

**Becker County Board of Adjustments
November 12th, 2009**

Present: Members: Jim Bruflodt, Steve Spaeth, Al Chirpich, Jerry Schutz, Merle Earley and Bill Sherlin.
Zoning Staff: Debi Moltzan and Julene Hodgson

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

Minute approval: The October minutes were discussed. The motion in the Fourth Order of Business was to include: **Chirpich second. All in favor. Motion carried for denial.** The motion in the Fifth Order of Business was to include: MOTION: Spaeth made the motion a Variance be denied due to the hypothetical nature of the application with no definite site plan for the property proposed **and since the lot was created after the adoption of Zoning it made a non-buildable lot.** Chirpich second. All in favor except Moore. Motion carried for denial. Spaeth made a motion to approve the minutes as corrected from the October 8th, 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:

None.

At this time Al Chirpich stated to Chairman Bruflodt that he would not participate in items #1 and #5 due to past history with these applicants. Bruflodt accepted Chirpich stating he will reclude himself from voting or participating.

NEW BUSINESS:

FIRST ORDER OF BUSINESS: APPLICANT: Patricia Potts 9090 McColl Drive Savage, MN 55378
Project Location: 38724 Height of Lake Rd LEGAL LAND DESCRIPTION: Tax ID number: **R150073000**
Height of Land PT of Govt Lot 2:Comm MNDR Cor #28 on E LN; Section 10, TWP 139, Range 39,
Height of Land Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to allow a lot line adjustment due to an existing septic system encroachment on a substandard lot of record.

Carl Malmstrom explained the application to the Board. He was speaking on behalf of the applicant and Rick and Kim Bergley regarding the application. Those with interest share a common lot line, with the septic system drainfield of Bergley's encroaching over the lot line into Potts property. Potts is willing to sell the area with the drainfield on it, and gain a portion of lake frontage in return. The 1999 survey subdivided the Potts property into 2 lots of record, with a new survey drawn now to show the proposed changes. The 1999 survey created tracks of land still larger than many tracks of land in the area. Tract B met the criteria for a standard sized parcel with Tract C falling short of shoreline, but met the criteria for lot area for a standard sized lot. The new survey proposed would meet the lake width measurement, but then would fall short for lot area. The new proposed lot would still have a large buildable area so it would not create the need for any future Variances, the setbacks could be met. The standards talk about practical difficulty, which Malmstrom felt this is the case. Malmstrom stated it would be a good resolution with a problem not caused by the current owner. Spaeth asked if anyone had determined the exact location of the drainfield to see if indeed it is encroached over the line and not perhaps just up to the side lot line, to which Malmstrom stated they did not obtain new information as to where exactly the drainfield ends. Spaeth asked if a recent certificate of compliance has been conducted on the existing septic system to show if it is still compliant and the Bergleys answered no, nothing recent has been conducted to check the system. Bergleys stated the system is working to the best of their knowledge at this time. They stated it was designed as a larger system for the resort that was previously there before they purchased the property. Spaeth asked all parties present why an easement could not be written up between the owners to which

Malmstrom stated these are significant property rights that are in question and this is the agreement they have to present at this time.

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. Shutz stated although it is presented as an inconvenience to look at an easement, he would hate to see a lot area cut down 5,000 sq ft. Sherlin stated it is hard to approve a Variance based on a septic system with a limited life span versus an easement. Sherlin stated they went to some length in 1999 to make two lots as compliant as possible with width and size, he doesn't think the Board should now create a substandard lot (in area) for a limited life span of a septic. Spaeth stated the current system could also be moved, or create an easement for the present system until some day a new one has to be designed.

MOTION: Spaeth made a motion a Variance be denied as proposed on the above property due to the request would create a substandard sized parcel in lot area and there are other alternatives for the septic system as in a recorded easement or relocation. Sherlin second. All in favor. Chirpich did not vote. Motion carried.

SECOND ORDER OF BUSINESS: APPLICANT: Scott Lembke 27290 Little Floyd Lake Detroit Lakes, MN 56501 Project Location: 27290 Little Floyd Lake, Detroit Lakes, MN 56501 LEGAL LAND DESCRIPTION: Tax ID number: R080891000 Little Floyd Ernie's Beach Lots 3-5 Section 11, TWP 139, Range 41 Detroit Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request an after the fact Variance to continue the construction of additions onto an existing nonconforming dwelling located ahead of existing neighboring stringline due setback issues of the existing dwelling.

