

LAKE COUNTY BOARD of ADJUSTMENT
January 10, 2007
Meeting Minutes

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

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

Lucille Buchmann called the meeting to order at 4:00 pm

Approval of December minutes was postponed, as they were not complete at the time packets were mailed.

MENG/MORIN VARIANCE

Joel presented the staff report. Additional letters of comment have been received since the staff report was mailed. One, from Leonard Twoteeth of CSKT, objects to the request as the proposal is presented, due to the Tribal ownership of the land under the high water mark of Flathead Lake. Another, from Carmine Mowbray, also objects to the request for the variance.

Joel explained that the variance would go with the property if granted, in response to Sue L's question, but the private agreement was something arranged between the private parties, that they propose to enter into. The variance doesn't require for future lot owners to relocate the cabin.

Shawn Rowland spoke on behalf of the applicants. He discussed some aspects of the plat. Regarding the Tribal concern about the portion where the Tribe has jurisdiction, he showed that there is a triangular piece of property outside of the high water mark, so the Tribe does not have jurisdiction over that portion, so there are two parcels. Regarding the question as to whether the agreement to tear down the cabin should be private or in perpetuity, one of the variances requested is from that setback. The owners agree that they don't want the cabin to be there, and they've formed the private agreement to remove it within 10 years.

Shawn outlined some history of the property and ownership. He felt the owners were trying to set up the property so each family could continue to go there in the future. Hardship would exist in them not being able to do so.

James checked that the claim of hardship centers around the evolution of the relationship between the co-owners. Shawn affirmed. Sue L confirmed with him that there are 2 existing separate lots, and that the 2 houses and garages are currently on 1 of the lots, and both families own both parcels. The boundary line adjustment would change this so they could own the two parcels together or separately. She asked for further information about the property with respect to the high water mark. Shawn explained at the map that one parcel has a small portion that is not under the jurisdiction of the Tribe.

James confirmed with Shawn that there are 2 lots, each with about 70' of lakeshore. With the new boundary, there would be 2 lots with about the same amount of lakeshore per lot. The lots are currently non-conforming in terms of amount of lakeshore. The new lots will both conform in terms of size (more than 1 acre), whereas currently one is less than 1 acre.

Jack pointed out that it won't change the density. James said that theoretically, they could split and each build a guest house. Lucille suggested a condition that they can each have a house and a bunkhouse, and not a guest house. A bunkhouse could have only a bathroom and no kitchen facilities. Clarence suggested a limit on the size of the bunkhouse.

Vince Meng spoke on behalf of the application. They could have filed for petition in court and bypassed public input. They did not intend to do something that would violate the intent of the Masumola zoning ordinance. They simply wanted to have a cleaner legal description of the property for the children. The intent of he and his wife with the guest cabin on the property line is to move that to a different location as a guest cabin, and build a much smaller replacement home in conformance with the zoning. Ultimately the structures will all conform to the zoning. They want to keep it simple and accommodate their families.

James asked where the garages are with respect to the boundary line. Joel responded that they trespass onto the proposed lot A. Vince added that one is a mobile boat structure, which they are going to dismantle at some point. The other garage is standing by a thread, and will be torn down after the construction of the new home, and this is in the agreement.

Lucille verified with Vince that the existing cabin on the proposed line is the Mengs. The Morins will demolish their existing cabin and rebuild. James verified with Vince that the 600 square foot cabin would be moved elsewhere on the lot, and another structure would be built.

Don Peterson lives south of this property. He believed there was a misrepresentation of the parcels. In 2002, the MT Supreme Court ruled regarding Finley Point that all land below high water mark is owned by the Tribe. He thought there were only 3.1 acres, rather than 3.7. The two parcels have been under the same ownership since 1959, so he viewed them as one property. He didn't believe the variance requirements for the Masumola Zoning District were met. The reason for the request is the properties were bought jointly and now want to split it. There is a lot of pressure in the area for splits for multiple owners. The impact on the area will be increased. Currently there are not two single family residences—there are two cabins that have been there 30 years. Once allowed to create two lots, there will be impact. When several families buy lots jointly, you get multiple family usage rather than single family usage. He thought the solution was that one party would have to buy the other out, or the property would have to be sold.

