



Community Development Services

Planning Division
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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**