

**BONNER COUNTY PLANNING
DEPARTMENT
HEARING EXAMINER
STAFF REPORT FOR MAY 21, 2025**



Project Name: **Toner – Shoreline and Property Line Setbacks**

File Number,Type: **FILE #V0005-25**

Request: The applicant is requesting a variance to the setback standards to allow for a 1-foot property line setback where 5 feet is required, and a shoreline setback of 16 feet where 40 feet is required.

Legal Description: 29-56N-3W SCHWEITZER VILLA LOT 8 2006 CHAMPION 27 X 72 RP CPWRS

Location: The project site is located off River Birch Road in Section 29, Township 56 North, Range 3 West, Boise-Meridian.

Parcel Number: RP004050000080A

Parcel Size: 0.684-Acres

Applicant: Richard B & Deborah B Toner
[REDACTED]
Kennewick, WA 99338

Project Representative: Tessa Vogel; Ruen-Yeager & Associates, Inc.

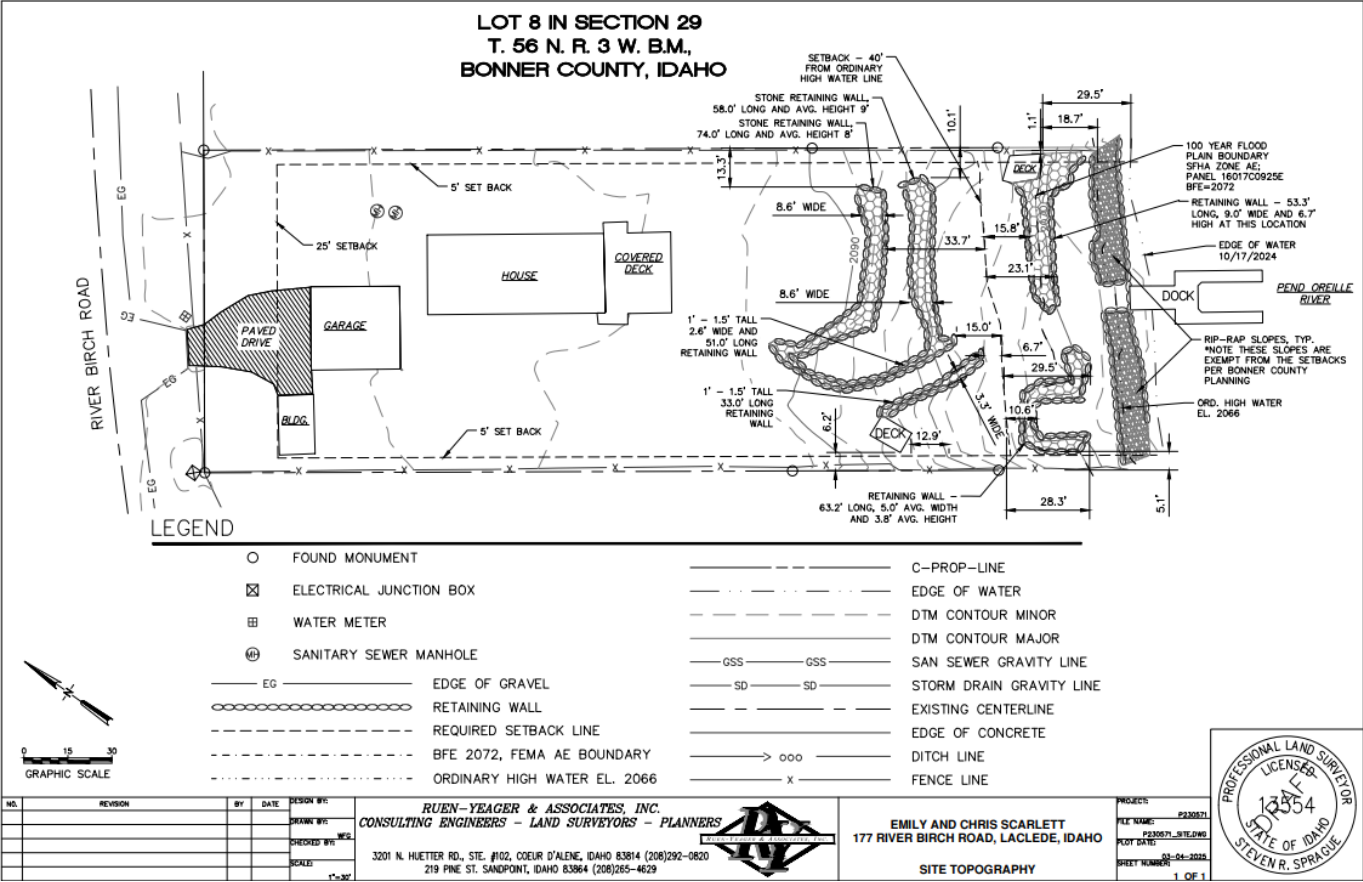
Property owner: Richard B & Deborah B Toner
73105 Grand Bluff Loop
Kennewick, WA 99338

