



Cass County
Planning Commission/Board of Adjustment

December 14, 2015

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting December 14, 2015 in the meeting room of the Cass County Land Department in Backus. The field inspection for the meeting was December 7, 2015 with PC members Fitch, Froehlig, Kostial, Moore, Pehling and Sundberg along with ESD staff Berg, and Fairbanks in attendance.

Sundberg called the meeting to order at 9:30 a.m.

Members present: Fitch, Froehlig, Kostial, LaPorte, Moore, Pehling and Sundberg.

Staff Present: Berg, Fairbanks and Ringle.

Citizens Present: Darlene Bakker, Gene Becker, Linda Becker, April Collman, Scott Euerle, Terry Freeman, Dennis King, Richard Kruger, Jeff Peterson, Jim Raboin, Rodney Thompson, and Matthew Vrudney.

MS/P Kostial/Fitch to approve the minutes of the 11/09/15 PC/BOA meeting as revised and presented.

Variance

Euerle, Scott, Crooked Lake Township on property described as Part of Govt Lot 8, Section 9-139-26, PID #12-009-2313 located at 1969 Peninsula Road NE. An application submitted "after the fact" to be allowed to retain a 14 feet x 24 feet addition and two 6 feet x 22 deck extensions constructed sans permit. The deck is 33 feet from the lake at the closest point from the lake with the addition 57 feet from the lake. The applicable portions of the Land Use Ordinance (02/15/13) include Section 501 which establish permit requirements, Section 800 which establishes variance criteria, Section 1115.3 which establishes the expansion of non-conforming structures standards and 1126.1 A which establishes lake setback standards. The property contains 3.1 acres riparian to Lake Washburn (GD).

PC members were at the site 12/07/15. 26 notices of the application were mailed with no responses received. The application was reviewed with Mr. Euer.

MS/P Kostial/Fitch to approve, "after the fact", the deck and residence expansion in place for the residential structure located upon PID #12-009-2313 as submitted upon review of the

criteria contained in Sections 501, 800, 1115.3 3.1 and 1126.1 A. of the Land Use Ordinance (02/15/13) along with M.S. 394.27, Subdivision 7 and the "Statsvold Decision" with the following findings and conditions:

Findings:

1. There is no record in the permit archive as to when existing residential structure was constructed and it is assumed, based on current lake setback, that it was prior to the adoption of use regulation.
2. The applicant, who purchased the residence October 2014, did not create the non-conformity.
3. The six feet wide deck varies in setback from the lake from 38 feet to 52 feet.
4. The deck expansion does not increase the existing deck encroachment to the lake and the residence addition is away from the lake.
5. There is nothing to indicate that the deck expansion or structure addition has altered, disturbed or negatively impacted existing land use or neighboring property which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.
6. There is no information or evidence to indicate that the application is primarily financially based.
7. The application, if approved, will not allow a use that is prohibited in the zoning district in which the subject property is located.
8. The application, if approved and assuming compliance with applicable run-off related conditions will not restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties.
9. The application, if approved, will not result in an incompatible land use that would be detrimental to the protection of ground and surface water quality.

"Statsvold" - After the Fact Factors:

7. There is nothing in the record to indicate or establish that the applicant did not act in good faith or intentionally neglected to contact ESD or obtain the appropriate permits.
8. Upon contact from ESD, the applicant is attempting to comply with the ordinance.
9. There are similar structures located in the immediate area and all long Lake Washburn.
10. Based upon the structure value at the time of purchase by the applicant and based upon the degree of expansion, it seems that the considerable investment has been expended.
11. The degree of impact to the area and land use is not significant and the County's benefits by pursuing removal of the deck and structure expansion are not outweighed by the applicant's burden if the applicant were required to comply with the ordinance and in light of all factors, the interest of justice is served by granting the ATF variance.

NOTICE TO APPLICANT: If the following conditions are included no permit to implement shall be issued until:

1. ESD required and approved erosion control is installed.
2. If shoreline vegetative enhancement, restoration or no mow is required by ESD or the Planning Commission, a written plan for suitable vegetation shall be approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. No run-off from all structures or impervious surfaces to the lake or adjoining properties is permitted and if determined necessary by ESD run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.
2. The construction and various related debris along with the general disarray of the property must be addressed and verified by ESD not later than 07.01/16.
3. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Kenfield Pines LLP, Hiram Township on property described as Lots 1 -7, Block 1, "Kenfield Pines LLP, Section 16-140-31, PID #16-436-0110, 0120, 0130, 0140, 0150, 0160, 0170 located at 6320 Kenfield Pine Lane NW. An application submitted to create three riparian lots that will comply with the lot size criteria except for minimum lot width at the Ordinary High Water Level (OHWL). The 3 proposed lots each will each measure 96 feet at the OHWL. The variance if approved will allow for the reduction in the number of lots on the property from seven to three, with two of the lots each containing a residential structure and one undeveloped lot. The relevant portions of the Land Use Ordinance (02/15/13) include Sections 1113.1 which requires a

riparian lot located on a General Development (GD) to contain least 37,500 square feet total area, 12,000 square feet buildable area and be at least 100 feet wide at the water and 100 feet wide at the structure setback and Section 800 which establishes the variance criteria. The property contains 8.3 acres riparian to Ten Mile Lake (GD).

