

LAKE COUNTY BOARD of ADJUSTMENT
November 14, 2012
Lake County Courthouse Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Mike Marchetti, Tim McGinnis, Paul Grinde

STAFF PRESENT: Joel Nelson, LaDana Hintz, Karl Smithback, Robert Costa, Lita Fonda

Mike Marchetti called the meeting to order at 4:00 pm

Motion made by Tim McGinnis, and seconded by Mike Marchetti, to approve the September 12, 2012 meeting minutes. Vote 2 in favor (Tim McGinnis, Mike Marchetti) to approve minutes, and 1 abstention (Paul Grinde). Mike asked if this was sufficient to approve the minutes. Joel clarified that the majority of those present at the prior meeting was required to approve the minutes. ~~There were 4 present at the September meeting so~~

DICKIE SETBACK VARIANCE—CITY COUNTY

Karl Smithback presented the staff report. (See attachments to minutes in the November 2012 meeting file for staff report.) Karl received a phone call from Jim Dickie this morning, who mentioned that the eaves weren't shown on the site plan and that he meant to say 13 ½ or 14 ½ for the height but showed 12 feet on the site plan. Discussion about eaves previously occurred when the applicant was in to submit plans and Karl thought it had included eaves.

Karl noted for #9 on pg. 15 that Jim Dickie's central idea was to locate the boathouse outside of the lakeshore protection zone, and since he would apply the 15-foot setback in the spirit of the lakeshore protection regulations that should mitigate. It also contemplated the 12-foot building height, so when a greater height was brought up this morning, Karl noted that what they'd talked about was having the project comply with the lakeshore regulations and having some continuity with what they were doing. He was still recommending a condition to require that the boathouse be constructed to no greater than 12 feet in height.

Karl highlighted b and c in the findings on pg. 17. The ball would be in the Board's court, because they were dealing here with an interpretation of reasonable use of a property zoned residential. On pg. 17, b was asking the Board about whether a boathouse was deemed necessary to a lakefront lot, such that without one, it wouldn't be considered a reasonable conforming use.

Karl highlighted some conditions and pointed out corrections. In #1 on pg. 19, the initial phrase should read 'All development and use of the lot shall be in accordance with the plans....' In #2, 'with' changed to 'will'. In #8 'managing' should be 'managed'.

Tim asked about attachment #3. Karl replied it was an elevation plan. Tim asked where the boat went. Karl explained there were no attributes of a boathouse that made it a boathouse pursuant to the regulations. The applicant wanted to store kayaks and water toys. LaDana noted it was lake related. Karl noted there was a concern that it looked like a guest cottage instead of a boathouse. That would be conditioned on an approval that there would be no living quarters or water supply.

Mike asked if the lakeshore regulations took precedence when there were seemingly competing documents of lakeshore regulations and community zoning. Karl said they were working with Polson Development Code (PDC) and lakeshore regulations. The lakeshore regulations governed the 20 feet adjacent to the lake, irrespective of adjacent zoning. There were zoning districts where they tried to establish the zoning regulations in concert with the lakeshore protection regulations, so there's some overlap in language. That may have been contemplated with the PDC but checking to see if the language fit together never really occurred. Mike asked specifically how that worked with the side setback, which was 15 feet for lakeshore and 30 feet for the zoning district. Those seemed to be in conflict. Karl said the argument that Jim was making was that within the shoreline buffer, it allowed those lake-related structures in accordance with state law. If it were within the 20 feet [of the lakeshore], it would need to be 15 feet from the side property boundary. However, there were issues with the lakeshore protections regulations that required boathouses to be set back 10 feet, which immediately if you had a boathouse greater than 10 feet in length, it would be outside the lakeshore protection zone. You've got a 15-foot side setback, but you've got a portion of the structure that had to be outside the jurisdictional area.

The applicant (or agent) wasn't present to make a statement.

Public comment opened: No comment was offered. *Public comment closed.*

Paul didn't see much sense in tearing out an existing retaining wall for a small structure like that. The neighbors seemed fine with it. Tim thought it was a reasonable use. Karl pointed out the question of B was not whether it was a reasonable use, but whether denying the variance would render the lot as having no reasonable existing use that would conform. A boathouse might be reasonable, but without it, was the current use also reasonable? Tim was okay with that; it didn't change his mind. Mike thought it seemed like a reasonable request, given the property on the lakeshore. He thought it would be prudent to allow them a facility to store their boats and water toys at a reasonable distance from the lake.

