

**BONNER COUNTY PLANNING and ZONING COMMISSION
PUBLIC HEARING MINUTES
MAY 7, 2020**

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Chair David called the Bonner County Planning and Zoning Commission hearing to order at 5:30 p.m. in the 3rd Floor BOCC Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho and via online webinar.

PRESENT

ONSITE: Commissioners Chair Don Davis; Taylor Bradish; Trevor Kempton; and Matt Linscott

VIA WEBINAR: Sheryl Reeve

ABSENT: Vice Chair Brian Bailey and Suzanne Glasoe

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

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: February 20, 2020 and March 5, 2020. Hearing no changes or objections, the Chair declared the minutes approved as written.

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 V0028-19 – Front Yard Setback – Ethel Renfrow is requesting a 4-foot 10-inch front yard setback from the right-of-way, where 25 feet is required, to build a roof cover over an existing deck and retaining wall attached to a single family dwelling. The property is zoned Recreation and is 0.3 acres. The project is located off Garfield Bay Road in Section 22, Township 56 North, Range 1 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: Kevin Renfrow on behalf of the applicant read a statement providing a summary of the site and the current proposed project.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

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

Motion by the governing body:

MOTION TO APPROVE: Commissioner Linscott moved to approve this project FILE V0028-19, where the applicant is requesting a 4'-10" front yard setback where 25' is required, to build a covered deck addition on to a single family dwelling where the roof will extend beyond 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 Linscott further moved to adopt the following findings of fact and conclusions of law as amended. The action that could be taken to obtain the variance is to complete the Conditions of Approval as amended, adding A-3 Applicant shall submit the applicable grading/erosion/stormwater plan as required per BCRC 12-7.2 at the time of building location permit. 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, unanimously.

Background:

A. Site data:

- Use: Residential
- Status: Unplatted
- Size: 0.3 acres
- Zone: Recreation

B. Access:

- The property fronts on Garfield Bay Road, a 50', paved, county maintained road.

C. Environmental factors:

- Site does contain mapped slopes on south end of property. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does not contain rivers/streams/lake frontage (NHD)

- Floodplain: Entire parcel is within SFHA Zone D, per FIRM Panel 16017C0975E, Effective Date 11/18/2009. No further flood review is required on this proposal.

D. Services:

- Water: Individual Well
- Sewage: Garfield Bay Sewer District
- 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	Resort Community (<=2.5 AC)	Recreation	Residential
North	Resort Community (<=2.5 AC)	Recreation	Residential
East	Resort Community (<=2.5 AC)	Recreation	Residential
South	Resort Community (<=2.5 AC)	Recreation	Vacant
West	Resort Community (<=2.5 AC)	Recreation/Lake	Lake/Docks

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: "Existing porch and retaining wall encroach onto right of way setback"

Staff: Staff concurs the existing retaining wall and fill are within the 25' front yard setback. Per the site plan, the deck will remain behind the retaining wall and the roof cover will slightly extend beyond the existing retaining wall resulting in a 4'-10" setback.

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

Applicant: "The existing house was constructed prior to current setback rules"

Staff: Staff concurs with the above statement. The current home, per assessor records, was established in 1932 and the shed was established in 1958.

- (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: "Project will remove existing porch and construct new covered deck. New structural supports will be placed directly adjacent to the retaining wall and will not create a hazard for vehicles or pedestrian traffic" [See additional responses to the Comprehensive Plan Goals and Objectives.]

Staff: Road and Bridge has revised their statement stating they are not opposed to the proposal.

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. The existing yard is filled behind a retaining wall.

