



**Town of Spider Lake
Plan and Review Commission Meeting
December 7, 2011**

Meeting was called to order at 6:05 pm by the Chair with Cerman, Brandt, Hucker, Woods, Kathy Overman Alternate also acting Secretary and Zoning Administrator Boss Present. Ross absent.

Pledge of Allegiance

Approval of the minutes of the November 2, 2011 meeting motion made by Brandt 2nd by Cerman MC.

New Business

- 1) Spider Lake Luxury Suites Condominium Addendum. Located in Gov't Lot 1, Sec. 28, T42N, R7W. Also being all of lot 2 CSM #2524. Vo.11 Pgs.427-428. The purpose of the addendum is to clarify the numbering of Commercial Unit 1 to Commercial Unit 10 and Storage Unit 1 to Storage Unit 11 and for no other purpose.

The Owner's representative confirmed that the purpose of this addendum is strictly correction of a clerical error and to avoid confusion. Motion made by Woods to approve 2nd by Brandt MC.

Zoning Administrators Report

- 1) Violation. Owner: Richard & Lisa Uihlein. Location: Part of Gov't Lot 6, Sec 22, T42N, R7W. 10781W Busse Ln. Mowing and trimming of vegetation in Shoreline Vegetation Protection Area.

Boss reported going out with D. Kafura of the DNR looking at the OHWM and at that time Boss noticed some mowing in the mitigated area and some of the underbrush was removed. When they stop mowing it will naturally correct itself. The owner's representative indicated that there appears to have been a miscommunication with the caretaker. In lieu of citation, owner will pay for inspection to confirm continuing compliance.

Boss also has received a survey that indicates an accessory structure (hot tub) is 3.4 ft from the lot line. Boss sought clarification as to whether the owner should be given until spring to correct by removal as it needs to be 10 ft from the property line.

Owner complained about the inspection process and does not want additional permits delayed because of this. It was made clear to owner that he is free to remove the nonconforming structure as soon as he wants but the outside date is the spring.

- 2) Violation: Owner: Michael & Colleen Osgar, Location: Sec 32, T42N, R6W. 12478N Morgan Rd. Grading and placement of fill within 35' Of the OHWM to create fire pit area.

Order will be written to restore it back to its original state. A follow up inspection will be necessary. In lieu of citation \$150 inspection fee to be paid by home owner instead of going through the citation process.

- 3) Violation. Owner: Teresa Lahti. Location: Sec 33, T42N, R7W. 1165W Allan Rd. Exterior walls not left in place as required by 4.4(4) Replacement of Foundation and Roof Support Systems.

Boss received a complaint last week that walls had been taken down during remodeling at the site. This was observed during deer hunting season. When he arrived the next day, the walls were standing except for 2 gable walls: garage gable wall and lakeside gable wall. He noted that the zoning ordinance does not allow for removal of walls when an owner seeks to replace roof system and foundation. Boss requested assistance from the County and County ZA Dale Olson and Jay Koslowski went out on Friday (December 2, 2011) and reported what is set out in the attached letter which Boss read into the record of the meeting. The letter indicates that the inspection confirms that walls were removed and rebuilt in violation of the zoning ordinance and the permit indicated that existing walls were to remain in place. The letter also indicated that the contractor had proceeded with work related to a variance which has not yet been approved by the County. A wall was constructed that related to the variance.

Boss has contacted the town's attorney and his recommendation was that if Boss's determination is that the walls were down he issue a cease and desist order for what is going on out there and put together a notice of violation for corrective action which would state that walls could not be torn down and rebuilt. Once the walls are gone that renders the building gone. Any rebuild would have to be in a code compliant area and meet all the required setbacks for the rebuild. Hucker indicated that he was copied on the letter that Boss read from Dale Olson.

Prudence Ross joined the meeting.

Hucker sought clarification that the 121 square feet that is referenced in the letter has to do with the variance that the town's board of appeals granted last month. Boss confirmed this and Hucker's recollection was that the land owner and contractor were cautioned at that time that the variance was subject to DNR review as well as subject to the fact that it needed to go to the county for a variance hearing which the county set for December 20. Boss confirmed this.

Woods asked if the violation only related to the variance and Hucker indicated that it goes far beyond the variance which only deals with about 121 square feet of space. Taking the walls down is tantamount to demolishing the building in an area where it cannot be rebuilt. Boss confirmed this absent a variance. Hucker gave Overman his copy of the letter from Olson to keep with the minutes of the meeting.

Boss indicated that the only walls that he can verify that have come down would be the 2 gable walls. He can only assume that the other walls were down just based on what was there and what county has looked at. Hucker asked if the county agrees that the walls were down and Boss said the walls were down. There are some existing studs, some existing plates. Boss indicated that the builder was here if the Commission had any questions.

Woods indicated she wanted to know why the 2 gable walls were down.

