

**BONNER COUNTY PLANNING DEPARTMENT
PLANNING AND ZONING COMMISSION
STAFF REPORT FOR MAY 16, 2019**



Project Name: Byrd – Front Yard Setback Variance

File Number, Type: FILE V0004-19, Front Yard Setback

Request: The applicant is requesting a 5' foot front yard setback where 25' feet is required to allow for the construction of a shop garage with future living area above on a 0.28-acre parcel.

Legal Description: Tract No. 3 – A portion of Government Lot 6 Section 27, Township 60 North of Range 04 West of the Boise Meridian, Bonner County, Idaho.

Location: The project site is located off of N Steamboat Bay Road in Section 27, Township 60 North, Range 04 West, Boise-Meridian.

Parcel Number: RP60N04W276060A

Parcel Size: ≈0.28 acres

Applicant: Stephan & Amy Byrd
1506 Forest Hill Drive
Spokane, WA 99218

Project Representative: N/A

Property owner: Same as applicant

Application filed: March 13, 2019

Notice provided: Mail: April 18, 2019
Site Posting: April 26, 2019
Published in newspaper: April 18, 2019

Project summary:

The applicant is requesting a 5' foot front yard setback where 25' feet is required to allow for the construction of a shop garage with future living area above on a 0.28-acre parcel.

There is a shared easement between the Byrd and the Northern property. The owners Erica Mullins and Allison Still have submitted statements stating their knowledge the structure will encroach into the shared easement and that they are in favor of the variance.

Applicable laws:

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

BCRC 12-222, Application, contents
BCRC 12-231, Variances, general provisions, application, standards, procedures
BCRC 12-234, Variance standards
BCRC 12-400, et seq., Development standards
BCRC 12-411, Density and dimensional standards for the Recreational zoning district
BCRC 12-432, Minimum off street parking requirements
BCRC 12-7.2, et seq., Grading/erosion/stormwater management
BCRC 12-800 et seq., Definitions

Background:

A. Site data: The subject property is a

- Developed Lot (Single Family Dwelling and Pickle Ball Court)
- Unplatted
- Size: \approx 0.28 acres
- Recreational zone

B. Access:

- Access is provided by Scranton Avenue a 15' wide, gravel, county maintained road with a 60' R-O-W.

C. Environmental factors:

- Site does not contain mapped slopes. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does not contain a river/stream. Site fronts on Priest Lake.
- Site is partially located in a Special Flood Hazard Area (DFIRM Panel # 0225F, Zone AE) (FEMA) Area to be developed not located in a Special Flood Hazard Area (DFIRM Panel # 0225F, Zone X - 0.2% annual chance of flood hazard)

D. Services:

- Water: Shared well
- Sewage: Coolin Sewer
- Fire: Coolin Cavanaugh Bay Fire District
- Power: Northern Lights

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Resort Community (0-2.5 acres)	Recreation	Residential
North	Resort Community (0-2.5 acres)	Recreation	Residential
East	Resort Community (0-2.5 acres)	Recreation	Vacant
South	Resort Community (0-2.5 acres)	Recreation	Residential
West	Priest Lake	N/A	Dock

F. Standards review: 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) 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: "I would suggest that compliance with the current standards creates undue hardship to the site by forcing the removal of remaining natural habitat along with ground cover and eliminating natural visual buffers along with natural drainage filtration for rain and runoff towards Priest Lake. If we are allowed a variance we could then maintain the natural site amenities and still have minimal or no impact on public or private uses occurring on and/or around our parcel."

Staff: The proposed site has served as a parking area between the natural vegetation against the road and the western part of the parcel. Other areas of the property are either developed or contain mature trees.

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

Applicant: "No special circumstances were created by the owners by any means in the past."

Staff: The current homeowners did not create/define the current parcel boundaries or plant the mature trees on the property after obtaining the property in September of 2015 per deed #878807.

- (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: "Granting of this variance would not be in conflict with the public interest or detrimental by of the issues mentioned above. In fact quite the opposite is the result of granting the variance. We would be allowed to maintain our natural visual buffer along with the natural filtration of ground water and runoff that could become a problem in the future as a result of compliance to

current setback. Also by allowing for a reduced setback we are able to place the new proposed structure fully outside of the 200' setback for shoreline management (see attached drawings & pictures)." [See additional responses to the Comprehensive Plan Goals and Objectives.]

Staff: "Section 5.2 Forestry" of the Land Use component of the Comprehensive plan states: "Timber conservation management should be encouraged on both public and private lands."

G. Stormwater plan: A stormwater management plan is required pursuant to BCRC 12-720.3 K. Application does result in the creation of additional impervious surface. See conditions of approval – required stormwater management plan per BCRC will be submitted at the time of building location permit.

H. Agency Review: The application was routed to the following agencies for comment on February 6, 2019:

Panhandle Health District

Coolin Sewer District

Coolin Cavanaugh Fire District

Northern Lights

School District #83

Bonner County Schools – Transportation

Idaho Dept. of Water Resources

Idaho Dept. of Fish and Game

Idaho Dept. of Env. Quality

Army Corps (Newport)

Fish and Wildlife Service

Idaho Dept. of Lands, Nav. Waters

Idaho Dept. of Lands (Sandpoint)

The following agencies replied "No Comment":

Idaho Department of Lands

All other agencies did not reply.

