

**Becker County Board of Adjustments
September 10th, 2009**

Present: Members: Jim Bruflodt, Steve Spaeth, Clifford (Kip) Moore, Al Chirpich, Jerry Schutz and Bill Sherlin.

Zoning Staff: Julene Hodgson

Chairman Bruflodt called the meeting to order. Julene Hodgson took minutes.

Minute approval: The August minutes were discussed. Spaeth made a motion to approve the minutes from the August 13th, 2009 meeting. Chirpich second. All in favor. Motion carried.

Chairman Bruflodt explained the protocol for the meeting. Spaeth read the criteria for granting or denying a variance.

OLD BUSINESS:

FIRST ORDER OF BUSINESS: APPLICANT: Lonnie and Patricia Nelson 3792 Park Street Fargo, ND 58104 Project Location: 24185 Woodland Ln LEGAL LAND DESCRIPTION: Tax ID number: **R191936000 Sallie** Woodland Beach .26 ac lot 28 & Pt lot 29 **R190121000 Munson** .12 ac E 50' of that part of Lot 2 Section 08, TWP 138, Range 41, Lake View Township.

APPLICATION AND DESCRIPTION OF PROJECT: Revised: Request a Variance to construct a Garage 16 feet from the ROW and 32.75 feet from the ordinary high water mark (in the Shore Impact Zone) of Monson Lake. Also request a Variance to construct a garage 10 feet from the ROW on Lake Sallie. The Lake Sallie request exceeds the 5% size allowed for detached accessory structures. The requests are due to substandard lots of record.

Lonnie Nelson and Son Jeff Nelson explained the application to the Board. The request on the Monson side was downsized to 480 sq ft, moved over closer to the side property line and further back from the lake. The ridge would run N & S with the door facing E. There would be no service from the road, no driveway or apron and Nelson proposed to place a vegetative buffer by the lake. The request would be 16 ft from the ROW and 32.75 ft from the lake. Nelson stated he would be negotiable to the size and right now is proposing 15.2% lot coverage. Nelson stated he wants the structure a little less than the 22 ft in height allowed, but is requesting a 1 ½ story.

The Lake Sallie request is for a 28x28 garage 10 ft from the ROW. Nelson is requesting to enter off the road from the N and moved the garage to w/in 6' of the existing cabin. Peak would run N & S with stormwater diverted toward road. Nelson stated the request is smaller than previously proposed, but still exceeds the maximum size allowed for the property and would like a 1 ½ story structure here also. Nelson stated his plan did not move the garage over one way or the other because of mature trees in the ROW.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the applications. At this time, testimony was closed for the Lake Monson and Lake Sallie applications and the Board held further discussion.

The Board discussed the Lake Monson request. Sherlin stated although the request had changed some, it was still contrary to the Ordinance, with the request to locate the structure to close to the lake. Spaeth asked what the SIZ area was for Monson, to which Hodgson stated 50 feet from the

OHW. Brufloft agreed that the Board has tried to set a precedent to not allow new construction in the SIZ. Spaeth stated due to the size of the lot, the request seems too much for the property.

MOTION: Spaeth made a motion to deny a variance to construct a 480 sq ft garage on the Monson Lake property due to the very substandard lot, with the request too close to the lake and it would require multiple Variances. Sherlin second. All in favor. Motion carried.

The Board discussed the Lake Sallie request. Chirpich stated the existing trees could die in the ROW and are not considered a hardship, therefore could be removed to place the structure to one side or the other for entrance from the side and not backing out onto the road. Chirpich stated although the road surface may never change locations, they have never approved only 10 ft from the ROW along this road area. Sherlin affirmed it is very unusual/rare occasions/circumstances the Board allows less than the 20 ft required from the ROW due to most of the time there are then vehicles parking in that area also, so they end up being in the ROW. Sherlin stated with the ones approved, they have never allowed the entrance to come directly off the road, they have always had to enter into the property and enter the structure on the side. Schutz stated although the plan has downsized the request some, it is still too large for the guidelines and possibly too large for the property. Schutz asked why both requests are for the 1½ story structure, and Sherlin stated the Board cannot prevent this if the applicant stays within what is allowed. Moore asked to clarify if the request was 10' from the ROW, to which Sherlin answered yes. Schutz asked if the owner would have the option to table the application again, to which Brufloft answered yes, the owner could meet with Zoning for further suggestions and copies of other approved Variances in the general area. **At this time, the property owner asked to table the Variance application until a later date to pursue all options and then request to come back in front of the Board.**

