

**BONNER COUNTY PLANNING and ZONING COMMISSION
PUBLIC HEARING MINUTES
JUNE 18, 2020**

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Chair Davis called the Bonner County Planning and Zoning Commission hearing to order at 5:30 p.m. in the 1st 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 Amanda DeLima; Planner II Halee Sabourin; Planner I Tessa Vogel; and Office Manager Jeannie Welter

CHANGES IN AGENDA:

No consent agenda as there are no minutes ready to review and approve from June 4, 2020 meeting.

PUBLIC HEARINGS:

VARIANCES

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 V0006-20 – Rear Yard Setback Variance – Todd Mielke is requesting a five foot (5') rear yard setback, where 25 feet is required, to allow for the construction of a detached garage with living quarters on the second floor. The 0.27 acre lot, in the Kokanee Park Subdivision, is zoned Recreation. The project is located off North Kokanee Park Loop in Section 6, Township 59 North, Range 4 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: Planner I Tessa Vogel presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Applicant Todd Mielke presented a PowerPoint presentation (exhibit A) he also submitted two additional photo exhibits, B & C. He stated he is simply trying to complete the structure according to how it was originally proposed and approved.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

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

MOTION: Commissioner Linscott moved to approve this project FILE V0006-20, a 5 foot rear yard setback variance, where 25 feet is required, to allow for the construction of a detached garage with living quarters, 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 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 Bailey seconded the motion.

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

Background:

A. Site data:

- Use: Residential
- Platted: Kokanee Park, Lot 32
- Size: 0.27 acres
- Zone: Recreation
- Land Use: Resort Community

B. Access:

- N. Kokanee Park Loop
 - i. Road Class: Local
 - ii. Road Owner: Private
 - iii. Surface Type: Asphalt

C. Environmental factors:

- Floodplain: The entire parcel is within SFHA Zone D, per FIRM panel 16017C0410F, effective date 7/7/2014.
- Slopes: Less than 15%
- Soil Type: Caribouridge-Stien families, complex, outwash plains of mixed geology.
 - i. Not prime farmland
 - ii. Well drained
- Wetlands: None

D. Services:

- Water: Kokanee Park Water System
- Sewage: Outlet Bay Sewer District
- Fire: West Priest Lake Fire Department
- Power: Northern Lights, Inc.

E. Comprehensive Plan, Zoning and Current Land Use

| Compass | Comp Plan | Zoning | Current Land Use & Density |
|---------|------------------|------------|----------------------------|
| Site | Resort Community | Recreation | Residential |
| North | Resort Community | Recreation | Residential |
| East | Resort Community | Recreation | Residential |
| South | Resort Community | Recreation | Residential |
| West | Resort Community | Recreation | Residential |

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 proposed structure was permitted by Bonner County in 2003 and construction was initiated then, including the pouring of footings and foundation. At the time, the rear setback requirement was determined to be 5'. Construction was halted due to family health issues. Since that time, the rear setback has now been determined to be 25' which would require the removal of the concrete footings and foundation, and most likely would require the demolition of the existing portion of the building and a complete re-design.*

Staff: There is a building location permit on file with the Bonner County Planning Department under file BLP2003-0699 where the site plan was approved with reduced rear yard setbacks.

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

Applicant: *This application is for a structure first permitted by Bonner County in 2003 (permit #03-699). At that time, the majority of footings and foundation were installed and the 'large' stall of the garage structure was erected. Also, at that time the rear setback requirement was 5' since this was considered a residential accessory building and less than 900 square feet was to be developed into living space. Since then, regulations have changed regarding how living space is to be delineated, and the rear setback has changed to 25'. The proposed structure has the same footprint as proposed*

in the 2003 permit and will be the same in appearance. The applicant desires to complete the structure as originally proposed in 2003. This entails changing the designation of the existing mobile home to be the residential accessory building (currently the 'residence'), designating the proposed garage with living quarters as the residence, and granting a variance of the rear setback to 5'. Again, this application requests the approval of the same structure in the same location as approved by Bonner County 2003.

Staff: If the proposed structure (BLP2003-0699) had no living space in it, the rear yard setback requirement would be 5' but due to the living space in the garage the rear yard setback is required to be 25'.

- (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: *Granting the variance would allow for the completion of a storage garage with living quarters to be used as residential guest quarters. This use would be consistent and compatible with a number of parcels within the Kokanee Park subdivision that have erected similar structures located towards the rear of their parcels, including one combined garage/living quarters on an adjacent parcel, and another similar structure being contemplated on another adjacent parcel. The use will not be commercial, and there are no anticipated adverse effects on adjoining properties.*

Staff: The proposed garage would be encroaching no more on the rear yard setback than it would if there was no living space in the structure. The approved building location permit also approved a site plan showing the proposed structure 7' away from the rear yard property line.

G. Stormwater Plan – A stormwater management plan was not required at the time of the variance, pursuant to BCRC 12-721.2(B).

H. Agency Review

The application was routed to agencies for comment on **May 19, 2020**.

Bonner County Road & Bridge: *Road & Bridge has no comments regarding this back yard setback. The property is accessed from North Kokanee Park Loop, which is a private road.*

- Idaho Department of Environmental Quality: No comment
- Idaho Department of Lands – Coolin: No response
- Idaho Department of Water Resources: No response
- Idaho Panhandle National Forest: No response
- Idaho Transportation Department – District I: No response
- Kokanee Park Water System: No response
- Northern Lights, Inc.: No response
- Outlet Bay Sewer District: No response
- West Priest Lake Fire District: No response

I. Public Notice & Comments

Neighbors within 300' of the subject property were noticed on May 19, 2020 and one public comment was received at the time of this staff report.

On June 05, 2020, Lyle Sugimura on 205 N. Kokanee Park Loop commented (in opposition); (summary of comment) "The variance should be reconsidered as the current setback requirements were put in place for a reason including preventing property owners from building on top of and right next to each other, allowing privacy between properties and having a place for snow storage. The building codes are necessary and the variance should be reconsidered."

Findings of Fact

1. This proposal was reviewed for compliance with the criteria and standards set forth in BCRC 12-234 Variances, Standards for Review of Applications, and BCRC 12-400, et seq., Density and Dimensional Standards.
2. The subject property is Lot 32 in the Kokanee Park subdivision and is 0.27 acres in the Recreation Zone.
3. The subject property is accessed off N. Kokanee Park Loop, a private road.
4. The subject property has no slopes over 15%, wetlands, or surface water present on site.
5. The applicant obtained the property in 2000 per the warranty deed under Instrument #564114.
6. The subject property was created in 1981 (S0229-81) when the Kokanee Park subdivision was created by the subject property's previous owners, Edward and Constance Miller. The applicants were not part of the lot design.
7. The existing dwelling, a mobile home, was placed on the property in 1971 per Bonner County Assessor records.
8. The site is served by Outlet Bay Sewer District, Kokanee Park Water System, and Northern Lights, Inc.

