

# BONNER COUNTY PLANNING DEPARTMENT HEARING EXAMINER STAFF REPORT FOR DECEMBER 20, 2023

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**Project Name:** Caliber Land Company LLC - Variance

**File Number, Type:** V0024-23, Minimum Lot Size Variance

**Request:** The applicant is requesting a minimum lot size of 1.35-acres and 0.42-acres where 2.5-acres is required.

**Legal Description:** 16-56N-2W PLAT OF SWSE SCHOOL LOT 6 IDAHO GRANITE 1975 ATCO HOMES 24 X 56 MH

**Location:** 468146 U.S. Hwy 95, Sagle, ID 83860

**Parcel Number:** RP0068700000SLA

**Parcel Size:** 1.78-acres

**Applicant:** Caliber Land Company LLC  
468146 U.S. Hwy 95  
Sagle, ID 83860

**Project Representative:** Jeremy Grimm  
Whiskey Rock Planning + Consulting  
614 Creekside Ln  
Sandpoint, ID 83864

**Property owner:** Caliber Land Company LLC  
468146 U.S. Hwy 95  
Sagle, ID 83860

**Application filed:** October 27, 2023

**Notice provided:** Mail: November 21, 2023  
Published in newspaper: November 21, 2023  
Site Posting: November 20, 2023



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**Project summary:**

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The applicant is requesting a minimum lot size variance of 1.35-acres and 0.42-acres where 2.5-acres is required. The platted lot consists of 1.78-acres with a split zoning designation of Suburban (S) and Commercial (C). The site is located off U.S. Hwy 95, in a portion of Section 16, Township 56 North, Range 2 West, Boise-Meridian.

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**Applicable laws:**

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

BCRC 12-222: Application, Contents

BCRC 12-232: Variances, General Provisions

BCRC 12-234: Variance Standards

BCRC 12-324: Suburban District

BCRC 12-325: Commercial District

BCRC 12-412: Density and Dimensional Standards; Suburban, Commercial, Industrial, Rural Service Center, Recreation and Alpine Village Zones

BCRC 12-7.2, et seq.: Grading/Erosion/Stormwater

BCRC 12-800, et seq.: Definitions

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**Background:**

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**A. Site data**

- Platted in 1912 in Book of Plats, Book 1, Page 140, Records of Bonner County, Idaho
- Legal, non-conforming lot
- Multiple structures
  - ~1344 sq ft single family dwelling (mobile home)
  - ~4320 sq ft commercial building
  - ~2560 sq ft accessory building
  - ~1040 sq ft accessory building
  - ~480 sq ft accessory building
- Size: 1.78-acres per Record of Survey, Inst. No. 748194
- Zone: Suburban (S) and Commercial (C)
- Land Use: Transition ( $\leq 2.5$  AC)

**B. Access**

- U.S. Hwy 95 is a 160' public right-of-way with a paved 60' travel way.

**C. Environmental factors**

- The site does not contain mapped slopes in excess of 30% grade per USGS.
- The site does not contain mapped wetlands per USFWS.
- The site does not contain river/stream/lake frontage per the National Hydrography Dataset (NHD).
- The site is within SFHA Zone X per FIRM Panel #16017C0950E, effective 11/18/09.

**D. Services**

- Water: Individual Well

- Sewage: Lies within the Sagle Valley Water & Sewer District but is currently served by a private individual system
- Fire: Sagle/Selkirk Fire District
- Power: Avista Utilities
- School District: Lake Pend Oreille School #84

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

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Transition	Suburban/Commercial	Residential/Commercial
North	Transition	Commercial	Non-residential, 3.80-acres
South	Transition	Suburban	Commercial, 0.45-acres
East	Transition	Commercial	Commercial, 1.34-acres
West	Transition	Suburban	Residential, 0.60-acres

**F. Standards Review**

BCRC 12-234 specifies that “The staff, Zoning Commission, hearing examiner and/or Board shall review the particular facts and circumstances of each proposal submitted. To grant a variance, the hearing examiner or the Governing Body must 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.**

