

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 1st 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 V472-16 – Variance Request – Front Yard Setback – Tom Magnuson is seeking Variance approval to allow for a 7-foot front-yard setback to construct a two-car, two-story garage utilizing an existing foundation, where 25-feet is required. The lot is located about 0.6 miles south of East Hope, on Taku Trail, located in Section 1, Township 56 North, Range 1 East, 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 Jason Johnson 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.

In response to Commission inquiries, Mr. Johnson confirmed the structure is being built on gravel.

APPLICANT PRESENTATION: Project Representative Martin E. Taylor, AICP of James A. Sewell and Associates noted that he would rely on the application materials on how this project complies with Bonner County Revised Code. He provided a brief overview of the project. He commented on location and addressed the public comments received.

In response to Commission inquiries, Mr. Taylor addressed the use of the second story, location of septic, protection of the native soil, locations of garage doors, parking, and setbacks.

PUBLIC/AGENCY TESTIMONY: Kim Felts spoke in opposition to the project. She commented on the following: Access for emergency vehicles; security; septic; drainfield; blockage of vehicles;

Ms. Felts described and submitted the following exhibits:

- Exhibit A - Parking Pad – Photograph
- Exhibit B - Taku Trail (Up) – Photograph
- Exhibit C - Taku Trail (Down) – Photograph
- Exhibit D - Property Stakes – Photograph
- Exhibit E - Dog-leg – Photograph

John Felts spoke in opposition to the project. He commented on the following: Septic; parking; visibility; access; environment; adjoining lot; and public interest.

Elyse Matejovsky spoke in opposition to the project. She commented on the following: Parking; septic; keeping the lake pure; infringing on others; and setbacks. She submitted the following exhibit:

- Exhibit F - Letter regarding septic

Jan Rumore spoke in opposition to the project. She commented on the following: Parking; septic; drainfields; protection of the lake; safety; fire; egress, accessory dwellings; and size of garage.

Paul Rumore spoke in opposition to the project. He commented on inconvenience to neighbors and parking.

APPLICANT REBUTTAL: Following public testimony, Mr. Taylor addressed the following: Access; right-of-way; history of the property; sewer constraints; Taku Trail, non-applicable comments from public; emergency services access; and enforcement of right-of-way.

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

RE-OPEN APPLICANT TESTIMONY: The hearing was re-opened for clarifying questions. Mr. Taylor explained the architecture projections for the first and second story overhang.

COMMISSION INPUT: Chair Martin advised that the public could only comment on foundation and overhangs.

ADDITIONAL PUBLIC/AGENCY TESTIMONY: John Felts commented that this project does not meet the minimum setbacks.

Paul Rumore commented that the foundation was built for a mobile home and the alteration of the foundation.

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

MOTION: Commissioner Sabo moved to approve this project FILE V472-16, to allow for a 7-foot front-yard setback to construct a two-car, two-story garage, 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 Sabo 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.

The motion failed due to the lack of a second.

Commissioner Bailey moved to continue this project and then withdrew his motion.

Commissioner Sabo renewed her motion to approve this project FILE V472-16, to allow for a 7-foot front-yard setback to construct a two-car, two-story garage, 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 Sabo 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 with a vote of 2-1.

Mr. Neiman reviewed the appeal procedures.

Background:

A. Site data: The site is a single lot of around ± 0.5 acres. The site is features a Single Family Dwelling and normal appurtenant uses.

B. Access: Access is provided by Taku Trail, formerly known as Cedar Lane on the original plat of Mountain View Shores. Taku Trail is a publicly-dedicated and privately maintained local access road with a gravel surface. The Taku Trail

easement is 50 feet wide on the original plat. The travelway within the easement is nine feet wide. Taku Trail is sloped similarly to the site in question, with slopes between 15-29%.

C. Environmental factors: The site is treed as shown in the included photos, with some cleared areas for building sites. The entire site is mapped as Elk and White-tailed deer wintering area, as previously mentioned. The site is located in Flood Hazard Area X, and thus has no special floodplain requirements.

D. Services: The site is mapped within the Ellisport Bay Sewer District, however the application lists the sewage disposal on the site to be accomplished by an individual septic system. Water line intake is from the lake, per the application. Fire protection is provided by Samowen Fire. The application confirms that electric power and phone service are both available on this site. The site is within Bonner School District #84.