SECOND ORDER OF BUSINESS: APPLICANT: Steve and Arlene Hanson 1407 MacKubin Ave Breckenridge, MN 56520 Project Location: 15360 E Munson Dr LEGAL LAND DESCRIPTION: Tax ID number: R191144000 Munson Lake Lot 20 Ex Tri in S Pt being 10' on lake Section 05, TWP 138, Range 41 Lake View Township. APPLICATION AND DESCRIPTION OF PROJECT: Request an after the fact Variance to allow a 10x16 deck to remain located 27 feet from the ordinary high water mark of the lake due to an undemonstrated hardship of the property. Revised: Would like to relocate a 10x16 deck & attach it to the existing cabin. This would place the deck at 58ft from the ordinary high water mark of the lake.

The owner could not be present at the hearing and asked the Zoning office to speak for them. Upon further measurements taken by the applicant, he stated he would like to make application into the office to relocate the deck to an approved location that can be permitted by the Zoning Office without a Variance being placed on the property. This would locate the structure out of the shore impact area and behind neighboring stringline. The Board has the permission to make a final decision on the original request.

No one spoke in favor of the application. No one spoke against the application. There were no further letters of correspondence on file for or against the application. At this time, testimony was closed.

Further discussion was held by the Board. Spaeth stated the original request was too close to the lake and Sherlin agreed there are other alternatives on the property.

MOTION: Spaeth made a motion to deny the Variance to allow a 10x16 deck to remain located 27 feet from the ordinary high water mark of the lake due to an undemonstrated hardship of the property. Chirpich second. All in favor. Motion carried.

THIRD ORDER OF BUSINESS: APPLICANT: Douglas and Mona Barfield 15667 West Little Cormorant Rd Audubon, MN 56511 Project Location: 15667 W Little Cormorant Rd
LEGAL LAND DESCRIPTION: Tax ID number: R170051000 Little Cormorant Pt Lot 3 Beg 80' E and 327' S of SW Cor Lot 1 Blk 1 Blackhawk Mtn Beach Section 05, TWP 138, Range 42 Lake Eunice Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request an after the fact Variance to expand a nonconforming 7x18 deck to a 10x20 deck with a tuck-under sunroom addition allowing the structure to remain 45 feet from the from the ordinary high water mark of the lake, due to the setback issues of the existing dwelling.

Douglas Barfield explained the application to the Board. The year around home had a lakeside upper deck and lower deck that needed replacement. The contractor suggested they expand the deck and construct a sunroom under it. They would then exit from the garage on the lakeside. The area was originally pervious and Barfield added the cement slab when replacing some concrete in the original garage floor area. Barfield stated they are willing to remove impervious area at the end of the asphalt drive area and add infiltration area, possibly French drain. Chirpich noted the previous Variance placed on the property had conditions/stipulations attached that the owner was already supposed to place an infiltration area at the end of the driveway. Barfield stated they oversized infiltration areas on the hill with the gutters going into French drain areas away form the lake. Sherlin reminded the Board that the SIZ area is 50' on this lake and the previous Variance design shows a pea rock area was proposed at the end of the drive. Chirpich stated the existing gutters, spouts and catch areas will collect from the dwelling, but not the drive.

No one spoke in favor of the application. Lake Eunice Chairman John Renslow spoke regarding the application. He stated the Township members where also concerned that the previous stormwater plan submitted was not completed. The pipes from the gutters that are supposed to lead into French drain areas where not connected. They request follow-up to assure this work is finished. Hodgson read a letter of correspondence on file from the Lake Eunice Township Board member. At this time, testimony was closed.

Further discussion was held by the Board. Spaeth noted the responsibility of Zoning to do follow-ups regarding stipulations of the stormwater plan attached to the previous Variance. Spaeth noted with the slope of the lot, the water goes directly toward the lake off the asphalt. Sherlin stated he was opposed to requests for construction closer in the shore impact area. The request is not in harmony of the Ordinance- not only the intent, but there are other alternatives for reasonable use. Bruflodt stated they need to stay within the guidelines/criteria for granting or denying a Variance.

