

Becker County Board of Adjustments
June 12, 2008

Present: Members: Steve Spaeth, Jerry Schutz, Bill Sherlin, Al Chirpich, Merle Earley and Clifford (Kip) Moore.

Zoning Staff: Debi Moltzan and Julene Hodgson.

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

Minute approval: The May minutes were discussed. Sherlin made the motion to approve the minutes from the May 8th, 2008 meeting. Chirpich second. All in favor. Motion carried.

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

NEW BUSINESS:

FIRST ORDER OF BUSINESS: APPLICANT: Ronald & Carolyn Zehren 296 Chestnut Dr Horace, ND 58047 **PROJECT LOCATION:** 32388 Strawberry Court **LEGAL LAND DESCRIPTION:** Tax ID number: R320043000 Strawberry Lake A 100' Lot on Lake lying 938.5 SE of NE Cor Lot 3 Known as Lot 5 & N 1/2 Lot 4 Section 02, TWP 141, Range 40 Sugar Bush Township. **APPLICATION REQUEST:** Request a Variance to construct a non-conforming deck with expansion 54 feet from the ordinary high water mark of the lake with stairs 44 feet from the ordinary high water mark of the lake in the shore impact area and ahead of existing stringline due to setback issues.

Ronald & Carolyn Zehren explained the application to the Board. Their request is to replace the existing deck, a wrap around area, side deck and stairs. The proposal includes the expansion of an 8 x 8 area of pervious deck, taking out impervious paver area. The house was constructed in 1987 per a Variance. The dwelling and deck were to be included to make the setback of 73 feet granted by the Variance. Vice Chairman Spaeth noted the 12 x 16 deck area was permitted but the wrap around area with a side deck and stairs going toward the lake that were not part of the approved permit. Carolyn stated the dwelling and deck were constructed where it was approved, although today's measurements are much closer to the lake. The lake is at an all time high current water level. Chirpich asked the owner if they pursued contacting anyone to find out where the ordinary high water mark of the lake is located, to try prove how much, if any of the deck is located in the shore impact area. Carolyn stated no. Ronald & Carolyn stated the deck will not be enclosed and no footing are to be poured.

Audience member Jim Shaw spoke in favor of the application. No one spoke against the application. There were no letters of correspondence in the file. At this time, testimony was closed.

Further discussion was held. Vice Chairman Spaeth questioned if the Board should request the ordinary high water mark to be located in relationship to where the deck is located. Chirpich stated if the Variance will approve the replacement of the deck, it doesn't matter where this is indicated. Moltzan stated in 1987 the Zoning Administrator may have done a site visit, but not necessarily the entire Board. They may not have done a footing inspection. Chirpich and Schutz agreed they believe the owners constructed the dwelling at the current location in good faith. The true ordinary high water mark could be 15 feet out into the lake. Moore stated the decks are not in front of the neighboring stringline. Although part of the deck was built without a permit, the actions of the Board today is for the current request. The steps could be proposed to the side and possible french drains to be added to control runoff to the lake. The stone path must be removed below the current step area.

MOTION: Schutz made a motion for a Variance to be granted to replace an existing 12 x 16 deck wrapping around to a 4 foot side walkway and an 8 x 8 deck addition to replace an impervious patio, due to setback issues with the stipulations that the deck is to be constructed with pervious material; the side walkway cannot be expanded and the stairways off of the main deck must be constructed to the side of the deck and not go straight out to the lake; and must implement stormwater management measures to assure the roof runoff goes away from the lake. If the cabin is removed or destroyed, the new cabin/deck must meet the current setback regulations. Moore second. All in favor. Motion carried.

SECOND ORDER OF BUSINESS: Jim & Barry Shaw 11492

Ravenswood Beach Rd Detroit Lakes, MN 56501 **PROJECT LOCATION:** 11488 Ravenswood Beach Rd **LEGAL LAND DESCRIPTION:** Tax ID number: R190914000 and R190915000 Lake Melissa Charmony Beach 138 PP Lots 5 & 6 Beg 10' NW of Most Ely Cor Lot 6 Th NW 52.02 and All of Lot 7 To Beg; Section 28, TWP 138, Range 41 Lake View Township. **APPLICATION REQUEST:** Request a Variance to re-divide substandard sized riparian lots, which are in contiguous ownership, for resale purposes due to an undemonstrated hardship of the property. This deviates from the Ordinance that states contiguous parcels in the same ownership shall remain as one buildable parcel of land.

Jim Shaw asked permission to record the Public Hearing. Moltzan stated yes he could, but zoning requests the original and will make a copy for Shaw. Shaw presented a map petition of neighboring parcels with owners signatures in favor of the application. Shaw asked the Board why he made application for a Variance. Vice Chairman Spaeth stated the applicant is requesting to separate of two properties that have been joined into one property of common ownership.

