

**CITY OF EAST GULL LAKE
AGENDA
PLANNING AND ZONING COMMISSION**

April 27, 2004 - 6:30 PM

1. Call to Order
2. Roll Call

Commission: Rob Mason (Chair), Sam Marohn, Craig Dunphy (Dennis Lang and Craig Buchholz not present)

Staff present: Jenny Shillcox (P & Z Administrator)

3. Public Hearings

Variance to tear down a home and rebuild a new home on a non-conforming lot and to encroach on the road setback in the R-3 zoning district of Ruth Lake, and a conditional use permit to exceed the impervious coverage limit up to 25 percent, Roger Wulf.

Chairman Mason asks if anyone sent letters or comments regarding the hearing.

Shillcox states that Jim Ruttger called to state that most properties on Green Gables Road have garages that encroach within the road setback, including Gronau's, Fox's, and Brusven's, all of which were allowed to encroach. Ruttger is also a neighboring property owner and he feels that the Wulfs should not have to tear down the non-conforming garage because it would do more damage to replace it with a conforming garage closer to the lake than to leave it as is, and because most garages in the area are non-conforming and have been allowed in the past.

Shillcox states that Mr. Wulf has also submitted a stormwater management plan prepared by a licensed engineer, and a drawing showing that encroachment into the lake setback for decks on houses on adjacent properties is approximately 18 feet, and Mr. Wulf's proposed deck won't extend that far.

Chairman Mason asks Mr. Wulf if he has any concerns or questions regarding the staff report.

Roger Wulf states no.

Chairman Mason asks Planning Commission and members of the public if anyone has any points for discussion.

Commissioner Dunphy makes a motion to approve the variance for the house, deck and exemption for the non-conforming garage, and the conditional use permit for up to 25 percent impervious coverage based on the following findings of fact:

- 1. The strict interpretation of the Ordinance would create undue hardship. The small lot size would not allow the Wulfs to construct anything on their property without a variance.**
- 2. The strict interpretation of the Ordinance regarding the proposed home and deck would be impractical because of the small lot size, which was not created by the land owner.**
- 3. The strict interpretation of the Ordinance regarding the exemption for the non-conforming garage would not be impractical due to an adequate amount of buildable area between the proposed home and existing parking area (a minimum of approximately 25 feet x 55 feet) for a conforming garage.**
- 4. The deviation from the Ordinance, with conditions, will still be in keeping with the spirit and intent of the Ordinance as it will allow for continued residential use in a manner that does not detract from the visual and ecological quality of Gull Lake.**
- 5. A single family dwelling and deck are permitted uses in the R-3 zoning district.**

6. Impervious coverage up to 25 percent is an allowed conditional use in the R-3 zoning district.
7. The variance will not alter the essential character of the locality, which is characterized by predominantly single-family dwellings that are larger in size than the existing home on the parcel, and that have decks.
8. Reasonable use of the property currently exists under the Ordinance due to the presence of the existing house and guest quarters small lot size that restricts any construction without a variance.
9. The proposed dwelling and deck, with conditions, conform to the comprehensive land use plan, which supports residential and recreational land uses within the City.
10. The single-family home and deck are compatible with the existing neighborhood as described in #5 above.
11. The proposed home and deck, with conditions for screening and stormwater management, will not alter the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the City.
12. The proposed home and deck will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted on that property, nor substantially diminish or impair values in the immediate vicinity since it meets all setbacks and will not detract from neighboring properties' views or use of the lake, and will upgrade the appearance of the property.
13. The proposed home and deck will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area, since the area is already developed with residential uses as described in #5 above.
14. The lot is currently serviced by municipal sanitary sewer and currently has a bunkhouse which will be converted back to a storage shed, thus the proposed construction and resulting use on the property will not be detrimental to the economic welfare of the community.
15. The vehicular approaches and off-street parking on the property will not change, nor will the proposed construction create traffic congestion on surrounding public thoroughfares.
16. There will be no offensive odor, fumes, dust, noise, or vibration associated with the proposed home and deck.
17. The proposed home and deck and increased impervious surface, with conditions for screening and landscaping, will not result in the destruction, loss or damage of a natural, scenic or historical feature of major significance.
18. The proposed home and deck and increased impervious surface, with conditions for stormwater management, will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients.

With the following conditions the variance for the house, deck and exemption for the garage:

1. The proposed deck shall not extend further into the OHW setback of Ruth Lake than do the decks on the homes located on adjoining properties.
2. The proposed deck shall be fully screened from the lake with native vegetation.
3. Best management practices shall be used during construction of the home and deck to eliminate the flow of sediment onto adjacent parcels and/or Gull Lake. Groundcover shall be re-established as soon as possible.
4. No trees shall be removed between the house and the lake.
5. The property owner shall cease using the storage shed on the back of the garage as a bunkhouse/guest quarters and revert back to using it for storage only.

