

**Lincoln County Board of Adjustment
Minutes of Thursday, June 26, 2008 at 8:30 a.m.
Land Resource Center Meeting Room**

1. Open meeting and Call to Order – Meeting was called to order at 8:30 a.m. in the Zoning Office. Members present: Lamer, Jach-Richards, Steffenhagen, Hornischer, Schmidt & Brixius. Also present was: Dan Miller; Zoning Administrator.
2. Tour the sites for the Public Hearing that would be held at 12:30 p.m. – The Board & Miller left to tour the sites. They also toured the “Old Business” site at W5754 Whispering Winds Rd in the Town of Bradley

The Board recessed for lunch at approximately 11:15 a.m., at 3’s Company, 3201 E. Main Street, Merrill

Chairman Lamer called the meeting back to order at 12:30 p.m. Members present for the public hearing: Lamer, Jach-Richards, Steffenhagen, Hornischer, Schmidt & Brixius (Alternate, did not participate). Visitors: Dan Miller; Zoning Administrator, June Winters; Program Assistant, Mary Heedrick; Court reporter and 11 others.

3. Approve minutes from April 24, 2008 meetings - Motion by Steffenhagen, seconded by Hornischer to approve the minutes from April 24, 2008. Motion carried 5-0.
4. Public Hearing – The public hearing was opened for the request listed below.

Variance

1. William Crowe ETAL for a variance from Section 17.4.10(1) of Lincoln County Ordinances to allow for an addition to a cabin in a Forestry zoning district that is located less than 150 feet to County Road E. The property is described as the SW ¼ of the SE ¼ of Section 22, T33N, R05E in the Town of Harding; having a tax parcel number of 08.223305.015.000.00.00 and an address of W8268 County Road E.

William Crowe was present and sworn in. He gave the history of the parcel and explained their request for the board. Hornischer confirmed that they were not building any closer than the permit allowed in 1991 and confirmed that they were issued a permit for that construction. Crowe stated that was correct.

Dan Miller was present and sworn in. He explained that the 1991 permit was issued without doing an onsite even though the plot plan submitted indicated that it did not meet the setback so they had been honest in their application then and due to the fact that it was not questioned at that time by Zoning staff the permit was issued. He reviewed the staff report.

Chairman Lamer closed the public hearing for William Crowe ETAL.

The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination.

Motion by Jach-Richards, seconded by Schmidt to APPROVE the variance request. Motion carried 5-0.

2. Robert Schowalter for a variance from Section 21.07(7) of Lincoln County Ordinances to allow for the creation of an outlot with less than the required frontage in order to provide access to Lake Mohawksin for a backlot. Parcels included are described as lots 1 & 2 of CSM 2012 of Section 31, T35N, R06E and an 11 acre parcel in the SW¼ SE¼ of Section 30, T35N, R06E in the Town of Bradley; having tax parcel numbers of 04.313506.002.002.01, 04.313506.002.002.02 and 04.303506.015.002 with addresses of W7001 & W6985 Mohawksin Rd.

Robert Schowalter was present and sworn in. He explained his request stating that the western most 100 feet of his property below Mohawksin Rd would become an outlot tied to the parcel north of Mohawksin Rd for access to the lake for that back lot. Jach-Richards asked Schowalter to confirm the size of the outlot being created. Schowalter said approximately 50,000 sq. ft. He stated that he feels that his request would have minimal impact on the lake and it would create additional "green space" between the existing cottage on his property and the neighbors to the west. Steffenhagen asked if any trees would be removed. Schowalter said nothing in the first 75 feet back from the water and minimal beyond that. He would just create a path to the lake through that last 75 feet. Hornischer asked Schowalter to confirm that it was just going to be a "walking" path and not a "driving" path. Schowalter said that was hoping to have the option to make the path 10-11 feet wide in case someone wished to "car top" a kayak or the like closer to the water.

Dan Miller was present and acknowledged being sworn in. He stated that this is a complicated request. He explained the situation from Zoning's standpoint. He reviewed the staff report. He said that as the parcels are configured currently it affords for up to 4 residences. 2 would be on water (the lots listed on CSM #2012) and 2 off water because a town road bisects the 11 acre parcel creating 2 more legal lots. Under this request it would decrease the density to 3 dwellings but all 3 lots would have water frontage. Miller reviewed the seven conditions that he would like to see imposed if the variance is granted.

Lester Schmidt was present and sworn in. He is the surveyor for Mr. Schowalter and he just wanted to clarify that the lots on the CSM would have to be numbered consecutively as Lots 1-3 and an Outlot because of state requirements.

Thomas Jahn was present and sworn in. His father was the previous owner of the subject property. He stated that he had a problem with the reduced frontage that Schowalter was asking for. He doesn't disagree with Miller's assessment of the lesser density. He stated that the conditions that Miller is asking for would resolve some of his objections to the request. He also stated that this precedent that is set if granted may benefit him in dividing his land. Lamer stated that this decision does not set a precedent as each request is viewed independently.

