

**BONNER COUNTY PLANNING and ZONING COMMISSION  
PUBLIC HEARING MINUTES  
DECEMBER 19, 2019**

**PLEDGE OF ALLEGIANCE**

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

**PRESENT:** Commissioners Chair Don Davis; Vice Chair Brian Bailey; Trevor Kempton (left the hearing at 7:30 p.m.); Sheryl Reeve; and Matt Linscott

**ABSENT:** Taylor Bradish and Suzanne Glasoe

**ALSO PRESENT:** Planning Director Milton Ollerton; Planner II Halee Sabourin; Planner I Tessa Vogel; and Administrative Manager Jeannie Welter

**CHANGES IN AGENDA:**

Addition of Executive Session to the minutes to discuss sub-area interviews.

Chair Davis moved files AM0009-19 & ZC0008-19 – Comprehensive Plan Map Amendment & Zone Change to be heard as the last hearing of the evening.

**CONSENT AGENDA:**

**APPROVAL OF MINUTES:** The Chair requested the Commissioners declare if they had any corrections or changes to the approval of minutes as written for: December 5, 2019. Hearing no changes or objections, the Chair declared the minutes approved as written.

**PUBLIC HEARINGS:**

**VARIANCES**

**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 May 16, 2019 continued this file requesting the applicant obtain a certified

mapped survey including an impervious surface calculation and a 200-foot shoreline standard calculation.

**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 Halee Sabourin presented a PowerPoint summary of the project and the survey requested by the Planning & Zoning Commission's previous motion of the May 16, 2019 public hearing.

**APPLICANT PRESENTATION:** Applicant Stephen Byrd responded to a question from Commissioner Reeve regarding snow shedding toward the road, stating the roof is a comp roof and the snow should not shed off. He further explained some additional features on the survey he provided to the commission for this hearing.

**PUBLIC TESTIMONY:** Public testimony was closed for the file during the hearing on May 16, 2019 and the commission did not wish to reopen this hearing for public testimony.

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

**MOTION TO APPROVE:** Commissioner Linscott moved to approve this project FILE V0004-19 for a 10' 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, 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 Linscott 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 Kempton seconded the motion.

**VOTED** upon and the Chair declared the motion carried with a vote of 3-1. Commissioners Linscott, Bailey, and Kempton voted in favor of the motion. Commissioner Reeve voted in opposition of the motion.

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**Background:**

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- A. Site data:** The subject property is a
- Developed Lot (Single Family Dwelling and Pickle Ball Court)
  - Unplatted
  - Size: ≈0.28 acres
  - Recreational zone

- B. Access:**
- Access is provided by Scranton Avenue a 15' wide, gravel, county maintained road with a 60' R-O-W.

**C. Environmental factors:**

- Site does not contain mapped slopes. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does not contain a river/stream. Site fronts on Priest Lake.
- Site is partially located in a Special Flood Hazard Area (DFIRM Panel # 0225F, Zone AE) (FEMA) Area to be developed not located in a Special Flood Hazard Area (DFIRM Panel # 0225F, Zone X – 0.2% annual chance of flood hazard)

**D. Services:**

- Water: Shared well
- Sewage: Coolin Sewer
- Fire: Coolin Cavanaugh Bay Fire District
- Power: Northern Lights

**E. Comprehensive Plan, Zoning and Current Land Use**

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Resort Community (0-2.5 acres)	Recreation	Residential
North	Resort Community (0-2.5 acres)	Recreation	Residential
East	Resort Community (0-2.5 acres)	Recreation	Vacant
South	Resort Community (0-2.5 acres)	Recreation	Residential
West	Priest Lake	N/A	Dock

**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: "I would suggest that compliance with the current standards creates undue hardship to the site by forcing the removal of remaining natural habitat along with ground cover and eliminating natural visual buffers along with natural drainage filtration for rain and runoff towards Priest Lake. If we are allowed a variance we could then maintain the natural site amenities and still have minimal or no impact on public or private uses occurring on and/or around our parcel."*

**Staff:** The proposed site has served as a parking area between the natural vegetation against the road and the western part of the parcel. Other areas of the property are either developed or contain mature trees.

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

*Applicant: "No special circumstances were created by the owners by any means in the past."*

**Staff:** The current homeowners did not create/define the current parcel boundaries or plant the mature trees on the property after obtaining the property in September of 2015 per deed #878807.

