

CITY OF BATTLE LAKE PLANNING COMMISSION

The Battle Lake Planning Commission met Wednesday, February 7, 2018 at 7:00 p.m. Present were Commissioners Gary Dirckx, Chuck Reeve, Dawn Swisher, Bert Olson, Gene Kelm, Bev McAllister and Don Maslow. Also present were Val Martin, Clerk/Treasurer/Zoning Officer; Steve Seufert, Public Works Superintendent; and Scott and Connie Peterson from Sand Bay, LLC.

The meeting was called to order by Chairman Dirckx.

Olson moved to approve the agenda. Reeve seconded. MCU Reeve moved to approve the minutes. Maslow seconded. MCU

Election of Officers:

Reeve made a motion to elect the following officers: Dirckx as Chair, Maslow as Vice Chair and Martin as Secretary. Maslow seconded. MCU

The Planning Commission met to review a variance request from Sand Bay LLC

The variance request: *Sand Bay LLC is requesting a variance from the building setback requirements to add additional deck/patio space to cabins that are located lake-side. The request also includes the removal of current sidewalks and concrete patio and the use of aqua-pavers (permeable, zero drainage impact pavers) to add a 3 foot by 53 foot sidewalk and a 15 foot by 30 foot patio to unit 13 and 14.*

Presentation of Application: Scott and Connie Peterson were in attendance representing Sand Bay, LLC which is a Common Interest Community. Their request is a variance from the Ordinary High Water Level to allow extension of decks on several of the cabins to make them a little larger and useable as a deck. They are currently over on impervious surface but have removed or plan to remove some of the concrete now in place which is in front of the lodge area and Cabins 11, 12, 13 and 14. They will reuse this impervious surface for the additional deck sizes. The specific request includes:

- Cabin 1 – Current deck setback is 33/34' (angled cabin) with a proposed setback of 29/30'
- Cabin 2 - Current deck setback is 35' with a proposed setback of 31'
- Cabin 3 - Current deck setback is 37' with a proposed setback of 34'
- Cabin 4 - Current deck setback is 39' with a proposed setback of 36'
- Cabin 5 - Current deck setback is 45' with a proposed setback of 42'
- Cabin 10 - Current deck setback is 32' with a proposed setback of 28'
- Cabin 13 & 14 – Current deck setback is 52 feet with a proposed set back of 32 feet.

The applicants noted that this project would greatly improve the aesthetics and improve the impact on the environment. They also stated that, although they are requesting variances and bringing some of the decks closer to the lake, they are actually using less set-back area by the removal of some of the current concrete.

Olson, former Zoning Officer, explained the history of the resort conversion project and some of his concerns:

- They were told that no expansion would be allowed when the conversion was completed. They are over on impervious surface and under on open space requirements, if you look at the regulations for a PUD. The conversion was allowed due to state statute regulations for resort conversions which allowed them to covert what was already in place.
- He had concerns about "banking" impervious surface. Reuse of impervious surface has historically been allowed but should there be a time limit on this? He noted some language in the ordinance regarding nonconforming structures. It discussed a time limit for a rebuilt structure but does not clarify reuse of impervious surface with a time limit.
- Concerns on fire hazards if there are grills on the decks which are constructed of wood.
- Is this going to set precedence for other owners that have decks close to the lake?

Scott Peterson referred to this section of Shoreland Management:

§ 150.057 ADDITIONS/EXPANSIONS TO NONCONFORMING STRUCTURES.

(A) *Setbacks.* All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of §§ 150.035 through 150.043. Any deviation from these requirements must be authorized by a variance pursuant to § 150.102.

(B) *Deck additions.* Deck additions may be allowed with a variance to a structure not meeting the required setback from the ordinary high-water level if all of the following criteria and standards are met:

- (1) The structure existed on the date the structure setbacks were established;
- (2) A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high-water level setback of the structure; and
- (3) The deck is constructed primarily of wood, and is not roofed or screened.

Martin also referred to this section of the ordinance in her report. After reviewing with our City Attorney, the language is not clear whether it is meant for a structure that is just adding a deck or expanding a deck. Also, the words “may be allowed” are used.

Olson mentioned that a shed had been removed and would that be replaced? Yes, they are planning on replacing it and will include this in their application.

One of the members asked about using the extra square footage in the width and not going closer to the lake? Applicants felt it would just create a longer walk-way and make the deck less usable than their request to make it wider towards the lake.

Martin said if they get a variance for this project; they also need to include all future projects which will utilize the unused impervious surface even if someone is not planning on doing this right away. She also noted that all setbacks must be at least 30 feet back to be out of the shore impact zone.

Criteria/Findings of Fact and discussion:

1. Is it reasonable?

- **Staff recommendation:** Yes, I feel the request is quite small and reasonable. Most of the re-use of the impervious surface will be used in a way that will have less run-off to the lake and with the use of pervious pavers, there should also be much less run-off into the lake in that area.
- **Planning Commission discussion:** Olson feels the request is not reasonable and the current deck sizes should be sufficient. After discussion, five members agreed with the staff report that the request is reasonable. Maslow and Olson felt the request is not reasonable.

2. Is it unique?

- **Staff recommendation:** The resort was built many years prior to the adoption of the Shoreland Ordinance and there are no feasible alternatives to their request.
- **Planning Commission Discussion:** Olson feels it is not unique. He feels there are other areas that are not as close to the lake to utilize a place for their lawn chairs or grill. After discussion, six members agreed with the staff recommendation and felt it is unique. Olson feels it is not unique.

3. **If granted, the variance will not alter the essential character.** Members were all in agreement that the variance will not alter the essential character of the area.
4. **If granted, the variance is in harmony with the general purpose of this ordinance.** Members agreed that this is the case; although Olson agreed with conditions (conditions were not listed).
5. **Would granting the variance be consistent with the Comprehensive Plan?** All members agreed that it is consistent with the Comprehensive Plan.
6. **Will the variance have an adverse impact on government services?** All members agreed that it would not.
7. **What portion of the variance request is based upon economic considerations?** All members agreed there was none.

Reeve made a motion to recommend the City Council approve the variance as the applicants have met the requirements of the Findings of Fact, according to the majority of the members. Conditions listed below should be placed on the variance.

Kelm seconded. Motion passed with Olson voting no because he doesn't agree with the interpretation of the ordinance and he believes the current deck space is adequate.

The conditions are:

1. All projects and use of impervious surface must be included with the land use application. This includes projects that do not require a variance and the replacement of the shed that was removed last fall. Any "left-over" impervious surface cannot be used in the future. All of these projects must be completed by November 1, 2019.
2. As each owner is preparing to do their project, it must be staked out and the Zoning Officer needs to be notified for approval prior to building the project.
3. Survey map at City Hall will need to be continually updated as projects are completed with the same deadline of November 1, 2019.
4. Variance set-backs allowed for the decks will be approved as follows:
 - a. Cabin 1 – 30 feet
 - b. Cabin 2 – 31 feet
 - c. Cabin 3 – 34 feet
 - d. Cabin 4 – 36 feet
 - e. Cabin 5 – 42 feet
 - f. Cabin 10 – 30 feet
 - g. Cabin 13 and 14 – 32 feet with the use of professionally-installed permeable aqua-pavers per ordinance requirements.

Adjourn – 9:00 p.m.

Valerie J. Martin, Zoning Officer/Secretary