

**BONNER COUNTY PLANNING and ZONING COMMISSION
PUBLIC HEARING MINUTES
AUGUST 5, 2021**

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Vice 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, via Zoom webinar, and YouTube live streaming.

PRESENT: Commissioners Vice Chair Don Davis; Taylor Bradish; Dave Frankenbach; and Suzanne Glasoe

ABSENT: Chair Brian Bailey and Sheryl Reeve

ALSO PRESENT: Planning Director Milton Ollerton; Assistant Planning Director Jacob Gabell; Planner II Jason Johnson; Planner I Swati Rastogi; Planner I Chad Chambers; Planner I Daniel Britt; Administrative Manager Jeannie Welter; Administrative Assistant III Kelcey Utt-Boss; and Administrative Assistant III Janna Berard

CONSENT AGENDA:

APPROVAL OF MINUTES: The Chair requested the Commissioners declare if they had any corrections or changes to the approval of minutes as written for: June 24, 2021, July 1, 2021, and July 15, 2021. Hearing no changes or objections, the Chair declared the minutes approved as written.

PUBLIC HEARINGS:

VARIANCE

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

File V0011-21 – Lot Size Minimum Variance – Nick Nichols is requesting a lot size minimum variance to divide a 5.41-acre parcel into two parcels, one (1) 1.4-acre parcel, and one (1) 4-acre parcel by family exemption. The property is zoned Rural 5. The project is located off Highway 2 in Section 26, Township 57 North, Range 3 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: Staff Planner Chad Chambers 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 Nick Nichols presented a history and summary of the project. He stated if this project is approved, he plans to do a family split and give his son a parcel of land. He also spoke about neighboring properties as 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 Frankenbach moved to deny this project FILE V011-21 lot size minimum variance to divide a 5.41-acre parcel into (2) parcels, one (1) 1.4-acre parcel and one (1) 4-acre parcel, based upon the following conclusions: 1 & 3. The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Frankenbach 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 Glasoe seconded the motion. The action that could be taken, if any, to obtain the variance is to:
1) File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or 2) Appeal the Planning and Zoning Commission's decision to the County Commissioners.

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

Background:

A. Site data:

- ≈5.41 acre unplatted parcel
- Zone: Rural 5-acre
- Land Use: Rural Residential

B. Access:

- The property is accessed by Highway-2.

C. Environmental factors:

- Site does contain mapped slopes between 15-29% and 30% or greater grade. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does not contain a river/stream/frontage on lake.
- Per CFM Jason Johnson: JRJ, 6.9.2021: Parcel is within SFHA Zone X, per FIRM Panel 16017C0695E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.

D. Services:

- Water: "each homesite will have its own private well and water system"
- Sewage: Individual septic and drain field
- Fire: West Side Fire District
- Power: Northern Lights Inc.
- School District: Bonner School District #84
- Per CFM Jason Johnson: "6.9.2021: Parcel is within SFHA Zone X, per FIRM Panel 16017C0695E, Effective Date 11/18/2009. No further floodplain review is required on this proposal."

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	Rural 5-acre	Currently vacant
North	Rural Residential	Rural 5-acre	Rural Residential
East	Rural Residential	Rural 5-acre	Rural Residential
South	Rural Residential	Rural 5-acre	Highway 2
West	Rural Residential	Rural 10-acre	Rural 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: [Insert specific findings addressing each of the standards.]

- (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: "I am requesting a variance to the R5 zoning to allow a family split on this 5.41-acre parcel. The property is divided geographically by the 100' powerline ROW access which is a physical barrier that effectively creates two separate parcels of approximately 1.4 ac and 4 ac. Dividing the property along the south line of the powerline ROW would also allow for a natural road access to be developed with an extension of "The Cross Road" which would service both new parcels."

"There are currently several properties adjacent and within 1500 feet of the subject parcel that range in size from 1.1 ac, 2.28 ac, 2.93 ac, 3.4 ac to 3.6 ac."

Staff: The powerlines run through the subject property. Further eastward, the powerlines run through several other properties highlighted in the image referenced. Parcels in the surrounding area that fall below the lot size minimum requirement are likely legal non-conforming parcels; that is to say, it is possible that many of the surrounding parcels were created prior to the zoning ordinance that was adopted in 2008. See standard review in section (c) for a

more in-depth analysis regarding neighboring properties within 1,500ft of the subject parcel.

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

Applicant: "No action by the applicant have occurred on the property that created an issue requiring this variance request"

Staff: per the latest deed available electronically (Quitclaim deed; Instrument No. 966629), the property was acquired by the applicant on September 30, 2020. The powerline running through the property does not result from the actions of the applicant. Per historical imagery available on Google Earth, the powerlines existed long before the applicant acquire the property.