- (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: "Granting of this variance would not be in conflict with the public interest or detrimental by of the issues mentioned above. In fact quite the opposite is the result of granting the variance. We would be allowed to maintain our natural visual buffer along with the natural filtration of ground water and runoff that could become a problem in the future as a result of compliance to current setback. Also by allowing for a reduced setback we are able to place the new proposed structure fully outside of the 200' setback for shoreline management (see attached drawings & pictures)."* [See additional responses to the Comprehensive Plan Goals and Objectives.]

**Staff:** "Section 5.2 Forestry" of the Land Use component of the Comprehensive plan states: "Timber conservation management should be encouraged on both public and private lands."

**G. Stormwater plan:** A stormwater management plan is required pursuant to BCRC 12-720.3 K. Application does result in the creation of additional impervious surface. See conditions of approval – required stormwater management plan per BCRC will be submitted at the time of building location permit.

**H. Agency Review:** The application was routed to the following agencies for comment on February 6, 2019:

- |  |                                   |
|--|-----------------------------------|
| Panhandle Health District              | Idaho Dept. of Fish and Game      |
| Coolin Sewer District                  | Idaho Dept. of Env. Quality       |
| Coolin Cavanaugh Fire District         | Army Corps (Newport)              |
| Northern Lights                        | Fish and Wildlife Service         |
| School District #83                    | Idaho Dept. of Lands, Nav. Waters |
| Bonner County Schools – Transportation | Idaho Dept. of Lands (Sandpoint)  |
| Idaho Dept. of Water Resources         |                                   |

**The following agencies replied "No Comment":**

*Idaho Department of Lands*

**All other agencies did not reply.**

**I. Public Notice & Comments:**

Allison Still & Erica Mullins, on April 27, 2019 and April 26, 2019 respectively, provided comments in favor of the variance. They provided letters of understanding between their and the applicant's shared easement, ensuring an agreement between the two parties and the encroachment that extends beyond the required 5' side yard setback.

Cal Larson, on April 22, 2019 provided comments not in favor of the variance stating the following:

1. "I don't understand why [sic] could possibly be granted an exception to this code, as I think the code was written for public safety and this clearly is not in the interest of the public."

**Staff:** Variances are written into the code "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 [BCRC Subchapter 2.3]." Variances also grant the applicant the opportunity to address issues such as public interest.

2. "Their buildings are already jammed on the property, and this would create an unnecessary congestion."

**Staff:** The applicant has one residential building on site with a paved pickle ball court. Per BCRC, the applicant is entitled to build an accessory structure and accessory dwelling units on their property subject to the standards set forth in the BCRC.

3. "When they sell the property, the new owners would have no way to drive to their parking lot without trespassing on the neighbors, as the building would be in the way of the parking spot, and there is only a 5' setback."

**Staff:** There is a shared easement between the applicant and the northern parcel. Please see the letters of understanding from the northern neighbor showing their consent to build near/on the easement.

4. "I believe that their shop would encroach on Mr. Coffey's property in the back"

**Staff:** The site plan submitted by the applicant shows the required 5' side setback from the south property line. The applicant must adhere to the submitted site plan or be subject to another hearing process.

5. "It also strikes me as dangerous, having a building right on the road when kids are zooming by..., let alone the road is narrow to start with, and could be hazardous for larger work and emergency vehicles."

**Staff:** The majority of the proposed building will remain behind the existing tree line and does not appear to get much closer to the road than the existing trees per the scaled site plan.

6. "Being so huge and right on the road creates an awful aesthetic for the neighbors."

**Staff:** The BCRC does not include language to regulate the aesthetic of the structures built on the property. Additionally, they are not in a subdivision with HOA's or CC&R's (Neither are documents the County can enforce)

7. "Also, it is surprising to read that they are planning to turn this into yet another cabin. They already have a constant stream of people on the property (not to mention the two large families sharing the property to their North) and adding yet another family unit on the lake takes an environmental toll on the lake, which is so prized as it is an environmental gem. Every time we add another family dwelling, it slowly hurts the lake."

