

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
FEBRUARY 26, 2020**

CALL TO ORDER: Chair McDonald called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 3rd floor meeting room, Suite 338 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; Planning Operations Manager Josh Pilch; Planner II Halee Sabourin; Planner I Tessa Vogel; 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 V0004-19 – Front Yard Setback Variance – Stephan & Amy Byrd are 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. The project site is located off of N Steamboat Bay Road in Section 27, Township 60 North, Range 04 West, B.M. The Planning and Zoning Commission at the public hearing on December 19, 2019 approved this file for a 10' foot front yard setback. An appeal from the public was received by the Planning department on December 30, 2019 requesting this file be forwarded to the Board of County Commissioners for denial. An additional appeal was filed by the applicant on January 16, 2020 requesting the Board of County Commissioners consider the original 5' foot setback request as per the original application.

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 not consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Applicant Stephan Byrd stated to the Board of County Commissioners that he withdraws his request. The Chair confirmed his withdraw and adjourned this project hearing.

ADMINISTRATIVE 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 VA0011-19 – Lot Size Minimum Administrative Variance – Mazur Enterprises, Inc – Martin & Louise Mazur are requesting a 23% deviation of lot size minimum for a minor land division. The current zoning district is Rural 5-acre minimum. The project is located off Hidden Creek in Section 32, Township 56 North, Range 2 West, Boise-Meridian. An appeal of the administrative decision was received by the Planning department on January 9, 2020 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 Tessa Vogel presented a summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: None.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

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

Motion by the governing body:

MOTION TO APPROVE: Commissioner Connolly moved to approve this project FILE VA0011-19 for a variance of a 23% deviation in lot size minimum to allow for a minor land division, 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 Connolly 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 Bradshaw seconded the motion.

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

Background:

A. Site data:

- Use: Residential
- Unplatted
- Size: 7.75 acres
- Zone: Rural-5
- Land Use: Rural Residential (5-10 AC)

B. Access:

- The site is accessed by a private easement from Hidden Creek Road, a private roadway.

C. Environmental factors:

- Small portion of 15-29% slopes
- Riverine and Freshwater Forested/Shrub Wetlands
- Cocolalla Creek, a perennial stream
- SFHA 'A'
 - Per FEMA

D. Services:

- Water: Individual Well
- Sewage: Individual Septic System
- Fire: Selkirk Fire District
- Power: Northern Lights, Inc.

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential (5-10 AC)	Rural-5	Residential
North	Rural Residential (5-10 AC)	Rural-5	Residential
East	Rural Residential (5-10 AC)	Rural-5	Residential
South	Rural Residential (5-10 AC)	Rural-5	Residential
West	Rural Residential (5-10 AC)	Rural-5	Residential

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.

Applicant: The property is zoned R-5. The County assessed the property as a 10 acre tract leading the owner to believe that he could divide the property into two (2) five acre (5 ac) tracts. The east boundary of the property is Cocolalla Creek. Field survey (creek boundary) revealed a total of 7.75 acres. Each lot would be 3.87 acres – within 23% of the allowable lot size.

Staff: The current owners did not create the design of the parcel and based on the legal description and the assessment of the property by the Bonner County Assessor's office, understood their property to be 10 acres when in reality the property is 7.75 acres. The entire western property line follows Cocolalla Creek, which may cause the property dimensions to change as the creek changes.

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

Applicant: The applicant had no way of knowing that the assessed lot size was incorrect until it was surveyed.

Staff: The applicants had been under the impression that the parcel was 10 acres in size due to the information provided by the tax assessments from Bonner County and once the applicants had their property surveyed to begin the minor land division process they were notified that their parcel is really 7.75 acres in size. The purpose in allowing a variance, per **BCRC 12-231** is 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 this subchapter. The applicants are requesting a 23 percent relief from the five acre minimum requirement for the Rural-5 zoning district.

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 subject property currently includes an existing residence (trailer) and outbuilding. The division of the property would add the potential for one more dwelling. Each lot would be 3.87 acres which is within 23% of the minimum allowable acreage per lot. There are no public access issues and no foreseen adverse effects on the adjoining properties.

Staff: One additional single family dwelling and one accessory dwelling unit will be permitted for the newly created lot. An accessory dwelling unit will be permitted on the remainder lot that will have the existing single family dwelling currently on it. The current private easement and

the private road that is Hidden Creek Road are considered to be 'low volume private roads' and one additional residential lot in this Rural-5 zone should not be enough to cause more than two hundred (200) vehicle trips per day.

