

**Becker County Board of Adjustments**  
**August 9th, 2012**

**Present:** Board Members Al Chirpich, Lee Kessler, Vice Chairman Steve Spaeth, Kip Moore, Bill Sherlin and Zoning Staff Julene Hodgson. Absent were Chairman Jim Bruflo and Jerry Schutz.

Vice Chairman Spaeth called the meeting to order at 7:00 pm. Julene Hodgson took minutes.

Moore made a motion to approve the minutes from the July 12<sup>th</sup>, 2012 meeting with one correction in the 1st order of business. Kessler second. All in favor. Motion carried.

Spaeth explained the protocol of the meeting and Chirpich read the criteria for which a variance can be granted.

**FIRST ORDER OF BUSINESS: Douglas Barfield, 15667 W Little Cormorant Rd., Audubon, MN 56511. Application and Description of Project:** Request an after the fact variance to construct a 10' x 20' deck with a tuck under sunroom addition to be 47.5 ft from the OHW instead of the required 100 ft due to setback reasons. **Legal Land Description:** Tax ID number: 170051000, Little Cormorant Lake, PT LOT 3 BEG 80' E & 327' S OF SW COR L1B1 BLKHWK MT BCH 1ST TH S 171.31' E 169.09' TO LK N AL LK 152' & W TO BEG., Sec 05, TWP 138, Range 42, Lake Eunice Township. **Property Location:** 15667 W. Little Cormorant Rd.

Douglas Barfield explained the application to the Board. The Variance request is for a family member who has health problems and the sunroom would help with the health issues. Barfield explained what stormwater management has been implemented on the property to control and divert runoff away from the lake. Barfield stated he has added gutters, spouts, infiltration areas and a ditch area in the driveway. Barfield stated that he had made a previous application for the same request in 2009 and felt the Board was not in favor of the request and had shown concern because nothing had been implemented for the stormwater runoff from part of the house and his long asphalt driveway. Barfield stated this should alleviate any concerns.

Spaeth questioned if the sunroom could be constructed 2 ½ feet shorter to construct it out of the shore impact zone. Barfield stated this would leave 7 ½ feet and he didn't know if this would work. Bill asked Barfield to verify it would just be a sunroom in the corner without a deck above to which Barfield stated yes.

Kessler asked why the concrete wasn't removed after the previous Variance denial in 2009 and Chirpich asked what has changed. Barfield stated he left the area to re-request the Variance after the stormwater management was put in place. Moore congratulated Barfield on the work he has done on the property but wishes to sustain from voting due to he did not vote on the same request in 2009.

No one spoke in favor or in opposition to the application. There was no written correspondence either for or against the application. At this time, testimony was closed and discussion was held.

Chirpich asked if the work on the property for stormwater management would be enough to offset the previous request and denial to allow a new variance to override the old denied variance. Sherlin read the first variance approved on the property in 2007 and it stated the stormwater management was a condition of the 2007 variance granted. Spaeth noted the mitigation plan was required and was to be implemented per the plan Barfield had submitted. Moore recalled the issue was the 2 ½ feet that would intrude in the shore impact zone. Spaeth stated that was correct because the request would go closer to the lake than the existing structure. Sherlin stated the Board didn't need to exercise judgment on whether to allow 7 feet or 10 feet- they are here to find reason to approve or deny the application. Sherlin stated there was reasonable use of the property and already one variance in place for the property.

**Motion: Sherlin made the motion to deny the request to allow a 10x20 sunroom addition onto a non-conforming structure due to the request was not in harmony with the intent of the official control, part of the addition would go closer to the lake and be located in the shore impact zone and the plight of the landowner was not created by the property but by the landowner wanting a certain size addition in a certain location. Chirpich second. Sherlin second. All in favor, except Moore who abstained from voting. Motion carried for denial.**

**SECOND ORDER OF BUSINESS: Applicant:** Owen Benson, 11973 Maple Lodge Road, Audubon, MN 56511. **Application and Description of Project:** Request an after the fact variance to allow a non- permitted addition to remain on a non-conforming structure. **\*Note:** 8 ft of existing structure is to be removed. The existing cabin will then be 20 ft from the OHW & on the lot line. The addition will then be approximately 36 ft from the OHW & from 0 to 2.8' from the side lot line . **Legal Land Description:** Tax ID number: 170899000, Big Cormorant Lake, 30-138-042 PT LOTS 9 & 10 MAPLE LODGE & PT GOVT LOT 1: COMM MEANDER COR #43 TH SE 595.42', NW 48.47' TO POB...Subdivision Name MAPLE LODGE SUB DIV, Lake Eunice Township. **Property Location:** 11968 Maple Lodge Rd.

