

**BONNER COUNTY PLANNING and ZONING COMMISSION
PUBLIC HEARING MINUTES
MAY 4, 2017**

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; Brian Bailey; Taylor Bradish; Trevor Kempton; Sheryl Reeve, and Suzanne Glasoe

ABSENT: Commissioner Kris Sabo

ALSO PRESENT: Planning Director Milton Ollerton; Planner III Saegen Neiman; Floodplain Manager Jason Johnson; Planner I Marcus Pecnik; Bonner County Prosecuting Attorney Bill Wilson and Administrative Supervisor Tina Smith

CHANGES IN AGENDA: None

APPROVAL OF MINUTES: The Chair requested the Commissioners declare if they had any corrections or changes to the approval of minutes as written for: April 20, 2017. Hearing no changes or objections, the Chair declared the minutes approved as written.

MEETING: VARIANCE TRAINING

Planning Director Milton Ollerton discussed the following:

- Document "What is a variance" previously provided to the Planning and Zoning Commission.
- He provided a review of the changes from the six standards to three standards.
- The challenges on training on Variances.

Chair Davis commented on the relaxing of standards in a particular area. There were no further comments from the Commission.

PUBLIC HEARING:

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 V486-17 – Variance Request – Front & Rear Setback – Stejer's Inc. is seeking variance approval to have a 6-foot rear yard setback where 25- feet is required and a 17-foot front yard setback where 25-feet is required. In addition this

variance seeks to authorize a 7-foot front yard setback where 25-feet is required. The property is located 145 Thistlede Lane, Priest Lake in Section 10, Township 62N, Range 4W, 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 1 Marcus Pecnik presented a PowerPoint presentation with a previously circulated staff report, concluding this project is not consistent with Bonner County Revised Code. A copy of the PowerPoint presentation has been submitted to the file. He explained how conditions and circumstances were a result by the applicant.

In response to Commission inquiries Mr. Pecnik confirmed the structure located on the top side of tax 10 never received a permit. Planner III Saegen Neiman clarified the process of reviewing a building location permit. Mr. Pecnik confirmed the structure on Lot 10 was a zoning violation and there was no building location permit. He also addressed the building that was moved back five feet. In addition, he discussed setbacks.

Chair Davis commented on how all three standards have to be met.

Following an additional Commission inquiry, Mr. Neiman confirmed that the application states that Thislede Lane is a private easement.

APPLICANT PRESENTATION: Project Representative Martin E. Taylor of James A. Sewell and Associates advised that he would rely on the application for technical merits of this file. He provided a background of his work history with county. He provided a review of the proposed project. He commented on the following: The site plan is survey accurate; setbacks off of Thistlede Lane; applicant's willingness to submit floodplain / engineer plans/ building location permits; no change in density; the affects when the Building Department was disbanded in 1997 and the confusion in the community.

He addressed public comments received to the file after the staff report was prepared.

In response to Commission inquiries, Mr. Taylor addressed field inspections in 1997 and leach fields.

PUBLIC/AGENCY TESTIMONY: Jason Wing, Attorney for the neighbors commented in opposition to the project. He commented on the following: Undue hardship; granting variance is in conflict with public interest; creation of structures; inconsistency of permits; green structure on Tax 9; beige house on Tax 10; inconsistencies; and seeking forgiveness.

John Hungate commented in opposition to the project. He commented on the following: Obtaining permits; residences on Lot 10, house on Thistlede Lane; impact of people; density; this was done by intention not accident and wetlands.

APPLICANT REBUTTAL: In response to public testimony, Mr. Taylor addressed the following: advised that the applicant did not create the hardships consisting of the irregular shaped lots; the need for a boundary line adjustment; neighbors not liking their neighbors; structures on tax 10; the Variance request is for setback relief; and sewer constraints.

COMMISSION INQUIRY: In response to Commission inquiry regarding front yard setbacks, Mr. Neiman read the definition from the Bonner County Revised Code 12-825 into the record.

