

LAKE COUNTY BOARD of ADJUSTMENT
April 11, 2007
Meeting Minutes

MEMBERS PRESENT: Lucille Buchmann, Jack Meuli, James McKee, Sue Lavery, Clarence Brazil

STAFF PRESENT: Sue Shannon, Joel Nelson, Alex Hogle, Lita Fonda

Lucille Buchmann called the meeting to order at 4:02 pm

Motion by James McKee, and seconded by Jack Meuli, to approve the March 2007 meeting minutes as presented. Vote unanimous to approve minutes.

SLACK VARIANCE/ CONDITIONAL USE—UPPER WEST SHORE

Alex Hogle presented the staff report. Additional public comment letters were distributed.

James asked Alex how much the right of way extends past the driving surface. Alex did not have an exact figure on this calculated. Jack asked about the right of way. Alex explained that it's a point of contention, whether it's a right of way or prescribed use. The original plat for Crescent Beach lots does indicate what would typically be viewed as a deeded right of way, which measures 40'. The road is not 40' wide.

Jeff Fisher spoke on behalf of the applicants. Carstens Surveying has surveyed the road where it is. There's nothing to tell them where the right of way was, so they measured off the road. The garage can be moved back another 2' without getting into the steep bank, for 24' off of the driving surface of the road. They originally wanted to move the house to the north. When they move it to the south, it's further from the lake but they have to take out one big tree. They felt it was better to take out the tree and comply with the 20' lake setback. He handed out a revised drawing to the Board. He spoke regarding the conditional use for the buildable surface. Once the 12' width of road plus 20' on each side of it is removed (about 5000 square feet), the majority of the lot is not considered buildable area. They would like to go to 35% rather than 29%. For the variance, they will adjust their plan to make absolutely sure that the drip line is more than 20' from the high water mark. He measured 21' 2". They will make sure Alex agrees with the position and the surveyors show it on the plat. The roadside will be the tall side of the garage. The rest will be pretty well tucked into the bank. They can't put fill against wood. The steep bank behind it is almost 22' feet tall.

Sue L confirmed with Jeff that they're proposing to go back 2 more feet.

James checked that the garage height is 30' 2" on the tall side. Jeff affirmed and said they could reduce that easily to below 30'. Alex noted that the building height is an average. The average is less than 30' for both structures.

Lucille checked for further Public Comment:

Denise Peterson: She gave letters to the Board. She and her siblings have been neighbors since 1964 and support the requests. She pointed out that the fence may be on their property, and asked that moving the fence to the property line, up to 6' 9" over, as a condition. They think the proposal is in keeping with the nature of the area of Flathead Lake around Crescent Bay. The proposed garage would be an improvement over what's there now. She felt it could be accepted as it is, without the 2' shift. Per her research on the road, an easement was never deeded and isn't part of the ownership documents. It's been a 12' road by prescription for as long as she knew. The proposal will not impede their view. She asks that their request be approved.

Karen Slack: The house is nearly 70 years old, in poor condition and in need of remodeling. They've retired and want to make it their permanent residence. The plan conforms to other surrounding homes, and in fact is smaller than those on most of the neighboring properties.

Public comment closed.

Sue L asked if the granting of these variances and uses would set some sort of precedence. Is this typical of that area? Alex believed that this area, as well as many other shoreline areas, has similar problematic circumstances regarding pre-existing development on lots created long before zoning. He didn't feel it would create a negative precedence. Jack agreed.

Alex mentioned Denise Peterson's concern about the fence. This is not included in the staff report. Measurements in the report refer to ones taken to the property line, not the fence. She requested in her letter the inclusion of a condition of approval for moving the fence so that it no longer encroaches. James thought the fence should be moved, but he wasn't sure if this was the appropriate place. Jack agreed. Sue S and Jack thought this was between the two property owners, and beyond the Board. Karen Slack said that they're willing to move the fence.

Motion by James McKee, and seconded by Jack Meuli, to approve the variance to allow the proposed residential remodel expansion within the 50' buffer strip setback from high water mark of Flathead Lake with conditions set forth by staff. Motion carried unanimously.

Motion by James McKee, and seconded by Clarence Brazil, to approve the variance to allow the proposed residential remodel expansion to be located within 20' of the right of way for Rollins Lakeshore Drive with conditions as set forth by staff. Motion carried unanimously.

Motion by James McKee, and seconded by Sue Lavery, for approval of the conditional use permit for development of the lot with impervious surface coverage between 29% and 49% with staff recommendations. Motion carried unanimously.

ZIMMERMAN CONDITIONAL USE—EAST SHORE

Alex Hogle presented the staff report. A correction was given for pg. 5, #13, changing "approximately 17 people" to "approximately 45 people". Additional public comment received after the staff report was shared with the Board. Additional potential conditions of approval were handed out to the Board.

Marcia Zimmerman and Cody Herring spoke on behalf of their application. They felt the staff report was very thorough, and offered to answer questions. Cody responded to James that the water comes from Yellow Bay Creek. They have multiple irrigation and domestic use rights, in response to Jack's question. Regarding the letter from Walt Gibson, he's not an orchard owner. He lives across the street and down from them on the lakeside. He's not a user on the Yellow Bay irrigation ditch. Marcia added that Cody did talk to Walt, and answered some questions and concerns for him.

Lucille checked for further public comment:

Wade Riedesol: His neighboring orchard will be producing next year. Currently he has only one option for where his cherries go, and that's through the co-op. It'd be nice to have another option. He's on the canal, and takes water before they get their water.

