



Bonner County Planning Department

Hearing Examiner

Staff Report for August 21, 2024

FILE: V0014-24 **DATE OF REPORT:** August 07, 2024

PROJECT: Lot Size Minimum - Variance **APPLICATION DATE:** June 06, 2024

PARCEL No: RP58N01W047205A, RP58N01W047650A **PARCEL SIZE:** 4.387/4.850

LANDOWNER: Timothy Hooper **REPRESENTATIVE:** Whiskey Rock Planning + Consulting, Jeremy Grimm
614 Creekside LN
Sandpoint, ID 83864

NOTICE: Mailed - July 26, 2024
Published in newspaper - July 26, 2024
Site posted – August 5, 2024

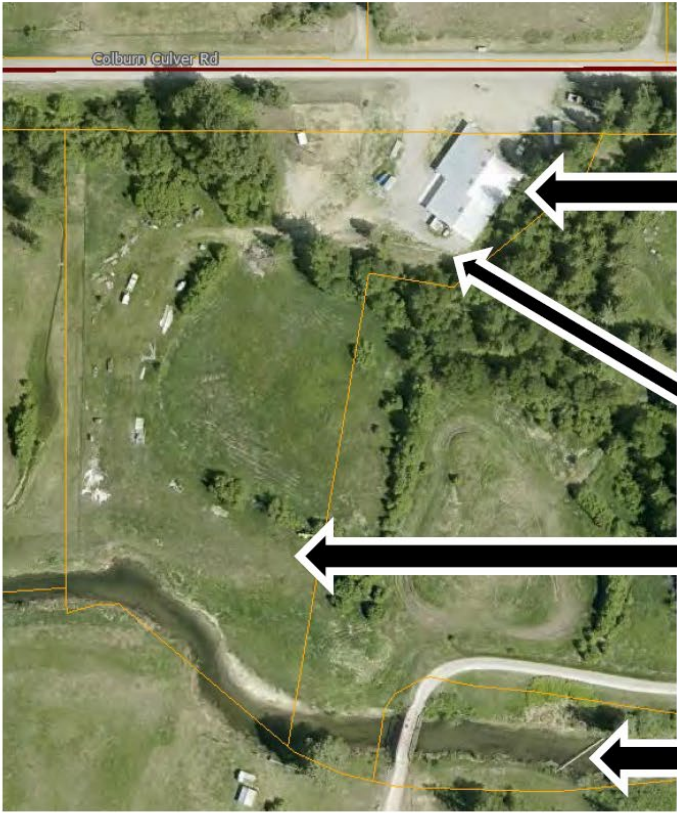
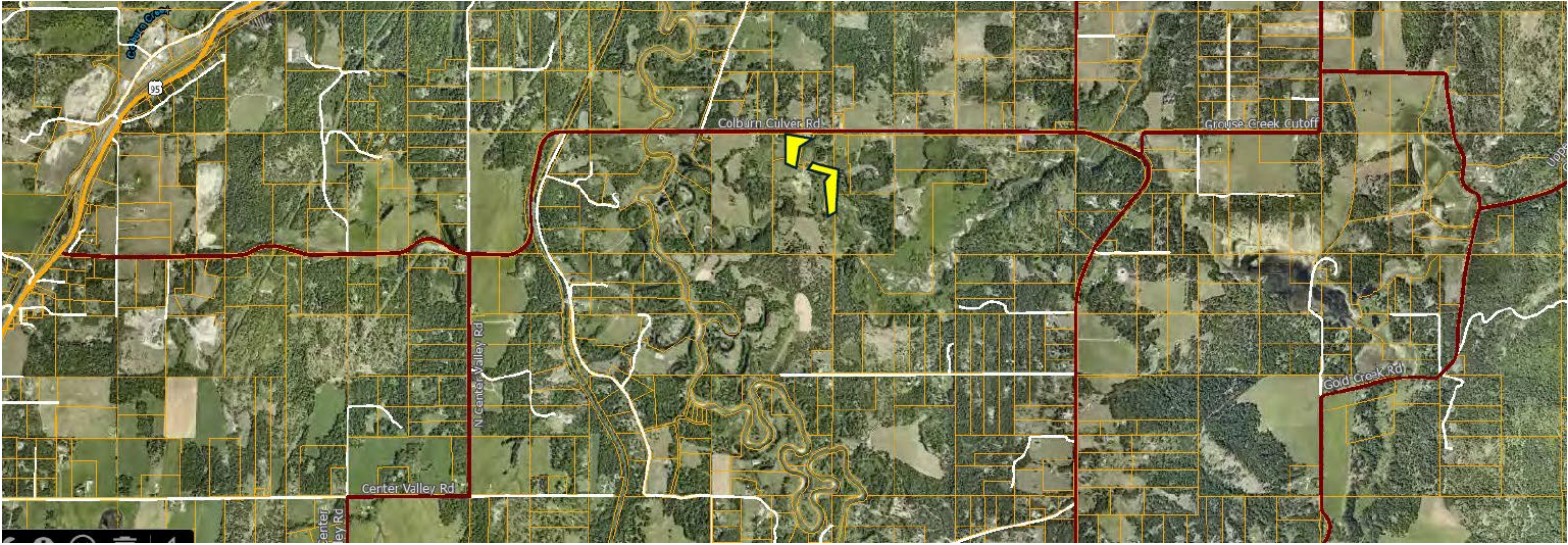
REQUEST: The applicant is requesting a lot size minimum variance for a 4.387-acre parcel and a 4.850-acre parcel where 20-acres is required.

