

**BINGHAM COUNTY PLANNING & ZONING COMMISSION  
REASON AND DECISION**

**APPLICATION OF:** Variance from Setback Requirement from a Waterway to a Structure

**PROPERTY OWNERS:** Jason and Wendi Stevens

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**Requested Action:** Property owner Jason Stevens requested a variance to the required 100-foot setback from the Snake River of approx. 30 feet to allow an existing non-permitted carport structure to remain in its current location on his property, located in a “R” Residential Zoning District, and within the Shelley Area of City Impact. Pursuant to Bingham County Code Section 10-10-5 *Variances*, the Applicant must show an undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest.

**Property Location:** 462 E 700 N, Firth, Idaho, Parcel No. RP0396913, Township 1 South, Range 36 East, Section 26, consisting of approx. 3.03 acres

**Applicable Regulations:** Bingham County Comprehensive Plan dated November 20, 2018  
Bingham County Zoning Ordinance 2012-08

**Public Hearing Date:** July 10, 2024

**I. PUBLIC HEARING MEETING AND INFORMATION**

1. The following was reviewed by the Commission:
  - a. Application;
  - b. Staff Report; and
  - c. Testimony presented prior to the Public Hearing which included:
    - (T-1) Bingham County Surveyor;
    - (T-2) Bingham County Public Works;
    - (T-3) Idaho Department of Environmental Quality;
    - (T-4) Bingham Riverbend Estates Home Owners Association President, Robert Boston, provided a letter in favor of the Variance Application; and
    - (T-5) Jennifer McCulloch and Mathew Barber provided a letter in a neutral position.
2. After the Staff Report was presented Commissioner Adams requested clarification as to if the variance was for 70 feet or 30 feet to which Assistant Director/Lead Planner Jackman stated 30 feet. Commissioner Bingham confirmed a Building Permit was applied for the shop structure but not the carport structure.

3. Testimony was then heard by (T-6) Applicant Jason Stevens, 1288 N 590 E, Shelley, Idaho, who stated he made a mistake by not researching the setback distance required from the Snake River. Mr. Stevens was aware of the 100-foot high-water mark when working with his builder for his home but had he known he would later want a carport, he would have placed the shop closer to their residence. Commissioner Adams confirmed Mr. Stevens didn't experience any loss of land during the high-water season and has no plans to rip rap or make other alternations to the river bank.

Commissioner Carroll questioned Mr. Stevens' response to Bingham County Code Section 10-10-5(A)(1)(c) That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures or buildings in the same zone. He believes that granting this Variance is providing a special privilege. Mr. Stevens did not see this request as a special privilege in that he was requesting to allow the structure to remain in place so the property can be utilized the way he designed it. Commissioner Carroll pointed out that the variance is applied for because he failed to obtain a Building Permit in the first place and in his opinion, that is a special privilege and questioned the unnecessary hardship of the structure.

Mr. Stevens noted that he originally was willing to remove the structure once his shop was completed but that his request is now for the carport structure to remain in its current location permanently. Mr. Stevens' recognized the inadvertent fault of not obtaining a Building Permit and if the structure needed to be removed, he asked for Commission consideration to allow it to remain until his shop was constructed.

4. No testimony was received on the Application and the Public Hearing portion for this item was closed after Mr. Stevens' testimony.
5. Commissioner Bingham questioned Director Olsen if the irrigation easement concern had been resolved. Director Olsen stated she has not been able to verify if an operating irrigation system lies within the platted irrigation easement and that she was hoping Mr. Stevens would have addressed the concern. Chairman Aullman stated that although testimony was received by the Home Owners Association (HOA), he questioned if they were aware that this structure is within that easement area. Director Olsen stated she was unable to contact the HOA President to discuss this specific concern noting the letter did not include any contact information. Commissioner Johns asked if there is irrigation pipe located in the subject easement? Director Olsen stated there are no irrigation plans in the Subdivision file and was unsure if there was a pipe in the easement but added the location is roughly 50' from the back-lot line.

