

## MINUTE ORDER

### BONNER COUNTY PLANNING and ZONING COMMISSION PUBLIC HEARING MINUTES MAY 5, 2016

**CALL TO ORDER:** Chair Martin called the Bonner County Planning and Zoning Commission hearing to order at 5:10 p.m. in the 1<sup>st</sup> Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

**PRESENT:** Commissioners Chair Mitch Martin; Brian Bailey; Don Davis; and Kris Sabo

**ABSENT:** Commissioners Margaret W. Hall and Greg Snow

**ALSO PRESENT:** Interim Director Saegen Neiman; Planner II Shauna Harshman; Planner II Jason Johnson; Planner I Planner Marcus Pecnik; and Administrative Secretary Tina Smith

#### 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 V473-16 – Variance Request – Side Yard & Waterfront Setback – Derrick Parker** is requesting variance approval from the waterfront and side yard setbacks for an accessory building and two decks. The variance would allow a 36-foot waterfront setback where 40 feet is required by Bonner County Revised Code (Priest Lake), and a one-foot side yard setback, where 5 feet is required. The property is located approximately one mile north of Coolin, on Sherwood Bay Road in Section 3, Township 59 North, Range 4 West, B.M.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Baily disclosed that Mr. Taylors and his firm are on the same job site. He advised this would not affect his participation in this hearing. There were no further disclosures or conflicts.

**STAFF PRESENTATION:** Planner II Shauna Harshman presented a summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code. The PowerPoint presentation has been submitted to the file.

**APPLICANT PRESENTATION:** Project Representative Martin E. Taylor of James A. Sewell and Associates discussed setbacks, the common lot, impervious surface and limited site disturbance. He also noted the site plan is survey accurate.

**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 Davis moved to approve this project FILE V473-16 variance approval from the waterfront and side yard setbacks for an accessory building and two decks. The variance would allow a 36-foot waterfront setback where 40 feet is required and a one-foot side yard setback, where 5 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 Davis 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:** The parcel acreage is 0.18 acres or approximately  $\pm$  7,600 square feet. The site is zoned Recreation and is currently used as a single family residential lot. Abutting land uses are residential, zoned as Recreation and Rural-5. The lot is located on Priest Lake with a residence built in 1993. The lot is steeply sloped from Sherwood Bay Road toward Priest Lake at about 49 percent average.
- B. Access:** The lot is accessed by Sherwood Bay Road, a 20-foot wide, platted, private easement, developed with a 10-foot wide gravel surfaced travel lane. The site is approximately 1 mile north of Coolin.
- C. Environmental factors:** A portion of the subject lot is located within a mapped floodplain (D-FIRM-0430), and the site does not contain any mapped wetlands. The lot fronts Priest Lake to the northwest. The subject property shows critical wildlife habitat for White-tailed deer, according to the Bonner County Comprehensive Plan Maps.

The soils are Priestlake gravelly sandy loam, 35 to 65 percent slopes. With nearly all of the subject lot containing a slope of 45-70 percent, the potential for rapid runoff is high to very high. The site is moderately vegetated with evergreens, fir trees, and some shrubbery.

**D. Services:** Water is provided by an individual well with a mean production of 11.2 gallons per minute, and sewage disposal is provided by Coolin Sewer District. The sewer system consists of a wastewater lagoon and land application system. Homes are served by “grinder pumps” and pressure sewer lines that pump solids and effluent to the District’s wastewater lagoon for treatment. The nearest solid waste collection is the Dickensheet Collection Facility, located approximately 5 miles away. Northern Lights, Inc. supplies the site with electricity.

The subject site is served by the Coolin-Cavanaugh Fire District, with the Coolin Fire Station approximately 2 miles away. Priest River Elementary is the nearest primary school, located approximately 10 miles away, and Priest River High School is the nearest secondary school serving the subject property, approximately 30 miles away.

