BOARD of ADJUSTMENT

Joe Bazzoli — Commission Chair

~Agenda~

Leah Carlson — Staff Liaison

http://www.ci.moscow.id.us/354/Board-of-Adjustment

Tuesday — **Council Chambers**

7:00 PM

December 4, 2018 — **206 E 3rd Street**

1. Approval Of Minutes From November 19, 2018

   ACTION: Approve minutes as presented; approve minutes with amendments; or provide staff further direction.

   Documents:

   MINBOA20181119.PDF

2. Public Hearing: Proposal For Variance At 951 S Meadow Street – LUP2018-0033

   Variance application to reduce the required 5-foot side yard setback to 0 feet for an existing garage located at 951 S Meadow Street within the Moderate Density, Single Family Residential (R-2) Zoning District per MCC 4-4-4.

   ACTION: Conduct the public hearing for the proposed Variance and upon consideration of any testimony presented, approve the Variance without conditions and direct Staff to prepare a reasoned statement of relevant criteria and standards; or approve the Variance with conditions as recommended by staff and direct Staff to prepare a reasoned statement of relevant criteria and standards; or deny the Variance and direct Staff to prepare a reasoned statement of relevant criteria and standards; or take other action as deemed appropriate.

   Documents:

   VARIANCE.PDF

3. Board Communications

4. Other Business

NOTICE: Moscow City Council Commission meetings can be televised, videotaped and/or

recorded. Individuals attending the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact the City Clerk, at (208) 883-7015 or TDD 883-7019, as soon as possible so that arrangements may be made.

BOARD of ADJUSTMENT

Joe Bazzoli
Commission Chair

Leah Carlson
Staff Liaison

boa@ci.moscow.id.us

208.883.7095

http://www.ci.moscow.id.us/354/Board-of-Adjustment

~Meeting Minutes~
November 19, 2018

The meeting was called to order at 5:36 PM

MEMBERS PRESENT: Mark Monson, Vice Chair; Annette Bieghler, Steve Bush, Marshall Comstock, Tim Thomson

MEMBERS ABSENT: Joe Bazzoli, Laurene Sorenson

STAFF IN ATTENDANCE: Mike Ray, Anne Peterson

1. Approval of Minutes from November 13, 2018.

Thomson moved approval of the minutes as presented.

RESULT:	**ACCEPTED [UNANIMOUS]**
MOVER:	Thomson
SECONDER:	Bush

Motion carried by acclamation. Monson made a point of acknowledging two citizens in the audience.

2. Approval of Relevant Criteria and Standards for Property Located at 1400 E 7th Street – LUP2018-0023

Comstock moved approval of the Relevant Criteria and Standards as presented.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Comstock
SECONDER:	Thomson

Motion carried by roll call vote.

3. Board Communications

Next hearing for a Variance application is scheduled for Tuesday, December 4th.

Adjournment

The meeting adjourned at 5:41pm.

_____ _____

Mark Monson, Vice Chair Date

DRAFT

COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

HEARING DATE: Tuesday, December 4th, 2018

GENERAL INFORMATION

Hearing Body: Board of Adjustment

Subject: Variance application to reduce the required 5-foot side yard setback to 0 feet to accommodate for an existing garage located at 951 S Meadow Street within the Moderate Density, Single Family Residential (R-2) Zoning District per MCC 4-4-4.

Attachments:
A. Public Hearing Notice – published in the Moscow-Pullman Daily News on Saturday, November 24th, 2018

