



Cass County  
Planning Commission/Board of Adjustment

March 10, 2014

The Cass County Planning Commission/Board of Adjustment conducted a regular meeting March 10, 2014 in the meeting room of the Cass County Land Department in Backus. The field inspection for the meeting was conducted March 3, 2014 with PC members Anderson, Ballenthin, Fitch, Froehlig, LaPorte, Moore and Sundberg along with ESD staff Berg and Fairbanks in attendance.

Sundberg called the meeting to order at 9:30 a.m.

Members present: Anderson, Ballenthin, Fitch, Froehlig, Moore and Sundberg.

Staff Present: Berg, Fairbanks, Ringle and Wright.

Citizens Present: Jeff Palkovich, Jeff Peterson, Jim Qualley, Marissa Skuza and Paul Wagner.

MS/P Froehlig/Anderson to approve the minutes of the 02/10/14 PC/BOA meeting as presented.

Variance

Qualley, Lee & James, Powers Township on property described as Lots 18 & 19, "El Sueno", Section 15-139-30, PID #34-398-0170 located at 1445 Gateway Drive NW. An application submitted to expand the existing non-conforming residence with a 16 feet x 24 feet attached garage addition with second level living space. The residence is non-conforming because it is located 54 feet from the lake at the closest point. Section 1126.1 A. of the Land Use Ordinance (02/15/13) requires structures to be at least 100 feet from the OHWL of a lake classified Recreational Development (RD). In addition, Section 1115.3 B. of the Land Use Ordinance (02/15/13) requires a variance for the expansion of any non-conforming structure. Section 800 of the Land Use Ordinance (02/15/13) establishes the variance review criteria. The property contains 1.55 acres riparian to Horseshoe Lake (RD).

28 notices of the application were mailed. No response was received from any person or governmental entity notified. The application was discussed and reviewed with Mr. Qualley and his contractor Mr. Wagner with discussion to alternative site locations, shoreline vegetation and expansion by a second level.

MS/P Froehlig/Fitch to approve the application to expand the non-conforming residence located upon PID #34-398-0170 based upon review of the criteria contained in Section 800 of the Land Use Ordinance (02/15/13) and in M.S. 394.27, Subdivision 7 with the following findings and conditions:

Findings:

1. There is no record in the permit archive as to when the original structure was constructed although it is apparent that it was prior to land use regulation by an owner other than the applicant.
2. The proposed expansion of the residence will be no closer to the lake than the existing setback.
3. The proposed residence expansion seems a reasonable use of the property when taking into account the configuration of the property along with the location of the residence 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.
4. The proposed expansion will not be excessive of scale or obtrusive to neighboring property which therefore 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. Because the surrounding area contains structures similar in size and scale, there is no reason or evidence to conclude that area land use will be negatively affected or altered by the proposed expansion.
6. There is no reason to conclude that water quality will be in any way affected by the proposed expansion.
7. No responses or objections have been received from any persons or governmental entities notified of the application.
8. There is no reason or evidence to conclude that financial consideration is the sole reason for the application.

NOTICE TO APPLICANT: 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 suitable 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 per square foot of the buffer area for no-mow or \$3 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. The dimensions and location of the expansion shall not vary from that submitted with the application 02/13/14.
2. Any material resulting from construction not reused or recycled must be disposed of in a permitted facility.
3. ESD shall determine the need for construction erosion control and if required applicant shall install ESD approved erosion control placement prior to the commencement of construction.
4. No run-off to the lake or adjoining properties is permitted. If determined necessary by ESD, run-off shall be directed by gutters from the garage to water retention structures such as rain gardens to retain and prevent run-off to the lake and adjoining properties.
5. Applicant consents to inspection of the property from time to time by ESD to verify compliance with conditions.
6. Unless commenced or otherwise extended or revised by the Planning Commission this approval shall be effective until 03/10/16.

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.

Appeal to an ESD Administrative Decision

Palkovich, Barbara & Jeff, Crooked Lake Township on property described as 465.2 Feet x 166.7 Feet x 301 Feet of Gov Lot 5, Section 26-139-26, PID #12-026-2301 located at 629 Sunset Hill Road NE. An appeal to the return of an application submitted 01/13/14 for an addition to the existing residential structure located upon the parcel. The application was returned 01/23/14 because it was not significantly revised from an application submitted in conjunction with a variance application denied 10/12. Section 802.2 of the Land Use Ordinance (02/15/13) allows for appeal from any permit, order, requirement, decision or determination made by the Environmental Services Department. The property contains 1.9 acres riparian to Lake Roosevelt (GD).

The appeal was reviewed and discussed with Mr. Palkovich and included bluff definition, bluff definition as applied to the Palkovich property, permit/variance history, the proposed expansion and what might constitute significant/substantial revision.

