



Cass County
Planning Commission/Board of Adjustment

February 14, 2011

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting February 14, 2011 in the meeting room of the Cass County Land Department in Backus. The field inspection was conducted February 7, 2011.

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

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

Staff Present: Fairbanks and Ringle.

Citizens Present: Stefanie Brown, Tom Dechmann, Larry Eveland, Terry Freeman, Scott Gustafson, Dan Helbling, Dan Kennedy, Bill Kranz, Paul Kroehnert, Ken LaPorte, Steve Larson, Jarrett Leas, Kayla Meyer, Mandy Meyer, Paul Meyer, Ken LaPorte, Alex Rogen, Rick Smith, Barb Thomas, Paul Widman and Michael Zdychnec.

MS/P Moore/Fitch to approve the minutes of the 01/10/11 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, 01/10/11, and 02/14/11 meetings. Four responses recommending approval and one recommending denial were received from the

mailing. The application was reviewed and discussed with the applicant's contractor Dan Kennedy and Rick Smith licensed SSTS professional with discussion centering on locating the residence between the south end of the wetland area and 20th Street. Mr. Smith verified that in his opinion the residence and SSTS could not be located together within the area from the wetland to the right-of-way of 20th St NW.

MS/P Gould Fitch to deny the application for variance from setback requirements for the residence proposed for PID # 32-004-3304 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 residence as provided by statute and ordinance can be replaced by permit at current footprint and volume.
2. Reasonable use of the property is not denied per Finding # 1.

Dorr, Gary & Tracy, Crooked Lake Township on property described as Part of Lot 43, "Sabins Eastburn Addition", Section 9-139-26, PID # 12-401-0430 located at 1893 Fern Trail NE. An application submitted "after the fact" to be allowed to retain at its current location a 12 feet x 20 storage structure two feet from a property boundary line. Section 1126.1 B. of the Land Use Ordinance requires structures to be located 10 feet from a property boundary line. The property contains 1.75 acres riparian to Lake Washburn (GD).

PC members attempted to reach the 02/07/11 but could not because of lack of snow removal on the road to the property. 29 notices of the application were mailed. Two responses recommending denial of the application was received. In addition, the neighboring property owners along the boundary line in question appeared to object to approval of the application. The applicants were not present. Discussion of the members included lack of permit prior to placement of the structure along with no apparent justification submitted as to lack of setback compliance.

MS/P Gould/Fitch to deny allowing the applicant to retain the storage structure located upon 12-401-0430 setback less than 10 feet from the closest property boundary upon review of Section 800 of the Land Use Ordinance (01/10/10) along with criteria established by court decisions with the following findings.

Findings:

1. The applicants placed the structure without applicable permit with disregard of the applicable setback.
2. There is no appreciable need for the structure to be less than 10 feet from a property boundary line on a lot containing 1.75 acres.

3. The structure is not a substantial or permanent structure which can be moved without substantial difficulty and moving the structure will not harm or deny the interests of justice.

Eveland, Bonnie & Larry, Trelipe Township on property described as Part of W 425 Ft of Gov Lot 3, Section 26-141-27, PID # 18-026-3404 located at 4129 Warner Road NE. An application submitted to expand a non-conforming residence with a 24 feet x 26 feet non-lakeside addition and a 10 feet x 20 lakeside deck expansion. The residence is non-conforming because it is located 85 feet from the water. Section 1115.3 B. of the Land Use Ordinance requires a variance to expand a non-conforming residence. The property contains 2.23 acres riparian to Upper Trelipe Lake (RD).

PC members were at the site 02/07/11. 16 notices of the application were mailed. One response offering no objection to approval of the application was received. The application was discussed and reviewed with Mr. Eveland. Discussion centered on the issue of use/area variance with consensus that the application, as determined in similar situations and per legal advice, is a use variance subject to reasonable use standard. Based upon the discussion Mr. Eveland withdrew his application from consideration.

