

**MINUTES
PEQUOT LAKES PLANNING COMMISSION/
BOARD OF ADJUSTMENT
REGULAR MEETING
OCTOBER 16, 2014**

PRESENT: Deb Brown, Bill Habein, Mark Hallan, James Oraskovich, Cheri Seils and Wesley Wilson. ABSENT: Todd Engels

CITY PLANNER: Justin Burslie, Community Growth Institute

ZONING ADMINISTRATOR: Dawn Bittner

COUNCIL LIAISONS: Absent.

PRE-MEETING DISCUSSION:

Downtown Plan

Mr. Burslie explained the Community Character and Housing action items from the Comprehensive Plan were discussed last month. This month the Economic Development, Recreation, Transportation and Infrastructure action items will be discussed. Those that pertain to the Downtown Plan will be included in the Plan.

The meeting was called to order by Chair Seils at 7:00 p.m.

PUBLIC HEARING:

APPLICANT: James Byrne

Applicant requests an After-the-Fact Variance to Exceed Maximum Accessory Structure Height.

Mr. Burslie explained the Staff Report. Applicant was present. Mr. Burslie stated Staff is not recommending approval of the After-the-Fact Variance. The reason for the 13 foot height requirement is accessory structures are not allowed to include living quarters or to have a habitable second story. There are other ways to have guest quarters. Mr. Burslie included Findings of Fact in the Staff Report supporting denial:

1. The subject property is located at 4905 Olson Road and is in the "Shoreline Residential" zone.
2. The after-the-fact variance request is to exceed the maximum accessory structure height.

3. The subject accessory structure was legally permitted to be constructed at 13 feet in height. Once it was constructed, it was determined the height of the structure is 14' - 7 1/2".
4. The applicant has not established that there are practical difficulties in complying with the official control. The subject accessory structure was constructed at a height not allowed by the permit issued by the City.
5. The "plight" of the landowner was created by the landowner.
6. The deviation from the ordinance will not be in harmony with the general purposes and intent of the ordinance and comprehensive plan.
7. The variance will not create a land use not permitted in the "Shoreline Residential" zone. Accessory structures are "permitted" in that zone.
8. Granting of the variance will aesthetically alter the essential character of the locality.
9. The variance request does appear to be for economic reasons. Reasonable use of the property does exist under the current code.

Mr. Burslie made a correction to Number 3 above. If the recommendation were for approval, the Findings of Fact would need to be changed and he had included the following as a Condition for approval:

1. Eight evergreen trees with a minimum planted height of 13 feet shall be planted on the subject property to screen the accessory structure. The location and species of trees shall be determined by the property owner and city staff. Said trees shall be planted no later than May 21, 2015.

Mr. Burslie had contacted area landscapers and found that evergreen trees can be planted anytime during the year; there is no window when they need to be planted. The reason for the condition is the only impact, besides habitation, is aesthetic reasons. The Planning Commission will need to discuss.

Chair Seils pointed out the 3 letters received: William Katter, Jeff Pearson and Carole Pearson. Zoning Administrator Bittner stated she had received a telephone call from Karen Boller. All 4 comments were supporting approval of the After-the-Fact Variance.

Mr. Byrne was in attendance, along with his landscaper, Brian Erickson, and friend Peg Zachman.

Mr. Byrne stated when he started the project in September, 2012 the upstairs was not to be habitable. There are no stairs; the only access is by a ladder. The door and deck were for aesthetics only. The door is a full view window to hand up materials. The deck has no support to handle weight or rail. There is no water, no bathroom, no plumbing. He stated he basically wanted to aesthetically match the roof lines of the existing lakehome. His intentions were never to exceed the 13' mark; he thought he was right at 13'.

Mr. Byrne further stated he was not aware it might be too high until City Planner Burslie and Zoning Administrator Bittner visited. The City received 2 complaints after the roof was completed for months. Planning Commission Member Hallan came out and did actual measurements. Mr. Byrne questioned why a complaint was registered four to five months after the roof was completed.

Mr. Byrne also explained he had been placed on the Planning Commission Agenda but could not attend due to medical reasons and his job has had him gone January through June. As for the structure, at this point it has been roofed, fascia and soffits completed before the complaint was issued. If we are looking at altering the structure, that is financially extremely excessive.

When asked, Mr. Byrne stated a patio door was used on the new addition rather than a garage door as depicted on the plans because ProBuild had the patio door and he had gotten an unbelievable price and it fit into the exact opening. This garage is not going to be for habitation. He explained he builds furniture for low income people. The upper level is for storage.

Brian Erickson stated the workshop has no hot or cold water or a toilet. The patio door provides excellent lighting and room to move items in and out of there. The grade has not been established; the grade can easily come up a block and a half on the west side and the north side. Final grade needs to be established.

