



BOUNDARY COUNTY PLANNING AND ZONING

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STAFF REPORT
BOUNDARY COUNTY PLANNING & ZONING COMMISSION
FILE #24-0061, BERNADETTE & MICHAEL BONNER
LOT/PARCEL SIZE MINIMUM VARIANCE

Prepared By:	Tessa Vogel, Contract Associate Planner Ruen-Yeager & Associates, Inc
Project Description:	Requesting a lot size minimum variance on a 10.4-acre parcel in the Ag/Forestry zone to allow for a future land division to create one 1.7-acre parcel and one 8.7-acre parcel, where 10 acres is required. Each parcel would have one of the two existing dwellings located on site.
Project Location:	1357, 1360, &AND 1364 Porkchop Road
Parcel Number:	RP63N02E351216A
Legal Description:	Tax 3 less Tax 8 SEC 35 T63N R2E
Property Zoning Designation:	Agriculture/Forestry
Applicants:	Bernadette & Michael Bonner
Date Application Complete:	03/06/2024
Hearing Dates:	Planning & Zoning Commission 04/25/2024
Legal Notice Provided:	Newspaper: 04/04/2024 Site Posting: 04/17/2024 Mailed to owners w/in 300', media, taxing districts: 04/03/2024
Staff Report Attachments	Legal notice, application, narrative, agency comments,

PROJECT SUMMARY

Bernadette & Michael Bonner are requesting a lot size minimum variance on a 10.4-acre parcel in the Ag/Forestry zone to allow for a future land division to create one 1.7-acre parcel and one 8.7-acre parcel, where 10 acres is required. Each parcel would have one of the two existing dwellings located on site. The parcel is located at 1357, 1360 and 1364 Porkchop Road and is identified as Assessor’s Parcel RP63N02E351216A in Section 35, Township 63 North, Range 2 East, B.M. The sites are served by individual septic systems and wells and the Curley Creek Fire District.

Boundary County Land Use Code

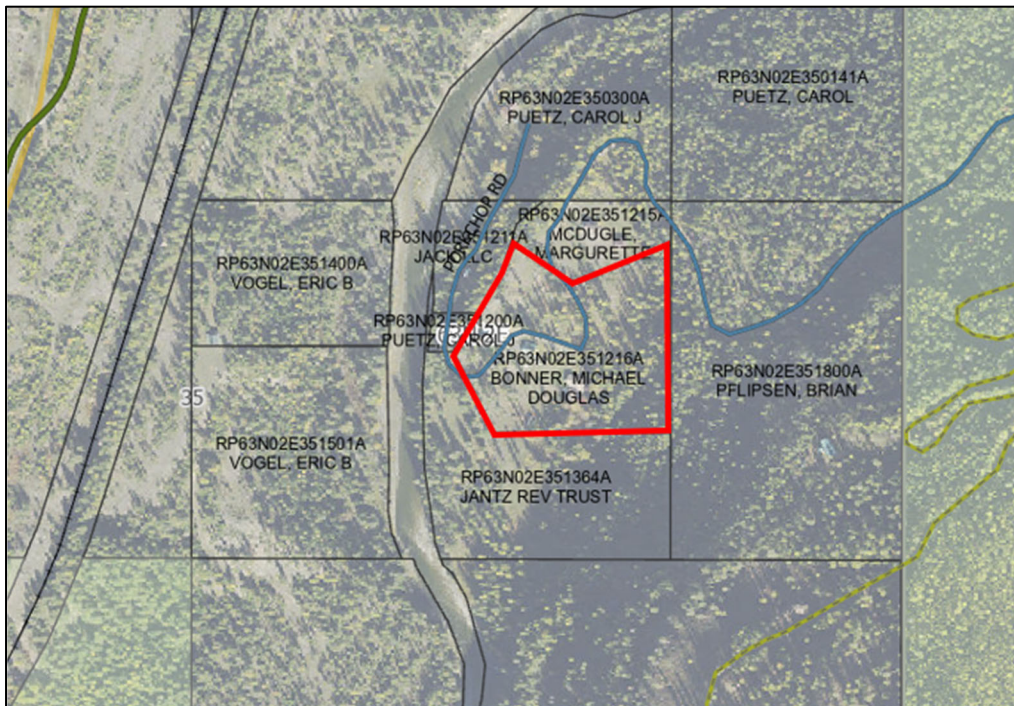
Section 12 Variances

12.2. Applicability: A variance is a modification of the bulk and placement requirements of this ordinance as to:

- 1. Setbacks related to front yard, side yard, and/or rear yard;
- 2. Parking space(s);
- 3. Structure height;
- 4. Other provisions herein affecting the size of a structure or the placement of the structure on lots or parcels.

