

**Blaine County Hearings Examiner
Public Hearing Date: February 2, 2022**

THIS IS NOT A FINAL DECISION

This Staff Report is based only upon the evidence in the record as of the date of this report and is subject to change. The final Finding of Fact, Decision and Conditions will be issued after the public hearing and after a decision is made.

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| REGARDING THE APPLICATION OF: Richard Dick and Dolores Prichard for a Variance application to encroach into the amended SH 75 setback. | Staff Report Nancy Cooley January 12, 2023 Revised January 27, 2023 |
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Requested Action: Richard Dick and Dolores Prichard request a Variance to encroach 10-feet and 2^{3/4} inches into the SH 75 100' setback for an addition of a bedroom, full bathroom and utility room. The property is Lot 5 & A-2, Block 1, Rivers Edge Ranch Subdivision, also known as 589 Benjamin Way and is 8.843 acres. The subject lot and project are within the Low Density Residential (R-1) zoning district and the Scenic Highway Overlay District (SHO). The lot, but not the project area, is within the Floodplain Overlay, Riparian Setback and the Rural Residential (R-10) Districts.

Issues for consideration are summarized here: The Hearing Examiner may wish to round up the proposed 10-foot and 2^{3/4} -inches encroachment to 10-foot and 3-inches.

The existing house is non-conforming for the 100' setback from SH 75 but was conforming when it was constructed in 2006. The SH 75 widening project encroached 15 feet and 8^{1/8} inches into the subject property, amending the eastern lot line adjacent to SH 75 making the existing house non-conforming for the SH 75 setback. A building permit for the addition was received November 1, 2022, without the design team realizing the 100' setback was not met.

Existing is a 1,101 square foot residence consisting of 1 full bath, 1 kitchen and 1 bedroom and an attached 692 square foot garage, all built in 2006 according to the assessor's records. Proposed is a 558 square foot second bedroom, bathroom and utility room addition located directly south of the existing garage. See Exhibit- A-2 Drawings; Sheets A0.0- Cover Sheet, L1.1- Site Plan and A2.0- Floor Plan.

The constraints of an addition to the existing house according to the applicant, are found in Exhibit A-1, the completed application and the responses to Variance Criteria for Review. Additionally, the Floodplain Overlay District encompasses most of this 8.843-acre lot. See Exhibit C-2.

The exact placement of the existing septic and drainfields is under investigation at this time. If the existing locations are found to be in conflict with the addition, the applicant shall provide a plan to relocate either or both of these facilities and has acknowledged this. See Exhibit A-1, response to Criteria B, the last paragraph. Hopefully this information will be provided prior to, or at least at the public hearing. If not, condition #3 covers this issue. No building permit for a residential structure or addition of a bedroom to a residential structure

can be issued without SCPHD's approval and sign off at building permit review by Land Use and Building Services.

All of the existing outdoor lighting fixtures (Ex. A-2, Sheet L1.1-Site Plan) will need to be brought into compliance with the current Outdoor Lighting chapter prior to Certificate of Occupancy for the building permit. See condition #3 and §9-29A: Outdoor Lighting.

I. Application, Notice, Exhibits & General Facts

1. Application- A variance application was received on December 20, 2022 and determined to be generally complete on January 12, 2023.
2. Disclosures: Site Visits? Ex. Parte Communications? Economic Conflicts? Other Conflicts?
Ex parte contacts involve a decision-maker's receipt of any information pertaining to an open application on a quasi-judicial matter. (ie: emails, phone calls, conversations) The undisclosed receipt and consideration of *ex parte* information denies interested persons their right to review and respond to this off the record information, resulting in a due process violation and more generally, an unfair process.
3. Notice- Public Notice for this application's Public Hearing on February 2, 2023, was as follows:
 - a. Legal notice was published in the Idaho Mountain Express on 1-18-2023;
 - b. Mailed on 1-18-2023 to surrounding landowners within 300' of the exterior boundary of the property;
 - c. Mailed on 1-17-2023 to all Blaine County political subdivisions.
 - d. An on-site notice was posted on the applicant's property on 1-26-2023, at least 7 days before the scheduled public hearing, as evidenced by an affidavit of posting in the record.
 - e. The application materials were posted on the Blaine County web page.

► Pursuant to Idaho Code §67-6512 and Blaine County Zoning Ordinance regulations, the Hearing Examiner shall review the above notice procedures and make a finding as to compliance with the requirements of Blaine County Zoning Ordinance §9-30-3.
4. Exhibits- The following are attached hereto as referenced:
A Exhibits- Applicant submittals (received on December 20, 2022, unless otherwise noted)
 - A-1 Completed Variance application form with responses to Criteria for Review
 - A-2 Drawings:
 - A0.0 Cover Sheet
 - L1.0 Vicinity and Parcel Map
 - L1.1 Site Plan and Existing Outdoor Lighting
 - A2.0 Main Level Floor Plan
 - A2.1 Roof Plan
 - A3.0 West Elevation
 - A3.1 East Elevation

A4.0 Sections

A-3 Compliant Outdoor Lighting fixture proposed at addition; rec'd 11-8-2022 for Building Permit application

B Exhibits-Agency Comments

B-1 North Blaine Co. Fire District; rec'd w/ building permit application 11-1-2022

B-2 South Central Public Health District- Updated approval is pending. See summary on pages 1-2 of this report.

