

**CITY OF EAST GULL LAKE
APPROVED MINUTES
PLANNING AND ZONING COMMISSION
March 27, 2007 – 6:30 PM**

1. Call to Order

Chairperson Mason calls the meeting to order at 6:30 p.m.

2. Roll Call

Members Present: Chairperson Mason, Commissioner Lang, Commissioner Anakkala, Commissioner Dunphy, Commissioner Lee

Staff Present: Timothy Schmidt, Zoning Administrator

Chairperson Mason reports all members present.

3. Public Hearings

Application for a Variance to Construct a Single Family Dwelling
Upon a Nonconforming Lot
Scott & Allison Timmons
Application 2007-07

Chairperson Mason asks Zoning Administrator Schmidt to read the public hearing notice.

Zoning Administrator Schmidt reads the public hearing notice and reviews the applications for the public.

Chairperson Mason opens the public hearing to hear public comment on the pending Variance application 2007-07.

John Erickson, On behalf of Art Brookfield
Mr. Erickson states that he is representing Mr. Art Brookfield and that he is speaking on behalf of Mr. Brookfield on the Variance application and the Conditional Use Permit application. He stated there are several issues to address. Stated that the applicant is creating the undue hardship by purchasing the property.

Mr. Erickson asks if the property lot area is based on total lot area or on the 20,000 square foot number.

Mr. Conners, Surveyor on behalf of the applicant, states that the area presented on the survey represents the total lot area.

Mr. Erickson further states that there is nothing that is being assessed as far as a floor plan and that the reasonable use of the property cannot be established on this. He further states that the Commission does not have the data to grant this Variance and that the applicant can build a smaller house which is less violative to the lake. He explains that the other thing that needs to be assessed is the site plan itself. Stated that he is making an assumption on the stories and height of the house and that this is a fair amount of house here. Stated that the house is pushing toward the bluff itself and that the patios and decks on the property are not necessary and that the City should deny the application based upon this. Stated that if this is a hardship based upon the land, the house should be more landward. He stated that the hardship does not include a two car garage and that hardship does not exist because the circumstance causing the lot to be nonconforming was to be created by the property owner because of the fact that the property buyers know that the preexisting lot is not buildable. He encourages members of the planning commission to make a site visit and that this is located right on a ridge. He stated that the proposed site should be staked to obtain a visualization of the structures to be built.

Mr. Erickson further explains that there is variance issue also. He states that if this is a 25,000 square foot bluff, the property would need an additional 20,000 square feet of buildable area. He states that the ordinance requires buildable area and that roughly one third of the site is within the bluff area. He reiterated that another variance problem exists and that area should be based upon the buildable area. He references section five, page 11 of the Ordinance.

Mr. Erickson states that is all he had on the Variance questions.

Chairperson Mason explains the bluff impact zone and that the property is 99% in the bluff impact area. He further states that it includes the entire lot area which makes the lot nonconforming due to the impossibility of meeting the bluff setback or meeting the buildable lot area requirement. He explains that this is the reason for the Variance.

Chairperson Mason asks if there are others who would like to comment on the pending application.

Chad Conners, Licensed Professional Land Surveyor
On behalf of the Applicant

Mr. Conners states that he is present on behalf of the applicants. He states that the Ordinance does provide criteria for defining the bluff. He explains that the "V" on the site plan actually represents the top of bluff.

Mr. Conners explains that this is a lot of record and that anything that is done on this lot would require a Variance due to the lot being nonconforming. He states that this

is due to the lot not meeting the bluff setback and the lot not meeting the buildable area requirements of the City. He explains that the footprint was selected by the applicant and that the proposed structure is in line with adjacent buildings on neighboring properties. He explains that the garage would be a single story. He provides the Commission with the property setbacks and states that they meet the side yard setbacks. He further explains measures have been taken to center the structure within the property and that the existing vegetation will be minimally disturbed due to the berms and retaining walls will catch water before it goes downhill. Mr. Conners asks for questions from members of the Commission.

Chairperson Mason asks for any additional public comments on the Variance.

George Schwartz, 10723 Pine Beach Peninsula Road

Mr. Schwartz states he is a property owner on south side of property. He asks what precedence is this variance based upon.

