

Becker County Board of Adjustments
August 13, 2009

Draft

Present: Members: Steve Spaeth, Clifford (Kip) Moore, Al Chirpich and Bill Sherlin.
Zoning Staff: Debi Moltzan

Acting Chairman Spaeth called the meeting to order. Debi Moltzan took minutes.

Minute approval: The June minutes were discussed. Sherlin made a motion to approve the minutes from the June 11, 2009 meeting. Moore second. All in favor. Motion carried.

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

OLD BUSINESS: APPLICANT: William Martodam P.O. Box 649 Hawley, MN 56549
Project Location: 11385 W Lake Eunice Rd LEGAL LAND DESCRIPTION: Tax ID number: R170438000 Lake Eunice Bergquist Beach Lot 12 Section 27, TWP 138, Range 42; Lake Eunice Township. APPLICATION AND DESCRIPTION OF PROJECT: Request a Variance to construct an attached garage 22 feet from the road right of way and request the lot coverage to exceed 25% due to the substandard sized lot of record. This deviates from an attached garage requiring a 45 feet setback from the road right of way and a parcel not to exceed 25% lot coverage. This was tabled by the applicant at the June 11, 2009 Public Hearing.

William Martodam explained the application to the Board. Martodam purchased the property in 1995 and put on an addition in 1998. Martodam stated that he showed Zoning a plan for the patio. He also stated that he was told that the patio was detached and did not need a permit. Martodam stated that he did not get this in writing and now he cannot build what he wants to. Martodam stated that he wanted to leave the application as requested and not change it.

Spaeth questioned Martodam as to why he thinks that the patio should not be counted as impervious. Martodam stated that the rain could go through the deck. He guesses he could replace it with Echo Stone, but the present deck does the same thing. He really wants a garage and if the deck is counted as impervious, he is over lot coverage.

Chirpich questioned if the Zoning Office has discussed the issue of the patio. Moltzan stated that, at the time the patio was installed, any structure over six (6) inches in height above the grade of the ground required a permit and at that time, if they were pervious pavers they were counted as impervious. Sherlin questioned the setback from the lake. Martodam stated that a portion of the patio was 32 feet from the ordinary high water mark and could not find anything about this in the Ordinance. Spaeth stated that his calculations show that lot coverage would be 30%. Martodam stated that everything in back would come out, so the coverage would not be that much.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from Lake Eunice Township against the application. At this time, testimony was closed and further discussion was held.

Martodam responded to the Lake Eunice Township letter by stating that he did everything the Township has asked him to and that he had gotten permission from USFW to fill what he did. Sherlin stated that the Board was not there to settle disputes between the Township and applicant. Sherlin wanted clarification as to what variance was being sought – his understanding was 22 feet from the road right of way in addition to allow the deck to remain as is. Martodam stated that was correct. Spaeth stated that a decision had to be made as to whether or not this deviates from the 25% impervious coverage. Sherlin stated that if the deck remains, the lot would be over 25%, so Martodam is actually asking for three (3) things. Martodam stated that he wanted the deck to remain and that the driveway would be Echo Stone.

Sherlin stated that the deck was a nonconforming structure in the shore impact zone. Chirpich questioned if the deck would have been allowed when constructed. Moltzan read the portion of the Zoning Ordinance in effect in 1998, which pertained to the height of the structure requiring a permit and the portion that pertained to nothing being constructed in the shore impact zone.

Sherlin stated that it has been past practice of the Board to allow garages especially for year round residents, but not necessarily where or how the applicant wants to build it. Sherlin stated that the intent of the Ordinance is to keep structures out of the shore impact zone and under 25% lot coverage for a reason. Sherlin felt that he could not support the application because it was not in the best interest of the public. Chirpich stated that there may have been lack of information at the time the patio was done and that it was not done right. However, the rules and laws were in place at the time of construction. Chirpich stated that there has been a lack of cooperation to change the request and that ignorance of the law is no excuse. Chirpich questioned if they should forgive or forget, it is a case of should of, could of and didn't. Moore stated that he agreed with the other members. The construction of the garage exceeds the 25% impervious. Moore stated that the applicant needs to decide if he really wants the patio or the garage. Chirpich stated that there is reasonable use of the property without a variance or a minimal variance could be considered.

