



Cass County
Planning Commission/Board of Adjustment

January 10, 2011

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting January 11, 2011 in the meeting room of the Cass County Land Department in Backus. The field inspection was conducted January 3, 2011.

Sundberg called the meeting to order at 9:10 a.m.

Members present: Ballenthin, Bliss, Fitch, Gardner, Gould, Moore and Sundberg.

Staff Present: Berg, Fairbanks and Ringle.

Citizens Present: Stefanie Brown, Robert Fields, Terry Freeman, William Harris, Dan Helbling, David Hewitt, Dan Kennedy, Bill LaTour, Judy LaTour, Ken LaPorte, Igor Lenznor and Paul Widman.

MS/P Fitch/Gould to approve the minutes of the 12/13/10 PC/BOA meeting as presented.

Variance

Becker, William, Ponto Lake Township on property described as Part of Gov Lot 9, Section 4-139-29, PID # 32-004-3304 located at 1558 20th St NW. An application submitted to remove an existing 18 feet x 22 feet residence and replace with new construction of a 30 feet x 38 feet residence 31 feet from the lake along with an 8 feet x 22 feet patio 23 feet from the lake. The application also calls for approval to construct a driveway with no setback for property boundary line. Section 1126.1 A. of the Land Use Ordinance requires structures to be located 100 feet from lakes classified Recreational Development (RD). Section 1126.1 B. allows for new driveways to be located 10 feet from property line. The property contains .53 acre riparian to Long Lake (RD).

The applicants propose to remove the exiting residence located 23 feet from the deck to the lake for construction of a new structure 31 feet and patio 23 feet from the lake. The area at the required lake setback of 100 feet is located within the wetland that occupies a large portion of the property. PC Members were at the site 12/06/10. PC members were at the site 12/6/10. 39 notices of the application were mailed for the 12/13/10 and 01/10/11 meetings. Three responses recommending approval and one recommending denial were received. The application

was reviewed and discussed with the applicants' contractor Dan Kennedy with discussion centering on locating the residence between the south end of the wetland area and 20th Street.

MS/P Ballenthin/Gardner to table consideration of the application until the 02/14/11 meeting in order for the applicant to verify that placement of the residence and waste water treatment is not possible between the wetland area and 20th Street.

Fields, Patricia & Robert, Boy Lake Township on property described as Part of Gov Lot 2, Section 24-142-28, PID # 07-024-2413 located at 2154 82nd St NE. An application submitted "after the fact" to be allowed to retain an 11 feet x 36 feet deck and an 18 feet x 25 feet addition constructed without variance or permit at less than 75 feet from the lake. In addition the application requests retention of a 22 feet fire pit/patio constructed outside the limit of the 14 feet lake access area. The residence is non-conforming because it is located less than 75 feet from the lake. The property contains 5.26 acres riparian to Boy Lake (GD). Section 1115.3.B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance.

PC members were at the site 01/03/11. 20 notices of the application were mailed. Four responses all supporting approval of the application were received. The application was reviewed and discussed with Mr. Fields. Discussion included permit history of the parcel along with the circumstances of the expansion and the need to obtain all applicable/required permits.

MS/P Ballenthin/Moore - Ballenthin-Yes, Bliss-Yes, Fitch-Yes, Gardner-Yes, Gould-No, Moore-Yes to approve "after the fact" the expansion of the residence located upon PID # 07-024-2413 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. The construction of residence was permitted in 1992 at 75 feet from the OHWM as established by ESD.
2. Since construction of the residence in 1992 there is no indication that its configuration has had any affect to the neighborhood.
3. There is no indication or evidence that the existing configuration of the residence has had any affect to ground or surface water.
4. There is no indication or evidence that the existing configuration has affected area land use because it is mostly unobservable from neighbors and the lake.
5. The existing situation has had no detrimental bearing to the need or demand for governmental services because the property already has direct access to a public road and is not nor will be connected to municipal or community waste water treatment system.
6. Although applicable permits were not obtained, removal of the expansion which is in excellent condition, will serve little purpose, to bring the property into compliance with setback criteria would seem excessive and in light of all the findings, allowing the variance will serve the interests of justice.

7. There is no evidence that financial consideration is the sole reason for the variance.
8. No comments have been received from the township or agencies notified.

NOTICE TO APPLICANT: If the following conditions are included, No permit to implement shall be issued until and if:

1. ESD required and approved erosion control is installed.
2. A written plan for native vegetation is 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 \$1.00 per square foot of the buffer area for no-mow or \$3.00 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. All applicable permits as determined by ESD must be obtained by 03/01/11.
2. Any administrative fee as determined by Director ESD must be paid by 03/10/11.
3. Winter agreements for both SSTS on the parcel must be submitted by 03/10/11
4. No storm water run-off to the lake or to adjoining properties is permitted. The residence, if necessary, shall be equipped with gutters to redirect storm water and if needed water retention structures such as rain gardens shall be installed to retain structure run-off and prevent run-off to the lake, the access road, and adjoining properties.
5. Shore vegetation shall be installed and maintained in a buffer area, subject to a 14 feet wide lake access area. The applicant shall submit a written plan for a native vegetation buffer to reduce/eliminate nutrient run-off to the lake which shall have written approval by ESD. The plan shall include a schedule for implementation and an estimate of the cost to implement. The plan shall include, as determined by ESD, all or any combination of the following:
 - a. A buffer within an area defined in the plan and approved by ESD.
 - b. A buffer in compliance with the following conditions and approved by ESD.
 - c. Restoration or installation of a berm approved by ESD.

