

05.31.24

Bonner County Planning
Attn: Jacob Gabell, Planning Director
1500 US 2
Sandpoint, ID 83864

614 Creekside Lane
Sandpoint, ID 83864
208.946.9944 | www.whiskeyrockplanning.com

Via email

RE: Variance Application Deviation From Minimum Lot Size on RP58N01W047205A & RP58N01W047650A allowing the independent ownership of two noncontiguous legally created parcels one 4.85 acres and the other 4.387 acres.

Dear Director Gabell,

On behalf of Mr. Hooper, we are submitting a variance to minimum parcel size for parcels RP58N01W047205A & RP58N01W047650A to remedy the present situation (the result of historical actions involving the property) that have place both Mr. Hooper and Bonner County in a difficult situation with no other clear solution. The subject parcels have a lengthy history and Mr. Hooper has relied upon the advice and direction of former planning staff that have in part resulted in the undesirable situation where Mr. Hooper is unable to transfer RP58N01W047650A (Florida Shaped Parcel) to the willing and abutting landowner RP58N01W047502A (Bates) due to the resulting ownership of lands by Mr. Hooper falling below the 20 Acre minimum parcel size of the zone. The request of this application is to recognize the existing characteristics of RP58N01W047205A (4.85 acres) as a stand alone independent parcel with existing improvements similar to the abutting parcel RP58N01W047400A (4.36 acres) as well as other adjacent parcels RP58N01W034040A (2 acres), RP58N01W044900A (4.58 acres), RP58N01W044800A (0.52 acres), RP58N01W041370A (1.00 acres), and RP58N01W040950A (1.31 acres) all of which do not meet the minimum area requirements of the AF 20 zoning district. The resulting approval of this application will allow Mr. Hooper to legally transfer RP58N01W047650A (Florida Shaped Parcel) to Bates and the parties to perform a lot line adjustment or other action that will allow Mr. Bates to absorb this area into their 57 acre adjacent parcel RP58N01W047502A. Concluding this future action, RP58N01W047205A (4.85 acres) will function as it does today, representing no material change in the nature or utilization of the parcel. Through the granting of this variance, the county will provide an elegant solution to the challenging situation that we are in today and avoid ongoing contentious and costly wrangling.

BACKGROUND FACTS

1. In March of 2005, Hooper acquired a 57-acre parcel or real property located in Bonner County, Idaho, on Colburn Culver Road, via a Quitclaim Deed, Bonner County Instrument No. 671996, ("RP58N01W047502A"). (See Exhibit "1").
2. In March of 2006, Hooper acquired an interest in a 20-acre parcel of real property located in Bonner County, Idaho, on Colburn Culver Road, via a Land Sale Contract, Bonner County Instrument No. 699572, (the "Property") from F.M. Balison and Lola Balison. (See Exhibit "2").
3. In 2007, Hooper filed a Quiet Title Action in the First District Court of Idaho, County of Bonner, Case No. CV 2007-1914, against Humbird Lumber Company to acquire title to a 25 feet parcel of real property that ran along the Eastern boundaries of the Property and RP58N01W047502A (the "Orphaned Property"). In 2008, the First District Court, County of Bonner, in Case No. CV 2007-1914,

entered a Judgment in favor of Hooper that Quited Title in the Orphaned Property to Hooper. (See Exhibit “3”).

4. Sometime later in 2008, Hooper met with Milton Ollerton, then the Planning Department Director, to discuss the possibility of subdividing the Property into 2-parcels. Mr. Ollerton informed Hooper that pursuant to an old Humbird Lumber Deed, dated March 15, 1920 and filed November 5, 1920, which created the Orphaned Property. And, due to the fact Hooper now owned the Orphaned Property, Hooper could divide the Property into less than 20-acre parcels since the Orphaned Property was subdivided and created before Bonner County had implemented any zoning rules or minimum lot requirements. (See Exhibit “4”).

5. In 2013, Hooper in reliance of Mr. Ollerton’s previous assurances the Property could be divided into parcels less than 20-acres, hired Lance Miller to do a Boundary Line Adjustment Survey, Bonner County Instrument No. 853189 (“BLAS”). The BLAS had the effect of attaching the Orphaned Property to RP58N01W047204 A. (See Exhibit “5”).

