

LAKE COUNTY BOARD of ADJUSTMENT
September 10, 2008
Meeting Minutes

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

STAFF PRESENT: Sue Shannon, Joel Nelson, Lita Fonda

Tim McGinnis called the meeting to order at 4:00 pm.

Motion made by Jack Meuli and seconded by Sue Lavery to approve the August 13, 2008 meeting minutes as written. Motion carried, all in favor.

SLACK CONDITIONAL USES AND VARIANCES

Sue Shannon presented the staff reports. On pg. 15 of the variance report regarding the approximate height of the home of less than 15', she clarified that this was in relation to the driving surface of Rollins Lakeshore Drive. It was taller than that on the lake side. Also on pg. 15 of the variance report, when discussing construction in the area between 20' and 50' of high water mark, she pointed out that lakeshore regulations only allow use of non-treated materials. This project would include treated material in the buffer area. On pg. 16, she noted that the end of the first sentence under item #9 should read "...removal of the improvements associated with the permit." She passed around photographs submitted as part of the application of the property and of other construction on the high water mark. She pointed out letters of public comment to the Board, some of which had been forwarded to them after the staff report, and others which had just arrived today and had been handed out.

Dave DeGrandpre spoke on behalf of the applicants. He introduced applicants and agents in attendance. He thought noxious weeds were present as a result of compliance with the cease and desist order. He relayed that according to Bob Long, attorney, and Jeff Fisher, the previous builder, they asked to do property maintenance such as regarding and backfilling the foundation. He described having a letter for submission from Jeff Fisher that the answer was no. (Editor's note: a copy of the letter was not provided for the record.). Dave thought there were a number of little issues like that in the staff report that he didn't think provided a clear picture, such as quality construction type issues. The structures were designed by licensed architects, reviewed by structural engineers and built according to plan.

He spoke about the variance requests. There must be a hardship unique to the property for a variance to be granted. He thought the crux of the issue was the east side of Rollins Lakeshore Drive was the only real buildable area on the lot. He disagreed with the discussion on pg. 16 of the variance request about the hillside south of the garage area. Terry Richmond, an engineer, spoke on behalf of the applicants. He visited the site and looked at the area south of the garage building. He had concerns. An easement on the south side of the property allows for a propane tank. The tank is elevated 7' above the road. This would be a stability issue and a hazard in construction. Additionally code requires a building to be a minimum of 10' from the tank. That moves the available land 10' to the north. By putting the building there, you limit access to the

back of the structure. You need to be able to get to the back if there's a septic tank/drainfield problem. He was most concerned by the removal of an amount of material that would compromise the existing building. The larger opening would be less stable. He added there was a retaining wall adjacent to the propane tank for the adjacent property. He summarized they were limited by easement, by propane tank and setbacks from that, by access and by the removal of material.

Tim asked Terry how much room there was to add on the garage. A woman answered less than 17'. Terry responded to Clarence's questions that he is a civil engineer with an emphasis on soils. The 10' propane tank setback from structures comes from Montana fire codes. Clarence noted that setbacks from propane tank varied with the size of the tank. Terry didn't know what size this tank was. Sue L guessed it was around 250. Terry guessed between 200 and 300. Clarence asked if Terry was saying the slope behind the garage was alright, and Terry said no. His recommendation for completing the project would be to stabilize that slope. Sue S asked if the Slacks granted the easement. Karen Slack said that the Morells, prior owners, granted the easement.

Dave spoke about whether there were other reasonable alternatives to the variance. He didn't feel that either the area south of the garage nor the garage's upper level was reasonable. The square footage would be 640 square feet according to International Building Code, which meant an area with a ceiling of 7' or greater. If the first level was used, storage would have to be on the east side of the property for vehicles and boats, and he thought this would be problematic.

