



**STAFF REPORT**  
**BURNS CONCRETE VARIANCE REQUEST TO ALLOW**  
**A 75-FOOT HIGH STRUCTURE IN THE**  
**DRIGGS AREA OF CITY IMPACT**

Prepared August 17 for the Board of County Commissioner's  
Public Hearing of September 13, 2012

**APPLICANT:** Burns Holdings, LLC.  
**LANDOWNER:** Burns Concrete, Inc.  
**APPLICABLE CODE:** Teton County Code- Title 7 Chapter 1: Driggs Area of City Impact Ordinance; Section 7-1-4 (A-2) which specifies that the "City of Driggs Zoning Regulations" -Tile 9, Driggs City Code shall apply to properties within the designated Area of City Impact.  
**LOCATION:** 1723 N. Hwy; appr. ½ mile north of the Driggs Airport entrance  
**LEGAL DESCRIPTION:** Lots 1BE and BW Block 2 of Teton Peaks View Subdivision  
**PROPERTY SIZE:** 6.5 acres for the two adjacent parcels owned by Burns Concrete  
**VICININTY MAP:**



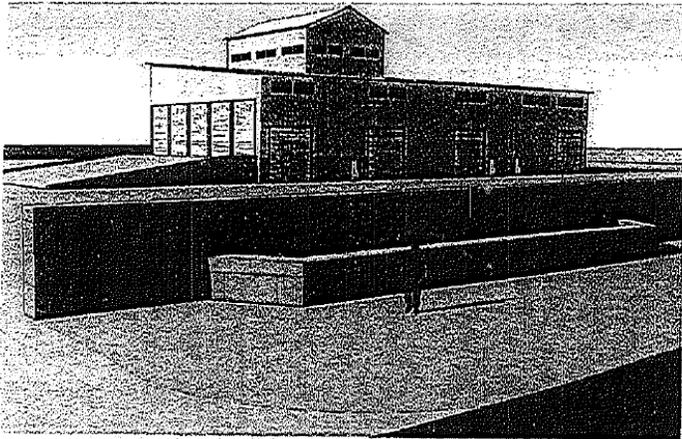
**ZONING:** Driggs Area of City Impact -M-1 (Conditional M1 zoning granted for a batch plant, per development agreement recorded #191250)  
**APPLICANT REQUEST:** A variance request pursuant to the Driggs City Code Section 9-7E (M1 Building Height). The Driggs City Code specifies a height limit of 45-feet, with a 20% increase possible. The application proposes a concrete batch plant structure that is 75–feet in height.

**CITY OF DRIGGS PLANNING & ZONING COMMISSION RECOMMENDATION:**  
On July 11, 2012, all five of the City of Driggs P & Z Commissioners voted to recommend denial of the Burns Concrete height variance application "based on the Driggs City Code and the applicant's inability to show undue hardship because of the characteristic of the site."

**BACKGROUND INFORMATION:**

- In 2007, Burns Concrete applied to rezone the subject property from C-3 (Service and Highway Commercial) to M-1 (Light Industrial). The rezoning would allow an industrial land use that was not permitted in the C-3 zone. The applicant applied for the re-zone approval in order to ultimately build and operate a ready-mix concrete manufacturing facility.
- The Driggs Planning and Zoning Commission held a public hearing and recommended approval of a conditional rezoning of the property. At that point in time, the critical issues focused on were the general considerations about the proposed use of a concrete batch plant. No CUP or variance application to the Driggs building height restrictions was applied for nor decided upon during the rezoning hearings.
- The Board of County Commissioners approved a conditional rezoning that restricted the M-1 uses to a concrete batch plant facility. A Development Agreement was executed which allowed for a temporary concrete batch plant to be erected and to commence operations. The temporary plant would facilitate and support the construction of a more substantial permanent facility, pictured below. The 65-foot cylindrical structure currently erected on the property is the temporary batch plant, not the permanent facility. Having obtained the M-1 zoning for the use, the applicant would have to submit a Conditional Use Permit application in order to permit the permanent facility to be built.

