

STAFF REPORT

Application:	Conditional Use Request for the movement of more than 50 cubic yards of earth in a shoreland district (approx. 300 cubic yards requested) to prepare a property for a future building.
Applicant:	Caliber Buildings LLC
Property Owner:	Thomas Wosepka
Agenda Item:	4(a)

Background Information:

- **Proposal:** The applicants are proposing to both cut and fill areas of the proposed lot to create a building pad for a 40' x 100' structure that will contain a 40' x 40' living area with second level and a 40' x 60' heated garage/storage shed. The earth movement estimated for the building pad itself equates to about 300 cu yds (40' x 100' x 2'). The total area to be graded is approximately 100' x 200'. The area beyond that of the building pad itself - if an average of 6 inches of cut/fill - would equate to about 110 cu yds of additional earth movement. Because the property is in the shoreland district (within 1000 ft of Lake Jessie) it is subject to a 50 cu yd limit before a conditional use permit is required. The primary concerns in such a request are 1) preventing changes in drainage patterns/runoff rates such that neighboring properties or roads are harmed; and 2) preventing erosion issues that would harm nearby waterbodies.

The site currently slopes to the north/east into an existing creek/drainageway that goes under West Lake Jessie Road and empties into Lake Jessie. The applicant indicates they will be using silt logs and/or silt fences to control erosion.

- **Location:**
 - Property address: 3206 W Lake Jessie Dr SE
 - Sec/Twp/Range: 34-128-37
 - Parcel number(s): 03-2172-505
- **Zoning:** UR - Urban Residential / RS - Residential Shoreland, Jessie Lake (General Development lake)
- **Lot size:** Approx. 300,564 sq ft (6.9 acres) according to County GIS estimate.
 - Existing and Proposed Impervious Coverage: Well below 25% limit
- **Septic System Status:** The property is served by ALASD sewer and private water.
- **Natural Features:**
 - Floodplain: The existing and proposed structures are not within an identified floodplain.
 - Bluff/Steep Slopes: The lot does not contain a bluff. The lot contains steep slopes that do impact the proposed improvement(s) to the property.
 - Wetlands: There are not wetlands that are likely to be impacted by the proposed improvement(s) to the property.

- Current Shoreline Conditions: N/A

Planning Commission Action: The Planning Commission may recommend approval of the variance request, denial of the request(s), or tabling the request(s) if the Commission should need additional information from the applicant. If the Commission should recommend approval or denial of the request, the Commission should state its recommended findings which support either of these actions.

Staff Recommendation: Based on the findings of fact and discussion listed below, Staff recommends approval of the proposed Conditional Use only if it is found that the standards for approval have been met.

If the application or some version of the application is approved, Staff would recommend consideration for the following conditions of approval (or tabling of the application to allow for review of revised plans consistent with the following):

1. That the applicant must grade their site and/or make use of gutters and downspouts or similar practices such that rainwater falling on the property is given opportunity to soak into the ground as much as possible before running off into the adjacent creek.
2. That the applicant must use sufficient erosion control measures to ensure that erosion and sedimentation onto neighboring properties (or eventually Lake Jessie) does not occur while the soil is exposed to the elements.
3. That the applicant must place enough black dirt and re-vegetate the disturbed areas of their lot by no later than June 1, 2024 or as soon as practically possible in the Spring of 2024 accounting for weather conditions.

Applicable Statutes/Ordinances: See Appendix A.

Findings of Fact: The following findings of fact are presented by Staff for consideration by the Planning Commission:

- 1) **The use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.**

Findings Supporting Approval

The movement of earth on the site will not create any additional burdens on parks, schools, or public utilities as it will not increase the number of people living in the area beyond what could be there without any earth movement. With most of the earth movement involving dirt already on the site, the impact on area roads should be minimal.

Findings Supporting Denial

None

- 2) **The use will be sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.**

Findings Supporting Approval

The placement of fill on the property will not significantly change the character or use of land in the area that would depreciate nearby property values. Provided that drainage from the lot is managed in such a way to prevent erosion into the nearby creek and the speed of runoff is managed to prevent increases to flash flooding, no impediment to the future development of vacant lots in the area would be expected.

Findings Supporting Denial

None

- 3) The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.**

Findings Supporting Approval

The fill itself will not create an appearance that is unusual or out of character with that of surrounding uses or those permitted in the zoning district.

Findings Supporting Denial

None

- 4) The use in the opinion of the Town Board is reasonably related to the overall needs of the Township and to the existing land use.**

Findings Supporting Approval

The proposed earth movement will allow for the construction of a new structure that will add additional tax base to the community in a manner that is in character with surrounding existing development.

Findings Supporting Denial

The site can be built on with a home and associated storage structures and create additional tax base with a much lesser amount of grading and change to topography that has the potential to negatively impact neighboring properties via increased drainage/flooding.

