

**LAKE COUNTY BOARD of ADJUSTMENT**  
**December 12, 2007**  
**Meeting Minutes**

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

**STAFF PRESENT:** Sue Shannon, Joel Nelson, LaDana Hintz, Lita Fonda

Lucille Buchmann called the meeting to order at 4 pm. She announced that the Johnson variance has been postponed.

**Motion by James McKee, and seconded by Jack Meuli, to approve the October 10, 2007 meeting minutes as written. Vote unanimous to approve minutes.**

**NITTINGER VARIANCE**

Sue Shannon reviewed the request and staff report. The item was originally scheduled for November. Because there wasn't a Board quorum, it was tabled until today. The staff report hasn't been modified. Additional information was received and included with the packet. Public notice was rerun and additional letters of comment received and included. James asked about the letters of public comment. Sue affirmed that there were seven, and that they are all attached to the staff report.

Richard Nittinger and Nicole Jarvis spoke on behalf of the applicants. Richard asked if a guest house was legal, and asked about the receipt and inclusion of specific letters of support. Sue S affirmed both inquiries. Nicole read her letter for the audience.

*Further public comment.* None offered. *Public comment closed.*

Jack said vegetable production is high labor intensive. He had trouble putting 2 people on 20 acres, especially when 15 acres were in hay. He didn't think it took that much labor. Clarence said that one letter mentioned a neighboring property was for sale. Being a builder, he thought a new home would cost possibly a minimum of \$150,000. He wondered if buying the neighboring property would be a viable option, if they're going to spend that much money anyway, and they'd have 40 acres and 2 houses. Richard responded that they thought about the property next store. They feel like they're going to be pushing to get by on the current property. He thought the property next store was priced at \$225,000. He worked as a building foreman in Bozeman, and he could put up a small house, 2000 square feet at tops, for around \$100,000. That's a big difference for them. He'd love to have the other 17 acres and the home there, but they couldn't make that work. There were letters from people in the valley, including Josh Slotnick whose wife runs 4 acres. He didn't think it was so much about whether they could make it just on this, but this is a lifestyle that they would like to see their family grow up in and continue. They didn't think they'd make a big living, but it's the lifestyle they're looking for, and they can get by on it and be sustainable.

Sue L felt supportive of the request. They are only about 3 acres off for them to be able to do it anyway. They can already have a guest house. She knew some of the opposing letters didn't feel this was truly a family farm, but she believed what they have to say and felt the Board should support that. James didn't doubt it was a family farm and admired their lifestyle choice, but he didn't think it rose to the level of there being no reasonable conforming use possible without a variance. Sue L asked about adding on to the existing house. Sue L and Lucille noted they were allowed a guest house. Jack asked if they could do this [plan without a variance] if they had 20 acres. Sue S replied they could do it if they had 20.01 acres. The density regulations say that if it exceeds the required density, they could have up to 3 dwelling units for family members. Clarence noted that the couple needs the parents' help to run this. He wondered what would happen if something happened to the parents. James said it reverts to a guest house. Clarence agreed with Sue L that the 3 acres out there didn't make much difference. Lucille agreed, and it would revert to guest status anyway.

**Motion by Sue Laverty, and seconded by Clarence Brazil to approve the variance request with the staff recommendations. Motion carried, 4 in favor (Lucille Buchmann, Jack Meuli, Sue Laverty, Clarence Brazil) and 1 opposed (James McKee).**

#### **YELLOW BAY HOMES LLC CONDITIONAL USE**

LaDana Hintz presented the staff report. She noted that one letter of comment was received after the staff report was written, but in time to include in the packet.

Mike Murphy spoke on behalf of the application. He felt this was an improvement for the neighborhood. Sue L asked why this wasn't included with the variance for the property. He said he wasn't aware at the time that they went over the impervious area. Sue asked if the project was already started, and Mike affirmed.

*Further public comment. None offered. Public comment closed.*

**Motion by James McKee, and seconded by Jack Meuli, to approve the conditional use request with the staff recommendations.**

Sue L mentioned that it bothered her when these things are done after the fact. Lucille pointed out this has been a battle for a long time, as long as she's been on the Board. Sue S reiterated that this is a conditional use request rather than a variance. Clarence asked if the house had been started. Sue S replied that the foundation had been poured. She added that he'd been fined for the violation, and has paid his fine.

**Motion carried, with 3 in favor (Lucille Buchmann, Jack Meuli and James McKee) and 2 opposed (Sue Laverty and Clarence Brazil).**

#### **MENG CONDITIONAL USE**

Joel Nelson noted that additional information had been received and handed out in a memorandum, which he presented along with the staff report. He pointed out the public comment received after the staff report was written. These comments were included in the

memorandum. Joel added a recommendation (written in the memorandum) for additional language to be incorporated into the condition of approval letter.

