



Bonner County Planning Department

"Protecting property rights and enhancing property value"

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ADMINISTRATIVE VARIANCE WRITTEN DECISION

This application has been reviewed against the standards for a variance in Bonner County Revised Code 12-234. It has been determined that the request has met the criteria, subject to conditions, based on the findings of fact and conclusion of law as per the review below.

FILE: VA0019-23

DATE OF REPORT: October 27, 2023

PROJECT: **Approved**

APPLICATION DATE: July 13, 2023

PARCEL No: RP059520010180A

APPLICANT: RSW Holdings LLC, Ryan Wood

REPRESENTATIVE: Scott Thompson, Scott Thompson Construction

SUMMARY OF PROPOSAL: The applicant is requesting to replace an existing non-conforming structure with a new structure that contains 11% more volume within the same footprint, constituting a bulk increase within the 40-foot shoreline setback. The 1.720 property is zoned Recreation and Forest 40 (F). The project site is located off South Horton Creek Road in Section 34, Township 61N, Range 04W, Boise-Meridian.

DOES PROJECT CONFORM TO VARIANCE CRITERIA BCRC 12-234:

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 2 roads crossing through it North + South Horton Creek and the steep slope makes it unike.*

STAFF: BCRC 12-234 (A) requires that 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.

Per BCRC 12-344, nonconforming structures that were built prior to November 18, 2008 are

considered legally nonconforming. The boathouse was not constructed by the applicant and was built before November 18, 2008 (1980). However, 12-344 (A) states “No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this section, except where otherwise noted in this subchapter.” Therefore, a variance is needed. The applicant is proposing to reconstruct the boathouse within the same footprint. The new structure will be raised to the current deck elevation which is approximately 5' above the artificial highwater mark so that it is even with the current deck. It will no longer be usable as a boat house as there will be no direct access to the water. The existing roofline will be raised from 8' to an average height of 8.5' from the structure floor. The new shed roof will slope from 10' on the north side to 7' on the south side. The proposed changes will increase the volume of the structure by 11%. The use of the structure is proposed to decrease in intensity and the proposed changes may possibly improve water quality since there will no longer be the potential for petroleum products from motorized vessels to leak into the water.

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

APPLICANT: *Boat house was pre-existing it was built in 1980. Purchased September 15, 2023. New storage will greatly improve water quality by bringing it out of the water will no longer be used for boat storage. Will be used for water toys, tubes, Beach toys, ect.*

STAFF: BCRC 12-234 (B) requires that the special conditions and circumstances do not result from the actions of the applicant.

The boathouse was not constructed by the applicant and was built before November 18, 2008.

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: *There will be no impact to the public.*

STAFF: BCRC 12-234 (C) requires that 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.

Granting this variance is not in conflict with public interest. Property owners within a 300 foot radius of the subject property were notified of this application. Two (2) public comments were received supporting denial of the variance. Both comments assumed that the proposed boat house would increase the footprint within the 40' waterfront setback which is not the case. See the public letters for those comments. No comments or recommendations were received from agencies that indicate a negative impact on public safety, health, or welfare.

AGENCY ROUTING

Agency routing memo sent: July 26, 2023

The following agencies were routed for review and comment:

Bonner County Floodplain Review

JRJ, 9.14.2023: Parcel is within SFHA Zone X & Zone AE per FIRM Panel Number 16017C0225F, Effective Date 7/7/2014. Based on the submitted application, submitted site plan, and county GIS the project site is within the SFHA. A Floodplain

Development Permit (FDP) will be required for this project. The FDP will be required regardless of whether a Building Location Permit is ultimately required for this project. The FDP should be applied for if and when file VA0019-23 is approved.

GIS Addressing

MC 7/24/2023: Complete. Does not affect addressing

Idaho Department of Environmental Quality (DEQ)

See letter for comment

Idaho Department of Fish & Game

See letter for comment

Idaho Department of Lands - CDA

No response

Idaho Department of Lands - Coolin

No response

Panhandle Health District

No response

U.S. Army Corps of Engineers

No response

U.S. Fish & Wildlife Service

No response

U.S. Forest Service

No response

PUBLIC COMMENT

Notice mailed:

July 26, 2023

Two public comments have been received.

See letters for comments

FINDINGS OF FACT:

1. This proposal was reviewed for compliance with the criteria and standards set forth in BCRC 12-238 Administrative Variances, BCRC 12-234 Variances, Standards for Review of Applications, BCRC 12-400, et seq., and BCRC Density and Development Standards if affected by the variance.
2. The site is split-zoned, Recreation and Forest 40.
3. The site does contain mapped slopes in excess of 30%. (USGS)
4. The site does contain mapped wetlands. (USFWS)
5. The site does contain frontage on Priest Lake. (USGS)
6. The site is within SFHA Zone X & Zone AE per FIRM Panel Number 16017C0225F, Effective Date 7/7/2014.
7. The Comprehensive Land Use designation is Resort Community (0-2.5 AC).
8. The parcel was purchased by the applicant on September 15, 2022, Instrument # 101124.

CONCLUSIONS OF LAW:

Based on the foregoing findings, the following conclusions are adopted. The proposed administrative variance **is** in accord with the purposes of Title 12. This action does not result in a taking of private property. The action that could be taken to obtain the administrative variance is to complete the Conditions of Approval as adopted.

1. 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.
2. 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.
3. Special conditions and circumstances **do not** result from the actions of the applicant.
4. 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:

- A-1. The granting of this variance shall not supersede any deed restrictions.
- A-2. Only the development highlighted on the site plan has been reviewed for variance standards. The footprint of the structure shall not be increased. All other development shown must comply with Bonner County Revised Code.
- A-3. All county setbacks not addressed in this decision letter shall be met.
- A-4. Prior to BLP issuance, an approved Floodplain Development Permit shall be obtained.
- A-5. The structure may be memorialized prior to issuance.

NOTICE OF ADMINISTRATIVE DECISION:

NOTE: This determination may be appealed to the Board of County Commissioners by notifying the Planning Director in writing of the intent to appeal within ten (10) working days from the date of the determination along with the applicable appeal fee of \$375. Upon receipt of an appeal, the Planning Director will schedule a meeting with the Board within ten (10) working days to hear the appeal and will provide written notice to the appellant of the time and place of the meeting. The Planning Director and appellant will be provided an opportunity to present the relevant issues to the Board at that meeting. The Board's decision shall be final and further recourse of the appellant shall be to the Courts as provided by law. If no appeal to the Board is filed, the Planning Director's decision shall be deemed final. (BCRC, §12-261).

Following any final decision concerning a site-specific land use request, the applicant has a right to request a regulatory taking analysis pursuant to Section 67-8003, Idaho Code (*Idaho Code §67-6535(3)*).

Please contact this department if you have any questions.

Sincerely,

Planning Department