

**BOARD OF ADJUSTMENT/PLANNING COMMISSION
CITY OF LAKE SHORE
CITY HALL
MINUTES
MAY 9, 2016
9:00 AM**

Chairman John Ingleman called the meeting to order at 9:00 a.m. Members of the Commission present: John Ingleman, Kevin Egan, Roger Smeby and Glen Gustafson; Alternate Wayne Anderson; Council Liaison Earl North; City Engineer Mark Hallan; City Zoning Administrator Teri Hastings and City Clerk Patti McDonald. Alternate Pat Hastings was absent. There were 8 people in the audience. A quorum was present and the Commission was competent to conduct business.

Approval of the April 11, 2016 Regular Meeting Minutes – MOTION BY GLEN GUSTAFSON TO APPROVE THE MINUTES FOR APRIL 11, 2016 BOARD OF ADJUSTMENT/PLANNING COMMISSION AS PRESENTED. WAYNE ANDERSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

PUBLIC HEARING

Amended Conditional Use Permit - Bar Harbor Hospitality – Bar Harbor Hospitality (Timberstone Investors LLLP) requested an amended conditional use permit to revise the dock configuration and the location of the gas dispenser. The property is described as part of Government Lot 10, Section 16, Township 135, Range 29 and Lot 31 Gullwood. (8164 Interlachen Road) and is zoned Waterfront Commercial

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 comments regarding this application.

Sean Harguth came before the Commission to explain that John Allen requested to move the gas dispenser to the T in the middle of the dock, rather than on shore, to shorten the length/distance of the hose and for convenience.

John Ingleman asked if there will still be an attendant present. Yes, there will have to be an attendant as it is a marine dispenser. Sean said this will eliminate the gas reel.

Glen asked about Teri's suggestion of a bladder being put under the T of the dock. She said that the bladder would be placed under the dock to catch any spillage. Sean said there is a sump built into the dispenser that would help spills. Earl commented that a bladder would ensure that any spill or seepage would keep it contained from entering the lake. Sean said that Oris told him there would be a catch basin at the installation of the dispenser. Earl asked if the dock would service only two boats at a time. Sean said that is correct.

Teri said that Darrin Hoverson of the MN DNR commented that the T in the dock would prevent having more than 2 boats at the dock at a time.

Wayne asked if this is the same location as the temporary dock from the international boat show. Yes, it is. Wayne questioned the distance between the bollards. The bollards are 4-5 feet on center surrounding the tank.

Gene Jaster asked why a gas pump has to be placed at Bar Harbor. Sean said to add another service to the area. Kevin Egan said that the environmental issues were discussed at last month's meeting.

Teri's staff report indicated the following: The applicant as submitted an amended conditional use permit request for the location of the gas dispenser and the gas dock configuration. The revised site plan shows the new tank location at 35' from the lake and the bollards surrounding the tank along with the 7'x14' tank dimensions. An email from John Allen stating the rationale for the revised location and dock configuration was included for the Commission to review. The new dock configuration is a T with the idea that a boat would fuel up on each side. The cross of the T would discourage boats from parallel parking along the dock.

The new location of the gas dispenser will eliminate the concern of the hose reels and the lengthy amount of hose that would have been needed. The applicant should address the fuel supply line hose from the tank to the dispenser. What kind of line and where will it be located?

STAFF RECOMMENDATION:

Recommend approval of the revised gas dispenser location and the dock configuration. The Planning Commission may want to consider adding the condition that a bladder be placed under the "T" portion of the dock for any spillage.

MOTION BY KEVIN EGAN TO APPROVE THE CONDITIONAL USE PERMIT FOR BAR HARBOR HOSPITALITY AT 8164 INTERLACHEN ROAD WITH THE FOLLOWING CONDITIONS: TO INCLUDE THE PRESENCE OF THE BLADDER AS DISCUSSED; ALSO TO INCLUDE THE CONDITIONS/RESTRUCTIONS PLACED AND AGREED TO AT LAST MONTHS HEARING. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Variance/Conditional Use Permit - James and Gail Ehlen – James and Gail Ehlen request a variance to construct a 12 wide driveway within the bluff and shore impact zone of Lake Margaret. The property is described as Lot 2 and Part of Lot 1, Block 1 Robinhood. The property is zoned Medium Density Residential (R-2) and Low Density Residential (R-1). Site address is 8093 County 78.

