

LAKE COUNTY BOARD of ADJUSTMENT
June 12, 2013
Lake County Courthouse Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Laverty, Mike Marchetti, Paul Grinde, Steve Rosso

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

Mike Marchetti called the meeting to order at 3:59 pm. He welcomed new member Steve Rosso to the Board.

Motion made by Mike Marchetti, and seconded by Paul Grinde, to approve the May 8, 2013 meeting minutes. Motion carried, 4 in favor (Clarence Brazil, Sue Laverty, Mike Marchetti, Paul Grinde) and one abstention (Steve Rosso).

Motion made by Sue Laverty, and seconded by Mike Marchetti, to adjourn into executive session to discuss a legal matter. Motion carried, all in favor. (4:01 p.m.)

Motion made by Mike Marchetti, and seconded by Sue Laverty, to exit executive session. Motion carried, all in favor. (4:17 p.m.)

WHITTAKER DENSITY VARIANCE (4:17 pm)

Joel Nelson presented the staff report. (See attachments to minutes in the June 2013 meeting file for staff report.) He noted on pg. 9 in 4.j of the report that the issue date was probably 2005.

Steve checked that the Density Regulations didn't specify that no alternative be available for the granting of a variance. Joel confirmed. Steve asked if the second home contained a kitchen. Joel believed it did, based on information from the Whittakers.

Mike referred to pg.9, 4.j and checked with Joel that the permit was issued a year prior to the listed date. He asked if that was before or after the Density Map was approved. Joel replied it was after adoption but prior to effectiveness. Sue checked the date should be 9/6/05 for 4.j and Joel agreed, based on the expiration date. Sue checked that they got DEQ approval for the 3 bedroom home, then came back later with the bunkhouse. Joel clarified that the bunkhouse was not attached to the same septic system. Exhibit D showed the parallel drainfields. Sue summarized there were two structures with two permitted independent septic systems.

Mike invited the applicants to speak. George and Millie Whittaker, the applicants, and their agent, Jack Duffey, spoke on behalf of the application.

George Whittaker described that the house was originally built for his parents to have a place to stay. It was built without a provision for a kitchen, other than a microwave. They added a stove and dishwasher after his parents passed away. They tried renting it out. They didn't want to be landlords so their son lived there now. It does have a functioning kitchen now. It wasn't built with a functioning kitchen.

Millie Whittaker referred to her written testimony in the staff packet. She reiterated that they never intended to be landlords. She felt the point was diverted to how the house came to be. For her, the issue was what to do with it now. The neighbors supported them. Their son lived there currently. If they could sell that as a separate unit, they would have a chance to correct those details. It seemed simple to her. When they got to the legalities, it got a lot more convoluted. They had a house that she couldn't take care of as she wanted to. It was never intended to be her responsibility or a rental. They weren't going to do something further with their property. Over the years, George was trying to do the right thing for his parents. They didn't want to look out the window in St. Ignatius and see another house, and now they did. So what did they do with it? She asked one neighbor about [inaudible] per Joel's suggestion, but they said no thank you. She didn't know what else to do.

Jack Duffey said it was unfortunate that this property was located in 40-acre density. The transfer of development right was not available. He noted that Joel suggested a variance. They were going for this variance as opposed to that one. Either way, a variance was required to get a division of this property. The site plan showed that if they did divide off approximately 2 acres of the north house, each house would have its own drainfield and well. The suggestion of both the Whittakers and the staff was for no further development, be it guest cottages or whatever. What was there, was what was there today. There were 2 houses there. If the variance were granted, this would be the first step. The hurdle would be Planning Board and the Commissioners and so on. In that process, they would address and clean up many of the items on pg. 11, #10 through 12. These would be addressed in the subdivision and sanitation review if they were allowed to proceed. According to the Whittakers, since George's parents passed away, the house had only been occupied for 4 out of the 7 years that it's been there. Their son was there currently but he was moving on shortly. With no further development, what was there was there, whether or not a line was drawn dividing into two separate properties. There wouldn't be increased dwellings or traffic from dwellings and the sanitation was in place. He thought that was a strong case for the variance.