- (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: "This request is not in conflict with the residential use of the area and appears to be in line with the sizes of many parcels within 1500 feet of the subject parcel. Public access is not currently available on the private roads that serve the subject property. Access to the property will be available with the extension of the private drive "The Cross Road" or by use of the easement that is currently in place on the south end of the property and accessed from HWY"

"No detrimental effects are anticipated through this request."

Staff: Per a buffer analysis conducted by staff, the surrounding property centroids that fall within a 1,500ft buffer from the existing subject property line equate to approximately an average parcel size of 5.13 acres. The analysis for neighboring acreage does exclude the subject 5.41-acre parcel in question so as to not potentially increase the sample size or add to the total average acreage.

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 June 15, 2021.

Panhandle Health District	Idaho Department of Water Resources
Westside Fire District	Idaho Transportation Department
Northern Lights Inc.	Idaho Department of Lands, Nav. Waters
Applicable School District #84	U.S. Fish and Wildlife Service
Bonner County Schools - Transportation	Idaho Department of Lands (Sandpoint)
Idaho Department of Fish and Game	BNSF Railway

The following agencies commented:

Idaho Department of Fish and Game – rec'd June 25, 2021

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

Idaho Department of Environmental Quality – rec'd July 6, 2021

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

All other agencies did not reply.

I. Public Notice & Comments: As of July 28, 2021, no public comments were received for this file.

Findings of Fact

1. There are several properties eastward of the subject property in the same Rural 5-acre zoning district that are divided by the powerlines. Thus, the conditions that apply to the property do generally apply to other properties within the vicinity of the subject property.
2. The applicant has no control over the powerlines running through the property. They were there long before the applicant acquired the property in September 2020, albeit the applicant acquired the property knowing that powerlines ran through it. The deed on file for the adjacent property, (Parcel No. RP04155000020A) indicates that the applicant acquired it in 2013 (Instrument #845749, Warranty Deed).
3. The request for a lot size minimum variance deviates approximately 72% for the proposed 1.4-acre property, and 20% for the proposed 4-acre property.
4. There are no mapped wetlands on the property, but there is some sloping in the southern half of the property between 15-29% grade. There are also some slopes 30% or greater near the southern property line. The property contains one soil type, Pend Oreille silt loam which is not prime farmland but is well drained. There are no mapped streams or rivers that run through the property.
5. The property has not been developed in a way that allows for increased density.
6. The site is served by the West Side Fire District and Northern Lights Inc. for power.
7. The property is zoned Rural 5-acre which allows for a minimum lot size of 5-acre parcels and lots.
8. Based upon a buffer analysis done by staff, the average parcel size acreage for parcel centroids within 1,500ft of the subject property are approximately 5.13 acres, on average.

Conclusions of Law:

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

Conclusion 1

Conditions apply to the property that **do** apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control.

Conclusion 2

Special conditions and circumstances **do not** result from the actions of the applicant.

Conclusion 3

The granting of the variance **is** in conflict with the public interest in that it **will** be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot. (Ord. 559, 1-4-2017)

MODIFICATION OF TERMS OF 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.

File MOD0005-21 – Modification of Ordinance No. 575 for file ZC365-18 – Doug & Gina Hoyt, Stan & Lisa Jewett are requesting to remove the language "future divisions of land within the rezone boundaries warrant paved surface low volume private roadways" from Ordinance No. 575 for Zone Change file ZC365-18 on two (2) ≈10.02-acre lots. The properties are zoned Rural 5-acre. The project is located off Goldfinch Lane in Section 21, Township 54 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: Staff Planner Chad Chambers 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 Gina Hoyt presented a PowerPoint (Exhibit A) of the project pertaining to density, existing roads, and paving.

PUBLIC/AGENCY TESTIMONY: The following spoke on the record: Lee Cornelison, "name inaudible", and Reg Crawford.

APPLICANT REBUTTAL: None.

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

MOTION: Commissioner Bradish moved to recommend denial of this project file MOD0005-21, requesting to remove the language from "Section 3: Improvements" which states that "Divisions of land within the rezone boundaries described herein shall developed with roadways meeting the 'low volume private road' standard set forth in Bonner County Revised Code, Title 12, Appendix A, Section 2.5A. Such roadways shall be paved" and "Whereas, the Board of County Commissioners did find that the zone change request ZC365-18 is in accordance with the Bonner County Comprehensive Plan; and have determined that future divisions of land within the rezone boundaries warrant paved surface low volume private roadways" from Ordinance No. 575 for Zone Change file ZC365-18, based upon the following conclusions: 1, 2, and 3. The decision is 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 amended. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the modification is to: 1. File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or 2. Appeal the Planning and Zoning Commission's decision to the County Commissioners. Commissioner Frakenbach seconded the motion.