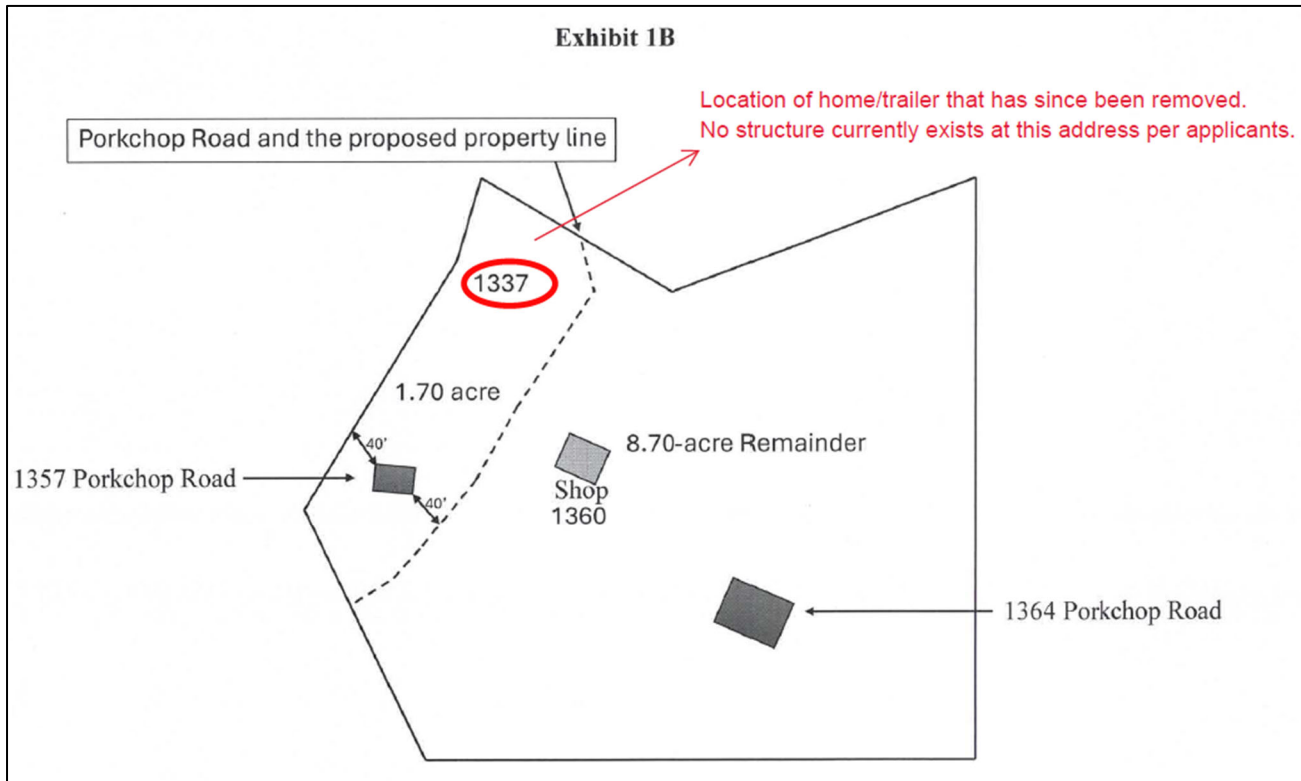
Idaho Code §67-6516

Variances: 67-6516. VARIANCE — DEFINITION — APPLICATION — NOTICE — HEARING. Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section 21-501, Idaho Code. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.



