



## STAFF REPORT TO TETON COUNTY PLANNING & ZONING COMMISSION

Public Hearing Date of April 12, 2011

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**APPLICANT:** Rand Olsen  
**LANDOWNER:** Lucky Good Dog LLC (Andrew Daniels)  
**AGENT:** Rand Olsen

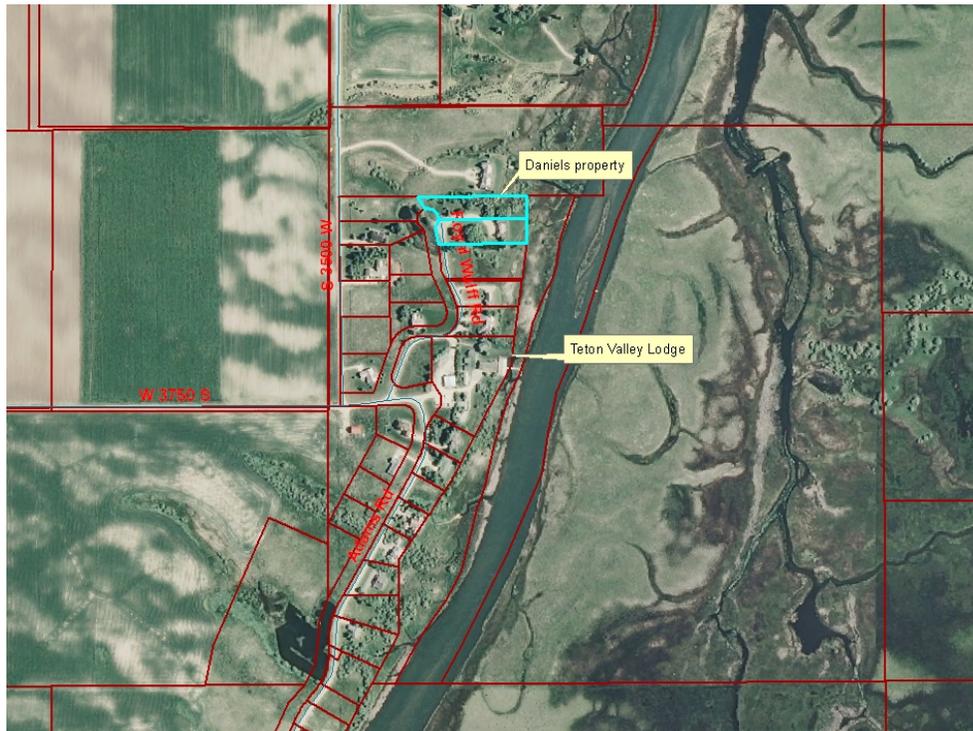
**NATURE OF REQUEST:** Two variance requests pursuant to Section 8-4-4 Height, Setback, and Lot Size Schedule, to allow:

- 1) a garage to be built 24-feet from the north side-yard property line where a setback of 30-feet is specified by the County ordinance;
- 2) a boathouse to be built 20-feet from the south side-yard setback also where a 30-foot side yard setback is specified by the County ordinance.

**LOCATION:** 3593 Royal Wulff Road  
**LEGAL DESCRIPTION:** Lots 6-7 Teton Valley Lodge Sites II  
**ZONING:** A/RR 2.5  
**OVERLAY:** Wetlands and Waterways Overlay  
**PROPERTY SIZE:** Approximately 2.31 acres, combined

