

Becker County Board of Adjustments
December 11, 2008

Present: Members: Bill Sherlin, Merle Earley, Jim Bruflodt, Steve Spaeth, Al Chirpich and Jerry Schutz.

Zoning Staff: Administrator Patty Swenson and Julene Hodgson.

Chairman Jim Bruflodt called the meeting to order. Julene Hodgson took minutes.

Minute approval: The November minutes were discussed. Spaeth made the motion to approve the minutes from the November 13th, 2008 meeting. Chirpich second. All in favor. Motion carried.

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

NEW BUSINESS:

1. **APPLICANT:** Beverly Moyer 507 21st Ave S Unit 2 Fargo, ND 58103 **Project Location:** 26267 Paradise Pt Rd **LEGAL LAND DESCRIPTION:** R081208000 / R081209000 / R080038001, Floyd Lake, Paradise Pt 1st add lot 2 and .12 acres adj N side, lot 3 and lot 4; Section 03, TWP 139, Range 41, Detroit Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a variance to allow three substandard contiguous lots in the same ownership to be considered as two individual buildable lots for resale purposes due to an undemonstrated hardship of the property.

At this time Chairman Jim Bruflodt recused himself from the hearing and turned over the floor to Acting Chairman Steve Spaeth due to conflict of interest with the application.

Beverly Moyers' Attorney Nicholas Vogel explained the application to the Board. Vogel explained the timeline of when the applicant purchased the property and when Lot 3 was sold away from Lot 2 in 2003. The parcels have separate dwellings and septic systems. The sale went through and the deed was recorded. The realtor and closing, abstract, title opinion and insurance, mortgage companies and government agencies did not question the transaction. The neighboring properties are also 75ft of lakeshore frontage, with existing cabins in single ownership. Vogel explained the request is after the fact and due to practical difficulties, with his clients acting in good faith. Vogel discussed the Minnesota Supreme Court case of In Re Stadsvold comparing practical difficulty to hardship of a property, stating Moyers request falls within the criteria for granting such a Variance. Sherlin stated the Minnesota Supreme Court Opinion also reminded Board of Adjustment members that a Variance only be granted under exceptional circumstances. Sherlin stated all aspects should be looked at to be sure a Variance is the correct avenue to go. Swenson stated the owners would be given reasonable use with no expansion to existing structures.

No one spoke in favor of the application. No one spoke against the application. There were letters of support in the file from Attorney Patrick Kenney for Hajostek, Akre, Shipley, McManus, Holter and Montplaisir. At this time, testimony was closed.

Further discussion was held by the Board. Chirpich asked Swenson when site permits are required. Swenson stated site permits are required for anything structural and currently the property has a non-conforming guest house on Lot 2. Spaeth stated other owners in the general area have requested Variances for setback issues that have been granted, by not granting this Variance the Moyers property will have restricted use, stating nothing further can be done to the property. Swenson read the criteria of granting an after the fact Variance due to practical difficulties. Chirpich stated the owners acted in good faith, tried all avenues to do things correctly. Schutz stated he did not know if this was enough of a reason to grant the Variance. Chirpich stated it would be hard to correct something that happened 5 years prior and this would be unreasonable. Earley stated there is evidence of circumstances created other than by the owners. The Board would have looked at this differently if the owner requested this Variance in 2003 before the sale occurred, but the Board is looking at an after the fact situation. Spaeth stated it was created by the lack of knowledge of everyone involved. Sherlin stated the laws intent is to create larger lots to decrease the cabins and protect the lakes. Swenson reminded the Board the application involves all three properties. Schutz stated this is a tough position for the Board members, wondering if the Board will be creating a precedents for future requests. Spaeth reminded the Board that each property and circumstances are looked at individually for Variance requests. Sherlin stated by granting the request, it will not be in harmony with the intent of the Ordinance, exceptional circumstances are not easy. Earley stated most of the area properties are still in single ownership and of small size. Swenson read the criteria under practical difficulties again. Spaeth stated the situation cannot be alleviated by any feasible matter other than to grant the Variance.

