

**BONNER COUNTY PLANNING and ZONING COMMISSION  
PUBLIC HEARING MINUTES  
AUGUST 1, 2019**

**CALL TO ORDER:** Chair Davis called the Bonner County Planning and Zoning Commission hearing to order at 5:30 p.m. in the 1<sup>st</sup> Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

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

**ABSENT:** None

**ALSO PRESENT:** Planning Director Milton Ollerton; Planner II Sam Ross; 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: June 6, 2019 and July 25, 2019. 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 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.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Bailey stated Mr. Taylor is testing concrete for his company. The Chair noted that there were no disclosures or conflicts.

**STAFF PRESENTATION:** Planner II Sam Ross presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** Project representative Marty Taylor, Certified Land Use Planner with James A. Sewell & Associated provided a summary of his project.

He stated he spoke with Will Valentine with Bottle Bay Water and Sewer about the project.

**PUBLIC/AGENCY TESTIMONY:** None.

**APPLICANT REBUTTAL:** None.

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

**Background:**

**A. Site data:**

- a. Acreage: 0.267 ac (11,623 sq ft)
- b. Legal: Lot 9, Block 2, Shaffer’s Lakeshore Lots (Bk. 2, Plats, Pg. 33)
- c. Zone: R-10/REC
- d. Use: Residential/Resort Community
- e. Structures: Existing garage (constructed circa 1986 per Assessor’s records)

**B. Access:**

- a. Name: Eureka Road
- b. ROW: 50’ wide, prescriptive
- c. Owner: Public
- d. Surface Type: paved

**C. Environmental factors:**

- a. Floodplain: AE (Special Flood Hazard Area) Source: FEMA
- b. Vegetation: The property is vegetated with evergreens and ornamental landscaping. Source: Applicant
- c. Soils: Pend Oreille-Hoodoo Silt Loams, 0 To 30 Percent Slopes. Source: NRCS
- d. Hydrology/Wetlands: Lake Pend Oreille. Source: USGS; USFWS
- e. Slope: <30% Source: USGS

**D. Services:**

- a. Water: Individual Well
- b. Sewer: Bottle Bay Sewer District
- c. Fire: Selkirk Fire & EMS
- d. Utility: Northern Lights INC
- e. School: LPOSD #84

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

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Resort Community	REC/R-10	Accessory/Residential
North	Resort Community	REC/R-10	SFD/Residential

Compass	Comp Plan	Zoning	Current Land Use & Density
South	Resort Community	REC/R-10	Bottle Bay
East	Resort Community	R-10	SFD/Residential/Timber
West	Resort Community	REC/R-10	SFD/Residential

**F. Standards review**

**BCRC 12-234:**

The staff, commission, hearing examiner and/or Board shall review the particular facts and circumstances of each proposal submitted. To grant a variance, the hearing examiner or the Governing Body must 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. *As shown on the survey accurate site plan, the property is bisected by Eureka Road. This encroachment, together with the prescriptive right of way width of 50-feet, effectively eliminates the building envelope on the subject property. Thus, in order to construct the proposed addition, some setback relief is necessary.*
- B. *The property was platted in 1957 (Bk. 2, Plats, Pg. 33). Setbacks were established in 1980 (Ord. 140). The applicant acquired the property in 2003 (Inst. No.617758). Accordingly, the resulting site constraints have not resulted from the actions of the applicant.*
- C. *After consulting with County Engineer Matt Mulder, the applicant concluded to not further encroach into the right of way. (See 12/10/18 e-mail, attached). All construction is limited to lands outside of the 50-foot wide public right of way. In addition, and as noted, the proposed addition is set back about 19-foot from the east edge of the Eureka Road travelway. As such, the project has been designed to not conflict with Eureka Road users and the public's interest.*

**Staff:**

- A. Per the applicant's site plan, the manner in which the right of way extends into the property effectively eliminates the building envelope. Staff concurs that some relief is necessary and a condition exists over which the applicant has no control.
- B. Deed research in addition to plat documents confirm that the condition has not resulted from the actions of the applicant.
- C. Correspondence between applicant rep and Public Works staff indicate that the proposal would not further the non-conformity within the road right of way. The structure has also been designed to comply with side and rear setbacks. The correspondence with Public Works in addition to compliance with all other setbacks indicate that the proposal 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 required pursuant to BCRC 12-720.2 and 12-722.2. The applicant has requested an exception per 12-721.2(b), stating that the land areas adjacent to the garage is vegetated.

See Condition A-3

**H. Agency Review:** The application was routed to agencies for comment on June 25, 2019. The following agencies commented:

- Bottle Bay Water & Sewer District – July 19, 2019
- Bonner County Road & Bridge – July 9, 2019
- Bonner County Floodplain – June 26, 2019

See file attachments for agency comments.

**I. Public Notice & Comments:** Will Valentine – July 19, 2019

**MOTION TO APPROVE:** Commissioner Linscott moved to approve this project FILE V0014-19, 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. 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 Chair declared the motion carried, unanimously.

