

# Meeting Minutes Planning Commission

## City of Medicine Lake Meeting held virtual via Zoom and in person at City Hall December 16<sup>th</sup> 2021 6:00 pm

1. Call to order and roll call
  - The meeting was called to order at 6:10 pm.
  - Members present include – Jesse Swanson, Glen Skajewski, Brad Beisel, Bill Enright, and Debbi Stafne
  - Members absent include Laura Ferenci
2. Approval of Agenda
  - Brad Beisel moves approval of the agenda and Bill Enright second with all present voting in favor.
3. Approval of Minutes from August 19<sup>th</sup>, 2021 and October 21<sup>st</sup>, 2021.
  - Brad Beisel, moved to approve the August 19<sup>th</sup> 2021 meeting minutes and Bill Enright second the motion. Swanson, Beisel, Enright, and Stafne voted in the affirmative. Skajewski abstained. Motion to approve passed.
  - Brad Beisel, moved to approve the October 21<sup>st</sup> 2021 meeting minutes and Bill Enright second the motion. The motion passed unanimously.
4. Public Hearings: Planner Scheib reviewed the process for public hearings with the Planning Commission for the two public hearings on the agenda.
  - 238 Peninsula Road – a variance from section 3600.7 of the zoning code to allow grading on a steep slope within 20 feet of the ordinary high-water line.
    - Planner Scheib gave an overview of the project based on the December 9 2021 staff report. Scheib indicated that project included replacing steps along a steep slope or bluff extending down to the lake and grading into a steep slope a 20 X 10 beach area. The 20 x 10 area is above the ordinary high-water line and is thus not technically a beach per the definition from the DNR. It was noted that the DNR Hydrologist has reviewed the application and provided feed back on the application as to mitigation strategies and triggers for when DNR would have permitting authority including if improvements are made below the ordinary high-water line. Scheib indicated this will be added as a condition of approval and noted it is included in the applicant's submittal on the sheet labeled as "details and notes." Scheib walked the commission

through the findings as outlined in the staff report. Scheib also indicated that he had received comments from one neighbor opposed to the project. That communication has been forward to the PC and will be attached to the staff report as part of the official record. These include a letter to Scheib dated December 13, 2021; a letter to Pat and Brianna Juetten (the applicants) dated December 13, 2021; a letter to Wes Saunders-Peirce (DNR Hyrdologist) dated December 15<sup>th</sup> 2021; and, a response from Saunders-Pearce on December 16<sup>th</sup>, 2021. Scheib further added as a condition that a building permit be obtained for the retaining wall as it is over four feet in height. Because there is no public sidewalk or building connecting to the retaining wall, no fence structure is required per the building inspector. Scheib indicated that many of the concerns expressed in the communications from Hoshal can be addressed through the grading plan review and approval by qualified professionals, sound construction techniques for projects on steep slopes, and shoreland/bluff sensitive restoration and landscaping that the variance process will allow us to enforce as a condition of approval across the entire steep slope and areas of construction impacts.

- Discussion ensued with questions from the planning commission regarding construction impacts, landscaping, visual aesthetics of the retaining wall (and that the top of the retaining wall is approximately 9 feet above the ordinary high water line), and the interpretation of the setback for the retaining wall that is one foot from the side property.
- Chair Swanson opened the public hearing at 6:57 pm.
  - Patrick Juetten – 238 Peninsula Road (applicant) – explained his request for the variance to create a useable recreational area near the lake shore for his family. Juetten explained that he has prepared plans with qualified professionals to minimize the impact and create a safe place for his family to enjoy the lake.
  - Less Young 145 Peninsula Road – expressed support for granting the variance to accommodate property owners desire to improve their lots.
  - Shaun Kennedy 215 Peninsula Road – commented on the side yard setback as it pertains to the retaining wall and indicated that he felt it should be a part of the variance request or the retaining wall should be moved.
  - Ted Hoshal 236 Peninsula Road – referred to the letters he had drafted to the applicant, planner and DNR. Mr. Hoshal walked through a number of concerns including: too big of an obstruction on steep slopes and bluffs and 3,000 square

feet of disturbance, inconsistency with city policy, values and zoning (which explains this is a no touch area), loss shoreland vegetation, water quality impacts, construction related impacts, aesthetic/shoreland character impacts, and others as articulated in his written correspondence. Hoshal requested the correspondence we included in the official record. Hoshal also questioned the interpretation of 'bluff impact zone' and requested the planner to relook at that. Hoshal requested PC to deny the variance, ask the applicant to withdraw due to insufficient information or table it to allow the DNR to provide further comment or the applicant an opportunity to provide further information. Hoshal requested the following further information: engineered elevation plan showing what the proposed structure including a sectional detail of the retaining wall; additional estimate of the amounts of excavation fill estimated to create a pivot base hillside for construction equipment; a side view sectional plan showing the temporary earthwork necessary to create the pivot base for the excavator - this drawing should show depths of the cut into the top of the hill, any amounts of earth pushed lake ward needed to create the pivot base and show a view of the excavator in place on the hill side; a final landscaping plan (not a sketch plan) for which the PC can deliberate as a part of its variance review; provide growing season photographs of the front bank and site area.

