BEFORE THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF
BONNEVILLE, STATE OF IDAHO

IN RE:
The Application was a variance to setback standards in a G-1 Zone on a parcel owned by Gary and Shellee Lewis.
Appeal was filed by Byard Cox.

(FINDINGS OF FACT, CONCLUSIONS AND DECISION)

This matter was before the Bonneville County Planning and Zoning Commission for the purpose of a variance request to the setback standards for a home in a G-1 (Grazing) Zone. The request was made by Gary and Shellee Lewis on property located at 6308 East Foothill Road. The Board of Adjustments heard this matter on December 16, 2015 and recommended approval of the request on a vote of 4-1. An appeal was filed against the decision made by the Board of Adjustments by Byard Cox. A subsequent hearing was held by the County Commissioners on March 1, 2016 and then continued to April 18, 2016. After having reviewed the testimony of both hearings, the report from the Board of Adjustments, the County Zoning Ordinance, the County Comprehensive Plan and all the reference information and affidavits submitted for the hearings the Bonneville County Commissioners make the following findings.

1. That the property is designated as an area for Agricultural development on the county's comprehensive map.

2. That the parcel is irregular in shape and is currently designated as a G-1 Grazing area on the zoning map of Bonneville County.

3. That the parcel has road frontage on Foothill Road.

4. That the parcel has not been used for agricultural purposes for a long period of time.

5. That the parcel would be difficult to farm because of its small size.

COMMISSIONERS' MINUTES
Exhibit No. 101-16
Book 33 Page 365
6. That the parcel is near to other residentially used properties.

7. In 2003 Mr. Cox had a record of survey prepared by Mountain River Engineering showing a proposed legal description and proposed tract out of a 34.5 acre parcel. No deeds were recorded removing the tract from the 34.5 acre parcel.

8. Mr. Cox’s original building permit for the home was not issued on the 1.27 acre legal description which was not recorded and therefore did not exist. The site plan that was submitted by Mr. Cox and drafted by his design professional Double D Designs showed a house located on a non-recorded lot with setbacks that did not meet setback standards. The correct setbacks were noted on the site plan and the non-existent legal description was crossed out. The permit was issued on the parcel of record which was 34.5 acres in size and identified as R03N39E300385. The second copy of the site plan that was submitted by Mr. Cox was updated with those corrections and was given back to the applicant Mr. Cox, when the permit was issued and picked up.

9. The certificate of occupancy for the home was issued to Mr. Cox in October 2005 also located on the large 34.5 acre parcel not the 1.27 acre non-recorded legal description. Mr. Cox paid the taxes for the home on the 34.5 acre parcel until 2007. In 2007 Mr. Cox deeded the small 1.27 acre parcel to himself. Mr. Cox acknowledged that he signed the deed for the new legal description during the public hearing.

10. When Mr. Cox recorded the deed of the small parcel to himself he created the violation of the zoning ordinance with the non-compliant setbacks.

11. The Lewis’s acknowledge that they were aware of the setback problems and had received a copy of the violation letter recorded by the Zoning Office prior to their purchase of the property.

CONCLUSIONS

In that the appeal is filed by Byard Cox of an action approved by the Bonneville County Planning and Zoning Commission, he must bear the burden of showing that the Planning and Zoning decision was inappropriate.

Mr. Cox’ attorney represented that this variance cannot be applied for in that the Applicants’ predecessor in interest forfeited its right to appeal the notice of violation of the setback standards when they (Federal National Mortgage Association) did not file an appeal of the notice. It needs to be noted that appeal and variances are separate actions as defined in the Zoning ordinance. Section 1-511 1. Deals with appeals of interpretation and administration of the ordinance by the Administrator or his officers.
1. "The Planning and Zoning Commission shall hear and decide appeals in cases where it is alleged that there is error in any order, requirement, decision, or determination made by the zoning administrator or other administrative officers in the enforcement of this ordinance, and shall decide questions involving interpretation of this ordinance including the determination of zone boundary lines."

Section 1-511 2 Deals with the granting of variances.