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:

- 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 At time of building location permit, the applicant shall submit the required documentation to the Bonner County Planning Department for review and approval.

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 V0003-20 - Front Yard Setback Variance - Jim and Karen Courtney are requesting a 2-foot front yard setback, where 25 feet is required, to allow for an addition to an existing garage, attached to a single family dwelling, on a 0.73 acre lot. The property is zoned Suburban. The project is located off West Oden Bay Road in a portion of Section 8, 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. 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 not consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Applicant Jim Courtney provided a summary of his project explaining what he wants to do on his property.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: None.

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

MOTION: Commissioner Kempton moved to approve this project FILE V0003-20 for a 2-foot front yard setback where 25 feet 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. Commissioner Kempton further moved to adopt the following findings of fact and conclusions of law as amended, eliminating findings of fact #10 and change conclusion of law number 3 to state "is not in conflict with public interest". 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 with the Chair being the deciding vote, the motion carried, with a vote of 4-3. Commissioner Kempton, Commissioner Linscott, Commissioner Glasoe, and Commissioner Davis voted in favor of the motion. Commissioner Reeve, Commissioner Bradish, and Commissioner Bailey voted in opposition of the motion.

Background:

A. Site data:

- Parcel Area: 0.73 acres
- Use: Residential
- Zone: Suburban
- Land Use Designation: Suburban Growth Area

B. Access:

- West Oden Bay Road
 - i. Owner: Bonner County (public)
 - ii. Road Class: Local
 - iii. Surface Type: Pavement

C. Environmental factors:

- Floodplain: SFHA X
 - i. Per FEMA
- Floodway: SFHA AE
 - i. Per FEMA
 - ii. LOMA Point: 02-10-361A
- Soil Type(s): Pend Oreille Silt Loam, 5 To 45 Percent Slopes
 - i. Not Prime Farmland
 - ii. Well Drained
- Slopes: 0-15% slopes going downward toward Lake Pend Oreille
- Wetlands: None

D. Services:

- Water: Oden Bay Water
- Sewage: Individual septic system with drain field
- Fire: North Side Fire District
- Power: Avista

E. Comprehensive Plan, Zoning and Current Land Use

| Compass | Comp Plan | Zoning | Current Land Use & Density |
|---------|----------------------|----------|----------------------------|
| Site | Suburban Growth Area | Suburban | Single Family Dwelling |
| North | Suburban Growth Area | Suburban | Single Family Dwelling |
| East | Lake | | Lake |
| South | Suburban Growth Area | Suburban | Single Family Dwelling |
| West | Suburban Growth Area | Suburban | 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: [Insert specific findings addressing each of the standards.]

(d) 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: This has a steep hill side to the back of the house making it costly to expand to the rear.

STAFF: Per the County map, the slope is identified as 0-15% and confirmed with the soil type: Pend Oreille Silt Loam, 5 To 45 Percent Slopes.

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

Applicant: The current owners did not build the home and there are no bedrooms on the main floor. A necessity due to the owners advancing age.

STAFF: Building location permit 2012-0422 to remodel a single family dwelling with attached garage was applied for by James Courtney. The plans submitted show a bedroom on the main floor. An earlier remodel permit (1995-0162) was issued in 1995 to previous owners.

(f) 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: Extending the garage to allow for a bedroom to be placed on the main floor of the residence will push the building envelope to within two feet of property line. Even doing so leaves 25 feet to the County road making no

obstructions of public access or any intrusion on adjoining properties physically or any of the other above examples.

STAFF: Panhandle Health (PHD) submitted comment stating no septic permit was found. However, PHD did sign off on the building location permit in 2012. Bonner County Road and Bridge submitted comment about concern over the road and the proposed setback.

G. Stormwater plan: A stormwater management plan was not required at the time of the variance, pursuant to BCRC 12-721.2(B), but an erosion control plan will be required at the time of building location permit. See conditions.

H. Agency Review: The application was routed to the following agencies for comment on **February 18, 2020**.

Bonner County Road & Bridge Department – *The Road & Bridge Department is opposed to the proposed 2ft setback variance. W Oden Bay Rd is a County-maintained road and it is not in the public's interest to allow residential structures to be so close to the property line fronting a County road. Our primary concern for reduced setbacks is damage from snow/ice/rocks during winter plowing operations, where material can be thrown a significant distance from the road and has the potential to break windows or damage structures which are too close. This is an ongoing issue every year which generates damage claims against the County.*

Additional concerns are for the space for stormwater ditches, clear zones for vehicles run-offs, and the space necessary to install utilities along the sides of the public right-of-way. A 2ft setback does not allow for enough space between a residence and these critical public infrastructure items. This setback makes future conflicts much more likely in my opinion.

Idaho Department of Environmental Quality – *No Comment*

Idaho Department of Lands – Navigable Waters: *No Comment*

Idaho Department of Lands – Sandpoint: *No Comment*

Idaho Department of Water Resources – *No Response*

Northern Lights, Inc. – *No Comment*

Panhandle Health District – *Panhandle Health District (PHD) has reviewed the variance application sent through the agency routing memo. PHD was not able to locate a valid septic permit for the property listed in the application. The application states that there is an existing individual septic system, however there is no indication that this property has a valid permit for the existing structure or the proposed expansion (bedroom increase). PHD requires any expansion to be newly permitted or confirmed through permitting that the existing septic permit allows for the increase. Please advise the applicants to contact PHD to either help provide valid permit documents or to begin the process of making the system valid.*

U.S. Army Corps of Engineers – *No Response*

Northside Fire Fire District – *No Response*

Avista – *No Response*

I. Public Notice & Comments: The application was routed to neighbors within 300 feet of the subject property for comment on **February 18, 2020**. As of the date of this report, four similar public comments were received, in favor of the project, from immediate neighbors. See file for letters.