MOTION: Sherlin made a motion to deny a variance to construct an attached garage 22 feet from the road right of way and request the lot coverage to exceed 25% based on the fact that the application is not in the intent of the ordinance, exceeds the 25% impervious regulation and that there is a non-permitted encroachment in the shore impact zone. Chirpich second. All in favor. Motion carried.

NEW BUSINESS:

FIRST ORDER OF BUSINESS: APPLICANT: Darian Hanson 816 32nd St N Fargo, ND 58102 Project Location: 17347 W Alpine Ln LEGAL LAND DESCRIPTION: Tax

ID number: R180324000 Bijou Lake Bijou Heights Lots 18 and 19 Block 4 Section 29, TWP 139, Range 43 Lake Park Township. APPLICATION AND DESCRIPTION OF PROJECT: Request a Variance to construct a 2nd Story addition onto an existing dwelling located 5 feet from the side property line, 62 feet from the ordinary high water mark of the lake and ahead of neighboring structural string line, due to the substandard sized lot of record.

Darian Hanson explained the application to the Board. He would like to add a second story onto the existing cabin and cantilever the addition six (6) feet toward the road. The existing roof was in poor shape and needed to be replaced, so he tore it off. At that time, he thought it would be a good time to add a second story. Hanson thanked the Zoning Staff for being so helpful in the variance process. Hanson stated that the application requests a 5 ft side lot line variance, which at the time of the application was a guess. He has located the side property line and measured the distance to cabin. The distance is actually 9 ft 4 inches from the side lot line.

Chirpich questioned if there was 10 feet on the south side. Hanson stated that there was. Chirpich questioned if Hanson owned the ravine or how close his property came to the ravine. Hanson stated that he owns about three (3) feet of the ravine. Sherlin questioned if the cabin was constructed of block walls on all four (4) sides. Hanson stated that all four (4) walls were concrete block with a concrete slab foundation. Hanson stated that his contractor stated that the foundation and walls would support a second story and submitted written documentation of that. Hanson stated that the existing structure did not have gutters and down spouts. Hanson stated that he would be adding these to direct the water away from the bank and that the situation would be much better than before.

Chirpich questioned if the setback was taken from the patio or from the wall of the structure. Spaeth stated that the Board tried to measure it, but it was difficult due to the steep slope. Chirpich stated that the setback is definitely less than 100 feet. Sherlin stated that the structure is out of the shore impact zone.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from Lake Park Township in favor of the application. At this time, testimony was closed and further discussion held.

Moore questioned if the structure could be moved closer to the road. Hanson stated that the well and access to the well for maintenance would interfere with moving the structure closer to the road. Hanson also stated that the septic system is located between the cabin and the road. Chirpich questioned if Hanson brought the application to Zoning or did Zoning find out about the work and contact him. Hanson stated that he tore off the roof to save some money while the contractor was getting the permit. Hanson stated that the contractor felt that there would be no problem. When the County checked out the application, it was found that a variance would be required to do what he wanted. Sherlin stated that this was not considered an after the fact variance. Chirpich questioned if the existing structure was tore down, could it be reconfigured and relocated. Sherlin stated that this was an instance that practical difficulties need to be applied. There is no way to

move the block building without demolishing it. Chirpich stated that the request was in harmony with the area. Spaeth questioned setback of the structures to the north and discussion was held regarding the adjoining setbacks. Sherlin stated that practical difficulty could be applied to this lot. Spaeth stated that if the variance was granted, erosion controls could be conditions of the variance so the water was controlled so that the slope and vegetation can be maintained.

MOTION: Moore made a motion to approve the variance. Chirpich made an amended motion to construct a second story addition onto an existing dwelling, using the existing block walls, with a six (6) foot cantilever toward the road, located nine (9) feet from the north side property line, sixty-two (62) feet from the ordinary high water mark of the lake and ahead of neighboring structural string line based on the fact that practical difficulties exist and it is in harmony with the neighborhood with the stipulation that there be a water retention plan to control the run off. Moore agreed to this amendment. Sherlin second. All in favor. Motion carried.

SECOND 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: Request a Variance to construct a Garage 14.5 feet from the ROW and 20 feet from the ordinary high water mark (in the Shore Impact Zone) of Monson Lake. Also request a Variance to construct a garage 6 feet from the ROW on Lake Sallie. Both requests exceed the 5% size allowed for detached accessory structures. The requests are due to substandard lots of record.

