



Cass County
Planning Commission/Board of Adjustment

December 12, 2016

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting December 12, 2016 in the meeting room of the Cass County Land Department in Backus. The field inspection for the meeting was conducted December 5, 2016, with PC members Froehlig, Kostial, LaPorte, Pehling and Sundberg along with ESD staff Berg, and Fairbanks in attendance.

Sundberg called the meeting to order at 9:35 a.m.

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

Staff Present: Berg, Fairbanks and Ringle.

Citizens Present: Jim Ballenthin, Ellie Dechman, Tom Dechman, Mike Elsenpeter, Curt Geiger, Cindy Hidde, Cyndi Kalenberg, Russ Kalenberg, Bill Klohn, Travis Miller and Jeff Peterson.

MS/P Moore/Fitch to approve the minutes of the 11/14/16 PC/BOA meeting as presented.

Variance

Kalberg, Russell & Cynthia, Fairview Township & City of East Gull Lake on property described as Lot 5, Block 1, "Timber Ridge Second Addition", Section 25-134-30, PID #14-442-0110 & PID #87-404-0150 located at 2100 Norway Pine Road SW. An application submitted to remove and replace the existing 2,136 square feet residence with a new construction containing 3,353 square feet including an attached garage. The replacement portion of the new construction is intended to occupy the existing foundation which is located within the bluff impact zone which is that area within 30 feet of the top or toe of a bluff. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria, Section 1115.3 which established the non-conforming structure criteria and Section 1126.1 B. which requires structures to be setback 30 feet from the top or toe of a bluff. The property contains 1.8 acres riparian to Gull Lake (GD).

PC members were at the site 12/05/16. 23 notices of the application were mailed. Two responses one supporting approval of the application along with one from the Fairview Township Planning Commission recommending that the proposed construction be moved away from the bluff were received. The application was reviewed and discussed with Cynthia and Russel

Kalenberg along with their architect Travis Miller with considerable discussion devoted to bluff setback, SSTS location and the condition of the existing foundation.

MS/P Moore Fitch to approve the application to construct the residence as submitted at less than the required bluff setback upon PID #14-442-0110/87-404-0150 upon review of the criteria contained in Sections 800, 1115.3 and 1126.1 B. of the Land Use Ordinance along with M.S. 394.27, Subd. 7 with the following findings and conditions:

Findings:

1. The property was platted in 1974 prior to the administration of the bluff criteria.
2. The current residence was constructed as permitted by ZP87-134-30-15 with reference to lake setback but not to bluff setback.
3. The applicants intend to utilize the existing foundation.
4. As allowed by ordinance and statute, the residence could be replaced at existing footprint on the current foundation.
5. The proposed expansion will be no closer to the lake or the bluff than the existing structure.
6. There is nothing to indicate or establish that the location and size of the proposed expansion, based upon lot size and location will alter, disturb or negatively impact 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.
7. There is nothing to indicate that the application is solely 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 standards or 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 land use that will be detrimental to the protection of ground and surface water quality.
11. The Fairview Township Planning Commission has recommended that the applicants be required to move the structure as it appears on the submitted site plan, including foundation walls, six feet from away from the from existing setback from the bluff.

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 violation of laws or ordinances or the terms of this Variance, including financial assurance, shall be determined by ESD.

Conditions:

1. The location, configuration and dimensions of the residential structure expansion shall not vary from that submitted 11/10/16 unless approved by ESD or if necessary the Planning Commission.
2. If the existing foundation cannot be utilized as determined by Mr. Miller along with an ESD representative, the new residential structure shall comply with all applicable setback requirements unless relief to the required distance is approved by variance.
3. ESD shall determine and if required, the applicant shall install construction erosion control.
4. No run-off to the lake or adjoining properties is permitted. 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.
5. Any material from demolition and construction not reused or recycled must be disposed of in a permitted facility.
6. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.
7. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 12/12/18.

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/Variance

Elsenpeter, Mike & Karla, Shingobee Township on property described as Part of Govt Lot 2, Section 35-142-31, PID #38-135-1303 located at 5301 Ladyslipper Lane NW. An application submitted for a conditional use permit (CUP) for the excavation of up to 400 cubic yards to construct walk-out access for the existing residence. In addition, the application requests, "after the fact", a variance to be allowed to retain an existing 216 square feet paver platform located outside of the access corridor. The applicable portions of the Land Use Ordinance include Section 705 which establishes the CUP criteria, Section 800 which establishes variance criteria and Section 1106.2 A. which requires a CUP for the excavation/grading of more than 50 cubic yards of earthen material within the Shore Impact Zone. The property contains 6 acres riparian to Leech Lake (GD).