And with the following conditions for the conditional use permit for impervious coverage up to 25 percent:

1. The property owner shall submit to the Zoning Administrator and maintain in perpetuity a stormwater management plan showing containment of a 5-year, 24-hour storm event on the parcel, prepared by a licensed engineer.
2. The property owner shall create a natural vegetation buffer – including shrubs, vines, grasses, broad-leaved plants, and several trees - within the shore impact zone (on their

property, this would extend approximately 15.5 feet from the retaining wall north toward the proposed home) to enhance the interception and filtration of run-off and improve the ecological value and natural appearance of the shoreline. The applicants should prepare and submit a plan for this buffer to be filed along with the permit.

3. After construction is completed, the property owners shall submit to the Zoning Administrator a photo of their property as viewed from the lake to be filed along with the permit.

Motion seconded by Commissioner Marohn. Motion passes unanimously.

Variance to add a refrigeration unit to a non-conforming structure located in the lake setback of Gull Lake in the CW zoning district, Craig Dunmire, Ernie's on Gull Lake

Chairman Mason asks if anyone has called or written with concerns.

Shillcox states that Alice Frudet wrote to say that she is "OK with it".

Elma Miller is present and says she would like to see the old refrigeration unit torn down. Asks if tearing down the old refrigeration unit will create more parking.

Craig Dunmire is present. He states no, not really, though there could be more parking in the future.

Motion by Commissioner Marohn approve the variance based on the following findings of fact:

1. The strict interpretation of the Ordinance would not create undue hardship since there is adequate room on the property to construct the refrigeration unit elsewhere.
2. The strict interpretation of the Ordinance would not be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner.
3. A variance, with conditions, will be in keeping with the spirit and intent of the Ordinance. The addition does not expand or extend the life of the non-conforming structure, but rather allows for the replacement of an existing detached refrigeration unit to meet state code and be placed in a more convenient and secure location for the storage of food products.
4. A variance, with conditions, will be in keeping with the spirit and intent of the comprehensive plan, which indicates that the recreation industry is important to residents. Ernie's on Gull Lake is a community gathering place and contributes to the identity and character of the City, and its continued operation is important to area residents and tourists.
5. Restaurants/bars are permitted uses in the C-W zone.
6. The proposed refrigeration unit will not alter the essential character of the locality; in fact, it will improve the appearance of the property by removing a hazardous and unsightly detached unit and replacing it with a new one that better fits with the architecture of the main structure and reduces the density of structures on site.
7. The variance is not for economic reasons alone, but reasonable use of the property does not exist under the Ordinance since the Ordinance does not deal specifically with security issues for the outside storage of food products.
8. The proposed refrigeration unit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted on that property, nor substantially diminish or impair values in the immediate vicinity, but will improve it as described in #6 above.
9. Squaw Point is fully developed and Ernie's has been in existence for a long time, so the proposed refrigerate unit will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
10. The proposed refrigeration unit will not require additional public facilities and services and

will not be detrimental to the economic welfare of the community.

11. The proposed refrigeration unit will not alter the vehicular approaches, traffic generation, or parking and loading.
12. The proposed refrigeration unit, with conditions, will help to prevent or control offensive odors and noise, and will not contribute to fumes, dust, or vibration, so it will not constitute a nuisance and no disturbance to neighboring properties will result.
13. The proposed refrigeration unit will not result in the destruction, loss or damage of a natural, scenic or historical feature of major significance; in fact, it will decrease the density of structures on the property as viewed from the lake, adjacent properties, and Squaw Point Road.
14. The proposed refrigeration unit will promote the prevention and control of pollution of the ground and surface waters including sedimentation and control of nutrients by reducing the amount of impervious coverage currently on the site. The impervious coverage limit in the C-W zoning district is 25 percent. The parcel is currently at approximately 10 percent impervious coverage, not including Squaw Point Road, which is a municipal street. Replacing the existing detached 780 sf unit with a new attached 703 sf unit will decrease the impervious coverage even more. Additionally, the proposed unit is located 81 feet from the OHW level, well outside the required setback.

With the following conditions:

1. The property owners shall submit to the Zoning Administrator a stormwater management plan showing containment of a 5-year, 24-hour storm event on the parcel.
2. Best management practices shall be used during the construction/installation of the new refrigeration unit and removal of the old one to eliminate the flow of sediment onto adjacent parcels and Gull Lake. Groundcover shall be reestablished as soon as possible.

Motion seconded by Commissioner Dunphy. Motion passes unanimously.

