

LAKE COUNTY BOARD of ADJUSTMENT
January 9, 2008
Meeting Minutes

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

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

Jack Meuli called the meeting to order at 4:01 pm.

Motion by Clarence Brazil and seconded by Tim McGinnis, to approve the Dec 13, 2007 meeting minutes as written. Motion carried, Jack Meuli, Clarence Brazil and Tim McGinnis in favor.

Sue Shannon noted that the Board needed to appoint a president and vice-president, since it's the beginning of a new year.

Motion by Clarence Brazil and seconded by Tim McGinnis to postpone this until the next meeting when everyone is here. Motion carried, Jack Meuli, Clarence Brazil and Tim McGinnis in favor.

Sue welcomed the new members, Tim McGinnis and Mike Marchetti, to the Board.

CICON CONDITIONAL USE

Tiffany Lyden presented the staff report. She handed out an additional email received, and summarized a phone call that had been received. The caller was concerned about stormwater getting into the lake and supported putting new vegetation conditions on the request to provide additional protection and absorb pollutants. Neither the applicant nor an agent was in attendance.

Public comment:

Dean Conklin: He spoke, both as president of the Shelter Bay Landowners Association, and as a landowner. He previously provided the Cicons with a letter of support from the Board of Directors, and also emailed with his personal response. They are in support. This is a view lot, not a waterfront lot.

Bob Betts: He spoke in support of the project, as the chairman of the Architectural Control Committee for Shelter Bay Estates, and as the owner of a lot below this lot. Even in a huge storm, they've never been affected by runoff from the above lot.

Terry Druyvestein: He owns the other lot below the Cicons' lot. He, too, has not observed runoff from the lot in the past. This was an opportune time, with the extension to the building, to take care of any roof drainage. The staff addressed that with a mitigation plan. He favored an underground sump, rather than an open swale, to take care of the expected roof runoff.

Public comment closed.

Motion by Clarence Brazil, and seconded by Tim McGinnis, to approve the variance request with the staff recommendations. Motion carried, all in favor.

PELC VARIANCE AND CONDITIONAL USE

LaDana Hintz presented the staff report. She noted that in the variance request, the numbers differ for the buildable area, because the size of the attached decking has been decreased. This is why the staff report varies from the site plan.

Tim asked regarding the impervious surface if they would be able to pave the driveway later. LaDana replied that they would not be able to pave it. Sue suggested it might be appropriate to add a condition to spell out for the future that the driveway could not be paved.

Mike Marchetti asked if there was a condition to not allow construction until after the septic plan was approved. LaDana confirmed. Jack explained that it was customary for the septic application to be done after BOA approval. Sue added that Planning and Environmental Health Depts work closely together.

Ken Miller spoke on behalf of the applicant. He offered one correction regarding the stormwater management plan. The compacted gravel driveway was factored in to the calculations to size the swale. He oversized the swale, by assuming a 900 square foot driveway. The swale is oversized, even for a 100-year storm event. This is a modest-sized home. The conditional use and variance requests are needed due to the size of the lot and configurations. With building setbacks, floodplain and steep slopes, there is no flat spot where all the conditions of the zoning can be satisfied. They are minimizing the disturbance of 25% slope by sliding to the NW corner, and keeping the footprint small. The livable square footage of the house is only 1,276 square feet. The eaves, door covering and deck add the rest. Terry Murphy of the Environmental Health Dept. thought there would be no problem getting a septic approval for the site. On the SW portion of the lot, they can easily fit a sand mound and drain field, and he is ready to file the septic application. They have no problem with an unpaved driveway. Most of the driveways in the area are unpaved.

Further public comment:

Tara Harbin: She and her husband own the property to the north. They wrote a letter with concerns, including where the septic will be on this very small lot. The section of Johnson Creek that the lot in question overlooks is entirely on the Harbin property. This creates concerns for the Harbins, and they had originally suggested that a variance be requested to put the home farther from the creek. The figures on the lot area needed to be recalculated and updated to be accurate. 49% coverage was the maximum allowed coverage, and she thought it was too much. She had a hard time with the driveway being called pervious. Swan Site zoning regulations consider a hard surface driveway to be impervious. Even with a grass-surface driveway, the more you drive on it, the harder it becomes. She felt the definition was up to interpretation, and the driveway was another 834 square feet. She thought a gravel driveway was a hard surface. Lastly, she disagreed that the lot could not be developed otherwise. Many Swan Site lots are solely owned for lake access. The value of this lot stood in having a garage for a boat and a concrete slab for

an RV. She thought the applicants were at the cusp of going beyond what the zoning regulations are there for. She asked that the request be denied.

