

**MINUTES  
PLANNING COMMISSION MEETING  
CITY OF WHITE BEAR LAKE  
JULY 31, 2017**

The regular monthly meeting of the White Bear Lake Planning Commission was called to order on Monday, July 31, 2017, beginning at 7:00 p.m. in the White Bear Lake City Hall Council Chambers, 4701 Highway 61, White Bear Lake, Minnesota by Chair Jim Berry.

**1. CALL TO ORDER/ROLL CALL:**

MEMBERS PRESENT: Chair Jim Berry, Mary Alice Divine, Peter Reis, Ken Baltzer and Mark Lynch.

MEMBERS EXCUSED: Marvin Reed.

MEMBERS UNEXCUSED: Erich Reinhardt.

STAFF PRESENT: Anne Kane, Community Development Director, Samantha Crosby, Planning & Zoning Coordinator, Elizabeth Showalter, Planning Intern and Amy Varani, Recording Secretary.

OTHERS PRESENT: Brian McGoldrick, Jeff Moelter, Bob Fletcher, Jan and Keith Dehnert, Katie West and Dick Gunderson.

**2. APPROVAL OF THE JULY 31, 2017 AGENDA:**

Member Reis moved for approval of the agenda. Member Baltzer seconded the motion, and the agenda was approved (5-0).

**3. APPROVAL OF THE JUNE 26, 2017 PLANNING COMMISSION MEETING MINUTES:**

Member Lynch moved for approval of the minutes. Member Divine seconded the motion, and the minutes were approved (5-0).

**4. CASE ITEMS:**

**A. Case No. 08-3-Sa and 17-13-V:** A request by **Admiral D's** for a Conditional Use Permit Amendment for a 1,012 sq. ft. building addition and rooftop seating per Code Section 1303.227, Subd.4.a, and a 50 foot variance from the 50 foot setback from the ordinary high water level per Code Section 1303.230, Subd.5.a for the property located at 4424 Lake Avenue South.

Kane summarized the case, providing an overview of the site's history and the proposed components of the applicant's request. She noted with the requested expansion and the recent addition of the cruise boat, staff completed an updated

parking analysis of the White Bear Shopping Center, which confirmed there is a small cushion of excess parking available in the shopping center. She indicated this is a complex and multi-layered zoning request. While some aspects of it are acceptable, staff does not find that the variances are reasonable and not the minimum necessary to alleviate the practical difficulty of the lot size and shape. The 50 foot setback has been in place since the mid-1980's. Some of the older establishments in the Marina Triangle district do not meet the standard. However, new buildings and expansions are expected to abide by this regulation. If the setback variances are granted for the building and the roof structure over the patio, it may set expectations that future development in the Shoreland Overlay District need not abide by this regulation. However, with modifications, staff can support the covered patio and rooftop seating. If there is support from the Planning Commission for these aspects of the application, staff would recommend denial of this application be forwarded to the City Council and general consensus among the Planning Commission to a future reduction or waiver in the 6 month waiting period before a new CUP amendment could be submitted.

Staff included the action timeline at the end of the staff report because it's imperative that the City Council take action on this application no later than August 22<sup>nd</sup> of this year. It is scheduled to go before the City Council on August 8<sup>th</sup> if the Planning Commission reaches a recommendation this evening.

Staff recommends denial of the variance from the Ordinary High Water Line (OHWL), denial of the Conditional Use Permit (CUP), and waiver of the 6 month waiting period to reapply for a CUP.

Divine asked why the south property line runs at such an angle. Kane stated that she can't answer why it does that. She thinks it was a surprise. There was one application in 2007 that assumed that it ran in a more east-west direction rather than at this north-south angle. A survey of the property was secured and it showed that Lion's Park actually had a north-south terminus.

Divine asked about the louvered roof. When they're closed, can rain get in? Kane confirmed it's watertight. Internal rain gutters are in the support structure. The applicant did not get into a lot of those details of creating a landscape plan and engineering the storm water management for this proposal at staff's direction to not incur those costs. If the applicant was proceeding without staff's support, staff did not want to see them spending good money after bad if it's not going to get supported at a policy level. If certain components move forward, then the applicant will have more confidence in investing those dollars to come up with those designs that would then be part of a future application so that staff's expectations are all documented and detailed.

Berry asked about the DNR requirement as far as any modifications made to the deck. Would any of this project be considered a modification to the deck? Kane responded that staff is recommending denial; therefore, there is no modification to the deck approved. Staff did want to include that in the report so the applicant was aware that the DNR order stands that was agreed to in 2010. If there is modification in the future, that the extension water ward over the OHWL, the footings and the

deck would have to be removed. If there's general consensus to come back with a revised application that would include modifications to the deck, at that point, the DNR would likely enforce that 2010 agreement. Berry asked if the improvements were to hang back out of the 25-foot impact zone, would it not trigger DNR enforcement? Kane stated no, there would still be modifications to the deck and DNR's Restoration Order would apply.

