

**CITY OF EMILY
AGENDA
PLANNING AND ZONING COMMISSION**

March 5, 2008, 7:00 PM

1. Call to Order – 7:00 PM
2. Roll Call

Planning Commission: Bill Spiess, Bonnie Fairchild, Bob Swanson, Bonnie Kile, Art Patterson

Council: Kent Rees, George Pepek

Staff: Charles Marohn (City Planner), Barb Hubbard (Zoning Clerk)

3. Election of Chair and Vice-Chair

Motion to elect Bob Swanson as Chairperson by Commissioner Fairchild, Seconded by Commissioner Spiess. Passed Unanimously.

Motion to elect Bonnie Fairchild as Vice-Chair by Commissioner Patterson, seconded by Commissioner Kile. Passed Unanimously.

4. Public Hearings

Variance to exceed the maximum building height, Application 08-04, James Walker, Applicant

Planner Marohn reviews the staff report. Indicates that there is nothing specific to this piece of property that would create a hardship or justify a variance.

Chairperson Swanson asks if they are looking for a fourteen foot garage door. States that they make shallow rail tracks for garage doors that would accommodate that. States that there is a way to do this.

Commissioner Spiess states that this could be engineered with scissors rafters or any number of other ways to meet the ordinance.

Chairperson Swanson opens public comment.

Mayor Pepek asks if the garage door is going on the side or the end.

Chairperson Swanson states that the drawing that was submitted shows it on the end.

No additional public comment. Public comment closed. Chairperson Swanson requests further discussion from the Commission.

Commissioner Fairchild states that she sees no hardship. This is a large building and something should be able to be worked out to meet the ordinance.

Commissioner Fairchild motions to deny the variance, seconded by Commissioner Patterson, based on the following findings of fact:

1. **The property is located on Lake Roosevelt and lies in the Shoreline Residential Zoning District.**
2. **The maximum building height allowed for an accessory structure is 18 feet for the Shoreline Residential Zoning District according to Section 5.6 of the ordinance; the applicant has proposed a building height of 19.5 feet, which exceeds this limit.**
3. **The property contains a 1520 square foot home and 500 square foot garage on the lake side of Clearwater Drive, which is a reasonable use of this property.**
4. **The plight of the landowner is not due to circumstances unique to the property, the plight stems from a large RV that would require a larger storage building.**
5. **The strict interpretation of the Ordinance would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property owner not created by the land owner do not exist, a home and garage already exist, the applicant is asking for an additional garage.**
6. **A deviation from the ordinance with conditions would not be in keeping with the spirit and intent of the ordinance. The intent of the ordinance is to limit building heights to 18 feet.**
7. **The variance would not create a land use not permitted in the zone; however it would create a non-conforming structure.**
8. **The variance would alter the essential character of the locality because all other structures meet the ordinance requirement for accessory building height.**
9. **The variance is essentially for economic reasons alone, reasonable use of the property already exists as there is a cabin and garage. A garage would be allowed in this location but the height would need to meet the 18 foot requirement of the ordinance.**

Passed unanimously.

Variance for addition to non-conforming structure, Application 08-06, Anna Zwirn, Applicant

Planner Marohn reviews the staff report. Recommends that the application be tabled so that the applicant can submit new drawings that do not contain a second story.

Greg Frazee, representing the applicant, states that he represents the applicant. They have an existing structure and have lived at the property since the 1960's. They would like to remodel the house, but do not want to give up the location. The roof is nearly flat and is deteriorated and needs to be fixed. Indicates that before he spent a lot of time and money designing a new structure, would like to have a conversation with the Planning Commission to see what would be allowed.

Frazee states that they are not looking for a full second story, but would like a sleeping loft for grandchildren. Wants the structure to be soft and modest. Would like to do more screening from the lake, but would like to maintain views. The intent is to correct the design and create a steeper pitched roof – something like a 6:12 similar to what other homes along the lake do. They do not

want to make something pretentious but something soft. The hardship is that if they move back further, they encroach onto the existing drainfield and sewer, but there is not a whole lot of hardship. Would like to do a tasteful job and stay where it is. The guidelines now that do not allow the roof pitched to be raised would not be practical on this property.

