

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
WEDNESDAY, AUGUST 7, 2019**

CALL TO ORDER: Chair Connolly called the Bonner County Commissioners' hearing to order at 1:32 p.m. in the 1st Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

PRESENT: Commissioners Chair Jeff Connolly; Vice Chair Dan McDonald; and Steve Bradshaw

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton; Planner II Sam Ross; and Administrative Manager Jeannie Welter

CHANGES IN AGENDA:

Change of venue from 3rd floor to 1st floor. File VA0004-19 will be heard first, file VS0001-19 will be hearing second.

PUBLIC HEARINGS:

ADMINISTRATIVE VARIANCE APPEAL

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

File VA0004-19 - Administrative Variance - Ralph Eberts is requesting a variance of 7 ½ feet from the front yard required setback of 25 feet and a variance of 12 feet from the shoreline to a stream setback. If approved the front yard setback would be 17 ½ feet and the shoreline setback would be 25 feet. The project is in the Coolin area located at 520 East Cavanaugh Bay Road in Section 23, Township 60 North, Range 4 West, Boise-Meridian. An appeal was received by the Planning department requesting this file be forwarded to the Board of County Commissioners for consideration.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

STAFF PRESENTATION: Planning Director presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is with Bonner County Revised Code.

APPLICANT PRESENTATION: Applicant Susan stated her husband purchased the property for her. She stated her husband is ... but has hired other licensed

professionals to assist with this project as well. She responded to public comments that have been received regarding this project. She stated she spoke with Keith who is responsible for Cougar Creek and he said he is deferring to the decision of Bonner County. She stated they intend to clean up the property and make it nice.

PUBLIC/AGENCY TESTIMONY: The following individuals spoke on the record in opposition of this project: Bud Belles; Mike Neilsen; Stan Miller; Ken Gramyk; Loel Finwick; Gregory George; Lisa Martin Gramyk; and Kim Shehan

The following individuals spoke on the record in favor of the project: Thomas Russell

APPLICANT REBUTTAL: Applicant representative Thomas Russell responded to public comments stating the survey does depict the topography but the size of the survey on the notice was smaller and therefore the topography didn't show up as well as it should have. Legal counsel for the applicant Ryan McNeice stated he concurs that the staff analysis does conform with Bonner County Revised Code. He stated the applicants are aware that a stormwater grading plan is required. Thomas Russell stated in fact if they were to choose an alternate building site it would cause a greater adverse environmental impact to the natural resources then it will to put the building at the currently proposed location. Bill Wilson stated the commissioners should approve or deny on the merits of this proposal not other suitable building sites. He further stated the standard used by the staff is the correct one. Milton Ollerton responded to comments stating Fish and Game were notified and no response was received from them.

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

MOTION TO APPROVE: Commissioner Bradshaw moved to affirm the approval of this project FILE VA0004-19, which allows for a front yard setback of 17.5 feet where 25 feet is required and a shoreline setback of 28 feet where 40 feet is required as shown on the site plan; finding that it **is** in accord with the Bonner County Revised Code as enumerated in the following conclusions of law. The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Bradshaw further moved to adopt the following findings of fact and conclusions of law as written. 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. Commissioner McDonald seconded the motion.

VOTED upon and the Chair declared the motion carried, unanimously.

Background:

A. Site data: The parcel is 1.83 acres, located on Priest Lake in a portion of Section 23, Township 60 North, Range 4 West, Boise Meridian, Bonner County, Idaho.

B. Access: The property is accessed off East Cavanaugh Bay Road.

C. Environmental factors:

The site is primarily sloping forested terrain that levels out slightly near the lake frontage. Large mature evergreen trees are the predominant vegetation. A year round creek (Cougar Creek) that is approximately 3' - 5' wide bisects the site, running diagonally from the northeast to the southwest property corners. The site slope varies from approximately 66% at the steepest to approximately 15% where the existing cabin is located. The creek bed is rocky, but the remainder of the site is forest soils with low ground cover. The only benched area is a man-made (existing) parking area about midway along the South property boundary

D. Services: Sewer is provided by the Coolin Sewer District. Water is provided by Cougar Creek Water Users Association. Power is provided by Northern Lights and served by the Coolin Cavanaugh Bay Fire Protection District.