Reis was curious about the possibility of a revised application; is there room to expand the building in any other direction? Kane stated that they could go north from the existing building. The applicant and his design team will need to find the right balance between how much kitchen area there will be and the number of seats.

Lynch asked what riparian rights are. Kane stated that when a property on a lake is divided by a public right-of-way, easement of some sort or prescriptive road from where the principal use is usually located away from the water.

Lynch asked about the western 25-foot setback. Is that where the DNR says you can't build anything too high and closer to the water than that? Kane stated that the 'Shore Impact Zone' is one half of the setback from the OHWL. It's the premiere area where they want to maintain the vegetative buffer and maintain the mature trees. The DNR, in developing the regulations for all of the lakes in Minnesota, is not only looking at land side uses, but the public's enjoyment from the lakeside.

Lynch asked if the 50-foot setback is a city zoning requirement. Kane stated that is correct; it was developed through negotiation with the DNR during adoption of the Shoreland Overlay District. The Shoreland Overlay District applies to all of the surrounding zoning that abuts White Bear Lake and other lakes within the City.

Lynch asked questions that he had for the applicants. What type of parking relationship do they have with the shopping center? Are the drop shades going to be on the lake side or are they going to be on the Lake Avenue side? He'd also like to know how the louvered roof works.

Berry opened the public hearing.

Bob Fletcher, 458 Oak Creek Drive S., Vadnais Heights, spoke. He has spent a lot of time on the lake. The lake is a gem, which is a regional asset second to none. They eat at Admiral D's, as well as other nearby restaurants. There's not enough infrastructure in terms of restaurants and places to sit and ways that people can enjoy the lake in this area. People are lined up that can't get a table. Most people on the docks are coming from other places than White Bear Lake. They're shopping at Kowalski's and stopping in Downtown White Bear Lake. This is a great magnet for economic development. What McGoldrick is proposing is needed. More people will be coming here with the Rush Line going in. We need more places to go and enjoy this regional asset.

The applicant, Brian McGoldrick, 36 Moonlight Bay, Stillwater, spoke. He stated that the DNR did not deny his application. He talked about a lawsuit involving the

Hubbard family in the City of Afton, conversations with the DNR about the bump-out of the deck beyond the OHWL, and 20 boat slips in front of the marina for transient parking. The bump out was for ADA access from the boats to the restrooms in the building. With the lake level being down, they haven't been able to implement the rest of it, but that was the only way to get people from the docks to the restaurant. He pointed out that he's the one who discovered that the property line runs at an angle. To answer Lynch's question about parking, he's a tenant of the White Bear Shopping Center. He has a ground lease, but the property is still maintained by the Trach family. He has paid for 7 sewer access charges, but he only uses 4.77 of them, with 2.23 extra. Staff is saying that the proximity of the building would set a precedent, but he questions who it is for. No other businesses on the water could come forward because everyone else is "maxed out" on their space.

He handed out packets with aerial photos. He had a survey done of the VFW and Tally's buildings. The setback from the OHWL for Tally's is 12.9 feet and the VFW is 7.4 feet. He expressed a misconception that expanding a line of non-conformity has some relation to the location of buildings on other neighboring properties and that is what was granted by the City Council past approval in 2007. He mentioned that he also leases space in the shopping center for storage and a prep kitchen and claimed that all the deliveries are made there so they are not blocking the flow of traffic on Lake Avenue.

He stated that a 900 square foot building doesn't work for him. They'd like to stay open year-round. He talked about the elements driving patrons away, the need for shades and the louver system. He wants to compare codes with other cities in relation to parking requirements associated with the dinner boat. As far as expanding north, there's a big power box there. He wants the roof top bar so as to have separation for patrons from families with children.

Reis asked McGoldrick if it's normal to have a kitchen that's equal to 50% the size of the restaurant. McGoldrick stated that they played the hand that they were dealt. After they put in the bathrooms, they had this. That's why they have the other kitchen across the street in the shopping center, it's their prep kitchen. They'd have to keep it even with their revised request. It would allow them to shorten their times and be more efficient.

Reis asked if McGoldrick has an alternate plan in case his request for a variance to move 50 feet towards the water gets denied. McGoldrick explained why they configured the building the way they did. They didn't give a whole lot of thought to going a different direction, it didn't seem to make sense. Reis asked if they could. McGoldrick replied that he didn't think so.

Jeff Moelter, Prescott, Wisconsin, and owner of Open Air Solutions, the louvered roof consultant, came up to answer questions.

Lynch asked what a louvered roof is and how it works. Moelter explained that there's an aluminum beam structure, and then louvers that run similar to a wooden pergola. The louvers are powered and they rotate. They can lay flat and they interlock. It allows them to catch all the water, which then runs to the sides of the

louvers and into the gutters.

Divine asked if they're load bearing, and how they handle snow. Moelter responded that they are designed and engineered to support the snow load.

