

**MINUTES
PEQUOT LAKES PLANNING COMMISSION/
BOARD OF ADJUSTMENT
REGULAR MEETING
OCTOBER 17, 2019**

PRESENT: Andrew Birch, Mark Hallan, Laura Larson, Nathan Norton, Tom Paulbeck, Christopher Savino, and Wesley Wilson. ABSENT: None.

CITY PLANNER: Absent

ZONING SPECIALIST: Dawn Bittner

COUNCIL LIAISON: Scott Pederson (Absent)

The meeting was called to order by Chair Hallan at 6:00 PM.

A motion was made by Planning Commission Member Wilson, seconded by Planning Commission Member Birch, to open the Public Hearings. All members voted “aye”. Motion carried.

PUBLIC HEARINGS:

APPLICANT: Alan J. Brown

Applicant requests a Variance (Continuation)

Bittner explained the Staff Report included in the packet was the same as the September Staff Report. Applicant was present. Bittner explained a Stormwater Site Management Plan had been received. She noted there is an area on the plan indicating an area on the neighboring lot to the south to be shaped to tie into the 1220 contour to protect property from stormwater runoff. Joseph Dubel, an engineer with WSN hired by applicant, explained the new site plan. He explained it was applicant’s intent to not increase stormwater from his site to his neighbor’s lot. The pond isn’t a retention pond, but an area to slow runoff. Mr. Dubel further explained that the intent is to create a larger contour to capture some of the stormwater from the roadway and keep it away from the neighbor’s SSTS. When he asked if the neighbor had granted permission for the work, Dave Morris, the neighbor, stated affirmatively, but inquired who is responsible for the expenses incurred. Mr. Dubel stated it would be the owner, Mr. Brown, as he is creating increases to the existing stormwater issues by increasing the square footage of his cabin. When asked by Mr. Morris, Mr. Dubel stated they plan to work around the existing trees along the lot line. Mr. Morris stated his goal is not to have all the stormwater go to Mr. Brown’s lot; there has always been stormwater in that area of his lot and he is

comfortable with that. Mr. Dubel stated Mr. Brown is doing the work on his lot, increasing the impervious coverage by 277 square feet, so the burden is on him to manage increased stormwater.

Planning Commission Member Birch noted that at the September meeting, a large amount of stormwater from the road runs to these 2 properties and asked if there had been any other solutions to mitigate that. Mr. Dubel stated there are properties all along the roadway, but Mr. Brown is doing the work and should be responsible. Chair Hallan noted that some of the stormwater from the road goes back to the wetland.

Planning Commission Member Paulbeck asked Mr. Dubel if he felt he has mitigated the issue from where it is now to where it is going to go. Mr. Dubel replied affirmatively.

Chair Hallan pointed out the new dwelling has been moved several feet to the north. The applicant is also indicating a finished floor elevation of 1222.5, which is 6 inches higher than the elevation of 1222 that they are required to meet. He further inquired if the proposed home will be a slab-on-grade. Mr. Brown stated it would be. Chair Hallan further stated there would be no crawl space, no utilities or anything below.

Bittner stated that since only 5 feet of fill is indicated around the perimeter of the structure, this now becomes a variance from the 15-foot fill requirement. The MN DNR provided criteria to review:

1. Is the variance in harmony with the purposes and intent of the ordinance?
 - A. Does the proposal provide the 15 feet of fill extending on at least one side of the building such that emergency crews can load/unload during times of flooding? No.
 - B. Does the proposal provide protection of the structure's foundation? Yes.
2. Is the variance consistent with the comprehensive Plan?
 - A. Which goals and policies apply? Policy: Protect and enhance natural resources and open space contributing to the character and vitality of Pequot Lakes. The City must actively protect existing natural resources and enhance those that contribute to Pequot Lakes' rural character. Goal: Control runoff to lakes.
 - B. Why or why not? Answered in "A".
3. Are there unique circumstances to the property not created by the landowner?
 - A. What physical characteristics are unique to the property that prevent compliance with the requirement to extend fill from the building? Small building area, narrow lot, road easement, and wetland.
 - B. Were any difficulties in meeting the foundation protection filling created by some action of the applicant? No.
 - C. Has the applicant demonstrated no other feasible alternatives exist that would not require a variance? Yes.

4. Will the variance, if granted, alter the essential character of the locality?
 - A. Does the variance provide minimal relief or a substantial deviation from the filling required? Minimal relief.
 - B. Does it affect the appearance of the shore from the river and from neighboring properties? No.
5. Does the proposal put property to use in a reasonable manner?
 - A. Is the proposed structure reasonable in this location given the depths and velocities of floodwaters anticipated? Yes.
 - B. How would this structure be accessed during times of flooding? By the roadway or the lake.