Public comment closed.

Clarence asked about conflict between lot size. LaDana referred to the site plan from Ken, and he said this was what he received from the surveyor. He said the figure for buildable area came from the computer off of the drawing, so the buildable area figure is not disputable. Tara asked if this was 3,970 or 3,986. Ken explained if you add the original and new buildable area, the number is 3,986 for the total potential buildable area on this site. Jack confirmed with Ken that 3,986 was the surveyor's figure. Ken said the impervious is 47% for 1,856 square feet.

Sue pointed out that the conditions are pretty specific regarding the amount of impervious surface area allowed on the property, at 47%. She said the 47% was based on the 3,970. Ken said that if the number were larger, at 3,986, then it would be a smaller percentage, less than 47%. Sue suggested if the Board recommends approval, that they require staff to change condition #12 to incorporate correct impervious surface coverage of the lot.

Sue verified for Jack that the way the staff recommendation is written, the variance and conditional use could be considered under one motion, unless the Board wanted to discuss each one individually and go through the recommendations accordingly. If the Board wanted to consider the variance and conditional use separately, the variance should be considered first since its denial would change the conditional use.

Motion by Clarence Brazil, and seconded by Mike Marchetti, to approve the variance and conditional use requests with the staff recommendations with changes to #12 to represent the actual impervious surface, and adding condition #21 to specify that the driveway cannot be paved with an impervious surface. Motion carried, all in favor.

BROOKS CONDITIONAL USE

Sue Shannon announced the Edwards conditional use application (on the property neighboring the Brooks request) has been withdrawn from review this month, and will be reviewed at the February meeting.

Sue presented the staff report for the Brooks application.

Jack asked if the 14' road and the 5' trail were separate. Sue explained that currently there is a 16' wide road cut. They propose to make it more of a bench area, and contour the edges of the cut to better match the downhill slope. There would no longer be a road. They would plant vegetation, and create a winding trail of 5' in width. This would not be drivable.

Mike referred to the 17' retaining wall and gradually tearing that out. He asked how condition #10 on pg. 18 comes into play if the Board does not accept a 17' wall. Sue explained the Board would need to tell her how to modify the condition for how they'd like to approve the proposal. The lakeshore regulations don't allow for a wall greater than 2' in height. The 17' wall represents a substantial visual surface.

Ken Miller spoke on behalf of the applicant. The area has an extremely steep slope, which is eroding away. He described that the applicant undertook steps to deal with the erosion, but was unaware of the regulations. Since becoming aware of them, he has followed them properly. Construction on steep slopes is an issue, and they don't want the slope to wash into the lake. The turf isn't thick there. They're leaving benched area for flat spots to plant, and they are creating vegetation that wasn't there before. Infiltration ditches would allow for cleaner water to enter the lake.

Ken spoke about treated timber. It's prohibited in the construction of the retaining walls. These are not chromate copper arsenic treated timber, which has always been discussed, and which is a major ground water and pollution problem. These timbers were treated with copper naphthenate. This is not a water-soluble chemical. It will hold on to the wood, and at worse, it will leach into a small amount of surrounding soil. Treated timbers last longer than regular wood. They don't want to have to replace the timber so often. This gives the vegetation a better chance to mature. He felt the treated timbers were an appropriate use, even within the 50' vegetated buffer for the reasons he's described in terms of low environmental impact.

Ken also spoke about the retaining walls. The overall elevation gain is on this property between the lakeshore and the residence is on the order of 70 or more feet over a distance of 100 feet. Two-foot high retaining walls would look like stair steps, with no room for plants. A couple of larger, well-placed, well-designed retaining walls, visual impacts could be shielded with plantings in front of them. He thought the visual impacts would be a lot less. They're willing to look into feasibility of changing the 17' retaining wall into two retaining walls with a flat bench in between, to see if that can be done. Regarding the trail surface, he liked Sue's idea of turf blocks. They can use native grasses and it will hold even better.

For noxious weeds, the report lists that there is no spraying within the vegetative buffer. Even with the slope recontoured, it's still around a 40% slope. The plan was to use Milestone as an herbicide within the vegetated buffer outside of the lakeshore protection zone. Milestone is approved by the EPA for use by water, and it won't knock down the native grasses, so they are requesting use of this product as it's legally approved by the EPA to be used.

Ken asked about the 80% figure in condition #7 and elsewhere. Sue clarified that 80% of the area is to be covered with trees and shrubs.