The Ehlen's requested to postpone their application before the Commission until the June Board of Adjustment.

Variance Request - Gene Jaster – Gene Jaster requested a variance from the Lake Shore Land Use Ordinance relating to the sideyard setback for an 8'x24' addition onto the existing garage at a setback of less than 15 feet from the sideyard setback and to add a second story addition onto the garage (24'x44'). The applicant also requested to enclose an existing nonconforming deck on the existing boathouse which is at a setback of less than 75 feet from the lake. The property is legally described as Part of Lots 1 & 2, Ozonite Beach and Part of Government Lot 6, Section 16, Township 135, Range 29 (site address is 1037 Miller Lane) 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 was one comment from Richard Sorkin (1033 Miller Lane); he phoned Teri and supports the project, he sent a letter May 4th which hasn't been received.

Teri's staff report indicated the following: The applicant is requesting a variance to construct an addition onto the existing garage which is less than 15' from the sideyard. The proposed addition

(8'x24') would not encroach any closer than the existing garage. The applicant would like to construct a second story above the garage (24'x44'). In addition, a variance is being requested to enclose the existing deck of the boathouse for a three season porch (14'x17').

The applicant has over 160 feet of shoreline and lot area of 50,705 square feet (over an acre). The proposed addition to the garage should not adversely impact the adjacent property as the applicant stated the adjacent owner's garage is 6' from the lot line. The applicant should be asked about the overhang of the garage (width)? The applicant will most likely need to enter the neighbor's property in order to construct the second story and addition. If the variance is approved, the applicant will need to provide written permission from the adjacent property to enter onto their property for construction purposes. The proposed garage meets the lake and road setbacks.

The second story will be utilized for living space as allowed by ordinance. The applicant has had a site evaluator and designer out to the property for the sewer system. A holding tank to serve the second story is being proposed.

The proposed screen porch for the boat house will be at a setback of 18 feet from Gull Lake. This is within the Shore Impact Zone. Typically, enclosures of boathouse rooftops are not approved due to the impacts on lake views from adjacent properties and the close proximity to the lake. The applicant does have a partial second story over the boathouse already. In addition, the main home does have a screened enclosure area.

The impervious surface for the property is currently 16.5% and the with the proposed garage addition the impervious surface will increase to 16.9%. The ordinance allows 20% impervious surface and up to 25% with a stormwater plan.

The applicant has submitted floor plans and elevations of the proposed garage additions and the screen porch on the boathouse.

The proposed addition to the garage will not exceed the 25' (to midpeak) height requirement.

The applicant should be asked what his plans are for additional screening. The applicant does address in his application runoff from the proposed improvements.

STAFF RECOMMENDATION

Recommend approval of the variance for the garage addition and the second story as they will not adversely impact the area and will allow the expansion of living space with minimal impact to the property as discussed in the variance application. The proposed addition will not alter the essential character of the neighborhood. Recommend denial of the lakeside three season porch to the boathouse based on the close proximity to the lake (within the shore impact zone). The applicant does have a reasonable use of the property with an existing screen porch on the main home.

Eugene Jaster (1037 Miller Lane) and Greg Jaster came before the Commission to explain the project. Gene would like to add an 8'X24' (third compartment for utilities) addition to the garage; he would like to construct a second story on the garage. He would also like to construct a 3 season porch over the existing boat house.

Glen commented that the railing is well used on the boathouse. Greg said that the railing does need to be replaced.

Mark Hallan said he pointed out to staff that the slab for the garage to the east was missing from the impervious surface; however, the additional area is still under the allowable 20% impervious coverage. The stairway will have to be revised per the plan shown.

