

**LAKE COUNTY BOARD of ADJUSTMENT**  
**July 8, 2009**  
**Meeting Minutes**

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

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

Mike Marchetti called the meeting to order at 4:01 pm

**Motion by Sue Laverty, and seconded by Jack Meuli, to approve the June 10, 2009 meeting minutes. Vote unanimous to approve minutes.**

**JOHNSON DENSITY VARIANCE**

Joel Nelson presented the staff report. (See attachments to minutes in July 09 meeting file for staff report.)

Tim McGinnis asked for some explanation of the difference between this proposal and a recent one in Rollins. Joel explained the previous one was in the Upper West Shore Zoning District, which does not have an allowance for plus or minus 10% provision. There was some discussion about the County road and its dedication on the Rollins one. Sue added that wasn't a deeded County road. There was a survey error.

Mike asked if the adjoining properties are easements or deeded for the road. Joel said most appear to be deeded. Sue noted this was on the west side of the center line. What the deeded right-of-way looks like can be seen really well on exhibit C.

Dave DeGrandpre spoke on behalf of the applicant, Marc Johnson, who would like to pursue a subdivision application. The first step was to secure a variance, since he's slightly under the acreage. He highlighted some portions of the staff report and requested the Board's support for the variance request.

*Public comment opened: None offered. Public comment closed.*

**Motion made by Jack Meuli, and seconded by Sue Laverty, to approve the variance with staff recommendations and findings of fact. Motion carried, all in favor.**

**HAMLIN VARIANCE REQUEST**

Mike asked for clarification about floodplain issues versus permission to build a home. Tiffany explained that today the Board would look at a variance from the Swan Sites Zoning District regulations to build in the floodplain. It's not a variance from the floodplain regulations. If the variance is approved, the applicant would then request a variance from the floodplain regulations. Copies of the floodplain regulations have been provided to the Board for the future. The Swan Sites Zoning Regulations do not allow development in the 100-year floodplain. The Floodplain Regulations talk about what is or is not allowed in the floodplain, dealing with specific development considerations. She thought the staff report would clarify further. Sue S

didn't think the Board had looked at a floodplain variance before. It is the Board of Adjustment that reviews variances on the floodplain regulations. Sue L asked why the variances weren't considered all at one time. Sue S replied the applicants weren't prepared to do them together. Tiffany explained more about the floodplain application and notice, and that there may be two floodplain items for the August meeting.

Tim asked for clarification of why floodplain was covered in two sets of regulations, and which had precedence. Tiffany replied this zoning district didn't allow development in the floodplain. Sue thought the Swan Sites zoning was created from the covenants, and that may have been an element of the covenants when the County didn't have floodplain regulations. Tiffany described the floodplain regulations gave the standards to follow if you are building in the floodplain.

Tiffany Lyden presented the staff report. (See attachments to minutes in July 09 meeting file for staff report.)

In response to Mike's questions, Tiffany said the actual flood zone was drawn on the maps. There was no elevation associated with that. The County has been using the best available information and in 2002, FEMA began using 3080' and the USGS topographic maps. It was rated as an approximate A. She showed the Board the FIRM map. The entire lake was mapped as approximate.

Tim asked if staff were comfortable with the conditions, and if there should be something in there that if the applicant is allowed to build in the floodplain, they can't sue the County if it's flooded. Tiffany thought that could be handled with the floodplain regulations. She wasn't sure if there was a disclaimer on the floodplain permit application. She thought it would be appropriate. Sue S agreed it was a good suggestion, and it could be dealt with next month.

Sue L checked about the lakeshore regulations and lakeshore protection zone. Tiffany said the applicants did map out high water on exhibit 2. She verified on site that this looked reasonable.

Matt Nerdig from A2Z Engineering spoke on behalf of the applicant. They prepared the site plans. He mentioned there was no attached garage. The proposed structure would meet the setbacks, and stormwater would be controlled. With the 3080' elevation, many of the surrounding homes built prior to the change in the floodplain study would need to seek the same variance. It's not outside the surrounding property uses. Finished floor would be at 3082'. They'd like to seek the variance not to go 15' around the structure at the next meeting in part because it would require filling into the lakeshore protection 20' buffer.

