



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 not met the criteria based on the findings of fact and conclusion of law as per the review below.

FILE:	VA0004-24	DATE OF REPORT	April 25, 2024
PROJECT:	Denied	APPLICATION DATE:	February 15, 2024
PARCEL No:	RP034160000010A		
APPLICANT:	Mort Construction		
REPRESENTATIVE:	Luke Gonzalez, Mort Construction		
SUMMARY OF PROPOSAL:	The applicant is requesting a 19.2' street setback where 25' is required. The 4.24 acre property is zoned Recreation (Rec). The project site is located off Whiskey Jack Cir in Section 7, Township 57 North, Range 1 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: *Lot 5 Block 1 of Whiskey Jack Short Plat 1 is an extraordinarily wide lot with an odd curve along the street flanking side. Due to the width of the lot a wider plan is more suitable and provides a much better look for the neighborhood and the build proposed. To comply with the 25' setback this would require the side setback on the south side of the lot to be 5' and requires over a 50' long driveway to access the home and pushes the rear of the home to the minimum rear yard setback at 25' which leaves this property with a less than desirable rear yard.*

STAFF: The applicant created the lot through Bonner County Planning Short Plat Subdivision File #SS0003-21, Whiskey Jack Phase 1. This plat was recorded April 11, 2024 under Instrument No. 1032166, Records of Bonner County. The lot was created by the applicant and there was ample opportunity to modify the lot to meet the required 5' property line setback and 25' street setback. In addition, the applicant has stated that the rear yard

setback is 25' which leaves the property with less than a desirable rear yard. The property line setback in the Recreation zoning is 5 feet, not 25 feet. These conditions apply to all other properties within the Recreation zone.

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

APPLICANT: *The parcel is at it was originally platted to the applicants knowledge but results in inordinate hardship to build a plan that accommodates the neighborhood while meeting this particular setback.*

STAFF: The proposed variance was applied for prior to plat recording which created the subject lot. The applicant had control over the circumstances from which they are seeking relief.

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 variance requested is for 30% of the setback distance and will not be out of character with the neighborhood. It does not effect access. safety etc.*

STAFF: The granting of this variance 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.

AGENCY ROUTING

Agency routing memo sent:

March 11, 2024

See Annex A for the agencies were routed for review and comment. The following agencies provided comments:

Bonner County Floodplain Review - Email

JRJ, 2.21.2024: Parcel is within SFHA Zone X per FIRM Panel Number 16017C0750E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.

Bonner County Road & Bridge - Email

The Bonner County Road & Bridge Department has no objections to the proposed setback variance. Whiskey Jack Circle is a privately maintained public road within our jurisdiction, and Ospre proposed 19ft setback will not cause any significant issues for the neighborhood maintenance of the road or utility installations within the right of way. With their driveway access coming off park and not encroach into the private road.

City of Kootenai - Email

The application was received by the City of Kootenai on March 11, 2024, which did not allow for the 40-day review period the City is entitled to per Kootenai City Code §8-3D-6 (ACI agreement). The application has been reviewed for consistency with Kootenai City standards. The subject lot is within the Recreation zone district and is included in the Area of City Impact (ACI) for the City of Kootenai. The subject lot is within

the City's comprehensive plan designation of Recreational Mixed (RMI/4). The proposal would allow the proposed structure to encroach into the side flanking setback (Whiskey Jack Circle) by about 6 feet. This area has the potential, if annexed into the City, to be zoned Recreational which has a minimum flanking street setback of 20' for a dwelling. If annexed, the proposed single-family dwelling would not meet the setback requirement for the Recreational zone. The hardship indicated by the application is that "The parcel [as] it was originally platted to the applicant's knowledge but results in inordinate hardship to build a plan that accommodates the neighborhood while meeting this particular setback." The City found no physical hardship of the land to warrant a variance.

GIS Addressing

MC 2/20/2024: Address will be required at time of BLP.

Idaho Department of Environmental Quality (DEQ) - Email

Thank you for providing the opportunity to comment. DEQ has no environmental impact comments for the project listed above at this stage of development.

Kootenai-Ponderay Sewer District - Email

The above-mentioned property is within the boundaries of the Kootenai-Ponderay Sewer District. The Sewer Main Extension for this property has not been completed and the District has not approved any building permits for this property. The District has not received final DEQ approved as-builts at this point in time. The District has not seen a final approved plat for this area. Although there are no specific concerns regarding the setback variance request, there are concerns where there are no finalized plans, and the District has not approved any building permits. No Hookup fees have been paid for the property. Sewer utility plans need to meet the standards of the Kootenai-Ponderay Sewer District as well as the standards of the Idaho Department of Environmental Quality (IDEQ). The District retains the right to require standards above those of IDEQ per District Rules and Regulations and Ordinances.

Bonner County Historical Society - Email

No comment

Idaho Department of Fish & Game - Email

No comment

Idaho Department of Water Resources - Email

Based upon our understanding of the project, the Idaho Department of Water Resources determined it is non jurisdictional.

Independent Highway District - Email

The subject property is outside of the boundaries of The Independent Highway District. No comment.

Panhandle Health - Email

No comment

PUBLIC COMMENT

Notice mailed:

March 11, 2024

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 site does contain few mapped slopes per USGS.
3. The site does not contain mapped wetlands per NWI/USFWS.
4. The site does not contain frontage on a river/stream/lake per NHD.
5. Parcel is within SFHA Zone X per FIRM Panel Number 16017C0750E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.
6. The lot is served by the City of Sandpoint, Kootenai-Ponderay Sewer District, Northside Fire District, Avista Utilities and Lake Pend Oreille School District #84.
7. The lot is platted per Instrument No. 940577, Book 14 of Plats, Page 15, Records of Bonner County.
8. The lot has a Land Use designation of Urban (0-2.5 AC) with a zoning designation of Recreation (REC).
9. The lot is accessed via Whiskey Jack Circle. This is a 70'-wide Bonner County-owned, privately maintained right-of-way with a 26' paved travel way. Access is also provided by Osprey Lane, a 60'-wide Bonner County-owned, privately maintained right-of-way with a 23' paved travel way.
10. The applicant purchased the parcel on February 24, 2021 per Instrument No. 977057, Records of Bonner County.
11. The subject lot was created by the landowner on April 11th, 2024, under instrument 1032166.

CONCLUSIONS OF LAW:

Based on the foregoing findings, the following conclusions are adopted. The proposed administrative variance **is not** 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** 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** 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:

None

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