

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
WEDNESDAY, JUNE 21, 2017**

CALL TO ORDER: Chair Bailey called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 3rd floor meeting room, Suite 338 of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

PRESENT: Commissioners Chair Glen Bailey; Vice Chair Dan McDonald; and Jeff Connolly

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton; Planner III Saegen Neiman; Planner I Marcus Pecnik, and Administrative Assistant II Jeannie Welter

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. One member of the public requested and was provided hearing assistance during the proceedings. The Chair continued with the public hearing.

File V486-17 – Variance Request – Front & Rear Setback – Stejer's Inc. is seeking variance approval to have a 6-foot rear yard setback where 25- feet is required and a 17-foot front yard setback where 25-feet is required. In addition this variance seeks to authorize a 7-foot front yard setback where 25-feet is required. The property is located 145 Thistle Lane, Priest Lake in Section 10, Township 62N, Range 4W, Boise Meridian. The Planning and Zoning Commission denied the request at their regularly scheduled public hearing on May 4, 2017. The applicant filed an appeal on May 17, 2017. The file will be heard de novo by the Board of County Commissioners.

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 I Marc Pecnik presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is not consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Marty Taylor, Certified Land Use Planner with James A. Sewell and Associates stated John Finney, attorney for applicants and Bruce & Sandra Olgard the applicants were present for the proceedings. He stated many site plans for applications have been hand drawn as a survey accurate plan is not a requirement in Bonner County. He further stated the reason for the variance request is to change the use of the current buildings. He commented that after the Building Department was disbanded in 1997 there was confusion and an understanding by many in Bonner County that permits were no longer a requirement.

Mr. Finney summarized each tax lot size and commented the property configuration should be taken into consideration.

Mrs. Olgard read a statement regarding the history of the property and what it personally means to her and her entire extended family.

PUBLIC/AGENCY TESTIMONY:

The following members of the public spoke on the record in favor of the project:

Bruce Olgard	Stuart Stejer	Jon Dodge
Shelley McDowell	Sharon Reed	Natalie Kraft
Joyce Miller	Galen Miller	

The following members of the public spoke on the record in opposition of the project:

Eleanor Jones	Jason Wing	Anne Ashburn
Lydia Hungate	Frank Hungate	Ben Fisher
John Hungate		

APPLICANT REBUTTAL: Mr. Taylor responded to the public comments stating it is not unreasonable for property that is zoned Rural Residential to be used for residential purposes, having a house on a property zoned for a house is not granting special privileges. As to the comment about limiting additional structures, Mr. Taylor stated that the zoning standards and Bonner County Revised Codes prevail. With regard to the comment stating Variances are precedent setting he stated that all Variances are unique and have to be reviewed based on their own merits.

Mr. Finney commented that the code already says this property is zoned for residential use. He stated due to the configuration of the lots even if these building were not already placed there is a likely possibility that a variance would still be needed in order to accommodate building placement on the lots. Mr. Finney suggested that Findings of Facts number four and five be amended as follows: Replace the words "an indication of improper building placement" with "based upon the building placement that occurred" which they believe is more accurate.

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

MOTION TO APPROVE: Commissioner McDonald moved to approve this project FILE V486-17, which allows for a 6 foot rear yard setback where 25 feet is required and a 17 foot front yard setback where 25 feet are required on tax parcel 9. In addition to allow for a 7 foot front yard setback where 25 feet is required on tax parcel 10. 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 McDonald further moved to adopt the following findings of fact and conclusions of law as amended. 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 Connolly seconded the motion.

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

Conclusions of Law:

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

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 1

Conditions apply to the property that **do** apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control.

Conclusion 2

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

Conclusion 3

The granting of the variance **is not** in conflict with the public interest in that it **will not** be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot. (Ord. 559, 1-4-2017)

Background:

A. Site data: The subject property is described as Tax-9 and Tax-10 of a portion of Government Lot 3, Section 10, Township 62 North, Range 4 West. Abutting land uses include residential lakefront properties, and residential tracts. The subject property is zoned Rural-5. Tax-9 has frontage on Priest Lake and currently contains a single family dwelling, as well as the lean-to.

B. Access: Access is provided by Thistlede Lane, an existing private local access road with a gravel travel surface.

C. Environmental factors: The Priest Lake base flood elevation is 2445.5 ft The property lies in a special flood hazard area (Zone: AE/X; FIRM: 0750E), the single family dwelling conversions will be reviewed for compliance with flood damage prevention ordinances, with a change of use Building Location Permit. The site does contain mapped wetlands, Applicant submitted a preemptory wetland reconnaissance report for the department's consideration. The property is identified on the Bonner County GIS Mapping application as Moose range.