**Staff:** BCRC allows this property to have a single family dwelling, and an accessory dwelling unit. Per BCRC, vegetative buffers, and limitations on impervious surfaces within 200' of the shoreline, regulate the impact of structures on shorelines. The applicant is building beyond 200' of the shoreline and preserving the existing vegetation.

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**Findings of Fact**

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1. The parcel is a ±0.28-acre area.
2. The parcel is zoned Recreation.
3. The parcel is located on North Steamboat Bay Road.
4. The parcel is served by Coolin Sewer.
5. The parcel is serviced by a shared well.

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**Conclusions of Law:**

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**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)

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**Conditions of approval:**

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**Standard permit conditions:**

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- A-1** The use shall be developed and shall be operated in accordance with the site plan as amended, to approve a 10 foot setback where 25 feet is required.
- 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 submit a stormwater management plan or erosion control plan at the time of building location permit per the standards and the requirements of BCRC.
- A-4** The applicant shall build the future living area to accessory dwelling unit standards per BCRC.
- A-5** A Building Location Permit shall be obtained prior to construction.

**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 V0024-19 – Side Yard Setback & Waterfront Setback Variance – James Chavez** is requesting a two foot (2’) side yard setback where 5-feet is required and a twenty foot (20’) waterfront setback where 40-feet is required as shown on the site plan, for an existing retaining wall. The property is zoned Rural 5. The project is located off W. Lakeview Boulevard in Section 29, Township 56 North, Range 5 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:** Planner I Tessa Vogel 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 James Chavez submitted photos of the site (exhibit A). He made a brief comment regarding Panhandle Health District’s agency comment.

**PUBLIC/AGENCY TESTIMONY:** None.

**APPLICANT REBUTTAL:** None.

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

**MOTION TO APPROVE:** Commissioner Kempton moved to approve this project FILE V0024-19 for a two foot (2’) side yard setback where five feet (5’) is required and a twenty foot (20’) water front setback where forty feet (40’) is required for an existing retaining wall, 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 Kempton 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 Reeve seconded the motion.

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

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**Background:**

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**A. Site data:**

- Parcel Area: 0.15 acres
- Elders Lakeview Lots, Lot 6, Block 3
- Use: Residential
- Zone: Rural 5
- Land Designation: Rural Residential (5-10 acres)

**B. Access:**

- West Lakeshore Boulevard
  - i. Owner: Public, not County Maintained
  - ii. Road Class: Local
  - iii. Surface Type: Gravel

**C. Environmental factors:**

- Floodplain: SFHA X
  - i. Per FEMA
- Soil Type: Cabinet Silt Loam, 12 to 30 Percent Slopes
  - i. Not Prime Farmland

- ii. Moderately Well Drained
- Slopes: Minimum slope of 21% with an average slope of 29%, including an average slope of 45% located around the retaining wall area.
- Wetlands: None

**D. Services:**

- Water: Individual Well – shared between 90 & 91 W. Lakeview Blvd.
- Sewage: Septic Tank & Drainfield – 500 gallon system shared between 89 and 91 W. Lakeview Blvd.
- Fire: West Pend Orielle Fire District
- Power: Inland Power and Light
- School District: Lake Pend Orielle School District, #83

**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 with a cabin
North	Lake Pend Oreille	Lake Pend Oreille	Lake Pend Oreille
East	Rural Residential (5-10 AC)	Rural 5	Residential with a cabin
South	Rural Residential (5-10 AC)	Rural 5	Vacant
West	Rural Residential (5-10 AC)	Rural 5	Residential – currently being developed

**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:

**BCRC 12-234.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:** This site has excessive slopes (all greater than 20%) which makes the waterfront unusable and unsafe. Additionally this property is in Albany Cove which only has waterfront to the high watermark 3 months out of the year. The property is 130' deep and the cabin built in 1963 sets right at the edge of the 40' setback. Other properties without the severe slopes have similar walls and structures. The primary need for this variance is due to the unique characteristics of the property.

There was no usable flat area for sitting by a fire pit or on lawn chairs to enjoy the view of the waterfront. Because of the topography and the severe slopes a retaining wall was the only way to make the property usable.

**Staff:** More than 50% of the property has a slope of 30% or greater while the remaining portion of the property has a slope of 15-29%. The applicant did not create the design of the lot nor did the applicant build the existing structures. There are similar retaining walls located on neighboring properties with similar slope issues. The lot is only 50 feet (50') wide and approximately 130 feet (130') deep with the existing cabin sitting at the forty foot (40') water front setback mark.