George Brouard of White Pines Construction identified himself and stated that the reason the gable walls were taken down was because of the UDC. If he builds a wall above 10 ft it must be an engineered wall and he cannot build those gable walls with the existing walls in place. If they truss over the wall they have hinging which is against the UDC.

Hucker indicated that the is the problem the contractor and the owner were faced with was a situation where you know you did not have a compliant building going into this as it related to the location. Brouard agreed.

Hucker asked if there any question in anybody's mind that ordinary repair and maintenance is the only thing you're allowed for that type of building and Brouard asked whose requirements does he meet.

Hucker indicated the contractor needed to meet the County's requirements, the Town's requirements and that would suggest and that if you cannot engineer around it without meeting the ordinance requirements, you have to find another way to do it or you can't do it because it is in a non-compliant location.

Brousard suggested that he just did a similar project at the end of Allan Rd the same road and that building was within the 75 ft setback and the a gable wall lakeside was removed. He was asked if anybody knew about what he had done and his response was that it was there for people to see.

He was asked if it was inspected while the wall was down at that other building and he responded by saying it was inspected when it was supposed to be inspected. He was asked the question again as to whether it was inspected by a county or a town inspector at the time when that wall was down at the other site and he was cautioned that if he did not recall or did not want to answer the question he did not have to do so.

He said it was clear that there were 2 x 4 walls in the entire structure except for the engineered wall on the gable end of the building which was 2 x 6 but Brousard did not answer whether it was inspected.

Hucker noted that he had been very specific in asking if anyone inspected at the time when the walls were down on the other building and that he did not want the contractor to bring up other buildings that have nothing to do with what occurred in this location where the county has inspected it and the county has come to the conclusion that the building was taken down. That is what is going to have to be determined. The Commission is at a point where the county inspectors have inspected and have come to the conclusion there is a serious violation. Boss has inspected on behalf of the town. The county has made it clear to the town that they expect the town to enforce its ordinance. The county has concurrent jurisdiction over the Shoreland area so he was asked if there was something that mitigates what occurred. The town needs to know what was done out there.

It was noted that the town is faced with inspections from everyone in the county that inspects buildings saying the walls were down. It just puts the Commission us in a very difficult position not to just move on to the next item on the agenda.

Brousard responded that there were two walls removed on the building and they were previously known as the garage. He stated that the application for the permit which was approved by the Town of Spider Lake says convert garage to habitable space. It also states new garage foundation and questioned how you put in a new footing and foundation where the old garage was on a slab and could not build by code on top of the slab it must have a foundation to be a code compliant foundation. So he took down the walls to put in a foundation that would be code compliant.

After further discussion about what contact the contractor had with ZA Boss Hucker asked if what the contractor was trying to tell the Commission is that the contractor was faced with a construction situation where in order to accomplish what the land owner wanted he had to remove walls which the contractor knew the ordinance provided you couldn't remove. He was asked if that was a fair summary and Brousard agreed it was fair.

Brousard stated that he had been in fairly constant contact with ZA Boss and had discussed the situation regarding the entire project and the garage walls and that he was going to take the walls down. Boss indicated that the walls would be moved to the side to complete the foundation work but not removed.

Boss said he received a call from the county because Jay [Koslowski] was out there to do a site visit for the variance hearing. He said there was a problem out there. The garage walls are gone. Boss believes he called the contractor and learned that the walls were leaning against a tree under a tarp. At that time Jay and Dale [Olson] said we were very lenient there but don't let it happen again where there are no garage walls.

Hucker confirmed that the issue covered by the letter from Olson goes beyond the garage walls and goes to all the walls in this structure. Brousard's contention is that the bottom plate is the exact bottom plate that existed before and the top plate is the exact top plate that existed before. He claims that his design for the walls did not match what was there. They sawed off studs to allow for window placement and doors. They put in headers and the shoulders for the headers and the king studs next to those headers. Those are new because they did not line up with what was existing. There are new studs in there but the bottom and top plate are original. That building was really very cobbled together. In a number of areas (depicted in green on a drawing given to the Commission) there

was extreme to substantial rot in the walls and everything that is indicated in green had rot and in some cases from the top plate all the way down thru the stud all the way thru the bottom plate into the floor into the floor joists.

Hucker noted that rot is not an excuse for not complying with the ordinance if the building reaches the point of that much rot, you are out of luck. It cannot be replaced. Even under the new county ordinance, there is a broad distinction between ordinary repair and maintenance and what is referred to as a structural change. If you hit that point where there is so much rot he is not sure if you are allowed to replace it. That is just because it is within the 75 ft. of the lake. It is not something he created or the Town created, not even something the county created. NR 115 is pretty clear about that and it has been and this not new.

Brousard said he asked if he could replace rotted material. Boss indicated that all he knew about rot was related to pictures given to him regarding repair of certain areas of the garage. A gable wall was removed. Anything in green was removed. It could have been studs.

