

**Becker County Board of Adjustments
May 13th, 2010**

Present: Members: Jim Bruflodt, Al Chirpich, Jerry Schutz, Kip Moore, Lee Kessler, and Bill Sherlin.
Zoning Staff: Administrator Patty Swenson and Julene Hodgson

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

Minute approval: The November minutes were discussed. Schutz made a motion to approve the minutes from the November 12th, 2009 meeting. Chirpich second. All in favor. Motion carried.

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

OLD BUSINESS:

None.

NEW BUSINESS:

1. **FIRST ORDER OF BUSINESS: APPLICANT: Paul Hansen** P.O. Box 251 Annandale, MN 55302 Project Location: 11020 W Lake Eunice Rd LEGAL LAND DESCRIPTION: Tax ID number: R170320001 Lake Eunice Pt Govt Lot 5; Section 34, TWP 138, Range 41, Lake Eunice Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request an after the fact Variance to allow a side deck to remain located 7.3 feet from the side property line and a 14x18 deck to remain 10 feet from a bluff due to an undemonstrated hardship of the property. This deviates from a required 10 feet side property setback and a 30 feet bluff setback.

Paul Hanson explained the application to the Board. He purchased the property in 2006 and the decks that are on the dwelling were existing, with nothing added/constructed on the property since purchase. Chirpich asked Paul if he owned lakeshore property before and if he knew of lakeshore regulations. Sherlin asked Zoning to clarify the application request. Hodgson clarified the existing side deck was constructed too close to the property line and both front decks are to be considered in the variance proposal because the closest deck located in the bluff impact area is above grade not a ground level deck- so it would also require an approved Variance to remain. The pictures brought into Zoning showed/appeared as if it was more of an in-ground landing, but it is only in-ground on one small area- the rest is an above ground deck. Chirpich asked if the previous owner discussed with Hanson that he thought all permits were in place or that he thought no permits were needed or that he did not know the regulations to which Hanson said the previous owner said he was not aware that anything was done incorrectly at the time the decks were constructed.

Dave Burd spoke in favor of the application. When he constructed the dwelling the only decks that were placed on the property were the rear/road side deck and the side deck with steps. The next year Dave hired a retired architect to construct the decks. Dave never questioned anyone concerning permits or regulations. The contractor did not take out any trees, preserved what foliage he could and the decks cannot be seen from the lake. The natural berm drains back into/away from the lake. Neither neighboring property can see the decks. Dave stated reasonable use should be to enjoy the lake and that the deck is not impacting the soils. The house is guttered at lakeside and diverted away from the lake. Chirpich asked what was originally approved on the dwelling permit for decks to which Zoning stated 150 sq ft to the rear of the dwelling was approved- nothing else shows on the site plan or application.

Gerald (Fritz) Zirbel spoke in favor of the application. He stated the property was brutal/impairing and difficult to construct on with the topography. If just a landing were placed on the side, not the catwalk with steps it would drop down dramatically and would be hard to construct. The property in general was hard to construct on with the bluff, dwelling, well and septic all trying to make the setbacks. He stated he thought the hardship of the topography should be considered and removal might do more harm than good.

He agreed with Dave that it was not detrimental to the lake or hindering to neighbors, but agrees more questions should have been asked prior to construction.

