

4/23/2013

To: Gallatin County Commission

Cc: Bridger Canyon Zoning District commissioners and agents

From: Bridger Canyon Property Owners Association

Tom Fiddaman, Chairman;

1070 Bridger Woods Rd, Bozeman MT 59715, tom@metasd.com, 406 582 7608

For the BCPOA Board of Directors, unanimously approved 4/22/2013

Re: Petty Variances

Reflecting on the April 11 Planning and Zoning Commission decision, we appreciate that the commission wishes to preserve old structures, minimize applicant expenses and protect views along Bridger Canyon Road. We do not entirely agree with the commission's assessment of the virtues of the projects, but respect the effort invested in the deliberations.

However, we believe that a higher principle is at stake: rule of law. Approval of the variance trades the *violation* of an objective standard (the stream setback) for unstated viewshed benefits in *in excess* of the road setback designed for that purpose and assumes hypothetical projects not yet proposed, while ignoring the actual criteria (deprivation or hardship) upon which decisions are to be based.

Objective, numerical standards and plain language should be the gold standard of the zoning regulations. If they can be set aside lightly, for the convenience of applicants and in pursuit of entirely optional Conditional Uses, then the application of zoning is arbitrary and capricious.

Therefore we ask the Commission to reconsider this project in light of the standards for approval of the variance.

17.3.1 Variances. Variances from the terms of this Zoning Regulation shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this Zoning Regulation deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

- Evidence presented on April 11 did not indicate any manner in which “strict application of zoning deprives” the Pettys of anything. Uncontested testimony has repeatedly shown that there is ample buildable land outside of setbacks.
- The sole evidence presented concerning “privileges enjoyed by other property in the vicinity” was a Google Earth image of a property with structures close to Bridger Creek. No effort was made to establish the nature or status of these structures. We subsequently requested permits on the property shown from the Planning Department, and none could be found. We contend that they are either nonconforming (in existence at the time the zoning was created in 1971) or unpermitted. It is extremely unlikely that there would be no paper trail if they were Conditional Uses. There is no evidence that these are a valid point of reference for demonstrating privileges enjoyed by others.

MCA 76-2-106: The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

- On April 11, the commission’s findings explicitly denied that financial considerations were part of the rationale for the existence of “hardship” (we agree). Yet no other example of hardship has been provided. There can be none, because ample accessible, buildable land exists outside of setbacks, and the proposed structures are for optional Conditional Uses, not necessities.

In light of these facts, we do not believe that the April 11 approval would withstand District Court review. The Commission can rectify this decision by denying this variance.

Should the commission approve, we ask that a condition suggested by the Planning Department be reinstated:

A buffer of native vegetation within 50 feet of the mean high water mark of Bridger Creek shall be maintained. (Here we have paraphrased from the original.)

The Commission’s prior disregard for this provision gave the untoward impression of a punitive measure. Given the prominence of water resource protection in the General Plan, and the extent of the proposed encroachment, we believe that the Commission should provide some mitigation for the stream setback irrespective of its opinion of variance opponents.

Similarly, the Commission declined to condition the application to restrict expansion of the recreational structure with a deck. Because these are residential accessory structures within the stream setback, they are nonconforming, and their nonconformity may not be increased by

additions. No variance has been sought from the nonconforming provisions of Section 14 of the regulation, so such additions are precluded. We request that the Commission note this fact.

We request that the commission incorporate BCPOA's testimony from the April 11 hearing, including memos from Tom Fiddaman et al. dated April 9 and April 11, which were noted in the record.

Finally, no land use permit may be issued until the appeal period has elapsed and appeals are exhausted (17.3.9). Residents have commented that interior work on the structures is ongoing; this project continues to be a sad example of disrespect for zoning and the commission's authority.

Respectfully,

A handwritten signature in blue ink that reads "Tom Fiddaman". The signature is fluid and cursive, with the first name "Tom" and last name "Fiddaman" clearly legible.

Tom Fiddaman