

**BONNER COUNTY PLANNING and ZONING COMMISSION  
PUBLIC HEARING MINUTES  
JULY 25, 2019**

**CALL TO ORDER:** Vice Chair Bailey called the Bonner County Planning and Zoning Commission hearing to order at 5:31 p.m. in the 1<sup>st</sup> Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

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

**ABSENT:** Chair Don Davis

**ALSO PRESENT:** Planner II Sam Ross and Administrative Manager Jeannie Welter

**CONSENT AGENDA:**

**APPROVAL OF MINUTES:** The Vice Chair requested the Commissioners declare if they had any corrections or changes to the approval of minutes as written for: July 18, 2019. Hearing no changes or objections, the Vice Chair declared the minutes approved as written.

**PUBLIC HEARING:**

**VARIANCE**

**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 V0014-19 – Front Yard Setback Variance – Rick Backus** is requesting a zero front yard setback where 25 feet is required, and a "bulk" variance to allow for the construction of a residential addition to an existing garage. The project is located off Eureka Road in Section 33/34, Township 57 North, Range 1 West, Boise-Meridian.

**MOTION:** Commissioner Reeve moved to continue project FILE V0014-19 for a zero front yard setback where 25 feet is required to a date and time certain of August 1, 2019 at 5:30pm. Commissioner Glasoe seconded the motion.

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

**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 V0013-19 – Shoreline Setback Variance – Dwayne and Margaret Eliuk** are requesting a 12-foot shoreline setback variance, to allow for a wall taller than 36-

inches and stairs wider than 4-feet, within 40-feet of the shoreline. The project is located off Sundowner Lane in Section 6, Township 56 North, Range 2 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:** Staff Planner Sam Ross presented a summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** Applicant Dwayne and Margaret Eliuk stated that the seller of the property was also the constructor. He stated they told the seller the steepness of the property to get to the waterline was a concern and as a result of this concern the seller built the rock wall and stairway. He stated they feel they have done the best they could do with the situation. Applicants confirmed they did own the property when the wall was built.

**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 TO APPROVE:** Commissioner Linscott moved to approve this project FILE V0013-19; allowing a 12-foot setback for a wall taller than 36-inches and stairs wider than 4-feet within the 40-foot shoreline setback. I find 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 Vice Chair declared the motion carried, with a 3-2 vote. Commissioners Linscott, Bradish, and Kempton voted in favor of the motion. Commissioners Reeve and Glasoe voted in opposition of the motion.

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**Background:**

**A. Site data:**

- a. Acreage: 0.53 acres
- b. Use: residential/vacant
- c. Zone: Rural-5
- d. Structures: Retaining wall over 4' in height

**B. Access:**

- a. Name: Sundowner Lane
- b. Owner: Private/HOA
- c. Class: local access
- d. Surface: Paved
- e. Width: 18-feet
- f. ROW Width: 50-feet

**C. Environmental factors:**

- a. Floodplain: X, A/E; proposed improvements lie within SFHA per FEMA
  - i. FIRM Panel: 16017C0950E
- b. Vegetation: grass w/ sparse trees
- c. Soils: Wrencoe Silty Clay, 0 To 2 Percent Slopes
- d. Wetlands: Freshwater Emergent Wetland (Per USFWS NWI) See application for delineation & reconnaissance report.
- e. Slopes: <15% per USGS
- f. Hydrology: Pend Oreille River frontage per USGS NHD

**D. Services:**

- a. Water: Sundowner Lane Water Co-op
- b. Sewer: Southside Water/Sewer
- c. Fire: Selkirk Fire & EMS
- d. Utility: Avista (Existing metering pedestal on property)
- e. School: LPOSD #84

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

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	R-5	Vacant
North	Rural Residential	R-5	Residential, SFD
South	Rural Residential	R-5	Residential, SFD
East	Rural Residential	R-5	Residential, SFD, Lake
West	Rural Residential	R-5	HOA, Vacant

**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.
- B. Special conditions and circumstances do not result from the actions of the applicant.
- 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. (Ord. 559, 1-4-2017)

