

**Becker County Board of Adjustments**  
**August 12, 2010**

**Present:** Members: Acting Chairman Steve Spaeth, Al Chirpich, Kip Moore, Jerry Schutz and Lee Kessler.

Zoning Staff: Julene Hodgson

Acting Chairman Spaeth called the meeting to order. Julene Hodgson took minutes.

Minute approval: The July minutes were discussed. Under the motion area, the name Sherlin was in error, Spaeth made a motion a Variance be granted to construct a 7.5x16 addition onto the rear of the existing dwelling due to a substandard sized lot of record and setback issues of the existing dwelling. Schutz made a motion to approve the minutes from July 8th, 2010 with changes. Chirpich 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:**

**None.**

**NEW BUSINESS:**

**1. APPLICANT: Justin Jacobson** 23963 Pebble Beach Lane Detroit Lakes, MN 56501 **Project Location:** 23963 Pebble Beach Ln **LEGAL LAND DESCRIPTION:** Tax ID number: R190349000 Government Lot 3 and R191583000 Lot 11 Block 4 Pebble Beach, Section 18, TWP 138, Range 41, Lake View Township, Lake Sallie **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to construct a dwelling 68 feet from the ordinary high water mark of the lake, due to an undemonstrated hardship of the property. This varies away from a required 75 feet setback from the ordinary high water mark of the lake.

Justin Jacobson and contractor Keith Zitzow explained the application to the Board. The request is being asked due to wetlands on the lot and required setbacks. With the proposal of the size of the dwelling requested, one side would be 1' less and the other side 7' less than the required setback from the lake. Jacobson stated they do not want to be closer to the road, and if they move closer, he thought they would be too close to the existing detached garage. Chirpich asked how far the request is from the road right of way to which Zitzow said the proposal is 50'. Kessler pointed out they could move back 5' to be the minimum required setback from the road of 45' and gain footage on the lakeside. Zitzow stated the homeowner was afraid if he were closer to the detached, he would have trouble backing out of the garage toward the new attached garage. Kessler noted the owner Jacobson had stated he was trying to acquire more property from the neighbor, then the entire proposed dwelling could be placed to make all property setbacks. Jacobson stated he had recently spoken with the adjoining property owner and he is unwilling to sell any of his property at this time. Schutz asked what the required side property setback is, to which Hodgson answered 10'. Zitzow stated he designed the home for the owner like it is, not overly large. Schutz noted the design wasn't designed around meeting the property setbacks. Jacobson stated they did not know or ask what setbacks were in place when they requested/created the design.

No one spoke in favor of the application. Lakeview Township Supervisor Gail Hahn spoke against the application. She noted if the design was made a little different for the proposed dwelling and moved back, it would make the setbacks on the property without requiring a Variance. There was a letter against the application from the DNR that was read to the Board. 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. Schutz agreed if the dwelling were designed different or made smaller, it could make all property setbacks. Chirpich agreed that in light of the criteria to granting a Variance, yes there were economic considerations because of the work that was put into the design of the home and there are wetlands on the property, but this is a large property that has many options. If the owner designed something a little different the structure could make all setbacks and be designed to "fit" the lot. Moore stated this was a beautiful lot with room to place something there that would have a nice view and not require a Variance to be placed on the property. Kessler noted the same as the other Board members, the wetlands did not really play a factor because there is a large high area to construct on.

**MOTION:**

**Chirpich made a motion a Variance be denied due to an undemonstrated hardship of the property. Schutz Second. All in Favor. Motion carried for denial of the request.**

**2. APPLICANT: Joel Donner** 902 18th Ave S Fargo, ND 58103 **Project Location:** 17247 North Leaf lake Rd Lake Park, MN 56554 **LEGAL LAND DESCRIPTION:** Tax ID number: R171325000 Eunice White Oaks Beach Block 001 Lot 2; 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 57 feet from the ordinary high water mark of the lake and ahead of neighboring structural stringline, due to an undemonstrated hardship of the property.

