

**BONNER COUNTY PLANNING and ZONING COMMISSION  
PUBLIC HEARING MINUTES  
THURSDAY, APRIL 5, 2018**

**CALL TO ORDER:** Chair Davis called the Bonner County Planning and Zoning Commission hearing to order at 5:30 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 Don Davis; Vice Chair Kris Sabo; Taylor Bradish; Trevor Kempton; Sheryl Reeve; and Suzanne Glasoe

**ABSENT:** Brian Bailey

**ALSO PRESENT:** Planning Director Milton Ollerton; Floodplain Manager Jason Johnson; Planner I Marcus Pecnik; Planner I Sam Ross; Planning Technician Halee Sabourin, and Administrative Assistant II Jeannie Welter

**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: **3/1/2018** Hearing no changes or objections, the Chair declared the minutes approved as written.

**PUBLIC HEARING:**

**AMENDMENT**

**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 AM161-18 - Amendment – Bonner County Revised Code (BCRC) Title 12 Text Amendment – Bonner County** is proposing to amend the following sections:

**BCRC 12-264:** Administrative Exceptions: Increase the administrative exceptions already allowed in the ordinance from one-foot to ten percent on setbacks and from 2 percent to 5 percent on lot size and subdivision design.

**BCRC 12-238:** Administrative Variances: This creates an administrative variance up to 30%. This process, after noticing requirements are met, allows the Director to approve the file or set the file for a public hearing. Variances greater than 30% of requirement would follow the regular variance process.

**BCRC 12-334:** Industrial Zones: Amend the uses allowed in the Industrial Zone identifying agriculture processing uses as more appropriate.

**BCRC 12-336:** Resource Based Code: Amend the uses allowed to expand uses allowed in a gravel pit located in the industrial zone.

**BCRC 12-337:** Accessory Uses: Add this section listing appropriate accessory uses in the varying zones in the County.

**BCRC 12-340:** Classification of New Uses: Amend the numbering for formatting purposes.

**BCRC 12-612:** Additional Requirements: Clarifying that splits larger than 20 acres are permitted after simple review by staff.

**BCRC 12-616:** Certificate of Compliance, Conditional Certificate of Compliance: Moves the date for which a parcel may legally exist to the adoption date of the last major rewrite of the ordinance (November 18, 2008).

**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:** Planning Director Milton Ollerton and Floodplain Manager Jason Johnson presented a summary of the proposed changes and previously circulated staff report, concluding this project is consistent with Bonner County Comprehensive Plan. Staff recommended a few changes to the previously proposed changes as follows:

**PUBLIC/AGENCY TESTIMONY:**

The following individuals testified on the record:

Jennifer Casey – She inquired about the list of animals.

Response – Commissioner Davis stated that was not part of the proposed changes and therefore not relevant to this hearing. He recommended she get clarification from staff regarding her questions at a later time.

Matt Linscott – 12-616 (E) – How many do you have to meet?

Staff responded stating you have to meet one.

Marty Taylor – Certificate of Compliance – 20 acre minimums for family splits and for two lot splits (Ord 136, Section 17, effective 10/20/78, Ord 293, Sections B & C, effective 8/12/95), buyer beware county, see nonconforming books of record (Ord 140, Section 16.05, eff. 1/11/80), old rural zoning lot size minimum (Ord 140, Section 9.02), zoning doesn't create bad splits, profound lack of understanding with regard to past and present ordinances, requested that the commission continue this part of the proposed changes for further review, noncompliant vs. nonconforming, why. Administrative variance process – contrary to hearing examiner duties. Resource base table – footnote to Batch Plants – strike footnote 22. Accessory use table – Footnote #1, why limit to 3? Administrative exceptions – mathematical rounding (12-264).

Staff response – Jason Johnson responded to the "Why" question stating that over time the code and searching through the history of the code is getting more and more complex with time. Director Ollerton stated the Planning department does recognize and understand the non-conforming code and we understand that when we change the date to 2008 we are affecting a limited number of parcels. He further stated staff is trying to make the process

easier. He concurred with comment regarding accessory use and stated perhaps the statement relating to permitted use should be removed.

Jack Mervin – look at the existing laws, if staff has a 97% approval rate then that is good.

Staff response – Director Ollerton explained that granting a variance is not a positive thing.

Carol Jenkins – Administrative exceptions – Changing 1 foot to 10% to waterfront setbacks, 40 feet has always been the setback. If this gets changed to 10% we would be looking at 36 feet setback.

Staff response – Director Ollerton stated staff did not do an analysis of variances that have been granted on the waterfront. He stated that the word waterfront can be removed from this section.

Steve Lockwood – Variance – understanding what a variance is and concerns with waterfront setback, concerns with blanket amnesty,

Staff response – Director Ollerton stated the county is currently working on digitizing all of its documents. He further stated eventually it will be easier to identify illegal splits and notify violators so the problem can be rectified.

Jim Shepard – Illegal split prosecution

Staff response – Director Ollerton stated that its more of a notification process than a prosecution. He further stated before someone could obtain a building location permit to build on the property it would have to be brought into compliance.

Darren Perdy – Want to do what I want to do with my land, over reaching?

Staff response – Director Ollerton stated the department is trying to decrease the overreach with these changes.

Jackie Myers – Purchased a bad split and have to spend a lot of money bringing it into compliance in order to build.

Darla Fletcher – Go after the people who are doing the bad splits.

Brian Wood – Batch plants.

Staff response – Director Ollerton stated the commission could strike footnote (22).

In audible – Like the fact that you can't go lower than five acres; keep in mind changing from footage to a percentage; Administrative variance questions.