Sue disagreed with the point that if it was subdivided there wouldn't be more impacts on traffic and buildings. It was supposed to be a guest house according to the regulations and documentation, which would be dependent on the main house. That meant it wouldn't be another full-time living situation even though it may have been used as such. By subdividing it, you would increase traffic since it would be another primary residence for someone else. It could have the potential for having more guest houses, garages and outbuildings, even if it's written into covenants that you're not supposed to do that. People didn't seem to read or understand their covenants and proceeded how they wanted, so she didn't think there was validity to that argument.

Steve agreed for the most part. It was a struggle for the Planning office to enforce some regulations. If the house returned to its proper use as a guest house in the future, the impacts were for a single-family dwelling on that 10-acre lot. If it got subdivided, there would be two full-time dwellings on that 10-acre piece.

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

Mike gave the applicants an opportunity to make clarifications. Millie W addressed the usage. In some way, it felt there was no control for the place when they tried to use it for something. They tried renters and they didn't want outbuildings on the property, or someone running a business, or used cars or things that would deter from the property value or look unsightly. It felt like that was going to happen one way or another. She thought if the house was vacant that they might have problems, including unsightly problems such as people leaving trash since there was a fishing area nearby. It was like there was no way to control it, if it was a rental or if it was vacant. They were trying to make it simpler.

Jack asked what difference there was between her son and his family living there as opposed to dividing it off, selling it and having someone else with a family living there. He thought it was the same thing. Sue said the intent from the beginning was that was not supposed to be--. Jack interjected that the governing body wasn't going to make them abandon or demolish it. It was there. George W said this was their dream property. He built the place to help his folks out and that need was gone. Right now it helped their youngest son temporarily. They tried renting it for a few months and they weren't going to do that. He hoped to split off the piece to recoup his costs for having built the house for his folks. If he couldn't do that, he thought his alternative was to bulldoze it to get relief on the property taxes.

Mike referred to pg. 15. He wondered if the spirit of the ordinance was being observed. The ordinances were there to protect the community. They were there for a clear purpose. Whether splitting this property would violate the intention of that zoning was what he was trying to get his head around. Was granting the variance contrary to public interest? They were talking about a zoning request for density that was developed by the community and the County. It was in the community interest to have that density upheld. Sue agreed with Mike. She appreciated the applicants' situation and commended them for taking in their parents. It was honorable. She agreed with Mike that it wasn't the spirit of the regulation. It didn't work. Subdividing off 2 acres wasn't in the spirit of the Density regulations and certainly wasn't in the spirit of the original subdivision of that property, which specified it wouldn't be subdivided further. The Board would be issuing a variance in contradiction to that. She didn't feel comfortable changing everything, not just a hardship based on the density map. There were a lot of other changes that the Board would be party to by granting the variance.

Steve said one of his concerns was if he had a neighbor with 80 acres who decided they wanted to subdivide into 16 lots and make some other 5-acre lots in that same

neighborhood. The Board would be in a difficult position to deny that request if they granted this variance. That in itself would have a major effect on that neighborhood, the community and the intention of that neighborhood. Mike said they would set a precedent that would change this community in the future if they were to allow this. Sue noted if it were cleaner, it might be a different issue. It was a difficult one.

Clarence said he could certainly see where they were stuck. He took his own son in for two years, and he was lucky that he had legally rentable places. His son lived there for free but Clarence was still paying the taxes. He could see where it would be really difficult to own a piece of property that you couldn't do something with. You were still paying taxes on it. Sue observed that plenty of people came to this Board requesting variances to their guest houses to allow for family members to live there on a full-time basis because they needed to. To her knowledge, the Board had always granted those variances to allow the full-time living. Clarence saw that. When you spent twenty or thirty thousand dollars building the structure and your parent died, the thing sat there and there was nothing you could do with it. He also understood the rules and regulations. They worked on those for many months. They worked on the Finley Point zoning regulations for over 10 years. There really wasn't an answer.