Scott Lembke and contractor Lawrence Howard explained the application to the Board. They would like to construct a new basement foundation with additions onto the existing dwelling. Brufloft asked if the construction or additions were permitted to which Lembke answered no. Lembke stated because the addition was only going out as far as the existing structure and not any closer to the lake, they did not know they needed a permit. It was not their intent to do anything wrong. Chirpich asked Howard how long he has done business in Becker County, to which he stated since 2000. Brufloft stated there was a lot of land alteration done on the property, to which Lembke stated when they upgraded the septic area they brought more fill onto the property in between him and the neighbor. Spaeth stated the land alteration is to be handled between the Zoning office and the property owner. Spaeth asked Lembke why he thought they should grant the Variance to place the structure back down ahead of the stringline, when the owner could move the structure back to make the dwelling conforming. Lemke stated when they started plans of making the dwelling larger, the plan all involved around placing it back in the same location on the existing basement and slab area with the additions added onto the existing, they did not think about where the existing actually was in accordance to the neighboring dwellings. They felt the plan they had was the least intrusive to enlarge the existing dwelling. Sherlin stated that when out on the site it appeared if the dwelling was moved back, it would only have to be moved approximately 10 feet to be behind the stringline, which is best for the lake environment to get some of these dwellings further back from the lake. Chirpich stated the owner wouldn't think to move it back because of not knowing the regulations. Spaeth asked if there was an existing poured patio in the back area where the new blocks/wall has been constructed, Lembke stated yes. Sherlin asked Lembke if he understood why he had to apply for the Variance and Lembke stated yes, the dwelling is out of the shore impact area, but ahead of the neighboring stringline. Spaeth asked if Lembke had any plans for a future deck constructed onto the front of the dwelling and Lembke stated no. Spaeth stated if he moves the dwelling back to be behind stringline, he would have to move it back further to compensate for any future deck because a deck is considered part of the dwelling. Otherwise only a landing with stairs to the side could ever be constructed onto the front. Sherlin asked if Lembke thought of moving the structure back and utilizing the wall that is already in place, Lembke stated he did not know if this could be done. Spaeth stated the Board is looking at this application as an after the fact and should be looking at it as: would they have considered granting such a request if it would have come before them prior to the start of construction- where is the hardship of the property when there is room to move the structure back. It can still easily be accomplished- being it is currently up in the air. The Zoning staff explained the state law

regarding expansion to nonconforming structures. The additions would be considered expansion, so a permit cannot be granted when the structure is located ahead of neighboring stringline. Brufloft stated to the applicant that he could table the application to think about his options of moving the dwelling back that would not require a Variance on the property, or if he has any other ideas he could bring back to the Board.

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. Sherlin stated the dwelling should be moved back, the practical difficulty is financial only, is not sufficient enough to go against the Ordinance and there is plenty of room to move back. One of the additions will be expansion on lakeside and moving the structure back would bring the property into compliance. Shutz stated if the applicant would have come before with the same request he couldn't have agreed with it, would agree the structure would have to be moved back. **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 if needed.**

THIRD ORDER OF BUSINESS: APPLICANT: David Lysne PO Box 17006 Reno, NV 89511 Project Location: 20735 Co Rd 117 LEGAL LAND DESCRIPTION: Tax ID number: R330100000 Big Toad Lake N 2 ac of Lot 1 Section 09, TWP 139, Range 38 Toad Lake Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to locate a 12x40 park model onto a 12x40 permanent pad located 35' from the County rd ROW due to wetland issues. Previous Variance allowed a 12x30 permanent pad located 45' from the County Rd ROW.

Dave Lysne explained the application to the Board. A previous Variance was approved for the property to allow a 12x30 pervious area, now Lysne is requesting a 12x40 area for a park home. The application would equal less than 1% lot coverage. Lysne stated the 12x40 park homes were more attractive and appealing. Sherlin asked if the applicant will place a 12x30 park model on the site if this request is denied, to which the applicant stated most likely. Chirpich stated the original Variance granted an area if 12x30, nothing further, but upon inspection of the property during the tour, it was noted a walkway has been added around the area so it exceeds the size allowed. Lysne wasn't aware the pavers could not be installed until the work was completed. He stated the reason for the Variance request was the wetland issue and stated he was in error of installing the patio pavers. He stated the area would be placed back into grass to bring everything into compliance if the Board would grant him the new Variance with everything behind the 35ft from the ROW requested. Chirpich stated the applicant had said he planned to pull an RV in and out of the property seasonally, now this would be more permanent. Lysne stated he went into the Zoning office which granted him a structure permit to place a 12x30 park home in the footprint that was approved, but he wanted to go in front of the Board to see if they would allow a larger area- knowing that if the Board denied the request, he would still have the previous Variance in place. Lysne stated he understands the property is limited and in violation with the pavers, he didn't realize until after the fact of when they were installed. Lysne stated a lot of time has gone into the improvement of the property and the larger size area would give more function and options for the property. Chirpich asked if the property was up for sale and Lysne stated he had a high price on the property and everything is for sale for the right price, but things change and he doesn't know if he would sell the property at this time or not.

