

October 2, 2018

The Scandia Planning Commission held their regular monthly meeting on the above date. The following were in attendance: Commissioners Greg Amundson, Jan Hogle, Perry Rynders, Travis Loeffler and Chair Dan Squyres. Staff present: City Planners Sherri Buss and Merritt Clapp-Smith, City Attorney Eric Sherburne, City Administrator Neil Soltis and Deputy Clerk Brenda Eklund. Council member Chris Ness was also in attendance.

Chair Squyres called the meeting to order at 7:00 p.m.

**APPROVAL OF AGENDA, MINUTES**

**Loeffler, seconded by Rynders, moved to approve the agenda as presented. The motion carried 5-0.**

**Loeffler, seconded by Hogle, moved to approve the September 4, 2018 meeting minutes as presented. The motion carried 5-0.**

**PUBLIC HEARING: AFTER THE FACT VARIANCE FROM WETLAND SETBACK ON LANGLEY AVENUE. JOSEPH AND KATHERINE REINHARDT, APPLICANTS.**

Planner Buss described the application for an after-the-fact variance from the required wetland setbacks for a driveway that was constructed in 2017 through a protected wetland on property owned by Joseph and Katherine Reinhardt. The property at 18884 Layton Avenue consists of 5 contiguous parcels with separate tax identifications. Three of the parcels have frontage on Layton and 2 of the parcels have frontage on Langly. The property owners did not obtain approval prior to installing the driveway from Langly Avenue to provide access to the rear portion of their property. The entire southern half of the parcel where the driveway is located is occupied by a wetland. The impacted area measures approximately 4,680 square feet.

Buss explained that this violation of the Wetland Conservation Act was reviewed by the Technical Evaluation Panel (TEP) and the City Council in early 2018. The applicants' request to permit the wetland impacts by approving a wetland replacement plan through wetland mitigation credits was denied based on findings that the new driveway was not needed to provide access to the septic tanks and storage on the property because there is an alternative access from Layton Avenue to the rear of the property. The DNR issued a restoration order that has been extended to October 30, 2018. Under WCA, the landowner's final alternative was to apply for a variance for the driveway to allow the City to determine whether the driveway access from Langly meets the criteria for a variance. Buss directed the Commissioners to consider the request as if it was being made prior to its construction, and whether it would have met the criteria for approval of a variance to impact the wetland if it had been applied for prior to construction.

Buss detailed her evaluation of each of the variance criteria and stated that the driveway constructed from Langly is not consistent with the goals of the Comp Plan for protection of water resources. Buss explained that the previous landowner was approved for variances in 2003 and 2006 with conditions that the 5 separate parcels be combined into one single tax parcel, which did not occur. Under the Shoreland Ordinance for requirements of non-conforming lots, the 5

parcels must be considered as one parcel for purposes of sale or development. As the City's Engineering Standards allow for one driveway for each property, the secondary driveway should not be allowed. Buss also noted that there are other options for accessing the rear of the property that would not impact wetlands or require a variance, and the potential for storage is not limited by physical conditions that would define practical difficulties. The exterior storage ordinance provides a process for storage of recreational vehicles in the front yard. Based on these findings, Buss recommended denial of the variance with conditions that the Reinhardts' comply with the DNR restoration order and that the 5 lots be combined into one single tax parcel as required by previous variances that permitted construction of buildings on the property.

Buss provided comments from the DNR which recommended denial, encouraged the City to protect the state's water resources and to enforce the restoration order.

Chair Squyres opened the public hearing at 7:27 p.m.

*Pat Reicherts, 11133 189<sup>th</sup> Street* – applicant added fill to a portion of his adjacent property to the east. If the variance is granted, water will flow to adjacent properties and impact wells and septic systems.

*George Weiss, Jr, and Mary Erickson, 18834 Layton Avenue* – reported spring flooding onto their adjacent property since the wetland was filled and moisture problems in the crawl space of the home during heavy rains this summer. They are opposed to granting a variance for the driveway.

*Dennis Rollin, 19215 Larkspur Avenue* – reported water being pumped out of the Reinhardt's property when the lot was under water this past spring, to an area across the street at Langly.

