

**BOARD OF ADJUSTMENT/PLANNING COMMISSION
CITY OF LAKE SHORE
CITY HALL
MINUTES
AUGUST 12, 2019
9:00 AM**

Paul Strong called the meeting to order at 9:00 a.m. Members of the Commission present: Paul Strong, Gene Hagen, Arla Johnson, Roger Smeby and Glen Gustafson; Council Liaison John Terwilliger; City Engineer Joe Dubel; City Zoning Administrator Teri Hastings and City Clerk Patti McDonald. Shawn Hansen was available in the audience. Alternates Pat Hastings and John Ingleman were absent. A quorum was present and the Commission was competent to conduct business. There were 8 people in the audience.

Approval of the July 8, 2019 Regular Meeting Minutes – MOTION BY GLEN GUSTAFSON TO APPROVE THE MINUTES FOR THE JULY 8, 2019 BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. GENE HAGEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

PUBLIC HEARING –

Variance – Doug and Sheila Johnston requested a variance to construct a 3’x16’8” section of deck at a setback of 67’ from Upper Gull Lake. The proposed section of deck will utilize existing posts. The property is legally described as Lot 27, Fawn Forest (site address is 7693 Lost Lake Trail) and is zoned medium density residential.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. There were no written or verbal comments regarding this application.

Doug and Shelia Johnston came before the Commission to answer any questions regarding their application. There are no impervious issues and no issues with the top of bluff.

Glen Gustafson asked what type of native plantings was planted. The Johnston’s answered which types were planted.

Teri’s staff report indicated the following: The applicant is requesting to construct a small deck extension – 3’x16’8”. The extension would not require additional posts but would cantilever over using the existing posts. The proposed extension will be 67’ from Upper Gull Lake. The other portion of the deck will remain the same.

The property does have a bluff. Decks have been allowed within the 30’ setback of bluffs. The proposed deck extension will be 1.9 feet from the Top of Bluff. No excavation will be required for the deck extension.

This property is well screened and the property owners have done additional native planting on the property. The proposed deck extension will not prohibit site lines from adjacent properties to the lake.

The impervious surface for the property is at 18% and does not exceed ordinance requirements for impervious surface.

The property does have a conforming septic system and enough area for a secondary system if necessary.

The proposed addition is an appropriate use in R-2 zoning district and is compatible with the neighborhood and will not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the city.

STAFF RECOMMENDATION

Recommend approval of the variance for the proposed deck extension since it is a negligible amount and the property owner has mitigated the extension with additional native plantings on the bluff.

MOTION BY GLEN GUSTAFSON TO APPROVE THE JOHNSTON'S VARIANCE AS PRESENTED. ROGER SMEBY SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY MOTION PASSED UNANIMOUSLY.

After the fact Variance – Daniel Beavers requested an after the fact variance for the location of a home at a setback 70 to 73 feet from Gull Lake and a sideyard setback 10 feet. The property is legally described as Lot 11, Gullwood (site address is 8314 Gullwood Road) and the property is zoned medium density residential.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. There was one written comment with concerns regarding the side yard setback read into the record from Scott and Rick Erickson; however, they are the neighbors to the south and they are not opposed to the project. There was numerous character letters submitted and included in the file.

Paul Strong asked about the comments of the MN DNR Hydrologist. Teri Hastings said that Darrin Hoverson, MN DNR, told her that it wouldn't be realistic to modify the structure to meet the 75' lake set back and the 15' sideyard setback. He made the comment that there have been variances granted for less than what the Beaver's are seeking. Teri said that this structure is very well screened from the lake and that would be one thing that Darrin would suggest to mitigate the variance; however, they will have to maintain the screening going forward (even if a storm would come through and take out trees). Darrin also indicated that it's not unlikely that a penalty should be imposed for an after the fact variance.

Paul Strong and Glen Gustafson asked what the precedence is for fines in Lake Shore. Teri explained the history of the few fines issued in Lake Shore in the past and noted that there have only been a couple that have reached this severity. Paul went through the options that the Commission have before them. Daniel Beaver's commented it was an honest mistake; they didn't put the home in the wrong place on purpose.

Joe Dubel asked about the retaining wall on the south. There appears to already be one on the property; will they construct a new one on the other side. There will be a retaining wall on both sides of the property as there is one existing retaining wall. Joe asked if the lot lines were marked. Charlie Beaver's answered that the lot markers are in place. Daniel answered that the excavator helped set the structure and reiterated that it was an honest mistake.