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

Background:

B. Site data:

- BLK 1 LOT 1 (≈10.02 acres)
- BLK 2 LOT 1 (≈10.02 acres)
- Zone: Rural 5-acre
- Land Use: Rural Residential

B. Access:

- Goldfinch Lane
 - i. Road Owner: private
 - ii. County Maintained: privately maintained

C. Environmental factors:

- Site does not contain mapped slopes. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does not contain a waterfront, stream or frontage on a lake.

Description	Farmland Classification	Drainage Class
Kootenai gravelly ashy silt loam (23)	Prime farmland if irrigated	Well drained
Bonner gravelly ashy silt loam (2)	All areas are prime farmland	Well drained

- Per CFM JRJ, 7.6.2021: Parcels RP014380020010A & RP014380010010A are within SFHA Zone X, per FIRM Panel 16017C1125E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.

D. Services:

- Water: individual well
- Sewage: septic system
- Fire: Spirit Lake Fire District
- Power: Inland Power

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site North	Rural Residential Ag/Forest Land	Rural 5 Agricultural/forestry 20	Rural Residential Rural Residential & Ag/Forest
South	Rural Residential	Rural 5	Rural Residential & Ag/Forest
East	Rural Residential & Ag/Forest Land	Rural 5 & Agricultural 20	Rural Residential & Ag/Forest
West	Rural Residential & Ag/Forest Land	Rural 5 & Agricultural 20	Rural Residential & Ag/Forest

F. Standards Review: BCRC 12-223 specifies that the Commission shall review the particular facts and circumstances of each proposal.

G. Comprehensive Plan Land Use Designation:

"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."

H. 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.

I. Agency Review: The application was routed to the following agencies on July 6, 2021.

Agencies who commented:

Spirit Lake Fire District – July 28, 2021:

"Per Chief DeBernardi: Quail Ridge was over density before the county passed the 5-acre splits on Goldfinch Lane. Furthermore, this area does not meet access/egress standards for the Idaho adopted fire code. Those plots should not have been rezoned because the density has further increased. This is now a low-volume area. Due to this overcrowding, the road ordinance (requiring paved roads) should be maintained throughout the area."

Idaho Department of Environmental Quality – July 28, 2021

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

Kootenai Ponderay Sewer District – July 27, 2021

"This property is outside of the District Boundaries."

Independent Highway District – July 23, 2021

"The subject property is outside of the boundaries of the Independent Highway District."

Agencies who replied "No Comment":

- Idaho Department of Fish and Game – July 20, 2021
- Pend Oreille Hospital District – July 8, 2021
- City of Clark Fork – July 8, 2021

All other agencies did not respond.

J. Public Notice & Comments: The application was routed to property owners within 300' of the subject property and posted in the newspaper on.

As of July 28, 2021, no public comments were received for this file.

Findings of Fact

1. The subject properties are within the Rural 5-acre zoning district and in the Rural Residential Comprehensive land use plan designation.
2. The properties are served by an individual well, septic system, Inland Power, and are in the Spirit Lake Fire District.
3. Both properties are platted and are part of the Qual Ridge 1st Addition Subdivision, Book 12 of Plats, Page 96.
4. The properties are not within a floodway and do not contain any mapped wetlands, slopes that are steeper than thirty percent (30%), rivers, streams, creeks, and the properties do not front a lake.

Conclusions of Law:

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

Conclusion 1

The proposed zone change **is not** in accord with the elements of 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 | •Agriculture |

Conclusion 2

This proposal was reviewed for compliance with Title 12, Bonner County Revised Code, and **was not** found to be in compliance.

Conclusion 3

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

COMMISSIONER & STAFF UPDATES:

Discussion regarding upcoming code amendments, land use and permit stats, city/planning meetings, and PHD signoff.

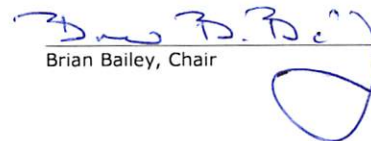
At 7:32 p.m., the Chair declared the hearing adjourned until August 19, 2021.

Respectfully submitted,


Milton Ollerton, Planning Director

The above Minutes are hereby approved this 16th day of December 2021.

Bonner County Planning and Zoning Commission

 12/16/21
Brian Bailey, Chair