



## 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.

<b>FILE:</b>	VA0001-24	<b>DATE OF REPORT:</b>	March 26, 2024
<b>PROJECT:</b>	<b>Approved</b>	<b>APPLICATION DATE:</b>	January 2, 2024
<b>PARCEL No:</b>	RP028520000010A		
<b>APPLICANT:</b>	Chris Reiner		
<b>REPRESENTATIVE:</b>	Cedar Creek Custom Homes Llc Jennifer Knappe		
<b>SUMMARY OF PROPOSAL:</b>	The applicant is requesting a 62' shoreline setback where 75' is required in order to expand the existing single family dwelling. The 9.0-acre property is zoned Rural 5 (R-5). The project site is located off Mick And Ern Drive in Section 13, Township 56 North, Range 5 West, 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 proposed construction plan include adding on more living space to either side of the existing home/garage. The rock and very steep hillside to the back of the existing structure does not allow pushing the structure further away from the water.*

**STAFF:** The current single-family dwelling on the parcel was built in 2015. The applicant is requesting shoreline setback variance of 62' where 75' is required in order to enlarge the residence. The variance is required because the residence is built against a steep embankment which prohibits enlarging the residence to the south. As a result, the applicant has proposed expanding the structure to the west, north and east. According to the submitted site plan, the east side of the residence will be 62' away from the Priest River. The Priest River is a perennial, flowing body of water that requires a 75' setback per BCRC 12-711(A)(2).

There is a minimum of a 40' of vegetative buffer on the parcel as required by BCRC 12-714. A comment by Idaho Department of Fish & Game (IDFG) states that the vegetative buffer appears to be sufficient and they recommend that this vegetative buffer be maintained. Additionally, they recommend installing bio-filtration swales (grassy infiltration areas). The IDFG is particularly concerned about maintaining water quality on the Priest River as the lower portion of the river is Critical Wildlife Habitat for the Bull Trout.

The parcel is unique in that the north side is bordered on three sides by the Priest River. This is due to the fact that the building site sits on a peninsula on a bend in the river. This imposes a 75' setback on three sides of the structure. The south side of the structure is encumbered by a steep slope that rises up behind it. These natural features limit how the structure can be expanded. The expansion, as proposed by the applicant, will result in a 62' setback on the east side, 64' setback on the north side and a 76' setback on the west side. Each of these setbacks are sufficient to maintain the required 40' vegetative buffer between the structure and the Priest River.

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

**APPLICANT:** *The topography of the lot creates a very narrow building envelope on the lower level. An oversight on Sewell's site survey for the proposed project misinterpreted where the 75' setback would be measured from. So, along with the county not mentioning anything when the permit was originally issued, the homeowner is already financially committed to the project under the assumption that the submitted stamped site plan was accurate and applicable. Relying on the engineers and County's review created circumstances that were out of the homeowner's control. The homeowner has already committed significant resources towards engineering, site work and product orders for the project.*

**STAFF:** The owners purchased the property on September 14, 2014 per Instrument No. 864243, Records of Bonner County. They have not made any changes to the property since the purchase. The natural features that limit the building envelope were present when the applicant purchased the property. The error by the surveyor in identifying the ordinary high water mark was beyond the control of the applicant. Another factor that is beyond the control of the applicant is that river banks change and move over time. It is possible that the 75' setback was able to be met at one time, but due to natural forces, it is no longer possible to meet the current code requirements.

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 addition does not interfere with the health or safety of the public. There are no neighboring homes within eyesight of the proposed structure.*

**STAFF:** Property owners within a 300-foot radius of the subject property were notified of this application. No public comments were received. No comments were received from agencies that would indicate any negative impacts on public health, safety, welfare or be materially injurious to properties or improvements in the vicinity of the subject parcel or lot.

#### AGENCY ROUTING

Agency routing memo sent: January 31, 2024

The following agencies were routed for review and comment:

**Avista Utilities - Email** *No response.*

**Bonner County Floodplain Review - Email**

*JRJ, 1.22.2024: Parcel is within SFHA Zone X & Zone AE Floodway per FIRM Panel Number 16017C0859E, Effective Date 11/18/2009. 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**

*No response.*

**City of Priest River - Email**

*No response.*

**GIS Addressing**

*MC 1/17/2024: No effect on addressing*

**Idaho Department of Environmental Quality (DEQ) – Email**

*See comment.*

**Idaho Department of Fish & Game - Email**

*See comment.*

**Idaho Department of Lands - Coolin - Email**

*No response.*

**Idaho Department of Lands - Navigable Waters & Mining - Email**

*No response.*

**Idaho Department of Water Resources - IDWR - Email**

*No response.*

**Lake Pend Oreille School District, #84 (Transportation) - Email**

*No response.*

**Panhandle Health District - Email**

*No response.*

**U.S. Fish & Wildlife Service - Email**

*No response.*

**West Bonner County School District, #83 - Email**

*No response.*

**West Pend Oreille Fire District - Email**

*No response.*

## **PUBLIC COMMENT**

Notice mailed:

January 31, 2024

No public comments were received.

## **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 property is zoned Rural 5 (R-5).
3. The site does contain mapped slopes in excess of 30% per the U.S. Geological Survey.

4. The site does contain mapped wetlands per the National Wetlands Inventory/U.S. Fish & Wildlife Service.
5. The site does contain frontage on the Priest River on the west, north and east sides. It does not contain frontage on a stream or a lake.
6. The site is within SFHA Zone X & Zone AE Floodway per FIRM Panel Number 16017C0859E, Effective Date 11/18/2009. Per site plan and county GIS the project site is within SFHA Zone X. No further floodplain review is required on this proposal.
7. The site is served by individual well, individual septic, West Pend Oreille Fire District, Avista Utilities, Lake Pend Oreille School District #83.
8. The lot is platted per Book 11 of Plats, Page 63, Records of Bonner County, Idaho.
9. The lot has a land use designation of Rural Residential (5-10 AC) with a zoning designation of Rural 5 (R-5).
10. The site is accessed by Mick And Ern Drive. This is a private easement with a 12' dirt travel surface.
11. The applicant purchased the lot on September 15, 2014 per Instrument No. 864243, Records of Bonner County.

#### 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, 12-234 and 12-238, Bonner County Revised Code, storm water management criteria and standards set forth in Title 12, Chapter 7, 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:

1. The granting of this variance shall not supersede any deed restrictions.
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.
3. The 40' vegetative buffer shall be maintained per BCRC 12-714.
4. Erosion control measures in accordance with an approved Grading/Stormwater Management/Erosion control plan must be implemented and inspected prior to beginning any ground disturbing activities.

**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