Findings of Fact

1. This proposal was reviewed for compliance with the criteria and standards set forth in BCRC 12-234 Variances, Standards for Review of Applications, and BCRC 12-400, et seq., Density and Dimensional Standards.
2. The subject property is 0.73 acres located in the Suburban Zone.
3. The subject property is accessed off West Oden Bay Drive, a county maintained road.
4. The property has slopes of 0-15% over most of the property.
5. The property slopes towards Lake Pend Oreille leaving the ideal location for the home where it is currently located.
6. The applicants purchased the property in 2012 per the warranty deed under Instrument #834505.
7. The property was divided in the early 1990's. The applicant did not participate in the division of land.
8. The site is to be served by an individual septic system, Oden Bay Water, Northside Fire District, and Avista.
9. The proposed single family dwelling with attached garage will encroach into the front yard setback along Oden Bay Road by 23 feet, allowing a 2-foot front yard setback.
10. The proposed setback encroachment is at the beginning of the curvature of the roadway increasing the concern over driveoffs and leading to property damage.

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 The use shall be developed and shall be operated in accordance with the approved site plan.
- A-2 At the time of building location permit, the applicant shall submit the proper documentation for a building location permit to the Bonner County Planning Department for review and approval.
- A-3 At time of building location permit, a grading/erosion control plan shall be submitted to the Bonner County Planning Department for review and approval.

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 V0007-20 – Waterfront Setback Variance – Anthony & Olivia Papa, Trustees for Papa Trust are requesting a seven foot (7') waterfront setback, where 40 feet is required, to allow for the construction of a 4'-6" retaining wall (rock outcropping) to stabilize the shore. The variance is for Lot 6, Block 2 of Buck Run. The 0.84 acre lot is zoned suburban. The project is located off Buck Run in Section 2, Township 56 North, Range 2 West, Boise-Meridian.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Glasoe recused herself from this project file. The Chair noted that there were no additional disclosures or conflicts.

STAFF PRESENTATION: Planner I Tessa Vogel 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 Dan Larson, 7B Engineering stated this is only the first step in the process as they have other permits that will be required if this variance is approved including but not limited to a development permit.

PUBLIC/AGENCY TESTIMONY: The following individuals spoke on the record: Olivia Papa, Barry Fisher, and Jeremy MacIom

APPLICANT REBUTTAL: Toby McLaughlin spoke about the topography of the property and erosion issues.

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

MOTION: Commissioner Bradish moved to approve this project FILE V0007-20, for a 7 foot waterfront setback, where 40 feet is required, to allow for the construction of a 4'-6" retaining wall (rock outcropping) to stabilize the shore, 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 Bradish 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 Reeve seconded the motion.

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

Background:

A. Site data:

- Parcel Area: 0.839
- Use: Residential
- Zone: Suburban
- Land Use Designation: Transition

B. Access:

- Buck Run
 - i. Road Class: Local
 - ii. Owner: Bonner County

C. Environmental factors:

- Floodplain:
- Slopes: Less than 15%
- Soil Types: Mission Silt Loam, 0 to 2 Percent Slopes
 - i. Prime farmland if drained, Somewhat poorly drained
- Wetlands: None

D. Services:

- Water & Sewer: Southside Water & Sewer District
- Fire: Selkirk Fire District
- Power: Avista Utilities

E. Comprehensive Plan, Zoning and Current Land Use

| Compass | Comp Plan | Zoning | Current Land Use & Density |
|---------|------------------|----------|----------------------------|
| Site | Transition | Suburban | Residential |
| North | Transition | Suburban | Residential |
| East | Lake Pend Orelle | | |
| South | Transition | Suburban | Residential |
| West | Transition | Suburban | Residential |

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:

- (g) 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 property sits alongside Fry Creek which consist of steep, hazardous and mildly eroded land for the entire waterfront of the property. The plan is to restablize the shore via a retaining wall/rock outcropping min 7 feet away from the shoreline. The retaining wall is the best option for bank stabilization and maintaining the consistency with the adjoining properties*

Staff: Mission silt loam soil for 0 to 2 percent slopes is present on the property and is not a well-drained soil, which can cause erosion problems.

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

Applicant: *The special conditions of this site are not a result of the actions of the applicant, but a result of the existing site conditions. The violation only came to the attention of the applicant after the applicant fully constructed the wall. The owner wanted to stop existing erosion on the stream bank of Fry Creek. Rip raps were considered, however the owners wanted to retain the existing slopes without creating the appearance of a 20 foot rip rap wall. The applicant hired a local contractor to make the improvements and believed that the improvements were all to code and qualified as stream bank stabilization.*

Staff: The applicants have no control over the type of soil present on their property.

- (i) 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: *Proposed setback does not obstruct public access or cause any safety hazards or nuisances. There will be no additional noise, light, glare, odor, etc. from the decreased setback-only a wall that both stabilizes the floodplain and creek bank. Other properties in the same zone and vicinity feature similar boulder walls with stairs to the waterfront due to the naturally steep slopes and mild erosion.*

Staff: The only comment from the Idaho Department of Lands was, "IDL will be reaching out to make sure they are aware that any work at or below the Artificial High Water Mark will require an encroachment permit." No other comments from outside agencies were submitted with concern for the public safety in regards to this proposal.

G. Stormwater Plan: A stormwater management plan was not required pursuant to BCRC 12-721.2 as the retaining wall is existing. The applicant provided stormwater and erosion control notes in regards to the proposal however.

H. Agency Review: The application was routed to agencies for comment on **May 19, 2020**.

Avista Utilities: No response
 Bonner County Road & Bridge: *Road & Bridge has no comments regarding the proposed waterfront setback variance. The rock wall will not affect our maintenance operations on Buck Run Rd.*
 Idaho Department of Environmental Quality: No comment
 Idaho Department of Lands – Sandpoint & navigable waters: *IDL will be reaching out to make sure they are aware that any work at or below the Artificial High Water Mark will require an encroachment permit.*
 Selkirk Fire District: No response
 Southside Water & Sewer District: No comment
 U.S. Army Corps of Engineers: No response

I. Public Notice & Comments: Neighbors within 300' of the subject property were noticed on **May 19, 2020** and no public comments were received at the time of this staff report.

Findings of Fact

1. This proposal was reviewed for compliance with the criteria and standards set forth in BCRC 12-234 Variances, Standards for Review of Applications, and BCRC 12-400, et seq., Density and Dimensional Standards.
2. The subject property is Lot 6 in Block 2 of the Buck Run subdivision and is 0.839 acres in the Recreation Zone.
3. The subject property is accessed off Buck Run, a County owned road.

