

**BONNER COUNTY PLANNING DEPARTMENT
PLANNING AND ZONING COMMISSION
STAFF REPORT FOR JULY 18, 2019**



Project Name: **GAVIN VARIANCE**

File Number, Type: **V0012-19, FRONT YARD SETBACK**

Request: The applicant is requesting a 7-foot front yard setback where a 25-foot setback is required to build a bath house

Legal Description: Lot 9A, Block 1 of 1st Addition to Walston's Lake Lots, according to the plat thereof, recorded in Book 10 of Plats, Page 134, official records of Bonner County.

Location: The project is located off of Raven View Drive, 1.5 miles from Camp Bay Rd. on a tract of land in a portion of Section 17, Township 56 North, Range 1 East, Boise Meridian, Bonner County, Idaho.

Parcel Size: 0.99 acres

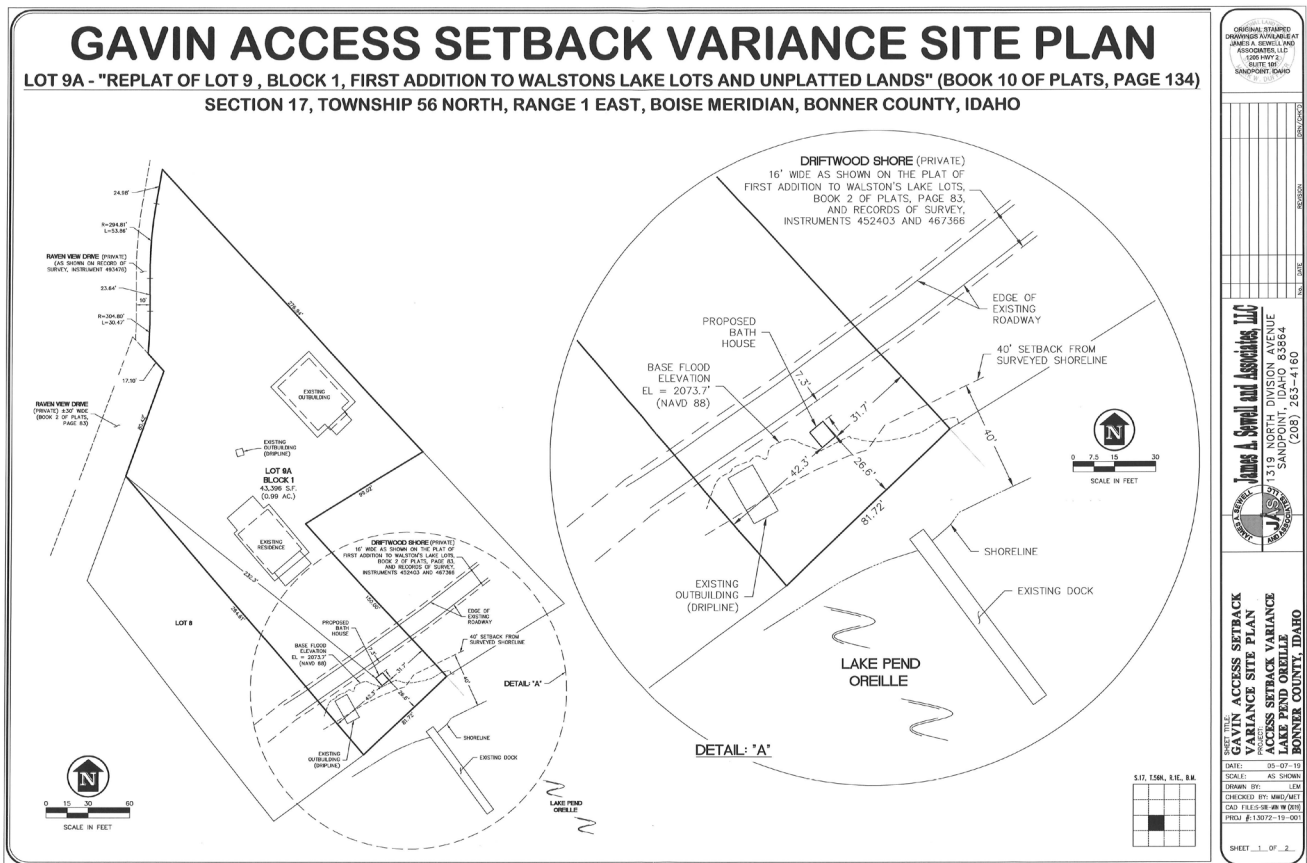
Applicant: Patrick & Kathleen Gavin
109 Raven View Drive
Sagle ID 83860

