

**LAKE COUNTY BOARD of ADJUSTMENT**  
**April 12, 2006**

**Meeting Minutes**

**MEMBERS PRESENT:** Jack Meuli, James McKee, Jerry Winkley, Clarence Brazil, Lucille Buchmann

**STAFF PRESENT:** Sue Shannon, Joel Nelson, Alex Hogle

Jerry Winkley called the meeting to order at 4:00 pm

*Jack moved to change to approve the March Meeting Minutes.  
Change: Clarence Brazil wasn't in attendance  
Vote unanimous to approve minutes.*

Jerry made an announcement: Estep Variance won't be heard, Legal Notice was in correct

**MCGREEVEY VARIANCE / CONDITIONAL USE**

Jerry announced we will be dealing with McGreevey Variance. The whole Board is present. Takes three to approve any of these variances or conditional uses. We will run through and do a Staff Report first and then we will hear comments from the applicant and then anyone else.

Alex reads the Staff Report

**JOHN:** Did you have any questions or would you like me to comment on what you folks have talked about?

**JERRY:** First we will ask the if the Board has any questions and we would like your comments, yes.

**JOHN:** Apparently I did not ask for a variance on the fifty foot set back.

**JERRY:** Ok

**JOHN:** I don't know if I asked for one of one would be approved. All we were trying to do was cover a portion of the existing deck to have some shade up there. We weren't trying to go out into that fifty foot set back from the lake. It appears to me that is kind of an area that you don't want people to build anything, fifty feet back from the high water mark. Although many places up there are you know five and twenty feet from the high water mark but I guess one question of mine would be if I came back and asked for that variance is that something that we can do is it something that may be approved or it you know you have to stay out of the fifty foot mark?

**JERRY:** How can I answer that? We have had requests to build in that fifty-foot zone

**SUE:** It has to be and historically there had to be a significant hardship in order to grant a variance for that fifty-foot zone.

**JOHN:** Hardship defined as

**SUE:** Mostly that the lot is very confining. That there is no other way that they can enjoy the lot without building in that fifty foot

**JOHN:** I see. I have applied or we have applied for a sanitation permit and apparently that continues to be a work in progress. We are getting the property surveyed because that southern

boundary is so close to where the existing structure was with the ten foot mark that and we agree with that that needs to be done so that we know exactly where that line is. I am hearing some talk that the lines where they used to be drawn and the new way that they are doing the surveys, the lines are a little bit off so I am concerned about that. So we are in the process of getting a survey done especially, not really for the other three lines but mainly for that southern line because that is kind of where it is kind of closest to that property set back.

**JERRY:** Well that is a requirement that you have to have an accurate survey

**JOHN:** Correct

**JERRY:** Before the permit can be issued.

**JOHN:** So I guess I can either apply for a variance on the fifty-foot set back or I have to move that back and not really cover that deck

**JERRY:** This is where we are at right now unless I don't know where we stand on the legal notice

**SUE:** We haven't legally noticed

**JERRY:** We haven't noticed that you want the variance through the paper so the public hasn't had a chance to respond to it. So I guess we would have to go through that motion and then the notice in order to do that.

**JOHN:** So as I understand it I would need to apply for a variance on that if that was something that we wanted to do but that would only be granted if I understand this correctly if there was a significant hardship?

**SUE:** It looks like we could redesign. The only question is that patio

**JOHN:** Was covered? So it would be like half of it was covered and then the rest of it wasn't?

**SUE:** Well it looks like you know more than half, it looks like three quarters of it could be covered. I mean (in audible)

**JOHN:** Well no actually no cause if we had to back that off,

**ALEX:** Mr. McGreevey?

**JOHN:** Yeah

**ALEX:** I believe that what Sue was saying that your proposed depth of your patio

**JOHN:** Correct

**ALEX:** You could still have three quarters of that patio. If you look at figure B

**SUE:** I am talking about that (in audible) you are talking about

**ALEX:** The upstairs patio would be overhanging eaves and soffit

**JOHN:** Yeah

**ALEX:** From the tip of your soffit edge your four and three fourths feet into that fifty-foot set back area. If you were to redesign this slightly you could still have a majority of your designed patio. It wouldn't cover your concrete deck as far but