Jack asked if the intent was for the additional language to be one of the conditions of approval. Joel explained that it wouldn't be a condition; it would be written into the approval letter. Jack summarized that it could be included in a motion of approval, if such was done. Joel said that it would be in the body of the letter of approval.

James looked at the site map on pg. 15. To clarify his understanding, he discussed the structures, deck, square footages and January approval with Joel and Sue S, clarifying there's a lot of square footage being proposed, and Sue S read from the January approval regarding future guest houses.

Vince Meng spoke on behalf of the application. He outlined changes and affects from the recent boundary line adjustment and changes. He described suggestions from an architect regarding the garage and storage. It includes a workshop and large work area and laundry facilities. They feel it's important to have their own well and pump. They would be happy to reconsider their plans and attach the garage to the house, which was the original plan, which would involve removing a few of the stately trees. The architect added the deck for access to the laundry room without having to walk through the garage. It only has to be a landing area. They would be happy to define this as a potential guest house, per his attorney's recommendation. There are no planned living quarters in the facility. Their intended use and long term plan when they build their future house is to have all of this integrated and look aesthetic so it doesn't look like a massive structure. He thought it conformed to the look of the property and was a good plan.

*Further public comment.* None offered. *Public comment closed.*

Sue L thought language regarding a potential guest house needs to be kept in, since someone down the road could make it a guest house because it has water and sewer facilities. James agreed, and was comfortable with that caveat. He thought this was better than one monstrosity. He asked what the correct mechanism, such as deed restriction, would be. Joel explained that this approval is to allow future use as guest house. Lucille added that they could not build another guest house. Joel said it's recognized they're not proposing a residential use at this time. Sue L said that it recognizes it's easily convertible to that, and the Board has stipulated prior that they couldn't have a guest house greater than 1000 square feet, including decking. Joel said it would allow use of the structure as a guest house up to 1000 square feet.

Sue S was concerned about notifying future property owners. A deed restriction or some sort of affidavit would need to be recorded with the property. That could be required. Sue S pointed out with #7, the guest house needed to meet or exceed listed standards. One is the maximum 1000 square feet of living area including the attached decking. That was something unique to this Board approval and not from Environmental Health approval or standards. She suggested that might be brought out into its own condition. The requirement for a deed restriction or affidavit to be filed could be attached there. Jack asked if the reference to Environmental Health could be scratched. Joel explained that this was based on a discussion he had with Susan Brueggeman from the Environmental Health Dept and her requirement that they're going to have to put in that application labeled with living area, so they don't review the lower level as a

bedroom. Sue S explained further. Her suggestion would be another independent condition requiring the filing of an affidavit, deed restriction or some similar legal document with the property. Sue S wasn't sure about the deck inclusion. Sue L asked if leaving off the deck would contradict the January decision. Sue S asked which portion of the 1200 square foot deck would be associated with the main residence and which with the guest house and garage. Jack thought that was solved by #7. James thought they were considering whether the decking was actually living area. Sue S said that if this were the Board's determination, the applicants would have to modify this plan for their future cabin and future decking to have it not attached to the structure. Further discussion occurred in reference to the site plan. Sue S noted that it's more difficult for the Planning dept to interpret and permit these things in the office without the Board. The main deck would need to be modified, or they could leave it in and modify the plans for the future residence.

**Motion by Jack Meuli, and seconded by James McKee, to approve the conditional use request with the conditions stated in the staff report plus a condition #17 from the memorandum today and an additional condition #18 for a deed restriction to tell future owners what they can and cannot do. Motion carried, all in favor.**

#### **OSBORNE CONDITIONAL USE**

LaDana Hintz presented the staff report.

James verified with LaDana that this is a 20-acre parcel with a specified 5-acre density. Sue L commented that it could be subdivided into four 5-acre parcels. Joel and Sue S added that the zoning would allow subdivision, subject to subdivision review criteria. Sue L asked about the lack of a utility easement mentioned in a public comment letter. LaDana said they could go from the existing house.

Rick Breckenridge spoke on behalf of the applicant. The access is only 30', so subdivision would not be allowed without 60'. He met with neighbors about acquiring an additional 30'. The offer was rejected, so the subdivision is off. They want to build a modest residence to be here part-time. There is a document that shows a utility on the subsequent parcel to the south. There's legal power to the existing house. He proposed upgrading the existing road to county standards. The other landowner didn't want this to happen. This is a platted easement.

Sue S asked if the landowner would live in the house. Rick said the landowner's guests would reside in the conditional dwelling. The landowner would live in the current primary residence. It's about 2400 or 2500 square feet. This one is comparable in size, only one level.

Sue L asked if he would consider a 1000 square foot guest house on the property. Rick was here with the architect's plans, which was what the applicant asked him to submit. He didn't feel he had the option to say otherwise. They are meeting the area's density requirements and they're keeping [inaudible] with what's currently out there.