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Resort Community	REC	SFD on a half-acre lot.
North	Resort Community	REC	SFDs on half-acre lots.
East	Resort Community	REC	Ellisport Bay and Lake Pend Oreille.
South	Resort Community	R-10/R-5	SFDs on half-acre lots.
West	Resort Community	R-10/R-5	SFDs and government land.

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.

The applicant states the following: "The site characteristic peculiar to the structure involved is the historic placement of a concrete parking foundation located within the front yard setback. This special condition has resulted in a circumstance particular to this project. Further, the site slopes at about 20 percent from Taku Trail toward Ellisport Bay resulting in an undue hardship because of site characteristics."

Additionally, the applicant has shown that approval of this variance will prevent driving over the reserve drainfield area and will prevent locating a structure immediately downhill of the reserve drainfield location.

(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.

The applicant has submitted examples of similar variances that have been approved in the past to address this criteria.

(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.

The applicant states the following: "The subject property was platted in 1957. The requested variance is consistent with similarly situated properties historically platted without regard for the ability to be developed. Examples cited include properties in Bottle Bay that have been granted setback. Consequently, the requested setback variance is equivalent to those afforded to other lands in the Recreation District, and as such will not confer upon the applicant any special privilege."

The applicant has submitted examples of similar variances that have been approved in the past to address this criteria. It is in the interest of applicant, public and county to protect reserve drainfield areas on residential lots.

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

The applicant states the following: "As noted, the subdivision was platted in 1957. The subject lot was developed with a mobile home in 1971 and utilized an existing concrete foundation which provided a parking area. The applicant acquired the subject lot in 2007 (Warranty Deed, Instrument #726374). Accordingly, these special conditions and circumstances did not result from the actions of the applicant."

Staff agrees that the concrete and gravel parking area was not built by the applicant.

Staff agrees that reserve drainfield areas need to be protected.

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

The applicant states the following: "The proposal consists of utilizing the existing concrete foundation and constructing a conventional two car garage of sufficient depth to house two vehicles (about 20 feet). Thus, based on the historic location of this foundation, the requested variance is the minimum necessary to alleviate the hardship."

Approval of this variance will prevent driving over the reserve drainfield area and will prevent locating a structure immediately downhill of the reserve drainfield location.

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

The applicant states the following: "As noted, to reduce additional site disturbance, as well as limit the creation of additional impervious surface, the garage will be located on top of an existing gravel parking area. Reducing site disturbance and limiting the creation of additional impervious surface adjacent to Lake Pend Oreille is in the public interest. Further, only two neighboring lots will drive past the proposed garage location. Thus, granting the proposed setback variance will not conflict with the public's use of Taku Trail."

Staff agrees that only two neighboring lots will drive past the proposed garage location.

This department received no disagreement on this application from any routed agency, including Bonner County Road & Bridge Department and Samowen Fire District.

This department has received negative public comments from the following parties:

April 21, 2016: Jeanne and Jim Rolph, owners of Lot 5 in the plat of Mountain View Shores, which is the second lot to the southeast of the lot in question.

April 16, 2016: John and Kimberly Felts of Spokane, WA.

Public comments summary and department response are detailed below.

G. Stormwater plan

The review of the variance itself does not require a stormwater plan or review pursuant to BCRC 12-720.3(k) because the proposal does not result in the creation of additional impervious surface, as defined. A stormwater management plan will be required when a Building Location Permit is submitted for this site, if the BLP would create new impervious surface, pursuant to BCRC 12-720.2.

H. Land capability report

A land capability report was submitted to the record by Marty Taylor of James A. Sewell and Associates, in accordance with BCRC 12-233 and 12-222(j), which states:

The site has demonstrated the ability to support the proposed garage since ca. 1971. Based on physical site characteristics, the proposed development area is satisfactorily suited for the intended use, subject to the corresponding variance request for setback relief. The site has demonstrated that it is capable of withstanding the disturbances without risk of harmful consequences as a result of floods, sewage, drainage, erosion, sedimentation, geological or surface slippage pursuant to Bonner County Revised Code, Section 12-222(j).

As stated in this report, this finding is dependent on approval of the corresponding variance request.