Brousard appeared to admit that all walls shown in green were replaced due to rot and carpenter ant infestation.

It was noted that no one was questioning that there probably was rot but that NR115 has been around a long time. That is one of the risks you have when you have a dwelling where the maintenance and repair was not maintained or if you bought something in poor condition a risk one takes. It has happened in the past in the town where a non compliant building failed due to lack of maintenance and the owner was not allowed to rebuild a non compliant accessory structure.

Overman noted that NR115 really put a lock down that you could not do anything there were a lot of structures in the town and or even in the county that had to basically be torn down because they were within the 75 ft. and beyond the point of repair.

Brousard indicated that the timeline on the project was that they were tearing down—basically doing the foundation work, then the garage walls and then the roof. He was asked if he had ever put in a foundation under an existing building under existing walls by jacking up the building and indicated he had. He said they did not know the rot existed until they got the siding off. He said jacking the building up was not considered. He did not know if it would be possible.

Brousard then complained that Dale Olson and the other gentleman from county zoning did not identify themselves initially when they appeared to inspect what was going on. After inspecting the structure and taking pictures, Olson “lit into Brousard” by questioning the work that was done that was subject to the variance under review and indicating that he already saw a \$350 violation for that work. Brousard disagrees. Brousard was reminded that he was cautioned at the Town variance hearing that the variance granted was subject to DNR and County review. Boss indicated he would never have approved placement of the wall to close over the area covered by the variance before the variance was approved. It would have to revert to a deck if the variance was not approved.

Back to the rot issue, Boss noted that repair of the garage wall which he had approved was allowed under the old county ordinance but not likely to be allowed under the new county ordinance that went into effect in November. Boss indicated that he agreed only to repair of a couple of areas shown in pictures of the garage wall area.

Woods mentioned that some of the cabins sold on her property had to have pilings put in to support roof trusses because the old walls were inadequate. She asked if building permits should be issued if there could be a problem with replacement.

It was noted that NR 115 policy is real clear that it is to encourage no development and to reduce development within 75 feet of the shore. If a building reaches the end of its useful life and cannot be repaired, it cannot be replaced on that location and has to be outside the 75 foot setback.

Hucker noted that he does not think any building inspector has an obligation to make a judgment call for the contractor as to the means of contraction and the contractor has to advise the owner and say I can do this legally

or I can't do it. Woods sees it as a gray area. Boss stated that land use permits are issued if they meet the statute. If he gets plans from a UDC perspective, he applies that standard as he did in the case Woods referred to.

Brousard said a tall wall needed to be engineered. Boss disagrees. He indicated that the walls could have stayed in place on the structure and been engineered to support the walls, including wind load.

Brousard feels there is a gap in rules and education about what you can and cannot do, at least for him. There are tall walls and they have to have support.

Mark Wilgot indicated he supplied dumpsters to the site as they took the place apart and demolition—removal and believes that Brousard did what he did to keep things intact. He does not think there was malicious demolition. He thinks they left what they could.

Cerman asked about the encroachment. The front of the building is within 28 feet. Cerman asked about closure and would that would lead to removal. The answer is yes. This has occurred in the past. Even if the town did not pursue this, others likely would. This clearly was construction not just repair.

The Commission does not see how this would qualify for a variance. The problem goes far beyond the variance that the town Board of Appeals granted. We do not know what the county will do with the pending request for a variance. The other construction could have gone on while the variance was pending. The second issue is that work was done by the contractor before the variance was approved by the County. Hucker will report on this matter to the Town Board next week.

Teresa Brousard said that they used existing where they could. She complained about the conduct of the County and the process.

Proposed Amendments

- 1) Review and discussion on text amendments to 4.4 Shoreland Regulation to ensure that the town's Shoreland ordinance continues to comply with the requirements of NR 115 and the Sawyer County Zoning Shoreland-Wetland Protection Ordinance.

Copies of the new county ordinance were distributed. A threshold question is whether the Town will follow the format the county used which was to create a separate Shoreland ordinance or whether to incorporate the Shoreland ordinance into the existing Zoning ordinance. After some discussion, it appears that the Commission will move in the direction of incorporating the Shoreland ordinance into the Zoning ordinance. Ease of use and efforts to improve clarity are goals.

Hucker suggested that the members focus in on the materials that begin at page 17 of the new ordinance. It discusses what can be done regarding ordinary maintenance and repair as distinguished from structural work.

It was noted that the county ordinance sets the minimum baseline but the town can be more restricted. It will take careful review.

We are exploring whether the town will qualify for a grant regarding the rewrite of the ordinance. There was discussion of the some of the potential gaps in the county ordinance.

Motion to Adjourn was made by Brandt, 2nd by Ross.

Kathy Overman, Acting Secretary