LEGAL DESCRIPTION: 4-58N-1W PORTION OF TAX 24 W OF TAX 23/4-58N-1W PORTION OF TAX 24 S & E OF TAX 23

LOCATION: The project site is located off Colburn Culver Road in Section 4, Township 58 N, Range 1 W, Boise-Meridian.

ENCLOSURE: Annex A

SUBJECT PROPERTY VICINITY MAP AND SITE PLAN



Site Plan

Improvements Approx. 80' x 90'

Driveway and access

Unimproved area

Grouse Creek

Scale
Approximately 100'

PROJECT SUMMARY

The applicant is requesting a lot size minimum variance for a 4.387-acre parcel and a 4.850-acre parcel where 20-acres is required.

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 12-322: Agricultural/Forestry District
BCRC 12-7.2, et seq.: Grading/erosion/stormwater
BCRC 12-800 et seq.: Definitions

BACKGROUND

A. Site Data

Land Use: Residential - 1 SFD
Size: 4.387/4.850
Zoning Designation: Ag/Forest 20 (A/F-20)
Comp Plan Designation: Ag/Forest Land (10-20 AC)

B. Access

Colburn-Culver Road is a Bonner County owned and maintained right-of-way with a paved travel way.

C. Environmental Factors

Site does contain mapped slopes (USGS).
Site does contain mapped wetlands (USFWS).
Site does contain frontage to a stream.
Site contains SFHA Zone AE and SFHA Zone X per FIRM Panel #16017C0515E, effective 11/18/09.

D. Services

Water: Individual well
Sewage: Individual septic
Fire: Northside Fire
Power: Avista Utilities
School District: Lake Pend Oreille School District #84

E. Comprehensive Plan, Zoning and Current Land Use

| Compass | Comp Plan Designation | Zoning Designation | Current Land Use & Density |
|---------|---------------------------|-----------------------|----------------------------|
| Site | Ag/Forest Land (10-20 AC) | Ag/Forest 20 (A/F-20) | Residential - 1 SFD |
| North | Ag/Forest Land (10-20 AC) | Ag/Forest 20 (A/F-20) | Residential - 1 SFD |
| East | Ag/Forest Land (10-20 AC) | Ag/Forest 20 (A/F-20) | Residential - 1 SFD |
| South | Ag/Forest Land (10-20 AC) | Ag/Forest 20 (A/F-20) | Residential - 1 SFD |
| West | Ag/Forest Land (10-20 AC) | Ag/Forest 20 (A/F-20) | Residential - 1 SFD |

AGENCY ROUTING

The following agencies were routed for review and comment on July 26, 2024. A full list of agencies routed is listed in Annex A.

The following agencies responded with comments:

Bonner County Floodplain Review - Email

JRJ, 6.11.2024: Parcel RP58N01W047205A is within SFHA Zone X, Shaded Zone X, Zone AE & Zone AE Floodway per FIRM Panel Number 16017C0515E, Effective Date 11/18/2009. Parcel RP58N01W047650A is within SFHA Shaded Zone X, Zone AE & Zone AE Floodway per FIRM Panel Number 16017C0515E, Effective Date 11/18/2009.

The integration of Parcel RP58N01W047650A with Parcel RP58N01W047502A is a combination of a 4.387 acre portion of land with a 57.116 acre parcel of land, resulting in the creation of a 61.503- acre parcel of land. These lands are located in the A/f-20 zone, with a 20-acre minimum parcel size required.

Currently, Parcel RP58N01W047502A has a base density of 2 and Parcel RP58N01W047650A/RP58N01W047205A has a base density of 1. If this decision is approved, Parcel RP58N01W047210A will continue to have a base density of 1 and a new, larger 61.503 parcel, with a base density of 3 instead of 2 ($61.503 / 20 = 3.075$) will be created after the combination of Parcel RP58N01W047650A with Parcel RP58N01W047502A. Both Parcel RP58N01W047502A and the new larger parcel proposed for creation have a substantial amount of floodway within their boundaries.

In other words, this is a proposal to increase the allowable base density within the Floodway portion of the Special Flood Hazard Area (SFHA). The floodways are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. Due to the hazards of the floodway, this department does not recommend approval of any action that will result in increasing the base density within the Floodway.

The following agencies responded with “No comment”:

**Idaho Transportation Department
Idaho Department of Fish and Game
Department of Environmental Quality
Northside Fire District**

All other agencies did not respond.

PUBLIC COMMENT

Public comments were 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 subject parcel can be viewed as legally nonconforming due to a variety of characteristics including parcel size and being noncontiguous or having an orphan remanent. The owner has no current control over the now recognized size of the parcel or the noncontiguous nature. The Bonner County GIS parcel map shows two separate parcels. The conditions and limitations described ARE a result of actual lot size and ownership.

