

**BOARD OF ADJUSTMENT/PLANNING COMMISSION
CITY OF LAKE SHORE
LAKE SHORE CITY HALL
MINUTES
MAY 10, 2021
9:00 AM**

Commission Members in attendance: Jim Woll, Arla Johnson, Glen Gustafson, Bob Toborg and Gene Hagen; Council Liaison John Terwilliger; City Engineer Joe Dubel, City Zoning Administrator Teri Hastings and City Clerk Patti McDonald. Absent were Alternates Shawn Hansen and Pat Hastings. A quorum was present and the Commission was competent to conduct business. There were 12 people in the audience at City Hall.

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

Approval of the April 12, 2021 Regular Meeting Minutes – MOTION BY ARLA JOHNSON TO APPROVE THE MINUTES FOR THE APRIL 12, 2021 BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

PUBLIC HEARING –

Variance Request – Terry and Kay Siemon – The Siemon’s requested a variance from the Lake Shore Land Use Ordinance relating to the lake setback for the purpose of demolishing the existing nonconforming dwelling (52’ from the lake) and constructing a new home (2715 square feet foot print including garage). The proposed lake setback for the home is 70 feet from the ordinary water mark of Upper Gull Lake where a 75’ setback is required. The applicant will meet all other ordinance requirements. The property is legally described as Lot 4 Wienzel Point (site address is 1145 Wienzel Point Road) and is zoned medium density residential.

The following documents became part of the record – Notice of mailing, notice of publication of public hearing, signed application and attachments and staff report. There were no written comments received regarding this application.

Terry Siemon came before the Commission to answer any questions or concerns with his project.

The Engineer and Commission had no concerns with the variance application.

Teri’s staff report indicated the following: The applicant is requested a variance to demolish the existing home and garage (constructed in 1971) and to construct a new home with an attached garage along with a lakeside patio at a setback of 70 feet from Upper Gull Lake.

The existing structure is at a setback of 52’ from Upper Gull Lake and encroaches on the sideyard setback to the south. The proposed home will better conform to the ordinance by meeting all setbacks except the lake setback. The lake setback proposed will increase by 18 feet. The proposed patio will meet the ordinance setback which is 50’.

The lot is almost 100 feet wide at the lake and has a depth of 175’ and 190’ (typically lake lots are 100’x200’) with a total lot area of 16,255 square feet. The lot was platted prior to current zoning regulations. The building envelope for the property is shown on the survey and the proposed home sits within the building envelope except for a small portion of the home. The applicant and Teri

had several discussions about the home design and placement of the structure on the property. The owner did decrease the depth of the garage and I felt decreasing the road setback could be an issue. A pick-up truck or large SUV is typically 20-22' in length and a driveway should be able to accommodate a vehicle parked outside with room to walk safely around the vehicle. A second consideration for the lake setback variance is that the adjacent properties all sit closer to the lake than the proposed Siemon structure.

The property is level except for a slight hill on the lakeside that rises approximately 6 feet above the lake. The site plan does not show a new sidewalk/steps to the lake and that may be a question for the property owner. What type of landscaping is planned for the property? There is not one tree on the street side of the property, consideration should be given to planting some trees. There are a handful of deciduous trees and one pine closer to the lake that should not be impacted by the construction nor should they be removed.

The existing impervious coverage is at 18.4% and the proposed impervious surface is 20.7%. A stormwater drainage plan is required between 20 and 25%. Teri recommended that the applicant utilize gutters to direct drainage away from the home and utilize small depression areas to capture the runoff. All runoff should be kept on the property and not directed to the lake, adjacent properties or the street.

The property is served by city sewer. There is an existing well within the garage (shallow) and the applicant has indicated they will be drilling a new well. A proposed well location is not noted on the survey. Teri doesn't anticipate any problems with locating a well on the property.

The applicant has submitted elevation drawings of the proposed home which is a two story which conforms to the ordinance height restriction.

STAFF RECOMMENDATION

Recommend approval of the variance as the proposed home will be better conform to the city's ordinances. The variance is necessary due to the shape of the property (lack of depth). The proposed variance will not create a land use not permitted in the medium density residential zoning district. The variance is not for economic reasons alone. The variance will not alter the character of the neighborhood. The variance is in keeping with the spirit and intent of the ordinance.