**JOHN:** Right that is the only portion that would be covered. We were covering twelve feet of the twenty-four feet and if we have to back up five then we are covering seven feet of it is what ends up happening

**SUE:** Well we could do something if you want to look into (in audible) or up the variance request on that, why don't you come and talk to us a bit further and let's deal with the subject

**JERRY:** I am not quite sure what to (in audible)

**SUE:** (in audible)

**JACK:** (in audible) if we are going to (in audible) come in another fifty feet we can't approve your staff recommendations the way they are then cause you've got another for fifty foot

**JERRY:** Yeah we could approve it

**JACK:** How can we approve it then if it comes to a variance?

**JERRY:** If he chooses not to move ahead with it

**SUE:** Steve we could do that as recommended he would have to redesign the structure to get the full set back

**JACK:** So we could approve it then and then if he doesn't like it he could come for a variance on it

**JERRY:** Yeah that is what we want I think

**JACK:** Alright

**JERRY:** Does everybody understand what we are saying? Ok is there anyone care to comment on this? We will close this one for Board discussion and action. I would like to (in audible) I guess if we are going to move ahead with it

**JAMES:** I move we grant the variance and conditional use. Do we need to do them separately?

**JACK:** Yeah we need to

**JAMES:** Alright I move we grant the variance as requested with the Staff Recommendations

**JACK:** And I will second that

**JERRY:** (in audible) Staff recommendation on the variance. I am going to close (in audible) how many feet on the variance?

**ALEX:** Five feet or more

**JERRY:** Five feet

**ALEX:** Yeah explicitly the new built structure shall meet or exceed the following standards

**JERRY:** I with you, there just wasn't a recommendation on the variance

**JAMES:** I think most of the recommendations will cover the variance and the conditional use. The variance is conditional on getting it surveyed properly. It is conditional on the plans submitted to the Courthouse. It is conditional on sanitation permium. It is conditional on stone water management. I think all of the conditions in the Staff recommendations apply both to the variance and the conditional use permit. Ok, so

**JERRY:** Can we approve both at one time?

**SUE:** You can do them in separate. There is already a motion on the floor to grant the variance, (in audible)

**JERRY:** With the Staff recommendation

**SUE:** And if you will second it, go ahead and open on that motion

**JERRY:** It has been moved and seconded that we approve the variance per the Staff recommendations with the conditions that apply. Those in favor of the motion raise your right hand. It is approved unanimous.

**JAMES:** I move that we grant the conditional use permit with the Staff recommendations

**JACK:** Second

**JERRY:** To 26 feet

**JAMES:** Yes to 26 feet

**SUE:** 26 feet

**JACK:** Now the Staff recommendations also goes into staying out of the fifty foot too

**JERRY:** Yeah

**JAMES:** Well it just kind of brings that to light and states it explicitly but we don't really, it doesn't really need to be stated. That condition, the regulation is in force and in effect regardless. So, all the Staff recommendation does is specify that he needs to follow that, follow that rule at this point unless he wants to come back for a variance for it later

**JERRY:** Yeah. Any question? Well then we can second it that we approve the conditional use on the height to twenty-six feet. Those in favor raise your right hand. It is unanimous.

### **CLARK VARIANCE REQUEST**

**JERRY:** And the next item on the agenda is the Clark Variance Request. And let's do the presentation.

**JOEL:** Ready for me?

**JERRY:** As ready as we will be

**JOEL:** Ok (Joel reads the Staff Report)

**JERRY:** Are there any questions of the Staff?

**JACK:** Yeah I got one. Why is, is this just an oversight that this was different than the ten and twenty acres or was there some reason?