*Joe and Katie Reinhardt, 18884 Layton Avenue, Applicants* – addressed the above comments. There was a mutual agreement with Reicherts to plant spruce trees along the property line, and there could be some fill at the edge which Reinhardt removed. Reinhardt provided 1993 photos of Weiss's property which has historically been wet, accounting for the water problems in his house. Reinhardt stated that he did not cause water problems in the Bliss area, rather it has been due to fill added to properties west of him. Regarding the back area of his property to store his boat and lift equipment, he said this driveway provides the most practical access and was meant as the access when the development was platted and he deserves access to the back parcels. If not allowed, it is a taking of his property and he should be compensated for that. He explained that Jay Riggs, WCA staff, is satisfied with his wetland replacement plan.

Reinhardt explained that the alternative access south of his house would require tree removal, driving over a septic line, and is not wide enough for his equipment to navigate through. In earlier conversations with the previous administrator, Reinhardt said he was told he could have one driveway from Langly and one storage building on the back of his property.

There were no further comments and Chair Squyres closed the hearing at 7:58 p.m.

Chair Squyres reported on a letter the Reinhardtts submitted with a request to table their application to allow their legal counsel time to address the staff report. Reinhardt took issue with the condition to combine the lots as he said the County would not stop the passing of papers on a future sale of the individual lots. The Commissioners noted the October 30<sup>th</sup> deadline that the DNR has established for the restoration order, and continued moving the application forward.

Commissioner Hogle said the comments received from the DNR and the Watershed not to approve the driveway concerns her greatly, even though she is sympathetic to the Reinhardt's request. The Commission shouldn't disregard the recommendations of the outside agencies for the protected wetland and should consider other options for the Reinhardtts, such as making an extension to their existing driveway on Layton or driving over the grass to access the rear property.

Planner Buss stated that the Commission needs to consider if they have potential, reasonable access, and that an extension of the primary driveway would not impact impervious lot coverage for the property. Commissioner Hogle said that the fill used for the new driveway does impact several surrounding properties. Attorney Sherburne advised that the discussion needs to be about an alternative access, not the effects of the driveway in its current state.

Commissioner Amundson said access to the rear can be reasonable along the south side of the house and there is a solution to get to the rear of the property. He added that times are different than they were 20 years ago when this request may have been acceptable, but wetlands are more protected now.

Commissioner Loeffler said that there is plenty of parking available in the primary driveway, and finds it would be a challenge to maneuver a trailer in the gap to the rear area. He added that he is not sold on allowing a wetland to be filled.

**Squyres, seconded by Hogle, moved to approve PC Resolution No. 10-02-18-01, Recommending Denial of an After-the-Fact Variance Request to permit a driveway that was constructed from Langly Avenue to the property at 18884 Layton Avenue with the 3 comments as provided in the staff report:**

- 1. The DNR requested that the City remind the applicants that they need to comply with the DNR's Restoration Order.**
- 2. The applicant shall combine the five parcels at 18884 Layton Avenue for tax purposes as required by previous variances that permitted the construction of the buildings on the property.**
- 3. The applicant shall pay all fees and escrows associated with the variance application.**

**The motion carried 5-0.**

The recommendation to deny the variance request will be presented to the City Council at their October 16, 2018 meeting.

**PUBLIC HEARING: VARIANCES AT 13090 182<sup>ND</sup> STREET NORTH. GRANT AND CHRISTINE ERICKSON, APPLICANTS.**

Grant and Christine Erickson propose changes to their property at 13090 182<sup>nd</sup> Street which require two variances. Replacement of the existing septic system to a different location on the property that is 5 feet from the side lot line requires a variance from the required 10-foot setback. A proposal to move their existing garage to a new location that is 10 feet from the side lot line requires a variance from the required 20-foot setback for structures. The property is 1.183 acres and within the Shoreland Overlay of Big Marine Lake.

Planner Clapp-Smith presented the staff report with a description of the request. The proposed location for the septic was identified as the most viable by the septic designer in an area with the most suitable soils, and is in a location further away from the right-of-way than the current system. The garage in its current location has experienced repeated flooding problems. The Ericksons propose to move it to a higher elevation and out of the path of natural water movement. The new location enables reuse of the existing driveway, with a net reduction of impervious surface. A small shed in the new location of the garage will be removed.

Planner Clapp-Smith concluded with findings for recommending approval of the request based on meeting the criteria for granting a variance. The practical difficulties are not caused by the landowner – the proposed locations for the septic system and garage are away from bluff areas and will not negatively impact the surrounding area. The City Engineer provided comments for erosion control measures. The Watershed will not require a permit for the work, and the DNR's review added no conditions.