MOTION BY GLEN GUSTAFSON TO APPROVE THE VARIANCE APPLICATION OF TERRY AND KAY SIEMON AS PRESENTED. GENE HAGEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Variance Request – Josh and Molly Kramer – The Kramer's requested an after the fact variance to construct a home and attached garage with the corner of the garage at a 10'6" setback from the sideyard. All other ordinance requirements will be met. The property is described as Part of Lot 17 Shaffers Roy Lake 1st Addition (site address 1033 Bass Lake Road) and is zoned medium density residential.

The following documents became part of the record – Notice of mailing, notice of publication of public hearing, signed application and attachments and staff report. There were two written comments read into the record in opposition of this application; one from Lois Hensel (1032 Bass Lake Road) and one from Todd Nelson (for Pat Isom), these letters are on file at City Hall.

Jason Thiesse, Baratto Brothers Custom Builders summarized the process they followed preparing for the project. They also missed the 10-foot sideyard setback on the site plan which is not Lake Shore's sideyard setback. They intend to build retaining walls; addressing the concerns of Todd

Nelson. Molly and Josh both said that they deferred to experts throughout the process and there was no ill intent in planning their project.

Lois Hensel (1032 Bass Lake Road) commented that they have built 6 homes in the past and shared the process they followed during their projects. She pointed out what she thought was done improperly during the process of this project. Teri verified this is a pre-existing lot and under the ordinance they are deemed buildable; they are allowed to apply for a variance for sideyard setback. Lois said Teri didn't send her the information regarding lot area. Teri said she sent what Lois requested and they are not asking for a variance from lot area as the lots in that development are pre-existing. Teri gave examples of the Bass Lake Road properties that already exist with the same amount of lot area.

Todd Nelson (1025 Bass Lake Road) commented that when they built their garage, they followed the 15-foot setback. He doesn't understand how the 15-yard setback was missed by so many people involved. He said 5-feet doesn't make a huge difference; however, they would have had more area to put a buffer. He is concerned this will happen again. He said, to outsiders looking in, this project doesn't look good.

Tim Terhaar (1043 Bass Lake Road) said there are two sets of stakes at the project property and they are encroaching onto his property. He is concerned this is a non-conforming lot. Jason Thiesse said all the monuments they used were previously found monuments. Teri said the City did a road project in the 90's and there may have been addition survey markers found there.

Joe Dubel asked for clarification of one marker. He pointed out that the house next door to the south on the survey is at 14'.2" and is less than the 15' requirement from the side yard lot line. He feels the request is reasonable. Todd said that they had their property surveyed yesterday and they told him that it is within inches of the lot line requirement; they can provide their survey when they receive it. Joe said he just wanted to point out there can be discrepancies between surveyors.

Arla Johnson said she understands that the 5 feet is a concern for the neighbor and asked if the Kramer's are doing something different with the garage. Molly said they will work with the neighbor and landscapers to make it more aesthetically appealing in the one area.

Todd Nelson asked if this is really just a mistake made by Teri; how was a 10' permit allowed rather than the 15' setback; he just wants to understand how it was issued.

Jim Woll said that before Teri comments, he wants people to understand that prior to this meeting, Teri asked Jim to meet with her as she was very concerned with the error she had made and needed to be addressed before the Planning Commission. He said, based on the sincerity in which she shared her oversight with him, he feels very confident that it was truly an error on her part.

Teri Hastings said when she heard from Todd, she verified on the survey that was provided by the landowner that the setback was correct, to her dismay, it was marked at 10' and she had looked at that survey numerous times because of other issues and she doesn't know how she missed the wrong setback. It truly was a mistake and she prides herself on her professional integrity. She would have loved to have caught that mistake at 15', she certainly wouldn't put herself in this position on purpose and have to explain herself to the Mayor and the Planning Commission at a public meeting.

Todd Nelson said mistakes happen and he would've appreciated a call saying that it was a mistake and the permit was issued in error.

Lois Hensel said it wasn't just an honest mistake by Teri, as there were numerous people that missed this setback and she wants to know why. Arla said that this doesn't describe what happened here and it was an unfortunate error; and to think there was planning of some underhanded desire to see this happen is not the case. She thinks it is really unfortunate that Lois made that comment.

Teri said she contacted the surveyor right after this and they discussed that most communities have a 10-foot setback and Lake Shore is unique in requiring 15-feet. She doesn't think it was intentional to slide something through.