**JOEL:** I wasn't here when

**SUE:** Well, right. I am really not sure either. I don't remember any discussion that particularly stated that that should be left out of that provision. I sent out comments or a letter of, a quick letter for comment to the Planning Board and didn't receive any comment from Planning Board Members stating that they remember specifically excluding the five acre (in audible) for a certain reason. I don't know if it was intentional

**JACK:** I was just surprised to see that it was, that it was different from the five and ten

**CAL:** Jack I think I know the answer to that question. I don't know if you want my comment now.

**JACK:** You want it now?

**JERRY:** Go ahead

**CAL:** But if you have a twenty acre minimum density. If you want twenty lots you take four hundred acres and you cluster twenty homes sites in an area and you've got that takes up an acre and a half or whatever you use thirty acres you got three hundred and seventy acres left to put a home site and that is not making it all look like it is development. If you take five acre tracks and you cluster twenty of them in one place and then use the remainder which is already fairly small and put another house there you basically it is your cake and eat it too. You've accomplished the cluster but the remainder piece is a nice little farmstead, twenty acres or whatever and you get to put a house on that. And then when the public comes by instead of seeing an open space they see all the houses clustered there and they see another house within the same area on another just slightly larger piece of ground.

**JACK:** Well why down the road can you put twenties on all the rest of them

**CAL:** Exactly

**JACK:** So you've got twenties anyway?

**CAL:** Yeah but you don't have any, I mean there is no advantage to trying to use these regulations to preserve open space and that is what they are for. The reason all this cluster and I remember the meetings that we, that Planning Board in the adoption of their density map, the reason they allowed these clusters because everybody was impressed with the fact that we have some open space. We wouldn't have a house on this particular area because they are all clustered here. I think it is a whole different ball game when you are talking ten and twenty acre tracks because you are dealing with a four hundred acre piece of ground when you are dealing with twenty instead of a much smaller piece of ground like a hundred or well fifteen tracks in five acres is what it is, sixty acres.

**JERRY:** Ok, well let's

**SUE:** Just one point there that I would like to make is that if this parcel the larger piece did not have a house on it they could get us another lot but it would have to be within the clustered, within the clustered lot, supposedly clustered lot, so if they would be able to have another house somewhere on the property.

**JERRY:** Well I had a question. With our chart lists the different ranges of (in audible) on this and this represents an average I assume that that is permissible?

**SUE:** Yes

**JERRY:** The average between sixty and seventy percent. This is sixty-five and we are averaging between thirty and forty to get to thirty-five.

**SUE:** That is how Staff has interpreted it

**JERRY:** Ok. Any other questions of the Staff? We will open it up to the applicant to comment

**MARC:** Thank you Mr. Chairman. I am Marc Carstens, Carstens Surveying. What we are asking for today is not approval of the subdivision. It is not approval of anything except for one small matter and that is to allow a (in audible) site to be tied to the set aside area when you go through Lake County's Regulations for clustering. I understand Mr. Christian's comments and his concerns. Basically this is why I submitted two copies of the maps to the County that we have here today. This is what, could, not would, could look like in five acre density and it is pretty well bopped up. This is what the developer would refer to in vision. This green area is the open space and there is no further development and we have a possible building site of an acre in size shown here, it is kind of (inaudible) what we want is to be able to tie a building site to this property and am not sure whether they will want to build, my ability to send people out to build houses on large tracks totally fails sometimes. Mr. Christian's comments about the open space and the acreage amounts have some merit to it. I will grant you that, but in this particular instance we are talking about five-acre density. Now, there are a couple of things that you have to do if you want to gain the density bonus through this procedure. Number one, the lots you are going to create have to be around two and a half acres or less. Number two they need to be clustered together in groups no more than twenty units per cluster. Number three, the resulting open areas can still be seeded, the resulting open area must be larger than the density size for that area. In this particular case we are talking about five-acre density, we are talking about forty, 40.8 acres of open space. Directly, if you are in ten acre density or twenty acre density it is conceivable that you could come up with a plotting plan that would result in a remainder parcel actually smaller than this forty acre tract that has an automatic inherent right to have a building site attached to it- What we think is or what has happened and it is our position because I didn't take in every detail, in fact I took in very few of them on purpose and what we think has happened is basically a housekeeping, clerical error. We don't understand why a house could be attached to a remainder parcel twenty-acre density or ten acre density. We fail to see the issue of it attached to a five-acre density especially if all the other conditions are met. And in this case the remainder parcel is almost nine times larger than is required by regulation getting in to a density situation.