MOTION: Chirpich made a motion to grant a Variance to allow three substandard contiguous lots in the same ownership to be considered as two individual buildable lots. The Variance was granted due to practical difficulties and circumstances, the hardship was not caused by the owners, and the criteria for granting the Variance due to practical difficulties have been met. Earley second. Chirpich, Earley and Spaeth in favor, Schutz and Sherlin opposed. Motion carried to grant the Variance.

At this time Chairman Jim Bruflojd joined the hearing as the acting Chairman.

2. **APPLICANT:** The Cone Family Trust 141 14th Ave NW New Brighton, MN 55112 **Project Location:** 30574 Cone Cove Dr **LEGAL LAND DESCRIPTION:** R340178000 and R340179000, Two Inlets Lake, Cone Cove Shores 141 36 Lot 8 and Cone Cove Shores 1st Add Lot 1 Block 1; Section 23, TWP 141, Range 36, Two Inlets Township. **APPLICATION AND DESCRIPTION OF PROJECT:** Request a variance to allow two substandard contiguous lots in the same ownership to be considered as two individual buildable lots for resale purposes due to an undemonstrated hardship of the property.

Owner Tom Cone explained the application to the Board. The Cone heirs want to settle their estate. They want to sell one half of the property with a cabin located on it and keep the other side. Cone sold the property August 22, 2008 and as he was clearing off the lot, he stopped to obtain paperwork from the Zoning office and was told the sale could not be recorded and would be considered an illegal sale. Cone understands that steps have to be met to meet the criteria of granting a Variance and feels he demonstrates hardship.

Cone stated the DNR regulations discusses property having capability to provide independent sanitary facilities and the setbacks can be met to stand on their own as a separate piece of property without harming the quality of the lakes. Cone stated the request won't change the surrounding area, the vegetation, or the creek area, and he is willing to plant more natural screening on the property with an exception of a small swim and dock area. Cone stated if the property were built on, he would have to build 175ft from the lake to avoid the bank of the creek area, but he would like to leave the property vacant. Cone stated the two lots are being taxed as though separate and he said the realtor and closing company involved were surprised to hear of the laws and regulations the Zoning office explained to them. Cone stated he understood the Board looks at each request and the properties involved separately.

Larry Sullivan spoke against the application. Sullivan stated he owns a larger sized lot and feels there is no hardship to grant the request. He stated he feels a dangerous precedent would be set by granting the Variance, the laws and regulations change and owners should have to abide by them. Sullivan stated the Cone family has 5 non-riparian lots that were approved in 2003 based on not having lake access. The Cone family plans to use the lakeside property as lake access for the back 5 lots. He believes the sellers involved were aware the property cannot be separated and sold and the sale has not gone through. Spaeth asked where the Sullivan's property is, to which Larry stated they are the next lot to the east of the Cone property. Mike Hughes spoke in favor of the application. He stated the Cones would like to utilize the lake lot for access and they are good stewards of the lake and land. There were letters of correspondence in the file from McGill, Higgins Niccum, Eischens, Hughes, Schwanker, Chadhary, Richard Cone, Lichter with DNR Forestry, Gast, Hansch, Goodrum, Mead, and Sullivan. At this time, testimony was closed.

Further discussion was held by the Board. Swenson reminded the Board if the property split was approved, the back lots are prohibited from lake access per the Ordinance. Stipulations can also be added to Variances to put certain controls in place. Sherlin stated with the rules and regulations in place, the request would directly go against the Ordinance and there is not a hardship of the property to justify such a request. There is a setback from the creek also, so it would be difficult for any structure to make the required setbacks on the property. Spaeth stated the intent to use the access for the backlots would be considered the funneling effect and it is not permitted, there are other ways to settle an estate. Chirpich stated by reading the guidelines for granting a Variance, this property does not meet the criteria.

MOTION: Schutz made a motion to deny the Variance to allow two substandard contiguous lots in the same ownership to be considered as two individual buildable lots. The request was not in harmony with the intent of the Ordinance, it does not meet the criteria of granting a Variance and there is no demonstrated hardship of the property. Spaeth second. All in favor. Motion carried.

Informational Meeting. Due to inclement weather, the next informational meeting is not scheduled until further notice from the Planning & Zoning Office.

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

Jim Bruflo, Chairman

ATTEST

Patricia Swenson, Zoning Administrator