

**Lincoln County Board of Adjustment
Minutes of Thursday, July 24, 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. Also present was: Dan Miller; Zoning Administrator. Alternate Board Member Brixius was excused.
2. Tour the site for the Public Hearing that would be held at 10:15 a.m. – The Board, Miller & Bowers left to tour the site.

Members present for the public hearing: Lamer, Jach-Richards, Steffenhagen, Hornischer & Schmidt. Alternate Board Member Brixius was excused. Visitors: Dan Miller; Zoning Administrator, Dan Bowers; Zoning Specialist, June Winters; Program Assistant, Ray Kraemer; Court reporter and 6 others.

3. Approve minutes from June 26, 2008 meetings - Motion by Steffenhagen, seconded by Schmidt to approve the minutes from June 26, 2008. Motion carried 5-0.
4. Public Hearing – The public hearing was opened for the request listed below.

Variance

1. James M. Krueger for a variance from Section 21.07(1) of Lincoln County Ordinances to allow for construction of a three season room over an existing deck that measures less than 75 feet to Lake Nokomis. The property is described as Lots 12 & 13 of Rapel's Subdivision in the NE¼ of the SW¼ of Section 4, T35N, R06E in the Town of Bradley; having a tax parcel number of 04.043506.018.012.00.00 and an address of N11842 Rapel Rd.

James M. Krueger was present and sworn in. He explained his request. He had obtained a variance in 1993 for building his home and deck at a setback of 65 feet from the water. He has started construction on his 3 season room because he had applied for his building permit and did not realize that he needed a new variance until he was contacted by Zoning.

Dan Bowers was present and sworn in. He explained to the Board that the variance from 1993 only covered his specific plan for construction at that time. He stated that a new variance would be required for any new construction. He said that impervious surfaces are already exceeded on this property but this request would not increase the impervious surface if the enclosure stayed entirely inside of the deck perimeter. He reviewed the letter received from WVIC regarding not constructing anything in the first 30 feet back from the OHWM. This request does not affect that 30 foot strip. He reviewed the staff report. Bowers stated that he believes that if this variance is granted the mitigation required to restore the buffer would benefit the public interest. Hornischer asked for clarification on the impervious surfaces limitations. Hornischer requested that Bowers explain the procedure for permits when that 30 foot strip owned by WVIC is involved. Jach-Richards asked Bowers where the planting for the buffer restoration would have to be done. Bowers stated that the existing boathouse needs to be in the allowed 30 foot viewing corridor so that a lot of the remainder of the frontage would need to be restored.

Tom Blake, with the Wisconsin DNR, was present and sworn in. He gave testimony that he didn't feel that there is a hardship present for his case. Blake doesn't agree that the request will "add to the natural beauty of Lake Nokomis" He said he doesn't feel that the standards for granting the variance have been met and feels that the request should be denied. He stated that if there is a buildable area that does meet the setback that option should be explored. He urged the Board to

take the required criteria into consideration in making their decision. Hornischer asked Blake if the DNR would have been less opposed if at the time of the 1993 variance this 3 season room was part of that request. Blake wasn't sure. He explained that the Board has to determine what constitutes a "hardship" in this request. There may have been a hardship at that time (for the initial construction) but he doesn't feel that his current situation, that not being able to do additional construction within the setback, is a hardship. Schmidt asked Blake which requests he gets involved with. Blake stated that the DNR is notified of all of the requests in shoreland. He tries to come to the hearings or send correspondence on any requests that he can get to. Hornischer stated that it is difficult to make a decision when the governing bodies disagree with each other on their recommendations on a request. Blake stated that he agrees with part of the county staff recommendation that granting this request would get the buffer restored, but doesn't agree that it meets the hardship criteria requirements. Lamer commented that in his opinion that the decks are an asset especially on steep slopes to the water. Blake stated that he is not against decks he just wants the Board to adhere to the rules. He knows that people live on the water for the beauty of the lake he just feels that in this particular case there is already enough construction on the property and no hardship exists.

Dan Bowers returned to the podium. Jach-Richard asked him for clarification on the staff recommendation. He said that staff is recommending approval. He discussed the buildable area on the property and explained why that other buildable area would not work; because of the location of the septic and also that it would increase the impervious surfaces. He conceded that the 3 season room is not a "necessity", but he pointed out the granting the variance would improve the public interest as Krueger would be required to restore his buffer. He doesn't feel that placing a structure on top of an existing structure would be against the public interest. Schmidt asked if we had any input from the Town of Bradley. Bowers said that the town is notified but they are not required to submit a recommendation for the requests. There were comments from the Board regarding decks and setbacks in general.

