

**Becker County Board of Adjustments
April 12, 2012**

Present: Board Members Lee Kessler, Bill Sherlin, Jim Brufloft, Jerry Schutz, Kip Moore and Zoning Staff Julene Hodgson. Board Members Al Chirpich and Steve Spaeth were absent.

Chairman Brufloft called the meeting to order at 7:00 p.m. Hodgson took the minutes.

Sherlin made a motion to approve the minutes from the December 2011 meeting with one correction. The second order of business should include: 'Discussion was held regarding the setback of the existing structure from the ordinary high water mark; **the existing structure measuring 41' from the current water level;** whether it was in the shore impact zone or out of the shore impact zone; the structure being ahead of the setback averaging line; moving the structure back from the OHW; and what the practical difficulty was to grant the variance'. Schutz second. All in favor. Motion carried.

Brufloft explained the protocol for the meeting. Schutz read the criteria in which a variance could be granted.

OLD BUSINESS:

FIRST ORDER OF BUSINESS: APPLICANT: Mike Vandal, 5805 Annapolis Lane, Plymouth, MN 55446. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to construct an addition onto an existing structure twenty (20) feet from the road right-of-way instead of the required forty-five (45) ft setback. This application was tabled by the applicant at the November 2011 public hearing. **LEGAL LAND DESCRIPTION:** Tax ID number: 17.1239.000, Lots 10 & 11 Tanglewood Estates, Section 19, TWP 138, Range 42; Lake Eunice Township. The property is located on Big Cormorant Lake. **PROJECT LOCATION:** 12672 Tanglewood Road.

Attorney Lisa Tufts and property owner Mike Vandal explained the application to the Board. The owner has been working with the township regarding the cul-de-sac. Vandal proposes to re-describe part of his property to be given to the Township to create a hammerhead (T) turn around area and in return the Township will vacate part of the existing cul-de-sac area to be added back to the Vandal property. Hodgson presented the Board with the draft drawing submitted by Heyer Land Surveying and Engineering, LLC showing the Road Terminus Proposal for Tanglewood Road. Tufts explained Vandal would like the Board to consider the request as submitted being 20' from the existing road right of way. When the road is vacated, the structure (with the proposed addition) will actually make the current required road setback, but the owner wants to finish the construction project as soon as possible. If granted, the Variance could be contingent on the road vacation being completed and then the Variance becomes null and void. Brufloft asked when the Township thought this would be complete, to which Vandal stated within the year. Kesler urged the owner to push the Township and assure this would be finalized

as soon as possible. Vandal stated the Township is in favor of this and have to write up the legal work for it to go forward. Sherlin noted to the Board that the front of the structure is nonconforming and this would allow an addition onto a nonconforming structure that does not meet the lake setback, so it is not just a road issue. Moore stated the previous Variance granted in 1977 allowed the owner to construct up to 25' from the existing cul-de-sac right of way already, the new request would only be 5' closer and he did not have a problem with this due to when the cul-de-sac goes away, it would null/void both road Variances. Tufts wanted to remind the board that there will be no impervious surface added to the property because the addition would be constructed where existing asphalt/concrete already exists.

There is an email on file from Hodgson to the BOA members regarding the conversation with Lake Eunice Chairperson Joe Lightowler in favor of the application. Lightowler stated the Township members are in agreement regarding Tanglewood Road proposed hammerhead and vacated cul-de-sac. No one spoke against the application. There was no further written correspondence for or against the application. At this time testimony was closed and further discussion was held.

It was the concensus of the Board that the wording of any Variance granted would have to state the approval is to the existing cul-de-sac right of way, so when the road issue is resolved, and the existing structure is then meeting the required setback, both this road Variance and the part of the 1977 Variance pertaining to the right of way of the cul-de-sac will become null and void. This would not allow the previous owner or any future owner to construct further additions 20' or 25' from the newly described hammerhead right of way. Sherlin noted he voted against the previous request in October, 2011 due to part of the existing structure being in the shore impact area, but the owner has made every effort to be compliant with the required road right of way setback.

Motion: Schutz made a motion to grant the variance to construct an addition onto an existing structure twenty (20) feet from the cul-de-sac road right-of-way as it exists 04/12/12; with the stipulation that this Variance and the road portion of the Variance of 1977 become null and void upon the cul-de-sac area being re-described and changed into the hammerhead turnaround and/or within two (2) years from 04/12/12. Kessler second. All in favor except Sherlin. Majority in favor. Motion carried. Variance approved.

NEW BUSINESS:

FIRST ORDER OF BUSINESS: APPLICANT: David Aaland, 4277 Coventry Dr, Fargo, ND 58104. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to construct a deck onto a nonconforming structure. The nonconforming structure is sixty-five (65) feet from the ordinary high water mark of the lake and the proposed deck will be seventy-five (75) feet from the ordinary high water mark of the lake. **LEGAL LAND DESCRIPTION:** Tax ID number: 19.0102.000 & 19.0818.223, Pt Govt Lots 11 & 12; Pt Lot 1 Woodland Beach; and Lot 4 Block 4 Barnes Shores; Section 7, TWP 138, Range 41; Lake View Township. The property is located on Lake Sallie. **PROJECT LOCATION:** 14747 240th Ave S.