Bittner stated the concerns with the fill requirement have been met. The State Floodplain Manager does not object to this variance if meeting that requirement would result in impacts to neighboring properties or resources, such as wetlands.

After discussion, Chair Hallan pointed out that the elevation must be at 1222, which is met, actually being 6 inches higher at 1222.5.

Mr. Morris asked if silt fence was planned along the retention area. Mr. Dubel stated the silt fence should be installed as indicated on the site plan.

Bittner reviewed the proposed conditions where Number 2 was modified, Number 4 was changed to 5 feet, Number 7 was modified and Number 8 was added.

PUBLIC COMMENT OPENED:

Alan J. Brown, applicant, stated based on the last meeting that he made every effort to make sure he is doing everything that needs to be done to protect the community, to protect the lake, to protect the neighbors and surrounding locality. That was his primary objective and it became more important after the last meeting.

PUBLIC COMMENT CLOSED:

A motion was made by Planning Commission Member Wilson, seconded by Planning Commission Member Larson, to approve the variance request, based on the following Findings of Fact:

1. The subject property is located at 27713 Janco Lane and is in the "Shoreline Residential" zone.
2. The property contains a 673.56 square foot cabin and a 192 square foot shed.
3. The applicant proposes to remove the existing cabin that is 10 feet from the OHW and build a new 950 square foot cabin 39 feet from the OHW.
4. The applicant proposes to increase the height of the new cabin by 7 feet.

5. The applicant proposes to install a depression area south of the proposed new cabin to maintain stormwater. Applicant also proposes to install gutters along the roofline of the new cabin to direct runoff to the depression area.
6. There is a recorded easement across the subject property for access to the lot to the north.
7. There is a wetland behind the shed to the west. The subject property must meet floodplain minimum elevation standards as it is located within the floodplain of East Twin Lake.
8. The existing dwelling (to be replaced) is located within the 100-yr floodplain of East Twin Lake. The Floodplain standards allow pre-existing structures located in the floodplain to be reconstructed in accordance with the standards in Section 6.2, "Standards for Reconstruction of Nonconforming Structures" of the zoning ordinance.
9. The subject property is served by a shallow well and two holding tanks. Applicant proposes to seal the shallow well and have a deep well drilled for the new cabin. Applicant proposes to move the existing lift tank and utilize the existing holding tanks for the new cabin.
10. The applicant has established that there are practical difficulties in complying with the Code. Applicant is unable to meet the 75-foot setback from the OHW. There is only approximately 69 feet from the OHW to the east edge of the easement road and approximately 32 feet from the west edge of the easement road to the wetland. The area to the west contains the shed and holding tanks for the septic system.
11. The property owner proposes to use the property in a reasonable manner.
12. The deviation from the Code will still be in harmony with the general purposes and intent of the City Code and Comprehensive Plan.
13. The variance will not create a land use not permitted in the Shoreline Residential zone.
14. The variance will not alter the essential character of the locality as the neighboring seasonal cabins have limited buildable area as well.
15. The variance has not been made based on economic considerations.

And subject to the following modified Conditions:

1. Existing trees and vegetation between the dwelling and the OHW shall remain in a live state to provide screening as viewed from the lake. In the event the existing trees and vegetation dies or is damaged by a natural event, additional trees and vegetation shall be planted to provide screening as viewed from the lake.
2. Pre-assembled hand installed silt fence shall be installed as outlined on the Stormwater Site Management Plan dated October 11, 2019 until vegetation is permanently established.
3. The structure must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation (1,221.6' - NAVD88) *or* 3 ft above the Ordinary High Water level (constructed at an elevation 1,222' - NGVD 29) - *whichever is higher*.
4. The finished fill elevation for the structure shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least 5 feet beyond the outside limits of the structure.

5. Before the foundation for the dwelling is constructed the applicant shall submit certification by a licensed land surveyor verifying the fill meets the minimum elevation requirements of this variance approval.
6. After the dwelling is constructed the applicant shall submit certification from a professional land survey verifying the finished fill and building elevations were accomplished in compliance with the conditions of this variance approval and the standards of the Floodplain Management Overlay District.
7. Gutters shall be installed on the north and south sides of the dwelling. Stormwater shall be directed to the stormwater retention area along the south edge of subject property identified on the Stormwater Site Management Plan dated October 11, 2019 as “proposed grade = 1219.0”.
8. Final grading shall meet the elevations outlined on the Stormwater Site Management Plan dated October 11, 2019.