MOTION BY GLEN GUSTAFSON TO APPROVE THE VARIANCE REQUEST OF GENE JASTER AT 1037 MILLER LANE TO CONSTRUCT AN 8X24 GARAGE ADDITION AND A SECOND STORY ABOVE THE GARAGE AS THEY WILL NOT ADVERSELY IMPACT THE AREA AND WILL ALLOW THE EXPANSION OF LIVING SPACE WITH MINIMAL IMPACT TO THE PROPERTY AS DISCUSSED IN THE VARIANCE APPLICATION. THE PROPOSED ADDITION WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD. WAYNE ANDERSON SECONDED THE MOTION. Discussion: Wayne asked if the sewer addition would be a holding tank. Greg said that is the plan, but they have the option of adding a drainfield up the hill. Teri said she assumed the high use of the property is in the summertime (pertaining to sewer usage). The applicant agreed. John asked what the overhang of the garage would be. Greg commented that it would match the rest of the garage; they have considered dormers. John suggested a construction easement for the project from the neighboring property owner. Roger asked about the gutter system. Greg said he would like a gutter helmet type system for low maintenance. Gene said they would like to dig down about 5 feet and place drain tile for the gutter system to drain into. There were no comments from the audience. MOTION PASSED UNANIMOUSLY.

Discussion followed for the variance request of the screen porch for the boat house which will be at a setback of 18 feet from Gull Lake. This is within the Shore Impact Zone. Kevin asked Teri to give a brief comment as to what the shore impact zone is. She said the shore impact zone is defined as half the setback from the lake, which is 37.5 feet from the lake. The DNR considers this area very sensitive and the impervious surface is really limited.

Kevin asked if there are any leakage issues. Gene said there is no leakage inside; however, there is on the sides. Greg said that the bladder is a little difficult and patio furniture cannot be set right onto the roof as it would rip the material. Gene said there has been a good deal of work done on boathouses on the west shore of the lake. He doesn't feel putting a 3 season porch will put any more impact on the shore impact zone. Greg said the runoff could be channeled into a better location to reduce the current washout conditions.

Earl recalled past applications of allowing them to rebuild existing boathouses with the only modification to construct a pitched roof rather than a flat roof, with no living conditions. Earl asked about the boathouses that have been rebuilt recently. Teri said by state law, existing boathouses are allowed to be rebuilt with the only modification allowed in Lake Shore is going from a flat roof to a pitched roof with no additional living space. John asked if this request is considered living conditions with it being screened in. Teri said it would be considered living expansion.

Brent Anderson said that last month they approved the screened in porch for John Allen. Teri said that it wasn't in the shore impact zone; however, that variance was for less than 75' from the OHW. She commented that the Commission is considering the conditions put on the shore impact zone requirements that are put on the City by the DNR. Gene said they will also put a rain garden for the runoff for the roof modification.

Earl commented from a City Council position it's an important consideration that we have always tried to look ahead at the same time be dealing with the present as far as boathouses go. The challenge is there are a lot of existing boathouses out there that are grandfathered in and a lot of them would like to be expanded, improved or made into additional living quarters and the city has always resisted that because if we give one exception it's difficult to make a denial on the next

request of a similar type or one with just a little more and if we don't uphold the city's ordinance they will fall by the wayside.

Roger said he hears that the current roof tends to leak and suggested allowing a flat deck with a railing. Greg asked if the Commission would allow the roof to be extended out by 15 feet.

Kevin asked if the applicant would consider withdrawal of the second portion of the application and come back with a revised plan to address the drainage plan. Gene said that's not what they wanted to hear; but agreed to work with Teri on a new plan and come back before the Commission.

Rezone/Lot Split -Joe Christensen – Joe Christensen requested to rezone a portion of his property from Wooded Residential (WR) to Low Density Residential (R-1). The portion to be rezoned is the East 230 feet of the North 280 feet of Lot 1, Block 1 Whitney Acres. Site address is 8193 Whitstrom Road.

The following documents became part of the record – Notice of mailing, notice of publication, signed application and attachments and staff report. Teri read two comments into the record are opposed to this application; one from Tim and Julie Kohler, 8163 Whitstrom Road, directly to the east. The other is from Jeanne Amaral at 8152 Whitstrom and former owner of 8193 Whitstrom Road; she has concerns that this may change the character of the neighborhood.

Joe Christensen and Kevin McCormick came before the Commission to explain the application and address the concerns of the neighbors. Kevin McCormick said that the property is at the old gravel pit area. He said that one of the concerns of a neighbor was the rezoning and he felt that the request does fit into the area. Joe would like to create/sell a piece of the property for someone to build on. He said the plan is drawn in accordance to city ordinance. Kevin Egan asked what the property is currently being used as. Joe said the entire parcel is used for working on cars. Kevin Egan asked if he is working on cars for himself or others for income and wondered if it is a permitted use in the current WR zoning. Joe said a little of both. Kevin McCormick said they would like to focus on Tract A first, then would like to address Tract B and its uses on its own. Teri asked if it's Joe's intent to put a residence on Tract A. Yes, Joe does intend to build a residence. Joe wanted to put a house on Tract B; however, he would now like to split the property and sell Tract B for someone to build a residence. Teri said there are covenants on the entire property. Joe was not aware.

