

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

**Thursday, January 25, 2018
6:00 P.M.**

**Council Chambers, City Hall
317 4th ST NW
Bemidji, MN 56601**

AGENDA

- **Call to Order/Roll Call** **Chair**
- **Pledge of Allegiance**
- **Approve Agenda**
- **Approve Minutes**
 - **Thursday, December 21, 2017 Regular Meeting**

NEW BUSINESS

- 1. Visitors** **Chair**

Public Hearings

- 1. Northern Township - V-18-31.00025.01 – Bernard Mistic** **CB**
- 2. Northern Township- V-18-31.00477.00; 31.02147.01; 31.01029.00 – Kathryn E. Hill** **CB**

OTHER BUSINESS

- 1. Director Report**

Election of Officers (new officers will be seated immediately)

- **Chair**
- **Vice Chair**

- 2. Upcoming Meetings** **Chair**
 - **February 14, 2018** 6:00 pm **JPB Regular Meeting**
 - **February 22, 2018** 6:00 pm **JPC Regular Meeting**
 - **March 14, 2018** 6:00 pm **JPB Regular Meeting**
 - **March 29, 2018** 6:00 pm **JPC Regular Meeting**

- 3. Adjourn** **Chair**

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

January 25, 2018
6:00 p.m.

City Hall
Council Chambers

CALL TO ORDER: Chair Nicki Lemmer 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, Lahn, Lemmer, Miller, Smith

MEMBERS ABSENT: None

STAFF PRESENT: Cory Boushee, Terri Ball

OTHERS: Steve Hill, Katy Hill, Matt Murray

APPROVAL OF AGENDA:

Commissioner Smith questioned first case classification. Staff will correct it to read: Z-18-31.00025.01.

Motion by Miller, second by Steffen, to approve the amended Agenda.

Motion carried unanimously.

APPROVAL OF MINUTES:

Motion by Steffen, second by David, to approve minutes from the December 21, 2017 Greater Bemidji Area Regular Joint Planning Commission.

Motion carried unanimously.

VISITORS:

None

NEW BUSINESS:

Planning Commission Meeting, January 25, 2018

Public Hearing:

Boushee presented the first case:

PLANNING CASE – Z-18-31.00025.01 – Bernard Mystic

Applicant is requesting to rezone his approximately eight (8) acre property located at the SW quadrant of the intersection of Wildwood Dr NE and Highway 71 NE in Northern Township from (C) Conservation to (R-2) Suburban Residential.

BACKGROUND

The applicant approached staff to inquire about building a single family home on the proposed property, the property was recently purchased at an auction from Beltrami County. Even though this property is no longer held in public ownership, it still requires a zoning map amendment before a single family home could be constructed.

PLANNING CONSIDERATIONS

Adjacent Zoning and Land Use

This property is a currently vacant lot with moderate tree cover. It is surrounded by low intensity residential development and (R-2) Suburban Residential zoning with the exception of Movil Maze County Recreation Area to the north across Trunk Highway 71 NE being zoned (C) Conservation.

Neighborhood Comment

At the time of writing this report only one neighborhood comment was received to clarify the ownership of the property.

Comprehensive Plan References

The goal of the comprehensive plan outlines the extensive public land within the Greater Bemidji Area as a benefit for preserving recreational and natural resource management. It was not intended to limit the use of private property ownership with the same protections as intended for conservation of public uses. This rezoning request is in keeping with the intent of the Greater Bemidji Area Land Use Plan.

RECOMMENDATIONS

Staff recommends approval to rezone the property located at the SW quadrant of the intersection of Wildwood Dr NE and Trunk Highway 197 NE in Northern Township from (C) Conservation to (R-2) Suburban Residential.

Planning Commission Meeting, January 25, 2018

Public Hearing opened at 6:08 p.m.

Public Hearing closed at 6:08 p.m.

Staff and Commissioners were without concerns or comments.

Motion by Steffen, second by David to approve rezone the property located at the SW quadrant of the intersection of Wildwood Dr NE and Highway 71 NE in Northern Township from (C) Conservation to (R-2) Suburban Residential with the following findings:

- 1. Whether the change in classification would be consistent with the intent and purpose of this Ordinance.**
Yes. This property is no longer reserved for public use and management; the proposed zoning change is consistent with the overall intent of the zoning ordinance.
- 2. Whether every use that would be permitted on the property if it were reclassified would be compatible with the uses permitted on other property in the immediate vicinity.**
Yes. This area is primarily surrounded by low intensity residential development; continued low intensity development is consistent with the adjacent properties.
- 3. Whether adequate sewer and water facilities, and all other needed public services, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified.**
Yes. The proposed zoning district was designed to accommodate low intensity development with private well and septic systems.
- 4. Whether the proposed amendment would correct an error in the application of this Ordinance.**
Yes. The property is no longer managed for public use, rezoning will allow reasonable use of the property consistent with the surrounding land uses.
- 5. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions.**
Yes. The property is no longer managed for public use and is held in private ownership.