Planning Commission Member Norton inquired how much time the applicant had to act on the Variance approval before the approval is void. Bittner stated the applicant will receive a letter indicating the approval and the timeframe is included in the letter.

All members voted “aye”. Motion carried.

APPLICANT: Jason Forrest
Applicant requests a Variance

Bittner explained the Staff Report. Applicant was present and represented by Kevin Yeager.

Chair Hallan asked why the driveway was not included in the existing impervious coverage calculations. Staff indicated the surveyor did not include them. Chair Hallan pointed out the entire bluff area is included in the impervious coverage calculations of 10.5 for the proposed construction, which is a misleading calculation. Chair Hallan stated a more realistic calculation would be approximately 20% south of Walleye Bay.

Mr. Yeager stated the applicant has a similar issue as the previous applicant regarding on-grade slab construction and the methodology. They plan to build up the site in the area that does not reach floodplain height with a monolithic slab to maintain the elevation required. The buildable envelope is very small and they plan to get the water to the retention area sub-terrain via the gutters and underground piping so they don't have to add so much fill.

Chair Hallan pointed out the finished floor elevation of 1200.0 which is more than a foot above the regulatory flood elevation. Mr. Yeager pointed out with the monolithic slab they are required to be 6 inches above the base elevation, so they will essentially be 18 inches.

PUBLIC COMMENT OPENED:

No public comment.

PUBLIC COMMENT CLOSED.

A motion was made by Planning Commission Member Birch, seconded by Planning Commission Member Savino, to approve the Variance request, based on the following Findings of Fact:

1. The subject property is located at 5577 Wilderness Road and is in the “Shoreline Residential” zone.
2. The property contains a 1,415 square foot dwelling, a 168 square foot shed and a 255 square foot water oriented accessory structure.
3. The applicant proposes to remove the existing dwelling that is 40 feet from the OHW and build a new 2,571 square foot dwelling 54 feet from the OHW.
4. The applicant proposes to re-contour the lot to ensure proper drainage and stormwater management. Stormwater from the gutters on the new dwelling will direct stormwater through underground pipes to a retention area.
5. The subject property will meet floodplain minimum elevation standards as it is located within the floodplain of Lower Cullen Lake.
6. The existing dwelling (to be replaced) is not located within the 100-yr floodplain of Lower Cullen Lake.
7. A portion of the proposed structure will be located in an area which is currently in the floodplain. Said area will be elevated with fill (per conditions of approval) so it is outside the floodplain area.
8. The subject property is served by a shallow well and a Subsurface Sewage Treatment System (SSTS). Applicant proposes to seal the shallow well and have a deep well drilled for the new dwelling. Applicant proposes to install a new SSTS.
9. The applicant has established that there are practical difficulties in complying with the Code. Applicant is unable to meet the 75-foot setback from the OHW. There is a very small building envelope to meet the 75-foot setback from the OHW and the 30-foot setback from Wilderness Road.
10. The property owner proposes to use the property in a reasonable manner.
11. The deviation from the Code will still be in harmony with the general purposes and intent of the City Code and Comprehensive Plan.
12. The variance will not create a land use not permitted in the Shoreline Residential zone.
13. The variance will not alter the essential character of the locality as the neighboring seasonal cabins have limited buildable area as well.
14. The variance has not been made based on economic considerations.

Subject to the following conditions:

1. Existing trees and vegetation between the dwelling and the OHW shall remain in a live state to provide screening as viewed from the lake. In the event the existing

- trees and vegetation dies or is damaged by a natural event, additional trees and vegetation shall be planted to provide screening as viewed from the lake.
2. All disturbed areas shall be stabilized with properly installed erosion control mats, bio-logs and/or silt fence until vegetation is permanently established.
 3. The structure must be elevated on fill so that the lowest floor including basement floor is at or above 1,198.8'- NAVD 88 Datum (3 ft above OHW level and also exceeds the regulatory flood plain elevation of 1,198.6').
 4. The finished fill elevation for the structure shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least 15 feet beyond the outside limits of the structure.
 5. Before the foundation for the dwelling is constructed the applicant shall submit certification by a licensed land surveyor verifying the fill meets the minimum elevation requirements of this variance approval.
 6. After the dwelling is constructed the applicant shall submit certification from a professional land survey verifying the finished fill and building elevations were accomplished in compliance with the conditions of this variance approval and the standards of the Floodplain Management Overlay District.

All members voted “aye”. Motion carried.

APPLICANT: City of Pequot Lakes

Applicant requests to Rezone from Public to Light Industrial

Bittner explained the Staff Report. Applicant was represented by Dawn Bittner.

PUBLIC COMMENT OPENED:

No public comment.