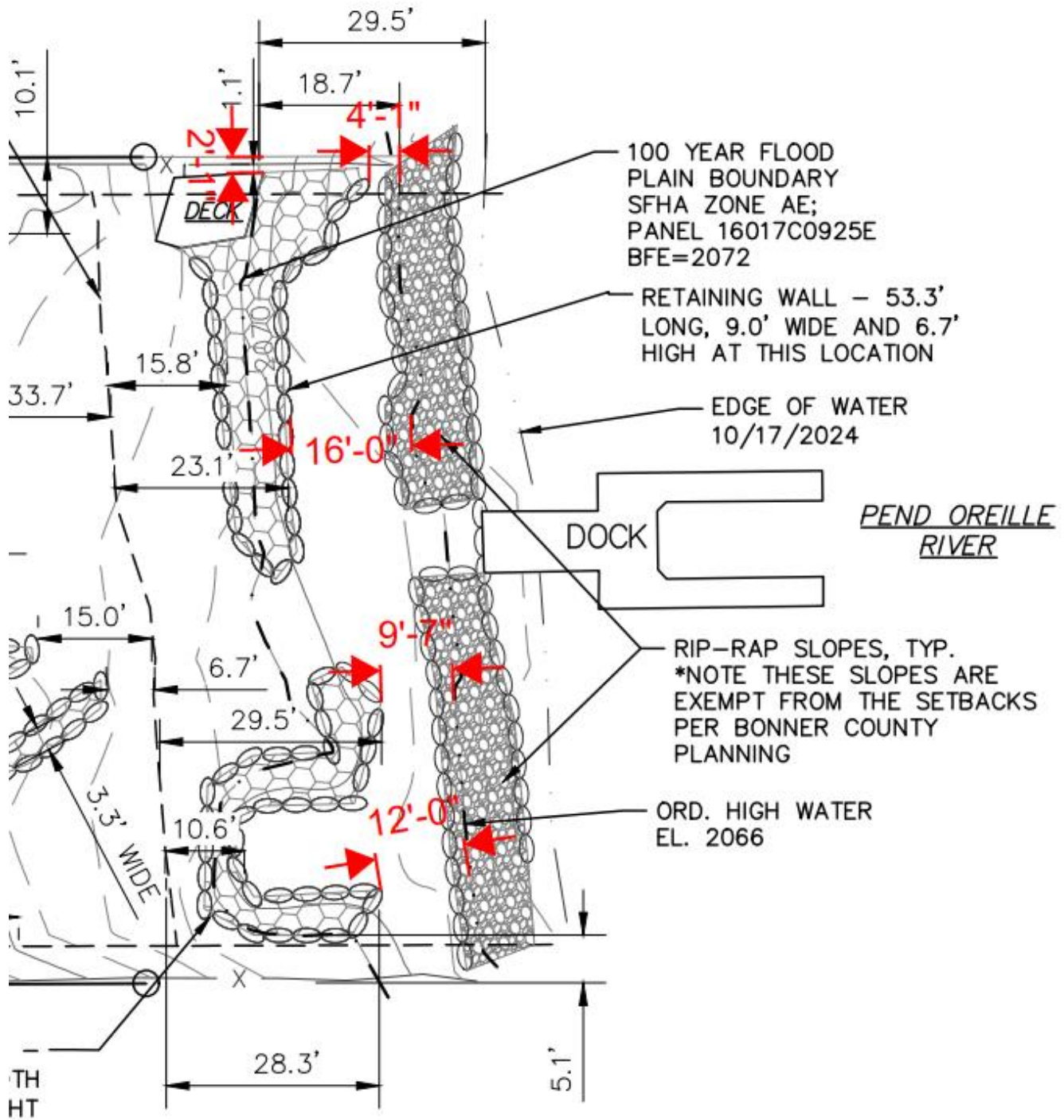
Application filed: March 6, 2025

Notice provided: Mail: April 23, 2025
Site Posting: May 7, 2025
Published in newspaper: April 23, 2025

Appendix: Appendix A – Notice of Public Hearing Record of Mailing
Appendix B - Agency Comments

Site Plan





Project summary:

The applicant is requesting a variance to the setback standards to allow for a 1-foot property line setback where 5 feet is required, and a shoreline setback of 16 feet where 40 feet is required. The 0.684-acre property is zoned Suburban. The project site is located off River Birch Road in Section 29, Township 56 North, Range 3 West, Boise-Meridian.

Applicable laws:

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

BCRC 12-222, Application, contents
BCRC 12-231, Variances, general provisions, application, standards, procedures
BCRC 12-234, Variance standards
BCRC 12-324, Suburban District
BCRC 12-400, et seq., Development standards
BCRC 12-7.1, et seq., Shorelines
BCRC 12-7.2, et seq., Grading/erosion/stormwater management
BCRC 12-800 et seq., Definitions

Background:

A. Site data:

Land Use: Residential - SFD
Platted
Size: 0.684-acres
Zoning Designation: Suburban (S)
Comp Plan Designation: Suburban Growth Area (2.5-5 AC)

B. Access:

River Birch Road, a 50-foot Bonner County owned, and privately maintained public right-of-way.

C. Environmental factors:

Site does contain mapped slopes of 0-30+%. (USGS)
Site does not contain mapped wetlands. (USFWS)
Site does contain frontage on Ponderay River.
Parcel is within SFHA AE and Zone X per FIRM Panel Number 16017C0925E Effective Date 11/18/2009.