Chairperson Mason explains that each variance is presents a unique circumstance and that there is precedence set on each lot.

Mr. Erickson states that he heard Chad talk and would like to say more with respect to the "V" located on the site plan. He explains that he appreciates the buildable area on the lot and notes that none of the structure is located within it. He then referred to his exhibit where he moved the sticker representing the house to the builable area. He further states that the house should be required to use the buildable area. He explains that the side yard setback is the question and the back yard setback area, which is the side closest to the road was not being used and could be used keeping the same square footage. He states that there is something on the order of 10 feet on the north and 10 feet on the south that would not require a variance for those components. Mr. Erickson states again that the applicant is creating the hardship.

Chairperson Mason then asks members of the Commission for comments.

Commissioner Lang asks Zoning Administrator Schmidt if there is a size limitation for homes.

Zoning Administrator Schmidt replies that there is no limit on the structure size within any residential zoning district although impervious surface coverage, setbacks, etcetera create physical limitations on structure size.

Commissioner Anakkala asks Mr. Conners if the structure would still be within the bluff impact zone if the structure was moved to the top of the bluff.

Mr. Conners states that it would.

Commissioner Anakkala asked if all vegetation with the construction area, including the berm and retaining wall areas would be removed as a result of this project.

Mr. Conners states that there would temporary removal of vegetation, but the vegetation would be reestablished as soon as possible after construction.

Zoning Administrator Schmidt refers to the condition recommended by Staff which requires the reestablishment of vegetation after construction and notes that there would be subsequent compliance inspections by Staff.

Commissioner Anakkala asks about the height of the retaining wall.

Mr. Conners states that the retaining walls would be two feet.

Mr. Erickson states that when one is asked to provide a hardship that what is allowed on the site should be reduced as much as possible. He states that the Commission has the power and discretion to reduce the size of the proposed house and that the City has the right to state what level the departure should be.

Mr. Erickson again states that another point is being passed over. He states that there is a need for a square foot Variance because the lot area within the bluff cannot be used in calculating buildable lot area, and that there is no application for this Variance. He also stated that no proper notice was given for this additional application

Zoning Administrator Schmidt states that the previous statement is incorrect and that the notices sent by the City clearly identified that a Variance was to be considered by the City and that the Variance was due to the lot being within a bluff impact zone. He explained that the Variance being considered addresses the both the bluff setback and buildable lot area circumstances as they are both caused by presence of the lot within the bluff impact zone.

Mason calls for additional public comment.

Mr. Schwartz comments that it appears that this is a big chunk of the property. He asks why the EGL standard is less than the state standard.

Chairperson Mason responds that the City established the more restrictive standard to control development with stormwater management plan. He further comments that this is a unique site and that the size of the house could be restricted.

Mr. Schwartz comments that he appreciates the impervious surface coverage requirement and that he respects the property owner's right to use the lot and that it needs to be tempered to be consistent with the community. Stated that this is a concern to him and preferred that this could be less than the 20% or closer to 15%.

Mr. Erickson stated that the Ordinance states a maximum and that the City could go less than that. He further comments that the 25,000 square foot lot area is calculated

on the whole lot and although the Ordinance provides no description of what is used for impervious surface coverage calculation, it does calculate lot area as buildable area. He comments that the impervious surface calculation should also be calculated off of the buildable lot area because the ordinance excludes wetlands and bluffs. He comments that the result of this circumstance calls for more variance and that there would be an additional variance required.

Commissioner Dunphy asks how impervious surface coverage has been calculated in the past.

Zoning Administrator Schmidt explains that the impervious surface is calculated using the total lot area and not simply buildable area. He further states that this Variance encompasses both circumstances, lot area and bluff setback provisions which cause the lot to be nonconforming.

Commissioner Dunphy states he agrees.

Mr. Schwartz comments on the scale of the project.

Chairperson Mason states that the ordinance had not exceeded 25%, even the large homes that have been granted variances in the past.

Mr. Conners states that 25% was not exceeded.

Gary Litchy 17037 Pine Beach Peninsula Road

Mr. Litchy states that he is a neighbor of the property. He comments that the home should be consistent with others and that the bluff should be shaved down or the home should be built on the bluff.

Chairperson Mason requests any additional public comments.

