

**BONNER COUNTY COMMISSIONERS
PUBLIC HEARING DECISION MINUTES
THURSDAY FEBRUARY 24, 2022**

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 and Commissioner Jeff Connolly

ABSENT: Commissioner Bradshaw

ALSO PRESENT: Civil Attorney Bill Wilson; Planning Director Milton Ollerton; Assistant Planning Director Jacob Gabell; Planner I Swati Rastogi; Planner I Amy Scott; Planner I Tyson Lewis; and Hearing Coordinator Jenna Crone

PUBLIC HEARING:

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.

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.

VARIANCE

File VA0036-21 – Administrative Variance – Lot Size Minimum Reduction – Roger D. & Avice Marie Griffin are requesting a minimum lot size reduction from the required 10 acres to 8 acres on two 20-acre properties. The properties are zoned A/F-10. The projects are located off Fish Creek Road in Section 14, Township 55 North, Range 3 West, Boise-Meridian. On December 30, 2021, the Planning Department received an administrative appeal requesting this file be forwarded to the Board of County Commissioners for a de Novo hearing.

STAFF PRESENTATION: Planner I Swati Rastogi presented a summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: James Griffin, son of the applicant, spoke on behalf of the applicant and stated the reasons for going forward with the request.

APPELLANT PRESENTATION: Brian Quayle provided comments on the information stated in the Staff Report as well as concerns for the approval of the variance setting precedent for future zone changes.

Bill Wilson, Civil Attorney, stated that the Board of Commissioners is hearing the appeal file de novo.

PUBLIC TESTIMONY: The following spoke on the record: Anastasia Griffin, Bobi Bamer, Christine Quayle, Scott Klasing, Jay Omundson, Linn Settle.

APPLICANT REBUTTAL: Landowner representative responded to comments made by the appellant and the public regarding the road and the future subdivision of the parcels.

STAFF REBUTTAL: Planner I Swati Rastogi addressed the Variance code definition and stated that the request is not in violation of the code and clarified that the file is being presented as a variance, not a zone change as it was previously heard.

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

Bill Wilson asked to have the code 12-234: Variance, Standards for Review of Applications be on the screen for reference during deliberation.

MOTION TO REVERSE STAFF'S DECISION: Commissioner Connolly moved to reverse the staff's decision to approve this project FILE VA0036-21, requesting a 20% variance in the required minimum lot size from 10 acres to 8 acres for the purpose of creating five 8-acre lots/parcels for family on approximately 40 acres of unplatted land located in Section 14, Township 55 North, Range 3 West, Boise Meridian, Bonner County, Idaho, based upon the following conclusions for the reasons stated during deliberation. The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. 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 this decision to the District Courts.

Commissioner McDonald stepped down from Chair to second the Motion.

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

Commissioner McDonald	Aye
Commissioner Connolly	Aye

Findings of Fact:

1. The variance is not a proper use of the code for achieving the requested use to create five 8-acre parcels.
2. The topography was not used for the layout of the proposed lots.
3. The topography or the shape of the parcels does not lend itself to the granting of this variance.
4. The Board recommends other methods such as creation of a Family Trust to achieve the desired results of joint ownership.
5. Testimony received at the hearing shows that the access to the site has slopes of nearly 15% grade and has rocky topography. If the applicant were to further subdivide the property using a short plat, the access road may not be developable. The applicant may create 4 lots as permitted by the current provisions of BCRC without having to improve access to the site.

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 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).

Background:

A. Site data:

- The southern parcel is currently developed with a single family home. The northern parcel is undeveloped.
- Both parcels exist as unplatted land.
- Size: 40 acres (approximately), each parcel being approximately 20 acres in size.
- Zone: Agricultural/ Forestry 10 District
- Land Use: Agriculture/ Forest Land
- This site is not located within any Areas of City Impact.

B. Access:

- The site is accessed via Fish Creek Road, a County owned and maintained public right-of-way, via 40 feet wide private easement. Fish Creek Road is approximately 0.1 miles away from the site, has a speed limit of 35 miles per hour and is treated with gravel.