B. Variance Application

C. Site Plan and Legal Description

D. Relevant Criteria and Standards Worksheet

Prepared by: Leah Carlson, Planner I

STAFF REVIEW

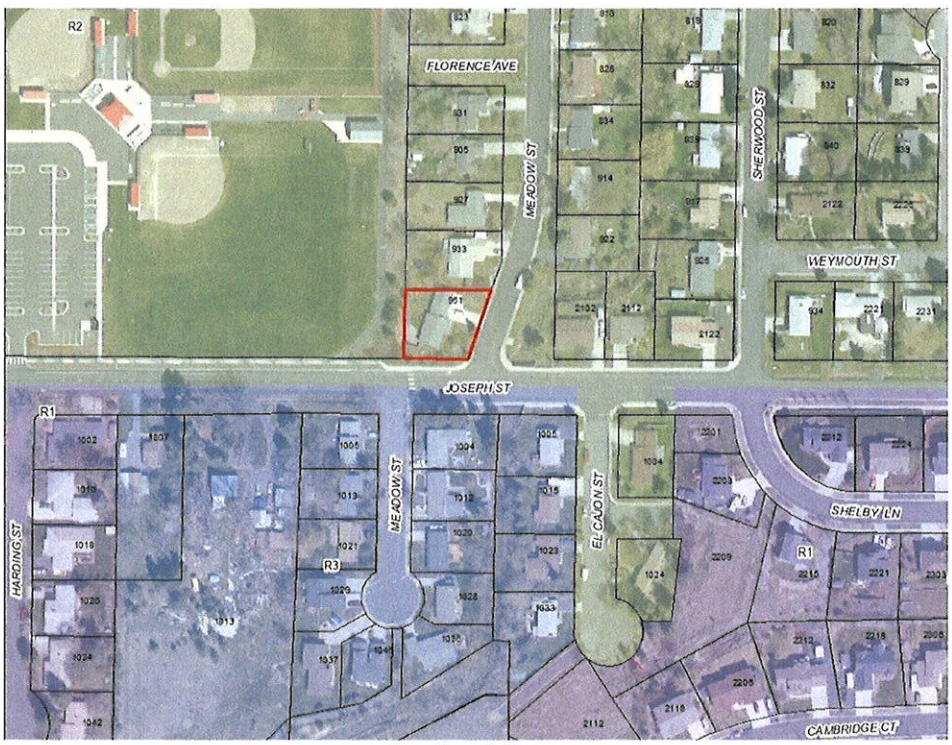
Proposal: The applicant, John Davis, is requesting a variance to reduce the required 5-foot side yard setback to 0 feet for an existing garage located at 951 S Meadow Street within the Moderate Density, Single Family Residential (R-2) Zoning District.

Background: On May 15, 2017, Moscow City Council granted a lot line adjustment allowing the applicant to move their northern property line 5 feet to the north, which allowed the applicant to construct a garage addition. The adjacent property owner subsequently quitclaimed the 5-foot strip of land to the applicant. In the process of selling the property, the applicant found that the mortgage company was not aware of the quitclaim transaction and is now requesting the applicant recast their mortgage. This process typically takes 60-90 days, which is a timeframe that compromises the sale of the home. As an alternative to recasting their mortgage, the applicant is requesting a variance, which would allow the expanded garage to exist legally.

Site and Area Land Use: The subject property is approximately 10,953 square feet (.25 acres) and is currently occupied by a single-family dwelling. The parcel has approximately 105 feet of frontage on Meadow Drive to the west and 93 feet of frontage on Joseph Street to the south. The surrounding land use is almost completely residential.

Aerial

Zoning: The subject property is located within the Moderate Density, Single Family Residential Zoning District (R-2). Adjacent properties to the north, west, and east are also located in the Moderate Density, Single Family Residential Zoning District (R-2). Adjacent properties to the south are located in Medium Density Residential Zoning District (R-3).



Zoning Map

Streets and Access: The subject property sits on the corner of Meadow Street and Joseph Street and is accessed from Meadow Drive.

Comprehensive Plan: Chapter 2, Community Character and Land Use, designates the subject property's future land use as Neighborhood Conservation. Neighborhood Conservation designated areas are intended to preserve the character of many of the City's existing (built) residential neighborhoods. Within areas designated Neighborhood Conservation, neighborhood specific zoning districts would be established that would describe prevailing lot sizes, permitted uses, and still allow for improvement and expansion of existing development.

Chapter 3, Community Mobility, identifies Joseph Street and Meadow Street both as local neighborhood streets.

Input from Other Departments/Entities: No comments from any Departments/Entities.