Mike Morin pointed out the parcel was survey at 3.35 acres entirely above water. The other parcel is not totally underwater. Some is above the high water mark. These are platted as 2 legal pieces of property. He pointed out and described the surrounding developments, frontages and locations. He said that once this boundary line adjustment is done, their two lots will each be on 1.85 acres and will be the largest lots on the base of Grinde Bay. There are 6 properties in the base of Grinde Bay that also have less than 100' of frontage. He plans to tear down the cabin

and build a year-round home. He has no problem with the conditions. It will continue to be two pieces of property.

Vince Meng mentioned the intent when purchased in 1981 was to split the property. An attempt to purchase the road easement slowed the process down. They thought it would be cleaner and easier had they been able to acquire that. He knows there was public notification when the Masumola Zoning District was done. Neither owner lives in the area, so they were unaware, and did not pursue this earlier.

Carmine Mowbray, Pinewood Shores, asked if the variance for setbacks was granted, could a future cabin be positioned inside the setback. Joel explained that the setback variance would be for the existing structures. Carmine had no objection to the placement of the homes. However the zoning was carefully deliberated and put in place. To grant a variance establishes a precedence that could be used in the future. She felt we shouldn't feel an obligation to provide for a geometric number of people in the future.

Shawn commented the most recent survey was done by Jack Duffey. Earlier surveys were done by Mark Carstens. Regarding the concerns with the survey, Shawn spoke with Marc about the projection below the high water line. Marc felt there was still an obligation to project the property line down there. Whether the property includes that acreage is another thing, and Shawn agreed that it should not be included. He noted that they have come to the Board with a specific reason and it is on a case-by-case scenario, and the rules allow them to come in for a variance. The property was purchased prior to zoning. The zoning allows for 1 home per acre on lakeshore frontage. There is at least 3 acres, so there could be multiple homes anyway.

Lucille noted that there are currently 2 separate deeds for two pieces of property, which they both own. When this is done, those deeds will be removed and 2 new deeds will be in place. Don Peterson said there's one deed since 1959. He thought if there was one deed, there was 1 parcel, and detailed this. Sue clarified that if a deed describes 2 individual parcels, there's a section of State law that says those parcels don't become aggregated unless the deed specifically states that the intent is to aggregate the tracts.

Sue Williamson read a statement as a citizen. (She had also sent a letter as a representative of Pinewood Shores Homeowners Association.) She felt the Masumola Zoning should be respected. She felt this case asked for exceptions to two important parts of the zoning. She felt the zoning would protect from abuse if upheld.

Public comment was closed.

Jack saw no problem. The density isn't increased. It could be done differently, and end up with 3 lots instead of 2. Lucille said this covered variances from the minimum lake frontage and the property line setbacks. She confirmed with Sue that this is not a subdivision and would not need to go to the Planning Board. Clarence liked the idea suggested earlier of limiting the future development of additional homes. Sue L agreed. Lucille reiterated that she felt bunkhouses would be appropriate but not guesthouses or year-round living structures. James was comfortable with a boundary line adjustment and that it wasn't a subdivision or a split. This

would actually make the lots less non-conforming, since both lots would conform to size. His concern was also the density, and that without restriction, there could be 4 dwelling units.

Motion by Jack Meuli, and seconded by James McKee, to approve the variance with the staff recommendations suggested in #7 of the staff report and the added condition of limiting guesthouses to a bunkhouse that would be limited to a bathroom and water (no kitchen or laundry facilities) and shall have less than 1000 square feet in total living area. Motion carried, all in favor.

LONG DENSITY VARIANCE REQUEST

Alex Hogle presented the staff report.

The Longs had no additional comments on their application.

Lucille asked for other public comment. Given none, public comment was closed.

Jack thought this was pretty cut and dried, as the house and business were separate. As far as density, a lot of that was divided prior to density at that intersect. James noted that separating them would not increase the future potential development over what's there.

Motion by James McKee, and seconded by Clarence Brazil, to grant the variance as presented. Motion carried, all in favor.

OTHER BUSINESS

Chairperson and Vice-Chairperson needed to be determined.

Motion by Jack Meuli, and seconded by James McKee, to elect Lucille Buchmann as the Chairperson. Motion by Clarence Brazil, and seconded by Sue Laverty to elect James McKee as the Vice-Chairperson. Motion by Jack Meuli, and seconded by James McKee, to close the nominations and cast a unanimous ballot. Motion carried, all in favor.

Meeting adjourned at 5:10 pm by general acclaim.