

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
WEDNESDAY, JANUARY 22, 2020, 1:30 P.M.**

CALL TO ORDER: Chair McDonald called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 1st Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

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

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton; Planning Operations Manager Josh Pilch; Planner II Halee Sabourin; Administrative Manager Jeannie Welter; and Administrative Assistant II Emily Aerni

PUBLIC HEARINGS:

VARIANCE

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 V0018-19 – Waterfront Setback Variance – Eric Cookman is requesting a 32-foot waterfront setback where 75-feet is required for an addition to the footprint of an existing structure which will include a wrap-around deck and second story. The property is 29 acres & zoned Rural-10. The project is located off Dufort Road in Section 28, Township 56 North, Range 3 West, Boise-Meridian. The Planning & Zoning Commission denied this project at the public hearing on November 26, 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: Staff Planner Halee Sabourin 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 Eric Cookman discussed the history of bank stabilization on his property. Mr. Cookman addressed Idaho Fish & Game's comment, stating he planned on putting back the vegetation to its natural state.

PUBLIC/AGENCY TESTIMONY: Steve Bouchn spoke on the record in support of the file.

APPLICANT REBUTTAL: None

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

MOTION: Commissioner Bradshaw moved to approve this project FILE V0018-19 where the applicant is requesting 32-foot waterfront setback where 75-feet is required for an addition to the footprint of an existing structure which will include a wrap-around deck and second story, 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. Commissioner Bradshaw further moved 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. Commissioner Connolly seconded the motion.

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

Background:

A. Site data:

- Residential use
- Unplatted
- Size: 29 acres
- Zone: Rural-10
- Land Use: Rural Residential (5-10 AC)

B. Access:

- Property fronts on Dufort Road, a county maintained road.

C. Environmental factors:

- a. Site does contain mapped slopes on a portion of the waterfront. (USGS)
- b. Site does contain mapped wetlands. (USFWS)
- c. Site does contain a river frontage on Cocolalla Creek
- d. HMS: Parcel project site partially in SFHA Zone A, per FIRM Panel #16017C0925E, Effective Date 11/18/2009. No further flood review needed.

D. Services:

- Water: Individual Well
- Sewage: Individual Septic
- Fire: Selkirk Fire District
- Power: Northern Lights
- School District: Bonner School #84

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential (5-10 AC)	Rural-10	Residential
North	Rural Residential (5-10 AC)	Rural-5	Cocolalla Creek
East	Rural Residential (5-10 AC)	Rural-10	Cocolalla Creek
South	Rural Residential (5-10 AC)	Rural-10	Vacant
West	Rural Residential (5-10 AC)	Rural-10	Lake Pend Oreille

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: "Property along the west side of Dufort Road on the Pend Orielle has a 40' setback. Because I am located across the Road on the East side of Dufort Road, I am at the end of Cocolalla Creek with a 75' setback."

Staff: Based on the narrow strip of land and with the existing home site and structures located on the narrowest portion, staff concurs that the building envelope for the proposal is compromised.

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

Applicant: "I started this project two years ago. I was told by the county there was a 40' setback. The septic and leach lines have been installed. The plans have been drawn to build on an existing foundation June 2019 I went to see about a building permit and was told the setback was actually 75' because I am on Cocolalla Creek and not the Pend Oreille River"

Staff: Staff concludes that the initial misinformation is not considered "circumstances that do not result from the actions of the applicant". Had staff informed the applicant correctly, he would still be within the 40' setback as per the site plan, and require a variance. The applicant is not responsible for the existing structures and orientation.

The applicant obtained the property in 2015. The establishment of the structure in question was established in 1980 per assessor records. The dwelling was established in 1959 with the garage established in 1965. Other structures on the site were established in 1980.

- (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: "I am requesting to build on a 29 acre site, with no close neighbors." [See additional responses to the Comprehensive Plan Goals and Objectives.]

Staff: Governmental agencies expressed no concern regarding the proposal.

