



**BOUNDARY COUNTY PLANNING AND ZONING**

Street address: 6452 Kootenai St Bonners Ferry, ID 83805 Mailing address: PO Box 419,  
Bonners Ferry, ID 83805 Phone (208) 267-7212 [www.boundarycountyid.org](http://www.boundarycountyid.org) (web page)

**STAFF REPORT**  
**BOUNDARY COUNTY PLANNING & ZONING COMMISSION**  
**FILE #22-0111, STRUGGLE BEAR LLC**  
**MULTI-STRUCTURE RESIDENTIAL USE**

Prepared By:	<b>Tessa Vogel, Assistant Contract Planner</b> <b>Ruen-Yeager &amp; Associates, Inc.</b>
Project Description:	The applicant is requesting approval for a conditional use permit for a multi-structure residential use to allow for four existing additional primary single-family dwellings on a 10-acre parcel.
Project Location:	A tract of land off Earl Lane Road
Parcel Number:	RP64N02E152114A
Legal Description:	Tax 4 SEC 15 T64N R2E
Zoning District:	Agriculture/Forestry and Suburban
Applicants/Landowners: Representative:	Struggle Bear, LLC Brian Domke
Date Complete Application Received:	April 04, 2022
Hearing Dates:	June 23, 2022; Planning & Zoning Commission
Legal Notice Provided:	Newspaper: 06/02/2022 Site Posting: 06/15/2022 Mailed: To landowners within 300' & Taxing Districts: 06/01/2022
Staff Report Attachments:	Legal notice, application/site plan, public comments

## **Project Summary**

Struggle Bear, LLC is requesting approval for a conditional use permit (CUP) for a multi-structure residential use to allow for four existing additional primary single-family dwellings on a 10-acre tract in the Agriculture/Forestry and Suburban zones to be used in a private recreational manner. The property is located off Earl Lane Road, a private road and is to be served by water from the Moyie River, private septic or off-site facilities for sewage disposal and Hall Mountain Fire District. The property is developed with six, single-family shell dwellings with one classified as a primary single-family dwelling and one classified as an accessory dwelling unit (ADU). The remaining four single-family dwellings are proposed to be classified as primary dwellings. Planning & Zoning files #22-0109 and #22-0110 have been applied for by the applicant for the first primary single-family dwelling and ADU. Three dwellings are 144 square feet in size and three dwellings are 400 square feet in size. There are no density restrictions for number of allowed dwellings in the County code.

## **Background**

- Documentation of structure construction on site was sent to the Planning Department on September 20, 2021. Violation ZV0002-21 became active.
- Violation letters were sent to the applicants on October 06, 2021, and February 02, 2022.
- The applicants contacted the Planning Department on October 16, 2021, stating that they were planning to turn in a conditional use permit and placement permits for the structures. No communication from the applicants occurred after the October 16<sup>th</sup> phone call so the second letter was sent February 02, 2022.
- The applicants notified the Planning Department on February 07, 2022, that they received the second letter and that they are working on the permits.
- The applicants' representative contacted the Planning Department on February 08, 2022, with questions about proceeding with a conditional use permit and placement permits.

## **Relevant Definitions**

**Private Recreation:** A recreational use developed for the private enjoyment of an individual property owner and guests. Private recreational use may include but is not limited to; vacation, lake, river, hunting or ski cabins, recreation vehicle pads, and improved campsites (**2.55.1.**).

**Recreational Hospitality:** Commercial uses established specifically to afford the general public access, accommodations and/or services by which the public may enjoy recreational opportunities on private land. Hospitality uses may include but are not limited to RV parks, motels, hotels or lodges, bed and breakfast establishments and inns (**2.55.2.**).

**Recreational Commercial:** Recreational uses established to provide general public access to privately owned land upon which specific outdoor recreational activities or sports are to be offered commercially, to include but not limited to hunting and fishing lodges or shops, motorized off-road areas for snowmobiles, motorcycles, ATVs or other recreational vehicles, ski resorts or lodges, and hang gliding, parachuting or other aerial sport facilities (**2.55.3.**).

**Residential:** A primary structure or structures on a single lot or parcel designed for habitation and occupancy by an individual or family to include, at minimum, sleeping quarters, lavatory and kitchen facilities, as well as accessory structures incidental to residential use, such as a garage, shed, barn, noncommercial workshop or accessory dwelling unit (**2.56.**).

**Single-Family Residential:** One primary residential structure designed for occupation by one individual or family (**2.56.1.**).

**Multi-Structure Residential:** More than one primary residential structure, whether single-family, duplex or multi-family, on a single parcel or lot (2.56.4.).

**Section 15.2.3. of Unrestricted Uses:** Private recreational uses, such as camping, hunting and fishing, parking and operation of recreational vehicles, motorcycles, ATVs, snowmobiles, etc.

**Sections 15.4.10. & 15.4.11. of Moderate Uses:** Recreational Hospitality, five or fewer units; Recreational Commercial.

