

**Lincoln County Board of Adjustment  
Minutes of Thursday, September 25, 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 and Alternate Adams. Also present was: Dan Miller; Zoning Administrator, Dan Bowers; Zoning Specialist & June Winters; Program Assistant. Board Member Brixius joined the rest at the Marcotte site. Board member Schmidt was excused.
2. Tour the site for the Public Hearing that would be held at 10:30 a.m. – The Board & Miller left to tour the sites.  
  
Members present for the public hearing: Lamer, Jach-Richards, Steffenhagen, Hornischer, Brixius and Alternate Adams. Visitors: Dan Miller; Zoning Administrator, Dan Bowers; Zoning Specialist, June Winters; Program Assistant, Mary Heederik; Court reporter and 4 others. Board member Schmidt was excused.
3. Approve minutes from July 24, 2008 meetings - Motion by Steffenhagen, seconded by Jach-Richards to approve the minutes from July 24, 2008. Motion carried 5-0.
4. Public Hearing – The public hearing was opened for the request listed below.

**Variance**

1. Donald and Mary Marcotte from Section 21.07(1) of Lincoln County Ordinances to allow for a screened porch that measures 53 feet to Lake Mohawksin. The property is described as Lot 6 of Red Cloud Landing Assessors Plat in Section 31, T35N, R06E in the Town of Bradley; having a tax parcel number of 04.313506.022.000.06.00 and an address of W7282 Loop Road.

Donald Marcotte was present and sworn in. He explained his request. He passed out to the Board members the points that he wished to make with his testimony. He asked them to look at the plot plan from the permit for the garage. He explained how he measured his setbacks. The proximity to the “closest point” of the water was not what he thought it was. He then referenced the aerial photo that Dan Miller provided in their packets indicating the closest point. He stated that when he built the screen porch he had no previous experience with permits and that his local builder had even advised him not to get a permit. On the matter of public interest, he feels that they have done other things to their property that have benefited the public interest. They have already replanted vegetation in several areas and were unaware of any restrictions. Marcotte stated that his son-in-law was up earlier than he himself was this year and had weed-wacked a larger area and they will not do that again. He feels that they have not taken any more liberties than others on the Somo/Mohawksin waterfronts. He discussed the recommendations on Miller’s staff report. Hornischer asked Marcotte at what point during the building process did the builder take measurements to the water? Marcotte stated that it was after they had started construction. Hornischer asked why, when they discovered it didn’t meet the setback, they did not stop their construction and apply for permits? Marcotte stated that he and the contractor just decided to keep going. Hornischer asked why this request is being brought forward 5 years after the fact. Marcotte thought it was from a complaint and Miller will have to answer that question in his testimony. Jach-Richards asked how long he has owned the property. Marcotte stated approximately 5 years.

Dan Miller was present and sworn in. He stated that he had spoken to Mr. Marcotte about the violation as a result of a complaint. He stated that he did apply for the permit in 2005 for the garage

and the other previous construction of the screen porch was not noticed by the inspector at that time. Miller reviewed the staff report and explained his recommendations and the legal alternatives. He stated that he doesn't feel that there is a hardship present. Hornischer asked Miller to clarify the legal alternatives. Miller stated that the porch could have been added to the west end of the home or to the south side. Another alternative would have been to build a free standing screen house in a compliant location. Miller is advocating denial but if the Board does grant the request he feels that this should be considered their "one time" expansion opportunity and that they should restore the buffer.

Tom Blake, Wisconsin DNR, was present and sworn in. He toured the site with the Board this morning and doesn't feel that the applicant meets the requirements of a hardship. He feels that even though this structure may seem inconsequential, if all of the structures on the lake are allowed to encroach into the setback, cumulatively it will affect the environment. He doesn't feel that the applicant's testimony shows that the burden of proof of hardship has been made. He believes that the request should be denied.

Mr. Marcotte returned to the podium and told the Board that the screen porch was built by a different builder than the garage. He said also, Dan Miller had told him that the complaint that he had received was not because it was an eyesore or nuisance but because the person was looking at purchasing the property and had been told that they could not do what they wanted with the property and wondered why this new buyer had been able to alter the structure.