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### VICINITY MAP

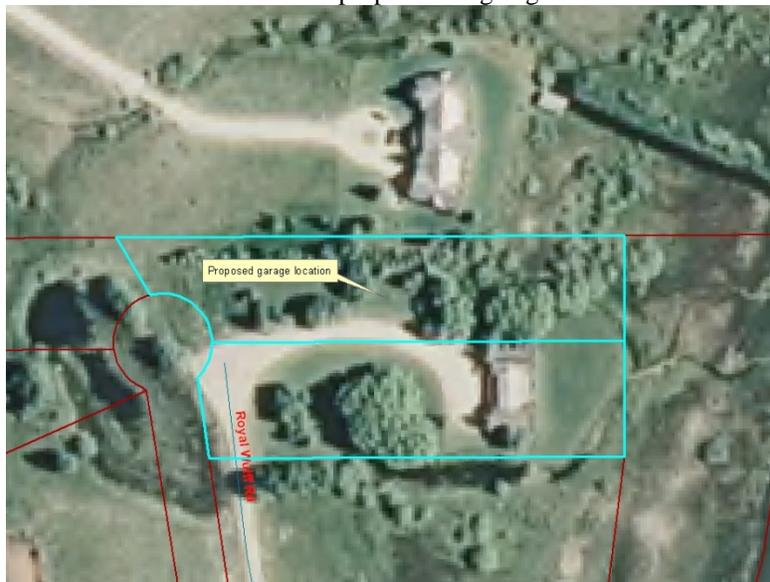


**PROJECT DESCRIPTION:**

**Proposed Garage Description:** The proposed garage location is adjacent to the existing driveway area and the closest structural wall to the adjoining property line is proposed to be built approximately 24 feet from the north property line adjoining the Scheid property (land owners to the north). This area is fairly flat and appears to be a lawn that is partially screened by a mix of evergreen and deciduous trees to the north, east, and west. The garage would measure 32 by 25 feet. At present, there are vehicles and equipment stored outside and they are covered with considerable amounts of snow.



X = Area proposed for garage



Note: the lawn area adjacent to the driveway is the proposed garage location. Lot lines are inaccurate and need to be shifted several feet south (imagine the cul d'sac lined up).

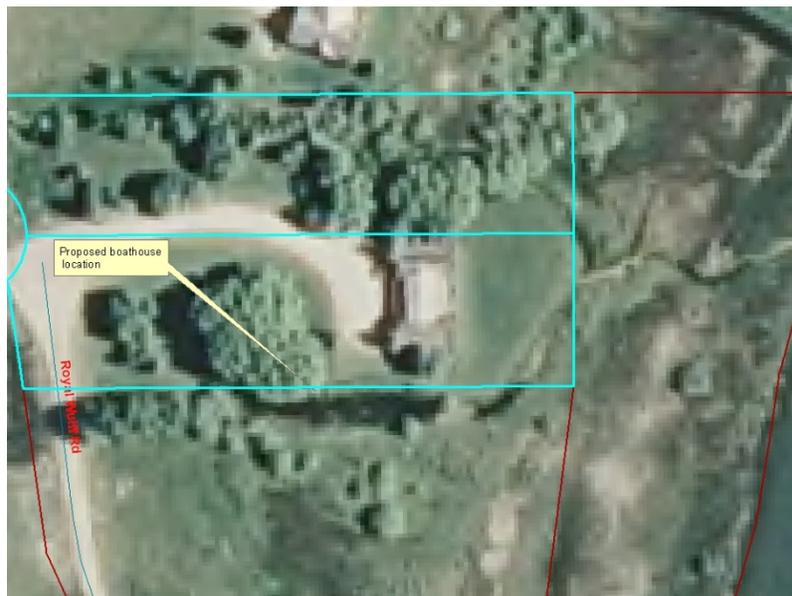
**Garage Considerations:** The only site specific issue that came up for the garage location was a question from adjacent landowner Ms. Scheid, who wondered if there might be a change in drainage resulting from the garage's foundation and floor as opposed to the pervious ground cover that presently exists. With a gable roof separating the direction of roof-runoff into two halves, a sloped area of 12.5 feet by 32-feet (400 square feet) would slant towards the north. An

area of approximately 800 square feet would change from permeable ground to impervious (roof). County Engineer Jay Mazalewski posed the question about affected drainage. He concluded that it would be a relatively small area that would have a change in drainage characteristics. With the 24-feet of separation buffer to the property line, he felt the structure would not create a “significant offsite drainage impact”. However, he felt that it would nevertheless be prudent to create a small detention pond by building a low lying ridge of dirt beyond the drip line of the roof. If a small mound of ½ to one foot high was created between the garage and the lot line, it would effectively deflect sheet flow and otherwise detain any runoff that would result from the new garage construction. Essentially, this small stormwater detention area would prevent the post-development run-off from being higher than the pre-development, undisturbed run-off rate.

