



Cass County  
Planning Commission/Board of Adjustment

February 13, 2017

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting February 13, 2017 in the meeting room of the Cass County Land Department in Backus. The field inspection for the meeting was February 6, 2017, with PC members Fitch, Kostial, LaPorte, Moore, 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, Kostial, LaPorte, Moore, Sundberg and Pehling.

Staff Present: Berg, Fairbanks, and Ringle.

Citizens Present: Terry Aleckson, Dennis Brackin, Devon Dumprope, Deanna Kohout, Jeff Peterson, Jed Shaw, Maria Sizer, Lisa Vait, Randy Vait, Steve Voight, and Dyan Westman.

MS/P Pehling/Fitch to approve the minutes of the 01/09/17 PC/BOA meeting as presented.

Variance

Aleckson, Terrance, Ponto Lake Township on property described as Lot 27, Block 1, "Smith Estates", Section 21-139-29, PID #32-427-0154 located at 1379 Smith Drive NW. An application submitted to construct a storage structure which will cause the property to exceed the maximum square footage of accessory allowed by lot size. The property is riparian and contains 1.12 acres to which a maximum of 1,500 square feet to total accessory structure is allowed. The property currently contains a 676 square feet garage/accessory structure. Through the increased setback allowance the property has 1,096 square feet available. The application requests a structure containing 1,280 square feet which would exceed the maximum allowed by 184 square feet. In addition, the application requests approval to extend an existing non-conforming fence located along the east property line from its current location 50 feet from the lake landward to a point 75 feet from the lake. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria, Section 1101 which establishes the accessory structure size criteria, Section 1115.3 which establishes the non-conforming structure criteria and Section 1126.1 A. which requires structures to be setback 100 feet from the OHWL of a lake classified Recreational Development (RD). The property contains 1.12 acres riparian to Lake Ada (RD).

PC members were at the site 02/06/17. 54 notices of the application were mailed. Four responses, three of support and one opposed were received. The application was reviewed and discussed with Mr. Aleckson.

MS/P Kostial/Pehling to approve the portion of the application to construct an accessory structure/garage that will exceed the square footage allowed based upon lot size for PID#32-427-0154 upon review of the criteria contained in Sections 800, 1101 and 1126.1 B. of the Land Use Ordinance along with M.S. 394.27, Subd. 7 with the following findings and conditions:

#### Findings/Accessory Structure

1. The property was platted in 1971 prior to the adoption of regulation to restrict square footage of accessory size based upon lot size.
2. The residence was constructed with permit in 1998 at 55 feet from the lake.
3. The proposed accessory structure will be located more than 20 feet from the closest property line, more than 40 feet from the right-of-way of Smith Drive and more than 200 feet from Lake Ada which therefore allows for a 33% increase in permitted size.
4. There is nothing to indicate that the proposed accessory structure square footage exceedance of 184 square feet 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.
5. There is no information or evidence to indicate that the application is primarily financially based.
6. The accessory structure size, if approved, will not allow a use that is prohibited in the zoning district in which the subject property is located.
7. 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.
8. 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 plan shall be approved by ESD and agreed to be implemented by applicant.

3. As determined by ESD staff the plan may be substantially implemented or financial assurance in an amount determined by ESD staff in the form of cash or a letter of credit shall be submitted.
4. As required by other conditions as set forth.

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/Accessory Structure:

1. 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.
2. The size, location and height of the accessory structure shall not vary from that submitted 01/24/17 unless approved by ESD or if necessary the Planning Commission.
3. Applicant shall consent to inspection of the property by ESD to verify compliance with conditions.
4. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 02/13/19.

MS/P Moore/Kostial to deny the fence extension portion of the application for PID#32-427-0154 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/Fence:

1. In this situation the "practical difficulties" standard is not met as used in connection with the granting of a variance, because the property owner is using the property (the location of the fence) in a manner not permitted by an official control in which there are no unique factors that create a circumstance unique to the property that justifies the expansion of the non-conforming fence located within Shore Impact Zone 1.
2. It has been established by ESD staff that the existing fence included in the application is deemed a legal non-conforming structure.
3. Based upon the location of the proposed fence, within the structure setback area, it can be assumed that it has altered, disturbed and/or negatively visually impacted existing land use or neighboring property which therefore does 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. Based upon the location, within the structure setback area, the fence in this situation does 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. Approval would allow the expansion of a use that is prohibited in the zoning district in which the subject property is located.

6. There few similar situations in the County other than a limited number of private parcels adjacent to a public access.

7. The degree of impact to the shoreland impact zone area and the land use system by approval would be significant and the public's benefits by denying a variance to the shoreland standards are not outweighed by the applicant's benefit.

Condition/Fence:

1. The existing non-conforming fence can be maintained in its current configuration.

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.