6. Based on the BLAS Hooper in 2013, sold a newly created 10-acre parcel, RP58N01W047210A, to the Burkes, via Bonner County Instrument No. 842942. (See Exhibit “6”).

7. From 2013 until 2020, Hooper paid his real property taxes to Bonner County on RP58N01W047204 A, which per his Bonner County Assessment Notice was an 11.21-acre parcel.

8. In 2020, Hooper again met with Mr. Ollerton to discuss getting building permit to build a shop and house on what would soon become RP 58N01W047205 A, which is allegedly a 4.85-acre parcel (“Nevada Property”). Mr. Ollerton informed Hooper it was buildable lot. (See Exhibit “7”).

9. Later in 2020, Hooper was doing a refinance and was putting up RP58N01W047204 A, as collateral for the loan. As part of the refinancing process N. Idaho Title made Hooper and his then wife, Birgett Hooper, sign a Quitclaim Deed, Bonner County Instrument No. 972065, which purported to transfer RP58N01W047204 A from Hooper and his then wife to Hooper as his sole and separate property. N. Idaho Title routinely makes parties have their spouse sign Quitclaim Deeds during refinances, even though they own the property as separate property, because Idaho is a community property state. (See Exhibit “8”).

10. On December 14, 2020, N. Idaho Title recorded Instrument No. 972065.

11. In 2021, Hooper sold RP58N01W047502A to the Bates via Warranty Deed, Bonner County Instrument No. 980834. Per the legal description in the Warranty Deed, the Orphaned Property was erroneously included in the sale. (See Exhibit “9”).

12. Later in 2021, upon realization the Orphaned property was erroneously included in the sale to the Bates, Title One recorded a Scrivener’s Affidavit, Bonner County Instrument No. 980834, to correct the mistake and clarify the Orphaned Property was part of RP58N01W047204 A. (See Exhibit “10”).

13. Thereafter, starting in 2021, Bonner County started sending Hooper Assessment Notices, which had the effect of turning RP58N01W047204 A from one 11.21-acre parcel, into 2-parcels; RP58N01W047205 A, which is allegedly a 4.85-acre parcel, and RP 58N01W0447650 A, which is allegedly a 4.387-acre parcel. (See Exhibit “11”).

14. Since 2021, and current to this day, Hooper in reliance on the two separate Bonner County Assessment Notices has consistently and diligently paid his real property taxes on RP58N01W047205 A and RP58N01W0447650 A.

15. In the Fall of 2022, Hooper hired the undersigned to investigate how Bonner County had turned one parcel, RP58N01W047204 A, into two parcels, RP58N01W047205 A and RP58N01W0447650 A.

16. The undersigned began communicating with Donna Gow, then the Bonner County Assessor, to determine how RP58N01W047204 A, turned into two parcels, RP58N01W047205 A and RP58N01W0447650 A. (See Exhibit “12”).

17. Per Ms. Gow, when N. Idaho Title recorded Instrument No. 972065, that created two parcels, RP58N01W047205 A and RP58N01W0447650 A.

18. The Bonner County Viewer has consistently shown for the last few years, what was formerly one parcel, RP58N01W047204 A, as two parcels, RP58N01W047205 A and RP58N01W0447650 A. A review of the Bonner County Viewer shows RP58N01W047205 A, sort of looking like a Nevada shape, and RP58N01W0447650 A, sort of looking like a Florida shape.

19. In January of 2023, the undersigned spoke with Grant Dorman, then the Bonner County Assessor, about the issue of the two parcels, RP58N01W047205 A and RP58N01W0447650 A, not complying with the 20-acre Bonner County Zoning requirement. Mr. Dorman advised the undersigned to file applications for Certificates of Compliance for each parcel.

20. On June 6, 2023, the undersigned, per Mr. Dorman's advice, filed Certificate of Compliance Applications for RP58N01W047205 A and RP58N01W0447650 A.

21. On June 29, 2023, Hooper, in reliance on Bonner County taxing RP58N01W0447650 A as a separate legal parcel for 3-years, entered into a Purchase and Sale Agreement to sell RP58N01W0447650 A to his neighbor, the Bates.

22. If this variance is approved the sale of RP58N01W0447650 A to the Bates can proceed and close. Upon closing of the sale, the Bates will then do a Boundary Line Adjustment and incorporate RP58N01W0447650 A, into their 57-acre parcel, RP58N01W047502A. (See Exhibit "13").