Chairman Lamer closed the public hearing for Donald & Mary Marcotte.

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

Motion by Hornischer, seconded by Jach-Richards to DENY the variance request. Hornischer stated that the applicant should confer with the Zoning staff to see what can be done to rectify the violation.

Motion carried 5-0

2. Dennis Betro from Section 21.07(1) and 21.13 (2) of Lincoln County Ordinances to allow for a rearward addition, decks, and overhang on a non-expandable structure by ordinance standards and all measuring less than 75 feet to Lake Nokomis. The property is described as Unit 6 of Viking Condominium in Section 2, T35N, R06E in the Town of Bradley; having a tax parcel number of 04.023506.019.006.00.00 and an address of N12096 Heafford Road.

Dennis Betro was present and sworn in. He explained that about a year ago the Viking Condominium applied for a Variance as a whole for several requests. He stated that after that Variance was granted the condominium association could not agree 100% with the conditions that were imposed so the Variance was not exercised. Betro was in favor of the buy-out that had been recommended but others were not. He explained his new request and the reasons. If they have to tear off a part of the structure it would make his son's bedroom so small it would be unusable. He reviewed for the Board the proposal that he had sent to the rest of the condo owners. He could not get all of them to agree to that. He said that he has been trying to work with Zoning on a compromise that would work and that both Dan Miller & Dan Bowers have been very helpful. He told the Board that he has already started the shoreland restoration in the buffer on his own without the help of the other condo owners. He has been working with Ben Niffenegger, the Shoreland Protection Specialist, in the Zoning office. He asked that the Variance be granted but if it is not he

asked for an extended period of time to remove any structures that need to be as he his currently unemployed and money is tight.

Dan Bowers was present and sworn in. He reviewed his dealings with Mr. Betro and explained that he has already made some steps in removing some of the impervious surfaces to meet today's standards. He explained the legal alternatives that Mr. Betro has and the fact that the condo will still be responsible for restoring the buffer even if they to not exercise the original Variance. He stated that staff recommended denial as there are legal options. Hornischer asked Bowers if the rest of the condo association is making progress with coming into compliance if they are not going to exercise the original Variance. Bowers stated that they were. Hornischer is worried that if this new request is granted it would create a problem because the fact is the condo is considered one property as far as we are concerned.

Tom Blake, was present and acknowledged being sworn in. He stated that Mr. Betro has not given proof that the ordinance is unnecessarily burdensome. The porch is not a necessity and the additions have a close proximity to the waterway. The argument about the son's bedroom he feels is a self imposed hardship and recommends denial. Hornischer asked if the ordinary high water mark ever changes. Blake says that it can due to natural changes that occur. Hornischer said that the flowage fluctuates significantly and asked if that would change anything. Blake stated that the fact that the water does fill to a certain point on a consistent basis does not necessarily change the OHWM.

Chairman Lamer closed the public hearing for Dennis Betro and read a letter from WVIC regarding Mr. Betro's request.

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

Motion by Steffenhagen, seconded by Brixius to DENY the variance request. Hornischer asked for discussion before the vote. He would hope that, if denied, Mr. Betro is granted a reasonable time frame to rectify the situation due to his current employment situation. The Board concurred that a year would be a reasonable amount of time.

Motion carried 5-0

5. Board of Adjustment re-organization - Chairman Lamer noted that this had been postponed from an earlier meeting since Pat Priebe passed away. Hornischer nominated Lamer for Board Chairman. There were no other nominations for Chairman. All voted in favor of Lamer as Board of Adjustment Chairman. Jach-Richards nominated Steffenhagen for Vice-Chair. Steffenhagen nominated Hornischer for Vice-Chair. Steffenhagen received 3 votes. Hornischer received 1 vote. Steffenhagen will now be the Board of Adjustment Vice-Chairman. Hornischer nominated Jach-Richards as Secretary. There were no other nominations for Secretary. All voted in favor of Jach-Richards as the Board of Adjustment Secretary.
6. Adjourn – Motion by Jach, seconded by Steffenhagen to adjourn at 11:35 a.m. Motion carried all ayes.