Harry Gladwin, Bradley Plan Commission, was present and sworn in and stated that the town is required to give recommendations for Conditional Uses, Rezones & Subdivisions but NOT for Variances, commenting that he is not sure why it is not required. In his own personal opinion he feels this request is a reasonable one and doesn't see a problem if he is building the 3 season room over an already existing structure.

Chairman Lamer closed the public hearing for James M. Krueger.

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

Motion by Hornischer, seconded by Schmidt to APPROVE ON CONDITION the variance request.
CONDITIONS:

- 1) No further increase in impervious surfaces. The proposed enclosed porch must be built over existing impervious surfaces according to the proposed site plan.
- 2) All other aspects of the ordinance must be adhered to including mitigation, a 63 foot setback to the road, and a minimum setback of 10 feet to the side lot line.

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

5. Old Business – Request by Louis & Jean Tomassi to allow for an existing garage to remain at less than 10 feet to a side lot line. (N10423 Horseshoe Rd – Town of King). – Jean Tomassi & Louis Tomassi Sr., were present and sworn in. Mr. Tomassi explained their request. He gave their history of the property stating that, when they purchased the property, the realtor showed them where the property line

was and the neighbors agreed at that time. The neighboring property has since been sold a couple of times. Mr. Tomassi stated that the line has been surveyed a couple of times with different results and the property stakes were moved. Mrs. Tomassi said that they had always agreed where the lot line was until the survey after the condominium was created on the neighboring lot. When they built their garage they based it on the original lot line. After the garage was built it was then the neighbors said that the garage did not meet the setbacks. Mrs. Tomassi said that they had yet another survey done by another surveyor and it did indeed show that their garage was too close to the lot line. She said that they also found out recently that their garage was built too close to the septic tank. Mr. Tomassi stated that they are currently working on getting a variance from the Department of Commerce for the reduced setback from the garage to the septic tank. She said that they went to the owners of the condo and asked to buy a small portion of the land and were told no because that would require amending the condo plat. She said they then discussed other options with the neighbors and they have not yet come to an agreement.

Jach-Richards asked for a couple of minutes break at 11:10 a.m. The hearing resumed at 11:12 a.m. Lamer asked the Tomassis if they had a survey done when they bought the property. Mrs. Tomassi said that they were told that it had already been surveyed. There was some confusion over what surveys had been done and when. She said that if they would have known that the lot line was incorrect they would not have built the garage there. She said that they had also been unaware that the garage was so close to the pump tank for their septic system. Jach-Richards asked what they were told when they got their permit for the garage. Mr. Tomassi said that they were told where to build their garage when they got the permit.

Dan Miller was present and sworn in. He gave an update since last month's meeting. He has had several conversations with Mrs. Tomassi. He said that the Department of Commerce variance had originally been submitted to Shawano and then sent to the LaCrosse office delaying the process. There were issues with the variance so the Tomassis contacted a local plumber, Tom Arnott, to supply additional information that the reviewer required. He said that the determination of the Department of Commerce is unknown at this time. He believes that the Tomassis are sincere in their statement that they didn't think they were encroaching on the setback. He did say that the garage was built just a little askew of how it was originally staked out and isn't sure if as originally staked would have met the setback either as staff was going off the assumed lot line at the time. Miller reviewed his original staff report giving his recommendation for approval pending either the approval from the Department of Commerce for the septic variance or if the Commerce variance is not granted, conditioned upon moving the septic tank. Hornischer recalled Julie Ehrke's testimony in opposition at the June meeting and asked if any of the other issues had been addressed. Miller said that they had come to an agreement about moving an electrical line and Ehrke's concern about their own opportunity to build a garage is not impacted by the Tomassis' request. Jach-Richards commented that it would be beneficial to require a survey for condominiums as it is too confusing without that clarification. Miller stated that it is now a requirement in our code.

Chairman Lamer closed the "Old Business" portion of the meeting regarding the request by Louis & Jean Tomassi.

Motion by Hornischer, seconded by Steffenhagen to APPROVE, CONTINGENT upon the applicants receiving approval from the Department of Commerce for a variance from the 5' setback requirement to a septic tank. If the variance from Commerce is not granted the applicant would be required to obtain a permit to relocate the septic tank to a compliant location.

Motion carried 5-0.

6. Adjourn – Motion by Steffenhagen, seconded by Jach-Richards to adjourn at 11:35 a.m. Motion carried all ayes.