

MINUTE ORDER

BONNER COUNTY PLANNING and ZONING COMMISSION PUBLIC HEARING MINUTES APRIL 7, 2016

CALL TO ORDER: Acting Chair Hall 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 Acting Chair Margaret W. Hall; Greg Snow; Don Davis; and Kris Sabo

ABSENT: Commissioners Mitch Martin and Brian Bailey

ALSO PRESENT: Interim Director Saegen Neiman; Planner II Shauna Harshman; Planner II Jason Johnson; 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 V471-16 – Variance Request – Bulk (Height & Roof Pitch) – Carrie Gale are seeking variance approval to increase bulk (height and roof pitch) in order to reconstruct an existing 1963 house that is located 28 feet from the summer pool elevation of the Pend Oreille River. The increased height will allow the applicant to modify the roof pitch in order to better shed snow. The parcel is generally located about 6 miles west of Sandpoint on North Riviera, in Section 4, Township 56 North, Range 3 West, B.M.

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 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. Ms. Harshman addressed a public comment that had been received after the staff report had been prepared. A copy of the comment was provided to the Commission for their review.

APPLICANT PRESENTATION: Project Representative Martin E. Taylor of James A. Sewell and Associates discussed the “bulk.” In response to Commission

inquiries, Mr. Taylor addressed the removal of the old house and the location of the septic.

STAFF INPUT: In response to Commissioner Hall's inquiry, Interim Director Saegen Neiman explained the routing of the project to the Bottle Bay Water and Sewer and noted it was an error.

FURTHER APPLICANT PRESENTATION: Mr. Taylor addressed the 2.5 acre minimum in regards to sub-surface sewage and individual wells.

Mr. Neiman discussed the Panhandle Health District's approval of a building location permit would include the verification that the septic system would have to be able to accommodate the structure being built.

Mr. Taylor also addressed snow shed and stormwater plan.

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 V471-16 to increase bulk (height and roof pitch) in order to reconstruct an existing 1963 house that is located 28 feet from the summer pool elevation of the Pend Oreille River, 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. Commission Sabo seconded the motion.

VOTED upon and the Chair declared the motion carried unanimously with a vote of 3-0.

Background:

A. Site data: The subject property is an unplatted parcel, of approximately 31,534 square- feet zoned Rural-5. The subject property and abutting land uses are primarily residential, also zoned as Rural-5. The parcel is located on the Pend Oreille River with a residence built circa 1963.

B. Access: Access is provided by North Riviera Lane, a \pm 14-foot wide, private, gravel surfaced travel way located within a 30-foot wide ingress, egress and utility easement.

C. Environmental factors: The subject parcel fronts the Pend Oreille River to the east. The property gently slopes from North Riviera east toward the Pend Oreille River at approximately 2.2 percent. The subject parcel is within a mapped Special Flood Hazard Area (D-FIRM-0925E), map designation AE. The property is vegetated with trees, shrubs and grasses. The site does not contain any mapped wetlands. The subject property shows no critical wildlife areas, according to the Bonner County Comprehensive Plan Maps.

D. Services: Sewage is disposed of via individual septic tank and leach field, and water is provided to the site via individual well. Avista provides power to the property, and the site lies within the Westside Fire District, and Bonner County School District #84.

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	Rural-5	Residential
North	Rural Residential	Rural-5	Residential
East	Rural Residential	Pend Oreille River	Borders subject parcel to the east.
South	Rural Residential	Rural-5	Residential
West	Rural Residential	Rural-10	North Riviera, the railroad tracks and Highway 2 border the subject property to the west.

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 residence was constructed in 1963, prior to the adoption of Ordinance 140, establishing a 40 foot shore land setback, as well as prior to the December 5, 2008 effective date of Ordinance 501 regulating the "bulk" of nonconforming structures.

(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.

"Bulk" variances have been approved under similar circumstances whereby the height of nonconforming buildings has been increased, typically to accommodate increased roof pitches. A literal interpretation of this standard would deprive the applicant of a right commonly enjoyed.