**BCRC 12-234.B; Special conditions and circumstances do not result from the actions of the applicant.**

**Applicant:** Nothing I did to the property made it less usable, or unbuildable. It was unbuildable and unusable in its original state. In fact that is why Lloyd and Joy Gill sold the property. They were unable to get to the waterfront without risk of injury and could not enjoy the waterfront in any meaningful way.

**Staff:** The applicant did not create the shape of the lot with the intense slopes. Elders Lakeview Lots was created in 1953, well before the setback standards of today were put into place. The applicant bought the property after previous owner(s) had done work to the property. The applicant constructed the retaining wall to make the property safer to use.

**BCRC 12-234.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:** The current retaining wall was built with neighboring properties in mind, as well as a desire to make the waterfront property safer and more usable. Multiple guests (primarily older friends and family) were constantly slipping and falling trying to get down to the dock or to the old fire pit (20% slope), making it unsafe to even sit around on a lawn chair. The wall was built using the block mfg engineer specs (Geogrid every 2' – 48" into the hillside, ground angular stone compacted every 6-8". Drain tile behind the wall. No native soil (clayish) was used to backfill, only angular stone for better compaction and drainage. The color is shadow grey to blend into the environment. The neighbor Larry Lambeth used it as a model wall for his property. The 40' setback is burdensome because the location of my cabin is already at the 40' mark and there would be zero usable waterfront property at all.

**Staff:** The granting of this variance is not in conflict with the public interest as it is an improvement in the safe usability of the property. Before the retaining wall was constructed, the portion of property leading down towards the water front was dangerous to maneuver down and had previous caused guests to fall. The retaining wall was constructed using block engineering specs to ensure the retaining wall was built safely. A neighboring properties used the applicant's model of a retaining wall to construct his own to make his property safer as well.

**G. Stormwater plan:** A stormwater management plan was not required pursuant to BCRC 12-721.2(A); The planning director may issue an administrative exception from the provisions of this subchapter, in whole or in part, for applications for building location permits or building permits for additions, remodeling or restoration of existing structures which would otherwise be subject to the provisions of this subchapter as set forth at section 12-720.2 of this subchapter.

The retaining wall is existing and no further ground disturbance is proposed.

#### H. Agency Review

The application was routed to agencies for comment on **November 19, 2019**. The following agencies commented;

- Panhandle Health District

On November 21, 2019 Panhandle Health District commented:

*Panhandle Health District (PHD) has reviewed the Bonner County Planning Department application, V0024-19. While PHD does not have a comment on the setback variance we will comment that the application states the septic system is a shared system with 89 W. Lakeview Blvd. We do not have records for 91 W. Lakeview Blvd. Our records indicate 89 W. Lakeview Blvds' septic system is not located where the applicant explains their system is. Prior to work being performed, the applicant may want to determine the location of their tank and transport lines to make sure they will not be affected.*

#### The following agencies replied "No Comment":

- City of Oldtown
- Idaho Department of Lands
- Bonner County Road & Bridge Department

#### All other agencies did not reply.

- Idaho Department of Environmental Quality
- Inland Power & Light
- U.S. Army Corps of Engineers
- U.S. Forest Service
- Idaho Department of Water Resources
- West Pend Oreille Fire District
- Idaho Panhandle National Forest

#### I. Public Notice & Comments

The application was routed to neighbors within 300 feet of the subject property for comment on November 19, 2019. The following comments were received;

On November 22, 2019 Daniel & Stacy Williams commented: (in favor of)

*I am the owner of 115 W. Lakeview Blvd. I have seen the retaining wall that was built, and it is clear that it helps protect the deterioration of the bank. This also makes use of an area of the property that was really unusable. I have been on this*

*portion of the river since I was a kid. The water in this bay is only up 3 months of the year. It is then about 200 feet out from the high waterline. Boating up and down the river most of the homes have retaining walls that are on or within 10 to 20 feet of the waterline. Some of these retaining walls are twice as high as the one I see on this property. This wall makes all the sense in the world to me and my wife, and would even hope to do something similar if it made better use of our own property. It is our recommendation to approve the building of this wall.*