Staff response – Director Ollerton clarified the process.

Diane Wheeler – Too many subjects to consider all at once. She asked for clarification regarding "employee housing".

Staff response – Director Ollerton stated if the housing is an integral part of a commercial operation it is allowed. He further addressed fears she had regarding subdivisions.

Brian Donte – Certificate of compliance – timing of changes makes it seem there is something more at hand. Comments on "Draft" Sagle Community Plan.

Response – Commissioner McDonald stated the Plan is a boiler plate because you have to start somewhere. He further stated the sub community plans are not part of the hearing on this date.

Susan Cane – Sub community comments, too many topics, Kootenai County got rid of regulations.

Staff response – Director Ollerton explained to the commission that Kootenai County changed their ordinance to be more like ours. They made the building permit optional. They called our department for examples for building location permits and processes.

Ingri Cassel – Too many topics to process.

James Semers – A lot of topics and looks like we have a lot of ground to cover. These changes are unnecessary. It is profiteering.

Staff response – Director Ollerton stated the changes being proposed are actually lessening the regulations compared to what they currently are. He further stated if we leave them the same the "overreach" will continue.

Bill Shine – What is the county going to do so that people who are buying property innocently will know they have an illegally split parcel?

Staff response – Director Ollerton stated the Planning department has no oversight in what gets recorded in the Recorder's office. The state law says that anyone can record anything in the Recorder's office.

Nathan Wood – Developers are the problem.

Doug Gunter – Following the rules will keep us from becoming Coeur d'Alene.

David Trebest – We followed the rules, we were pleased with the work we had from the Planning department and we support what is being attempted tonight.

Grace Bauer – Member of the Kootenai City Counsel. Kootenai is within the area of city impact. She made comments regarding granting amnesty for violators. Administrative variance being granted without neighbors knowing about it.

Staff response – Director Ollerton stated the amnesty is for anything before 2008, anything after that would have to be reviewed for compliance. Administrative variance process has a review which includes area of city impact and neighbor noticing requirement.

Tom Fletcher – Do what you can to preserve the natural qualities of this area that people appreciate.

Carlyne Tallakson – Comment about just finding out about the meeting.

Response – Chair Davis stated that meeting was published in the paper. Director Ollerton stated the department posts in the legal section of the paper, on the bulletin boards at the county building, on our website, and we also have a Facebook page that we post on as well.

**APPLICANT REBUTTAL:** See staff responses above.

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

Commissioner Glasoe suggested hearing one item at a time.

Commissioner Bradish recommended removing waterfront from the administrative exceptions. He stated the commission could put more work into the administrative exceptions and certificate of compliance sections but move forward with a vote on the other sections.

Commissioner Glasoe stated she believes the administrative variance needs further work as well.

Chair Davis asked legal counsel's advice regarding breaking up the items. Deputy Prosecuting Attorney, Bill Wilson stated as he understands the statutes, the Planning and Zoning Commission is required to render a recommendation to the Board of County Commissioners within 10 days of the hearing. The P&Z Commission can request a continuance of this file to the Board and upon the Board's approval the file can be continued back to the P&Z Commission.

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## Motion by the governing body:

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### PLANNING AND ZONING COMMISSION

**MOTION TO APPROVE ORDINANCE AMENDMENT:** Commissioner Sabo moved to request an extension on the file AM161-18 for the purpose of continuing to work through some of the issues. Commissioner Sabo further moved to recommend to the Board of County Commissioners the approval of the following tables as amended:

Accessory Use table BCRC 12-337 striking the sentence "Accessory Buildings located on the same site as a permitted or conditional use (1)", also striking corresponding footnote number 1, "Accessory building shall be limited to three (3) per acre and lot coverage of ten percent (10%)";

Resource Based Use table 12-336 striking footnote number 22, "A Batch Plant is only permitted in the Industrial zone with an active gravel pit";

Industrial Use table 12-334, Classification of New Uses Within Zone Districts 12-340, and Additional Requirements 12-612 as written. Commissioner Glasoe seconded the motion.

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

### 12-264: ADMINISTRATIVE EXEMPTIONS:

An administrative exception, not to exceed ~~one foot ten percent~~ (1'10%) of any dimensional requirement applicable to waterfront, front, side, rear and flanking street setbacks, and a ~~two five percent~~ (25%) exception to subdivision design depth to width standards, ~~or parcel/lot size~~ may be granted by administrative action of the planning director without public notice and without public hearing. (Ord. 501, 11/18/2008)

**STAFF:** This proposed change would have the effect of increasing the dimensions the Director is allowed to review and approve for an exception to the setback, subdivision design depth to width standard, and parcel/lot size without holding a public hearing. Currently the allowance for setbacks is one (1) foot. On a ten (10) acre parcel, for example, where the setback requirement is forty (40) feet the proposed exception would allow a four (4) foot change.

This tool is rarely used in the Planning Department, but offers the opportunity to mitigate slight errors when one is designing a home or addressing opportunities in a land division. Changing the exception from one (1) foot to ten percent (10%), for example, would make a more accurate application of the exception as it crosses the zoning definitions. A one (1) foot variation where five (5) feet is required is a twenty percent (20%) change, while a one (1) foot change where forty (40) feet is required is hardly noticeable. This proposal establishes a process where a small change to setbacks can be approved administratively instead of costing the expense of a full variance.

The next would be the lot size dimensions. Currently, the ordinance allows a five (5) acre parcel to be 4.95 acres. A ten percent (10%) deviation would allow for a

4.5 acre parcel with administrative approval. This is not a major deviation and would allow more parcels to come into compliance with current zoning.