**JERRY:** (in audible)

(A man looking for another meeting)

**MARC:** What we here today for is with my plans to represent the Board is one small item, that is to allow a building site to be attached to the remainder. That building site count would be removed from the total amount that we could see through clustering. Granted we could put

another small lot out there, it is a developers concern that if this isn't allowed to happen to where you could actually own this large tract or larger tract of land and have your homestead on it, we are concerned about the stewardship of the property. We have made residential lots small so they are easier to manage. There are challenges to be met through subdivision review on it, there is irrigation issue, there are prime soil issues, there are all kinds of issues. But that will be met through subdivision review, not here tonight. What we are concerned about is the density being able to attach a building site to the remainder of the property and thereby hoping to ensure better stewardship of the remaining property. Thank you. Other than that I can answer any questions.

**JERRY:** Are there any questions at this time. Anyone else care to comment. We will talk to opponents first. Anyone a proponent for approving this variance? Now any opponents, please identify yourself for the record.

**CAL:** My name is Cal Christian. I am an attorney from Missoula. I have two sons and several clients in the immediate vicinity and I just, I don't want to bore you. I am just going to make a couple of suggestions. The main argument for this variance isn't what you normally expect with variances which is a hardship argument. It is a maintenance of the property. If you go back to page four or your report in the last paragraph it says, where applicable and assures perpetual maintenance of the parcel. Part of what they have to commit to, to the County is they have to agree to perpetually maintenance so the argument of what we got to maintain so we need to put a house there to do it, isn't really an argument. If you, if they get a cluster development approved with an open space, part of the commitment of the County and is set forth in your own regulations, is you have to maintain the thing perpetually. That is part of what you do. I have already given you my opinion on why I think twenty and ten acres are different than five acres. So I won't reiterate that, but I won't reiterate that point, but I would say that in granting a variance, it is clear that you have to grant it, it won't be contrary to public health, that is not an issue. But where owing to special conditions of literal enforcement of the provisions of this regulation will result in unnecessary hardships, nobody has argued that here. Nobody is saying this is going to be an unnecessary hardship that there is some physical part of the ground like you were just dealing with in an earlier variance request. This is just simply that they want to cluster the homes here and still have a nice little farm with a building site next to it and not allow the true meaning of the open space that I think the Planning Board and the County Commissioners adopted when they adopted the density. And I propose that if you are going to allow the preserve to be used in five acre tracts it shouldn't be action of the Board of Adjustments it should go back and change you density regulations because I submit that if you grant this, you have taken the place of the planning board and those people responsible for the density because you will never get another request for variance that doesn't include the right to build on the five acre preserve and frankly the planning board would be in a position to have to grant it under a do rights argument. I mean if you grant this one, what is the argument, what is the ongoing, what is motivating it. What are the special circumstances? There aren't any. They want to do the cluster and they just simply want to put a house up. So anyway, I guess from a strictly legal standpoint, I think it is objectionable to bring that before this Board in this matter asking for a variance.

**JERRY:** Any one else

**STEVE:** Mr. Chairman, Steve Hughes. A member of the Planning Board spent a lot of time on the density map as well as two members on the Board of Adjustment or of the Planning Board. I just found out today that this is five-acre density and I am going to complain tonight and ask our Staff to show me the map where this was approved by the Planning Board for a density of five acres. A clear understanding of, I am a property owner out there, I am on the Planning Board. I

do not recall this ever being discussed as part of a density change from what we approved in the maps we saw at the last density map hearing that we had. I understand it went to the County Commissioners and I have been told recently just by Marc Carstens a few minutes ago that this was a change made by somebody, i.e. must have been the County Commissioners at the last minute and include this five acre density on this piece of property. As you recall the form of the states which is just to the east of this property we had long and bitter discussions about that prior to and during the planning process and their submission of their subdivision application two and three and four years ago. So, my issue of it is I agree with Mr. Christian obviously from the standpoint of what we are trying to do here, but I am objecting to the density map change that occurred without the knowledge of the Planning Board. Now I didn't write a letter about this particular situation because I don't have time to write a letter. I really don't have time to be here, but I came because I like you people, ok. I wanted to see how you operate, but this area we are talking about is prime agricultural land. And Mr. Gerity's neighbor is going to be right here, that the individual which is not a problem for the Board of Adjustments that owned this property previously, has never respond to any request that the neighbors (inaudible), ever. Now I understand it is actually the plan that we approved on this subdivision two years ago, has now the final plat has been done. I don't see an irrigation pipe out there, I don't see an irrigation pump out there. I don't see an area where the bus is supposed to pull in. On the plan that we approved as a Planning Board with the twenty acre densities that we knew about back then. So, I have lots or problems with this one. From a Planning Board standpoint, and as a neighbor. And the reference that Joel made to the one-acre house, happens to be a house that was part of our ranch that we sold but that is only because we did to get rid of the house so we wouldn't have a renter, you know a place we get with those kinds of situations. So it wasn't a "subdivision that was done for one acre only" it was an existing home that had been there for probably forty-five, fifty years. Much like Mr. Gerity's house and much like the houses further down the road. So, my objection again is the fact that as a neighbor, as a member of the Planning Board I had no idea this density was five acres and I need to see a new density map as a member of the Planning Board to see what we "approved" which I don't think we did. So, I hate to hold you up any longer.

