

**CITY OF BATTLE LAKE  
PLANNING COMMISSION**

The Battle Lake Planning Commission met Tuesday, November 7, 2017 at 7:00 p.m. Present were Commissioners Gary Dirckx, Chuck Reeve, Dawn Swisher, Steve Seufert, Gene Kelm, Bev McAllister and Don Maslow. Also present were Clerk/Treasurer/Zoning Officer, Val Martin, Barry Fabian from West by Northwest, LLC and several residents.

The meeting was called to order by Chairman Dirckx.

Reeve moved to approve the agenda. Maslow seconded. MCU Kelm moved to approve the minutes. Seufert seconded. MCU

The Planning Commission met to review a variance request from West by Northwest, LLC (Barry Fabian).

***The variance request:***

West by Northwest, LLC has applied for a variance for property located at 734 Lake Shore Drive with the Parcel ID 63000500003009. The request is as follows: *Requesting a variance from building setback requirements to build an 1148 sq. ft. house/garage on lot. Structure will not be any closer to the lake set-back or street right-of-way than homes on adjoining lots using string line test. The request is to allow an 8 foot set-back from the right-of-way, rather than a 30 foot set-back and to also allow a 29.5 foot set-back form the Ordinary High Water Level rather than 60 feet. Property will be under the 25% impervious surface calculation with the new structure. Structure roof design will direct all storm water away from lake.*

Fabian presented his request: He wants to build a reasonably-sized house on his nonconforming lot. He said he received resistance from City staff from the beginning and was told he could not even apply for a variance. Martin explained that she was told by the former zoning officer that the lot cannot be built on and the details on the County's web-site shows the lot is 50 feet deep. Lots have to be a minimum of 60 feet deep in order to build on them. She also said that Fabian was able to prove the lot is deeper than what is listed on the County's site. Fabian agreed with this comment.

His comments regarding his request:

1. The lot is unique due to the length as it's over 90 feet long with a 63 foot depth.
2. He will be 100 feet from Dennis Peterson's buildings on the one side of his property and 50 feet away from the Garcia buildings.
3. He is willing to make changes to the placement of his building. He also wants to change the water set-back to 30 feet so he is not in the shore impact zone.
4. The height is not determined yet but he will stay under the height restrictions.

Martin presented her report as zoning officer and stated that Attorney, JJ Cline reviewed this information and fully agreed with the assessment of the request:

*Mr. Fabian purchased this nonconforming lot recently finding a "loop hole" in the ordinance that would allow building on a nonconforming structure. This only applies to the size of the lot and a variance is needed for the set-backs.*

***From Ordinance 150-Shoreland Management § 150.056 CONSTRUCTION ON NONCONFORMING LOTS OF RECORD.***

*(A) Exempted lots. Lots of record in the office of the County Recorder on the date of enactment of local shoreland controls that do not meet the requirements of § 150.035 may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and meets sewage-treatment and setback requirements of this chapter.*

*(B) Variance required. A variance from setback requirements must be obtained before any use, sewage-treatment system, or building permit is issued for a lot. In evaluating the variance, the Board of Zoning Adjustment shall consider sewage-treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.*

*(C) Contiguous lots. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of § 150.035, the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of § 150.035 as much as possible.  
(Ord. passed 3-23-99)*

*With the lot being just over 60 feet deep, this is a huge request as he would be going from a 60 foot set-back on the lake-side to 29.5 feet and from an 8 foot set-back from the right-of-way rather than a 30 foot set-back. His argument will be that using a string-line he can place the building in a location that is very similar to his neighbors but both properties have been there prior to the current zoning regulations and are grandfathered in.*

***It is the burden of the property owner to PROVE he meets all the criteria of the variance.***

**Criteria/Findings of Fact – Martin reviewed each one individually while Fabian was given opportunity to respond to each one.**

