

LAKE COUNTY BOARD of ADJUSTMENT
December 10, 2008
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Mike Marchetti, Sue Laverty, Jack Meuli, Tim McGinnis

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

Tim McGinnis called the meeting to order at 4:00 pm. Motion made by Sue Laverty and seconded by Mike Marchetti to approve the October 8, 2008 meeting minutes as written. Motion carried, all in favor.

FINLEY DENSITY VARIANCE:

LaDana Hintz presented the staff report.

Phil Grainey spoke on behalf of the applicants. They are working on the joint well and joint irrigation agreements. The staff report suggested the agreement be recorded before the plat. He thought it would be awkward to properly connect the agreements and plat in that case. He suggested that he present the draft agreements to staff for comment, and then either record them simultaneously with the plat or after the plat recording.

Tim asked if the will was written prior to the density regulations. Phil affirmed.

Public comment opened. None offered. Public comment closed.

Sue L asked the staff regarding Phil's proposal. Tim suggested that on 11.a., to say 'simultaneous' rather than 'prior'. Joel suggested that this could also happen within a specified timeframe. Phil thought a 7-day timeframe would be perfect. Mike asked what would happen if the agreements were not filed, since the plat would already be recorded. Phil said they could prepare the drafts, check with staff, pre-sign the agreements, then insert the COS numbers. Joel noted this was normal way of recording documents for surveys. Phil didn't think it was as clear without the cross reference numbers. Joel suggested filing the BOA approval letter with the 7-day time period with the COS. Phil thought that would be fine. Mike thought that would be okay as long as Planning had a chance to look at and approve the drafts. *Joel noted this would apply to both 11.a and 11.b. Instead of 'prior to the recording of the survey', it would be 'within 7 days of recording the survey'. It could also state that staff will record the BOA approval letter with the COS if those documents aren't ready at that time.*

Tim checked through the variance criteria with the Board.

Motion made by Sue Laverty, and seconded by Jack Meuli, to grant the variance with the modifications made above and the staff report, application materials and findings of fact in support. Motion carried, all in favor.

Tim checked with Phil that he was comfortable with the amendment or if he wanted it read back. Phil was comfortable.

TOPPEN VARIANCE:

Joel Nelson presented the staff report.

Mike asked about the second sentence in #7 versus #10.c. Joel explained the variance approval, if approved, would limit the size of the expansion, and any modification would require a zoning conformance permit. Sue L asked if the applicants had to expand the building to add a bathroom. Joel wasn't sure.

Tim noted it appeared that construction had begun. He asked if the house had an accessory apartment. Joel said this wasn't known, but nothing indicated there's one. Tim asked about hardship, and read a section. Joel thought if they had to do major modifications to create guest quarters within the main house, it might be a little unreasonable when they could just modify the existing structure. Tim checked with Joel that there's no guest house allowance in RRZD.

Tim asked why it was beyond the scope of the BOA to take into account potential subdivision evasion, and how that ties into septic permit, and why this would not be considered. Joel thought it was beyond the scope of this review to worry about boundary line adjustments or something like that. Tim asked the applicant was saying it was a hardship because of the cost, \$4000 more for another drainfield. Shouldn't septic be considered then? Joel said they were not asking for a variance for the drainfield. One option was to add on to the current drainfield, and another was to develop a stand-alone drainfield for the guesthouse. Environmental Health staff had a concern that the second option isn't done, since then the applicants have approval for their septic system without going through subdivision review, and there were certain parts of subdivision review the department wouldn't have the ability to look at.

Tim checked that the variance would be decided by the Board, but the drainfield would not be decided by the Board, so the hardship the applicant talked about was not something for this Board. Sue L thought the Board could consider the options for the hardship but maybe not delve into it so deeply to assume whether or not they're trying to evade subdivision. Joel didn't think the hardship was related to the \$4000. Sue L thought the hardship to be considered would be putting a guest house in their house.

Tim's concern was subdivision by septic. Jack thought 10.e covered that. Tim didn't think so. The house could be on 2 acres and the guest house on another 2 acres. Joel identified this as the evasion that Environmental Health Dept. was talking about. Sue S said Environmental Health could allow 2 septic systems on a property if they were appropriately approved.