RELEVANT CRITERIA AND STANDARDS

1. The applicant has demonstrated that special conditions and/or circumstances exist which are peculiar to the property (such as size, shape, topography or location) which are not applicable to other property similarly situated in the same zoning district.

2. The applicant has demonstrated that, because of the aforementioned special conditions of the property, application of the provisions of this Zoning Code would impose undue hardship and would deprive the property owner of rights commonly enjoyed by owners of other property similarly situated in the same zoning district under the terms of this Zoning Code.

3. Granting of the variance will not be in conflict with the public interest or injurious to property or persons in the vicinity of the subject property.

RECOMMENDATION

It is Staff's opinion that the request does not satisfy criteria 1 & 2. Therefore, staff recommends **denial** of the Variance at 951 S Meadow to reduce the required 5-foot side yard setback to 0 feet.

Board shall direct staff to prepare Relevant Standards and Criteria to be reviewed at an upcoming meeting.

CITY OF MOSCOW
COMMUNITY DEVELOPMENT
Ph: 208-883-7035
Fax: 208-883-7033
apeterson@ci.moscow.id.us

LUP2018-0033

For City Use Only			
	Date Received	11/16/18	
Dept	Fee Type	Fees	Paid
CD	Application Fee	$475	$475.00
	Receipt Number	LUP2018-0033	

APPLICATION FOR ZONING VARIANCE

(Please type or print plainly with blue ink.)

GENERAL INFORMATION

1. **Applicant**

Name: John C Davis Telephone: 208 310 3166

951 S. Meadow St.
(home address)

Relationship to affected property (please check one):

Owner ☒ Purchaser ☐ Lessee ☐ Other ☐ (explain below)

2. **Owner of Affected Property** (if other than applicant)

Name: _____ Telephone: _____

_____
(home address)

3. **Location of Affected Property**: _____

Legal Description: Melgards Additia (subdivision) 1 (block) 1 (lot)

If described by Metes and Bounds, please attach copy of deed.

INFORMATION ON REQUESTED VARIANCE

4. **Proposal**: The applicant proposes the following construction and/or use for the above-described property:

See Attached

Existing and proposed site conditions shall be shown on an attached site plan drawn to a standard engineer's or architect's scale. The site plan shall show, label and dimension all property lines and easements, existing and proposed buildings, parking lot and driveway(s) and fencing. The site plan should also show topography and landscaping if pertinent to the Variance.

5. **Reason(s) for Variance Request**: The proposed construction and/or use described in Question 4 above would be in violation of Section 4-4-4B of the Moscow Zoning Ordinance which requires that:

See Attached

Received 11-16-18

6. ***In order for the Board of Adjustment to issue a Variance, the Board must make findings of compliance with the following three relevant criteria and standards. Please indicate in the spaces provided below what you believe to be justification showing compliance with each of the relevant criteria and standards.***

Criteria #1. SPECIAL CONDITIONS AND/OR CIRCUMSTANCES EXIST WHICH ARE PECULIAR TO THE PROPERTY (SUCH AS SIZE, SHAPE, TOPOGRAPHY OR LOCATION) WHICH ARE NOT APPLICABLE TO OTHER PROPERTY SIMILARLY SITUATED IN THE SAME ZONING DISTRICT.

Justification and compliance with criteria #1: See Attached

Criteria #2. BECAUSE OF THE AFOREMENTIONED SPECIAL CONDITIONS OF THE PROPERTY, APPLICATION OF THE PROVISIONS OF THIS ZONING CODE WOULD IMPOSE UNDUE HARDSHIP AND WOULD DEPRIVE THE PROPERTY OWNER OF RIGHTS COMMONLY ENJOYED BY OWNERS OF OTHER PROPERTY SIMILARLY SITUATED IN THE SAME ZONING DISTRICT.

Justification and compliance with criteria #2: See Attached

Criteria #3. GRANTING OF THE VARIANCE WILL NOT BE IN CONFLICT WITH THE PUBLIC INTEREST OR INJURIOUS TO PROPERTY OR PERSONS IN THE VICINITY OF THE SUBJECT PROPERTY.