**Section 15.5.4. of High-Occupancy Uses:** Recreational Hospitality exceeding five units, such as hotel, motel, resort or conference center.

#### **Section 15.9.3. Ag/Forestry Zone Uses Not Regulated**

- Unrestricted Class and Light Class uses (15.9.3.1.).
- Moderate Class Uses when located more than 500' from any existing residence (15.9.3.2.).

#### **Section 15.9.5. Ag/Forestry Zone CUP Required**

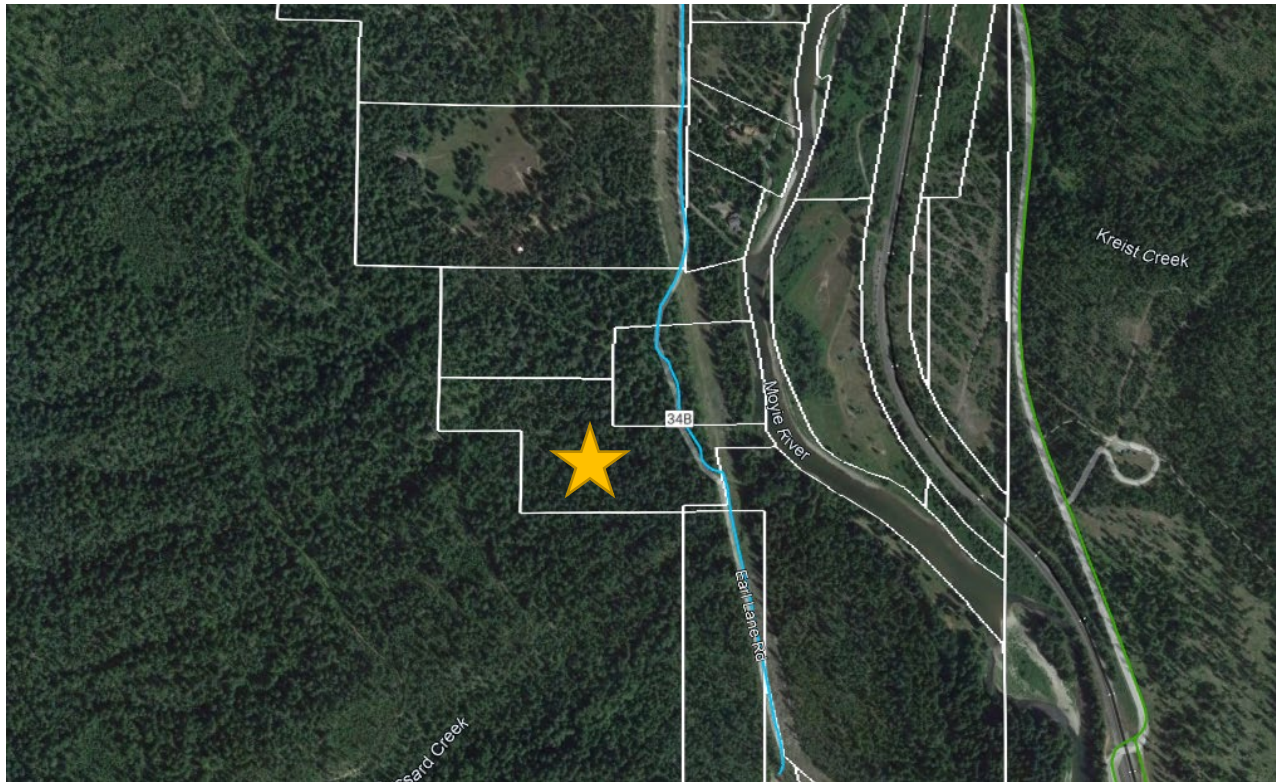
- Moderate Class Use when located less than 500' from any existing residence (15.9.5.1.).
- High-Occupancy and Land-Intensive uses (15.9.5.2.).
- Duplex, multi-family or multi-structure residential (15.9.5.3.).

