

Bonner County Planning Department Hearing Examiner Staff Report for April 3, 2024



FILE: V0027-23 **DATE OF REPORT:** March 25, 2024
PROJECT: Shoreline, Street Setback, Bulk Increase, Lot Coverage, Impervious Surface Coverage - Variance **APPLICATION DATE:** November 08, 2023
PARCEL No: RP059690010010A **PARCEL SIZE:** 0.30-acre
LANDOWNER: Doug Heiskell **REPRESENTATIVE:** Verdis
cc/Anthony Bauerle
3906 N. Schreiber WAY
Coeur d'Alene, ID 83815

NOTICE: Mailed - March 05, 2024
Published in newspaper - March 05, 2024
Site posted - March 06, 2024

REQUEST: The applicants are requesting a 28-foot shoreline setback where 40 feet is required, a 2 foot street setback where 25 feet is required, 50% impervious surface coverage where 35% is required, 50% lot coverage where 35% is required and a 270% bulk increase variance of an existing structure.

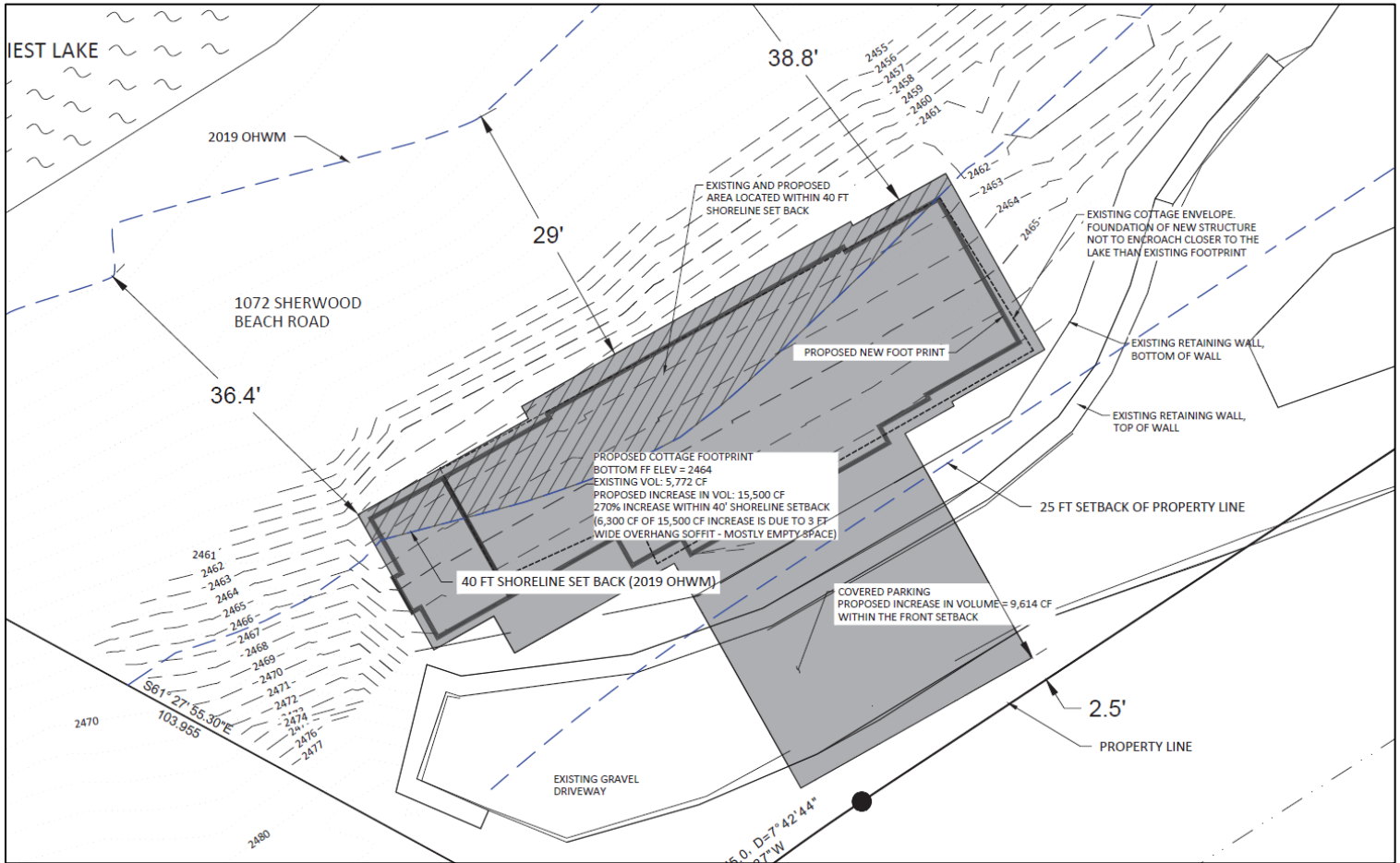
LEGAL

DESCRIPTION: 3-59N-4W KOKANEE POINT 1ST ADD BLK 1 LOT 1

LOCATION: The project is located Sherwood Beach Road in Section 3, Township 59 North, Range 4 West, Boise-Meridian.

ENCLOSURES: Annex A – Notice of Public Hearing Record of Mailing

SUBJECT PROPERTY SITE PLAN



PROJECT SUMMARY

The applicants are requesting a 28-foot shoreline setback where 40 feet is required, a 2 foot street setback where 25 feet is required, 50% impervious surface coverage where 35% is required, 50% lot coverage where 35% is required and a 270% bulk increase variance of an existing structure.

APPLICABLE LAWS

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

- BCRC 12-222: Application contents
- BCRC 12-232: General provisions
- BCRC 12-234: Variance standards
- BCRC 12-400: Development standards
- BCRC 12-411 DENSITY AND DIMENSIONAL STANDARDS; FORESTRY, AGRICULTURAL/FORESTRY AND RURAL ZONES
- BCRC 12-7.1, et seq.: Shorelines
- BCRC 12-7.2, et seq.: Grading/erosion/stormwater
- BCRC 12-7.6, et seq.: Hillsides
- BCRC 12-800 et seq.: Definitions

BACKGROUND

A. Site Data

Land Use: 0.30-acres/Residential
Platted
Size: 0.30-acre
Zoning Designation: Rural 5
Comp Plan Designation: Rural Residential

B. Access

The property is accessed off of Sherwood Beach Road, a Bonner County-owned and maintained public right-of-way.

C. Environmental Factors

Site does contain mapped slopes (USGS).
Site does contain mapped wetlands (USFWS).
