

**GREATER BEMIDJI AREA
REGULAR JOINT PLANNING COMMISSION MEETING**

**Thursday, May 28, 2020
6:00 P.M.**

**Cisco Webex Video Conferencing
(For log in information <https://www.jpbgba.org/planning-actions>)**

AGENDA

- **Call to Order/Roll Call** **Chair**
- **Pledge of Allegiance**
- **Approve Agenda**
- **Approve Minutes**
 - **Thursday, April 23, 2020 Regular Meeting**

NEW BUSINESS

- 1. Visitors** **Chair**

Public Hearings

- 1. City of Bemidji - IUP-20-80.05562.00 – Sanford Health** **JC**
- 2. City of Bemidji – V-20-80.00737.00, 80.00734.01, 80.00751.00 – Cake Properties** **JC**
- 3. City of Bemidji – V-20-80.06649.00 – Eric Schulke** **CM**

OTHER BUSINESS

- 1. Director’s Report**
- 2. Upcoming Meetings** **Chair**
 - June 10, 2020 6:00 pm JPB Regular Meeting
 - June 25, 2020 6:00 pm JPC Regular Meeting
 - July 8, 2020 6:00 pm JPB Regular Meeting
 - July 23, 2020 6:00 pm JPC Regular Meeting
- 3. Adjourn** **Chair**

**MINUTES
GREATER BEMIDJI AREA
REGULAR PLANNING COMMISSION MEETING**

**May 28, 2020
6:00 p.m.**

**Cisco Webex
Video Conference**

CALL TO ORDER: Chair Don Heinonen called the regular meeting of the Greater Bemidji Area Joint Planning Commission to order at 6:00 p.m., roll call was taken and the pledge of allegiance was recited.

MEMBERS PRESENT: Berg, Faver, Steffen, David, Heinonen, Lemmer, Miller, Smith

MEMBERS ABSENT: None

STAFF PRESENT: Casey Mai, Jamin Carlson, Terri Ball

OTHERS: Paul Nistler, Eric Carlson, Mike Granlund, Renee Axtman, Matt Murray, Mark Thorson

APPROVAL OF AGENDA:

Motion by Miller, second by Steffen, to approve the agenda as presented.

Ayes: Smith, Miller, Lemmer, Heinonen, David, Steffen, Faver, Berg

Nays: None

Abstentions: None

Motion carried unanimously.

APPROVAL OF MINUTES:

Motion by Smith, second by Lemmer, to approve minutes from the April 23, 2020, Greater Bemidji Area Regular Joint Planning Commission as presented.

Ayes: Berg, Faver, Steffen, David, Heinonen, Lemmer, Miller, Smith

Nays: None

Abstentions: None

Motion carried unanimously.

NEW BUSINESS:

VISITORS:

Chair Heinonen announced that Mike Granlund has been recommended by Northern Township to fill the vacant seat on the Joint Planning Commission. Granlund introduced himself. The resolution finalizing his appointment will be presented to the Joint Planning Board on June 10, 2020.

Public Hearing:

Carlson presented the first case:

PLANNING CASE – IUP-20-80.05562.00 – Sanford Health

Sanford Health, represented by Paul Nistler, is requesting approval of an interim use permit (IUP) to add outpatient behavioral health services at property located at 1705 Anne St. NW within the City of Bemidji. This property is located in the B-1 Low Density Commercial District.

BACKGROUND

The Applicant, Paul Nistler representing Sanford Health, is proposing to provide outpatient behavior health services for individuals & group services for mental health and substance use disorder treatment at the 1705 Anne St. NW location. The current site for the behavioral health services is at 722 15 St. NW. The Applicant states that behavior health services being moved to 1705 Anne St. NW would now be closer to more medical facilities as well as significant benefits for patients struggling with transportation needs. The applicant states that this proposal would allow for more efficient care at one location. Clients could receive their Medication Assisted Therapy under a Medical Doctor (MD) and receive substance use disorder treatment at the same time. This will increase success rates for clients to obtain permanent recovery.

This requested land use falls under Counseling per Section 302 of the GBAJPB Ordinance, and is allowed with an approved conditional use permit (CUP); however, since the use will be located in a leased space, the interim use permit (IUP) is required. An IUP allows for the community to review on a case by case basis the needs of the surrounding neighborhood to allow a use, with conditions, that may or may not be of a similar nature. The conditions are a way to minimize any potential impact the use may have.

Primary Hours of Operation: 8:00 a.m. to 7:30 p.m.

Number of Employees: 25 for the behavioral health services

Number of Clients: Up to 75+ per day

PLANNING CONSIDERATIONS

Per the Ordinance: clinics that provide counseling services require the issuance of an Interim Use Permit by the JPB to be located in the Low Density Commercial (B-1) zoning district. A community cannot use its zoning authority to discriminate against classes of people that it does not want to accept, such as substance dependent persons, individuals with behavioral disorders, etc. Therefore, the use is allowed following a public hearing with conditions to ensure the safety of both the clients of the facility as well as the public.

This property is surrounded by predominantly low density business to the north, and medical/office to the east and south, with Hwy 71 running along the west. This use is common in the low density commercial and medical/office districts. The Sanford Health complex surrounds the area as well.