4. The property borders Lake Pend Oreille to the southeast and has the soil type Mission silt loam, 0 to 2 percent over the entire property.
5. The retaining wall will sit at 7' from the shoreline where 40' is required.
6. The applicant has a zoning violation (ZV0044-19) for the existing retaining wall and have applied for this variance to bring the retaining wall into compliance and to abate the violation.
7. The applicant obtained the property in 2018 per the warranty deed under Instrument #917233.
8. The Buck Run subdivision was created in 1998 (S0758-19) and the applicants have no control over the lot design for the subdivision.
9. The site is served by the Southside Water & Sewer District, Selkirk Fire District and Avista Utilities.

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:

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 At time of building location permit, the applicant shall submit all required documents to the Bonner County Planning Department for review and approval.

AMENDMENT & ZONE CHANGE

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.

Files AM0004-20 & ZC0004-20 - Comprehensive Plan Map Amendment & Zone Change - Stan Kraly is requesting a Comprehensive Plan Map Amendment from Ag/Forest (10-20) & Rural Residential to Transition, and a Zone Change from Ag/Forest-10 & Rural Service Center to Commercial. The property is 9.03 acres and located at the corner of Highway 200 & Colburn Culver Road in Section 4, 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 Davis disclosed because of his employment with the Idaho Transportation Department his signature is on a document contained in the file. He stated he has no conflict relating to this project file. The Chair noted that there were no disclosures or conflicts.

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

APPLICANT PRESENTATION: Project Representative Travis Haller, Glahe & Associates, stated there is a business on the site currently. He further stated all landscaping and buffering will be developed to Scenic Highway standards. He stated the applicants believe this change will better reflect the current and future use of the parcel.

PUBLIC/AGENCY TESTIMONY: None.

APPLICANT REBUTTAL: Toby McLaughlin stated this property seems to have been mislabeled. This change will bring it into better compliance. Applicant Stan Kraly stated the highway 200 access is currently open.

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

Comprehensive Plan Amendment - Motion by the Governing Body:

MOTION: Commissioner Linscott moved to recommend approval to the Board of County Commissioners on this project, FILE AM0004-20, requesting a comprehensive plan amendment from Ag/Forest (10-20 AC) & Rural Residential to Transition 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, 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. This action does not result in a taking of private property. Commissioner Bradish seconded the motion.

VOTED upon and the Chair declared the motion carried, 5-1, with Commissioners Linscott, Bradish, Bailey, Reeve, Kempton voting in favor of the motion and Commissioner Glasoe voting in opposition of the motion.

Zone Change - Motion by the Governing Body:

MOTION: Commissioner Linscott moved to recommend approval to the Board of County Commissioners on this project, FILE ZC0004-20, requesting a zone change from Ag/Forest 10 & Rural Service Center to Commercial, 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, 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. This action does not result in a taking of private property. Commissioner Bradish seconded the motion.

VOTED upon and the Chair declared the motion carried, 5-1, with Commissioners Linscott, Bradish, Bailey, Reeve, Kempton voting in favor of the motion and Commissioner Glasoe voting in opposition of the motion.

Background:

B. Site data:

- Use: Mixed use commercial & residential
- Unplatted
- Size: +/- 9.0
- Zone: Ag/Forest – 10 & Rural Service Center
- Land Use: Ag/Forest (10-20) & Rural Residential (5-10)
- Legal per: Instrument # 720308

C. Access:

- Main access is off of Colburn Culver Rd, a paved, county road with an 80-foot R.O.W. The applicant notes that the approach off of Highway 200 has been closed off and will remain as such. The turn lane off of Highway 200 provides safe access onto the county road and easy access to the parcel.

C. Environmental factors:

- Site does not contain mapped slopes. (USGS)
- Site does contain mapped wetlands. (USFWS); per applicant, to be delineated prior to any development.
- Site does not contain waterfront or streams. (NHD)
- Entire parcel is within SFHA Zone X, per FIRM Panel 16017C0730E, Effective Date 11/18/2009.

- Soil:
 - Classification: A mixture of Mission silt loam & Odenson silt loam
 - Type: Prime farmland if drained
 - Drainage: Half of the property is somewhat poorly drained and the other half is poorly drained.

D. Services:

- Water: Oden Bay Water
- Sewage: Individual Septic
- Fire: North Side Fire
- Power: Avista
- School District: #84

E. Comprehensive Plan, Zoning and Current Land Use

| Compass | Comp Plan | Zoning | Current Land Use & Density |
|---------|---|---|----------------------------------|
| Site | Ag/Forest Land (10-20 AC) & Rural Residential (5-10 AC) | Agricultural/forestry 10 (A/f-10) & Rural 5 (R-5) | Mixed Use Residential/Commercial |
| North | Ag/Forest Land (10-20 AC) | Agricultural/forestry 10 (A/f-10) | Residential |
| East | Ag/Forest Land (10-20 AC) | Agricultural/forestry 10 (A/f-10) | Agriculture/Vacant Land |
| South | Residential (5-10 AC) | Rural 5 (R-5) | Agriculture/Vacant Land |
| West | Residential (5-10 AC) | Rural 5 (R-5) | Residential |

F. Standards review: Bonner County Revised Code

- **12-215:** Applications for Zone Changes and Comprehensive Plan Map Amendments, Contents
 - The application was considered complete and routed to agencies accordingly.
- **12-216:** Evaluation of Amendment Proposals
 - Staff and the governing bodies shall review the particular facts and circumstances of each proposal submitted and shall determine whether there is adequate evidence that the proposal is in accordance with the general and specific objectives of the comprehensive plan. (Ord. 501, 11-18-2008)

Existing Comprehensive Plan Designation:

1. Ag/Forest Land:

The Ag/Forest Land designation recognizes areas where steeper slopes prevail (30% or greater) and transportation is provided by private roads or U.S. Forest Service or state roads. Urban services are not available and residential development challenges are present due to slope, poor soil conditions, hazard areas and lack of police or fire services.

- Staff: The subject parcel does not feature steeper slopes (USGS <15%). Access is provided by Highway-200, a main transportation corridor that is paved, and the parcel is afforded fire protection via Northside Fire. Soil conditions are considered "prime farmland" if drained.

2. Rural Residential:

The Rural Residential area provides for residential development in areas where urban services are not available and slopes may vary up to 30%. These areas include hazard areas and critical wildlife habitats, where lower densities reduce potential impacts to resources and exposures to loss of property or lives. Small-scale agricultural uses and residential development are permitted.

- Staff: The subject parcel does not feature steeper slopes (USGS <15%). Access is provided by Highway-200, and the parcel is afforded fire protection via Northside Fire. The parcel is also serviced by Oden Water, however, surrounding properties feature agricultural uses.