A resolution granting approval with findings and five conditions was prepared, including that a survey of the east property line be completed to clearly mark the setbacks, and a grading plan be prepared.

Chair Squyres opened the public hearing at 8:27 p.m.

*Christine Erickson, 13090 182<sup>nd</sup> Street, Applicant* – asked for approval of their variance requests.

There were no further comments and Chair Squyres closed the hearing at 8:28 p.m.

Commissioners voiced approval with comments that it is positive for the property, there will be less impervious coverage, and it's a good plan.

Commissioner Rynders questioned if the garage could be in a location that meets the 20-foot setback. Commissioner Amundson said that would require fill be brought in to expand the driveway to the west. Erickson added that they are trying to keep the relocation as natural as possible and the proposed location needs less fill and concrete. They want to keep it as simple as they can. Amundson said adding fill is more detrimental than a 10-foot setback. Commissioner Hogle said Rynders has a good point but the alternative is more impactful. Council member Ness added that the proposed location requires removal of a shed, further reducing lot coverage.

Chair Squyres recommended that language for the shed removal be explicitly stated in the conditions even though the applicants plan to remove it.

**Loeffler, seconded by Amundson, moved to approve PC Resolution No. 10-02-18-02, Recommending Approval of Variances for 13090 182<sup>nd</sup> Street North, with an added condition that the applicants remove the shed from the property. The motion carried 5-0.**

The recommendation to approve the variance request will be presented to the City Council at their October 16, 2018 meeting.

**PUBLIC HEARING: VARIANCE AT 12150 LAKAMAGA TRAIL. PETER AND COLLEEN NORA, APPLICANTS.**

Peter and Colleen Nora propose an addition to their home at 12150 Lakamaga Trail that is within 9 feet of the side property line, and requires a variance from the required 20-foot side setback. The property is 1.51 acres in size and within the Shoreland Overlay of Big Marine Lake.

Planner Clapp-Smith presented the staff report with a description of the request. Locating the addition on parts of the house that meet setbacks is not practical – the addition is an attached garage with a den above and will be adjacent to the existing kitchen and mudroom. The property has 3 accessory structures that exceed the number and allowed square footage for this sized property. Clapp-Smith recommended the quantity be reduced to more closely comply with the standards for accessory structures by removing some of the buildings. Because the existing driveway straddles the adjacent property line to the north, the Noras were asked if there was a driveway agreement for this.

Planner Clapp-Smith concluded with a recommendation to approve the variance with findings and conditions presented in a resolution. The practical difficulties are caused by the narrowness of the lot and features of the property. Granting the variance from the side lot line will permit an addition that does not extend closer to the lake and bluffs, and avoids large tree removal. Conditions included that a survey be completed to confirm the locations of the property lines, and removal of one of the two garage structures and the outdoor storage tent.

Chair Squyres opened the public hearing at 8:44 p.m.

*Peter Nora, 12150 Lakamaga Trail, Applicant* – explained that the attached garage on the north side is the most practical for entrance into the home.

*Keith Hainy, 12124 Lakamaga Trail* – supports the request. Building right next to the kitchen makes the most sense.

There were no further comments and Chair Squyres closed the hearing at 8:46 p.m.

Commissioner Amundson said that the two existing garages are connected structurally with a roof and should be considered as one building. It wouldn't make sense to remove this larger structure.

Chair Squyres said that without a survey, it seems like guesses are being made. He said he was concerned that there was no easement on record for the driveway. Nora said that the house was built over 100 years ago and he showed an easement area from an old plat map; however no document was found. Attorney Sherburne explained that there could be a “right to claim” that would not legally require a recorded easement document. Nora stated that he located the pins for the north property line.

In discussion on locating the addition on the other side of the house where a variance would not be needed, Planner Buss said that entering from a garage into bedroom areas is not practical, and the house is considered a physical characteristic of the property to allow the variance as a reasonable arrangement.

**Amundson, seconded by Hogle, moved to approve PC Resolution No. 10-02-18-03, Approving a Variance for 12150 Lakamaga Trail North, with an amended condition #5 that the applicants remove ~~one of the two garage structures and the outdoor storage tent~~ to more closely conform to the standards. The motion carried 5-0.**

The recommendation to approve the variance request will be presented to the City Council at their October 16, 2018 meeting.