Boushee presented the second case:

PLANNING CASE – V-18-31.00477.00; 31.02147.01; 31.01029.00 – Kathryn E. Hill

Kathryn Hill is requesting a variance for a reduction of sixty-two (62) feet of the required one-hundred (100) foot ordinary high water level (OHWL) setback of Lake Bemidji, located at 7200 Birchmont Ct NE in Northern Township within the (R-3) Suburban Residential – Unsewered and Shoreland Overlay.

BACKGROUND

The applicant approached staff with a proposal to redevelop their lake lot on Lake Bemidji. The lot is currently developed with a nonconforming cabin, and a small guest cabin within the OHWL setback. The existing cabin is proposed to be removed and replaced with a larger cabin to accommodate year round living, the small guest cabin will remain on-site meeting setbacks but will no longer be allowed to function as a dwelling unit meaning it shall not have water or sewer services. The applicants have asked to leave it as a playhouse on the property.

PLANNING CONSIDERATIONS

The applicant has submitted a letter explaining why they believe that this is a reasonable request and that a practical difficulty does exist.

It will be up to the JPC to analyze whether or not they also feel that a practical difficulty does exist here. If this property were to be completely redeveloped with every building removed, or if it were to be required that every building be removed it is very probable that a new home could be built meeting all requirements. However, this would likely create a tunneling effect resulting in a new home being constructed behind all adjacent homes and a view of garages and cabins, not Lake Bemidji alone. This tunneling effect could likely be mitigated through vegetation planting or fencing, but this may alter the character of how current development is in the area. It is likely this part of the lake shore will maintain this character into the future.

The long term effects of approving variances like this are that the shoreland will never become compliant with zoning and shoreland regulations overtime. The main theory on zoning and the allowed continuation of nonconforming uses is that someday they will eventually become compliant with the regulations.

Existing Conditions

This area of Lake Bemidji was previously developed with substandard setback to Lake Bemidji, some development happened before stricter shoreland rules came into place, and some were approved by variance applications. Typically, to rebuild structures or remodel structures with a similar distance to the lake as what was existing on-site. The existing cabin and deck on this property are thirty-three (33) feet from Lake Bemidji, as the proposed cabin would be a five (5) foot improvement to thirty-eight (38) feet.

Through the combination of three (3) parcels, this property will meet the lot size requirements. Typically, a variance for substandard lots is necessary in this area of Lake Bemidji. Combining these lots and not granting a substandard lot variance will eliminate potential for continuous development along Birchmont Court.

OHWL Setback

Ordinary High Water Level (OHWL) setbacks are established statewide to protect the natural shoreland, manage the effects of shoreland development, maintain existing property values, as well as protect surface waters from runoff and pollution. Protecting the natural shoreland is important for two main reasons; one (1) the natural shoreland is a diverse ecological area susceptible to erosion and pollution, two (2) it is important that the natural view from public waters to the natural shoreland be maintained for the enjoyment of the public water.

JPB staff is requesting that the applicant add natural vegetation to the existing rip-rap shoreline; this will increase the ability of the rip rap to prevent erosion and will act as a vegetative buffer and reduce pollution from stormwater run-off. Staff will also request that at least three (3) native trees or shrubs be added to a landscaping plan to break up the view of the structure from the public water. JPB staff would work closely with the applicant and the MnDNR to ensure that the shoreline stabilization would be completed correctly. As an added measure the JPC could also request that the applicant maintain a ten (10 to fifteen (15) foot buffer area along the shoreline that is not maintained or mowed along the entire shoreline with the exception of a twenty (20) foot access area . It can be left to grow and naturally restore itself, or native plantings could be installed to create a natural shoreline.

With the preservation of the existing trees, the addition of new trees and shrubs, guttering of stormwater away from the lake for infiltration, increasing the distance of the septic system from the lake and with the existing rip-rapped shoreline it is not anticipated that this project will have negative impacts on the surface waters of Lake Bemidji.

JPB Engineer – Karvakko, P.A.