*Further public comment:*

Christine Cook: She had concerns about the guest house size. The house already on the property is leased by another party. She was concerned whether the guest house could be cut off and sold down the line. She's concerned about the road. Big Lodge Trail is a private road. One of the reasons the piece was limited to subdivision into 5-acre pieces was there is a recording document #366925, which states the access is limited to 10 acres, because it is a private road. Maintenance on the road has been a problem, especially when owners aren't living there. She was concerned if this is approved for that size of guest house, with the potential of more cars. She thought there should be a maintenance fund set up prior to the structure being built that would take care of the extra traffic on that road. It would be a hardship otherwise, on the few that live there. The existing house is leased and the owner does not reside there at this time.

Katherine Meyers: She heard no good reason to have a guest house exceed the 1000 square foot limit when Rick spoke. She would like to stick to the zoning law. This does not benefit anybody but the owner. There are concerns in the area that this is a prelude to breaking up the property and selling it. As long as it doesn't benefit the rest of them, why break the zoning.

Steve Rosso: He thought the integrity of the zoning regulations were important to the Upper West Shore area. He'd like to see a condition placed, for a deed restriction or whatever, such that if there was a subdivision in the future, it would maintain the required density. If there was subdivision, both of these homes could not end up on the same 5 acres or if there are some other conditions that limit the subdivision to 10 acres it would handle those requirements too. A condition might eliminate risk that a future subdivision would cause a density in violation of the zoning configuration.

Rick Breckenridge: If you look at a site plan, it would be physically impossible to keep the two structures in one 5-acre piece. Secondly, he would support a condition that if it were subdivided, that it could not be a part of the parent tract. This would mitigate some of the concerns about the density. The road issue has been at an impasse, as far as subdivision. As far as a road maintenance agreement is concerned, they would be willing to enter into that, looking at 10 vehicle trips per day. He didn't know what was out there right now. He hasn't done a vehicle count to see how many folks are out there. As far as snow removal or maintenance, he thought they could handle that, neighbor on neighbor. They would be amenable to a condition that if this is subdivided, these two structures would then each be a main house, not guest house.

*Public comment closed.*

Sue S checked with Rick that the applicants would be okay with a condition to waive the right to protest a future maintenance agreement for the roadway, and Rick affirmed. He's had conversations with Robert Osborne about that. Sue S asked if there would be a problem with adding additional terminology to the staff recommendation which specifically says the building shall be occupied on a short-term basis by guests of the occupants of the primary residence only. Rick affirmed. Sue S suggested to the Board to consider that additional language. It is in the definition of guest house, and unintentionally was omitted from the staff recommendation to define the use.

Sue L said every property of 5 acres could have a main house and a guest house. Jack said the 5-acre density was put in out there, because that's what the people wanted for the minimum lot size. Sue S said there were provisions in the regulations that allow for an average lot size, transferred development rights and clustering. Sue L thought since it wasn't built yet, why not build a guest house that qualifies as a guest house within the district for square feet. Jack said one 20-acre piece of property is being considered. Sue S reiterated that it's a conditional use, not a variance. James didn't think they were asking for very much. Clarence asked if they could legally build another residence on this property, and not call it a guest house. Sue S responded that permitted use is single-family residential. Sue L didn't see the necessity for a 2500 guest house. Lucille said if it were cut up, the guest house would become a primary house.

James said they could put the condition on for this to become a primary house in the event of subdivision. Sue S commented that Rick did say they would be fine with a condition that future subdivision would require that this guest house structure comply with the permitted uses. She didn't think it would be a problem to clarify the condition further. She thought if it ever was subdivided, you'd have 2 primary residences and additional buildings would require compliance with the 1000 square feet or coming back to this Board.

**Motion by Jack Meuli, and seconded by James McKee, to approve the conditional use request with the staff recommendations plus the three additional recommendations that they will waive the right to protest a road agreement or RID, #14 to add the language regarding a guest house from the definition (the additional occupancy criteria that's in the definition of a guest house), and #15, if development/subdivision of the parcel take place, the two buildings shall be on separate tracts and the structure to be built as a guest house now shall be considered a primary residence. Motion carried, all in favor.**

#### **OTHER BUSINESS:**

Sue introduced Kurt Moser, who has recently joined the Lake County Attorney's Office. He will be working closely with the Board.

Sue thanked Lucille and James for their volunteer work, service to the Board and their conscientiousness. She asked Lucille how long she's been on the Board of Adjustment. Lucille explained that she was on both Boards, then off for one year, and then back on with the Board of Adjustment. She thought it had been 8 or 9 years. Sue L thanked Lucille and James for the pleasure and honor of sitting on the Board with them.

A couple asked about the Johnson item. Sue S explained that it was announced at the beginning of the meeting that the item had been postponed. The letter withdrawing their request for this meeting and asking for a 30-day postponement was received at about 2:00 today. This was also posted at the door.

**Lucille wished everyone a Merry Christmas and Happy New Year, and adjourned the meeting at 5:42 pm.**