

**CITY OF BATTLE LAKE**  
**PLANNING COMMISSION**

The Battle Lake Planning Commission met Tuesday, July 6, 2021. The meeting was called to order at 7:00 p.m. by Chair Don Maslow. Present were Commissioners Dawn Swisher, Richard Bullard, and Rezin Everts. Absent was Greg Maynard, Steve Seufert and John Salveold Also present was Val Martin, Clerk/Treasurer/Zoning Officer.

Bullard made a motion to approve the agenda. Swisher seconded. MCU

Swisher made a motion to approve the minutes. Everts seconded. MCU

**Consideration of a Variance Application**

*Pursuant to City Code #150.102 of the City of Battle Lake, Sand Bay Property Owners, 405 Washington Ave. N are requesting a variance to approve the change in height of the original deck on Cabin 2. As part of a remodel in 2019, the original deck was rebuilt, reduced in size, and raised approximately 8 feet in height. The remodel was done in conjunction with two existing variances: Variance #1 – the original cabin was approved to be raised to 35 feet and Variance #2 to reconfigure the impervious surface of Sand Bay Homeowners Associations, which included adding additional impervious surface in front of the Cabin 2 (the same location as the original deck). The existing (new) deck meets all other zoning requirements other than the lake setback ordinance. The deck is much smaller and approximately 3 feet further from the lake.*

Matt Mouse was in attendance to present the application.

- A 2003 variance allowed him to raise his cabin and add a second story.
- When the cabin was raised, the deck was raised with it. He changed his lower area to a concrete patio.
- He did not understand there was an issue and did not see it as two separate structures. He felt he was following the variance and did not know the height was an issue. He felt the deck he was replacing was the one they moved with the raising of the structure and they just put concrete underneath it.
- He uses the deck for a fire escape and to get furniture to the second floor as he has a spiral staircase inside the cabin. The railing on the deck is removable.
- Matt also said he reviewed the code and did not see an issue with the deck. He did not understand it was a variance violation.

Several communications had gone back and forth between Mouser, Martin, and Attorney JJ Cline. Last fall Mouser received a letter from the Chief of Police stating that the deck was in violation and needed to be resolved. He was given permission by the City to wait until June to submit an application for a variance. Mouser noted that he had waited several months to hear back from Attorney Cline and then received the letter from the Chief of Police.

**Staff Report:**

1. The subject property is Sandy Bay Homeowners Association.
2. The applicant has asked for an after-the-fact variance for a 2<sup>nd</sup> story deck at Cabin 2.
3. The applicant received a variance from the setbacks for several decks along the shoreline. The variance was for setbacks only and they removed some of the impervious surface on the property to accommodate the additional space needed.
4. Mr. Mouser, owner of Cabin 2, lifted the cabin and added a story under the cabin as allowed by another variance the previous owners received several years prior to making it a CIC.
5. The issue came into play when the cabin was raised, and he added a 2<sup>nd</sup> floor deck. He also built the patio on the ground level creating two structures.
6. The variance Sand Bay received specifically stated that the owners were requesting the variance to extend current decks to make they a little bigger and have a more useable space. Mr. Mouser choose to replace his deck with a concrete patio. We did not specify the material needed for the deck. Because of the door being elevated to the 2<sup>nd</sup> floor, he added the 2<sup>nd</sup> deck.
7. The 2<sup>nd</sup> floor deck is an additional structure which was not approved through the first variance and the structure was built outside of his footprint. Actual ownership outside the wall of each cabin in owned by the association as a whole. Attorney Cline and I have gone back and forth with Mr. Mouser trying the explain the issue. The issue is that he did not comply with the variance. He has noted several sections of the ordinance in his explanation, but it is the variance that he did not follow, not the ordinance.
8. Several requests to handle the situation were sent along with several emails back and forth between me, Mr. Mouser and JJ. Attached you will find the majority of the emails and the letters that Mr. Mouser received.
9. Bottom line – Mr. Mouser has chosen to apply for the variance to clear up the situation.

Planning Commission discussed their concern that this could set precedence for other requests from Sand Bay.

Martin reported that she spoke with Attorney Cline this morning and he had the following comments to share with the Planning Commission:

1. *Has some concerns about his representation to the Sand Bay committee.*
  - a. *Page 18 Violation of Code – it is a violation of the variance, not the code*
  - b. *“Matt wanted to make sure the association understands that this does not imply or allow anyone to build a similar deck without approval and a variance.” This implies that someone else can apply for a variance for a 2<sup>nd</sup> floor deck, when in fact, the original variance was intended to be final with no additional applications of this nature coming forward. This is an “after the fact” variance request to deal with this situation. Planning Commission and Council should not even consider another variance request from Sand Bay for a 2<sup>nd</sup> floor deck.*
2. *Noted in the application that “the 2<sup>nd</sup> floor deck was clearly visible at time of inspection.” It was not clearly visible nor part of the original plan. It is an added structure and outside of the Mouser’s property. No 2<sup>nd</sup> floor decks were approved with the original variance application.*

