

**BOARD OF ADJUSTMENT/PLANNING COMMISSION
CITY OF LAKE SHORE
TELEPHONIC AT LAKE SHORE CITY HALL
MINUTES
MARCH 8, 2021
9:00 AM**

Commission Members in attendance: Jim Woll, Arla Johnson, Glen Gustafson and Bob Toborg; Alternate Shawn Hansen; Council Liaison John Terwilliger; City Engineer Joe Dubel, City Zoning Administrator Teri Hastings and City Clerk Patti McDonald. Absent were Gene Hagen and alternate Pat Hastings. A quorum was present and the Commission was competent to conduct business. Brent Anderson was in the audience at City Hall.

Others present telephonically: Brian Thorup, Jeff Thorup, Jeremy Johnson and Jethro Carpenter.

Jim Woll called the meeting to order at 9:00 a.m.

Approval of the January 11, 2021 Regular Meeting Minutes – MOTION BY ARLA JOHNSON TO APPROVE THE MINUTES FOR THE JANUARY 11, 2021 BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

PUBLIC HEARING –

Variance Request – Brian Thorup – Brian Thorup requested a variance to demolish an existing nonconforming structure and rebuild a new 904 square foot dwelling lakeward of the existing structure at a setback of less than 30 feet from the top of bluff and less than 15 feet from the sideyard setback. The proposed dwelling does include a screen porch and a lakeside deck. The property is legally described as Lots 17 and18, Block 11 Tingdale Brothers Sherwood Forest on Gull Lake. The property is zoned R-2, Medium Density Residential and the site address is 8471 Nottingham Road.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. There were no written comments received regarding this application. Darrin Hoverson, DNR Hydrologist's comments were read into the record suggesting there are alternatives to the setback of the structure; therefore, recommended denial of the application.

Brian Thorup gave a brief summary of his project and the reasoning for proposing the building other than remaining on the same footprint. He said their builder thought they would be disturbing less soil. Jeff Thorup commented that if they move the dwelling closer to the road, the driveway would move back to which would disrupt the neighboring property.

Arla Johnson said in her observation, this is a beautiful piece of property and it appears the structure could be moved back. Jeff Thorup said this would require too much disturbance of the soil and require retaining walls.

Shawn Hansen confirmed the comments stated in the DNR letter for extending the deck within the 75' setback area. Teri said typically the city allows a deck to encroach into the bluff area.

Joe Dubel commented that when you consider the bluff, you have to consider the setback of the bluff. Joe looked at a couple options to move the structure back to the bluff setback and they would be on the same elevation as the neighboring property to the south and it would come back farther with less obstruction of the view for both. Joe feels there are options available to the Thorup's rather than the proposed option; plus meet the standards of the bluff setback.

Teri's staff report indicated the following: The applicant is requesting a variance to demolish an existing nonconforming structure (sits within the bluff and sideyard setback) and rebuild a new dwelling lakeward of the existing structure. The proposed structure is 26'x36' with an attached screen porch, lakeside deck and side deck. The proposed home will sit forward of the existing structure with all but a small corner within the 30' bluff setback. The applicant is intending to retain the cabin located on the north side of the property. The applicant will keep the proposed structure at the same sideyard setback as the existing structure which is 6'. It should be noted that the proposed structure will meet the 75' setback.

The lot is 30,951 square feet and has a buildable area of 11,138 square feet. The building envelope is shown on the survey and there is ample area to build a conforming structure. The existing impervious surface is 3.3% and with the proposed structure it is at 14.5% which is below the ordinance maximum of 25%. A drainage plan is not required since the impervious surface is less than 20% (drainage plan required when impervious surfaced is between 20%-25%) however, some thought should be given to how runoff will be managed.

The cleanouts for the septic system are shown on the survey. Along with a well location. The applicant has stated that if the system cannot be used for the proposed home, a new system will be installed. A compliance inspection will be needed for the existing system or a site evaluation and design for a new system.

The applicants have stated in their application that the proposed location will have less impact than if they were to build a conforming structure. The applicant sited less impact to trees, elevation and view for the adjacent property. The city engineer has reviewed the proposed location for the new dwelling and feels there are alternative locations for placing the proposed structure. In addition, the Planning Commission has rarely granted variances within the bluff impact zone and has not to my recollection granted a variance to go closer within the setback area than the existing structure.

The applicants have submitted elevation drawings of the home. The home is a single- story walkout home which is not much different from the existing structure.