Paul said his thought in support of this variance was that the two adjoining 80-acre parcels were Tribal. He checked that those were not regulated. Joel replied they weren't regulated by the Density Map and Regulations. Paul thought those could turn into town sites, possibly, and there went the 40-acre density. George W said the Tribe dug test holes on the property across the street from them. Mike asked that George let the Board ruminate at present. Paul described his other thought was that if this variance was passed it still had to go to Planning Board for subdivision review. Mike added that it had to go through DEQ review again to make sure things were in compliance. Joel said there were potentials for exemptions. He thought it would at least need some sort of rewrite.

Clarence said technically the house was there. Moving in another family would not impact the County to a gigantic extent. By the same token, it screwed up what they'd done for 10 years with the regulations. Sue said that even if it had nothing to do with the Density regulations, it was recorded on the plat that it was not to be subdivided. How did they, as a Board, have the authority to say that didn't matter? Clarence said they weren't making that decision. It would still have to go through subdivision and planning. Joel pointed to condition #3, where prior to submitting preliminary plat application to Lake County but after preapplication review, the owners shall formally request an amendment to the subdivision approval to allow the property to be further subdivided contrary to the original approval, and the covenants shall be amended accordingly. He'd want them to do a preapplication first so they could look at other issues that might come up. He would want them to get a recommendation from the Planning Board and approval from the Commissioners [on the amendment] before they invested more efforts into this. The covenants could be amended after they actually filed a plat. It would require Commissioner approval to change the covenants.

Clarence said they tried to make laws to cover the general population. They couldn't make a separate law for every piece of property in the County. They had to try to put themselves in these positions and do what they could, legally, to make recommendations for each lot as it came to them. There were a lot of lots. What would they do if they were in these people's position? Sue noted that she had a guest house on her property. It just sat and did nothing. Clarence said maybe her financial situation was different than theirs. Sue observed that would be a personal thing. It wouldn't be that because she had an unoccupied guest house or one she couldn't rent, she should be able to subdivide and sell it. She didn't know that there was an argument there. Clarence replied that he had a property that wasn't a guest house. His son lived there for free. Clarence had to pay the taxes and insurance. If he had a changed financial position, he wouldn't have been able to pay the taxes on his own house. If you got to the position where your income didn't allow you to do that, what would you do? Sue thought she would have to sell the property and find something that she could afford to live in. She would have to look for different options, either rent out the entire parcel so she could afford a smaller parcel to rent, or she would have to sell. Clarence said he would also have to do that. Sue thought most people would have to do that, or let it go back to the bank and you'd still be without a house.

Motion made by Steve Rosso, and seconded by Sue Laverty, to deny the application, with the findings of fact in the staff report and conditions. Motion carried, 3 in favor (Mike Marchetti, Steve Rosso, Sue Laverty), one opposed (Paul Grinde) and one abstention (Clarence Brazil).

Joel checked for other motions. None were offered. Mike concluded the item.

BAUMGARTNER VARIANCE & AMENDMENT—FINLEY POINT (5:14 pm)

LaDana Hintz presented the staff report. (See attachments to minutes in the June 2013 meeting file for staff report.) Jim Decker assisted by pointing out features on exhibit 3. He offered further explanation about the exhibit. LaDana suggested an additional condition: "All stone facing of the retaining walls shall occur before the final property inspection occurs to ensure this condition has been met in order to minimize visual impacts resulting from the development."

Steve asked about the width of the stairway to the lake. LaDana said it was three and a half feet or four feet wide. Steve concluded it was less than the 4-foot limit in the lakeshore protection regulations. LaDana thought the project would comply with the lakeshore regulations. They also had a lakeshore application in to resolve any other issues that tied into the lakeshore area. That application was being processed simultaneous to these. Steve asked where the high water mark was on the drawings. Jim Decker outlined this on the posted drawing, on which points were clarified between Steve, Jim and LaDana. Steve observed that the area available for a buffer zone was behind the concrete. LaDana explained they put in the retaining walls to stabilize the slope. They would plant areas, which she indicated. Steve asked about the change from rock to concrete in the plan. Jim explained the idea was to match the stone in the foundation. They found the soils weren't stable enough; it was better to do this [with

concrete] and face it with stone that matched the house. Steve looked to see if there was room for a vegetative buffer between those retaining walls and the lakeshore, and there wasn't. What kind of shoreline did the neighboring properties have? Did they also have concrete retaining walls? LaDana said yes, there was lots of concrete on the neighboring properties. The water was really deep. It wasn't the kind of location where you could have a vegetative buffer right to the water.