E. Comprehensive Plan, Zoning and Current Land Use

Compa ss	Land Use	Zoning	Current Use
Site	Remote Ag/Forest	Forest 40	Residential
North	Remote Ag/Forest	Forest 40	Vacant unplatted land owned by State of Idaho
East	Remote Ag/Forest	Forest 40	Eastshore Rd then vacant unplatted land owned by the State of Idaho
South	Remote Ag/Forest	Forest 40	Residential lakefront Cabin
West		Priest Lake	Priest Lake

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:

Due to steep site topography, lake frontage, and Cougar Creek which bisects the property along its long axis, reasonable building site are very limited. An existing cabin occupies the only reasonably level area on the site, and there is not enough area around it for a garage outside setbacks. The only viable area large enough for a modest sized garage is near the existing parking/ road access. The steep site topography and creek location impose a hardship in that reasonable building sites don't exist or are already occupied by the existing permanent residence.

Staff: The topography as delineated on the site plan and shown on the County map system, create a challenge as to the best location of a garage on the property. The subdivision created and recorded in 2013 did not go through the County approval

process as it was on State land. The creek, as it runs through the property, is separating access from the established cabin. Other lots in the vicinity do not have a creek running through their properties with the exception of the neighboring property (Lot 2) where Cougar Creek runs through a portion of the lot.

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

Applicant: *All the site features, topography, and the existing building were present when the applicant purchased the property. The existing structure has clearly been there in its current configuration for many years. No apparent site modifications have taken place in some time. It is unclear when the parcel was created, but no record could be found that the property boundaries have been altered since its initial creation.*

Staff: This is a state lease lot that has been sold to private ownership. The State recorded the subdivision - Cougar Creek at Instrument #840104 on February 21, 2013. The applicant purchased the property as is from the lease holder in 2017 (See Inst #915661). Then purchased from the State in 2018 (Inst# 929702). The applicant did not create the land division in its current configuration. The circumstances of the lot including topography and stream location were not created by the applicant.

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. (Ord. 559, 1-4-2017)

Applicant: *The proposed garage will have no detrimental effect on adjacent properties or to the general public. It is located at the very end of a minor private road and will only be used as a parking/ storage shelter accessory to a single family residence. Only one private parcel is adjacent, and the portion of that property that is adjacent to the proposed garage site is prohibitively steep and is not a viable building location. The subject property has frontage on Eastside Rd, a public county road, but is not accessed from that road. Additionally, the proposed garage and the existing cabin on the site are not visible from Eastshore Road due to the steep terrain and dense tree cover.*

Staff: The County has conducted a public review period allowing for comments from agencies and neighbors. IDL provided a no comment response. Road and Bridge provided no comment stating that E Cavanaugh Bay Road is a private road. There have been some comments received from the neighbors and the Selkirk Conservation Alliance.

Concerns in letters from neighbors and the Selkirk Conservation Alliance include:

- 75 foot setback from streams (Belles 6.6.19)
- Garage will cause damage to the stream (Belles 6.7.19)

- Limit visual access to the stream (Fenwick 6.13.19)
- Needs to provide topographical, hydrologic and engineering plans to Bonner County. (See Condition A-3)
- 75 foot setback is required (George 6.12.19)
- Conditions DO generally apply to other properties in the same zone or vicinity (George 6.12.19)
- Loss of view would be "detrimental and materially injurious" to the properties in the vicinity (George 6.12.19)
- Application fails to include information ordinarily required for a project within a stream protection zone. (George 6.12.19)
- Applicant's development plans will not stop with the garage (George 6.12.19)
- Roadwork would cut into a steep hillside (McLeod 6.5.19)

G. Stormwater plan: A stormwater management plan will be required at the time of construction. (See Condition A-3)

H. Agency review: The application was routed to the follow agencies for comment on May 23, 2019:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Bonner County Road and Bridge | <input checked="" type="checkbox"/> Idaho Dept. of Env. Quality |
| <input checked="" type="checkbox"/> Idaho Fish and Game | <input checked="" type="checkbox"/> Idaho Dept. of Lands, Coolin |
| <input checked="" type="checkbox"/> Coolin Cavanaugh Bay Fire | <input checked="" type="checkbox"/> Coolin Sewer District |
| <input checked="" type="checkbox"/> Northern Lights Power Company | <input checked="" type="checkbox"/> Idaho Dept. of Water Resources |
| <input checked="" type="checkbox"/> Cougar Creek Water Users Association | |

Northern Lights requested a 50 foot easement for underground power indicating that the proposed 20 foot easement was not enough. The new site plan shows the 50 foot easement for this request.

PHD requested that the permitting process be completed with their agency. Those applications are currently being worked through.