Moltzan read the Ordinance. Shaw stated the Ordinance of Section 17 Subdivision 9

outlines lots of records, he felt the purpose of Zoning was to manage shoreline of crowding, to allow space, regulate lot sizes and he presumed this is talking about bare land. Vice Chairman Spaeth stated the Board was to approve or deny the Variance request, they do not make the laws. Schutz requested the owner to explain his application to the Board, so further questions could be asked. Moore asked owner why he made application to the Board. Shaw introduced Dostert and explained they are in the process of trying to purchase the property. Financially they could not afford a cash amount for the cabin, therefore they went through a finance company for the funding. An Appraisal was conducted by Vice Chairman Spaeth. Vice Chairman Spaeth asked Shaw if he would like him to step down as acting Vice Chairman during the hearing. Shaw stated yes. Chirpich took over the public hearing as Acting Vice Chairman. Acting Vice Chairman Chirpich asked Shaw to no recourse but to allow applicant to state his case, deliberate, adjudicate and applicant can appeal to a higher court if he is not satisfied with findings.

Shaw explained the application to the Board. Acting Vice Chairman Chirpich stated after questions and testimony closure, no further comments can be made by the applicant unless a question is asked of the owner. There are no septic servicing either property, it is a community system. Applicant and brother do ownership of everything together. The property is taxed as separate parcels. Brother bought cabin and moved to Cormorant. The sale of the A frame would financially help with the Cormorant property. Homestead is being taxed on the red cabin. In 2001 a driveway was added in front of the red cabin, Shaw was told a permit was not required. Planning and Zoning advised the owner to take out the driveway due to lot coverage. Shaw hired a local attorney to help with the Variance process. Attorney stated lots tied together because of lot coverage. Shaw stated this affects both cottages. Extreme economic hardship if the cottage cannot be sold to Dosterts. Shaw read/addressed the criteria of granting a Variance, with his answers to each question pertaining to his property. The Board had a copy of Shaw's paperwork. Acting Vice Chairman Chirpich asked if the Board had any further questions for Shaw. Sherlin asked if Shaw was aware of the letter Shaw's attorney wrote in 2001 regarding the property being in the same ownership as of November 1998. Shaw stated yes. Sherlin read the letter dated December 5th, 2001 for the Variance dated December 12th, 2001. Shaw stated he did not understand the meaning of the information in the letter. Shaw felt it had nothing to do with anything other than permeable coverage. Shaw removed the asphalt driveway from in front of the red cabin. The property has been resurveyed with the shared deck split. Shaw asked why they can have a warranty deed in different names and pay taxes with two different parcel numbers on the statement. Acting Vice Chairman Chirpich stated the Board cannot take this to legal aspects of this specific request. Sherlin stated the Board is aware of the two separate parcels number.

Acting Vice Chairman Chirpich asked if anyone would like to speak in favor or against the application. Carolyn Dostert spoke in favor of the application. The family would like to purchase the A frame cabin. They would like to retire here. The bank received a letter from the appraiser stating an illegal split of the property makes the property unbuildable, no improvements. Dostert respectfully requested the Variance be granted. No one spoke against the application.

There were no letters of correspondence in the file. At this time, testimony was closed.

Further discussion was held. Moltzan read file information stating the Variance was granted on property as one. The Quit claim deed in 2006 is considered an illegal split, making the property currently in violation of the law. Schutz stated it is difficult to debate because it is supposed to be looked at as one property. Moore disagreed, he said the paperwork shows separate owners who make separate decisions, the Board should look at the overall picture. Sherlin agreed with part of it being debatable, but it is difficult because the owner knew it was in same ownership in 2001 during the Variance process, it was a benefit of the property being as one, it is hard to find a hardship now. Several deeds changed, several Quit claim, several mortgages after 2001, clearly violation of intent of control. Mn State law intent is to eliminate substandard property situations. Schutz stated he interpreted this is one piece of property, doesn't believe by Variance they should allow this type of situation. Chirpich stated to grant the Variance would grant yes on property that cannot be built on. Earley stated if the property was looked at as two, it would not need the Variance.

MOTION: Sherlin made a motion a Variance be denied as submitted due to insufficient property hardship with evidence presented. Earley second. All in favor except Moore. Motion carried.

Informational Meeting. The next informational meeting is scheduled for Thursday, July 3rd, 2008 at 7:00 a.m. at the Planning & Zoning Office.

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

Al Chirpich
Acting Vice Chairman

ATTEST

Patricia Swenson, Zoning Administrator