AERIAL OF SITE

PROJECT SETTING	
Access	Porkchop Road (private)
Current & proposed uses	Residential
Hazardous Areas	No special flood hazard areas, Zone D, Panel 1602070425B, no floodplain/floodway (area of undetermined but possible flood hazards)
Zoning overlays or special areas	None
Comp Plan designation & Zoning of site	Ag/Forestry
Surrounding Comp Plan designations & Zoning	Ag/Forestry; Prime Forestry
Surrounding uses	Residential; Vacant; Agriculture; Timber land, County land



SITE PLAN – EXHIBIT 1B IN APPLICATION

AUTHORITY

- Idaho Code §67-6516, Variances
- Boundary County Land Use Ordinance, Section 12, Variances
- Boundary County Land Use Ordinance, Section 15.9., Ag/Forestry Zone
- Boundary County Land Use Ordinance, Section 11, Subdivisions
- Boundary County Land Use Ordinance, Section 20, Parcel Divisions

AGENCY/STAFF COMMENTS:

The following agencies were routed for comment on March 07, 2024, and April 03, 2024: Boundary County Addressing (R&B), Ambulance, Assessor, Commissioners, Library, Road & Bridge, Boundary School #101, Curley Creek Fire District, Idaho Department of Environmental Quality, Panhandle Health District, and U.S. Forest Service.

Boundary Co. Addressing: *There are 4 addresses on this parcel. Will 1337 remain with the 1.5 acres they plan to sell? No other issues with the variance.*

Staff Note: Per the landowners, the dwelling located at 1337 has been removed (see site plan).

Boundary Co. Assessor: *Portion of parcel is currently valued as forestland in the bare land and yield category. Deferred taxes on the split acreage may become subject to recapture upon a change in use or ownership.*

Boundary Co. Road & Bridge: *Existing approach off of Perkins Lake Road for USFS RS2269 (Tuin Road). Under USFS jurisdiction for access to Porkchop Road.*

Idaho Dept. of Environmental Quality: *DEQ has no environmental impact comments for the project at this stage of development.*

Panhandle Health District: *PHD does not have a sewage disposal application for parcel RP63N02E351216A. 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. Proximity to the Moyie River is a concern for sanitary services.*

PUBLIC COMMENTS

Landowners within 300’ of the subject property were notified of the proposal on April 03, 2024, and notice was published in the Bonners Ferry Herald on April 04, 2024. Two public comments were submitted with the application.

Margurette & Robert McDugle: *My husband and I live on the adjoining property to the Bonners, 1202 Porkchop Road. We have been made aware that the Bonners would like to sell 1.5 acres of their property. We understand that that is a change in the variance, but, we do not have concerns about the change.*

Carol Puetz: *I am Carol Puetz who has property at 1544 Porkchop Road, Moyie Springs, Idaho. I’m aware of Bernie and Mike wanting to sell property to Liz and Rob Fulton which I approve of the sale.*

STANDARDS ANALYSIS & EVIDENCE OF APPLICABLE CODES AND COMPREHENSIVE PLAN	
Idaho Code, §67-6516 <i>Variances may be granted upon showing of undue hardship because of site characteristics. The variance shall not be in conflict with the public interest.</i>	
Boundary County Land Use Ordinance, Section 12.2. Applicability: <i>A variance is a modification of the bulk and placement requirements of this ordinance as to:</i> <ol style="list-style-type: none"><i>1. Setbacks related to front yard, side yard, and/or rear yard;</i><i>2. Parking space(s);</i><i>3. Structure height;</i><i>4. Other provisions herein affecting the size of a structure or the placement of the structure on lots or parcels.</i>	
Applicant: <i>The word bulk is not defined in the definitions section of the Boundary County Planning & Zoning ordinance. Since its inception in 2005, Boundary County Planning & Zoning has held bulk to refer to both the size of lots in addition to the height, and setback requirements for buildings and structures within a specific area.</i> <ol style="list-style-type: none"><i>1. The current buildings meet all the setback requirements contained in the Boundary County Planning & Zoning ordinance (see Exhibit 1B). Additionally, the proposed parcel would also meet all the setback requirements.</i><i>2. This is a private single-family residence and is therefore not applicable.</i><i>3. This is a private single-family residence and is not applicable.</i><i>4. The variance being requested is to allow for the modification of the bulk of a new parcel. Said proposed parcel is for the sole purpose of placing the additional residence built in 1985 on its own parcel.</i>	
Staff: <i>While a variance is a modification of the bulk and placement requirements of the Boundary County Land Use Ordinance, Idaho Code §67-6516 also notes other factors that constitute a variance. In addition, state code provides that variances may be granted when there is an undue hardship of site characteristics exists and it is not in conflict with the public interest. The commonly used planning definition for bulk is the volume of a structure or the size and shape of a structure and its relationship to other structures and the land in question. A bulk variance is not being requested for this variance. The applicants are seeking a lot size variance.</i>	
Boundary County Land Use Ordinance, Section 12.4.4.1. <i>Is the parcel unsuited for uses that would otherwise be allowed in the zone district because of special circumstances of the property, such as its dimensions, topography or features?</i>	

