

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
WEDNESDAY, SEPTEMBER 11, 2019**

CALL TO ORDER: Chair Connolly called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 3rd Floor Meeting 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

PUBLIC HEARING:

Commissioner McDonald moved to postpone File AM003-19 to an uncertain date and time. Commissioner Bradshaw seconded the motion. Voted upon and the motion passed unanimously.

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 V0005-19 – Front and Rear Yard Setback Variance – Todd and Judy Ableman are requesting a 15' Front Yard and 12' Rear Yard setback to allow for the construction of a single family dwelling. The project is located off of N Kokanee Park Loop in Section 6, Township 59 North, Range 04 West, Boise-Meridian. The Planning & Zoning Commission denied this project at the public hearing on June 20, 2019. 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: Planner II Sam Ross presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is not consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Applicant Todd Ableman presented a PowerPoint summary of his project stating the reasons he believes his project is consistent with Bonner County Revised Code.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

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

MOTION TO APPROVE: Commissioner Bradshaw moved to approve this project FILE V0005-19, a 15' Front Yard and 12' Rear Yard setback, where 25-feet is required, to allow for the construction of a single-family dwelling with an attached accessory structure. This motion is based upon the following conclusions: 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 amended. This action does not result in a taking of private property. The action that could be taken to obtain the variance is to complete the Conditions of Approval as adopted. Commissioner McDonald seconded the motion.

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

Background:

A. Site data:

- a. Acreage: 0.31 (platted); 13,596 sq ft
- b. Use: Resort Community
- c. Zone: Recreation
- d. Structures: Existing Accessory Building, BLP2017-0290
 - i. Mobile home has been removed
- e. Lot Coverage:
 - i. Existing: 7%
 - ii. Proposed: 30.8%

B. Access:

- a. N Kokanee Park Loop
- b. Owner: private
- c. Surface type: gravel

C. Environmental factors:

- a. Floodplain: D; (not in special flood hazard area per FEMA)
- b. Slope: <15%; (no steep slopes on site per USGS)
- c. Hydrography: None on site; (Project approx. 200-feet from Lamb Creek per USGS NHD)
- d. Soils: N/A (No NRCS data available)
- e. Vegetation: 5% of lot is timber (approx. per applicant)

D. Services:

- a. Water: Kokanee Park Water
- b. Sewer: Outlet Bay Sewer
- c. Fire: West Priest Lake Fire
- d. Electric/Utility: Northern Lights

- e. School: Bonner School District #83

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Resort Community	Recreation	Residential; Accessory
North	Resort Community	Recreation	Residential; SFD/Accessory
East	Resort Community	Recreation	Residential; SFD/Accessory
South	Resort Community	Recreation	Residential; SFD/Accessory
West	Resort Community	Recreation	Residential; SFD/Accessory

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:

- 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.
- Special conditions and circumstances do not result from the actions of the applicant.
- 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 north property line is only 56-feet in depth. In order to get a desirable structure to meet the 25-foot front and back yard setbacks, the building would need to move south, creating close distances from an accessory building, and eliminating the primary green space for the purpose of gatherings. 15-foot front and 12-foot back yard setbacks [make] a desirable placement of the proposed residential structure by centering the structure on the lot."*

"The setback of the existing building is to maintain the green space between the existing building and the road, which is the lowest point of the property. My two neighbor's properties directly behind my property to the (west) are approximately 8-10 feet higher in elevation. The arrows on site plan are the current drainage of the property. The road elevation also runs down

towards this green space, so the lawn is more desirable at this location to accept stormwater retention. In order for me to build in the larger open space and preventing runoff to a structure, I would need to fill, eliminating my storm water retention area. It is my desire to locate my building on higher ground."

- "No. The existing 1983 plat, lot 29, was smaller than the Kokanee Park Replat 29A. The replat enlarged the lot size to bot the existing lots 29, and 33 by eliminating 31. Since the replat, this shared green space has provided [for] family, friends, and community gatherings."*
- "Granting of the variance will not be in conflict with public interest and not detrimental to public health, safety, or welfare, or materially injurious to vicinity properties as the proposed development is consistent with the surrounding residential uses."*

"The reason for the variance is due to the pie shaped. Some of the lots in our development still have single wide trailer and have not considered redevelopment at this time. I too had single wide trailer on this particular lot and moved it off in June of 2018. Many lots still have single wide trailers on the property and as they redevelop their lots, I believe some will need to seek variances to redevelop. I have worked with a few property owners to try and meet setbacks and the results are ugly trying to angle and fit structures in order to comply with setbacks. The location of the existing structure combined with the new proposed building is the most desirable set up and location for me as a property owner. The pie shape lots with the 50-foot setback requirements (front/back) take 1/3 of my property away from me."