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#### Findings of Fact

1. The existing retaining wall is located on a Rural 5 Zone parcel. This is consistent with the intent of the zoning codes of Bonner County.
2. The use is existing and no new ground disturbing activities are proposed.
3. The variance will resolve the active Building Violation (BV2019-0057) for the retaining wall by allowing for a Building Location Permit to be applied for with the reduced setbacks.
4. The existing setbacks will be verified at the time of the inspection for the Building Location Permit.
5. Subject property is Lot 6 in Block 3 of Elders Lakeview Lots and is 0.15 acres.
6. Structures, besides the retaining wall, were established before current ownership.
7. The existing dwelling was built in 1963 according to Assessor's records.
8. The current owners bought the property in 2012 according to the warranty deed under Instrument #831307.
9. The property is accessed by West Lakeview Boulevard.

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#### 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** The use shall be developed and shall be operated in accordance with the highlighted portion of the approved site plan.
- A-2** A Building Location Permit for the existing retaining wall will be submitted to the Bonner County Planning Department for approval.
- A-3** The *Block MFG Engineer Specs* used for the retaining wall and referenced in the narrative statement shall be turned in with the Building Location Permit application to the Bonner County Planning Department.

**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 V0026-19 – Front Yard Setback Variance – Michael Altringer** is requesting an eleven foot (11') eight inch (8") front yard setback from access road South Rocky Point Road, where 25-feet is required, for the construction of a garage. The property is zoned Forest 40. The project is located off South Rocky Point Road in a portion of Section 22, Township 60 North, Range 4 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:** Planning Director Milton Ollerton presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** Architect for the applicant Tom Russell presented a thumb drive containing photos of the site (exhibits A-G).

**PUBLIC/AGENCY TESTIMONY:** None.

**APPLICANT REBUTTAL:** None.

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

**MOTION TO APPROVE:** Commissioner Linscott moved to approve this project FILE V0026-19 requesting a variance of eleven feet, three inches (11'3") where twenty-five feet (25') is required from an ingress/egress easement, 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 Linscott 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 Bailey seconded the motion.

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

**Background:**

**A. Site data:**

- Acreage: 0.76 Acres
- Subdivision: Tanglewood Point Blk 1 Lot 15
- Zone: Forest 40
- Structures: Single Family Home

**B. Access:**

- Access is provided off S Rocky Point Road from Rocky Point Road.

**C. Environmental factors:**

- Site does contain mapped slopes. (USGS)
- Site does contain mapped wetlands along the lake portion of the property. (USFWS)
- Site does contain a Priest Lake frontage

**D. Services:**

- Water: Water is drawn from the lake
- Sewage: Coolin Sewer District
- Fire: Coolin Cavanaugh Bay Fire District
- Power: Northern Lights
- School District: Bonner Schools #83

**E. Comprehensive Plan, Zoning and Current Land Use**

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Remote AG/Forest	Forest 40	Single Family Residence
North	Priest Lake		
East	Remote AG/Forest	Forest 40	Single Family Residence
South	Remote AG/Forest	Forest 40	Vacant Forest Land
West	Remote AG/Forest	Forest 40	Single Family Residence

**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 subject property is a former State lease lot, and is bisected by S. Rocky Point Rd. Steep topography limits reasonable building sites, particularly on the southern portion of the lot, across the road from the existing residence. The access road further reduces the possible building locations. The limitations imposed by the access road, steep terrain, and lot shape are such that the only reasonable site for a modest size garage is as proposed."*

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

*Applicant: "The subject property was created as a state lease lot. It was purchased in 2017. No modifications or alterations were made to the lot configuration, access road location, or topography. A residence was constructed on the site approximately 2013, but the residence is in a location that would not be reasonable for a garage given how steep a driveway would need to be in order to access it. All conditions that affect a potential garage location existed prior to the owner purchasing the property."*

- (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: "The variance proposal is for a simple 2-car garage, used for vehicle and equipment storage. The proposed location is as far a practical (11'-3") from the access road, and should not impede its use or limit access to the 3 properties that are beyond the applicant's property before the road ends. The access road is a private road, used exclusively by adjacent property owners. No limitation to their use or access by emergency vehicles will be created by the proposed garage location. Locating the garage any further from the access road would necessitate substantial retaining and an impractically tall, unsightly and expensive concrete foundation." [See additional responses to the Comprehensive Plan Goals and Objectives.]*

**G. Stormwater plan:** A stormwater management plan was required pursuant to BCRC 12-720.2. The plan by James A. Sewell & Associates. The plan calls for....