Earl said from Council point of view; he keeps seeing more expansion of cars either being stored or worked on. It does appear to be a commercial endeavor which may not follow the covenants of the property. He also said that Joe would have to clear up issues with Tract A before moving forward with Tract B.

Joe said he needs to deal with and sell Tract B, before he can deal with Tract A. Kevin McCormick said understands the quandary of Joe's business and current zoning; however, he doesn't feel it diminishes the application request.

Kevin Egan wouldn't be comfortable making a motion without dealing with the entire property. Wayne asked if there are violations with the covenants of Tract B. Teri said not on Tract B as it is wooded right now; although Joe was made aware of violations of the covenants because she has sent him letters for the debris on the property and outdoor storage. Joe has cleaned up a portion of the property.

Earl said that he is concerned environmentally with the automotive business currently being conducted as the water table of that property is 3 feet and that property is in close proximity to an

area with perched water. Kevin McCormick said that they are within the city code; and doesn't feel that the MPCA would be called in. Earl said he sat on the Environmental Committee and his concern is Tract A is being used as a commercial business which is not allowed in the current zoning and would like to see that taken care of first. Kevin McCormick asked if the application was tabled today could they come in with a viable plan for Tract A. Joe has to address the outdoor storage and a permanent solution. If he wants to continue with auto repair he may want to rezone to commercial. It may have been used that way in the past, but if he wants to use it as a home occupation there would have to be a home.

Kevin McCormick said that this request meets the criteria within the ordinance for rezoning; however, if the Commission would like to see a different plan he needs to know what they would like to see changed. Teri said that they would need to know what Joe is going to do with Tract A, address a permanent solution for outdoor storage and if he plans to continue a commercial business there, he would have to request to rezone to commercial. Teri said that the rezone request may be difficult. If he wants to do a home occupation there, he would have to establish a home.

Kevin McCormick said they would certainly entertain the option to table the issue and come back with a plan for Tract A. Joe will sign the waiver to the 60 day rule.

Mark Hallan made Kevin McCormick that there is a bust in the contour and Kevin said he will correct the mistake on the site plan.

Teri's staff report indicated the following: The applicant has submitted a rezoning request that involves approximately 1.63 acres of land that is currently zoned Wooded Residential. The applicant is proposing to have the property rezoned to Low Density Residential (R-1). The minimum lot size for the Low Density District (R-1) 40,000 square feet. The minimum lot size for the Wooded Residential District is 5 acres. The applicant has made application for a lot split which would be contingent upon the rezoning request.

The criteria for rezoning or classifying property are listed in Section 11.5 of the ordinance.

The zoning of the subject property and surrounding property is indicated on the attached zoning map. A majority of the surrounding property is held in single ownership with the exception of the gravel pit to the west. The property to the north is part of a homeowners association.

It appears there are no significant historical sites on the property. There are wetlands on the property on the north side of the property. The property to be rezoned does not abut any lakeshore; therefore, the criteria relating to the lake is not applicable.

The property was once part of the Whitney Gravel Pit. The area to be rezoned is fairly wooded in comparison to the other portion of the property. The property does have some areas with steep slopes due to the past use of this property. The topography of the property does not prohibit development but does pose limitations.

The property to be rezoned is will have access off of Whitstrom Road.

The Commission will need to determine if the rezoning will serve a socioeconomic need of the public. The applicant should be asked what are the plans for the property? Currently, there are issues with the property not meeting requirements of the covenants for the property and with city ordinances.

The property to be rezoned is not served by city sewer. The proposed The applicant has been asked to provide soil borings The city will want to ensure that the rezoning will not cause undue pressure to provide municipal sewer in this area.

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, south and north is zoned Low Density Residential. The property to the west is zoned Wooded Residential. .