Parking and Traffic

Section 1009 of the Ordinance requires that parking be based on three (3) spaces per examination or treatment rooms. This site has approximately 138 parking spaces, which meets the minimum requirement for this location

Signage

No signage plan has been presented to JPB staff. Any new signage will require a sign permit through the GBAJPB. All signage must comply with Section 712 of the Ordinance.

Trash Handling & Storage Containers

A dumpster location has been identified on the property and is non-compliant with the Ordinance. The dumpsters on the property shall be fully enclosed with a gate complying with Section 1002 of the Ordinance.

Staff noted that since the publishing of this report, Sanford Health has begun construction of the trash enclosure, as witnessed during a recent site visit.

Development Team: (Public Works/Engineering, Building & Fire Department)

The Building Department, nor the Fire Department had any concerns regarding the site plans for the proposed use.

Bryan Kerby, City of Bemidji Building Official had the following comment:

"The Building Department has no concerns on this planning case. Please note that any building projects within the existing space will need to be plan reviewed, permitted and inspected per 2020 MN State Building Code."

Neighboring Property Owner input

At the time of writing the report, no neighborhood input was obtained.

Comprehensive Plan References

The proposed use to provide behavior health services in the (B-1) district is consistent with Greater Bemidji Area Land Use Plan; provided the IUP process is followed and specific conditions are met in order to assure compatibility with surrounding uses.

Objective 7.1: Preserve and Enhance our Public Services and Private Utilities Cooperation is important when planning for public or private expansion of services, encouraging private and public entities to work together on major improvements and promote reasonable expansion projects while supporting the maintenance of existing facilities.

RECOMMENDATIONS

Staff recommends approval of an Interim Use Permit to allow Sanford Health to add counseling services for property located at 1611 Anne St. NW within the City of Bemidji in the B-1 Low Density Commercial District, with the following conditions:

1. The IUP shall terminate upon a change in use, a change in the owner/operator (leaseholder), or a change in the lease space as may be determined by the JPB Staff.
2. Any additional signage must meet Section 712 of the Ordinances and a permit must be granted if necessary before any additional signage is placed on site.
3. All dumpsters shall be fully enclosed with a gate complying with Section 1002 of the Ordinance and shall be in place no later than September 1st, 2020.
4. The hours for behavior health services shall be 8 A.M. to 7:30 P.M. JPB staff shall be informed if hours of operation are to change.
5. If a change in type of behavior health services were to occur or an intensification of services provided such as increased allowable clientele, JPB staff shall be notified. If staff see a change or intensification warrants review it will be brought to the Joint Planning Board for further action.

6. The IUP shall be reviewed for compliance one (1) time upon six (6) months of operation by the JPB staff. If JPB staff see there is a reason to bring it to the JPB, the applicants shall participate in a review of the IUP. A review will occur if complaints are received by staff.
7. An interim use permit shall expire and become void if the use it allows is not substantially started within twelve (12) months from its date of issuance. A substantial start means more than preliminary steps have been taken such that preparations to initiate the use are mostly complete. The JPB may, upon written request of the owner, grant an extension to this deadline not to exceed an additional twelve (12) months.

Public Hearing opened at 6:20 p.m.

Paul Nistler addressed the past dumpster enclosure violation at 1611 Anne Street NW, and assured the Commission that the enclosure is currently being constructed at 1705 Anne Street NW location. Commissioner Miller asked Nistler if Sanford is moving their chemical dependency license to the new location, if Sanford has been providing mental health services, if groups will be meeting, especially after 7:30 pm. Nistler explained that the license is being moved from the 722 15th Street NW address to the 1705 address. Group meetings in the evening are not anticipated, however, if that changes Nistler will contact the JPB staff. Miller asked what will become of the building at 722 15th Street NW. Nistler stated that he is unaware of the answer.

Public Hearing closed at 6:22 p.m.

Motion by Miller, second by Steffen to recommend approval of an Interim Use Permit to allow Sanford Health to add counseling services for property located at 1611 Anne St. NW within the City of Bemidji in the B-1 Low Density Commercial District, with the following conditions:

1. The IUP shall terminate upon a change in use, a change in the owner/operator (leaseholder), or a change in the lease space as may be determined by the JPB Staff.
2. Any additional signage must meet Section 712 of the Ordinances and a permit must be granted if necessary before any additional signage is placed on site.
3. All dumpsters shall be fully enclosed with a gate complying with Section 1002 of the Ordinance and shall be in place no later than September 1st, 2020.
4. The hours for behavior health services shall be 8 A.M. to 7:30 P.M. JPB staff shall be informed if hours of operation are to change.
5. If a change in type of behavior health services were to occur or an intensification of services provided such as increased allowable clientele, JPB staff shall be notified. If staff see a change or intensification warrants review it will be brought to the Joint Planning Board for further action.
6. The IUP shall be reviewed for compliance one (1) time upon six (6) months of operation by the JPB staff. If JPB staff see there is a reason to bring it to the JPB, the applicants shall participate in a review of the IUP. A review will occur if complaints are received by staff.
7. An interim use permit shall expire and become void if the use it allows is not substantially started within twelve (12) months from its date of issuance. A substantial start means more than preliminary steps have been taken such that preparations to initiate the use are mostly complete. The JPB may, upon written request of the owner, grant an extension to this deadline not to exceed an additional twelve (12) months.