After hearing no response, Chairperson Mason closes public hearing portion of the hearing.

Chairperson Mason asks Zoning Administrator Schmidt if it would be proper to move forward with a decision on the Variance or open the public hearing on the CUP.

Zoning Administrator Schmidt states that since the applications are related it would be better to open the public hearing for the Conditional Use Permit, close the hearing and then deliberate on each issue individually.

Chairperson Mason opens the public hearing for application #2007-13, Conditional Use Permit for additional impervious surface coverage.

Commissioner Anakala asks Zoning Administrator Schmidt if the grass would be counted in the impervious surface coverage.

Zoning Administrator Schmidt explains that grass surfaces are typically not counted as impervious surface.

Commissioner Lee stated that there would be a condition placed upon the Variance that trees greater than 4 inches would not be removed.

Chairperson Mason asks about the clearing of vegetation on the site.

Ms. Timmons states the site would not be cleared and that construction would access through the driveway.

Commissioner Dunphy states that 3,000 square feet is a modest home now.

Ms. Timmons states that the impervious surface coverage originally included the road and that the impervious surface coverage would be under the 20% if the road did not exist.

Commissioner Dunphy states that 21% is better than 20% because of the stormwater management plan.

Chairperson Mason states that the Commission has considered comments from the applicant and Mr. Erickson and Mr. Connors.

Chairperson Mason states that he would like to see the applicant stay with the 20% rather than the 22.8%.

Chairperson Mason asks the applicant if they would agree with the 20% provision with a stormwater management plan and if any members of the planning commission have any questions on doing so.

Mr. Erickson states that the chairperson is right about the site and the deck and that the five year rain event would run water down to the lake very fast. He notes the stormwater management plan submitted by the applicant. He restates his comments. He states that the impervious surface coverage could be reduced and that the lot is precarious and additional planning that is needed for this site.

Mr. Connors states that the road does take up a large portion of the impervious surface coverage.

Chairperson Mason asks if it would be possible to reduce the site to 20% without significantly reducing the plans. He notes that there are many ways to get the impervious surface coverage down.

Chairperson Mason asks again for additional comments.

Commissioner Anakkala states that there are similar issues that are pending on this issue.

Commissioner Dunphy states that there is comfort with the knowledge that was presented on this variance and that he is not prepared to make a motion on CUP at this moment.

Chairperson Mason states that he would agree with requiring 20% impervious surface coverage and also require a storm water management plan for the Variance.

Mr. Schwartz asks what the definition of a buildable lot is.

Mr. Erickson states that a buildable lot area minimum lot square footage is 20,000 square feet. He explains the definition for buildable area, and that in most instances this lot is not buildable. He states that only 300-400 square feet of the lot is buildable.

Chairperson Mason asks for any additional public comment. He notes that the road on the property significantly adds to the impervious surface coverage of the lot and that the applicant is proposing to build approximately 19% in additional impervious surface coverage.

Ms. Timmons states that is correct, that the road significantly adds to the impervious surface coverage of the property and that the structures they are proposing to construct would not normally be necessary on other lots with public roadway.

Commissioner Anakkala asks about the berm and if it would handle the water.

Mr. Connors responds stating that the storm water improvements were signed by a Professional Engineer and that the berm would retain the water. He explains that the berm would be 1-2 feet in height.

Chairperson Mason closes the public hearing on the proposed Conditional Use Permit and asks members of the Commission if there are any additional questions or comments from members of the Commission or if any member of the Commission is prepared to make a motion.

Motion by Commissioner Dunphy to recommend approval of Variance application 2007-07 which addresses the buildable area and bluff setback nonconformities of the property to the City Council, based upon the following findings:

- 1. The strict interpretation of the Ordinance presents a hardship as defined by the Ordinance. The applicant would not be able to build anything upon the subject property without the granting of a Variance.**