Owen Benson and Attorney Jade Rosenfeldt explained the application to the Board. Benson purchased the property in 1992 which had the trailer attached to the cabin that is located too close to the lake. Several times he discussed with Zoning what could be done on the property. Benson stated the septic tank is 29 feet behind the new addition. Benson stated the trailer became a safety issue and was not habitable; therefore he was living across the road. Benson became disabled in 2002 and he has difficulty going up and down steps. Benson stated a friend offered material, labor and equipment to construct an addition onto the existing cabin after removing the trailer. Benson stated the variance process seems more difficult to go through and felt he would be denied any expansion due to the existing cabin was locate in the shore impact zone. Benson stated he has dealt with permits in 6 different states and at times the permitting process becomes too much and takes too long, therefore he decided to build and then deal with it afterwards. The

materials used were raw logs so they had to be cut and finished this year or lose them. Benson noted he talked to several neighbors that were in favor of the request. Benson stated the previous zoning administrator told him years earlier that the cabins close to the lake would be a thing of the past because they want them moved back. Benson stated he is willing to tear off 8' of the old cabin. Benson noted that part of the structure would still be located in the shore impact zone, but he felt if he moved it back it might affect the septic system. Benson stated he understood the intent to get rid of things close to the lake but allowances or adjustments should be put in place due to small lots. Benson noted he didn't construct closer to the lake, just left the front and added onto the back. Vogel Law Firm Attorney Jade spoke in favor of the request. Jade felt Benson has gone to great lengths to speak to people on the Watershed, Township, Lake Association and neighbors and no one is present in opposition of the application. Jade stated the Board is incorrect if they do not consider the circumstances of each individual landowner and if they look at just the property they would deny all requests. Jade felt Benson was clearly apologetic and the situation was caused by circumstance of free labor and supplies. Jade stated the new addition was an added 300 sq ft and Benson is willing to compromise by removing some of the lakeside area with the outcome to accommodate what meets the criteria for his disability. Jade noted the size of the lot, the well and septic location does not allow making concessions. Benson previously filed notes from neighbors in favor of the request.

Don Haugen spoke in favor of the application. He stated Benson was a good neighbor and the project was a huge improvement over what was on the property. Haugen stated there has been many lot line disputes in this area and the properties are smaller than most property owners thought they were. Benson stated he lost 4' in width due to lot line discrepancies. Russ Cossette spoke in favor of the application. He has never met Benson but stated the project looks nice. Cossette sees no problem with the request. Hodgson read written correspondence for the application that was on file from Ron Tollefson. Tollefson stated Benson is not affecting the view of the neighbors or doing any harm to any of the neighbors. Tollefson stated the variance board should not be acting like dictators, denying or making it extremely difficult to improve our property, but instead should be working with their constituency to help and assist them in making improvements on their land. At this time, testimony was closed and discussion was held.

Kessler asked if all of the new addition was located out of the shore impact zone to which Benson stated no he thought it to be about 6'-7' in the shore impact zone. Benson stated he also removed the pumphouse, porch and deck out of that area. Moore noted that although the structure would be 1' from the side property line, it would be a good solution and better for the water and entire situation to get some of the structure removed up by the shoreline. Sherlin noted that according to the survey even if the entire old part was removed, the new dwelling would be 39' from the OHW, being 11' in the shore impact zone. Moore wanted to enter a motion that due to practical difficulty the new addition would be allowed to remain 39' from the OHW until Benson doesn't own the property anymore. Chirpich stated he would second the motion. Sherlin stated the practical difficulty is due to the structure already being there which someone else caused and he felt by allowing it based on that would be arbitrary and capricious. Moore stated

why have this Board if we can't look at each individual case, not everyone meets all the criteria to grant a variance. Sherlin stated he has difficulty with this because it is already there and the owner admitted he did it and came to ask for forgiveness after the fact. Spaeth stated every file is different but the Board tries to be consistent in keeping structures out of the shore impact zone. Sherlin stated the motion should reflect what the request was and this is a different proposal. Spaeth stated the applicant could ask to ammend the request to accommodate the motion to allow the new addition to remain, the entire old cabin to be removed. Chirpich asked Benson if the front were taken off, would the remainder of the structure be enough area to accommodate his needs to which Benson answered yes. Jade stated Benson would like resolvement. Benson stated he didn't like the idea of passing on property with the stipulations that the dwelling has to then be moved back, it would be hard with the well and septic and size of the property.

At this time Jade, on behalf of Benson stated they wished to amend the request previously submitted to remove the entire old part of the cabin to allow the new structure to remain 39' from the OHW with the stipulation that the structure would be relocated at a future time when Benson no longer owned the property.

Sherlin asked the Board if they would have granted this request if it had come in front of the Board beforehand to which he stated no, due to the request: it is not in harmony with the intent of the official control, the structure is still in the shore impact zone and the plight was clearly caused by the owner. Chirpich discussed practical difficulties and questioned how they could justify going against guidelines for approving and/or denying a variance. Moore stated the practical difficulty is that it is already there and this alternative would be better than the current structure setback. Chirpich voiced concern that if the Board approves this variance, there will be others that will construct things on their property and come in front of the Board to ask forgiveness afterwards. Moore stated it was a bad mistake on the owners part, but this is a reasonable solution.

**Motion: Moore made a motion to grant a Variance as amended to allow the new dwelling structure to remain at 39' from the OHW with the stipulations that the entire old cabin be removed and the new dwelling structure must be relocated to meet the required setbacks when Benson no longer owns the property. Chirpich second. Vote: All in favor, Moore. Not in favor, Chirpich, Sherlin and Kessler. Majority ruling. Motion denied.**

**Informational Meeting.** The next informational meeting is scheduled for Thursday, September 6, 2012 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, Sherlin made a motion to adjourn the meeting. Chirpich second. All in favor. Meeting adjourned at 8:30 p.m.

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Steve Spaeth, Vice Chairman

ATTEST \_\_\_\_\_  
Patricia Swenson, Zoning Administrator