I. Public comments: No written comments received. A couple phone calls from neighbors were taken with questions about the project.

Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted:

This proposal was reviewed for compliance with the criteria and standards set forth at 12-233 and 12-234, Bonner County Revised Code, and variance criteria and standards set forth at Section 67-6516, Idaho Code.

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)

Findings of Fact

1. This proposal was reviewed for compliance with the criteria and standards set forth at Section BCRC 12-238 Administrative Variances, BCRC 12-234 Variances, and Standards for Review of Applications, BCRC 12-400, et seq., Development Standards if affected by variance.
2. The property is zoned Forest 40.
3. Cougar Creek runs only through Lot 1 and a small portion of Lot 2.
4. Cougar Creek divides Lot 1 separating vehicular access from the existing home.
5. There are no view easements on Lot 1
6. The home was built on a state lease lot at the time it was constructed.
7. The sewer is provided by onsite septic.
8. The building area between the property line and the stream is less than 100 feet in accordance with BCRC 12-711 B.2.
9. Cougar Creek subdivision was created by the State of Idaho
10. The steep slopes and the location of the creek are circumstances not created by the applicant.

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 provide a stand-alone stormwater/grading plan for the garage prior to building and road construction.

Chair Connolly recessed the hearing at 2:54 p.m. to move the hearing up to the 3rd floor conference room ste. 338.

Chair Connolly reconvened the hearing at 3:05 p.m. He stated Commissioner Bradshaw was excused from this portion of the hearing. Administrative Manager Jessi Webster was also replaced by Administrative Assistant Claire May.

ROAD VALIDATION

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

File VS0001-19 Road Validation – E Bottle Bay Road Right-of-Way - East Bottle Bay Road & Bridge Assoc., Inc is petitioning to validate a portion of the E Bottle Bay Road public right-of-way. The project involves a 50-foot strip of land following a portion of East Bottle Bay Road located in Section 3, Township 56 North, Range 01 West, Boise-Meridian.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

STAFF PRESENTATION: Staff Planner Sam Ross presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Applicant Bill Berg gave a history of the portion of Bottle Bay Road being petitioned for validation.

PUBLIC/AGENCY TESTIMONY: The following individuals spoke on the record in opposition of the petition: Kathy & Bill Francis.

The following individuals spoke on the record in favor of the petition: Will Valentine; Marie Valentine; Jack Lensing; Sharon Sherrard, Jeremy Smith; and Paul Smith.

APPLICANT REBUTTAL: Mr. Berg stated the Bottle Bay Road Association was going to work toward making sure the lots past the portion of Bottle Bay Road relating to this petition had legal access to them. Sam Ross affirmed his earlier comments given during his presentation of the file.

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

MOTION TO APPROVE: Commissioner McDonald moved to approve this petition, FILE VS0001-19, finding that it is in accord with Idaho Code 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. Commissioner

McDonald further moved to adopt the following findings of fact, conclusions of law and conditions of approval as written. The action that could be taken to obtain the validation is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property. Commissioner Connolly after stepping down from the Chair seconded the motion.

VOTED upon and the Chair declared the motion carried, unanimously.

Background:

A. Site data:

- a. ROW Width: 50-feet
- b. Hydrologic Features: Bottle Bay – Lake Pend Oreille
- c. Flood Hazard Zone: X, AE; 0.2% Annual Chance Flood Hazard / Special Flood Hazard Area
- d. Wetlands: Freshwater Emergent; USFWS NWI
- e. Slope: <30% per USGS
- f. Soils: Pend Oreille-Hoodoo Silt Loams, 0 To 30 Percent Slopes

B. Access:

- a. Name: Bottle Bay Road
- b. Owner: Bonner County Road & Bridge (Public)
- c. Width: 50-feet
- d. Surface: Paved

C. Standards review:

The project has been reviewed for conformance with Idaho Code §40-203A – VALIDATION OF COUNTY OR HIGHWAY DISTRICT SYSTEM HIGHWAY OR PUBLIC RIGHT-OF-WAY.

The following facts relate to the standards of review:

- Idaho Statute Title 40, Chapter 2, Subsection 203A:
 - (1) One of these conditions must exist:
 - "If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a highway or public right-of-way;
 - Existing condition (applicant):
 - "Petitioners are entitled to validation because 'the road' was laid out, recorded and opened by the Kootenai County Commissioners in 1904, used continuously since the by the public. In the alternative, East Bottle Bay Road, has been acquired by the public by prescription because it has been continuously used by the public and was maintained by the county for a period of five years."
 - Staff: The condition, rendering the subject ROW eligible for validation, is that doubt exists as to the legal establishment or evidence of establishment of a highway or public right-of-way.
 - Evidence to the condition shall be presented at subsequent hearing.