Sharon Meyers: She was ambivalent. She's an orchard grower. She also uses the water that comes from the Yellow Bay ditch/creek. It's a concern to make sure that the water goes all the way down to accommodate the roughly 40 orchardists that use it. She has no problems as long as the water gets from her down on to the end. She's also concerned about the traffic. Will bringing in cherries from other orchards cause a traffic problem? It's a concern for the whole neighborhood. There's a curve just to the south of them, and traffic can move quickly there.

James McKee: He verified she's on the canal. Her diversion is below the one with the canal.

Sharon: She asked 'below' to be defined.

Cody Herring: He is maybe 1/2 to 1 mile downstream from her diversion.

James: The canal gets filled first, then runs past his place.

Marcia Zimmerman: They'd use the water before Marcia and Cody could get to it.

Jack Meuli: That's a water right problem.

Lucille: Is Sharon for or against?

Sharon: Her comment was regarding water.

Lucille: She asked if there were others to speak in favor.

Doug Wold: He's a local attorney here on behalf of University of Montana Biological Station on Yellow Bay. As the Board has already been informed, Dr. Stanford has said that the Biological Station will not object to the issuance of the permit but that this support is conditional. These were laid out in the letter and captured well by the staff. He spoke particularly in support of the condition #5 (on the Additional Potential Conditions of Approval sheet). He disagreed with the interpretation of the scientific data that's been condensed by staff. The Board is being asked to weigh a risk. On one hand, there's the need for the cherry processing, which provides a valuable

service to the area. On the other hand, there's a risk of putting in jeopardy 100 years of research that's been done by the Biological Station. The water isn't just drinking water. It's the water used for the analytical research purposes of the Biological Station. If the constituency of this water changes, then 100 years of research is jeopardized. They want, need and request this 5th condition on the additional list (the 17th condition overall). He didn't think it was very onerous, because it would not throw a wrench into the wheels of the wastewater disposal, since there would be other ways of disposing of it besides spraying it on orchards. It is a short-term operation, just a couple of weeks during the year. He asked that the Board please give them the recognition to protect what the state has so heavily invested in over the last 100 years. They have no objective evidence at present. It's going to take time. The scientific agencies involved recognize that it's a risk, and say they'll go to work on it, and they'll try to figure it out. There's a technical difference between a risk, hazard and danger. They can't say at this point if it will reach that level. If at some point they can say this, they need to be able to come back and have this permit yield to re-examination in the event the evidence warrants it. He asked again for the Board to adopt this additional condition

Maria Mitchell: She's not against development of a new packing plant or processing other people's cherries. Her concern is the water. There are 40-some families on the Yellow Bay Creek and ditch. There have been several summers where they have been without water due to the normal usage of the tenants along that system. They use the water for drinking as well as irrigation. They are fortunate in having water rights to the lake and now irrigate from there. She doesn't believe Cody would divert more water into his area, but it's been done in the past. She would like to see them required to drill a well that would take the burden off the ditch for the increased production of the cherries.

Lucille: She thought during cherry picking season, the cherry trees aren't being irrigated. It's just a few weeks.

Maria: If there isn't rain, they do need water for irrigation. The water is their drinking water as well. The ditch needs repair. Water is lost along the way, which is Yellow Bay Ditch's problem.

Lucille: There's nothing the Board can do about that.

Jack: With water rights, it's first in right, first in time. If they have a better water right, filed before yours, they're going to take the water. If yours is better, they have to let it down to you.

Maria: She understands that. They all have water rights along there.

Sue S: The water rights are administered through the DNRC. The contact is Kurt Hafferman in Kalispell. She has made him aware of the comments regarding the ditch and that there were concerns. This is nothing that the Board of Adjustment can address in this review.

Mark Potter: He's with the Biological Station. Their discussions with Cody have been related to water quality. He wanted to mention that the highway is a bit of a concern. He hopes Cody will do everything he can to avoid blockage of traffic, especially for southbound traffic.

Cody: He'd like to put the burden on the County to increase some sort of signage or something.

Sue S and Alex: It would be the State.

Marcia: Their capacity is limited, which would limit the amount of trucks. They can only process about two trucks a day.

Cody: He thought it was insignificant compared to Missoula Cartage and chip trucks.

Mark: Semi's maneuvering and backing up from the highway into the facility can have impact.

Cody: They have the right and can and will put up signs to warn people that trucks are turning.

Public comment closed.

Sue S commented on the suggested additional condition. It was last minute, since the Biological Station letter was not received until the end of the day yesterday. She suggested revising it to be more specific, by changing "to the existing spring" to "specific to the existing use of the spring".

James asked if there was a mechanism or precedence for a reversible conditional use permit. Sue replied that it wouldn't be reversed—it would be reopened for evaluation. It could be reversed. James asked if the Board does this. Sue said they can do it, if they feel it's necessary to ensure that the spirit of the zoning regulations is being met in the approval.

Sue L asked if traffic was considered. Alex affirmed. Communication between the applicants and MDT has occurred. The impact was felt to be minimal. Perhaps the approach could be broadened, if turning for the semis appears to be a problem. Marcia referred to pg. 5, #14.

Motion by Jack Meuli, and seconded by James McKee, to approve the conditional use request with staff recommendations, and condition #17 as reworded by Sue S.

Sue L checked about the different language between the additional conditions handout for items 1 through 4 and the conditions in the staff report. Alex explained that the ones on the new sheet are summarized from the requests from Dr. Stanford. Staff Report conditions already address these. She asked about #2 of the new, which says 'not to exceed' versus the staff version which says 'approximately'. Lucille noted that it says 'It shall be limited to approximately....' A preference was expressed for 'limited to approximately'—what if you have 50,001 pounds? Jack clarified that his motion is for those in the staff report, plus #5 (Additional... sheet) which becomes #17.

Motion carried unanimously.

OTHER BUSINESS

Motion by James McKee to adjourn. Meeting adjourned at 5:29 pm.