No one spoke in favor of the application. No one spoke against the application. Written correspondence where received from William and Margaret Lauritsen, Fred Tuominen, David Laine, and Becker County Highway Department Brad Wentz. All letters were read by Moltzan and where opposed to the applicants request. Lysne wanted the opportunity to comment on the letters that were in the file- to which the Board granted his request. Lysne stated the Lauritsens concern of the wetland is not an issue, he has seen no impact and the entire size of the parcel is 2 1/2 acres with the footprint area requested being very small. Lysne stated the wetland was a previous pasture and he feels his impact is less than that of the cattle waste. Lysne stated the property has a holding tank installed for the sewer system so this is not an issue and he has kept the site clean and mowed. Lysne stated the Co Hwy dept has concerns of parking in the ROW and he moved the truck that was parked there. The dock was parked there temporarily, and that has also been removed. Lysne stated two of the letters said it is an economic hardship with wanting to place something bigger on it to then sell, he disagrees and said the hardship is the wetlands. Lysne stated this would be the

last thing approved on the property and he felt the traffic is not an issue. Lysne said his property is surrounded by Laine property and he has had previous issues with Richard Laine and once again there will be nothing parked in the ROW even without the Variance approval. At this time, testimony was closed.

Further discussion was held by the Board. Spaeth stated they should deny the request due to the first Variance giving reasonable use of the property. Sherlin asked if the original was granted for a permanent structure and wondered if the Board should clarify the previous Variance if the intent was for an RV only—something to come on and take off. Moltzan stated although it was discussed in the minutes during the last Variance, it was not specifically stated in the motion that the 12x30 area was to allow an RV only. Sherlin wondered if they should clarify to state an RV site only with 12x30 pervious footprint, nothing larger, with no pavers. Chirpich stated they should deny the request with no change from the original Variance, which would allow a 12x30 area only, for something on the property. Early questioned again, should they change it to read RV or something mobile only, not a permanent structure. Chirpich stated the park models are licensed and would be looked at no different than if an RV permanently sat on the property without removing seasonally.

MOTION: Chirpich made the motion that the Variance be denied as proposed on the above property due to the original Variance granted May 10, 2007 for a pervious 12x30 footprint located 40 feet from the ROW gives reasonable use of the property due to wetland issues. Spaeth second. All in favor. Motion carried for denial.

FOURTH ORDER OF BUSINESS: APPLICANT: Winona LaDuke 31446 E Round Lake Rd Ponsford, MN 56575 Project Location: 31446 E Round Lake Rd LEGAL LAND DESCRIPTION: Tax ID number: R250476000 Round Lake Lot 7 Bayport Shores Section 18, TWP 141, Range 38 Round Lake Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to construct a Solar Panel 10 feet from the ordinary high water mark of the lake, due to an undemonstrated hardship of the property.

Winona LaDuke explained the application to the Board. LaDuke is the owner of several lots that are wooded and wants to place solar panels on the property. LaDuke wanted to place them on the roof of the new dwelling being constructed, but the energy people from Sebeka that checked the property did not feel it could go on the roof with the best place identified on the shoreline. They stated it would be the only place suitable without cutting down trees and LaDuke wanted to keep as many trees as possible. (At this time another picture was given to the Board members as an example of what it would look like on the shoreline.) Chirpich asked if it could go on the other lot, back from the shoreline to be out of the shore impact zone area, LaDuke stated she thought this would still require tree removal. The Board asked the definition of a water-oriented structure and a structure, to which Moltzan read them for the Board out of the Ordinance.

No one spoke in favor of the application. No one spoke against the application. There where letters of correspondence on file from Kay Grignon, Ruth Bergquist, and Art and Mary Diercks read to the Board by Moltzan. (A letter came after the hearing from Jim and Sharon Kemp that was not read to the Board) At this time, testimony was closed.