The administrative exception is not tracked separately and when requested, is usually in conjunction with a building location permit. The only way to identify the number of exceptions issued would be to review all the BLP's individually. There appears to be no incident of administrative exception in the last two years.

Going forward, the administrative exception will be tracked separately. The comments from the city of Kootenai and Dover to establish clear criteria for granting the exception are not ignored, there has simply not been a criteria identified to be used in the past. The Planning Commission may consider the following language: "An administrative exception, applying the standards for a variance listed in BCRC 12-234, not to exceed..." This language would require the applicant to prove such a deviation is warranted.

## 12-238 ADMINISTRATIVE VARIANCES

- A. The director may grant a variance, as an administrative decision, of up to thirty percent (30%) of the following requirements: lot size, lot width or depth, structure height, setback distances for the front, back, or side yards, or parking space.
- B. The applicant shall submit an application for administrative variance along with the appropriate fee.
- C. The application shall be processed as follows:
  - 1. Application and Administrative Requirements: A site plan and letter of intent shall be submitted for review together with all appropriate fees as established by the adopted fee schedule. The burden of proof lies upon the applicant to show whether characteristics of the site create an undue hardship.
  - 2. Area of City Impact: If the property is located in an area of city impact, the County shall notify the affected city and allow the required amount of time for a response.
  - 3. Notifications: Upon acceptance of an application, and while in ACI review, if appropriate, the Director shall provide notification by mail of the variance request to the owners of parcels within three hundred feet (300') of the external boundaries of the parcel and shall provide such individuals a period of twenty-one (21) calendar days from the date of the mailing to submit comments concerning the proposed variance.
  - 4. Action on application: Based on the comments from staff, agency, and those from affected property owners, the Director shall review the proposed request and shall either approve, approve subject to conditions, or deny the application or forward it to the Planning Commission for a public hearing per section 2.3 within seven (7) working days from the end of the twenty-one (21) day comment period. In considering comments, the director shall evaluate whether granting the variance will be consistent with the standards listed in BCRC 12-234: Variances, Standards for Review of Applications.

- 5. Notice of Decision: The director shall give notice of the decision granting or denying the application to those previously notified of the pending application.
- D. The planning commission shall consider all other applications for variances in accordance with the notice and hearing procedure of this chapter.
- E. Appeal: The decision of the Director may be appealed as follows:
  - 1. Filing Time Limit; Fee: Any affected person may file an appeal of the final decision of the Planning Director with the Planning Department within twenty eight (28) days after the final written decision of the Planning Director has been issued. The appellant shall pay the fee required by this title upon filing the appeal. An appeal shall not be considered to be filed until such fee has been paid. Failure to file the appeal within the time limits shall cause automatic dismissal of the appeal.
  - 2. Notice Of Appeal Contents: The notice of appeal shall be in writing and shall provide the grounds for the appeal and set forth the issues of appeal.
  - 3. Procedures For Consideration Of Appeal:
    - i. Within sixty (60) days of the receipt of the appeal, the Board shall conduct a public hearing. The hearing shall be conducted in the same manner using the same standards, as if the Board had original jurisdiction to hear the application.
    - ii. Upon consideration, the Board may affirm, reverse, or modify the decision of the commission/hearing examiner, after compliance with applicable procedural standards.
    - iii. The decision of the Board shall be final, and any further recourse shall be as provided by law.

**STAFF:** An administrative variance is one in which the regular procedures of a variance are followed, differentiating only in removing the requirement for a public hearing. Idaho Code 67-6516 Variances states "Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration." This administrative process guarantees that opportunity. The Area of City Impact is still required to be noticed and the neighboring properties within 300 feet of the parcel in consideration are required to receive notice with a 21-day comment period.

In the last three years, there have been 44 applications for variances. With a 30% allowance for administrative variances, four (4) of those applications would have been affected. With a 40% allowance, eight applications and at 50% allowance, 13 of the last 44 variances would have been affected. At 30% allowance, this would affect less than ten percent of the variances in the last three years.

The proposed ordinance would require the director to review the proposed variances against the standards of a variance listed in BCRC 12-234. The director has the option to approve, approve with conditions, deny or send the application to a hearing with the Planning Commission. Following a decision, there is an appeal process allowing those affected by any decision to appeal to the Board and ultimately request a judicial review if so desiring.



In comments received from the city of Kootenai and Dover, there was concern that this process does not follow Idaho Code. A review of this proposed ordinance against Idaho Code is as follows:

Idaho Code 67-6509 lists the requirements for holding a public hearing to amend the County comprehensive plan. Idaho Code 67-6511 lists the requirements for amending the zoning ordinance and specifically refers to I.C. 67-6509 for holding a public hearing. Idaho Code 67-6512 lists the requirements for approving a special use or conditional use permit and specifically refers to I.C. 67-6509 for holding a public hearing. In contrast, Idaho Code 67-6516 describing the requirements for approving a variance, provides no reference to I.C. 67-6509 for a public hearing and states "prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration."

The proposed ordinance provides for notice and an opportunity to be heard.