Conclusion: Existing densities, environmental features, access and services indicate that the subject property does not conform well to either existing land use designation.

Proposed Comprehensive Plan Designation:

1. Transition:

The Transition classification is reserved for those areas of the County where a mixture of land uses can occur which may include higher density residential uses, commercial, industrial and light industrial uses. Due to the intensity of land use, these areas require primary transportation routes, urban like water and sewer services, fire and police services.

Conclusion: The location of this parcel and the services available fits well with the Transition classification. Based off historical and current use, commercial type uses will serve the local community and maintain the rural character of the area.

Zone Change Request:

The applicant is requesting a zone change from A/F-10 and Rural Service Center to Commercial. The standards for those districts are below:

Existing Zoning:

1. 12-327: Rural Service Center District:

The rural service center district is established to promote the development of local commercial services in small communities to meet

the needs of rural residents as well as limited tourist commercial services and limited light industrial uses consistent with the maintenance of the rural character of the area. The rural service center district is also intended to provide opportunities for a variety of affordable housing types that are within walking distance of commercial services. These purposes are accomplished by:

- Providing for a range of small scale retail and rural service uses.
- Allowing for mixed use buildings (housing over office or retail) and a range of housing types, including detached single-family dwelling units, cottage housing, townhouses, apartments and mobile home parks where sufficient services are provided.
- Allowing for light industrial uses where activities are conducted primarily indoors and impacts to adjacent uses are mitigated.
- Excluding commercial uses with extensive outdoor storage.
- Excluding large scale commercial uses that would be more effectively located in incorporated cities.
- Applying simple design standards that enhance pedestrian access and improve the character of the area. (Ord. 501, 11-18-2008)

Use of this zone is appropriate in areas designated as neighborhood commercial, resort community or transition by the comprehensive plan and community plans and that are served at the time of development by adequate sewage disposal services, water supply, roads and other needed public facilities and services. Expansion of existing rural service center districts or the creation of new rural service center districts may be considered only if the expansion will not negatively impact the safety and function of a state highway or other roadway. (Ord. 512, 1-6-2010)

2. 12-322: Agricultural/Forest District:

The agricultural/forestry district is established to provide for agricultural and forestry pursuits, including livestock production, forestry, horticulture, floriculture, viticulture, and necessary accessory uses for treating, storing and processing agricultural products. The purpose of the A/F district is to preserve, protect and maintain areas that are rural in character and the integrity of the forest/woodland areas where viable agricultural pursuits can be feasible and to avoid fragmentation of forests and farms. These purposes are accomplished by:

- Establishing residential density limits and conservation development standards to retain areas sized for efficient farming.
- Allowing for uses related to agricultural production and limiting nonagricultural uses to those compatible with agriculture, or requiring close proximity for the support of agriculture.

Use of this zone is appropriate in areas designated by the comprehensive plan as follows:

1. A/F-20 in all areas designated as prime ag/forest land in the comprehensive plan. The A/F-20 zone is also appropriate in areas designated ag/forest land in the comprehensive plan that also feature:

- a. Prime agricultural soils.
- b. Are characterized by agricultural or forestry uses.
- c. Areas where one or more of the following apply: limited services; characterized by slopes steeper than thirty percent (30%); where access may be absent or limited to substandard road systems or where large tracts of land may be devoted to ag/forest production.

A/F-10 in areas designated as ag/forest land in the comprehensive plan that do not feature prime agricultural soils, but where agricultural and forestry pursuits remain viable. These areas may be within or adjacent to areas of city impact or where lands are afforded fire protection, access to standard roads and other services.

Proposed Zoning:

1. 12-325: Commercial District:

The commercial district is established to promote a range of commercial uses to serve the needs of the immediate area, surrounding rural communities and visitors without adversely affecting adjacent residential neighborhoods. The commercial district is also intended to provide opportunities for a variety of affordable housing types that are within walking distance of commercial services. Intensive large scale commercial development is not appropriate due to the limited density of surrounding unincorporated areas. Access to primary transportation routes and a system of hard surfaced roads are expected and consideration is given to the potential public transportation access. These purposes are accomplished by:

- a) Providing for a wide range of small to medium scaled retail, professional, governmental and personal service uses.
- b) Allowing for mixed use buildings (housing over office or retail) and a range of housing types, including cottage housing, townhouses, apartments and mobile home parks where sufficient services are provided.
- c) Allowing for light industrial uses where activities are conducted primarily indoors and impacts to adjacent uses can be mitigated.
- d) Excluding commercial uses with extensive outdoor storage.
- e) Excluding large scale commercial uses that would be more effectively located in incorporated cities.
- f) Applying simple design standards that enhance pedestrian access and improve the character of the area.

Use of this zone is appropriate in areas designated as neighborhood commercial, urban growth area or transition by the comprehensive plan and

community plans and that are served at the time of development by adequate sewage disposal services, water supply, roads and other needed public facilities and services. Expansion of existing commercial districts or the creation of new commercial districts may be considered only if the expansion will not negatively impact the safety and function of a state highway or other roadway. (Ord. 501, 11-18-2008)

Conclusion: The existing commercial type use has been established, and can be traced back to 1980. Access to hard surfaced, primary transportation routes, and the availability of municipal water is in accord with the general and specific goals of the Transition land use designation. Per Bonner County Revised Code, at the time of development, adequate sewage disposal services, water supply, roads and other needed public facilities and services will be addressed. Additionally, the site meets the minimum acreage requirements where not all urban services are available. During the permitting stage, new development will be required to demonstrate that the safety and function of a state highway and county road will not be negatively impacted.

The proposal to amend the Zoning Map is in accord with the general and specific goals of the Comprehensive plan and of Bonner County Revised Code.

G. Stormwater plan: A stormwater management plan was not required, pursuant to BCRC 12-721.2(B) because the proposal does not result in new impervious surfaces.

H. Agency Review: The application was routed to agencies for comment on May 19, 2020.

*Idaho Department of Water Resources
Oden Water District
Bonner County Road Department
Avista Utility Company
U.S. Army Corps
Idaho Department of Lands (Sandpoint)
Idaho Department of Environmental Quality
Idaho Department of Fish & Game
Montana Rail Link
(All Taxing Districts)*

The following agencies replied "No Comment":

*Bonner County Road Department - No Comment, May 20, 2020
City of Clark Fork - No Comment, June 2, 2020
Independent Highway District - No Comment, June 4, 2020
Pend Oreille Hospital District - No Comment, May 26, 2020
Kootenai-Ponderay Sewer District - No Comment, June 1, 2020*

All other agencies did not reply.