Further discussion was held by the Board. Brufloft stated he has a problem with site pollution on the shoreline and wonders if all options where weighed on the property. Chirpich stated this sets precedents for others to come. Chirpich stated if this is considered a structure, we have not been allowing new structures to be constructed in the shore impact zone area. Sherlin read the hardship statement regarding solar energy and asked interpretation to which some of the Board members agreed there where other options for the property and this did not pertain. Spaeth stated removing trees might not work if neighbor's trees also have to be removed. Spaeth thought it rotated, but was corrected that it does not rotate, it is set on an 8 foot pole so it is not as high as it sounds, possible reason for granting could be because of not wanting to remove trees. Schutz asked if another type could be placed on the roof, not just this style. Spaeth stated there could be a stipulation attached to the Variance requiring the shoreline to stay natural. Chirpich stated maintenance of trees and shoreline preservation must be given some weight regarding request. Schutz stated we are not the Board to want to set precedents, we deny things in the shore impact zone on a continuance basis and have not considered trees as a hardship in the past. Schutz stated what if the next applicant wants a windmill for solar energy 10 feet from the OHW of Pickeral lake, are we to grant this. Chirpich and

Brufloft agreed that this could open up the interpretation of a structure to try to place anything right up on the shoreline. Chirpich reminded the Board how harsh they have been on applicants regarding things located in the shore impact zone and denials based on this. Chirpich stated maybe it could be placed on the other lot at least the 50 ft back from the shoreline. Brufloft stated normally a request for a Variance varies away from a setback, it does not go against the laws of the Ordinance altogether. Schutz asked if across the road was an option, to which the applicant stated they had not pursued that option. Chirpich stated it should be denied in as much as there is not enough of a property hardship to allow a structure in the shore impact zone area. Schutz agreed but wanted to assure the owner that this should in no way discourage the use of solar energy but to reaffirm that if there is another property option the owner should pursue it.

MOTION: Chirpich made a motion a Variance be denied as proposed on the above property due an undemonstrated hardship of the property to allow a new structure to be located in the shore impact zone. Schutz second. All in favor for denial except Spaeth and Sherlin. Motion carried for denial.

FIFTH ORDER OF BUSINESS: Ron McMartin PO Box 310 St Thomas, ND 58276 Project Location: 41106 Co Rd 126 LEGAL LAND DESCRIPTION: Tax ID number: R280212000 & R280197000 Island Lake Lots 4 and 5 Section 30, TWP 140, Range 38, Shell Lake Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to construct a 1196 sq ft two story water oriented structure 25 feet in height with water supply and sewage disposal facility due to an undemonstrated hardship of the property. The request deviates from Section 3 of the Becker County Ordinance.

Eric Brown of Land Elements and Floyd Jenson of Northside Construction served as acting agent for the applicant to explain the application to the Board. The owner wished to analyze all property options with two of the property options being discussed tonight. The owner is requesting a Variance for a structure in sight of setbacks, which will be an opportunity to do something good for the lake because the owner is willing to forgo any future development of the property if the application is approved as proposed. Eric explained that the 2nd option if the Variance is denied is to subdivide the property. The current proposal is for 5.1% lot coverage and the shoreline is almost 14,000 linear ft. The structure is proposed 25ft from the OHW with the canopy maintained. The structure design is to add to the artistic nature of the property and the owner will store boats inside. Brown stated there was no land hardship for the request but feels the hardship would be the loss of keeping the natural shoreline and large property if not granted. There would be more density proposed if individually owned and the boathouse would be less of an impediment than the development of the property. Brufloft asked if the plan was to excavate the 8ft or more berm area out and Brown answered yes. Brufloft asked if they weighed the option of making application to place the structure at the required 100 ft setback that would not require a Variance and Brown stated no. Brufloft said they could then construct the structure as they wish and port the boat to the nearest landing. Brown stated the owner would relocate the present cabin out of the shore impact zone area as part of the proposal if the Variance were granted. They plan to modify the design of the structure to accommodate stormwater to go back onto property and away from the lake. Sherlin asked if other dwellings on the property would stay, because this structure seems to be a dwelling versus a boathouse.

