



Bonner County Planning Department

Hearing Examiner

Staff Report for July 17, 2024

FILE: V0012-24 **DATE OF REPORT:** July 10, 2024

PROJECT: Shoreline Setback - Variance **APPLICATION DATE:** May 22, 2024

PARCEL No: RP62N04W279580A **PARCEL SIZE:** 20-acre

LANDOWNER: Priest Lake Syndicate LLC **REPRESENTATIVE:** Whiskey Rock Planning + Consulting
Jeremy Grimm
614 Creekside LN
Sandpoint, ID 83864

NOTICE: Mailed - June 18, 2024
Published in newspaper - June 21, 2024
Site posted - July 3, 2024

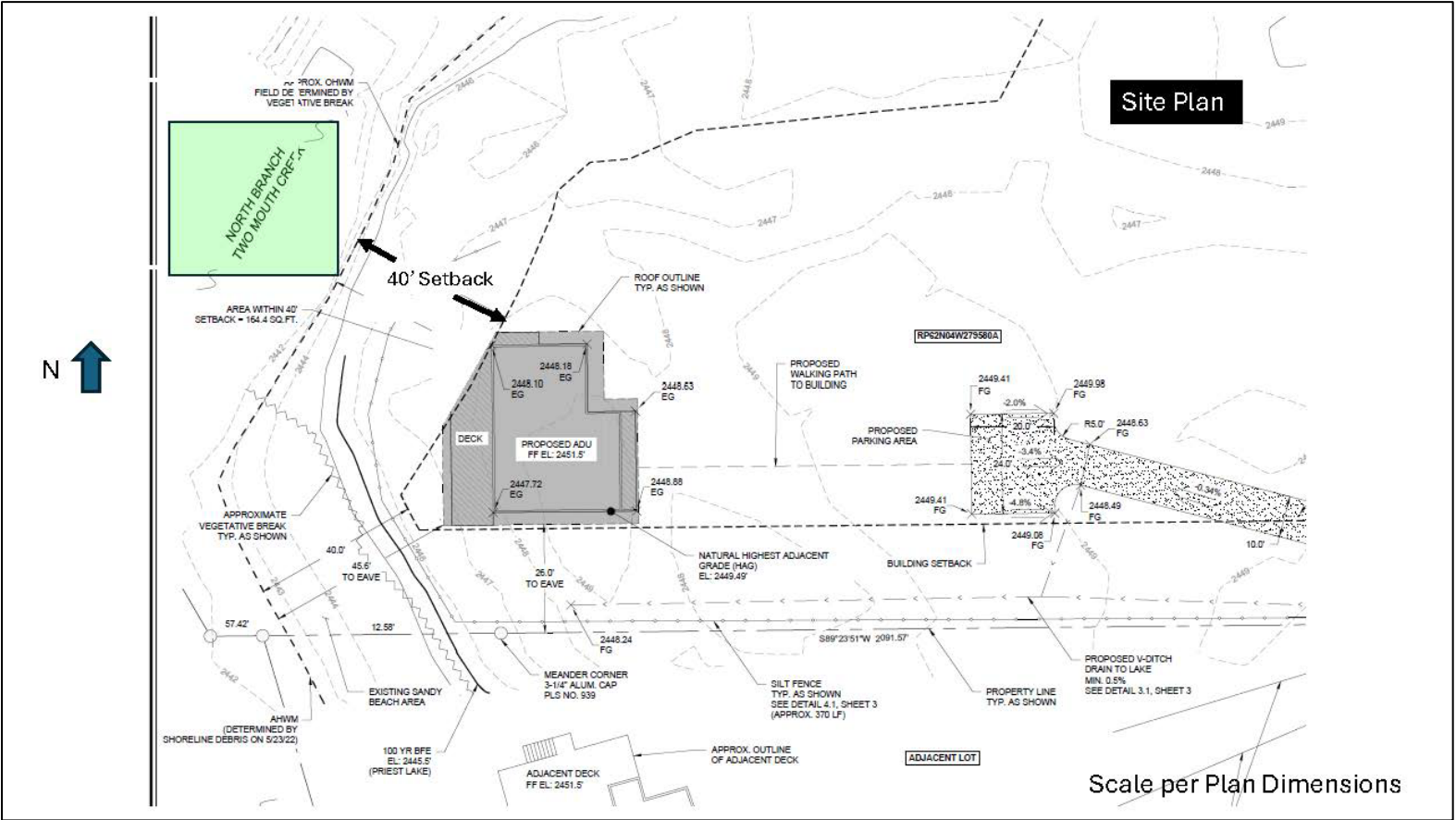
REQUEST: The applicant is requesting a 40' shoreline setback where 75' is required.

