

LAKE COUNTY BOARD of ADJUSTMENT
May 13, 2009
Meeting Minutes

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

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

Mike Marchetti called the meeting to order at 4:02 pm

Sue Laverty amended the minutes on pg. 7, where talking about the identification of the tables in the 4th paragraph, to read 'Sue asked if what was behind the identification of the tables was so it didn't expand.'

Motion by Jack Meuli, and seconded by Sue Laverty, to approve the April 8, 2009 meeting minutes as amended above. Vote unanimous to approve the amended minutes.

BRODSKY CONDITIONAL USE

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

Clarence asked where the well would be since they planned to abandon the current one for space for a sand mound. Tiffany said the agent may have more information. Clarence pointed out that the well must be sealed properly to avoid contamination into the aquifer.

Hans Lund spoke on behalf of the applicant. They were replacing the current house, which was slowly sinking into the hill. They were upgrading the septic. Sue L double checked on the well issue Clarence had mentioned. Hans said Terry Murphy (of Environmental Health) had already brought up that they need to contain it properly. Seeing no other comments from the floor, Mike closed comments for discussion. Tim agreed the house was in rough shape. Mike noted there were 2 parts to this conditional use.

Motion made by Jack Meuli, and seconded by Clarence Brazil, to approve the variance for the disturbance of slopes exceeding 25%, and to accept the staff report, staff recommendations and findings of fact. Motion carried, all in favor.

Motion made by Mike Marchetti, and seconded by Tim McGinnis, to approve the variance for impervious surface coverage of 39% of the buildable area of the lot, with staff recommendations, staff report and findings of fact. Motion carried, all in favor.

MORIGEAU SETBACK VARIANCE

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

Tim was uncomfortable that MDT comments had not been received, and asked about adding a condition. Joel suggested that approval could be conditioned on obtaining MDT comment, with directions to staff as to how to deal with opposing comment. Jack thought MDT would have responded if there was a problem. Joel noted it was 32' from the right-of-way. It would be nice to have the comment.

Sue L asked for clarification on the buildable coverage. Is it 52% right now? Joel said that was assuming there was no other buildable area on the property except for the area around the building site. Joel pointed to condition #6. If it's over 49%, they have to come back for a variance.

Tim asked about the purpose of the setback from the highway, and if it related to growth. Joel agreed and said it was a state highway. There could be some elements related to safety.

Jack Nordberg spoke on behalf of the applicant. They did have issues with sanitation to address with Terry Murphy (Environmental Health). The steps have already been moved to the side. The base issue is the 91' to the highway center line. They've set the house back as far as they could without getting into the 25% grade. There's more buildable area on top. To get there you have to go through the 25% grades. He would measure it for the impervious surface calculation and get those calculations to the Board.

Tim checked that the applicants didn't have an issue with the conditions. Jack affirmed.

Public comment opened. None received. Public comment closed.

Sue L thought the property seemed very limited in its buildable site.

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

LERUM CONDITIONAL USE

LaDana Hintz presented the staff report. (See attachments to the minutes in the May 09 meeting file for the staff report.) She pointed out that the site plan said 2028 for the square footage, but that didn't take into account the cantilever. This morning, she discussed the deck with Mark Nunlist, who thought the deck would have to come off the existing guest cabin, which could cause roughly a 100 [square] foot loss in the numbers she was giving the Board in the report. LaDana gave some corrections to the staff report. The date of legal notice listed on pg. 8 of the report was corrected from Dec. 25, 2008 to April 23, 2009. The square footage for disturbance of slopes was adjusted from 1,059 to 1,259 in the preface to the conditions on pg. 9. She suggested modifying condition #1, to eliminate "At this time, no modifications to the existing cabin are being proposed," since the deck may be removed from the existing cabin. In condition #2, approximately 325 sq. feet was changed to approximately 352 sq. feet. On condition #4, after 49.5%, 'of the buildable area of the lot' was added.

Mike asked if the staff report changes were updated prior to the staff report going to the record. LaDana confirmed.

Deidre Moran, Steve Lerum's sister, offered to answer questions for the Board.