Financial assurance shall be returned to the applicant upon a schedule approved by ESD and in all events upon substantial implementation of the vegetation plan as determined by ESD. Portions of the approved plan for vegetation not completed in accordance with the implementation schedule will be installed at the direction of ESD and charged against the financial assurance.

6. Applicants consent to inspection of the property from time to time by ESD to verify compliance with all 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.

LaTour, Judy & William, Fairview Township on property described as Lot 6, Blk 1, "Hunters Point Estates", Section 18-134-29, PID # 14-386-0140 located at 2059 Perch Lane SW. An application submitted "after the fact" to be allowed to retain an 8 feet high x 16 feet long privacy fence located 10 feet from the top of a bluff and at a property boundary line. The property contains .47 acre riparian to Gull Lake (GD). Section 1126. 1. B. of the Land Use Ordinance requires structures to be located 30 feet from the top or toe of a bluff and 10 feet from a property boundary line. A bluff is a topographic feature located either part or fully within the shoreland area and having the following characteristics; the slope rises at least 25 feet vertically above the toe of the bluff, the grade of the slope from toe of the bluff to a point 25 feet or more above the toe of the bluff averages 30% or greater and the slope drains toward public waters. Section 1126.10 of the Land Use Ordinance establishes maximum fence height of 6 feet.

PC members were at the site 01/03/11. 34 notices of the application were mailed. One response from Fairview Township recommending approval along with one from an adjacent property owner urging denial of the application was received. The application was reviewed and discussed with Judy and Bill LaTour which centered upon the circumstances leading up to the construction of the fence.

MS/P Ballenthin/Moore to deny allowing the applicant to retain the privacy fence constructed without applicable permits and not at applicable setbacks which is located upon PID # 14-386-0140 upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings and conditions.

Findings:

1. The applicants willfully and purposely constructed the fence without the applicable permit and disregard of required setback standards.
2. There is no appreciable need for a privacy fence from the adjacent lot which is undeveloped.
3. There is no indication that similar privacy fencing is typical at neighboring properties therefore it is unusual for the area.
4. Applicable permits were not obtained, the fence is not a substantial structure, it can be removed without substantial difficulty therefore denial of the variance will not harm or deny the interests of justice.

Condition:

The fence shall be removed or placed at applicable setback with permit no later than 05/01/11.

Other Business

Brandt, James & Susan, Hiram Township, VP10-140-31-6 on property described as Pt of Gov Lot 1, Section 17-140-31, PID # 16-017-1102 located at 3930 64th Ave NW. An application submitted to expand to the side of a non-conforming residence with a 16 feet x 34 feet 16 feet x 10 feet addition, a 10 feet x 16 addition non-lakeside addition and to enclose a 13 feet x 16 feet deck/open area. The residence is non-conforming because it is located 25 feet from the lake. The property contains 1.82 acres riparian to Ten Mile Lake (GD). Section 1115.3 B. of the Land Use Ordinance allows for the expansion of a non-conforming residence only by variance. Approved 09/13/10.

The members discussed their 01/03/11 visit to the Brand property at which time they observed that the original residence which was approved for expansion is in fact gone and replaced by new construction which was not intent of the variance approval. The project contractor explained his reasoning for not retaining the existing residence based upon his evaluation of the existing walls and trusses and that their condition did not justify retention. Discussion included what action to take to address the issue of retention versus replacement.

MS/P Ballenthin/Ballenthin to revise VP10-140-31-6 to allow and reflect the "as built" replacement construction and that no purpose would be served to pursue removal of the structure based upon the following findings and conditions.

Findings:

1. The original setback from the lake is unchanged.
2. The current footprint is less than what was approved combining existing residence and expansion.
3. Alternatives to address similar situations will be adopted through ESD policy and ordinance revisions.

Condition:

1. The footprint of the residence shall not exceed the "as built" dimensions as they exist 01/10/11.
2. ESD shall determine appropriate administrative fees which shall be paid prior to the resumption on construction.
3. A plan must be submitted to ESD approval to provide shoreline buffer and screening of the shoreline width of the property except as allowed by a 14 feet wide area access the lake
4. Financial Assurance in the amount of \$5,000 shall be submitted prior to the resumption of construction.
5. Financial assurance shall be returned in amount and duration as determined by ESD as the shoreline buffer and screening plan is implemented.

"Lodges of Blue Water 1st Addition", Shingobee Township on property described as Outlot F "Lodges of Blue Water", Section 2-141-31, PID # 38-343-0006. Work session with applicant to resolve density, waste water treatment, parking, traffic, occupancy, mooring and landscaping disputes. No formal actions such as approval or denial will take place. It is anticipated that the application will be placed on the 2/14/11 agenda to approve or deny.

Members discussed and reviewed the proposed development with Mr. Helbling, Mr. Freeman and Mr. Lenznor. Discussion issues included declarations language, density, owner occupancy limits, parking, ordinance standards and PC approval flexibility. Approval/denial of the CUP/PP will be considered during the 02/14/11 regular meeting.

MS/P Moore/Gardner at 12:32 p.m. to adjourn.

P. Fairbanks