

**Becker County Board of Adjustments
October 13, 2011**

Present: Al Chirpich, Lee Kessler, Bill Sherlin, Steve Spaeth, Jim Bruflo dt, Kip Moore, Jerry Schutz and Debi Moltzan.

Chairman Jim Bruflo dt called the meeting to order at 7:00 p.m. Debi Moltzan took minutes.

Discussion was held regarding the first application of the September meeting and the wording of the motion. After much discussion, the consensus of the Board was to leave the motion as stated in the minutes. Sherlin made a motion to approve the minutes from the September 2011 meeting. Spaeth second. All in favor. Motion carried.

Chairman Bruflo dt explained the protocol for tonight's meeting. Vice Chairman Spaeth read the criteria, which has to be met in order to grant a variance.

FIRST ORDER OF BUSINESS: Mike Vandal. Request a variance to construct a second story addition to an attached garage being 36' from the OHW & 34' from the ROW for the property described as: Lots 10 & 11 TANGLEWOOD ESTATES, Sec 19, TWP 138, Range 42, Lake Eunice Township. PID Number 17.1239.000. The property is located on Big Cormorant Lake at 12672 Tanglewood Rd.

At the June 2001 meeting, the applicant had tabled the application.

Lisa Tufts, and the Vandal's explained the application to the Board. They would like to add onto the existing garage being 14 ft from the right of way and then put a second story addition onto the garage. Tufts explained that a variance is needed because the lot was platted with no buildable area and that is the hardship. The Vandal's understand that they cannot go closer to the lake and that impervious lot coverage is an issue. As far as the garage addition going closer to the road right of way, it would be 14 ft from the right of way, but more than 20 ft from the actual driving surface of the road. The second story addition would be a reasonable use and be in character with the neighborhood. The hardship was caused by government action. A variance is needed to do anything to this house because it does not meet current setback criteria.

Sherlin stated that, since the notice did not reflect the request to be 14 ft from the road right of way, the Board could not act on that portion of the request. Bruflo dt further explained that if it had not been published it could not be acted upon.

No one spoke in favor of the application. No one spoke in opposition to the application. Written correspondence was received from Lake Eunice Township in objection to a variance 14 ft from the road right of way. Tufts stated that if the Board could not consider the garage addition, then the letter does not apply. At this time, testimony was closed and further discussion was held.

Schutz stated that if a variance was granted, it would be for a second story addition over the existing garage, not an enlargement. Sherlin felt that if one bought a legally platted lot, one should have reasonable use of the lot. Brufloft stated that this Board has had to act on bad decisions made by other Boards. Sherlin stated that this is expansion to a structure in the shore impact zone and that is against the intent of the Zoning Ordinance. Chirpich stated that the footprint would not be enlarged because it would be going straight up.

Further discussion was held regarding the water run off, natural buffered shoreline and the amount of impervious lot coverage.

Motion: Schutz made a motion to approve a variance to allow a second story addition onto the existing garage, as shown on site plan submitted with the application, thirty six (36) feet from the ordinary high water mark of the lake and thirty four (34) feet from the road right of way based on the fact that the addition would not be going closer to the lake than the existing structure and it would give the structure reasonable use. Moore second. All in favor except Sherlin. Majority in favor. Motion carried. Variance approved.

SECOND ORDER OF BUSINESS: Ronald Swanson. Request a variance to construct a new detached garage 16 ft from Township ROW for the property described as: Lot 8, SCENT O'PINES SHORES, Sec 06, TWP 142, Range 38, Round Lake Township, PID Number 25.0591.000. The property is located on Elbow Lake at 40124 Scent of Pine Shores.

The Swanson's explained the application to the Board. Due to the location of the house, propane tank and septic tank, and topography, this is the best location for a garage. Kessler questioned if the propane could be moved. Swanson stated that this is the better location due to the road and driveway and there would be more room to fill the tank and service the septic tank.

Discussion was held regarding the setback of the house to the road right of way, location of the road and location of propane tank and septic tank.

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 and further discussion was held.

Spaeth felt that there was enough room to move the propane tank and meet the 20 ft setback from the road right of way. Schutz and Sherlin agreed.

Motion: Spaeth made a motion to deny a variance to construct a new detached garage 16 ft from Township ROW based on the fact that there is room to locate a garage that meets the required twenty (20) ft setback from the road right of way. Chirpich second. All in favor. Motion carried. Variance denied.