H. Agency Review: The application was routed to agencies for comment on March 3, 2020 and March 11, 2020. The following agencies commented:

- | | |
|---|---------------------------------------|
| Panhandle Health District | Idaho Department of Water Resources |
| Garfield Bay Sewer | Idaho Department of Fish and Game |
| Selkirk Fire | Bonner County Road Department |
| Northern Lights Inc. | U.S. Fish and Wildlife Service |
| Idaho Department of Environmental Quality | Idaho Department of Lands (Sandpoint) |
| Bonner County Schools – Transportation | |

The following agencies replied "No Comment":

- Garfield Bay Water & Sewer District
 Panhandle Health District
 Idaho Department of Environmental Quality
 Idaho Department of Lands (Sandpoint)

The following agencies provided comment:

Bonner County Road Department – Steve Klatt, May 1, 2020

- Planning has received a Road & Bridge response through Agency Review from our engineer, Matt Mulder, but in this case his viewpoint does not represent the Road & Bridge position on this Variance request. Although Matt's position is altruistic in regard to many right-of-way matters in our road system, his position is not realistic in specific relationship to Garfield Bay and this particular neighborhood. The southern edge of this property is the terminus of our winter road maintenance and the proposed structure's setback variance poses absolutely no hindrance to our winter maintenance. In fact, our turnaround pattern may even extend onto this parcel of land beyond our right-of-way

- An even greater inconsistency in the Road Department opposing this Variance request would be the fact that we allowed a commercial structure to be constructed that continues to operate, within the right-of-way immediately north of this parcel. Then the Road Department granted a landowner permission to create a landscaped obstruction at the very asphalt's edge, preventing people from using the right-of-way, several hundred yards further north. To oppose a setback variance that remains beyond our right-of-way is totally incongruous with previous actions managing our right-of-way, especially when that variance will in no way create a present or future hardship in road management.
- Furthermore, to the south of this property there are several older existing commercial structures that were partially constructed in the road right-of-way and have just become part of the nature of the road in Garfield Bay. This road department will never be looking at doing major road improvements in this area and even if we ever did, this proposed deck will not be any of the problems that might be addressed.
- So, officially, the Road Department has no opposition to the Variance requested in File V0028-19

All other agencies did not reply.

I. Public Notice & Comments

No public comments were received

Findings of Fact

1. The existing retaining wall and fill are within the 25' front yard setback. Per the site plan, the deck will remain behind the retaining wall and the roof cover will slightly extend beyond the existing retaining wall resulting in a 4'-10" setback.
2. The current home, per assessor records, was established in 1932 and the shed was established in 1958.
3. The local agencies have provided comment stating the proposal shall not be detrimental to the public health safety and welfare. Additionally, the condition of approval shall ensure the proposal will not be detrimental to the public health safety and welfare.
4. The property fronts on Garfield Bay Road, a 50', paved, county maintained road.
5. Site does contain mapped slopes on south end of property. (USGS)
6. Site does not contain mapped wetlands. (USFWS)
7. Site does not contain rivers/streams/lake frontage (NHD)

8. Floodplain: Entire parcel is within SFHA Zone D, per FIRM Panel 16017C0975E, Effective Date 11/18/2009. No further flood review is required on this proposal.
9. Use: Residential
10. Status: Unplatted
11. Size: 0.3 acres
12. Zone: Recreation
13. Water: Individual Well
14. Sewage: Garfield Bay Sewer District
15. Fire: Selkirk Fire District
16. Power: Northern Lights
17. School District: Bonner School #84
18. Bonner County Road Department is opposed to the project.

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 The applicant shall obtain an approved building location permit before the start of construction.

A-3 The applicant shall submit the applicable grading/erosion/stormwater plan as required per BCRC 12-7.2 at the time of building location permit.

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 V0002-20 – Waterfront Setback Variance – Bryan Flaig is requesting a 26-foot waterfront setback where 40-feet is required to allow for the construction of a canopy over an existing desk that was built in 1975. The property is zoned Rural-5. The project is located off W. Lakeview Blvd in Elders Lakeview Lots, Block 3, Lots 12 & 13, in a portion of 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: Staff Planner 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: None.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

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

Motion by the governing body:

MOTION TO APPROVE: Commissioner Kempton moved to approve this project FILE V0002-20, which allows for a 26-foot waterfront setback where 40-feet is required to construct a canopy over an existing deck, 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. 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 Chair declared the motion carried, unanimously.