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

MOTION: Commissioner Kempton moved to deny this project FILE V486-17, which allows for a 6 foot rear yard setback where 25 feet is required and a 17 foot front yard setback where 25 feet are required on tax parcel 9. In addition to allow for a 7 foot front yard setback where 25 feet is required on tax parcel 10, Finding that it is **NOT** in accord with the Bonner County Revised Code as enumerated in the following conclusions of law: Conclusion 2 – “Special conditions and circumstances **do** result from the actions of the applicant.” The decision is 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. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the variance is to:

- 1) File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or
- 2) Appeal the Planning and Zoning Commission's decision to the County Commissioners.

Commissioner Glasoe seconded the motion.

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

Background:

A. Site data: The subject property is described as Tax-9 and Tax-10 of a portion of Government Lot 3, Section 10, Township 62 North, Range 4 West. Abutting land uses include residential lakefront properties, and residential tracts. The subject property is zoned Rural-5. Tax-9 has frontage on Priest Lake and currently contains a single family dwelling, as well as the gazebo.

B. Access: Access is provided by Thistlede Lane, an existing private local access road with a gravel travel surface.

C. Environmental factors: The Priest Lake base flood elevation is 2445.5 ft The property lies in a special flood hazard area (Zone: AE/X; FIRM: 0750E), the single family dwelling conversions will be reviewed for compliance with flood damage prevention ordinances, with a change of use Building Location Permit. The site does contain mapped wetlands, Applicant submitted a preemptory wetland reconnaissance report for the department's consideration. The property is identified on the Bonner County GIS Mapping application as Moose range.

D. Services: The site is served by an individual well, and connected to a sewage disposal system PHD permits 69-09-122433 and 88-13477. The site lies within the North of the narrows Fire District, and the Lake Pend Oreille School District (#83). Power is provided to the property via Northern Lights.

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	R-5	Unplatted Lakefront Lot, 0.7 of an acre
North	Rural Residential	R-5	Unplatted Lakefront Lot, 3.1 of an acre
East	Rural Residential	R-5	Unplatted Lakefront Lot, 0.2 of an acre
South	Waterfront	Waterfront	Priest Lake
West	Rural Residential	R-5	Unplatted lake front lot, 71 acres

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:

“As noted, both properties pre-date any Bonner County subdivision standards. Both properties also pre-date any Bonner County zoning standards, such as setbacks and lot sizes (Ord. 140, eff. 1/11/80; zoning map eff. 12/9/81). The configuration of both Tax-9 and Tax-10 are such that irregular parcel shapes created in 1967 and 1972 have resulted in building envelopes now affected by setback standards. These site characteristics peculiar to these parcels create an undue hardship for the buildings involved.”

Staff: Virtually all parcels in the surrounding area are sub zoning standard minimum. The “northern” parcel Tax-10 is roughly .22 acres in size, while the “middle” parcel Tax-9 is roughly .28 acres. Both Parcel were uniquely described prior to County Zoning standards, Tax-10 being described in deed Instrument # 137575 dated April 11, 1971. Tax-9 described in instrument # 111087 dated May

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9, 1967. These small parcels coupled with the presence of a wetland to the west of the property, result in tight building envelopes not commonly found in the area and not within the applicant's control. Standard A is applicable.

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

Applicant:

"The requested variances involve "grandfathered" parcels and are predicated on site constraints. The properties were created in 1967 and 1972 resulting in irregularly shaped parcels. Residential setbacks were established in 1980 creating limited or restricted building envelopes. These special conditions and circumstances did not result from the actions of the applicant."

Staff: The parcels were created by Norma Stejer in 1967 and 1971. However they were created prior to county zoning ordinances as stated above. Therefore the parcels are considered legal non-conforming.