Lillehei, Anne & Kevin, Fairview Township on property described as Lot 6, Blk 1, "Hunters Point Estates 1st Addition", Section 13-134-29, PID # 14-387-0130 located at 2096 Bluebill Lane SW. An application submitted to expand a non-conforming residence with a 12 feet x 15 feet two level addition and a 15 feet x 17 attached garage with a 10 feet wide access ramp all to be located on the non-lakeside of the residence. The expansion is intended to provide for family members with physical disabilities. The residence is non-conforming because it is located 38 feet from the water. 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 .6 acre riparian to Gull Lake (GD).

PC members were at the site 02/07/11. 65 notices of the application were mailed. One response from Fairview township recommending approval of the application was received. The application was discussed and reviewed with Ms. Lillehei and the contractor Mr. Kranz. Discussion centered on the issue of use/area variance along with the applicants' desire to expand based upon family needs with consensus that the application, as determined in similar situations and per legal advice, could be considered by the reasonable use standard.

MS/P Ballenthin/Gould to table consideration of the application until the 03/14/11 meeting in order for the applicants to revise their application to reflect and verify that their expansion is required to accommodate the needs of physically disabled family members and that the proposed expansion will be constructed to ADA standards.

Styrvoky, Thomas, Fairview Township on property described as Lot 10, 15 & Part of Lot 16, "Birch Forest", Section 24-134-30, PID # 14-437-0150 located at 2511 Birch Forest Road SW. An application submitted to remove the existing residential structure and replace with 26 feet

x 38 feet new construction in the approximate site of the current residence which will not comply with the required bluff or lake setback. The current residence is located less than 75 feet from the lake and within the bluff area. Section 1126.1 A. of the Land Use Ordinance requires new structures to be located 75 feet from lakes classified General Development and Section 1126 B. which requires new structures to be located 30 feet from the toe or top of a bluff. 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. The property contains .6 acre riparian to Gull Lake (GD).

PC members were at the site 02/07/11. 33 notices of the application were mailed. One response from Fairview township recommending approval of the application was received. The application was discussed and reviewed with the applicants' representatives Mr. Freeman and Mr. Larson. Discussion centered on the question of gaining setback from the lake by moving structure back to the retaining wall, lift station location, shoreline vegetation, and location of the garage.

MS/P Ballenthin/Gould to table consideration of the application until the 03/14/11 meeting in order for the applicants to assess the possibility of moving the proposed residence to the retaining wall and to submit a lakeside elevation of the proposed residence.

Conditional Use Permit

Kroehnert, Joan & Paul, Crooked Lake Township on property described as Pt of Gov Lot 5, Section 17-136-29, PID # 12-017-1301 located at 1505 Birch Bay Drive NE. An application submitted to move more than 200 cubic yards of earthen material within the shoreland zone (1,320 ft) of Lake Washburn in order to construct driveway access for 3 lots that will be created from the existing lot. Section 1106.2 of the Land Use Ordinance requires a Conditional Use Permit for the movement of more than 200 cubic yards within the shoreland zone. The shoreland zone is the area within 1, 320 feet of the ordinary high level of public waters. The property contains 20.8 acres riparian to Lake Washburn (GD).

PC members were at the site 02/07/11. More than 75 notices of the application were mailed with two responses received one with concern as to road alignment and one concern with the road route as related to existing easements to the property. The application was discussed and reviewed with Mr. Kroehnert along with the applicants' surveyor Mr. Leas. The revised project plan from KLD dated 02/07/11 received by ESD 02/11/11 that reduces excavated quantities was reviewed along with verification of the project along what is refereed to as the Harrington easement and that the construction will service only the three proposed lots, that other property owners will not utilize the project roadway to access their property and that because of DNR ownership a through road is more than unlikely.

MS/P Ballenthin/Gould to approve the driveway/road project for PID # 12-017-1301 upon review of Sections 705 and 1106.2 of the Land Use Ordinance (01/10/10) with the following findings and conditions.