I. Agency Review

The application was routed to agencies for comment on February 22, 2016. The following agencies commented:

Panhandle Health District

Samowen Fire District

School District #84

Department of Lands (Sandpoint)

Department of Water Resources

U.S. Forest Service

Bonner County Road & Bridge Department

Ellisport Bay Sewer District

Department of Fish & Game

Department of Environmental Quality

U.S. Fish & Wildlife Services

All routed agencies had either no response or responded with no comment, save for the Idaho Department of Water Resources, which questioned the existence of a water right on the lot. This comment was forwarded to the applicant and is not material to the review at hand.

J. Public Notice & Comments

The following public comments were received:

April 16, 2016: John and Kimberly Felts of Spokane, WA.

April 21, 2016: Jeanne and Jim Rolph, owners of Lot 5 in the plat of Mountain View Shores, which is the second lot to the southeast of the lot in question.

The Felts comments raised the issues of fire safety and emergency services access if the reduced setback was approved.

The Felts comments also proposed that if the variance was to be approved, that it be done so with the condition of improving Taku Trail frontage for the lot in question (lot 3) to county road design standards with a 20-foot wide travelway.

Department response to Felts comments: This proposal was routed to both Bonner County Road and Bridge and the Samowen Fire District. Neither objected to this proposal.

Bonner County Revised Code does not grant the Planning Department the authority require road improvements as a condition of variance approval.

April 27, 2016 Applicant response to Felts comments: "The proposed building location does not conflict in any way with vehicle access, emergency or otherwise, traversing Taku Trail. Rather, the proposed building location is set back between 7 feet and 18 feet from the closest travelway edge. Further, Taku Trail is located within a 50 foot wide platted, public right of way. As such, there is ample room to widen the travelway well within the platted right of way. Consequently, the requested setback will neither impede use of the present travelway, nor will the building location prohibit future road widening. Lastly, there is no evidence in the record supporting the comment that Taku Trail be improved to any standard. The

requested variance adds no traffic to this travelway. In fact, the public works department has no objection to the variance as requested."

"The applicant does concur with a variance condition prohibiting blocking or otherwise obstructing use of Taku Trail during construction activities. This makes sense."

The Rolph comments raised issues of road width, the possibility of vehicles being parked within the reduced setback, protection of existing wildlife corridors, and whether the approved development would push wildlife into the using the road travelway itself more frequently.

Department response: This proposal was routed to both Bonner County Road and Bridge and the Samowen Fire District. Neither objected to this proposal. Additionally, this department has authority to regulate for wildlife protection only in the process of reviewing new subdivisions, per BCRC 12-74. No subdivision is proposed here. Bonner County Code does not grant this department the authority to directly consider the wildlife impacts of this variance proposal.

For the record, this application was routed to the Bonner County Road and Bridge Department, Idaho Department of Fish & Game, Idaho Department of Environmental Quality, Idaho Department of Lands (Sandpoint), the U.S. Fish & Wildlife Service, and the U.S. Forest Service. None of these agencies objected to this proposal.

Findings of Fact

1. The application states that the subject property was platted in 1957.
2. A flat concrete and gravel parking area exists on the site in question. It was built in about 1971 according to the submitted application, and is situated within the required 25-foot standard right-of-way setback. It is set back seven feet from the right-of-way.
3. The application states that the existing concrete and gravel foundation provided a parking area for a mobile home in 1971.
4. A substantial amount of the developable space on this lot is devoted to the reserve drainfield area, per supplemental information from the applicant.
5. Based on the notes for pre-application meeting 2016-0002, the current septic system is located on the waterward side (rear, northeast side) of the existing SFR.
6. County records indicated, and applicant submitted photos support, the finding that entire lot is gradually sloping. The application indicates slope of about 20%.
7. The site is developed with an SFD and residential outbuildings.
8. The Bonner County Planning Department has received two negative public comments on this proposal.
9. The Bonner County Planning Department has received no negative comments from routed agencies.

Conclusions of Law:

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.

Conditions of approval:

A-1 The Taku Trail travelway shall not be used a construction staging area or for the storage of materials.

Standard permit conditions:

B-1 The use shall be developed and shall be operated in accordance with the approved site plan.

B-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.