

**BONNER COUNTY PLANNING and ZONING COMMISSION  
PUBLIC HEARING MINUTES  
SEPTEMBER 3, 2020**

**PLEDGE OF ALLEGIANCE**

**CALL TO ORDER:** Chair Davis called the Bonner County Planning and Zoning Commission hearing to order at 5:32 p.m. in the 1<sup>st</sup> Floor conference room, of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho, via Zoom webinar, and YouTube live streaming.

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

**ABSENT:** Trevor Kempton

**ALSO PRESENT:** Planning Director Milton Ollerton; Assistant Planning Director Josh Pilch; Senior Planner Amanda DeLima; Planner II Jason Johnson; Planner II Halee Sabourin; Administrative Manager Jeannie Welter; and Administrative Assistant III Maria Alexander

**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: August 20, 2020. Hearing no changes or objections, the Chair declared the minutes approved as written.

**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 V0019-20 - Wetland Setback Variance – Wade Burnett** is requesting a 5' wetland setback where 40' is required, to build an attached carport to an existing home on a 9.545-acre parcel. The property is zoned Agricultural/Forestry-10. The project is located off Colburn Culver Road in Section 34, Township 58 North, Range 01 West, Boise-Meridian.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Bailey disclosed Mr. Taylor's firm is providing services for him. He further stated it does not create a conflict regarding this file. The Chair noted there were no additional disclosures or conflicts.

**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 Revised Code.

**APPLICANT PRESENTATION:** Applicant Representative Marty Taylor gave a background history summarizing 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.

**MOTION:** Commissioner Linscott moved to approve this project FILE V0019-20, requesting a 5' setback from a wetland boundary where 40' is required, to build an attached carport to an existing home, 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.

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**Background:**

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**A. Site data:**

- Residential Use
- Unplatted
- Size: 9.545 acres
- Zone: Agricultural/Forestry - 10
- Land Use: Ag/Forest Land (10-20 AC)

**B. Access:**

- The property fronts and obtains access off Colburn Culver Road, a county owned and maintained, hard surfaced road of varying widths.

**C. Environmental factors:**

- Site does not contain mapped slopes. (USGS)
- Site does contain mapped wetlands. (USFWS)
- Site does not contain a river/stream/frontage on lake (NHD)
- Parcel is within SFHA Zone X, per FIRM Panel 16017C0730E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.

**D. Services:**

- Water: Individual septic tank and leach field
- Sewage: Oden Bay Sewer District
- Fire: Northside Fire District
- Power: Northern Lights
- School District: 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)	A/F - 10	Residential and small acreage farming
North	Ag/Forest Land (10-20 AC)	A/F - 10	Residential and small acreage farming
East	Ag/Forest Land (10-20 AC)	A/F - 20	Residential and small acreage farming
South	Ag/Forest Land (10-20 AC)	A/F - 10	Residential and small acreage farming
West	Ag/Forest Land (10-20 AC)	A/F - 10	Residential and small acreage farming

**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 building site is bordered to the west and east by wetland swales. These conditions restrict the building site and are unique to this property.*

*The proposed carport will be located on an existing retained, fill area setback about 5' from the wetland edge. It is not possible to construct the carport addition within this area without encroaching into the 40' setback."*

**Staff:** Staff concurs with the above statement. Due to the location of the wetlands, the building envelope results in a unique constraint on this property.

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

*Applicant: "As noted, the building site is confined due to the presence of adjacent wetlands. The location of these wetlands did not result from the actions of the applicant."*

**Staff:** Staff concurs with the above statement. The applicants did not develop the wetlands.

- (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: "The project includes constructing a carport addition to an existing residence. The carport will be constructed on top of existing fill. No wetland encroachment is proposed. Accordingly, no public interest conflict will occur.*

*The carport location is over 500' from the neighboring house located at 9868 Colburn Culver Road.*

*Surrounding land uses consist of residences on 5 acre to 40 acre parcels. The proposed carport will be located on an existing retained, paved fill area separated from the adjacent wetland swale. Accordingly, there will be no compromise to the integrity of this wetland or neighboring properties 'downstream' (to the south)."* [See additional responses to the Comprehensive Plan Goals and Objectives.]

**Staff:** Staff concurs with the above statement. The development does not require filling wetlands and affecting habitat. Additionally the proximity of the development to neighbors will ensure there will not be a nuisance.