Sue asked for some clarification on Ken's comments on the 2' walls, and whether Ken was referring to the switchback wall in condition #7, or the 17' wall in #10. She clarified that this was 2' above the existing grade or finished grade. She wasn't suggesting that the 17'-high wall should be 2' tall, graded. Ken clarified that he was addressing why 2' walls wouldn't be possible on this property in its entirety. An engineer has been retained to look at the retaining walls, so Ken hadn't done calculations about condition #7. He wasn't sure whether or not it would be possible. The engineer has said there was roughly 7' of fill behind the existing wall now. This also has to correlate with what the Edwards do on the next property. The wall will need to be worked on in conjunction with them. Mike Brooks said he didn't know about 2', but he thought it could be tiered back up where the trees are, and started right behind the boathouse. Ken

thought they're run out of room to keep the wall both 2' high and out of the lakeshore buffer. Sue thought this would need to be revisited as the engineer becomes more involved.

Sue said in the regulations for the required 50-foot buffer, under long-term maintenance, it says fertilizers, pesticides and herbicides shall not be used in the buffer strip to prevent nutrients from entering Flathead Lake. To do otherwise would be a variance item, and it has not been legally noticed. Ken said they'd deal with weed maintenance by hand in the buffer strip.

Tim checked about the proposed roadway shown on the map. Mike Brooks said the only driving on that would be for dock or seawall maintenance, or to haul equipment down to the lake. Access would be a better name for it than a road. Tim confirmed that it would be 5' wide, vegetated and not drivable. Ken affirmed that this was the intention of winding the trail. Mike B said that with the winding, the trail would look vegetated from any angle of view, but would still allow him to bring down a vehicle on occasion to do the things allowed by the regulations, such as hauling lumber down for the seawall. The road was there previously. He's trying to get the property acceptable within the zoning. Tim commented the Board is trying to allow him to use his property, without affecting the view from the lake. Mike B thought with islands of vegetation, you wouldn't be able to see up the road, but he would still be able to get up and down.

Tim asked about the map required for vegetation, and what's expected of the applicants. Mike B said the map is a 2-dimensional representation. His first priority was to stabilize the bank, and his second priority was to bring it into compliance with the zoning regulations. The road has to be pulled back to 12' in width, and they have to put in the areas where they can plant. Somewhere, given the slopes, the wall needs room to accept erosion, since it's an erosion control device as well as a bank stabilizing device. To prevent erosion, the hydroseeding and planting would happen. He wanted to work with the engineer to figure out what needs to go where for the plantings, and do what makes sense on the ground. He didn't think it would be as it is on paper.

Sue explained that staff are requesting that the timeline be updated to require quarterly reports. Over the time period for provision of the project, she will be getting things from the engineers, so she will know what's happening with the vegetation and there will be an opportunity to monitor what's happening. Mike B said that he was expecting that the 80% was negotiable, depending upon the conditions on the ground. The area never had 80% vegetation. He referred to the pictures. Between 2001 and today, there was a lot of birch, which was wiped out for some reason.

Tim was uncomfortable with the treated wood, and asked if documentation was available about it. Ken said that he does have documentation. Mike B gave the Board a handout containing information about sodium fluoride, copper naphthenate (wood preservatives) and Milestone (herbicide). The wood is soaked rather than pressure treated to inhibit rot. He highlighted information on pg. 4 and pg. 7.

In response to Mike B's comments about the lakeshore protection zone and the buffer zone, Sue clarified that in the zoning regulations in section 3A, which she read, the regulations do extend the lakeshore protection zone from 20' to the 50' mark. She pointed out that there are

alternatives to wood, which would not have to be replaced regularly. Mike B said the wood wall was meant to blend in to the surroundings. It was kind of green. He thought the risk factor was minimal, per the materials he just handed out. He asked for a variance to allow that portion of the wall to stay within the buffer zone. Jack confirmed with Sue that the lakeshore protection says no treated wood, and that the zoning extends the lakeshore protection back. Sue said this was a request for a new variance, and this was new information brought today. Tim thought this was something that they shouldn't deal with at the moment, and that it might be a new variance. Jack agreed. Mike B said he didn't know until about 3 days ago that treated lumber wasn't wanted in there.

Further public comment:

Dick Schultz: He gave some history, which he outlined. In 1980, a failed culvert at the 9-mile marker on Hwy 35 failed. This has been documented 4 times. He saw 5000 yards of fill put back in front of Mike's place to put it somewhat back in the condition it was. It's a straight up-and-down clay bank. He has this, if not more, by his house on the north. It's a vertical 80' cliff. Anything that's done would be good. Three years ago when there was high water, he called the Highway Dept in Helena. He guessed that 20,000 yards went into the lake right under the 9-mile marker. He thought it was petty to worry about small amount going into the lake. Other neighbors built a log piling retaining system after the 1980 flood, which failed. The replacement wall established there is similar to what Mike B has started. They look good and they're holding. He's 100% for it, and it's protecting his property in one direction. He's like help on how to keep a vertical 80' clay bank from eroding.

