

**BOARD OF ADJUSTMENT/PLANNING COMMISSION
CITY OF LAKE SHORE
LAKE SHORE CITY HALL
MINUTES
SEPTEMBER 13, 2021
9:00 AM**

Commission Members in attendance: Jim Woll, Arla Johnson, Glen Gustafson, Bob Toborg and Gene Hagen; Council Liaison John Terwilliger; City Engineer Joe Dubel, City Zoning Administrator Teri Hastings and City Clerk Patti McDonald. Alternate Pam Poston was available in the audience. Absent were Alternates Shawn Hansen and Pat Hastings. A quorum was present and the Commission was competent to conduct business. There were 5 people in the audience at City Hall.

Jim Woll called the meeting to order at 9:00 a.m.

Approval of the August 9, 2021 Regular Meeting Minutes – MOTION BY GENE HAGEN TO APPROVE THE MINUTES FOR THE AUGUST 9, 2021 BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

PUBLIC HEARING –

Variance Request – Todd Pries requested a variance for the purpose of constructing a 638 square foot addition onto the south side of the dwelling and constructing a 676 square foot attached garage onto the rear of the existing dwelling. The addition will be 65' from Lake Margaret at the closest point and the garage addition will be 7.5' from the north property line. The property is legally described as Lot 15 and Part of Lot 16, Block 16, Tingdale Brothers Sherwood Forest (site address is 8569 Nottingham Road) and is zoned medium density residential.

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

Todd Pries commented that they had been approved with a variance for this property that he let lapse. He has made relatively minor changes in his application and would like to move forward with his project.

Arla Johnson asked if the old cabin will be removed. Todd said it will be demolished. She also asked about the screening and rain gardens that Todd is proposing for his project. Todd confirmed his screening and rain garden plan.

Teri's staff report indicated the following: The applicant is requesting a variance to construct an addition onto the existing dwelling and to construct an attached garage to the rear of the dwelling. The proposed addition will be flush with the existing dwelling on the lakeside. The existing home is at a setback of 66' from Lake Margaret. The proposed addition will be 65' from Lake Margaret. The proposed attached garage will be 7.5 feet from the north lot line. The corner of the existing dwelling is 5.4 feet from the north lot line. The addition will be a walkout on the lakeside. The applicant will be utilizing the existing foundation but a new main floor structure will be rebuilt. The proposed addition will be single story with walkout basement.

The applicant was granted a variance in 2015 for the same request except with a loft area over the existing cabin. The loft area has been removed from this request. Previously, the applicant did a site plan review prior to submitting his completed variance application. The comments from the

site plan review included: considering offsetting the addition from the main structure to meet the 75' setback requirement. The applicant acknowledged the addition could be moved back to meet the 75' setback but it does create difficulty in creating a floor plan that works with adequate room size and within the existing dimensions of the dwelling. A second area of concern noted by the applicant is that the further the proposed improvements are pushed back, the closer it is to the septic tank and lift. The SSTS inspector noted that the tanks are pretty deep (6'-7') and it would be best if to avoid moving them (tanks). Previously, the zoning ordinance allowed additions going no closer to the lake than principal structure as a conditional use. This recognized the many nonconforming structures that were build prior to the 75' setback requirement.

The applicant has submitted floor plans and elevations of the proposed addition. In addition, the applicant has provided a copy of the proposed floor plan with an outline marked in green with how moving the addition back would impact the floor plan which is included in the packet.

The current impervious surface for the property is 20.9%. and with the proposed changes and improvements the impervious surface will increase by .6 to 21.5%. Previously, the applicant indicated the changes he had done with the driveway to prevent erosion and runoff into the lake. The applicant has provided a plan that details how the stormwater will be handled. The plan submitted does show two areas for proposed rain gardens.

The applicant should be asked how the old cabin will be removed from the property. There are several large trees that should be saved; it may be that the cabin can't be moved in one piece or it could be demolished on site. The addition and the garage itself will impact 2-3 large trees.

The proposed addition and new roof line will not exceed the 25' (to midpeak) height requirement.

The applicant should be asked what his plans are for additional screening; will trees be planted and how many.