**G. Stormwater plan:** A stormwater management plan was not required, pursuant to BCRC 12-720.3(k) because the proposal does not result in the creation of additional impervious surface, as defined.

**H. Agency Review:** The application was routed to agencies for comment on August 4, 2020.

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|---|-------------------------------------|
| Panhandle Health District                 | Idaho Department of Water Resources |
| North Side Fire District                  | Bonner County Road Department       |
| Northern Lights, Inc.                     | U.S. Army Corps                     |
| Bonner County Schools – Transportation    | U.S. Fish and Wildlife Service      |
| Idaho Department of Fish and Game         | Idaho Department of Lands           |
| (Sandpoint)                               |                                     |
| Idaho Department of Environmental Quality | U.S. Forest Service                 |

**The following agencies replied "No Comment":**  
**Bonner County Road Department – August 10, 2020**

**The following agencies replied:**

Idaho Department of Environmental Quality – Robert Steed, August 21, 2020

I have reviewed Bonner County Planning Department Variance Application V0019-20 and have concerns regarding potential impingement into wetlands. These concerns are based on an unclear perspective of the project due to the various scales of exhibits provided, especially the Site Plan. Idaho DEQ is in favor of the project if all work and structures are done within the existing retaining wall, but would be opposed to work or structures within the wetland or relocation of the retaining wall further into the wetland as defined by the wetland delineations shown on the last page of the Maps exhibit. Please feel free to contact me if you have any questions or concerns.

All other agencies did not reply.

**I. Public Notice & Comments**

The following public comments were received:

None received

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**Findings of Fact**

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1. This proposal was reviewed for compliance with the criteria and standards set forth at Section BCRC 12-238 Administrative Variances, BCRC 12-234 Variances, and Standards for Review of Applications, BCRC 12-400, et seq., Development Standards if affected by variance.
2. Current property development obtained the required permits.
3. There are no current violations on the property.
4. The applicant is requesting a 5' setback from a wetland boundary where 40' is required, to build an attached carport to an existing home.
5. The property is zoned Agricultural/Forestry-10.
6. No concerns from Bonner County Road and Bridge.
7. The property is described as the South Half of the North Half of the Southeast Quarter of the Northeast Quarter of Section 34, Township 58 North, Range 1 West, Boise Meridian, less the Colburn Culver Road right of way.
8. The project is located off Colburn Culver Road.
9. The property is served by: Northern Lights, Oden Bay Water, and Individual septic.

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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

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)

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**Conditions of approval:**

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**Standard permit conditions:**

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**A-1** Only the development of the proposed carport has been reviewed for variance standards. All other development shown must comply with 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 V0021-20 – Road & Property Line Setbacks & Impervious Surface Variance – Jeffrey & Sarah Petersen** are requesting a 0'-0" road setback where 25' is required to allow for the construction of a SFD, front patio, and retaining wall; a 0'-0" property line setback where 5' is required, for the south retaining wall; and an increase in allowed impervious surface of 14.9%, to accommodate the steep slope (35% ±). The ~1.1-acre lot is zoned Recreation (Rec). The project is located off E Bottle Bay Rd in Section 33, 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:** Planner II Jason Johnson 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 Tom Russell, Boden Architecture gave a brief history of the property summarizing the project. The applicant Jeffrey Petersen stated Jason Johnson conveyed his interest well.

**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 Bradish moved to approve this project file V0021-20, where the applicant is requesting a 0'-0" road setback where 25' is required to allow for the construction of a SFD, front patio, and retaining wall; a 0'-0" property line setback where 5' is required, for the south retaining wall; and an increase in allowed impervious surface of 14.9%, to accommodate the steep slope, 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.

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**Background:**

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**A. Site data:**

- Lot RP004130010140A, platted lot
- Size: ~1.1 Acres
- Zone: Recreation (REC)
- Comp Plan: Resort Community (<=2.5 AC)
- Land Use: Vacant, Single-Family Dwelling proposed

**B. Access:**

- Access is provided by E Bottle Bay Rd, a local paved road that is not county maintained.
- The stretch of E Bottle Bay Rd near the property is about 12 feet wide.
- Many homes and accessory structures located near the site are within the standard road setback. Some nearby homes and structures appear to have been built with a zero-foot road setback.
- Bonner County abandoned maintenance of E Bottle Bay Rd in the 90's.
- According to comments from Bonner County Road & Bridge, "after the abandonment of maintenance, this road's status as public vs private has been a matter of much debate in recent years and our department has been of the opinion recently that E Bottle Bay Rd shall be treated as a private road for our purposes."

