

**Becker County Board of Adjustment
November 12, 2015**

Present: Members Roger Boatman, Jim Kovala, Jim Bruflodt, Lee Kessler, Steve Spaeth and Zoning Staff Debi Moltzan.

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

Kovala made a motion to approve the minutes. Spaeth second. All in favor. Motion carried.

Bruflodt explained the protocol for the meeting and Spaeth read the criteria for which a variance could be granted. Bruflodt also announced that the applications for Randy and Debbie Stevens and John Drewes would not be heard tonight. Stevens had withdrawn their application and the Drewes application had been settled administratively.

FIRST ORDER OF BUSINESS: Lannie and Ann Runck. Original request of a Variance to construct an addition fifty (50) feet from the edge of the county road and forty-six (46) feet from the ordinary high water mark of the lake was tabled by the applicant. The amended request is for second story addition onto the existing structure, which is forty-two (42) feet from the ordinary high water mark of the lake for the property described as: Tax ID number: 170776000, Lot 1 and E 45 feet of Lot 2 Isthmus Beach Third Addition; Section 27, TWP 138, Range 42, Lake Eunice Township. Project Location: The property is located on Maud Lake at 20630 Co Hwy 22.

The Runck's explained the application to the Board. After the last meeting, they went back to the drawing board to see how they could gain more space without changing the footprint and increase impervious. They have reduced the impervious to 26%, but could possibly remove some more.

Boatman questioned the boat ramp into the lake and what it was constructed of. Runck's stated it was primarily dirt with a little bit of concrete or asphalt, all of which was there prior to them buying the property. The Runck's further stated that they want to move to the lake permanently and need more room, but the lot does not allow for much, also, the retaining wall holds the water back so that no run off gets into the lake.

Spaeth stated that the impervious material needs to be less than 25% so no additional variances would be required.

No one spoke in favor of the application. No one spoke against the application. At this time, testimony was closed and further discussion was held.

Spaeth stated that the house is partially in the shore impact zone but the lot is very narrow; the impervious material is being reduced and there are practical difficulties with the size of the lot. Kovala stated that the owners were willing to remove more impervious. Spaeth stated that the existing house is not excessive in size being only 22 ft. in width. Kessler stated that the owners have worked hard to do all they could to make this project work and the project would not alter the character of the neighborhood.

Motion: Kessler made a motion to approve the variance to allow a second story addition onto an existing dwelling, which is forty-six (46) feet from the ordinary high water mark of the lake based on the fact that the structure conforms to the surrounding area, incompliance with the rest of the buildings in the area, the size of the substandard size lot of record and the fact that the owner is willing to mitigate and reduce the impervious coverage with the stipulation that the sidewalk from the house to the lake be removed, the boat ramp be removed and restored to a natural state with a berm installed and the house guttered and runoff directed to the road right of way. Spaeth second. All in favor. Motion carried.

SECOND ORDER OF BUSINESS: Brian Nelson. Request an Administrative Decision Appeal- Appeal the Order to cease and desist issued 08/18/15 for the property described as: Tax ID numbers: 25.0238.000 and 25.0243.000, Lot 5 and Lot 6; Section 11, TWP 142, Range 38, Round Lake Township. The property is an island in Juggler Lake with access by easement from S Juggler Lake Road.

Attorney Carl Malmstrom and Brian Nelson explained the application to the Board. Malmstrom explained that Nelson was issued a cease and desist order to cease renting his single family lake home. This matter is dealing with interpretation of administrative decisions and the Board should not show favoritism to the Zoning Office. The law is clear and if there is doubt, you must side with the owner. Malmstrom stated that the cease and desist order does not reference which section of the Ordinance has violated.

Malmstrom presented a letter from Terry Kalil with concerns about rental properties, as she rents her property out on occasion. Malmstrom also presented a copy of case law from a similar situation.

Nelson explained that they have owned the property for some time. It is a single family home, a vacation home. When his family is not using the cabin, they have rented it out. Malmstrom pointed out different definitions in Chapter 10, along with excerpts from the Planned Unit Development portion of the Ordinance. Malmstrom stated that the Zoning Office was attempting to extend the restrictions by using portions of the Ordinance that do not apply. Malmstrom then

referred to a court case in Douglas County that was similar to this situation, and the courts sided with the homeowners.

Boatman questioned the easement and if there was enough room for everyone to park. Nelson said it would park several cars and has a dock. Boatman then asked if the cabin was being advertised on the website. Nelson stated that his son had set it up on a couple of different websites to rent from 4 to 10 days.

Discussion was held regarding the use of the single family dwelling, the definitions, and different sections of the Ordinance that may or may not apply to this situation.

No one spoke in favor of the application. Speaking in opposition to the application is Terry Forehand, who was concerned about the parking, garbage, septic system and noise; and Deborah Thyen, who was concerned for safety, parking, septic system and garbage. Written correspondence in opposition was received from Art Ruud, Marv Gunderson and James and Cecilia Marotzke. At this time, testimony was closed and further discussion was held.

Brufloft reminded the Board that their job is to either uphold or reverse the cease and desist order. Is this a commercial operation or not.