#### 12-334: INDUSTRIAL USE TABLE:

TABLE 3-4 INDUSTRIAL USE TABLE

Use	Zoning District									
	F	A/F	R	S	C	I	RSC	RE C	AV	
Accessory building	P	P	P	P	P	P	P	P	P	
Electronics: electrical and related parts; electrical appliances, motors and devices, electrical and mechanical;					<u>C</u> (12)(13)	<u>P</u> (2)				
Food and dairy products processing and manufacturing including frozen foods greater than 2000 square feet	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u> (2)	<u>P</u> (2)	<u>C</u>			
Food and dairy products processing and manufacturing including frozen foods less than 2000 square feet (15)	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			
Furniture manufacturing and upholstery					<u>P</u> (12)(13)	<u>P</u> (2)				
Industrial and manufacturing, fabricating or processing of products (1)						<u>P</u> (2)				
Industrial, light					P (3)	P	P (3)			

Instruments: scientific and precision; medical and dental; timing and measuring -				<u>C</u> (12)(13)	<u>P</u> (2)					
Junkyards/wrecking yards (5), (6)					<u>C</u>					
Laboratories: dental, medical, and optical				<u>C</u> (12)(13)	<u>P</u> (2)					
Machine shop				<u>C</u>	<u>P</u> (2)	<u>C</u>				
Manufacturing of explosives (7)					<u>C</u>					
Pharmaceuticals: cosmetics, drugs, perfumes, toiletries and soap (not including refining or rendering of oils or fats)				<u>C</u> (12)(13)	<u>P</u> (2)					
Sawmills, shingle or planing mills, woodworking plants (8), (9)	<u>C</u> (4)	<u>C</u> (4)				<u>P</u>				
Slaughterhouses, meat processing or rendering plants (8), (10), (11)	<u>C</u> (4)	<u>C</u> (4)				<u>C</u>				
Meat processing greater than 2000 square feet	<u>C</u>	<u>C</u>		<u>C</u> (2)	<u>P</u> (2)	<u>C</u>				
Meat processing less than 2000 square feet (14)	<u>P</u>	<u>P</u>		<u>P</u>	<u>P</u>	<u>P</u>				
Warehouse storage						<u>P</u>				

#### Standards:

1. Fabrication or assembly of products, wholesale distribution facilities, such as warehouses, bulk plants, etc., not used for agricultural purposes.
2. Uses must meet the following criteria:
  - a. Carried on in such a manner as to be protected from fire and explosions.
  - b. Emits no obnoxious odors.
  - c. Exhaust no waste or dust.
  - d. Discharge no treated or untreated sewage or industrial waste.
  - e. Carry on any operation that would produce heat, light or glare perceptible from any property line of the industrial site.

3. Use must be wholly contained within a single building having less than 10,000 square feet. Buildings larger than 10,000 square feet are subject to a conditional use permit in the commercial district.

4. Where access to the site is by road, the road shall be located within a recorded easement or public right of way, and constructed to the appropriate standard set forth in title 2 of this code or appendix A of this title.

5. The site shall provide for adequate screening by using a sight obscuring fence and a strip of type A landscaping at least 20 feet wide around the perimeter of the site.

6. No materials, parts, automobiles or junk will be visible from any public right of way. A performance bond or developer's agreement may be required for assurance of compliance with the provisions of this conditional use.

7. Manufacturing of explosives shall have a minimum area of 10 acres and shall be at least 1,000 feet from any residential district or residential use. The use shall be subject to approval of the local fire officials and all other applicable agencies. Facilities will not be approved if not located in a fire district. The use shall meet all other local, state and federal requirements.

8. All facilities shall be designed and located with full consideration to the safety factors involved with such a use and to minimize the noise, smoke, dust and other nuisance factors to nearby land uses.

9. All sawmill, shingle or planing mill, or woodworking plant facilities must meet air quality standards applicable at the time of issuance of this permit. All facilities must make provision for fire protection; facilities must also meet the requirements and be approved by the appropriate fire district. Facilities will not be approved if fire protection is not provided.

10. Off street parking for all patrons shall be provided.

11. Slaughterhouse, meat processing and rendering plants shall have a minimum area of 5 acres and all facilities shall be at least 600 feet from any existing dwelling other than the owner's.

(Ord. 501, 11-18-2008)

(12) In conjunction with a retail storefront.

(13) Square footage limit for manufacturing in the Commercial Zone shall be limited to 1000 sq ft or ten percent (10%) of the commercial use, whichever is greater.

(14) Meat processing operations less than 2,000 square feet or as a home occupation is permitted if it meets the requirements of a home occupation.

The meat processing facility shall be a minimum 200 feet from any existing dwelling other than the owner's.

(15) Food and dairy products processing and manufacturing including frozen foods less than 2,000 square feet or as a home occupation is permitted if it meets the requirements of a home occupation. The food and dairy processing facility shall be a minimum 200 feet from any existing dwelling other than the owner's.

**STAFF:** The purpose of this change is to identify specific industrial uses that would be appropriate in Bonner County. This ordinance adds those uses while deleting uses that may not be appropriate such as rendering plants. This change does specify uses that would be appropriate in an industrial zone in the County such as machine shops, manufacturing that is relevant to the agricultural uses in the County including meat processing, food and dairy processing. This change allows such agricultural uses to occur as a home based business if appropriate size limitations are met.

City of Sandpoint comments that industrial uses such as meat processing and food processing should occur only in a commercial or industrial zone. The Rural and Ag/Forest zones comprise large acre lots or parcels. The allowance of use gets the manufacturing closer to the source while following a conditional use permit process to allow for comment and involvement from the ACI, if appropriate, and the public. Kootenai and Dover comments agree with this ordinance change.