G. Stormwater plan: A stormwater management plan was required pursuant to BCRC 12-720.2. See Condition B-1.

H. Agency Review: The application was routed to agencies for comment on May 21, 2019.

- Bonner County Road and Bridge; May 23, 2019 – "No comment"

I. Public Notice & Comments:

- Gary and Cheryl Mandick – June 7, 2019
 - "The variance is fine with us"
- Robert Westby – June 14, 2019
 - "We are in favor of the application"

J. Planning and Zoning Commission Hearing:

- On June 20, 2019, the Planning and Zoning Commission unanimously denied the request (File V0005-19), finding that it is not in accord with Bonner County Revised Code.

K. Appeal

- a. On July 19, 2019, the applicant submitted an Appeal of the Planning Commission's Decision, June 20, 2019.

Finding of Facts:

1. Lot 29A of the Replat of Lots 29, 31 and 33 of Kokanee Park conforms to the design criteria set forth in BCRC 12-621.

BCRC 12-621 and supporting BCRC 12-800 definitions are ambiguous and inconclusive. This resulted in an arbitrary decision based on the unilateral opinion of staff and the Planning Commission. Due process and a fair hearing require that definitions and standards be clear, understandable and not be based on subjective interpretation.

Staff: BCRC 12-621 and supporting definitions are not ambiguous or inconclusive. The proof of this being that Bonner County Planning has approved hundreds of other subdivision and lot line adjustment projects in reliance on the definitions and lot design criteria. The staff report for project file LS1537-07 (Replat of Lots 29, 31 and 33 of Kokanee Park) confirms that the replat (Lot 29A) conformed to the subdivision design criteria, including depth to width, when the lot was platted. This fact was observed by staff the Planning and Zoning Commission to support the conclusion that the shape of the lot was not grounds for a variance.

2. A dwelling unit has existed on Lot 29 of Kokanee Park. Inst. No. 743049.

BCRC 12-804: Definition of existing Dwelling, Mobile Home is a detached residential structure. No foundation. Dwelling Unit is defined as a space within a building.

Staff: See finding of fact no. 2.

3. The applicant constructed an accessory building in 2017 that generates runoff into on-site grassy infiltration areas.

The grass swale is used for past, existing, and future development as required under Staff Report G. Stormwater Plan, BCRC 12-720.2 in addition to BCRC 14-101, 14-104.

Staff: The applicant constructed an accessory building in 2017 that generates runoff into on-site grassy infiltration areas. This is observed as being an action taken by the applicant that contributes to the unsubstantiated hardship as set forth in BCRC 12-234(B).

4. The supplemental site plan shows a building envelope approximately 2,282 sq ft in size that complies with setbacks and does not impact existing structures, improvements, or grassy infiltration areas.

As provided in my repose to the Planning Commission on June 20, 2019. Staff has interpreted this plan as a supplemental site plan which was not its purpose. It was a pictorial demonstration of setback averaging an impact of less than 30% of an administrative variance which was submitted on the advice of staff prior to requiring the variance process (BCRC 12-238).

Reducing my building envelop to 2,282 s.f. as suggested by staff, given the triangular buildable area, takes away substantial use of the proposed building. Further, staff's and the Planning Commission's conclusion does not allow the reasonable use of our property given its configuration. We have not created this "hardship." Finally, we have received no comments or objections from our neighbors with staff failing to identify the conflict with the "public."

Staff: The supplemental site plan shows a building envelope approximately 2,282 sq ft in size that complies with setbacks and does not impact existing structures, improvements, or grassy infiltration areas. This finding indicates that there is a building envelope on the property large enough for a single family dwelling.

In response to the notion that setbacks "reduce" the applicant's building envelope, which would only be the case if the setbacks were not in place when the applicant acquired the lot. Setbacks establish the building envelope to begin with.

The Planning Commission's decision to deny a deviation in the required setbacks does not disallow the reasonable use of the property in the given configuration. This proof of this lies with the fact that setbacks are basic development standards (BCRC 12-400). Setbacks do not deny the applicant's right to develop the property with a single family dwelling. Setbacks guide the scope of the development so that it is compatible with the Bonner County Comprehensive Plan.

Conclusion of Law:

Conclusion 1

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

The staff report did not set forth facts under the Title 12 codes, to support their reasoning for denial. My report at the Public Hearing on June 20, 2019 to the Planning Commission identified specific areas to support the variance; which I feel as an applicant, requires staff to provide specific facts and analysis based on Bonner County Ordinances so the Planning Commission can support their decision made at the Public Hearing on June 20, 2019.

Staff: Conclusion of Law 1 was based upon project having been reviewed for compliance with the criteria and standards set forth in Bonner County Revised Code, Title 12, and variance criteria and standards set forth at Section 67-6516, Idaho Code.

Findings of Fact were adopted by the Planning and Zoning Commission after deliberation of all relevant facts, oral and written testimony. The staff report established these Findings of Fact based on analysis of the information presented

in the 'Background' portion of the staff report. These Findings of Fact support the Conclusions of Law.