I. Public Notice & Comments:

Allison Still & Erica Mullins, on April 27, 2019 and April 26, 2019 respectively, provided comments in favor of the variance. They provided letters of understanding between their and the applicant's shared easement, ensuring an agreement between the two parties and the encroachment that extends beyond the required 5' side yard setback.

Cal Larson, on April 22, 2019 provided comments not in favor of the variance stating the following:

1. *"I don't understand why [sic] could possibly be granted an exception to this code, as I think the code was written for public safety and this clearly is not in the interest of the public."*

Staff: Variances are written into the code "to provide a mechanism by which the county may grant relief from the strict application of the provisions of this title where proposals conform to the standards set forth in [BCRC Subchapter 2.3]." Variances also grant the applicant the opportunity to address issues such as public interest.

2. *"Their buildings are already jammed on the property, and this would create an unnecessary congestion."*

Staff: The applicant has one residential building on site with a paved pickle ball court. Per BCRC, the applicant is entitled to build an accessory structure and accessory dwelling units on their property subject to the standards set forth in the BCRC.

3. *"When they sell the property, the new owners would have no way to drive to their parking lot without trespassing on the neighbors, as the building would be in the way of the parking spot, and there is only a 5' setback."*

Staff: There is a shared easement between the applicant and the northern parcel. Please see the letters of understanding from the northern neighbor showing their consent to build near/on the easement.

4. *"I believe that their shop would encroach on Mr. Coffey's property in the back"*

Staff: The site plan submitted by the applicant shows the required 5' side setback from the south property line. The applicant must adhere to the submitted site plan or be subject to another hearing process.

5. *"It also strikes me as dangerous, having a building right on the road when kids are zooming by..., let alone the road is narrow to start with, and could be hazardous for larger work and emergency vehicles."*

Staff: The majority of the proposed building will remain behind the existing tree line and does not appear to get much closer to the road than the existing trees per the scaled site plan.

6. *"Being so huge and right on the road creates an awful aesthetic for the neighbors."*

Staff: The BCRC does not include language to regulate the aesthetic of the structures built on the property. Additionally, they are not in a subdivision with HOA's or CC&R's (Neither are documents the County can enforce)

7. *"Also, it is surprising to read that they are planning to turn this into yet another cabin. They already have a constant stream of people on the property (not to mention the two large families sharing the property to their North) and adding yet another family unit on the lake takes an environmental toll on the lake, which is so prized as it is an environmental gem. Every time we add another family dwelling, it slowly hurts the lake."*

Staff: BCRC allows this property to have a single family dwelling, and an accessory dwelling unit. Per BCRC, vegetative buffers, and limitations on impervious surfaces within 200' of the shoreline, regulate the impact of structures on shorelines. The applicant is building beyond 200' of the shoreline and preserving the existing vegetation.

Staff analysis:

Staff concluded this project **is** consistent with Bonner County Revised Code based upon the following:

The site has an existing clearing/parking area between the natural vegetation against the road and the western part of the parcel. Other areas of the property are either developed or contain mature trees. The currently homeowners did not create/define the current parcel boundaries or plant the mature trees on the property after obtaining the property in September of 2015 per deed #878807. "Section 5.2 Forestry" of the Land Use component of the Comprehensive plan states: "Timber conservation management should be encouraged on both public and private lands."

The conditions of approval will ensure that 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.

Staff recommendation:

(APPROVE) See Staff Analysis above.

Planner's Initials: HS Date: May 3, 2019 Note: This is only a recommendation. 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.

Motion by the governing body:

PLANNING COMMISSION

MOTION TO APPROVE: I move to approve this project FILE V0004-19 for a 5' foot front yard setback where 25' feet is required to allow for the construction of a shop garage with future living area above on a 0.28-acre parcel, 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 move to adopt the following findings of fact and conclusions of law as written (or as amended). 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.

MOTION TO DENY: I move to deny this project FILE V0004-19 for a 5' foot front yard setback where 25' feet is required to allow for the construction of a shop garage with future living area above on a 0.28-acre parcel: [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 move to adopt the following

findings of fact and conclusions of law as amended. 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 Planning and Zoning Commission's decision to the County Commissioners.

Findings of Fact

1. The parcel is a ±0.28-acre area.
2. The parcel is zoned Recreation.
3. The parcel is located on North Steamboat Bay Road.
4. The parcel is served by Coolin Sewer.
5. The parcel is serviced by a shared well.

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 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)

Conditions of approval:

Standard permit conditions:

- A-1** The use shall be developed and shall be operated in accordance with the approved site plan.
- A-2** The variance shall expire if not issued within two (2) calendar years from the date of approval, or once issued, if the use has not commenced within two (2) calendar years from the date of issuance. At any time prior to the expiration date of the variance, the applicant may make a written request to the Planning Director for an extension of the variance for a period up to two (2) years. The Planning and Zoning Commission may consider such request for extension at any public hearing. The

extension request must be approved or denied prior to the expiration date of the variance.

- A-3** The applicant will submit a stormwater management plan or erosion control plan at the time of building location permit per the standards and the requirements of BCRC.
- A-4** The applicant shall build the future living area to accessory dwelling unit standards per BCRC.
- A-5** A Building Location Permit shall be obtained prior to construction.

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.