Public comment opened:

Dan Volkmann had no major problems with the proposal. He thought the house would be great. He wanted to make sure the permit for the septic system had been approved, and would be adequate to handle the load that would be put upon the system. His son bought the neighboring property, and he owns the property next to that. He also wanted to know the encroachment of the cabin to the setback rules, which he thought was 10' before the Masumola zoning rules came into effect. He thought they'd said it was 15' here. A quarter of the cabin is less than the 10', and taking off the porch is great since it's substandard, but that's on a portion of the land where no encroachment is occurring. He asked if it mattered if the foundation to the cabin is conforming or nonconforming.

Mike Marchetti noted that it was in the discussion and analysis, which will be in the record, that the septic and well will have to be approved by DEQ before a permit can be granted. He wasn't sure about setback rules that had been grandfathered in, seeing as the structure was there prior to the zoning rules. The rest of that structure would fall under that rule. Tim said they weren't increasing the nonconformity. Sue L liked the idea of reducing the deck, and somehow having that somehow worded in #1. She thought that would help a bit to reduce the lot coverage.

Dan added the cabin was brought in by trailer. The foundation is suspect. They did the sewer and the cabin at approximately the same time. Joel asked what the question was with the foundation. Dan wondered if it was conforming to County standards. Joel noted the County didn't have building standards for a foundation.

Tiffany explained the Masumola zoning regulations were put into place in 2000. Anything in place before that would be considered existing nonconforming. Mike thought the only time those structures would come before the Board would be when the nonconformity was being increased. Mark Nunlist commented that Terry Murphy said the septic system could be modified. They had to wait for this meeting and approval.

Public comment closed.

Mike double checked with LaDana that the conditions were adjusted for the fact that there would be modifications. LaDana affirmed.

Motion made by Jack Meuli, and seconded by Tim McGinnis, to approve the conditional use for the guest house and to adopt the staff recommendations and findings of facts with the change in condition #1 of the staff recommendations to take out the sentence about no modifications, since the deck would be removed. Motion carried, all in favor.

Motion made by Clarence Brazil, and seconded by Jack Meuli, to approve the conditional use for impervious coverage between 30 and 49%. Motion carried, all in favor.

Sue L asked if the motion included the findings of fact and so forth. Mike noted those had been done with the first motion.

Motion made by Mike Marchetti, and seconded by Jake Meuli, to approve the conditional use for disturbance of slopes >25%. Motion carried, all in favor.

Mark commented that this counted the deck as impervious. He thought some decks were pervious, and thought there should be a distinction in the future.

SOHLBERG VARIANCE AND CONDITIONAL USE: POSTPONED

Joel and Mike announced that this item had been postponed, and was removed from tonight's agenda.

BROOKS CONDITIONAL USE CLARIFICATION

Joel handed out a key from Mike Brooks to help with the interpretation of the color map that was in the staff memo. (See attachments to the minutes in the May 09 meeting file for the handout and staff memo.) Joel presented the staff memo and information.

Tim asked about the timeline. Joel replied the restoration plan and vegetation is required to be done by Nov. 30, 2009. There was extra time for the removal of the treated lumber of the retaining wall. Mike Brooks said it was 2013 for the treated lumber and 2011 for the log [inaudible].

Mike Brooks gave some background on the plans. He thought the first plan, exhibit B, was done by someone behind a desk who hadn't looked at the property. He thought exhibit C was the next plan. He and Joel had talked about the plan at length, and other plans were produced as they communicated back and forth. With the Nov. 30, 2009 deadline, he thought he could have the plan completed, but the vegetation is different. He referred to the 3 zones on the color map. The slope is over 45 degrees. He said according to the zoning regulations, plants typically have been shown not to grow on slopes over something like 25 or 30 or 40%. Whatever it is, he's over it. He was building mini-terraces so if erosion happens, it's going to flatten out behind the terraces and he'll be able to plant something. If it doesn't erode, he may rappel down with soil or get it down some other way, and plant something. He wasn't sure he could hang there and dig. He can't have machines down there, so it's by hand.