**Proposed Boathouse Description:** The proposed boathouse would straddle an existing artificial channel that flows to the Teton River. The structure’s footprint is 17 by 36 feet. One corner would be angled in and would be 20-feet from the southern property line. A 30-foot setback is the County standard on the side yard. The attached Army Corp application contains several summertime pictures and site plans depicting the channel, nearby wetlands, and the proposed boat house location.

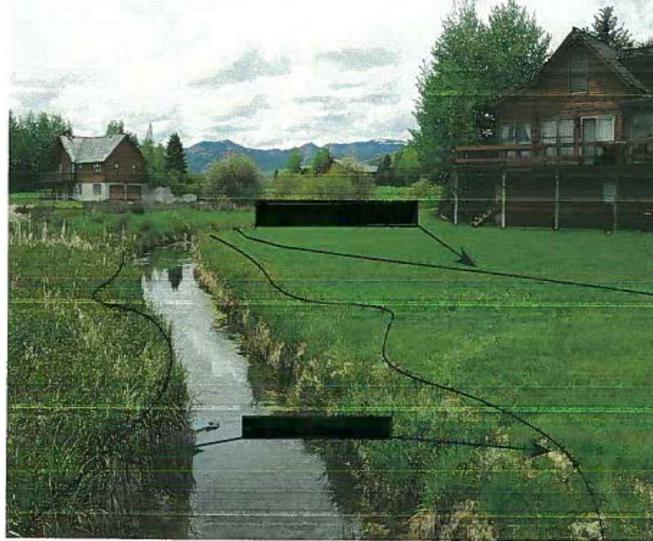
**Boathouse considerations:** The boat channel was apparently dug many years ago by a previous owner. Some areas directly adjacent to the boat channel are wetlands and the Army Corp of Engineers received a wetland application regarding some wetland enhancements that are proposed on this property. The photos in the Army Corp application material depict the channel and boathouse location. The following considerations are relevant to the proposed boathouse variance application:

- Placing a structure on piers (like stilts) above a wetland is an acceptable practice according to Rob Brochu of the Idaho Falls Regulatory Office. Bridges and cart paths above wetlands were allowed in the Huntsman Springs’ golf course, for example.



The lot lines are inaccurate and need to be shifted down-south.

- The Army Corp letter of March 29, 2011 states “*the work you propose to excavate a boat channel and construct a boat house in wetlands adjacent to the Teton River does not require a DA permit provided the construction is as described in the application ...*”
- The Idaho Department of Water Resource is reputed to have some jurisdiction over diversions of this sort from the river. Staff has not heard back from IDWR at the time of writing this report, however, both the Army Corp and a wetland consultant said that IDWR would not be issuing a permit for this boat channel.
- Similar artificial channels with boathouses have been denied by the IDWR on the Teton River, according to the Project Manager with the Army Corps.



See Army Corp attachment for full set of the summertime site photos

- Section 8-5-2-D Wetland and Waterways Overlay Regulations of the Teton County Zoning Ordinance lists three Development Criteria. The first criteria requires at least 100 feet of separation between a building envelope and the ordinary high water mark. The boat house complies.
- Section 8-5-2-D-1-ii states that “*preservation of open space between upland and wetland areas may be required to protect wetland functioning, and to protect fish and wildlife indicator species or habitat identified through the wildlife assessment*”. If it could be determined that fish or other indicator species were affected by the construction of this boat house or regular use of the channel, then building the boathouse structure would be contrary to the intent of this section of code; otherwise there would be no conflict.
- Section 8-5-2-D-1-ii also states that “*All building envelopes shall comply with lot frontage, lot size, building envelopes, well, septic, sewer and health requirements, as determined by Teton County, U.S. Army Corps of Engineers, and Eastern Idaho Public Health Department officials as applicable. Building setbacks in Section 8-4-4 shall apply.*” Since the boathouse setbacks don’t comply with Section 8-4-4, they also don’t technically comply with this section of code found under the Wetlands and Waterways Overlay Regulations.
- The Teton Valley Lodge has a community boathouse that is a non-conforming, grandfathered use because it has existed for many years. At the writing of this report, staff is awaiting a callback from the Lodge regarding their subdivision rules about the “community” boathouse’s use. It would seem that the intent of this jointly-used dock and boathouse would be to reduce the need to have individual docks and canals on each property.