Commissioner Adams stated the river is constantly changing and with the structure being 70 feet from the river, it is his position that the structure being removed would create an undue hardship. Commissioner Bingham commented that in the most recent Variance Applications that were approved for towers that failed to meet setback distance

requirements, in this case, it seemed reasonable. Commissioner Adams added this Variance Application seems more innocent than those referenced.

Commissioner Johns agreed with Commissioner Adams and Commissioner Bingham's comments but stated it is challenging to continue to grant Variance Applications for structures that are placed without Building Permits. The Code requires a 100-foot setback from the river and questioned if the Commission approves every request where a permit wasn't first sought, if it would generate more Variance requests.

Commissioner Adams said he understands that Mr. Steven's made a mistake for not permitting the structure and added that Mr. Stevens is on the inside bend of the river which is probably why he hasn't lost ground; if he were on the outside of the bend, it would be expected for the river flow to change the ground more so than not.

Commissioner Johns asked if there may be future issues with the irrigation easement if the Variance is granted? Chairman Aullman commented that he believes that the nature of the carport is not permanent and could be moved. Commissioner Bingham asked if the Public Hearing could be reopened to allow Mr. Stevens to testify to the irrigation easement concerns. Commissioner Johns second the motion and the motion carried with all those present voting in favor.

Mr. Stevens approached the podium and stated he had his sprinkler system installed professionally, that the Subdivision has a community pond, and the irrigation supply is provided from an irrigation pond located near the Highway and does not come from behind his property.

## II. REASON

The Planning and Zoning Commission found:

1. the Application met the requirements of Bingham County Code Section 10-10-5 as the Variance Application was complete; and
2. the 24'x30' carport structure was placed without a Building Permit and is located approximately 70 feet from the high-water mark of the Snake River within the required 100-foot setback area provided in Bingham County Code Section 10-6-5; and
3. the Applicant stated he was unaware a Building Permit was needed for the carport structure or that there were distance requirements from the Snake River for an open-ended structure;
4. the Applicant provided in his Narrative that he has put a great deal of money into the carport structure and should the Variance Application be denied; the removal of the structure would be costly creating a financial hardship for the Applicant; and

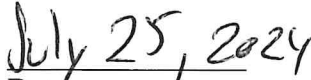
5. the Applicant testified he desires to keep the carport structure in its existing location so he is able to access the carport for storage and also be able turnaround and use his property as he designed to do so; and
6. the County Surveyor provided testimony advising that the carport structure encroaches upon a platted irrigation easement. The Commission discussed if this was a concern and determined with the support of the Home Owners Association President who didn't address the irrigation easement and with the Applicant advising his irrigation water comes from the front of his lot as opposed to the rear (where the carport structure is placed), the Commissioners did not find the carport being placed over a platted irrigation easement as a concern; and
7. granting the Variance Application will not confer on the Applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same zone and that the public interest will not be harmed with the desired location of the accessory structure. The Commissioners were somewhat divided in that there were unique site characteristics which prevented the Applicant from meeting the required setbacks as the Applicant stated had he known a 100-foot setback from the Snake River to a structure existed, he would have placed the carport structure in a compliant setback area; and
8. the Application met the notice requirements of Idaho Code Title 67, Chapter 65 and Bingham County Code Title 10 Chapters 3 and 5.

### III. DECISION

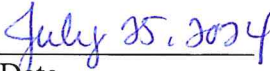
Based on the record, Commissioner Adams moved to approve the request of Jason Stevens for a variance to Bingham County Code Section 10-6-5 and allow an existing 24' x 30' accessory carport structure to remain within the 100-foot setback distance from the Snake River by approx. 30 feet, at 1288 N 590 E, Shelley, Idaho with the Applicant receiving a Building Permit for the structure. The findings for granting the variance request is that this variance is not contrary to public interest where a literal enforcement of removing or relocating the carport would result in unnecessary hardship.

Commissioner Bingham seconded the motion. Commissioners Adams, Bingham, Butler, Carroll Carroll, Johns, and Jolley voted in favor and the motion carried.

  
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William Aullman, Chairman  
Bingham County Planning and Zoning Commission

  
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Date

  
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Tiffany G. Olsen  
Planning & Development Director

  
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Date