2. The hardship is due to the existence of the lot within the Bluff Impact Zone, the fact that the subject property is preexisting and that the circumstance which causes the property to be nonconforming is beyond the control of the property owner.
3. The Variance is in keeping with the spirit and intent of City Ordinances in that the site plan subject to the Variance conforms to the Ordinance in all other respects, meets the hardship definition of the Ordinance and provides for a use which is permitted within the R-3 Shoreline Residential District.
4. The proposed use is permitted within the R-3 Shoreline Residential District.
5. The Comprehensive Land Use Plan does not specifically address this kind of permit request. Current zoning is consistent with the comprehensive plan.
6. The use, with conditions, is compatible with the existing neighborhood, since there are other homes of comparable size in the area.
7. The property will be served by preexisting ingress/egress easement.
8. The applicant has submitted a Type II stormwater management plan which mitigates impacts on the bluff and drainage from the site. The Variance will not result in the further destruction, loss or damage of any other known natural, scenic or historical feature.
9. The impervious surface coverage exceeds the maximum allowed under the R-3 District, however the applicant has applied for a Conditional Use Permit and submitted a stormwater management plan concurrently with this Variance request.
10. Before construction begins, appropriate erosion control measures (including silt fences) shall be installed on the north, west and south sides of the project area. The erosion control measures must contain runoff on the property, and prevent any pollution of ground and surface waters.

The motion is made with the following conditions:

1. The approval of this Variance is contingent upon the conditions of the concurrent Conditional Use Permit for increased impervious surface coverage.
2. Stormwater shall not be directed toward the lake, neighboring properties, or the public right-of-way.
3. Best management practices shall be used during construction, including the installation of silt fence around the project area, to eliminate the flow of sediment onto wetland areas, adjacent parcels and into Gull Lake.
4. Ground cover shall be reestablished as soon as possible after construction.

5. **Trees greater than four inches in diameter shall not be removed except for those would interfere with the proposed addition or existing structure in the future.**
6. **Upon completion of construction and reestablishment of ground cover, the applicant shall notify City Staff. The proposed structures shall be inspected by Staff to ensure the terms and conditions of the Variance are met.**

Seconded by Commissioner Lang.

Motion Passed Unanimously.

Chairperson Mason calls for a motion on Conditional Use Permit application 2007-13.

Motion by Commissioner Anakkala to recommend approval of the Conditional Use Permit for increased impervious surface coverage to the City Council based upon the following findings:

1. **The applicant has submitted a Site Plan with a Stormwater Management Plan prepared by a licensed Professional Engineer that shows the Type II 24 Hour Storm Event. The plan proposes that retaining walls and berms will be constructed.**
2. **The site plan proposes a total of 22.8% impervious surface coverage for the lot, which is less than the 25% maximum which would be allowed under the provisions of this Conditional Use Permit.**
3. **Based on findings 1 and 2, the proposed use is an appropriate conditional use in the R-3 land use zone.**
4. **The Comprehensive Land Use Plan does not directly comment on this Conditional Use or this site, although the plan does broadly suggest maintaining low impervious surface coverage.**
5. **With conditions, the proposed use will be compatible with the existing neighborhood. The height of the proposed principal structure must not exceed 25 feet.**
6. **The structure, as proposed on the site survey submitted by the applicant, meets all setback requirements of the R-3 District with the exception of the bluff related setbacks subject to a Variance requested by the applicant.**
7. **The proposed use would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance or prosperity of the City.**
8. **The proposed use with conditions would not be injurious to the public health, safety, welfare, decency, order, comfort, convenience, appearance, or prosperity of the City.**
9. **The proposed use 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 vicinity.

10. There is no vacant property that abuts the property.
11. The public will not incur any costs for facilities or services.
12. There will be no increase in traffic beyond what is expected under normal residential use; therefore the proposed use will not affect traffic flow in the region.
13. The additional impervious surface will likely not produce harmful or disturbing consequences beyond what would normally be expected of residential development within the general vicinity of the subject property.
14. The conditional use proposes stormwater management design and appurtenances which mitigate the impacts of the development upon the bluff. The conditional use will unlikely result in loss or damage of a natural, scenic or historical feature of major significance.
15. Although the applicant is proposing to increase impervious surface coverage on the property, the construction of berms, retaining walls and grading should control erosion and sedimentation, control nutrient runoff, and prevent pollution of the ground and surface waters.