- On sheet 2/3 there is a discussion about the gutter downspouts and I agree with those comments. Maximizing the vegetated buffer between the stormwater discharge point and the receiving water is very important for infiltration. Getting the water into the ground (infiltration) reduces the temperature at which it enters Lake Bemidji and helps maintain natural water temps.
- Exposed soils during construction pose a threat to Lake Bemidji in that if there is a storm event, the erodible soil discharge could be significant with the sediment plume it sends into the lake. I recommend a double Sediment Control Log perimeter barrier

between the construction work and the lake. The MPCA requires a redundant (double) perimeter control setup on construction projects this close to waters.

- Birchmont Ct NE is an existing roadway so there won't be a significant change in the hydraulic scenario that is there today, aside from the new impervious building and any driveway work.

Neighborhood Comment

At the time of writing this report no neighborhood comment was received.

Comprehensive Plan References

Through mitigation efforts to ensure additional stormwater is not directed towards Lake Bemidji, increasing distance of septic system to Lake Bemidji, preserving existing trees in the shoreland, maintaining a shoreland protected from erosion, and limiting backlot development this proposal is maintaining or enhancing the overall environmental quality of the Greater Bemidji Area and is consistent with the spirit, purpose, and intent of the Greater Bemidji Area Land Use Plan.

RECOMMENDATIONS

Staff recommends approval of a variance for a reduction of sixty-two (62) feet of the required one-hundred (100) foot OHWL setback of Lake Bemidji, located at 7200 Birchmont Ct NE in Northern Township within the (R-3) Suburban Residential – Unsewered and Shoreland Overlay. Approval recommended with the following conditions:

1. Any proposed building or impervious surface on-site will be construction staked by a professional surveyor to ensure accuracy and to mitigate chance for setback encroachment, or increase of impervious surface.
2. An erosion control plan will be reviewed and approved by JPB; this erosion control plan shall be installed before any construction or demolition may occur on-site. It will also include the obliterated and proposed septic system areas. Also as noted in engineering comments a double sediment control log meeting standards of MPCA will be installed along the lake shore.
3. The proposed gutter system directing stormwater runoff away from Lake Bemidji shall be installed as shown on the site plan.
4. A landscape plan will be provided to be reviewed and approved by JPB to include plantings for shoreland stabilization, size, type, and location of three (3) proposed native trees or shrubs prior to approval of a land use permit.

Public Hearing opened at 6:37 p.m.

Steve Hill spoke on behalf of Kathryn Hill, stating he is the neighbor to the south and has owned his home for 20 years. Kathryn's parcels belonged to her grandfather for 46 years, and has the only full sized lot in the neighborhood – all others are substandard. Because

of substandard size, many landowners have requested variances, and some parcels have multiple variances. Hill referenced Commissioner Smith's comments about 1995 DNR Technical Report on managing nonconformities on shoreland district and stated he found the same research and thinks this case does not require a variance because it has dwelling units on each side, and is only 37 ½ feet from the OHW. Lemmer asked if the String Test (a string line from the neighbor on one side to the neighbor on the other side, so new structure could not be built closer than either neighbor) was used on his property. Hill did use this technique and it was in the county shoreland ordinance at that time. Hill compared setbacks of neighboring six (6) properties and stated the most recent construction is 40'. Lahn questioned the limiting factor of building onto the back on the house. Hill responded the new building would run into existing building, but it will be in line with the structures on both sides. If Hill were to remodel the structure, it would require a new foundation and rebuilding of 80-90% of existing. This process was done on Hill's home and now his foundation is in poor condition. David commented that home should not be moved back to meet setbacks because it would look hideous. Faver questioned how the applicant feels about the vegetative buffer. Hill stated that everyone in the neighborhood mows up to the lake, and did not seem positive about the condition. Hill comment to commission that this is not a two story home, and described the features of the 1 ½ stories. Smith asked if lots are being combined. Staff stated they are not, but that could become a condition. Surveyor Matt Murray discussed the DNR standards for shoreland, which would allow a new structure to be built in line with neighboring homes. Murray has no concerns with erosion or run off as this area has approximately 1% slope, so few risk factors are present. Heinonen questioned if ordinance prohibits relocation of 10'x16' structure. Staff stated that setbacks are being met and no expansions on existing garages or accessory structures are anticipated. Berg questioned number of accessory structures, and staff explained the parcel is greater than one (1) acre, so more than one structure is allowed, up to a total of 1200 square feet.

Public Hearing closed at 6:58 p.m.