D. Services:

- Water: Laclede Water District
- Sewage: Individual Septic
- Fire: Westside Fire District
- Power: Provider info not provided
- School District: West Bonner School District #83

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Suburban Growth Area (2.5-5 AC)	Suburban	Residential, 0.684-acres
North	Suburban Growth Area (2.5-5 AC)	Suburban	Vacant, 7.640-acres
East	Suburban Growth Area (2.5-5 AC)	Suburban	Residential, 0.684-acres

South	Rural Residential (5-10 AC)	Rural 5 (R-5)	Lake Pend Oreille
West	Suburban Growth Area (2.5-5 AC)	Suburban	Residential, 0.653-acres

F. Standards review

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: [Insert specific findings addressing each of the standards.]

- (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: *"Regarding the existing retaining walls, the site has a terraced lawn that slopes towards the Pend Oreille River. There were existing boulders on-site for an old retaining wall that needed to be replaced to keep the integrity of the lawn and protect any shifting of land into the Pend Oreille River. Without the retaining wall, the site has the potential for the terraced land to shift overtime and fall towards the river. The main retaining walls are over 4 feet in height which requires setbacks to be met, however, due to the topography of the site, the retaining walls have to extend close to the side property lines where 5 feet is required, and the lowest retaining wall is within the shoreline setback which requires 40 feet. The topography of the lot is a direct cause of needing the setback variance for the retaining walls.*

