

CITY OF BATTLE LAKE

PLANNING COMMISSION

The Battle Lake Planning Commission met Tuesday; October 4, 2022 The meeting was called to order at 7:00 p.m. by Chair Don Maslow. Present were Commissioners Richard Bullard, Steve Seufert, John Salveold, and Rezin Everts. Absent were Dawn Swisher and Greg Maynard. Also present was Val Martin, Clerk/Treasurer/Zoning Officer along with applicants for variances: Matt and Katrina Mouser, and Mark and Bridgette Thiesen.

Seufert made a motion to approve the agenda. Salveold seconded. MCU

Bullard made a motion to approve the minutes. Seufert seconded. MCU

Consideration of a Variance Application – this is a review of the application from July 2021. The applicant appealed the City’s decision to deny the variance. The court ultimately ruled that a variance was needed for the deck and the City needed to reconsider the application. They also stated that the City considers all factors listed in state law as well as all factors listed in local ordinances.

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 and Katrina Mouser discussed their request again and presented a packet of information that they felt was important from the court documents as follows (*in their words with excerpts from the court document*):

1. *All parties agree that the lower-level deck/patio and cabin reconstruction are compliant and thus immaterial for future discussion. "The patio, its expansion, and the 2018 variance that allowed for that expansion can all be set aside as irrelevant." (Page 12)*
2. *The deck on the now second level is not new but does require a variance for its change in height because it is attached to a non-conforming structure. (Extensive clarification on page 13 and page 27)*
3. *In the setting of conformity " It is an undisputed fact that second-level decks are allowed without variance" (Page 26)*
4. *No other similar structure that has permission to elevate has an existing deck to elevate, nor does any two-level structure have a location to attach one. Moreover, Cabin 13/14, which did not have any similar structures initially, has been approved for several larger similar structures. (See attached diagrams)*
5. *The deck on Cabin 2 does not have a significant visual impact on any parties. "And the application included a photograph showing the deck is not visible from the shoreline, because it is hidden behind a mature tree." (Page 8)*
6. *The aspects of an after-the-fact variance were not considered in previous discussions.*
7. *The construction of the deck was viewed on at least two occasions prior to completion. No notice was given until after the completion of deck. "In particular, the zoning officer viewed the cabin in June 2019, when a deck plate for the new deck was visible. She also photographed construction in August 2019. No concerns regarding the deck were raised at that time." (Page 6)*
8. *The owners of cabin 2 continue to assert that the position of the deck was discussed without concern at the start of deck construction.*

The Mousers also made several comparisons to Cabin 13 & 14’s variance at Sand Bay CIC which was allowed to build two stairways outside of their building and a pergola over the patio. They feel their request is much smaller than the request for Cabins 13 and 14.

Planning Commission reviewed and voted on the Findings of Fact:

