

**BONNER COUNTY HEARING EXAMINER
PUBLIC HEARING MINUTES
APRIL 3, 2024**

CALL TO ORDER: Hearing Examiner Jackie Rucker called the public hearing to order at 1:30 p.m. in the 1st floor Conference room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho, via Zoom webinar, and YouTube live streaming.

PRESENT: Jackie Rucker, Hearing Examiner

ABSENT: None

ALSO PRESENT: Planning Director Jacob Gabell, Assistant Planning Director Travis Haller, Planner I Alex Feyen, Planner I Rob Winningham and Hearing Coordinator Jenna Crone.

PLEDGE OF ALLEGIANCE

CHANGES IN AGENDA: None

APPROVAL OF MINUTES: Hearing Examiner Rucker approved the minutes as written March 20, 2024.

PUBLIC HEARING:

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Hearing Examiner asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, she continued with the public hearing.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: Hearing Examiner Jackie Rucker stated that she had no conflict with these proposals.

STAFF UPDATES:

- Director Gabell advised the Hearing Examiner of a contentious file that will be heard at the April 17th hearing and reminded her not to seek out information and to forward any correspondence to the Planning Department.
- Three of the files that were heard by the Hearing Examiner will be going to the Board on appeal in the month of April.

File V0001-24 - Variance - Lot Size Minimum. The applicant is requesting a lot size minimum of 0.66-acres where 1.0-acre is required. The 0.74 acre property is zoned Suburban (S). The project is located off Sherwoods Road in Section 3, Township 56 North, Range 2 West, Boise-Meridian, Idaho.

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

APPLICANT REPRESENTATIVE: Kathy Marietta and Bruce Ethni made themselves available for questions from the Hearing Examiner.

PUBLIC/AGENCY INPUT: The following members of the public spoke on the record: None.

HEARING EXAMINER INPUT: The Hearing Examiner closed the hearing to public testimony and discussed findings and conclusions.

Hearing Examiner Rucker approved this project, File V0001-24, requesting a minimum lot size of 0.66-acre where 1.0-acre is required, 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. Examiner Rucker further adopted the findings of fact and conclusions of law as set forth in the Staff Report and direct planning staff to draft written findings and conclusions to reflect this decision and transmit to all interested parties. 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.

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)

Findings of Fact

1. The site does contain few mapped slopes in excess of 30% per U.S. Geological Survey (USGS).

2. The site does not contain mapped wetlands per the National Wetlands Inventory (NWI)/U.S. Fish & Wildlife Service (USFWS).
3. The site does not contain a river/stream/frontage on a lake per the National Hydrography Dataset (NHD).
4. The subject site is within SFHA Zone X per FIRM Panel Number 16017C0950E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.
5. The lot is served by a community water system, individual septic system, Selkirk Fire District, Avista Utilities
6. The lot is platted per Instrument No. 314359, Book 4 of Plats, Page 38, Records of Bonner County.
7. The lot has a land use designation of Urban (0-2.5 AC) with a zoning designation of Surburban (S).
8. Access to the site is via Sherwoods Road. This is a 60'-public right-of-way with a 24' paved travel way.
9. Lot 16 was purchased by the applicant on April 18, 2010 per Warranty Deed, Instrument No. 790790, records of Bonner County, Idaho.

Conditions of approval:

Standard permit conditions:

1. The granting of this variance shall not supersede any deed restrictions.
2. Only the lot line adjustment as highlighted on the site plan has been reviewed for variance standards. Any future lot line adjustment, including development, must comply with Bonner County Revised Code.

Examiner Rucker closed file V0001-24 at 1:48 P.M.

File CUP0020-23 - Conditional Use Permit - Public Utility Facility. The applicants are requesting a Conditional Use Permit for a Public Utility Facility for the provision of a fiber optic relay facility. The 9.033 property is zoned Commercial (C). The project is located off Hwy 41 in Section 24, Township 55 North, Range 6 West, Boise-Meridian, Idaho.

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

APPLICANT REPRESENTATIVE: Jeff Thornton, Intermountain Infrastructure Group, LLC shared information regarding the proposed project.

PUBLIC/AGENCY INPUT: The following members of the public spoke on the record: None.

HEARING EXAMINER INPUT: The Hearing Examiner closed the hearing to public testimony and discussed findings and conclusions.