**H. Agency Review:** The application was routed to the following agencies for comment on November 19, 2019.

Coolin Sewer District	Dept. of Water Resources
Bonner County Road and Bridge	Dept. of Env. Quality
Coolin Cavanaugh Bay Fire District	Army Corps (Newport)
Northern Lights	Fish and Wildlife Service
Bonner School District #83	Dept. of Lands, Nav. Waters
Dept. of Fish and Game	Dept of Lands, Priest Lake

**The following agencies replied "No Comment":**

*Idaho Dept of Lands  
Idaho Fish and Game*

**All other agencies did not reply.**

**I. Public Notice & Comments**

No public comments have been received at the time of writing the staff report.

**Findings of Fact**

1. The property is intersected by S. Rocky Point Road.
2. The property is challenged with steep slopes.
3. The lot was created as a state lease lot and sold to private ownership.
4. The proposed location of the structure is 11'3" from the easement.
5. Three property owners have access beyond the property.

**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)



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**Conditions of approval:**

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**Standard permit conditions:**

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**A-1** The use shall be developed and shall be operated in accordance with the approved site plan.

**A-2** The stormwater plan shall be reviewed and approved prior to issuance of a building location permit.

**AMENDMENT & ZONE CHANGE**

**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.

**Files AM0009-19 & ZC0008-19 – Comprehensive Plan Map Amendment & Zone Change – Bonner County** is initiating a Comprehensive Land Use Map Amendment from Agricultural/Forest (10-20) to Rural Residential (5-10) and a Zone Change from Agricultural/Forest 20 to Rural 5 in Section 27, Township 54 North, Range 4 West, Boise-Meridian, and a Zone Change from Rural 10 to Rural 5 for Section 35, Township 54 North, Range 4 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/APPLICANT PRESENTATION:** Planning Director Milton Ollerton presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Comprehensive Plan and Bonner County Revised Code.

**PUBLIC/AGENCY TESTIMONY:**

The following individuals spoke on the record in opposition of the proposed changes: Darren Tabor, Judy Stark submitted a letter (exhibit A), Jerry Stark, Darryl Sabota, Harold Lunt, Carmen Croitori, April Fitzgerald, Bradley Bower

The following individual spoke on the record in favor of the proposed changes: Jackie Malinauskas, Nathan Hester

**STAFF/APPLICANT REBUTTAL:** Director Ollerton responded to the public comments. He suggested to the commissioners, we allow the sub-area plan committee for Southwest Bonner County to review this project as they may be able to provide the Planning & Zoning Commission some essential information and feedback that may facilitate their recommendation to the Board of County Commissioners.

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

**MOTION:** Commissioner Bailey moved to continue files FILE AM0009-19 Comprehensive Plan amendment and ZC0008-19 Zone Change to a date and time certain of March 5, 2020 at 5:30 p.m. at 1500 Highway 2, Sandpoint, Idaho. Commissioner Reeve seconded the motion.

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

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**Background:**

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**A. Site data:** The two sections contain approximately 1280 acres.

**B. Access:** The property is accessed off Clagstone Road at Satchel Drive, Pend Oreille Drive and Dylan Road.

**C. Environmental factors:** There are no wetlands or other hydrology or floodplain in these two sections. The only slope in this area follows Clagstone Road and cuts the Northeast corner of Section 27.

**D. Services:** Sewer is provided by onsite septic systems. Water is provided by onsite wells. Inland Power provides electricity to the area.

**E. Comprehensive Plan, Zoning and Current Land Use**

Compass	Comp Plan	Zoning	Current Land Use & Density
Section 27	Agricultural Forest	A/F-20	Vacant land and limited residential use. 4 5-acre lots and 6 10-acre lots.
Section 35	Rural Residential	R-5 and R-10	Some vacant land.
North	Agricultural Forest	A/F-20	Idaho State Land and US Government
East	Agricultural Forest	A/F-20	Idaho State Land and US Government
South	Agricultural Forest	A/F-20	Idaho State Land and Kootenai County
West	Agricultural Forest	A/F-20	Idaho State Land

**F. Standards review****Amendment Request:****12-215: Applications for Zone Changes and Comprehensive Plan Map Amendments, Contents**

The application was considered complete and routed to agency review on November 19, 2018.