Motion made by Paul Grinde, and seconded by Tim McGinnis, to approve the variance request with staff findings of fact and stipulations. Motion carried, all in favor.

Joel clarified that the [September] minutes hadn't passed earlier because per 5.b of the Board rules. The Board shall review previous meeting minutes and approve, modify or table the Planning Department's draft meeting minutes. A simple majority of the Board

members who were present at a previous meeting may approve, modify or deny the minutes of the previous meeting. Clarence, Sue, Mike and Tim were there [for the previous meeting]. Three of those would be needed to vote in favor of the motion. So the minutes could not be approved tonight.

DAVIS DENSITY VARIANCE—Pablo Community Growth Area (4:18 pm)

Robert Costa presented the staff report. (See attachments to minutes in the November 2012 meeting file for staff report.)

Tim asked if the applicant wouldn't need a variance if they hooked up to Pablo water and sewer. Robert replied that Environmental Health's concerns would be resolved. Mike said it would still require a variance because it was a permanent living facility. Robert affirmed. There were two issues here. One involved Environmental Health's concerns. The other involved Planning concerns. The variance dealt with Planning concerns.

Shawn Davis spoke on behalf of the application. His in-laws were at retirement age. The septic and the well were existing when they put their place there. He was confused as to why the septic wasn't approved.

Paul asked if the trailer was always there and always hooked up the way it was now. Shawn said there had always been that septic and well. When they moved back about 10 years ago, they put a trailer there. The property wasn't split at the time. The septic and well served them for probably 8 years. He had the septic pumped and they didn't have trouble with it. He was curious why it didn't conform now. Mike asked how long the mobile home had been there. Shawn said it had been there a few months. Mike confirmed with Shawn that this was what was hooked up to the current septic. Once they hooked up the other house, was the other septic abandoned for a while? Shawn said when they put in a new doublewide and hooked into the city sewer and water, there was nothing hooked to that at that time. Once they sold their place, they put a trailer there and hooked back into it.

Public comment opened:

Jack Duffey asked what the answer was as to why the septic wasn't okay. Robert said he didn't have an answer. It wasn't a Planning concern. The wastewater regulations were enforced by the Lake County Environmental Health Dept. Planning was merely relaying the concerns. Donny Saisbury would be the one to talk with. He thought Donny had sent a letter.

Stephanie Davis said her concern was if it were a permanent stick-built house that would be there another 70 years. Right now, things were working fine and there was financial burden. It was kind of a hardship to have to redo something, and there were only two people living there. It was probably going to be a temporary situation. Tim checked if the mobile was not going to be titled. Shawn said no, it wasn't on a foundation. He didn't think they detitled them until they were put on a foundation. Shawn said the sewer ran parallel to the railroad tracks on their side of the tracks. He thought it would be pretty

easy to do his, but to go through the railroad to the street was a major concern. He didn't think there'd be enough grade to get to the street.

Mike understood the concerns. He thought Robert stated it succinctly that it wasn't within the Board of Adjustment jurisdiction to tell Environmental Health what they could do. Joel said there was the language in #3 that spoke to approval in a timely manner. If the Board didn't want to concern themselves with Environmental Health stuff, they could remove some of the language. Mike said that if the Board voted to approve the request, they would have to work with Environmental Health to resolve differences that they had. Joel said that per the current staff recommendation, it required them to work with Environmental Health in a timely manner. Mike asked Joel to define timely. Joel said this was another reason to remove that language. LaDana asked if Environmental Health would issue a violation. Mike said if Environmental Health already stated something, they would come back and say you've taken too much time and apply fines. Mike asked if the applicants had been given a date. Leona Frisk said she hadn't heard anything. Joel explained that what it said was if compliance wasn't obtained in a timely manner, that department would issue a notice. It was kind of a notification. It left the door open for the Planning staff to get involved because they did the condition. Mike asked if that would be an inappropriate condition.

Joel suggested they add '*for purposes of notification to the landowners*', and then leave the last sentence of #3 as it was.

Cheryl identified herself as a neighbor to the south. She supported the variance. It didn't change the aspect of the land in one iota. It was still quiet and peaceful.