Arla Johnson said that the Commission agrees that the mistake wasn't intentional; should they agree that a fine should be administered. Arla said that it makes a difference that there are positive comments from the neighbors.

Gene Hagen asked if the homes that were heavily fined were misplaced on purpose. Teri said that in that instance it was determined that they were.

Teri's staff report indicated the following: The applicant is seeking an after the fact variance for the sideyard setback and the setback from the lake. A permit was issued based on the site plan showing a 75' lake setback and a sideyard setback of 24' and 18' feet. A survey of the property

was done in 2016 by Stonemark Surveying and was part of the file. The home was framed when the setback issue was discovered and the lake setback deficiency was discovered after the survey was completed by Arro Land Surveying. The home dimensions match was submitted on the site plan for a zoning permit.

The applicant has provided a survey showing the improvements. The southeast corner of the home is 10 feet from the side lot line and the southwest corner is 13' from the side lot line. The front of the home varies from 70 feet to 74 from Gull Lake. The applicant also has a proposed patio on the lake side of the home. The patio should not be an issue since the setback for a patio is 50 feet. A deck cannot be built on the lakeside of the home without a variance.

The applicant has stated that the home was inadvertently positioned within the setbacks. The applicants stated they did want to be closer to the south side of the property due to the topography of the lot and drainage issues but meeting the setback.

A letter from Eric Lee of Arro Land Surveying is included in the packet regarding his thoughts on the matter.

A letter from the neighbor to the north Elaine Harber is also included.

STAFF RECOMMENDATION

The applicant's statements do have some merit with the topography of the lot and the drainage however; there is adequate room on the property to build the home meeting all setbacks as proposed with their original site plan. The applicants stated the requested after the fact setbacks are not extreme and the character of the area will be maintained. Yes, the city has granted variances with lesser setbacks and Teri doesn't believe the mistakes were intentional. However, it is two mistakes (lake and sideyard) and a penalty should be imposed if the after the fact variance is approved (\$5,000??). If the Planning Commission wishes to deny the application for the after the fact variance, the commission must make sure to include findings of fact and to how the applicant is to remedy the situation (with deadline).

MOTION BY GLEN GUSTAFSON TO APPROVE THE BEAVERS AFTER THE FACT VARIANCE WITH A PENALTY OF \$5,000 SUBJECT TO THE FACT THAT THE SCREENING ON THE LAKE SIDE IS MAINTAINED. ROGER SMEBY SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

After the fact Variance – Backyard Reflections/Ed and Marie Peterson requested an after the fact variance for the placement of an outdoor grill island, permeable paver patio and pergola at a setback from 8'8" to 12' 1" from the side lot line. The proposed improvements will meet the 50' lake setback for patios. The property is legally described as Lot 4, Block 2 Clarks Addition (site address is 7482 Doyle Parkway) and is zoned medium density residential.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. There were no written or verbal comments regarding this application.

Jamie Lippke and Mike Munsterteiger from Backyard Reflections came before the Commission to answer questions regarding the after the fact variance for the Petersons. Jamie commented that most jurisdictions they work with have a 10-foot side yard setback which is not an excuse. Backyard Reflections have added to the plan to include screening to the sideyard.

Paul Strong went over the options that the Commission have before them. Arla Johnson asked if they usually start work without a survey. Jamie said customarily they do and usually work from/by GPS and the lot line was clearly found, but again, they thought the setback was 10'. Roger asked what thoughts the neighbors have. Mike said they have talked to the neighbors and

they are fine with the project as long as they add screening. Glen asked what the adequate mitigation is that was proposed. It will be a living fence consisting of larger shrubs and trees.

Joe Dubel pointed out the rock retaining wall indicated on the site plan and said it does have a function in the sideyard setback. Teri said that is allowable.

Teri's staff report indicated the following: The applicant is seeking an after the fact variance for the sideyard setback for an outdoor grill island, permeable paver patio and pergola. A permit was originally issued at the end of October for these items and during construction this spring it was discovered the setbacks were less than 15' from the south side lot line of the property. The permit was issued on basis of the site plan dated 10/29/18. An older site plan from 1995 shows the sideyard setback at 16' from the prior solarium/greenhouse that was being replaced. A survey for this property had not been done previously for this property.