Applicant:

- A. *The property sits alongside of an inlet into the bay which was created steep banks along the entire waterfront of the property and extends from the upstream southern properties. The original bank was steep and hazardous for the entire width of the property along the waterfront. The property is part of a homeowners association, which has rules for minimum size of house. If the land were terraced to follow the ordinance, it would significantly decrease the developable area of the lot and would force the development much closer to the road, which would not be consistent with the other homes on the street. The tall retaining wall is the best option for bank stabilization and maintaining the consistency of the neighborhood.*
- B. *Special conditions and circumstances of the existing wall did not result from the actions of applicant as the construction of the wall was contracted out to a local company in 2014, Mountain Scape, who built the wall in violation of the county ordinance. The contractor was asked to leave a gap in the wall for some stairs and the landowners assumed all was to code and built the stairs to fill the gap. The violation only came to the attention of the applicant after the property was conditionally sold in March 2019.*
- C. *Other properties in the same zone and vicinity feature similar retaining walls with stairs to the waterfront due to the naturally steep slopes and small building windows available on the properties.*

Staff:

- A.
  - a. Retaining walls are common along shoreline areas due to topography and limited building envelopes. A site visit conducted on May 8, 2019 confirms that the property was developed with a retaining wall to provide stabilization along the shoreland as well as to provide a level envelope for structures and improvements.
  - b. Pathways accessing the water are common along shoreline areas as said areas are often used for recreation by landowners. A site visit conducted on May 8, 2019 confirms that the property was developed with a staircase that exceeds the shoreline setback exception standards. The applicant indicated that the feature was installed to "fill in the gap" that the aforementioned retaining wall created.
- B. Information provided by the applicant in the application indicates that they did not build the retaining wall or the staircase, but rather contracted a local company to make the improvements. The applicants also state that, "the landowners assumed all was to code". Staff observes this not to be the actions of the applicant, but rather the actions of the contractor who, by nature of profession, should be up-to-date with all codes and regulations, regardless of jurisdiction.
- C. A site visit on May 8, 2019 confirms that other properties in the same zone and vicinity feature similar retaining walls with stairs to the waterfront. This can be attributed to the fact that the lots within the Sunset Bay Estates

subdivision are below the zoning minimum (R-5) and feature slope towards the shoreline.

**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 agencies for comment on June 25, 2019. The following agencies commented:  
Bonner County Floodplain – June 26, 2019

*"Parcel is a combination of SFHA Zone AE and Zone X, per FIRM Panel 16017C0950E, Effective Date 11/18/2009. Project site will be at least partly within SFHA Zone AE. Actual development will require a Flood Development Permit. I cannot find an existing FDP for this structure in the old flood records, indicating it was probably never given the required FDP. An FDP will be required after variance approval"*

**I. Public Notice & Comments:** As of July 15, 2019, there have been no public comments received.

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#### Findings of Fact

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1. Neighboring lots within the Sunset Bay Estates plat feature similar walls and associated improvements within the 40-foot shoreline setback.
2. Retaining walls are common along shoreline areas due to topography and limited building envelopes.
3. Stairs and pathways are common along shoreline areas and are often used by land owners to access areas of recreation.

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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

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

Conclusion 2

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

Conclusion 3

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

Conclusion 4

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

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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 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 development shall comply with Title 14 - Flood Damage Prevention.
- A-4** The applicant shall obtain a building location permit for any retaining walls that are over four feet (4') in height measured at grade.

At 6:18 p.m., the Vice Chair declared the hearing adjourned until August 1, 2019

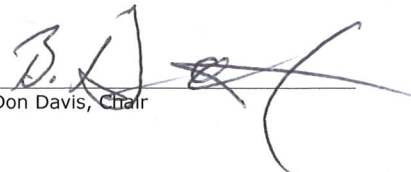
Respectfully submitted,

  
Milton Ollerton, Planning Director

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The above Minutes are hereby approved this 1<sup>st</sup> day of August, 2019.

Bonner County Planning and Zoning Commission

  
Don Davis, Chair