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. Board member Spaeth, who was not present, had emailed his comments to the Board. Brufloft noted that although decks are beneficial to enjoy lakes, the bluff areas are protected and taken very seriously to keep from any bluff failure. Schutz stated if the request would have come to the Board before construction, past precedence would have been the denial of such a request. He stated there are not a lot of other options to bring the property into conformity. Everything proposed is within the 30 feet bluff setback, which shows the dwelling was built as close as it could be and should not have been constructed so large- to then accommodate a lakeside deck without a Variance placed on the property. Schutz again referred to the bluff areas being taken seriously by the Board and regulations are what they are. Chirpich stated if it had not been for the property information review through the assessors notes, this would have never come to light and looking through the guidelines he believes that being Hanson is the petitioner of the request, although someone should not have done it, he bought it in good faith and the deck was probably an enhancement advertised at time of sale. Chirpich stated if you again read the criteria of granting or denying a Variance, you could say yes to all. He stated maybe a Variance could be approved with stipulations/guidelines to eventually disappear. Sherlin stated again if the request came before the Board before the decks were constructed, the Board would have never approved the request. The bluff area is almost worse than the shore impact area, if it fails it is hard to restore. He agreed with Chirpich it is unfortunate for the current owner but felt you cannot grant a Variance to this owner only and not to the property itself for the next owner. Chirpich stated the berm helps with any runoff and he felt the current owner should not suffer. Chirpich asked Swenson if the Board where to grant something could they stipulate the decks would go away upon a new owner to which Swenson stated the approval makes the property non-conforming but the Board can place stipulations on anything they approved. Brufloft noted to the Board that once property is purchased the new owner gets everything that goes with the property even if this includes any property violations. Brufloft stated he would agree with the side catwalk, stairs and a small landing at the bluff but not the rest. Schutz agreed there should be more education pursued by the public, realtors and mortgage companies in reference to regulations. It cannot be excused by allowing it to remain. The Board discussed some variables and agreed it would be best for the property to leave the side but not the front structures. Kessler stated as a new member this was one of the first properties he was able to tour with the Board. He agreed if it would not be allowed if asked as a request today, then it should not be granted to remain. Sherlin stated again he did not feel it would be correct to grant a Variance to a specific person but not the property in general and regardless of the wording in an approval, the request should be denied except the catwalk side area that is needed for access. Moore stated he had sympathy for the owner who bought the property. Chirpich stated why not look at as extenuating circumstances for approval. Moore stated it is hard to regulate everything and Brufloft agreed it is not up to the Board to re-design this for the owner and to remember reasonable use.

MOTION:

FIRST: Schutz made a motion to grant a Variance to allow a side deck to remain located 7.3 feet from the side property line for access purposes due to the property topography. Sherlin Second. All in Favor. Motion carried to Approve.

SECOND: Schutz made a motion to deny a Variance to allow the decks to remain in the bluff setback area and bluff impact zone area due to an undemonstrated hardship of the property. The owners are allowed 18 months from the Variance date to bring the property into compliance. Sherlin second. All in favor except Chirpich. Motion carried to Deny.

2. **SECOND ORDER OF BUSINESS: Matthew Marotz** 12877 Co Hwy 39 Frazee, MN 56544
Project Location: 12877 Co Hwy 39 **LEGAL LAND DESCRIPTION:** Tax ID number: R110099003
NW1/4 NW1/4 S of Hw #87 Less S1/2 W1/2 SW1/4 NW1/4 NW1/4; Section 20, TWP 138, Range 38, Evergreen Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a

Variance to construct a garage 58 feet from a State Highway road right of way due to the topography. This deviates from a structure setback of 85 feet from a State Highway road right of way.

Matthew explained the application to the Board. He stated he wants to construct a shop/garage on the side of the dwelling closest to the state highway, but it does not make the highway setback. Chirpich asked the size of the property to which Matthew answered 14 acres. Matthew said he didn't feel there was anywhere else to construct the shop/garage. The property has low areas, other areas would require fill, on the other side of the house is an embankment and he did not want it close to the in-laws property. Sherlin reminded Matthew of the criteria to granting a Variance that was previously read. Chirpich asked if the reason for the request was mainly for convenience as written on the application to which Matthew stated yes. Chirpich asked if there was any other reason as in a hardship of the property to grant the Variance to which Matthew stated he didn't have one. He stated even if he downsized the structure, it would still require a Variance where he wants to construct it because the current dwelling is right at the setback from the highway.