The septic system serving the property was recently inspected by Martin Joyce for compliance with the proposed improvements and is on file. A new deep well will be drilled and the proposed location is in front of the cabin that is to be removed. The proposed location will meet the 50' setback from the neighboring septic tank and the applicant's septic tanks. It should be noted there is a system serving the old cabin that will need to pumped and filled according to the MPCA rules.

STAFF RECOMMENDATION

Recommend approval of the variance as the applicant has demonstrated practical difficulties for not meeting the 75' setback requirement. The proposed addition will not alter the essential character of the area but will be very similar if it were at 75 feet from the lake. The proposed garage location and configuration of the home will mostly likely provide more privacy for the neighbor to the north as the entrance of the home will move away from the north side of the property and be relocated on the south side of the home where there is more area. In addition, the variance if approved will eliminate the nonconforming cabin on the property. The following conditions should be considered if approval of the variance is granted:

- The old cabin be removed from the property within 6 months of issuance of the zoning permit.
- The septic system serving the old cabin be pumped and filled in accordance with the MPCA.

The City Engineer had no concerns with the variance request. The Commission had no further questions or concerns.

MOTION BY GLEN GUSTAFSON TO APPROVE THE VARIANCE REQUEST OF TODD PRIES; SUBJECT TO THE OLD CABIN BEING REMOVED AND THE SEPTIC SYSTEM

SERVING THE OLD CABIN BE PUMPED AND FILLED IN ACCORDANCE WITH THE MPCA. BOB TOBORG SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

After the Fact Variance/Lot Line Adjustment – Patrick and Kelly Smith requested an after the fact variance for the location of a home/storage building at a setback of less than 15’ from the sideyard setback. The property is legally described as Lot 8, Parts of Lot 9 and 10, Block 24 Tingdale Brothers Sherwood Forest on Gull Lake (site address is 8759 Interlachen Road). The property is zoned low density residential.

The following documents became part of the record – Notice of mailing, notice of publication of public hearing, signed application and attachments and staff report. There was one comment from the impacted property owner regarding this application; he is agreeable to the reconciliation.

Kelly and Patrick Smith, along with Joe Christiansen were in the audience to answer any questions of the Commission. PJ started with a candid and sincere apology for the mistake. He said he should have found the property pins for the location of the building; however, it was assumed they were in a different place in alignment with the utility location. He said Teri’s staff report indicates the process they went through to get to this point and reconcile the mistake.

Teri’s staff report indicated the following: The applicants are seeking a lot line adjustment and an after the fact variance for the sideyard setback. Lot line adjustments which do not create an additional property and do not create a nonconforming lot can be approved administratively. Permit #3481 was issued on August 18, 2020 based on a conforming site plan (which was attached) for a home/storage garage. Construction started during the winter of 2021 and in June of this year it was learned that the structure was partially on the adjacent property owned by Eric Pion. A survey was done to locate property markers and structure location.

The applicants have attempted to resolve the situation by acquiring the adjacent property owned by Eric Pion. The applicants have also discussed other options such as relocating the Pion structure and acquiring a portion of his property. These options have been outlined in the attached letter from the applicants. The letter also states the issue with removing a portion of the building to comply with the 15’ setback requirement.

The applicants have stated that the home was inadvertently positioned within the setbacks due to using a utility box/pole as the lot corner rather than verifying a property pin. The property pins along the road (clear circles) indicate those property pins set by the surveyor when they surveyed the property (August 4, 2021). The property pins at the rear of the property were found by the surveyor and in place at the time of the survey.

Teri spoke to Eric Pion a few times in regard to this issue and he has collaborated what the applicants have submitted in their letter. In addition, Eric stated he may sometime in the future decide to sell all of the property to Smith but not at this time.

The land area to be exchanged is equal amounts of land and there would not be a net loss of land area for Eric Pion or the Smiths.

Eric Pion has agreed to an easement to Smiths so they may be able to maintain the building.

There is adequate area on the site after the lot line adjustment to install a conforming septic system as designed.

STAFF RECOMMENDATION:

The Planning Commission has three options:

1. Deny the variance request and require modification of the building. If this option is chosen the Planning Commission should make adequate findings of fact and include a timeline for modification of the building.
2. Grant the variance request with conditions and a penalty.
3. Grant the variance with no penalty.