**JIM:** Yeah my name is Jim Gerity. I live on the west side there and I didn't realize it was in five-acre density lots either. I had never heard that but I have many concerns with that much development too. Groundwater being one of them you know. The problems with that much saturation and drying up the well and stuff not to mention dogs and too many people for the road for one thing. Forman Road is one of the worst roads in the County for drifting snow in the winter time. I don't know I don't think we need that much saturation out there at this point in time. I am little concerned on how they plan on getting to that flow dirt because it is cut off by a ditch there unless they put a bridge in there. You know stuff like that. I have many concerns on it.

**JERRY:** Ok, does the Board have any questions of

**JACK:** I have a question of Marc. If that land, the rest of that could be sold, right?

**MARC:** The rest of it?

**JACK:** That piece out there, if they don't put a house on it, they could sell it right?

**MARC:** Yes, yep. It is a track of land

**JACK:** Right

**MARC:** The question is does it have the right to build on to it or not.

**JACK:** Right, but it can be sold either way

**MARC:** It could. It could

**JACK:** It could to a neighbor, it could go to a hobby farmer

**MARC:** It could

**JACK:** Or developer or whatever it can't be developed

**MARC:** It can't be developed that is out of its future. If I may too, (in audible) to the nature of the ground, there are irrigation ditches. There is ponds, there is some wetlands associated with this open area, and

**END OF TAPE SIDE A**

**MARC:** That is an option

**JERRY:** Yep

**MARC:** And it is not a desirable one by any means.

**JIM:** And if I understand this correctly too you can basically do this anyway, you just put a twentieth lot in there somewhere and then the open space but happens to the open space

**MARC:** It can be sold

**JIM:** As I said just as

**MARC:** As a not buildable tract. I think theoretically you are right. Maybe I am wasting everybody's time. Maybe I should just put a twentieth lot up there and shut up. I will sell the balance to whoever wants to buy it. I just hope that they have a house there so they would be more sensitive to it.

**MAN:** That is what I feel is a less appealing

**JERRY:** Is there any more questions? I think we have heard the comments. I think at this point we will close it for Board discussion and action.

**LUCILLE:** I have something to say. I like the idea of the cluster development. I worked and I spoke my piece and I yelled and I did everything in the Finley Point's Zoning where we live, they wanted to have five acre density and I said no. Cause every five acre plot around us had weeds. We have been killing weeds and fighting weeds all our, we moved there in 1956. We have been fighting them all these years. Weeds that come drifting in from the neighbors. These five acre tracts, so we have two and a half acre in the area where we are because people will mow a two and a half acre tract. But a five-acre tract they don't care, they let it go. So I like the idea of the cluster development and I don't know why a guy couldn't live in one of the lots up above or sell it, without putting another building out there. The owner of it or whoever

**JIM:** They can sell it to the neighbor west of them. I already made an offer like that and never got a counter offer or nothing on the deal.

**JERRY:** Let's

**JAMES:** We need to visit when we are done. I mean you could do Plan B without a variance of any kind, right?

**MAN:** That is correct. Five-acre tracts. If I do five-acre tracts, granted you know you have concerns about this being a five-acre density area but that is not something that we can address here. But I mean he can do the plan on the left without a variance or anything from us and I don't, I mean if you want to talk about preserving open space that certainly doesn't do it. The cluster, I like the cluster deal on the right much better than, it preserves a lot more open space. I do have concerns about granting a variance without meeting the requirements for a variance.