The existing home currently has good screening with leaf on conditions and is well vegetated along the shoreline. If the variance is approved, a condition requiring the shoreline vegetation remain should be included in the approval along with the existing vegetation within the shore impact zone.

STAFF RECOMMENDATION

Recommend denial of the application as submitted as there are viable options for placement of a new structure without going closer than the existing dwelling. The building envelope is substantial on the property and should accommodate a conforming structure and septic system. A new septic system will most likely be required if the proposed home is moved back from the lake. The applicant should be allowed to resubmit without additional fees.

MOTION BY GLEN GUSTAFSON TO DENY THE VARIANCE APPLICATION AS PRESENTED. BOB TOBORG SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

MOTION BY GLEN GUSTAFSON ALLOW THE THORUP'S TO REAPPLY WITHOUT AN ADDITIONAL VARIANCE FEE. ARLA JOHNSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

NEW BUSINESS –

Site Plan Review - Jethro Carpenter – Teri's staff report indicated the following: The applicant is seeking a site plan review for the subdividing property. The property is 34 acres with 21.9 acres of upland area. The property is located east of the Causeway multi plex units on the east side of Lost Lake Road and north of the Anderson Gravel Pit. The property is located on Spider Lake which is considered a Natural Environment Lake (NE). A Natural Environment Lake has a minimum lot size of 80,000 square feet and a minimum buildable area of 40,000 square feet. The topography of the property is difficult. It has steep slopes, bluffs and wetlands. The applicant would like to subdivide the property and has come up with a few scenarios. One is a typical lot and block subdivision and the other is a Conservation Subdivision Hybrid. The lot and block subdivision shows a lot size of 80,000 and an area of 40,000 square feet of buildable area. The lot/block subdivision demonstrates how this could be configured (6 lots each with lake access). Due to the topography and wetlands, it would require boardwalks for each lot over sensitive wetland areas and traversing bluff areas.

The Conservation Subdivision (Lake Shore's form of a planned unit development) requires clustering of the homesites on smaller lots and with the remainder of the property put into a conservation easement. This is a good tool when developing property with difficult topography. The Conservation Subdivision process is Section 38 of the Zoning Ordinance. The Conservation Subdivision utilizes a method of dividing the property into tiers (400' in depth for a Natural Environment Lake) and taking the suitable land area (no wetlands or bluffs) and dividing it by the lot size (80,000 square feet for a NE lake). This gives a base density of units for the development. The ordinance does grant very minor density increases if additional requirements are met, for example, increasing the setback by 100%. A density calculation sheet has been distributed to the Commission by the applicant and Teri has made comments in red on the density calculation.

In addition, the city did receive a variance request for this property in 2010 which was included in the packet. The variance request was for a structure to be located on the peninsula. The issues addressed in the variance in 2010 have not gone away.

There is a possibility of connecting the development to city sewer. A very preliminary study shows the city may have capacity for an additional 10-12 units without requiring the city to make costly upgrades to the system.

Issues for the Planning Commission to address:

Proposed density is inconsistent with the ordinance. A variance on density would be needed or an ordinance change considered. Lake Shore is more restrictive on density than DNR standards and other surrounding communities. The applicant has provided a document regarding density labeled "Lost Lake Rd Property" which is attached. Below is Lake Shore's allowable density increases with a maximum increase of 5%.

Criteria	Density Increase, Tier 1	Density Increase, Tier 2	Density Increase, Tier 3 and Beyond
Dwelling setback from lake increased 50% over minimum	5%	N/A	N/A

Dwelling setback from lake increased 100% over minimum	10%	N/A	N/A
Common Open Space increased to 60%	0%	0%	0%
Maintain predevelopment peak runoff rate for the 50-year, 24-hour storm event	0%	0%	0%
Maintain predevelopment peak runoff rate for the 100-year, 24-hour storm event	0%	0%	0%

38.1.1.1 Increases in unit or site densities shall not exceed the following maximums:

Tier	Maximum Density Increase
First	5%
Second and each subsequent tier	10%

The Conservation Subdivision sketches are a hybrid with the proposed home out on the peninsula. Typically, for a new development a variance is not allowed when creating “new lots”. When the city is approving a subdivision, it is tasked with ensuring each lot is buildable without a variance. In addition, the conservation subdivision requires clustering of the dwelling units. The proposed home would be a deviation.

Lake access or docking rights is only granted to the number of units allowed in tier 1.

