

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
NOVEMBER 4, 2020**

CALL TO ORDER: Chair McDonald called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 3rd floor meeting room, Suite 338 of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho, via Zoom webinar, and YouTube live streaming.

PRESENT: Commissioners Chair Dan McDonald; Vice Chair Jeff Connolly; and Steve Bradshaw

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton; Senior Planner Amanda DeLima; Administrative Manager Jeannie Welter; and Administrative Assistant III Jenna Mickelson

PUBLIC HEARING:

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 V0013-20 – Side Yard Setback & Shoreline Exceptions Variance – John & Patricia Wane are requesting a 2' 8" side yard setback, where 5' is required, a walkway width variance, a 6' 2" retaining wall height variance, where 36 inches is maximum, and an impervious surface variance. The property is zoned Forest 40. The project is located off Cape Horn Road in Section 33, Township 61 North, Range 4 West, Boise-Meridian. On August 20, 2020, the Planning & Zoning Commission denied this project. On September 18, 2020 the Planning Department received a letter of appeal requesting this file be sent to the Board or County Commissioners to be heard de novo.

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: Senior Planner Amanda DeLima presented a summary of the project and previously circulated staff report, concluding this project is not consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Project Representative Jeremy Grimm submitted a PowerPoint presentation (Exhibit A) and two additional documents (Exhibits B & C)

to the Commissioners. He stated walkway widths were oversized due to ADA accessibility requirements.

PUBLIC/AGENCY TESTIMONY: Tom Gallagher commented on site photos that were previously submitted to the record by himself, the applicant, and applicant's representative. Legal counsel for Mr. & Mrs. Gallagher Toby McLaughlin stated the lot isn't unique to the area, and that the applicant didn't follow the plans that were previously approved by the county.

APPLICANT REBUTTAL: Project Representative Jeremy Grimm responded to public comments relating to fire danger and public safety.

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

MOTION TO APPROVE: Commissioner Connolly move to approve this project File V0013-20 a walkway width variance, a 6'2" retaining wall height variance where 36" is the maximum, and an impervious surface variance, finding that it is in accord with the Bonner County Revised Code as enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Connolly further moved to adopt the following findings of fact and conclusions of law as written. The action that could be taken to obtain the variance is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property. Commissioner Bradshaw seconded the motion.

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

Amended: Commissioner Conolly amended the motion to include Findings of Fact, Conclusions of Law as written:

Findings of Fact

1. The subject property was developed by the applicant with a single family dwelling, shop, and an accessory structure in 2017 through Building Location Permit(s) BLP2017-0588, BLP2017-0589, and BLP2017-0590.
2. The property features 0-15% slopes according to the Bonner County Viewer Map.
3. The property fronts Priest Lake.
4. The applicant obtained the property in 2016 as recorded by instrument number 896322.
5. The applicant is in receipt of three outstanding zoning & building violations BV2019-0039, ZV0014-19, and ZV0022-19, for building out of compliance with an approved Building Location Permit, and with the shoreline standards contained in Bonner County Revised Code.
6. The property is zoned Forest 40.
7. Woody's Point Second Addition subdivision was created by the State of Idaho.

8. The site was approved for a maximum of 10,210 sq.ft. (35%) impervious surfaces within 200' of the shoreline during the permitting process for Building Location Permit(s) 2017-0588, 2017-0589, and 2017-0590.

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 An updated professional stormwater plan shall be filed with the Bonner County Planning Department prior to the finalization of Building Location Permit 2017-0590. The revised plan should show all of the current, and proposed development, including calculations for additional impervious runoff caused by the additional landscaping not provided in the original report.

A-2 A Building Location Permit must be filed with the Bonner County Planning Department for any retaining wall sections taller than 4-feet in height.

A-3 All existing development must comply with Bonner County Revised Code Title 14, Flood Damage Prevention. Structures built within the Special Flood Hazard Area SFHA must obtain a Flood Development Permit.