Mark Giacoletto: Seven years ago he had the same problem. He too has culverts, and he had to do a sand separating type system and separate the drain water into collection tanks and take it down to the lake. He had a problem with his bank and stabilized the slopes with retaining walls. He's in favor of the project. As landowners, they want to protect the lake and their property, and want to use their property. He thought the system was adequate. He got a Cease and Desist order also. He worked together with the County. Now you wouldn't know he'd had a problem.

Public comment closed.

Jack was unclear on the chemical used to treat timber. If it's 'no treated' in the zone, he didn't know what they could do. They didn't get a request for a variance on this. Sue noted it hasn't been analyzed as a variance and suggested dealing with the subjects at hand. In the future, if they want to submit the information to her, she could do research and make findings regarding variance criteria.

Mike M commented about pg. 18, recommendation #10 and the 17' wall. He suggested modifying the language so retaining wall structures over 10' in height would be considered for splitting into two walls. Mike B thought that was fair.

Sue checked that this would be a modification to #10 to say something similar to an engineer will certify that it's not feasible to design the upper rate retaining wall in a way that would accommodate a wall no higher than 10' rather than a 17' vertical wall. Mike B thought this was

an engineering question, and asked if the engineer could put something together to answer the concern. Jack said he'd have to have an engineer who could work with the Planning Dept.

Motion by Mike Marchetti, and seconded by Tim McGinnis, to approve the conditional use request with the conditions stated in the staff report except for modifications to #10 to add language regarding walls over 10'. Motion carried, all in favor.

EDWARDS CONDITIONAL USE: withdrawn from 1/9/08 meeting and postponed

MOUNTAIN STATE LEASING/GIACOLETTO CONDITIONAL USE

Sue Shannon presented the staff report.

Johna Morrison spoke on behalf of the applicant. She was frustrated with her receipt of the staff report on the previous Friday. She turned in the application 4 weeks prior to the deadline. She gave the following responses and comments to the following items on pg. 8 and 9:

#3: The application did not ask for this, so she did not supply it. It's actually 1,004 cubic feet that will be removed. After it's excavated, approximately 197 cubic feet will go back into the foundation for a net of approximately 800 cubic yards removed from the site.

#4: She thought the applicant had the most stable slopes in the area, given tiers to stabilize, and revegetation. She thought the 1960 USGS soil survey was 50% right.

#5: She tried to call Dave DeGrandpre without success. He was the planner at the time, and did see that addition. The applicant did have a 2001 violation, at which time he was unaware of the regulations. He took care of those. They were upset that this was revisited.

#7: She disagreed with the item. These were submitted and she could show them on the plans. She did not receive a call to request more information.

#9: The new decking on the drawing is to replace the old decking. The application did not address this because she thought it could be accomplished through a standard zoning application for replacement. She showed pictures of the deck.

#8: The west elevation drawing shows how the existing cabin would be attached to the house. If you look closely, on the second level down, there's an outline that says the existing cabin.

#10: She asked for clarification on whether this is average building height or 30' maximum. She understood it to be an average. You have to take the grade, topo and peak to figure out the height. She said the highest point was 41' and the lowest was 13.5'. She got an average of 27', per the architect. The 4' of upper deck in the 50' buffer was an oversight. They will remove it.

#11: This was not provided since the application didn't ask for it. It was also an oversight. The engineer calculated today that the impervious surface would be 14,192 square feet.

#12: The contour lines in yellow are hard to read in color printing.

#13: The architectural and engineering plans were submitted. She didn't know what more was being looked for.

#14: She didn't know how to answer this. They felt it was preserving the natural environment by a series of retaining walls, and giving the landowner the option to build a residence without taking his rights away.

#15: Cache basin details were included in the application, with the location shown on sheet AL-001. The water would be guttered and taken to the cache basin, where it would be filtered before it would be able to enter the lake.

#16: She didn't know a Fire Department letter was required on the application. She handed out a letter dated Jan 7 from the Montecahto Fire Dept.

#17: She didn't know how to address this. In 2004 the neighbors to the south received a variance and conditional use for a third structure for disturbance of slopes over 25%. She handed out copies of that decision.