**JOEL:** It might be good idea to go through each requirement to grant a variance and address it.

**JERRY:** I think hardship is a real question

**JAMES:** I have a hard time saying that this meets a hardship requirement as well. Which is unfortunate because I think it would be, I think that is a better idea than the other ones

**JERRY:** I am going to ask Sue a question. The proposal on the right with the cluster this could still come to the Planning Board for subdivision approval with or without approval by us on the remainder lot. Is that correct?

**SUE:** Correct.

**JACK:** Well wouldn't it have to come to the Planning Board anyway?

**SUE:** Yep

**JERRY:** If they intend to split it yeah

**SUE:** Right but they can come to the Planning Board with the cluster design even if they don't get the variance today if that is what you are asking

**JERRY:** And they could go up

**JACK:** But they can't come to the Planning Board with the (inaudible) and the house on the (in audible) piece

**SUE:** Correct

**JACK:** They got to have a variance before they can do that. Can the Planning Board get this thing straightened out so there can be a house on the five-acre like there is on the ten and the twenty also on the remainder? Is that allowed to be done by the Planning Board too won't it

**JERRY:** With the Commissioners

**JACK:** With the Commissioners, right.

**JERRY:** It is set for review in October

**SUE:** Yeah that would have to be an amendment to the density regulations to allow all of the five-acre parcels that use the cluster from this

**JACK:** (in audible) explanation. I still don't think his lot was the way it is anyway, instead of going through

**SUE:** The only way to not make it come to the Planning or the Board of Adjustment ever time for a variance to allow a house on that remaining larger open space, would be to amend the density regulations

**JACK:** That is what I would like to see done is. I don't know if we can do it or not. Rather than do this piecemeal.

**JERRY:** I am trying to figure out how I want to ask this question. I think the reason that five acres was left off was that generally speaking they felt the remainders would be smaller but my memory isn't good enough to say that that is a fact or not. If the remainder tract of the ten or twenty would be a larger than allowing a house on that would not be as intrusive as allowing it on the remainder of a five acre density. Of course we've got another question that has been raised, did it change from something other than five acres to five acres after it went through the Planning Board. I don't know whether the map was changed or not. It may have. I guess we need to know that answer at some point. We are close. I will entertain a motion to either or approve or deny the variance. Whatever suits the Boards favor, unless you want more discussion.

**CLARENCE:** I don't see how we can. I would rule that we deny it.

**LUCILLE:** I just, one of the (inaudible) is 74.43 acres. Why are we considering five acre? I mean isn't that true of any piece of land? If it is a five-acre density and they want, then it could be cut up into five acres each or less.

**JERRY:** Average

**LUCILLE:** You are saying in a five-acre, just five acres you could cluster and you wouldn't have much land. But in a seventy-four piece, you've got a lot of land left over if you are clustering over here. I can't

**JACK:** The five acres is on the left

**LUCILLE:** Yes I know

**JACK:** The other (in audible) is for cluster and Marc's idea is that there's a house on that (in audible) acre that they (in audible). That maybe true and may not be true. It also depends on who it gets sold to and I have a strong feeling it is going to be sold. Or else he is going to sit there with something he can't use.

**MARC:** I will respond if you want me to

**SUE:** The larger piece is 48.8 or 4.5 acres

**JACK:** Most developers don't want to get left with something they can't use and build more than a house on it, but is going to get sold I think

**MARC:** I know you closed, I would love to make a comment but

**JACK:** I am just commenting to you cause you are handy.

**JERRY:** We do have a motion and a second

**SUE:** I didn't hear a second

**JAMES:** I seconded it.

**LUCILLE:** What was the motion again?

**JERRY:** To deny the variance from, if there is no further discussion, I am going to call for the vote. It has been moved and seconded that we deny the variance. Those in favor of the motion, raise your right hand. Those opposed

**LUCILLE:** well I am not opposed but I guess I am opposed

**VOTE:** James, Jerry and Clarence in favor, and Jack and Lucille opposed.

**JERRY:** Ok, three to two. The variance has been denied.

**MARC:** Thank you gentleman

James McKee moved to adjourn

Jack Meuli - seconds