

BOUNDARY COUNTY PLANNING AND ZONING

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PLANNING & ZONING COMMISSION MINUTES of MAY 27, 2021 Public Hearing & Workshop

University of Idaho Extension Office, 6447 Kootenai Street, Bonners Ferry, ID

P&Z Members in attendance:

- | | | | |
|--|---|--|---|
| <input checked="" type="checkbox"/> Caleb Davis, Chair | <input checked="" type="checkbox"/> Wade Purdom, Co-Chair | <input type="checkbox"/> David Hollabaugh | <input checked="" type="checkbox"/> John Cranor |
| <input checked="" type="checkbox"/> Rob Woywod | <input type="checkbox"/> Scott Fuller | <input checked="" type="checkbox"/> Tim Heenan | |
| <input type="checkbox"/> Adam Isaac | <input checked="" type="checkbox"/> Ron Self | | |

Chairman Davis called the meeting to order at about 5:31 p.m. Roll call: Commission members present are noted with a checked box above. The meeting was made available to the public via telephone conference call.

Consent Agenda:

Commissioner Self moved, and Commissioner Woywod seconded the motion, to approve the April 22, 2021 minutes. The Chairman declared the motion approved on a unanimous voice vote. Commissioner Purdom moved, and Commissioner Cranor seconded the motion, to approve the February 25, 2021 minutes. The Chair declared the motion approved on a unanimous voice vote.

Public Hearings:

FILE 21-054, VARIANCE, Frederick Williams. Frederick Williams is requesting variance approval to allow a zero setback, where 25 feet is required, to construct an accessory building. The site is located on Farm to Market Road and is identified as Assessor Parcel #RP65N01W350753A. The property is zoned Agriculture/Forestry. The file was continued from the April Planning & Zoning Commission meeting to the May meeting at the request of the applicant.

Opening and Hearing and Summary: The Chairman opened the hearing and read the file legal notice.

Call for Disclosures: The Chairman called for disclosures or conflicts of interest regarding the file. Chairman Davis disclosed that he knows the applicant's attorney Art Macomber, and may assist in his political campaign, but stated that will not affect his decision on the current file. There were no other disclosures.

Application Summary: The Chairman summarized the application. Acting Zoning Administrator Clare Marley presented a summary of the last hearing on the file to the Planning & Zoning Commission.

Applicant Presentation: The applicant's representative Art Macomber discussed the record of survey dated 11/15/2018 and his concerns that Boundary County possibly does not have jurisdiction over the

right-of-way fronting Williams property because the State of Idaho may not have deeded the road to the county. The attorney stated that slope is a limiting factor in the placement of the foundation and that the applicant did not create his own hardship as the previous planning administration provided the applicant incorrect information. Mr. Macomber stated that he was unsure who owns the right-of-way as the 1942 deed for the right-of-way conveys it to the State of Idaho and not Boundary County.

Public Testimony: Mike Sheppard asked the Planning & Zoning Commission whether their decision is final and whether variances would now be required for existing development along the road. Both questions were clarified by the Chair and the Acting Zoning Administrator. Boundary County Road and Bridge Co-Superintendent Renee Nelson testified that the portion of the right-of-way dividing the applicant's property is not taxed per the recorded survey and current landowner's deed, which shows ownership is "less" the right-of-way. Ms. Nelson clarified that the existing foundation encroaches into the right-of-way between 4'-7' due to the orientation of the slab. Ms. Nelson also stated that she is not specifically aware of any deed to the County from the State for the right-of-way but believes it may have been deeded with groups of other roads. Ms. Nelson submitted Exhibit Nos. F, G and H, of the concrete pad area. She described them the photos for the applicant's representative, who was attending via phone call. Commissioner Heenan asked the Co-Superintendent what issues the encroachment into the right-of-way could pose. She responded that anything that encroaches into a right-of-way can be a potential hazard and liability. Oulita Williams spoke about the history of the interaction with the Board of Commissioners regarding this issue.