Shirley Jahn was present and sworn in. She is a real estate broker representing the Voigts and stated that they are extremely against the request (Board had received Voigts' letter). Speaking for herself she feels that this request should not be granted. The rules are made to be followed and they shouldn't be able to reduce the frontage requirement by almost a third of the requirement. Hornischer questioned the difference between water frontage and water access. Jahn stated that if given the water frontage it would get more use and negatively affects the adjoining lots. She is worried about policing some of the conditions if granted and fears that they would not be enforced. Jahn said that she fears that "4 wheelers" would be going down to the lake through the outlot. She said that when the 11 acres was purchased it was as agriculture land and not with water frontage and that it is not in Schowalter's name but in an LLC.

Kim Brixius was present and sworn in. She is a BOA alternate not participating today, but is speaking as an audience member; she is confused about a few issues. She wanted to clarify the number of dwelling opportunities involved. Miller confirmed that it would be the same number of people having access to the water with one less building opportunity. If the argument is that

neighbors are against the request because of the “density” she doesn’t see that as a legitimate argument if the proposed conditions are enforced. Miller concurred with that assessment.

Carolyn Schuelke was present and sworn in. She and her sisters and her father own land to the west, directly adjoining the proposed outlot. She gave the committee a copy of Miller’s staff report with her comments written on it. She reviewed her comments regarding how it will affect the surrounding property owners. She stated that they as landowner’s rely on these governing bodies to protect the land with their rules. She feels that there are other options for Schowalter to market his land but they may not be as financially lucrative as he would like. She doesn’t want to see any type of legal precedent set. She said she understands that the state variance statute creates the opportunity for land owners to request a variance to provide relief for a “hardship” but she doesn’t see any type of hardship that is present for Schowalter in this case.

Walden Weaver was present and sworn in. He is the other property owner to the west. He gave his history of the parcels. He stated that he would like to see the request denied and concurs with the reasons that his daughter stated in her testimony.

Harry Gladwin, from the Town of Bradley Plan Commission, was present and sworn in. He just had a couple of comments. He read a letter that Carolyn Schuelke had submitted to the Town of Bradley stating their concerns for this request. He relayed a comment from another town resident, Hal Schrage, who had concerns that the 9 acre lot may be divided further and questioned why a variance should be granted when a hardship is not present.

Hornischer asked Miller for clarification on riparian access. Miller stated that our code prevents the conveyance of easements for riparian rights. Jach-Richards asked if Schowalter had considered relocating the outlot to the middle of the proposed area instead of along the west lot line. Miller said that a recently installed septic system for the cottage would make that not practical.

Robert Schowalter returned to the podium and stated that he is the only owner of the property. Some of it is listed in Robert Schowalter IRA but it is all in his name. He owns a lot of land in the county and has respect for peace, quiet and open space and he believe that his intension supports that.

Carolyn Schuelke stated that most of the 9 acres above Mohawksin Rd is swamp.

Maggie Burke was present and sworn in. She stated that they live on Peaceful Valley Rd which feeds to Mohawksin Rd and they ended up purchasing additional lots adjoining to theirs to prevent this from happening as they were afraid that the lots across the road would just use the water lots as access. She wondered if the taxes are equitable in these situations where backlots still have water access as she feels that they are heavily taxed for having their water frontage.

Kim Brixius tried to clarify how it is taxed when it is a shared access. She questioned Schuelke’s comment about not being opposed to the outlot being in the middle of the lot. Schuelke said that wasn’t her intention to say she was in favor of that either she was just saying “how would they like that next to them”? Schmidt wondered what the benefit was to having the outlot as an access. Schowalter stated that it isn’t like they are building a house on the outlot it is just for someone who would like a way to get to the water.

Chairman Lamer acknowledged letters of opposition and read into record the letters already not covered by testimony. Letter were received from; (Richard & Beverly Hartl), (Clark Shannon), (Carolyn Schuelke, Nancy Yang, Sally Spicer, Wally Weaver), (Art & Jo Shannon), (Owen & Kathy DeVillers), (Clarence & Arlene Voigt),(Thomas & Kathleen Bronsted) and (Walden Weaver).

Chairman Lamer closed the public hearing for Robert Schowalter.

The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination.

Motion by Jach-Richards to DENY the variance request. Motion died for lack of a second.

Hornischer commented that although there has been significant testimony in opposition today he does not want to ignore the recommendations of staff as they have analyzed the request and are giving their recommendation hopefully with a solution compatible for all participants in the issue. Because of the fact that this request is not for a substandard buildable lot, but access, he feels that this request is not compromising the intent of the zoning laws.

Motion by Hornischer, seconded by Steffenhagen to APPROVE ON CONDITION (as listed on the staff report) the variance request.