Planning commission when through the Findings of Fact:

1. **Is it reasonable?** The Planning Commission members agreed 3 members to 1 that it is reasonable. The deck provided a fire escape and a way to get furniture into the building.
2. **Unique Circumstances:** It is unique – he has to stay within the boundaries of the building itself. With a spiral staircase inside, the deck could be used as a location to get furniture to the second floor and as the fire escape.
3. **Essential Character:** Members voted 3 to 1 that it will not alter the essential character - It will blend in with the area.
4. **Is it in harmony with the general purpose of the zoning code?** Planning Commissioner members all felt that it is not in harmony with the zoning code.
5. **Is it consistent with the Comprehensive Plan?** Yes
6. **Will the request have an adverse impact on government services such as street usage, snow removal, stormwater runoff, emergency services, etc.?** It will not.
7. **What portion of the variance request is based upon economic considerations? (Economic considerations alone should not be a reason for granting a variance)** None.
8. **Does the existing sewer treatment need upgrade?** No
9. **Are there conditions that should be imposed in granting the variance?** NA

Everts made a motion to recommend the City Council not approve the variance based on the Findings of Fact. Swisher seconded. MCU

The Planning Commission reviewed some suggested changes to the zoning ordinances related to accessory structures. Some of the discussion and possible changes included the following:

**Current regulations for accessory structures are:**

*Maximum Building Height. Any principal building within 200 feet of a residential zoning district, shall have a maximum height of 55 feet or less. Single family residence shall have a maximum height of 35 feet and all accessory structures shall have a maximum height of 25 feet or less. Maximum height in shoreland management for all structures is 35 feet – does not distinguish a difference for accessory structures.*

**Subdivision 2. Accessory Buildings.**

- A. *In any zoning district, no accessory building or structure shall be erected or constructed prior to the erection or construction of the principal or main building but may be erected simultaneously unless owner has received an Interim Use Permit.*
- B. *An accessory building including carports attached to the principal building, on a lot, shall be made structurally a part thereof and shall comply in all respects with the requirements of this Chapter applicable to the principal building. A breezeway, for the purpose of this Chapter, is an attachment between the garage or carport and the principal building and shall be considered a part of the principal building.*
- C. *All detached accessory buildings or structures shall have a minimum of ten feet of separation between building eaves and walls of accessory buildings or the accessory buildings and the principal building located on the same lot as the accessory building or structure. Unenclosed porches and decks shall be considered as part of the principal or accessory building(s) and shall be required to meet the minimum requirements of this Section. Such accessory buildings or structures shall be located in the buildable area.*

*All storage sheds or buildings shall be permanently anchored to the ground, including all buildings less than 120 square feet in size.*

**Below is some language for discussion. This would apply to residential districts:**

1. Maximum size: 1,200 sq. ft. maximum
2. Maximum of one detached garage and one shed permitted
3. 26' maximum roof line height, 12' maximum sidewall height
4. Structures over 120 square feet shall be constructed of materials similar in quality and appearance to the of the principal structure. Galvanized sheet metal corrugated (pole-barn), asbestos, canvas and iron are not allowed as exterior wall coverings. No more than 2 detached accessory structures are permitted on a parcel occupied by a single-family detached dwelling.
5. On parcels less than 90,000 square feet occupied by a single-family dwelling the cumulative square feet of accessory structures and attached garages shall not exceed 1,800 square feet.
6. On parcels greater than 90,000 square feet in the R-1 Zoning District that are occupied by a dwelling unit the cumulative square feet of accessory structures and attached garages shall not exceed 2% of the total parcel area up to a maximum of 3,600 square feet
7. On parcels occupied by dwelling units no attached garage or accessory structure shall exceed 1,200 square feet in area. No accessory structure shall be constructed on a parcel without a principal structure.
8. No accessory structure shall be constructed on a parcel without a principal structure.
9. Single-family dwelling roofs shall be shingled with asphalt, wood, tiles, metal (with concealed fasteners) or other comparable materials.
10. Horizontal steel siding having a width not exceeding 10 inches, if it is affixed without exposed fasteners, is allowed.
11. Within all zoning districts of the city, buildings constructed of canvas, fabric or straw shall not be permitted.

This discussion came about because of some complaints of very large or unsightly accessory structures going up. The code only deals with setbacks and impervious surface but does not address the materials or size. It seems to be more of a complicated matter and any changes to how structures are built, and materials used may also need to be addressed on the main dwelling. It might make sense to go back to the Comprehensive Plan and see what that say. Bottom line, we need to have a general discussion on how we want the community to look. Another consideration – do we want to continue to allow the building of storage sheds on residential lots without a main residence?

This will be more of a discussion at the hearing next week rather than making a decision. There are a couple minor changes that can be changed at the Hearing related to enforcement and allowing the police department to enforce the zoning ordinances along with the zoning officer.

Adjourn 8:30 p.m.

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Valerie Martin, Zoning Officer/Secretary