Stormwater/Erosion control analysis for the steep slope in the water front, and floodplain development criteria has not been addressed – conclusions cannot be drawn on environmental impacts and the properties downstream.

Additionally, the conditions of approval – as proposed or amended – 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.

G. Stormwater plan: A stormwater management plan is required pursuant to BCRC 12-720.2. See Conditions of Approval

H. Agency Review

The application was routed to agencies for comment on October 22, 2019. The following agencies commented:

- | | |
|----------------------------------|------------------------------------|
| <i>Panhandle Health District</i> | <i>Dept. of Water Resources</i> |
| <i>Bonner County Road Dept.</i> | <i>Army Corps (Coeur d'Alene)</i> |
| <i>Selkirk Fire District</i> | <i>Dept. of Env. Quality</i> |
| <i>Northern Lights Inc.</i> | <i>Fish and Wildlife Service</i> |
| <i>School District #84</i> | <i>Dept. of Lands, Nav. Waters</i> |
| <i>Dept. of Fish and Game</i> | <i>Dept. of Lands (Sandpoint)</i> |

The following agencies replied "No Comment":

- Idaho Department of Lands – Tom Fleer October 22, 2019*
- Panhandle Health District – Tim French October 23, 2019*
- Road and Bridge – Matt Mulder October 29, 2019*

Comments provided by the following agencies:

November 14, 2019

Idaho Department of Fish and Game – Charles E. Corsi, Regional Supervisor

They recommend maintaining a 40' setback to preserve Morton Slough's important habitat and for bank stabilization. Additionally, any disturbance of the riparian corridors should have native vegetation re-established.

All other agencies did not reply.

I. Public Notice & Comments

The following public comments were received:

No objections - Liona Irish October 29, 2019

Concerned this will set precedence for other applicants – Jim Violette October 27, 2019

Findings of Fact

1. The property is 29 acres. Not excluding submerged lands.
2. The property is zoned Rural-10.
3. The project is located off Dufort Road.
4. Site plan is not to scale.
5. Portion of development will be in the flood hazard zone per FEMA's Map.
6. Erosion control/stormwater analysis has not been provided for the steep slope on the waterfront.
7. The applicant is requesting additions to an *existing* structure established in 1980 per the Assessor's records

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** 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.
- A-2** Applicant shall obtain a building location permit for the development herein or as amended.
- A-3** Applicant shall apply for a LOMA – or other applicable map amendments – or obtain an approved flood plain development permit before development in the flood hazard zone meeting the standards set forth in BCRC Title 14.
- A-4** Applicant shall submit the applicable grading/erosion/stormwater plan subject to the requirements per BCRC 12-7.2 at the time of building location permit.
- A-5** At time of development, applicant can build with a larger setback from the water, but not closer than what is applied for in this variance without applying for a modification of terms.

AMENDMENT

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 AM0007-19 – Amendment to Text – Bonner County Revised Code – Title

12 – Bonner County is initiating a text amendment to Bonner County Revised Code – Title 12 to include the following proposed changes: **BCRC 12-332 Note (11)** Building Location Permit regulations do not apply to non-commercial temporary, intermittent or occasional use of recreational vehicle. When a recreational vehicle is used in the same manner as a single-family dwelling or an accessory dwelling unit, such use is limited to a maximum of two (2) recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply. **12:801-D: "Dwelling Unit, Recreational Vehicle:** A recreational vehicle used in the same manner as a single-family dwelling or an accessory dwelling unit." **BCRC 12-496 A. Dwelling Unit, Recreational Vehicle a.** Limited to one (1) per lot or parcel for lots or parcels less than one (1) acre in size, or limited to two (2) per lot or parcel for lots, or parcels

greater than one (1) acre in size without respect to density. **b.** Each recreational vehicle dwelling unit requires a building location permit. **c.** Shall meet all residential building setbacks. **d.** Each recreational vehicle dwelling unit may be inside a garage or under a snow roof. **e.** It may be used as a vacation rental subject to the standards and conditions in BCRC 12-484. **f.** RV's used in conjunction with an open building location permit shall not require an additional permit. This newly proposed language was presented during the Board of County Commissioner's public hearing on December 18, 2019 at which time they voted to continue this proposed language to a date and time certain of January 22, 2020.