Conclusion 2

An undue hardship does not exist because of site characteristics, and special conditions and circumstances that are peculiar to the land, structure, or building involved.

Removal and fill of the existing gassy swale impacts the site characteristics of our lot which is not desirable as provided in the goals and objectives of the Bonner County Comprehensive Plan, section 2.7, Hazardous Areas.

In addition, site characteristics of the triangular shape of our lot, as regulated by BCRC 12-412, 25' front yard and 25' rear yard setback, takes 63% of our lot from reasonable use otherwise allowed. Building a desirable minimum 34' structure (including eaves) reduces my buildable lot by 5900 s.f. or 43%. Staff has failed to provide reasonable justification for this restriction and instead makes interpretations based on subjective judgments.

Undue hardship is defined as an "action requiring significant difficulty or expense" when considered in light of a number of reasonable and objective factors.

Staff: An undue hardship does not exist because of site characteristics, and special conditions and circumstances that are peculiar to the land, structure, or building involved. This conclusion was founded on the information received at the Planning and Zoning Commission public hearing. During the hearing, the applicant failed to provide evidence to the contrary.

The applicable setbacks did not "reduce" or "take" from the lot's buildable area. The entire lot, as the applicant observes, is not buildable. Setbacks were established when the applicant acquired the lot.

Staff did not fail to provide reasonable justification or objective judgments. Setbacks are basic development criteria consistent with the goals and policies of the comprehensive plan (BCRC 12-400).

Conclusion 3

Special conditions and circumstances do result from the actions of the applicant.

The lot has an irregular shape – a triangle. This shape was approved by Bonner County years ago through its subdivision process. I have not created the "hardship" that impacts the reasonable use of our property.

Our actions did not result from (or cause) the size, shape, and characteristics of the site to exist (67-6516, Idaho Law). A variance is designed to provide relief from site conditions that are unique and not self imposed by the property owner.

Staff: The subject lot does not have an "irregular shape". The subject lot conforms to the design criteria established in BCRC 12-621. This is why Bonner County approved the replat in 2007. This is also why the Planning and Zoning Commission determined that the conforming lot shape did not justify a hardship.

The applicants did construct another structure on the property in 2017. The action is observed to be a contribution to the alleged hardship. This is demonstrated in the Findings of Fact. The basis for the Findings of Fact is the information found in the 'Background' portion of the Staff Report and the information presented to the Planning and Zoning Commission hearing.

Conclusion 4

The variance is in conflict with the public interest.

Two comments were received as part of the BCRC public notice requirements. Both comments were in support of my variance, and were neighboring properties.

There is no definition of "public interest in BCRC. The Staff report does not clearly support this Conclusion with facts and evidence. Instead, there is only a conclusory statement mirroring the ordinance.

Public Interest means: Anything affecting the rights, health, or finances of the public at large. No evidence supports Staff's conclusion. The variance process whether it be administrative, planning commission through public hearing, and appeal process has delayed my schedule to build in 2019.

Staff: The Planning and Zoning Commission cannot make a decision that does not conform to the variance standards set forth in BCRC 12-234 A & B, and contradictorily determine the project is in the public interest.

The zoning regulations and districts for the unincorporated areas of Bonner County, as established, have been made in accordance with a comprehensive plan and Idaho Code for the purpose of promoting the health, safety and general welfare of the people of Bonner County (BCRC 12-111).

Setbacks are basic development standards consistent with the goals and policies of the comprehensive plan (BCRC 12-400).

Findings of Fact

1. The applicable setbacks make up a majority of the lot area for the subject lot (63%).
2. The applicant did not do the replat of the lot in 2007 (Inst. #743049) or establish the applicable setbacks.
3. Single Family Dwellings are permitted uses in the REC Zone.
4. "Bonner County has a number of historic neighborhoods developed over the past century. There is a need for flexibility for older neighborhoods and historic settlements so that standards fit those unique neighborhoods."
Bonner County Comprehensive Plan - Implementation: Community Design.

Conclusions of Law:

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

Conclusion 1

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

Conclusion 2

An undue hardship **does** exist because of site characteristics, and special conditions and circumstances that are peculiar to the land, structure, or building involved.

Conclusion 3

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

Conclusion 4

The variance **is not** in conflict with the public interest.

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** At the time of Building Location Permit application submittal, the applicant shall submit a grading/stormwater management plan that is compliant with the criteria set forth in BCRC 12-7.2, et seq.
- A-4** The applicant shall remove all permanent provisions for living, sleeping, eating, cooking and sanitation within the structure permitted via BLP2017-0290. Confirmation of this condition shall be borne by the applicant upon inspection of Building Location Permit required for the subject single-family dwelling.

The Chair declared the hearing adjourned at 2:22 p.m.

Respectfully submitted, this 11th day of September 11, 2019.


Milton Ollerton, Planning Director