Background:

A. Site data:

- Parcel Size: +/- 0.28 acres
- Platted: Elders Lakeview Lots, Lots 12 & 13, Block 3
- Land Use Designation: Rural Residential (5-10 AC)
- Zone: Rural 5
- Use: Residential

B. Access: West Lakeview Blvd

- Owner: County
- Road Class: Public
- Surface Type: Gravel

C. Environmental factors:

- Site contains 15-29% mapped slopes. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site contains frontage the Pend Oreille River.
- Site appears to be a combination of SFHA Zone X and Zone AE SFHA, per FIRM Panel 16017C0865E, Effective Date 11/18/2009 however, the entire project site is within SFHA Zone X, per DFIRM data.

D. Services:

- Water: Individual Well
- Sewage: Septic Tank with Community Drainfield
- Fire: West Pend Oreille Fire District
- Power: Inland Power & Light

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 Single Family Dwelling
North	Lake Pend Oreille	Rural 5	N/A
East	Rural Residential (5-10 AC)	Rural 5	Residential with a Single Family Dwelling
South	Rural Residential (5-10 AC)	Rural 5	Residential with a Single Family Dwelling
West	Rural Residential (5-10 AC)	Rural 5	Residential with a Single Family Dwelling

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: "Deck was built in 1975 when no building code existed in Bonner County, now want to cover existing deck, just a roof, no sides, all open. Will not affect deck or [existing] rails. This canopy will have its own footings not connected to deck, so snow load will be on canopy and its footings. This has already been engineered for the load of canopy & snow (see attached)."

Staff: Staff concur that the structure was created prior to the setback ordinance. This matter of fact creates a circumstance over which the applicant has no control.

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

Applicant: "The reason for the canopy is need shade [sic]. There was a larger spruce tree there before that provided shade on deck. Had to cut tree down because roots were damaging sidewalk and wall."

Staff: The house was constructed in 1976 by the applicant (assessor's records). Setback ordinances became effective January 11, 1980 (Ord. 140). Consequently, the applicants constructed their home in its current location at a time when it was legal to do so. Therefore the applicants did not create this special condition.

- (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: "Same size of existing deck, will not affect light glare."

Staff: Conflict of public interest is mitigated through the planning department's agency review process and by public notification. Both the public and governmental agencies expressed no concern regarding the proposal. Additionally, the conditions of approval 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 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 February 18, 2020.

The following agencies replied "No Comment":

Panhandle Health District - Replied "no comment" on February 25, 2020, stating that the site already contains a permitted septic system, and that the proposed variance will have no effect on the sewage disposal methods.

Idaho Department of Lands: Replied "no comment"

Bonner County Road & Bridge: Replied "no comment"

Idaho Department of Environmental Quality: Replied "no comment"

All other agencies did not reply.

West Pend Oreille Fire District
Inland Power & Light Utility Company
Idaho Department of Water Resources
U.S. Army Corps

I. Public Notice & Comments: No public comments were received

Findings of Fact

1. The existing single family dwelling and attached deck were built in 1975.
2. The property is zoned Rural 5.
3. The parcel has frontage on the Pend Oreille River.
4. The proposed development will not create additional impervious surface.
5. The development proposed is not located within a Special Flood Hazard Area, SFHA.

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 A Declaration of Exempt Structure shall be filed with the Bonner County Planning Department prior to any construction.

OPEN LINE DISCUSSION:

Staff updates and proposed code amendments.

At 6:32 p.m., the Chair declared the hearing adjourned until May 21, 2020.

Respectfully submitted,



Milton Ollerton, Planning Director

The above Minutes are hereby approved this 21st day of May, 2020.

Bonner County Planning and Zoning Commission



Don Davis, Chair