

**BONNER COUNTY PLANNING DEPARTMENT  
PLANNING AND ZONING COMMISSION  
STAFF REPORT FOR JULY 25, 2019**

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**Project Name:** Eliuk

**File Number:** V0013-19

**Type:** Shoreline Setback Variance

**Request:** The applicant is requesting a 12-foot setback to permit a wall taller than 36-inches and stairs wider than 4-feet within the 40-foot shoreline setback

**Legal Description:** A tract of Land in Section 31, Township 57 North, Range 2 West

**Location:** The project site is located off of Sundowner Lane in Sagle, Idaho.

**Parcel Number:** RP02453000011AA

**Parcel Size:** 0.53 acres

**Applicant:** Dwayne & M. Tanya Eliuk  
PO BOX 1171  
Crossfield, Alberta, CANADA, TOM 0S0

**Project Representative:** Same as applicant

**Property owner:** Same as applicant

**Application filed:** May 28, 2019

**Notice provided:** Mail: June 25, 2019  
Site Posting: July 16, 2019  
Published in newspaper: June 25, 2019



## ***Project Aerial***

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### **Project summary:**

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- The applicant is requesting a 12-foot setback to permit a wall taller than 36-inches and stairs wider than 4-feet within the 40-foot shoreline setback.
- The site is located off of Sundowner Lane in Sagle, ID and features frontage on the Pend Oreille River.
- The parcel is zoned Rural-5 and is a part of the Sunset Bay Estates – Planned Unit Development.

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## Applicable laws:

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

BCRC 12-231, Variances, general provisions, application, standards, procedures  
BCRC 12-234, Variance standards  
BCRC 12-411, Density and Dimensional Standards; Rural Zone  
BCRC 12-400, et seq., Development standards, if affected by variance  
BCRC 12-7, et seq., Environmental Standards

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## Background:

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### A. Site data:

- a. Acreage: 0.53 acres
- b. Use: residential/vacant
- c. Zone: Rural-5
- d. Structures: Retaining wall over 4' in height

### B. Access:

- a. Name: Sundowner Lane
- b. Owner: Private/HOA
- c. Class: local access
- d. Surface: Paved
- e. Width: 18-feet
- f. ROW Width: 50-feet

### C. Environmental factors:

- a. Floodplain: X, A/E; proposed improvements lie within SFHA per FEMA
  - i. FIRM Panel: 16017C0950E
- b. Vegetation: grass w/ sparse trees
- c. Soils: Wrencoe Silty Clay, 0 To 2 Percent Slopes
- d. Wetlands: Freshwater Emergent Wetland (Per USFWS NWI) See application for delineation & reconnaissance report.
- e. Slopes: <15% per USGS
- f. Hydrology: Pend Oreille River frontage per USGS NHD

### D. Services:

- a. Water: Sundowner Lane Water Co-op
- b. Sewer: Southside Water/Sewer
- c. Fire: Selkirk Fire & EMS
- d. Utility: Avista (Existing metering pedestal on property)
- e. School: LPOSD #84

### E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	R-5	Vacant
North	Rural Residential	R-5	Residential, SFD
South	Rural Residential	R-5	Residential, SFD
East	Rural Residential	R-5	Residential, SFD, Lake
West	Rural Residential	R-5	HOA, Vacant

## 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. 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.
- B. Special conditions and circumstances do not result from the actions of the applicant.
- 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. (Ord. 559, 1-4-2017)

Applicant:

- A. *The property sits alongside of an inlet into the bay which was created steep banks along the entire waterfront of the property and extends from the upstream southern properties. The original bank was steep and hazardous for the entire width of the property along the waterfront. The property is part of a homeowners association, which has rules for minimum size of house. If the land were terraced to follow the ordinance, it would significantly decrease the developable area of the lot and would force the development much closer to the road, which would not be consistent with the other homes on the street. The tall retaining wall is the best option for bank stabilization and maintaining the consistency of the neighborhood.*
- B. *Special conditions and circumstances of the existing wall did not result from the actions of applicant as the construction of the wall was contracted out to a local company in 2014, Mountain Scape, who built the wall in violation of the county ordinance. The contractor was asked to leave a gap in the wall for some stairs and the landowners assumed all was to code and built the stairs to fill the gap. The violation only came to the attention of the applicant after the property was conditionally sold in March 2019.*
- C. *Other properties in the same zone and vicinity feature similar retaining walls with stairs to the waterfront due to the naturally steep slopes and small building windows available on the properties.*