Applicant: Two single-family homes were built on the property from 1984-1985. This was before the changes in Boundary County development standards, which occurred on October 02, 2005, were put in place. The Bonners' daughter, Liz, has lived in the home on the west side of the property. Due to debt from medical bills, the Bonners would like to put the home to the west, in which their daughter lives, on its own parcel. In doing this, their daughter will be able to fiancé buying the home, thereby allowing the Bonners to pay medical bills.

Staff: The site is an ~10.39-acre parcel located in the Ag/Forestry zone which has a 10-acre minimum density. There are two existing homes and at one point there were three homes on site with the dwelling at 1337 Porkchop Road having been removed. Due to the age of the remaining dwellings, they would be considered grandfathered as far as structure placement standards. Per the current Boundary County Land Use Code, more than one dwelling is permitted on a 10-acre, Ag/Forestry-zoned parcel so long as proper permits are issued – placement permits for one primary dwelling and one accessory dwelling unit or placement permits and a conditional use permit for a second primary dwelling.

Boundary County Land Use Ordinance, Section 12.4.4.2.

Could denial of the variance infringe on the rights of the property owner, or could it constitute a taking of private property rights?

Applicant: Denial of the variance would be an infringement of the Bonners' property rights. The first section of the Boundary County Comprehensive Plan directly addresses property rights.

In Section 1.6 of [the] Boundary County Comprehensive Plan, "Government actions which violate Article 1, Section 14, are classed as regulatory takings, to include local land use ordinances or decisions which unjustly deprive a property owner the use of property."

In Section 10.1 the "Idaho Regulatory Acts Guidelines," define property rights and establish an administrative procedure for review. Those guidelines also establish a checklist to analyze whether a governmental land use action constitutes a regulatory taking.

In the checklist mentioned in Section 10.1 in item 1.10.4. "Does the regulation have a significant impact on the landowner's economic interest?" The Bonner's economic interest will have a significant impact depending on the approval of the variance for the following reasons – The Bonners need to sell the additional residence to pay off their outstanding medical debt.

Staff: The denial of the variance would not infringe on the right of the property owners as the current owners would be able to use the property as permitted within the Ag/Forestry zone, and would still be permitted to have the multiple dwellings on site.

The denial of the variance request would not constitute a taking of private property rights as 1) no permanent or temporary physical occupation of private property is occurring, 2) the property owners are not being required to dedicate a portion of property or grant an easement, 3) the property owners are not being deprived of all economically viable uses of the property, 4) the denial would not have a significant impact on the landowner's economic interest, and 5) the property owners are not being denied a fundamental attribute of ownership.

The applicants note that the variance would allow them to pay outstanding medical debt, which is an economic interest rather than an undue hardship due to the physical characteristics of the site.

Boundary County Land Use Ordinance, Section 12.4.4.3.

Would the variance infringe on the property rights of neighboring property owners?

Applicant: No, the neighboring property owners are in favor of approval of the variance, please reference letters from the Bonner's neighbors (Exhibit 2). The road used by the neighboring properties would not see any additional use due to the outcome of the variance not leading to any change in density.

Staff: The referenced public comments can be found on Page 4 of this staff report under PUBLIC COMMENTS. If the variance request is approved, there is potential for an increase in density as both parcels would be permitted to have one accessory dwelling unit each.