PUBLIC COMMENT CLOSED.

A motion was made by Planning Commission Member Birch, seconded by Planning Commission Member Norton, to recommend the City Council rezone the subject property to Light Industrial, based on the following Findings of Fact:

1. The applicant is proposing to rezone 1.9 acres from “Public” to “Light Industrial.”
2. The subject property is owned by the City of Pequot Lakes. The subject property is being sold to a private individual who plans to construct a building to house his construction business.
3. The subject property is not within the Shoreland Area and no Shoreland soil types have been identified.
4. The vegetative cover of the subject property consists of grasses.
5. The subject property is not adjacent to a public water body. “In-water physical characteristics” and recreational use of surface water do not apply.

6. The subject property is accessed from Morehouse Drive and Derksen Road.
7. The proposed rezoning does not increase the socio-economic development needs of the public.
8. The public sewer and water utilities are adjacent to the subject property.
9. The subject property does not contain any known significant historical or ecological value.
10. The subject property is adjacent to property zoned "Light Industrial", "Commercial" and "Public". The proposed reclassification is not considered "spot zoning."
11. The proposed rezoning is in conformance with the City of Pequot Lakes Comprehensive Plan.
12. The future land use map identifies the subject property as "Light Industrial." Rezoning the subject property to "Light Industrial" is compatible with that classification.

All members voted "aye". Motion carried.

A motion was made by Planning Commission Member Wilson, seconded by Planning Commission Member Savino, to close the Public Hearings. All members voted "aye". Motion carried.

ADDITIONS OR DELETIONS TO AGENDA: None.

OPEN FORUM: None.

NEW BUSINESS:

a. Nathan Walberg – Discussion, Fence and Tank System

Mr. Walberg was present and explained he has been unable to find someone to install the floor drain. Mr. Walberg has discussed this requirement with several people and it may be unnecessary as they do not have a floor drain or water. In his research, Mr. Walberg found that these types of systems are to separate oil and water. There is no water so he wondered if he is supposed to pour oil into it.

Chair Hallan read Condition #4 regarding the floor drain/sediment trap. As part of the CUP request, Chair Hallan pointed out Mr. Walberg planned on doing vehicle maintenance in that building. With maintenance, comes oil, snow, etc. With repair comes snow, water, oil, and those items need to go to a floor drain and holding tank.

Planning Commission Member Birch stated it is very easy to have oil spill onto the floor when doing maintenance and that needs to go to the floor drain. Mr. Walberg stated he cleans up his spills according to EPA recommendations. He also reached out to the

Minnesota Department of Health and they didn't have a requirement for this. Mr. Walberg provided copies of the email one-word response he received from the MDH: No. He stated some repair businesses spray their floors at the end of the day into their floor drain. That is not how he cleans up his spills. He doesn't have water to spray with nor a floor drain. If something is spilled, it is cleaned up with an absorbent and properly disposed of.

Chair Hallan pointed out that at the time they made application for the CUP, they intended to do auto repair and with auto repair a floor drain was required. Auto repair businesses have floor drains.

Mr. Walberg stated that Condition #4 refers to Minnesota Department of Health's best management practices. From what he understands, MDH doesn't have that. He reiterated the email response that there is no requirement with the MDH. Mrs. Walberg stated another reason they have been unable to find a plumber to install this is that they have in-floor heat. It is very likely they would rupture a line by installing the 4-inch drain. Chair Hallan stated that was information the City was not provided at the time of the public hearing. Plumbers would not install the drain due to the liability of rupturing a line which is irreparable. Chair Hallan stated the in-floor heat was installed after purchasing the building knowing the floor drain was necessary. Mrs. Walberg stated the in-floor heat was installed when they were leasing the building; they purchased the property 2 years ago.

Planning Commission Member Birch recommended further discussion on this matter be postponed until research can be done. A one-word email is not sufficient information to make a decision.

Mrs. Walberg also stated that they had an EPA representative observe how they were cleaning up their spills and the representative stated they were cleaning them up properly. Planning Commission Member Birch stated that if that representative had been present at this meeting, it would have helped a lot. Planning Commission Member Larson asked if a letter from that representative could be obtained.

After reviewing the CUP file, Bittner stated there is information from the MPCA and their floor drain/sediment traps and their best management practices. Mr. Walberg stated the condition states MDH. Bittner stated that it does state MDH, and that maybe when the condition was drafted, MDH was inserted rather than the Minnesota Pollution Control Agency. Chair Hallan stated MDH regulates wells and the MPCA regulates SSTs, etc. Mr. Walberg stated they were only going with the information the City provided. Bittner acknowledged that the condition does state MDH.