#### **Section 15.11.3. Suburban Zone Uses Not Regulated**

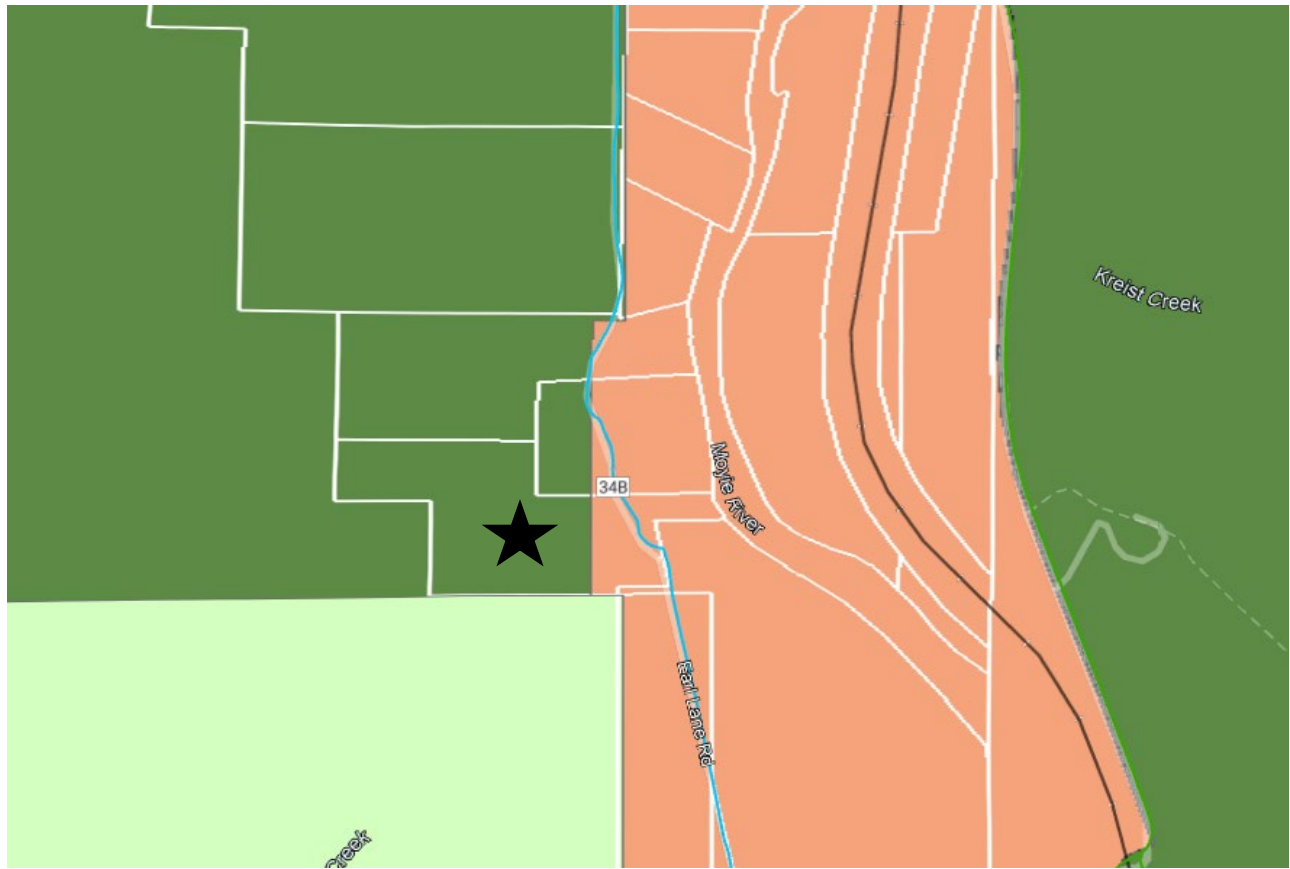
- Unrestricted Class Uses (15.11.3.1.).
- Moderate Class Uses when located more than 1,000' from any existing home (15.11.3.3.).

#### **Section 15.11.5. Suburban Zone CUP Required:**

- Multi-family or multi-structure residential (15.11.5.1.).
- Moderate Class Use when located less than 1,000' from any existing residence (15.11.5.3.).
- High-Occupancy Use (15.11.5.4.).
- Land-Intensive Use (15.11.5.5.).