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/APPLICANT PRESENTATION: Planning Director Milton Ollerton presented a summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

PUBLIC/AGENCY TESTIMONY: The following individuals spoke on the record in support of the file: Steve Bouchn.

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

Motion by the governing body:

MOTION: Commissioner Connolly moved to APPROVE the remainder of this FILE AM0007-19, updating Sections 12-332 Note 11; adding 12-804 D. Dwelling Unit, Recreational Vehicle; and adding BCRC 12-496 Recreational Vehicles; as presented or amended in this hearing, based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. This action does not result in a taking of private property. Commissioner Bradshaw seconded the motion.

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

Text Amendment Ordinance Adoption:

BOARD MOTION TO ADOPT ORDINANCE: Commissioner Connolly moved to adopt an Ordinance of Bonner County, Idaho, the number to be assigned, citing its authority, and providing for the amendment of Title 12, Bonner County Revised Code, Sections 12-332 Note 11, adding 12-804 D. Dwelling Unit, Recreational Vehicle; and adding BCRC 12-496 Recreational vehicles, providing for publication and an effective date. Commissioner Bradshaw seconded the motion.

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

ROLL CALL VOTE

Commissioner McDonald AYE
Commissioner Connolly AYE
Commissioner Bradshaw AYE

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

Project Authority

Bonner County initiated an amendment to Title 12. The proposed amendment (File #AM0007-19), are to provide for clarifications regarding the residential use of Recreational Vehicles (RV's) continued from the December 18, 2019 hearing.

Below are the proposed amendments to each specific section and the description of the changes. The language in **red and underlined** is recommended as additions to the existing code. Those words in ~~red~~ and strike through would be deleted from the ordinance.

RESIDENTIAL USE OF AN RV

Based on the comment provided by the Planning Commission, the three sections of code to be changed for the residential RV use should be as follows:

BCRC 12-332 Note (11) Building Location Permit regulations do not apply to non-commercial temporary, intermittent or occasional use of recreational vehicle. When a recreational vehicle is used in the same manner as a single family dwelling or an accessory dwelling unit, such use is limited to a maximum of two (2) recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply.

12:804-D: Add: "Dwelling Unit, Recreational Vehicle: A recreational vehicle used in the same manner as a single family dwelling or an accessory dwelling unit."

BCRC 12-496

A. Dwelling Unit, Recreational Vehicle

- a. Limited to one (1) per lot or parcel for lots or parcels less than one (1) acre in size, or limited to two (2) per lot or parcel for lots, or parcels greater than one (1) acre in size without respect to density.
- b. Each recreational vehicle dwelling unit requires a building location permit.
- c. Shall meet all residential building setbacks.
- d. Each recreational vehicle dwelling unit may be inside a garage or under a snow roof.
- e. It may be used as a vacation rental subject to the standards and conditions in BCRC 12-484.
- f. RV's used in conjunction with an open building location permit shall not require an additional permit.

The Planning Commission's justification for updating this language is to more clearly define the permanent use of an RV and bring it more in line with the definition of a dwelling unit. This clarifies the use to be in the same manner as a single family dwelling or an accessory dwelling unit.

STAFF: The proposed change for the residential use of an RV has been discussed at length with staff and workshops held with the Planning Commission. Occupancy of an RV for 120 days on a property is in conflict with many of processes in the Planning Department. For example, if one wants to live in an RV while building a home and this takes longer than 120 days.