MOTION TO DENY: Commissioner Bradshaw move to deny this project FILE V0013-20, a 2'8" side yard setback, where 5' is required based upon the following conclusions: [REFER TO FOREGOING CONCLUSIONS OF LAW AND SPECIFY WHICH CONCLUSIONS THE PROJECT MEETS AND FAILS TO MEET]. The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Bradshaw further moved to adopt the following findings

of fact and conclusions of law as amended. This action does not result in a taking of private property. 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. Commissioner Connolly seconded the motion.

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

Findings of Fact

9. The subject property was developed by the applicant with a single family dwelling, shop, and an accessory structure in 2017 through Building Location Permit(s) BLP2017-0588, BLP2017-0589, and BLP2017-0590.
10. The property features 0-15% slopes according to the Bonner County Viewer Map.
11. The property fronts Priest Lake.
12. The applicant obtained the property in 2016 as recorded by instrument number 896322.
13. The applicant is in receipt of three outstanding zoning & building violations BV2019-0039, ZV0014-19, and ZV0022-19, for building out of compliance with an approved Building Location Permit, and with the shoreline standards contained in Bonner County Revised Code.
14. The property is zoned Forest 40.
15. Woody's Point Second Addition subdivision was created by the State of Idaho.
16. The site was approved for a maximum of 10,210 sq.ft. (35%) impervious surfaces within 200' of the shoreline during the permitting process for Building Location Permit(s) 2017-0588, 2017-0589, and 2017-0590.

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 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)

Background:

A. Site data:

- Residential
- State Subdivision Woody's Point Second Addition, Block 1, Lot 1
- Size: ±1.01 acres
- Zone: Forest 40
- Land Use: n/a

B. Access:

- Access is off Cape Horn Road, a privately maintained, gravel road of unknown ownership.

C. Environmental factors:

- Site does contain mapped slopes. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does contain frontage on a lake.
- Floodplain Manager, Jason Johnson, commented on 6.4.2020: Parcel is a combination of SFHA Zone X and Zone AE (near the water), per FIRM Panel 16017C0225F, Effective Date 7/7/2014. Variances do not approve development as defined in BCRC Title 14. If this variance is approved, it does appear that the development, as proposed, would require a Floodplain Development Permit (FDP). **See Condition A-3**

D. Services:

- Water: Individual Well
- Sewage: Individual Septic
- Fire: Not served by a Fire District
- Power: Northern Lights
- School District: #83

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	No Land Use Designation	Forest 40	Residential
North	No Land Use Designation	Forest 40	Residential
East	No Land Use Designation	Forest 40	Residential & State land
South	No Land Use Designation	Forest 40	Residential
West	Priest Lake	n/a	n/a

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: "The subject parcel slopes steeply, averaging over 21% toward Priest Lake and as a result the design and construction of retaining walls and pathways requires some additional flexibility to avoid the construction of switchbacks. As designed, the basalt rock placement ensures robust slope stability which prevents erosion and slumping. The determination that the basalt rocks constitute a "wall" or "structure" exceeding the 36" height allowance within 40' of the shoreline could be arbitrary as the stones are not placed in a "vertical plane", a defining component of a wall according to the American Planning Association Dictionary of Planning Terms. In order to mitigate the steep slope, the design of the pathway to the water incorporates a slight increase in width to allow comfortable passage for two individuals walking together, which is especially necessary for those with age related vertigo or other handicaps which necessitate assisted walking.

In an effort to provide the best possible slope stability and erosion prevention, the property owners chose to install massive basalt blocks which blend in well with the natural surroundings. One characteristic of this material is the impervious nature of the rock. To offset the exceedance of impermeable surface maximums within 200' of the shoreline, the property owners have gone to great length and cost to develop an extensive series of beneficial stormwater infiltration and retention swales throughout the property. With 6 independent retention swales and extensive groundcover planting throughout the 200' setback area, sufficient stormwater controls have been developed to capture and retain any exceedance of impermeable surface overages on the site."