The applicants have made a good faith attempt to resolve the mistake and Teri doesn't believe this was an intentional error. The variance ultimately will not alter the essential character of the area. The property owners propose to use the property in a reasonable manner. However, it is a mistake and a penalty should be imposed if the after the fact variance is approved. Previously, the city fined a property in a similar situation \$5,000 and recommend the same in this case. Teri would also recommend that the variance be approved with the condition that all of the items outlined in the variance proposal be adhered to.

The Commission and City Engineer had no concerns with the application as presented and the reconciliation between the two parties involved.

MOTION BY ARLA JOHNSON TO APPROVE THE AFTER THE FACT VARIANCE OF PATRICK AND KELLY SMITH AS PRESENTED IN THE STAFF REPORT. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

The motion was revisited regarding the options that the Commission was presented. There was not one specific option being noted in the motion. The Commission discussed the 3 options.

MOTION BY GLEN GUSTAFSON TO AMEND THE ORIGINAL VARIANCE APPROVAL AND APPROVE THE OPTION TO APPROVE THE AFTER THE FACT VARIANCE AS PRESENTED IN THE STAFF REPORT WITH THE CONDITION THAT THE SMITH'S RECEIVE A \$5,000 ADMINISTRATION FINE DUE TO NOT FOLLOWING THE ORDINANCE AND NOT FOLLOWING THE ORIGINAL PLAN ON THE ORIGINAL PERMIT. ARLA JOHNSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

NEW BUSINESS –

Final Plat: Agate Woods Addition – Teri's staff report indicated the following: The applicant, Dale and Jodi Spohn, submitted the Final Plat of Agate Woods Addition which consists of six residential off water lots. The property is located between Agate Lake Road and Anderson Road and does not have any public improvements.

The Final plat also shows two drainage easements (Lot 2 and 3). These were not shown on the preliminary plat but were included based on the feedback during the preliminary approval.

The preliminary plat and Rezoning were approved by the City Council at their June 28, 2021 meeting.

There are no proposed covenants for this plat.

A satisfactory title opinion has been completed and reviewed by the city attorney.

The park dedication fee has been paid in the amount of \$1,500.00.

An independent plat check has been completed and is on file.

A stormwater management plan has been completed which was a condition of preliminary approval.

Professional fees will need to be reimbursed to the city (city attorney and city engineer) before the final plat is signed. A total for these fees has not been submitted to the applicant.

STAFF RECOMMENDATION:

Recommend final approval of the plat provided all items are completed satisfactorily prior to signing the final plat (payment of professional fees).

There were no concerns from the Commission or the City Engineer. Jim Woll asked if it was common to use (i.e., ten-years) when doing a stormwater plan. Joe explained the process using ten years in this case; the stormwater plan was done for this plat at the request of the neighbors on Interlachen/Rocky Point Roads due to the issues in that area.

MOTION BY BOB TOBORG TO APPROVE AND MOVE FORWARD TO THE CITY COUNCIL THE FINAL PLAT OF AGATE WOODS ADDITION AS PRESENTED AS ALL THE ITEMS HAVE BEEN COMPLETED WITH THE PROFESSIONAL FEES BEING REIMBURSED TO THE CITY WHEN BILLING IS COMPLETE. ARLA JOHNSON SECONDED THE MOTION. MOTION PASSED WITH GENE HAGEN BEING OPPOSED TO THE FINAL PLAT APPROVAL.

OLD BUSINESS – There was no old business.

REPORTS

City Engineer – Joe Dubel had nothing to report.

Chairman – Jim Woll had nothing to report.

Council Liaison – John Terwilliger had nothing to report.

Zoning Administrator – Teri Hastings updated the Commission regarding the property on Upper Gull regarding the Mitchell’s patio violation; they are making application for a patio.

There has been an issue down on Rocky Point Road regarding tree removal that has been referred to the City Attorney on which direction to move for the failure to notify the City of the removal of the trees and whether the trees were diseased and dying. Teri suggested that this area of the ordinance is revisited for clarification.

PUBLIC FORUM – There was no public forum.

MOTION BY ARLA JOHNSON TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF SEPTEMBER 13, 2021 @ 9:23 AM. GENE HAGEN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald
Lake Shore City Clerk