Kovala questioned why the public access was being used for parking instead of the easement. Nelson stated that the easement is rough, but could easily direct people to use the easement rather than the access. Spaeth stated that he could not find anything in the Ordinance that specifically addresses rental of single family dwellings; everything in front of them addresses PUD's and multiple dwellings.

Spaeth made a motion to reverse the cease and desist order because there was nothing in the Ordinance that addresses the rental of single family dwellings and that Nelson can address the parking and noise issues. There was no second, so the motion died for the lack of a second.

Further discussion was held. Brufloft stated that the County has its work cut out for them to make this type of situation more clear (black and white) in the Ordinance, but until then, there is nothing in the Ordinance that specifically addresses rentals of single family dwellings. Kessler questioned what the harm would be to get a conditional use permit to rent out the house. Brufloft stated that there is no harm. Discussion was held regarding the definitions and sections of the Ordinance regarding commercial and whether or not they apply; the need for changes in the Ordinance and whether or not the cease and desist should be reversed.

Motion: Spaeth made a motion to reverse (appeal/vacate) the cease and desist order because there is nothing in the Ordinance that specifically addresses the rental of single family dwellings. Kessler second. All in favor except Boatman. Majority in favor. Motion carried.

THIRD ORDER OF BUSINESS: Nancy Peterson. Request a Variance to construct a dwelling sixty (60) feet from the ordinary high water mark of the lake for the property described as: Tax ID number: 340196000, Lot 4, Block 2, Forest Points; Section 14, TWP 141, Range 36, Two Inlets Township. The property is located on Two Inlets Lake across the road from 31301 and 31305 Two Inlets Drive.

Jeff Peterson and Dan Erdahl explained the application to the Board. After further looking at the site, it is possible to move the structure back to 80 feet instead of 60 feet from the ordinary high water mark of the lake. Peterson stated that the shoreline would not be touched and left natural. The new cabin would be for family, who could use the established beach on the other lot. Peterson further stated that they wanted to build in a location that they could see the lake. Erdahl stated that with the indentation of the bay, it limits the location in which the house can be placed. Erdahl stated that they first thought about placing the house at 72 feet and the deck at 60 feet, now they would like to push the house back to 84 feet and the deck at 72 feet.

No one spoke in favor of the application. No one spoke in opposition of the application. Written correspondence was received from Susan Wolters in opposition to the application and Dennis and Teresa Goodrum in favor of the application. At this time, testimony was closed.

Brufloft stated that, no matter where you built on the lot, there is not a view of the lake and felt that there was adequate room to construct a dwelling without a variance. Peterson stated that the surveyor told him that the County would allow him to build at 80 feet, but should ask for 60 feet. Erdahl stated that this is an odd shaped lot. Spaeth stated that the request was for one setback and now they are changing the request. Spaeth suggested tabling the application and coming back with a more concrete plan. Kessler stated that the drawing should be precise and scaled, not rough drawn. At this time, Peterson asked to table the application.

FOURTH ORDER OF BUSINESS: Bruce and Ann Kindseth. Request a Variance to construct a dwelling fifty-two (52) feet from the ordinary high water mark of the lake for the property described as: Tax ID number: 090060000, Lot 1 Less Plats; Section 12, TWP 142, Range 39, Eagle View Township. Project Location: The property is located on Elbow Lake at 38743 S Elbow Lake Road.

Kindseth explained the application to the Board. Kindseth would like to remove an existing cabin and replace the cabin, which is 52 feet from the ordinary high water mark of the lake. The

lot is 34 acres, which is mainly wooded and away from the lake, which there is 250 feet of lakeshore separated from the rest of the property by a private road.

Spaeth questioned if the road could be moved. Kindseth stated that it may be possible, but would require court action.

Further discussion was held regarding the amount of lakeshore frontage (discrepancy between Zoning Office records and homeowner's statement); why the structure could not be moved to the 100 ft. setback; whether or not the property meets duplex lot size; current size of the house that will remain; current size of the cabin to be removed; whether or not two houses can be allowed on the parcel of land. Brufloft stated that the request is only for replacing a cabin at 52 feet, nothing about allowing for a guest house or a guest house exceeding the allowable square footage. Kindseth stated that it was not marked on the application but referred to in the attachments.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from Rodger Hemphill, DNR Area Hydrologist in opposition to the application and Gary Buckley, with concerns about the application. At this time testimony was closed and further discussion was held.

Brufloft stated that the first thing that needs to be done is to find out exactly how much lakeshore frontage there is. The amount of lakeshore will dictate which direction the Board must go. Spaeth felt that there is 34 acres of land; the structure could be relocated to meet the 100 foot setback. Kessler felt that if the road was vacated, the structure could be moved further back and the funnel would not be there to allow further run off to the lake. Spaeth felt there were several things to consider and many unanswered questions.

At this time, Kindseth asked to table his application.

FIFTH ORDER OF BUSINESS: Informational Meeting.

The next informational meeting is scheduled for Thursday, December 3, 2015 at 7:00 a.m. in the 3rd Floor Meeting Room of the Original Courthouse.

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

Jim Brufloft, Chairman

ATTEST

Eric Evenson-Marden, Zoning Supervisor