Site does contain water frontage.
Parcel is within SFHA Zone X & Zone AE per FIRM Panel Number 16017C0430F, Effective Date 7/7/2014.

D. Services

Water: Lake Pump System; individual system
Sewage: Coolin Sewer District
School District: West Bonner School District #83

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan Designation	Zoning Designation	Current Land Use & Density
Site	Rural Residential	Rural 5	0.30-acres/Residential
North	Rural Residential/ Resort Community	Rural 5/Recreation	0.23-acres/Residential
East	Rural Residential	Rural 5	0.468-acres/Residential
South	Rural Residential	Rural 5	48.31-acres/IDL-owned land
West	Priest Lake	Priest Lake	Priest Lake

AGENCY ROUTING

A full list of the agencies noticed for this file can be found in the attached Annex A. The following agencies provided a comment:

Bonner County Floodplain Review - Email

*JRJ, 3.4.2024: Parcel is within SFHA Zone X & Zone AE per FIRM Panel Number 16017C0430F, Effective Date 7/7/2014.
Per site plan and county GIS the project site is within*

SFHA Zone X.
No further floodplain review is required on this proposal.

Bonner County Road & Bridge - Email

See letter for more details.

GIS Addressing

MC 3/4/2024: Complete

Idaho Department of Environmental Quality (DEQ) - Email

See letter for more details.

Idaho Department of Fish & Game – Email

See letter for more details.

PUBLIC COMMENT

As of the date of the staff report, public comments have been received.

STANDARDS REVIEW & STAFF ANALYSIS:

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. Standards Review

- (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 steep topography of the site reduces the buildable area of the lot. The topography and the distance to the OWHM (Official High Water Mark), does not allow for adequate footprint for a typical residence. An existing retaining wall and driveway provides access from Sherwood Beach Rd increases the inability to build further away from the lake. The existing natural topography ranges from 45% slope to 80% slope. These slopes require the existing structure to be rebuilt within the 40 ft buffer of the Ordinary High Water Mark. The proposed variance would not change any existing setbacks, but instead allow a taller structure to be built which does not further the encroachment.