He wanted to focus on the current situation, not what was there before, since the nonconforming use was terminated. He did point out the proposed footprint was smaller than the previous one. He talked about the square footages, and pointed out changes, such as moving the deck to the south, and the removal of a floor, to make the house more compliant and blend in more with the neighborhood. He read from the zoning about preexisting lots and noted the lot was created prior to the zoning regulations. He thought that a home could not meet the setback requirements. With storm drainage, there were a number of proposed conditions for the Board's consideration. The applicants had no problem with these, and though they make sense.

Dave spoke about the general use of the property. A single-family residence is proposed. He read again from the zoning, and showed photos. He counted 13 homes in the immediate vicinity of the property that were in the same situation. He described it as part of the unique character of Rollins Lakeshore Drive. He noted that the letters from the community surprised him in that 3 landowners didn't think it was appropriate and 30 or 35 thought it was. He referred to the criteria to consider for a variance, and went through a handout he provided to the Board regarding that criteria.

Clarence asked if the photos Dave passed out were of new projects since the zoning or grandfathered houses. Dave said many were grandfathered and some had been expanded in the same way the Slacks originally had requested. Clarence confirmed with Dave that none were new. Tim expressed a concern that this would defeat the point of zoning. He didn't think the Upper West Shore Zoning was designed to allow people to build houses that close to the lake. Dave saw it differently. He saw Rollins as a unique area, and one purpose of zoning as being to

continue existing patterns of growth. He thought water quality was a key issue, and that setbacks and vegetative buffers were intended to prevent sedimentation. There weren't a lot of options on this property. He agreed with Tim that setbacks for water quality and vegetative buffers were good things and should be part of the zoning.

Jack explained that he'd been at the Rollins meetings. The feeling he got was the houses on Lakeshore Drive should stay but they didn't want any more building at all on the lakeshore, and they had to stay within the footprints of what they had. Sue L felt if there were true interest to allow new development, they would have changed the verbiage of the zoning regulations in the 2006 update. Dave said there wasn't much undeveloped lakeshore. It's pretty safe to maintain language like that when you're not likely to see much change.

Ashley Slaughter, a registered architect, spoke on behalf of the applicants. She spoke about the garage, and handed out a set of diagrams. It was built as designed, but was sitting further south than it was supposed to. The builder moved the house further south on the site to allow access up around the north end of the garage. This caused more slopes to be disturbed. In the approval under which the garage was built, the footprint was considered in the coverage number but not the eaves. The deck and concrete slab by the lake were not considered. The different total coverage numbers were different for this reason. She passed out some updated 11 x 17 drawings, which included some color and a grading plan, and talked about the drawings. Sue L asked about the concrete slab. Ashley explained this was an existing 4" slab that's been on the site for 2.5 years. She highlighted changes in the landscaping plan, and a preliminary regrading plan. Clarence asked about the dirt wall behind the garage. Ashley thought Terry could speak better about restoring the hillside behind the garage. They've talked about possibly putting up an engineered wall with a geotech fabric that goes back into the hillside and stabilizes permanently. She talked about letters from builders regarding the intent of the Slacks. She referred to the page of elevations in the packet regarding the height concerns of the neighbors, and the removal of the second floor.

Tim noted it says single-family residence. Ashley explained that set of drawings for the garage was put together by Rob Heinecke. He initially did the house drawings as well. It was part of one big packet. The garage was engineered. Tim asked if a bathroom was still planned in the garage. Ashley replied they were not planning on finishing the space in the garage. They have brought water to the garage. They intend to use the upper area for storage. In response to additional questions from Tim, she replied the house would have 2 bedrooms and 2.5 bathrooms, and it was a 3 bedroom septic system.

