

**BONNER COUNTY PLANNING and ZONING COMMISSION
PUBLIC HEARING MINUTES
NOVEMBER 26, 2019**

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Vice Chair Bailey called the Bonner County Planning and Zoning Commission hearing to order at 5:30 p.m. in the 1st Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

PRESENT: Commissioners Vice Chair Brian Bailey; Trevor Kempton; Sheryl Reeve; Suzanne Glasoe; and Matt Linscott

ABSENT: Chair Don Davis and Taylor Bradish

ALSO PRESENT: Planning Director Milton Ollerton; Planner I Halee Sabourin; Planner I Amanda DeLima; and Administrative Manager Jeannie Welter

PUBLIC HEARINGS:

VARIANCES

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

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

STAFF PRESENTATION: Planner I Halee Sabourin presented a PowerPoint summary of the project and previously circulated staff report.

APPLICANT PRESENTATION: Eric Cookman stated he has a permit from Army Corp of Engineers for the riprap. He further stated that he has spoken with the Floodplain Manager Jason Johnson as well.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

COMMISSION DELIBERATION: The Vice Chair closed the hearing to public testimony. The Commission discussed Findings and Conclusions.

MOTION: Commissioner Glasoe moved to deny 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, based upon 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 Glasoe 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. Commissioner Kempton seconded the motion. The action that could be taken, if any, to obtain the variance is to:

- 1) File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or
- 2) Appeal the Planning and Zoning Commission's decision to the County Commissioners.

VOTED upon and the Vice Chair declared the motion carried, 3-1. Commissioners Glasoe, Reeve, and Kempton voted in favor of the motion. Commissioner Linscott abstained from the vote.

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** 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** result from the actions of the applicant.

Conclusion 3

The granting of the variance **is** 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)

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

File V0022-19 – Front Yard Setback & Waterfront Setback Variance – Wayne Erik & Lisa Liband are requesting an 8-foot ingress/egress easement setback where 25-feet is required and a 22-foot waterfront setback where 40-feet is required as shown on the site plan, for the construction of a 480 square foot cabin replacing an existing cabin. The property is zoned Rural 10. The project is located off Driftwood Shore in Section 17, Township 56 North, Range 1 East, Boise-Meridian.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Vice Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Bailey disclosed that he spoke with the applicant regarding snow removal but he has no conflict. The Vice Chair noted that there were no disclosures or conflicts.

STAFF PRESENTATION: Planner I Amanda DeLima 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 Wayne Erik thanked the Planning Department for their assistance on this project.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

COMMISSION DELIBERATION: The Vice Chair closed the hearing to public testimony. The Commission discussed Findings and Conclusions. Vice Chair Bailey instructed staff the anonymous comment be stricken from the record.

MOTION TO APPROVE: Commissioner Glasoe moved to approve this project FILE V0022-19 8-foot ingress/egress easement setback where 25-feet is required and a 22-foot waterfront setback where 40-feet is required as shown on the site plan, for the construction of a 480 square foot cabin replacing an existing cabin, 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 Glasoe 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 Linscott seconded the motion.

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

Background:

A. Site data:

- Acreage: 0.38 Acres (platted)
- Rural Residential 5-10 acres
- Zone: Rural - 10
- Structures: 280sq.ft. Cabin (built in 1940)

B. Access: According to the applicant, access to the lower part of the parcel is provided by Driftwood Shore, a 12' wide, gravel, easement with a 16' R-O-W as recorded by instrument number 452403 & 467366.

C. Environmental factors:

- Site contains mapped slopes of 15-30% grade, however the structure will be placed in an area where the slope is less than 15% (USGS)
- Site does not contain any mapped wetlands
- Site is located on Lake Pend Oreille
- Site contains some special flood hazard zone areas, but the proposed building will be placed outside of this area in DFIRM Panel # 16017C1000E, Zone X -0.2% annual chance of flood hazard (FEMA).

D. Services:

- Water: Individual Well (to be placed on adjacent parcel owned by applicant, existing cabin used lake water)
- Sewage: Individual Septic (new septic approved by PHD)
- Fire: Selkirk Fire (~12 miles)
- Power: Northern Lights
- School District: LPOSD #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 10	Vacant Land
East	Rural Residential 5-10 AC	Rural 10	Residential
South	Rural Residential 5-10 AC	Rural 10	Lake Pend Oreille
West	Rural Residential 5-10 AC	Rural 10	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: [Insert specific findings addressing each of the standards.]

