

LAKE COUNTY PLANNING BOARD
Sept 11, 2013
Lake County Courthouse, Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Sigurd Jensen, Steve Rosso, Rick Cothorn, Roland Godan, Bob Stone

STAFF PRESENT: Joel Nelson, LaDana Hintz, Robert Costa, Diana Cornelius

Steve Rosso, acting chair, called the meeting to order at 7:03 pm.

Robert offered a correction to the August 14, 2013 minutes, where on pg. 3 in the last line the person who answered no was Joel. Roland didn't recall seconding a motion on pg. 6, first motion of the page; no correction was suggested. Joel noted a typo on pg. 6 in the heading at the bottom of pg. 6 where DISTRICT was misspelled.

Motion by Rick Cothorn, and seconded by Sigurd Jensen, to approve the August 14, 2013 meeting minutes as corrected. Motion carried, 4 in favor (Steve Rosso, Roland Godan, Rick Cothorn, Sigurd Jensen) and 1 abstention (Bob Stone).

POLER LAKESHORE VARIANCE REQUEST (7:06 pm)

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2013 meeting file for staff report.) He mentioned the applicant might have an agreement with the southwestern adjacent property owner, which Lisa Poler might wish to address when she spoke tonight.

Roland referred to the second bullet towards the bottom of pg. 5. Was there a definition for 'adequate'? Robert explained that went back to the setback of 25 feet. Roland confirmed with Robert that per the schematic for the dock, they were at 480 square feet, which was 80 feet above the amount allowed by the regulations.

Steve asked about the 2nd paragraph on page 6. If two adjoining lots decided to build a common dock to provide an ability to meet the setback requirements, could they also use both frontage feet to get the surface area for the dock? Robert agreed that they could and would. He wasn't quite sure how that would work out. A caveat was included on pg. 6 and 7 that this alternative had not been reviewed. The standard would need to be addressed, whether or not it required a variance. Steve commented that if the property lines came down at an angle to the shoreline with a perpendicular distance of 50 feet between the property lines, there was a possibility that there was more than 50 feet of shoreline. If the regulations allowed 8 square feet per foot of shoreline, it would be good for the owner to measure the actual shoreline at full pool from property line to property line. They might be allowed 480 square feet of dock. Robert said this was possible. He measured this based on the deed exhibit of record, using their scale. It was approximately 50 feet. If they were to get a surveyor to measure it out, they could work with that. Based on what was of record, it was 50 feet. He wasn't sure what sort of difference there might be, or if it was worth the cost for the surveyor to the applicant.

Lisa Poler spoke on behalf of her application. She invited questions. Steve said one of the issues was placing a dock at all due to the width of the shoreline. Given the setbacks, the dock width would be zero. With the 10-foot wing, the width became 18 feet rather than the 8 feet of a straight dock going out. Pertaining to Canal Bay and the rough water that came in from the south, with placement of a wing on the north side of the dock, you could tuck behind the wing [away] from the direction of the wind. He asked her about the design. She referred to someone else, who said the water was pretty shallow in there so that was why [the length] was 50 feet. To swing around an L would put you too shallow. Lisa added there wasn't water there for 3/4 of the year. In the summer it was an extremely shallow spot. She had to get out quite a ways to even put her motor down, so that was way she was careful on that side.

Steve asked if it would be acceptable to her to have a dock without a wing. Lisa replied this would be a possibility. The biggest problem for her was that if she didn't have a dock, she wasn't able to use her property. Buying the little piece was a big dream for her, and she'd assumed that she'd be able to do this to be able to get out there on the water with a boat. It was a challenge. She was open to possibilities. When she bought it, it was to have a piece of property that she could use on the water.

Roland asked what her feelings were about a shared dock with the neighbor to the south. Lisa replied there was some writing in a recorded document. However, that property owner built a very large dock to which she didn't have access. Steve confirmed with Lisa that this was the property immediately to the south, owned by Brent Zubot. She mentioned that his dock was near Rick Weaver's, who barely had enough room to get his boat in there, in between the docks. It didn't seem feasible at this point.