Findings:

1. The proposed use is not inconsistent with the intent of the Cass County Land Use Ordinance.
2. The proposed use will not cause any unreasonable adverse effects to adjacent properties.
3. The proposed use is consistent with the normal and orderly development of property.
4. The applicant has submitted the documents required by the Cass County Land Use Ordinance.
5. The project will have no affect to parks, schools, streets utilities, other public facilities and require no additional public infrastructure.
6. The project does not reach mandatory EAW/EIS criteria.
7. No wetland or critical habitat will be disturbed by the project.
8. No scenic or historic features will be negatively affected by the project.
9. No unusual threat to public health, safety or welfare can be expected.

NOTICE TO APPLICANT: If the following conditions are included, implementation shall not commence 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.

Conditions/Approve:

1. The excavation, dimensions and design shall comply with and not exceed the quantities and specifications dated 02/07/11 received by ESD dated 02/11/11.
2. Verification of project route location along with the erosion and sediment control plan must be submitted to ESD by the project design firm prior to the implementation of the project.
3. Verification of MPCA NPDES Permit, if required, must be submitted to ESD prior to the implementation of the project.
4. Verification implementation of all phases of the project included in the plans dated 02/07/11 shall be submitted to ESD.
5. Financial assurance in the amount of \$7,500 shall be submitted to ESD prior to the commencement of implementation of project plan.
6. ESD shall determine a schedule for release of financial assurance based upon project milestones prior to commencement of implementation of the project plan.

Conditional Use Permit/Preliminary Plat

"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. An application submitted to reconfigure the current resort unit lot configuration to 24 resort unit lots along with a revision of the current resort conditional use permit (CUP) to reflect revised number and configuration resort unit lots. The property contains 5.2 acres riparian to Leech Lake (GD) classified Water Oriented Commercial (WOC). Section 705 of the Land Use Ordinance establishes Conditional Use Permit (CUP) review criteria. Section 1104.9 of the Land Use Ordinance establishes resort CUP criteria. Section 705 of the Land Use Ordinance establishes CUP review criteria. Section 901 of the Land Use Ordinance establishes and describes land use districts. Section 1104.9 of the land Use District establishes resort criteria. Consideration of this application was tabled during the 12/13/10 meeting.

PC members were at the site 12/06/10. 56 notices of the application were mailed for the 12/13/10 and 2/14/11 meetings. Eight responses were received from both mailing with all raising some level of concerns based upon proposed density, storm water run-off, and near shore conditions. In addition two persons in attendance spoke to the application one of urging disapproval and one approval. The application was discussed and reviewed with Mr. Helbling and Mr. Freeman with discussion that included among others, density, parking, traffic, revised declarations, storm water management, shore vegetation and boat mooring.

MS/F Moore/Fitch - Ballenthin/No, Bliss/No, Fitch/No, Gardner/No, Gould/No, Moore/Yes to approve the resort for PID # 38-343-0006 with the findings and conditions dated 02/11/11 upon review of Sections 705 and 1107.4 of the Land Use Ordinance (01/10/10) with the following findings and conditions. Motion failed.

MS/P Moore/Ballenthin - Ballenthin/Yes, Bliss/Yes, Fitch/Yes, Gardner/Yes, Gould/No, Moore/Yes to table consider of the conditional use permit to the 03/14/11 in order to allow for additional time for the members to consider the proposed revised conditions.

MS/P Ballenthin/Moore to approve the preliminary plat of "Lodges of Blue Water 1st Addition" upon review of Article 4 of the Subdivision and Platting Ordinance (03/01/09) with the following findings.

MS/P Ballenthin/Gould to approve the driveway/road project for PID # 12-017-1301 upon review of Sections 705 and 1106.2 of the Land Use Ordinance (01/10/10) with the following findings and conditions.

Findings:

1. The lots comply with the resort GD standards.
2. The County Surveyor has reviewed and approved the preliminary plat.
3. Wetland delineation requirements have been fulfilled.

4. Waste treatment location has been determined with design to be submitted with the final plat.
5. The archeological requirements have been fulfilled.
6. The plat does not reach the mandatory EAW/EIS review standards.
7. The plat complies with the road access criteria.
8. No comments have been received that object to the plat from any agencies notified.

P. Fairbanks