

**BOARD OF ADJUSTMENT/PLANNING COMMISSION  
CITY OF LAKE SHORE  
CITY HALL  
MINUTES  
MARCH 12, 2012  
9:30 AM**

Commission Chair Earl North called the meeting to order at 9:30 a.m. Members of the commission present: Earl North, Dave Baldwin, Mark Nelson and Lee Martin; Alternate Tom Diemert; Zoning Administrator Teri Hastings; City Engineer Mark Hallan and City Clerk Patti McDonald. There were 4 people in the audience. Alternate Ron Muehlbauer arrived late. Dick Miles and Council Liaison Susan Amacher were absent. A quorum was present and the Commission was competent to conduct business.

MOTION BY LEE MARTIN TO APPROVE THE MINUTES FOR OCTOBER 11, 2011 BOARD OF ADJUSTMENT/PLANNING COMMISSION WITH TWO ADDITIONS PRESENTED BY CITY ENGINEER MARK HALLAN. DAVE BALDWIN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY

**PUBLIC HEARING**

Rezoning Request- Brent Anderson/Lot Split – Brent Anderson requested to rezone a portion of his property; the request involves rezoning the property described as the West ten acres of Government Lot 3, Section 17, Township 135, Range 29 from Agricultural (minimum lot area of 10 acres) to Wooded Residential (minimum lot area of five acres). The property has approximately 10 acres of land and is located at 8009 County 78.

The following documents became part of the record – Notice of mailing, notice of publication, notice of public hearing, signed application and attachments and staff reports. There was one written comment read into the record from Rita Sorenson with no objections as long as neighboring properties receive the same classification.

Brent Anderson came before the commission to explain his application. He said there are already two homes on the property. He is requesting to split the property roughly in half being one at 4.61 acres and the other 5.39 acres as there is a heavy wood line at the line that he would like to split the property at.

Teri highlighted items from her staff report: The applicant has submitted a rezoning request that involves approximately 10 acres of land that is currently zoned Agricultural. The applicant is proposing to have the property rezoned to Wooded Residential. The minimum lot size for Wooded Residential is five acres. The applicant appeared before the board in 2004 with a rezoning request to R-1 (40,000 sq ft) however, that request was denied.

The criteria for rezoning or classifying property are listed in Section 5.1 (6) A-P of the ordinance.

The zoning of the surrounding property is indicated on the attached map. The surrounding property is held in single ownership however, the property directly across County 78 is city owned. The property is used for the city's wastewater treatment facility.

It appears there are no significant historical sites on the property or sensitive areas such as wetlands. The property to be rezoned does not abut lakeshore.

The property is wooded. The topography of the property does not prohibit development. The property is not being used for agricultural purposes.

The property to be rezoned is adjacent to County 78 and is maintained by Cass County. The property currently has two dwellings on it. A dwelling permit was issued in 2008 without the knowledge of trailer located on the back half of the property. There is no permit for the trailer or septic information. Teri doesn't believe the county was aware of the trailer since an address was not assigned to the property in 1999. The rezoning/lot split would clean up the issue of two dwellings on one property but a compliance inspection on the trailer is mandatory. An easement is needed to access Tract A and is shown on the survey.

The property to be rezoned is served by sub-surface treatment systems (on-site septic system). According to information in the file, the area has suitable soils for on-site septic systems.

There are no known areas of significant historical or ecological values of the area that would prevent it from being rezoned.

The rezoning would not create a spot zone. The property located directly east and south is zoned Low Density Residential. The property to the north and west is zoned Agricultural. The property to the southwest is zoned Wooded Residential. It would appear the wooded residential zoning would be a good fit given the surrounding land use and provide the transition from R-1 to AG.

#### STAFF RECOMMENDATION

This rezoning request meets the criteria within the ordinance for rezoning. The rezoning request will create a transition from the R-1 district to the east and the Ag district to the west.

#### LOT SPLIT REQUEST

##### ISSUES:

In addition to the rezoning request the applicant requested a lot split to create two lots. If the commission recommends denial of the rezoning then the lot split should be denied. However, if the commission recommends approval to the City Council then the following would apply. The lot split would be contingent upon the City Council approving the rezoning classification. The following items are related as if the rezoning would be approved.

The property is zoned Wooded Residential. The lot size for the Wooded Residential District is 5 acres. The applicant is attempting to split the property and create two tracts. Each tract **does not** meet the minimum lot size of five acres. Tract B is 5.39 acres and tract A is 4.61 acres. Tract B does include right of way area. In the past, the commission has been lenient on allowing right of way to be included in the lot area. If not, neither tract meets the lot area. Both tracts meet the lot width of 300 feet. The applicant's rationale for the division line is due to the vegetation (tree line). There is a map showing the vegetation on the property.

Both tracts contain dwellings which are shown on the survey. The topography of the property is fairly level. Contour information has not been provided by the applicant however, attached is contour information from Cass County GIS. There does not appear to be any wetlands located on the property. The property does not contain any bluffs.