Commissioner Fairchild asks if they are changing the footprint.

Fraze states that they are doing an addition that would be on the back or the side.

Chairperson Swanson asks if they are looking to add sidewalls to the existing structure or would you be using the same walls.

Fraze states that they will be using the existing walls. It will look like a single story house but will have a dormer in the front and back. The second floor square footage will not be huge.

Commissioner Kile asks about the size of the addition in the back.

Fraze states that the goal is to stay within the guidelines in regards to size. States that it is wet and humid inside.

Planner Marohn asks about remodeling of the existing structure and whether it would be left.

Fraze states that the structure is in need of attention all the way around. Believes that quite a bit of it might need to be replaced.

Chairperson Swanson asks if it will be taken down to the deck.

Fraze states that is not the intention, but it is likely that 75% of the structure may need to be replaced.

Commissioner Patterson asks if the width of the walls would be replaced.

Fraze states that depends on how she would like to use the structure. Does not want to state that they are doing a minor remodel and then rebuild. Wants to be upfront and state that a lot of work is needed.

Planner Marohn asks if it is worth the 22 feet.

Fraze states that Mrs. Zwirn is attached to the location having lived there for a long time. States that if the deck were to be added to the lake side, they would have some issues with the sewer system. Asks if a deck variance would be possible if the house were moved back to 75 feet.

Commissioner Fairchild states that she can't see making another non-conforming building if this were to be moved. States that the lake setback is important.

Chairperson Swanson states that the lay of the land on this one, moving it back 75 feet is not going to disturb the view. States that he understands from previous experience, once windows starts being replaced you are going to wind up with a new structure. Moving back to 75 feet would be a viable alternative.

Fraze asks if they came back with an increased roof pitch to accommodate a loft, would that be possible?

Commissioner Spies states that, to keep within the 50% rule, they would need to eliminate the patio and reduce the size of the addition presented in the old drawings.

Planner Marohn states that he would hate to see the city getting into a situation where they were trying to manage a project or design the structure for them. States that it would give them greater long-term flexibility to move back to the conforming setback.

Fraze states that he has some good direction and will present the feedback to Mrs. Zwrn.

Marylou Savage, neighbor, asks if the property has been surveyed so they know where the line is. States that there is some dispute over exactly where the line is.

Fraze states that they would absolutely look into that before they proceed. Assures Savage that they will survey and meet the setbacks.

Savage indicates that she has no complaints and would like them to build.

Public hearing closed.

Motion to table by Commissioner Kile, seconded by Commissioner Spiess. Passed unanimously.

Variance to construct ISTS on non-conforming lot, Application 05-88, Randy Ridenour, Applicant

Planner Marohn reviews the staff report and the recommendation of approval.

Ridenour present. Asks if they could put a pumping station in to pump the first tank onto a second tank on a different property, which they own. Shows the Planning Commission where they are seeking to place it.

Discussion amongst the Planning Commission and concurrence that there should be a holding tank placed on the property with a pumping contract.

Commissioner Fairchild states that she has concern with ensuring the tank is properly pumped. Requests a condition be added requiring records be given to the city.

Motion to approve the Variance by Commissioner Spies, seconded by Chairperson Swanson, based on the following findings of facts and conditions:

Staff Findings:

- 1. The subject property cannot be put to reasonable use as nothing could be constructed upon the property without the issuance of a Variance. The property does not have an ISTS.**
- 2. The circumstance which causes the lot to be nonconforming existed prior to the adoption of the Ordinance and is a circumstance which was not created by the property owner.**
- 3. Due to the small size and topography of the lot, the 50 foot ISTS setback from the OHW**

restricts the installation of the ISTS.

4. The deviation from the Ordinance with any attached conditions will still be in keeping with the spirit and intent of the Ordinance in that surrounding development is similar in size and residential use. ISTS as a use conforms with the Comprehensive Plan and the underlying District.
5. The construction of an ISTS will not alter the essential character of the locality.
6. The variance is not for economic reasons as the primary intent of the installation of an ISTS is to properly treat wastewater and not for economic enhancement.