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**Findings of Fact**

1. The property was platted in 1957.
2. Eureka Road bisects the subject property.

3. The proposed addition would not be constructed within the Eureka Road right of way.
4. The proposed addition was designed to comply with side and rear yard setbacks.
5. The residential use is compatible with neighboring properties.

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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 in Bonner County Revised Code Title 12 and Idaho Code Section 67-6516.

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 structure shall be developed in accord with BCRC Title 12, Subchapter 7.2 – Grading, Stormwater Management And Erosion Control.
- A-4** The applicant shall obtain a Building Location Permit for the residential addition.
- A-5** Any development of the project site shall comply with BCRC Title 14 - Flood Damage Prevention.

### AMENDMENT

**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 AM003-19 – Amendment to Text – Bonner County Revised Code - Title 12 – Bonner County** is initiating a text amendment to Bonner County Revised Code – Title 12 to include the following proposed changes: **12-315: RULES FOR INTERPRETATION OF ZONING DISTRICT BOUNDARIES:** Add letter J: **J. Where a zone boundary line divides the parcel/lot, upon review, the director may permit the entire parcel/lot to be included in one of the zones, and its associated land use designation, that then apply to the parcel/lot so that only one zone and its associated regulations will apply to the parcel/lot.** Changing notice requirements to 22 days from 15 days to match the change in notice previously adopted. **12-247 PROCEDURE FOR REVIEW OF A SPECIAL USE PERMIT:** Amend only B & C: B. At a minimum, the planning director shall provide public hearing notice to adjacent property owners as set forth in subsection 12-244E of this subchapter, notifying them of the public hearing. These letters shall be sent by U.S. mail, at least **twenty-two (22)-fifteen (-15)** days prior to the date of the hearing and shall include a description of the proposed special use, and the date, time and place of the public hearing. The planning director shall also send the public hearing notice to be sent to those public agencies that may be affected by the proposed special use. C. The planning director shall have notice of the public hearing published in one issue of the official county newspaper at least **twenty-two (22) fifteen (-15)** days prior to the date of the public hearing. This notice shall contain a description of the proposed special use, and the date, time and place of the public hearing. The planning director shall have the notice of public hearing posted in a prominent place on the property at least one week prior to the date of the public hearing. **12-263 RECONSIDERATION:** Amend only C1 & C2: C. Public Notice On Hearing: Notice of the public hearing on the reconsideration, identifying the specific deficiencies alleged in the reconsideration request, will be provided as follows, including: 1. Notice To Agencies And Political Subdivisions: At least **twenty-two (22) fifteen (-15)** days prior to the public hearing, the Director shall send notice to all political subdivisions providing services with the planning jurisdiction, including school districts and the manager or person in charge of the local public airport. 2. Legal Notice: At least **twenty-two (22) fifteen (-15)** days prior to the public hearing, the Director shall publish a notice of the time and place in the official newspaper or paper of general circulation in the County. **12-643 SUBDIVISIONS, PROCEDURE FOR PROCESSING PRELIMINARY PLAT:** Amend only D: D. Upon receipt of the commission recommendation, the planning director shall proceed to schedule the application for preliminary plat for the next available public hearing date before the board, allowing sufficient time for published public notice at least **twenty-two (22) fifteen (-15)** days prior to the date of the public hearing in one issue of the official county newspaper, and mailed notification to landowners as required at section 12-217 of this title. Such notices shall contain the applicant's name, a description of the proposed subdivision, its general location and the date, time and place of the public hearing.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Bailey recused himself stating that his company has a state contract to do sidewalk work for the City of Kootenai. The Chair noted there were no additional disclosures or conflicts.

**STAFF/APPLICANT PRESENTATION:** Planning Director Milton Ollerton presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is with Bonner County Revised Code.

**PUBLIC/AGENCY TESTIMONY:** Grace Bower spoke on the record in opposition of the "Interpretation of Zoning District Boundaries" proposed change.

**APPLICANT REBUTTAL:** Director Ollerton stated the appeal process would still be in place for any administrative decision.

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

**MOTION TO RECOMMEND APPROVAL:** Commissioner Bradish moved to RECOMMEND APPROVAL of this FILE AM0003-19, to the Board of County Commissioners, amending the sections of Title 12, Bonner County Revised Code, as presented or amended in this hearing, 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. Commissioner Kempton seconded the motion.

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

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### Project Authority

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The Planning Department initiated an amendment to Title 12. Under the proposed amendment (File #AM0003-19), these amendments are to provide for clarifications resulting from questions that occur as the ordinances are being applied.

This is a continuation of the fine-tuning of the code. Below are the proposed amendments to each specific section and the description of the changes. The language in **red and underlined** is recommended as additions to the existing code. Those words in **red** and strike through would be deleted from the ordinance.

### 12-315: RULES FOR INTERPRETATION OF ZONING DISTRICT BOUNDARIES:



Add letter J.

J. Where a zone boundary line divides the parcel/lot, upon review, the director may permit the entire parcel/lot to be included in one of the zones, and its associated land use designation, that then apply to the parcel/lot so that only one zone and its associated regulations will apply to the parcel/lot.