## 12-336: RESOURCE BASED USE TABLE:

TABLE 3-6 RESOURCE BASED USE TABLE

Use	Zoning District								
	F	A/F	R	S	C	I	RSC	REC	AV
Accessory building	P	P	P	P	P	P	P	P	P
Agricultural direct marketing activities (14)		P	P	P (17)			P		
Agriculture	P	P	P	P (11), (12), (13)	P (1)	P (1)	P(1)	P (1)	P (1)
Batch Plant – asphalt and/or concrete (4) (21)	C	C	C			P (21) (22)			
Open Pit (23)						P			
Confined animal feeding operation		C							
Expanded seasonal harvest festivities (16)		C	C				C		

Fur farms, commercial (2)		C	C						
Keeping of equine animals	P	P	P	P (13)				P (9)	
Mining, Stone quarries, gravel pits, and stone mills (3), (4)	C (5)	C (5)	C (5)			C		C (10)	C (10)
Rock crushing operations	C (5)	C (5)	C (5)			C			
Seasonal harvest festivities (15)		P	P				P		
Value added agricultural processing (18)		C	C	C (19)					
Water bottling works at the source; wineries, breweries and distilleries subordinate and accessory to farming (3), (4), (5), (7), (8), (20)	C	C	C						C

Standards:

- Includes growing and harvesting of crops only. All other agricultural uses are prohibited, except where otherwise noted in this title.
- Commercial fur farms shall have a minimum area of 10 acres. All animals and runs will be housed in permanent buildings not less than 100 feet from any dwelling other than the dwelling of the owner. The operator of such a use will maintain adequate housekeeping practices to prevent the creation of a nuisance.
- Sufficient land area is required to accommodate the proposed use, and the use and any appurtenant structures shall be so arranged on the land as to minimize any adverse effects on surrounding properties. The use shall not create particular hazards to adjacent properties.
- Specified conditions with respect to emissions of noise, light, glare, smoke, odor, dust, particulate matter, vibrations or hours of operation may be prescribed differently from those required in a given district, as to be compatible with other applicable state and federal standards.
- Where access to the site is by road, the road shall be located within a recorded easement or public right of way, and constructed to the appropriate standard set forth in title 2 of this code or appendix A of this title.
- Temporary rock crushing operations located outside of city impact areas within an existing or approved gravel pit.
- 1 on premises sign, not in excess of 32 square feet, which may be lighted

from the exterior, shall be permitted when included as part of the conditional use permit application.

- A traffic plan is required describing, at minimum, the method of ingress and egress to the site, traffic circulation within the site and on premises parking and loading areas.
- The keeping of equine animals for noncommercial uses and associated nonresidential accessory structures, on property having an area of 3 acres or more is permitted, provided that animal care and waste management meet all applicable state and health district regulations and provided that the number of animals not exceed 2 equine animals on 3 acres and 1 additional equine animal for each additional acre up to a maximum number of 10 equine animals. The keeping of equine animals for noncommercial purposes on property having an area of not less than 1 acre and not more than 3 acres and associated nonresidential accessory structures may be conditionally permitted, provided that animal care and waste management meet all applicable state and health district regulations and the number of equine animals does not exceed 2.
- Mining and rock crushing activities shall be temporary, and shall be limited in lifetime and scope by conditions established by the commission.
- Includes growing and harvesting of crops. Other agricultural uses are limited, as specifically provided by this title.
- The keeping of chickens and rabbits are permitted, subject to the following standards:
  - Roosters are prohibited.
  - Up to 10 chickens, rabbits or combination thereof may be kept on lots/parcels of less than 1 acre, provided all enclosures and coops are set back a minimum of 20 feet from all property lines and from any residences other than the owner/renter.
  - Up to 30 chickens, rabbits or combination thereof may be kept on lots/parcels between 1 and 3 acres, provided all enclosures and coops are set back a minimum of 20 feet from all property lines and from any residences other than the owner/renter.
  - Up to 50 chickens, rabbits or combination thereof may be kept on lots/parcels greater than 3 acres, provided all enclosures and coops are set back a minimum of 50 feet from all property lines and from any residences other than the owner/renter.

- e. All chickens or rabbits shall be kept in a predator resistant enclosure during daytime hours and shall be enclosed in a predator resistant, covered coop or enclosure during nighttime hours.
  - f. Animal care and waste management practices shall meet all applicable state and health district standards.
  - g. Chickens or rabbits shall be kept on the same lot/parcel as the landowner/renter or on an adjacent lot or parcel to owner/renter.
13. The keeping of bees, livestock, farm animals and domestic fowl (turkeys, ducks and geese), are permitted, subject to the following standards:
- a. The lot or parcel shall contain a minimum of 3 acres.
  - b. Animals shall be limited to 2 animal units for the first 3 acres of fenced, pasture land, forestland or enclosure associated with the agricultural use and 1 additional animal unit per acre thereafter. Total animal units shall not exceed 20 animal units no matter the acreage. (See animal unit chart in [chapter 8](#) of this title.)
  - c. Beekeeping operations shall be registered with the state department of agriculture.
  - d. Confined feeding areas, cages, pastureland or enclosures shall be constructed and maintained to keep the animals contained. Feeding areas, cages, pastureland or enclosures may be placed up to the property line but shall not be closer than 40 feet from any residence other than the owner or renter. Hives shall be a minimum of 25 feet from all property lines and any residences other than the owner or renter.
  - e. Animals shall be kept on the same lot/parcel as the landowner/renter or an adjacent lot/parcel to the owner/renter.
  - f. Animal care and waste management shall meet all applicable state and health district regulations. Waste shall not be stockpiled or composted within 50 feet of any property line or any residence other than the owner or renter.
  - g. Keeping of swine, unneutered male goats, guinea fowl, peafowl, ostrich, emu, buffalo, yak, and beefalo is prohibited. Exception: 1 potbellied pig is permitted.
14. Subject to standards contained in section [12-493](#) of this title.