Jim Decker, agent for the applicants, spoke on behalf of Patti and Charlie Baumgartner, who were also in attendance. He outlined some history of the project, which began when the Baumgartners approached him with the problem of stormwater that ran into their front door and came out the basement to the lake. He encouraged them to tear down the existing home and start over. They opted to do this, knowing [the new home] would be a home that their family could continue to enjoy safely. They got a previous variance, 2010 and 2011, that enabled them to put a modest home, 1000 square feet per floor, on the property. Their builder suggested ways to access the lake from the front of the house and further control the erosion. They agreed. The builder did a great job with the finishes and aesthetics, but he didn't consult the Planning Dept. By attaching the [retaining walls] to the house, he threw everything out the window. The building was no taller and no closer than previously. It was just that these were attached. It didn't have an adverse effect on the neighboring properties. They reviewed the current and proposed conditions and had no issues with them. He respectfully requested their approval.

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

Mike recommended that the Board add the condition that LaDana suggested to the staff recommendation, with the wording as proposed. He asked if anyone had an issue with adding that. The Board offered no objection, and he directed LaDana to provide the wording.

Motion made by Paul Grinde, and seconded by Sue Laverty, to approve the variances with staff findings of fact and recommendations. Motion carried, all in favor.

REDMOND VARIANCE—FINLEY POINT (5:48 pm)

Paul Grinde recused himself from the vote on the Redmond variance.

Robert Costa presented the staff report. (See attachments to minutes in the June 2013 meeting file for staff report.)

Steve commented on #10 on pg. 15, regarding impervious surface coverage in the last paragraph. He thought the impacts of impervious surface coverage would include all of the impervious surface, whether it was inside or outside the buildable area. He thought that typically there was no impervious surface allowed outside the buildable area. It seemed reasonable to do the calculation that Robert had done, but because 90% of this development was outside the buildable area, 90% of the impervious surface hadn't been included. Robert said that was correct. It was based on the way the regulations defined

impervious surface. Steve asked if Robert knew the actual number for impervious surface. Robert did not know this outside of the definition of the regulations. Steve commented that the impacts of the impervious surface were considerably higher than what had been put on there. Because it was so close to the lake, this was a serious consideration that had to be made.

Steve referred to concrete under some decking where the new stairway would go, in figure 4 of exhibit 4. Would that be removed? Robert replied no, this was all wooden decking. Steve affirmed with Robert that it was wooden decking and walkway that would be removed in that area. Sue checked on which walkways were to be removed and put in. Robert said the submitted plans didn't show the existing. There was additional decking and stairway if you headed slightly NE. Further discussion and clarification ensued with the pictures. Robert clarified that no construction had occurred on the structure since January.

Mike checked that Robert reviewed the stormwater management plan, and Robert affirmed. Mike asked if the 50 and six 55-gallon barrels would be enough to satisfy the runoff from the roof and eaves and such. Clarence asked about the composition of the 55-gallon barrels. That was a standard oil or gasoline barrel. He asked if they would rust away in 5 years. Robert asked Roland Redmond to speak to this. Roland explained these were commercially available, plastic rain barrels, made of heavy duty PVC plastic. Sue and Mike noted that Murdock's sold them.

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

Motion made by Sue Laverty, and seconded by Clarence Brazil, to approve the variances with staff recommendations, findings of fact and report. Motion carried, 4 in favor (Clarence Brazil, Sue Laverty, Mike Marchetti, Steve Rosso). (Paul Grinde recused).

HEFFERNAN CONDITIONAL USES—FINLEY POINT (6:07 pm)

Paul Grinde recused himself from the vote on the Heffernan item.

Karl Smithback presented the staff report. (See attachments to minutes in the June 2013 meeting file for staff report.) He clarified with #2 on pg. 18 that it didn't allow 14,800 square feet of slopes to be disturbed. It just allowed slope disturbance within that 14,800 square feet. On #6, this was a requirement of zoning. It allowed some latitude from the landowners.