- (2) If proceedings for validation of a highway or public right-of-way are initiated, the commissioners shall follow the procedure set forth in section 40-203, Idaho Code, and shall:
 - (a) If the commissioners determine it is necessary, cause the highway or public right-of-way to be surveyed;
 - Staff: The applicant has provided a survey and legal description of the area to be validated.
 - (b) Cause a report to be prepared, including consideration of any survey and any other information required by the commissioners;
 - Staff: A staff report produced by the Planning Dept. satisfies this condition.
 - (c) Establish a hearing date on the proceedings for validation;
 - Staff: A hearing date has been set for: August 7, 2019.
 - (d) Cause notice of the proceedings to be provided in the same manner as for abandonment and vacation proceedings; and
 - Staff: notice to neighbors/adjacent landowners and public has been provided pursuant to said sections.
 - (e) At the hearing, the commissioners shall consider all information relating to the proceedings and shall accept testimony from persons having an interest in the proposed validation.
- (3) Upon completion of the proceedings, the commissioners shall determine whether validation of the highway or public right-of-way is in the public interest and shall enter an order validating the highway or public right-of-way as public or declaring it not to be public.
 - Staff: The applicant provided an analysis that indicates that said portion of East Bottle Bay Road is a public right of way. This analysis can be found in the narrative and exhibits submitted with the application.
- 4) From any such decision, any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to section 40-208, Idaho Code.
- (5) When a board of commissioners validates a highway or public right-of-way, it shall cause the order validating the highway or public right-of-way,

and if surveyed, cause the survey to be recorded in the county records and shall amend the official highway system map of the respective county or highway district.

- Staff: The record of survey shall be recorded. See conditions of approval.
- (6) The commissioners shall proceed to determine and provide just compensation for the removal of any structure that, prior to creation of the highway or public right-of-way, encroached upon a highway or public right-of-way that is the subject of a validation proceeding, or if such is not practical, the commissioners may acquire property to alter the highway or public right-of-way being validated.
 - Staff: Per documentation provided in the application, no structures need be removed as part of this validation and no property need be acquired by the Commission to accommodate the validation of the known area.
- (7) This section does not apply to the validation of any highway, public street or public right-of-way which is to be accepted as part of a platted subdivision pursuant to chapter 13, title 50, Idaho Code.

D. Agency Review

The application was routed to agencies on July 2, 2019.

Comments received:

- Bonner County Road and Bridge – July 23, 2019
 - "Road and Bridge supports the validation of this portion of E Bottle Bay Rd as public ROW. The County maintenance of this road in the past makes a strong case in support of their validation efforts."

All other agencies did not submit comments.

E. Public Notice & Comments

Comments received:

- William & Cathy Francis – July 30, 2019
 - "...Since the majority of East Bottle Bay [Road] is privately owned and most have privately paved their portion, we hope you keep this road private to residents only and hope the EBBR&B Assoc, LLC proposal is DENIED."
 - See project file for full comment.

Conclusions of Law:

The Background section of the staff report above is the basis for all of the following findings of fact and conclusions of law. Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

This proposal is compliant with the validation criteria and standards set forth at Idaho Code §40-203A.

Finding

The procedures set forth in section 40-203, Idaho Code, have been followed. No public agency has objected to the proposed right-of-way validation. Local utility providers were routed as part of agency review, and none opposed the validation.

Conclusion 2

That portion of East Bottle Bay Road right-of-way is in fact, a valid public right-of-way.

Finding

The petitioner demonstrated adequate evidence indicating that said portion of East Bottle Bay Road right-of-way is in fact, a valid public right-of-way.

Conditions of approval:

1. The validation of the above-described right-of-way shall be effective upon the recording of a resolution by the Bonner County Commissioners granting the validation.
2. The costs for legal advertisements and recording fees shall be borne by the applicant and shall be paid prior to the recording of this validation resolution.
3. The survey submitted for the legal description of the portion of land to be validated shall be recorded with the Bonner County Recorder's office.

The Chair declared the hearing adjourned at 3:43 p.m.

Respectfully submitted, this 8th day of August, 2019.



Milton Ollerton, Planning Director