No one spoke in favor of the application. Marietta Keenan (Island Lake Assn and Cola Rep for Island Lake), Terri Kalil and Emma Thompson spoke against the application. Keenan stated when the request was proposed to them, they felt coerced with the feeling that if they don't agree to the proposal the owner will subdivide the property. She stated that this is not a threat if they go through the proper channels with Zoning and the Planning Commission for subdivision and all the wetlands are considered during the process with possibly shoreline conservation. The property has been left natural, Keenan stated she would hate to see the shoreline area dug up and that this structure should not be allowed. Thompson's stated there is plenty of room for this type of structure to meet the required 100 ft setback and the request doesn't meet any of the criteria of a water oriented structure nor is it in harmony of the Ordinance. Emma stated this would cause a negative impact from the excavation, erosion and phosphorus. Kalil stated some of the same concerns of the others and included that this is not the Board that needs to look at any proposals for subdivision. 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. Brufloft stated the request was in excess for a structure to fall under the water oriented structure criteria. He affirmed the request in front of the Board was regarding the boathouse only and has nothing to do with thoughts of future subdivision. Spaeth stated even if they could place stipulations on the property (as in no subdivision) we have not allowed new structures to be constructed in the shore impact zone area that do not meet the criteria of the Ordinance. He further stated there is no hardship of the property to grant the Variance request because there is adequate room for a structure like this to make all property setbacks. Sherlin agreed there are many other options for the property.

MOTION: Sherlin made the motion a Variance be denied as proposed on the above property due to an undemonstrated hardship of the property and the request does not meet the criteria of a water-oriented accessory structure. Spaeth second. All in favor. Chirpich did not vote. Motion carried for denial.

SIXTH ORDER OF BUSINESS: APPLICANT: Randall Kremer 1706 32 St South Moorhead, MN 56560 Project Location: 33152 S Cotton Lake Rd Rochert, MN 56578 LEGAL LAND DESCRIPTION: Tax ID number: R100577000 Cotton Lake Cofell Beach Lot 3 Section 11, TWP 139, Range 40 Erie Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request an after the fact Variance to allow an addition to remain onto the rear of an existing cabin located 45 feet from the ordinary high water mark of the lake in the SIZ due to the existing cabin setback issues. This deviates from the required 100 ft setback.

Randall Kremer explained the application to the Board. The existing cabin and bunkhouse were constructed on the property in the late 50's early 60's and Kremer connected the two with a small addition in between them. The entire cabin is now 750 sq ft with the lot coverage at approximately 20%. Kremer stated there had been an existing deck between the two structures, which he removed and placed the walls and roofline to tie everything into one. The addition does not encroach into the shore impact zone area and the existing cabin front is behind stringline. Kremer stated although the existing cabin front is a little into the shore impact area, nothing was structurally done to this structure, but this would have required him to apply for a Variance regardless if it would have been before or after the construction. Kremer upgraded the septic system for the property with a new holding tank. There are existing downspouts turned away from the lake on the entire structure and a natural berm exists on the shoreline. Kremer stated he is willing to do something further concerning any runoff from the driveway area.

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.

Brufloft stated other cabins along the shoreline are all relatively in the same location and this is behind the stringline of the neighboring structures, and barely in the shore impact zone area. Chirpich reminded the Board that there was a previous existing deck already tying the two structures together and decks are considered part of the structures regarding setbacks. Spaeth stated if they came in front of the Board with the request beforehand, they may have approved the request because of the deck and not doing any work to the existing cabin in front of that area. Chirpich stated they could place something on the property stating if anything were to happen to the addition, nothing could be replaced in the same location, but the entire property is restricted in depth measurement. Schutz stated he would like to see the owner work even more with Planning and Zoning to mitigate the stormwater runoff although there is a natural berm with possibly a vegetative shoreline buffer area and containment of the runoff from the driveway area. Chirpich agreed, but how much area would be placed back into natural plantings, to which Schutz stated 35%.

MOTION: Schutz made a motion a Variance be granted to allow an addition connecting the two cabins to remain on the rear of the existing main cabin with the stipulation that stormwater management is to be implemented which is for runoff and 35% of the shoreline must be restored into natural/native vegetation and remain with the property. Chirpich second. All in favor. Motion carried with stipulations.

FINAL ORDER OF BUSINESS: Informational Meeting. The next informational meeting is scheduled for Thursday, December 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, Spaeth made a motion to adjourn the meeting. Chirpich second. All in favor. Motion carried.

Jim Brufloft Chairman

ATTEST

Patricia Swenson, Zoning Administrator