LEGAL DESCRIPTION: 27-62N-4W TAX 2

LOCATION: The project site is located off South Sandy Shores Lane in Section 27, Township 62 N, Range 4 W, Boise-Meridian.

ENCLOSURE: Annex A – Complete List of Agencies Routed

SUBJECT PROPERTY SITE PLAN



VICINITY MAP



PROJECT SUMMARY

The applicant is requesting a 40' shoreline setback from a perennial stream where 75' is required.

APPLICABLE LAWS

The following sections of BCRC, Title 12, apply to this project:

BCRC 12-222: Application contents
BCRC 12-232: General provisions
BCRC 12-234: Variance standards
BCRC 12-400: Development standards
BCRC 12-323: Rural
BCRC 12-7.2, et seq.: Grading/erosion/stormwater
BCRC 12-800 et seq.: Definitions

BACKGROUND


A. Site Data

Land Use: Residential, 1 single-family dwelling
Size: 20-acre
Zoning Designation: Rural 5 (R-5)
Comp Plan Designation: Rural Residential (5-10 AC)

B. Access

South Sandy Shores Ln is a privately owned and maintained easement.

C. Environmental Factors

Site does contain mapped slopes in excess of 30% grade. (USGS).
Site does contain mapped wetlands. (USFWS).
Site does contain water frontage on the north and south fork of Two Mouth Creek. Both are classified as "stream or river-perennial" per the NHD. See figure below.
Site does contain water frontage on Priest Lake.
Site contains Bonner silt loam, cool, 0 to 4 percent slopes
 Site contains SFHA Zone X and Zone A per FIRM Panel #16017C0150F, effective 7/7/14.

D. Services

Water: Huckleberry Water & Sewer District
Sewage: Huckleberry Water & Sewer District
Fire: North of the Narrows Fire
Power: Northern Lights Inc.
School District: Lake Pend Oreille School District #83

NORTH AND SOUTH FORK OF TWO MOUTH CREEK



E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan Designation	Zoning Designation	Current Land Use & Density
Site	Rural Residential (5-10 AC)	Rural 5 (R-5)	Residential, 1 SFD
North	Rural Residential (5-10 AC)	Rural 5 (R-5)	Residential, 1 SFD
East	Rural Residential (5-10 AC)	Rural 5 (R-5)	Residential, vacant
South	Rural Residential (5-10 AC)	Rural 5 (R-5)	Residential, 1 SFD
West	Rural Residential (5-10 AC)	Rural 5 (R-5)	Priest Lake

AGENCY ROUTING

The agencies listed in Annex A were routed on June 18, 2024.

PUBLIC COMMENT

Public comments were received at the time this staff report was prepared.

STANDARDS REVIEW & STAFF ANALYSIS:

BCRC 12-234 specifies that “Staff, the commission and/or board shall review the particular facts and circumstances of each proposal submitted and shall find adequate evidence showing that:

A. Standards Review

- (a) **Conditions apply to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control.**

Applicant: The parcel is bisected by both (intermittent) North Fork Two-Mouth Creek and main Two-Mouth Creek. The North Fork intersects the 20-acre lot creating two separated frontages where it empties into the lake. Recent upstream geomorphological changes have resulted in the North Branch of Two Mouth Creek being severed from the main channel and from year round stream flows. As such and as document by field survey and study, the North Branch is no longer functions as a flowing stream and as such does not deserve or justify the 75' setback restriction per BCRC. Instead, the 40' setback for intermittent streams should apply.

Staff: The parcel is not unique as there are adjacent parcels that have similar characteristics such as depth-to-width ratios and multiple creeks. The parcel immediately to the North (RP62N04W279040A) has a similar depth-to-width ratio. Additionally, there is a parcel to the south (RP62N04W354201A) that is also bifurcated by two streams flowing into Priest Lake. The Bonner County revised code requires the use of the National Hydrography Dataset (NHD) as the standard for classifying streams and therefore for determining required shoreline setbacks, as outlined in BCRC 12.7. According to the current NHD, both branches of Two Mouths Creek are classified as perennial and thus requiring a 75' shoreline setback per BCRC 12.7.

(b) Special conditions and circumstances do not result from the actions of the applicant.

Applicant: There are no past actions of the applicant that affect the site as acquired from the HB developer. The ground and shorelines have been undisturbed by its owners for over 20 years, and no adjustment of lot lines has been made. The changes to basin conditions and upstream channelization and flows resulting in the North Branch becoming an intermittent stream were not a result of actions of the applicant.