The motion is made with the following conditions:

1. The applicant shall make impervious surface alterations proposed by the applicant according to the application form and property survey.
2. The stormwater berm and retaining walls shall be constructed and all grading completed in such a way as to retain the Type II 24 hour five year storm event. The proposed stormwater management improvements shall be adjusted to hold the required amount of stormwater runoff from the property as indicated by the drainage plan submitted by the applicant.
3. Stormwater shall not be directed toward the lake, neighboring properties, or the public right-of-way.
4. Best management practices, including the construction of the silt fence to the north, west and south of the project area, shall be used during the grading to eliminate the flow of sediment. Ground cover shall be re-established as soon as possible.
5. Trees greater than four inches in diameter shall not be removed except for those which would interfere with the proposed addition or existing structure in the future.
6. The approval of the Conditional Use Permit shall be contingent upon the approval of a Variance requested by the applicant and any conditions thereof.
7. Upon completion, the applicant's stormwater designer shall submit a statement indicating that they have been to the site and concur that the stormwater improvements have been completed to retain the Type II, 24-hour, five-year storm event.

8. **Upon final completion, the proposed addition shall be inspected by Staff to ensure the terms and conditions of the Conditional Use Permit are met.**

Seconded by Commissioner Lee.

Motion passed 3-2 with Commissioner Lee, Commission Lang, and Commissioner Anakkala voting “Aye” and Chairperson Mason and Commissioner Dunphy voting “Nay.”

Commissioner Anakkala stats that he approves the Conditional Use Permit due to the road.

4. Additions or Deletions to the Agenda

Chairperson Mason asks if there are any additions or deletions to the agenda.

Zoning Administrator Schmidt states that he has no additional items for the evening’s agenda.

5. Approval of Minutes
 - a. February 27, 2007 Regular Meeting

Chairperson Mason asks if there are any corrections to the February 27, 2007 meeting minutes.

Chairperson Mason asks for a motion to approve the meeting minutes.

Motion by Commissioner Lee to approve the February 27, 2007 regular meeting minutes as prepared. Seconded by Commissioner Dunphy. Motion passed unanimously.

6. P&Z Administrator’s Report

Zoning Administrator Schmidt provides an overview of permits issued by the City of since the previous Planning Commission/Board of Adjustment meeting. He notes that the permits issued only include Land Use Permits and does not include special permits since such permits are noted on the regular meeting agenda.

Schmidt also notes that Staff will begin compliance inspections in the spring and that a member of the Planning Commission typically accompanies Staff on those inspections.

Chairperson Mason asks if any of the Commissioners are interested in accompanying Staff on Compliance Inspections.

Commissioner Anakkala notes that he would be available for inspections.

Commissioner Lang notes that he has done compliance and enforcement inspections in the past and would also be available.

Commissioner Lee notes that he has a rather limited schedule, but may also be available for inspections.

Commissioner Dunphy notes that he hasn't had the opportunity to conduct inspections, but would be interested in doing so if it could be coordinated with his schedule.

Zoning Administrator Schmidt notes that he would contact Commission members to ensure that project which are ready for compliance inspections are completed in the spring.

7. Open Forum

Chairperson Mason notes that there is no longer anyone other than the Planning Commission and Staff in attendance of the meeting.

8. Old Business

Chairperson Mason mentions the Ordinance updates included within the Staff report. He asks that they be placed on upcoming agenda, and notes that home occupation provisions, clarifying definitions, and clarifying the appeals process should all be completed in the coming months.

Zoning Administrator Schmidt provides an overview of other Ordinances noted within the Staff report and provides a list of provisions of the Ordinance to be reviewed.

Chairperson Mason directs Schmidt to prepare Ordinance review and revision recommendations, at least on the three or four discussed and confer with City Attorney on ordinance updates if needed.

9. New Business

Zoning Administrator Schmidt provides an overview of the 2007 Planning and Zoning budget. He notes that the budget includes increased enforcement and implementation of Ordinance revisions.

Motion by Commissioner Dunphy to recommend approval of the 2007 Planning and Zoning Budget to the City Council. Seconded by Commissioner Lang. Motion passed unanimously.

Motion by Commissioner Lee to adjourn the meeting at 9:23 p.m. Seconded by Commissioner Dunphy. Motion passed unanimously.

Respectfully Submitted,

Timothy J. Schmidt
Community Growth Institute
Planning and Zoning Administrator