C Exhibits- Blaine County Supplements –

C-1 Governing Plat for Rivers Edge Ranch Sub,

C-2 Floodplain Overlay and Riparian Setback District aerial map of subject lot

D Exhibits- Public Comment-

D-1 Karen and Carter Cox; 615 Benjamin Way; rec'd 1-17-2023

D-2 Jim Cooper; River's Edge Ranch HOA President; Rec'd 1-17-2023

II. Criteria for Review and Evaluation under §9-30-4 for Variance Applications

The criteria for review and evaluation of variance applications are found in the Blaine County Zoning Ordinance §9-30-4. The Hearing Examiner shall consider these criteria, as well as factors specified in other sections of the Zoning Ordinance and in the Blaine County Comprehensive Plan, in ruling on the applicant's request for a variance.

Code citations are italicized. Staff comments are bolded.

NOTE: The applicant has submitted written responses to the Criteria; see Exhibit A-1.

A. *Whether the granting of the variance will conflict with the public interest as expressed in the Blaine County Comprehensive Plan.*

Comment: See below from the Comprehensive Plan.

B. *Types of Housing*

B-7: . . . Consider more flexible regulations for existing nonconforming buildings and lots that provide housing for year-round residents, including zoning changes, flexibility in energy codes and other modifications, recognizing that continuing to live in existing homes is the most sustainable practice.

B. *Whether there are exceptional conditions creating an undue hardship, applicable only to the property involved or the intended use thereof, which do not generally apply to the property or class of use in the zone or district?*

Comment: The applicant has stated in Exhibit A-2, "The existing cabin sits on a small buildable portion of the property. The area around the existing cabin is bordered by the south neighboring property access road between the cabin and the highway, the driveway on the north side, and a large pond and floodway on the east side. There is a small area available on the south side of the cabin for the addition to the back of the existing garage.

The existing septic tank, natural gas and power services are directly to the east of the proposed addition, making the proposed footprint the only reasonable location for the addition. Prior to the expansion of State Highway 75 and the revised 100' setback, the footprint of the existing cabin and location of the proposed addition was outside of the original 100' setback. Without the variance to encroach 10'-2 3/4" into the revised 100' setback to the highway, the addition is not feasible. We are in the process of trying to locate the exact placement of the existing septic drain field and will follow up with this information when we receive it. In the event that the drainfield is found to be in conflict with the addition footprint, we will provide a plan to relocate the drainfield as necessary."

C. *Whether the granting of such relief will be detrimental to the public health, safety, or welfare.*
Comment: No detriment is foreseen.

D. *Whether the owner can derive a reasonable use of the owner's land without a variance.*
Comment: The applicant has stated that "Without the proposed variance for a 10-foot 2^{3/4}-inch encroachment into the revised SH 75 100' setback, the addition to the existing cabin will not be feasible."

Existing is a 1,101 square foot residence consisting of 1 full bath, 1 kitchen and 1 bedroom and an attached 692 square foot garage, all built in 2006 according to the assessor's records. Proposed is a 558 square foot bedroom, bathroom and utility room addition located directly south of the existing garage. See Exhibit- A-2 Drawings; Sheets A0.0- Cover Sheet, L1.1- Site Plan and A2.0- Floor Plan.

The constraints of the proposed addition are found in Exhibit A-1, the completed application and the responses to Variance Criteria for Review.

E. *Whether the variance will effect a change in zoning.*
Comment: The existing R-1 zoning includes single-family dwellings as a permitted use. The SH 75 100' setback is independent from underlying zoning districts dimensional standards.

9-3-10: STRUCTURE SETBACK ON HIGHWAY 75:

All structures along Highway 75 shall be set back a minimum of one hundred feet (100') from the edge of the right of way. Utilities and driveways are exempt. Signs within this setback are regulated in chapter 29 of this title. Fences, walls, earthen structures and landscape are regulated in chapter 21A of this title. Address markers are regulated in section 7-7-5 of this code.

F. *Whether the variance will be injurious to the property or improvements of others.*
Comment: Proposed is an additional 583 square feet for a 2nd bedroom with a full bath and a utility room. See Exhibit A-2. The closest residential structure to the subject residential single-family residence is located approximately 160-feet south, on 587 Benjamin Way. Aerial mapping indicates landscaping between the proposal and the residence to the south.

Aerial mapping and a site visit indicate thick tree cover between the highway and the

subdivision. Passersby on the highway do not see structures within the subdivision.

G. *If the applicant or landowner with respect to an application for a variance under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof, . . .*

Comment: Not applicable. The applicant is a private property owner.

III. Decision and Conditions

Pursuant to Zoning Ordinance §9-33-8, the Hearing Examiner shall enter an order approving, conditionally approving, or disapproving an application within fourteen (14) days after conclusion of the public hearing together with the reasons therefore. The public hearing on this application is set for February 2, 2023.

Any approval or denial of this application will be based upon the information provided as part of this application and upon any additional information which may be provided before or during the scheduled public hearing. The Hearing Examiner shall also, pursuant to Zoning Ordinance §9-33-8, attach conditions of the approval of a variance request as are deemed necessary to protect the rights of all affected property owners and the general welfare. If approved the hearing examiner shall state the permitted encroachments and distance of encroachments.

1. Approved is a 10-foot 2^{3/4} – inch (or a 10-foot 3-inch if the H.E. is rounding up) encroachment into the 100' setback from SH 75.
2. All variances shall expire one year after their issuance if a building permit has not been obtained for the purpose of exercising the variance.
3. The applicant shall apply for and obtain a building permit prior to commencement of any site preparation work or construction, and shall comply with all other applicable zoning, building, fire and health district regulations and conditions.
4. Any modifications to the approved plans shall require further zoning review and may be subject to additional regulations pursuant to the Blaine County Zoning Ordinance.

Notice pursuant to I.C. 67-6535(c): The owner of the property subject to this application and decision may request regulatory taking analysis pursuant to I.C. 67-8003.