Roland asked Lisa about the alignment of her dock. It was parallel with the boundary lines, yet 20 degrees skewed with the shoreline. Lisa deferred to Brett. He said the riparian line would be straight off the shore. He referred to Steve's drawing and the dashed line. Could they follow that? They assumed they had to stay with the property line in the water. If they could come straight out to shore, they'd prefer to do so. Roland said they had discussed whether or not they could do that because they were in essence putting posts in the neighbor's property. Brett said they knew that wouldn't be allowed. They needed to keep on the property that was there. They set for a mooring buoy a few years ago. They had to follow the line that was allowed. For the record, there was no distance [shown] but the dock was assumed to be right in the middle of the property, with equal distance on both sides. Roland thought the end of the dock would end up in slightly deeper water if they rotated it counterclockwise about 20 degrees and at the same time stayed within the physical property line. Lisa checked that he was talking about the pin out in the water. Roland mentioned the dock wasn't drawn to scale on the picture.

Steve checked if Lisa had more to add or if there were further Board questions. Lisa said this was very important to her. She was open and willing to work with the Board. She wanted to get this resolved. Her boat sat on the shore for the last two and a half summers. The boat was chipped from sitting on the rocks. She said just to let them know what they needed to do. She referred to Brett regarding math and scale questions.

Roland asked if Minerva Carson was the property owner to the northeast. Lisa hadn't met her and assumed the same. Roland pointed to Minerva Carson's concerns about the dock as shown impairing her ability to access her property with a boat. Lisa didn't see this as an issue. That property was a huge chunk. Robert said it was 500 feet of frontage. Lisa observed that fishing boats came in sideways. She didn't see that would be an issue. Roland said there could be a sandbar or rocks or something that wouldn't appear in a drawing. Lisa noted it was shallow like it was in front of her property but there was no access problem that she could see. She and Roland looked at and discussed the property line location with respect to the pictures on pgs. 2 and 3. Roland clarified that he was trying to understand the neighbor's concern about how her access to the shore might be affected. Lisa understood and wanted to help.

Public comment opened: None offered. Public comment from the door closed.

Steve expanded to the public comment included in the staff report, specifically the letter from Mimi Carson, the neighbor to the north. In the letter, issues were brought up regarding Mimi Carson's neighbor to the east on the opposite side of the bay from Lisa, and a problem she had with a dock that was put in there. He asked if the applicants were aware of that issue. Lisa was not. Steve was aware of the situation and history. He knew the family that owned that piece of property. He talked about his drawing, which was posted on the board and was based on one that he downloaded off the Internet. He highlighted features on the map. The family built the dock within the riparian boundaries, but it crossed the real property line. Even though the dock was permitted and met the lakeshore protection regulation requirements of setbacks from the riparian boundaries, Mimi Carson took the family to court to get the dock removed. They could not come to an agreement outside of court, and ended up having to cut the dock off. It was cut a few inches from the real property line, so they weren't required by the courts to have a setback from the real property line; they just could not cross it. The County hadn't addressed this specific issue in the lakeshore regulations. Setback from real property lines wasn't discussed, just from riparian boundaries. He thought it would be a mistake for the County to permit a dock that met riparian boundary setback issues without considering where the real property boundaries were on properties platted to the low water mark. When the Board discussed this and when this moved on to the Commissioners, he hoped there was some consideration for the dock placement to both meet the regulations and to meet the legal requirements to be on your own property and not cross onto the neighbor's property.

Robert pointed to #19 of the recommended conditions of approval on pg. 9, which touched on Steve's concern. He noted that Steve was right in that the regulations didn't address whether it was on or off the property, and it was outside the planners' ability to verify that. They didn't know the exact distances. The applicant requested a riparian boundary setback variance. It was possible that the applicant could angle the dock such that it encroached on both sides of her riparian boundary but still stayed within the property boundaries. They didn't have distances yet. It was still a possibility that they could encroach but still angle it in a way, if it would work for the applicant in accessing the boat.