- 15. Subject to standards contained in section [12-494](#) of this title.
- 16. Subject to section [12-495](#) of this title.
- 17. In the suburban zoning district, a minimum of 5 acres is required for agricultural direct marketing activities.
- 18. Shall meet all applicable local, state, and federal regulations. At least 2 acres of primary ingredient used in processing shall be grown on site.
- 19. A minimum of 5 acres is required in the suburban district. Use shall be contained within building not exceeding 10,000 square feet of floor area.
- 20. At least one-half (0.5) 2 acres of primary beverage ingredient used in distilling or brewing shall be grown on site. Winery, brewery or distillery shall be clearly subordinate to agricultural operation. All structures associated with the beverage operation shall be a minimum of 75 feet from property lines. Sales are limited to fermented or distilled beverages produced on site and limited food sales. Sales of bottle openers, glasses or other such promotional items identifying the site are permitted. Hours of operation and maximum occupancy may be limited by the conditional use permit.
- 21. Batch plant operations shall be located outside of city impact areas. The emissions control system(s) on such batch plants shall be of "Best Available Control technology" (BACT) as generally accepted under relevant industry standards, within five (5) years prior to application.
- ~~22. A Batch Plant is only permitted in the Industrial Zone with an active gravel pit.~~
- 23. An open pit, also known as a sandbox, is an area where material (usually soil, gravel or sand) has been dug for use at another location. Open pits shall be in conjunction with and close to major construction projects and shall be limited in lifetime and scope by conditions established by the commission. (Resource based table)

(Ord. 501, 11-18-2008; amd. Ord. 510, 11-4-2009; Ord. 538, 6-26-2014)

**STAFF:** The purpose of this change is to identify batch plants as part of a gravel pit and provide current "Best Available Control Technology (BACT)" as justification for that addition. Also encouraging its association with gravel pits as a reduction of transportation costs and time. The change also allows for an open pit to be allowed as part of a road development or subdivision project as a temporary use.

The cities, Sandpoint, Dover and Kootenai each commented on the allowing of batch plants in the industrial zone. Each noted the absence of batch plants in the area of city impact, while listing concerns of traffic, dust and noise. The reason batch plants are to be included only with a gravel pit in an industrial zone is due to

the impacts included in these comments. Batch plants located outside of an industrial zone will require a conditional use permit with standards addressing these concerns.

#### 12-337: ACCESSORY USE TABLE:

TABLE 3-7 ACCESSORY USE TABLE

Use	Zoning District								
	F	A/F	R	S	C	I	RSC	REC	AV
Accessory solar, geothermal facilities and ground-source heat pump	P	P	P	P	P	P	P	P	P
Accessory Buildings located on the same site as a permitted or conditional use (1)	P	P	P	P	P	P	P	P	P
Employee Housing as an integral part of the commercial operation	P	P	P	P	P	P	P	P	P
Incidental services for employees on a site occupied by a permitted or conditional use						P			
Watchman's or caretaker's living quarters only when incidental to and on the same site as a permitted or conditional use	P	P	P	P	P	P	P	P	P
Apparatus needed for the operation of active or passive solar energy systems or other alternate energy systems, including but not limited to, overhangs, movable insulating walls and roofs, attached or detached solar collectors, reflectors and piping.	P	P	P	P	P	P	P	P	P

#### Standards:

1. Accessory buildings shall be limited to three (3) per acre and lot coverage of ten percent (10%).
2. Employee housing as part of an integral part of the commercial operation shall be onsite housing and shall meet all the required standards of the requested type of housing, ie. Subdivision, RV park, tiny home park/subdivision, or condominium.
3. Watchman or caretaker living quarters shall be limited to one (1) unit per lot/parcel.

**STAFF:** This new table summarizes the accessory uses throughout the County. This list is not comprehensive but begins the discussion of the type of and limitations for accessory uses. Employee housing is included as a permitted use if it is an integral part of the commercial operation. This could include uses such as Schweitzer or other large commercial uses that would use employee housing as an incentive to

employment. The permitting of the housing as a use is listed however this does not waive any requirements of density, land divisions or other permits such as building location permits, or subdivision. This should be clarified by adding the following: "shall meet all the required standards and permits of the requested type of housing..."

Comments from the cities of Dover, Kootenai and Sandpoint discussed concern about this permitted use. Adding the language noted above should clarify and answer those concerns. Kootenai suggested removing the inclusion of tiny home park/subdivision as there have been no adoption of formal codes regarding that use. Those uses are currently defined as RV/Mobile home parks and cottage housing.

#### 12-34037 CLASSIFICATION OF NEW USES WITHIN ZONE DISTRICTS:

It is recognized that new unanticipated types of land uses will be proposed in Bonner County. In order to provide for such changes and contingencies, when a use is proposed that is not listed as a prohibited, permitted or conditional use in a zone district, the planning director shall make a determination that:

A. The use falls within the same standard classification pursuant to the "Standard Industrial Classification Manual" or the North American industry classification system, as amended, modified or superseded, as a listed permitted or conditional use in a current zone district and that it may be processed in the same fashion as the listed use; or

B. The use does not fall within the same standard classification pursuant to the "Standard Industrial Classification Manual" or the North American industry classification system, as amended, modified or superseded, as a listed permitted or conditional use in a particular zone district, and thus is a prohibited use in that district; or

C. The use is unique in nature and an amendment to this title is necessary in order to allow for its placement within the appropriate zone district. (Ord. 501, 11-18-2008)

**STAFF:** The purpose of this change is to format the numbering system to allow for the previous addition of the accessory table.

#### 12-612: ADDITIONAL REQUIREMENTS:

A. Replatting Required:

1. Any division of land that has been platted shall not be divided again without replatting.

B. Recorded Survey Required:



1. Any division of land created pursuant to subsection C of this section must be surveyed and the survey recorded with the county recorder if any one parcel in the division is less than five (5) acres, or a  $\frac{1}{128}$  aliquot division of a section.

