

**MINUTE ORDER  
PLANNING DEPARTMENT  
PUBLIC HEARING DECISION MINUTES  
WEDNESDAY, OCTOBER 28, 2015**

**CALL TO ORDER:** Chair Kelly 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 Cary Kelly; Vice Chair Glen Bailey; and Todd Sudick

**ABSENT:** None

**ALSO PRESENT:** Planner Clare Marley, AICP; Associate Planner Saegen Neiman; Planning Secretary Jeannie Welter, and Commissioners Executive Assistant/Deputy Clerk Julie Halliday

**PUBLIC HEARINGS:**

**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.

**1:45 p.m. – File V456-15 – Variance Request – Waterfront Setback – Frank & Sharon Baker** are requesting variance approval for an existing 224-square foot gazebo located 24 feet from the waterfront, where a 40-foot setback is required. The project fronts the Pend Oreille River and is generally located southeast of Priest River on Dufort Road, in Section 32, Township 56 North, Range 4 West, B.M. The site is zoned Rural 10. The applicants appealed the Bonner County Planning & Zoning Commission denial of the variance. The Bonner County Board of Commissioners has ordered a new hearing be conducted before them on this request.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Sudick disclosed that he is familiar with the property on the river. The Chair noted that there were no additional disclosures or conflicts.

**STAFF PRESENTATION:** Mr. Neiman presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is not consistent with Bonner County Revised Code.

Commissioners and staff discussed condition B-2, the floodplain development permit requirement and map amendments.

**APPLICANT PRESENTATION:** Applicant attorney John Finney stated that he was aware of the Letter of Map Amendment process. He stated the applicants have no objections to the condition regarding the floodplain permit.

**PUBLIC/AGENCY TESTIMONY:** None.

**APPLICANT REBUTTAL:** None.

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

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### **Motion by governing body**

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Commissioner Sudick moved to approve this project FILE V456-15 for an existing 224 square foot gazebo located 24 feet from the waterfront where 40 feet is required, 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 Sudick further moved to adopt the following findings of fact and conclusions of law as written or 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 Bailey seconded the motion.

Upon a roll call vote the Chair declared the motion carried, unanimously.

Commissioner Kelly – Aye  
Commissioner Bailey – Aye  
Commissioner Sudick - Aye

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### **Background:**

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**A. Site data:** The subject property is described as a ±2.01 acre parcel. The site is zoned Rural 10, and fronts the Pend Oreille River. The site also contains a 2,674 square foot single family dwelling, as well as a 1,600 square foot accessory structure.

**B. Access:** The site is accessed by Dufort Road. Dufort Road is an existing county owned and maintained ±60-foot wide right-of-way, with a paved travel surface.

**C. Environmental factors:** The property fronts the Pend Oreille River, and nearly the entire site lies within the river's associated flood hazard area (Zone: AE; DFIRM: 0890). The site does not contain any prime agriculture soils, slope gradients steeper than 15% grade, wetlands, or critical wildlife habitats, according to the Bonner County Comprehensive Plan.

**D. Services:** The subject gazebo contains no plumbing, but the site is served by an individual septic and drainfield system, as well as an individual well. The site is located within the West Pend Oreille Fire District, and the West Bonner County School District (#83).

**E. Comprehensive Plan, Zoning and Current Land Use**

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	Rural-10	Waterfront Property; 2.01 acres
North	N/A	N/A	Pend Oreille River
East	N/A	N/A	Pend Oreille River
South	Rural Residential	Rural-10	Waterfront Property; 1.55 acres
West	Rural Residential	Rural-10	Secondary Waterfront Lot; 10.02 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) An undue hardship exists because of site characteristics, and special conditions and circumstances exist which are peculiar to the land, structure, or building involved.

*APPLICANT RESPONSE: The undue hardship in this case is due to the fact that the terrain simply would not allow the gazebo to be placed in a difference position on the site and still offer a view of the river.*

*STAFF RESPONSE: The subject parcel is 2.01 acres, with waterfront on two sides of the parcel, leaving adequate space for gazebo construction, while meeting county setback requirements. The parcel topography gently slopes toward the river, but none of the slopes on the property exceed 15% grade, according to USGS topographical data.*

(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.

*APPLICANT RESPONSE: There have been numerous riverfront parcels that have been granted similar variances in many different portions of the county.*

*STAFF RESPONSE: A structure located within the required 40-foot waterfront setback is not necessarily a right commonly enjoyed within the Rural 10 zoning district. On April 3, 2014, the Bonner County Planning and Zoning commission denied an existing 270 square foot gazebo located within the waterfront setback. (The Board of County Commissioners approved the variance on appeal (V443-13)).*

(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.

APPLICANT RESPONSE: *There will be no special privilege afforded to the Bakers if the request is granted, only the ability to bring their structure into conformance. As stated before, there have been many other similar variance requests that have been previously approved with Bonner County.*

STAFF RESPONSE: *BCRC 12-411, establishes a 40-foot waterfront setback for all structures located within the Rural 10 zone.*

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

APPLICANT RESPONSE: *When the applicants purchased the property there was an existing home located on it. About 12 years ago the Bakers removed that home and built their current home. When the previous home was torn down, the foundation was left in place. The gazebo in question today is actually using those exact footings. The original home had a porch that extended about six feet beyond the footings, the gazebo roof extends about three feet. The gazebo is less of a violation than what the original house was. Additionally, the applicant called the county to inquire about permitting since the structure is less than 400 square feet, he was told it was not necessary to get a BLP, but also did not face the scrutiny of planning to examine setbacks.*

**Staff note:** According to BCRC 12-344(B), the grandfathering right must be exercised by reconstruction within two years of its destruction.