Lonnie Nelson, along with his son Jeff Nelson, explained the application to the Board. They would like a variance to construct a garage on the Munson Lake side. This lot is a small lot approximately 50 ft by 68 ft in size. Nelson stated that they just want to use the lot.

Spaeth stated that each request should be addressed separately. Spaeth stated that the Board viewed both properties and that multiple variances would be required to do what is proposed. Chirpich stated that the Board typically allows garages. However, this one is proposed to be 14.5 feet from the lake and 14.5 feet from the road right of way and a 24 ft by 30 ft garage. Nelson stated that the lake setback was to the survey pins, there is an additional four (4) feet to the lake. Jeff Nelson stated that they want to gain storage because the cabin is so small. J. Nelson also stated that they are flexible as to the size that could be placed on the lot.

Chirpich stated that the Board has been holding to the 20 ft setback from the road right of way for safety. Chirpich added that they have to look at the use of the building should the property change ownership. Chirpich stated that the 20 ft setback allows for a vehicle to park in front of the structure and still be off the road right of way.

No one spoke in favor of the application. Gail Hahn, Lake View Township, spoke against the application. Hahn stated that the Township wanted the structure 20 feet from the driving surface of the road due to the fact that the snowplow has a ten (10) ft wing and needs room for snow removal. There was no written correspondence either for or against the application. At this time, testimony was closed for the Munson application.

Nelson then explained the application for the Lake Sallie project. They would like a garage to be able to store their equipment. The new garage would go over the existing parking area. Chirpich questioned where the entrance to the garage would be. Nelson stated that it would be directly off the road. Spaeth questioned if the proposed garage was to be six (6) feet from the road right of way. Nelson stated that was corrected and that it would be sixteen (16) feet from the black top. Nelson stated that he could show numerous structures that are closer than that to the road.

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

Chirpich stated that there was eight (8) feet between the cabin and the garage. If they were attached, it would put the garage further from the road. Nelson stated that it was required to be forty-five (45) feet from the road if it was attached. Spaeth stated it could be attached and get a different variance. Chirpich stated that the twenty (20) ft setback is for safety, to park a vehicle in front and be off the road right of way and for snow removal. Nelson stated that this was the starting point and they could change the size. J Nelson stated that their trailers are 26 ft long, so a garage would have to be large enough to accommodate that size.

Spaeth stated that the Board received copies of similar variances in the general vicinity of this lot that have been denied. The adjacent property had applied for a variance for a deck and storage shed. The variance for a storage shed was denied and the deck was reduced to a ground level patio. Spaeth stated that four (4) variances would be required to allow a structure on the Munson Lake side.

Sherlin stated that if the applicant was open to suggestions, the applicant could table application and come back at any time without paying another application fee. Sherlin further stated that he could not support the Munson Lake variance request because it was too close to the road and in the shore impact zone. Spaeth stated that reasonable use for a lot like this may be an access to use the lake and for a dock. Sherlin stated that this is not a reasonable use of the property. Chirpich felt that Nelson should be given a sense of what has been approved or denied in that area so he could reconsider his application. Sherlin stated that the Board did approve two garages on that road, east of this property toward the DNR Headquarters, both at fifteen (15) feet from the road right of way with access to the garages parallel to the road, not directly off the road. The Board also denied a variance for a garage closer than twenty (20) feet from the right of way on Bad Medicine Lake. This request was in a very remote area, but due to public safety, it was

denied. Moore felt that storage structures are not compatible with the residential use. Moore stated that he could support a garage on the Lake Sallie side.

Spaeth explained that Nelson had the right to table the application. Nelson questioned if he should table just the Munson Lake application. Spaeth and Sherlin stated that he could table part of the application or the entire application. Further discussion was held regarding the tabling of the application and suggestions that could be considered. Nelson stated that this property is not sellable or useable. Chirpich stated that Spaeth had eluded to the fact that reasonable use may be for a dock and access to the lake.

MOTION: At this time, Nelson asked to table the application.

Spaeth stated that Nelson needed to contact the Zoning office as to when he needed to have the new information submitted in able to be placed on the agenda. Sherlin stated that the Board could not design the structure for him. Nelson stated that he did not want to keep tabling and having to come back before the Board. Spaeth stated that the Board has given him guidelines of twenty (20) feet from the road right of way and out of the shore impact zone. Spaeth further stated that Nelson could contact the Zoning Office about other variances either in the general vicinity or similar to this request. Spaeth stated, however, that the Zoning Office could not design the structure for him or tell him how the Board would vote.