Sue S clarified that she didn't think Planning got new plans for the garage. She indicated the plans that were submitted. Ashley asked how the zoning conformance permit could be issued from a preliminary set of drawings. Sue S replied that's what they said they were building. Ashley said the difference was the level of detail in the drawings. Sue clarified that this was the only plan submitted and this was the plan on which the permit was issued. Tim commented that plan looked like a garage with a storage unit above. The plan she's showing now doesn't look like a storage unit. Ashley said the dimensions were the same. Mike said confusion was the fact this was the only plan they'd seen until recently. In April the Board saw this elaborate garage, where at first it was a 'plain Jane' garage with a windowless upstairs. Tim added they have a 3-

bedroom capacity, water to the property and delightful views. If it looks like a duck, and quacks like a duck.... Clarence added that ordinarily a garage wouldn't have \$4000-\$5000 u-lam (sp?) beams and all that stuff for storage. It would have regular trusses and so forth. Karen Slack said the structural engineer made them use those beams.

Public comment:

Denise Peterson: She's an adjacent landowner. She referred to her letter of comment and attachments. The architect said they fully intended to remodel their old house. She showed a picture of the old house right before its destruction, up on beams over a full basement, which didn't look like it was intended for remodel. She referred to her attachments and highlighted portions of her letter of comment. If the Board was persuaded to approve the variance, she asked that it be conditioned on scaling down closer to the acceptable level that would be allowed for a lake-related structure that would be in compliance. She read from and talked about her letter and attachments. She showed pictures of homes to the north that she said Karen Slack had found objectionable. The pictured houses she provided were on the west side of the road. She hadn't seen all the residences for which Dave provided pictures on the lakeside of the road. There was one she saw that some might say was a residence but was a garage that's been there for some time, and Mike Murphy built a small structure on his property, but she didn't know of others that would qualify. She talked more about the pictures. They had no idea a year and a half ago what the garage would be like, and there was no hardship. Her sister, a surveyor, analyzed the property and believed there was an additional 34 feet to build. She gave more information from her letter.

Gale Lewis: He was on the committee when the regulations were written. His first question was if they had a permit to put in a concrete slab. (Karen Slack affirmed.) He thought the rules had been broken and a precedent should be set to make people go by the rules. His understanding was that they didn't go by the rules on the garage. He gave another example of the applicants asking for one thing and building something more. He saw the old cabin up on blocks with the floor underneath it, and having built a lot of houses, he wondered how they would incorporate the old cabin into the new house. Then it was torn down and burned. He knew of people with a silver trailer house probably from the 1950's who would love to add on, and then tear down the trailer house. He believed it's time to set a precedent to say Rollins Lakeshore Drive voluntary zoning was put there for a purpose to keep the area unique. They want to keep it a unique place. He thought the Slacks should tear out the foundation and live in the fancy garage, and fix up their beach like the rest of them had.

Sue S: She pointed out they had a permit for the retaining wall, but she hadn't seen a permit that included the concrete slab within the last 2 years.

Lynn Weaver: He thought the zoning regulations were positive and a good set of rules. He thought they had to go by the rules. He agreed with what Gale said about non-conforming units along that lake. If it were approved on this project, somebody with another non-conforming project would point to that. He would hate to see that happen. If a lot of people support what the Slacks are doing, maybe those people should get together and change the zoning if that's what

they want to do. Right, these are the current rules to play by. He hoped a decision would be made based on these rules.