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

Comprehensive Plan Amendment Findings of Fact

1. The existing and historical use of the property is consistent with the Transition land use designation.
2. Access is provided by Highway 200 and Colburn Culver Rd, paved primary transportation routes.
3. Water is provided by Oden Bay Water Association
4. The property features mixed uses; commercial and residential.
5. The Rural Residential land use designation is out of compliance with the Rural Service Center zone that is currently active on the parcel.

Comprehensive Plan Amendment Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

The proposal is in accord with the following elements of the Bonner County Comprehensive Plan:

| | | |
|----------------------|------------------------|-------------------|
| Property Rights | Population | School Facilities |
| Transportation | Community Design | Implementation |
| Economic Development | Land Use | Natural Resources |
| Hazardous Areas | Public Services | Transportation |
| Recreation | Special Areas or Sites | Housing |

Conclusion 2

This proposal was reviewed for compliance with Title 12, Bonner County Revised Code, and is found to be in compliance.

Conclusion 3

The proposal is in accord with the Transition Land Use Designation.

Zone Change Findings of Fact

1. The property is currently and historically been used for commercial purposes.
2. The property is proposed to be designated Transition in the comp plan.
3. Access is provided by Highway 200 and Colburn Culver Rd, paved primary transportation routes.
4. Water is provided by Oden Bay Water Association.
5. No adverse comments were received from Road & Bridge and the Idaho Department of Transportation in regards to negative impacts to the safety and function of the road system.

Zone Change Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

The proposal is in accord with the following elements of the Bonner County Comprehensive Plan:

| | | |
|----------------------|------------------------|-------------------|
| Property Rights | Population | School Facilities |
| Transportation | Community Design | Implementation |
| Economic Development | Land Use | Natural Resources |
| Hazardous Areas | Public Services | Transportation |
| Recreation | Special Areas or Sites | Housing |

Conclusion 2

This proposal was reviewed for compliance with Title 12, Bonner County Revised Code, and was found to be in compliance.

Conclusion 3

The proposal is in accord with the purpose of the Commercial zoning district, provided at Chapter 3, Title 12, Bonner County Revised Code.

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 AM0006-20 – Title 12 Text Amendment – Bonner County is proposing to amend the following: **Sections 332, 483, 484, 490, 616, 623, 647, 661, 721.2, 804, & 807** to delete portions of the code specifically related to guest homes, temporary dwellings, sewer, water and septic requirements and clean-up of other necessary code language. This includes amending **Table 3-2 Residential Use Table** and amending the **standards** in this section.

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.

APPLICANT/STAFF PRESENTATION: Planner II Halee Sabourin presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Comprehensive Plan and Bonner County Revised Code.

PUBLIC/AGENCY TESTIMONY:

APPLICANT REBUTTAL:

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

MOTION: MOTION TO RECOMMEND APPROVAL: Commissioner Kempton moved to recommend approval to the County Commissioners this project FILE AM0006-20

to amend the sections of Title 12, Bonner County Revised Code, as amended in this hearing, finding that it is in accord with the general and specific objectives of the Bonner County Comprehensive Plan as enumerated in the following findings of fact and 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. This action does not result in a taking of private property. Commissioner Bailey seconded the motion.

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

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. Additional changes that have come about as a result of comment and further review during the writing of the staff report are indicated by **orange and underlined**.

Staff recommends approval of the proposed amendment (because)

12-332: RESIDENTIAL USE TABLE:

TABLE 3-2
RESIDENTIAL USE TABLE

| Use | Zoning District | | | | | | | | |
|--|-----------------|------------------|------------------|------------------|-----------------------|---|-----------------------|------------------|------------------|
| | F | A/F | R | S | C | I | RSC | REC | AV |
| Dwelling unit, accessory (8) | P | P | P | P | P (5) | | P | P | |
| Dwelling unit, temporary | - | P (9) | P (9) | P (9) | P (5), (9) | - | P (5), (9) | P (9) | P (9) |
| Farm labor housing (13) (11) | P | P | P | | | | | | |
| Guesthouse (10) | P | P | P | P | P (5) | - | P | P | P |
| Mobile home park (12) (10) | | | | C | C (5) | | C | | |
| Dwelling unit, Recreational vehicles (11) (9) | P | P | P | P | P | | P | P | P |

Standards:

(1) Must be ~~within a mobile home or~~ living quarters within the structure of a permitted use. Caretaker must be a bona fide employee of the property ownership and/or management.

(8) Refer to section 12-490 of this title for accessory dwelling unit provisions/standards. ~~One (1) Either 1 guest home or 1 accessory dwelling unit is permitted per lot or parcel without respect to density. This does not apply to parcels/lots that have explicit restrictions on the number of dwellings.~~

~~(9) A temporary dwelling unit for care of the aged or handicapped family member shall be permitted, subject to the issuance of a building permit or building location permit, provided that:~~

~~a. The property must contain a minimum of 2 acres.~~

~~b. The temporary dwelling shall consist of an in-house apartment or a mobile, modular or manufactured home, not placed on a permanent foundation.~~

~~c. The property owner shall complete a "temporary dwelling agreement" form provided by the Planning Department agreeing to comply with the provisions of this section and shall notify the Planning Department annually in writing of the status of the temporary occupancy.~~

~~d. As part of the agreement, the property owner shall provide a physician's certification that the handicapped or aged family member is incapable of adequately caring for himself or herself. "Incapable of adequately caring for himself or herself" is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable, physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months".~~

~~e. The use of the temporary dwelling where permitted in this title as additional living quarters for the aged or handicapped family member shall expire and shall be removed after the qualified use has ceased.~~

~~f. The temporary dwelling constitutes the second residence on the property.~~

~~(10) A building location permit or building permit application for a guesthouse shall be accompanied by an accurately drawn and scaled site plan sufficient to determine compliance with the dimensional standards of this title, and sewage disposal and water supply requirements. A guest home shall be limited to 1 per lot or parcel. A guesthouse shall: a) consisting of sleeping quarters with no kitchen facilities and a floor area of 600 square feet or less may be permitted on the same lot as the main dwelling without respect to lot density provided all dimensional and other title requirements are complied with; b) guesthouse with kitchen facilities and/or a floor area of more than 600 square feet may be permitted on the same lot as the main dwelling provided the lot is of sufficient size and design to comply with the density requirements of the zone (1 dwelling unit/minimum lot size of the zone district) and will be designed and located on the lot to accommodate future or potential lot division in compliance with all dimensional and other title requirements. Either 1 guest home or 1 accessory dwelling is permitted per lot or parcel.~~

(911) Building Location Permit regulations do not apply to non-commercial temporary, intermittent or occasional use of recreational vehicle. When a recreational vehicle is used in the same manner as a single family dwelling or an accessory dwelling unit, such use is limited to a maximum of two (2) recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply.