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

<b>Compass</b>	<b>Comp Plan</b>	<b>Zoning</b>	<b>Current Land Use &amp; Density</b>
Site	Resort community	Recreation	Single family residential.
North	Resort community	Recreation	Single family residential uses.
East	Resort community	Recreation & Rural-5	Single family residential uses and state forest lands.
South	Resort community	Recreation & Rural-5	Single family residential uses.
West	Resort community Single	Priest Lake	Priest Lake

### **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) An undue hardship exists because of site characteristics, and special conditions and circumstances exist which are peculiar to the land, structure, or building involved.

#### **APPLICANT RESPONSE:**

*The portion of the lot forward of the home is steeply sloped to as much as 72 percent. The portion of the lot fronting the road, where the applicants propose placing a shed is somewhat less steeply sloped, with the shed site being essentially level. These site characteristics create an undue hardship particular to the land involved.*

#### **STAFF RESPONSE:**

*The lot size does pose challenges for placement of a storage shed with the dimensions of 8x10, placed in the direction shown on the site plan. A smaller shed would require less protrusion into the setback, as would a shed turned the other direction.*

*Construction of an 8-foot wide deck is not affected by slopes on site. The home construction was completed in 1993 according to the site inspection found in Building Permit number 1993-0460. According to this application the setback to the shore line was 51-feet. According to the site plan submitted with the variance application, the setback to the shoreland is currently 44-feet. The applicants did not create this discrepancy.*

- (b) A literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title.

APPLICANT RESPONSE:

*Numerous setback variances have been approved due to similar site constraints involving excessively steep slopes. Accordingly, a literal interpretation of the setback requirements would prevent the applicant of constructing the proposed structures, which are commonly enjoyed amenities within the Recreation District.*

STAFF RESPONSE:

*The provisions of this title would prevent the applicants from building a second and third deck that project into the shoreland setback. The applicants enjoy a deck on the north side of their home, and there is additional room for expansion. A smaller shed would project less into the side yard setback. Three setback variances have been approved in Camp Sherwood Addition for side and front yard setbacks, and one waterfront setback variance has been approved, all for the construction of homes.*

- (c) Granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same district.

APPLICANT RESPONSE:

*The applicant states that variances have been granted due to similar circumstances and site characteristics, therefore would not confer any special privilege to the applicant.*

STAFF RESPONSE:

*The site characteristics, slopes in particular have resulted in decreased side yard and shore land setbacks to accommodate structures in previously approved variances.*

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

APPLICANT RESPONSE:

*The property was platted in an excessively sloped area in the 1959. The house was constructed in 1993. The applicant acquired the property in 2015. Consequently, these circumstances did not result from the actions of the applicant.*

STAFF RESPONSE:

*Special conditions and circumstances do not result from the actions of the applicant as the land was platted prior to land use code in the 1959. Additionally, the home was constructed 22 years prior to purchase by the applicants.*

- (e) The variance requested is the minimum necessary to alleviate the undue hardship.

APPLICANT RESPONSE:

*The applicant states that an 8-foot wide balcony is the minimum required to place patio furniture. Similarly, the 8-foot by 10-foot shed is the minimum size shed necessary to alleviate the site constraints and resulting hardship.*

STAFF RESPONSE:

*The 8-foot wide balcony seems a modest size to accommodate use. Similarly an 8-foot by 10-foot shed is small enough to not require a building location permit application, nor Declaration of Exempt Structure.*

- (f) The variance is not in conflict with the public interest.

APPLICANT RESPONSE:

*The applicant argues that the alternative to the balconies is to excavate and create a level "patio" area between the lake and the home. Similarly, excessive excavation and retention adjacent to the driveway would be required for shed placement without the requested site yard setback. Both alternatives are described as undesirable in that they would result in excessive site disturbance adjacent to the lake, arguably in conflict with the public interest. The applicant proposed that the variances actually serve to reduce a public interest conflict.*

STAFF RESPONSE:

*The alternatives the applicant outlines are allowable by Bonner County Revised Code. The fact that neither structure requires a building location permit, but rather a Declaration of Exempt Structure, exempts each of the structures from erosion control requirements. The setback variances to the side yard and shoreland will result in less site disturbance than the alternatives.*

## **G. Stormwater plan**

A stormwater management plan was required pursuant to BCRC 12-720.2. The applicant has requested an administrative exception do to the minimal site disturbance and presence of mature vegetation between the project sites and the shoreland. See BCRC, Section 12-721.2, paragraph (b), vegetation.