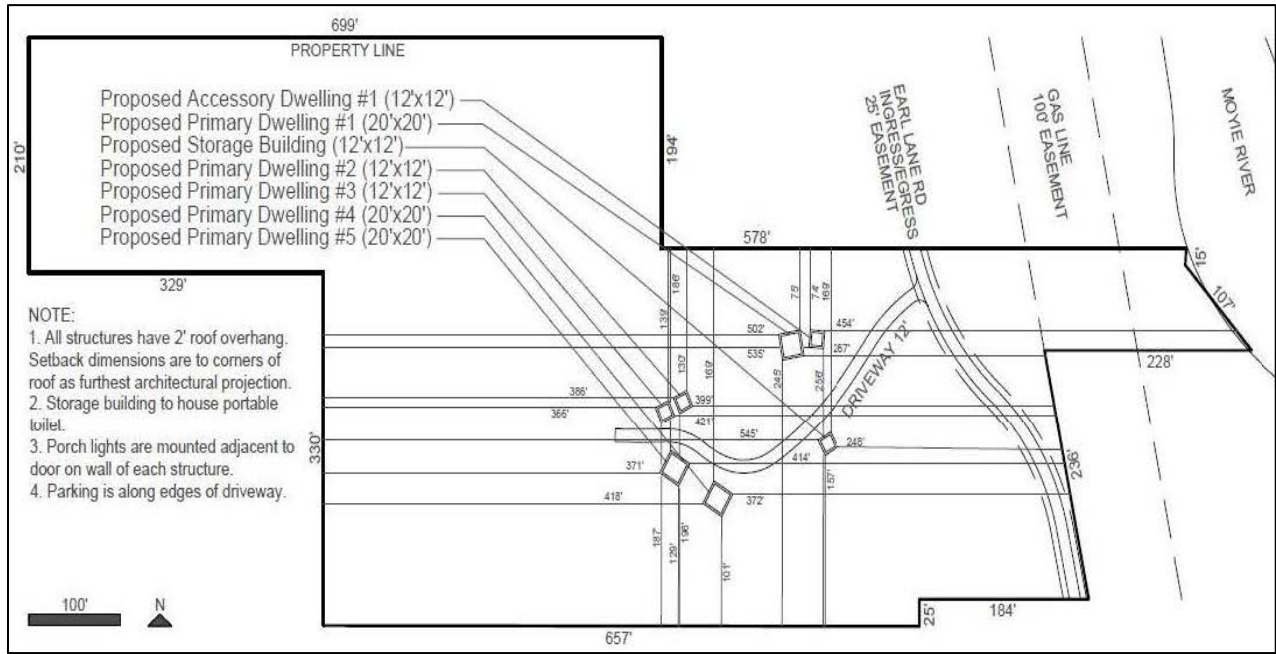


**Aerial of Vicinity**

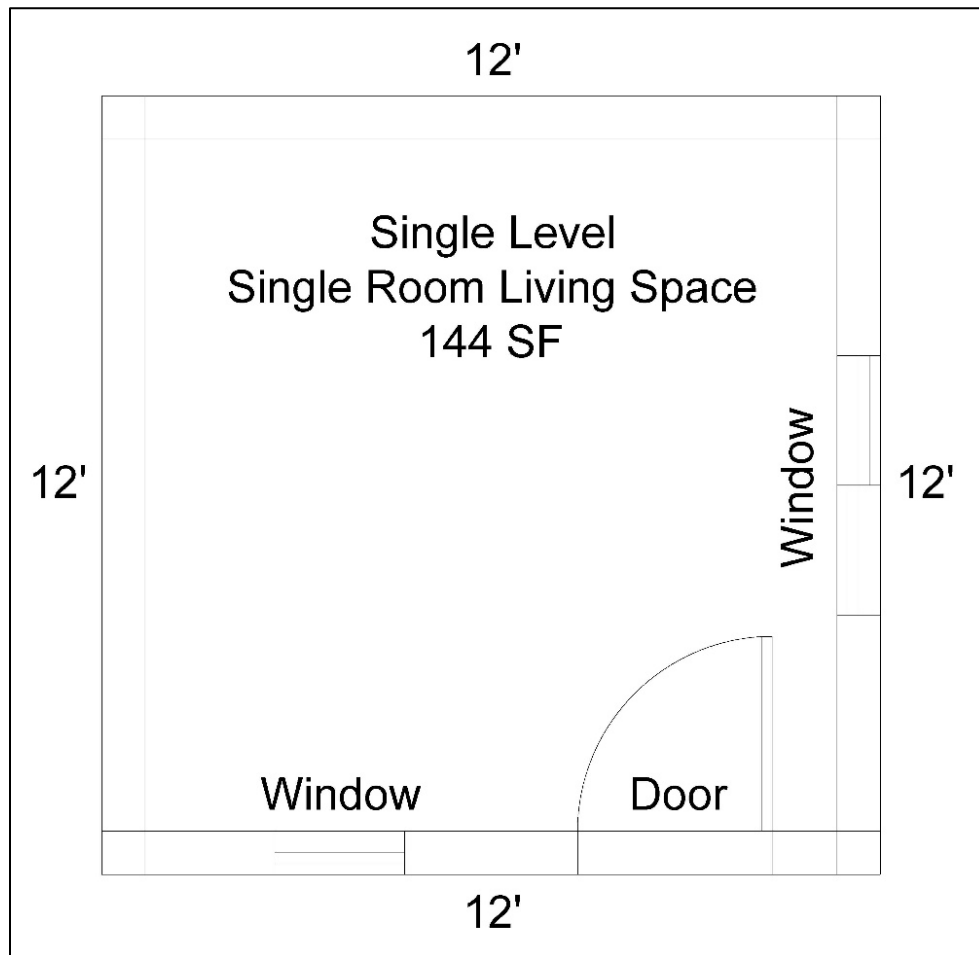


**Zone Map**

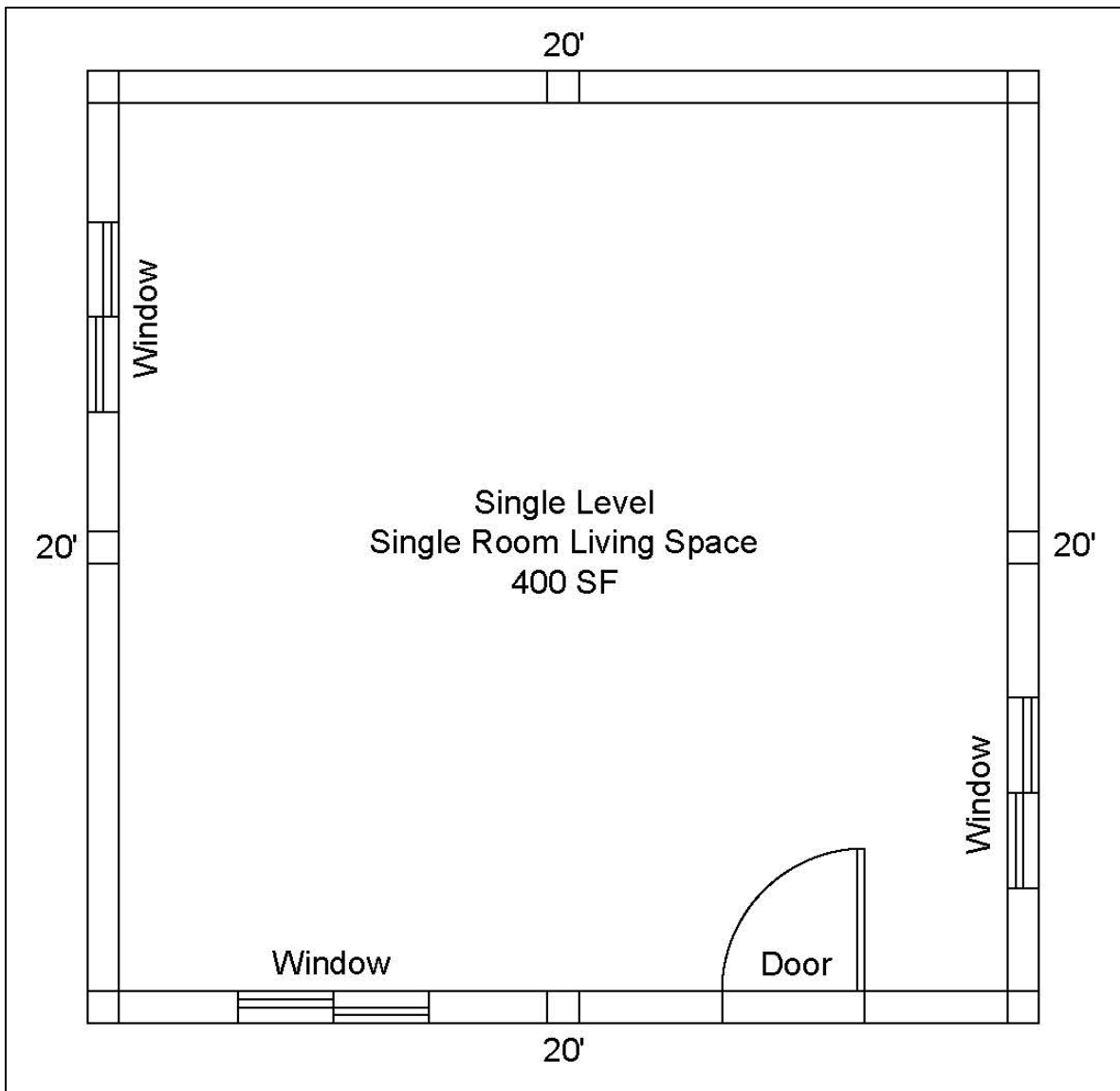
**Dark Green = Agriculture/Forestry, Light Green = Prime Forestry, Orange = Suburban**



Site Plan



Floor Plan – 144 Square Foot Design



**Floor Plan – 400 Square Foot Design**

<b>Project Setting</b>	
<b>Access</b>	Earl Lane Road (private portion)
<b>Current use</b>	Residential; Agriculture/Forest
<b>Services, utilities</b>	Moyie River for water; Septic or off site facilities for sewage disposal; Hall Mountain Fire District
<b>Hazardous Areas</b>	Zone X Special Flood Hazard Area, Panel 1602070200B, no floodplain/floodway
<b>Zoning overlays or special areas</b>	Mapped Riverine Wetlands present
<b>Site Zoning &amp; Comp Plan designation</b>	Ag/Forestry and Suburban
<b>Surrounding Zoning &amp; Comp Plan designations</b>	Ag/Forestry; Suburban; Prime Forestry
<b>Surrounding uses</b>	Vacant, forestry, state land, residential



**National Wetland Inventory Map**

### **Authority**

- Idaho Code §67-6512, Special Use Permits, Conditions, and Procedures.
- Boundary County Land Use Ordinance 9B18LOV2, Section 2, Definitions
- Boundary County Land Use Ordinance 9B18LOV2, Section 7, Conditional Use Permits
- Boundary County Land Use Ordinance 9B18LOV2, Section 15.9., Ag/Forestry zone requirements
- Boundary County Land Use Ordinance 9B18LOV, Section 15.11., Suburban zone requirements