Mr. Byrne stated he is requesting the Planning Commission to approve the after-the-fact Variance.

Public comment: None.

Mr. Erickson stated he has done planting of trees over the years for Mr. Byrne and Mr. Byrne plans to plant the hillside lawn into a natural grove. The north and west sides of the garage were grade issues. They need to get the water runoff taken care of and then plant trees. Mr. Byrne stated 125 trees have been planted on the property over the years.

Planning Commission Member Hallan asked to see the elevation plans. Zoning Administrator Bittner provided them from the file. Planning Commission Member Hallan stated that the plan submitted would not even come close to 13 feet. The person who drew the plans may want to put something together that is more to scale. The plan is considerably different than what was built; the garage is shorter than the plan. Mr. Burslie stated the Code must be met no matter what the application and plans state.

Planning Commission Member Brown asked if Mr. Byrne had a contractor. Mr. Byrne stated he did but he was unable to attend due to illness.

Mr. Erickson stated screening can be added, but inquired if it was from the lake or Olson Road. Grading needs to be done along the north and west sides and the lawn to the north Mr. Byrne plans to plant with trees.

Planning Commission Member Oraskovich asked if the slope isn't toward the lake now. Mr. Erickson stated that was correct.

Planning Commission Member Habein stated the plan indicates a 10/12 pitch and an 8/12 roof was actually built. Mr. Byrne concurred. Mr. Habein asked if they planned to build up the grade. Mr. Erickson stated yes, on 3 sides, with a knee high retaining wall on the north side.

Planning Commission Member Habein asked if there is existing tar in front of the garage door. Mr. Byrne stated there is and Planning Commission Member Habein stated that side would not be in conformance then.

Mr. Byrne stated the DNR owns the property to the east and this area would not be visible to anyone. The neighbors stated in their correspondence that they can't see the garage.

Planning Commission Member Hallan stated that this property has been improved immensely. The Planning Commission has had several applications that we denied as people need to build according to the ordinance. In this case, 13 feet to prevent habitation.

Planning Commission Member Habein stated it was a good intention to use the upper level for storage, but properties sell. Mr. Byrne stated this property will not change hands. Planning Commission Member Hallan stated it will change hands at some point. All sites are different and this structure does not stick out like a sore thumb.

Mr. Byrne stated that it hasn't upset the immediate neighbors; two letters were received from properties within 350 feet and a response from a neighbor on the south side of the lake. He would like the Planning Commission to make note of that also.

Planning Commission Member Brown stated she appreciates the fact that the structure is nice looking and the neighbors are not complaining, but the Planning Commission needs to look at the facts. Grading has gotten us into trouble before. Based on the Findings of Fact put together by Staff, there are no Findings to support approval. We

need to think about setting a precedence. We could say this garage roof was a mistake, etc., but we have to consider the next After-the-Fact Variance request. Not that this was done intentionally, but what precedent are we going to set if we approve this.

Planning Commission Member Wilson asked if there is any plumbing for future bathrooms. Mr. Byrne stated there is no plumbing at all. Mr. Byrne further stated there was an individual on the south side of the lake that built a little garage with plumbing in it. He stated he was allowed to do it because it was his wife's sewing room. There is no staircase in this garage, only a ladder. The Commission is more than welcome to come out and find that fact to be true.

Mr. Erickson stated that if the Commission does come out to take a look at the drainage issue and screening issues.

Mr. Burslie stated the Condition included for approval was for substantial trees; 13 foot trees were suggested due to the building height of 13 feet.

Mr. Erickson stated the varieties would be balsam, some white spruce, red pine and Norway, but for screening, they are not primary choice.

Planning Commission Member Hallan stated this is not the first time being in this position. The City could take legal action to remove the roof. If the Planning Commission denies the Variance, Mr. Byrne has the right to appeal that decision to the City Council.

Planning Commission Member Habein stated 20 minutes has been spent talking about aesthetics, not building height.

Planning Commission Member Oraskovich stated Mr. Byrne has been out of town a lot and it has taken more than a year for him to attend a meeting; we need to do something.

A motion was made by Planning Commission Member Hallan, seconded by Planning Commission Member Brown, that the After-the-Fact Variance to exceed the maximum Building Height of 13 feet for an accessory structure be denied.

Planning Commission Member Hallan stated the motion does not mean he is voting for his own motion. This goes back to the Comprehensive Plan. We may as well change the ordinance to 14 feet. If this person came in before they started, wanting to match the pitch on the house, would I have considered it before the fact with proper scalable drawing? One reason is aesthetics. The dormer makes it look more habitable. Do we have him come back, remove the dormer to look like a garage rather than a habitable

building? The dormer makes it look like another dwelling. It's not breaking the budget taking the dormer off.