D. Services: The site is served by an individual well, and connected to a sewage disposal system PHD permits 69-09-122433 and 88-13477. The site lies within the North of the narrows Fire District, and the Lake Pend Oreille School District (#83). Power is provided to the property via Northern Lights.

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	R-5	Unplatted Lakefront Lot, 0.7 of an acre
North	Rural Residential	R-5	Unplatted Lakefront Lot, 3.1 of an acre
East	Rural Residential	R-5	Unplatted Lakefront Lot, 0.2 of an acre
South	Waterfront	Waterfront	Priest Lake
West	Rural Residential	R-5	Unplatted lake front lot, 71 acres

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. Conditions apply to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control.

Applicant:

"As noted, both properties pre-date any Bonner County subdivision standards. Both properties also pre-date any Bonner County zoning standards, such as setbacks and lot sizes (Ord. 140, eff. 1/11/80; zoning map eff. 12/9/81). The configuration of both Tax-9 and Tax-10 are such that irregular parcel shapes created in 1967 and 1972 have resulted in building envelopes now affected by setback standards. These

site characteristics peculiar to these parcels create an undue hardship for the buildings involved."

Staff: Virtually all parcels in the surrounding area are sub zoning standard minimum. The "northern" parcel Tax-10 is roughly .22 acres in size, while the "middle" parcel Tax-9 is roughly .28 acres. Both Parcel were uniquely described prior to County Zoning standards, Tax-10 being described in deed Instrument # 137575 dated April 11, 1971. Tax-9 described in instrument # 111087 dated May 9, 1967. These small parcels coupled with the presence of a wetland to the west of the property, result in tight building envelopes not commonly found in the area and not within the applicant's control. Standard A is applicable.

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

Applicant:

"The requested variances involve "grandfathered" parcels and are predicated on site constraints. The properties were created in 1967 and 1972 resulting in irregularly shaped parcels. Residential setbacks were established in 1980 creating limited or restricted building envelopes. These special conditions and circumstances did not result from the actions of the applicant."

Staff: The parcels were created by Norma Stejer in 1967 and 1971. However they were created prior to county zoning ordinances as stated above. Therefore the parcels are considered legal non-conforming.

On Tax-10 the storage building is seeking a variance for a 7 foot front yard setback, which would then allow for a change of use permit to be filed, converting to a single family dwelling. If this structure had been permitted correctly in the 1990's, the issue of tight building envelope would have been mitigated by proper building design. Therefore conditions and circumstances DO result from the applicant, this aspect does not comply with standard B. *(Further analysis in Staff Analysis section below)*

On Tax-9 the storage/ garage structure was permitted for its intended use in 1999 (BLP1999-025) which allowed for reduced rear yard setbacks due to its use. This structure is seeking a variance for a 6ft rear setback where 25ft is required in order to convert into a single family dwelling (it's current unpermitted use). Approval would enable a change of use permit to be filed and reviewed (BLP2015-0458). This structure is also seeking a variance for a 17 foot front yard setback where 25ft is required. This structure was permitted in 1999 having a 25ft front yard setback, the applicant now seeks a variance for 17 foot front yard setback, therefore applicant improperly built the structure according to the original building location permit. In addition the applicant proposes that a boundary line adjustment shall take place to achieve a 5ft side yard setback, which would bring the structure into compliance with its original BLP. The structural size, and placement was done by the applicant, resulting in the current "hardship", Standard B does not apply. *(Further analysis in Staff Analysis section below)*

C. The granting of the variance is not in conflict with the public interest in that it will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot. (Ord. 559, 1-4-2017)

Applicant:

"Because the structures are in place and have been since the late 1990s, granting the variances will not conflict with the public interest. Use of the two subject buildings for residential purposes has been approved by the Panhandle Health District (PHD File 15-09-132276). The structures have been in place since the 1990s. Consequently, the requested variances will have no effect on adjoining properties. Adjoining properties are similarly developed with single family residences. Accordingly, the proposed residential uses are compatible with neighboring properties. Similar setback variances have been approved based on irregularly shaped parcels containing limited or restricted building envelopes. (See V203-95, V404-09, V443-13 and V481-16.) The requested setbacks are the minimum necessary to authorize use of the structures for residential purposes, and the applicant is willing to adjust boundary lines between Tax-9 and Tax-10 in order to improve property line setbacks (see site plan)."

