

LAKE COUNTY BOARD of ADJUSTMENT
September 12, 2007
Meeting Minutes

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

STAFF PRESENT: Sue Shannon, Joel Nelson, Lita Fonda

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

Motion by James McKee, and seconded by Sue Laverty, to approve the July 2007 meeting minutes as written. Vote unanimous to approve minutes.

YELLOW BAY HOME LLC VARIANCE REQUEST

Sue Shannon presented the staff report. She highlighted staff recommendation #6, which answered some Board questions.

Lucille affirmed with the report that a stormwater management plan must be submitted.

Mike Murphy, the applicant, spoke. He wants to combine 3 lots into 2. He thought this would be better for the lake. He can comply with the things listed in the staff report.

Lucille asked if his intention was to make one parcel out of the part that's above the road. He said the design of the system was a community septic system. They were setting up to bore under the highway, and there'd be a sand mound on the other side. That was designed to service 3 homes, and now will service only two. Sue S clarified with exhibit 3. The variance only deals with the 2 northern tracts. The portion across the highway will be their drainfield.

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

Motion by James McKee, and seconded by Jack Meuli, to approve the variance request with the conditions listed. Motion carried unanimously.

VAN WAGONER IRREVOCABLE TRUST CONDITIONAL USE/VARIANCE/APPEAL

Sue Shannon presented the staff report. She handed out letters received after the staff report was prepared. She paused on pg. 8 for Board discussion on the first issue to determine the direction for the other items, since the determination of the first issue would affect which of the subsequent items would apply.

Richard Reep spoke on behalf of the applicants. James clarified that the Board would like to first hear his comments regarding whether this is a temporary structure or a dwelling. Richard said the yurt is a fabric wrapped structure on a fairly permanent foundation with footings and timbers and a lattice network. It's not designed to put up and take down on a seasonal basis. Lucille pointed out that historically the wanderers on the steppes of Russia used yurts and these were portable. To her, a yurt is something temporary, especially since it's made out of canvas.

Sue Lavery checked that their intent is still to hook this up to water and sewer. Richard thought this was their ultimate intent.

Richard explained that they resist the temporary structure definition since it would require them to take this down for a portion of the year, which would be impractical, involving pulling footings up and taking the platform down.

Lucille was more concerned over the plumbing than the yurt itself. James thought this was another dwelling. Jack thought that made it another guest house.

James brought up the 2nd issue of considering this under current or previous regulations. Richard said that they would withdraw that, and just stand with the Board's decision under the current regulations.

James brought up the 3rd point to consider on the apparent appeal listed on pg. 8, as to whether the two permanent dwelling units should be grandfathered when considering the addition of another dwelling or must the use of the dwellings be defined at this time. James and Sue L found this confusing, as there's a third structure there either way. Sue S explained that a single-family residence is permitted and one guest house is allowed, so the question is how do they comply with that. The applicant contention is that the 2 existing structures should not be considered at all, because they're grandfathered, and the new dwelling would be defined as a guesthouse. James commented that everyone in Finley Point would get to build an additional guesthouse, in addition to what was built prior to 2006. Lucille said that when the zoning first went into place, it was general knowledge that your primary dwelling was your dwelling, and other building you had was a guest house. It wasn't two primary dwellings on a lot. The grandfathered part was that they could rent them out. They can no longer rent them. Jack reiterated James' comment. Lucille said why not just double the density then. This was further discussed. Clarence added that only applied if they had enough acreage. There isn't enough acreage here.

Sue S said that the 2 existing structures are very old. Both have water and sewer currently. James believed they had the option of tearing one structure down. Sue L suggested that they could also remodel a structure as an option. The two structures are there and are serviced with water and sewer hookups. James pointed out they couldn't be remodeled in just any way. Clarence noted they'd have to meet setbacks, and so forth. Sue S explained they can maintain an existing structure but can't expand.

The Board reviewed the 3 points of the first issue.

Regarding a temporary versus permanent structure, James thought it was a dwelling, given water and sewer. Sue L noted this was the applicant's intention. James said that with the permanent footings and structure, it struck him as a permanent structure. Sue S thought it would be clearest to do a motion on each point.

Motion by James McKee, and seconded by Sue Laverty, that the Board consider the yurt to be a permanent dwelling. Motion carried, with 3 in favor (Sue Laverty, Jack Meuli and James McKee) and 2 opposed (Lucille Buchmann and Clarence Brazil).