THIRD ORDER OF BUSINESS: APPLICANT: Lawrence and Jacqueline Ibach 1408 4th Ave E West Fargo, ND 58078 Project Location: 16052 Saign Lane LEGAL LAND DESCRIPTION: Tax ID number: R020288000 Little Cormorant Block 003 Lots 1 and 2 Blackhawk Mt Beach 1st Addition Section 32, TWP 139, Range 42 Audubon Township. APPLICATION AND DESCRIPTION OF PROJECT: Request a Variance to construct a dwelling 10 feet from the road right of way and 71 feet from the ordinary high water mark of the lake, due to the substandard sized lot of record.

Jacqueline Ibach and Joe Shriver, son-in-law, explained the application to the Board. They are requesting a variance from the lake and from the road in order to remove the existing trailer and replace it with a 1380 sq ft home with pervious decks and patios. A design was submitted for a new septic system, lot coverage would be at 21% and they have a mitigation plan. First they were told they could build up to the road and then later told it was too close to the road. Shriver presented a storm water plan that they are willing to implement.

The Board discussed the application, which included the setbacks, if a string line could be established, storm water plan and mitigation and the number of people on this road.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from Audubon Township in favor of the application. At this time, testimony was closed and further discussion was held.

Moore stated that this is an off the record situation, doesn't meet normal criteria and the neighbors don't have any objections. Sherlin stated that these are substandard lots that created the hardship, but are large enough to do something with. Sherlin stated that the road in question is a restricted drive, which may be public, but is not comparable to a township road. The restricted drive is more like an easement.

MOTION: Moore made a motion to approve the variance. Chirpich second.

Sherlin suggested that substandard size lot and shape of the lot be added to the findings and the stipulation that the storm water management plan submitted at the hearing be added to the motion.

Moore amended his motion to say: Approve a variance to construct a dwelling 10 feet from the road right of way of the restrictive drive and 71 feet from the ordinary high water mark of the lake due to the shape of the lot and the fact that the lot is a substandard sized lot of record with the stipulation that the storm water plan submitted at the hearing be implemented. Chirpich second. All in favor. Motion carried.

At this time, Spaeth recessed for a short break and reconvened the meeting within fifteen (15) minutes.

FOURTH ORDER OF BUSINESS: 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.

Steve and Arlene Hanson explained the application to the Board. They would like the deck to remain for liability and safety concerns. There is a bank going to the lake and there are lots of little kids at their place. The deck is a safe place for them to play and prevents erosion of the bank and improves the property. Their cabin is the oldest cabin on the lake. The deck was given to them and they added the railing after the deck was in place. They stated that it wasn't smart on their part, but they got caught up in the moment. Since then, they have received several compliments on the deck.

Spaeth stated that a neighbor had spoken to them at the tour meeting. S Hanson stated they made a mistake.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence on file. Spaeth asked Gail Hahn, Lake View Township, if the Township had any comments. Hahn stated that the County could handle this application. At this time, testimony was closed and further discussion was held.

Sherlin questioned what the exact variance would be for – all in the shore impact zone or ahead of string line. Moltzan explained that the lot does not meet the criteria for a water oriented structure, so the variance would be the setback from the lake and ahead of string line. Sherlin stated that the Hansons were present during the earlier discussion about Munson Lake. The required setback is 100 feet and shore impact zone is 50 feet. A deck is a structure; this structure is in the shore impact zone and does not meet the criteria of a water-oriented structure.

Spaeth questioned the Hansons as to whether or not they considered a fence or safety railing at the top of the bank. A Hanson didn't know if that would be allowed and did not know how it would look from the lake.

Moore questioned the setback on Munson Lake because a letter in the file indicated that the setback was 75 feet from the lake and questioned if the deck could be allowed if it were six (6) inches or less above the ground. Moltzan stated that the required setback on Munson Lake is 100 feet, the letter contained a mistake and that the six (6) inch rule was removed from the Ordinance during the ordinance revisions. Chirpich stated that if the deck was pulled up to the cabin, then the deck would be out of the shore impact zone. Chirpich stated that if safety is the concern, a railing or fence could be installed; but if they wanted a deck, it needed to be out of the shore impact zone.