CONDITIONS:

- 1) Outlot 1 shall be labeled "unbuildable" on the face of the CSM.
- 2) The parcel located north of Mohawksin Road shall be surveyed as well and depicted on the CSM that will be prepared for the creation of Lot 1, Lot 2 and Outlot 1 as proposed by the applicant. It shall be labeled "Lot 3" so that proper legal descriptions and covenants may be created to reference and incorporate the terms of these conditions into the deeds.
- 3) Outlot 1 shall become non-severable from Lot 3. It may not be sold separately from that parcel and the CSM must depict this condition.
- 4) Outlot 1 shall be confined to providing access to the owner of Lot 3 and no one else.
- 5) Lot 3 shall be bound to one residential unit and may not be further subdivided. A statement depicting this must be placed on the CSM.
- 6) The access to Lake Mohawksin on Outlot 1 shall be limited to one 5-foot wide path and/or stairway from the Ordinary High Water Mark to that point 50 feet landward. The rest of the frontage shall remain natural with the existing vegetative buffer zone preserved to a 50 foot depth. Dead trees may be removed with permission of the Zoning Department only if the vacancies are replaced with native trees and shrubs. The 5-foot access path and stairway must be centered within the Outlot.
- 7) Conditions 1 through 5 must be satisfied before the CSM may be signed by the Zoning Department for recording.

In discussion Jach-Richards is concerned if this request is granted it will set a legal precedent. Hornischer stated that each request is separate and distinct and this should not affect future decisions on like requests. Lamer again stated the same regarding it not setting a precedent.

Motion carried 4-1 with Jach-Richard voting nay.

3. Louis & Jean Tomassi for a variance from Section 21.07(1) of Lincoln County Ordinances to allow for a garage to remain at less than 10 feet to a side lot line. The property is described as part of government lot 8 of Section 28, T35N, R07E in the Town of King; having a tax parcel number of 12.283507.005.011.00.00 and an address of N10423 Horseshoe Rd

The applicant was not present to give testimony. Dan Miller was present and acknowledged being previously sworn in. He explained that this is an "after-the-fact" request because of a structure that was already built and explained the need for the request. He reviewed the staff report indicating that the impact if denied would be mainly financial. Hornischer asked questions about the staff onsite for issuance of the permit. Miller stated that when the onsite was done the landowner indicated that the tree and fence line was the lot line when in fact the lot line was identified as being different on

the subsequent survey that had been done. Schmidt asked Miller to explain the septic variance that was requested in the staff report. Lamer stated that he could see why it would have been taken that the fence line appeared to be the lot line. Jach-Richards asked for clarification on where the structure had been approved to be built.

Julie Ehrke was present and sworn in. She thought that the Tomassis should have been made to have the survey done before they were issued that permit. She thinks that they knew where the lot line was but just intentionally encroached on the actual lot line. Ehrke stated that since they purchased their property, because of this issue, they were forced to have a survey done at their own expense. She said that there are lots of unknowns as far as what effect this variance would have on their own property. She wondered why the Tomassis decided to build the garage in that specific location when there were better buildable locations on their property. She doesn't think that financial hardship is a legitimate hardship in this case. She asks that the Board hold off in making their decision until they see if the septic variance from Wisconsin Department of Commerce is granted. Schmidt asked Ehrke where her interpretation of the lot line was when they purchased the property. She explained it was quite different from where the Tomassis' idea of the lot line was. Ehrke discussed some of the issues and events that have taken place since they purchased the property. Lamer asked Ehrke to identify her pier on the aerial photo and she did indicating where the property line actually is. Hornischer asked Ehrke if she is hoping that the Tomassis will be made to remove the structure. She said that they are not asking that the Tomassis be made to move the structure although she questions why it was allowed to be built there in the first place, and does not understand why they are not being penalized for doing something wrong. She is concerned with the fact that her own building opportunities may be hindered if this request is granted. She stated that actions and liberties that the Tomassis have taken over the last 3 years that have affected the Ehrkes miserably.

Miller returned to the podium to address some of Ehrke's concerns and answer some of her questions. He did acknowledge that the Tomassis did not build their garage exactly as portrayed on the permit plot plan. Miller said that they have not been penalized yet because when the problem was discovered the two solutions to resolve this issue were to either move the structure or seek a variance. The outcome of this hearing will determine the solution. If they do not comply with the solution they will then be fined. Hornischer had questions about the electric line which Miller tried to clarify. He commented that Ehrke did not appear as a vindictive neighbor and were just hoping for an equitable resolution.

Chairman Lamer closed that public hearing for Louis & Jean Tomassi.

Motion by Steffenhagen, seconded by Jach-Richards to LAYOVER a decision on the variance request until the Tomassis obtain and supply the Board with Department of Commerce approval for a variance from the 5' setback requirement from a building for a septic tank. Motion carried 5-0.

5. Old Business – Request by Sheldon Hoff Jr. to extend time to exercise previously granted Variance (VAR-03-783) for Unit 1 of Whispering Winds Condominium – Town of Bradley.

Motion by Schmidt, seconded by Hornischer to grant an extension of one year from today to exercise previously granted Variance number VAR-03-783. Motion carried 5-0.

6. Adjourn – Motion by Steffenhagen, seconded by Jach-Richards to adjourn at 2:30 p.m. Motion carried all ayes.