And Findings of Fact

1. **Whether the proposed use adversely affects the public safety, health, morals, convenience and general welfare of the occupants of the surrounding land.**
No. The proposed use is not anticipated to adversely affect, nor create an unreasonable level of disruption or interference upon the surrounding area. A counseling service for behavior health is compatible with the current GBAJPB land use regulations.
2. **Whether the proposed use adversely affects traffic conditions and parking on adjacent streets and land.**
No. Increases in traffic or other negative impacts are not anticipated. The subject parcel will use its current parking lot for the additional counseling services.
3. **Whether the proposed use adversely affects property in the surrounding area.**
No. The proposed use is not anticipated to adversely affect, nor create an unreasonable level of disruption or interference upon the surrounding area. The subject property is currently being used as a medical clinic with no adverse effects. The subject parcel is appropriately zoned for the proposed use with approval of an IUP.
4. **Whether the proposed use is in conformance with the community's Comprehensive Plan or Land Use Plan.**
Yes. The proposed land use is consistent with the goals and policies of the Comprehensive Plan as well as the Zoning and Subdivision Ordinance.
5. **Whether adequate utility, drainage and other such necessary facilities have been or can be provided.**
Yes. The property has adequate public infrastructure and is served by city services.

Ayes: Smith, Miller, Lemmer, Heinonen, David, Steffen, Faver, Berg

Nays: None

Abstentions: None

Motion carried unanimously.

Carlson presented the second case:

PLANNING CASE – V-20-80.00737.00, 80.00734.01, & 80.00751.00 – Cake Properties

Cake Properties LLC, is requesting approval of a variance for a reduction of two (2) feet in the rear yard setback on the property located at 2921 & 2919 Bemidji Ave N within the City of Bemidji. This property is located in the B-2 General Commercial District.

BACKGROUND

The property representative contacted staff about adding on to the existing building. The existing structure is a legal non-conforming building that does not meet the current rear yard setback. The applicant states that the parcels listed will be combined into one (1) lot of record along with acquisition of land to the northeast of the proposed addition if the variance is granted. The existing commercial storage building sits 12.6 feet from the rear property line and the proposed addition will be built over the current bituminous, therefore, not creating any additional impervious surface. A lot line realignment from parcel 80.00738.00 will add an additional 1,200 square feet to the property and will alleviate other encroachments. The applicant states that the current structure is vacant and will be used for commercial use. He also commented that further reducing the size of the addition would not be feasible for the use, as the proposed addition would be centered on the existing building, thus, making the addition more in-line with the current structure and the surrounding area.

PLANNING CONSIDERATIONS

Lighting

All exterior lighting for this development, whether it's existing or new lighting, shall meet Section 1008 of the JPB Ordinance and shall be downward facing or shielded so lighting isn't directed towards the night sky, neighboring properties or within the right-of-way. A lighting plan showing exterior fixtures and placement will need to be submitted for approval.

Landscaping

After a site visit, it appeared that there are not any trees located within the parcels. Per Section 1006 of the Ordinance a total of nine (9) trees are required to be on the property. Staff would recommend that trees be planted throughout the outer perimeter of the property. Applicant shall submit a landscaping plan to staff for approval at the time of obtaining a building permit.

Signage

All signage must comply with Section 712 of JPB Zoning and Subdivision Ordinance.

Trash Handling

Per Section 1002 of the JPB Zoning and Subdivision Ordinance, all dumpsters throughout the property shall be fully screened and enclosed on all sides at a minimum of six (6) feet in height and be of a durable and fully opaque material which cannot be seen through.

Lot Combination

The applicant shall combine the three (3) listed parcels 80.00737.00, 80.00734.01, & 80.00751.00 into one (1) lot of record along with combining acquisition of the west forty-eight (48) feet of parcel 80.00738.00.

Development Team: (Public Works/Engineering, Building, GIS & Fire Department)

No issues were brought to the attention of JPB staff at the time of writing this report. Final plans will be reviewed by all officials for compliance with City of Bemidji and JPB regulations.

From Bryan Kerby, Building Official:

"To Development Team,

The Building Department has no concerns on this planning case. Please note that any building projects adding onto or modifying the existing structure will need to be plan reviewed, permitted and inspected per 2020 MN State Building Code."

Neighboring Property Input

No neighborhood comment was received at the time of writing this report.

Comprehensive Plan References

The newly adopted Greater Bemidji Area Comprehensive Plan has identified the following objectives and strategies that supports this variance.

Objective 4.2: Preserve and Promote Commercial and Industrial Redevelopment or In-Fill Development Where Appropriate Providing opportunity for commercial and industrial redevelopment is imperative to reduce urban sprawl and increase land use densities where appropriate. Land use planning can preserve existing developed areas and ensure land is available as well as compatible for increased development.