THIRD ORDER OF BUSINESS: Larry & Teresa Lisburg. Request a variance on a non-conforming structure that is located 27 ft. from the OHW constructing an addition that will be 40 ft from the OHW for the property described as: Lots 1 & 2, FITCH'S BEACH, Sec 35, TWP 142, Range 40, Maple Grove Township, PID Number 20.0514.000. The property is located on Strawberry Lake at 34821 Fitch's Beach Rd.

The Lisburg's explained the application to the Board. The proposed addition would be located in the same location as the existing deck, then attic truss rafters would be placed over a portion of the house and vaulted rafters be placed over a portion of the house.

Chirpich questioned when the property was purchased. Lisburg stated that they closed in January 2011. Kessler questioned if the house could support those type of rafters. Lisburg stated that the house should be able to support the rafters proposed.

Lisburg commented on the criteria in which a variance could be granted and felt that he met all the criteria because he would be staying the same footprint as already there, the realtor knew of their future plans and did not inform them of the limitations, it is in character with the surrounding area and it is uninhabitable due to the bad roof.

Brufloft questioned if they knew the roof was bad when they purchased it. Lisburg stated that they did know that.

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

Spaeth stated that the structure is entirely in the shore impact zone and there is adequate lot to get the structure out of the shore impact zone. Chirpich stated that they could rebuild what they have in the same location but not expand. Kessler felt that, if the structure was moved back, in 10 years or so from now, the owners would be much happier.

Motion: Spaeth made a motion to deny a variance on a non-conforming structure that is located 27 ft. from the OHW constructing an addition that will be 40 ft from the OHW based on the fact that there is adequate land to relocate the structure or rebuild outside of the shore impact zone. Sherlin second. All in favor. Motion carried. Variance denied.

FOURTH ORDER OF BUSINESS: Citizens National Bank of Park Rapids. Request a variance to subdivide a property with the lot size not in compliance with current minimum standards. This tract is a mortgage tract, which was not subdivided into its own legal parcel at the time of the mortgage and since then, lot sizes on a natural environment lake have changed for the property described as: PT GOVT LOT 3: COMM SW COR SEC 29 TH NELY 1590.65' AL S LN TO POB; TH NLY 200', ELY 519' TO WOLF LK, SELY 209' AL LK TO S LN GOVT LOT 3, WLY 571' TO POB. Sec 29, TWP 139, Range 37, Wolf Lake Township, PID Number 37.0117.000. The property is located on Wolf Lake at 17005 480th Ave. Frazee.

Jim Wallace, Citizens National Bank of Park Rapids explained the application to the Board. Mortgages were taken out on a 200 ft tract of land and on the balance of the property. The mortgage for the 200 ft of land was by Merchants Bank and the balance of the property by Citizens National Bank. At the time of the mortgage transaction, the 200 ft lot was a legal lot, and then the regulations changed. Wallace felt that the 200 ft lot should be grandfathered in. Now part the property is in foreclosure and the other part of the property has been deeded to the bank in lieu of foreclosure.

Chirpich asked Wallace to simply stated the practical difficulty. Wallace stated that the tract was legal at the time of the mortgage transaction, but the regulations on lot size have changed.

There were questions on the ownership of the property, which bank had which piece of property, the need for a variance and the lot sizes. Moltzan explained the lot size requirements at the time of the mortgage transaction, the change in regulations and the change in required lot sizes, along with the procedure that needed to be followed to make these two tracts each a buildable lot and which lot would be requiring the variance.

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 and further discussion was held.

Chirpich felt that this was a matter of formality. Spaeth stated that when the mortgage tract was created, the mortgage tract was legal and would still be legal lot size had the ordinance not changed. Discussion was held regarding if the variance had to be specific to which 200 ft require a variance. Consensus was that the Board did not have to be specific because they would be allowing a 200 ft tract and the Planning Commission and County Board of Commissioners would be approving a certificate of survey outlining the exact 200 ft.

Motion: Spaeth made a motion to allow a variance for a two hundred (200) ft tract of land to be subdivided from a larger tract of land based on the fact that when the mortgage tract was created, the mortgage tract was legal and would still be legal lot size had the ordinance not changed. Chirpich second. All in favor. Motion carried. Variance approved.