Steve Rosso. He was concerned about compromising the lake quality by setting a precedence that would allow people to build homes in the buffer zone. He thought the buffer zone was very important, especially in the Rollins Lakeshore area because the steep slopes on some of the properties get the runoff to move faster towards the lake and there's also the road. The road is contaminated with vehicle pollutants, which also wash into the lake. It's important to maintain that vegetative buffer area. He thought the idea behind the zoning was that as these grandfathered buildings close to the lake become demolished, that they not be rebuilt. Over time, the entire district would conform. He's concerned about the history of this property. The retaining wall along the lakeshore along the north edge juts out 8' into the lake. It was put about 3' from the shoreline. He doubted that the shoreline jugged out perpendicular to the natural shoreline for 8' before that was put in. He thought it might have been put more than 3' beyond the natural shoreline. He didn't think this could be approved and the message sent that it was okay to create buildable land by moving the lakeshore out into the lake. He thought between the garage, the existing foundation for the new house and the tearing down the grandfathered house, there had been a lot of violations and mistakes made on this property. It's hard to image that these were all someone else's fault and not the responsibility of the landowner. He thought by approving this application with its recent history on this property would make it very difficult to justify denying other property owners permits to build in the buffer zone. It would set a damaging precedent. He was sorry to see the waste of effort and materials used in the project, and that the plans and dreams of the Slacks could not be fulfilled, but he felt the project must be denied. If the project were approved, he thought the Board should include conditions as recommended by the Planning Department that would mitigate some of the impact on the lake, reduce the possibility of a damaging precedent and give the Slacks some incentive to complete the work within the limit of the permitting [inaudible].

Beverly Olandt: She felt the Slacks were already considered guilty, and they weren't. At the time this was being built, they went to CA for a grandchild's emergency operation. The architect told Jeff Fisher they had to leave a retaining wall. Jeff decided to take the whole thing down and burn it.

Tim: He reminded speakers to address the Board with items relevant to discussion, and not to address the audience.

Gale: He thought he heard someone say that the current footprint is smaller than the old cabin.

Ashley: She clarified that the footprint of the old cabin plus the footprint of the old deck was larger than the footprint of the new cabin plus the footprint of the new deck.

Gale: He had a hard time believing that.

David Miller: He knew the Slacks, and he bought a house that Jeff built. He could believe Beverly that it probably wasn't the Slacks fault.

Tim: That was more of an issue between the Slacks and the contractor.

David M: He thought this should be approved and go forward.

Alice Blood: She was familiar with the lake through the Flathead Lakers and as a realtor. She spoke in support of the Slacks. She didn't think they should be punished for things such as the contractor's activities. One big concern she had about the lake was the double standard there seemed to be, given Shelter Island and the construction there, and sediment falling directly into the lake. She thought people seemed to talk the Planning Board into allowing them to blast boathouses into the shoreline well within the 50' zone. She thought these things were more damaging to the lake. She thought there'd been disturbances with Cromwell Island also. She wanted to see attention paid to some of these huge projects that go through and break the rules.

Jane Butke: She thought some points raised were petty, such as about the windows and bathroom in the garage. She knew the Slacks made concessions, and that some of the property north of them on the Petersons had been disturbed, and the Slacks had put it back at their own expense. She did not think they should be denied building a single family home [inaudible].

Larry Quickmark (?): He asked if the cabin had burnt to the ground, would they be able to build another cabin on the same foundation.

Various: No.

Larry: He asked what would happen then.

Sue S: They would have to build in compliance or get a variance.

Larry: The builder burnt the cabin down.

Public comment closed.

Sue L asked for clarification on rebuilding after destruction. Sue S explained that if it were a natural fire, the structure would have to be rebuilt in compliance with the regulations or if not possible because of a limiting peculiarity specific to the property, they could obtain a variance.

Sue asked the Board to discuss the criteria and make findings if there are motions.

The Board discussed the conditional use. Jack noted this was a request for something already done. What happens if it isn't granted? Sue replied the Board would have to let the applicants know how they have to re-establish the site to prior conditions and establish a timeframe for doing that. Jack asked if there was a way to redo the slopes. Sue thought the slopes disturbed by the garage would be difficult without removing the structure, and also the structure would need to be removed for the slopes disturbed within the 50' buffer. There were disturbed areas in both the eastern and western portions of the properties, with 804 square feet disturbed on the western portion of the property and 245 square feet on the eastern portion.

Mike said it seemed like the conditional use and variance are related. If the conditional use is approved but not the variance, how would that work? Tim thought the Board could deal first with the conditional use and disturbed grade of slope, and then deal with the impervious surface. The Board discussed this.

