that it is an ornamental plant and that he likes the look of alfalfa over turf grass. The Appellant additionally claimed he had an agriculture purpose for the alfalfa, which is another defense in the Weed Ordinance, in that he feeds the alfalfa to his horses that reside on a ranch off his Property.

   The Board heard from both Code Enforcement and the Appellant on this matter. The Board did not agree with Appellant that the alfalfa was an ornamental grass. However, the Board determined that the growth of alfalfa to feed to animals was considered an agricultural purpose according to the way the Weed Ordinance is written and, on that basis, overturned the weed violation. Wherein the letter of violation solely focused on whether the Property violated the Weed Ordinance, the Board was advised to solely focus on a possible Weed Ordinance violation. The Appellant was advised that possible other violations may exist from using one's yard for agricultural purposes in an R1 zone – but for the purposes of that May 29, 2025 hearing the R1 zone criteria was not addressed by the Board.
6. Shortly following the May 29, 2025 hearing, the City sent a letter of violation to the owners of the Property, indicating that the Property was in violation of the City's Zoning Ordinance because of the agricultural use that was taking place in an R1 zone.
7. On July 14, 2025, the Appellant claimed that the growth of alfalfa on his property is protected under the Right to Farm Act and that the Right to Farm Act supersedes local ordinances. The Appellant also conceded that he omitted references to the Right to Farm Act because he did not believe that those

omitted sections pertained to his case. However, when reviewing the entirety of the Right to Farm Act, the Right to Farm Act specifically protects *existing* agricultural operations from becoming a nuisance when urbanization and other nonagricultural activities develop around *already existing farmland*. City Staff demonstrated that Appellant's Property has been subdivided, zoned, and developed as residential for the past 67 years. The Right to Farm Act protects existing farmland as it becomes encroached by urban areas. The Act does not provide a means for a property owner to transform a developed, and long established, residential neighborhood into farmland.

8. The Board determined that the agricultural use of growing alfalfa in R1 is a clear violation of Section 5-8-11 of the City Zoning Ordinance and unanimously voted to deny the Appellant's appeal. The Board came to this decision for the following reasons:

    a. The Right to Farm Act protects existing rural farmland and agricultural operations from new and encroaching urban areas with nonagricultural uses.

    b. The Right to Farm Act does not apply in this instance because the Property was already within a long-established residential zone that has had no agricultural activity for approximately sixty-seven (67) years. In addition, this residential zone is completely surrounded by urbanized development. Because the Property is not an existing agriculture operation threatened by urbanization, the Right to Farm Act does not apply.

    c. All of the houses surrounding the Property are in compliance with the Zoning Code and consist of residential lots. To allow the Property to conduct agricultural activity within its front lawn, in violation of the Zoning Code, unfairly and unlawfully burdens other law abiding property owners.

    d. Pursuant to the Zoning Code Table 11-2-1, an R1 zone cannot have an agricultural use. The Property has been in a residential zone for many years. The only residential zone that permits agricultural uses is the Residential Estate (RE) zone. The RE Zone permits limits "limited agricultural uses." Zoning Code 11-3-3(A). Even in the RE Zone, agricultural uses are "limited for the purpose of providing family food and for the use of those *residing on the premises*. . . . "[1] Zoning Code 11-2-6(D) (emphasis added). The Appellant, however, is growing alfalfa that he transports from the premises. Even if Appellant's property was zoned in the RE Zone, Appellant's use is not consistent with the "on premises" use requirement.

    e. The Board recognizes that "main" or "primary" uses generally authorizes uses that are considered an integral part of the "primary" use. *See Primary and accessory uses*, 8 MCQUILLIN MUN. CORP. § 25:154 (3d ed.). Such integral, but subordinate, uses are sometimes referred to as an "accessory" uses. *Id.* The City's Zoning Code also recognizes accessory uses. Zoning Code 11-7-1 ("Accessory Use - A use that is incidental and subordinate to the principal use, conducted upon the same property. The accessory use must be a permitted use in the designated zoning."). The Appellant argues that the Zoning Administrator's interpretation of the Zoning Code that his alfalfa field is a prohibited agricultural use ignores the fact that many residential properties have gardens. The Zoning Administrator's interpretation, the Appellant posits, would render the Zoning Code absurd as it would make every garden within the City illegal.

    f. While the Board agrees with Appellant that gardening is an accessory use that is incidental and consistent with residential uses, in this case, Appellant's activity far exceeds beyond mere gardening. Appellant has converted the entire front portion of the Property into an alfalfa field. The Appellant has gone as far as to remove mature trees and all other vegetation in order to

[1]The Board does not interpret it the Zoning Code 11-2-6(D) the same as the staff report and finds that the "limited agricultural uses" is specific to a use that promotes the main residential use of the property. Nevertheless, as explained in paragraph 8.d. of this Reasoned Statement, such uses are only permissible within RE zones.

more efficiently use the property as an agricultural operation. These material changes to the property are inconsistent with the other residential uses present within the R1 Zone.

Rather than a simple, individual-accessory use garden, where the garden's products would be used to support the residential uses on the property itself, Appellant harvests the alfalfa and transports the harvest to support his off-site horse husbandry. This off-site purpose erodes against Appellant's argument that the alfalfa agricultural operation is an accessory garden use. The alfalfa is clearly not supporting the residential use of the Property. In other words, the line between a permitted accessory garden use and a prohibited agricultural operation is whether the produce is incidentally *supporting the primary use of the Property as a residence.* As the Appellant's use of the Property does not promote or support the allowed residential uses permitted under the R1 zone, the Board agrees with the Zoning Administrator's interpretation that the City's Zoning Code prohibition against agricultural uses within R1 zones prohibits Appellant's alfalfa agricultural operation.

II. DECISION

Based on the above Reasoned Statement of Relevant Criteria, the Board of Adjustment of the City of Idaho Falls upholds the violation as presented.

PASSED BY BOARD OF ADJUSTMENT OF THE CITY OF IDAHO FALLS

THIS _____ DAY OF _____, 2025

_____

Nathan Kennedy – Chair

Pursuant to Zoning Code 11-6-4(C),the Appellant, and other owner(s) of the Property, may appeal this decision of the Board by filing a written notice of appeal with the City Council within fourteen (14) days of the date of this written decision. The written notice of appeal shall be first filed with the Zoning Administrator and shall set forth objections to the decision made by the Board. The Zoning Administrator will then forward the notice of appeal to the City Council, along with this written decision made by the Board.