The lot/block method is not ideal with having multiple lengthy boardwalks to gain lake access.

Access into the property should be reviewed and input sought by the city engineer. Utilizing the existing Causeway entrance for the upper causeway multiplex units has merit.

A Conservation Development was utilized for Whitney Acres in 2007 which is located off of Whitstrom Rd on Whitney Court (5 lots with 11 acres plus an island put into conservation subdivision).

» » Jethro Carpenter has asked for feedback from the Planning Commission before purchasing a piece of property to develop. He suggested a possible zoning change and asked the Commission’s opinion on the direction they would like to go on that request. Jim Woll said that the Commission is empowered to review the plans brought forward today; they do not design or implement any plans that are not subject to their review. The Commission will give feedback on what he has proposed and will not make any decisions for him. Jethro said he doesn’t want to put forth something that the Commission is not going to support. He prefers that the property would be zoned Waterfront Commercial.

Jethro commented that he put forth a lot and block proposal although he doesn’t feel that is the best use of the property; this is not the option he would prefer. He explained what he would like to do as higher density Waterfront Commercial property and how he interprets the Lake Shore City Ordinance as compared to the DNR and Cass County’s Ordinances. Jim Woll pointed out that the City is allowed to be more restrictive than the state or county, he asked Teri to share the history to the changes to the zoning ordinance when it was last updated. Teri replied, the ordinance was changed in 2007; at that time the city had several resort conversions which mirrored the DNR allowing more density. There was quite a bit of feedback regarding the density allowed during these resort conversions and the city placed a moratorium on Planned Unit Developments. She asked City Council member John Terwilliger for his comments as he was the Mayor when the

change was made to take a more restrictive stance on PUD's; the City's Comprehensive Plan was just updated recently and didn't point out that there should be an increase in density allowed for developments. John commented that he doesn't feel the city would make changes to our ordinance to meet the needs for an individual property. He said, as for commercial, he was of the understanding that the units would have to be rented out. Teri said it depends what type of business that Jethro is considering; whether it's a timeshare, a marina or single-family homes. She said that the density doesn't change between the zoning options he is discussing. Jethro asked if the City allowed controlled accesses. The City doesn't allow controlled accesses. Jethro said he is looking for an alternative to the lot and block option; he doesn't want to put forward a Conservation Easement development because they want more than one mooring slip per unit. Teri said the DNR regulations specifically states that only one mooring space per unit is allowed in the first tier; she explained that a day dock would be allowed for the off-lake properties. He asked if he did lot/block if a clustered area for the lake access is allowable. Teri said, yes, you could create a common area and that it has been done before on Lake Margaret.

Joe Dubel said there are several approaches here and would have to look at them individually; which would include the review for the demand of sewer availability. He said he did review the setbacks and he doesn't feel the peninsula would support any building.

Arla Johnson commented that it would probably be beneficial for Mr. Carpenter and Teri to get together to discuss the issues that he isn't aware of. The City certainly can't design what is acceptable to be done on the property, but Teri could help with the roadblocks and what needs to be dealt with before he makes his final presentation to the Commission.

Jim asked Jethro if a variance was granted to do something on the peninsula and an access road is required, that access road would likely require a storm water permit from the MN Pollution Control Agency. Jethro wasn't aware of that, but knows he has to put together a master plan and get a permit from a national agency. Jim commented that the topographical maps Jethro provided indicate that the bluffs are pretty steep and cautioned him that the stormwater permit may contain specific and maybe onerous requirements.

Jim asked if this request is different from the variance request that was presented in 2010 and was denied for constructing a house on the peninsula. Jethro said, no, and has asked Darin Hoverson to review the OHW for his opinion.

Jethro is more than happy to work with Teri as she has been extremely helpful for him to get to this point saying that the city is lucky to have her. Jim said the Commission has offered their comments on the information provided and for him to work with her for her guidance.

Bob Toborg has a concern with the septic system that is proposed; he said it is very close to the channel. Teri commented that if this was the application presented, the Planning Commission would be granting a variance for the septic system as well.

John Terwilliger suggested that Jethro understand Teri's role in: 1) offering information and explaining the ordinances and what they require, and 2) not designing your development. Jethro understands.

Joe Dubel remarked that the proposed application would be disturbing more than an acre of land on each of these; this is an Environmental Lake in which he will have to provide a stringent storm water management during construction.