Further review of the code indicates a temporary dwelling unit is permitted. However, a temporary dwelling unit is intended only for caring for a family member. The ordinance does not allow this unit to be an RV. (BCRC 12-332 (9))

BCRC 12-420 G. allows for temporary buildings but does not indicate these can be livable structures – only for material supplies. In continued conflict, BCRC 12-820 defines a temporary dwelling unit as a building on a nonresidential construction site for the purposes of security.

There appears to be no permission in the ordinance to live in an RV in any capacity on a person's property without taking up one of the permitted uses of a single family dwelling or an accessory dwelling unit.

The other difficulty with the existing code is the allowance of an RV for 120 days in any consecutive 12 month period. This ordinance appears to require the County to prove the RV was in place and in use for 120 days. This would likely require a daily visit to the property to determine. Additionally, this limits the property owner to use the property the way he or she may intend.

Currently the ordinance allows one home and one ADU (Accessory Dwelling Unit) on each property. The proposed change will now allow two (2) permanent RV spaces on each property. Currently if a property wanted to live, permanently in an RV, a BLP was required and the RV has to be declared as the home or the ADU. This change will allow two (2) additional living spaces on a property. The review of the comprehensive plan, below, shows that density is not limited by number of residential units on a property but only by lot size minimums. The ordinance limits density on a parcel. This proposal increases the number of residential structures on a property.

The proposed language above includes a definition for a Dwelling Unit, Recreational Vehicle. This definition clarifies the permanent use of an RV on a property.

This code addition addresses the standards for RV's on private property. Each property is limited to two parking spaces with the second space requiring a minimum of one acre. This means that in order to have two spaces on the property, the property must be at least one acre. Each space will require a BLP to ensure setbacks. This will be a reduced fee to cover the costs of inspection and paperwork.

The permit will ensure setbacks and other standards are followed. There will not be double permits – a permanent RV space inside a garage or under a snow roof will be identified as dwelling unit.

The Planning Commission in their public comment, recommended using the recommended ordinance above.

Public Comment:

There have been two comments received to date on this file. One each from the City of Kootenai and Panhandle Health. The Independent Highway District and City of Clark Fork provided a "no comment" response.

The City of Kootenai brought up the concern that two (2) RV's per property is against the densities established in the comprehensive plan. In the land use section of the comp plan, there are lot size minimums discussed and it appears there is not any discussion of density.

Panhandle Health recommends the County require review and approval of permanent RV parking spaces by PHD prior to the County issuing permits.

While this file has been discussed on social media quite extensively, at the time of the staff report, there have been two public comments received to date. Both letters indicate the proposed changes are going in the right direction for Bonner County.

Authority

The ordinance amendment is proposed under the authority granted at Idaho Code, Chapter 7, Title 31; Chapter 8, Title 31; and Chapter 65, Title 67; and Article XII, Section 2, of the Idaho Constitution.

Findings of Fact:

1. The Planning and Zoning Commission, per Idaho Code Chapter 65, Title 67, may recommend a zoning ordinance.
2. The Bonner County Planning Department has reviewed the proposed changes against Idaho Code and made amendments to better comply with the Idaho Code, specifically Title 67 Chapter 65.
3. The Board of County Commissioners is authorized by Idaho Code, Chapter 7, Title 31, to adopt ordinances, rules and regulations "...not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein..."

The proposed ordinance making the above changes adds to the clarity intended in the interpretation of the Bonner County Revised Code and Bonner County Comprehensive Plan. These actions will further balance the provision of safety, health and prosperity while maintaining the protection of property, peace, good order, comfort and convenience of the county and its inhabitants.

4. This proposed change provides further clarifying standards enabling the public and the staff to achieve the best results leading to greater understanding and use of the zoning ordinance.

Conclusions of Law:

1. The proposed amendments to Title 12 **IS** in accord with Idaho Code, Chapter 7, Title 31.
2. The proposed amendments to Title 12 **IS** in accord with Idaho Code Chapter 67 Title 65.

The Chair declared the hearing adjourned at 2:14 p.m.

Respectfully submitted, this 6th day of February, 2020.



Milton Ollerton, Planning Director