Teri's staff report indicated the following: The applicant is seeking an after the fact variance for the sideyard setback for a corner of the attached garage currently under construction. A permit was issued in February for the new home and attached garage. A survey had been done on the property and the proposed home was staked by the surveyor. Unfortunately, in Teri's review of the site plan she missed the sideyard setback showing 10 feet rather than the required 15 feet. An updated drawing showing the corner of the garage is included which shows a setback of 10'6".

The city attorney has been made aware of the situation and stated the best course of action was for the property owner to file for a variance for the structure so it is of record.

The proposed structure is setback away from the lake (145') from Spider Lake. The lots on this peninsula have a General Development classification even though Spider Lake is a Natural Environment Lake. The property also has an area of wetland that has been delineated. The city has a 30' wetland setback. The home meets this requirement. The wetland location and setback does require the home to be positioned to the south side of the property. It should be noted that a redesign of the home or a variance would have been necessary to accommodate the home on this lot.

Retaining walls will be required on the south side of the property and will be less than 4' in height. Teri's discussions with the property owner indicate they will be landscaping with trees along this area as well. The lakeside of the property does have some wetland and is well vegetated and screened. Erosion control methods have been utilized to protect the wetland area.

STAFF RECOMMENDATION:

Recommend approval of the after the fact variance as the applicant has proposed adequate mitigation measures for the reduced sideyard setback. The after the fact variance will not alter the character of the area and will not impact the use and enjoyment of the adjacent property to the south. All parties involved in the variance (homeowners, contractor, surveyor, adjacent landowner) have been very cooperative and understanding in this matter.

MOTION BY ARLA JOHNSON TO APPROVE THE VARIANCE APPLICATION OF JOSH AND MOLLY KRAMER WITH PROPER EROSION CONTROLS IN PLACE, AND BUILD THE RETAINING WALL ESTABLISHED IN THEIR PLAN. GENE HAGEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

NEW BUSINESS –

Lot Split – David Anderson – Teri's staff report indicated the following: The applicant is applying for a lot split. The applicant has approximately 1.68 acres of land and requested to split the property into two parcels. The property is zoned Low Density Residential (R-1) which has a minimum lot size of 40,000 square feet and a buildable area of 20,000 square feet. The lot width for the R-1 district is 150 feet. Parcel B does meet this requirement. Parcel A will be kept with the property

identified as 90-384-0060 (Anderson home). The property owner, Mr. Anderson understands that Parcel A and 90-384-0060 will become one property and cannot be sold separately.

The applicant has submitted a survey by a licensed surveyor. Legal descriptions have been prepared for the property.

The property does not contain any bluffs; however, there are areas of steep slopes which have been identified on the survey. Access for both parcels is off of Bass Lake Road which has been identified on the survey.

The surveyor notes there was not any visible evidence of wetlands on either parcel. This has been confirmed on the Cass County GIS program.

Both parcels are currently vacant and do not have any improvements.

Monuments have been placed marking the corners of the property.

Building envelopes are shown on each of the parcels.

STAFF RECOMMENDATION

Recommend approval of the lot split as presented. The proposed parcels meet the requirements of the ordinance.

David Anderson came before the Commission to explain his lot split request.

Commission members and Joe Dubel had no concerns with the application.

MOTION BY GLEN GUSTAFSON TO APPROVE THE ANDERSON LOT SPLIT AS PRESENTED. GENE HAGEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

OLD BUSINESS – There was no old business.

REPORTS

City Engineer – Joe Dubel had nothing to report.

Chairman – Jim Woll said two weeks ago he met with the person that was proposing the purchase of the property near the Anderson pit.

Council Liaison – John Terwilliger had nothing to report.

Zoning Administrator – Teri Hastings said was made aware of a violation on Upper Gull Lake and provided photos of the violation. She has contacted the homeowner to stop their project and sent them a certified letter requiring them that they will have to restore their property, which will include the planting of trees. She has been in contact with the City Attorney and Darrin Hoverson from the DNR. They will also be issued a fine.

PUBLIC FORUM – John Terwilliger said that he had the piece of property that the Kramer's purchased and he had been through the proper procedures when he purchased and split the property many years ago. He shared that there was no nefarious intent in the sale of the property.

David Anderson commented that in the years of working with Teri, his interaction has always been outstanding and professional.

MOTION BY ARLA JOHNSON TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF MAY 10, 2021 @ 9:58 AM. GENE HAGEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald
Lake Shore City Clerk