Sue L noted the slope disturbance is already done. Tim suggested discussing the west side first. Sue S thought they'd want to incorporate it as one, but they can limit the amount that they're going to allow to be excavated or disturbed on the property. The applicants are asking for 1049 square feet. The portion on the west side of the road is 804 square feet. She suggested the Board go through the criteria #1 through #8 (listed on pg. 15) while they think about the project as it's proposed as a whole. The Board could see for each one if there's general agreement whether or not the use constitutes a conditional use as established in the zoning district. Sue read the first and the Board agreed. Tim continued to read the criteria to the Board. With #4, the Board didn't see hazards. Sue S suggested they'd want to ensure the stormwater is managed and that the slopes are regraded for it to not be hazardous or potentially disturbing to existing use for the neighbors. Tim read each of the remaining criteria. The Board thought that given the suggested conditions, these were okay. Tim summarized that it did seem to meet these standards with the conditions.

Motion made by Sue Laverty, and seconded by Jack Meuli to grant the conditional use for disturbance of 500 square feet or more of natural grade of slopes greater than 25%, with compliance to the staff recommendations as well as the finding of facts, and to adopt the staff report and application materials into the Board findings. Motion carried, all in favor.

Tim saw a tie between the second conditional use request regarding impervious surface and the variance requests. He checked with the Board about doing the second one after the variance requests. The Board agreed.

Sue S read through criteria and considerations for the Board to consider (pg. 17) and on which the Board needed to make findings. Jack didn't feel the criteria gave a reason to grant a variance.

Motion by Jack Meuli, and seconded by Sue Laverty to deny both variances. Motion carried, with 3 in favor of the motion (Sue Laverty, Jack Meuli and Mike Marchetti) and 2 opposing the motion (Tim McGinnis and Clarence Brazil).

Sue S asked Jack if his motion included adoption of the staff report and materials. Jack noted that the request was denied. He asked if the staff report was necessary to adopt in this case. Mike said it was, since a timeline would need to be set. Sue S noted that it is in support of the motion. Jack affirmed it was not included.

The Board returned to the conditional use for the impervious surface. Sue L said it was denied to build the house there, but they could still put a lake-related structure there. Would they need a conditional use for that coverage? Sue S said they could go to 29% without a conditional use. Right now they're at 21.3%. If they went to the max for a lake-related structure, she thought

they would be under 29% but could not say for sure without calculations. Mike thought at this point, without the house, the Board didn't need to grant this.

Motion made by Mike Marchetti, to deny item #2. Dave DeGrandpre asked for some clarification on the basis of denial for the variance. Did Jack say the variance did not meet any of the 7 criteria? He thought it was important to have a clear basis for the denial in the record, and also to adopt the staff report.

Jack Meuli withdrew his motion to deny the variances. Sue Laverty withdrew her second to the motion.

Sue S noted that the Board should address points in the staff analysis (pg. 16), about items to consider if the variance is denied.

Regarding a motion to deny this, Sue L gave her reason that it's in the zoning and it was destroyed. Under current zoning, they cannot rebuild. The zoning was recently modified and no changes on this were made at that time. She didn't think it was a hardship for that particular lot. The other lots in the area are like that, and it would apply to every other homeowner whose property on that side would be destroyed as well. In a way the applicant created this, in that they hired someone who did.

Mike was of the same mind as Sue L. Regarding comments on fault, he disagreed with those who thought it was not the Slack's fault. The Slacks hired an agent, Fisher, who did something on their behalf. That action caused the nonconforming building to lose that status, and they had to come back. They now are forced to meet the zoning rules. By his actions they are forced into this.

Dave D agreed that the nonconforming use is gone, and that is no longer relevant. The question is what can they build.

Motion made by Sue Laverty to deny the variance, and accept the staff report and the findings of fact, based on that this is not a hardship particular to the applicant's property, and the hardship was created by the applicant and/or his agent, and that there is another buildable spot on the property.