On Tax-10 the storage building is seeking a variance for a 7 foot front yard setback, which would then allow for a change of use permit to be filed, converting to a single family dwelling. If this structure had been permitted correctly in the 1990's, the issue of tight building envelope would have been mitigated by proper building design. Therefore conditions and circumstances DO result from the applicant, this aspect does not comply with standard B. *(Further analysis in Staff Analysis section below)*

On Tax-9 the storage/ garage structure was permitted for its intended use in 1999 (BLP1999-025) which allowed for reduced rear yard setbacks due to its use. This structure is seeking a variance for a 6ft rear setback where 25ft is required in order to convert into a single family dwelling (it's current unpermitted use). Approval would enable a change of use permit to be filed and reviewed (BLP2015-0458). This structure is also seeking a variance for a 17 foot front yard setback where 25ft is required. This structure was permitted in 1999 having a 25ft front yard setback, the applicant now seeks a variance for 17 foot front yard setback, therefore applicant improperly built the structure according to the original building location permit. In addition the applicant proposes that a boundary line adjustment shall take place to achieve a 5ft side yard setback, which would bring the structure into compliance with its original BLP. The structural size, and placement was done by the applicant, resulting in the current "hardship", Standard B does not apply. *(Further analysis in Staff Analysis section below)*

C. The granting of the variance is not in conflict with the public interest in that it will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot. (Ord. 559, 1-4-2017)

Applicant:

"Because the structures are in place and have been since the late 1990s, granting the variances will not conflict with the public interest."

Use of the two subject buildings for residential purposes has been approved by the Panhandle Health District (PHD File 15-09-132276).

The structures have been in place since the 1990s. Consequently, the requested variances will have no effect on adjoining properties.

Adjoining properties are similarly developed with single family residences. Accordingly, the proposed residential uses are compatible with neighboring properties.

Similar setback variances have been approved based on irregularly shaped parcels containing limited or restricted building envelopes. (See V203-95, V404-09, V443-13 and V481-16.) The requested setbacks are the minimum necessary to authorize use of the structures for residential purposes, and the applicant is willing to adjust boundary lines between Tax-9 and Tax-10 in order to improve property line setbacks (see site plan)."

Staff: Conflict of public interest is mitigated through the planning department's agency review process and by public notification. During the agency review period County, State and Federal regulatory agencies were notified of the project and were permitted to comment. North of the Narrows fire department, Idaho Department of Water Resources, Bonner County Road and Bridge and Panhandle health department all returned a "No Comment" response. As noted in section I. below, there were no other agency comments and as such Bonner County Planning assumes there are no objections to the project. As noted by Section J, there have been no public comments, as such Bonner County planning assumes there are no objections to the project.

G. Stormwater plan

A stormwater management plan was exempted, pursuant to BCRC 12-721.2 (a).

H. Land capability report

A land capability report was submitted to the record by Martin E Taylor, AICP, in accordance with BCRC 12-233 and 12-222(j), which states:

- "Based on physical site characteristics, the existing development area is satisfactorily suited for the intended use, subject to the corresponding variance request for setback relief. The site has demonstrated since the 1960's that it is capable of withstanding disturbances without risk of harmful consequences as a result of floods, sewage, drainage, erosion, sedimentation, geological or surface slippage pursuant to Bonne County Revised Code, Section 12-222(j)."*

I. Agency Review

The application was routed to the follow agencies for comment on February 22, 2017:

Panhandle Health District	Dept. of Water Resources
Bonner County Road Dept.	Army Corps (Coeur d'Alene)
North Narrows Fire District	Army Corps (Newport)
School District # <u>83</u>	Fish and Wildlife Service
Northern Lights	Forest Service

Dept. of Fish and Game
Natural Resource
Conservation Service
Dept. of Lands (Sandpoint)

State Historical Society
Dept. of Lands, Nav. Waters

The following agencies commented:

**Panhandle Health District, Response dated February 28, 2017:
No Comment**

While Panhandle Health maintains a "No Comment" position, on March 21, 2017 the department offered additional historic information on the subject property. Submitting the Consent order agreement which the property owners took corrective action on to come into compliance.