On the second point, the applicant had withdrawn the request, so the review will be under current regulations.

Richard spoke to the 3rd point. In 1991, the current zoning was implemented. Certain uses were grandfathered. The question isn't whether the dwellings should be grandfathered, but whether they are grandfathered. They were constructed in the '30's so they are grandfathered. He suggested that its current use is as a single-family dwelling with 2 small units in place that are grandfathered.

James asked Richard to clarify which is the single-family dwelling. Richard replied that both of them are, grandfathered. He said neither fit the Lake County definition of a guesthouse. They are old and small, with kitchens, and connected to a permanent sewer. He noted the lot is bisected east to west by Skidoo Lane, but the lot runs north to south. The existing septic/sewer system as it exists is fully permitted and functional. They want to use the yurt as a yoga studio.

Lucille confirmed with Sue S that the septic system would have to be reviewed by the County, if the yoga studio has plumbing.

Jack said that if the Board approves this, and then the applicants rebuild the house and rebuild the guest house, they would end up with 3 approved houses. This was discussed further. They have the density for one house and one guesthouse. Sue L asked if under current regulations, they could rebuild the cabins and both could be lived in. Sue S explained that under current regulations, if they don't do anything on the property, they're grandfathered to allow that they could live in both structures permanently. When they put another structure on the property with water and sewer, they need to start to define things to comply with the zoning. Bob Williams asked if they have to reapply if they remodel. They would have to go through zoning at that time, and could not be expanded due to setbacks. Sue S confirmed. She said that if the 3rd dwelling were approved without conditions regarding changes with existing grandfathered dwelling, they would just be grandfathered. They would have to comply with setbacks, height restrictions and similar requirements, but the number of units or the use would not be reviewed again. The Board would have to choose, if approving it, to put some sort of condition on it. Sue L asked if they were approved without those kinds of conditions, if they would be approved for 3 dwellings on that property. Jack said if the Board approves the yurt, the applicants would still be able to do what they want with the houses as long as it meets the zoning restrictions. Sue S said this was correct if the Board approved the yurt as a guest house. They could rebuild two other single-family residences on the property.

Clarence checked that if the yurt has plumbing, it becomes a guest house. Sue S replied that something with water and sewer in it has the potential to be living quarters. Clarence suggested that if the yurt were approved, it include a condition that they not put plumbing in it. Sue S said that was one option. Richard didn't think the Board was ruling on the status of the two current units. If modifications were to be made to those structures, they would have to comply with

statutes and regulations. The applicants are not asking that. They suggest they have 2 permitted living homes on the property that were grandfathered. They ask that the yurt be considered a guest house. He didn't think a variance was necessary. The applicants aren't requesting a variance. They were asked to prepare a conditional use permit application. They are before the Board to explain what they're trying to do.

James explained that he understood what the applicants were trying to do. Most lots out there have one single-family residence and one guesthouse. The intent of the zoning regulations currently in place is that this be the limit on those small lots, that there be at most two structures pulling from the water source and putting into the septic system. What they're asking for is a 3rd structure on this lot that's going to do the same thing with those scarce resources. It may come down to whether they can do that technically, but it's clear to him that it's not what the zoning regulations intended.

Clarence asked if they did put in the guesthouse, the zoning says they have to review what happens to the other two houses. Sue S explained that when they request a permit to add another dwelling, compliance with the regulations, which say one single-family residence and one guesthouse, needs to be ensured. Clarence said so if this becomes a guesthouse, they have to comply with the regulations and they lose the grandfathered status on the other houses. Richard disagreed. Clarence said if this is the regulation, it automatically transpires when the Board says yes or no. If this is the present zoning regulations, if you are allowed to call this a guest house, then you have to review the other two houses. Sue L said this happens if you call it a permanent dwelling, whether it's a guesthouse or not. If it's a permanent dwelling, that's 3 permanent dwellings on that parcel that are not in compliance with the current zoning. Richard did not think this was the position taken by the Planning Dept. There are 2 units that are grandfathered in. They are asking for the permitted use of a guest house between 200 and 1000 square feet. Lucille said the density says there can only be two houses on that small of a lot. She would say they were asking for a conditional use, and to ask for the conditional use for the yurt without plumbing. Give them the use of the yurt but no plumbing. Clarence agreed.