Roland commented that the property to the north was large. The property to the south already had an established dock fairly close to the southern portion of this property so he thought the chances of another dock being put in and facing the same circumstances on that parcel seemed

slim. Robert wasn't sure. He wouldn't entirely discard the possibility of something right on the boundary between the two properties, maybe 4 feet on each side. He understood the applicant's hesitation to do that. Additionally, in order to access that dock, she'd also have to take out a lot of vegetation, which maybe wasn't desirable. Roland asked about the spirit of the ordinance in the first place. He guessed that if there were a bunch of 50-foot properties, people didn't want a bunch of docks with little room between them. Robert thought the intent would be moreover that if there were 200- or 300-foot properties, neighbors weren't encroaching on each other and accesses were kept as open as possible. He didn't think the regulations contemplated a case with a property with a 50-foot wide property. This was an odd case where the property didn't fit the regulations exactly. Roland thought this wouldn't create a blight or impair someone's enjoyment of their property. His issue with this was there were two things requested: variance from the setback from the riparian boundary and the size of the dock. The size of the dock in relation to the lot was quite a bit out of range. That might be a slippery slope to grant. Brett said that [480 square feet] was a wish list since they were going for a variance [and they could go with 400 square feet].

Roland said he didn't know dock construction, but a 7-foot wide dock would have a lot less square footage than an 8-foot wide one, in interest of trying to preserve the L-shape. He thought there might be some room to play with the size and shape of the dock to keep within the 400 square feet. Brett said you could go 6 to get out there. He asked if the L with the 18 feet was even a consideration given the 50-foot lot. He thought the 8-foot would be adequate. Roland thought once the riparian bubble was burst, it didn't make much difference, considering the large lot size to the north and the established dock to the south. He was going towards a compromise of maybe not granting the impervious square footage variance in lieu of changing the dock position and size.

Steve thought when they worked on a variance, they looked for the minimum allowance that was required to overcome the hardship. There was a difference in going 2 feet versus 18 feet closer to the riparian boundary. Ideally to minimize the impacts to the neighbors and restrictions to navigation, you'd go straight with an 8-foot wide dock with no L on it, in the middle between the two riparian boundaries to minimize the encroachment into the setback. He thought with the experience of the neighbor to the north, it would also be important to make sure the real property boundary under the water was not crossed. There was no setback from that boundary. He didn't know what it would cost or how much the dock cost would be affected to hire a licensed surveyor to determine the riparian boundaries perpendicular to the shoreline where your real property boundary crossed the shoreline and to locate the real property boundary. Someone quipped that the cost would be less than court fees. Lisa noted one of the pins was in the ground right now. She could see it [in the shallow water]. This was the one to the south. The one to the north would be more critical. She thanked Steve for the suggestions.

Steve was concerned about condition #19. He was more comfortable if the wing was dropped. He checked if there was something in the conditions that described the existing plan for the dock regarding the shape of the dock. Joel noted #5 spoke to the breakwater portion of the dock. Robert explained this was measured based on the stem. He checked that this was the inside of the L as opposed to the outside of the L. Robert confirmed.

Steve wanted to change #5 to say there shall be no breakwater portion. The dock would be straight to maximize the setbacks from the riparian boundaries.

Brett asked if it was still called a breakwater when it was an open flow-through dock. Robert said yes and explained further. Lisa said if the L was gone, it was open. Steve explained the nomenclature in the lakeshore protection regulations used the term, so they did too. That helped with the square footage too.

Steve commented in the proposed new regulation draft, they limited the impervious surface in order to control storm water. Over water, stormwater control didn't make much sense. When you shaded the bottom of the lake, you did change conditions for vegetation and other kinds of natural processes that took place. Building too big of a dock did change the ecology of the lake a little bit. That was why that limit existed.