He said it was not a winding 6' path in the plan, and if you saw the property you'd see that it couldn't be. He was trying to accommodate the County by listing it as both a road and a path. He thought whether it was a grandfathered road or path needed to be solved someplace else. He asked the Board to consider letting him plant what he could, which he thought was everything outside of 8'. He was concerned about the need for the path to meander.

Mike B referred to the colored map. He was trying to complete the green part this year. About half of the mini-terraces are in. He pointed out some changes in tree type, and that there are now 2 walls. He didn't want to put trees, which would be heavy, on fill behind a wood wall on the east side. He thought something with a root system that sucks up moisture and takes hydraulic pressure off that wall would be what was wanted, so he changed away from fir trees. On the

west side of the upper road, he would plant something, but wasn't sure exactly what. The road had the only flat spots, so that's where plants would have a good chance of survival.

Regarding the treated lumber in the 'pink zone', directly to the west of the treated lumber wall, he wanted to experiment this year on what it would take to take the wall out. He was successful in eliminating 20% of the treated lumber from the wall since January. He wanted to try to bring in a machine to work on this. The replacement wall of concrete has been made, with an aggregate stone look. His goal was to take out the treated lumber by the end of this year, and to take care of the green part of the map. He didn't want to plant stuff this year and then end up running over it later this year or next year.

The yellow zone was along the log retaining wall at the bottom of the 'U'. He was going to need to replace it in the next couple years and would like not to plant in that zone before the mystery wall has been figured out. In the green zone, he couldn't complete behind the wood wall. His neighbor still has moisture coming out onto the property from behind the wall. He talked with the Sanitation Dept about it, but it's not solved. Until it was fixed, he couldn't see buttoning up that wall on the east side and covering up where it's wet.

Tim asked Mike B what he was asking for. Mike B said he'd like to do three things. He'd like to consider the green zone this year's vegetation plan, as it is on the paper. He said the number of plants was the same, but different types of plants, in the green sliver on the east side of the wall and road. They weren't fir trees. Joel noted those were never fir trees, and listed dogwood, hackberries, ash, Aston fir and chokecherry. Mike B thought one of the plans had fir trees. He wanted to avoid tree weight behind the wall.

Secondly, Mike B asked the Board to approve the plan as written here to accommodate the different timing of the project. For instance, he'd like the leeway to go to the end of the project with the pink zone. Tim checked that Mike B wanted the vegetation plan to extend for 5 years along with the construction plan. Mike B said he'd like the green part to be for this year (Nov. 30, 2009). He didn't think the APEC plan was specific enough to his property. He'd like to until 2013 for the pink part, and Nov. 30, 2011 for the yellow part.

He pointed out the location of the Edwards potential septic violation on a map at Mike M's request. Mike M asked the date of the creation of exhibit B. Mike B guessed February. Joel clarified that was submitted by APEC in October 2008. Sue S added it was approved by the Board in January 2009. Mike M and Joel noted this was the one the Board approved, subject to conditions. Joel said the staff memo discusses the timeline. Sue S asked Mike B if he addressed when the path would be seeded. He replied that the road itself would be planted with grass seed at the end of every construction year, planting in the fall to come up in the spring.

Mike B thought there was still stuff he and Joel needed to talk about or adjust, based on today's situation. Joel pointed out on concerns he saw on pages 2 and 3 of the staff memo where the latest plans don't comply with the Board of Adjustment's approval, and the previously approved plan. Vegetation is gone. For certain elements of the plan, like along the roads, there seems to be agreement in certain locations, but then Mike B added things like a new timeline. Mike B said he didn't want to plant stuff he'd then have to run over.

Sue S asked if it would be helpful to the Board to go through the section of the staff memo where Joel has pointed out items that he feels don't comply. Mike M referred to conditions #9 and #11, which were not met. Joel detailed points listed on pgs. 2 and 3 of the staff memo. For #1 on pg. 2, 5 shrubs have been eliminated, which were some suggestions Joel had for creating a 6' wide winding path. Sue L asked if those were eliminated forever, or for the timeline until the project is completed. Mike B answered those would be eliminated forever. Sue S checked that he'd like to do 8' for the path, and not have it wandering. She pointed out that exhibit B that was approved in January doesn't show it winding. She asked if one of the conditions was to have vegetation along that path to make it winding, and 6' wide. Joel affirmed, within the 50' setback. Jack said then they weren't figuring on anything going down that road except [inaudible]. Joel was looking for compliance with the zoning regulations. Jack said he couldn't get equipment down there. Joel said he'd have to drive over shrubs in the 8 or 10 feet. Mike B said they could avoid future conflict if the County could agree on 8' to allow equipment to get down. Sue S pointed out that the winding wasn't just a visual thing. It's to control erosion and storm water management. Mike B agreed with her in concept but it was working with what they were doing on this piece of property.