Project Representative: Marty Taylor, AICP, Project Planner
1319 North Division Ave.
Sandpoint ID 83864

Property owner: Same as applicant.

Application filed: May 22, 2019

Notice provided: Mail: 6/18/2019
Site Posting: 7/9/2019
Published in newspaper: 6/18/2019



ORIGINAL STAMPED DRAWING AVAILABLE AT JAMES A. SPINELL AND ASSOCIATES, LLC 1319 NORTH DIVISION AVENUE SANDPOINT, IDAHO 83864 (208) 263-1160

JAMES A. SPINELL AND ASSOCIATES, LLC
 1319 NORTH DIVISION AVENUE
 SANDPOINT, IDAHO 83864
 (208) 263-1160

DATE FILED: 05-07-19
 SCALE: AS SHOWN
 DRAWN BY: LEM
 CHECKED BY: MMB/MLT
 CAD FILE: 18-0960.DWG
 PROJ: #13072-19-001

SHEET 1 OF 2

Project summary:

The applicant is requesting a 7-foot front yard setback where a 25-foot setback is required in response to Building Location Permit 2018-0960 submitted on October 18, 2018. Variation from BCRC 12-411, Density and Dimensional Standards, would allow for the placement of a 6' x 6' bath house along the shore of Lake Pend Oreille. The parcel is zoned Rural 10, and is located in the vicinity of Camp Bay. The property is accessed by Raven View Drive, but is divided by a private easement, Driftwood Shore Dr. on the lower southeastern half of the parcel. When the property was platted in 1961 the easement crossing the lower half of the parcel resulted in a portion of the property having a "negative" or no building envelop. The applicant is proposing a variance which would allow for the use of this area of land.

Applicable laws:

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

- BCRC 12-323, The rural district is established to allow low density residential uses that are compatible with rural pursuits.
- BCRC 12-234, Variance standards
- BCRC 12-400, et seq., Development standards, if affected by variance
- BCRC 12-231, Variances, general provisions, application, standards, procedures
- BCRC 12-7.2, et seq., Grading/erosion/stormwater management

Background:

A. Site data

- a. Acreage: 0.99 (platted); 43,124 sq.ft.
- b. Use: Rural Residential 5-10 acres
- c. Zone: Rural – 10
- d. Structures:
 - i. Existing Garage/ADU ~1900 sq.ft., BLP2008-0642
 - ii. Existing Single family dwelling ~3,968 sq.ft., BLP1999-0105
 - iii. Existing Storage facility ~100 sq.ft.
- e. Lot Coverage
 - i. Existing: 13.8%
 - ii. Proposed: 13.9%

B. Access: According to the applicant, access to the lower part of the parcel is provided by Driftwood Shore, a 10'-12' wide, gravel, easement with a 16' R-O-W as recorded by instrument number 452403 & 467366. Upon a site visit it was observed that Driftwood shore is a 10-12' wide paved access road. Access to the main parcel is provided by Raven View Dr. a 15' wide, paved, easement with a 24' R-O-W as recorded by instrument number 4452405.