C. Family Division: The following division of land is exempt from platting: A division of unplatted land which is made for the purpose of a single gift or sale to the landowner's spouse, parent, child, sibling, grandparent or grandchild; provided, that the division complies with all of the following:

1. A division of unplatted land made for the purpose of a single gift or sale from the landowner's spouse, parent, child, sibling, grandparent or grandchild;
2. The landowner has not previously been exempt from platting requirements by a gift or sale of another single parcel to the same person;
3. An individual may only receive one parcel by gift or sale created pursuant to this exemption ever within Bonner County. Examples:
  - a. If a husband owns two (2) different parcels in Bonner County and wishes to divide both parcels under the provisions described in this subsection C, he can give his wife only one of the divided parcels. However, he can give or sell the second parcel created by the other land division to his child, sibling, grandparent or grandchild.
  - b. An individual may receive by gift or sale a single parcel from his father through the exemption process, but may not again receive from any other family member another parcel through the exemption process.
4. The parcel created and any remaining parcel meets the minimum zoning district requirements for the district in which the parcel is located;
5. The parcels created conform with the design criteria set forth in section 12-621, subsections 12-623A through C, sections 12-624, 12-625, and subsections 12-626A and C of this chapter;
6. A "notice of land division" is recorded in accordance with the provisions set forth at section 12-613 of this subchapter for all parcels and remainder parcel created; and
7. Parcels created pursuant to this subsection that are not retained by the grantee for a period of two (2) years from the date of recording are subject to the platting standards contained within this title. For any remaining parcel which has legal access and is not less than ten (10) acres, the two (2) year holding period shall not apply.

D. Financing Of A Lot Or Parcel: The following is exempt from platting: The financing of any portion of a single lot or parcel; provided, that:

1. The portion separated for financing purposes and any remaining portion meet the minimum zoning district lot size requirements for the district in which the single lot or parcel is located; and
2. The single lot or parcel remains in one ownership.

E. Reservation Of A Life Estate: The following is exempt from platting: The reservation of a life estate; provided, that the single lot or parcel remains in one ownership.

F. Waiver Of Land Division Requirements: The director may waive minor land division, short plat and regular subdivision requirements on parcels to be created lots that have legal access and the resulting parcel size is not less than of twenty (20) acres or larger when the land can be described as a one thirty-second ( $\frac{1}{32}$ ) aliquot description or larger. This waiver may be granted upon review of the proposed legal descriptions prior to recording.

**STAFF:** This change clarifies that parcels larger than 20 acres can be created through deed only when reviewed and approved for legal access and zoning.

#### **12-616: CERTIFICATE OF COMPLIANCE, CONDITIONAL CERTIFICATE OF COMPLIANCE:**

- A. Any person owning a lot or parcel may apply for a certificate of compliance, on an application form provided by the planning department, requesting the planning director to determine whether the lot or parcel resulting from a division of land complies with the applicable provisions of Bonner County code in effect at the time the division occurred. The fee for applying for a certificate of compliance shall be as set forth in section 12-265 of this title.
- B. If the planning director, upon reviewing the application, determines that the lot or parcel resulting from a division of land complies with the applicable provisions of Bonner County code in effect at the time the division occurred, and upon the effective date of the determination pursuant to this section, the planning director shall record, on a form provided by the planning department, a certificate of compliance with the Bonner County recorder. The certificate of compliance shall identify the lot or parcel, and shall state that the lot or parcel resulting from a division of land complies with the applicable provisions of Bonner County code in effect at the time the division occurred.
- C. If the planning director, upon reviewing the application, determines that the lot or parcel resulting from a division of land did not comply with the applicable provisions of Bonner County code in effect at the time the division occurred, and upon the effective date of the determination pursuant to this section, the planning director shall record, on a form provided by the planning

department, a conditional certificate of compliance with the Bonner County recorder. The conditional certificate of compliance shall identify the lot or parcel, and shall state that the lot or parcel resulting from a division of land will comply with the applicable provisions of this code in effect at the time the division occurred upon completing only those conditions which would have been applicable to the lot or parcel at the time the division occurred. The conditional certificate of compliance shall list those conditions. Compliance with the conditions listed shall be required prior to the issuance of any permit for the development or use of the property. The planning director shall record a certificate of compliance upon the applicant completing the listed conditions. A recorded final plat or notice of land division pursuant to this chapter constitutes a certificate of compliance with respect to the lot or parcel described therein.

D. If the planning director, upon reviewing a permit for the development or use of any lot or parcel, determines that the lot or parcel resulting from a division of land did not comply with the applicable provisions of this code in effect at the time the division occurred, and upon the effective date of the determination pursuant to this section, the planning director shall record, on a form provided by the planning department, a conditional certificate of compliance with the Bonner County recorder. The conditional certificate of compliance shall identify the lot or parcel and shall state that the lot or parcel resulting from a division of land will comply with the applicable provisions of this code in effect at the time the division occurred upon completing only those conditions which would have been applicable to the lot or parcel at the time the division occurred. The conditional certificate of compliance shall list those conditions. Compliance with the conditions listed shall be required prior to the issuance of any permit for the development or use of the lot or parcel. The planning director shall record a certificate of compliance on the application completing the listed conditions. A recorded final plat or notice of land division pursuant to this chapter constitutes a certificate of compliance with respect to the lot or parcel described therein. A conditional certificate of compliance recorded pursuant to this subsection shall include as a condition the fee as set forth at section 12-265 of this title.