Sue asked for clarification. There were 3 lots. The guest house conversion was on one lot. The house would be on the same lot? Karl affirmed. He explained that the 3 lots were subject [to the plan] because the driveway made one turn and passed through the other two. Sue confirmed with Karl that the 3 lots were 9.94 acres totaled together. Karl added that most of the development was on the back of the largest lot, which was over 7 acres. Marc Vert (agent) noted that the Heffernans purchased another lot next to it, which made a total of almost 10 acres.

Duane Smith, an agent for the Heffernans, requested approval. Marc Vert, another agent, thought if they looked at the big picture, it was such a large lot and timbered, that the effect on the neighbors was very minimal. He reported that two neighbors were present earlier in the meeting in support of the project. The overall impact was very minimal because of the wooded area and the size of the lot. Most of the construction was happening in the core of the area. Clarence asked if they intended to build anything else on those lots in the future. Duane responded no.

Steve noted that non-paved roads weren't required to be used in the analysis of the impervious surface coverage. In fact, a properly graveled, compacted road had a lot of runoff, probably 90% of a paved road. With the section of road that went around the old home proposed as guest house and got closest to the lake, he asked Marc if [that portion of road] would be sloped so the runoff would go to the side of the road away from the lake. Marc thought the road was 300 feet from the lake there. Karl mentioned there were two curves in the road. Steve and Marc pinpointed the area of Steve's question on the map. Marc said it was possible to grade it so it shed away from the lake. There was a concrete wall with a cap along that entire thing. He referred to a buffer zone. There should be no way for runoff to get in. It wasn't very steep. He further described the area with the map. Steve mentioned that with those concrete retaining walls, often the water would soak in the ground and go underneath and into the lake. Marc described rock and filter cloth used to keep that from happening. Steve commented any ability to minimize runoff from the road that might go towards the lake would be great [to have]. Duane said they were applying for this because the current road wasn't up to par and was super steep. By redoing this, that issue would be solved. They would put in adequate retaining walls and all that. They wanted to do it right.

No members of the community were present to offer public comment.

Motion made by Mike Marchetti, and seconded by Steve Rosso, to approve the two conditional uses including staff recommendations and findings of fact. Motion carried, 4 in favor (Clarence Brazil, Sue Laverty, Mike Marchetti, Steve Rosso). (Paul Grinde recused).

RICHARDSON CONDITIONAL USES—FINLEY POINT (6:17 pm)

Robert Costa presented the staff report. (See attachments to minutes in the June 2013 meeting file for staff report.) He confirmed with Ralph Lasche, the agent for the applicants, that he looked into the area indicated as 25% slope on the site plan that Ralph asked him to check, and the area was flat. That was included in the buildable area calculations

Steve asked how the stormwater was handled now on the asphalt drive. Robert answered the applicants proposed possible infiltration chambers for the drive. The drive was not being reviewed as part of this development because it was existing. Steve saw the [infiltration chambers] on [the plan]. Ralph highlighted some details on the plan. Those would be included with this development.

Mike confirmed with Robert that the surface was pretty flat. His concern if it wasn't flat was that you'd have to trench to put in the runoff chambers, and you needed to be very careful about runoff during the construction period. Robert noted they proposed Best Management Practices (BMP's) regarding construction and stormwater drainage during construction.

Ralph spoke on behalf of the application. There were no other structures besides the main house and the boat house. The living space was on the second story of the garage. He asked for clarification on the square footage used. Robert said the site plan showed 1,858 square feet. Ralph replied the building was 1,200. Robert pointed to exhibit 5, on which the square footage was based. Ralph said the footprint was 43 x 28. Joel pointed to the roof area in exhibit 4, which specified 1,858 square feet of roof area. Ralph said he had an elevation of 25.5 feet on exhibit 2. Robert checked that Ralph was saying the proposed guest house would be 1204 square feet of living space, based on the 43 x 28 measurement he mentioned. If that was what he wanted to propose, the Board could consider amending the recommendation so it was 1,204 square feet of living area for a guest house. This would still require a conditional use. Ralph said the previous house burnt down. The house would be no larger a footprint than the previously existing one. You could see they'd reduced the surface area that was there before, with less patio and the like. It would also now conform to setbacks, unlike the previous building.