1. **Is the request reasonable?** *The purpose of the set-back from the Ordinary High Water Level is to generally keep development away from the water's edge, to maintain the natural environment and to keep the water safe. Even though his neighbors have building closer to the water, they were built prior to the putting the zoning regulations in place. Fabian brought up the property north of him that is the same depth and according to Fabian, the property owner was allowed to enlarge the size of his structure and move a garage. Martin explained that each application must be granted on its own merits and other variances that have been granted are not a factor.*
2. **Unique Circumstances –** *This lot does not have unique circumstances that you can apply to the state statute. Unique circumstances are related to the characteristics of the land – slopes, wetlands, trees, poor soils, etc. The size of the lot does not make it unique. Fabian feels that the property size is unique and would apply under the variance. He mentioned the string line test which is described in the ordinances which allows the zoning officer the ability to allow a change to the set-back based on a string –line test from the adjoining properties. Martin explained it may not apply to a nonconforming lot and the language also used the word “may” meaning it does not have to be used.*
3. **Essential Character –** *In my opinion, the request would not change the essential character of the neighborhood. Reeve feels it would change the essential character of the area and Fabian feels it would not. He stated the view of the water should not be considered as an owner of a back lot should know that they may not have a view of the lake. Fabian feels the house will blend into the area.*
4. **Is the request in harmony with the ordinance and the Comprehensive Plan?** *Martin reviewed the portions of the ordinance that she felt would apply to this with the italicized and underlined showing what she feels is the most pertinent:*

**From Ordinance 152 - Zoning**

*The purpose of this ordinance is to regulate the use of structures, lands, waters, lot coverage, population density and the size and location of all structures in accordance with Battle Lake's Comprehensive Plan so as to lessen street congestion, secure safety from fire, flood and other dangers, to promote health and general welfare, to provide adequate light and air, to prevent overcrowding of land, to facilitate adequate provision of transportation, water, sewer services, schools, parks and other public requirements, to preserve the character of the area or neighborhood, to conserve the value of buildings and to encourage the most appropriate use of land throughout the City of Battle Lake, Minnesota.*

**From Ordinance 150 – Shoreland Management § 150.002 POLICY.**

*The uncontrolled use of shorelands of the city affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the city.*

Fabian feels his house would blend in with those in the same area. He also stated that with the tilt of the roof to the road, the stormwater would go into the street rather than the lake.

5. **FROM THE COMPREHENSIVE PLAN** *Martin reviewed the portions of the comprehensive plan that she felt would apply to this with the italicized and underlined showing what she feels is the most pertinent:*

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**Natural Amenities and Character**

*Across all topic areas, the lake and other natural amenities emerged as the pride and joy of Battle Lake residents, and as the major component that identifies the character of the City and contributes to the well-being of the community. Ensuring the protection of and access to the lake and other natural amenities is crucial to the future of Battle Lake as a destination and as a great place to live. This plan focuses on natural amenities and character to:*

- *make Battle Lake a destination for recreation, shopping, and living,*
- *attract outside investment,*
- *maintain the strength and appeal of Battle Lake's neighborhoods,*
- *protect the resources unique to Battle Lake and make them accessible to everyone (with special emphasis on West Battle Lake).*
- *ensure high quality of life for residents, and*
- *serve as green infrastructure to reduce infrastructure costs.*

**Goal 12: Maintain and improve the character of all aspects of the lake with respect to future residential lakeshore development.** *Citizens value the quality and beauty of West Battle Lake and other area lakes. A major benefit of living in Battle Lake is the close proximity to the lake from all existing neighborhoods. As demand for marginal lakeshore property increases, more of the shoreline will be privatized and access to the lake by non-lakeshore property owners will be reduced. New housing developments on lakeshore property should take public access into account.*

Citizens also worry about detrimental impacts resulting from the redevelopment of existing residential lakeshore lots and new construction on marginal lakeshore and second-tier lakeshore properties. Of primary concern is the loss of water clarity from increased impervious coverage and landscaping practices, and the loss of natural beauty from the removal of native trees and vegetation along the shoreline. New housing and residential development should address these concerns so as not to degrade this valuable city resource.