Brackin, Dennis, Ponto Lake Township on property described as Part of Govt Lot 6, Section 20-139-29, PID #32-020-1304 located at 1735 10<sup>th</sup> Street NW. An application submitted to expand an existing non-conforming residence with a 30 feet x 14 feet x 17 feet x 8 feet addition to be located less than 100 feet from the lake but no closer than the current lake setback. The residence is deemed non-conforming because it is located 44 feet from the lake. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria, Section 1115.3 which establishes the non-conforming structure expansion criteria and Section 1126.1 A. which requires structures to be setback 100 feet from the OHWL of a lake classified Recreational Development (RD). The property contains 1.06 acre riparian to Sylvan Lake (RD).

PC members were at the site 02/06/17. 18 notices of the application were mailed with one response endorsing approval of the application received. The application was reviewed and discussed with Mr. & Mrs. Brackin with most of the discussion focused upon the height to peak of the proposed expansion.

MS/P Kostial/Moore to table consideration of the application in order for the applicant to consider their expansion options.

Westman, Kelly & Dyan, Shingobee Township on property owned by Roger & Gail Tieg described as Part of Govt Lot 3, Section 26-141-31, PID #38-026-4112 located at 5508 County 50 NW. An application submitted to expand a non-conforming residence located less than 100 feet from the lake. The existing stone structure would be retained and the existing frame portion of the structure would be removed and replaced. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria, Section 1115.3 which establishes the non-conforming structure criteria and Section 1126.1 A. which requires structures to be setback 100 feet from a lake classified Recreational Development (RD). The property contains 1.77 acres riparian to Portage Lake (RD).

PC members were at the site 02/06/17. 32 notices of the application were mailed with no responses received. The application was reviewed and discussed with Ms. Westman.

MS/P Pehling/Kostial to approve the application for variance to replace a portion to the non-conforming residence located upon PID #38-026-4112 upon review of the criteria contained in Section 800 of the Land Use Ordinance along with along with M.S. 394.27, Subd. 7 with the following findings and conditions:

#### Findings:

1. The property became of record in 1978 and that the structure and the portion to be replaced were obviously constructed before land use regulation at less than 100 feet from the lake.
2. It has been established by ESD staff that the residential structure in the application is deemed a legal non-conforming structure.
3. The proposed addition and porch addition will be no closer to the lake than the existing portion of the residence to be retained.
4. There is nothing to indicate that the proposed expansion 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.
5. There is no information or evidence to indicate that the application is primarily financially based.
6. The application, if approved, will not allow a use that is prohibited in the zoning district in which the subject property is located.
7. 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.
8. 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.

9. As submitted by the applicants, the accessory structure/shed and out house identified in the application are to be removed.

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 plan shall be approved by ESD and agreed to be implemented by applicant.
3. As determined by ESD staff the plan may be substantially implemented or financial assurance in an amount determined by ESD staff in the form of cash or a letter of credit shall be submitted.
4. As required by other conditions as set forth.

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 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.
2. The size, location and 19 feet height to peak of the residential structure expansion shall not vary from that submitted 01/23/17 unless approved by ESD or if necessary the Planning Commission.
3. ESD must determine and if required, the applicant shall install approved construction erosion control.
4. Approval does not allow or imply approval that the structure to be expanded can be removed by demolition or any other method from the site nor shall the structure to be expanded be reduced to "one wall".
5. Any material resulting 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. The accessory structure/shed and out house identified in the application must be removed by 07/01/17.
8. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 02/13/19.

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

Kohout, Rodney & Deanna, Deerfield Township on property described as S 100 Feet of the N 700 Feet of Govt Lot 1 Lying Between the Public Road & the Shoreline of Pine Mountain Lake, Section 36-139-31, PID #13-036-2118 located at 324 Pine Mountain Lake Road SW. An application submitted to establish a Family RV Campground consisting of 4 existing RVs and accessory structures which will be utilized for family purposes only and not available to the public which requires approval by Conditional Use Permit (CUP). A Family Campground is defined as, "Two or more residential structures and associated accessory structures on the same lot used and managed jointly by members of a family". The applicable portions of the Land Use Ordinance include Section 705 which establishes the CUP criteria and Section 1121 which establishes Private Campground criteria. The property contains 2.41 acres riparian to Pine Mountain Lake (GD).

PC members were at the site 02/06/17. 45 notices of the application were mailed with four responses opposed to approval of the application received. The application was reviewed and discussed with Devon Dumprope and Deanna Kohout.

MS/P Moore/Kostial to approve the CUP application for the existing RV configuration located and occurring at PID #13-036-2118 as a Family RV Campground upon review of the criteria contained in Sections 705 and 1121 of the Land Use Ordinance along with M.S. 394.301 with the following findings and conditions:

#### Findings:

1. As near as can be determined, the RV's have been in place and utilized by family members prior to the submittal of this application.
2. The property contains 2.41 acres and the number of RV's (four) complies with Section 1121.
3. No calls in regard to the RV occupancy and use were received other than one regarding potential wetland impact at which time it was determined that a CUP application for Family RV Campground should be submitted.
4. There is nothing to indicate that the existing use has been detrimental to neighboring residential 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.