Steve confirmed with Ralph that the shaded area on the drawing was the old building and patio. Ralph commented that everything was a bump-up in improvement from the previous building. Ralph reported when the house burned down, the neighbor said he just improved his property value. Sue checked that the living area was above the garage. Ralph said the 1st floor was all garage.

Steve noted that since the square footage was smaller than they thought, that would also change the percentage of impervious surface. Robert asked where Ralph thought Jill Todd, who prepared the stormwater management plan, got the 1,858 square foot figure. Ralph had no idea. Robert checked for eaves or decking that would increase beyond 1,204. Steve thought it might have eaves. The drip line might be bigger than the 1,204. Robert clarified that they were trying to figure out what impervious surface area was being proposed by Ralph. Mike referred to exhibit 4, which specified there was 1,858 square feet of roof area. That's where they got the 1,858. Ralph said [inaudible] the statement of living space. Robert turned to pg. 22, #1 where the Board might wish to consider amending from 1,858 to 1,204. The impervious surface area would remain as listed.

Ralph mentioned exhibit 2. Robert explained based on what had been submitted, there were some changes in the numbers. Ralph agreed with Robert that [the building] would be no higher than 25.5 in height on all facades. Robert said they could amend the height as well. Sue asked if the Board would amend condition #5 on pg. 22. Mike suggested taking out #5. Robert recommended it would be best to amend it and restrict them to what they proposed for the building height. They could keep the last sentence in #5,

removing the rest, and change the number from 30 to plus or minus 25.5. Ralph asked what happened if some change occurred in the roof design. Robert said they would come back to the Board.

Steve asked why the number didn't read 30 feet, since that was what the zoning regulations said. Robert said that typically this condition would say the structure shall not exceed 30 feet and shall be built to an average building height of 25.5 feet so it restricted the applicants to what they were proposing. If that changed, the applicants needed to come back and amend the record so that was reflected. Ralph asked if it was possible to say less than 30 feet, since this was a preliminary drawing and since ideas change over the months. He asked if it was feasible to say that he'd like to elevate the roofline right now. Joel said the public should have a reasonable expectation for what was reviewed by the Board and for what the public came in and looked at in the public file. He thought it would be better to limit it to at least reflect these drawings. Steve checked that the slab was at grade. It might be a few inches above grade for runoff and snow anyway. Maybe it should read 26 feet. LaDana noted the 25.5 was approximate. Joel asked if they wanted to say 26 feet for a little more wiggle room. Others agreed. Mike asked if wiggle room would be good for #1. Sue said Ralph knew what the footprint would be. Paul said he was building off an existing slab. Ralph said everything was gone. The house wasn't any larger than the previous one. The house now accommodated present setbacks. Sue said she was comfortable with the 1204.

Mike summarized there were 2 changes on pg. 22. Lita verified with the Board that in #1, 1,858 changed to 1,204, and in #5, 30 changed to 26 and everything but the last sentence was eliminated.

(Note: No public present to comment.)

Motion made by Mike Marchetti, and seconded by Paul Grinde, to approve the conditional use request with 2 modifications to the conditions on pg. 22. Condition #1 would reflect 1,204 square feet of living space (changed from 1,858) and in condition #5, the structure shall not exceed 26 feet (changed from 25.5). The approval would include all staff recommendations and findings of fact. Motion carried, all in favor.

OTHER BUSINESS (6:41 pm)

Karl noted it was his last Board meeting, as he was returning to Wisconsin.

Mike and Clarence mentioned potential upcoming schedule concerns.

Steve asked the identity of the vice-chair for the Board. Mike said that it had been Tim McGinnis, so they did need a vice-chair.

Motion made by Mike Marchetti, and seconded by Steve Rosso, to appoint Sue Laverty as vice chairman. Motion carried, 4 in favor (Clarence Brazil, Steve Rosso, Mike Marchetti, Paul Grinde) and one abstention (Sue Laverty).

There would be Board items for July.

Mike Marchetti, chair, adjourned the meeting at 6:46 pm.