Justification and compliance with criteria #3: See Attached

Conditions of Approval: In granting any Variance, the Board of Adjustment may prescribe appropriate conditions and safeguards that enable the Board or the Commission to approve the Variance application and ensure the Variance is consistent with the purposes and intents of the Zoning Code.

Compliance:

1. In the event of failure to comply with the plans approved by the Board of Adjustment, or with any conditions of a Variance approval, the permit shall be immediately revoked and shall be automatically null and void.
2. Where plans are submitted and approved as part of the application for a Variance, modifications of the original plans may be required by the Board as a condition of approval.
3. Where plans approved by the Board of Adjustment are modified following such approval, such plan modifications must be submitted to and determined by City staff to be in substantial conformance with the plans approved by the Board. If plan modifications are not in substantial conformance, the plan modifications must be resubmitted to the Board for an additional public hearing as an amendment to the Variance application.

Revocations: If a building permit or occupancy permit pertaining to the Variance is not obtained for the subject property within one (1) year from the date of the Board of Adjustment's final decision, such Variance shall be immediately revoked and shall be automatically null and void.

Received 11-16-18

Application Submittal: This application must be completed and submitted with the below described items to the Moscow Community Development Director at least sixteen (16) days prior to the hearing at which the application is to be considered by the Board of Adjustment, or the application will not be processed. Applicant will be notified by the City Planner as to the time and place of the hearing pertaining to this application.

The following items must be submitted with this application:

1. Application Fee
2. Legal description (deed) of subject property, if it is not subdivision, block and lot.
3. Site Plan (drawn to scale)
4. Floor Plan(s) (drawn to scale), if applicable
5. Elevation Drawing(s) (drawn to scale), if applicable

I understand this information is a public record and may be posted to a public website.

Applicant's Signature — Date: 11-16-2018

Property Owner Signature — Date: 11-16-2018

Received 11-16-18

Addendum to the Davis Application for Zoning Variance: For a 5' reduction in the required 5' north-side yard setback.

Items 4 & 5 Information

Reason for the Variance: I wanted to construct a garage addition and went through the lot line adjustment process (Moscow City) to move the northern side property line 5' to the north. The proposed lot line adjustment was approved by City Council on May 15, 2017. The adjacent property owner subsequently quit-claimed the 5' strip to me. For health and personal reasons, I put my house up for sale in October of 2018 and it was discovered through a title search that there was a mortgage company that holds a lien on my neighbor's property.

The mortgage company was not aware of or signed off on the quit-claim transaction, which involved payment of approximately 200' of new and reconstructed fence for my neighbors. It has been a challenge working with the mortgage company to recast the mortgage (in essence, selling the 5' strip of land to me for the fence work). As I am in the process of selling my home (buyer purchased the home on the first day it was listed on the MLS, closing was to occur Nov 16, 2018), the timing of the mortgage recast has compromised the sale of the home--there are no guarantees from the mortgage company that a recast will be completed, and they estimate 30-60 days to complete the process. Therefore, I am requesting a 5' variance so that the garage addition that I constructed up-to the original property line can remain. so that the sale of the home can be completed. The eaves currently extend to the property line and the wall is 1' away. I have discussed with city staff the necessary construction needed to add additional fire protection to the northern wall of the new garage, and upon approval of this Variance request, will work with city personnel to complete the required measures.

Item 6 Information

In essence, the nature of this zoning request and subsequent building modifications for additional fire protection will not impact any of the 3 criteria identified under item 6 as there are no peculiar or special conditions, no hardship conditions or any depriving of property owner rights, and there would be no conflict with public interest.

Received 11-16-18

Application for Davis Zoning Variance request item 6 information:

Criteria #1.

There are special conditions and circumstances regarding the request for Variance. In April, 2017, I decided to construct a garage addition and worked with city staff to determine the most appropriate (and desirable) approach, beginning with necessary construction aspects, including offset from the edge of a (new) building to an existing lot-line. After deciding upon the garage (as opposed to a carport) design that would work best, I followed the lot line adjustment process (Moscow City) to move the northern side property line 5' to the north. I was made aware of two options: work with the neighbor to Quit-Claim a 5' strip of property to me, thus providing the required 5' offset from the edge of the proposed garage to the new property line. The other option was to follow the process for a Zoning Variance. The Quit-Claim process appeared to be the best option.