1. Promote flexibility for commercial and industrial redevelopment and encourage in-fill development. Allowing for in-fill development and redevelopment of existing commercial areas will ensure the current commercial and industrial areas remain vibrant, full, and diverse. In-fill

and redevelopment will be encouraged before resorting to increasing commercial and industrial areas energy needs, ultimately reducing environmental impact.

RECOMMENDATIONS

Staff recommends approval of a variance in order to build an addition on an existing building located at 2921 Bemidji Ave N:

1. A reduction of two (2) feet within the rear yard setback per Section 402 requirement of twenty (20) feet.

Approval is recommended with the following findings of fact and conditions:

Conditions

1. Addition shall be staked by a professional surveyor to mitigate setback encroachment.
2. An erosion control plan shall be submitted and be in place before any construction commences on the property.
3. All dumpsters shall be fully enclosed complying with Section 1002 of the JPB Zoning and Subdivision Ordinance.
4. A sign permit shall be obtained prior to installation of any new signage. Any additional signage shall be included on the sign permit or will require another permit prior to being placed on the property at a future date.
5. JPB site verification form and fee shall be submitted prior to construction.
6. Nine (9) trees shall be planted throughout the property complying with Section 1006 of the JPB Ordinance.
7. A building permit shall be obtained prior to construction.
8. All new and existing exterior lighting for this development shall meet Section 1008 of the JPB Ordinance.
9. The variance shall expire and become void if the project is not substantially started within twelve (12) months from its date of issuance. A substantial start means more than preliminary steps have been taken such that preparations to initiate the addition is mostly complete. The JPB may, upon written request of the owner, grant an extension to this deadline not to exceed an additional twelve (12) months.

Public Hearing opened at 6:34 p.m.

Eric Carlson stated concerns with condition number six (6) requiring trees to be planted along Bemidji Avenue, as per Ordinance Section 1006. Staff explained that the nine (9) trees could be planted throughout the property and will not be required in the front along Bemidji Avenue. Commissioner Miller commented that trees along Bemidji Avenue are not shown on the site plan. Staff stated that the site plan was only a suggestion by staff, because staff is comfortable with Applicant's placement throughout the property. Miller questioned the presence of the Applicant's purchase agreement on parcel number 80.00734.01. Carlson stated that he does not own the property yet, but the closing will occur any day and was contingent on the variance being approved.

Public Hearing closed at 6:39 p.m.

Motion by Steffen, second by Lemmer, to approve a variance at 2921 Bemidji Ave N, with the following conditions:

1. Addition shall be staked by a professional surveyor to mitigate setback encroachment.
2. An erosion control plan shall be submitted and be in place before any construction commences on the property.

3. All dumpsters shall be fully enclosed complying with Section 1002 of the JPB Zoning and Subdivision Ordinance.
4. A sign permit shall be obtained prior to installation of any new signage. Any additional signage shall be included on the sign permit or will require another permit prior to being placed on the property at a future date.
5. JPB site verification form and fee shall be submitted prior to construction.
6. Nine (9) trees shall be planted throughout the property complying with Section 1006 of the JPB Ordinance.
7. A building permit shall be obtained prior to construction.
8. All new and existing exterior lighting for this development shall meet Section 1008 of the JPB Ordinance.
9. The variance shall expire and become void if the project is not substantially started within twelve (12) months from its date of issuance. A substantial start means more than preliminary steps have been taken such that preparations to initiate the addition is mostly complete. The JPB may, upon written request of the owner, grant an extension to this deadline not to exceed an additional twelve (12) months.

And Findings of Fact

1. Has the applicant demonstrated a practical difficulty?

Yes. The current structure was built before current zoning standards. The location of the current building demonstrates a practical difficulty for expanding the current building as it resides within the rear setback.

2. Are there exceptional circumstances, unique to this property, which have not been created by the land owner?

Yes. The building was built prior to today's zoning standards and was not constructed by the current owner. The current location of the building creates difficulties for improvement of the structure.

3. Can the variance be granted and that such action will be in keeping with the spirit, purpose and intent of the Zoning Ordinance?

Yes. This area is zoned for commercial and it would be keeping with the spirit, purpose and intent of the Zoning Ordinance. Although setback encroachments towards a rear lot line are not encouraged, the proposal does reduce its encroachment in regards to the current structure.

4. Can the variance be granted without altering the essential character of the surrounding area?

Yes. Again, this area is zoned for commercial with businesses surrounding the proposed site to the north and south. The proposed addition is situated on the north side of the property going towards other commercial parcels. The proposed variance request would fit well within the surrounding area and would not alter the character.

Ayes: Berg, Faver, Steffen, David, Heinonen, Lemmer, Miller, Smith

Nays: None

Abstentions: None

Motion carried unanimously.

Mai presented the third case:

PLANNING CASE – V-20-80.06649.00 - Schulke

Eric Schulke is seeking a variance in order to construct a new single-family home on a substandard lot of record located at 5030 Birchmont Dr NE; parcel 80.06649.00 within the City of Bemidji. This parcel is within the (R-3) Suburban Residential Sewered Zoning District and Shoreland Overlay. The existing house and detached garage will be demoed as part of the new construction. The requested variances are as follows:

1. A reduction of 3,187 square feet in lot size per the Section 901 requirement of 30,000 square feet;
2. An additional 6.2% or 1,662 square feet of impervious surface coverage throughout the property per Section 901; and
3. A setback reduction of twenty (20) feet from the required fifty (50) feet from Balsam Creek.

