

**FREMONT COUNTY NOSKIRE APPEAL OF VARIANCE DENIAL
PUBLIC HEARING**

Date: March 9, 2011

Time: 1:00 p.m.

Location: Annex Building

Attended by: Commissioners Skip Hurt, Lee Miller and Jordon Stoddard

Also attended by: Deputy Clerk Cathy Conger, Planning & Building Administrator Stephen Loosli and Prosecuting Attorney Joette Lookabaugh

Commissioner Hurt called the hearing to order at 1:01 pm and welcomed the public.

Commissioner Hurt introduced those in attendance. He reviewed the schedule for the hearing.

Commissioner Hurt asked Deputy Clerk Cathy Conger if proper notice had been given. She stated that it had.

Commissioner Hurt asked if any of the commissioners have a conflict of interest. Commissioner Miller responded no; Commissioner Stoddard responded no; Commissioner Hurt responded no.

Planning & Building Administrator Stephen Loosli gave an opening statement explaining the building in question and the permit. He explained what the Planning and Building department has done up to this point. He explained the documentation that the commissioners have received prior to this meeting. His department has concluded that requirements have not been met.

Commissioner Hurt questioned when this was built. Mr. Loosli stated that to his knowledge it was completed in 2010.

Commissioner Stoddard questioned what the square footage is. Mr. Loosli stated that he is unsure but that it is a small building two stories tall that is approximately 450 to 600 square feet.

Commissioner Miller questioned if the building meets the 50 foot setback requirement. Mr. Loosli stated that it is approximately 21-22 feet back from the setback point.

Commissioner Hurt questioned what the requirements are for this type of building for gross footage. Mr. Loosli stated that the gross footage is for the whole building.

Commissioner Stoddard questioned if the foundation was concrete. Mr. Loosli stated that from their observation the floor is concrete and there are concrete piers. Because of the siding there is no way of knowing if the whole foundation is concrete.

The purpose of the hearing is to provide for public comment. He explained that the public comments will be kept to three minutes each. Commissioner Hurt read through the sign in sheet for those in attendance.

OPENING COMMENTS:

Marvin Smith (591 Park Idaho Falls, ID)

Mr. Smith is representing Noskire – Erikson family. Mr. Smith addressed the foundation questions and submitted Exhibit “A”. Mr. Smith gave a brief account of the Erikson family’s history in Fremont County. This is Lot five. Other Lots that are owned by the family are Lots 34, 35, and 36. Tab 5 shows the road that transverses the property. They had to cut the road and it has been in use for over 20 years. The structure was started in the fall OF 2009 and completed in 2010. The structure is around 600 sq ft. Mr. Erikson took a tour of other boat houses around Henry’s Lake prior to construction of the building. He assumed that all of these other boat houses were within code.

Mr. Smith referenced pictures to show that his client believes that the boathouses are closer to the water than his is. He thought that the set back was 30 ft. He did not measure by right angles as a trained professional would but rather with a standard measuring tape. He assumed that his building followed the exemption rules based on what he had researched at the time. There are no wildlife corridors or paths in relation to his property. Under a laymen’s consideration of pollution and contamination this structure does not pose a threat. There is no dry camping – this is housing for boat and water craft. There is no habitation except for temporary use as needed for securing the water craft. There were no objections from the neighbors. There is no run off or erosion problems. There has been an attempt to build a retaining wall. In their discussion with the Planning and Zoning commission we welcomed a request as a condition of the variance to have a concrete retaining wall. We want to preserve the aesthetic of the area as well as the water.

The utility structure is as a boat house and as that it needs to be somewhat close to the water. It is obvious that other boat houses exist without prosecution. The water level has never gone above the high water mark. If you take it up 50 ft there is no utility for the structure. What the Erikson’s are proposing is that you go to the site so that you will see that it is a rather severe slope. With the location of the road there is only one spot that can be utilized as a boat house. This raises the question of selective enforcement. The unique hardship rule has been met. The purpose of your code and comprehensive plan is to not destroy the esthetic of the area. We feel that this meets those requirements. We have gone to every proximity land owner and there have been no objections.