C. Environmental factors:

- Approximately 81.6% of the site area contains slopes of less than 15% grade. Nearly 18.6% of the site area contains moderate slopes of 15-29% grade and 1% of the site area contains slopes of over 30% grade. (United States Geological Survey)
- Site contains a stream or river intermittent, running through both parcels of land. (National Hydrography Dataset)
- Site contains Freshwater Forested/ Shrub Wetlands (PFO1C) and Riverine Wetlands (R4SBC), located along the intermittent stream. (United States Fish and Wildlife Services)
- Entire site contains Sagle silt loam soils, classified as "not prime farmland" with a drainage classification of "somewhat poorly drained". (Natural Resources Conservation Service, Soil Survey)
- Site is located within Flood Zone X, per FIRM panel 16017C1150E. The site is not located within any floodways. It would not require any further floodplain review.
- Site does not contain any critical wildlife habitats as identified by any local, state or federal agencies.

D. Services:

- Water: Site is currently served by an individual well.
- Sewage: Site is currently served by an individual septic system.
- Fire: Selkirk Fire District
- Power: Avista Utilities
- School District: Lake Pend Oreille School District #84
- Hospital District: Pend Oreille Hospital District
- Ambulance District: Bonner County Ambulance District

E. Comprehensive Plan, Zoning and Current Land Use:

Compass Site	Comp Plan	Zoning	Current Land Use & Density
	Agriculture/ Forest Land	A/F-10	Single family dwelling
North	Agriculture/ Forest Land	A/F-10	Residential and Bare forest (20 ac.)
East	Agriculture/ Forest Land	A/F-10	Residential (20 ac.)
South	Rural Residential	R-10	Residential (8.96 ac. and 27.18 ac.)
West	Rural Residential	R-10	Residential (7.27 ac., 6.23 ac. and 40 ac.)

Agency Review

The application was routed to the following agencies for comment on November 01, 2021.

Panhandle Health District Bonner County Road Department	Idaho Department of Water Resources Idaho Department of Lands (Sandpoint)
Selkirk Fire District Avista Utilities	Idaho Department of Fish and Game Idaho Department of Environmental Quality
Lake Pend Oreille School District #84	U.S. Fish and Wildlife Service
U.S. Forest Service	Bonner County Schools #84 – Transportation

The following agencies commented:

Idaho Department of Fish and Game – November 04, 2021

"The Idaho Department of Fish and Game does not have any comments to submit for this application."

Panhandle Health District – November 19, 2021

"PHD would like to encourage the applicant to contact PHD prior to proceeding, as the only way to know if the sanitary services as proposed will be adequate for this project is to assess the site(s) for compliance with the relevant IDAP A rule sets & current standards." (Note: This is only a part of the agency's comments. In order to review complete comments received from this agency, please refer to the agency's letter.)

Department of Environmental Quality – November 22, 2021

"DEQ has no environmental impact comments at this stage of the project."

The following agencies replied "No Comment":

Idaho Department of Lands – November 01, 2021

All other agencies did not reply.

Public Comments

Public Comments received for this file raised the following concerns:

- Setting precedent.
- Opposition to rezoning
- Personal need for variance
- Inadequate water supply for domestic use and fire suppression
- Emergency vehicle ingress/ egress
- No power utility
- Negative increase in auto traffic on Fish Creek Road
- Destruction of forest and wildlife
- Lower property values in the area
- Request inconsistent with the neighborhood

Standards Review and Staff Analysis

BCRC 12-231: Purpose

Staff: The purpose of this request is to grant relief from the strict application of the provisions of this title where proposal conforms to the standards of Title 12, Subchapter 2.3 Variances.

BCRC 12-234: Variances, Standards for Review of Applications

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: The applicant states that they have 40 acres between two parcels. They wish to divide the properties equally among their children.

Staff: The intent of the request is to divide the 40-acre property for the purpose of creating five 8-acre lots/parcels for the landowner's family.

The conditions on the property that do not generally apply to other properties in the vicinity result from the topographical properties of the site that are well suited to the proposed 8 acre lots – no presence of steep slopes; 100% of the site area covered in non-prime farmland soils; no presence of any critical wildlife habitat areas as identified by any federal, state or local agencies; access from Fish Creek Road, a Bonner County owned and maintained public right-of-way via a 40 feet wide private easement; location of the site in 500-year floodplain, Zone X; no limited access to public services such as Selkirk Fire District, Bonner Co Ambulance District, Pend Oreille Hospital District and Bonner School District #84.

The applicant does not intend to increase the currently permitted residential density on their two 20-acre properties. With the current A/F-10 zoning, creating four 10-acre lots is possible through permitted land division procedures as per BCRC, Title 12 that would allow the applicant to develop those 4 lots with 16 Dwelling Units by right (1 single-family Dwelling Unit, 1 Accessory Dwelling Unit and 2 RV Dwelling Units on each of the 4 lots/parcels).