Regarding the existing platform, the current property owners bought the lot with the existing platform. They did not construct the platform and the issue of encroachment into the side setback and shoreline setback were not found until the applicants began the permitting process for the retaining walls"

Staff: The subject lot is in a subdivision of similarly sized and shaped lots. The area near River Birch Road is relatively flat, with steep slopes on the shoreline side. Retaining walls and paths are common with the other similarly conditioned lots, as access to the shoreline can be difficult on a steep slope. Bonner County Code allows for retaining walls and pathways to the shoreline, that meet design standards. The retaining walls seeking a variance are over 4 feet in height, which BCRC defines as structures, and requires that they be permitted and meet setback standards. The Single Family Dwelling and accessory structures have already been constructed on site.

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

Applicant: *"Regarding the existing retaining walls, the landowners hired a landscaping company to install the essential retaining walls and seawall (seawall not part of this variance due to exemption from setback requirements). It was unknown to the landowners and landscaping company that setbacks and a building location permit are required for retaining walls over 4 feet in height along with a floodplain development permit for the portions within the special flood hazard area. Both the landowners and landscaping company were unaware of the floodplain boundaries on*

site. Due to this, a floodplain violation, file FV2022-0007, was opened on the property.

Regarding the existing platform, no work has been done to the platform and the current landowners did not build the platform. It was existing when the current landowners purchased the land in 2019. The issue of the setback encroachments were found at the time of permits for the retaining walls and seawall. The landowners are including the patio in this bulk variance per Bonner County Planning."

Staff: The applicants acquired the subject property on September 20, 2019, under instrument #945628. Historic imagery indicates the parcel was previously timbered and included a wooden walkway extending to the shoreline. Following the purchase, the walkway was partially removed, leaving the platform in place. Vegetation in the buffer area was cleared, and multiple retaining walls and a structure were constructed along the shoreline. After a violation notice (FV2022-0007) was issued, the structure along the shoreline was removed, while the associated retaining wall remained. The cleared buffer area was replaced with lawn. These activities occurred without recorded approvals or permits.

- (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: *"Regarding the existing retaining walls, the variance will not be detrimental to the public, it is actually a protection for the public by retaining any land materials on site from potentially entering the Pend Oreille River. The retaining walls, along with the seawall, are essential to keeping the integrity of the lawn and protection of the Pend Oreille River."*

Regarding the existing platform, the variance will allow the platform to stay where it has been located since prior to 2019. The platform is still located completely on-site and does not encroach over the property line it is encroaching into the 5-foot setback or the shoreline where it is also encroaching into the 40-foot setback. The variance for the platform will not impact the public in any manner."

Staff: The development seeking approval does not appear to inhibit the use of neighboring properties, or public areas. Retaining walls typically help control slope erosion, although the removal of the shoreline vegetative buffer also increases this risk.

Idaho Department of Environmental Quality commented that "Development setbacks from stream banks and lake shorelines are an important tool for protecting water quality. Riparian vegetation provides natural filtration of stormwater runoff and provides numerous other benefits to promote healthy surface water ecology. DEQ recognizes that there are sometimes unique circumstances that may justify reduced setbacks. While an individual variance likely has a relatively small impact on water quality, the cumulative impact of development in close proximity to shorelines and stream banks is a significant threat to water quality. DEQ advises local government planning departments to maintain established setbacks whenever possible.

Exceptions should be considered carefully by the local jurisdiction and used only when absolutely necessary to accommodate unique circumstances.”

No other agency or public comment suggested that this project would be detrimental to the public health, safety and welfare or be materially injurious to the surrounding properties or improvements in the vicinity.

G. Stormwater plan

A stormwater management plan was required pursuant to BCRC 12-720.2. The plan shall be submitted at the time of the Building Location Permits.

H. Agency Review

Agencies were notified of this project on April 23, 2025. A full list of the agencies notified can be found in the attached Appendix A.