MOTION: Schutz made a motion a Variance be denied to allow expansion of an existing 7x18 deck to a 10x20 deck with a tuck-under sunroom addition due to the non-conforming structure would go closer to the lake in the shore impact zone and include impervious surface intrusion. Upon denial, the owner is to remove the un-permitted concrete area. Sherlin second. All in favor, except Moore who abstained from voting. Motion carried

NEW BUSINESS:

FIRST ORDER OF BUSINESS: APPLICANT: Steve Eickman Box 13573 Grand Forks, ND 58708 Project Location: 32161 Two Inlets Dr LEGAL LAND DESCRIPTION: Tax ID number: R340063001 Two Inlets Pt Lot 5 Beg 937 E and 916 NE of SW Cor Lot 5 Section 11, TWP 141, Range 36 Two Inlets Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request an after the fact Variance to enclose an existing roofed/deck area into a three season/screen porch area on the side of an existing dwelling that is located 60 feet from the

ordinary high water mark of the lake and ahead of neighboring stringline, due to setback issues of the existing dwelling. This deviates from the required 100 feet structural setback and behind neighboring stringline.

Steve Eickman explained the application to the Board. He recently purchased the property and started to do maintenance on the dwelling. He read in the description of maintenance and thought he would be under the guidelines for the project he started. There is a side deck with a roof area that was dilapidated and he replaced the entire bottom deck area for safety reasons. He also started on the new roof and replacing the lakeside deck. He then read elsewhere regarding replacement of the main structural frame constitutes the need for an approved site permit. He applied at the Zoning Office. When the sight visit was conducted, it was noted the structure is nonconforming, due to its current location ahead of neighboring stringline. The Zoning office approved the replacement of the lakeside deck per the MN Stat of replacement of the same size, but could not approve to enclose the deck to make a porch/sunroom area because this would constitute expansion/more use of the nonconforming structure. Eickman stated he had already started framing in the side deck area for a screened in porch and was told he would have to apply for a Variance. There is an existing ice berm on the entire shoreline and the dwelling has gutters with spouts directed away from the lake. Chirpich noted that part of the front deck that was approved for replacement, a three foot portion, was not replaced. Eickman stated he would not replace that area, it was basically there for washing the bay window and for safety reasons decided not to replace it. The Board clarified the distance to the lakeside deck is 60ft from the waters edge and the addition will be 74ft from the lake.

Thomas Wagner from Two Inlets Township spoke in favor of the application. He stated the improvements to the property are beneficial to the Township and the County. No one spoke against the application. Written correspondence was received from Teresa Goodrum and the Two Inlets Township Board in favor of the application. Hodgson read the letters to the Board. At this time, testimony was closed.

Further discussion was held by the Board. Sherlin clarified the dwelling was permitted to be constructed in the current location in 1978. The laws/regulations change and when the neighboring property re-built, it changed the stringline for this property. Spaeth stated there was no reason to mitigate more on the property, the owner had everything already in place to protect the lake. Schutz stated there would be no negative impact by granting the request.

MOTION: Sherlin made a motion a Variance be granted to enclose an existing roofed/deck area due to the addition is to the side of the existing structure at 74 feet from the lake, will not encroach closer to the lake and the natural shoreline berm will remain with the property. Chirpich second. All in favor. Motion carried.

SECOND ORDER OF BUSINESS: APPLICANT: John Borgen 2820 30 St S Moorhead, MN 56560 Project Location: 13773 Deer Pt Rd LEGAL LAND DESCRIPTION: Tax ID number: R170639000 Big Cormorant Lot 1 Deerpt Bch, PT Govt Lot 1 Section 18, TWP 138, Range 42 Lake Eunice Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to construct a Dwelling w/ garage 51 feet from the ordinary high water mark of the lake and ahead of neighboring stringline, due to the topography issues and a substandard lot of record.