MS/P Moore/Ballenthin to deny the appeal as presented for PID #12-026-2301 with the following findings:

Findings:

1. A permit application, ZP12-139-26-48, for the expansion of the non-conforming residence was submitted to ESD 08/30/13
2. Upon receipt of the permit application, ESD staff determined that structure is located within the required bluff setback making it non-conforming thus necessitating a variance for expansion.
3. The ESD staff bluff determination was based upon the departmental interpretation of the bluff definition with no variation from bluff determinations made since the enforcement of the bluff standards.
4. A variance to allow the expansion to the residence located within the bluff setback area, VP12-139-26-9, was heard by the Planning Commission 10/08/12 after an on-site inspection conducted 10/01/12.
5. VP12-139-26-9 was denied with findings 10/08/12.
6. During the 11/13/12 Planning Commission meeting the applicant requested and was allowed to present a revised plan for the expansion of the non-conforming residence to which the Planning Commission voted not to reconsider or approve the revised plan.
7. No appeal to the Planning Commission's denial of the variance was made to the appropriate judicial authority within the allotted time period.
8. Some modification to location and size to the original application was noted but the essential circumstance of a proposed expansion of a non-conforming residence remained unchanged from the 2012 permit application and 2012.
9. As the ESD Director noted in correspondence to Mr. Palkovich dated 01/23/14, the permit application was not accepted by ESD and returned because of no essential revision to an application previously denied by variance.
10. Appeal of ESD's denial of the applicant's land use permit application for addition/expansion to the existing non-conforming residence residential structure is denied because ESD correctly determined that the structure on the property is non-conforming because the structure is located within the bluff setback area. Due to its non-conformity, the Land Use Ordinance requires a variance prior to the issuance of a land use permit. The applicant has not applied for a variance nor has a variance been approved. Therefore ESD has properly refused and returned the land use permit application.

Applicant's Exhibit C to the appeal is a topographic survey of the Palkovich property which is assumed to be accurate. Exhibit C shows nine lines, each being a depiction of the slope from the toe of a possible bluff to the top of a possible bluff as bluff is defined in the Definitions Ordinance. Lines 1, 2 and 3 show a rise of 25 feet or greater and a slope of 30 percent or greater. Each of lines 1, 2 and 3 depict a bluff at their respective locations as defined in the Definitions Ordinance. Lines 4 - 9 each show a rise of 25 feet or more but at a slope of less than 30 percent. Lines 4 -9 do not depict a bluff at their respective locations. BASED UPON THE LINEAR SCALE OF Exhibit C, a circle drawn to show 30 feet from the top of the bluff

point depicted by Line 3 encompasses a portion of the deck and a portion of the existing residence.

Section 1126.B of the Land Use Ordinance establishes a structure setback of 30 feet from the top or toe of a bluff. Portions of the Palkovich residence are located within the 30 feet structure setback applicable to the top of a bluff.

The Definitions Ordinance provides; Non-conformity: Any legal use, structure or parcel of land already in existence, recorded or authorized before the adoption of officials controls or amendments thereto that would not be permitted to become established under the terms of the official controls as now written.

Applicant states the existing structures on the property, including the house, have been on the lot since the 1930's, that is, before land use regulation. The current ordinance would not permit the house structure at its current location because it is within 30 feet top of bluff setback. Therefore, the current house structure is a legal but non-conforming use.

Section 1115.3 of the Land Use Ordinance provides in relevant part as follows; 1115.3 Non-Conforming Structures B. Expansions. All expansions that add area to a non-conforming structure shall require a variance. These shall include any additions of living areas, storage spaces and walkout basements except construction or replacement of non-walkout basements, crawl spaces or permanent support footings.

Applicant's land use permit application requests a permit for expansions that add area to the non-conforming house structure as follows: to expand the non-conforming house structure 1) by a 30' x 42' addition with basement and second level, 2) by an 18' x 16' addition to connect the foregoing addition to the non-conforming structure, 3) by an 8' x 24' expansion, 4) by an 18' x 18' four season porch, and by 5) by adding a loft to the main residence structure.

Due to the applicant's request for a land use permit to add expansion to a non-conforming structure and because the applicant has not requested a variance, ESD's return of the land use permit application is correct and applicants appeal is denied.

There is no merit to the applicant's assertion that a bluff can exist only if the average slope of the entire lot is 30 percent. That argument is unreasonable on its face. A purpose of the bluff provisions is to protect natural and sensitive topographic features of property from degradation. Bluffs are natural features with aesthetic, natural and environmental values. The 30 feet setback provision is intended to help preserve and protect these features from that degradation, including reducing obtrusive and highly visible structures at tops of bluffs in the shoreland area; reducing the likelihood of bluff slumping from structure water run-off and subsurface water/soil movement; reducing erosion down bluffs slopes and impairment of public waters; among others.

To give credence to applicant's argument would allow construction on topographic bluffs merely because other portions of a lot were not a bluff. It is on those non-bluff portions of a lot where construction should occur, and that is what the bluff provisions are designed to achieve.

If ESD of the PC/BOA has made a contrary interpretation of the bluff standards in the past, those interpretations were made on the particular facts and are not before the PC/BOA in this case. The questions before the PC/BOA is application of the bluff provisions of the Land Use Ordinance to the facts present in this case. Based upon those facts, the appeal is denied.

As the applicant notes, ESD collaterally commented that the land use permit application was not significantly different from the 2012 application. The 2012 application involved a request for variance which was denied and from which the applicant did not appeal. Because applicant states the ESD comment is not material, but is merely inaccurate, it will not be addressed further. If applicant presents a new variance application, the question whether the new application is change will be addressed after viewing the property and a hearing on the new application.

#### Reconvene 1<sup>st</sup> Reading

#### Revisions to Subsurface Sewage Treatment System Ordinance (SSTS)

ESD Director Ringle presented and discussed proposed revisions to the escrow portion SSTS Ordinance to the PC.

MS/P Ballenthin/Anderson to adopt the proposed revised SSTS on first reading to recommend adoption by the County Board.

MS/P Anderson/Froehlig at 11:35 am, to adjourn.

P. Fairbanks