**C. Environmental factors:**

- Site does contain mapped slopes. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does contain frontage on lake
- The site is within SFHA Zone X, per FIRM Panel 16017C0975E, Effective Date 11/18/2009. Based on this, no further floodplain review is required on this proposal.
- The site has widely spaced larger mature evergreen trees and some low brushy deciduous trees higher up on the eastern half of the property.
- No surface springs are apparent on the site.
- The primary hazard on this site, and the reason for the variance request, are the steep slopes on the majority of the site.
- Applicant statement: *Requiring the applicant to meet current setback requirements would force their proposed home further into and up the hillside, this would require excessive excavation, retaining structures, greatly increase site disturbance, and impose hardship not required of adjacent properties*

**D. Services:**

- Water: Private well
- Sewage: Bottle Bay Sewer District. On-site holding tank discharging into sewer main under the road.
- Fire: Selkirk Fire
- Power: Avista
- School District: School District: Bonner School #84

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

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Resort Community (<=2.5 AC)	Recreation	Vacant
North	Resort Community (<=2.5 AC)	Recreation	Single-Family Dwellings
East	Resort Community (<=2.5 AC)	Rural 10	Vacant
South	Resort Community (<=2.5 AC)	Recreation	Single-Family Dwellings
West	Resort Community (<=2.5 AC)	Recreation	Lakefront uses

**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:

- (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: "The site has an excessively steep west facing slope (35% +/-) rising from the edge of the existing road. Large excavations and extensive retaining walls would be required to build on this waterfront parcel with required setbacks. The only viable access to the property is from East Bottle Bay Road. Meeting required setbacks increases the difficulties in providing safe and practical access to the structure due to the slope. East Bottle Bay Road is substantially built out with most structures having similar or less setbacks than that which is proposed for this property. Since no adjacent properties are set back to current code minimum front setbacks, requiring the applicant to do so would deprive them of views that others enjoy. Adjacent buildings would impede the applicants' views if they conform to the required front yard setback."*

**Staff:** Other lots in the immediate vicinity are impacted by the same slope as the lot in question. Other lots in the same zone in the county are not typically impacted by such slopes. The variance is requested to accommodate lot topography and does not appear to be a request of convenience. The applicant has no control over the slope on the lot.

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

*Applicant: "No actions taken by the applicant created the hardship encumbering this parcel. The location of East Bottle Bay Road and required waterfront setbacks necessitate building on the East side of the road. Steep topography is existing and was not substantially modified by the applicant. The adjacent buildings were existing when this parcel was created. Additionally, East Bottle Bay Rd bisects the property. Since it was not created by the applicant and it is the access road for numerous properties, the applicant requests that it be excluded from the allowable impervious lot coverage."*

**Staff:** The applicants did not create the sloped conditions on this lot. The slope appears to present a significant development challenge, if the standard road setback were to be required in this case. The location and steepness of the slope on this lot appears to create a classic case of where a variance approval would be advisable.

- (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: "The proposal is not in conflict with the public interest, and will not create an obstruction in the road easement. The travel way of East Bottle Bay Road remains unencumbered and so no encroachment is necessary. The residences on both sides of the subject parcel are setback a similar distance to what is proposed with this variance, hence no reduction in their view corridors or access will result if this variance is approved. Until about 4 years ago, this site had a home on it that was much closer to East Bottle Bay Road the proposed residence will be if this variance is approved."*

*"The requested variance does not affect the property rights of any adjacent property owners."*

*"The Recreation classification is intended to allow for urban residential densities in remote and scenic areas of the County near winter sports venues, lakes and rivers. The requested setback reductions would allow the applicant to build a home of similar scale to others in the area. The proposed residence will have minimal impact on natural resources. With the exception of clearing a few trees and grading the building pad, no natural resources will be significantly impacted or depleted."*

*"The proposed residence will not impact the subject property's susceptibility to natural hazards. The potential for wildfire or flooding of the site will not be affected if the proposed structure is constructed. No significant impact on Public Services will result if the proposed setback reduction is allowed."*