**Applicant:** *The subject parcel is currently legally nonconforming due to a variety of characteristics including uses, and density. The owner has no control over the now recognized size of the parcel. General publicly available information on the Bonner Count GIS parcel map shows the parcel being 2.45 acres in size when in fact the survey results show the parcel to be 1.78 acres, thereby falling under the minimum size required to create two 1-acre lots as originally desired by the owner. The conditions and limitations described ARE a result of actual lot size.*

**Staff:** The lot is a triangle-shaped 1.78-acre lot that is split-zoned Suburban/Commercial. This lot is a legal, non-conforming lot since it does not have urban services and is below the 2.5-acre minimum lot size per BCRC 12-412. Although the service map for Sagle Valley Water & Sewer covers the lot, the applicant has stated that there are no urban services present and there is no timeline to extend services to the lot. No water availability report from an Idaho-licensed engineer or will-serve letter from Sagle Valley Water & Sewer was submitted or received at the time of this staff report. BCRC 12-412 states that lots zoned Suburban and Commercial have a lot size minimum of 2.5-acres where urban sewer and water services are not available.

The lot consists of 1.78-acres per Record of Survey, Instrument Number 784194, dated March 21, 2008. This document was referenced in the deed that was submitted by the applicant and is available at the Bonner County Recorder’s office.

In fact, it appears that the site plan submitted by the applicant was taken from the record of survey. While the Bonner County GIS system does show the lot acreage as 2.45-acres, all users of the GIS system are presented with a disclaimer screen stating that Bonner County is not responsible for any errors or omissions.

There are a number of sub-2.5 acre, legal, non-conforming lots in both zones near the subject lot that do not have urban services. The parcels/lots near the subject lot range from 0.45-acres to 7.638-acres and are zoned either Suburban or Commercial.

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

**Applicant:** *The applicant has taken no action and has not caused circumstances to occur which have changed the legal area of the parcel. The request for this variance is due to an inconsistency between the Bonner Count GIS listed parcel area (2.45 acres) and the actual area of +/-1.78 acres which necessitates the request.*

**Staff:** The applicant has not taken any action to create any special conditions or circumstances that may exist for this lot. This lot was platted on July 27, 1912 per Book of Plats, Book 1, Page 140, Instrument Number 022404, Records of Bonner County, Idaho. The applicant purchased this lot on January 21, 2022 per Instrument Number 999423, Records of Bonner County, Idaho. The applicant has not made any changes to the lot since it was purchased.

**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:** *This is private property and for no commercial use.*

**Staff:** The creation of 1.35-acre and 0.42-acre lot could be detrimental to the public interest as there is insufficient area for individual services and there are no urban services available. BCRC 12-412 states that lots zoned Suburban and Commercial have a lot size minimum of 2.5-acres where urban sewer and water services are not available. The lot is currently 1.78-acres and is already below the lot size minimum. A 1.35-acre and 0.42-acre lot would further increase the non-conformity on this lot, double the allowable density and provide for an increase in the intensity of use on the subject property. If an additional lot is allowed, it may require another encroachment permit through the Idaho Transportation Department (ITD). The current encroachment permit for the commercial structure was issued for a café. Per ITD's agency comment letter, the agency is requesting a revised traffic count for the current use so that they can reevaluate the existing encroachment permit.

Property owners within a 300-foot radius of the subject property were notified of this application. No public comments opposing or supporting the variance were received. No comments or recommendations were received from agencies that indicate a negative impact on public safety, health, or welfare.

### **G. Grading/Erosion/Stormwater**

Per BCRC 12-7.2, there is no grading/erosion/stormwater management plan required at this time. This is not an application for development. However, a management plan may be required at the time of application for a Building Location Permit.