If the request were to be approved, staff recommends that approval be subject to the condition that the total development on this 40 acre property will be limited to a total of 15 Dwelling Units – 1 Single-family Dwelling Unit, 1 Accessory Dwelling Unit and 1 RV Dwelling Unit only, on each of the potential five 8-acre lots/parcels.

This results in an overall replacement of 2 RV dwelling units with 1 single-family residence and will not result in increase of any additional residential density on the site that it is not already permitted for.

See related Conditions of Approval below.

BCRC 12-134 (B). Special conditions and circumstances do not result from the actions of the applicant.

Applicant: The applicant states that they did not create the current property dimensions. The applicants wish to preserve the current zoning purpose of agriculture/forestry while ensuring their children each get a parcel of their own.

Staff: The applicants did not create the topographical conditions of the subject properties. The properties were purchased in their current size and orientation on February 27, 2017, per warranty deed, instrument number 902226.

The site is physically suitable to accommodate five 8-acre residential parcels with only 1% (approximately) of the site area containing steep slopes of over 30% grade, no prime farmland soils, close access to Fish Creek Road, a county owned and maintained public right of way (0.1 miles away from the subject property), no presence of floodways or critical wildlife habitats as identified by any local, state or federal agencies.

BCRC12-234 (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. (Ord. 559, 1-4-2017)

Applicant: Since the current use is agricultural/residential, there should be no change, obstruction, or safety hazards incurred. There will be no increase in noise, light, glare, odor, fumes, or vibration affecting adjoining properties. The variance would not change our family intention to keep the property in forestry.

Staff: Notice of this application was sent to adjacent property owners within a 300 foot radius of the subject property on November 01, 2021. Staff received comments from the public with concerns over the zoning, increased residential density, increased traffic etc. None of the comments stated evidence of how the granting of this variance was immediately detrimental to the public health, safety, welfare, or would be materially injurious to properties or improvements in the vicinity of the subject parcel or lot. No agency comments were received either, indicating any concerns for public health or safety.

Since the applicants will be limited to a total of 15 Dwelling Units, as described above, where 16 are permitted currently, by right, staff assesses no adverse impacts to the neighborhood as granting of this variance with recommended conditions of approval will result in no increase in the total possible residential density. In essence, it results in a slight decrease in the total possible residential density by replacement of 2 RV dwelling units with 1 single-family dwelling unit.

This request will not change the current zoning or the current land use designation of the property and thus, the uses permitted on the property remain the same as permitted by the Bonner County Revised Code in A/F-10 zoning.

BCRC 12-238: Administrative Variances

BCRC12-238 (A). The Director may grant a variance, as an administrative decision, of up to thirty percent (30%) of a modification of the bulk and placement

requirements of this title as to lot or parcel size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space size, height of buildings, or other provisions of this title affecting the size or shape of a structure or the placement of a structure upon a lot or parcel, or the size of the lot or parcel. (Ord. 590, 6-12-2019)

Staff: The property is zoned Agricultural/ Forestry 10 and thus the minimum required lot/parcel size in the zoning district is 10 acres, allowing the applicant to create four 10-acre parcels. The applicant is requesting a 20% variance from this requirement to allow them to create five 8-acre parcels on their property totaling an area of approximately 40 acres.

BCRC 12-238 (B). The applicant shall submit an application for administrative variance along with the appropriate fee. (Ord. 578, 7-11-2018)

Staff: The application for this request was submitted in conformance with this section of BCRC.

BCRC 12-238 (C). The application shall be processed as follows:

BCRC 12-238 (C), (1). Application and Administrative Requirements: A site plan and application shall be submitted for review together with all appropriate fees as established by the adopted fee schedule. The burden of proof lies upon the applicant to show whether characteristics of the site conform to the standards in section 12-234 of this subchapter. (Ord. 590, 6-12-2019)

Staff: The application for this request was submitted in conformance with this section of BCRC with the application and the site plan reviewed together with appropriate fee as established by the adopted fee schedule. The applicant provided adequate proof to establish conformance of the request to the standards in Section 12-234 of this subchapter.

BCRC 12-238 (C), (2). Area of City Impact: If the property is located in an area of city impact, the County shall notify the affected city and allow the required amount of time for a response.

Staff: The site is not located in Area of City Impact.