Staff:

- A.
  - a. Retaining walls are common along shoreline areas due to topography and limited building envelopes. A site visit conducted on May 8, 2019 confirms that the property was developed with a retaining wall to provide stabilization along the shoreland as well as to provide a level envelope for structures and improvements.
  - b. Pathways accessing the water are common along shoreline areas as said areas are often used for recreation by landowners. A site visit conducted on May 8,

2019 confirms that the property was developed with a staircase that exceeds the shoreline setback exception standards. The applicant indicated that the feature was installed to “fill in the gap” that the aforementioned retaining wall created.

- B. Information provided by the applicant in the application indicates that they did not build the retaining wall or the staircase, but rather contracted a local company to make the improvements. The applicants also state that, “the landowners assumed all was to code”. Staff observes this not to be the actions of the applicant, but rather the actions of the contractor who, by nature of profession, should be up-to-date with all codes and regulations, regardless of jurisdiction.
- C. A site visit on May 8, 2019 confirms that other properties in the same zone and vicinity feature similar retaining walls with stairs to the waterfront. This can be attributed to the fact that the lots within the Sunset Bay Estates subdivision are below the zoning minimum (R-5) and feature slope towards the shoreline.

**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 impervious surface, as defined.

**H. Agency Review**

The application was routed to agencies for comment on June 25, 2019. The following agencies commented:

Bonner County Floodplain – June 26, 2019

*“Parcel is a combination of SFHA Zone AE and Zone X, per FIRM Panel 16017C0950E, Effective Date 11/18/2009. Project site will be at least partly within SFHA Zone AE. Actual development will require a Flood Development Permit. I cannot find an existing FDP for this structure in the old flood records, indicating it was probably never given the required FDP. An FDP will be required after variance approval”*

**I. Public Notice & Comments**

As of July 15, 2019, there have been no public comments received.

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**Staff analysis:**

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Staff concluded this project is consistent with Bonner County Revised Code based upon the information found in the ‘Background’ portion of this staff report.

This conclusion is further demonstrated and supported in the findings of fact, conclusions of law, and conditions of approval.

<b>Planner’s Initials: <u>SR</u>      Date: <u>July 15, 2019</u></b>
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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.

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## **Motion by the governing body:**

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### **PLANNING COMMISSION**

**MOTION TO APPROVE:** I move to approve this project FILE V0013-19; allowing a 12-foot setback for a wall taller than 36-inches and stairs wider than 4-feet within the 40-foot shoreline setback. I find 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 V0013-19; allowing a 12-foot setback for a wall taller than 36-inches and stairs wider than 4-feet within the 40-foot shoreline setback. This motion is based upon the following conclusions: [REFER TO FOREGOING CONCLUSIONS OF LAW AND SPECIFY WHICH CONCLUSIONS THE PROJECT MEETS AND FAILS TO MEET]. The conclusions are 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.

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## **Findings of Fact**

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1. Neighboring lots within the Sunset Bay Estates plat feature similar walls and associated improvements within the 40-foot shoreline setback.
2. Retaining walls are common along shoreline areas due to topography and limited building envelopes.
3. Stairs and pathways are common along shoreline areas and are often used by land owners to access areas of recreation.

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## **Conclusions of Law:**

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

Conclusion 1

This proposal was reviewed for compliance with the criteria and standards set forth at Title 12, Bonner County Revised Code, and variance criteria and standards set forth at Section 67-6516, Idaho Code.

Conclusion 1

An undue hardship **does** exist because of site characteristics, and special conditions and circumstances that are peculiar to the land, structure, or building involved.

Conclusion 2

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

Conclusion 3

The variance **is not** in conflict with the public interest.

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**Conditions of approval:**

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**Standard permit conditions:**

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- 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** The development shall comply with Title 14 - Flood Damage Prevention.
- A-4** The applicant shall obtain a building location permit for any retaining walls that are over four feet (4') in height measured at grade.

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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](http://www.bonnercountyid.gov) Bonner County Revised Code (BCRC) is available at the Planning Department or online.