DECISION TO APPROVE: Hearing Examiner Rucker approved this project, FILE CUP0020-23 for a Public Utility Facility, finding that it is in accord with the general and specific objectives of the Bonner County Comprehensive Plan and Bonner County Revised Code as enumerated in the following conclusions of law:

Conclusion 1: The proposed conditional use permit **is** in accord with the general and specific objectives of Bonner County Comprehensive Plan.

Conclusion 2: This proposal was reviewed for compliance with the criteria and standards set forth at BCRC Title 12, Chapter 2, Subchapter 2.2 Conditional Use Permits; Chapter 4 Development Standards and Chapter 7 Environmental Standards. The proposal **is** in accord with the Bonner County Revised Code.

Conclusion 3: The proposed use **will not** create a hazard or **will not** be dangerous to persons on or adjacent to the property.

The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Examiner Rucker further adopted the findings of fact set forth in the Staff Report and amended at this hearing and direct planning staff to draft written findings and conclusions to reflect this decision and transmit to all interested parties. The action that could be taken to obtain the conditional use permit is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property.

Findings of Fact

1. The applicants are requesting a Conditional Use Permit for a Public Utility Facility for the provision of a fiber optic relay facility.
2. The subject parcel is zoned Commercial with a land use designation of Neighborhood Commercial.
3. The site is accessed off of U.S. Hwy 41, a 90'-wide Idaho Transportation Department-owned and maintained public right-of-way with a 26'-wide paved travel way.
4. Per BCRC 12-335, Public Use Table, Public Utility Facilities are permitted as Conditional Uses in Commercial zoning districts.

5. The applicant is proposing construction of a 12' wide X 9' high X 32' long building within a 36' X 75' lease area to facilitate functioning of the proposed telecommunications facility.
6. A backup generator for emergency use will be located on the site.
7. Construction is proposed to occur in a single phase of development.
8. The facility will be unmanned and occupied only during routine and emergency maintenance.
9. The FCC is required by the National Environmental Policy Act of 1969, among other things, to evaluate the effect of emissions from FCC-regulated transmitters on the quality of the human environment.
10. EMI emissions are regulated by the FCC per 47 CFR Part 15.

Conditions of approval:

Standard permit conditions:

1. The use shall be developed and shall be operated in accordance with the approved site plan.
2. The Conditional Use Permit shall not supersede deed restrictions.
3. All County setbacks shall be met.
4. The Conditional Use Permit 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 Conditional Use Permit, the applicant may make a written request to the Planning Director for an extension of the Conditional Use Permit for a period up to two (2) years. The Hearing Examiner, Zoning Commission or board may consider such request for extension at any regular meeting. The extension request must be approved or denied prior to the expiration date of the Conditional Use Permit.
5. A building location permit shall be obtained prior to commencing any land disturbing activity.
6. A Grading/Stormwater Management/Erosion Control plan shall be submitted with the building location permit application.
7. A landscaping plan (Landscaping Plan D) shall be submitted with the building location permit application.

8. The backup generator included in this project, if operated less than 225 hrs. per month, would meet Category II Exemption on requirements for an air quality permit under IDAPA 50.01.01.222.c.iii. To maintain this exemption the facility shall maintain monthly records of hours of operation. The records shall be maintained for a minimum of two years and be made available to county or DEQ personnel when requested.
9. The FCC is required by the National Environmental Policy Act of 1969, among other things, to evaluate the effect of emissions from FCC-regulated transmitters on the quality of the human environment.
10. EMI emissions are regulated by the FCC per 47 CFR Part 15.

Examiner Rucker closed file CUP0020-23 at 2:10 P.M.

File V0027-23 - Variance - Shoreline, Street Setback, Bulk Increase, Lot Coverage, Impervious Surface Coverage. The applicants are requesting a 28-foot shoreline setback where 40 feet is required, a 2 foot street setback where 25 feet is required, 50% impervious surface coverage where 35% is required, 50% lot coverage where 35% is required and a 270% bulk increase variance of an existing structure. The 0.30-acre property is zoned Recreation (Rec). The project is located on Sherwood Beach Road in Section 3, Township 59 North, Range 4 West, Boise-Meridian, Idaho.