Staff: The north half of the parcel (RP58N01W047205A) consists of approximately 4.85-acres with a depth-to-width ratio of 2.7:1. The south half of the parcel (RP58N01W047650A) consists of approximately 4.387-acres with a depth-to-width ratio of 7.2:1. The total acreage is 9.237. Although this area is zoned Agricultural/Forestry 20, there are a number of legal non-conforming 10-acre parcels in the area. This parcel is unique as it does not consist of two separate parcels (RP58N01W047205A and RP58N01W047650A) as it was determined through Planning files CC0001-23 and CC0002-23, and therefore the remainder subject parcels, shall be seen as a legal, non-contiguous 10-acre parcel resulting from a 2013 Boundary Line Adjustment (BLA) land use action, that consists of two parts that have separate parcel numbers (RP58N01W047205A, RP58N01W047650A).

(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 cause the zoning (BCRC) to prohibit parcels under twenty acres or to classify his property as AF 20. The request for this variance is due to an inconsistency between the direction provided by Bonner County planning staff (former Director) and current interpretation of code.

Staff: The subject parcel's area is zoned Agricultural/Forestry 20. This zoning was put into place in 2008. However, it does contain a number of grandfathered parcels that are at or near 10-acres. The subject parcel was illegally created in 2013. Given that this subject parcel is near 10-acres, granting the variance request would take one illegally created, non-conforming parcel and create two illegally created more non-conforming parcels. Additionally, per the comments from the Floodplain Manager, allowing the variance to be granted would create additional base density within the floodway. This has the potential for creating a life/safety hazard. It appears to staff that the current owner illegally created the parcel, thereby creating the problem from which he is asking relief from.

(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: As has been mentioned, the subject parcels exist in a state of perpetual impasse. Without the granting of this variance, the owner has no ability to transfer the orphan portion to the adjacent landowner. Doing so will increase the size of the Bate's parcel and is not being perused for the intention of creating new building lots that would fall below minimum area requirements of the zone. No material changes would occur to the existing improvements/uses and the orphaned parcel would be absorbed into an adjacent conforming parcel that we believe would not be in conflict with the public interest or detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. Finally, numerous other adjacent and abutting parcels in the vicinity fall below the 20-acre minimum lot size of the zone. Approving this request would reflect the existing use and characteristics of the land and improvements.

Staff: Property owners within a 300-foot radius of the subject property were notified of this application. No public comments were received. No agencies provided comments indicating there was any negative impact to public safety, health, welfare or would have any impact on neighboring parcels. In addition, during the floodplain review, it was noted that *"The floodways are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. Due to the hazards of the floodway, this department does not recommend approval of any action that will result in increasing the base density within the Floodway."*

B. Stormwater Management Review

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.

C. Staff Review Summary

The parcel's history of illegal creation and its current non-conforming status, combined with the floodplain review comment, present significant challenges. Planning Staff realizes the hardship that

the landowner creating, however, based on staff's analysis, the proposal appears that it would perpetuate the non-conformity and potentially increase the safety hazards by increasing the base density within the floodway.

Staff determination: No recommendation or conclusion is made by planning staff regarding this project

Planner's Initials: RW

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 by the Governing Body

HEARING EXAMINER

DECISION TO APPROVE: I approve this project V0014-24, requesting a 4.85-acre and 4.387-acre lot size minimum where 20-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. (Ord. 559, 1-4-2017)

The decision is 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 V0014-24, requesting a 4.85-acre and 4.387-acre lot size minimum where 20-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. (Ord. 559, 1-4-2017)

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 project, File V0014-24, requesting a 4.85-acre and 4.387-acre lot size minimum where 20-acres is required, 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 site does contain mapped slopes per USGS.
2. The site does contain mapped wetlands per NWI.
3. The site does contain frontage on a stream.
4. Parcel RP58N01W047205A is within SFHA Zone X, Shaded Zone X, Zone AE & Zone AE Floodway per FIRM Panel Number 16017C0515E, Effective Date 11/18/2009. Parcel RP58N01W047650A is within SFHA Shaded Zone X, Zone AE & Zone AE Floodway per FIRM Panel Number 16017C0515E, Effective Date 11/18/2009.
5. The parcel is served by individual well, individual septic system, Northside Fire District, and Lake Pend Oreille School District #84.
6. The parcel is not platted.
7. The parcel is zoned Agricultural/Forestry 20 (A/f-20) with a land use designation of Ag/Forest Land (10-20 AC).
8. Access is via Colburn-Culver Road, a Bonner County owned and maintained right-of-way.
9. The parcel was determined to have been created illegally by Planning files CC0001-23 and CC0002-23.

Conditions of Approval:

STANDARD CONDITIONS:

1. 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.

2. This variance shall not supersede any deed restrictions.

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.

I hereby certify that a true and correct copy of the "Notice of Public Hearing" was digitally transmitted or mailed (postage prepaid) on this **26th** day of **July 2024**.



Jenna Crone, Hearing Coordinator

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|---|---|
| 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 - Email | 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 | |