Conditions:

1. Best management practices shall be used during the installation of the ISTS to eliminate the flow of sediment onto adjacent parcels and Wood Lake. Erosion control measures shall be implemented. Groundcover shall be reestablished as soon as possible after installation.
2. The applicant shall submit an updated ISTS design and Certificate of Survey showing the location of the ISTS and all other structures upon lot 3, Plat of Kavli's Wood Lake Shores, prior to the issuance of an ISTS permit by the City.
3. The system shall be a holding tank. The design shall include a recommendation for pumping interval.
4. The property owner shall provide the City with pumping records as the system is pumped.

Passed unanimously.

Ordinance Amendment for Lake Classification Amendment, Alternative Shoreline Standards, City of Emily

Planner Marohn reviews the Staff Report.

Public hearing open.

Jan Mossman states that she was encouraged and that this was a good thing to consider. States that the lake associations and the people living on the lake would be interested in research and monitoring as volunteers to be part of this process. Would like to see this included in the review process.

Commissioner Fairchild states that she would like to know who does the studies.

Mossman states that she would like the minutes to reflect that this would be an asset.

Public hearing closed.

Chairperson Swanson asks on item 3a, it states that there needs to be two or more of a number of criteria. Wants to know why two would be required.

Planner Marohn states that he does not know. Reviews the language in the "assessment and Rationale" document that accompanies the Alternative Standards. Would have no problem removing the "two or more" language.

Motion by Commissioner Spiess to approve, with the change in language to remove the “two or more” statement in 3a, seconded by Commissioner Fairchild.

13.5 Lake Classification Amendment

The City Council may adopt multiple shoreland classifications to a single body of water by resolution. Such resolution shall not be passed indiscriminately, but shall only be adopted upon a determination that such action is necessary to address a unique situation. The procedure for making a determination on the necessity of a multiple lake classification is as follows:

- (1) A study of the water body shall be initiated by the City Council. The Planning Commission or any property owners may petition the Council for such a study. A petition shall not compel the Council to proceed.
- (2) Prior to commencing a study of the water body, the Commission shall be notified of the City’s intent to commence the study.
- (3) The study shall be prepared by the Zoning Administrator and overseen by the Planning Commission. The study shall examine the following:
 - a. Determine whether the lake has an irregular natural shoreline configuration, possesses bays, arms, islands, peninsulas or points, or the lake has been artificially segmented by roadways, railways, bridges or levees. If none of these conditions exist, multiple shoreland classification shall not be applied to the lake.
 - b. Where the conditions of (a) exist, a recommendation shall be made as to the appropriate lake classification for each segment identified in (a). The recommendation shall be based on references to the following:
 - i. The records and files of the Department of Natural Resources, including maps, lists, and other products of the Protected Waters Inventory;
 - ii. Data and publications of the DNR Shoreland Update Project
 - iii. DNR Bulletin No. 25 (1968);
 - iv. Supplementary Report No. 1 - Shoreland Management Classification System for Public Waters (1976) of the Division of Waters
 - v. Minnesota’s Lakeshore, part 2, Statistical Summary, Department of Geography, University of Minnesota;
 - vi. Any additional supporting data supplied by the Commissioner.
- (4) Upon receipt of the study, the Planning Commission shall cause all property owners within a minimum of 500’ of the shoreline proposed to be reclassified to be notified by regular mail and shall publish a hearing notice for in the legal section of the official newspaper and shall provide notice and proposed reclassification to the DNR at least 10 days ahead of the public hearing. The Planning Commission shall hold the hearing and make a recommendation to the City Council.

- (5) The City Council shall review the recommendation and shall make a timely decision. A majority vote to reclassify shall be done by resolution.
- (6) Where a resolution to reclassify is adopted, the City Clerk shall forward the resolution to the Commissioner for review and approval. Multiple shoreland classifications are subject to review and approval by the Commissioner.
- (7) Where approved by the Commissioner, the City Clerk shall publish a description of reclassified area or a map showing the change, whichever is appropriate, in the official newspaper within thirty days of a response from the DNR. Where a reclassification is denied, the City Clerk shall notify all property owners identified in (4) of the Commissioner's decision.

