

MINUTE ORDER

BONNER COUNTY PLANNING and ZONING COMMISSION PUBLIC HEARING MINUTES NOVEMBER 5, 2015

CALL TO ORDER: Chair Temple 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 Steve Temple; Vice Chair Brian Bailey; Margaret W. Hall; Greg Snow; Mitch Martin; Don Davis; and Kris Sabo

ABSENT: None

ALSO PRESENT: Planner Clare Marley, AICP; Assistant Planner KayLeigh Miller; and Administrative Secretary Tina Smith

PUBLIC HEARINGS:

CONDITIONAL USE PERMIT

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.

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 V465-15 – Variance Request – Lot Size Minimum – Randolph “Earl” & Madelen Rowe are requesting a lot size minimum variance for an existing 5-acre parcel, where a 10-acre minimum is required by the Bonner County official zoning map and zoning codes. The subject property was created in 1991, at a time when zoning required a minimum parcel size of 10 acres. Current zoning is A/F-10 (10-acre minimums). The subject property is located on Jacobson Road in Section 34, Township 58 North, Range 1 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: Planner Clare Marley, AICP, 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. Marley reviewed a public comment received in opposition from Steve and Lori Swan.

APPLICANT PRESENTATION: Project Representative Martin E. Taylor, AICP, of James A. Sewell & Associates advised that he would rely on the record for details on this project. He discussed the history of this proposal and commented on maintaining an agricultural business, neighboring parcels, and density. Mr. Taylor addressed the comment letter received from Steve and Lori Swan.

The letter was passed to the Commission for their review.

PUBLIC/AGENCY TESTIMONY: Tom Cleveland did not sign up to testify but wished to comment on this proposal. He commented on the following: This project is a zone change not a variance. He noted that everyone should have to follow the rules.

APPLICANT REBUTTAL: Mr. Taylor clarified that this project is a variance and not a zone change. He addressed density and explained how this project merits approval.

STAFF CLARIFICATION: Ms. Marley addressed the placement of a non-residential structure.

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

CLARIFICATION BY APPLICANT: In response to the Commission inquiry regarding clarification, Mr. Taylor addressed the original 20 acres (parent parcel) and the remaining remnant which is this project.

MOTION: Commissioner Snow moved to approve this project FILE V465-15 for a lot size minimum variance to allow a 5-acre tract in the Ag/Forestry-10 zoning district, 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 Snow 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 Martin seconded the motion.

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

STAFF INPUT: Ms. Marley reviewed the appeal process.

Background:

A. Site data: The 5-acre tract is vacant, agricultural land.

B. Access: The property is accessed from Jacobson Road, a public right-of-way classified as a "collector." There are no proposed changes to the access.

C. Environmental factors: There are no water courses, springs or wells on site. The property is not within a mapped flood hazard zone (FIRM Panel #730E). The land is level and contains Mission silt loam soils. There are no wetlands present, according to the U.S. Fish & Wildlife wetlands inventory map. The site is used for growing garlic.

D. Services: There are no developed water or sewer services on site. However, the property is within the Oden Water District. The property is within the Northside Fire District.

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Ag/Forest Land	AF-10	Vacant farmland
North	Ag/Forest Land	AF-10 & AF-20	1- To 5-acre ag/residential tracts
East	Ag/Forest Land	AF-10 & AF-20	5- to 10-acre ag/residential tracts
South	Ag/Forest Land	AF-10 & AF-20	10-acre homesites; small-acreage farming
West	Ag/Forest Land	AF-10 & AF-20	1-acre and 4.6-acre tracts and 10- to 40-acre agricultural tracts

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 property was created from a division of a 20-acre parcel into 15- and 5-acre tracts in 1991. The creation of the subject 5-acre tract was contrary to the official zoning map designation of Agricultural, which required 10-acre minimums. The current owners did not create the land division. Adjoining parcels of land on all four sides are at the minimum 10 acres or smaller, leaving no available land to remedy the substandard parcel through a boundary line adjustment. The application notes the current landowners were "innocent purchasers" of the property.

(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.

According to the application, the property is surrounded by 14 smaller parcels of 5 acres or less. The literal interpretation of Title 12 would deprive the applicant of the ability to develop the land by placing a home or other structures because BCRC 12-130A states: "...The planning director shall not issue a permit unless the intended uses of the buildings and land conform in all respects with the provisions of this title."

(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.

As noted in the application, there are other parcels in the immediate area that do not meet the minimum Ag/Forestry zoning district minimum. The application also states Bonner County has granted other lot size minimum variances. If approved, the lot size variance would allow the applicants to seek building location permits from Bonner County for structures permitted in the Ag/Forestry district.

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

The applicants did not create the substandard parcel, according to the application, but were "innocent purchasers" 10 years after the fact.

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

The 5-acre tract is a remainder from a 1991 land division. The applicants are not seeking to further reduce the size of the property.

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

The applicants have submitted a letter of support from the University of Idaho, indicating the land is capable of being used for small-acreage farming. There have been no letters of opposition from the reviewing agencies or members of the public.

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. Land capability report

A land capability report was not required because the proposal does not result in the creation of new impervious surfaces, is not located on steep slopes or within a floodplain hazard area and does not create new sewage disposal services (BCRC 12-233 and 12-222(j))

I. Agency Review

The application was routed to the following agencies for comment on August 19, 2015. The record shows the following comments:

Panhandle Health District: No comment (returned comment sheet dated 8/21/15).

Bonner County Public Works: No comment (email dated 9/10/15).

Northside Fire District: No reply.

J. Public Notice & Comments

The following public comments were received: None.

Findings of Fact

1. The 5-acre tract was created in 1991 with the division of a 20-acre parcel into a 15-acre and a 5-acre.
2. The property was zoned Agricultural (10-acre minimums) and is currently zoned Ag-Forestry-10 (10-acre minimums).
3. The current landowners did not create the parcel of land.
4. The adjoining parcels on all four sides are either at the zoning district minimum or smaller.
5. There are other parcels in the vicinity that are smaller than 10 acres.
6. There have been no comments from public agencies or the general public on the proposed variance.

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.