C. Environmental factors:

- i. Site contains mapped slopes of 15-30% grade, however the structure will be placed in an area where the slope is less than 15% (USGS)
- ii. Site does not contain any mapped wetlands
- iii. Site is located on Lake Pend Oreille
- iiii. Site contains some special flood hazard zone areas, but the proposed building will be placed outside of this area in DFIRM Panel # 16017C1000E, Zone X -0.2% annual chance of flood hazard (FEMA).

D. Services:

- Water: Individual well
- Sewage: Individual septic tank
- Fire: Selkirk Fire (~12 Miles)
- Power: Avista

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential 5-10 AC	Rural 10	Residential
North	Rural Residential 5-10 AC	Rural 10	Vacant Land
East	Rural Residential 5-10 AC	Rural 10	Residential
South	Rural Residential 5-10 AC	Rural 10	Residential
West	Rural Residential 5-10 AC	Rural 10	Residential

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:

(a) An undue hardship exists because of site characteristics, and special conditions and circumstances exist which are peculiar to the land, structure, or building involved.

Applicant: "The subject lot's shoreline was platted in 1961 establishing a narrow strip of land between the lakeshore and Driftwood Shore, a 16' wide easement depicted on the plat of the 1st addition to Walston's Lake Lots. This narrow strip will be developed with the subject structure, as well as numerous outbuildings and residences located on similarly platted lots. Thus the 40' lake front setback and the 25' easement setback overlap, negating any compliant building envelop, resulting in an undue hardship."

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

Applicant: "The property was platted in 1961 by the Waltsons. The applicants acquired Lot 9 in 2004 and replatted same in 2012. Accordingly, the applicants did not create the narrow strip of land between the Pend Oreille lake shore and Driftwood Shore. Thus, this site constraint was not a condition or circumstance resulting from the actions of the applicants."

(c) The variance is not in conflict with the public interest.

Applicant: The location of the structure is similar to that of about 14 buildings located within the 25' Driftwood shore easement setback. Additionally, the structure will be situated on a gravelly area. Therefore, no additional impervious surface will be created. Lastly, the structure will be located on the downhill side of and is set back about 10 feet from the Driftwood Shore travel way. Vehicles traveling southwesterly are thus not affected by the shed's location. Two ponderosa pines are located immediately adjacent to the Driftwood Shore travel way. Vehicles traveling northeasterly are thus not affected by the sheds location.

G. Stormwater plan: 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 site disturbances, as defined.

H. Agency Review: The application was routed to the following agencies for comment on June 18, 2019. The following agencies commented:

Panhandle Health District- Comment on June 26, 2019
Bonner County Road Dept. - No Comment
Selkirk Fire District - No Reply
Bonner County Schools - Transportation - No Reply
School District #84 - No Reply
Northern Lights Utility Company - No Reply

Dept. of Water Resources- No Reply
Army Corps- No Reply
Dept. of Lands, Nav. Waters - No Reply
Avista Utility Company - No Reply
Dept. of Lands - No Comment
Dept. of Env. Quality - No Reply

Panhandle Health District comment on June 36, 2019: *"The Panhandle Health District does not have a comment regarding the Variance for a front yard setback. However, any structure that will produce wastewater (including greywater) must discharge wastewater into an approved septic system. The property has a permitted system, PHD file # 09-09-118491. Upon review, there does not appear to be any plans for connecting the bathhouse to the septic system.*

Per Idaho State Individual/Subsurface Sewage Rules IDAPA 58.01.03.002:

04 Responsibilities

ii. Connecting all plumbing fixtures on that property that discharge wastewaters to an approved wastewater system facility. (10-1-90)

Due to the immediate proximity to surface water (40'), it is of utmost importance to dispose of any wastewater generated by the structure to the septic system and not either onto the ground or into Lake Pend Oreille."