All lot corners have been monumented; the survey has been prepared by a licensed surveyor. A signed copy of the survey will be turned into the Planning & Zoning Office prior to the meeting. Legal descriptions for the tracts have been prepared for each tract. An easement is shown for access to Tract A.

There are homes located to the west, east and south; however, Teri doesn't believe there are any structures located within 50 feet of the Anderson property.

The survey does not show building envelopes for the two tracts; however, both tracts currently have a structure which demonstrates there is an adequate building envelope. Information on soils is contained in the site evaluation and design for the septic system for the home located on tract B. The property does not contain any bluffs.

**STAFF RECOMMENDATION:**

Recommend denial of the lot split as presented as it does not meet the lot area requirements of the city. If the applicant would like to revise the division line to create two five acre tracts (including right of way) then approval is recommended provided a revised survey is submitted to the Planning & Zoning Office prior to recording.

Tom Diemert asked if Brent lived on the north portion of the property. Yes, he does. Mark Nelson asked if the property was previously Herman Sorenson's. Yes, it was. The trailer was on the property when he purchased it. The wood structure existed before the trailer was brought in.

Dave Baldwin asked if there are separate water and sewer for each structure. Brent said that he put a sewer in for his home in 2008. There is no record on file at city hall for the trailer septic system. Both properties have new drilled wells. Teri asked if there was a compliance inspection done in 2004 when Brent brought the property. Brent wasn't sure.

Mark Nelson asked about the right-of-way as he has the same situation with his property. Teri's staff report doesn't suggest excluding the right-of-way and her recommendation is to approve the rezoning request.

Karen Smith said if Wooded Residential isn't approved, she feels both zoning and the lot split request be talked about at the same time. The request is for wooded residential and not R-1. Wooded Residential is what was posted. Brent said that if the lot split was approved, he is satisfied with the property remaining agricultural.

Earl North explained the process of what has been requested. Teri said she has no problem tabling the request to make proper notification for a R-1 zoning request. Dave Baldwin said he has the same situation with a tree line on a piece of his property. He doesn't agree that the lot line be created because of cosmetics.

Mark Nelson said he was surprised that the county hasn't changed his classification. Teri said the counties classification system is completely different from the cities classifications; the counties classification is strictly for tax purposes.

Earl North called for a vote on the rezoning.

**MOTION BY MARK NELSON TO RECOMMEND TO THE CITY COUNCIL THAT THEY APPROVE THE ANDERSON REQUEST FROM AG TO WOODED RESIDENTIAL AS IT MEETS THE CRITERIA WITHIN THE ORDINANCE FOR REZONING. LEE MARTIN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.**

Earl North said that there is information missing before the commission can make a decision on the lot split request. There needs to be a signed site plan. There needs to be a compliance inspection for the sewer. Brent needs to provide information that the trailer was on the property before he bought it or request an after the fact permit. Earl agrees that the lot split shouldn't be for cosmetics only.

Tom Diemert isn't familiar with the right-of-way discretion. Teri said the legal description includes the right-of-way. Dave Baldwin asked how many feet difference there is. Brent said that it is 50'. Mark Nelson asked if it would have to be re-surveyed. Teri said that it could just be changed on the site plan by the engineer and resubmitted to the city.

Karen Smith said that when she was on Planning and Zoning she believes that hardship needed to be proven. Teri said the state statute on variances for cities has been changed and that is no longer true.

Brent Anderson asked if there is minimum lot width. Teri said that it is 300' at the building line. Brent said that the lot line is an issue to him. It gives the north lot more useable lot space. He asked if he could make easement adjustments from his property to meet the 5 acres. Mark Hallan explained how Brent could split the easements to keep the lot lines where they are.

MOTION BY DAVE BALDWIN TO APPROVE THE LOT SPLIT CREATING AN 'L' LOT USING THE EASEMENTS TO MEET THE 5 ACRE LOT REQUIREMENT. THE APPROVAL IS CONTINGENT UPON SUBMITTING A NEW SURVEY SHOWING THE CHANGES. PROVIDE A SEWER COMPLIANCE INSPECTION, DOCUMENTATION THAT THERE IS PROOF SHOWING THE TRAILER ON THE PROPERTY BEFORE THE LAND WAS PURCHASED BY ANDERSON, AND PROVIDE A SIGNED SURVEY FOR THE CITY TO FILE. LEE MARTIN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

#### **NEW BUSINESS –**

Lot Split – John and Karen Smith – Teri's staff report indicated the following: The applicant requested a lot split to create two lots. The property is zoned Wooded Residential. The lot size for the Wooded Residential District is 5 acres. The applicant is attempting to split the property and create two parcels, each parcel meets the minimum lot size of five acres. Parcel B is 35 acres and Parcel A is five acres. Each tract meets the minimum lot width requirement of 300'.

Both parcels are vacant. The topography of the property is fairly level. There does not appear to be any wetlands located on the property. The DNR fish rearing pond is located on the forty directly south of the subject property.