BACKGROUND

The Applicant and his representative Matt Murray of Murray Surveying, Inc. recently met with Staff out on site in regards to demoing the existing structures and building a new single-family residential house with an attached garage on the property. The existing house, deck and detached garage currently all are placed within the structure setback line of the creek's fifty (50) foot ordinary high water level (OHWL) setback. The existing detached garage is as close as eleven and a half (11.5) feet from the creeks edge. In August of 1977, a prior owner, Raymond Fladland, was approved a variance by Beltrami County Board of Adjustment to construct a large sun deck onto the south end of his cottage and the detached two-stall garage, with the closest part of these structures being twenty-seven (27) feet from Balsam Creek's OHWL. A conditional use permit was also approved at this meeting for the placing of fill for his garage and his turnaround driveway. At that time, two conditions were placed on the approval, (1.) Owner was required to build an appropriate retaining wall so as to protect Balsam Creek from any run-off or soil erosion from the proposed fill area; and (2.) That the deck could never be built or remodeled to be used as living quarters for the cottage within its life span. At some point the Creek either expanded or was altered as today the existing detached garage sits eleven and a half (11.5) feet from the creeks edge whereas the 1977 variance was approved for the structure to be no closer than twenty-seven (27) feet.

While on site, Staff observed several roof gutters directing run-off straight towards Balsam Creek. This property is approximately 28,360 square feet in size including the creek that runs through it or is approximately 26,813 square feet excluding the creek. The property's existing impervious surface coverage is approximately twenty-two percent (22%) or 6,141 square feet. The Applicant is proposing to construct a new 3,480 square foot structure that will be placed more so along the northern edge of the property. The new proposal will increase the impervious surface coverage on the property to approximately a little over thirty-one (31%) or 8,336 square feet.

Schulke's property is unique compared to most properties that exist on Lake Bemidji as it not only has to comply with the fifty (50) foot setback from the ordinary high water mark (OHWM) from the Lake, but also the fifty (50) foot setback from the OHWM on the creek. Balsam Creek, also a Judicial Ditch (No. 35) is classified as a Tributary River Segment per the Greater Bemidji Area Zoning & Subdivision Ordinance as well as the Minnesota Rules, Part 6120.3300.

The adjacent property to the south of Balsam Creek, Parcel Numbers 80.06646.00 & 80.06647.00 (formerly known as 31.00649.00 & 31.00650.00 prior to the 2015 annexation) received a variance on April 9th, 2008 from the GBAJPB for a thirty-five (35) foot setback reduction from the OHWM of Balsam Creek, essentially allowing a structure to be built no less than fifteen (15) feet at any point from the leading edge to the OHWM. This property still sits empty today and has not been constructed on. Mississippi Headwaters Board (MHB) granted certification for the project due to their Board failing to act within the '60-day' rule, which resulted in automatic certification. It is unknown

whether or not MHB would have been in support of granting a variance for a structure to be that close in proximity to the OHWM.

PLANNING CONSIDERATIONS

Landscaping Requirements

A landscaping plan would need to be submitted if any trees, shrubs, or vegetation are to be removed within the shoreland protection zone. Erosion control would have to be in place before any construction or demolition begins and remain intact until suitable vegetation is established and in place.

Per Section 908 of the Ordinance, Vegetation alterations shall in no case exceed fifty percent (50%) of the brush and twenty-five percent (25%) of the trees within the shore and bluff impact zones or on steep slopes. For the purpose of this Section, trees less than four (4) inches in diameter as measured at a height of four (4) feet from the ground shall be considered brush. Per Section 1006 of the Ordinance, a minimum of two (2) trees shall be planted or preserved on the property within the front yard setback between the property line and the principal structure.

Stormwater Mitigation

Per Section 914 of the Ordinance, if a project cannot meet the shoreland limitation for impervious surface of twenty-five percent (25%) maximum, an engineering plan, provided by a licensed civil engineer, or registered land surveyor, indicating that there will be no additional post development runoff with the addition of alternative impervious surfaces (including rain gardens, pervious pavers or pavement systems, green roofs, underground treatment, etc.) may be submitted for review and approval by the Planning Administrator, subject to prior engineering review and a maintenance plan. Approved alternative pervious surfaces of up to an additional twenty-five percent (25%) over and above traditional impervious surface materials may be considered for approval.

The Applicant is proposing to install gutters around the perimeter of the structure and having all runoff directed to two (2) separate dry wells. Dry Well No. 1 is proposed to be fifteen (15) feet by ten (10) feet and two (2) feet deep, whereas Dry Well No. 2 is projected to be fourteen (14) feet by eight (8) feet and one and one-half (1.5) feet deep. Dry Well No. 1 has a storage volume of one hundred and twenty-four (124) cubic feet and will treat approximately seven hundred (700) square foot of roof. Dry Well No. 2 has a storage volume of sixty-six (66) cubic feet and will treat roughly one thousand six hundred (1,600) square foot.