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

APPLICANT REPRESENTATIVE: Anthony Bauerle, Verdis, gave a PowerPoint presentation giving an overview of the history of the property as well as the plans for improvement.

The Hearing Examiner called for a recess at 2:50 p.m.

The hearing was resumed at 2:55 p.m.

Matt Mulder, Road and Bridge Staff Engineer, explained the comment he gave for the project and explained the issues that can arise with utility installations and answered questions from the Hearing Examiner.

PUBLIC/AGENCY INPUT: The following members of the public spoke on the record: None.

STAFF REBUTTAL: Alex Feyen, Planner I, clarified that the presentation stated that the property is Recreation, when in fact it is Rural 5.

HEARING EXAMINER INPUT: The Hearing Examiner closed the hearing to public testimony and discussed findings and conclusions.

DECISION TO APPROVE: Hearing Examiner Rucker approved a portion of this project V0027-23, requesting a 28-foot shoreline setback where 40 feet is required, 50% impervious surface coverage where 35% is required, 50% lot coverage where 35% is required and a 270% bulk increase variance of an existing structure, 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. Examiner Rucker further adopted the findings of fact and conclusions of law as set forth in the Staff Report and direct planning staff to draft written findings and conclusions to reflect this decision and transmit to all interested parties. 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.

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)

DECISION TO DENY: Hearing Examiner Rucker denied a portion of this project V0027-23, requesting a 2 foot street setback where 25 feet is required based upon the following conclusions:

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** 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)

The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Examiner Rucker further adopted the findings of fact and conclusions of law as set forth in the Staff Report and directed planning staff to draft written findings and conclusions to reflect this decision and transmit to all interested parties. 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 Hearing Examiner's decision to the County Commissioners.

Findings of Facts:

1. The proposal was reviewed for compliance with BCRC 12-234 Variances, and standards for review of applications, BCRC 12-400, et seq.
2. The property is zoned Rural 5.
3. The property is described as 3-59N-4W KOKANEE POINT 1ST ADD BLK 1 LOT 1.
4. The property has an existing single-family dwelling.
5. There are slopes of 0-30+% grade present on the property per USGS.
6. The property does have mapped wetlands, per USFWS.
7. A portion of the property is located in Special Flood Hazard Area Zone-AE per FEMA.
8. The applicants obtained this property through a State of Idaho Deed, Instrument No. 913637, on October 27, 2017.
9. The property is served by Coolin Sewer District and an individual lake pump system.
10. The property is served by Coolin-Cavanaugh Bay Fire District and Northern Lights, Inc.
11. The property is accessed off of Sherwood Beach Road, a Bonner County owned and maintained public right-of-way.

Suggested Conditions of Approval:

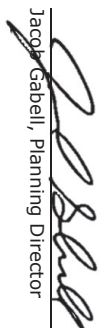
Standard continuing permit conditions. To be met for the life of the use:

- A-1. A Building Location Permit shall be obtained prior to commencing construction on the structure.
- A-2. 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-3. The granting of this variance shall not supersede any deed restrictions.
- A-4. Per BCRC 12-720.2 (E) a stormwater management plan shall be required for all new building construction or development which occurs on or within 300' of a slope with 15% or greater incline.
- A-5. The applicant shall install prior to ground disturbing activities all temporary erosion control measures as designed and approved. The applicant shall provide to the Planning Department prior to ground disturbing activities a signed statement from the project engineer or design professional stating that these measures have been installed as per the design specifications as approved. The applicant shall install upon completing ground disturbing activities and shall maintain thereafter all permanent erosion control and stormwater management measures as designed and approved. The applicant shall provide to the Planning Department upon completing ground disturbing activities a signed statement from the project engineer or design professional stating that these measures have been installed as per the design specifications as approved.
- A-6. Site contains mapped steep slope of over 30% grade. Any development on site located within or in proximity of the areas of steep slopes is required to meet the standards of BCRC 12-7.6 prior to start of development on site.

Examiner Rucker closed file V0027-23 at 3:10 P.M.

At 3:11 p.m., the Hearing Examiner declared the hearing adjourned until April 17, 2024.

Respectfully submitted,


Jacob Gabell, Planning Director

The above Minutes are hereby approved this 17th day of April 2024.


Jacqueline S. Rucker, Hearing Examiner