STAFF RECOMMENDATION

This rezoning request meets the criteria within the ordinance for rezoning. The concern with the rezoning is the proposed use given the issues with the existing property. If this property is to be rezoned, the principal use must be first be established (dwelling). The property could not be used for commercial purposes or storage of any kind unless in enclosed in a lawful accessory structure.

Joe Christensen - Lot Split -

Teri's staff report indicated the following: The applicant is applying for a lot split in coordination with the rezoning request. The lot split is contingent upon the rezoning being approved by the Planning Commission and the City Council. The applicant has approximately 6.6 acres of land is requesting to split the property into two tracts. In order to split the property, a portion needs to be rezoned otherwise it cannot be split into two tracts. The Wooded Residential District has a minimum lot size of 5 acres with a 2.5 acre minimal buildable area. Tract A meets the minimum requirements for the Wooded Residential District. The Low Density Residential District has a lot size of 40,000 square feet and 20,000 square feet of buildable area which Tract B meets. The lot width for the Wooded Residential District is 300 feet. The lot width for the R-1 district (General Development) is 150 feet. Both tracts meet this requirement.

The applicant has submitted a survey by a licensed surveyor. Legal descriptions have been prepared for the property.

The property does not contain any bluffs but does contain steep slopes on Tract A. The steep slope has been labeled. Tract B contains wetlands. There is a 30' setback from a wetland which has been shown.

All existing structures and improvements are shown on the survey. Tract B is vacant with the exception of some debris.

The property is not served by city sewer so an onsite system is needed. Soil boring should be submitted for Tract B to demonstrate that an onsite can be located on the property.

Monuments have been placed marking the corners of the property.

Building envelopes are shown on each of the tracts.

STAFF RECOMMENDATION

Recommend approval of the lot split as presented contingent upon the rezoning being approved by the Planning Commission and the City Council. The proposed tracts meet the requirements of the ordinance.

NEW BUSINESS – There was no new business.

OLD BUSINESS –

Building Code Discussion – Teri said last month that Wayne submitted a letter regarding signatures by a professional architect on commercial drawings. Crosby and Breezy Point have adopted the building codes. East Gull hasn't adopted the building code and they don't require stamped drawings. Pequot Lakes, Crosslake and Jenkins don't require stamped drawings, but they have to meet the applicable codes. Nisswa has language within their ordinance that states that for commercial buildings exceeding 1,500 square feet in area a plan signed by an architect licensed in Minnesota indicating conformance with applicable regulations and codes is required. There are no inspections.

Kevin asked why Earl made the suggestion years ago to require the adoption of the building code in Lake Shore. He said it started out to push for a plan review and a building inspection process which could be subcontracted out to a surrounding cities building inspector. The main reason for council denial was they deemed it an unnecessary expense. Earl said that in his search last time and in his discussions with state agencies he found it is not a unique problem to just Lake Shore. He continued that it is problematic for the fire marshal and the department of labor and industry as these are entities that have to ensure public safety from a code enforcement standpoint. He said when he spoke with the fire marshal they had just had a seminar on catastrophic issues with buildings that aren't built to code or modified and violated code. Earl said that you have an obligation to act on something once you become informed. Wayne said he assumes we could require signed drawings without requiring building code.

Kevin Egan asked if they should move forward with acting on both commercial and residential. Teri said she could see resistance from residential as some drawings are prepared by the lumber yard. She suggested that if there is a change the city could use language similar to Nisswa's ordinance if the Commission chose to recommend an ordinance revision or make it a condition during the conditional use process.

Kevin likes the idea of taking the first step to require professional signed commercial drawings.

The Commission directed Teri to initiate an ordinance revision with new language similar to Nisswa's ordinance to be added to the June Board of Adjustment meeting.

REPORTS

City Engineer – Mark Hallan had nothing to report.

Chairman – John Ingleman had nothing to report.

Council Liaison – Earl North had nothing to report.

Zoning Administrator – Teri Hastings had nothing to report.

PUBLIC FORUM – Teri said that Kevin Egan is going to give a presentation on May 25th at City Hall on his trip to Cuba.

MOTION BY WAYNE ANDERSON TO ADJOURN THE BOARD OF ADJUSTMENT/PLANNING COMMISSION MEETING OF MAY 9, 2016 @ 10:26 AM. GLEN GUSTAFSON SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Transcribed by Patti McDonald
Lake Shore City Clerk