Staff and Commissioners stated concerns or comments.

- Smith stated that this is a rare opportunity for the commission to have a new shoreland structure be built in compliance with the ordinance. Smith does not agree with applicant's claim that this lot will be unbuildable or unsellable without the variance. Further, Smith is in favor of re-instating the String Test into our ordinance.
- Faver urged commissioners and staff to not include the String Test in our ordinance, as it would not require variances which would monitor conditions.
- Smith commented that this project is an improvement over existing site, and meets safety concerns and standards.
- Heinonen sees Smith's point; however, the neighboring structures are all less than 20 years old, so redevelopment is not expected any time soon.

- Berg stated the issue has a fine line because the project brings the foundation closer to the lake and it will be twice the current size.
- David has no concern with a patio in the front of the home because it is not a structure.

Motion by Faver, second by Miller to approval of a variance for a reduction of sixty-two (62) feet of the required one-hundred (100) foot OHWL setback of Lake Bemidji, located at 7200 Birchmont Ct NE in Northern Township within the (R-3) Suburban Residential – Unsewered and Shoreland Overlay with the following conditions:

1. Any proposed building or impervious surface on-site will be construction staked by a professional surveyor to ensure accuracy and to mitigate chance for setback encroachment, or increase of impervious surface.
2. An erosion control plan will be reviewed and approved by JPB; this erosion control plan shall be installed before any construction or demolition may occur on-site. It will also include the obliterated and proposed septic system areas. Also as noted in engineering comments a double sediment control log meeting standards of MPCA will be installed along the lake shore.
3. The proposed gutter system directing stormwater runoff away from Lake Bemidji shall be installed as shown on the site plan.
4. A landscape plan will be provided to be reviewed and approved by JPB to include plantings for shoreland stabilization, size, type, and location of three (3) proposed native trees or shrubs prior to approval of a land use permit.
5. A ten (10) foot vegetative buffer area along the shoreline that is not maintained or mowed along the entire shoreline with the exception of a twenty (20) foot access area to the lake.
6. Applicant's lots shall be legally combined and recorded with the county.

And with findings:

1. **Has the applicant demonstrated a practical difficulty?**
Yes. This is an existing developed site that the applicant wishes to enhance; it would not be reasonable to require a new structure to be built behind all existing structures further from Lake Bemidji creating a tunneling effect and not allowing the applicant the same use of their property as neighboring developed lots. Furthermore, setting the new home back further would require an existing structure to be destroyed.
2. **Are there exceptional circumstances, unique to this property, which have not been created by the land owner?**
Yes. This area has seen continuous new development, redevelopment, and remodeling of existing structures. Whether through a variance or construction before shoreland ordinances this area has been developed and is anticipated to maintain being developed with a significant deficiency in OHWL setback requirements.
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. Through mitigation efforts the proposal will maintain or enhance

- environmental quality, no adverse safety or public health impacts are anticipated, and no adverse effects on adjacent properties are anticipated.
4. **Can the variance be granted without altering the essential character of the surrounding area?**

Yes. The request is to allow for the structure to be placed in similar location with other structures in the neighborhood, meeting the setback would require the proposed structure to be built behind all adjacent structures.

Roll call vote:

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

Nayes: Berg

Abstain: None

Absent: None

Motion carried.

OTHER BUSINESS:

New commissioner, Don Heinonen, was introduced.

DIRECTOR REPORT:

Boushee updated commissioners on last month's case, staff projects, Casey's CPAW attendance and noted that most development projects are on hold until spring.

ELECTION OF OFFICERS:

Motion by Miller, second by David to re-elect Nicki Lemmer as JPC Chair.

Motion carried unanimously.

Motion by Lemmer, second by Faver to re-elect Kristi Miller as JPC Vice-Chair.

Motion carried unanimously.

UPCOMING MEETING DATES:

February 14, 2018	6:00 pm	JPB Regular Meeting
February 22, 2018	6:00 pm	JPC Regular Meeting
March 14, 2018	6:00 pm	JPB Regular Meeting
March 29, 2018	6:00 pm	JPC Regular Meeting

ADJOURNMENT:

There being no further business, motion by Smith, second by Heinonen to adjourn the Regular Planning Commission meeting at 7:13 p.m.

Motion carried unanimously.

Respectfully submitted.

Terri Ball, Planning Assistant

Approved and attested by:

A handwritten signature in blue ink, appearing to read "Nick Lemmer", written over a horizontal line.

Joint Planning Commission Representative