Sue L thought whether they chose to build a garage there or a house is irrelevant. Tim asked her if granting the variance adversely affects neighboring properties. She thought it would, because the neighboring properties have to come under the same set of rules. They, as a zoning district, have decided not to change their zoning. By denying the variance, it will not adversely affect the neighboring properties. Tim confirmed with Sue L that she believed the requested variance was not the minimum variance.

Motion seconded by Jack Meuli. Motion carried, with 3 in favor of the motion (Sue Laverty, Jack Meuli and Mike Marchetti) and 2 opposing the motion (Tim McGinnis and Clarence Brazil).

Regarding impervious surface, Sue S noted the applicants are already over. They can have 520 square feet of impervious surface coverage in that area. Sue L thought they could apply for and put in a lakeshore related structure, but it would be twice as large. Mike said they needed to give the Slacks 4 to 6 months to replan the east side of that road properly, and come back with a plan that meets the zoning rules, which is basically a lake use facility. Sue L suggested 6 months. She would like to see the slopes regraded and revegetated around the foundation. She mentioned winter upcoming. Sue S checked that they were saying the east side of the road would need to comply with zoning. Mike confirmed. Sue S noted that they would have to come back to this Board. She suggested they could say that within 6 months, the east side of the road would have to comply with the zoning, including lake-related structure, regrading and buffer plan. Mike thought these were good words. Clarence thought something had to be done with the wall behind the garage before winter.

Mike wanted to be clear that they were still talking about the variance just denied and the structure on the east side of the road. That has to be regraded and brought back to its original condition. A revegetation plan needs to be put back in place on that one within 6 month. Sue L checked about the lakeshore protection, and that they could have 500 square foot boat house with a day room above it. Sue S replied that a boathouse could not be more than 15' average height. They could have some sort of recreational space. The whole area is limited to 520 square feet. Sue L asked if they could ask for a variance for lake related structure, as opposed to a dwelling unit. Her thought was to avoid tearing out the foundation. Sue S suggested letting the applicants decide how they are going to bring their property into compliance within a certain timeframe.

Motion made by Mike Marchetti, and seconded by Jack Meuli, that the property be brought back into compliance of the Upper West Shore Zoning District within 6 month. Motion carried, all in favor.

The Board returned to discussion of the second conditional use request, pertaining to impervious surface. Sue L said that if they were in compliance, they wouldn't need the conditional use request. Sue S read #1 on the evaluation standards (pg. 15). If they don't have the impervious area on the east side of the road, there would not be a need for a conditional use.

Motion made by Jack Meuli, and seconded by Mike Marchetti, to deny the second conditional use (regarding impervious surface). Because the variances were denied, it did not meet the standards #1 through #8. Motion carried, all in favor.

BONNER DENSITY BONUS & CONDITIONAL USE: Postponed

MENG v. LAKE COUNTY BOARD OF ADJUSTMENT:

Settlement discussion—portions in executive session

Motion made by Mike Marchetti, and seconded by Sue Laverty, that the Board adjourn and move into executive session. Motion carried, all in favor.

Motion made by Mike Marchetti, and seconded by Sue Laverty, that the Board return to open session. Motion carried, all in favor.

Motion made by Sue Laverty, and seconded by Clarence Brazil, to approve the settlement agreement before the Board. Motion carried, all in favor.

OTHER BUSINESS:

Sue S suggested that Kurt Moser might be able to do a workshop regarding getting the motions down. The Board responded positively. Some discussion followed.

Motion made by Sue Laverty, and seconded by Mike Marchetti, that the Board adjourn and move into executive session for discussion of the zoning meeting. Motion carried, all in favor.

Motion made by Mike Marchetti, and seconded by Sue Laverty, to end the executive session. Motion carried, all in favor.

Motion by Jack Meuli, and seconded by Sue Laverty, to adjourn. Motion carried, all in favor. Public meeting closed at 6:37 pm.