**North of Narrows Fire District, response dated March 12, 2017:
No Comment**

**Bonner County Road and bridge Quality responded on March 03, 2017:
No Comment**

**Idaho Department of Water Resources, response dated February 24, 2017:
No Comment**

**Idaho Department of Environmental Quality, Faye Beller, response dated March 22, 2017:
No Comment**

All other agencies provided no response, as such staff concludes that there are no objections to the project.

J. No public comments were received a time of preparation of staff report.

Findings of Fact

1. Parcels were uniquely described prior to County Zoning standards, Tax-10 being described in deed Instrument # 137575 dated April 11, 1971. Tax-9 described in instrument # 111087 dated May 9, 1967.
2. Tax-9 structure has an approved BLP 1999-0025 for a car storage and garage.
3. Tax-9 structure has an approved BLP 2007-0088 for a lean to.
4. Tax-9 structure is currently in violation of front yard setback, an indication of improper building placement.
5. Tax-9 structure is currently in violation of northern side yard setback, requiring a boundary line adjustment for remedy, an indication of improper building placement.

6. Reduced Tax-9 setbacks allow for a change of use to occur, from storage to single family dwelling.
7. Tax-10 structure has been in place since 1990's according to Assessors records, Tax-10 has no building permits or building location permits on file for the current structure. Building permits have been required in the county since 1980.
8. Tax-10 had a zoning violation ZV-259-97 concerning building setback, stating clearly the front yard setback is 25 feet.
9. Tax-10 has a pending BLP 2015-0458 for a single family dwelling.
10. Tax-10 has a pending BLP 2015-0507 for a bunk house.
11. Tax-10 is currently in violation of front yard setback.
12. The site contains mapped wetlands that are represented on county GIS data layers. The applicant has submitted a wetlands reconnaissance performed by James A. Sewell & Associates authorized agent Martin E Taylor, verifying the building site is void of wetland vegetation and wetland soils. The wetlands reconnaissance does however depict the wetland immediately to the west of Tax-9 and Tax-10.
13. The location of 2 the structure lie within flood hazard zone AE. (Zone: AE; FIRM: 0150F).
14. No adverse agency or public comments have been submitted.

Conclusions of Law:

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

This proposal was reviewed for compliance with the criteria and standards set forth at Sections 12-233 and 12-234, Bonner County Revised Code, storm water management criteria and standards set forth in Chapter 7, Title 12, Bonner County Revised Code, and variance criteria and standards set forth at Section 67-6516, Idaho Code.

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** 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)

PUBLIC MEETING

DISCUSSION / REVIEW OF LAND CAPABILITY REPORTS

Mr. Ollerton and staff discussed the following:

- Whether this requirement needs to remain in code
- Necessity
- Changing the requirement
- Liability
- Extra charge

Commission and staff discussed who prepares the Land Capability Reports.

Staff will brainstorm with options and will bring back to the Planning and Zoning Commission.

WETLANDS

The Commission was provided a copy of Bonner County Revised Code Subchapter 7.3 – Wetlands.

Floodplain Manager Jason Johnson provided an overview of a meeting held with the Army Corp of Engineers regarding wetland regulations and Wetlands Reconnaissance.

Staff and Commission discussed the inaccuracy of the Wetland inventory map, wetland buffering, wetland delineation and addressing issues that staff experiences regarding the map.

Mr. Ollerton provided a schedule update and advised that a meeting had been set up for the Natural Resource Working Group for May 23, 2017 at 6:00 p.m. Staff and Commission discussed the current Natural Resource component of the Comprehensive Plan and the proposed plan.

The Chair declared the hearing adjourned at 7:43 p.m.


Respectfully submitted,



Milton Ollerton, Planning Director

The above Minutes are hereby approved this 18th day of May, 2017.

Bonner County Planning and Zoning Commission


Don Davis, Chair