4. Additions or Deletions to the Agenda – Mike Thelen removed from agenda, Jana Carlson added.
5. Approval of Minutes
 - a. March 2004 Minutes

Motion to approve minutes by Chairman Mason. Seconded by Commissioner Marohn. Motion passes unanimously.

6. P&Z Administrator's Report
 - a. Permits
 - b. Correspondence
 - i. Wetland filling.

Shillcox points out letter from Ron Morriem, DNR Waters, regarding illegal filling of wetland. She states that she has requested a site visit with Ron Morreim if he deems it necessary, and asks if any Commission members would be interested in attending that meeting if it happens.

Commissioner Dunphy stated he would be willing to attend.

- ii. Follow-up Surveys:

Shillcox points out the proposed follow-up survey staff would like to include in letters to applicants that have gone through the public hearing process to surface any potential problems and improve the level of service from the staff. The survey will focus on the public hearing process and staff's ability to help

applicants understand the Ordinance, potential issues with their requests, and the process for applications and public hearings. She asks if Planning Commission has any feedback.

Chairman Mason and Commissioner Dunphy state that it is a good idea and they support it.

c. Potential Violations/Enforcement Action

i. Ryan Violation

Shillcox states that she has spoken with Tom Fitzpatrick, City Attorney, who recommended that the City should hire a state-certified building inspector to designate the burnt building on Ms. Ryan's property as "hazardous" before the City can take legal action to condemn the property and assess the costs of clean up to her. Shillcox states that she is uncertain as to how the City should do this, and if the City Council has to give approval.

Chairman Mason asks who will pay for the inspection.

Shillcox states she has left messages with Mr. Fitzpatrick to ask this question, and whether or not an inspector can go on the property.

Chairman Mason asks if Fire Chief declared it a hazardous building.

Shillcox states that Chief Mahle investigated the building to determine the cause of the fire but not to look at structural capacity, and stated that in his opinion the structure posed a health and safety hazard. This was not an official declaration.

Shillcox further states that, if the building is deemed hazardous, Mr. Fitzpatrick suggests writing one more letter to Ms. Ryan after the inspection letting her know the results of the inspection and giving her the opportunity to clean up her property before taking legal action. She states that she has also contact Faith in Action for Cass County, a volunteer helping hands organization that may be able to provide clean up assistance as an option for Ms. Ryan.

ii. Toumi Violation

Shillcox states that Nathan Tuomi called the City to state that he has identified at least 15 properties in violation of the Ordinance – illegal storage of equipment and materials without proper screening. If the City doesn't stop pursuing his violation, then he will report the 15 violations which the City will have to be prepared to take action on to enforce the Ordinance. If the City drops his violation, he will not file the complaints.

Chairman Mason states that the City hasn't taken action against Mr. Tuomi for being in violation, he simply can't get permits until he cleans up his property.

Shillcox states she assumes he wants this restriction taken off his record.

Chairman Mason states that Mr. Tuomi's situation has nothing to do with other properties.

Shillcox asks the Planning Commission for guidance on how to proceed in the event that Mr. Tuomi calls with to file complaints of violations on 15 properties.

Commissioner Dunphy asks what staff normally handles complaints of violations.

Shillcox states the staff investigates the situation and then writes a letter to the property owners asking them to come into conformance with the Ordinance. She says the first approach is always to work with property owners to take care of the violation and find amicable solutions. If this doesn't work, then it is turned over to the attorney for legal action.

Commissioner Dunphy asks if the City should pay staff to investigate a large number of complaints. This could cost a lot of money.

Chairman Mason states that the staff should handle these complaints as it handles all others. All Planning Commission members agree.

iii. Sedgwick Violation

Chairman Mason asks what is the status of the Sedgwick violation?

Shillcox states that Chuck Marohn is working with the Sedgwick's lawyer, Lonny Thomas, to develop a set of conditions for an after-the-fact variance. The Sedgwicks want to apply in May.

Chairman Mason feels that the conditions should include some sort of fine - \$5,000.

Shillcox states that to date, the City has spent over \$1100 on the Sedgwick violation since 2002.

Nadine Wittkop, City Council member, is present and states that we should also charge a punitive fine above what was paid on staff time.

Chairman Mason agrees.

Certification in stormwater run-off management.

d. Council Action

The City Council approved all three recommendations from the Planning Commission at its April meeting.

Chairman Mason asks for a discussion on requiring stormwater management plans prepared by licensed engineers. He asks if it is really necessary in all cases, since it places a significant cost burden on property owners. In some cases, such as the McNair case and the golf courses, is it really necessary?

Shillcox states that Jim Ruttger called today with the same concern. He feels that the need for a plan prepared by a licensed engineer should be done on a case by case basis. In some instances where there is minimal alteration to the land and the parcel is flat or drains away from the lake, is it really necessary?