E. For the purposes of the administration of this section, the following shall be considered to be in compliance:

1. Any lot or parcel which is described on a recorded legal instrument of conveyance prior to ~~October 20, 1978~~ November 18, 2008;
2. Any lot or parcel for which a valid building permit or building location permit has been issued by Bonner County since ~~November 18, 2008~~ October 20, 1978, whereon development has occurred and a use has been established in reliance on that permit;
3. ~~Any unplatted parcel which is described on a recorded legal instrument of conveyance prior to November 18, 2008 August 12, 1995, that met the minimum zoning district standards in effect at the time of conveyance;~~

4. Any unplatted parcel which is described on a recorded legal instrument of conveyance prior to ~~November 18, 2008~~ August 12, 1995, that meets current minimum zoning district standards. (Ord. 501, 11-18-2008)

F. Any determination made by the planning director in the administration of this section shall be appealable to the board of county commissioners by notifying the planning director in writing of the intent to appeal within ten (10) calendar days from the date of the determination. Upon receipt of an appeal, the planning director shall schedule a meeting with the board within ten (10) working days to hear the appeal and shall provide written notice to the appellant of the time and place of the meeting. The planning director and appellant shall be provided an opportunity to present the relevant issues to the board at that meeting. The board's decision shall be final, and further recourse of the appellant shall be as provided by Idaho Code. If no appeal is filed, the planning director's decision will be deemed effective and the certificate of compliance or conditional certificate of compliance shall be recorded. (Ord. 551, 3-9- 2016)

**STAFF:** A certificate of compliance or deed research is the process the County goes through to identify whether a parcel in question was created legally or not. If the parcel was described after October 20, 1978 and not platted, the parcel is considered to be not in compliance and must be platted in order to be legal and obtain a building location permit. There is a loop hole – if the parcel in question has a legitimate building permit or building location permit, the parcel is considered to be in compliance.

If a parcel was described after August 12, 1995 and was not platted and did not meet zoning minimums in place at the time, not only does it need to be platted, the property owner is required to request a variance or the parcel must be combined with another parcel to bring it into compliance with zoning.

In processing these certificates of compliance and reviewing deed research for building location permits, it occasionally appears that a person has acquired a parcel that is not in compliance with these standards and must either plat or obtain a variance in order to build a home. This can extend the time of building up to a year and cost several thousand dollars while oftentimes it is the previous owner that has caused the situation.

Additionally, in 2008, the County laid down a new zoning map that drastically changed the zoning minimums for much of the County. This zoning change created thousands of substandard parcels throughout the County requiring each parcel to require research to prove compliance prior to permitting.

Further, as county employees change, an interpretation of the old zoning code has changed. For example the rural definition as we know it dictates 5-10 acre minimums, however the old rural zoning does not specify zoning size minimums. At one point, the Department interpreted all lots with the rural designation to mean 5

acre minimums when the original ordinance does not specify clearly for 5 acre minimums. This amendment will identify a clear line for future determinations.

This change proposes moving the "amnesty" date for zoning and platting to the most recent major adoption date of November 18, 2008.

In the last three years, six (6) of 44 variance requests have been for lot size minimums as a requirement of a certificate of compliance. Of those six (6), one was withdrawn after extensive research found a 1958 deed first describing the property. The remaining five (5) variances were each approved. If each variance is just approved, it appears the County is requiring property owners to follow a procedure that is arbitrary and capricious.

Sandpoint did not comment on this section. Dover and Kootenai commented that they object to blanket grant of amnesty but recognize that if the current landowner is not the one who caused the violation, the relief should be granted outright. Changing the amnesty date is recognizing this situation and all the compliant non-conforming that also need reviewed. This date should have changed when the extensive rezoning work was complete in 2008.

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#### **Findings of Fact:**

1. The Planning and Zoning Commission, per Idaho Code Chapter 65, Title 67, may recommend a zoning ordinance.
2. The Bonner County Planning Department has reviewed the proposed changes against Idaho Code and made amendments to better comply with the Idaho Code, specifically Title 67 Chapter 65.
3. The Board of County Commissioners is authorized by Idaho Code, Chapter 7, Title 31, to adopt ordinances, rules and regulations "...not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein..."

The proposed ordinance adding appropriate sections and deleting such adds to the clarity intended in the interpretation of the Bonner County Revised Code and Bonner County Comprehensive Plan. These actions will further balance the provision of safety, health and prosperity while maintaining the protection of property, peace, good order, comfort and convenience of the county and its inhabitants

4. Further clarifying standards used and appropriate administration exceptions help with the public understanding and compliance as it leads to greater understanding and use of the zoning ordinance.

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#### **Conclusions of Law:**

1. The proposed amendments to Title 12 **IS** in accord with Idaho Code, Chapter 7, Title 31.
2. The proposed amendments to Title 12 **IS** in accord with Idaho Code Chapter 67 Title 65.

**OPEN LINE DISCUSSION:** There was some further discussion between the Planning department and the commissioners regarding the amendment changes and the processes. Some suggestions on how to assist the public to better understand the changes that are being proposed. There was some discussion about a workshop.

Director Ollerton informed the commissioners they have five variance files they will hear within the next two months as well as a subdivision file.

Mr. Ollerton informed the commissioners of some changes in planning staff. He stated he hired a Planning Technician who will work in the front office taking in land use applications etc. He explained that he made some job position changes and as a result staff could apply for the new positions and he informed them Tina chose not to apply and she is no longer with the department.

The Chair declared the hearing adjourned at 8:15 p.m.

Respectfully submitted,

  
Milton Ollerton  
Planning Director

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The above Minutes are hereby approved this 19<sup>th</sup> day of April, 2018.

Bonner County Planning and Zoning Commission

  
Don Davis, Chair