<p>Boundary County Land Use Ordinance, Section 12.4.4.4. <i>Is the need for the variance the result of the actions of the applicant?</i></p> <p>Applicant: No, the need for this variance was caused by the change in Boundary County Development standards which occurred on October 02, 2005, (10.1 of the comp plan). The two residences were built on the Bonner’s parcel 39 years ago which was before Boundary County’s standards were changed in 2005.</p> <p>Staff: Per the application, the applicants built the existing homes back in 1984-1985. Comprehensive Plan and ordinance updates/amendments are typical as communities grow through the years and multiple updates and amendments have occurred since the inception of the Boundary County Planning & Zoning Department to present that have the ability to impact landowners. Current Boundary County Land Use Code notes the Ag/Forestry zone, zoning of the site, has a density minimum of 10 acres.</p>
<p>Boundary County Land Use Ordinance, Section 12.4.4.5. <i>Is the variance the minimum accommodation needed to provide the requested use?</i></p> <p>Applicant: An option available to ensure the minimum necessary accommodation is the implementation of a deed restriction to prevent any change to density. The deed creating the future new parcel shall have a restriction that runs with the land limiting the parcel to one single-family residence with no additional dwelling units.</p> <p>Staff: The application and site sketch showing the proposed land division shows that the variance request for a 1.7-acre parcel and a remainder is the minimum necessary as the existing road dividing the property is proposed to be used as the new property line to allow for each existing dwelling to be on their own parcel.</p>
<p>Boundary County Land Use Ordinance, Section 12.4.4.6. <i>Would granting the variance confer special privilege to the property owner?</i></p> <p>Applicant: No, the need for this variance is caused by the change in Boundary County development standards which changed after the two houses were built.</p> <p>Staff: Per IC§67-6516, a variance shall not be considered a right or special privilege but may be granted to an applicant only upon a showing of undue hardship because of <u>characteristics of the site</u> and that the variance is not in conflict with the public interest.</p>
<p>Boundary County Land Use Ordinance, Section 12.4.4.7. <i>Would the variance confer on the property conditions that have been granted to other properties similarly situated?</i></p> <p>Applicant: Yes, see the attached map of similar parcels and the record of parcel divisions in the surrounding area (Exhibit 3).</p> <p>Staff: Of the parcels directly adjacent to the site, three parcels, (RP63N02E351215A; RP63N02E351211A; and RP63N02E351200A), are less than 10 acres. Per County records, these parcels were created in 2009, 2005, and 2008 respectively. In 2005, the Ag/Forestry zone did not exist and was instead the Ag/Suburban zone which allowed sites as small as 2 acres. After the County-wide zoning update in 2006, the Ag/Suburban zone was eliminated and many of those areas were zoned Ag/Forestry, including the site area of this variance. The parcels created in 2008 and 2009 would have needed to meet the 10-acre minimum density. Depending on the number of parcels created when these three parcels were created, a land division application would only have been required if four or more parcels were created which cannot be confirmed. No permits are on file with Boundary County. Per Boundary County Ordinance #2023-2, these three parcels are considered legal non-conforming or “grandfathered”.</p>
<p>Boundary County Land Use Ordinance, Section 12.4.4.8. <i>Will the variance alter the character of the zone district? (Refer to Comp Plan & 1.9. of the ordinance)</i></p> <p>Applicant: The variance will not alter the character of the zone district because no changes will be made in the current number of homes. Additionally, the portion of land proposed in this variance is adjacent to parcels of similar size thereby not altering the character of the area.</p> <p>Staff: The site is located in the Ag/Forestry zone, which has a density minimum of 10 acres. The applicants are proposing one, 1.7-acre parcel and one, 8.7-acre parcel. Both parcels would be less than the density minimum.</p>
<p>Boundary County Land Use Ordinance, Section 12.4.4.9. <i>Is the variance in harmony with the general purpose and intent of this ordinance and the Comprehensive Plan? (Refer to Comp Plan & 1.3. of the ordinance)</i></p>

Applicant: *The Boundary County Comprehensive Plan Introduction clearly states that it puts the rights and independence of its residents first. The Plan goes on to state that "It is also clear that those who have long been residents of Boundary County value their independence and wish to retain their ability to use their land as befits they and their neighbors, with minimal or no governmental interference."*

According to the 10.1. COMMUNITY DESIGN ASSESSMENT portion of the comprehensive plan, the development standards were created in 2005 to preserve the current standard of living. Going on to say that "Rather than imposing community design standards, county policy has been geared to the furtherance of free enterprise and economic development, particularly as regards harvest or extraction and utilization of Boundary County's natural resources, and to encourage the initiative of property owners to use their land in furtherance of their own best interest, both economic and social."

When the Bonners and their brother built the homes in 1984-1985, Boundary County did not impose parcel size restrictions, and there was no expectation that they would in the future. Boundary County gave both homes their own addresses. Liz & Robbie live in the secondary home, 1357 Porkchop Road, for which this variance is being requested. The proximity allows Liz & Robbie to provide care for their elderly parents.