**12-216: Evaluation of Amendment Proposals**

Staff and the governing bodies shall review the particular facts and circumstances of each proposal submitted and shall determine whether there is adequate evidence that the proposal is in accordance with the general and specific objectives of the comprehensive plan. (Ord. 501, 11-18-2008)

From the Land Use Chapter of the Comprehensive Plan. Section 27, Township 54 North, range 4 West is being proposed to change from Agricultural Forestry to Rural Residential. The standards for those land use designations from the comprehensive plan are below:

Agricultural Forest: The Ag/Forest Land designation recognizes areas where steeper slopes prevail (30% or greater) and transportation is provided by private roads or U.S. Forest Service or state roads. Urban services are not available and residential development challenges are present due to slope, poor soil conditions, hazard areas and lack of police or fire services.

Rural Residential: The Rural Residential area provides for residential development in areas where urban services are not available and slopes may vary up to 30%. These areas include hazard areas and critical wildlife habitats, where lower densities reduce potential impacts to resources and exposures to loss of property or lives. Small-scale agricultural uses and residential development are permitted.

**Zone Change Request**

Section 27 the zone change request is from A/F-20 to R-5 and for Section 35 the zone change request is from R-10 to R-5. The standards of the zones are below:

**12-322: AGRICULTURAL/FORESTRY DISTRICT:**

A. The agricultural/forestry district is established to provide for agricultural and forestry pursuits, including livestock production, forestry, horticulture, floriculture, viticulture, and necessary accessory uses for treating, storing and processing agricultural products. The purpose of the A/F district is to preserve, protect and maintain areas that are rural in character and the integrity of the forest/woodland areas where viable agricultural pursuits can be feasible and to avoid fragmentation of forests and farms. These purposes are accomplished by:

1. Establishing residential density limits and conservation development standards to retain areas sized for efficient farming.
2. Allowing for uses related to agricultural production and limiting nonagricultural uses to those compatible with agriculture, or requiring close proximity for the support of agriculture.

B. Use of this zone is appropriate in areas designated by the comprehensive plan as follows:

1. A/F-20 in all areas designated as prime ag/forest land in the comprehensive plan. The A/F-20 zone is also appropriate in areas designated ag/forest land in the comprehensive plan that also feature:
  - a. Prime agricultural soils.

- b. Are characterized by agricultural or forestry uses.
- c. Areas where one or more of the following apply: limited services; characterized by slopes steeper than thirty percent (30%); where access may be absent or limited to substandard road systems or where large tracts of land may be devoted to ag/forest production.
  2. A/F-10 in areas designated as ag/forest land in the comprehensive plan that do not feature prime agricultural soils, but where agricultural and forestry pursuits remain viable. These areas may be within or adjacent to areas of city impact or where lands are afforded fire protection, access to standard roads and other services. (Ord. 501, 11-18-2008)

**12-323: RURAL DISTRICT:**

A. The rural district is established to allow low density residential uses that are compatible with rural pursuits. The purpose can be accomplished by:

1. Limiting residential densities and permitted uses to those that are compatible with rural character and nearby resource production districts and sites and can be adequately supported by rural service levels.
2. Allowing small scale farming and forestry activities, and tourism and recreation uses that can be supported by rural service levels and are compatible with rural character.
3. Encouraging conservation development configurations that create permanent open space or farming areas, protect sensitive environmental features, reduce infrastructure costs and/or enhance recreational opportunities.

B. Use of this zone is appropriate in areas designated by the comprehensive plan as follows:

1. R-10 in areas designated as rural residential in the comprehensive plan that meet one or more of the following criteria:
  - a. Characterized by slopes that are steeper than thirty percent (30%).
  - b. Located within critical wildlife habitat as identified by federal, state or local agencies.
  - c. Contain prime agricultural soils.
  - d. Served by a network of public and/or private roadways that generally do not meet applicable roadway standards set forth in title 2 (public roads) of this code or appendix A (private roads) of this title or are absent.
  - e. Within the floodway.
  - f. Contain limited access to public services.
2. R-5 in areas designated rural residential in the comprehensive plan that are already developed at or near the one dwelling unit per five (5) acre density and/or do not meet the criteria for R-10 above. (Ord. 501, 11-18-2008)

**G. Stormwater plan:** A stormwater management plan was not required, pursuant to BCRC 12-720.3(k) because the proposal does not result in the creation of additional impervious surface, as defined.