STAFF RESPONSE: *For structures between 200 square feet and 400 square feet in size, the declaration of exempt structure paperwork must be filed with the Bonner County Planning Department, in accord with BCRC 11-104. In addition to the declaration of exempt structure form, the landowner did not obtain development permit approval for the gazebo, as required by BCRC 12-742. BCRC 12-104(C) states, "the structure shall comply with the requirements of Title 12 of this code and any other laws or ordinances of Bonner County or other local, state, or federal laws."*

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

*The applicant is requesting variance approval for the gazebo's current greatest architectural projections of 24 feet from the Pend Oreille River high water mark.*

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

APPLICANT RESPONSE: *There is no conflict with the public interest in any way because of the fact that the applicants are merely requesting what many others in similar circumstances.*

*STAFF RESPONSE: Because the landowner did not obtain development permit approval for the gazebo, it is unknown whether the structure meets development standards for construction within the flood hazard area.*

### **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. There were existing stone pavers on the site.

### **H. Land capability report**

A land capability report was submitted to the record by Inland Northwest Consultants, in accordance with BCRC 12-233 and 12-222(j), which states:

- **FLOODS:** According to the FIRM panel that covers this property, 16017C0890E, the base flood elevation is listed as 2071. According to a site survey, the lowest elevation of any building site is 2076.86, which is actually the finished floor level of the garage attached to the residence. There are no visible signs of flooding on the site.
- **SEWAGE:** The site shares a common drainfield area with the neighboring parcel to the west, or downriver side. The BLP for the new shop was recently signed off by Panhandle Health District, and there are no visible signs of detrimental effects caused by the existing septic system.
- **DRAINAGE/EROSION/SEDIMENTATION:** Because the site is landscaped and maintained there are no signs of any visible erosion, and any run-off that does not flow into the existing lawn is directed back toward the direction of Dufort Road and kept onsite by the natural contours of the parcel. The runoff from the house and asphalt surfaces goes into the existing lawn.

The gazebo roof drains onto a surface of pavers then onto the existing lawn. The shop roof drains onto a gravel surface and then is directed away from the river by the natural slope of the land.

No areas of the site exhibit any signs of erosion, and with the lawn encompassing everything that might want to go towards the river, transportation of any sediment should stop at the lawn.

- **GEOLOGICAL or SURFACE SLIPPAGE:** The soils on site show no visible signs of surface slippage, and according to the Natural Resources Conservation Service, are well drained and have percolation rates between 2" and 6" per hour. The soils are classified as Lenz-Rock Outcrop with a depth of bedrock of 0 -60." Because of this, chances of slippage are minimal.

## I. Agency Review

The application was routed to the following agencies for comment on February 10, 2015:

*Panhandle Health District  
West Pend Oreille Fire District  
Department of Fish & Game  
Department Navigable Waters*

*Bonner County Public Works Department  
Avista Utilities  
Department of Lands (Sandpoint)*

*The following agencies commented:*

**Bonner County Public Works, Matt Mulder, P.E., Response dated February 24, 2015:** No comment

**West Pend Oreille Fire District, Response dated March 5, 2015:** No comment

## J. Public Notice & Comments

The following public comments were received:

### **ROBERT & JULIA FAIRCHILD, Letter received April 24, 2015:**

The Fairchilds stated that they are adjacent landowners and supported the project based on the following reasons

- The gazebo that was erected is a well-designed structure and fits the previous development that occurred on the property.
- It does not intrude on the waterfront. Actually it appears to be 40 feet or more from the bank.
- It would be a serious economic waste to cause it to be removed.
- Prior to the state claiming the lake and river lands, underwater was state property, our deeds run to the meander line of the original river (Pre Albeni Falls Dam) and the Corps of Engineers have a flood easement, not ownership.
- The present setback appears to be arbitrary and serves no purpose in the present situation.
- Several years ago we had a topographical survey of our property done by Sewell Engineering and it was recorded that our structures are above the hundred year floodplain and it appears the Baker building and the structure in question are also above the hundred year floodplain.

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## Findings of Fact

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1. The subject gazebo is 224 square feet, and is located 24 feet from the high water mark of the Pend Oreille River.
2. The subject parcel is ±2.01 acres.
3. No wetlands, slopes steeper than 15% grade, or critical wildlife areas are mapped on site.

4. The structure lies in an area of mapped flood hazard area (Zone: AE – 0890), and the applicant did not obtain a development permit for the construction of the gazebo within this flood hazard area.
5. The subject gazebo would qualify for Bonner County's Title 11 Declaration of Exempt Structure. Whereby a building location permit is not required, but conformance with Title 12 is required.
6. The applicant did not file a declaration of exempt structure for the gazebo.
7. According to staff calculations, the subject parcel contains 18.72% building coverage over the ±2.01 acre site.

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## **Conclusions of Law:**

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**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.

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**Conditions of approval:**

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**Standard permit conditions:**

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**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.

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**Standard and site-specific conditions:**

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**B-1** Prior to issuance of the variance, the applicant shall file a declaration of exempt structure form with the Bonner County Planning Department for the gazebo.

**B-2** Prior to issuance of the variance, the applicant shall obtain floodplain development approval for the gazebo from the Bonner County Planning Department, and meet the standards of the flood damage prevention code, BCRC 12-7.5.

The Chair declared the hearing adjourned at 2:23 p.m.

Respectfully submitted, this 3<sup>rd</sup> day of November, 2015,

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Clare Marley, AICP, Planner