Joel Donner and Attorney Carl Malmstrom explained the application to the Board. Donner presented further documents to the Board of Adjustment members to review. Donner apologized for the request being after the fact and did not intend to go against County Regulations. He would have rather been in front of the Board beforehand doing proper procedure and thought his brother in law had acquired all permits required. Donner felt the request would be in harmony with the area, add value and give reasonable use to the lakeside of the existing dwelling. Donner stated there is a slight slope from the existing dwelling going downward toward the lake and it becomes a slippery area when it is wet. Donner stated that was the main consideration regarding the size of the deck constructed to extend far enough out to be past the slope area where the ground levels off for safety egress/access out of dwelling. Donner felt the slope is a hardship of the property. Donner noted the drawing given to the members suggest the slope drops 2' 2.5" within 16' from the dwelling. Malmstrom discussed Variance requests and the way they are reviewed regarding use and area with hardship standards versus practical difficulties. Malmstrom reviewed the history of the property with the Board members. Malmstrom noted a past regulation allowed a lakeside deck by a 15% rule of the existing setback, which in this case would have allowed a 12 ft deck. The previous owner applied for a Variance to construct the existing dwelling closer to the lake and the request was denied. Malmstrom stated a past regulation that used the stringline method for properties. The existing septic was moved back in 2005 and the dwelling was permitted in line by stringline also in 2005. Malmstrom stated in 2009 the Helgesons requested a Variance for a deck. The argument was the existing structure was placed right at the approved stringline, not taking into consideration a lakeside deck would have to be considered in the setback. Malmstrom feels that with the past considerations previous Board members may have used the wrong standards when the request was reviewed and denied for the lakeside deck. Malmstrom stated the request is to review the elements for granting a Variance and reasonable use for the new owner.

No one spoke in favor of the application. No one spoke against the application. There was a letter in favor of the application from Richard and Loretta Sorby read to the Board. 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 noted the old cabin was located within the shore impact zone and the new dwelling was permitted to go back further into the property and behind the stringline that was existing at that time. Spaeth continued by stating the owners should have taken into consideration a lakeside deck by moving the dwelling back further toward the road, so they could have constructed a lakeside deck onto the structure and remain a conforming property. Chirpich noted the property owner could place a small amount of fill in the slope area without a land alteration permit and this would allow/create a safe area to place a landing of the size allowed and this would also keep the property conforming. Spaeth asked if the owner had considered removing the lakeshore deck/landing and storage

shed out of the shore impact as part of mitigation of the property, to which the homeowner stated he would rather not. Chirpich noted the criteria standards set regarding Variance requests and trying to stay in harmony of the intent. Spaeth with the guidelines used the board must review if there are other alternatives for the property. Chirpich noted there is a lot of area between the cabin and road and asked if the owner had thought about moving the cabin back to then place the larger lakeside deck, to which the owner stated he had not. Chirpich stated the owner purchased the property "as is" and he should have looked into what can be permitted on the property. Kessler noted that Variances should not come lightly for properties. Schutz stated if the application came before the Board before it was constructed as a future proposal, he did not think he would agree for approval. Schutz noted there are options for the property as in the regulation which allows a 4 x 6 landing for access and that would be considered reasonable use. Schutz stated the Board has asked the owner if he would consider a give and take regarding mitigation and have offered suggestions for the property and the owner does not seem to want to consider any options. Moore stated the members have to look at the application in front of them and consider reasonable use of the property. **At this time, the property owner asked to table the Variance application to look at all property options and bring back any new information/request to the Board.**

**FINAL ORDER OF BUSINESS: Informational Meeting.** The next informational meeting is scheduled for Thursday, September 2, 2010 at 7:00 a.m. at the Courthouse 3<sup>rd</sup> floor meeting room.

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.

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Acting Chairman Spaeth

ATTEST

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Patricia Swenson, Zoning Administrator