FIFTH ORDER OF BUSINESS: Owen Bensen. Request a variance to construct a dwelling 40 ft from the OHW for the property described as: PT LOTS 9 & 10 MAPLE LODGE & PT GOVT LOT 1: COMM MEANDER COR #43 TH SE 595.42', NW 48.47' TO POB; CONT NW 48.47' TO NLY COR LOT 9, SW 178.59' TO BIG CORM LK, SE AL LK 49.68 TH NW 175.35' TO POB, MAPLE LODGE SUB DIV, Sec 30, TWP 138, Range 42, Lake Eunice Township, PID Number 17.0899.000. The property is located on Big Cormorant Lake at 11969 Maple Lodge Road.

Moore stated that he had a conflict with this application and felt that he should abstain from the discussion and decision.

Benson explained the application to the Board. Benson bought this lot in 1993 and at that time Zoning Administrator Svenby told him that nothing could be done to the cabin with the attached trailer. Benson did do some interior work with roof work and some new windows. In 1998, he bought the house across the road and felt that he could maintain the home and the cabin. Due to his disability, he can no longer live in the house and wanted to make the cabin habitable. His neighbor wanted him to do something with his property. The neighbor offered him \$25,000 for a sliver of his lot providing the money is used to improve the structure. Benson then talked to the Zoning Office, who told him the variance process. He obtained donated materials left over from the renovation of Spanky's. The addition is 28 ft by 32 ft and is being constructed to meet the American Disability Act, but knew that he still had to apply for a variance. As far as the existing cabin, new windows are to be installed and the foundation was repaired, but not enlarged. Benson then presented a letter of support with approximately 24 to 25 signatures.

Chirpich questioned Benson that if he knew he needed permits, why did he proceed? Benson stated that he needed to make a decision about the donated materials. Benson also stated that the Cormorant Lakes Watershed District looked at the project and did not have a problem with it.

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

Schutz stated that this is after the fact and had the request came before the Board before construction, the Board would have denied it. Spaeth stated that if a permit would have been granted, the side yard setback would have had to be met along with the lake setback. Sherlin stated that the structure is in the shore impact zone and has been enlarged and the building was decrepit. Spaeth stated that the American Disability Act states how a structure has to be constructed but not where the structure is to be constructed.

Benson commented that the structure could not be moved back due to the septic system location.

Motion: Spaeth made a motion to deny the variance to construct an addition 40 ft from the ordinary high water mark of the lake based on the fact that there is no practical difficulty because there is room on the lot to move the structure to meet the side yard setback and to be outside the shore impact zone. Schutz second. All in favor except Moore, who abstained from voting. Motion carried. Variance denied.

SIXTH ORDER OF BUSINESS: Joseph Olson. Request a variance to construct an attached garage 130 ft from a Natural Environment Lake for the property described as: Lot 027 & Lot 028 Block 001, ABBEY LAKE ESTATES, Sec 23, TWP 138, Range 41, Lake View Township, PID Numbers 19.0691.000 & 19.0692.000. The property is located on Abbey Lake at 12821 Abbey Lake Dr.

Adam Olson explained the application to the Board. The Olson's would like to construct an attached garage. The actual measurement from the ordinary high water mark is 140 feet and would not be closer to the lake than the existing home. It would be difficult to move the garage 150 ft from the lake due to the entrance door on the house.

Speaking in favor of the application was Gail Hahn, Lake View Township. No one spoke against the application. Written correspondence was received from Gary and Janis Olson in favor of the application. At this time, testimony was closed and further discussion was held.

Discussion included when the house was permitted, when the ordinary high water mark for that lake was established, that a 10 ft variance would not impact the lake and that a garage would give the property reasonable use.

Motion: Sherlin made a motion to approve a variance for an attached garage one hundred forty (140) feet from the ordinary high water mark of the lake based on the fact that it would not be detrimental to the lake and that it would give the property reasonable use. Kessler second. All in favor. Motion carried. Variance approved.

SEVENTH ORDER OF BUSINESS: Keith & Paula Zitzow. Request a variance to construct a new home with attached garage 82 ft from the OHW and 51 ft from the centerline of the county road for the property described as: Lot 7, Block One, and Lot 2 Block 002, STROBEL SHORES, Sec 03, TWP 139, Range 40, Erie Township, PID Numbers, 100729507 & 100729512. The property is located on Cotton Lake at 21964 Co Hwy 32.