Staff: The subject property contains, and would be characterized, by slopes of 0-30+%. Slopes can inhibit the ability to develop the property. While the slopes affect all of the surrounding properties, the steep slopes on the applicant's property appears to be more severe than the surrounding parcels.

The current cottage on the property is located within the shoreline setback, however, since the structure is being remodeled and enlarged, a variance for shoreline setback is necessary. As proposed, the applicant is not proposing to further increase the current structure's footprint into the setbacks, only the extension of the eaves. While the building's footprint will stay the same, the size of the structure is proposed to be increased in height. Within the street and shoreline setbacks, the proposed bulk increase is 270%.

Additionally, the applicants are requesting a reduced street setback for a covered parking area over the existing driveway, 2 feet from the edge of the right-of-way where 25 feet is required.

Bonner County Road & Bridge Department stated concerns with structures being located in

close proximity to the right-of-way can impede the county's ability to properly maintain the roads and could potentially lead to damage of the structures within that setback.

With the request of the parking cover structure, the lot coverage and impervious surface coverage allotments, 35% of the parcel, have been exceeded to 50%.

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

Applicant: No conditions or actions by the owner have created an unbuildable parcel. The existing retaining wall is to strengthen the area in the front of the structure and provide safer access to the structure. The grade of the site does not allow for safe vehicle access to the ground level of the home. The applicants do not want build closer to the lake, but build up higher from the existing footprint to allow access from the existing driveway/retaining wall. The lot was previously owned by IDL and did not conform to Bonner County Standards, as IDL is not required to meet County regulations.

Staff: The applicants obtained this property through a State of Idaho Deed, Instrument No. 913637, on October 27, 2017. The property was once endowment land owned by the State of Idaho. The property was platted by Kokanee Point First Addition, Book 11, Page 25, recorded as Instrument No. 863243. The applicants have not changed the property to further the non-conformity of the property since they obtained it, including changing the shape, size, topography, or any changes to the existing structures. Bonner County records indicate that the structure in question was built in 1950. The applicants have not altered the structure since they obtained the property.

(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: The proposed variance will allow reasonable access to a newly built single-family residence without furthering the setback encroachment. Granting the variance does not allow the owner to further encroach closer to the lake. The applicants' proposal will improve the look of the neighborhood by updating a 1950s cottage. The proposed structure will not have a negative impact on any of the neighbors. The tall forest-like trees hide the structure well and do not restrict the view of the neighbors, nor does it restrict the view from the public road.

Staff: All properties within a 300-foot radius of the property were notified of the request; we received no public comments. Bonner County Road & Bridge has indicated, in their review letter, that buildings close to the right-of-way can create issues with maintaining the right-of-way. Additionally, Idaho Department of Fish and Game and Idaho Department of Environmental Quality indicated the need to maintain a native vegetative buffer between the shoreline and the proposed structures. No other agency comments were received at the time of the staff report that indicated that granting this variance for the reduced setbacks for the purpose of future construction will have a negative impact on public health, safety, or welfare. SEE BONNER COUNTY ROAD & BRIDGE, IDFG, AND IDEQ COMMENTS.

B. Stormwater Management Review

Per BCRC 12-7.2, all new building construction within 300 feet of a water body is required to have a stormwater management/erosion control plan. A stormwater and erosion control management plan will be required at the time of application of the Building Location Permit.

C. Staff Review Summary

Due to the lot size, setbacks to shorelines and roads, and steep terrain, the building envelope for the subject parcel is restrictive, which can inhibit the ability to develop the property as other surrounding properties. Currently, the building on the property is located within the required 40 foot shoreline setback; it currently is measured at 32 feet from the shoreline. However, per the applicant's site plan, the further encroachment of the shoreline setback is due to the extension of the proposed eaves of the building, creating a

29-foot setback, but the applicant has requested a 28-foot setback.

Per the application, the new residence will encroach further into the shoreline setback, creating a 270% bulk increase within the setback. The applicant's narrative states that they will be extending the eaves of the house, and building a taller structure, rather moving closer to Priest Lake.

The applicant requested a variance from lot coverage and impervious surface coverage. Currently, this property has an impervious surface and lot coverage calculation of 34%. With the proposed addition of the home and covered parking area, the proposed impervious surface and lot coverage would be 42%, but they have requested 50%. At the time of Building Location Permit, a stormwater and erosion control plan and geotechnical analysis will be required.

