



Cass County
Planning Commission/Board of Adjustment

January 9, 2017

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting January 9, 2017 in the meeting room of the Cass County Land Department in Backus. The field inspection for the meeting was conducted January 3 and January 5, 2017, with PC members Fitch, Froehlig, 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, Froehlig, Kostial, LaPorte, Moore, Sundberg and Pehling.

Staff Present: Berg, Fairbanks, Navratil and Ringle.

Citizens Present: Brian Cornell, LuAnn Cornell, Jeff Johnson, Ken Katzenberger, Monica Lundquist, Heather Marcum, Tom Marcum, Jack McNally, Deputy Tom Matchler, Christine Moore, Commissioner Jeff Peterson, Mike Saxton, Justin Smith, Jerome Sutton, Bonnielyn Witt and Bill Witt.

MS/P Froehlig/Fitch to approve the minutes of the 12/12/16 PC/BOA meeting as presented.

Variance

Boyle, Kenneth & Kelly, Shingobee Township on property described as Lot 10 & Part of Outlot B, "Christmas Point", Section 2-141-31, PID #38-351-0100 located at 6849 Holly Trail NW. An application submitted to expand the existing non-conforming residence with a 24 feet x 34 feet addition to be located 65 feet from the lake. The existing residence is non-conforming because it is located 62 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 criteria and Section 1126.1 A. which requires structures to be setback 75 feet from a lake classified General Development (GD). The property contains 1.4 acres riparian to Leech Lake (GD).

PC members were at the site 01/03/17 and 01/09/17. 47 notices of the application were mailed with no response received. The application was reviewed and discussed with the Boyles representative/contractor Walter Secore.

MS/P Kostial/Froehlig to approve the application to expand the non-conforming residence located at 38-351-0100 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 residence was constructed with ZP76-141-31-5 at 75 feet from the lake with no indication that the setback was measured from the OHWL.
2. Measurement from the established OHWL was conducted 10/01/15 by ESD staff confirming setback of 62 feet at the closest point from the OHWL.
3. VP88-141-31-1 approved a 16 feet x 28 feet deck with a 10 feet x 12 feet enclosed screened area at 61 feet.
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. No portion of the expansion will be closer to the lake than the existing residence.

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 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 expansion not vary from that submitted 12/06/16 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 01/09/19.
5. The addition shall not be less than 65 feet from the OHWL.
6. The height to peak of the addition shall not exceed that of the existing structure.

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.

Saxton, Michael, Woodrow Township on property described as Lot 3, "Pine Shore Estates", Section 3-140-29, PID #51-343-0030 located at 4697 Barnum Road NW. An application submitted to be allowed, "after the fact", to retain a boundary fence constructed to the water and at the common boundary of the applicant's and neighboring property. The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria, Section 1126.1 A. which requires structures, including fences, to be setback 100 feet from the OHWL of a lake classified Recreational Development (RD) and Section 1126.10 which requires a boundary fence to be setback one foot from a property line. The property contains 1.4 acres riparian to Barnum Lake (RD).

PC members were at the site 01/03/17 and 01/05/17. 33 notices of the application were mailed with three responses all opposed to approval of the application received. The application was reviewed and discussed with Mr. Saxton with the course of discussion focused upon the origin and description of the on-going conflict of the applicant and his neighbor Mr. Schuk. Mr. Schuk was present to describe his version of the conflict and the resulting fence issues. After much discussion, Mr. Saxton, without prompting, voluntarily withdrew the lake setback portion of his application as well as voluntarily stating his intent to remove the fence currently located within the lake setback area.