The following agencies commented:

Idaho Department of Environmental Quality
Bonner County Floodplain Review

The following agencies replied “No Comment”:

Kootenai/Ponderay Sewer District

All other agencies did not reply.

Public Notice & Comments

At the time this Staff Report was written, no public comments had been received.

Staff Review Summary:

The proposed variance seeks to address site modifications that were completed without prior permits or adherence to Bonner County regulations. Based on available information, the location of the platform does not appear to be the result of any action by the current applicants, whereas the retaining walls were installed without documented awareness of applicable regulatory requirements. Approval of the variance would not fully resolve the parcel’s current nonconformance with BCRC 12-714, particularly regarding shoreline buffer standards, and would not address setback requirements as indicated in the “as-constructed” site plan. Initial measurements provided on the first site plan were inaccurate; therefore, the revised site plan, if approved, should be field-verified by a Bonner County Compliance Investigator to ensure accuracy. While no apparent impacts to neighboring properties have been identified, potential environmental concerns have been noted. Based on the stated intent of the shoreline buffer provisions and comments from the Idaho Department of Environmental Quality, the project may present compatibility challenges with the public interest. Without an approved stormwater management plan and a landscaping plan that complies with BCRC 12-714, it is unclear whether the project can meet standards intended to protect public health, safety, welfare, and nearby properties.

Planner's Initials: ___DF___ Date: ___5/14/25___ Note:
The final decision rests with the governing body after the completion of the public hearing and consideration of all relevant oral and written testimony and evidence.

Motion by the governing body:

HEARING EXAMINER

DECISION TO APPROVE: I hereby approve this project FILE V0005-25, requesting a variance to the setback standards to allow for a 1-foot property line setback where 5 feet is required, and a shoreline setback of 16 feet where 40 feet 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. (Ord. 559, 1-4-2017)

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 findings of fact and conclusions of law as written (or as amended) and direct planning staff to draft written findings and conclusions to reflect this motion 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 hereby deny this project FILE V0005-25, requesting a variance to the setback standards to allow for a 1-foot property line setback where 5 feet is required, and a shoreline setback of 16 feet where 40 feet is required, based upon the following conclusions:

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. (Ord. 559, 1-4-2017)

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 findings of fact and conclusions of law as written (or as amended) and direct planning staff to draft written findings and conclusions to reflect this motion 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 decision to the County Commissioners.

Findings of Fact

1. The project is located off River Birch Road, a Bonner County owned and privately maintained public right-of-way.
2. The project is served by individual septic and Laclede Water District.
3. The project site is served by Westside Fire District.
4. The property is zoned Suburban (S).
5. The property contains mapped slopes of 0-30%+(USGS).
6. The property does contain water frontage, or wetlands (USFWS + NHD).
7. The property was platted on August 12, 1963, under instrument #91528, Records of Bonner County.
8. The applicant purchased the property on September 20, 2019, and recorded deed on September 24, 2019, under instrument #945628, Records of Bonner County.
9. Floodplain Violation FV2022-0007 was opened on June 9, 2022.
10. Setbacks requested are not shown on the scaled site plan as the greatest encroachments.

Conditions of approval:

Standard Conditions:

A-1. Only the development highlighted on the site plan (retaining wall and platform setbacks) has been reviewed for variance standards. All other development shown must comply with Bonner County Revised Code.

- A-2.** This variance shall not supersede any deed restrictions.
- A-3.** A stormwater plan shall be required at time of Building Location Permit.
- A-4.** An approved Floodplain Development Permit must be obtained.
- A-5.** Building Location Permits must be obtained.
- A-6.** An approved Stormwater Management Plan must be obtained.

Conditions to be Met Prior to Issuance:

- B-1.** A landscape plan shall be submitted to, and approved by, the Planning Department demonstrating compliance with BCRC 12-714.
- B-2.** Portions of structures shown on site plan that encroach greater than what is approved in the variance must be removed or have an approved variance granted.

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.

Appendix A – Notice of Public Record of Mailing

Appendix B – Agency Comments