## **APPLICATION REQUIREMENTS:**

1. **Section 8-8-1-C Application Form:** A site plan and all relevant application materials were supplied – (see attached site plan and the variance application and narrative of responses to the variance standards).
2. **Section 8-8-1-D Filing Fee:** The variance application fee was paid and taxes are up to date.
3. **Section 8-8-1-E Public Hearing:** A Public Notice of this variance application’s Public Hearing was published in the Teton Valley News.
4. **Section 8-8-1-G Written Notice:** A written notice of this application and the associated Public Hearing was mailed to property owners within 300 feet of the property boundary of the subject property.
5. The site was posted with the variance notification of the Public Hearing to be held on April 12, 2011.

## **PUBLIC COMMENT/ RESPONSE FROM NEIGHBORHOOD NOTIFICATIONS**

The public hearing and notice requirements have been met in accordance with Idaho Code Title 67, Chapter 65 § 67-6509, 67-6511 and 67-6516. Appeals of the planning commission are subject to judicial review as provided by Idaho Code.

The following written comments should be considered as part of the record for making a determination about the two structural setbacks:

- Karen Scheid email of March 28, 2011  
This letter states that, “*the residents of the development would use the Teton Valley Lodge boat house in order for the development residents to have access to the river.*” Staff comment: The subdivision setback standards are only 20-feet on the side yards, so the placement of the garage and boat house both meet the subdivisions’ private covenants, but do not comply with the current 30-foot County zoning ordinance setback. This subdivision pre-dates the zoning code setback regulations, and there is no County approved PUD-type design standards for this grandfathered subdivision.
- Neil Dorrill’s email was in support of the variance and he owns the land directly south of the subject property and the proposed boathouse location.
- Richard Hokin had a question but sent an email with “no comments”.

## **AGENCY COMMENTS**

Other wetland enhancement work has been proposed on this lot and the application has provided details about the wetland issues and good pictures of the channel and boathouse location. The Corps does not require a permit for the proposed work, which might involve some dredging and placement of pier supports for the boathouse structure.

## **UNDUE HARDSHIP FINDINGS Section 8-8-1-B:**

### **Variance # 1- Garage- Standards for Granting a Variance**

A. “*A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site.*”

Staff Analysis on Garage Variance: These lots were platted a long time ago, prior to zoning regulations and the Daniels residence occupies two lots, yet combined, they are only about 230-foot wide. The house was situated to avoid steep drop-offs to either the south or north towards

the riverside benches. The driveway and planted trees were laid out in such a way that the only logical place to build a garage is where it is being proposed. The area is flat and has mature trees surrounding it. The building of a garage at the most logical location is appropriate, especially since this lot was designed prior to the zoning setback rules. The subdivision covenants limit side yard setbacks to 20-feet and that is what the architect designed the garage to comply with. There would be undue hardship to have to do more extensive grading on this lot to accommodate a garage when the proposed site is flat and does not need much earth-moving. Staff believes this finding is met.

B. *“The variance is not in conflict with the public interest nor the general land or conditions in the vicinity of the application.”*

Staff Analysis on Garage Variance: The topographic conditions in the vicinity of the building footprint are flat; elsewhere there are slopes towards the river or mature vegetation. The Subdivision covenants stipulate only 20-feet to side yards, at least to side yards within the subdivision. Staff believes this finding is met.

C. *“The variance will not be a material detriment to public health, safety or welfare nor to neighboring property owners.”*

Staff Analysis on Garage Variance: The neighboring property owners, the Schied’s, will not suffer material detriments and will not be affected from added run-off from the structure. Staff recommends that a little grading of the area (to keep drainage away from the property line) be installed; this might be a small linear mound of about ½ foot above grade to detain any run-off. The mature vegetation separating the two properties should provide some screening of the new garage. Staff believes this finding is met.

**PLANNING COMMISSION, ACTING AS THE BOARD OF ADJUSTMENT, ACTIONS:**

- A. Approve the variance application as requested in the application, having provided the reasons and justifications for the approval.
- B. Approve the variance application with modifications to the application request, or adding conditions of approval, having provided the reasons and justifications for the approval and for any modifications or conditions.
- C. Deny the variance application request and provide the reasons and justifications for the denial.