G. Stormwater plan

A stormwater management plan was not required pursuant to **BCRC 12-720.3(K): Activities to which this subchapter is not applicable; Applicants for conditional use permits, industrial and commercial site plan reviews, planned unit developments and variances that do not result in the creation of additional "impervious surface," as defined in section 12-809 of this title.**

H. Agency Review

The application was routed to agencies for comment on **November 14, 2019**. The following agencies **commented**;

On November 19, 2019 Panhandle Health District commented:

"Panhandle Health District does not have any comments regarding the Variance to the Lot Size Minimum of the subject project. However, it is recommended that the applicant apply for a Speculative Site Evaluation for the proposed parcel in the South prior to the minor land division to determine if the lot is suitable for subsurface sewage disposal, therefore assuring the applicant that the lot will be buildable. There is currently a mobile home in the Northern portion of the lot that has an approved septic system with Panhandle Health District Permit 03-09-9863 (attached), and therefore no evaluation of this proposed parcel is needed."

The following agencies replied "No Comment":

Bonner County Road & Bridge Department
Idaho Department of Environmental Quality
Idaho Department of Lands

The following agencies did not respond for comment:

Idaho Department of Water Resources
Northern Lights, Inc.
Selkirk Fire District
U.S. Army Corps of Engineers

I. Public Notice & Comments

The application was routed to neighbors within 300 feet of the subject property for comment on **November 14, 2019**. The following comments were received.

On November 20, 2019 Mark Young of 224 S. Haughey Rd. commented:

Summary of Comment (in opposition of): *The error of Bonner County reporting the incorrect lot size of the subject property is not a reason to approve a variance to a minimum 5 acre per lot zoning requirement. A buyer is expected to conduct its own due diligence to validate the size of the property being purchased and failure to do*

*so should not compromise the minimum zoning requirements for rural developments. Mr. Young does not want to see the rural settings he enjoys compromised. A complete copy of the public comment can be found on file under **VA0011-19**.*

On November 25, 2019 Michael & Loretta D'Orazi of 217 Powell Ave., CA commented:

Summary of Comment (in opposition of): *Until Mr. and Mrs. D'Orazi have more information as to whether or not the structure on the subject property encroaches on their property, they cannot give their approval of the project and if the encroachment does exist, the applicant and Mr. and Mrs. D'Orazi will need to agree on a resolution before their consent will be provided. A complete copy of the public comment can be found on file under **VA0011-19**.*

On November 27, 2019 Mary Leiser commented:

"We are the owners of the property northwest (RP56N02W3178000A) of the subject property up for Administrative Review. We are not in favor of the proposed variance. We feel that 5 acre minimum is appropriate for parcel sizes in our rural area, especially in regards to private access via easements through our other neighbor's properties. It is also our understanding that the owners have several other issues that will be addressed by affected neighbors."

On November 27, 2019 Thomas & Theodora D'Orazi of 260 Hidden Creek Rd. commented:

Summary of Comment (in opposition of): *Several issues with the property have been brought to the attention of Mr. and Mrs. D'Orazi including the following;*

- *There is a building on the subject property encroaching on a neighboring property per a recent survey.*
- *A drainage culvert from the shop goes across a neighboring property towards Cocolalla Creek.*
- *Junk from the subject property appears to be on a neighboring property.*
- *A hard sealed or paved road surface is needed from the highway.*
- *Servient tenement holders should need to approve additional access.*

A complete copy of the public comment can be found on file under **VA0011-19**.

On November 29, 2019 Steve & Melinda Walker of 465 Hidden Creek commented:

Summary of Comment: *Access to the subject property has to go through Mr. and Mrs. Walker's property or another neighbor's property. The easement runs in front of the Walker's home and they do not want more traffic and wear and tear on the road. The road is maintained by the owners and needs a lot of maintenance. The Walker's ask that if the subject property were to be subdivided that the owner (applicant) be required to work on the road. The Walker's would not have bought their property if they knew that it could be re-zoned below 5 acres and to access the proposed lots a bridge has to be crossed. The bridge is not engineered and would require work before it could provide safe passage for additional traffic and homes. A complete copy of the public comment can be found on file under **VA0011-19**.*

J. Appeal Public Notice & Comments

The application was routed to neighbors within 300 feet of the subject property for comment on **January 28, 2020**. No public comments were received for this appeal.

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 property is zoned Rural 5-acre minimum.
3. The current owners bought the subject property on May 17, 2002.
4. The current owners applied for four (4) building location permits.
5. One (1) single family dwelling (a manufactured home) under BLP2004-0819 and one (1) accessory building (outbuilding) under BLP2003-0577 are located on the subject property.
6. Both building location permits were approved and signed off on, including flood development permit FDP2003-0037 for the shop (BLP2003-0577) per Bonner County Planning Department records.
7. The two (2) lots being proposed for a minor land division would be 3.87 acres each instead of the required 5 acres for the Rural-5 zoning district.
8. The current owners built the single family dwelling and the accessory building.
9. The current owners did not create the parcel design.
10. The property had been assessed as 10 acres until a 2019 professional survey by J.R.S. Surveying, Inc.
11. Hidden Creek Road is a local road with an 'unknown' ownership which is treated as private.
12. Cocolalla Creek is a perennial stream.
13. Per CFM/Planner II Halee Sabourin from the Bonner County Planning Department, the parcel is partially in the special flood hazard area (SFHA) Zone A and SFHA Zone X, per FIRM Panel #16017C0950E, effective date 11/18/2009.
14. As the road is a private easement, the Bonner County Planning Department has no jurisdiction over the roadway use or maintenance.
15. The soil types present on the property are Bonner Gravelly Silt Loam, 0 to 4 percent slopes and Dufort Silt Loam 5 to 45 percent slopes, both suitable for homesites on level ground.