#2 (staff memo, pg. 2) was related to #1. Sue S reiterated that what she heard was the pathway would be seeded, without shrubs, within that 6 or 8'. She asked how that compared in terms of compliance with what the approval statement from January said. Joel said it needed to be hydro seeded with native vegetation. He thought it needed to be brought to a maximum of 6' of grass, and winding. Outside of that 6', the area shown as roadway needed to be 50% vegetation with shrubs that would make the path winding. Sue L read a portion. Mike B said he would like to seed as they are now. When he's completed the plan, then it would be the time for a final hydro seed where they can get some tall grasses growing on the slope. They put in a seawall this year. Already, as expected, they have sinkholes behind the seawall, so for instance, they'll have to take equipment down there once in a while to tinker with the wall.

For #3 (staff memo, pg. 2), Joel referred to exhibit C and subsequent plans that speak to the ground cover and break it down to native grasses (5931 square feet), shrubs (100 square feet), and trees (48 square feet), of the 6079 square feet to count towards the percentage requirements. The percentage requirements of ground coverage were supposed to be trees and shrubs. Mike B thought the paper was 2 dimensional. He described something that plants don't grow on. Should this be counted as where they have to have bushes and shrubs, or should it be the shoulder of the road?

For #4 (staff memo, pg. 3) Joel explained this was regarding condition #11 and ground coverage and 40% shrubs and trees, in the disturbed areas outside the 50' buffer strip. [The revised plan] doesn't demonstrate compliance with the 40% ground coverage, and doesn't address 5-year maturity. These are the disturbed areas east of the buffer strip. Mike B said he could get the shoulder of the road that way. As far as the steep slopes, he didn't know. He thought it would be woefully short of 40%. He didn't want to water that bank. He asked what would grow in semi-drought conditions. Sue L pointed out the native trees and shrubs listed on the plan that are used to growing in those kinds of conditions. Joel noted the vegetation plan submitted after the

BOA meeting eliminated 2/3 of the shrubs. Mike B said the first plan was erroneous and did not reflect the ground.

Sue S asked if he'd sought the consultation of a qualified landscaper, who said he couldn't plant trees on that slope, or is he saying that he can't do it. Mike B said he couldn't do it. Sue S suggested they would like the opinion of a qualified landscaper that this could not be done. Mike B said he was going by what the zoning regulations said about what typical slope a plant could survive on. Sue S explained the way the zoning regulations are written, you shouldn't disturb your buffer that is on greater than 25% slope because it's impossible to revegetate it to that same level of vegetation. In context, it's saying if you have a vegetated slope of 25%, do not disturb it. In Mike B's case, the slope has been disturbed, and the idea is to get it back to a situation that complies. It was vegetated at one point. Mike B said it wasn't for about a year and a half. The birches died and rolled down the hill, wiping out the bushes. Tim highlighted that Sue's point is that stuff grows there. Jack said he would be a lot more comfortable dealing with a landscaper and a contractor that knew how to do these things and had experience doing them. Sue L didn't think APEC just pulled this out of their hat. Mike B clarified his point was the person putting the plants into the plan wasn't familiar with the ground, and his engineer didn't catch it. His engineer agreed that it had to be redesigned. Tim asked if he had a letter from the engineer saying that this plan was impossible to do, for some sort of basis for a decision. Mike B corrected that he didn't have that conversation with the engineer.