STAFF: Throughout the County are numerous parcels/lots that are split zoned. This is a result of the zoning being applied to section lines versus property lines. This creates the potential for limited uses because two sets of zoning rules apply to the property.

The review would be triggered by the owner of a property that has a zone boundary line division. The review would consider the standards of the zone as described in BRCR 12-3.2 Zoning Districts Established. The resolution shall only exist in the two zones applying to the property.

### 12-247 PROCEDURE FOR REVIEW OF A SPECIAL USE PERMIT

Amend only B & C

B. At a minimum, the planning director shall provide public hearing notice to adjacent property owners as set forth in subsection 12-244E of this subchapter, notifying them of the public hearing. These letters shall be sent by U.S. mail, at least ~~twenty-two (22) fifteen (15)~~ days prior to the date of the hearing and shall include a description of the proposed special use, and the date, time and place of the public hearing. The planning director shall also send the public hearing notice to be sent to those public agencies that may be affected by the proposed special use.

C. The planning director shall have notice of the public hearing published in one issue of the official county newspaper at least ~~twenty-two (22) fifteen (15)~~ days prior to the date of the public hearing. This notice shall contain a description of the proposed special use, and the date, time and place of the public hearing. The planning director shall have the notice of public hearing posted in a prominent place on the property at least one week prior to the date of the public hearing.

### 12-263 RECONSIDERATION

Amend only C1 & C2

C. Public Notice On Hearing: Notice of the public hearing on the reconsideration, identifying the specific deficiencies alleged in the reconsideration request, will be provided as follows, including:

1. Notice To Agencies And Political Subdivisions: At least ~~twenty-two (22) fifteen (15)~~ days prior to the public hearing, the Director shall send notice to all political subdivisions providing services with the planning jurisdiction, including school districts and the manager or person in charge of the local public airport.
2. Legal Notice: At least ~~twenty-two (22) fifteen (15)~~ days prior to the public hearing, the Director shall publish a notice of the time and place in the official newspaper or paper of general circulation in the County.

### 12-643 SUBDIVISIONS, PROCEDURE FOR PROCESSING PRELIMINARY PLAT

Amend only D

D. Upon receipt of the commission recommendation, the planning director shall proceed to schedule the application for preliminary plat for the next available public hearing date before the board, allowing sufficient time for published public notice at least ~~twenty-two (22) fifteen (15)~~ days prior to the date of the public hearing in one issue of the official county newspaper, and mailed notification to landowners as required at section [12-217](#) of this title. Such notices shall contain the applicant's

name, a description of the proposed subdivision, its general location and the date, time and place of the public hearing.

STAFF: The above changes will further make the code consistent with itself from the last update of the ordinance. This further clarifies the notice period extended to 22 days to justify the already approved comment period ending seven (7) days prior to the hearing.

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**Public Comment:**

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At the time of the staff report, there have been no public comments on this file.

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**Authority**

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The ordinance amendment is proposed under the authority granted at Idaho Code, Chapter 7, Title 31; Chapter 8, Title 31; and Chapter 65, Title 67; and Article XII, Section 2, of the Idaho Constitution.

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**Findings of Fact:**

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1. The Planning and Zoning Commission, per Idaho Code Chapter 65, Title 67, may recommend a zoning ordinance.
2. The Bonner County Planning Department has reviewed the proposed changes against Idaho Code and made amendments to better comply with the Idaho Code, specifically Title 67 Chapter 65.
3. The Board of County Commissioners is authorized by Idaho Code, Chapter 7, Title 31, to adopt ordinances, rules and regulations "...not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein..."

The proposed ordinance making the above changes adds to the clarity intended in the interpretation of the Bonner County Revised Code and Bonner County Comprehensive Plan. These actions will further balance the provision of safety, health and prosperity while maintaining the protection of property, peace, good order, comfort and convenience of the county and its inhabitants

4. Further clarifying standards enabling the public and the staff to achieve the best results leading to greater understanding and use of the zoning ordinance.

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**Conclusions of Law:**

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1. The proposed amendments to Title 12 **IS** in accord with Idaho Code, Chapter 7, Title 31.

2. The proposed amendments to Title 12 **IS** in accord with Idaho Code Chapter 67 Title 65.

**EXECUTIVE SESSION:**

At 6:20 p.m., Commissioner Linscott moved to enter an Executive Session pursuant to Idaho Code §74-206(1)(a) to consider hiring. Commissioner Glasoe seconded the motion.

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

The Chair resumed the public meeting at 7:03 p.m.

**OPEN LINE DISCUSSION:**

Staff updates.

P&Z commission openings.

At 7:20 p.m., the Chair declared the hearing adjourned until August 15, 2019.

Respectfully submitted,



Milton Ollerton, Planning Director

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The above Minutes are hereby approved this 15<sup>th</sup> day of August, 2019.

Bonner County Planning and Zoning Commission



Don Davis, Chair