Ms. Marley entered into the record and read Exhibit No. H, a letter from County Civil Counsel Tevis Hull, dated May 27, 2021, regarding the Commission authority and jurisdiction.

Ms. Marley provided the Commission with the definition of setback and spoke about requirements for structure setbacks.

Applicant Rebuttal: Applicant Frederick Williams suggested that he have a survey conducted on the property to determine where the property lines truly are located. The representative stated that while the concerns of the Road & Bridge Department need to be taken seriously, he does not see the slab causing an issue in the right-of-way and that the zero (0) foot setback is the issue tonight with the portion of the slab in the right-of-way being under another jurisdiction. Commissioner Self asked the applicant if the structure could be built in a different location at a higher elevation. The representative stated that it would be more expensive and harder to access if moved and the applicant stated that the current location allows for easy entrance/exit of large trailers and that the purpose of that road is for agricultural activities. Commissioner Heenan asked if the applicant would grant a like-for-like exchange for a portion of private property to be exchanged for a portion of the right-of-way that the slab is encroaching on. The applicant stated that he had suggested that in 2018. Chairman Davis asked if a denial of the application would infringe on the applicant's property rights, and the representative stated that it comes back to the issue of fee simple vs. the right to cross over the right-of-way and that he doesn't know nor has he heard of a denial of a variance constituting a taking.

Close of Hearing & Deliberation: The Chairman closed the public comment portion of the hearing and opened deliberation. The Commission discussed the application and the need for the accessory structure. Commissioner Woywod stated that granting the variance should happen as a denial would cause an undue hardship on the owner. Co-Chair Purdom stated that a like-for-like can't happen

due to the slope on the opposite side of the right-of-way. Chair Davis stated that the 4-foot portion of the slab in the right-of-way isn't part of the variance, the topography seems to show an issue, the denial doesn't seem to show a taking, whether or not the County is or is not impacted needs to be determined and the applicant seems to have done their due diligence and were provided bad information by the previous planning administration so the variance seems appropriate. Acting Zoning Administrator Clare Marley stated that Conditions #3 and #4 in the staff report regarding removal of the concrete within the right-of-way and an expiration date need to be discussed. Commissioners discussed whether to remove or extend the length of time to complete construction.

Motion to Approve: Commissioner Self moved to approve File #21-054, with all conditions as written except condition #4, which extends the expiration date to four years. Commissioner Woywod seconded the motion, but said he did not agree with Condition #3 as written. The Chair declared the motion failed on a 1-4 voice vote.

Motion to Approve: Commissioner Cranor moved to approve File #21-054, a variance to allow a zero setback where 25 feet is required, to construct an accessory building, finding that the proposal is in accord with the variance standards of Idaho Code and Boundary County Land Use Ordinance 9B18LOV2, based upon the findings and conclusions, and subject to the conditions #1, #2 as written, striking the second sentence of #3, and changing #4 to a 5-year time limit. Commissioner Woywod seconded the motion. The Chair declared the motion passed with a unanimous voice vote.

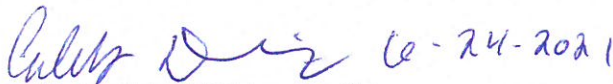
New Business:

Ms. Marley advised the Commission that the County is making the Annex building (former Armory) available for regular Commission meetings. She advised that the room will have audio and visual set-ups for the meeting. The Chair asked the group whether they wished to move their meetings to the Annex.

Motion: Commissioner Purdom moved to change the regular meeting place of the Commission to the County Annex Building. The motion was seconded by Commissioner Cranor. The Chair declared the motion approved on a unanimous voice vote.

Ms. Marley updated the Commission on upcoming hearings.

Adjournment: Co-Chair Purdom moved, and Commissioner Self seconded the motion, to adjourn the meeting. The Chair declared the motion approved on a unanimous voice vote and closed the meeting at 7:26 p.m.



Caleb Davis,
Boundary County Planning and Zoning Commission Chairman