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** A minor land division shall be submitted to the Bonner County Planning Department per BCRC 12-650; *Minor Land Division Procedure*.

ROAD VACATION

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 VS0005-19 – Petition to Vacate a public right-of-way – Brian Ringe is petitioning to vacate a nonfunctioning 50-foot right-of-way located off Dufort in a portion of Section 4, Township 55 North, Range 4 West, Boise-Meridian. The property is zoned Rural 5.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Connolly disclosures he talked with counsel regarding his family owning property that abutted up to the subject property at one point, but it did not create a conflict for him. The Chair noted that there were no disclosures or conflicts.

STAFF PRESENTATION: Planning Operations Manager Josh Pilch presented a summary of the project and previously circulated staff report, concluding this project is consistent with Idaho State Statute Title 40-203.

APPLICANT PRESENTATION: Project Representative Joel L. Andring stated there was never a road built so there should not be impact to the lots on Eric's Haven by the loss of the road. Mr. Andring further stated there will be a road built that would be in a similar location and come off Dufort Road.

PUBLIC/AGENCY TESTIMONY: The following public spoke on the record regarding the proposed changes: Gordon Parke.

APPLICANT REBUTTAL: None.

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

Motion by the governing body:

MOTION TO APPROVE: Commissioner Bradshaw moved to approve this petition, FILE VS0005-19, a petition to vacate a non-functioning public right of way off of Dufort Road 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 Bradshaw 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 vacation 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:

Hydrologic features: None
Flood Zone: AE
Wet Lands: None
Soil: Mission Silt Loam
Slope: <15% per USGS, 0 to 2 Percent Slopes

B. Access:

Access was to be gained off of Dufort Rd.

C. Environmental factors:

The area of the existing Right-of-way is a hay field and has been for some time.

D. Standards review

Required compliance with:

§40-203, Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way

The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.

- Provided:
Petitioner's reason for the request:

This road vacation is being proposed for the purpose of removing a non-functioning public right-of-way. In 1987 Quinton dedicated this 50' foot wide

strip to the public, but never built the road. Also there appears no indication that the county ever accepted the dedication.

E. Agency Review

The petition was routed to the following agencies on January 24, 2020.

Panhandle Health District	Dept. of Lands, Nav. Waters
Bonner County Road and Bridge	Idaho Department of Water Resources
Selkirk Fire District	Bonner County Assessor's Office
Bonner County Schools - Transportation	

Agency Review Ended on December 2, 2019.

PHD - No Comment.

DEQ - No Comment.

IDWR - No Comment.

Bonner County Road and Bridge -

Road & Bridge supports this vacation of public ROW. All of the lots that would be affected by this vacation are owned by Ringe Properties, LLC and Brian Ringe has been working with the Road & Bridge Department to establish the location and layout of a new suitable private road to access the parcels planned in this area. The existing ROW does not provide ingress to any public areas that would be in the interest of the public to preserve access to.

F. Public Notice & Comments

Letter against File VS0005-19, Received February 10, 2020
Larry and Tracey Hubbard
Lot #1, Eric's Haven
Priest River, ID 83856

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 vacation criteria and standards set forth at Idaho Code §40-203.

Finding

The procedures set forth in section 40-203, Idaho Code, have been followed.

No public agency has objected to the proposed petition to vacate.

Local utility providers were routed as part of agency review, and none opposed the validation.

Conclusion 2

This non-functioning right of way is hereby vacated and declared abandoned.

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Finding

The petitioner demonstrated adequate evidence that the vacation of the subject easement would not be in conflict with public interest.

Finding

The petitioner provided adequate evidence that the vacation of the subject easement would not result in any real property to not have access to an established highway or public right-of-way

Conditions of approval:

1. The vacation of the above-described platted area shall be effective upon the recording of a resolution by the Bonner County Commissioners granting the vacation.
2. The costs for legal advertisements and recording fees shall be borne by the petitioner and shall be paid prior to the recording of this vacation.
3. Prior to the adoption of a resolution, the applicant shall submit to the Planning Department, documentation confirming easements have been established.

The Chair declared the hearing adjourned at 2:15 p.m.

Respectfully submitted, this 18th day of March, 2020



Milton Ollerton, Planning Director