MS/P Moore/Fitch to deny the property line setback portion of the application for the existing fence located at PID #51-343-0030 upon review of the criteria contained in Section 800 of the Land Use Ordinance and M.S. 394.27, Subd. 7 along with the criteria contained in the "Statsvold" Decision with the following findings and conditions:

Findings:

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, other than behavioral, that create a situation unique to the property that justify the location of the fence to water's edge.
2. Based upon the location of the fence 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.
3. Based upon the location of the fence, 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.
4. Approval will allow a structure that is prohibited in the zoning district in which the subject property is located.
5. 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 fence was placed by the applicant.
2. There is nothing to indicate or anyway to determine if the fence was constructed other than as a retaliatory measure to the adjacent owner involving a neighbor to neighbor dispute.
3. There is nothing to indicate that the fence owner inquired as to permit and placement limits for the fence.
4. The fence is in place and complete.
5. There are no other similar situations in the County other than private parcels adjacent to a public access.
6. The degree of impact to the shoreland area and the land use system is significant and the public's benefits by denying a variance to the shoreland standards are not outweighed by the applicant's burden if the applicant were required to comply with the ordinance.

Conditions:

1. Any fencing currently encroaching in any setback area shall be removed from the structure be area not later than 06/01/17.

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.

Witt, William, Shingobee Township on property described as "Witt's Forest Pines", Lots 1-5 & 7-8 all in Section 31-141-31, PID #s 38-453-0110, 38-453-0120, 38-453-0130, 38-453-0140, 38-453-0150, 38-453-0170 & 38-453-0180. An application submitted to be allowed to construct residential structures with walk-out lower levels within the area determined as "steep slope". Steep slope is defined as, "Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance. Where specific information is not available, steep slopes are lands having average slopes over 12 percent as measured over horizontal distances of 50 feet or more that are not bluffs". The applicable portions of the Land Use Ordinance include Section 800 which establishes variance criteria and Section 1106.2 A. which establishes steep slope requirements. The Lots included in the application contain 9.37 acres riparian to Howard Lake (RD).

PC members were at Howard Lake 01/03/17 and 01/05/17. 17 notices of the application were mailed with 11 responses all opposed to approval of the application received. "Witt's Forest Pines" was approved by the Planning Commission in 2007 with the steep slope requirements adopted to the Land Use Ordinance in 2012. The application was reviewed and discussed with Mr. Witt. This discussion included steep slope, bluff, setback requirements, and excavation and construction requirements. Specific discussion focused upon the number and configuration of the lots and that if the variance, if approved, should be applicable to all lots in the subdivision. In addition to the written comments, several persons in attendance raised concerns in regard to steep slope construction and, in addition, several persons, current lot owners, appeared to support approval of the proposed variance.

MS/P LaPorte/Pehling to approve the application for variance for construction within the steep slope area, approval shall allow for one residence upon combined Lot 1, Block 1, PID #38-453-0110 & Lot 2, Block 1, PID #38-453-0120, one residence upon combined Lot 3, Block 1, PID #38-453-0130 & Lot 4, Block 1, PID #38-453-0140 and combined Lot 7, Block 1, PID #38-453-0170 & Lot 8, Block 1, PID #38-453-0180 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. "Witt's Forest Acres" was approved as a minor subdivision 06/06/07.
2. Reference to steep slope was added to the Land Use Ordinance in 2012.
3. The bluff determination made for the plat in 2007 is not altered or eliminated by this application.
4. The setback requirement from the top and toe of a bluff is not altered or eliminated by this application.
5. Approval of this application does not require structure placement in an area of steep slope.
6. Walk-out basements are currently allowed by permit in areas of less than 18% slope and within SIZ-2 at less than 50 cubic yards excavation.
7. The activity proposed in the application is not mandatory and based upon numerous walk-out construction throughout the County, there is nothing to indicate that the construction method allowed by approval 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.
8. There is no information or evidence to indicate that the application is primarily financially based.
9. The application, if approved, will not allow a use that is prohibited in the zoning district in which the subject property is located.
10. 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.
11. 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 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 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 any new construction shall be approved by ESD through the regular permit process and shall include a Letter of Credit to Cass County in the amount of \$5,000 to insure erosion control implementation and shall be returned at a rate and amount determined and agreed to by ESD staff and the applicant.
3. All applications for land use permit shall contain a plan for erosion control during construction and post construction that shall be approved prior to construction by ESD staff.
4. Prior to the commencement of construction excavation or clearing all applicants shall request and not proceed until ESD staff on-site inspection of erosion control implementation and shall implement any erosion control revisions as directed by ESD staff.
5. If deemed necessary, ESD may require shoreline vegetation enhancement in a manner and number as determined by ESD staff.
6. Every applicant shall consent to inspection of the property by ESD to verify compliance with conditions.
7. The record of this determination shall be recorded to each lot combination as described in the motion.