**STAFF RECOMMENDATIONS: Garage Setback Variance Recommendation:**

The Planning Staff recommends Action B, **approval with a condition** for the garage setback variance request to allow the garage to be built 24-feet from the side yard boundary as depicted on the “Raino-Ogden site plan titled DC2.” The staff suggests the following motion:

Having found that all the standards for the granting of a variance have been met for the Lucky Good Dog, LLC garage setback variance request, and having found that the reasons and justifications for said variance are enumerated in the Staff’s analysis in this report and the applicant’s narrative, we hereby approve the variance application as depicted in the site plan, with the following condition:

After the garage construction and prior to having final inspection by the County, the contractor shall grade the property around the garage so that surface run-off and snowmelt will not drain towards the adjacent property to the north.

## **Variance # 2 -Boat House -Standards for Granting a Variance**

A. *“A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site”.*

Staff Analysis on Boat House Variance: The applicant’s site plan and narrative response (letter dated March 14) has failed to demonstrate that there is an undue hardship associated with the boathouse. In recent years the Idaho Department of Water resources has denied the creation of artificial channels to be used for boat houses. There is an existing boathouse for the Teton Valley Lodge a short walk upstream. It is not yet known whether that boathouse is available for use by subdivision owners. While, the owners’ enjoyment of the lot may not be maximized, their use of the lot and access to the river is comparable to other streamside property owners that must haul their boats onto a secure location. Having the boathouse could be considered an unusual convenience, not typically enjoyed by most streamside owners. Not having the boathouse at this location has not been demonstrated to be an undue hardship.

B. *“The variance is not in conflict with the public interest nor the general land or conditions in the vicinity of the application.*

Staff Analysis on Boat House Variance:

The proposal may in fact pose some conflict with the public interest. The public interest in Teton Valley is to attract and retain tourism, fisherman, and to have professional fishing guides employed in taking clients on a scenic, relatively undeveloped stream. Clients are attracted to both the fishing and the streamside scenery. If many dozens of streamside owners develop their own private launches, piers, boat houses or launching channels, then the quality of the fishing experience will be diminished, and that is not in the recreational or economic best interest of the community. It is arguable whether the boathouse, at this side yard location, or anywhere else within the Wetland-Waterways overlay on this property is not in the public interest. Section 8-5-1 D Wetland and Waterways Overlay states: *“It is also the purpose of this overlay to ensure that critical waterway frontages and corridors in Teton County are sufficiently protected from encroachment of land uses that would degrade the viability of the waterway”.* The economic (and related scenic) viability of this waterway is diminished as streamside development increases, particularly when it involves non-essential and non-habitable structures and launching channels along multiple private properties.

C. *“The variance will not be a material detriment to public health, safety or welfare nor to neighboring property owners”.*

Staff Analysis on Boat House Variance:

The granting of the variance has not been demonstrated to create a public health concern or any safety concern to the most directly affected property owner to the south. Given this analysis of the lack of foreseeable impacts, Staff makes a finding that there is no significant material detriment.

### **STAFF RECOMMENDATIONS: Boat House Setback Variance Recommendation:**

The Planning Staff recommends Action C, **denial** of the Daniels boat house setback variance request. The Staff suggest the following motion:

The Planning and Zoning Commission, acting as the Board of Adjustment, denies the application request for the granting of a variance for the Lucky Good Dog, LLC boat house side yard setback. The commission was unable to find that all the criteria for the granting of a variance can be met. Specifically:

- The finding that a variance “may be granted to an applicant only upon showing of undue hardship because of characteristics of the site” was not demonstrated in the application materials and the Planning Staff could likewise not provide a sufficient justification to make this finding of fact.
- The Commission could not conclusively determine a finding of an absence of a conflict with the public interest.
- Additionally, it is unlikely that the Idaho Department of Water Resources will issue a permit for the boat channel.

Staff Report: Curt Moore- County Staff Planner

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Attachments:

- County Variance application
  - Rain0- Ogden Site Plan Exhibit
  - Army Corp of Engineers Application materials and site photos
  - Neighbor comment emails: Scheid, Dorrill, Hokin
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