26 notices of the application were mailed. One response from the Hiram Town Board concerned with the proposed lot width at the OHWL was received. The application was reviewed and discussed with the applicant's representative Mr. Freeman. Mr. Freeman explained how lot width at the OHWL is defined and determined.

MS/P Kostial/Moore to approve the reconfiguration of "Kenfield Pines" as submitted based upon criteria contained in Sections 800 and 1113.1 of the Land Use Ordinance (02/15/13) along with M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. "Kenfield Pines" was reconfigured 2006 as a PUD containing six residential lots and one common open lot.
2. Two residences have been constructed.
3. The reduction of the number of total existing lots from seven to three outweighs the fact that the proposed lots will not comply with the minimum requirement of 100 feet at the OHWL.
4. The proposed lot configuration at the OHWL will be 96 feet which is 96% of the requirement.
5. Reconfiguration will reduce development and decrease the potential to affect the natural environment which therefore does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or contradict the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.

Conditions:

1. The dimensions and configuration of the proposed reduction to three lots shall not vary from the survey dated 11/17/15.
2. Unless recorded or otherwise revised by the Planning Commission this approval shall be effective until 12/14/17.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Lichliter, John, Turtle Lake Township on property described as Part of Govt Lot 4, Section 7-142-30, PID #45-107-3405 located at 4643 Vireo Trail NW. An application submitted to construct a 30 feet x 34 feet residence to be located six feet from the ordinary high water level (OHWL) of Gould Lake (NE). The relevant portions of the Land Use Ordinance (02/15/13) include Section 1126.1 A. which requires structures to be setback 150 feet from a lake classified Natural Environment (NE) and Section 800 which establishes the variance review criteria. The property contains 9.02 acres riparian to Gould Lake (NE) and Leech Lake (GD).

PC members were at the site 12/07/15. 16 notices of the application were mailed. One response raising concern in regard to the proposed road easement realignment and run-off was received. The application was reviewed and discussed with the applicant's representative Mr. Raboin.

MS/P Moore/Kostial to table consideration of the application until the 01/11/16 meeting or until wetland and related issues are resolved.

Spence, Jeffery, Woodrow Township on property described as Lot 1, Block 1 & 1/8 Interest Outlot A, "Westgate", Section 25-140-29, PID #51-483-0102 located at 3085 Westgate Drive NW. An application submitted to enclose a 12 feet x 24 feet patio located 65 feet from the lake which is deemed an addition. The residence is non-conforming because it is less than 100 feet from the lake. The relevant portions of the Land Use Ordinance (02/15/13) include Section 800 which establishes the variance criteria, Section 1115.3 which establishes the non-conforming expansion criteria and Section 1126.1 A. which requires structures to be setback 100 feet from a lake classified Recreational Development (RD). The property contains .5 acre riparian to Blackwater Lake (RD).

PC members were at the site 12/07/15 and discussed the application with the applicant's representative and contractor Mr. Larson. 35 notices of the application were mailed with no responses received.

MS/P Froehlig/LaPorte to approve the application to expand the residence located upon 51-483-0102 as submitted based upon the criteria contained in Sections 800, 1115.3 and 1126.1 A. of the Land Use Ordinance (02/15/13) along with M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. "Westgate" was platted in 1970.
2. A former owner placed, as approved by ZP85-140-29-2, a RV/deck at 90 feet from the lake.
3. Structure setback from Blackwater Lake in 1985 was 85 feet.
4. The same owner was approved by ZP99-140-29-13 to construct the current residence at the same setback approved in 1985.
5. The area requested for enclosure is an existing impervious surface patio to which approval with appropriate conditions will improve control of run-off.

6. There is no information or evidence to conclude that the essential character of the area will be altered or disturbed by the proposed patio enclosure which does not contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote health, safety, and general welfare or the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.
7. There is no information or evidence to indicate that the application is primarily financially based.
8. The application, if approved, will not allow a use that is prohibited in the zoning district in which the subject property is located.
9. The application, if approved and assuming compliance with applicable run-off related conditions will not restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties.
10. The application, if approved, will not result in an incompatible land use that would be detrimental to the protection of ground and surface water quality.