Planning Commission Member Norton stated he agrees with Planning Commission Member Birch that the City needs to determine what the requirement is before making a

decision. Chair Hallan stated the intent was to have a floor drain just as other auto repair shops have been required to do. That is common practice for an auto repair shop. Planning Commission Member Paulbeck asked if it is required or is it common practice. Chair Hallan stated the City required it. The Plumbing Code reverts back to the local unit of government. He further stated he would have to research the Plumbing Code to see if it typically requires it or is it recommended.

Chair Hallan asked Mr. Walberg how many vehicles he typically repairs. Mr. Walberg stated typically 5 vehicles a week. Chair Hallan stated he would like to see what the State Plumbing Code states on this type of repair facilities and the MPCA regarding requirements of the LUG requiring a grease trap.

Planning Commission Member Birch asked if there is any information regarding the situation we are in with an existing building with in-floor heat and by requiring this, are we creating more of a problem than fixing one.

Mr. Walberg stated they had their concrete poured long before this SSTS requirement.

When asked by Chair Hallan, Mr. Walberg wondered if construction of the fence had solved the earlier problems. Bittner stated the fence has been installed by the deadline and provided photos of the new fence.

When asked if there had been complaints, Bittner stated she had noticed the fire access driveway had been blocked. Planning Commission Member Wilson stated he had never seen it open.

Chair Hallan stated the Planning Commission would like to research the questions regarding the floor drain. He also asked Mr. Walberg to provide the information he has received to the City regarding the EPA and the absorbents he uses. When asked, Mr. Walberg stated he takes his absorbents and rags to the transfer station in Pine River and properly disposes of them.

Planning Commission Member Birch stated the Planning Commission would be remiss by not looking into the concerns regarding the fire access driveway. He personally has seen it blocked and it is a safety issue. The fire safety issue is not only for the Walberg's, but also for the volunteer fire fighters. It has been determined that the DNR property is not an access.

Planning Commission Member Norton asked Mr. Walberg the size of the building; Mr. Walberg stated approximately 2,300 sf. The size may come into play regarding the rules.

OLD BUSINESS:

a. Downtown Plan Update – Revised Text

Bittner reminded the Planning Commission that the Downtown Plan Update should be completed by the end of the year. Chair Hallan directed the Planning Commission to review the revised text and send the comments to Bittner. Planning Commission Member Birch stated there were comments at the October Council Meeting regarding the intersection, etc. Bittner stated she is including information from the Traffic Study in the Neighborhood Evaluation revisions.

b. Downtown Plan Update – Neighborhood Evaluation

Bittner pointed out that all of the Members need to review the street sections and provide their input. The examples in the packet indicate 3 different responses for the same street section. Each street will be discussed at an upcoming meeting, but each Member needs to review the streets first.

APPROVAL OF MINUTES:

A motion was made by Planning Commission Member Wilson, seconded by Planning Commission Member Larson, to approve the September 19, 2019 Minutes. All members voted “aye”. Motion carried.

P & Z ADMINISTRATOR’S REPORT:

Bittner pointed out the 5 permits issued and the 3 letter sent since the last meeting. The following Potential Violations/Enforcement Actions were discussed:

1. Nathan Walberg – Chair Hallan received a complaint and viewed the property from the DNR property. Several tipped up mattresses were visible. The fire access is blocked 80 – 90 percent of the time. Planning Commission Member Birch stated as a body to enforce the CUP, how can they get onsite if not invited? Chair Hallan stated a drone could fly the perimeter and the City could ascertain the number of vehicles on the property. Planning Commission Member Birch stated there is an operability number included in the CUP that must be met. How do we prove this number is being met without going on the property? Revoking the CUP was discussed. Staff was directed to contact the City Attorney to see what steps we can take to get onto the property to count the vehicles and see how many start. Planning Commission Member Birch asked if there is a state agency that governs junk yards or if there is a state agency that could get involved. Planning Commission Member Wilson noted there are all sorts of items stored outside; we have rules against exterior storage. Chair Hallan stated we have to document the violations. The perimeter could be flown on specific dates each month to document the number of vehicles. One flight would determine the number of vehicles,

especially now with leaf-off conditions. There are likely more pollutants on the ground from the vehicles than what may end up on the floor in the shop. Staff was also directed to look into scheduling a drone flight in early November to determine the number of cars.

ADJOURNMENT:

A motion was made by Planning Commission Member Birch, seconded by Planning Commission Member Paulbeck, to adjourn the meeting. All members voted “aye”. Motion carried. The meeting was adjourned at 7:52 PM.

Respectfully submitted,

Dawn Bittner
Zoning Specialist