- 1. Is it reasonable? The property in question cannot be put to a reasonable use if used under conditions allowed by the official controls (Variance requests should only be considered reasonable when no other alternatives exist, particularly if public water is impaired or at risk of being impaired. How substantial is the request related to the standard?)** Mouser claimed the need for the deck for a fire escape and to get furniture to the 2nd floor made is reasonable. Bullard made a motion to vote yes, it is reasonable because the deck is smaller than the patio below and would not create additional stormwater runoff. Salvevold seconded. MCU
- 2. Unique Circumstances – The plight of the landowner is due to circumstances unique to the property not created by the landowner. What distinguishes this property from other properties to justify deviation from the requirements when others must comply?** Mouser suggested their property was unique as it is landlocked and they have no other way to get out of the structure if there was a fire. In discussion, Planning Commission felt the property was not unique – in comparison to other properties in the Sand Bay CIC, they own only the cabin itself and nothing outside of the walls of the cabin. This is the same for the other cabins within the CIC including other cabins that have a second story. In consideration of the fire escape, Planning Commission said that windows and an emergency rope ladder could be used for a fire escape as other people with 2nd-floor houses have to use this route. Seufert made a motion to vote no on this finding. Bullard seconded. MCU
- 3. Essential Character – if granted, the variance will not alter the essential character of the City/locality. (Does the size and location compare to structures in the vicinity? If in the shoreland management area, to what extent does the structure encroach into sensitive natural areas such as bluffs or shores?)** Seufert made a motion that the request will not alter the essential character of the City/locality. It would easily blend in with the other cabins in the CIC. Rezin seconded. MCU
- 4. The deviation from the Ordinance with any attached conditions will still be in keeping with the spirit and intent of the Ordinance; (Will deviating from the required standard on this property undermine the purposes and intent? Why or why not?)** Everts made a motion that the request will still be in keeping with the spirit of the ordinance. Salvevold seconded. MCU
- 5. Would granting the variance be consistent with the intent of the Comprehensive Plan? (Which goals and policies apply? Is allowing deviation from the ordinance consistent with these goals and policies?)** Bullard made a motion that the variance would be consistent with the intent of the Comprehensive Plan. It will not create additional stormwater runoff with concerns for the lake. Everts seconded. MCU
- 6. Will the variance request have an adverse impact on government services such as street usage, snow removal, stormwater runoff, emergency services, etc.?** Seufert made a motion that the variance will not have an adverse impact on government services. Maslow seconded. MCU
- 7. The variance is not for economic reasons alone.** Maslow made a motion that the variance is not for economic reasons. Salvevold seconded. MCU
- 8. The variance will not create a land use not permitted in the ordinance.** Seufert made a motion that the variance would not create a land use not permitted in the ordinance. Bullard seconded. MCU
- 9. Are there any conditions that should be imposed in granting the variance?** Not applicable

Additional Shoreland Management Considerations:

- 1. Whether the property owner has reasonable use of the land without the variance.** Seufert made a motion that the property owner has full and reasonable use of the cabin without the help of the variance for a deck. Everts seconded. MCU
- 2. Whether the property is used seasonally or year-round,** The property is seasonal due to the water and sewer system
- 3. Whether the variance is being requested solely on the basis of economic considerations** Seufert made a motion that the variance is not based solely on economic considerations. Everts seconded. MCU
- 4. The characteristics of development on adjacent properties.** Not applicable

After the Fact Variance Considerations:

- 1. Whether the applicant acted in good faith –** Salvevold made a motion that the applicant acted in good faith. The applicant attempted to comply with the ordinance after he was told he was required to have a permit. He sent several emails back and forth between the City staff and the attorney. Most of his questions had to deal with why he needed a variance and what code he was breaking. Everts seconded. MCU

2. **Whether the applicant attempted to comply with the ordinance** – Everts made a motion that the applicant attempted to comply with the ordinance
3. **Whether the applicant made a substantial investment;** Bullard made a motion that yes, the applicant did have a substantial investment in the project with the cost of materials for the deck. Everts seconded. MCU
4. **Whether construction was completed.** Everts made a motion that the Planning Commission agreed construction was complete. Bullard seconded. MCU
5. **Whether there [are] similar structures in the area;** Bullard made a motion that there were no similar structures to date within a one-block radius that has a 35-foot structure with a second-story deck. Seufert seconded. MCU
6. **Whether the zoning authority's benefits would be outweighed by the applicant's burden if the variance were denied.** Maslow made a motion that Planning commission members felt the authority's benefit did not outweigh the applicant's burden. Bullard seconded. MCU

There was a discussion between Mouser and the Planning Commission on a possible compromise – possibly taking the railing and deck boards off and making the structure a pergola.

Seufert made a motion to recommend the City Council not approve the variance based on the Findings of Fact and the council should consider a possible compromise as discussed with the Planning Commission if this can be done legally. Everts seconded. MCU

The Mousers stated their disappointment in the outcome and suggested that there may be another appeal to the court systems if they are not successful in their request. Mr. Mouser again felt that he received “permission” for the deck because the zoning officer viewed the deck plate on a site visit and took photographs later on. Martin stated later in the meeting that she does not remember having a conversation about a second-floor deck with Mouser and said that the site visit was to view the layout of the new patio with a concentration on that part of the project. No permission was ever given for a 2nd-floor deck. This is something that would require an application.