Shillcox states that Ordinance requires that a stormwater management plan be prepared by a licensed engineer for CUPs for impervious coverage up to 25%, and that she feels that any work done in the shore impact zone should also require it. She further states that she does not have training in engineering and stormwater management, and that requiring a plan by a licensed engineer provides the City with assurance that run-off will be kept on site, and not run into the lake or adjacent properties.

Commissioner Dunphy agrees that the city should continue to require stormwater management plans prepared by licensed engineers in CUP and shore impact zone to be consistent.

Chairman Mason feels that if cost is only \$400 - \$500 vs. \$1,000, then it is reasonable, but still questions why a landscaper couldn't create a plan, and if plans are really necessary in all cases. Asks if landscapers can calculate run-off and create a plan?

Shillcox states that she will ask Chuck Marohn if he knows of any certification for preparing stormwater management plans. She suggests that perhaps Commissioners could do site visits with Staff in cases where a stormwater management plan done by a landscaper might suffice, but says the line could be a fuzzy one.

7. Open Forum

a. Mike Thielen -Cancelled.

- b. Jana Carlson, metes and bounds subdivision question.

Jana Carlson not present.

Shillcox explains that Ms. Carlson's brother did a lot split last year in which he consolidated two properties to make one larger property. Now he and Jana want to split the property into two different lots so she can build a house on one lot. Ms. Carlson's brother, Nathan, currently has a house, which will be retained on the other lot. The Ordinance allows only one lot split every three years, and Ms. Carlson wanted to know if this applied in their situation and wanted to ask the Planning Commission if they could split the lot this year. Shillcox explains that they are waiting for an answer, after which time they will submit an application. She informed the Carlsons about the subdivision standards and that they will have to create two lots that meet the requirements, including 33' of frontage on a public right of way and minimum buildable lot area.

Planning Commission unanimously agreed that a lot split would be fine as long as proposed lots meet all minimum requirements.

8. Old Business

- a. Update on temporary boat structures.

Commissioner Dunphy states that he hasn't received other complaints about temporary boat houses from citizens. He wonders whether this is an individual concern or a community concern. The Planning Commission has not heard anything from the public, and can't just make a change to the Ordinance at the direction of one City Council member. How will that look to the public?

Commissioner Marohn mentions that Jim Erickson stated that he could get signatures from citizens who feel this is a problem that needs to be addressed.

Chairman Mason still doesn't know what the major concern is. Are people losing sleep over this?

Commissioner Dunphy states that he doesn't want to regulate things that can't be enforced. He also doesn't want East Gull Lake to be the first city to change the Ordinance to address these, and would rather wait to see what other communities have done. He asks if any other Minnesota communities have amended their Ordinances to address temporary boat structures.

Shillcox states no, not that she could find in Minnesota, although several Wisconsin counties do.

Chairman Mason asks what about East Pointe, or what about the Knotty Bear, or Green Hill Bay? These are areas with special considerations, and many don't have high visibility. Commercial areas should be treated differently than residential, and the size restriction is too small. Also, how do you tell someone to take a structure out over the winter if they don't want to? What about Dutton Brookfield? He states that he does not feel comfortable making a change to the Ordinance when it has not presented itself as a problem.

Nadine Wittkopp states that she does not think this will be an up and coming problem.

Shillcox states that Jim Erickson's point was that we should plan ahead and not wait for it to become a problem. She also states that the draft language was meant to be a starting point, and that it could be adjusted to meet the needs of separate zoning districts and to have more reasonable restrictions on size or time limits of use.

Commissioner Dunphy states that he needs to see an outcry from the public. Furthermore, classic wooden boats contribute to the cultural heritage of the area. They need to be stored in the water. He asks Shillcox if the Planning Commission has to make a decision or do something.

Shillcox states that Jim Erickson came to the Planning Commission with an issue on temporary boat structures. The Planning Commission directed staff to do research and develop draft language to use as a starting point for discussion. This is what has been done, and now it is in the Planning Commission's hands to decide what to do with the research and draft language. The City has not received any complaints thus far other than Jim Erickson's.

Motion by Chairman Mason to table the discussion indefinitely and keep the information on hand until the public demonstrates a need to change the Ordinance, at which time it can be reviewed again. Motion seconded by Commissioner Marohn. Motion passes unanimously.

9. New Business – None

10. Adjournment 7:36

Motion by Commissioner Marohn motion to adjourn. Motion seconded by Chairman Mason seconds. Motion passes unanimously.

Note: This was Commissioner Marohn's last meeting. He has sold his house and is no longer a property owner in East Gull Lake.

Respectfully submitted,

Jenny Shillcox
Planning and Zoning Administrator