It is the Commissions' finding that it is true an appeal of the notice of violation cannot be appealed in that it is beyond the appeal time. However this request is not appealing the notice of violation of the standards; the Lewis' acknowledge the violation is correct. The Lewis' are asking for a variance to the setback standards which violation was not of their making but by the actions of Mr. Cox. Whether the variance is approved or not, they have the right to apply.

The Zoning Ordinance of Bonneville County provides a procedure for the granting of a variance. A variance may be granted, provided the applicant can justify compliance with the items listed in Section 1-511 of the ordinance.

1. "The Planning and Zoning Commission shall hear and decide appeals in cases where it is alleged that there is error in any order, requirement, decision, or determination made by the zoning administrator or other administrative officers in the enforcement of this ordinance,"... The Board of County Commissioners finds as was noted above that the Lewis' are not challenging any decision of the administrator in the interpretation of the setback violation.

2. "The Planning and Zoning Commission may grant variances from the strict letter of this ordinance where a property owner can show that:

(a) Because of unusual narrowness, shallowness or shape of a specific lot or parcel of land, or

(b) By reason of peculiar topographical features or other special circumstances peculiar to the particular lot or parcel of land, the strict application of the terms of this ordinance would prohibit the use of the applicant's property in a manner reasonably similar to that of other lots in the same zone."

It is the Board's opinion that because of the actions of the previous owner Mr. Cox that there is now an unusual lot condition created that makes the lot too small to comply with setback standards on three sides of the parcel. Because of these actions, the applicants' property is denied privileges that would prohibit the use of this home in a similar manner that others in the same zone possess. It is also the opinion of the Board that because of
actions taken by Mr. Cox in his severance of the two parcels that there are also special circumstances that are peculiar to this specific lot.

3. Before a variance can be granted, the Planning and Zoning Commission must find upon the evidence before it that:

(a) Special circumstances do actually attach to the particular property covered by the application, which do not apply generally to the other properties in the same zone.

Once again, it is because of the actions of the previous owner Mr. Cox that there is now an unusual lot condition created that makes the lot too small to comply with setback standards on three sides of the lot. Because of these actions the applicants' property is denied privileges that would prohibit the use of this home in a similar manner that others in the same zone possess.

(b) Because of some special circumstances the appellant's property is deprived of privileges possessed by the properties in the same zone.

Because of the actions of the previous owner Mr. Cox there is now an unusual lot condition created that makes the lot too small to comply with setback standards on three sides of the lot. Because of these actions the applicants' property is denied privileges that could prohibit the use of this home in a similar manner that others in the same zone possess.

(c) The granting of such variance will not substantially affect the comprehensive plan of zoning in the county.

In that this case is so unique and peculiar it will not affect the comprehensive plan for zoning in that the circumstances involved will most likely never be seen again.

(d) Adherence to the strict letter of the ordinance will cause difficulties and hardships, the imposition of which is unnecessary in order to carry out the purposes of the zoning plan.

As was stated above in that this case is so unique and peculiar it will not affect the comprehensive plan for zoning in that the circumstances involved will most likely never be seen again.

(e) The hardship is not the result of any action by the property owner taken after the effective date of this ordinance.

As has been mentioned above the hardship was created by Mr. Cox in that he is the one that divided the property placing it into violation of the setback standards. The smaller acreage could
have been utilized and developed as a viable site for construction of this home if it would have been located properly on the lot. Mr. Cox's design professional D. Blain of "Double D Design" did not orient the home properly on the lot. Mr. Cox could have fixed the problem prior to construction in that he was the owner and was in control and responsible. He received a corrected site plan when he obtained his building permit which showed that the small 1.27 acre parcel did not exist and that if it had been used that the setbacks were non-compliant. He could have at that time reconfigured the location of the home on the lot so that in the future it could have been split out.

Mr. Cox complains in his brief that the county should have not passed the inspections if it was non-compliant. The house as built on the 34.5 acre lot was fully compliant with zoning rules and regulations and therefore no corrections were required. The county did notify him of the potential problem before we issued the building permit as it was noted on the returned plans given to him. Again the non-compliance did not occur until he recorded the deed creating the problem. The hardship was not of the Lewis' making.