Submitted Exhibit "A" at 1:13pm

Todd Erikson (1274 Pebble Creek Idaho Falls, Idaho)

It is a family partnership that owns the property. There has never been any run off erosion since we have bought the property. The road is more for ATV's than for general traffic. When my father wanted to build something he looked at other neighboring boat houses. The dimensions of the building are 25'x20' downstairs, and 20'x16' upstairs. There is no water, septic, bathroom, etc. We cleared the dead trees. There is no flooding there nor is there any chance of flooding. My father had gotten permits in the past for building the cabin however because of the size and no water or septic system he thought that a permit was not needed. It is our position that if the variance is not granted we will not be moving the boathouse due to the expense. We do meet the requirements for undue hardship and it is not in conflict with public interest.

Commissioner Stoddard asked him to clarify his involvement in the structure of this building. Mr. Erikson stated that he was aware of the building being built but that was the extent of his involvement.

Commissioner Hurt asked him if he aware of the process of requesting a permit. Mr. Erikson stated his father is aware of this.

Commissioner Hurt asked him to clarify who he is representing. Mr. Erikson stated that he is representing the family partnership which consists of his parents and six children including himself.

PUBLIC COMMENTS:

Garth Blanchard (1618 W Ashton Hill Loop, Ashton) Against

The purpose of the development code is to protect the public from illegal construction. This boathouse was built without a building permit and too close to the water. This is about the code and upholding the rules that we have all agreed to live by. Granting this variance would send a message that it is ok to ignore rules and build anything anywhere that you want and to merely ask for forgiveness. If you grant this you are opening the door to all variances that are clearly at odds with public interest.

Ms. Lookabaugh requested that Mr. Blanchard specify how the public would be affected. Mr. Blanchard stated that this is a public lake and if you allow buildings too close you are affecting others ability to use it.

Kim Ragotzkie (580 Maple Leaf, Ashton) Against

She is here to represent the Henry's Fork Foundation. She agrees with Mr. Blanchard and encourages the commissioners' to deny the variance request. She is concerned that this would set precedence.

Commissioner Miller asked what the concerns are of the Henry's Fork Foundation. Ms. Ragotzkie stated that there is a concern that this would set a poor precedent.

Chad Erikson (504 Park Lane, Rexburg) For

He appreciates the comments about upholding the laws and codes. The flood plain is in place for other reservoirs as well. This boathouse was not done intentionally to break the codes. I don't believe that this would set a precedent.

Ms. Lookabaugh asked Mr. Smith to expand on comments of other boat houses. Mr. Smith stated that the photos of other boathouses show that they are closer to the water line. Idaho recognizes selective reinforcement. It is our understanding that these structures were built after the 1992 code and obviously these are not up to code. Everybody is supposed to be treated equally. The argument could be made that when the inspector was up there he would have seen the other boathouses as well. Mr. Smith believes that there should be a cease and desist order for the other boathouses as well. The docking on the other boathouses should be in question. The state law allows variances. You look at each property owner and see how they measure against each other.

Commissioner Hurt closed the public comment portion of the hearing.

Commissioner Hurt stated that they will not make a decision today.

Commissioner Hurt stated that they have 60 days to make a determination.

Commissioner Hurt stated that there will be no more public comment after this meeting.

Commissioner Hurt thanked everyone for the comments and their attendance.

The hearing was closed at 1:51 p.m. by Commissioner Hurt.

There being no further business to come before the board, the hearing was adjourned.

Skip Hurt, Chairman
Fremont County Commission

Attest: _____
Cathy Conger, Deputy Clerk

Exhibit List

Noskire Appeal of Variance Denial

Held March 9, 2011

Exhibit A – Drawing of foundation