Spaeth informed the Hansons of their option to table the application and come back before the Board with a different proposal. Chirpich further stated that any suggestions tonight would not be a guarantee at the next meeting. Spaeth suggested that they consider mitigation on water control to the lake.

Chirpich and Sherlin stated that this is a tough and small lot. Sherlin stated that the intention of the Ordinance is to get further from the lake and out of the shore impact zone, which would mean at least 50 feet from the lake.

MOTION: At this time, the Hansons asked to table the application.

FIFTH ORDER OF BUSINESS: 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.

No one was present to explain the application. Spaeth suggested moving this item to the end of the meeting.

SIXTH ORDER OF BUSINESS: Les and Diana Helgeson 305 24th Ave N Fargo, ND 58102 Project Location: 17247 N Leaf Lake Rd LEGAL LAND DESCRIPTION: Tax ID number: R171325000 Leif Lake White Oaks Beach Lot 2 Block 1 Section 06, TWP 138, Range 42 Lake Eunice Township. APPLICATION AND DESCRIPTION OF PROJECT: Request an after the fact Variance to allow a deck to remain 72 feet from the ordinary high water mark of the lake and ahead of neighboring structural string line, due to an undemonstrated hardship of the property.

Diana Helgeson explained the application to the Board. The deck on the lakeside is not attached and she was told that as long as the deck was not attached, she did not need a permit. Then the County contacted her saying she needed a permit and could only have a 4 ft by 6 ft landing. She bought this deck thinking it was 4 ft by 6 ft, but it turned out to be a 9 ft by 12 ft.

No one spoke in favor of the application. Deboraha Mattson stated that she came to the meeting opposed to the deck, but since has changed her mind. If a deck were allowed, it would not impact the lake. Mattson further stated that the Helgesons knew the specific regulations when they built and exceeded them, but a deck would make the place look nicer. Joe Lightowler, Lake Eunice Township, stated that the Township was opposed to the application. Lightowler stated that the deck currently was placed with the longest section going toward the lake. There was no written correspondence either for or against the application. At this time, testimony was closed and further discussion was held.

Spaeth stated that there was a variance to place the house at the string line and they put the new house at the string line and did not allow for a deck. Now they want to expand closer to the lake. Moltzan stated that the original variance request was to be 64 feet from the ordinary high water mark but it was denied because no variance would be needed to build at the established string line. Spaeth questioned the size of the deck. Helgeson's measurement was 6.5 ft by 9.5 ft, the Board measured 7 ft by 8 ft with the deck extending toward the lake 8 ft, and the application states 8 ft by 12 ft. Helgeson stated she included the steps. Chirpich stated that the placement of the steps was insignificant. Spaeth and Chirpich stated that the Ordinance allows for a 4 ft by 6 ft landing without a variance. Helgeson stated that a chair could not be placed on that size of landing. Chirpich stated that a 4 ft by 6 ft landing would allow ingress and egress to the structure. Spaeth stated that he could not see a hardship of the property.

Moore stated that he would be abstaining from this application because he could not recall which site it was.

Sherlin stated that he failed to see a hardship and could not support the variance. Sherlin stated that the applicant knew about the established building line and a previous variance request was denied. Sherlin further stated that the County Attorney has been involved to get this issue resolved. Sherlin stated that he might reconsider if there was a trade off by removing the deck and shed by the lake.

MOTION: Sherlin made a motion to deny the variance to allow a deck to remain 72 feet from the ordinary high water mark of the lake and ahead of neighboring structural string line based on the fact that there was no hardship of the property. Chirpich second. All in favor except Moore, who abstained from the vote.

SEVENTH ORDER OF BUSINESS: 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.

No one was present to explain the application. Spaeth questioned what procedure was to be followed when an applicant did not show up. Moltzan explained the 60-day rule and with the application acceptance date and the date of the next meeting, the application could be tabled by the Board or they could act on the application tonight.

Sherlin stated that the applicant was present on the property during the site visit. Spaeth stated that something could have come up to prevent them from coming tonight.

MOTION: Chirpich made a motion to table the application until the September 2009 meeting to allow the applicants a chance to represent themselves. Moore second. All in favor. Motion carried.

EIGHTH ORDER OF BUSINESS: Informational Meeting. The next informational meeting is scheduled for Thursday, September 3, 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. Chirpich second. All in favor. Motion carried.

Steve Spaeth, Acting Chairman

ATTEST

Patricia Swenson, Zoning Administrator