Consideration of a Variance Application:

Pursuant to City Code #150.102 of the City of Battle Lake, Mark and Bridgette Thiesen are requesting a variance from setbacks and impervious surface requirements. The request is to build a roof/carport attached to the west side of the existing building in the rear of our lot. It would align with current structures and extend over existing cement with an additional 6 x18 impervious coverage. The request would be to increase the impervious surface from the current impervious surface of 31.9% to 33%. City Code requires a maximum of 25% impervious surface. They are also requesting a side setback on the west side from the current standards of 10' to 7' 6".

Mark and Bridgette Thiesen were in attendance to present their application. The carport would extend over the current concrete slab with footings going into the slab. This project will actually assist in keeping more stormwater on their property as most of it now goes into the alley. The carport will be used to protect their vehicles from tree debris during storms.

STAFF FINDINGS:

1. The subject property is located at 206 East Dunton Street.
 2. The applicant has asked for a variance to add a carport on an existing cement slab.
 3. Alley setbacks can be used by a string line but the side setback requested would be 7' 6". The owner stated that the retaining wall on the property line will maintain any additional stormwater.
 4. As the property is within 1000' of shoreland management, they will need to keep their impervious under 25%. They are currently at 31.9% and would increase to 33%.
1. **Is it reasonable? The property in question cannot be put to a reasonable use if used under conditions allowed by the official controls (Variance requests should only be considered reasonable when no other alternatives exist, particularly if public water is impaired or at risk of being impaired. How substantial is the request related to the standard?** Bullard made a motion that the request is reasonable. Even though they are adding a small amount of impervious, it will assist in keeping one of the stormwater runoff on their property. Everts seconded. MCU
 2. **Unique Circumstances – The plight of the landowner is due to circumstances unique to the property not created by the landowner. What distinguishes this property from other properties to justify deviation from the requirements when others must comply?** Bullard made a motion that the

property is unique due to the hill/elevation in that block of the community. This will assist greatly with the stormwater runoff. Seufert seconded. MCU

3. **Essential Character – if granted, the variance will not alter the essential character of the City/locality. (Does the size and location compare to structures in the vicinity? If in the shoreland management area, to what extent does the structure encroach into sensitive natural areas such as bluffs or shores?)** Maslow made a motion that the variance would not alter the essential character of the area. Many of the accessory structures are as close or closer to the alley. Bullard seconded. MCU
4. **The deviation from the Ordinance with any attached conditions will still be in keeping with the spirit and intent of the Ordinance; (Will deviating from the required standard on this property undermine the purposes and intent? Why or why not?)** Maslow made a motion that the request will be in keeping with the spirit and intent of the ordinance. Everts seconded. MCU
5. **Would granting the variance be consistent with the intent of the Comprehensive Plan? (Which goals and policies apply? Is allowing deviation from the ordinance consistent with these goals and policies?)** Seufert made a motion that granting the variance will be consistent with the Comprehensive Plan. Bullard seconded. MCU
6. **Will the variance request have an adverse impact on government services such as street usage, snow removal, stormwater runoff, emergency services, etc.?** Everts made the motion that the variance request would not have an adverse effect on the government services, in fact – it will assist with snow removal and keeping stormwater on their property. Salveold seconded. MCU
7. **The variance is not for economic reasons alone.** Seufert made a motion that the request is not for economic reasons. Maslow seconded. MCU
8. **The variance will not create a land use not permitted in the ordinance.** Bullard made a motion that the variance will not create a land use not permitted by the ordinance. Everts seconded. MCU
- 9.
10. **Are there any conditions that should be imposed in granting the variance? Yes**

Seufert made a motion to recommend the council approve the variance with the following conditions: The gutter downspouts will be facing north and the carport will stay a carport and not have walls added to it. Everts seconded. MCU

Adjourn 9:25 p.m.

Valerie Martin, Zoning Officer/Secretary