Christopher Toppen spoke on behalf of his application. He said they wanted a bathroom in their guesthouse. Environmental Health was concerned about subdivision by septic. They're happy to include language to prevent that. The guesthouse was built in 1980. They wanted to upgrade that. The added lean-to was because they had already started the process of making the building less rustic, and they didn't realize they had to have permission to add an 8' x 16' lean-to. The lean-to part would be weathered in today, and they can stop after it's dry. He thought the Board

might consider adopting the City of Polson language for Mission Bay against a property that sits next to a gravel pit. They bought the property because it has a lot of opportunities for special things to happen up there from an entrepreneurial standpoint, none of which they would undertake without proper permits. He thought the deed restriction would prevent revenue-producing efforts up there, and he didn't think this was reasonable or fair. He thought this eliminated the possibility of a home occupation. He understood that subdivision evasion was a big deal. That wasn't what they were trying to do. He thought they ought to be able to do what everyone else seemed to be doing.

Tim thought staff referred to Mission Bay for the guesthouse. If it's not deed restricted, then it's a rental, and that's a whole different thing. Christopher wanted to be able to rent the house if they went south for the winter. Several people noted that was a different situation. Jack thought this was going beyond the scope of the variance. Christopher said they just wanted a toilet. Tim explained that the next person is a complication, and there's a big difference between a guesthouse and a rental.

Sue S asked whether they wanted the toilet for their guest quarters or for some other possible use. Susan Toppen said they wanted the building to be a versatile building. They would like to have guests stay there. They are starting a kids grow program for 9 and 10 year olds in their garden through the Boys and Girls Club. This would be somewhat of a clubhouse for them, where they could teach them. They may not be asking for the right thing. Sue S wasn't aware of the kids grow program. Susan said they didn't understand until they got the letter yesterday. They were concerned about not being able to rent their home. She thought the letter was asking for two principle residences without the privileges. They're not asking for a subdivision. They're asking for a versatile building.

Christopher said the reality was that building could generate revenue for them and the wording seemed to prohibit that. He said Joel said guesthouses that are being rented are nonconforming. He said the state gives permits to those people to rent them. He said the City of Polson allows that and considers that a home business. Susan said they asked Joel N and Terry Murphy to walk the property, regarding the drainfield, since it didn't seem to make sense.

Tim and Jack weren't sure what the applicants were asking for. Tim said he'd prefer to table this if the applicants were amenable. He wasn't sure if they knew what they were asking for, and he thought it would be better if things were clearer. Susan asked who they should be talking with. Tim suggested they talk with the Planning staff. Sue S explained the applicants' need to lay all the cards on the table. Staff have been looking at a guesthouse only. Jack noted that this is now a lot of other things that maybe shouldn't even be brought up here. It's gotten complicated.

Christopher thought maybe it should stay an accessory building with a home occupation. Tim pointed out these were issues he could talk with Joel and Sue S about, once Joel has all of the information. Sue S mentioned that the structure with a toilet would be a guesthouse.

Motion made by Jack Meuli, and seconded by Mike Marchetti, to table the variance to a future date. Motion carried, all in favor.

Sue S noted the applicants could get a zoning conformance permit to finish the construction without inclusion of the water and sewer, but they do need a permit. Susan said they learned about this when they got the letter yesterday. Sue S also mentioned about applications and home occupations.

Sue L checked if by adding water and sewer to an existing building, it becomes something else. If the Toppens come back the next time, they'll have a more concrete picture of what they want. Can they have a business? Joel pointed out there's a home occupation section in the Polson Development Code that they would need to comply with. Sue summed that it sounded like a structure with bedrooms and bathrooms, and whether it had a kitchen or not, that could also be used as a home occupation, and how it would comply with those home occupation standards. Sue L pointed out the applicant's objection about [limiting] the revenue generating aspects, and how he didn't want to be limited in renting. That's not a home occupation. Sue S thought they may have been confused that the guesthouse could not be rented independently from the primary structure on the property. The Planners need to sit down and explain the language, and maybe refine it, so the applicants are more comfortable with it.

Clarence noted that the applicant said he might want to turn it into a lodge. Sue S said commercial uses are not allowed up there. She mentioned Susan Toppen talked to her about opening some sort of facility where people come to stay and learn to cook, and she had explained to Susan that couldn't be done in that zoning district, prior to purchase. So they talked to Planning about the zoning before they purchased the property.

OTHER BUSINESS:

Sue S gave an update on the Big Sky Eatery and their application to the State for licensing.

**Motion made by Sue Laverty, and seconded by Mike Marchetti, to close the meeting.
Motion carried. Meeting was closed at approximately 5 pm.**