Mr. Cox's brief argues that the county approved his site in non-compliance when it was inspected and the county was in error and that Mr. Cox is blameless. If that were true then he must agree the Lewis' should also benefit from that same mistake and they are not in violation.

Mr. Cox claims that he did not understand the purpose of the deed that he signed and it was the banks fault. It is the Board's opinion that this seems odd in that Mr. Cox had the property surveyed a year in advance of him getting a building permit. He must have provided the survey of the unrecorded parcel to his designer. Did he not give instructions to the designer as to where he wanted the home placed? Who placed the home improperly on the surveyed parcel Mr. Cox or his designer? Did he not approve the site plan when it was presented to him by his designer? Regardless of who sited the residence, Mr. Cox ultimately approved it by allowing construction of the residence to continue and by occupying the premises. All of these actions took place in advance of the Lewis' taking ownership of the property. The hardship was created by Mr. Cox' actions and as the owner he is responsible.

Mr. Cox states in the brief that the Lewis' got the home cheap and were gambling that they could get a variance. Mr. Cox indicated that as the price of the home was falling that he could have made an offer at any time to buy the home but he did not exercise the option to buy. Now he complains the Lewis', if granted the variance, will receive a windfall profit, and the county would be an accomplice. If Mr. Cox would have purchased the property in advance of the Lewis' he would have received the same windfall profit particularly where he is the only person who could fix the setback problem. It can only be reasoned that Mr.
Cox was only waiting for a lower price for even a greater windfall profit for himself.

Mr. Cox claims the Lewis’ created the hardship by buying the property out of compliance and the only solution is for them to buy property from him at his determined price. Mr. Cox seems to be leveraging the land the Lewis’s would need, asserting he is their only solution. If this is the case, Mr. Cox has created a loophole to the lending laws wherein he can leverage an unreasonable price for the land to bring the parcel into compliance or he is the only viable buyer to buy the property back at a price that is to his liking, say $1.00 either way, it is a windfall of his own creation. It is the Board’s opinion the Lewis’ again did not create the problem but that they did speculate and run the risk that they could obtain a variance.

The challenge in the brief referring to Section 1-711 "The minimum distance between main buildings used for human occupancy shall be forty (40) feet.",[1] claiming that granting the variance would constitute an unlawful infringement of the use of the adjoining property is also a red herring. It was Mr. Cox who attempted to have the home built in non-compliance with the setback standards when he originally applied for the building permit with the unrecorded 1.27 acre parcel and then did create the noncompliance when he recorded the deed in 2007. At both time frames he owned all of the land creating the infringement by himself and on himself. If he would have wished to build a occupied structure on the adjacent property when he owned it he would have had to be set back to the 40’ distance. Mr. Cox again created the hardship not Lewis’ and any infringement was of his own making. It is the Board’s opinion that the infringement created was Mr. Cox’s responsibility through his actions and not an unlawful act created by the Lewis’ or by county actions.

After reviewing the report of the Planning and Zoning Commission it is the commissioners decision that based on the evidence and testimony received that the Commission appropriately considered and deliberated the case when they approved the variance requested by Lewis’. It is also the intent of the Board of County Commissioners to adopt and incorporate those minutes as an integral part of this decision.

There is a no gain or loss of land solution, just rotate the legal description to match the setback minimums and do a deed exchange between the two owners.

Based on the testimony and the evidence submitted it is the opinion of this Commission that the findings of the Planning and Zoning Commission were proper and that the variance was properly granted. Mr. Cox failed to show that the Planning and Zoning decision was inappropriate.
DECISION

Based upon the above facts it is the decision of the Bonneville County Commissioners that the request be approved for variance to setback standards. The Zoning Administrator is to hereby notify the applicant of the decision of this board.

Dated this 13th day of July 2016.

BONNEVILLE COUNTY COMMISSIONERS

Roger S. Christensen  Chairman

Lee Staker  Member

Dave Radford  Member