5. The surrounding area consists of a shoreland residential type development to which there is no reason or evidence to conclude that area land use has been negatively affected for the past 11 years or will be negatively affected or altered by the on-going activity.
6. The on-going activity has had no impact to the demand for governmental services.
7. Any wetland or critical habitat that been disturbed is being resolved by the applicants according to ESD directives.
8. No scenic or historic features have been affected by the on-going land use.
9. With compliance to conditions, it is reasonable to expect that the proposed use will pose no threat to public health, safety and welfare.

Conditions:

1. The depth of the existing vegetative/tree buffer must be maintained
2. All run-off must be contained on-site.
3. Any request to revise the CUP to exceed more than 4 RV's shall not be considered.
4. None of the RV's shall open to or available for rent to the public
5. The accessory structure identified as Shed #2 must be removed in order for any permit to be approved to construct additional structures.
6. All existing wetland issues must be resolved to the satisfaction of ESD staff.

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.

Sizer, Maria & Vait, Lisa, Ponto Lake Township on property described as Lot 4, Block 1, "Idle-A-While", Section 4-139-29, PID #32-352-0141 located at 2263 East Long Lake Drive NW. A CUP application submitted to continue to operate the existing resort in its current configuration which consists of 3 resort cabins and 3 tent/RV campsites available to the public with 2 additional mobile homes and 2 additional RV sites used by family members. The applicable portions of the Land Use Ordinance include Section 705 which establishes the CUP criteria, Section 1101 which requires a CUP to operate a resort and Section 1104.7 which establishes resort criteria. The property contains 3.17 acres riparian to Long Lake (RD) classified WOC.

PC members were at the site 02/06/17. 70 notices of the application were mailed with no responses received. The application was reviewed and discussed with Maria Sizer, Lisa Vait and Randy Vait.

MS/P LaPorte/Pehling to approve the CUP application for the existing resort located and occurring at PID #32-352—0141 to continue to operate as a resort upon review of the criteria contained in Sections 705, 1101 and 1104.7 of the Land Use Ordinance along with M.S. 394.301 with the following findings and conditions:



## Findings:

1. The parcel included in the application has long been part of Idle-A-While Resort which operate during the 2016 season and is classified WOC.
2. Section 903.9, Water Oriented Commercial (WOC); "The purpose of this district is to accommodate commercial uses in the shoreland zone where access to and use of a surface water feature is an integral part of the business. Marinas, resorts and restaurants with transient docking facilities are examples of such use".
2. It is well established by the current property configuration and local history that the property has operated as a resort prior to and after the adoption of land use regulation.
3. The existing resort activity seems not to be disruptive to the neighborhood.
4. There is nothing to indicate that the resort activity has had any detrimental effects to public health, safety or welfare.
5. There is no evidence or anything to indicate that the resort activity has been detrimental to the residential land use in the area.
6. The resort activity has had no effect to the need or demand for governmental services.
7. The existing configuration complies with the RD resort density standards.
8. There is no evidence or indication that the resort activity has degraded water quality from increased activity along or in the lake in this specific location.
9. There is nothing to indicate that the resort activity has or will contradict the purpose of the official controls, 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 also to promote the health, safety, general welfare.
10. There is nothing to indicate that the resort activity has been or will be obtrusive and burdensome to the neighborhood which contradicts 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.
11. No wetland or critical habitat is affected.
12. No scenic or historic features are affected.

## Conditions:

1. The applicants may, with permit, may expand the existing resort unit bedrooms to comply with Minnesota Department of Health minimum square footage standards.
2. No run-off to the lake or to adjoining properties is permitted.
3. If necessary, the applicant shall abide by ESD recommendations for run-off shoreline vegetative management such as gutters to redirect storm water and water retention structures such as rain gardens to prevent run-off to the lake, the township road, and adjoining properties.
4. The applicant shall obtain and provide verification to ESD of all applicable State of Minnesota permits, licenses and approvals.
5. Applicant consents to inspection of the property from time to time by ESD to verify compliance with all conditions.

6. The Sizer mobile home may be removed from the adjacent property to this property provided that an applicable land use permit is obtained, it is located at least 267 feet from the lake and waste water treatment is evaluated and brought into compliance as deemed necessary.
7. Any expansion from the number of resort units included in this application shall require an application for an amended CUP and shall be evaluated according to the criteria contained in Section 1104.9 L. 3. Of the Land use Ordinance.

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 CUP, REMOVAL OF VIOLATIONS AND MITIGATION.

### Other Business

MS/P Pehling/Fitch to elect Susan Sundberg as PC Chairperson for the period of 02/17 - 02//18.

MS/P Pehling/Moore to elect Ken Kostial as PC Vice-Chairperson for the period of 2/17 - 02/18.

\* Conduct Public Hearing 1<sup>st</sup> Reading Proposed Land Use Ordinance Amendments. ESD Director Ringle reviewed and discussed the proposed revision and informed the members that no written comments were received. In addition, there was no one in attendance to present comments to the proposed revisions.

MS/P Moore/Pehling to recommend adoption by the County Board of the proposed revisions.

MS/P Moore/Fitch at 10:57 PM, to adjourn.

P. Fairbanks