Violation

While on site, Staff observed a violation of which appeared to be grass clippings being dumped near the edge of the Creek. Per the Minnesota Stormwater Manual MS4 Fact Sheet, it is illegal to dump non-hazardous household waste and improper dumping of yard waste in streets, storm drains, wetlands, lakes, and other water bodies pollutes surface waters. Non-hazardous household waste includes items such as tires, furniture, common household appliances and other bulk items. Yard waste includes any organic debris such as grass clippings, leaves, and tree branches. Although yard waste is composed of natural materials that will eventually decompose, the debris releases nutrients and uses up oxygen that is necessary for a healthy aquatic ecosystem. Non-hazardous household materials should be recycled or disposed of at a proper facility and yard waste is best minimized and composted.

Digging & Demolition Permits

A digging permit will be required prior to demolition to ensure that both water and sewer utilities are disconnected from the main City lines within the right-of-way. A demolition permit will also need to be approved prior to the removal of any structures on site. Both the digging and demolition permit can be obtained from the City of Bemidji Building Department.

Mississippi Headwaters Board (MHB)

Tim Terrill, MHB Executive Director had the following to say in regards to this variance request:

My comment is that I see more danger from Balsam creek. My concern is for the homeowner and the safety and integrity of the home. Without looking at the creek water levels or other soil factors, it visually has a high amount of sinuosity in its profile which suggest it will eventually over time cut the outer banks and incise the channel causing increased erosion to Lake Bemidji. This is a "tipping point" lake that is trending toward an impairment. As or "if" more impervious increases in the upper portion of the Balsam Creek watershed, the creek will erode in the curves and affect the structural integrity of the home. I suggest more study be done on the creek itself to determine the erosiveness of soils, stream velocity and cutting, and likelihood of development in the watershed. Also in the stormwater mitigation plan I would suggest a raingarden in the dirt portion of the driveway.

Development Team: (Public Works/Engineering, GIS, Building & Fire Department)

GIS nor the Fire Department had any concerns with this request.

Bryan Kerby, City Building Official stated the following per this variance request:

The building department does not have any immediate concerns on this planning case. While the location of the existing structure seems to indicate the presence of adequate soils, the construction is so near Balsum Creek and Lake Bemidji will necessitate the verification of correct buildable soils for a residential structure per 2020 MN State Residential Code. These soils will need to be examined during demolition of the existing structure and may require verification via testing by a licensed soil engineer as adequate for the new structure when submitted for residential plan review prior and permitting.

Craig Gray, City Engineer stated the following in regards to this request:

It sure looks to me like some of the bituminous pavement for the driveway could be removed to meet the impervious surface coverage requirement. Maintaining the required setback from the creek would also help to improve/maintain the water quality of the creek and the lake.

Because the attached storm water mitigation plan contains the design of a dry well, and associated dry well storage volumes, I will require that it be signed by a registered Professional Engineer.

We have no problem with a RLS preparing a grading and drainage plan for a residential structure, but when dry wells and other structures are required then a PE signature will be required.

Neighborhood Comment

At the time of writing the report, no neighborhood comments were received.

One phone call was received prior to the meeting, from a neighbor within the mailing buffer area. This person is "dubious" about granting a variance as the owner knew what he was getting before he bought the property, is "concerned" with the building being built so close to the creek, stated that the area lakes are fragile and should be protected, and commented that the construction will be a "disruption" to the eco system. Overall this person is opposed to the granting of the variance.

Comprehensive Plan References

The newly adopted Greater Bemidji Area Comprehensive Plan has identified a few objectives and strategies that supports the redevelopment of this lot as long as it is in keeping with the spirit, purpose and intent of the Plan.

Land Use Objective 4.1: Preserve the Quality Residential Neighborhoods

Identify specific redevelopment opportunities and promote revitalization while maintaining character. Mapping of existing neighborhoods can provide a clearer boundary to ensure preservation. This can also aid in the development of form-based zoning to allow redevelopment of existing nonconforming structures.

Natural Resources Objective 11.2 Preserve and Enhance Water Quality

The protection of water quality is becoming increasingly important in all-natural resource environments. In an area that thrives on a strong connection to water and Mississippi River, water quality protection is key to preserving and improving a high quality of life standard that is so attractive to residents and visitors.

Strategy #2: Use shoreland restoration incentives and demonstrate success on public and private property to increase natural shoreland. Encourage shoreland restoration projects through incentives or flexibility could potentially reduce shoreland variances. Displaying the benefits of shoreland restoration can increase awareness and understanding of the process that could result in a positive impact on shoreland.

Legal Feedback

Prior to the meeting, a letter was emailed from attorney William Burns who represents Eric Schulke. Staff read aloud the email which was then added to the packet.

RECOMMENDATIONS

JPB Staff had difficulties coming to a definitive conclusion on this request as its imperative to use best planning practices in the implementation of the ordinance and to ensure it is in keeping with the spirit, purpose and intent of the of the Comprehensive Plan. It's a goal of the Greater Bemidji Area to allow redevelopment opportunities while maintaining the character of the surrounding neighborhoods. Although the redevelopment of this lot is consistent with what is taking place around Lake Bemidji, the granting of a variance for setback reductions to the ordinary high water mark while other options exist is not smart planning. Staff fully supports the Applicant in wanting to redevelop the lot and pushing structures away from the ordinary high water mark, but we also realize that there are options available to make a structure fit within all setbacks.