John and his wife Kelly Borgen explained the application to the Board. They would like to construct a year around home. The request would move the structure out of the shore impact zone and the new attached garage would be basically in the same location as the existing one. By locating it back, they would gain credit for their mitigation and their contractor has included a

stormwater management plan along with the request. Moore noted their proposal would have them access the garage from the side as to not be backing out onto the main road. There is already a rear slope area protecting the garage from the road area. Chirpich noted the plan was a good one for the small property, moving the dwelling away from the lake and keeping the lot coverage down for reasonable use. The Board asked clarification regarding the application and the lake setback. Hodgson stated when the application came into the office, upon review the neighboring files were pulled to check the current stringline. The application was for 51ft, which would be out of the shore impact area, but the review information suggested the request would be ahead of stringline. Upon the Board property tour, it was noted both the neighbors had older/existing structures that could be used for the stringline of the 51 ft requested. Therefore, the Borgens could withdraw the lakeside Variance request which could be approved with mitigation by the Zoning Office. At the same time, it was noted the measurements submitted for the road was to the existing asphalt, not from the property pins/row. This would require a Variance for the dwelling setback from the road. Brufloft confirmed the amended information for the road request was sent to the Board members prior to the public hearing.

At this time, the Borgens withdrew the Variance request for the lake setback, this would be dealt with administratively.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from Lake Eunice Township in favor of the application. Hodgson read the letter to the Board. At this time, testimony was closed.

Further discussion was held by the Board. Spaeth confirmed the measurement request for the road setback was 24ft at the closest point with the access to the side. This would have the owners backing out onto their own property and any cars would be parked away from the ROW. Chirpich noted the runoff was severe from the asphalt driveway going toward the lake and would like to see more mitigation taken in that area. Borgens stated they will work with the Watershed for erosion issues and rip rap. Brufloft suggested they leave the gully area un-mowed and un-weedwacked to deal with the water issues.

MOTION: Sherlin made a motion a Variance be granted to construct a dwelling w/garage located 24 feet from the road ROW with the entrance located to the side and parallel to the existing road on a substandard lot of record. Mitigation measures are to be implemented for stormwater management from the dwelling and existing sloped drive that goes into the property. Chirpich second. All in favor. Motion carried.

THIRD ORDER OF BUSINESS: APPLICANT: Susan Huguelet 219 18th ST S Fargo, ND 58103 Project Location: 40819 W Island Dr LEGAL LAND DESCRIPTION: Tax ID number: R150436000 Island Lake Island View 1st Add Lot 1 Section 13, TWP 140, Range 39 Height of Land Township. APPLICATION AND DESCRIPTION OF PROJECT: Request an after the fact Variance to allow a 10 ft high water oriented structure to remain 25' from the side property line on property that has 4-5 feet elevation, due to the undemonstrated hardship of the property. This deviates from the criteria that the structure must not exceed in height the elevation of the lot measured at the building setback line from the ordinary high water level and the structure shall be placed within the center twenty-five feet of the lot as measured along the setback from the ordinary high water level.

At this time Al Chirpich recused himself due to conflict of interest and left the Board room.

Jeff Huguelet was present as acting agent for his mother Susan Huguelet and explained the application to the Board. He stated he applied for the site permit for a gazebo and upon review of the Ordinance he thought the structure would be allowable where proposed, so he started on the project and poured the cement before hearing from the Zoning office. He received the letter of denial. He stated that with his interpretation of what he read, he thought there would be no way it would not be permitted and had also started framing in the structure on the new concrete. Huguelet stated if water off the structure was the concern, he could divert the water to the back of the structure. He stated the septic was updated on the property in 2001 and he doesn't feel the structure will have any impact on the lake. Spaeth noted that building in the SIZ negatively impacts the lake and is not on this piece of property by the Ordinance regulations. Huguelet stated if he was trying to do something wrong, he would have just constructed the structure without making application into the Zoning office altogether. Bruflodt asked how far back the current dwelling sits from the OHW. Huguelet stated the dwelling is at 102 ft. The property had a Variance approved in 1970 for a structure to be located at 80ft from the OHW, but the house was constructed further back from the lake. Huguelet stated the gazebo is currently at 38 ft from the OHW, 25ft from the side property line, and measures 11 ½ x 11 ½ with a 10' 10" height. Spaeth asked what Jeff thought the hardship of the property was for the request. Jeff stated it was difficult for his mother Susan to walk on an incline/uneven ground and stated it would be wrong to deny the rights of the property owner for the entire use of the property. Schutz noted there was not a lot of natural shoreline left on the property, the entire front of the property is open. Sherlin asked Huguelet's interpretation of the number 6 criteria of the water oriented structure regulations that state the structure is to be placed within 25ft of the center of the property. Jeff stated he thought this meant he was to be 25ft from the side property line, otherwise the center would not have been a favorable option due to view from the property. Jeff stated he thought that would be a good location to block the view of the neighboring lot that blocks their car in the SIZ after launching boats. Moore stated there were some trees by where it was placed, did not think this would effect the neighbors.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from James Nord and Joe Huguelet in favor of the application. Hodgson read the letters to the Board. At this time, testimony was closed.