The Zitzow's along with Maureen Engle explained the application to the Board. They would like to construct a new house on the property 82 ft from the lake and 51 feet from the centerline of the road with the entrance to the garage being parallel with the road. Zitzow stated that 2 similar variances have been granted in this subdivision other variances on the lake have been granted allowing structures closer to the lake.

Schutz questioned the size of the concrete apron. Zitzow stated that they would need to back out of the garage, toward the lake in order to drive out onto the road so they were not backing out onto the road.

No one spoke in favor of the application. Speaking in opposition to the application were Kevin Swan, Cotton Lake Association, concerned about protecting the lake, drainage to the lake and the fact that there are no houses on the lots adjacent to this lot. Jay Beutler was concerned that this variance would place the structure closer to the lake than the variance he has on his lot. Written correspondence was also received from Beutler in opposition to the application. At this time, testimony was closed and further discussion held.

Discussion was held regarding the platting of this subdivision, what the intent was when the subdivision was platted, nearby variances, setback from the road, location of the septic system and the amount of fill for the project.

Spaeth questioned why they were not building across the road, where setbacks could be met. Zitzow stated that they did not want grandchildren crossing the busy road and that they would not be able to enjoy the lake. Brufloft stated that he had a bigger concern about the setback from the road. Sherlin looked at the lots having to be sold together, so they were looked at as one lot and was buildable without a variance if the structure was placed across the road.

Further discussion was held regarding setting precedence, setbacks and whether or not practical difficulties existed.

Motion: Moore made a motion to approve the variance to construct a dwelling seventy five (75) feet from the ordinary high water mark of the lake and twenty seven (27) feet from the road right of way or fifty eight (58) feet from the centerline of the road, with the septic system being on the road side of the structure based on the fact that it would reasonable use to the property and is consistent with surrounding variances. Schutz second.

Further discussion was held and Schutz stated that he would like to see some type of water retention to protect the lake. Moore amended his motion to read: 'approve the variance to construct a dwelling seventy five (75) feet from the ordinary high water mark of the lake and twenty seven (27) feet from the road right of way or fifty eight (58) feet from the centerline of the road, with the septic system being on the road side of the structure based on the fact that it would reasonable use to the property and is consistent with surrounding variances with the stipulation that water retention be implemented to protect the lake'. Schutz second. All in favor. Motion carried. Variance approved.

EIGHTH ORDER OF BUSINESS: Frank & Ken Foltz. Request a variance to construct an office building 45' from state ROW for the property described as: Lot 2 Block 001, FOLTZ'S ACRES, 16, TWP 139, Range 41, Detroit Township, PID Number 08.1012.052. The property is located at 19097 Frontage Road.

Ken Foltz explained the application to the Board. The structure would be 45 feet from the state road right of way, however the structure would be 275 feet from the centerline of the existing Highway 59. When the road was moved, the State did not vacate the right of way, which is now a frontage road maintained the Township. Due to the overhead wires, the structure needs to be moved back and the structure would be 55 feet from the right of way.

Spaeth questioned the right of way of Highway 59. Kessler stated that there is a 100 ft right of way on each side of the centerline of the road. Spaeth stated that would place the building 175 feet from the right of way, had the State vacated the old right of way.

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 and further discussion was held.

Motion: Spaeth made a motion to approve a variance to allow a structure fifty five (55) feet from the state road right of way based on the fact that Highway 59 had been relocated and the right of way of old Highway 59 had not been vacated, that the right of way of old Highway 59 is being used as a township road and that the structure would be 175 feet from the right of way of the current location of Highway 59. Kessler second. All in favor. Motion carried. Variance approved.

NINTH ORDER OF BUSINESS: Informational Meeting.

The next informational meeting is scheduled for November 3, 2011 at 7:00 am in the Third Floor Meeting Room of the Original Courthouse.

Since there was no further business to come before the Board, Chirpich made a motion to adjourn the meeting. Schutz second. All in favor. Motion carried. Meeting adjourned at 9:30 p.m.

Jim Bruflo dt, Chairman

ATTEST

Patricia Swenson, Zoning Administrator