Sue L asked about the timeline and the different phases of construction. Joel didn't think it was appropriate to extend to 2013. Sue S thought it needed to be seeded or something. It shouldn't just be bare soil. She understood they didn't want to vegetate and then rip it out. The plan really isn't known. Mike B had said they've already designed these concrete walls and have those completed for the buffer zone. She was concerned if there was a problem with the height or materials of the walls. If Mike B could give a plan including what his intentions are with ripping out the treated lumber and also the log wall. Joel said they knew the log wall would not be done this year, so maybe it would be appropriate to not install all the shrubs next to the switchback. [Inaudible] at least showed the majority of the shrubs, and we should address how they're going to be done next year after the log walls have been replaced.

Tim said he'd like to see the same number, and if it can't be, he'd like a letter from a landscape architect saying why it can't be. He would like to see the same amount of planting; Mike B is saying that can't be done. If a landscape architect says he can't do it, then maybe they'd reconsider it. For the timeline, it made sense to Tim to not plant trees and then have to rip them out. Grassing would be fine, but some kind of end date, so a plan is needed on that. Mike B said he agreed about the landscaper, but this is the plan in front of them. Sue L agreed with Tim. The Board approved a plan, and it's been changed. It's a lot different than what was originally presented. To make modifications, she would be more comfortable having a professional landscape contractor/architect/designer say what cannot, in their professional opinion, be planted there, and reasons why. Then come back and discuss modifications to that timeline. No one wants to put in a big tree and rip it out, but the original plan and what was agreed to had been totally changed. She didn't feel comfortable with that.

Tim agreed with Jack on the 8' walkway. He thought the access was needed. Mike B said he'd plant it so you couldn't see it. Clarence said usually you don't want an 8' access. You don't want people continually running up and down launching boats, carrying [inaudible] for big parties. We don't want it to be a road. Sue L checked that it was in the 50' buffer zone, as far as being able to not continually use it as a road, but also erosion and filtration of any runoff into the lake. With a larger area [in the road], you'll have less filtration before anything can get down to the lake. The meandering helps with that. Clarence thought 2' didn't make a gigantic difference, except as far as access was concerned. Mike B said the only vehicles going down were to repair the bank or wall or whatever. Jack asked about the logic behind the meandering path. Joel said it wouldn't direct stormwater straight to the lake. Jack confirmed with Joel that grass would be in the path. Sue L said it gave more time for the water to divert if it has to make turns. There's more filtration and dispersment by meandering than a straight line. Joel thought more was intended than the wiggling of a 6' thing within this 8' plane. It was the best they could do with conditioning what was submitted. Sue S asked how wide the flat area was. Mike B guesses it varied around 10 to 12'. Sue said for 8' to meander in 12' width it would be difficult to have a significant meander.

Mike B asked what the Board wanted him to do. Mike M said to get an engineer or certified landscaper or such to come in and provide their opinion on the plantability of that slope, and what kind of vegetation can be planted there and hold. Then come back to the Board. He didn't know how to deal with the meandering road. Sue L thought they could deal with that, at that time. What the Board has in front of it, is does this vegetation plan comply with what was already approved. She said no. In order for changes, she would want to see an expert in the field say why. Tim said he would like to see the planting plan stay the same, until it's proven that it can't be. He wasn't talking about the timeline, which was the other big thing.

Mike M said he'd like to defer the timeline discussion until after they have more evidence on what can be planted and how it should be done. He agreed you don't want to plant shrubs or trees in that roadway if you've got to go down, and boards and planks still need to be removed, and maybe bring an excavator down to deal with the slope. Sue S suggested it might be helpful to have in writing what Mike B's changes for different timelines are, what his intentions are and why he's asking for that. Joel said there were a few things that did address the wall. Sue L said instead of just listing the colored areas, to give a specific reason why in, for instance, the pink area, he can't do these certain items. Mike B said the project end was Nov. 30, 2009 for all of the planting but not for the construction, which didn't make sense to him. Jack said the landscaper might tell him there are certain plants you can drive over.

Motion made by Mike Marchetti, and seconded by Clarence Brazil, to table this discussion until the Board receives further information as requested. Motion carried, all in favor.

Tim appreciated Mike B's patience. It's a very challenging piece of property.

Mike M repeated that the Sohlberg variance and conditional use has been postponed.

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