The Joint Planning Commission and the Joint Planning Board need to decide whether or not they support the variance request to construct a new house within the setback of the ordinary high water mark or if they are in opposition of the request and feel that the Applicant shall construct a structure to fit within the required setbacks. If the variance request is approved, the following conditions are recommended based on the findings of fact:

Recommendations for Approval

A variance approval is recommended in order to construct a new single-family home on a substandard lot of record located at 5030 Birchmont Dr NE; parcel 80.06649.00 within the City of Bemidji. The requested variances are as follows:

1. A reduction of 3,187 square feet in lot size per the Section 901 requirement of 30,000 square feet;

2. An additional 6.2% or 1,662 square feet of impervious surface coverage throughout the property per Section 901; and
3. A setback reduction of twenty (20) feet from the required fifty (50) feet from Balsam Creek.

Approval recommended with the following conditions:

1. Building shall be staked by a professional surveyor to mitigate setback encroachment.
2. An erosion control plan and permit application shall be submitted and be in place before any construction commences on the property.
3. A stormwater mitigation plan for the proposed dry wells shall be designed and signed off on by a professional engineer to be reviewed and approved by the City Engineer before a building permit can be issued.
4. Soil verification via testing by a licensed soil engineer shall be required if determined by the Building Official at the time of demolition; a building permit from the City of Bemidji shall be obtained prior to construction.
5. Applicant shall obtain a digging permit from the City of Bemidji prior to disconnecting from the City water and sewer at the time of demolition.
6. A minimum of two (2) trees shall be planted or preserved within the front yard setback. A landscaping plan would need to be submitted if any trees, shrubs, or vegetation are to be removed within the shoreland protection zone.
7. All exterior lighting shall comply with Section 1008 of the Ordinance.
8. The variance shall expire and become void if the project is not substantially started within twelve (12) months from its date of issuance. A substantial start means more than preliminary steps have been taken such that preparations to initiate the use are mostly complete. The JPB may, upon written request of the owner, grant an extension to this deadline not to exceed an additional twelve (12) months.

Findings of Fact

1. Has the applicant demonstrated a practical difficulty?

Yes. This is an existing substandard lot of record that currently has a house, deck and detached garage that lie within the ordinary high water setback. The detached garage was built eleven and a half (11.5) feet from the creek's high water mark. The surrounding area to the north and south is all developed land with similar size of parcels and structures to what the Applicant is seeking. The difference from this parcel compared to others along Birchmont Dr NE is that Balsam Creek runs through the south edge of this property creating two (2) separate fifty (50) foot setbacks to comply with on a one hundred (100) foot wide lot.

2. Are there exceptional circumstances, unique to this property, which have not been created by the land owner?

Yes. This is a previously platted lot of record; without a variance for a lot size, this parcel could never be redeveloped on unless the new structures stayed within the same footprint of the existing structures.

3. Can the variance be granted and that such action will be in keeping with the spirit, purpose and intent of the Zoning Ordinance?

Yes. This request is proposing to make use of the property in a reasonable manner. This proposal is to allow for the redevelopment of a new house with an attached garage to replace aging structures; although setbacks from the ordinary high water mark of Balsam Creek are not being met, it's an improvement from what is existing now.

4. Can the variance be granted without altering the essential character of the surrounding area?

Yes. There is a single family home that currently exists today and the proposal of constructing a new home would fit well within the surrounding area and would not alter the character or the density. Over the past few years, several properties around Lake Bemidji have torn down the aging structures and replaced them with better energy efficient homes.

Recommendations for Denial

To ensure uniform development throughout the Greater Bemidji Area, a recommendation of denial for an ordinary high water setback reduction variance is based on the following findings of fact:

Findings of Fact

1. Has the applicant demonstrated a practical difficulty?

No. Although this is an existing substandard lot of record with structures that currently are within the setbacks, the Applicant is choosing to redevelop a site with the 'want' for setback reductions, whereas alternative options existing with fewer variances needed.

2. Are there exceptional circumstances, unique to this property, which have not been created by the land owner?

No. This is a previously platted lot of record with existing structures that reside within the setbacks; however, the owner is planning to redevelop the lot with a larger structure that exceeds the maximum impervious surface coverage allowed within the Shoreland Overlay. Due to the desired layout by the owners, a setback reduction to the Balsam Creek's ordinary high water mark is needed, whereas if an alternative layout option was chosen, setbacks variances would not be necessary.

3. Can the variance be granted and that such action will be in keeping with the spirit, purpose and intent of the Zoning Ordinance?

No. A variance from the ordinary high water setback requirement is not promoting best planning practices in the implementation of the Ordinance and Comprehensive Plan, nor is it in keeping with the spirit and intent of the of the Ordinance. A fifty (50) setback is required for a reason to help preserve and enhance the water quality of Lake Bemidji and the Mississippi Headwaters.