NOTICE TO APPLICANT: If the following conditions are included no permit to implement shall be issued until:

1. ESD required and approved erosion control is installed.
2. If shoreline vegetative enhancement, restoration or no mow is required by ESD or the Planning Commission, a written plan for suitable vegetation shall be approved by ESD and agreed to be implemented by applicant.
3. At applicant's option, the vegetative plan is substantially implemented as determined by ESD or financial assurance in the amount of \$1 per square foot of the buffer area for no-mow or \$3 per square foot for all other vegetative buffers or if less 125% of the cost estimate.
4. As required by other conditions as set forth.

NOTICE TO THE APPLICANT: No site preparation or building construction shall be commenced until issuance of Permit. Commencement of either prior to issuance of a Permit may result in withholding, withdrawal or revocation of a permit until inspection by ESD, correction of any circumstances in violation of laws or ordinances or the terms of this Variance, deposit of financial assurance as determined by ESD to secure correction of violations and completion of other measures required by ESD.

Conditions:

1. The dimensions, location and configuration of the enclosure shall not exceed that of the existing concrete patio footprint.
2. ESD shall determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.

3. No run-off from all structures or impervious surfaces to the lake or adjoining properties is permitted and if determined necessary by ESD run-off shall be directed by gutters or other means to natural water retention features located upon the property or structures such as rain gardens.

4. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.

5. Unless commenced or otherwise extended or revised by ESD or if necessary, the Planning Commission, this approval shall be effective until 11/09/17.

COMPLIANCE WITH ALL CONDITIONS IS REQUIRED. FAILURE TO COMPLY WITH ANY CONDITION SHALL RESULT IN A VIOLATION AND SUBJECT THE APPLICANT TO ENFORCEMENT PROCEDURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, REVOCATION OF THIS VARIANCE, REMOVAL OF VIOLATIONS AND MITIGATION.

Conditional Use Permit

Walker Adult Day Services, Turtle Lake Township on property currently owned by Gary & Darlene Bakker described as Tract D, Part of SE SW, Section 6-141-30, PID #45-006-4300 located north of MN 200 and the Immanuel Lutheran Church. An application submitted to reclassify the property from Rural Residential 2.5 (RR-2.5) to Commercial-2 (C-2) which requires approval by conditional use permit (CUP). Any land use within C-2 requires CUP approval and conditions limited to a specific land use activity. The proposed land use activity is to establish a facility to provide adult day services. The relevant portions of the Land Use Ordinance (02/15/13) include Section 705 which establishes the CUP standards and Sections 903 and 1001 which establish land use districts standards. The property contains 8.24 acres non-riparian (RR-2.5).

PC members were at the site 12/07/15. 44 notices of the application were mailed with no responses received. The application was reviewed and discussed with Ms. Collman.

MS/P Pehling/LaPorte to approve the application for reclassification and use at PID #45-006-4300 based upon review of the criteria contained in Sections 705, 903 and 1001 of the Land Use Ordinance (02/15/13) along with M.S. 394.301 with the following findings:

Findings:

1. The purpose of the C-2 District is to provide adequate space areas for general retail and service activities as conditional uses in rural areas to which the proposed use is appropriate.
2. The proposed lot for the adult services activity is located along the right-of-way of Minnesota #200.
3. There is nothing to indicate that the proposed use will have detrimental visual or other impact to neighboring property which therefore does not necessarily contradict the purpose of the Land Use Ordinance which is to protect, preserve and enhance the quality of the lakes, rivers, forests, wetlands, natural land forms and open space for future generations and to promote

health, safety, and general welfare or contradict the purpose of the Comprehensive Plan which is to 1.) Provide a rational basis to make difficult land and resource decisions wisely, 2.) Eliminate the conflicts caused by unplanned development, 3.) Improve coordination and communication between county, local governments and the citizens in land use planning, and 4.) Protect the County's natural resources from degradation.

4. The surrounding area consists of a rural suburban type development evolving from one that was once primarily timber related to which there is no reason or evidence to conclude that area land use will be negatively affected or altered by the use.

5. Approval will have no impact to the demand for governmental services.

6. Existing roadways will be utilized with no need to expand exiting public infrastructure.

7. No wetland or critical habitat will be disturbed.

8. No scenic or historic features will be affected.

9. No threat to public health, safety and welfare can be expected.

MS/P LaPorte/Pehling to amend VP15-140-27-1 located at PID #44-365-0040 owned Timothy and Rene Dolan as presented by Scott Rolf of Complete Remodeling LLC.

MS/P Moore/Froehlig to endorse to the County Board fee and rate increases as determined and presented by ESD Director Ringle.

MS/P Fitch/Pehling at 11:55 am, to adjourn.

P. Fairbanks