

**Lincoln County Board of Adjustment
Minutes of Thursday, October 23, 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 and Alternate Adams. Also present was: Dan Miller; Zoning Administrator & June Winters; Program Assistant. Board Member Brixius was absent when meeting was called to order but met the Board at the site on tour.
2. Tour the site for the Public Hearing that would be held at 10:00 a.m. – The Board & Miller left to tour the sites.

Members present for the public hearing: Lamer, Jach-Richards, Steffenhagen, Hornischer, Schmidt & Alternates Brixius and Adams. Visitors: Dan Miller; Zoning Administrator, Dan Bowers; Zoning Specialist, June Winters; Program Assistant, Ray Kraemer; Court reporter and 4 others.

3. Approve minutes from September 25, 2008 meetings - Motion by Steffenhagen, seconded by Jach-Richards to approve the minutes from September 25, 2008. Motion carried 5-0.
4. Public Hearing – The public hearing was opened for the request listed below.

Variance

1. Albert Semmler from Section 21.07(1) and 21.013(2)(b) of Lincoln County Ordinances to allow for a deck that measures 54 feet to Lake Nokomis and an addition to a non-conforming home that already exceeds 1,500 square feet of livable area. The property is described as Lots 57-60 of Rapel's Subdivision in Section 4, T35N, R06E in the Town of Bradley; having a tax parcel number of 04.043506.018.057.01.00 and an address of N11795 W. Rapel Road.

Albert K. Semmler was present and sworn in. He explained the request. They are proposing a small addition to the kitchen, enlarging the basement and adding a small deck onto the home. He stated that the kitchen is too small for the number of family members that are usually at their home, the existing area in the basement is too small for their storage requirements and he would like the small deck off of the bedroom as someplace to go out and sit and smoke his cigars. Attorney Craig Nienow is helping him in this process. He has no problem with any conditions imposed if the variance is granted. Hornischer asked why this wasn't addressed when a variance was granted in 1993. Semmler stated that the increase in the size of his family was not anticipated at that time and now that their grown children are coming up with their families the home is not large enough.

Craig Nienow was present and sworn in. He is representing Mr. Semmler. He stated that this is a large wooded lot with most of the buffer being left in a natural state. He doesn't feel that the 3 requests that are being made are unreasonable. He questioned the definitions of "reasonable use" and "undue hardship". He said because of the size of Semmler's family the kitchen is quite small for the number of people and therefore a hardship is present. He stated that his client could live with the legal alternative for the basement issue (keeping the ceiling height below 7 ft) but the kitchen addition is most important. The shape of the lot is a problem as the lots are quite shallow in that subdivision. They are just asking for a 96 sq. ft. addition to the kitchen and he does not feel that it is unreasonable. The deck that they are asking for is so small he would consider it just a "stoop" and doesn't see that as unreasonable either.

Dan Miller was present and sworn in. He reviewed the staff report. He noted that the previous variance determined that there was a hardship present at that time and a variance was granted for a

proposed addition but since that time the ordinance standards have changed and non-conforming structures that fall between the 40 feet and the 75 foot setback are expandable subject to a 1500 sq. ft. "cap" and Semmler's structure is already beyond that cap. Miller feels that the owners do have reasonable use of the property as is, and he doesn't feel that there is a hardship present for this new request. As far as the basement, legal options would allow for up to a 7 foot basement under the existing structure (anything higher than that would qualify as livable area). Miller stated that he is recommending denial of the variance. If the Board does decide to grant the variance he hopes that the Board would require an affidavit be recorded for having the existing buffer maintained. He did commend Mr. Semmler for leaving the existing buffer in such a natural state. Schmidt asked if we had any input from the Town of Bradley. Miller said that the township was notified but we have not received any comments. Jach-Richards asked for clarification on the point that the basement, as long as it remains under 7 foot in height, can be done under the existing foot print under the current code. Miller said that was correct.

Kim Brixius, Board of Adjustment alternate (not voting on this request), was present and sworn in. She isn't against the request but she suggested to the Board that if the variance is granted they could think about requiring increased buffer depth as a condition.

Harry Gladwin, from the Town of Bradley Plan Commission, was present and sworn in. Currently the Town Board does not require that the Plan Commission review Variance requests. He personally tries to attend any hearings where a parcel in the Town of Bradley is concerned.

Tom Blake, Wisconsin DNR, was present and sworn in. He stated that he toured the Semmler site this morning with the Board. He said that in looking at the "purpose" section of the ordinance he feels that these requests are not in keeping with the purpose of the ordinance of protecting fish and wildlife. He said that a "hardship" can not be a matter of "personal preference" and does not feel that the size of the existing structure presents a hardship. He said that the property itself does not present a hardship and doesn't feel that any of the testimony proved that it did. He does applaud Mr. Semmler for his maintenance of a natural buffer. Blake said the fact that Semmler could put a basement under the existing house (without a variance) as long as it is not "livable area" resolves his need for storage.

Craig Nienow returned to the podium. He argued that the DNR's argument is not reasonable and that this small addition is not going to harm the environment in any way. He doesn't agree with the way that the DNR over-regulates the use of people's private property. Hornischer asked Nienow what is the existing livable area excluding the current basement. It is approximately 1700 square feet. Nienow stated that he does not see what is going to be harmed by granting a small addition onto the kitchen. The deck is not as critical in the request as the addition to the kitchen.

Tom Blake returned to the podium. He said that the standard that requires this variance is not a DNR rule it but it is an ordinance adopted by the Lincoln County Board. He said that no matter what the size of the structure in the request, if the criteria for granting a variance are not met, it should not be granted. He says that the Board can not ignore the required criteria.

Chairman Lamer closed the public hearing for Albert Semmler. 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. Both Hornischer & Jach-Richards suggested that interior remodeling and reconfiguration of the kitchen, dining area & sunroom could remedy the situation of the kitchen being too small. Motion carried 5-0

5. Adjourn – Motion by Steffenhagen, seconded by Jach-Richards to adjourn at 10:35 a.m. Motion carried all ayes.