Further discussion was held by the Board. Schutz stated it was unfortunate the structure was already constructed before having an approved permit. He noted there was not a lot of water runoff issues controlled and would like to see the shoreline restored. Moore agreed there could be mitigation measures implemented on the property. Sherlin stated the Ordinance clearly restricts anything being constructed in the SIZ unless the property can meet the entire criteria of the water oriented regulations. He stated the lot is quite flat and the restrictions are there for properties with steep slopes or bluffs for reasonable use to store toys and lifejackets. They are allowed because the height of the lots back at the 100' building line are 18 to 20 ft above the water level and the people look over the structures, not through them. Sherlin also stated without defining what can be constructed in the SIZ, the Board would have more applications from property owners with flat lots to start placing these structures back up by the water. The intent of the Ordinance is to start getting these away from the shoreline. He stated the property currently has a Variance placed on it for a structure to be located 80ft from the OHW and the current structure could be relocated somewhere in this area in front of the main dwelling and still enjoy reasonable use of the property. The topography of the lot would allow a deck or a seat in the shore impact area under the water oriented structure regulations, but not a gazebo. Spaeth asked the question of the Board, if the structure was not already there and the request was made due to the owner disability, would the Board have allowed the Variance with the stipulation the gazebo would be removed when the

current owner was gone or sold? He answered his own question by stating probably not because then there is the issue of enforcement with the placing of stipulations on Variances. Spaeth stated we would not approve this request if it was not already there, possibly a deck, but not a structure. Brufloft reminded the Board of the criteria in granting or denying a Variance and to look at any property hardship for the application in front of them. With the correct criteria and the property at hand, it would allow an approved permit for something 4ft high within the center 25ft (middle) of the lot, what the applicant did could have been an honest mistake, but with the #1 & #6 rule of Section 3 Chapter 6, this structure would not be allowed. Relocating the structure can be considered as an economic difficulty, but the property is gaining reasonable use with or without the gazebo. Sherlin agreed he wouldn't approve the request even if the structure was not built, he would ask to deny the request. Sherlin stated Schutz has a good point to try to make the property owner do some mitigating for stormwater runoff, if this request where allowed, but cannot justify approving a structure in the SIZ. Sherlin stated the Board has to draw the line and stay firm to set a precedents for a request to construct in the SIZ when it clearly states in the Ordinance that on this property this structure would not be allowed. Sherlin stated the intent is to build out of the SIZ, not in it and the owner can apply to relocate the structure back elsewhere that would give reasonable use of the property, they could use the previous Variance. Brufloft agreed mitigation should be used as last resort, criteria of the Ordinance should be looked at first.

MOTION: Spaeth made a motion a Variance be denied to allow a water oriented structure to remain based on the fact it not meet the criteria of the Ordinance and there is an undemonstrated hardship of the property. The existing property Variance can be utilized to re-locate the structure out of the shore impact zone to allow reasonable use of the property. Sherlin second. All in favor except Schutz. Motion carried for denial.

FINAL ORDER OF BUSINESS: Informational Meeting. The next informational meeting is scheduled for Thursday, October 1, 2009 at 7:00 a.m. at the Courthouse 3rd floor meeting room.

Since there was no further business to come before the Board, Moore made a motion to adjourn the meeting. Sherlin second. All in favor. Motion carried.

Jim Brufloft Chairman

ATTEST

Patricia Swenson, Zoning Administrator