A proposed lot line adjustment was approved by City Council on May 15, 2017. My neighbors, Aaron & Kat Jordan, readily agreed to Quit-Claim the 5' of land (630 sq ft) to me, providing me with the required offset. I paid for the land (calculated fair market value of each square foot) via labor and materials to construct approximately 125' of new, wood fence (treated lumber posts in concrete, treated lumber rails, & dog-eared 6' planks), being 85' and a gate along their western property border, and two sections of gated fence on both sides of the northern part of the house. I also re-constructed the existing southerly-border fence to 5' north of the existing (soon to be new) property line. The adjacent property owner subsequently quit-claimed the 5' strip to me. For health (peripheral neuropathy pain) and personal (being close to family) reasons, I listed my house for sale in October of 2018 with the intent to move to a region with climate that would better suit my health challenges. An acceptable offer occurred within a day, and the sale process began. A title search on the property revealed the Quit-Claim; again, neither I nor my neighbors fully understood the ramifications of a Quit-Claim when a mortgage company holds a lien on the property.

As the Jordan's mortgage company was not aware of or signed off on the Quit-Claim transaction, they contacted the Jordans and informed them of the mortgage re-cast process that must be followed, which, in en essence, replaces the Quit-Claim process (which we reversed). As I am in the process of completing the sale of my home (closing was to occur Nov 16, 2018), the timing of the mortgage recast has delayed the timely completion of the sale of the home. We (buyers and I) have filed a successful extension for the closing date, as their mortgage company estimated 30-60 (or more) days to complete the recast. ***Importantly, and the key to this Variance request, there are no guarantees from the mortgage company that a recast will be completed***.

Therefore, I am requesting a 5' Zoning Variance so that the garage addition that I constructed up to the current property line can remain intact, thus following city code on set-back. I have discussed with city staff the necessary construction needed & time frame allowed to add required, additional fire protection to the northern wall/eaves of the new garage, and upon approval of this Variance request, will work with city personnel to ensure completion of the required measures within the allotted time.

Criteria #2.

When the Jordans & I discussed the original Quit-Claim, we did consider any potential impact, e.g., hardships, & rights. It would actually help them by reducing the amount of land they have to maintain in a very large backyard. There would remain ample land (about 18') between their home and the new property line. In addition, reconstruction of the fence on the new property line reduced a significantly overgrown area covered with overgrown shrubs, older, poor-condition raised beds, and noxious weeds that were all removed (by me), and they enjoy a quality, attractive fence between our properties.

Criteria #3.

There is no conflict with public interest or persons in the vicinity of the area, as the 5' strip of land is between our homes following the north-south boundary.

579207

EXHIBIT "A"