Public comment closed.

Mike thought this variance was okay. He wanted to change the wording in #3 per Joel's suggestion.

Motion made by Mike Marchetti, and seconded by Tim McGinnis, to approve the variance with staff recommendations with a change to the wording of condition #3 on pg. 15 to the wording as stated by Joel, so 'For the purposes of notification to the landowners' would be added at the beginning of the last sentence. Motion carried, all in favor.

Motion made by Mike Marchetti, and seconded by Paul Grinde, to approve the variance with findings of facts, conditions and terms as written by the Planning staff and amended above. Motion carried, all in favor.

LUNDT VARIANCE—FINLEY POINT (4:35)

(Note: Lundt Conditional Use—Withdrawn)

LaDana Hintz presented the staff report. (See attachments to minutes in the November 2012 meeting file for staff report.) She highlighted that although both lots 13 and 14 were under discussion, the variance applied only to lot 14. She gave a correction to the

report to g. on pg. 12 where the number listed should be 78 feet rather than 79 feet. She added a condition that had been left out: *As approved by a variance, a lake frontage associated with lot 14 may be reduced to 78 feet.* That was just so it was clear on how far the frontage could be reduced.

Tim asked about the Exemption Review Committee (ERC). Joel answered that those were the designated agents of the governing body of the Board of Lake County Commissioners that reviewed exemptions from subdivision reviews, so boundary line adjustments, family transfers, etc. It was composed of the Treasurer, the Planning Director, the County Attorney, the Environmental Health Director and the Clerk & Recorder, or their professional level subordinates.

Mike asked if the Board approved this and ERC said no, then ERC overrode what the Board did. Joel said that ERC had the power to deny exemptions. There had to be reasons. It wouldn't really override what the BOA did. It would override the ability to pursue the boundary line adjustment. The ERC was established with the 2010 updates to the subdivision regulations. It used to be not much of a process. Previously, the planner would look at it in the checkprint review and made sure it complied with the evasion criteria in appendix L. Now it was in chapter 3 of the subdivision regulations.

Jack Duffey noted that area had been historically used by lot 14. It was the lower, flatter area with stairs down to it. The more southern portion was steeper so this had been a natural use for lot 14. Since both lots were under one ownership, this was how it was historically used and developed. On lot 13, there was a small, poorly built structure that was in the process of being removed.

Tim asked why they wanted to do the boundary line adjustment. Jack explained this would allow this dock area to stay with lot 13. That would reduce lot 14, which had its own dock developed. Mike checked that the reasoning was the boundary was very steep. Jack affirmed. The current boundary basically projected through the existing dock. Mike said it was inaccessible because of the steepness of the slope going down to the lake. If you moved the boundary line, you had easier access to the dock, and it was on that one piece of property. LaDana referred to the contour lines that Jack added. It was steeper on the other end of lot 13, so they couldn't really put a dock over there. It needed to be in the area where the common dock was at present.

Tim asked about the little bump out that was halfway up. LaDana replied that accommodated the house so they stayed in compliance with the zoning requirements. It would comply with the zoning with a ten-foot setback from the property line. She remarked that [the lot] looked fine for impervious surface coverage and would not need a conditional use for that. Staff were trying to make sure that a nonconforming property was not created. The house wasn't built to meet the setback requirement, which was part of the problems.

Mike checked about the surveying mark on the plat, and that the boundary line adjustment occurred about 2/3 of the way down. LaDana agreed. There was also the

little bump out to make sure the house would comply. Mike asked why bother with the bump out if the house was already out there. LaDana said the problem was it didn't comply with the 2009 permit. It was better to get everything cleaned up and into compliance now, if the applicant was going to do the effort of moving the boundary lines, especially if they wanted to sell the property.

(No public left to comment.)

Motion made by Tim McGinnis, and seconded by Paul Grinde, to approve the variance with findings of fact and conditions of approval, including condition #6: As approved by a variance, the lake frontage associated with lot 14 may be reduced to 78 feet. Motion carried, all in favor.

OTHER BUSINESS

Lita mentioned to the Board about a potential December informal holiday gathering (editors note: no business to be discussed).

There would be something on the agenda for next month.

Mike Marchetti, chair, adjourned the meeting at 4:52 pm.