## **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:

"Ground disturbance attributed to balcony construction is limited to the installation of pilings. Limited site disturbance will occur with shed installation because the area is currently nearly level. Therefore, the site has demonstrated the ability to support the proposed uses".

### **I. Agency Review**

The application was routed to agencies for comment on March 14, 2016. The following agencies commented:

**Panhandle Health District, Chris Irvin, Response dated March 16, 2016:**

*No comment.*

**Bonner County Road Department, Matthew Mulder, P.E., Response dated March 16, 2016:**

*The proposed setbacks will not affect our maintenance activities.*

**Department of Lands (Sandpoint), Response dated April 1, 2016:**

*No comment.*

Coolin Cavanaugh Bay Fire District, no response

Coolin Sewer District, no response

Northern Lights Inc., no response

Department of Lands (Coolin), no response

### **J. Public Notice & Comments**

The following public comments were received:

**Rick and Diane Thomas, Response dated April 15, 2016:**

*The Thomas's wrote to voice their support for the variance to the shoreland setback for the decks.*

**Steve Smith, Response dated April 15, 2016:**

*Mr. Smith wrote to voice support for the variance, stating the property would have limited use without it.*

**Doug and Julie Heiskell, Response dated April 26, 2016:**

*The Heiskell's wrote to voice their support for the variance in general.*

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### **Findings of Fact**

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1. The subject parcel was created by the platting of Camp Sherwood Addition in December of 1959, prior to the adoption of Bonner County Ordinance 140, establishing setback requirements in the county.
2. Ordinance 140, establishing shoreland setback requirements was not effective until January 11, 1980.

3. Porches and decks attached to single family dwellings, as well as storage sheds are a common right enjoyed by those within the Recreation zoning district.
4. The original home built in 1993 met setback requirements to the shoreland.
5. The applicants purchased the property in 2015.
6. Variances have been issued for similar site constraints within the Camp Sherwood Addition subdivision.

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**Conclusions of Law:**

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**Based upon the findings of fact, the following conclusions of law are adopted:****Conclusion 1**

This proposal was reviewed for compliance with the criteria and standards set forth 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 2**

An undue hardship **does** exist because of site characteristics, and special conditions and circumstances that are peculiar to the land, structure, or building involved.

**Conclusion 3**

A literal interpretation of the provisions of this Title **would** deprive the applicant of rights commonly enjoyed by other properties in the same District under the terms of this Title.

**Conclusion 4**

Granting the variance requested **will not** confer on the applicant any special privilege that is denied by this Title to other lands, structures, or buildings in the same District.

**Conclusion 5**

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

**Conclusion 6**

The variance requested **is** the minimum necessary to alleviate the undue hardship.

**Conclusion 7**

The variance **is not** in conflict with the public interest.

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**Conditions of approval:**

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**Standard permit conditions:**

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- A-1** The use shall be developed and shall be operated in accordance with the approved site plan.
- A-2** The variance shall expire if not issued within two (2) calendar years from the date of approval, or once issued, if the use has not commenced within two (2) calendar years from the date of issuance. At any time prior to the expiration date of the variance, the applicant may make a written request to the Planning Director for an extension of the variance for a period up to two (2) years. The Planning and Zoning Commission may consider such request for extension at any public hearing. The extension request must be approved or denied prior to the expiration date of the variance.

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**Standard and site-specific conditions:**

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- B-1** The applicant shall submit a Declaration of Exempt Structure for the proposed decks.
- B-2** At the time of Declaration of Exempt Structure application, the applicant shall provide to the Bonner county Planning Department a grading/erosion control plan consistent with BCRC 12-7.2. The applicant shall install prior to ground disturbing activities all temporary erosion control measures as designed and submitted.