23. To effectuate the sale of RP58N01W0447650 A, to the Bates, a new full legal description has been created for RP58N01W0447650 A. (See Exhibit "14"). (Emphasis added).

CONCLUSIONS

At the time one of the divisions of Hooper's properties occurred it complied with the then existing provisions of Bonner County Code. When Humbird Lumber created the Orphaned Property in 1920, there were no zoning or minimum lot size requirements. The Orphaned Property became part of RP58N01W047204 A, pursuant to the BLAS and the Judgment entered in Case No. Case No. CV 2007-1914. And, ultimately the Orphaned Property became part of RP58N01W0447650 A, when Bonner County divided RP58N01W047204 A, into RP58N01W047205 A and RP58N01W0447650 A. Hooper reasonably relied on the Bonner County Tax Assessment Notices that turned one-parcel, RP58N01W047204 A, into 2-parcels, RP58N01W047205 A and RP58N01W0447650 A. Hooper has consistently and diligently paid real property taxes to Bonner County for at least 3-years, on 2-parcels, not 1-parcel. Hooper reasonably relied on Bonner County's promise that RP58N01W0447650 A, is a legal separate taxable parcel when he entered into the Purchase and Sale Agreement with the Bates. Hooper relied on said promises when he hired surveyor Lance Miller to create a full legal description for RP58N01W0447650 A.

Mr. Hooper is exasperated by the current situation. Without approval of a variance to minimum lot size, these parcel will be constrained and the individual sale of the c RP58N01W047650A to an abutting property owner is impossible.

There are a number of supportive reasons for approving this request to deviate from the minimum 20-acre parcel size identified in BCRC. First and foremost, the property is "built out" with substantial improvements in existence. Demands for water, septic and access would not change if the variance were approved as a substantial structure already in exists. In fact, approval would make the parcel and related improvements more conforming and allow this orphan parcel to enlarge the Bate's parcel.

Despite these very rational reasons to support the request for a variance to minimum lot size, we understand that per BCRC and Idaho Code, further factual findings must be considered.

Basis for Request BCRC 12-234 A, B and C

At times under certain circumstances, property owners may not be able to strictly comply with the bulk dimensional and performance requirements or restrictions governed by the zoning designation of their property. In such circumstances, especially when historical nonconforming aspects are involved, it is often appropriate to seek a variance. The subject parcel has been improved with a residential structure and presently should be considered a legally nonconforming independent parcel from a land use perspective. The application before you is less of a “New” variance, and rather could be viewed as a modification recognizing the historical and present use of the land, allowing the noncontiguous portion to be absorbed by an adjacent landowner (Bates).

BCRC 12-234(A)

The subject parcel can be viewed as legally nonconforming due to a variety of characteristics including parcel size and being noncontiguous or having an orphan remnant. The owner has no current control over the now recognized size of the parcel or the noncontiguous nature. The Bonner County GIS parcel map shows two separate parcels. The conditions and limitations described ARE a result of actual lot size and ownership.

BCRC 12-234(B)

The applicant has taken no action and has not caused circumstances to cause the zoning (BCRC) to prohibit parcels under twenty acres or to classify his property as AF 20. The request for this variance is due to an inconsistency between the direction provided by Bonner County planning staff (former Director) and current interpretation of code.

BCRC 12-234(C)

As has been mentioned, the subject parcels exist in a state of perpetual impasse. Without the granting of this variance, the owner has no ability to transfer the orphan portion to the adjacent landowner. Doing so will increase the size of the Bate’s parcel and **is not being perused for the intention of creating new building lots that would fall below minimum area requirements of the zone.** No material changes would occur to the existing improvements/uses and the orphaned parcel would be absorbed into an adjacent conforming parcel that we believe would not be in conflict with the public interest or detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. Finally, numerous other adjacent and abutting parcels in the vicinity fall below the 20-acre minimum lot size of the zone. Approving this request would reflect the existing use and characteristics of the land and improvements.

Thank you in advance for your consideration of allowing the owner to deviate from the minimum lots size of the zone for these parcels. Please do not hesitate to contact me with any questions or need for clarification.

Respectfully,



Jeremy Grimm

Whiskey Rock Planning + Consulting