BCRC 12-238 (C), (3). Notifications: Upon acceptance of an application, and while in ACI review, if appropriate, the Director shall provide notification by mail of the variance request to the owners of parcels within three hundred feet (300') of the external boundaries of the parcel and shall provide such individuals a period of twenty one (21) calendar days from the date of the mailing to submit comments concerning the proposed variance.

Staff: Upon acceptance of the application, the notice of the proposed variance request was provided to property owners within 300 feet of the external boundaries of the subject parcels on November 01, 2021, providing a minimum of 21 calendar days to submit concerns regarding the proposal.

BCRC 12-238 (C), (4). Action On Application: Based on the comments from staff, agency, and those from affected property owners, the Director shall review the proposed request and shall either approve, approve subject to conditions, or deny the application per section 12-234 of this subchapter within seven (7) working days from the end of the twenty one (21) day comment period. Alternatively, the Director may, at any time during this review, forward the application to the Planning Commission for a public hearing and decision in accordance with the public hearing process in section 12-267 of this chapter. In considering comments, the Director shall evaluate whether granting the variance will be consistent with the standards listed in section 12-234, "Variances, Standards For Review Of Applications", of this subchapter.

Staff: Based on comments from staff, agencies and affected property owners the application was approved with conditions, within 7 working days at the end of the 21 day public comment period. The request was found to be in conformance with the standards of Section 12-234 of BCRC Title 12.

BCRC 12-238 (C), (5). Notice of Decision: The Director shall give notice of the decision granting or denying the application to those previously notified of the pending application.

Staff: The notice of decision was mailed to those previously notified of the pending application on December 08, 2021.

BCRC 12-238 (D). The Planning Commission shall consider all other applications for variances in accordance with the notice and hearing procedure of this chapter.

Staff: This is request for an Administrative Variance. Thus, this section of the code is not applicable to this application.

BCRC 12-238 (E). The decision of the Planning Director may be appealed as follows:

BCRC 12-238 (E), (1). Filing Time Limit; Fee: Any affected person may file an appeal of the final decision of the Planning Department within twenty eight (28) days after the final written decision of the Planning Director has been issued. The appellant shall pay the fee required by this title upon filing the appeal. An appeal shall not be considered to be filed until such fee has been paid. Failure to file the appeal within the time limits shall cause automatic dismissal of the appeal.

Staff: An appeal of the administrative decision was received on December 30, 2021, within 28 days after the final written decision was issued on December 08, 2021.

BCRC 12-238 (E), (2). Notice Of Appeal Contents: The notice of appeal shall be in writing and shall provide the grounds for the appeal and set forth the issues of appeal.

Staff: The appeal was made in writing and the contents of the appeal set forth the issues of the appeal. **Note:** Please see the letter of appeal for issues set forth in the appeal.

BCRC 12-238 (E), (3). Procedures For Consideration Of Appeal:

BCRC 12-238 (E), (3),(a). Within sixty (60) days of the receipt of the appeal, the Board shall conduct a public hearing. The hearing shall be conducted in the same manner using the same standards, as if the Board had original jurisdiction to hear the application.

Staff: The Board is conducting a public hearing for the appeal within 60 days of the receipt of the appeal. The appeal is scheduled to be heard on February 24, 2022. The hearing is being conducted in conformance with the public hearing standards set forth in BCRC 12-267 of Title 12.

BCRC 12-238 (E), (3),(b). Upon consideration, the Board may affirm, reverse, or modify the decision of the commission/hearing examiner, after compliance with applicable procedural standards.

BCRC 12-238 (E), (3),(c). The decision of the Board shall be final, and any further recourse shall be as provided by law.

BCRC 12-7.2: Grading, Stormwater Management and Erosion Control

BCRC 12-720.3.K: Activities to which this Subchapter is not Applicable: Applications for conditional use permits, industrial and commercial site plan reviews, planned unit developments and variances that do not result in the creation of additional "impervious surface", as defined in section 12-809 of this title.

Staff: This request for a variance is not resulting in creation of any additional "impervious surface", as defined in BCRC 12-809 of Title 12. Therefore, grading, stormwater management or erosion control plan is not required.

Conclusion: Based on the review of the background information and the standards review and the staff analysis, staff concludes that this project is consistent with Bonner County Revised Code.

The Chair declared the hearing adjourned at 3:00 p.m.

Respectfully submitted, this 7th day of March 2022,


Milton Ollerton, Planning Director