- Juetten explained he is willing to work with the stated conditions including addressing the retaining wall setback if needed.
- Chair Swanson closed the public hearing at 7:15.
- PC discussion ensued with the following comments and concerns expressed:
  - The retaining wall should meet the side yard setbacks of not closer than 4'.
  - Concern that the retaining wall affects the essential character of the neighborhood – views form the lake – given it is 6' tall from grade but 9' above the ordinary high-water level. Would like to see what that might look like.
  - Noted that the property owner purchased the property with the steep slope and if that use is desired, they could purchase a property without a steep slope. And questioned the uniqueness aspect.
  - Concern that if it is not approved, how will that limit other property owners usability or enjoyment of property.

- Suggestion that it can be done well and properly with experienced and qualified contractors.
- After discussion, Skajewski moved to table the request in order to allow the DNR Hydrologist time to respond more thoroughly to Hoshal's letter and to request from the applicant additional information including how the project will prevent impacts to water quality, elevations and images for how the retaining wall will look from the lake, more detail on the landscape plans and more detail/description of how the project will be constructed relative to equipment and construction related grading impacts. The motion was second by Enright. Further discussion was had about the effort and cost to the property owner to provide technical information. The motion to table passed 4-1 with Swanson, Skajewski, Enright, and Beisel voting in the affirmative and Stafne voting against the motion. Scheib indicated he will work with the applicant to obtain the additional information in time for the January PC meeting.
- 201 Peninsula Road – a variance from the street side and lake side setbacks (3100.5 subparts c-1 and c-4 and 1100.5 subpart a-1) to allow for building remodel and additions that extend into the setback areas.
  - Chair Swanson excused himself from the Planning Commission Chair position to avoid potential conflict as he is a neighbor to the subject property and will participate through the public hearing process. Brad Beisel assumed chair responsibilities as Vice Chair.
  - Planner Scheib introduced the project and provided an overview of the staff report from 12/09/2021 and submittal materials from the applicant. Scheib indicated that the applicant and the architects representing the applicants were present to speak to the application. Scheib walked through the key elements of the projects and highlighted the variance needs. Also noted were two areas that are being brought into conformance including removal of parking area in the public right-of-way and a shed that currently encroaches on the side lot line. Scheib indicated that he received a few inquiries of the project but only one that was not supportive of the project and which submitted a letter today through the law firm DeWitt LLP. This letter is appended to the staff report as part of the official record and was distributed to the Planning Commission and applicant. The letter is in relation to the subject property and its impacts on 209 Peninsula Road. Scheib briefly touched on the issues identified in the letter including impacts on drainage, impacts on essential character, and reference to section 900.6 of the zoning code pertaining to expansion permits for non-conforming structures. It the opinion of the legal representation from DeWitt LLP that the proper application should be for an 'expansion permit'

and furthermore that the application does not meet the requirements of an expansion permit and thus should be denied. Scheib briefly talked about the history of the expansion permit section of the code as being added after 2011 changes in the courts ruling on variances that interpreted "hardships" in a way that challenged municipal variance authority. Scheib indicated that the expansion permit was added to the codes to allow an alternative process to the variance and hardship test as an option to expanding existing non-conforming structures so long as they meet certain criteria, similar to what would be looked at through the variance process. Scheib indicated that the legislature ultimately took action to restore the variance authority referring to practical difficulties as opposed to undue hardship. Scheib indicated that no projects utilized the expansion permit process. Brad Beisel inquired if it was more of an outdated relic. Scheib concurred with that observation.

- Question and discussion ensued as to if we need legal review, clarification on staff findings pertaining to the deck variance and observations of the project.
- Vice Chair Beisel opened the public hearing at approximately 8:10.
  - Gary Engler 201 Peninsula (applicant) – addressed the commission and walked through their interest in doing the project specifically indicating efforts to keep the structure at a single story, minimize impacts on setbacks, and improve the quality of the home.
  - John Bergford with TEA2Architects introduced himself as the applicants architect. Bergford discussed the challenges pertaining to the ability to improve the site including limited buildable area due to setbacks. Bergford further discussed the notion of context and attempts by the architects to keep the project variance requests within a context that is consistent with other nearby properties. Bergford reviewed a number of the slides provided in the background files to explain the project.
  - Julie Nagorski – DeWitt LLP Law Firm representing Elizabeth Borns at 201 Peninsula Road. Nagorski introduced herself as a lawyer with DeWitt LLP and having experience with the 2010 Krummenacher case that dealt with non-conformities and variance processes. Nagorski reviewed the points from the letter dated 12/16/2021 submitted as part of the official record. Nagorski offered a number of findings in support of denial due to process and as granting the variance would impact the property at 209 Peninsula Road. This issues included: the need to apply for an expansion permit and