### **Agency/Staff Comments**

**The following agencies were routed for comments on June 01, 2022: Boundary County Ambulance, Assessor (Mapper), Commissioners, Library, Road & Bridge, Boundary School #101, Hall Mountain Fire District, and Panhandle Health District.**

**Boundary Co. Addressing (R&B):** *Addressing may require unit numbers for each dwelling for E911 purposes.*

**Boundary Co. Road & Bridge:** *Any future use of the existing approach from the county portion of Earl Lane Road will require an approach permit with a disclaimer to be completed for use of the approach per direction that easements are not verified. A permit will need completed for each usage.*

**Panhandle Health District:** *PHD does not have a sewage disposal application for parcel RP64N02E152114A. It is unknown what is and is not approvable here. Any dwelling construction that creates new or increases wastewater flows must have an approved location for the wastewater to go. Contact PHD for sewage application and further information.*

## **Public Comments**

**Landowners within 300’ of the subject property were notified of the proposal on June 01, 2022, and notice was provided in the Bonners Ferry Herald on June 02, 2022. Multiple public comments were received and summaries of each are below. The comments in their entirety have been provided to the Planning & Zoning Commission, along with photos and additional resources provided by the public with their comments.**

**Ken Lustig:** Submitted a packet of information in opposition to the proposal. Mr. Lustig responded to the applicant’s narrative statement answers, highlighted portions of the Boundary County Comprehensive Plan that relate to the proposal, a copy of the Southern Poverty Law Center’s article The Year in Hate & Extremism where the applicant is highlighted, a sketch of Earl Lane Road with potential issues with the proposal listed, and a copy of Idaho State code §67-6516 for variances.

**Staff Note:** The proposal is for a conditional use permit, not a variance.

**Elaine Duncan:** Submitted a packet of information in opposition to the proposal. Ms. Duncan included portions of Idaho State code §67-6512 for conditional use permits, information on how the proposal does not meet the definition of a residential use but rather falls under a light class, moderate class or high occupancy class use, claiming the proposal should be classified as Recreational Hospitality, requests further details from the applicants, states her fears of who will be able to use the property, and concerns about how the proposal will impact the neighborhood. Ms. Duncan referenced past videos of the applicant and others where it is stated that for a fee, people can camp on site. In her packet, Ms. Duncan included transcripts from online videos the applicant posted, news articles, photos of the area and Earl Lane Road, documents related to the right-of-way of Earl Lane Road, and a letter from Ken Lustig to the Boundary County Planning & Zoning Department regarding his opposition to a rezone attempt on parcel RP64N02E152111A to change the zoning from Ag/Forestry to Suburban. Ms. Duncan also states that the dwellings do not meet the standards for a residential dwelling as there are no lavatories or kitchen facilities.

**Staff Notes:** Planning was notified by the applicant and their representative that they no longer wish to allow people to camp on site for a fee and only wish to use the property in a private recreational manner. Per the County code, the explanation given by the applicant and their representative describes a private recreational use.

**Diane Keigley-Keith & Alec Keith:** *I do not support the application for a conditional use permit that Struggle Bear, LLC has filed. This is a bad idea. If approved, it sets a precedent for future development projects that could lead to more undesirable and un-approved projects. Struggle Bear, LLC has circumvented the process to acquire a residential placement permit and is now asking for a conditional use permit. This should not be allowed.*

**Terry & Jorja Auten:** *My wife and I own the parcel just north of the Struggle Bear parcel, 5.36 acres. Along the river, bordering the Struggle Bear parcel on our south and west property lines. (map was attached) We purchased the property in this area for our family to use recreationally for now and hopefully someday build on it because of serenity of the neighborhood. The only access road the Struggle Bear parcel cuts through our entire parcel from north to south and is a private easement. I firmly believe that if this CUP is approved, it will have substantial negative impact on our property and our quality of life there for us and I see no benefit to the community in his intended use. This is a quiet rural residential neighborhood on a dead-end road with very limited access and activity which is why we love it here. The parcels are zoned to be used for single family residences and ag/forest management and should remain that way. I will refer to documents submitted by Elaine Duncan (neighbor to our north) in opposition to the CUP application for my reasons for opposing this CUP. I agree with her findings, and don’t think I could add anything to it.*

**Standards Analysis & Evidence of Applicable Codes and Comprehensive Plan**

**Idaho Code §67-6512, Special Use Permits, Conditions, & Procedures:**

A special use permit/conditional use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, to provide services for the proposed use and when it is not in conflict with the plan.

**Staff:** The Boundary County code allows for conditional use permits in **Section 7** of the County land use ordinance, which states, “where a specific or general use is allowed for consideration as a conditional use with a zone district, a conditional use permit shall be approved and issued prior to the onset of development or establishment of that use. A conditional use application will encompass all development proposed on a single parcel or lot, and upon issuance, the application, as modified by standards, terms or conditions imposed by the conditional use permit, will become the controlling plan for that parcel or lot, and will not be changed or expanded without application for a new development permit.”