Passed unanimously.

Ordinance Amendment to allow a Bed and Breakfast in SR District (Continuation), Application 07-101, Troy Satchell, Applicant

Planner Marohn reviews the staff report.

Public hearing open.

Darril Wegscheid, states that the discussion last time went towards a housing ordinance. States that this makes a lot of sense but we should consider whether or not a family would blow out the current use. This should not shift it from a residence to impacting the septic system.

Chairperson Swanson indicates that the sewer system language in the proposed rental property ordinance should also be applied to this use.

Mayor Pepek states that the ordinance in the staff report is wrong. It should not have the reference to two people.

Motion to modify definition of bed and breakfast by Commissioner Spiess, seconded by Commissioner Patterson.

Modify definition of bed and breakfast as follows:

Bed and Breakfast Dwelling. A dwelling, single family, licensed through the Minnesota Department of Health, where, for compensation, meals and lodging are provided for three or more unrelated persons, but not exceed eight persons. The owner of the parcel must live on the premises.

Classify B&B as CUP in SR zone

Add Section 8.10

8.10 Bed and Breakfasts - In districts where permitted or allowed by conditional use, a bed and breakfast inn shall comply with the following standards:

- A. The bed and breakfast inn shall be part of an owner-occupied residential structure and shall be owner-operated.
- B. The use shall comply with applicable Federal, State, County and City rules and regulations.
- C. The exterior appearance of the structure shall not be altered from its single-family character.
- D. All guestrooms, and access to guestrooms, shall be located within the principal residential structure.
- E. The total number of units shall be limited to four (4), not including owner.
- F. The property must meet all density requirements of the ordinance as a single family dwelling.
- G. Guests are limited to a length of stay of no more than 14 consecutive days.
- H. No food preparation or cooking facilities shall be conducted within any of the guestrooms.
- I. All requirements of the zoning district must be followed, variances will not be granted for the operation of a bed and breakfast and they will not be allowed on non-conforming lots.
- J. Owner shall provide licensure information to the City before operation shall begin.

Add K as follows to 8.10:

- k. No property may be leased or rented to a number of individuals greater than the structure's bedroom and septic capacity.

Add "city" to B.

Passed unanimously.

Ordinance Amendment for Rental of Shoreline Residential Property

Planner Marohn reviews the staff report.

Public hearing open.

Mayor Pepek states that a page is missing. They put together a group with six people and worked with the City Attorney to make sure that things were legal. If we run into any snags we can review it at any time. As we settled in and worked through it, we settled on this. We have nothing today and people are doing it today.

Commissioner Kile states that she does not know how it will be controlled.

Mayor Pepek states that about how it is now. Hopes that a neighbor will tell people that they need a permit. If it does not work, we will revisit it.

Commissioner Kile states it is like the dog ordinance and will likely be ignored.

Ken Schwartz, states that if a place is rented out, is registered with the city and there is a problem we have the contacts. If not, we know they are out of compliance. The best part is that we have some paperwork to hook on to.

Darril Wegscheid, states that this seems to be coming together nicely. The City is not responsible to make sure they are meeting all of the other state requirements and regulations. Is nervous that we are not required to inform them of their rights. This appears to be in good shape.

Public hearing closed.

Commissioner Fairchild states that she sees some discrepancy between the bed and breakfast and this rental ordinance. We should require them to meet all state and federal regulations. It does not seem right to require this of the bed and breakfast, which will have a supervised person there, but the guy next door can rent to anyone without any supervision and not have this requirement. We can't make people follow those rules but should have it down as an expectation. Wants to add language under 8.10B recommended in the bed and breakfast.

Mayor Pepek states that they discussed that but rental properties are not a commercial use as a bed and breakfast would be.

Commissioner Fairchild states that the expectation should be presented to them. They would need to follow those rules, which is not up to us, but the expectation is there.

Mayor Pepek states that they wanted to make sure the sewer system compliance was important and that the user knew the safety rules of the City.