PC members were at the site 12/05/16. 25 notices of the application were mailed with no responses received. The application was reviewed and discussed with Mr. Elsenpeter and Mr. Geiger with discussion primarily focused upon excavation, proposed walk-out location and possible alternative placement.

MS/P Kostial/Pehling to approve the variance portion of the application existing paver platform located at PID #38-135-1303 upon review of the criteria contained in Section 800 of the Land Use Ordinance along with the criteria contained in the "Statsvold" Decision with the following findings and conditions:

Findings:

1. The paver platform was not installed by the applicant.
2. The paver platform is well screened and not visible from the lake or neighboring property.
3. Based upon the size of the platform along with its location there is no indication that it 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.
4. The paver platform size and use in this situation does not 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.
5. There is nothing to indicate that the application is solely financially based.
6. Approval will not allow a use that is prohibited in the zoning district in which the subject property is located.
7. Approval 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.

"Statsvold" - After the Fact Findings:

1. The paver platform was not placed by the applicant.
2. There is nothing to indicate or anyway to determine if the paver platform was not constructed in good faith or in a surreptitious manner.
3. There is nothing to indicate or anyway to determine if the property owner at the time inquired as to permit and placement limits for the shoreland alteration.
4. The paver platform is in place and complete.
5. There are similar the shoreland structures along Leech Lake and throughout the county.
6. The degree of impact to the shoreland area and the land use system is not significant and the County's benefits by obtaining a variance to the shoreland standards are 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.

Conditions:

1. Approval does not allow or imply approval for any expansion of the paver platform.

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.

MS/P Moore/Kostial to table consideration of the CUP portion of the application for the proposed walk-out excavation for the residence located at PID #38-135-1303 in order for the applicant to consider possible plan revision or relocation.

Other Business

1. Request received from Quarterdeck Resort to revise the approved site plan for the resort development. The proposed reconfiguration will not alter the density or number lots. PC members were at the site 12/05/16. A letter of support and approval was received from the Fairview Township Planning Commission. The proposed revision was explained by and discussed with Ms. Hidde Mr. Klohn and Mr. Miller.

MS/P Kostial/Moore to approve the revision and reconfiguration included in RLS #75 for Quarterdeck/Beach Club LLC as submitted with the following findings

Findings:

1. The new structures and related activity is within Tier 2.
2. Open space area and impervious surface area is not affected by the RLS revision.
3. The number of lots in the RLS and the density of the resort is not affected the RLS revision.
4. ESD will review compliance of the CUP with Quarterdeck/Beach Club LLC.

2. Request received from Pat and Jack Levene to revise Condition #2 of VP16-139-26-10 approved 10/14/16 from 40 feet to 49 feet.

EXCERPT FROM 11/14/16 AGENDA - Levene, Jack & Pat, Crooked Lake Township on property described as Lots 5 & 6, "O'Brien's Plat of Outlot "A" of O'Brien's Plat on Roosevelt and Lawrence Lakes", Section 26-139-26, PID #12-477-0051 located at 559 65th Avenue NE. An application submitted to remove the existing nonconforming residence and replace with new 32 feet x 40 feet residence to be located 25 feet from the lake at the closest point. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria and Section 1126.1 A. which requires structure to be located 75 feet from a lake

classified General Development (GD). The property contains .5 acre riparian to Lake Roosevelt (GD).

PC members were at the site 11/07/16. 63 notices of the application were mailed with two responses both opposed to approval received. The application was reviewed and discussed with Pat and Jack Levene.

MS/P Fitch/Froehlig/Moore-Abstain to revise Condition #2 from 49 feet to 40 feet of VP16-139-26-2 as requested:

Conditions:

2. The structure shall not be less than 40 feet from the lake at any point which shall be verified by ESD prior to construction.

Jim Ballenthin and ESD Director Ringle discussed proposed revisions to ordinance definitions and text in regard to accessory dwelling units, guest cottages, guest quarters and related topics. Director Ringle will request the County Board to establish a date for 1st Reading of the proposed revisions.

MS/P Pehling/Kostial at 11:35 AM, to adjourn.

P. Fairbanks