Robert asked Steve for specific language for *condition #5*. *Steve said it should read that the design as proposed shall be built with the exception that there will be no breakwater wing on the end of the dock*. Robert agreed with Steve that it worked to call it a breakwater portion instead of a breakwater wing. Someone suggested adding for clarification that would bring them within the square footage.

Steve pointed to condition #11 on pg. 9 for the square footage. *Condition #11 would be changed to 400 square feet. Joel added 'as a result of the breakwater portion of the dock' for #11*. He noted the Board hadn't been asked for a recommendation on the breakwater or impervious surface. Steve agreed. This condition was in there and needed to be corrected.

Steve moved to *condition #19*. *He would like that to read that the issuance of this permit allows the applicant to construct the subject project only within the riparian boundary of his property and the real property boundary.... Robert changed 'his' to 'her'. Lisa expressed appreciation. Steve continued that it would go on to read that this permit shall not be construed as verification that the subject property is within said riparian boundary or real property boundary. He wanted to add another sentence in #19 that would read to the best of the applicant's ability, the dock will be located in such a way to maximize the setbacks from each riparian boundary.*

Steve next highlighted condition #4, which they couldn't address without doing some engineering work. Robert clarified that the X's were in places where the number of feet would be provided by the applicant in a drawing. He didn't expect that those would be filled in tonight. He could potentially add other conditions or modifications depending on what the applicant comes up with as a result. What the Board proposed would be modified and kept in.

Roland asked about the layout. If the dock was rotated slightly to be more perpendicular to the shoreline, one end would move somewhat towards one riparian boundary and away from the other because of the angle. Which was worst? Steve thought since the riparian boundaries were perpendicular to the shoreline, if the dock were also perpendicular to the shoreline and in the center of the lot then it would be equal distance from each riparian boundary. You'd be close to the real property boundary on the north side and would have to be sure not to cross it. If you got within a few inches of it, you had better know where it was.

Motion made by Steve Rosso, and seconded by Rick Cothorn, to approve the variance to the setbacks for the riparian boundary with the changes in the conditions of approval that have been discussed, and adopting the findings of fact from the staff report. Motion carried, all in favor.

Steve noted the applicants would work out with Robert what he needed. Brett said they'd check on getting the survey before low water. They'd definitely like to have the survey. He noted that the dock of the neighbor to the south went into open water, and he pulled in from the south.

FINLEY POINT ZONING DISTRICT & REGULATIONS PROPOSED AMENDMENTS
(approx. 7:58 pm)

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2013 meeting file for staff report.) He prefaced by noting this was the same thing they'd brought for the Upper West Shore Zoning District, regarding the requirement regarding text amendments for the amendment procedures. Bob S confirmed with Robert that [the proposed amendment] was less burdensome for the amount of input needed to propose an amendment. It would go from 65 % to no one other than the land owner proposing the amendment. Robert returned to the staff report.

Robert addressed a recommendation that the Planning Board made to the Commissioners when this amendment came through for the Upper West Shore Regulations for the removal of a condition that the Commissioners ultimately ended up including. This was in X.B.1.c on pg. 18 of the current report, where the applicant shall provide the names and addresses of all property owners adjoining the proposed amendment area. The Planning Board recommended removing this in April, and the Commissioners disagreed and included that portion. That process was done without much conversation between the Commissioners and the planners. Steve later brought up that it was kind of a silly thing. Was it adjoining the boundaries of the affected area? What was the point of it? The Board might wish to consider either recommending removal of it, or since the Commissioners appeared to find this valid, the Board might wish to elaborate on it and make it relevant. Joel thought the Commissioners kept it because they wanted the list to be available in case of protest, so people would have a list of people to contact if they wanted to organize such a protest. Robert said he didn't disagree with the intent. This was pulled together quickly. Had he had the opportunity, he might have looked at that and elaborated on it to make it more relevant. He agreed with the Commissioners. Maybe they could talk about the affected subdistrict or whatever to make it useful.