Commissioner Fairchild states that if we are inviting people into the city for a resort, hotel, bed and breakfast or some type of rental, whether it is called commercial or not. We are inviting the public and the people who are renting should all have to follow the same regulations. Do we want people to rent where the fire code is not being met? How about carbon monoxide? We want people to be safe.

Mayor Pepek states that they just upgraded their housing ordinance and this would need to be up to that ordinance before property is rented.

Commissioner Spiess states that he agrees with Commissioner Fairchild. If people are renting their properties without going through the proper processes, we are telling resorts and bed and breakfast that they have to do this but their competition does not. This hurts the resorts and bed and breakfast by not having everyone live by the same standard.

Darril Wegscheid, wants to make sure that the City makes it real clear that there are other regulations out there that they are responsible to meet. The City is simply registering them but not ensuring their compliance with all of these rules. This gives them fair warning.

Motion to approve amendment for rental of shoreline residential property by Commissioner Fairchild, seconded by Commissioner Kile.

Same as SR except 8.10 is changed to 8.11 and reads as follows:

8.11 Leaseback by Owner or Rental of Property

- 1. All property owners seeking to or renting or leasing property within the City of Emily must register the property with the Planning and Zoning office.**
- 2. The property shall not be rented more than one time in a seven (7) day period.**
- 3. No person or entity may rent or lease sleeping quarters in a non-dwelling structure, such as a shed, pole barn, garage, boathouse or similar structure.**
- 4. No property may be leased or rented to a number of individuals greater than the structure's bedroom and septic capacity.**
- 5. When a property is registered pursuant to this section of the Zoning Ordinance, the owner shall provide a certificate of septic testing less than three (3) years old showing that the system is compliant with then applicable Minnesota Rules and any applicable municipal ordinances.**
- 6. The sleeping capacity of the property rented shall not be increased through the use of tents, campers or other recreational vehicles.**
- 7. Properties may not be rented or leased more than six (6) times in a twelve month period.**
- 8. The City will review these performance standards at least once every two years after adoption or as needed.**
- 9. The use shall comply with applicable Federal, State, County and City rules and regulations.**

Passed unanimously.

5. Additions or Deletions to the Agenda

6. Open Forum

Darril Wegscheid, states that he is right next to the Roosevelt Shores subdivision. States that a lot of work has been done and that a lot of experts have weighed in. Is encouraging some deed restrictions. Would like to see total amount of clearing, location of buildings, wetland preservation, boardwalks and the fessel systems would need deed restrictions so the regulations get passed from owner to owner. The fessel system is optimistic to help people but, if it is not maintained, could get bad quickly. Things could drop through. This could be stipulated in the EAW so things are not lost in the process.

Kevin McCormick, SEH, states that he agrees that deed restrictions are an effective way to do this type of regulation. Fessel systems has a mandate to provide a monitoring agreement with these systems because it is a new technology. The fail safe system in the EAW responses states that the properties will function with standard septic systems.

Chairperson Swanson asks if it is up to the purchaser of the property whether or not to install the Fessel system.

McCormick states that they are making it mandatory.

Don Anderson, asks if we are going to make a recommendation on a land swap.

Chairperson Swanson states that it will be later.

Anderson states that he lives on adjacent property. His land is more valuable if it remains public. Does not know if we should trade land outside of the City if it is land that the public uses. People use it a lot.

7. Approval of Minutes
 1. February 2008 Meeting

Motion to approve the February 2008 minutes by Commissioner Fairchild, seconded by Commissioner Spiess. Passed Unanimously.

8. Planning and Zoning Administrator's Report
 - a. Permits
 - b. Correspondence
 - c. Enforcement Actions
 - d. Council Action
 - e. ISTS Compliance Testing
 - f. CUP and Variance Review
9. New Business
 - a. **Metes and Bounds Subdivision, Michael McClellan**

Planner Marohn presents the staff report.

Commissioner Spiess indicates that the staff report should call this Birchwood Drive.

McClellan indicates that all of the blacktop is being removed and the driveway is going to be gone. The driveway is going to be shifted and be a shared driveway.