Moelter addressed the retractable sides. The advantage of them is that you're only using them for a couple hours in the evening at a peak time when the sun is at just the right angle. They are somewhat opaque; you can see through them to some extent. There's not 100% blockage.

Divine asked for clarification on the OHWL. Did the DNR require the building to be set back to the OHWL? Kane stated that the City's zoning code does require it. That (the Shoreland Overlay) was adopted in conjunction and in collaboration with the DNR in about 1985. The City does have authority to grant variances from that standard. Divine asked about the setbacks for Tally's and the VFW. Kane stated that they were preexisting before the mid-1980's and before adoption of the Shoreland Overlay regulations.

Berry appreciates what McGoldrick has done with his business, as well as what the other businesses in the Marina Triangle area have done. Whoever was at those properties at the time that they were built, the current setback was not in place. But at the time that McGoldrick did decide to build Admiral D's, he did know what all the restrictions were at the time that he got it approved and built this. The Planning Commission is being asked to change the rules of the game afterward.

Baltzer stated that he was on the Planning Commission when this came before them in 2008. The original plan for the building was all made out of glass that they could see through. That's the way it was presented to the Planning Commission. However, within a short amount of time when it got to the City Council, it suddenly became a brick building. If he'd known it was going to be a brick building, he would have never voted for it in the first round. He disagreed with McGoldrick as to what type of band he was told would be playing there. He has heard rock bands, and the neighbors have called to complain about the noise. He has a tough time believing what's here is what he's eventually going to see because it hasn't transpired that way before. He's got a tough time supporting this request.

Lynch feels it's a very small strip of land. It started out as a marina, and then it went to a shed, and then a shed with food, and then went to a small restaurant, and now it's looking to go to a bigger restaurant. It seems to be creeping bigger and bigger. There's a certain limit that can be done there when it comes to the nature of what the lake area is. The VFW and Tally's were just lucky because they've been there for 30 or 40 years or longer. He said that if things need to be expanded, then something entirely different needs to be reworked. He's very concerned about the proximity to the lake, the cover to the patio, and the way the roof access would end up right next to the road by the park. He's not saying the rooftop is not doable. He thinks it needs to be looked at in a completely different way. He's going to be voting against this tonight. He wouldn't mind seeing a revised plan for the rooftop. He's not saying he'll support it when it comes back but it's an interesting idea.

Berry concurs with Lynch. He would like to see a different configuration as far as something that sits inside the 25 foot setback.

Member Reis moved to deny approval of the application of Case No. 08-3-Sa and 17-13-V. He is very bothered by building all the way down to the water line. He's aware of the controversy over the concept of OHWL. It moves back and forth, but building all the way down to the OHWL is something he can't see. Member Baltzer seconded the motion. Lynch suggested adding an amendment about waiving all or some of the six month waiting period to reapply. Reis accepted the amendment and the motion passed by a vote of 5-0.

**B. Case No. 76-15-Sa and 17-16-V:** A request by **Polar Mazda** for a Conditional Use Permit Amendment, per Code Section 1303.140, to remove the existing sales building and a one sign variance, per Code Section 1202.040, Subd. 2.B, to allow a second free-standing sign that is 79 sq. ft. in size and 28' tall for the property located at 4095 Highway 61. **TO BE CONTINUED TO AUGUST AT APPLICANT'S REQUEST.**

**C. Case No. 17-17-V:** A request by **Joel Moline** for three variances to allow a 1,200 square foot expansion of the existing 1,064 square foot detached garage: a 1,264 square foot variance from the 1,000 square foot limit for a primary accessory structure; a 1,014 square foot variance from the 1,250 square foot limit for all accessory structures combined; both per Code Section 1302.030, Subd.4.; and a 25 foot variance from the 40 foot setback from the road-side property line, per Code Section 1303.030, Subd.c.1 for the property located at 2521 Manitou Island.

Showalter discussed the case. Staff recommends approval.

Lynch asked if they were to someday tear the garage down in the future, the variance would still be around, correct? Showalter stated that the variance goes with that garage. Kane stated that they can put a condition in that says it needs to remain underground.

Berry opened up the public hearing.

Dick Gunderson with Gunderson Construction came up to speak. He's present to answer any questions they might have. Gunderson stated that due to the open floorplan of the house, the applicant needs storage.

Member Lynch moved to recommend approval of Case No. 17-17-V. Member Reis seconded the motion with the amendment stating that the garage must remain underground, and it passed by a vote of 5-0.

**5. DISCUSSION ITEMS:**

**A.** City Council Meeting Minutes of July 11, 2017.

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**B.** Park Advisory Commission Meeting Minutes – June 15, 2017.

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**6. ADJOURNMENT:**

Member Baltzer moved to adjourn, seconded by Member Lynch. The motion passed unanimously (5-0), and the July 31, 2017 Planning Commission meeting was adjourned at 8:19 p.m.