A multi-structure residential use is permitted through a conditional use permit in the Ag/Forestry zone at **Section 15.9.5.3**.

A multi-structure residential use is permitted through a conditional use permit in the Suburban zone at **Section 15.11.5.1**.

**Boundary County Land Use Ordinance, 9B18LOV2, Sections 7.7.1 – 7.7.9:**

(1) Whether the application, site plan and additional documentation provided by the applicant sufficiently demonstrate the full scope of the use proposed.

**Staff:** The application package sufficiently demonstrates the scope of the proposal with the site plan showing all dwellings and accessory structure, floor plans for both dwelling sizes, and a complete narrative statement in relation to the proposed use.

(2) Whether the proposed use conforms to all applicable standards established by this ordinance.

**Staff:** No specific standards exist in the County code for the proposed use other than the requirement that a conditional use permit be applied for, which has occurred, along with the existing dwellings being required to meet the Ag/Forestry and Suburban setback requirements. These requirements have been met. If the conditional use permit were to be approved, a residential placement permit for each of the four (4) additional dwellings would be required to be applied for.

(3) Whether there is sufficient land area to accommodate the use proposed, and whether development is so timed and arranged so as to minimize adverse effects on surrounding properties and uses.

**Staff:** The property is 10 acres and split-zoned with the Suburban zone having a density minimum of 2 ½ acres where no community water or sewer is available and the Ag/Forestry zone having a density minimum of 10 acres regardless of community services. If more than one is proposed, a multi-structure residential use is required to be applied for with a conditional use permit in both zones. The number of dwellings is not regulated by code. The application states that it will pull water from the Moyie River and will have septic systems for sewage disposal. Panhandle Health District has stated that it does not have any application for the parcel and that the applicants will be required to contact them about the sewage disposal for the additional primary single-family dwellings.

(4) How the impacts of the use proposed compare with the impacts of existing uses within the zone.

**Applicant:** *Since each dwelling is small, not intended to accommodate a primary residence, and is only intended to support part-time use for recreational purposes, the actual impact should be no greater than the existing adjacent uses with primary dwellings that are larger in size. Also, since the property is zoned as both Ag/Forestry and Suburban, the Suburban zone designation allows for higher densities in the vicinity, making the overall density of land area compared to total building size similar with nearby parcels.*

	<p><b>Staff:</b> All six (6) of the dwellings are existing with two of them having been applied for a residential placement permit for a primary single-family dwelling and an accessory dwelling unit (ADU). The other four dwellings would first have to be approved through a conditional use permit prior to applying for their individual placement permits. Three dwellings are 144 square feet in size and three dwellings are 400 square feet in size. Neighboring parcels have a mix of uses from vacant timberland and state land to residentially developed land.</p>
(5)	<p>Whether concerns raised by other departments, agencies or by the providers of public services, including but not limited to road &amp; bridge, water, electricity, fire protection, sewer or septic, can be adequately addressed.</p>
	<p><b>Applicant:</b> <i>The applicant has a water right permit to use water from the Moyie River, the low intensity recreational use is supported using portable toilets with off-site disposal, Earl Lane Road provides direct access to the property and the low traffic generation can be supported by the current road conditions, NLI power is available at the site, fire access is via Earl Lane Road, and no agency concerns have been raised.</i></p> <p><b>Staff:</b> At the completion of this staff report, no concerns were raised by local agencies, but multiple agencies provided comments in regard to how the applicant can follow their regulations. These agencies included the Boundary County Road &amp; Bridge Department, Addressing Coordinator (R&amp;B Department), and Panhandle Health District.</p>
(6)	<p>The potential benefit to the community offered by the use proposed.</p>
	<p><b>Applicant:</b> <i>The community would benefit from the proposed use by keeping the majority of the parcel in its current wooded condition, meaning wildlife habitat is preserved and private recreational uses are supported. These benefits are consistent with the surrounding area and maintain overall continuity with many aspects of the comprehensive plan.</i></p> <p><b>Staff:</b> There would be minimal to no potential for the local community to benefit from the proposed use except for the possibility for local construction businesses to have temporary work on the project.</p>
(7)	<p>Whether specific concerns aired through the public hearing process have validity and whether those concerns can be adequately addressed.</p>
	<p><b>Applicant:</b> <i>There are no known concerns with the land use proposed in this conditional use permit application.</i></p> <p><b>Staff:</b> Pending public hearing testimony.</p>
(8)	<p>Whether the use proposed would constitute a public nuisance, impose undue adverse impact to established surrounding land uses or infringe on the property rights of surrounding property owners, and whether terms or conditions could be imposed adequate to mitigate those effects.</p>
	<p><b>Applicant:</b> <i>Since the proposed land use is consistent with the surrounding land uses and private property rights, no impacts that require mitigation have been identified. The purpose of the use is to support private recreational use of the property by the landowner's family and guests, per unrestricted uses allowed under Section 15.2.3. The only reason for the conditional use permit is the proposed multi-structure residential use. Even with the higher total number of dwelling units (6 total), the total area of proposed dwelling unit buildings is only 1632 square feet.</i></p> <p><b>Staff:</b> The application states the use of the multiple primary single-family dwellings is for private recreation by the owner, their family and guests. If the use were to be used in a recreational hospitality or commercial use, a new conditional use permit would be required to have this standard reviewed against for that use. While the parcel is at the minimum density on 10 acres for the Ag/Forestry zone, the County code does not specify the number of multiple dwellings based on zoning.</p>
(9)	<p>Whether the use proposed would unfairly burden Boundary County taxpayers with costs not offset by the potential benefits of the proposed use.</p>
	<p><b>Applicant:</b> <i>Since the proposed land use does not create new or additional unfair burden or costs to Boundary County taxpayers, the benefit of maintaining wildlife habitat and private recreational uses of land offers a benefit to the county and its taxpayers.</i></p>