Jim summarized what he understands Jethro is considering: He said that ‘density’ seems to be driving the discussion and the proposed density is inconsistent with the existing Lake Shore ordinance; those issues need to be resolved. Also, the Commission doesn’t tend to issue variances for new development. Jim said if Jethro intends to develop this area, he needs to come to the Commission with a proposal that is in compliance with the Lake Shore ordinance as it exists today. However, if Jethro wants to propose an ordinance change, there is an opportunity to do that and Teri can provide him with the needed information.

Jethro asked the Commission if they prefer one or the other of what his proposals were today, aside from the Lot/Block proposed. Jim answered that the Commission requests that he comes back with a proposal that does not require a variance from the existing ordinance; if not, the other option would be work with Teri for an ordinance change.

OLD BUSINESS –

‘Shouse’ Discussion – Teri’s staff report indicated the following: A spreadsheet showing permit data for house/garage ratio for the past three years was distributed to the Planning Commission. Below is chairman’s Woll analysis of the data which she thinks is “spot on”. If the commission is in agreement, she will carry this information forward to include in our zoning rewrite. She also attached Nisswa’s ordinance for reference and the summary of the workshop meeting.

Jim’s Analysis: I sorted the table by zoning district. Analyzed only the R-1 and R-2 districts and only considered the ratio of storage area to residential area. Then looked at those permits with a ratio of greater than 100% and highlighted them in yellow. That analysis showed that there were five properties permitted in the R-1 districts that exceeded 100% and that there were none in the R-2 districts. Then looked at the permits with a ratio greater than 50% but less than 100% and highlighted them in orange. That analysis showed that there were four properties permitted in the R-1 districts that met this criterion and that there were five in the R-2 districts.

Based upon this review, I offer the following observations. If we followed the Nisswa example (>50%) and applied it to the R-2 districts there would have been five properties that would have required a conditional use permit for the period of time covered by Teri’s review. If we applied the same criterion to the R-1 classified properties there would have been nine properties that required a conditional use permit. However, if we increased the ratio to 100% for R-1 classified areas there would have been five conditional use permits required for the same time period. In fact, if we increased the ratio to 200% in the R-1 classified areas there would still be those same five properties subject to conditional use permits.

I recommend that we consider the use of the Nisswa standard for R-2 classified areas. Five conditional use permit reviews over a three-year period does not seem to be overly burdensome for the commission. This number might even be reduced if the standard were adopted as it might force applicants to size their attached storage area so as to avoid the conditional use permit route. Given the desire to be less restrictive in the R-1 zoning districts, I recommend that we set the ratio at 100% to 200%. Again, I don’t believe that five conditional use permit application reviews over three years is problematic.

Jim Woll said that the ordinance revision should apply to R1 and R2 zoning districts only.

Brent Anderson commented that the ‘Shouse’ is a very popular concept. He said that the public doesn’t know that the ordinance is possibly going to change. He said that it’s a good use of space

for tax base and if it is not allowed, the people wouldn't build in Lake Shore. He asked why this came about.

Jim said if the ordinance was changed it would not prohibit a 'shouse', it would require a conditional use permit aimed at offering input from the nearby neighboring properties.

Arla said there were some concerns that the 'shouse' doesn't disturb the surrounding atmosphere of the neighborhood.

Teri explained how this came before the Commission. She said there was a concern regarding a 'shouse' that was constructed along Interlachen; there has also been 'shouse's' constructed in the agricultural area and she supplied examples of all of them in a previous report. She summarized how we have got to this point.

John Terwilliger commented that he has seen these done very well out in the agricultural area. He said a regular house could also be sided with the metal siding that is used on the storage building and fall within the ordinance requirements. He doesn't feel the city should get into limiting what material can be used for siding.

Brent Anderson asked if double wide mobile homes are allowed within the city. Teri said we don't discriminate on mobile homes; the city controls what's allowable by width.

MOTION BY JIM WOLL TO FOLLOW THE RECOMMENDATION OF THE SUBCOMMITTEE AS PRESENTED. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED WITH SHAWN HANSEN OPPOSING.

REPORTS

City Engineer – Joe Dubel had nothing to report.

Chairman – Jim Woll had nothing to report.

Council Liaison – John Terwilliger had nothing to report.

Zoning Administrator – Teri Hastings had nothing more to report.

PUBLIC FORUM – There was no public forum.

MOTION BY ARLA JOHNSON TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF MARCH 8, 2021 @ 10:35 AM. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald
Lake Shore City Clerk