Staff: The applicant purchased the parcel on October 28, 2020 per Instrument No. 968675, Records of Bonner County. The only change the applicant has made is constructing a single-family dwelling on the parcel. This variance proposal is for the construction of an accessory dwelling unit.

(c) The granting of the variance is not in conflict with the public interest in that it will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot.

Applicant: The proposed variance or interpretation makes no infringement on the public interest due to the misclassification of the North Branch as a flowing stream. If the accurate assessment and character of the North Branch is considered (an intermittent stream), the proposed development activity would not require a variance because the owners are proposing to maintain a 40' setback from the creek. The issue at hand comes down to semantics and is the result of the outdated and erroneous classification by the NHD listing the North Branch as a flowing stream. The Field Survey and related empirical photographic evidence confirms that the subject property and area identified for construction of an ADU is adjacent to an intermittent stream not a flowing stream and as a result the construction of improvements adhering to a 40' setback will not be in conflict with the public interest nor detrimental to the public health, safety or welfare.

Staff: Staff agrees that granting the variance would not be detrimental to public health, safety, or welfare, nor would it be materially injurious to neighboring properties.

B. Stormwater Management Review

A stormwater management plan was not required, pursuant to BCRC 12-720.3(k) because the proposal does not result in the creation of additional impervious surface, as defined.

C. Staff Review Summary

While the applicant presents arguments based on local conditions and empirical evidence, the staff's position is rooted in regulatory compliance with the Bonner County Revised Code and the National Hydrography Dataset classifications. The variance request hinges on the interpretation and classification of the stream by the NHD, which BCRC requires setbacks from.

Furthermore, the subject parcel is approximately 20-acres and is not unique when compared to the adjacent parcel to the north, as it has a depth-to-width ratio and lot size very similar and also has two perennial streams running through it. Therefore, it appears to staff that the land conditions and characteristics apply to this property that also applies generally to other properties in the same vicinity.

Lastly, this project underscores the challenge of balancing local regulations with specific property conditions and highlights the importance of accurate hydrological classifications in land use planning and regulatory compliance.

Staff determination: The request is not consistent with Bonner County Revised Code

Planner's Initials: RW

Date: July 3, 2024

Note: This is not a decision or a recommendation. The final decision rests with the governing body after the completion of the public hearing and consideration of relevant oral and written testimony and evidence.

DECISION BY THE GOVERNING BODY:

HEARING EXAMINER

DECISION TO APPROVE: I approve this project, FILE V0012-24, for a reduced perennial stream shoreline setback of 40' where 75' is required, finding that it is in accord with the Bonner County Revised Code as enumerated in the following conclusions of law:

Conclusion 1

Conditions apply to the property that **do not** apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control.

Conclusion 2

Special conditions and circumstances **do not** result from the actions of the applicant.

Conclusion 3

The granting of the variance **is not** in conflict with the public interest in that it **will not** be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot.

This decision is based upon the evidence submitted up to the time the Staff Report was prepared, and testimony received at this hearing. I further adopt the following findings of fact as written (or amended during this hearing) and direct planning staff to draft written findings and conclusions to reflect this decision and transmit to all interested parties. The action that could be taken to obtain the variance is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property.

DECISION TO DENY: I deny this project, FILE V0012-24, for a reduced perennial stream shoreline setback of 40' where 75' is required, based upon the following conclusions of law:

Conclusion 1

Conditions apply to the property that **do/do not** apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control.

Conclusion 2

Special conditions and circumstances **do/do not** result from the actions of the applicant.

Conclusion 3

The granting of the variance **is/is not** in conflict with the public interest in that it **will/will not** be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot.

This decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further adopt the following findings of fact and conclusions of law as set forth in the Staff Report (or as amended during this hearing) and direct planning staff to draft written findings and conclusions to reflect this decision and transmit to all interested parties. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the variance is to:

- 1) File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or
- 2) Appeal the Hearing Examiner's decision to the County Commissioners.

FINDINGS OF FACT

1. This proposal was reviewed for compliance with the criteria and standards set forth in BCRC 12-234, Variance Standards.
2. The property is zoned Rural 5 (R 5).
3. The subject property is described as approximately 20.0 acres.
4. The subject property contains slopes between 0% and 30%+ (USGS).
5. Two perennial streams run through the subject property (USGS NHD).
6. The subject property does contain mapped wetlands (NWS).
7. Applicant purchased the property on October 28, 2020 per Instrument No. 969675, Records of Bonner County.
8. The subject property is served by Huckleberry Water & Sewer, North of The Narrows Fire District, Bonner School #83 and Northern Lights, Inc.
9. The applicant applied for an administrative variance asking for a 28-foot shoreline setback. File VA0015-23 was denied by planning staff and affirmed by the BOCC in the VA0015-23 appeal decision letter dated October 16, 2023.