furthermore that the criteria for granting an expansion permit cannot be met, the need for a grading permit to be applied for and issued, issues with drainage as it may impact 209 Peninsula Road, and concerns about pavers within the setback area. Nagorski requested the PC recommend denial of the variance.

- Shaun Kennedy 215 Peninsula Road – Kennedy inquired about the expansion permit. Nagorski reiterated that in her opinion the expansion permit is required. Scheib reiterated that the expansion permit was put in place as an alternative approach to addressing expansions of structures that are non-conforming due to setbacks or other bulk standard. Scheib indicated he will consult with the City attorney further on this matter prior to City Council consideration. A question was raised if the expansion permit process is more difficult than the variance process. Scheib indicated the criteria are similar except for the practical difficulties test. No projects have utilized the expansion permit process since the legislature restored the variance authority.
- Clint Carlson 204/202 Peninsula Road – Carlson inquired about the parking on the site and that as drawn there is little room for guest parking on the site. He indicated support for the improvements to the property.
- Jesse Swanson 189 Peninsula Road – Swanson expressed support for improvements to the property. Swanson requests consideration for the lake side corner of the property that is expanded to the full setback nearest 189 Peninsula. The proposed structure will be proximate to 189 Peninsula Road and within the site line towards the lake. It is requested to consider window modifications so that they are not looking into the living room from their house.
- Dan Nepp – TEA2 Architects – indicated that the driveway pavement from garage to edge of street is approximately 38-40 feet. Nepp also discussed the lake side deck and the need to have a comfortable deck that can support chair and table or chairs with the ability to walk around them. He also discussed the proposed structure setback from the lakeside in context to other property.
- Chris Neilsen 229 Peninsula Road – Neilsen inquired about the findings to grant the variance. It was his understanding that there needed to be something physical about the property that created a hardship and need for the variance such as a wetland or floodplain.

- Brian Farrens 189 Peninsula Road – Farrens inquired about the patio area with the label of “trash and recycle” on it adjacent 189. Farrens inquired if this area will be screened or will it encroach? Farrens also indicated that the applicants need to comply with city ordinances relating to the storage of refuse and recycling containers.
      - The applicants indicated the intent to fence or landscape this area.
  - Vice Chair Beisel closed the public hearing at approximately 8:40.
  - Discussion ensued regarding the following items:
    - It was discussed whether an expansion permit is needed. Scheib indicated that he will consult with the City Attorney on this matter.
    - Beisel suggested maybe we need to table the application to get a response on that issue. Skajewski discussed the possibility of moving it forward and having that issue resolved before City Council. Scheib indicated that would occur and if it was determined it would be needed, Council can remand the application back to the Planning Commission.
    - Enright indicated he had no major concerns with the findings in the staff report and would support the deck variance as well.
  - Enright suggested a motion to approve the variances requested with staff findings of fact as noted in the staff report including support for the deck variance. Skajewski and Beisel suggested adding conditions as follows: That the City Attorney review the need for an expansion permit prior to City Council consideration and giving due consideration to the submission from DeWitt Law Firm on behalf of Elizabeth Borns and that the applicant provide details on the landscape plan to shield the trash and recycling areas.
  - Enright made the motion to approve the variances with the stated findings of fact including the deck and the two additional conditions as discussed. All members present voted in the affirmative and the motion passed unanimously.

5. New Business: no new business was discussed

6. Old Business:

- Continued discussion of short-term rentals and public process including survey questions

- Swanson provided a brief update on the status of the survey questions on the topic of STRs and noted this will go to council in January for review.
  - Swanson indicated that staff continues to work on the updates to the shoreland ordinance and will be bringing this forward in 2022.
  - Clint Carlson 204 Peninsula Road – expressed frustration with the STR process and felt the questions are biased against STR. Discussion ensued. Scheib suggested Carlson provide written comments to Swanson on his concerns and suggestions for reworking the survey and that Swanson can present that along with the questions to the Council.
7. Adjournment
- Brad Beisel moved adjourn at 9:15 pm. Bill Enright second the motion and all voted in the affirmative.

Respectfully Submitted  
Brad Scheib  
Planning Consultant/Zoning Administrator

Approved on January 20, 2022