#18: There would be no excavation of 50% slopes. When they did the calculation on the slope, it was 24.9%, and they felt that was close enough to bring to the Board and be covered by a conditional use. The home plan selected works best with what exists, and integrates the existing structures. Permits were received for the boathouse and the sunshade (a deck with a roof). She said the application was early because they were told the wrong date for the December meeting. She was frustrated because she wasn't contacted sooner about the information needed.

Further public comment:

Dick Schutz: He had no objections to the proposal. He thought someone putting money into improving the lakeshore in this area torn up by road problems should be given encouragement. He hasn't seen the plans or blueprints. He like what Mark had done in the past, and thought it would be an improvement.

Public comment closed.

Clarence asked how to reconcile the slope being less than 25% versus it being 50%. Sue responded that he's seen the same plans that she's seen. She would need better plans to verify the numbers for slope and also the buildable area. A lot of numbers were given today for buildable area and impervious surface coverage. She's not sure how they dealt with slopes greater than 25% in the buildable area calculation. A lot of the stuff that Johna mentioned as not being on the application is required by the zoning regulations. With every zoning permit, staff look at impervious surface coverage and have the applicant demonstrate compliance with that portion of the regulations. A lot of this information is detailed under the conditional use section of the regulations. A way to reconcile this would be better maps demonstrating their intention.

Clarence thought there was conflict in information such that a decent judgment could not be made in this case without a lot more information. The information has to be condensed to where the Board knows for sure what it is. It's confusing. He had no way of knowing what's true and what isn't. He thought it should be postponed or put off until they have the information.

Sue said the request was in front of the Board. She wasn't sure that they had the ability to postpone it. They could make a motion to deny without further information, or ask them to request an extension, or something along those lines.

Tim said it is part of the regulations. The regulations are there. They didn't get the information that they needed to make a determination. He felt opposed to having the information given to the Board while they are sitting there. He wants a chance to look at it.

Motion by Tim McGinnis, and seconded by Clarence Brazil, to accept the staff recommendation of denial. Motion carried, all in favor.

GRITS INC VARIANCE:

Joel Nelson presented the staff report.

Jack asked if use is considered with the density map. Sue said that land use is not considered in the density regulations. Jack asked if the existing use was considered. Sue said they didn't look at individual cases. Jack said the area there is divided up into smaller pieces. Someone thought that was Rehbein subdivision, and Jette Lake subdivision. On the west side of Highway 93, you'll see a commercial lot, and then an acreage done by [inaudible], and the rest is 20 acres.

[inaudible]

Marc Carstens spoke for the applicants. On pg. 6, he'd made a faux faux and recognized that the need is for an interpretation of the regulations, and asked to alter the hearing to get clarification. After further clarifying his aim, Sue thought what he wanted was an appeal. Marc agreed. Sue pointed out that the public hearing had not been noticed as an appeal. Further discussion ensued. Marc thought the maximum number of units was 2 per the staff interpretation, but was 3 per his firm's interpretation. Sue asked if he was withdrawing the application. The Board admitted to confusion. Marc withdrew the variance. He apologized that this was submitted as a variance. It should have been an interpretation question. His firm and the staff have a difference of opinion. Joel outlined the procedure of MCA 76-2-226. Sue suggested that Marc submit an appeal for next month.

(See additional comment under 'Other Business'.)

OTHER BUSINESS:

Sue highlighted the handout about the Roberts Rules class on Feb 5 & 6.

Patrick Marranin had public comment on the Grits, Inc. item. Speaking for the greater good, they are concerned about having seen 3 people within view dead from their back porch. This is where the applicants want to increase the traffic, in the vicinity of Jette Store. He understood these people are trying to deal with business. He felt bad about that, but people are dying on these roads, double from the statistics of other counties. Uphill there are 80 head of livestock with a corral and feedlot. The fecies drain over the road into the well area. Also, there are 2 additional well sites on the plan. Will that mess with stock water? Will the rancher have water for his stock? When he turn off of Hwy 93 onto Ranch Road, if he's got someone behind him, he'll turn right, then come back and cross the road. There's an issue of a turning lane, which is big bucks, and sewage, which is also big bucks, and Lake County assuming Ranch Road and Cutting Horse Lane, which is big bucks. Culverts, drain systems and everything like that would be needed. This is where this will end up going next month. He wanted to forewarn the Board. The infrastructure is not there. He's concerned about driving from Ronan to Kalispell. He thanked the Board for their time.

Motion by Clarence Brazil, and seconded by Mike Marchetti, to adjourn. Motion carried, all in favor. The meeting was adjourned at 6:40 pm.