The reason for placing the home on a separate parcel is to finance the sale of said home so that Michael & Bernadette can pay their medical debt, and so that Liz can remain close to her parents to continue taking care of them.

The granting of this variance is in line with the comprehensive plan's community design, which is to preserve and further the economic and social best interests of property owners in Boundary County. The granting of this variance would not violate the character of the community, as it would not change the housing density, and the neighboring parcel owners are in favor of this application. It is in the best interest of our community to alleviate the hardships of our neighbors when we can. If their medical debt cannot be resolved, Michael & Bernadette will have to seek other, less desirable resolutions and ultimately undertake additional hardship on top of their current situation.

Staff: The review of every variance request is looked at individually so as to provide applicants with fair, equitable and consistent land use regulations and guidelines.

Boundary County Land Use Ordinance, Section 12.4.5.

In considering approval of an application to establish a variance, 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. Such terms and conditions may be, but are not limited to:

- *Establish time frame(s) for development/completion.*
- *Change the value of the measurement for which the variance seeks relief.*

Staff: Draft conditions of approval are listed at the end of this staff report for review, discussion, and adoption/amendment by the Boundary County Planning & Zoning Commission.

DECISION OF THE PLANNING & ZONING COMMISSION	
MOTION TO APPROVE	I move to approve the request for a lot/parcel size minimum variance to allow for a future land division to create a 1.7-acre and an 8.7-acre parcel, File 24-0061, finding that the proposal IS in accord with the comprehensive plan and the criteria of Section 12 of the Boundary County Land Use Ordinance, based upon the findings, conclusions, and conditions as written [<i>or amended</i>]. This action does not result in a taking of private property.
MOTION TO TABLE	I move to table or continue the hearing to [<i>insert date, time, and place</i>] to allow further consideration of the proposed variance or to allow review and approval of written findings and decision.
MOTION TO DENY	I move to deny the request for a lot/parcel size minimum variance to allow for a future land division to create a 1.7-acre and an 8.7-acre parcel, File 24-0061, finding that the proposal IS NOT in accord with the comprehensive plan and the criteria of Section 12 of the Boundary County Land Use Ordinance, based upon the findings and conclusions as written [<i>or amended</i>]. [<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 applicants are requesting a lot/parcel size minimum variance for a 10.4-acre parcel to create a 1.7-acre parcel and an 8.7-acre parcel to put the two existing homes on their own parcels.
2. An application for the land division has not been submitted to the Boundary County Planning & Zoning Department.
3. The site has a comprehensive plan land use and zoning designation of Ag/Forestry, which has a density minimum of 10 acres.
4. Accessed is off Porkchop Road, a private road.
5. The site has no special flood hazard areas but is in an area of undetermined but possible flood hazards.
6. The site has no mapped wetlands present on site.
7. The site is located outside of any city’s area of city impact.
8. The site is located outside of the Airport Overlay Area.
9. The site is located within the Curley Creek Fire District boundaries.
10. The site is currently served by individual septic systems and wells.
11. Three, sub-10-acre parcels are adjacent to the site and range between 3 acres to 0.44 acres, were created in 2005, 2008, and 2009 and are considered legal non-conforming or “grandfathered” per ordinance #2023-2.
12. The applicants built the two existing dwellings in 1984-1985, per the application.

DRAFT CONDITIONS FOR DISCUSSION/ADOPTION:

1. The variance will run with the land to which it is attached and continue in effect for the life of the variance established.
2. The applicants shall obtain approval for a land division in accord with the subdivision and parcel division requirements of the Boundary County Land Use Ordinance and shall complete the conditions of permit approval within two (2) years of the written approval of this variance, or the variance shall no longer be valid. An extension of the variance may be granted by the Planning and Zoning Commission provided the request is made prior to the expiration date and the Commission finds there is just cause for the extension.
3. Any future land division will require a parcel division application or plat application be submitted to the Boundary County Planning & Zoning Department for review and approval.
4. The following notes shall be placed on the face of the plat or record of survey for the future land division:
 - a. Variance #24-0061 was approved for one, 1.7-acre parcel and one, 8.7-acre parcel only.
 - b. Only the existing dwellings are permitted on each parcel and no additional dwellings of any size or classification shall be permitted on either parcel.
5. Prior to the issuance of this variance, file 24-0061, the applicants shall reimburse Boundary County for first class mailings and advertisements required for public notification.