**PUBLIC HEARING: ORDINANCE AMENDMENT TO CHAPTER 3, SECTION 4.15 REGULATING LIVESTOCK AND SECTION 3.2 ACCESSORY STRUCTURES**

Planner Buss presented a proposed ordinance amendment to permit domestic fowl on properties smaller than five acres, which is the second public hearing on the amendment. Revisions were made after the August 1<sup>st</sup> public hearing to clarify number of chickens allowed and the setbacks for the structures used to house them. Other changes were made to allow chickens to range freely on the owner’s property and removed some of the performance standards related to requirements for coops.

Chair Squyres opened the public hearing at 8:59 p.m.

Chair Squyres read written comments from Pam Arnold, 16560 220<sup>th</sup> Street: Opposed to prohibiting roosters, peahens, and guinea fowl on properties less than 5 acres. Wrote that animal sounds are part of rural character and the fowl should be permitted if the surrounding neighbors agree.

There were no other comments and Chair Squyres closed the hearing at 9:02 p.m.

Commissioner Hogle noted that some communities allow roosters on smaller properties with a permit and agreement with the neighbors; but with her personal experience of owning guinea fowl, she recommended the ordinance continue to prohibit roosters and guinea fowl on properties less than 5 acres because of the noise. Commissioners Loeffler, Amundson and Squyres stated their agreement. Squyres said that residents also have a right to quiet enjoyment of their property.

Chair Squyres questioned the language of 4.16(D)2 that chickens shall be tolerant of local climate conditions, and asked if the City should be regulating the type of chickens that people keep. Planner Buss said that could be up to the landowner, and this language was stricken.

Commissioner Rynders recommended that 4.16(B) clarify that total number of fowl may not exceed ten fowl per acre on a parcel ~~that is less than five acres~~ “between one to five acres” in size; up to five fowl are permitted on parcels less than one acre. Commissioners agreed with this change.

Chair Squyres noted that Section 3.2(F) regulates setbacks of livestock structures from wetlands and lakes to be 200 feet, and asked if the poultry coops should as well. Planner Buss said this was addressed in earlier discussions and concluded that the scale of a small number of poultry is too small to have impacts to water resources.

**Loeffler, seconded by Hogle, moved to recommend approval of an Ordinance Amending Chapter 2, Section 4.15 Regulating Livestock and Livestock Operations and Section 3.2 Regarding Accessory Structures, with changes to 4.16 (B) and (D)2. The motion carried 5-0.**

The recommendation to approve the ordinance amendment will be presented to the City Council at their October 16, 2018 meeting.

**PUBLIC HEARING: ORDINANCE AMENDMENT TO CHAPTER 4, SECTION 4.24 REGULATING SWIMMING POOLS**

Planner Buss summarized the ordinance amendment to standards for swimming pool covers to clarify the language regarding the types of automatic pool covers that are permitted in Scandia. At the September meeting, the Commissioners reviewed the Building Official’s recommendation to allow pool covers only, not “other protective devices”, and to use the professional ASTM standard for safely installing the pool covers.

Chair Squyres opened the public hearing at 9:15 p.m. There were no comments and the hearing closed.

Attorney Sherburne advised that because automatic pool covers are allowed as an alternative to fences which must have a self-closing and latching gate, language should be modified to include a human factor for the operation of the cover. Planner Buss added language to 4.24(2)(I) to state “covers must be installed and operated in accordance to the manufacturer’s recommendations”.

**Squyres, seconded by Amundson, moved to recommend approval of an Ordinance Amending Chapter 2, Section 4.24 Regarding Swimming Pools as amended to paragraph (2)(I). The motion carried 5-0.**

The recommendation to approve the ordinance amendment will be presented to the City Council at their October 16, 2018 meeting.

**ITEMS FOR FUTURE AGENDAS**

Commissioner Loeffler recommended a discussion on fill and grading activities occurring on properties in Scandia. Jay Riggs of the Washington Conservation District will be consulted on this topic.

**ADJOURNMENT**

**Loeffler, seconded by Hogle, moved to adjourn the meeting. The motion carried 5-0.**

The meeting adjourned at 9:21 p.m.

Respectfully submitted,

Brenda Eklund  
Deputy Clerk