Staff:

Retaining Wall Variance: Staff concurs that the applicant has no control over the slope of the property. Per the county map, the slope is identified as 0-15% across the parcel. Accordingly, a taller wall may be necessary to stabilize the slope below the house depending on the style of foundation associated with the home that was built.

Sidewalk Width Variance: Bonner County Revised Code allows for 48" pathways within the waterfront setback where the ADA recommends a minimum of 36" wide pathways for safe handicap access. The applicant states that the paths are 58" wide for individuals to walk side by side due to aging and vertigo. For these conditions, the commission may "grant relief from the

strict application of the provisions of this title” should the governing body find the proposal meets the intent of the code.

Impervious Surface Variance: While the project originally required a professional stormwater plan, Bonner County Revised Code does not allow stormwater drainage to be a substitute for additional impervious areas. While the applicant states the basalt rocks have added to the impervious nature of the lot in general, records show the walls were included in the impervious calculations at the time of permitting, while the paths and other landscaping were not included on the Shoreland Worksheet submitted with BLP2017-0590. In addition, records also show that the applicant was aware of Bonner County’s shoreline standards for impervious surfaces during the permitting process. A shoreland worksheet demonstrating the 35% maximum allowance was submitted with each permit establishing this fact.

Side Yard Setback Variance: Staff has examined the evidence provided with the application to determine whether a hardship exists in the case of the art studio that would require an encroachment into the side yard setback. BCRC 12-234 requires an examination of whether or not *“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.”* The applicant has simply stated that they would like “comprehensive relief” from Bonner County Code. While slope had been used as justification for an increase in retaining wall size, it has not been demonstrated that there are any conditions occurring on the property that would cause a need to encroach onto the side yard setback.

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

Applicant: Same answer as above

Staff: Records show that the applicant developed the existing structures through building location permits BLP2017-0588, BLP2017-0589, and BLP2017-0590 respectively. The applicant was notified when the property was being developed out of compliance with the open permit BLP2017-0590, and with the shoreline standards contained in Bonner County Revised Code with a stop work order, and through the building and zoning violation process. *These violations result from the actions of the applicant, or someone acting on behalf 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.

Applicant: "Several of the requested variances mentioned above are likely able to be mitigated through the administrative relief provided by Bonner County Code. In an effort to provide comprehensive relief, transparency and to approach the alleged violations holistically, the property owner has chosen to seek a variance through the Planning Commission and Board of County Commissioners whereby additional flexibility to the standards may be granted. In doing so, the Commission and Board are required to find that the granting of a variance (SIC) will not be in conflict with the public interest, public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel. We believe that the requested variances from Bonner County Code will have no detrimental impact and in fact that they will benefit the environment by providing enhanced slope stability and stormwater control."

Staff: The County has conducted a public review period allowing for comments from agencies and neighbors. Bonner County Road & Bridge, Panhandle Health District, and the Department of Environmental Quality provided a no comment response.

Idaho Fish & Game expressed concern should the variance be approved. In summary, the agency wanted to provide comments regarding Priest Lake's water quality that may help decision makers. They went onto state, the exceedance of the impervious surfaces is the most concerning of the variance request. Priest Lake's fishery requires a high level of water quality to thrive and F&G recommends the county verifies mitigation measures for additional stormwater runoff if the variance gets approved.

All other agencies did not reply.