(1012) See section 12-485 of this title for mobile home park standards.

(1113) Farm labor housing: Caretaker must be a bona fide employee of the property ownership and/or management. The total allowable number of dwelling units does not apply to temporary or seasonal farm labor housing, such as a bunkhouse where only sleeping quarters are provided for farmworkers.

(Ord. 501, 11-18-2008; amd. Ord. 512, 1-6-2010; Ord. 581, 10-24-2018)

12-804: DEFINITIONS - D:

~~DWELLING UNIT, TEMPORARY: One in-house apartment or mobile, modular or manufactured home, as a second dwelling on a property and not on a permanent foundation. (Ord. 558, 12-14-2016)~~

12-807: DEFINITIONS - G:

~~GUESTHOUSE: An accessory building located on the same lot as the main building consisting of sleeping quarters with no kitchen facilities and a floor area of six hundred (600) square feet or less for the use by temporary guests or family members of the occupants of the main structure, not rented or otherwise used as a separate dwelling.~~

STAFF: TEMPORARY DWELLINGS

Currently, the ordinance allows for the establishment of accessory dwelling units (ADU). One ADU is outright permitted, irrespective of density allowances, and can serve the same purpose as a temporary dwelling unit or guest house. This renders the need for these other classifications obsolete as an ADU can be an umbrella term for these different uses. ADU standards state the maximum allowances and still allow applicants to build smaller/less than what is granted. Overall, removal of these terms does not remove an applicant's ability of pursue a dwelling that will be accessory to their property; instead, it cleans up the ordinance and provides simplicity.

STAFF: GUEST HOMES

Currently, we have standards to allow either 1 accessory dwelling unit or 1 guest house on the property. Accessory dwelling units have a greater impact due to the allowed larger size, kitchen facilities, and is allowed to be rented.

There have only been (7) guesthouse permits applied for in the last two years, while (49) accessory dwelling units have been applied for. The demand for

larger structures with a wider range of permitted uses further illustrates that the ordinance does not need multiple tiers for secondary dwellings. Removing this definition and use will result in these secondary dwellings to all be considered as accessory dwelling units.

Overall, this will prevent owners from having to apply for a change of use permit to allow the structure to be rented and having to supply a site plan to scale when we do not require them for other residential structures.

The only increased restriction this change will result in will occur in the Alpine Village zoning. Currently, guest homes are allowed whereas accessory dwelling units are not. However, it makes sense to not allow secondary dwellings due to the typical size of the lots and PUD restrictions common in the Alpine Village zone. This will avoid the need for variances to accommodate additional dwellings in the Alpine Village zone.

STAFF: RECREATIONAL VEHICLES

The purpose of adding the additional language to the term is to match the term listed in the definitions of Title 12 and avoid a misinterpretation or loophole on what constitutes a recreational vehicle to be subject to the specific standards of BCRC 12-496. The change in the number for the applicable standards of the use table is due to the deletion of standards and a need to renumber.

12-616: CERTIFICATE OF COMPLIANCE, CONDITIONAL CERTIFICATE OF COMPLIANCE:

E. For the purposes of the administration of this section, the following shall be considered to be in compliance:

1. Any lot or parcel which is described on a recorded legal instrument of conveyance prior to November 18, 2008;
2. Any lot or parcel for which a valid building permit or building location permit has been issued by Bonner County since November 18, 2008, whereon development has occurred and a use has been established in reliance on that permit;
- ~~3. Any unplatted parcel which is described on a recorded legal instrument of conveyance prior to November 18, 2008;~~
- ~~4. Any unplatted parcel which is described on a recorded legal instrument of conveyance prior to November 18, 2008, that meets current minimum zoning district standards. (Ord. 578, 7-11-2018)~~

STAFF: CERTIFICATE OF COMPLIANCE

The proposed removal of BCRC 12-616 (E) (3 & 4) removes redundancies. BCRC 12-616 (E) (1 & 2) result in the same conclusions.

12-483: ART, PERFORMING ARTS AND RECORDING STUDIOS:

~~E. An adequate potable water supply and a sewage disposal method approved by the Panhandle Health District and/or the State of Idaho shall be provided.~~

12-484: VACATION RENTALS:

B. Vacation Rental Permit Procedures: A vacation rental permit approval by the Planning Director is subject to the procedures set forth in this section.

1. Vacation Rental Permit Procedures: No structure, ~~guesthouse,~~ dwelling or ~~accessory~~ dwelling unit or portion thereof shall be used as a vacation rental until an application for a vacation rental permit has been reviewed and approved by the Planning Director or designee. The application shall include the following:
 - c. ~~An adequate potable water supply and a sewage disposal method approved by the Panhandle Health District and/or sewer/water district and/or the State of Idaho shall be provided.~~

12-490 Accessory Dwelling Units

B.

~~8. An adequate potable water supply and a sewage disposal method approved by the Panhandle Health District and/or sewer/water district and/or the State of Idaho shall be provided.~~

~~9. Accessory dwelling units shall not be eligible for a condominium project. The purpose of this is to retain and expand the supply of affordable rental housing. (Ord. 501, 11-18-2008)~~

12-623 Services and Utilities:

B. An ~~adequate potable~~ water supply shall be provided per at least one of the following:

1. ~~Subdivisions Lots~~ to be served by an individual well on each lot: Applicants shall demonstrate how the aquifer proposed for water supply has sufficient production capability to provide drinking water to all applicable lots and that a location is available within each lot for installation of a well without conflicting with proposed sewage systems on or adjacent to the proposed lot.
2. ~~Subdivisions Lots~~ to be served by a new water system serving from two (2) to nine (9) lots: Documentation by an Idaho licensed professional engineer or professional geologist that the sources proposed for water supply have sufficient production capability to provide drinking water to the lots in the proposed subdivision.
3. ~~Subdivisions Lots~~ to be served by a new public drinking water system: Division of environmental quality written approval of an engineering report prepared by an Idaho licensed professional engineer demonstrating that an

adequate water supply is available to meet the estimated demand for water from the lots in the proposed subdivision.

4. ~~Subdivisions Lots~~ to be served by connection to an existing public or private water system: A letter from the owner of the system indicating it has sufficient reserve production capacity to supply water to the lots in the proposed subdivision.