Additionally, a covered parking structure is proposed, per the application, "...to allow safe access from the existing driveway/retaining wall." This portion of the structure would encroach further towards the county right-of-way. Per the site plan, the covered parking area would encroach past the existing driveway. Bonner County Road & Bridge had stated in their letter that buildings built close to the edge of the right of way can impede the ability to maintain the roads properly. Bonner County Road and Bridge's comment appears to conclude that the expansion of the covered parking structure could be detrimental to public health, safety, or welfare. No other agencies that were routed indicated that the granting of the variance could impede public health, safety, or welfare.

The applicants have not, since taking ownership of the property, done anything to further the non-conformity of the parcel by changing the size, shape, topography, or features of the property or the existing structures.

The Bonner County Planning Department has found that the following requests are consistent with Bonner County Revised Code:

1. 28-foot shoreline setback where 40-feet is required.
2. Bulk Increase of 270% to the existing single-family-dwelling within the shoreline setback.
3. 50% impervious surface coverage where 35% is required.
4. 50% lot coverage where 35% is required.

The following requests are not consistent with Bonner County Revised Code:

5. 2-foot street setback where 25-feet is required.

Staff determination: Has met criteria subject to conditions.

Planner's Initials: AF

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.

DECISION OF THE HEARING EXAMINER

DECISION TO APPROVE: I approve this project V0027-23, requesting a 28-foot shoreline setback where 40 feet is required, a 2 foot street setback where 25 feet is required, 50% impervious surface coverage where 35% is required, 50% lot coverage where 35% is required and a 270% bulk increase variance of an existing structure, 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 adopt the findings of fact and conclusions of law as set forth in the Staff Report (or as amended during this hearing) and direct planning staff to draft written findings and conclusions to reflect this decision 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 deny this project V0027-23, requesting a 28-foot shoreline setback where 40 feet is required, a 2 foot street setback where 25 feet is required, 50% impervious surface coverage where 35% is required, 50% lot coverage where 35% is required and a 270% bulk increase variance of an existing structure, 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 adopt the findings of fact and conclusions of law as set forth in the Staff Report (or as amended during this hearing) and direct planning staff to draft written findings and conclusions to reflect this decision 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 Hearing Examiner's decision to the County Commissioners.

RECOMMENDATION TO THE ZONING COMMISSION: I recommended that the Zoning Commission conduct a public hearing for this Variance File V0027-23, requesting a 28 foot shoreline setback where 40 feet is required, a 2 foot street setback where 25 feet is required, 50% impervious surface coverage where 35% is required, 50% lot coverage where 35% is required and a 270% bulk increase variance of an existing structure, pursuant to the public hearing noticing requirements and procedures of Chapter 2, Subchapter 2.6 of Title 12, based upon the extent of public comment and other contested factors in the case which warrant a hearing in front of the Zoning Commission.

FINDINGS OF FACT

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 property is zoned Rural 5.
3. The property is described as 3-59N-4W KOKANEE POINT 1ST ADD BLK 1 LOT 1.
4. The property has an existing single-family dwelling.
5. There are slopes of 0-30+% grade present on the property per USGS.
6. The property does have mapped wetlands, per USFWS.
7. A portion of the property is located in Special Flood Hazard Area Zone-AE per FEMA.
8. The applicants obtained this property through a State of Idaho Deed, Instrument No. 913637, on October 27, 2017.
9. The property is served by Coolin Sewer District and an individual lake pump system.
10. The property is served by Coolin-Cavanaugh Bay Fire District and Northern Lights, Inc.
11. The property is accessed off of Sherwood Beach Road, a Bonner County owned and maintained public right-of-way.

CONCLUSIONS OF LAW

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

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)

CONDITIONS OF APPROVAL:

Standard Conditions:

- A-1.** A Building Location Permit shall be obtained prior to commencing construction on the structure.
- A-2.** Only the development highlighted on the site plan has been reviewed for variance standards. All other development shown must comply with Bonner County Revised Code.
- A-3.** The granting of this variance shall not supersede any deed restrictions.
- A-4.** Per BCRC 12-720.2 (E) a stormwater management plan shall be required for all new building construction or development which occurs on or within 300' of a slope with 15% or greater incline.
- A-5.** The applicant shall install prior to ground disturbing activities all temporary erosion control measures as designed and approved. The applicant shall provide to the Planning Department prior to ground disturbing activities a signed statement from the project engineer or design professional stating that these measures have been installed as per the design specifications as approved. The applicant shall install upon completing ground disturbing activities and shall maintain thereafter all permanent erosion control and stormwater management measures as designed and approved. The applicant shall provide to the Planning Department upon completing ground disturbing activities a signed statement from the project engineer or design professional stating that these measures have been installed as per the design specifications as approved.
- A-6.** Site contains mapped steep slope of over 30% grade. Any development on site located within or in proximity of the areas of steep slopes is required to meet the standards of BCRC 12-7.6 prior to start of development on site.