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

Marcum, Thomas & Heather, Loon Lake Township on property described as Part of W $\frac{1}{2}$ SE NE, Section 16-136-29, PID #22-016-1407 located at 5755 Sibley Lake Road SW. An application submitted, "after the fact" to be allowed to continue to operate the existing yard maintenance/landscape on premise business activity as a Home Business, which requires a conditional use permit (CUP). A Home Business is defined as, "A use of residential property for a commercial use by the inhabitants thereof which may be conducted inside as well as outside the primary residence". The applicable portions of the Land Use Ordinance include Section 705 which establishes the CUP criteria and Section 1110 which establishes Home Business criteria. The property contains 4.32 acres non-riparian within the shoreland area of Mayo Creek (SR).

PC members were at the application location 01/03/17 and 01/05/17. 55 notices of the application were mailed with one response of support of the application and 8 responses opposed to approval of the application received. The application was reviewed and discussed with Heather and Thomas Marcum in regard to their business/commercial activity which included number of employees, employee arrival and departure, Monday-Friday work week and on-site activity which includes primarily loading of installation materials for transportation to the work sites.

MS/P LaPorte/Moore to approve the CUP application for the existing Home Business activity located and occurring at PID #22-016-1407 upon review of the criteria contained in Sections

705 and 1110 of the Land Use Ordinance along with M.S. 394.301 with the following findings and conditions:

Findings:

1. The property contains 4.32 acres on which the current business/commercial activity commenced in 2005.
2. Except for job preparation, equipment loading and periodic maintenance activities all business/commercial activity takes place off-site.
3. Except for some light maintenance of vehicles and equipment, the business/commercial is not active during the winter months.
4. Except for one residence to the east, the business/commercial activity is well screened for neighboring residences.
5. No calls in regard to the business/commercial activity were received until one in 11/16 at which time it was determined that a CUP application for a Home Business should be submitted.
6. It seems that employee vehicles in and company vehicles out for a limited time in the morning and evening hardly reaches what could be characterized as a traffic disturbance or even a traffic inconvenience.
7. Presuming the existing tree buffer is maintained along the boundaries of the property, there is nothing to indicate that the proposed use has or will have detrimental visual or other impact 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.
8. The surrounding area consists of a rural suburban type development 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.
9. The on-going activity has had no impact to the demand for governmental services.
10. No wetland or critical habitat has been disturbed.
11. No scenic or historic features have been affected by the on-going land use.
12. With compliance of conditions and all applicable state requirements, it is reasonable to expect that the proposed use will pose no threat to public health, safety and welfare.
13. The applicants are encouraged to evaluate and if necessary upgrade on-site fuel storage containers.
14. As proposed by the applicants, they plan to move the current business/commercial activity to a more suitable location to accommodate planned expansion.

Conditions:

1. The depth of the existing vegetative/tree buffer must be maintained

2. Any run-off must be contained on-site.
3. On-site vehicle inventory shall not exceed that number submitted with the application.
4. The applicants shall consult with MPCA to ensure their compliance with any applicable fuel storage tank requirements.

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.

Other Business

ESD Director Ringle informed the members that the County Board has directed him to conduct 1st Reading on the proposed Land Use Ordinance Amendments 02/13/17 @ 11:00 AM in the Public Meeting Room of the Land Department.

ESD Director Ringle reviewed and discussed concerns raised by Janet Webster in regard to CUP conditions for Birch Bay RV Park on Agate Lake.

MS/P Pehling/Kostial at 12:49 PM, to adjourn.

P. Fairbanks