Eight public comments were received from neighbors. These comments and concerns are summarized below:

1. Lynch commented on June 19, 2020: Regulations are a matter of public information. It is the Wane's responsibility to adhere to local ordinances. The request should be denied in effort to encourage contractors to abide by the rules and to discourage overreach of the law.
2. Rice commented on June 26, 2020 and on July 18, 2020: Mr. Wane either knew or is charged with knowing the regulations. These conditions are a result of the actions of the applicant and this request should be denied. (Rice)
3. Gallagher commented on July 6, 2020: The Wane's variance isn't based on arguing the interpretation of a single code or regulation, and they have provided no legitimate reason for any of their infractions. We categorially object to the Wane's request for a variance because they do not meet any of the variance standards. There are no building hardships due to slope or removal of the previous cabin as all lots share similar features, the site is large

enough to accommodate 35% impervious surface standards as it is the largest lot in the subdivision, and neighboring lots have built homes on smaller lots without the need for a variance. In addition, the encroachment of the art studio imposes a threat to the safety of the adjoining property should a fire or other disaster occur. This violation is a life safety issue and the county should not bear that responsibly should this get approved. (Gallagher)

4. Jenkins commented on October 9, 2020: The Planning & Zoning Commissioners got it right in their denial of this variance. The nature of the variance request seems excessive.
5. Vieth commented on August 7, 2020 and October 5, 2020: Both letters reiterate concerns about the excessive impervious surfaces and the fact that lawn does not replace native vegetation within the shoreline. Being in close proximity to the lake, the stormwater controls should be inspected as the lot was not built to the approved permit. The decision of the Planning & Zoning Commission should stand, and the variance should be denied again.
6. Cossette commented on October 15, 2020: Hardscape is not a replacement for native vegetation. This request compromises water quality which is the intent of the shoreline code. It's time to take a stand. These types of variances should be denied.
7. Pryor commented on October 19, 2020: Construction on the lake should always stay within code. There will be exceptions, but except in extreme cases we believe the codes and enforcement of them should be a top priority, in order to preserve the unique qualities of this very special place.
8. Feighner commented on October 26, 2020: Commissioners, I am not in favor of the Wane's variance request. I love the lake, and have been here since the early 60's and have never seen so much construction at one time. As a long time tax payer my expectation is everyone is held accountable to the codes to protect our lake. The Wane's have created all their violations on their own and a variance shouldn't be allowed.

G. Stormwater plan

A stormwater management plan was required pursuant to BCRC 12-720.2., and was submitted at the time of permitting. The stormwater plan on file does not include the additional impervious surfaces, or landscaping. A new stormwater plan should be submitted to include the additional development in an effort to ensure run off is contained on the property. **See condition A-1**

H. Agency Review

The application was routed to agencies for comment on June 16, 2020.

Panhandle Health District
Bonner County Road Dept.
Applicable Fire District
Applicable Utility Company

Dept. of Water Resources
Army Corps (Coeur d'Alene)
Army Corps (Newport)
Fish and Wildlife Service

Applicable School District #84 or #83
Transportation
Dept. of Fish and Game
Dept. of Env. Quality
Dept. of Transportation
Dept. of Lands, Nav. Waters
State Historical Society

Bonner County Schools -
Dept. of Lands (Sandpoint)
BNSF Railway
School District #83
Forest Service
Area of City Impact: Sandpoint

The following agencies replied "No Comment":

Bonner County Road & Bridge
Department of Environmental Quality
Panhandle Health Department

The following Agencies Commented:

Idaho Fish & Game commented on July 8, 2020.

All other agencies did not reply.

I. Public Notice & Comments

As summarized in the narrative above, eight public comments were received:

1. Gary & Frances Lynch commented on June 19, 2020
2. Stephen C. Rice commented on June 18, 2020 & June 26, 2020
3. Tom & Kathleen Gallagher commented on July 6, 2020
4. Carol Jenkins commented on October 9, 2020 in reference to the appeal.
5. Rick & Lynne Vieth commented on August 7, 2020, and October 5, 2020 in reference to the appeal.
6. Doug Cossette commented on October 15, 2020 in reference to the appeal
7. Kelly & Patti Pryor commented on October 19, 2020 in reference to the appeal.
8. Linda Feigher commented on October 26, 2020 in reference to the appeal.

The Chair declared the hearing adjourned at 3:02 p.m.

Respectfully submitted, this 4th day of November, 2020,



Milton Ollerton, Planning Director