- 5) The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.**

Findings Supporting Approval

The intent of the Zoning Ordinance's restrictions and regulation of fill is to protect lake water quality and prevent damage or harm to nearby properties. Provided the applicant grades the property so that drainage does not negatively impact nearby properties or public roads and downstream properties the proposal will meet the intent of the Zoning Ordinance.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because it would amount to a substantial alteration of topography on the parcel and is more than is necessary to accommodate a home and associated storage structures on the property.

- 6) The use is in conformance with the Comprehensive Plan of the Township.**

Findings Supporting Approval

The Comprehensive Plan does not directly address applications involving fill of land. Provided the applicant grades the property so that drainage does not negatively impact nearby properties or public roads and rights-of-way, the proposal will meet the more general intent of the Comprehensive Plan to avoid property damage or harm to the environment.

Findings Supporting Denial

None

7) The use will not create a traffic hazard or congestion.

Findings Supporting Approval

The placement of fill on the property should have no appreciable impact on traffic congestion or safety - particularly because the great majority of the earth being moved will be from the site itself rather than being imported or exported off the site.

Findings Supporting Denial

None

8) (For Shoreland Areas) The prevention of soil erosion or other possible pollution of public waters, both during and after construction.

Findings Supporting Approval

The site does slope naturally to the creek leading into Lake Jessie and this proposal will not change that pattern of drainage. The applicant's proposed use of silt logs and/or silt fence should sufficiently manage erosion potential provided it is installed and maintained correctly.

Findings Supporting Denial

The applicant has not provided sufficient detail to ensure that erosion will not occur - erosion which would eventually lead to more silt in Lake Jessie.

9) (For Shoreland Areas) The visibility of structures and other facilities as viewed from public waters is limited.

Findings Supporting Approval

The proposed fill itself (and future structures) will not be generally visible as viewed from Lake Jessie due to the steep slopes along the shoreline and significant existing tree cover.

Findings Supporting Denial

None

10) (For Shoreland Areas) The site is adequate for water supply and on-site sewage treatment.

Findings Supporting Approval

The site is served by ALASD sewer and there is no indication that a private water well cannot be installed on the property to accommodate the anticipated future development of the lot.

Findings Supporting Denial

None

11) (For Shoreland Areas) The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

Findings Supporting Approval

The movement of earth on the property will have no direct impact on the number of watercraft on Lake Jessie.

Findings Supporting Denial

None

Appendix A

Applicable Statutes and Ordinances

Alexandria Township/Douglas County Regulations

728. LAND ALTERATIONS

728.1 Permit Required

- (1) A Land Alteration Permit shall be required in all cases where excavation, grading and/or filling of any land within the county would result in a substantial alteration of existing ground contour or would change existing drainage or would cause flooding or erosion or would deprive an adjoining property owner of lateral support and would remove or destroy the present ground cover resulting in less beneficial cover for present and proposed development, uses and enjoyment of any property in the County.
- (2) Substantial alteration shall be defined as the extraction, grading, or filling of land involving movement of earth and materials in excess of fifty (50) cubic yards in the Shorelands Districts and in excess of five hundred (500) cubic yards in all other districts except drain tiles and ditch cleaning in agricultural areas. Such substantial alteration shall require a conditional use permit.
- (5) A Land Alteration Permit is also required from the County and from the Commissioner of Natural Resources for any alteration in the Flood Plain District and the Shorelands Districts. Such alteration shall include any filling, dredging, channeling, or any other work in the beds of public waters which would change the course, current or cross section of a public water.
- (6) A Land Alteration Permit shall be valid for a period of six (6) months from the date of issue. A Land Alteration Permit shall be administered in the same manner as a Conditional Use Permit.

728.2 Requirements

Before the issuance of a Land Alteration Permit or an Administrative Land Alteration Permit, it must be established that all of the following conditions are met. These conditions must also be adhered to during the issuance of construction permits, permits, conditional use permits, variances and subdivision approvals:

- (1) Grading or filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland (this evaluation must also include a determination of whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so advised):
 - (a) sediment and pollutant trapping and retention;
 - (b) storage of surface runoff to prevent or reduce flood damage;

- (c) fish and wildlife habitat;
 - (d) recreational use;
 - (e) shoreline or bank stabilization; and
 - (f) noteworthiness, including special qualities such as historic significance, critical habitat for endangered plants and animals, or others.
- (2) Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
 - (3) Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;
 - (4) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;
 - (5) Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;
 - (6) Fill or excavated material must not be placed in a manner that creates an unstable slope;
 - (7) Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater;
 - (8) Fill or excavated material must not be placed in bluff impact zones;
 - (9) Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, section 105.42;
 - (10) Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
 - (11) Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.