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.

RECORD OF MAILING

Page 1 of 1

File No.: V0027-23

Hearing Date: April 03, 2024

Record of Mailing Approved By:

I hereby certify that a true and correct copy of the "Notice of Public Hearing" was digitally transmitted or mailed (postage prepaid) on this **5th** day of **March 2024**.



Jenna Crone, Hearing Coordinator

Assessor - Email	Avista Utilities - Email
Bay Drive Recreation District - Email	Bayview Water & Sewer - Email
Bonner County Airport Manager - Email	BONNER COUNTY DAILY BEE - U.S. Mail
Bonner County EMS - Email	Bonner County Floodplain Review - Email
Bonner County Road & Bridge - Email	Bonner County Sheriff - Email
Bottle Bay Water & Sewer District - Email	City of Clark Fork - Email
City of Dover - Email	City of East Hope - Email
City of Hope - Email	City of Kootenai - Email
City of Oldtown - Email	City of Ponderay - Email
City of Priest River - Email	City of Sandpoint - Email
City of Spirit Lake - Email	Coolin Sewer District - Email
Coolin-Cavanaugh Bay Fire District - Email	Drainage District #7 - Email
East Bonner Library - Email	East Priest Lake Fire District - Email
Ellisport Bay Sewer - Email	Garfield Bay Water & Sewer District - Email
GEM STATE MINER - U.S. Mail	Granite Reeder Water & Sewer District - Email
Idaho Department of Environmental Quality (DEQ) - Email	Idaho Department of Fish & Game - Email
Idaho Department of Lands - CDA - U.S. Mail	Idaho Department of Lands - Coolin - Email
Idaho Department of Lands - Navigable Waters & Mining - Email	Idaho Department of Lands - Sandpoint - Email
Idaho Department of Water Resources - IDWR - Email	Idaho Transportation Department (Aeronautics) - U.S. Mail
Idaho Transportation Department- District I - Email	Independent Highway District - Email
Kalispel Bay Sewer & Water - U.S. Mail	Kootenai-Ponderay Sewer District - Email
KPBX-FM 91 SPOKANE PUBLIC RADIO - U.S. Mail	KSPT-KPND-KIBR RADIO - U.S. Mail
Laclede Water District - Email	Lake Pend Oreille School District, #84 (Admin Office) - Email
Lake Pend Oreille School District, #84 (Transportation) - Email	Lakeland Joint School District, #272 - Email
Little Blacktail Ranch Water Association - U.S. Mail	North of the Narrows Fire District - Email
Northern Lights, Inc. - Email	Northland/Vyve Cable Television - Email
Northside Fire District - Email	Outlet Bay Sewer District - Email
Panhandle Health District - Email	Pend Oreille Hospital District - Email
Priest Lake Public Library District - Email	Priest Lake Translator District - Email
Sagle Valley Water & Sewer - Email	Sam Owen Fire District - Email
Schweitzer Fire District - Email	SELKIRK ASSOCIATION OF REALTORS - U.S. Mail
Selkirk Fire, Rescue & EMS - Email	Selkirk Recreation District -Email
Southside Water & Sewer District - Email	Spirit Lake Fire District - Email
Spokesman-Review - U.S. Mail	State Historical Society - Email
Swan Shores Sewer District - U.S. Mail	Syringa Heights Water Association - Email
Tamarack Village Water & Sewer - U.S. Mail	Timber Lake Fire District - Email
Trestle Creek Sewer District - Email	U.S. Army Corps of Engineers - Email
U.S. Fish & Wildlife Service - Email	U.S. Forest Service - U.S. Mail
West Bonner County Cemetery District - Email	West Bonner County School District, #83 - Email
West Bonner Library - Email	West Bonner Water & Sewer District - Email
West Pend Oreille Fire District - Email	West Priest Lake Fire District - Email