The applicant has provided a sketch by Lakes Ares Surveying showing the setbacks for the improvements to the side lot line. The setback varies from 8.5 feet to 11.5 feet. The applicant states they were unaware of the 15' setback requirement in Lake Shore since most of the surrounding communities utilize a 10-foot setback. In addition, the site plan submitted did not specify a dimension to the improvements just a statement to be very careful of the property line. Staff should have caught the missed dimensions in the application review.

The applicant has proposed additional screening with 4 Parkland Pillar Birch Trees, and 3 Amber Jubilee Ninebark Shrubs plus a privacy screen to mitigate the setback deficiency.

The company, Backyard Reflections has done several projects within city and the city has had no issues (violations) related to their work previously.

STAFF RECOMMENDATION:

Recommend approval of the after the fact variance as the applicant has proposed adequate mitigation measures for the reduced sideyard setback. The after the fact variance will not alter the character of the area and will not impact the use and enjoyment of the adjacent property to the south.

MOTION BY ROGER SMEBY TO APPROVE THE PETERSON AFTER THE FACT VARIANCE AS PRESENTED TO INCLUDE THE PROPOSED SCREENING AS INDICATED ON THE APPLICATION AND SITE PLAN DATED 7/18/19. ARLA JOHNSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

NEW BUSINESS –

Lot Split/ Adjustment – Sean and Stacy Weldon – The applicant is seeking a metes and bound subdivision or a lot line adjustment for Lot 1, Block 1 of Baskerville Addition and Lot 9, Block 1 of Baskerville Addition. The applicant has come before the Planning Commission for two site plan reviews for the proposed project. The project entails adding an additional area of 19'x 84' to the existing townhome lot. The additional land will allow the Weldon's to construct an addition to their townhome. Previously, the Planning Commission discussed the original variances granted to the townhome project in the early 90's which included a 35' setback from the ROW of CSAH 77 and a maximum amount of impervious surface of 32%.

Since this property is a townhome development (PUD) – the typical lot areas and widths will not apply. The property owner will need to comply with getting approval from the Homeowners Association for division of land.

The proposed addition from the previous site plans has been downsized in order to meet the 15' sideyard setback and the 35' setback from the ROW.

A proposed legal description has been prepared and is included on the certificate of survey.

The property is served by city sewer.

Improvements within 50 feet of the property are shown on the survey.

STAFF RECOMMENDATION:

Recommend approval of the lot line adjustment as it is in substantial compliance with the city's ordinance and previous variances granted for the property.

Teri spoke for the Weldon's as they were unable to attend the meeting due to a family emergency.

MOTION BY ARLA JOHNSON TO APPROVE THE SEAN AND STACY WELDON LOT SPLIT AS THE LOT SPLIT MEETS THE INTENT OF THE ZONING ORDINANCE; BEFORE THE PERMIT IS ISSUED A SIGNED DOCUMENT IN AGREEMENT FROM THE HOMEOWNERS ASSOCIATION. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Comprehensive Plan – Paul Strong commented that the Commission has reviewed the document many times. Teri included all the changes from the public hearing and there were no additional comments or concerns.

MOTION BY ARLA JOHNSON TO RECOMMEND MOVING THE COMPREHENSIVE PLAN FORWARD TO THE CITY COUNCIL FOR APPROVAL. GENE HAGEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

OLD BUSINESS – There was no old business.

REPORTS

City Engineer – Joe Dubel had nothing to report.

Chairman – Paul Strong asked what the city could do to avoid these after the fact variances; should a site survey be required or at least have the lot lines staked. Roger thinks they should be required. Teri commented that when it comes to lake lots the homes/structures should be staked by an engineer before construction could begin. Joe Dubel commented that the cost of a survey for some structures would be cost prohibitive. He agreed with the requirement of staking the structure.

John Terwilliger asked if the application asks for the lot lines. Teri said the application has been modified a few times, it does state that the landowner is responsible for the lot lines. Teri said the survey could be required for new construction.

Teri will put together a draft document for the next Commission meeting.

Council Liaison – John Terwilliger had nothing to report.

Zoning Administrator – Teri had nothing to report.

PUBLIC FORUM –

MOTION BY GLEN GUSTAFSON TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF AUGUST 12, 2019 @ 10:02 AM. ROGER SMEBY SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald
Lake Shore City Clerk