Tim asked what happens when a drainfield is flooded. Matt replied that typically the applicant won't be there if the area is flooded. The water would infiltrate the ground. The bottom of the drainfield typically is 3 feet below the ground. Even with all that added water, anything coming out of the bottom of the drainfield would have to move through the soil. It becomes anaerobic at that time. You shouldn't be adding anything more to the drainfield during the flood. It would most likely be evacuated at that point. Typically septic tanks have to be sealed, and there's a water-tight requirement. The only way water could get in would be through the lid, depending on the lid. Some are sealed tighter than others. Mike checked the floodplain management and

rules would cover septic and wells. Tiffany said typically septic systems are not allowed in floodplains. The septic system was installed in 2000, which was prior to the 3080' elevation being established. When a new detailed study does get conducted for Swan Lake that elevation may change. Because the septic system is in place, it's existing. There's no home there right now.

Matt said looking at the detailed studies on the river, most likely the floodplain will drop. There was an extrapolation done for Kootenai Lodge. It could become an issue for existing home owners, as far as mortgage insurance. Sue S said the landowner will be required to get flood insurance. He will be in the floodplain.

*Public comment opened: None offered. Public comment closed.*

Sue L added that if they were to build next to the common area, she would like to see wording that work associated with the construction of the property be done on the property, without parking or placement of materials on adjacent parcels. She thought future development should be limited. Will they be coming back later for a garage and guesthouse? Sue S thought those would need to be taken as they come, and reviewed at the time. Mike summarized that Sue L's comment would be to add that they do not interfere with the common area or adjoining landowners without written permission.

**Motion by Sue Laverty, and seconded by Jack Meuli, to approve the variance request with staff recommendations and findings of fact, and with the addition of condition that all work associated with this project including subcontractors, material, equipment and parking, must be contained upon the subject property unless they have written permission from adjoining landowners to expand outside of their property . Motion carried, all in favor.**

### **ELLIS VARIANCE REQUEST**

LaDana Hintz presented the staff report. (See attachments to minutes in July 09 meeting file for staff report. Editor's note for pg. 9 typo: CC 94-20 was issued in November 1994. Polson Development Code was adopted in March 1994.)

Tim asked what role the Board of Adjustment had regarding the Polson Development Code. Sue explained the County has adopted the same goals and objectives for the County portion of the coverage.

Sue L asked about the accessory apartment mentioned in the accessory use definition. Sue S clarified the accessory apartment is specified as being within the residential structure.

Tedd Herreid, the builder, spoke on behalf of the applicant. He said this was for the owners' guests and company. It's still a garage. They added a game room for a safety factor so they'd have a fire escape. It wouldn't be a rental. He talked to Ron Melvin (at the City) and thought if he was under the 30' height limit and the footprint didn't change, he didn't need to get a permit. He said place to the south of the lady who sent the email has the apartment and garage, which is about 100 yards from the main house and would be more subject to development or split. This one is all on the same paved driveway.

Tim asked if they were agreeable that they couldn't subdivide the land or rent out the property. Tedd pointed out there was a vacation rental next door. Tim clarified the property as a whole could be rented, but just not the building separately.

*Public comment opened:* None offered. *Public comment closed.*

Jack Meuli suggested approving the variance with 2 changes: one to prohibit renting the apartment, and another that there would be no further subdivision. Mike pointed to pg. 12, item 12.f.1. Jack agreed this staff condition covered it.

Sue L asked about item #2 and the covenants on pg. 12. Mike said it specifically stated it wasn't the responsibility of the Board or the Planning Commission to force compliance with the covenants. The covenants say that can't subdivide. This says that if they decide to go forward, they cannot come back at the Board if the community goes after the property owner. The community enforcing the covenant can't come back and say the Board was at fault. LaDana said there were just two conditions that were being placed as part of the [inaudible]. Sue L summarized that they would consider the variance with two conditions.

Mike said technically there were 3 conditions: they could not rent it apart from the main structure; they could not subdivide the property; and the Board is held harmless.

**Motion made by Jack Meuli, and seconded by Mike Marchetti, to approve the variance, with the staff recommendations and the three conditions. Motion carried, all in favor.**

### **OTHER BUSINESS**

**Motion made by Mike Marchetti, and seconded by Sue Lavery, to go into executive session and discuss ongoing litigation. Motion carried, all in favor.**

**Motion made by Mike Marchetti, and seconded by Sue Lavery, to exit from executive session. Motion carried, all in favor.**

**Motion made by Jack Meuli, and seconded by Tim McGinnis, to adjourn. Motion carried, all in favor. Meeting adjourned at 6:10 pm.**