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**VIEW AT CASPER DRIVE**

- The City of Driggs Planning and Zoning Commission held a public hearing for the Burns Concrete permanent batch plant CUP. They recommended approval of the CUP.
- When the Board of County Commissioners held the Burns Concrete CUP public hearing, they voted to deny the application to build a 75 foot tall building. There are lengthy findings of fact and conclusions of law that support their decision.
- The denial of the Burns Concrete CUP became the subject of a lawsuit with the County. In brief, the court found that exceeding the 45-foot height limit in the M-1 zone would require that a variance be specifically granted.

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- Following the court ruling, Burns Concrete applied for a variance. The variance application being considered now is subject to the standards of review enumerated in the Driggs City Code. The City height regulations are printed in the July 11 staff report to the Driggs Planning & Zoning Commission. Also, the City’s variance criteria are taken directly from the Idaho State Statute. The applicant must establish that there is an undue hardship *because of the characteristic of the site* and that the variance is not in conflict with the public interest nor the general land or conditions in the vicinity of the application.

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- On July 11, 2012, all five of the City of Driggs P & Z Commissioners voted to recommend denial of the height variance application. Their recommendation was “based on the Driggs City Code and the applicant’s inability to show undue hardship *because of the characteristic of the site.*”



Burns site east of Highway 33

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**APPLICATION MATERIALS:**

A site plan and all relevant application materials was submitted, these include: the attached Burns Concrete site plan, the City variance application, narrative of responses to the variance standards, and a Development Agreement-Instrument 191250. The required application fee for a project located within the Area of City Impact has been paid.

**APPLICATION NOTIFICATION REQUIREMENTS:**

1. A Public Notice of this variance application’s Public Hearing was published in the Teton Valley News.

2. A written notice of this application and the associated Public Hearing was mailed to property owners within 300 feet of the property boundary of the subject property.
3. The site was posted with the variance notification of the Public Hearing to be held.

**VARIANCE REVIEW CRITERIA: (Driggs City Code)**

- A. *“A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site”.*
- B. *“The variance is not in conflict with the public interest nor the general land or conditions in the vicinity of the application.*

**PUBLIC COMMENTS:**

The public hearing and notice requirements have been met in accordance with the City of Driggs and Teton County requirements as well as Idaho Code Title 67, Chapter 65 § 67-6509, 67-6511 and 67-6516.

The City of Driggs Planning and Zoning Commission held their public hearing on July 11, 2012 and public comment was provided to the Commission. The comments from four citizens were placed on the public hearing record and the City staff report and meeting minutes are attached. All four citizens spoke in opposition to granting the variance.

**DRIGGS PLANNING & ZONING COMMISSION CONCLUSIONS:**

*“The variance application should be denied based on the finding that there are no unique characteristics of the site that have been presented which can be found to cause undue hardship to Burns Holding in its effort to construct a 75-foot concrete batch plant. Subsequently, the question of whether the proposed concrete batch plant would conflict with the public interest or general land conditions in the neighborhood does not need to be addressed again by the Commission”.*

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All five of the City of Driggs P & Z Commissioners voted to recommend denial of the Burns Concrete height variance application.

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**BOARD OF COUNTY COMMISSION ACTIONS:**

- A. Approve the variance application as requested in the application, having provided the reasons and justifications for the approval.
- B. Approve the e variance application with modifications to the application request, or adding conditions of approval, having provided the reasons and justifications for the approval and for any modifications or conditions.
- C. Deny the variance application request and provide the reasons and justifications for the denial.

**COUNTY PLANNING STAFF RECOMMENDATION:**

ACTION "C"- denial

**Suggested motion:**

Having found that the no unique characteristic of the site on the subject property has been established as a cause for undue hardship;

[And having found that the variance is in conflict with the public interest and the general land or conditions in the vicinity of the application.](#)

And having found that the reasons and justifications for denying said variance are enumerated and documented in the City of Driggs report of July 11, the Driggs Planning & Zoning recommendation, the public hearing record, and in the public comments received;

I recommend denial of the Burn Concrete height variance application.

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Attachments: City of Driggs packet dated July 25, 2012; [Driggs Code section on Variances](#)

End Staff Report: Curt Moore- County Staff Planner -