### **H. Agency Review**

The following agencies were routed for review and comment on November 14, 2023

<b>Avista Utilities</b>	<i>No response</i>
<b>Bonner County Floodplain Review</b>	<i>The parcel is within SFHA Zone X per FIRM Panel Number 16017C0950E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.</i>
<b>GIS Addressing</b>	<i>MC 12/6/2023: No addressing issues.</i>
<b>Idaho Department of Environmental Quality (DEQ)</b>	<i>See comment</i>
<b>Idaho Department of Fish &amp; Game</b>	<i>See comment</i>
<b>Idaho Department of Water Resources - IDWR</b>	<i>No response</i>
<b>Idaho Transportation Department-District I</b>	<i>See comment</i>
<b>Lake Pend Oreille School District, #84 (Admin Office)</b>	<i>No response</i>
<b>Lake Pend Oreille School District, #84 (Transportation)</b>	<i>No response</i>
<b>Panhandle Health District</b>	<i>No response</i>
<b>Road &amp; Bridge BLP Signoff</b>	<i>No response</i>
<b>Sagle Valley Water &amp; Sewer</b>	<i>No response</i>
<b>Selkirk Fire, Rescue &amp; EMS</b>	<i>No response</i>
<b>U.S. Army Corps of Engineers</b>	<i>No response</i>
<b>U.S. Fish &amp; Wildlife Service</b>	<i>No response</i>

### **I. PUBLIC COMMENT**

As of the date of the staff report, no public comments have been received.

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**Staff analysis:**

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Staff concluded this project **is not** consistent with Bonner County Revised Code based upon the following:

Per BCRC 12-412, the minimum lot size for both the Suburban and Commercial zones where no urban services are available is 2.5-acres. Although the lot is within the Sagle Valley Water & Sewer District service area, water service is not provided to the subject lot and the district does not provide sewer service.

The applicant purchased the property as it currently exists. They have not taken any action to create the special conditions or circumstances that apply to the property.

The granting of this variance could be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject lot by increasing the density, increasing the non-conformity and increasing the intensity of use where urban services currently do not exist.

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

**Planner's Initials: RW**

**Date: December 11, 2023**

**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 all relevant oral and written testimony and evidence.**

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**Decision by the governing body and Conclusions of Law:**

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**HEARING EXAMINER**

**DECISION TO APPROVE:** I approve this project, FILE V0024-23, for a reduced minimum lot size of 1.34-acres and 0.42-acres where 2.5-acres 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). 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 V0024-23, a reduced minimum lot size of 1.34-acres and 0.42-acres where 2.5-acres 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.

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 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 Hearing Examiner's decision to the County Commissioners.

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### **Findings of Fact**

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1. The proposal was reviewed for compliance with BCRC 12-234 Variances, and standards for review of applications, BCRC 12-400, et seq.
2. The lot was platted on July 27, 1912 per Book of Plats, Book 1, Page 140, Instrument Number 022404, Records of Bonner County, Idaho.
3. The lot consists of 1.78-acres per Record of Survey, Instrument Number 784194, dated March 21, 2008.
4. The site does not contain mapped slopes per USGS.



5. The parcel does not contain wetlands per USFWS.
6. The site does not contain a river/stream/frontage on a lake per the National Hydrography Dataset (NHD).
7. The parcel is within SFHA Zone X per FIRM Panel Number 16017C0950E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.
8. The lot is accessed via U.S. Hwy 95. U.S. Hwy 95 is a 160' right-of-way with a paved 60' travel way.
9. The site is split-zoned Suburban (S) and Commercial (C) with a land use designation of Transition.
10. The applicant purchased this lot on January 21, 2022 per Instrument Number 999423, Records of Bonner County.
11. The applicant has applied for a zone change (ZC0010-23) requesting that the entire lot be changed to Commercial zoning. As of the date of this staff report, a decision to approve or disapprove the zone change application has not been made.

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**Proposed Conditions of approval:**

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**Standard permit conditions:**

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**A-1** Only the lot size minimums 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.

**A-2** The granting of this variance shall not supersede any deed restrictions.

**A-3** All requirements of BCRC 12-623 shall be satisfied prior to the approval of a final plat.

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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.