PROPOSED CONDITIONS OF APPROVAL:

Standard Conditions:

1. Only the perennial stream shoreline setback as shown on the site plan have been reviewed for variance standards. All other lot design standards and future development must comply with Bonner County Revised Code excepting the modified lot size minimums herein.
2. The granting of this variance shall not supersede any deed restrictions.

The complete file is available for review in the Planning Department, 1500 Highway 2, Suite #208, Sandpoint, ID. Some file application material is available online at www.bonnercountyid.gov. Bonner County Revised Code (BCRC) is available at the Planning Department or online.

ANNEX A

RECORD OF MAILING

Page 1 of 1

File No.: V0012-24

Record of Mailing Approved By:

Hearing Date: July 17, 2024

Robert Winningham, Planner

I hereby certify that a true and correct copy of the "Notice of Public Hearing" was digitally transmitted or mailed (postage prepaid) on this **18th** day of **June 2024**.



Jenna Crone, Hearing Coordinator

Avista Utilities - Email	Bay Drive Recreation District - Email
Bayview Water & Sewer - Email	Bonner County Airport Manager - Email
BONNER COUNTY DAILY BEE - U.S. Mail	Bonner County EMS - Email
Bonner County Floodplain Review - Email	Bonner County Road & Bridge - Email
Bonner County Sheriff - Email	Bottle Bay Water & Sewer District - Email
City of Clark Fork - Email	City of Dover - Email
City of East Hope - Email	City of Hope - Email
City of Kootenai - Email	City of Oldtown - Email
City of Ponderay - Email	City of Priest River - Email
City of Sandpoint - Email	City of Spirit Lake - Email
Coolin Sewer District - Email	Coolin-Cavanaugh Bay Fire District - Email
Drainage District #7 - Email	East Bonner Library - Email
East Priest Lake Fire District - Email	Ellisport Bay Sewer - Email
Garfield Bay Water & Sewer District - Email	GEM STATE MINER - U.S. Mail
Granite Reeder Water & Sewer District - Email	Idaho Department of Environmental Quality (DEQ) - Email
Idaho Department of Fish & Game - Email	Idaho Department of Lands - CDA - U.S. Mail
Idaho Department of Lands - Coolin - Email	Idaho Department of Lands - Navigable Waters & Mining - Email
Idaho Department of Lands - Sandpoint - Email	Idaho Department of Water Resources - IDWR - Email
Idaho Transportation Department (Aeronautics) - U.S. Mail	Idaho Transportation Department- District I - Email
Independent Highway District - Email	Kalispel Bay Sewer & Water - U.S. Mail
Kootenai-Ponderay Sewer District - Email	KPBX-FM 91 SPOKANE PUBLIC RADIO - U.S. Mail
KSPT-KPND-KIBR RADIO - U.S. Mail	Laclede Water District - Email
Lake Pend Oreille School District, #84 (Admin Office) - Email	Lake Pend Oreille School District, #84 (Transportation) - Email
Lakeland Joint School District, #272 - Email	Little Blacktail Ranch Water Association - U.S. Mail
North of the Narrows Fire District - Email	Northern Lights, Inc. - Email
Northland/Vyve Cable Television - Email	Northside Fire District - Email
Outlet Bay Sewer District - Email	Panhandle Health District - Email
Pend Oreille Hospital District - Email	Priest Lake Public Library District - Email
Priest Lake Translator District - Email	Sagle Valley Water & Sewer - Email
Sam Owen Fire District - Email	Schweitzer Fire District - Email
SELKIRK ASSOCIATION OF REALTORS - Email	Selkirk Fire, Rescue & EMS - Email
Selkirk Recreation District -Email	Southside Water & Sewer District - Email
Spirit Lake Fire District - Email	Spokesman-Review - U.S. Mail
State Historical Society - Email	Swan Shores Sewer District - U.S. Mail
Syringa Heights Water Association - Email	Tamarack Village Water & Sewer - U.S. Mail
Timber Lake Fire District - Email	Trestle Creek Sewer District - Email
U.S. Army Corps of Engineers - Email	U.S. Fish & Wildlife Service - Email
U.S. Forest Service - U.S. Mail	West Bonner County Cemetery District - Email
West Bonner County School District, #83 - Email	West Bonner Library - Email
West Bonner Water & Sewer District - Email	West Pend Oreille Fire District - Email
West Priest Lake Fire District - Email	