(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.

Bonner County's nonconforming use codes provide for the reconstruction of nonconforming structures so long as the reconstruction does not increase the nonconformity (BCRC 12-334(b)). While the bulk of the structure is being increased, the location of the proposed home does not further encroach into the water front setback.

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

The home was constructed in 1963, while the shore land setback was not adopted until January 11, 1980 (Ordinance 140). The landowners acquired the property in 2004. The applicant is proposing to tear down and reconstruct a new dwelling in the same location, forward of the 40-foot set back.

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

The proposed roof height would be the minimum necessary to allow the designed truss system to tie into the proposed roof line of the reconstructed residence set back beyond 40-feet from the summer pool. The 3 foot, 11 inch height ("bulk") increase is the minimum necessary to alleviate the hardship imposed by a less steep roof.

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

The "Substantial Improvements" to the structure will require that the home be constructed in compliance with current floodplain standards. As a result the applicant is required to submit engineered stamped plans showing compliance with the Flood Hazard Reduction standards of Bonner County Revised Code, Title 12, Chapter 7. According to the application, the reconstruction is still subject to flood damage prevention ordinance standards, as applicable, and is subject to the previously approved stormwater management plan (See Building Location Permit 2015-0627). As county code authorizes the reconstruction of a nonconforming portion of a structure, the proposed "bulk" variance request is not in conflict with the public's interest.

G. Stormwater plan

A stormwater management plan was required pursuant to BCRC 12-720.2. The plan by Tim C. Blankenship of James A. Sewell & Associates, LLC was approved by the Bonner County Planning Department as part of building location permit number 2015-0627, approved October 27, 2015. The plan calls for installation of a silt fence, straw wattles and straw mulching during construction and post construction reseeding and straw mulching. The plan also calls for the installation of grassy infiltration areas.

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:

- FLOODS: The proposed building site is located within a mapped flood hazard area. The residence will be constructed in accordance with flood damage prevention ordinance standards, as applicable.

- SEWAGE: The project is served by a subsurface sewage disposal system (see PHD permit 13-09-128022).
- DRAINAGE: Reconstruction is subject to the previously approved Stormwater management, grading and erosion control plan (see Building Location Permit 2015-0627).
- GEOLOGICAL OR SURFACE SLIPPAGE: The property does not include any identified "mass failures" (landslides) (Idaho Department of Lands *Mass Failures in Pend Oreille Lake and Lower Clark Fork Watersheds* GIS map).

The report further states the site has demonstrated the ability to support the existing house for 53 years. Based on physical site characteristics, the proposed development area is satisfactorily suited for the intended use, subject to compliance with flood damage prevention and Stormwater management, grading and erosion control standards, and subject to the corresponding variance request authorizing the roof height increase. 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).

I. Agency Review

The application was routed to the following agencies for comment on February 9, 2016:

*Panhandle Health District
Westside Fire District
Department of Lands (Sandpoint)
Avista Power*

*Bonner County Public Works Department
Department of Fish & Game
Bottle Bay Rec. Water & Sewer District*

The following agencies commented:

Bonner County Public Works, Response dated February 24, 2016:

No comment

J. Public Notice & Comments

No public comments had been received at the time staff report was prepared.

Findings of Fact

1. The subject home was constructed in 1963, 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 attached to single family dwellings are a common right enjoyed by those within the R-5 zoning district.
4. The existing shoreland setback for the residence is 28 feet. The resulting setback from the new porch will be 28 feet, with an increase in height of 3 feet, 11 inches.

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:

Standard permit conditions:

- 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.

Conditions to be met prior to issuance of the permit:

- B-1** The applicant shall obtain Building Location Permit approval for the proposed structure.
- B-2** At the time of building location permit, 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 approved.
- B-3** Prior to issuance of the variance, the applicant shall obtain Development Permit approval for the construction of the structure within the designated special flood hazard area associated with Pend Oreille River.