Mr. Byrne asked if the Planning Commission would be more compliant if the dormer was removed.

Mr. Burslie states that is not an option. If we approve taking the dormer off, it needs to mitigate the problem. Plant some trees. Planning Commission Member Hallan stated removing the dormer technically doesn't mitigate height.

Mr. Erickson asked when the final grade is established around the structure, what then? There is grade and drainage that has to be addressed.

ROLL CALL VOTE: Ms. Brown: Aye; Mr. Habein: Aye; Mr. Hallan: Nay; Mr. Oraskovich: Nay; Mr. Wilson, Nay. Motion fails. Aye: 2 Nay: 3.

Planning Commission Member Hallan stated that when the permit was issued the old definition for Building Height was in the Code. The definition was recently amended.

Mr. Burslie asked if the applicant would consider tabling this matter to go back to establish the grading issues and match the old definition for Building Height.

When asked by Mr. Byrne, Chair Seils stated that if he agrees to table this it would give him the opportunity to do final grading around 2 sides. Mr. Burslie stated only one side would be necessary. Planning Commission Member Hallan stated on the north side and the west side, increase grade 1 1/2 to 2 feet will get drainage away and reduce the height from the west and from the road.

Mr. Burslie stated they wouldn't need a Variance then; the new grade would be acceptable to the Planning Commission; Mr. Byrne could withdraw their request and meet the Code.

Mr. Erickson stated the grading can be done this fall, but tree planting would need to be done later.

Planning Commission Member Oraskovich stated this can be tabled up to 120 days to come to a conclusion with the grade. Chair Seils stated 120 days to implement, to get the grading done.

A motion was made by Planning Commission Member Wilson, seconded by Planning Commission Member Habein, to table this matter. All members voted "aye". Motion carried.

Planning Commission Member Hallan stated he will re-measure the height on the north and west sides; it must measure 13 feet or less.

ADDITIONS OR DELETIONS TO AGENDA: None

OPEN FORUM: None

NEW BUSINESS: None

OLD BUSINESS:

a. “River Street” Update –

Zoning Administrator Bittner explained she met onsite with Public Works Supervisor Loven and Planning Commission Member Engels. Without a survey it is difficult to determine exactly where the boardwalk is located; a portion could be on River Street or on the neighbor to the west. This area has been used for years as access to Mayo Lake for ice fishing.

The Planning Commission approved the sample letter to be mailed to the property owner who may have installed the boardwalk and dock.

APPROVAL OF MINUTES:

A motion was made by Planning Commission Member Oraskovich, seconded by Planning Commission Member Wilson, to approve the September 18, 2014 Minutes, as read. All members voted “aye”. Motion carried.

ZONING ADMINISTRATOR’S REPORT:

Zoning Administrator Bittner informed the Planning Commission that this would be Justin Burslie’s final meeting as he has accepted the City Planner position with the City of Nisswa. The City has made no plans at this time for planning services; the City is under contract with Community Growth through January, 2015.

Zoning Administrator Bittner reported attending a meeting with the CWC SWCD, MPCA and DNR regarding the Mayo Creek Watershed. The SWCD will contact Cass County and collect parcel data and septic information for the landowners within the

watershed. Pequot Lakes will inventory all SSTS around Sibley and Mayo Lakes for compliance to aid in the determination of where the e-coli is coming from.

Zoning Administrator Bittner further reported attending a Technical Evaluation Panel pre-application meeting for the Preserve Golf Course. The Golf Course is seeking permission to add fill to the wetland on Fairway Number 5. This item will be included on the November Agenda as the Golf Course has determined they cannot achieve what they need keeping the fill under 10,000 square feet.

Zoning Administrator Bittner pointed out the seven permits issued and the 6 letters sent and received. The following Potential Violations/Enforcement Actions were discussed:

1. Virgil Dahl – Bittner explained City Staff returned to the Dahl property on October 15 assisting Mr. Dahl with loading heavy metal items into his recycling container and removed most of the items stored outside. Mr. Dahl was instructed to sort personal property and dispose of non-essential items. Staff will revisit the property in the spring to deal with the non-conforming mobile home.
2. John and Barbara Derksen – The Planning Commission directed the Zoning Administrator to move forward with enforcement.

ADJOURNMENT:

A motion was made by Planning Commission Member Habein, seconded by Planning Commission Member Hallan, to adjourn the meeting. All members voted “aye”. Motion carried. The meeting was adjourned at 8:22 p.m.

Respectfully submitted,

Dawn Bittner
Zoning Administrator