<b>Staff:</b> The proposed use, as described, does not show a potential to pose an unfair burden on Boundary County taxpayers.
<b>Boundary County Land Use Ordinance, 9B18LOV2, Section 7.8:</b> In considering approval of an application to establish a conditional use, the planning and zoning commission may consider the imposition of terms and conditions as a means of eliminating or mitigating potential adverse effects or to provide for public safety.
<b>Staff:</b> Draft conditions of approval are listed in the staff report.

<b>Decision by the Planning and Zoning Commission – Conditional Use Permit</b>	
<b>Motion to Approve</b>	I move to approve the conditional use permit for a multi-structure residential use to allow for four (4) additional existing primary single-family dwellings, File #22-0111, finding that the proposal <b>IS</b> in accord with the standards of Idaho Code and Section 7 of the Boundary County Zoning & Subdivision Ordinance, based upon the findings and conclusions as written or amended. This action does not result in a taking of private property.
<b>Motion to Table</b>	I move to table or continue the hearing to [insert date, time and place] to allow further consideration of the proposed application or to allow review and approval of written findings and decision.
<b>Motion to Deny</b>	I move to deny the conditional use permit for a multi-structure residential use to allow for four (4) additional existing primary single-family dwellings, File #22-0111, finding that the proposal <b>IS NOT</b> in accord with the standards of Idaho Code and Section 7 of the Boundary County Zoning & Subdivision Ordinance, based upon the findings and conclusions as written or amended. [ <i>state which findings/conclusions do not meet the standards</i> ]. This action does not result in a taking of private property.

**Draft findings and conclusions for discussion/adoption**

1. The applicant is requesting approval for a conditional use permit for a multi-structure residential use to allow for four (4) additional primary single-family dwellings, that currently exist.
2. The parcel is split-zoned Ag/Forestry and Suburban.
3. The Ag/Forestry zone has a minimum density of 10 acres and the Suburban zone has a minimum density of 2 ½ acres where no community services are available.
4. The site was created through Planning & Zoning file #20-152 and issued 10/28/2020 to then landowner Auten Construction.
5. The multi-structure residential use is defined as, “more than one primary residential structure, whether single-family, duplex or multi-family, on a single parcel or lot”. (**Section 2.56.4.**)
6. Multi-structural residential uses require a conditional use permit in both the Ag/Forestry zone (**Section 15.9.5.3.** ) and Suburban zone (**Section 15.11.5.1.**).
7. Planning & Zoning files #22-0109 and #22-0110 have been applied for by the applicant for the first primary single-family dwelling and accessory dwelling unit.
8. Three dwellings are 144 square feet in size and three dwellings are 400 square feet in size.
9. The site is accessed off the private portion of Earl Lane Road.

10. The site is to be served by the Moyie River for water, either septic systems or off-site facilities for sewage disposal, and Hall Mountain Fire District.
11. There are no mapped special flood hazard areas on site.
12. Mapped Riverine wetlands are present on site.
13. The site is not located within any area of city impact.

**Draft conditions of approval for discussion/adoption**

1. The conditional use permit will run with the land to which it is attached, and continue in effect for the life of the use established (**Section 7.3.**).
2. The approved conditional use permit will be deemed to lapse if work to establish the use has not begun within two (2) years of the date of approval, or when a use established by the conditional use permit is discontinued for a period of two (2) consecutive years. The owner of a property subject to a conditional use permit may request termination of the conditional use permit at any time by notifying the administrator in writing (**Section 7.4.**).
3. Any change in the use or increase in the use impact shall require a modification of the conditional use permit.
4. A residential placement permit for each of the four (4) additional primary single-family dwellings shall be applied for with the Boundary County Planning & Zoning Department and issued prior to the completion of any work.
5. Prior to the issuance of any placement permit for any future use of the existing approach from the county portion of Earl Lane Road, an approach permit with a disclaimer shall be completed for the use of the approach with the Boundary County Road & Bridge Department per their requirements.