**Staff:** There is no indication that the public health, safety, or welfare will be negatively impacted by this proposal. There is no indication this proposal will be materially injurious to properties or improvements in the vicinity. It is possible that requiring the standard road setback of 25 feet from the road could actually prove injurious to public health, safety, or welfare, or could be materially injurious to properties or improvements in the vicinity. Requiring the standard road setback in this case would require substantial excavation into a steep slope which abuts neighboring properties. This has the potential to destabilize the slope. It appears that substantial engineering, and ongoing engineering maintenance, would be required to maintain the stability of the slope if a 25 foot setback was required in this case. Minimal disturbance of this slope is generally advisable, especially given its proximity to homes. This proposal will allow for far less slope disturbance and stability engineering than would otherwise be required by the standard setback. There does not appear to be a reasonable argument for forcing the significant slope cuts and alterations that would be required to achieve the standard road setback in this case.

**G. Stormwater plan:** A stormwater management plan was required pursuant to BCRC 12-720.2. The plan was submitted by Brandon Staglund, P.E. of James A. Sewell & Associates, LLC. The plan calls for stormwater collection facilities designed to collect and treat the first half inch of runoff from the created impervious surface areas, and ensure that the post-development site runoff rate from the 25-year storm

will not exceed that of the pre-developed site, as required by the Bonner County Code §12-726.

As stated in this engineered plan, with the proper implementation of the best management practices described in the submitted plan, the subject property is capable of supporting the proposed site development without substantial risk of soil erosion or sedimentation of surface waters. The site is capable of storing, treating, and conveying stormwater using the best management practices described in the submitted plan.

**H. Agency Review:** The application was routed to the following agencies for comment on August 4, 2020:

Panhandle Health District  
Idaho Department of Water Resources  
Selkirk Fire District  
Bonner County Schools – Transportation  
School District #84  
Bonner County Road & Bridge Department  
Northern Lights, Inc.  
U.S. Fish and Wildlife Service  
Idaho Department of Environmental Quality  
Idaho Department of Lands (Sandpoint)  
Idaho Department of Fish and Game  
U.S. Army Corps of Engineers  
**The following agencies commented:**

Bonner County Road & Bridge, Aug 10, 2020: *Road & Bridge has the following comment regarding the proposed setback variance: Bonner County abandoned maintenance of E Bottle Bay Rd in the 90's due to the number of encroachments violations into the public ROW leading to disputes with landowners about our maintenance abilities being obstructed. After the abandonment of maintenance, this road's status as public vs private has been a matter of much debate in recent years and our department has been of the opinion recently that E Bottle Bay Rd shall be treated as a private road for our purposes. As such, the Road & Bridge Department has no comments or interest regarding the proposed setback variance.*

**The following agencies replied "No Comment":**

*Department of Environmental Quality, Aug 6, 2020*

**All other agencies did not reply.**

**I. Public Notice & Comments**

The following public comments were received:

*No public comments were received*

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### **Findings of Fact**

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10. The subject property features 30%+ slopes.
11. E Bottle Bay Rd is the only viable access to the site.
12. Large excavations and extensive retaining walls would be required to build on this waterfront parcel with required setbacks.
13. East Bottle Bay Road is substantially built out with many/most structures violating the standard road setback.
14. The proposed variance is requesting a larger road setback than many of the existing structures on E Bottle Bay Road.

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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

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)

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### **Conditions of approval:**

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#### **Standard permit conditions:**

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- A-1** Only the development shown on the submitted site plan has been reviewed for variance standards. All other development must comply with Bonner County Revised Code.
- A-2** The variance does not replace the need for permits. The applicant shall obtain approved permits as required by Bonner County Planning Department.

**OPEN LINE DISCUSSION:**

Discussion regarding Selle/Samuels area Comp Plan.

STAFF UPDATES: Meeting with mayors, upcoming ordinances and mining ordinance workshop.

At 6:47 p.m., the Chair declared the hearing adjourned until September 8, 2020.

Respectfully submitted,



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Milton Ollerton, Planning Director

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The above Minutes are hereby approved this 8<sup>th</sup> day of September 2020.

Bonner County Planning and Zoning Commission



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Don Davis, Chair