4. Can the variance be granted without altering the essential character of the surrounding area?

Yes. There is a single family home that currently exists today and the proposal of constructing a new home would fit well within the surrounding area and would not alter the character or the density. Over the past few years, several properties around Lake Bemidji have torn down the aging structures and replaced them with better energy efficient homes.

Public Hearing opened at 7:15 p.m.

Matt Murray commented that the response to the variance request has been more complicated than it needs to be, and Burns' letter clarified the standard of review that puts this request in the category of a practical difficulty versus a hardship. Murray addressed the design of the structure as a two (2) story elevation, then compared the proposed square footage to that of several parcels to the north. Murray continued with the noted emphasis of water quality and explained the proposed dry wells as one of the substantial mitigation efforts to this property. He commented that the suggested depression in the driveway in an attempt to decrease impervious surface results in modification that will require the applicant to increase the necessary maneuverable area of impervious surface by nine percent (9%). Murray stated that if the house location is shifted, in order to maintain an entry area it will impact the interior design, then he reiterated that the Applicant's request is reasonable.

Murray referenced a LMCIT pamphlet about variances which highlighted the subject of existing topography, then stressed the uniqueness of this property's creek. He also mentioned the presence of a Judicial Ditch, similar to two (2) nearby ditches, none of which require regulation. Commissioner Lemmer asked Murray if any research showed evidence of the change to Balsam Creek, which he stated to be unknown. Commissioner Miller commented that a bridge to Birchmont Drive once existed, and thought that alterations to the creek could have been made in the past.

Public Hearing closed at 7:26 p.m.

Mark Thorson had informed Chair Heinonen of a technical difficulty which had disconnected him from the public hearing. Heinonen re-opened the meeting to hear Thorson's comments.

Public Hearing re-opened at 7:39 p.m.

Thorson stated his agreement with the Applicant's lawyer, and is understanding of neighbor's concerns in opposition, but argued that a new structure is better than a decrepit house. Thorson commented that this project is an improvement to the area and is in full support of the variance request.

Public Hearing closed at 7:41 p.m.

Notes of Commission comments that support motion:

- Space is available within the setbacks to allow for a wonderful home.
- The request is a reasonable use and is possible without a variance.
- Suggested invoking the 60-day rule to allow for a revised site plan; Applicant is opposed.
- Questions about validity of 2008 variance for parcel to the south of the subject property. Staff will consult with JPB Attorney.
- Three (3) commissioners stated their opposition to the variance.

Motion by Smith, second by Lemmer to recommend denial of the variance request based on the findings of fact:

1. Has the applicant demonstrated a practical difficulty?

No. Although this is an existing substandard lot of record with structures that currently are within the setbacks, the Applicant is choosing to redevelop a site with the 'want' for setback reductions, whereas alternative options existing with fewer variances needed.

2. Are there exceptional circumstances, unique to this property, which have not been created by the land owner?

No. This is a previously platted lot of record with existing structures that reside within the setbacks; however, the owner is planning to redevelop the lot with a larger structure that exceeds the maximum impervious surface coverage allowed within the Shoreland Overlay. Due to the desired layout by the owners, a setback reduction to the Balsam Creek's ordinary high water mark is needed, whereas if an alternative layout option was chosen, setbacks variances would not be necessary.

3. Can the variance be granted and that such action will be in keeping with the spirit, purpose and intent of the Zoning Ordinance?

No. A variance from the ordinary high water setback requirement is not promoting best planning practices in the implementation of the Ordinance and Comprehensive Plan, nor is it in keeping with the spirit and intent of the of the Ordinance. A fifty (50) setback is required for a reason to help preserve and enhance the water quality of Lake Bemidji

and the Mississippi Headwaters.

4. Can the variance be granted without altering the essential character of the surrounding area?

Yes. There is a single family home that currently exists today and the proposal of constructing a new home would fit well within the surrounding area and would not alter the character or the density. Over the past few years, several properties around Lake Bemidji have torn down the aging structures and replaced them with better energy efficient homes.

Ayes: Smith, Miller, Lemmer, Heinonen, David, Steffen, Faver, Berg

Nays: None

Abstentions: None

Motion carried unanimously.

OTHER BUSINESS:

DIRECTOR REPORT

Mai provided updates on last month's planning cases as well as proposed cases, year to date activities, and development project progress. Mai also anticipates the video conferencing venue for June's JPC meeting but will keep everyone informed.

UPCOMING MEETING DATES:

June 10, 2020	6:00 pm	JPB Regular Meeting
June 25, 2020	6:00 pm	JPC Regular Meeting
July 8, 2020	6:00 pm	JBP Regular Meeting
July 23, 2020	6:00 pm	JPC Regular Meeting

ADJOURNMENT:

There being no further business, motion by Miller, second by Steffen, to adjourn the Regular Planning Commission meeting at 7:57 p.m.

Ayes: Berg, Faver, Steffen, David, Heinonen, Lemmer, Miller, Smith

Nays: None

Abstentions: None

Motion carried unanimously.

Respectfully submitted,

Terri Ball
Planning Administrative Assistant

Approved and attested by:



Joint Planning Commission Representative