Sue S said they have existing structures that are grandfathered. If you want to say they're each an individual residence when you're adding guesthouses, you are expanding the use. You're non-conforming in terms of having multiple residences on a single-family residentially zoned property. Now you want to add a guest house so you're expanding the use. Under the regulations, non-conforming uses can't be expanded. Richard said they were a non-conforming permitted use, and they have a permitted use of a guest house. He thought it was in compliance.

Sue L looked at staff recommendation #5. She thought that might allow some consideration. Richard did not find the condition objectionable. Their concern was they didn't think they needed a permit when they constructed this, and they are here to make this right. Sue L said they'd also need water/sewer permits. Lucille pointed out they couldn't get a water/sewer permit unless it goes through the Board. She would consider the 2 older structures a house and a guest house. Sue S said that under existing uses, if they want to contend that there are two residential structures on the property, that's a non-conforming use. She read what it says under the existing uses in the regulations. They are adding a guest house and expanding the degree of non-conformity of the property. She read further from the regulations. The Board may grant a

variance to allow that, but somehow it might be conditioned such that if there is a change in the existing residences or the guest house, the property will come into conformance and have 1 residential structure and guest house. The applicant's line of thought would allow for a 2nd guest house down the road otherwise. If the Board approves the yurt today, put in some sort of condition that if the existing structures or yurt change, the property shall come into compliance.

Clarence and Lucille thought it would be simpler to approve the yurt without plumbing. Sue L saw it as a permanent structure though. She liked having changes to the buildings requiring the property to come into compliance. James said it didn't solve the problem of having 3 structures hooked up to water and sewer. James said they could both approve the yurt without water and sewer, and say if there are changes to the structures on the property in the future, the property will come into conformance.

James checked in on whether the conditional use or the variance was the applicable process. Sue asked if they are allowing a second guest house. If the water and sewer are taken away, it's an accessory structure and can be permitted without Board approval, since the yurt is not a temporary building. The action should be on the appeal section. Whether there's a need for a conditional use was further discussed by the Board. James confirmed with Sue S that they'd need a variance in order to hook up to water and sewer.

Motion by James McKee, and seconded by Jack Meuli, to deny the variance to allow the yurt as a second guest house on the property. Motion for denial carried, all in favor.

OTHER BUSINESS:

Sue S explained that in 2003, the Board of Adjustment granted a variance to allow for construction on a property in the Swan Sites Zoning District. One condition of approval was that they receive a letter from the Swan Sites Homeowners Association that the construction on the property complied with the covenants. They've had some issues and extensions. They are now closer to obtaining the permit, and requested comment from the Swan Sites Homeowners Association. The Association contacted Sue to ask about this. Since 2003, other issues have arisen regarding covenants. Legal counsel has told the County it should not be enforcing or interpreting covenants. This should be strictly left up to private individuals. In this case, she didn't feel it was appropriate for the Homeowners Association to write a letter of compliance. If they feel it doesn't apply with their covenants, they should bring a priori action against the landowner to enforce the covenants. The County should not be involved. The permit number is SS 03-05. She would like action of the Board to remove that condition from the Board approval.

Sue L felt she could make an unbiased decision on this matter. The property owner expressed concern that she might have conflict of interest, as a neighboring landowner and given her association with the Swan Sites Homeowners Association Board of Directors. She chose to recuse herself from this issue, so there would be no doubt in the homeowner's or anyone else's mind.

Jack checked with Sue S that in terms of requiring Swan Sites to give a letter stating that the project complies with covenants, this motion says the applicants don't need to provide a letter

from the Homeowners Association saying their project complies with the covenants. The County will review the application for compliance with the Swan Sites regulations and the Board of Adjustments rule. Jack asked what happens if the applicants aren't in compliance with the covenants. Sue L replied that they'd have to go to court. Sue S said that this would be between the Swan Sites Homeowners and the homeowner. James thought that was the appropriate channel.

Motion by James McKee, and seconded by Jack Meuli, to remove the requirement of a letter from the Swan Sites Homeowners Association regarding compliance with the covenants from the Board of Adjustment conditions for SS 03-05. Motion carried, 4 in favor (Lucille Buchmann, Jack Meuli, James McKee, Clarence Brazil) and one abstention (Sue Laverty).

James announced he would resign after December, due to being overly busy.

Motion by Clarence Brazil, and seconded by James McKee, to adjourn. Meeting adjourned, 5:05 pm.