Staff: Conflict of public interest is mitigated through the planning department's agency review process and by public notification. During the agency review period County, State and Federal regulatory agencies were notified of the project and were permitted to comment. North of the Narrows fire department, Idaho Department of Water Resources, Bonner County Road and Bridge and Panhandle health department all returned a "No Comment" response. As noted in section I. below, there were no other agency comments and as such Bonner County Planning assumes there are no agency objections to the project. As noted by Section J, there have been several public comments, as such Bonner County planning assumes there are some objections to the project, and some in favor of the project.

G. Stormwater plan

A stormwater management plan was exempted, pursuant to BCRC 12-721.2 (a).

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:

- *"Based on physical site characteristics, the existing development area is satisfactorily suited for the intended use, subject to the corresponding variance request for setback relief. The site has demonstrated since the 1960's that it is capable of withstanding disturbances without risk of harmful consequences as a result of floods, sewage, drainage, erosion, sedimentation, geological or surface slippage pursuant to Bonne County Revised Code, Section 12-222(j)."*

I. Agency Review

The application was routed to the follow agencies for comment on February 22, 2017:

Panhandle Health District	Department of Water Resources
Bonner County Road Department	Army Corps (Coeur d'Alene)
North of the Narrows Fire District	Army Corps (Newport)
School District #84	U.S. Fish & Wildlife Service
Northern Lights Inc.	U.S. Forest Service
Idaho Department of Fish & Game	State Historical Society
Natural Recource Conservation Service	Department of Lands, Nav. Waters
Department of Lands (Sandpoint)	

The following agencies commented:

Panhandle Health District, Response dated February 28, 2017: No Comment

While Panhandle Health maintains a "No Comment" position, on March 21, 2017 the department offered additional historic information on the subject property, submitting the Consent Order Agreement which the property owners took corrective action on to come into compliance.

North of Narrows Fire District, response dated March 12, 2017: No Comment

Bonner County Road and bridge Quality responded on March 03, 2017: No Comment

Idaho Department of Water Resources, response dated February 24, 2017: No Comment

Idaho Department of Environmental Quality, Faye Beller, response dated March 22, 2017: No Comment

All other agencies provided no response, as such staff concludes that there are no objections to the project.

J. Several public comments were received at time of preparation of staff report.

Numerous letter in opposition to this project have been received.
Numerous letters of support of this project have been received.

Findings of Fact

1. Parcels were uniquely described prior to County Zoning standards, Tax-10 being described in deed Instrument # 137575 dated April 11, 1971. Tax-9 described in instrument # 111087 dated May 9, 1967.
2. Tax-9 structure has an approved BLP 1999-0025 for a car storage and garage.

3. Tax-9 structure has an approved BLP 2007-0088 for a lean to.
4. Tax-9 structure is currently in violation of front yard setback, based upon the building placement that occurred.
5. Tax-9 structure is currently in violation of northern side yard setback, requiring a boundary line adjustment for remedy, based upon the building placement that occurred.
6. Reduced Tax-9 setbacks allow for a change of use to occur, from storage to single family dwelling.
7. Tax-10 structure has been in place since 1990's according to Assessors records, Tax-10 has no building permits or building location permits on file for the current structure. Building permits have been required in the county since 1980.
8. Tax-10 had a zoning violation ZV-259-97 concerning building setback, stating clearly the front yard setback is 25 feet.
9. Tax-10 has a pending BLP 2015-0458 for a single family dwelling.
10. Tax-10 has a pending BLP 2015-0507 for a bunk house.
11. Tax-10 is currently in violation of front yard setback.
12. The site contains mapped wetlands that are represented on county GIS data layers. The applicant has submitted a wetlands reconnaissance performed by James A. Sewell & Associates authorized agent Martin E Taylor, verifying the building site is void of wetland vegetation and wetland soils. The wetlands reconnaissance does however depict the wetland immediately to the west of Tax-9 and Tax-10.
13. The location of 2 of the structures lie within flood hazard zone AE. (Zone: AE; FIRM: 0150F).
14. No adverse agency or public comments have been submitted.

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.

A-3 Prior to variance issuance, the applicant shall obtain a boundary line adjustment

A-4 Applicant shall obtain Building Location Permit approval for the change of use for both subject structures.

The Chair declared the hearing adjourned at 3:09 p.m.

Respectfully submitted, this 22nd day of June, 2017,



Milton Ollerton, Planning Director