Fabian stated that the lot size should not come into play as it is a legal nonconforming lot. He feels it is not marginal and actually has some of the nicest lakeshore on West Battle. He feels it is in harmony with the comprehensive plan and will blend in with the neighborhood. Reeve sited some information from a LMC publication and an excerpt from the comprehensive plan that he felt applied to this request and considered it to not be in harmony with the comprehensive plan.

6. **Will the variance request have an adverse impact on government services?** *The request would not impact services as the addition would be set back far enough to not impact traffic visibility, snow removal or storm water.* Martin also stated that attorney Cline has some concerns about public safety with vehicles parking fairly close to the bike trail. Fabian said he was perfectly willing to always keep his cars in his garage and his guests could park at Lions Park.
7. **Is the request based upon economic consideration?** *No*
8. **Does the sewage system need upgrading?** *NA*

Five letters were received from various neighboring property owners, all of them citing reasons they were against the variance.

Dirckx called for public comments:

- Fran Vohnoutka voiced his opposition and has questioned use of a string line with the curve of the land. Fabian stated the curve of the land is only off about a foot from one end to the other. Martin stated that the string line does not apply to this variance. Vohnoutka also stated that he had asked to buy the property at one time but was told that nothing could be built on it.
- Todd Larson stated that he was approached by a realtor to purchase it at one time and he also was told it was not buildable. He feels granting this variance would set precedence and the City will have continual requests.
- Lou Barry feels that the adjacent buildings were built long before the zoning ordinance was in effect and should not come into consideration. She tried to purchase the lot at one time and was told she would not be allowed to build anything on it, not even a gazebo. She also felt it would set precedence and where would it stop?
- Todd Peterson stated that he knows of a neighbor that will submit a variance application if this is granted so he can build a garage. This neighbor has the same issue with the depth of his lot.

Discussion by Planning Commission:

- There is room between the bike path and where the garage will be for a car.
- The current road is built closer to the west side and when it is rebuilt, we don't know if the tarred surface would move closer to the east.
- There was a question on where the shore impact zone is. Martin stated it is 30 feet from the ordinary high water level.
- Why didn't he check ahead of time? Fabian stated he did check and felt he did enough research to be granted a variance for the property.
- A member did not feel there were any real safety concerns.

The Planning Commission worked to formulate the Findings of Fact. It was stated that this is not a black and white issue and up for interpretation. Each item was discussed and voted on separately:

1. Is the request reasonable? Discussion included: The 60 foot set-back is put in place to protect the water. Is that one spot on the lake really going to affect the health of the lake? Votes were as follows: 6 no and 1 yes
2. Unique Circumstance – is the difficulty created by unique circumstances of the property? Martin reported that while doing her research, she discussed the request with a League of MN Cities staff member. He said the size of the lot does not make it unique. Votes were as follows: 7 voted that there is not a unique circumstance
3. Essential Character – If granted, will the request alter the essential character of the locality? 6 members voted that it will not alter the essential character, 1 member voted no
4. If granted, will the request be in harmony with the zoning ordinances? 5 members felt that it is not in harmony with the zoning ordinances, 1 member voted no and 1 member abstained.
5. If granted, will the request be in harmony with the comprehensive plan? 4 members felt that it is not in harmony with the comprehensive plan and 3 felt it was.
6. Will the variance have an adverse impact on government services? 6 voted no and 1 member abstained

7. The commissioners all felt the request was not based on economic consideration.

Maslow made a motion to recommend to the City Council that they NOT grant the variance based on the Findings of Fact. Swisher seconded, all in favor. MCU

Fabian asked if the hearing next week will be recorded and was told that it will be. Fabian asked if he could bring a court reporter to the hearing and was told it is a public meeting and that should not be an issue.

Adjourn – 9:00 p.m.

Valerie J. Martin, Zoning Officer/Secretary