**H. Agency Review:** The application was routed to the following agencies for comment on November 19, 2018

All Taxing Districts	Dept. of Water Resources
Bonner County Road and Bridge	Army Corps (Coeur d'Alene)
Northern Lights	Forest Service
Dept. of Fish and Game	Dept. of Lands, Nav. Waters
Dept. of Env. Quality	Bonner County Schools - Transportation
Dept. of Transportation	Dept. of Lands (Sandpoint)
BNSF Railway	

**Comments received from the following with "No comment"**

City of Clark Fork                      Department of Environmental Quality  
Idaho Department of Lands            Independent Highway District  
Kootenai-Ponderay Sewer District    Panhandle Health District

**I. Public Notice & Comments**

There were no public comments received.

**Findings of Fact**

1. The proposed area is a section of land – approximately 640 acres.
2. The neighboring sections are State Land.
3. The section is touched on three corners by five and ten-acre lots.
4. There is little to no slope with a small area of slopes in the Northeast corner.
5. The subject property is consistent with the Rural Residential designation.
6. The good soil can accommodate individual septic and water.
7. Access is provided by Clagstone Road, a County maintained road.
8. The property is served by Spirit Lake Fire, Bonner County School District #83 and Inland Power.

**Conclusions of Law:**

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

Conclusion 1

The proposed comprehensive plan map amendment **is** in accord with the Bonner County comprehensive plan.

- Property Rights                      •Population                              •School Facilities, Transportation
- Economic Development            •Land Use                                •Natural Resources
- Hazardous Areas                      •Public Services                        •Transportation
- Recreation                              •Special Areas or Sites                •Housing
- Community Design                    •Implementation

Conclusion 2

The proposal is in accord with the purpose of the Rural Residential land use designation, provided in the Land Use section of the Bonner County Comprehensive Plan.

Conclusion 3

The proposal is appropriate for the area based on the existing residential uses, soil types, access to public services and maintained county roads.

**Zone Change Findings of Fact**

1. There are numerous five-acre lots in Section 35.
2. Section 35 is designated as Rural Residential in the comprehensive plan. Section 27 is proposed to be Rural Residential in this proposal.
3. The proposed area is located on the transportation corridor of Clagstone Road, a County maintained roadway.
4. The two sections are touched on corners by R-10 and R-5 zoning with checkerboard state and federal land abutting.
5. The only steep slopes follow Clagstone Road and cut the corner of Section 27.
6. Sewer and water are provided by individual services.
7. The soil types lend to the Rural-5 zone district.

**Zone Change Conclusions of Law:**

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

Conclusion 1

The proposed zone change **is** in accord with the Bonner County comprehensive plan.

Conclusion 2

This proposal was reviewed for compliance with the zone change criteria and standards set forth at Sections 12-212, 12-215, and 12-216, Bonner County Revised Code, and **was** found to be in compliance.

Conclusion 3

The proposal **is** in accord with the purpose of the Commercial zoning district, provided at Chapter 3, Bonner County Revised Code.

Conclusion 4

The proposal **is** appropriate for the area based on the number of five acre lots in the area and the location of public service and access to County maintained roads.

**EXECUTIVE SESSION:**

At 8:45 p.m., Commissioner Bailey moved to enter into Executive Session pursuant to Idaho Code §74-206(1)(a) hiring. Commissioner Reeve seconded the motion. Voted upon and the Chair declared the motion carried, unanimously.

The Chair declare the meeting back in open session at 9:32 p.m.

The commission directed staff to create a sub-area plan completion procedure for the purpose of finalizing the plans in preparation for the public hearing process.

**OPEN LINE DISCUSSION:**

At 9:33 p.m., the Chair declared the hearing adjourned until January 2, 2020.

Respectfully submitted,



Milton Ollerton, Planning Director

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The above Minutes are hereby approved this 2<sup>nd</sup> day of January, 2020.

Bonner County Planning and Zoning Commission



Don Davis, Chair