Planner Marohn asks if it is still going to be a driveway.

McClellan states that it would be.

Commissioner Fairchild indicates that then it would be impervious.

Discussion on impervious coverage and what could be removed to meet the impervious coverage requirements.

Consensus to frame in the garage door in the second garage, maintain the major driveway, remove the gravel driveway, sod the existing driveway, mitigate stormwater from extra impervious.

Motion approve by Commissioner Kile, seconded by Commissioner Spiess.

Based on the following findings of fact:

1. The property owner shall submit to the city legal documentation conveying the use of the shared driveway by both parties, if approved by the planning commission. The conveyance shall be approved by the city attorney prior to approval.
2. The applicant shall work with the City to address any stormwater management issues with the culvert located on the property.
3. Frame in the door on the northeastern accessory structure on Parcel B.
4. Remove the gravel driveway on Parcel B. Replace the driveway area with sod and landscaped trees to give it a permanent greenspace feel.
5. Submit a stormwater management plan for the property consistent with the provisions of Section 5.XX of the Ordinance.

Passed unanimously.

b. Metes and Bounds Subdivision, Earl Ready

Planner Marohn reviews the staff report.

Chairperson Swanson asks about a well for Parcel A.

Commissioner Fairchild asks if we should split something while they are using the same well.

Planner Marohn discusses clustering and that we actually encourage this through the comprehensive plan.

Motion to approve by Commissioner Spiess, seconded by Commissioner Patterson.

Staff Findings:

1. The applicant proposes to divide the subject property into two lots, each of which conforms to the lot requirements of the Shoreline Residential District.
2. The lot split proposes to create a nonconforming circumstance with the division of the septic treatment system and the ability of both remaining lots to support a primary and alternate ISTS is unknown, however this is a circumstance which is addressed through the conditions placed upon approval of the application.
3. The proposed lot split will result in no increase in water based recreation as both proposed lots contain a preexisting structure and recreational, residential use.
4. The lot layouts proposed by the property owner are consistent with those of neighboring properties and the proposed lot lines contain no unnecessary jogs or angles.
5. Parcel A contains roughly 173 feet of public right of way and Parcel B contains roughly 201 feet of public right of way, both of which exceeds the minimum 33 feet minimum required by the Ordinance.

Conditions:

1. The property owner shall submit a revised Certificate of Survey and soil information showing that Parcel A and Parcel B would have the ability to independently support an individual septic treatment system prior to the signature of the document to be recorded with Crow Wing County is signed by the City.
2. The property owner shall provide the information required by Condition #1 and record the Metes and Bounds subdivision with the County Recorder of Deeds within six months of approval by the City Planning Commission.

Passed unanimously.

Clarification from the Planning Commission that this means each property shall demonstrate that they can have a primary and a secondary sewage treatment site on each lot.

c. Roosevelt Shores EAW

Review and discussion of the comments and responses. Kevin McCormick of SEH present to discuss the EAW.

Motion by Commissioner Fairchild, seconded by Commissioner Spiess, to recommend a FONSI to the City Council.

d. Land Exchange Consideration

Planner Marohn reviews the staff report and states that they have no concerns. The property has no inherent value as public. It is not a part of a recreation area, habitat corridor or have a significant ecological value based on the City's planning documents.

Commissioner Kile states that this happened once before and now we have a large mess. We should think twice before doing this.

Commissioner Spiess states that he would consider trading land within the City limits, but not to trade outside of the city limits. We should try to keep public land in the city. This property is used by hunters and other people.

Commissioner Kile asks if there is a road to this property.

Commissioner Spiess states that it is the old Refuge Road. It goes through the golf course and back to the tree farm. It would be a big mistake to trade this property away.

Motion by Commissioner Spiess, seconded by Commissioner Fairchild, to recommend that the land trade be denied. Passed unanimously.

- **We should not be trading public lands away but should be keeping the public lands in the city limits.**
- **There is less problem if it is traded within the city.**

10. Old Business

11. Adjourn – 10:22 PM

Respectfully Submitted,

Charles Marohn, City Planner