I. Public Notice & Comments: No public comments were received.

Staff analysis:

Staff concluded this project **is** consistent with Bonner County Revised Code based upon the following:

The subdivision design is not a result of an action from the applicant. The applicant could have chosen to pursue a more severe variance by encroaching into the shoreline setback and floodplain area. The requested variance to deviate from the front yard setback allows for this strip of land to be developed, and used less intensively than other lots in the same vicinity. In addition, properties neighboring the parcel have been developed with single family dwellings which is inherently a more intensive use on a similar sized strip of land. Furthermore, placing the bathhouse on an existing impervious surface minimizes the impact to native vegetation and does not add to water run off effecting the lake.

Bonner County Revised Code section 12-234 (A) requires that unique conditions apply to the property due to size shape, topography or circumstances that are outside the control of the applicant; based upon the aforementioned the planning department concludes this standard is met because the applicant has no control over the location and nature of the lot. BCRC 12-234 (B) requires that special conditions and circumstances do not result from the actions of the applicant; based upon the facts of finding the planning department concludes this standard is met because the applicant purchased the land and did not create the lot. BCRC 12-234 (C) requires that the granting of the variance is not in conflict with the public interest. The planning department concludes this standard is met if the applicant can demonstrate compliance with Panhandle Health District, finding no other agencies or members of the public in conflict with the proposed variance.

Based upon the evidence collected, coupled with any agency or public comments, staff recommends approval.

Planner's Initials: AD **Date:** 7/05/2019

Note: This is only a recommendation. 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.

Staff Report Issued: 7/05/2019

Motion by the governing body:

PLANNING COMMISSION

MOTION TO APPROVE: I move to approve this project FILE V0012-19 which allows for a 7-foot front yard setback where 25-feet is required; finding that it is in accord with the Bonner County Revised Code as enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the following findings of fact and conclusions of law as written (or as amended). 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.

MOTION TO DENY: I move to deny this project FILE V0012-19 which allows for a 7-foot front yard setback where 25-feet is required; based upon the following conclusions: [REFER TO FOREGOING CONCLUSIONS OF LAW AND SPECIFY WHICH CONCLUSIONS THE PROJECT MEETS AND FAILS TO MEET]. The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I further move to adopt the following findings of fact and conclusions of law as amended. 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 Planning and Zoning Commission's decision to the County Commissioners.

Findings of Fact

1. The 1st Addition of Walston's Lake Lots was platted in 1967 during which the narrow strip of land between Lake Pend Oreille and Driftwood Shore was created.
2. A Replat of Lot 9 of 1st Addition to Walston's Lake Lots that created Lot 9A in 2012 conforms to the design criteria set forth in BCRC 12-621, and has allowed for the existing residential development to occur north of Driftwood Shore road.
3. The lot is Zoned Rural 10.
4. The lot contains 15% slope or greater.

Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted:

This proposal was reviewed for compliance with the criteria and standards set forth at Sections 12-233 and 12-234, Bonner County Revised Code, storm water management criteria and standards set forth in Chapter 7, Title 12, Bonner County Revised Code, and variance criteria and standards set forth at Section 67-6516, Idaho Code.

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)

Conditions of approval:

Standard permit conditions:

- A-1** The use shall be developed and shall be operated in accordance with the approved site plan.
- A-2** The variance shall expire if not issued within two (2) calendar years from the date of approval, or once issued, if the use has not commenced within two (2) calendar years from the date of issuance. At any time prior to the expiration date of the variance, the applicant may make a written request to the Planning Director for an extension of the variance for a period up to two (2) years. The Planning and Zoning Commission may consider such request for extension at any public hearing. The extension request must be approved or denied prior to the expiration date of the variance.
- A-3** Prior to the issuance of any Building Location Permit, the applicants shall provide documentation to the planning department demonstrating adequate sewage disposal approved by Panhandle Health District will be provided to the structure.

The complete file is available for review in the Planning Department, 1500 Highway 2, Suite #208, Sandpoint, ID. Staff reports are available online one week before the hearing at www.bonnercountyid.gov Bonner County Revised Code (BCRC) is available at the Planning Department or online.

File Documentation is posted to the web at
<https://www.bonnercountyid.gov/departments/Planning/file-v0012-19>