LEGAL DESCRIPTION

File No.: 58012

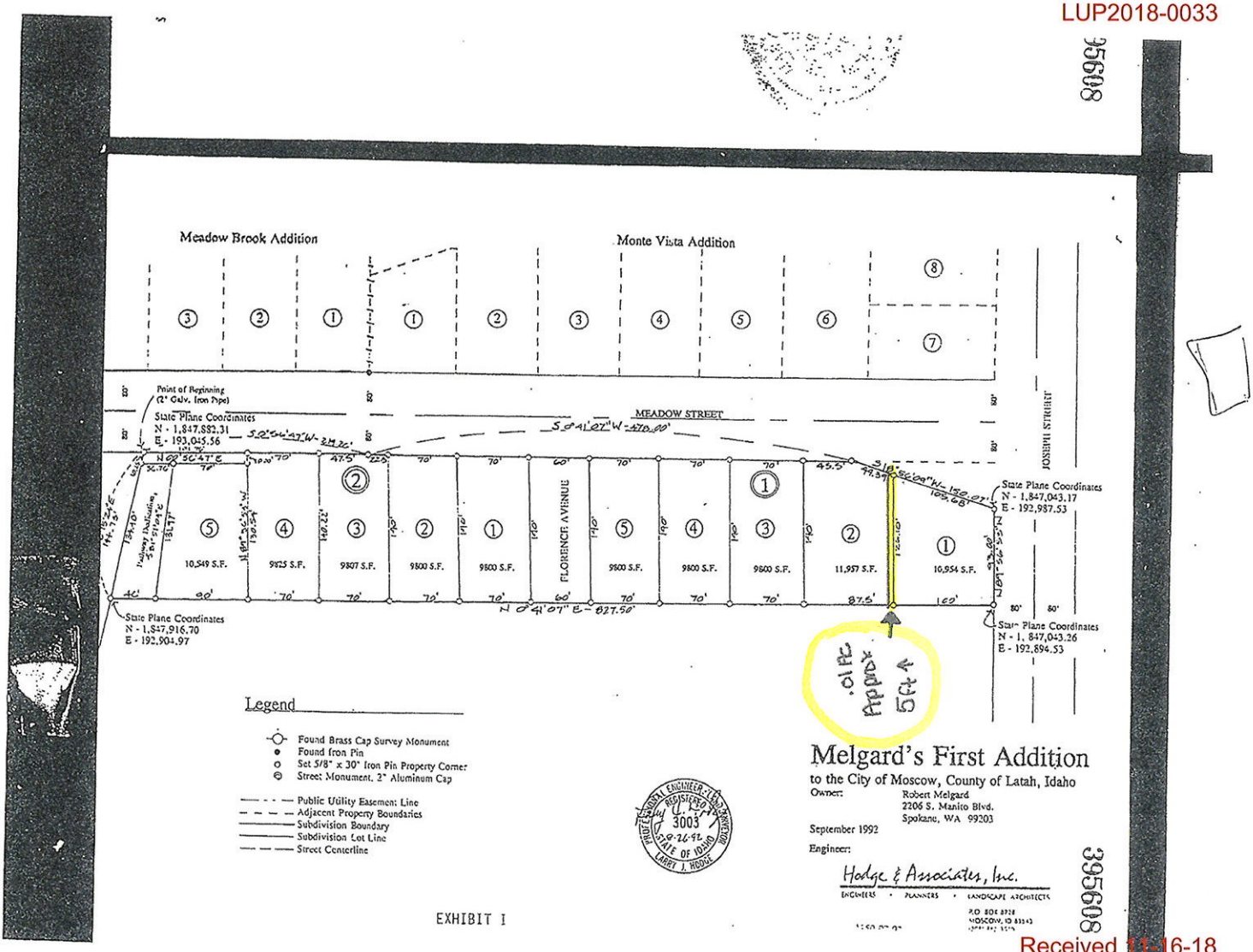
The land referred to herein is situated in the State of Idaho, County of Latah and is described as follows:

Lot 1, Block 1, Melgard's Addition to the City of Moscow, as shown by the recorded plat thereof.

Received 11-16-18

LUP2018-0033

395608



Legend

- Found Brass Cap Survey Monument
- Found Iron Pin
- Set 5/8" x 30" Iron Pin Property Corner
- Street Monument, 2" Aluminum Cap
- Public Utility Easement Line
- Adjacent Property Boundaries
- Subdivision Boundary
- Subdivision Lot Line
- Street Centerline

REGISTERED PROFESSIONAL ENGINEER
LARRY J. HODGE
3003
STATE OF IDAHO
9-16-92

Melgard's First Addition

to the City of Moscow, County of Latah, Idaho

Owner: Robert Melgard
2206 S. Manito Blvd.
Spokane, WA 99203

September 1992

Engineer:

Hodge & Associates, Inc.

ENGINEERS • PLANNERS • LANDSCAPE ARCHITECTS

P.O. BOX 8728
MOSCOW, ID 83843

EXHIBIT I

395608

Received 11-16-18

LUP2018-0033
JOSEPH ST
MEADOW ST
Received 11-16-18