(d) 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 lot's shoreline was platted in 1961, establishing a narrow strip of land between the lake shore and Driftwood Shore, a 16' wide easement depicted on the plat of the 1st addition to Walston's Lake Lots (Book 2 of Plats, Page 83). This narrow strip has been developed with numerous outbuildings and varying sized residences located on similarly platted lots. The 40' lake front setback and 25' easement setback overlap, negating any compliant building envelop, resulting in an undue hardship due to site characteristics peculiar to this strip. "

Staff: Walston's Lake lots was not created by the applicant. In an effort to build a new cabin to replace the dilapidated cabin from 1940, a variance would be necessary in this location due to the overlapping setbacks from the road and waterfront. The easement alignment has created a hardship for many of the waterfront lots in the Walston's Lake subdivision. Additionally, numerous variances have been granted along Driftwood Shores to allow for the construction of single family residences.

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

Applicant: "The property was platted in 1961 by the Walston's. The narrow strip of land between the Pend Orielle lake shore and Driftwood Shore has existed since the original platting. The site constraint was not a condition or circumstances resulting from the actions of the applicants."

Staff: The design/creation of the subdivision was the not due to the actions of the applicant. The subdivision was created by Mr. Walston in 1961.

(f) The granting of the variance is not in conflict with the public interest in that it will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot.

Applicant: "Granting this exception would not grant any additional privileges to the applicant. In fact, the request for a small cabin upgrade and repositioning is what we believe is a very reasonable and modest request in comparison to current development of neighboring properties within this area of the subdivision.

The location of the proposed cabin is similar to that of the other structures/residences located along Driftwood Shore within the 25' easement and 40' waterfront setback. There will be no change to current ingress/egress access along Driftwood Shore. The exception will have a positive impact on the ingress and egress by adding additional space for parking off the roadway. The design proposal provides for additional parking to the front of and to both sides of the cabin well in excess of the 500 square foot minimum requirement. At a minimum, there is 600 square feet of parking planned to the sides of the cabin.

Staff: The opportunity for agency/public comment on the proposal addresses public interests. In order to address the potential impacts to the lake staff has required that "at the time of permitting the structure shall be developed in accord with BCRC Title 12, Subchapter 7.2 - Grading, Stormwater Management & Erosion Control."

G. Stormwater plan: A stormwater management plan is required pursuant to BCRC 12-720.2. See conditions of approval- required stormwater management plan/erosion control plan per BCRC will be submitted

H. Agency Review

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

- Panhandle Health District - **No Comment**
- Bonner County Road & Bridge - **No Comment**
- Selkirk Fire District - No Response
- Northern Lights - No Response
- Bonner County School #84 - No Response
- Dept. of Fish & Game - **No Comment**
- Dept. of Environmental Quality - No Response
- Dept. of Water Resources- No Response
- Army Corps - No Response
- Dept. of Lands, Nav. Waters - No Response
- Fish & Wildlife Service- No Response
- Bonner County Schools Transportation - No Response
- Dept. of Lands - **No Comment**

I. Public Notice & Comments

No public comments

Findings of Fact

1. The parcel is 0.384 acres.
2. The parcel is zoned Rural 10.
3. The parcel is located on Driftwood Shore.
4. The parcel was platted 1961.
5. The parcel contains an original 280 square foot cabin from 1940.

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 At the time of permitting the structure shall be developed in accord with BCRC Title 12, Subchapter 7.2 - Grading, Stormwater Management & Erosion Control.

OPEN LINE DISCUSSION:

AM007-19 time extension will be presented to the BOCC on December 3, 2019 and the rest of the file will be heard by the BOCC on December 18, 2019.

Staff Updates

Staff met with DEQ regarding the Sagle aquafer.

At 6:32 p.m., the Vice Chair declared the hearing adjourned until December 5, 2019.

Respectfully submitted,



Milton Ollerton, Planning Director

The above Minutes are hereby approved this 5th day of December, 2019.

Bonner County Planning and Zoning Commission

A handwritten signature in black ink, appearing to read "Don Davis", written over a horizontal line.

Don Davis, Chair