All lot corners have been monumented; the survey has been prepared by a licensed surveyor. Legal descriptions for the parcels have been prepared for each tract.

There is a home located on the tract to the north of Parcel B.

The survey does show building envelopes. Soils information has not been submitted; the properties to the north and east have adequate soils for an onsite treatment system.

The property does not contain any bluffs.

Parcel A will be served by Agate Lake Road and Parcel B served either by Anderson Road or Agate Lake Road.

#### **STAFF RECOMMENDATION:**

Recommend approval of the lot split as the split is in substantial compliance with the city's ordinances.

Karen Smith came before the commission to answer any questions regarding her application.

Lee Martin asked if there are further lot splits should driveway placement be talked about. Karen said that the property has an old logging trail that would most likely be used as for driveways.

MOTION BY MARK NELSON TO APPROVE THE SMITH LOT SPLIT AS IT IS IN SUBSTANTIAL COMPLIANCE WITH THE CITY'S ORDINANCE. TOM DIEMERT SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Site Plan Review – Jamie Ledin – The applicant is seeking a site plan review for a potential variance. The applicant currently has a nonconforming structure that is approximately 40' from Gull Lake. The lot is an undersized lot, approximately 13,600 square feet.

The current configuration of the garage and home is awkward. The location of the garage does not allow for easy entrance into the home which is on the south side of the home. There is a small area between the home and garage that creates an useable space. The applicant is proposing to attach the garage and locate it of the northwest corner of the home. This will bring more of the garage at closer setback to the road than the existing garage. This portion of Rocky Point Trail is not city maintained, but privately maintained. The city maintains the roadway just a few homes before the Ledin property. Snow storage and other associated concerns with having a structure close to the roadway should still be discussed.

The applicant is also proposing to relocate the porch from the north side of the home to the south side which would encroach on the southerly side setback. In addition, the home would be significantly remodeled to include a living area over the garage and the main home. The home is currently a one story and would be remodeled to a story and a half. This would add “bulk” to the existing area and would be similar to the structure to the north.

The proposed plan has an impervious coverage of 24% so a stormwater plan would be needed. In addition the septic system will need to be modified. The applicant has had a designer out to review the property and proposed improvements.

Jamie Ledin said the he knows that there are issues before him with his project. He would like some guidance before he submits his formal application.

Dave Baldwin asked what the neighbor's think. Jamie said that his concerns right now are with the permitting process with the city before he goes to the neighbors. Jamie said that most of the neighbors have received variances to improve their property. Dave asked about the road. It is a city road, but not maintained by the city. The only issues with the road are set back issues.

Earl said the original survey shows a well on the neighbor's property. Jaime said they shared the well with the neighbor; they have since put in their own well on his property. There is a small easement for the sidewalk. The septic system relocation design has been discussed with a designer. Earl said that the neighbor to the north would have more of a view of the improvements. Jamie said that he would put in screening. Earl would be sensitive to the opinion of neighbors to the north before approval. Teri said that Jamie can talk to the neighbors; right now he is concerned about the issues regarding the project.

Tom Diemert said according to the site plan two corners will exceed the allowable set back. The porch currently doesn't encroach on the side yard set back.

Dave Baldwin asked about the storage space under the garage; he is concerned about the closeness to the road being 3 feet and digging down next to the road. The designer said the frost footings would be right there.

Mark Nelson asked the set backs from the south part of the property. It is 7' 3" as it exists. Mark said that the side yard set back can be changed to 10 feet with conditional use. Mark asked if there has been a similar request for a right-of-way set back issue. There has been a couple in the past 10 years.

Mark said that he would encourage going up, rather than out. He said the plan is a huge gain of space without changing the foot print of the original home. Mark asked about the side yard set back. Teri said that it will be a variance; the criterion for a CUP is not in the current zoning ordinance.

Mark Hallan said that based with the existing conditions there will be 5 feet taken out for a retaining wall. He suggested that the contours and elevations be assigned to the final site plan.

Mark Nelson asked when this is brought before the commission what will be the issues. The side yard set back for porch, set back for the garage and the cubic yards excavated outside the footprint of the structure.

Election of chairman and Vice Chairman –

MOTION BY MARK NELSON TO REAPPOINT EARL NORTH AS CHAIRMAN AND LEE MARTIN AS THE VICE CHAIRMAN. DAVE BALDWIN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

**OLD BUSINESS** – There is no old business.

## **REPORTS**

City Engineer – Mark Hallan had nothing to report.

Chairman – Earl North had nothing to report.

Council Liaison – Susan Amacher was absent.

Zoning Administrator – Teri had nothing to report.

**PUBLIC FORUM** – Mark Nelson asked if 9:30 a.m. works for everyone. No negative comments from the commission. Brent Anderson said that as a person to make comment it is probably easier for them in the evening.

MOTION BY TOM DIEMERT TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF MARCH 12, 2012 @ 11:13 AM. LEE MARTIN SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald  
Lake Shore City Clerk