Dave Aaland explained the application to the Board. The existing cabin is 75' from the lake with a 10' front deck being 65' from the lake and an existing side deck. This is ahead of the new setback averaging regulations. Aaland wishes to replace the side deck with larger deck to the side of the existing dwelling. Brufloft asked the owner if Zoning explained the option that if Aaland removed the front/lakeside deck, the property would not require a Variance for the side to which Aaland answered yes but that he did not want to lose the lakeside deck the dwelling currently has. Aaland further stated the deck would not infringe on the view of neighbors and will be going further back from the lake. Schutz wanted clarity of where Aaland's side property line was and if the asphalt that runs vertically with the side property going toward the lake was Aaland's- to which Aaland answered no, it was the neighbors. Schutz asked if Aaland would be willing to complete mitigation measures to help control the runoff from his driveway in front of the garage that goes to the side and toward the neighbors asphalt and eventually down to the lake. Aaland stated he would implement mitigation to help with storm runoff.

Ken Shroyer; Lake View Township Supervisor; spoke in favor of the application. The Township had no problem with the request. 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.

Sherlin noted the structure would meet the required setbacks if the previous stringline requirement were still a part of the Ordinance. The new regulation made the existing structure non-conforming which is a hardship created by someone other than the owner. Sherlin stated the request is not adding liveable area or lot coverage with a previous deck and the new deck will meet and/or exceed the lake setback. Schutz stated the mitigation would benefit the property. Kessler agreed.

Motion: Sherlin made a motion to grant the variance to construct a deck onto the side of a nonconforming structure based on the practical difficulty to remove the front deck and the hardship created by the regulation changes. The Variance was granted contingent on mitigation measures must be implemented to control stormwater runoff. Schutz second. All in favor. Motion carried.

SECOND ORDER OF BUSINESS: APPLICANT: Jonathan & Cathy Nelson, 15751 Maple Ridge Rd, Audubon, MN 56511. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a Variance to allow an un-permitted deck to remain in its location and allow an un-permitted fire pit area exceeding the size of a water-oriented structure to remain. The property owner states that the deck meets the required 100 ft setback from the ordinary high water mark and the fire pit is 54 ft from the ordinary high water mark. Zoning Inspectors have determined the deck setback at 75 ft from the ordinary high water mark of the lake and the fire pit structure 35 ft from the ordinary high water mark. This is an after-the-fact permit request. **LEGAL LAND DESCRIPTION:** Tax ID number: 17.0979.000 Out Lot E of Maple Ridge Beach Second Addition; Section 4, TWP 138, Range 42; Lake Eunice Township. The property is located on Little Cormorant Lake. **PROJECT LOCATION:** 15751 Maple Ridge Rd.

Jonathan and Cathy Nelson explained the application to the Board. They wish the Board to allow the after the fact side dwelling deck and the lakeside firepit w/patio to remain. They constructed their dwelling and believe the structure was meeting all required setbacks. The lath that was set to show the 100' setback was placed in front of the construction site, but they did not place one on the side- in the bay area of the peninsula. They later requested a 16x18 porch area to be added to the existing dwelling and it was denied with Zoning noting the request would not meet the required setback from the side/bay area of the lake. A second request at a later date requested a 16x18 screened porch and a 16x16 deck and the request was denied stating they would be allowed to construct a 4x6 landing for access due to setback issues. They constructed an 8x10 deck after the denial and poured a round concrete patio with a middle fire pit up closer to the lake. Brufloft stated the question on hand is whether or not the existing deck is meeting the required 100' setback from the ordinary high water mark of the lake, not the current water level. Sherlin asked the owner if he used the proper equipment to determine were he thought the ordinary high water mark elevation level was to which Nelson stated yes. Hodgson noted to the Board that the DNR elevation readings indicate that the current water level is lower than the ordinary high water mark elevation level by approximately 2 inches. Therefore the ordinary high water mark elevation would be up on the shore and it is under the belief that the side deck would not meet the required lake setback.

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.

Sherlin noted the owners went to the effort to try to determine the ordinary high water mark elevation. The Board must act on the request in front of them to request the after the fact 8x10 deck and firepit with patio to remain. Kessler and Moore agreed that without a professional surveyor being hired, the owner is acting in good faith. Sherlin noted the firepit and patio area would have met the old WOS criteria if the owner would have applied for a permit last year when constructed. Sherlin noted it is larger than what would be allowed by today's regulations.

MOTION: Schutz made a motion to approve a Variance as submitted to allow an after the fact 8x10 deck and patio with firepit to remain in there present locations. Sherlin Second. All in favor. Motion carried for approval.

THIRD ORDER OF BUSINESS: ELECTION OF OFFICERS:

Brufloft made a motion to nominate Schutz for the Chairman seat. Sherlin second. Discussion was held. All opposed, with the motion not carried.

Schutz made a motion to nominate Brufloft for the Chairman seat. Kessler second. All in favor. Motion carried.

approved

Moore made a motion to nominate Spaeth for the Vice-Chairman seat. Schutz second. All in favor. Motion carried.

FORTH ORDER OF BUSINESS: Next Informational Meeting.

TENTATIVE DATE FOR INFORMATIONAL MEETING: Thursday, May 3, 2012.

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

Jim Brufloft, Chairman

ATTEST Patricia Swenson, Zoning Administrator