Steve turned to pg. 17, where in X.B it said a proposal to amend the zoning may be initiated by any landowner within the district, the Lake County Planning Board, or Planning Department staff. When you went to X.B.1.c, the wording was that the applicant would provide this. He asked if the staff recommended an amendment, if they became the applicant and if they also were required to come up with this list. Staff answered no. Joel clarified that staff were not applicants. Steve asked if a property owner applicant was being offered to provide something that the Board or staff would not be asked to provide if they did the amendment. Joel said yes. Steve said he would ask that question of the Commissioners.

Steve asked for clarification on ‘adjoining’. If this was kept, they needed to know what adjoining meant. Joel said he would use its plain meaning: adjoining meant it touches. Steve checked these would not be in the zoning district. Joel corrected to not in the affected area. Robert said his interpretation would be the boundary line of a zoning district. Half would be on the outside of the line of the zoning district and the other half would be within, on the inside of the zoning district. Steve said if the whole district was affected, that would become the amendment area. He checked that this list was not a list of the people in the zoning district. Did the Commissioners understand this? He thought this was another point that needed to be brought up. The Commissioners needed to understand what X.B.1.c said. Robert agreed and thought the concerns were valid.

Bob S asked if this would be property owners who were adjoining and within. Robert thought it would just be within. Steve thought the issue was with within. Joel thought the meaning was basic. Steve wondered if someone wrote ‘adjoining’ imagining that it would be the people within the district. Robert suggested they focus on what they wanted the document to say.

Steve had two concerns. They were trying to put the property owners within that district who wanted to make an amendment on the same footing with the Planning Board, Commissioners and Planning staff, so they didn’t have to come up with this burdensome list of things to do in order to ask for or initiate an amendment. If these addresses were required of the applicants, whoever asked for an amendment should come up with a list of addresses. Joel asked if [staff] should be required to pay the \$850 fee too. Steve said no—he wanted the Commissioners to have a reason to take this out. He thought they needed to understand what the [Planning Board] was asking. Joel said Steve was trying to put [the Planning Board, Commissioners and staff] on the same footing as the landowners, so he had better make them pay the \$850 and do the other administrative requirements. Steve said the reason they were making the amendment was so [an applicant] wouldn’t have to come up with the landowners of 65% of the property. That was no harder than coming up with a list of the people in the district. He didn’t think they’d changed the burdensomeness of this [amendment process]. Robert disagreed. Steve acknowledged it was easier to come up with a list than to get people to sign a petition. Robert thought between the GIS Dept. and the Assessor’s Office that it would take 5 minutes to come up with a list. Steve asked where the \$800 came in. Joel said that was from the fee schedule. He couldn’t remember the exact fee. Steve said he was questioning the retention of this and wanted to give the staff some things to ask the Commissioners about if they wanted to keep this in.

Bob S noted his earlier question was answered. He gathered that the Commissioners didn’t realize the people on the proposed list would not even be in the zoning district. How could they make the Commissioners understand that and reconsider? Robert said if the Board wanted to remove that portion altogether, that was fine. Staff was now on notice that this wasn’t doing what they wanted it to do. Staff could communicate that as part of the official public hearing. Bob S asked if that could happen without the Board making a motion. Robert thought so. That was fine. If the Commissioners decided to keep this as they did last time, staff might then take the initiative and help reword this and beef it up to get to what they wanted.

Motion by Steve Rosso, and seconded by Rick Cothorn, to recommend that the County Commissioners approve this amendment and conditions with the exception that X.B.1.c be removed. Motion carried, all in favor.

OTHER BUSINESS (approx. 8:15 pm)

Rick asked if there were developments with Lake Mary Ronan. Joel said he hadn't heard anything. It wasn't clear that there would be items for next month.

Steve adjourned the meeting at approximately 8:16 pm, with general acclaim.