C. An ~~adequate~~ sewage disposal method for all building sites, as approved by the Panhandle Health district and/or the state of Idaho, ~~shall~~ may be provided.

12-647 Endorsements

D. A place for Panhandle Health District approval or the Sanitary Restriction as allowed by I.C. 50-1326.

12-661: Applications for adjustments of lot lines, minor notational changes.

B. All applications for readjustments of lot lines and minor notational changes shall include:

2. ~~A letter from the Panhandle health district or applicable sewer and/or water district stating the requirements for the sanitary restriction as set forth in Idaho Code title 50, chapter 13, have been met, or are not affected by a readjustment of lot lines.~~

STAFF: ADEQUATE SEWAGE AND POTABLE WATER

Portions of the ordinance, regarding “adequate sewage disposal” and “potable water,” have proven difficult to enforce. Some criteria is defined to obtain approval from Panhandle Health District while others do not and do not further define adequate or potable. Additionally, it does not make sense to make the determination of what adequate and potable constitutes when the department of environmental quality has adopted regulations to make those determinations. Overall, removing or altering the regulations pertaining to water and sewage services from local county code does not waive the requirements set forth from other local, state and federal agencies. Requiring sign offs and outside agency approval will potentially add more time to Planning department processes. Lastly, there has been difficulty in communications with PHD to determine which building septic permits are serving. There is not enough defining parameters to match permits together to determine “adequacy.” Ultimately, leaving

Changing the term “subdivision” to “lot” for BCRC 12-623 (A) (1-4) will allow the short plat procedure to apply those standards. The definition of subdivision has changed over time to exclude short plats without considering the change in standards due to existing terminology throughout the ordinance.

Changing "shall" to "may" in BCRC 12-623 (C) will allow applicants to apply the sanitary restriction on the plat – not waive the need for adequate sewage disposal.

Lastly, only a single taxing district (PHD) related to sewage disposal or water supply provided comment.

Overall, the Bonner County Planning Department will provide copies of all permit and land use submissions to PHD as well as any other agency, at their request, should they desire to obtain evidence to enforce their regulations

12-721.2: ADMINISTRATIVE EXCEPTIONS:

It shall be the duty of the planning director to exercise sound professional judgment in the issuance of administrative exceptions and to determine that such exceptions are within the purposes set forth in this subchapter:

- B. The planning director may issue an administrative exception from the provisions of this subchapter ~~to allow for minor variations to the standards set forth herein~~ to accommodate unique topographical, existing impervious surfaces, vegetative, geological or hydrological conditions.

STAFF: ADMINISTRATIVE EXCEPTIONS

Generally, the purpose of this chapter is to "protect property, surface water and groundwater against significant adverse effects from excavation, filling, clearing, unstable earthworks, soil erosion, sedimentation and stormwater runoff, and to provide maximum safety in the development and design of building sites, roads and other service amenities."

Overall, what constitutes "minor" is not further defined in the ordinance with any specificity of where the line shall be drawn. Additionally, there are other portions of this waiver that allows variations in "whole or in part" for development needing building location permits. Lastly, staff involved in making these exceptions are certified in SEEP training and have a solid basis and understanding to make reasonable and sound decisions.

12-487: PROVISIONS FOR UNIQUE LAND USES:

Certain unique land uses pose special problems that may have a detrimental influence on surrounding land uses. The following performance standards for such unique land uses shall be adhered to in addition to all other provisions of this title:

- A. Bulk Storage Of Flammable Liquids, Fuel, Gases Or Combustible Materials:

~~1. Storage of flammable liquids, fuel, gases or combustible materials shall be below ground and will be located at least three hundred feet (300') from a residential district and will meet the requirements of all local, state and federal fire codes.~~

1. 2. Storage of flammable liquids, fuel, gases or combustible materials above ground may be permitted only for quantities over twenty thousand (20,000) gallons, provided all of the most restrictive state, local, and federal fire codes and fire insurance underwriter's requirements are complied with.

2. 3. No flammable liquids, fuel, gases or combustible materials will be stored below the surface of any lake, river, stream or water body in Bonner County.

STAFF: PROVISIONS FOR UNIQUE LAND USES:

This amendment is to provide a more environmentally friendly installation of fuel tank and allow greater surveillance of the condition of the tanks and ensure proper maintenance in a timely manner. To require these tanks to remain underground can cause pollution to go unnoticed.

12-652: APPLICATION/CONTENTS OF PRELIMINARY PLATS FOR SHORT PLAT PROCEDURE:

- B. Application: Applications for short plats which contain five (5) to ten (10) contiguous lots under common ownership may be processed as "short plats" as set forth in sections ~~12-653~~ through ~~12-654~~ of this subchapter. ~~;~~ ~~provided, that no zone district change is required, or a planned unit development requested, to accommodate the proposed lot sizes.~~

STAFF: SHORT PLAT PROCEDURE

The purpose of a zone change is to accurately zone an area of land to meet the criteria of the zone and/or comprehensive plan designation. If a property is eligible to be rezoned to allow smaller parcel sizes, then the property should be allowed to be divided through a short plat – where applicable – to achieve the division.

Additionally, planned unit developments are extensive planning processes that are reviewed through hearings. To require a division of land to proceed with a platting process that requires a public hearing is redundant. A short plat, essentially, has the same requirements as a regular plat. Therefore, short plats should not be limited in their development process.

Findings of Fact:

- 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. This proposed change provides further clarifying standards enabling the public and the staff to achieve the best results leading to greater understanding and use of the zoning ordinance.

Conclusions of Law:

Conclusion 1

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

Conclusion 2

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

Conclusion 3

The proposed zone change **IS** in accord with the Bonner County comprehensive plan.

| | | |
|----------------------|------------------------|-----------------------------------|
| Property Rights | Population | School Facilities, Transportation |
| Economic Development | Land Use | Natural Resources |
| Hazardous Areas | Public Services | Transportation |
| Recreation | Special Areas or Sites | Housing |
| Community Design | Implementation | |

OPEN LINE DISCUSSION:

- Discussion regarding sub committees.
- Status update on permits and land use files.
- Discussion regarding roads and subdivisions.
- Discussion regarding availability of housing in the area.

At 9:33 p.m., the Chair declared the hearing adjourned.

Respectfully submitted,


 Milton Ollerton, Planning Director

The above Minutes are hereby approved this 5th day of November 2020.

Bonner County Planning and Zoning Commission


 Brian Bailey, Chair