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. Board member Spaeth, who was not present, had emailed his comments to the Board. Chirpich did not see a demonstration of a hardship of the property to grant such a request. There are other areas that would be suitable for a structure that would allow reasonable use and not require a Variance on the property. Sherlin agreed the property must define a hardship. Schutz agreed the owner has other options.

MOTION: Chirpich made motion to deny a Variance due to an undemonstrated hardship of the property. Sherlin second. All in favor. Motion carried to deny.

3. **THIRD ORDER OF BUSINESS: APPLICANT: Randall and Valerie Alland** Box 454 Hawley, MN 56549 Project Location: 35355 325th Ave LEGAL LAND DESCRIPTION: Tax ID number: R200386000 Strawberry Lake Govt Lot 6; Section 26, TWP 142, Range 40 Maple Grove Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to construct an addition onto an existing dwelling that is located 7 feet from the side property line, with the existing deck located 42 feet from the ordinary high water mark of the lake and ahead of the neighboring stringline structures, due to the substandard sized lot of record. The existing structure will not be altered and the proposed addition will be making the side yard setback, be located out of the shore impact area and behind neighboring stringline structures.

Randall (Randy) explained the application to the Board. This will be a year-around residence and he would like to construct an addition onto the existing cabin. The existing cabin was constructed approximately 1965. Chirpich stated that back when these older structures were constructed, they did not consider setbacks as they do now. Sherlin stated the existing cabin appears structurally sound to which Randy stated yes, they are going to just re-shingle and re-side the old cabin to match the new addition. Chirpich confirmed they are asking for the side Variance due to the existing cabin was constructed too close, but that the new addition would make the side yard setback on the opposite side of the property, to which Swenson stated yes and that the other part of the request was due to one corner of the existing cabin was located in front of the neighboring stringline. Moore asked if the vegetative buffer drawn on the site plan was already implemented to which Randy answered yes. Schutz stated that if the Variance is granted, gutters should be added to the entire structure and diverted away from the lake for stormwater management to which Randy stated that was in their plans. Sherlin stated there was lake access that was cut for dock purposes but the rest of the ice ridge remained intact and the shoreline was natural. Randy said there was some erosion in the last 10 years, but they have been trying to keep it as natural as possible. Brufloodt asked if they actively use the boat landing? Randy stated no, he had some landscape timbers at lakeside that could be removed, they are not permanent but they were generally used for canoes or small boat access. Moore stated that back then when surveys were conducted, they were not as accurate as they are today, so the side property line could be further away from the existing cabin. Randy stated he did locate the property pins and ran a string from the front to the back on the side and came up with the footage that required the 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. Board member Spaeth, who was not present, had emailed his comments to the Board. Chirpich stated he has no problem with the request as long as the mitigation proposed is implemented as far as the stormwater management to drain the water away from the lake and the vegetative buffer stays natural. He felt the landscape timbers should be removed with possible riprap replacement in that area. Brufloft confirmed the measurement taken to the corner of the existing cabin the day of the tour was 49'-50' with the proposed addition and porch going back further from the lake than the existing cabin. Sherlin noted there was a practical difficulty of the property due to the substandard size of the lot. There was a question of whether the front deck should remain or not, because that was located in the shore impact zone area and the original cabin was not to be altered.

MOTION: Sherlin made a motion to grant a Variance as submitted due to a substandard sized parcel and setback issues of the existing cabin with the stipulation the lakeside deck and shoreline timbers are to be removed. Schutz second approval with stipulations. All in favor. Motion carried for approval.

FINAL ORDER OF BUSINESS: Informational Meeting. The next informational meeting is scheduled for Thursday, June 3, 2010 at 7:00 a.m. at the Courthouse 3rd floor meeting room.

Sherlin addressed the Board regarding the role of Board members and enforcement issues of past Variance requests.

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

Jim Brufloft Chairman

ATTEST

Patricia Swenson, Zoning Administrator