

**Lincoln County Board of Adjustment  
Minutes of Thursday, October 28, 2010 at 8:30a.m.  
Lincoln County Service Center, Meeting room #107**

1. Open meeting and Call to Order – Meeting was called to order at 8:30 a.m. in the Zoning Office. Members present: Lamer, Steffenhagen, Brixius, Adams & Alternate Prain. Also present was Dan Miller; Zoning Administrator. Board Member Hornischer was excused.
2. Tour the site for the Public Hearing to be held at 10:00 a.m. – The Board and Miller left to tour the site.  
  
Members present for the public hearing: Lamer, Steffenhagen, Brixius, Adams & Alternate Prain. Visitors: Dan Miller; Zoning Administrator and William and Linda White. Board Member Hornischer was excused.
3. Approve minutes from August 26, 2010 meeting - Motion by Adams, seconded by Steffenhagen to approve the minutes from August 26, 2010. Motion carried all ayes.
4. Public Hearing – The public hearing was opened for the request listed below.

**Variance**

1. A request for variance by William and Linda White from sections 21.07(1), 21.07(3), and 21.10(1) of Lincoln County Ordinances to allow for two decks already constructed to remain at less than the required setback to the water and to the side lot line, to exceed the impervious surface limits; and to not earn the mitigation required for them to remain. The property is located in Section 30, T35N, R07E, in the Town of King and has an address of N10215 Shorewood Circle.

Chairman Lamer swore in William White to testify. White explained that they would like to keep their decks. They followed some bad advice and thought that since they were not attached to the home or built upon posts that were dug into the ground (sitting on cement blocks) that they would not be subject to permits or setbacks.

They don't want to restore the shoreline back to 35 feet because that would take up their whole yard area where they sit around the fire pit and it would cause problems with their drainfield area. They already have about 25 trees in the area. They pay taxes and don't want to lose part of their yard. In 1985 they got a permit from the DNR to rip-rap the shoreline and that takes care of any erosion concerns. The decks are slotted and they allow rain to go into the soil beneath them; they don't have any plastic under the decks. He volunteered that they could tear up some asphalt on the east side of their garage that measures 11'6" by 22' to reduce the amount of impervious surface on the lot if the Board feels that it is necessary and in lieu of installing the buffer. They were not trying to purposefully avoid Zoning or break the rules.

Brixius asked when the decks were constructed. White answered they built the first one six years ago and the second one three years ago. They would install some vegetation if it is less than 35 feet; maybe 5 or 10 feet. In response to a question about the age of the septic system he thought that it was installed in about 1962 as his folks bought the property in 1967 and it was already in then. He is concerned about tree roots interfering with the drainfield as it lies within 35 feet of the lake.

Adams mentioned that the 30 foot view corridor is allowed in the buffer and White replied that he was aware of that. He elaborated on impervious surface issues and wondered if we count decks why don't we count picnic tables or sandboxes or swing sets? Also wondered why we allow 40 square foot landings with roofs when we are concerned about slotted decks. Prain asked if there were eve troughs on the home and White responded yes but not on the lake side.

Linda White was sworn in and added that the spaces in the boards are larger in the summer as the wood shrinks.

Miller was sworn in and went through the staff report with the Board. He highlighted the staff findings that there was not an unnecessary hardship as the property and home could and has been used without the decks. There is a legal alternative to the decks as they could be replaced with landings that do not exceed 40 square feet. He explained that they can indeed be covered with a roof but the 40 square feet is counted as impervious regardless of whether they are roofed or not. He also pointed out that there are several components of this application: lake setbacks, a lot line set back and impervious surface limits and a request to ignore mitigation requirements. Should the Board deny the decks in question, they should consider a variance to the lot line setback for a 40 square foot landing on the north side of the home and to the total impervious surfaces as the Whites are currently over that standard by 800 square feet.

When asked about the buffer standards and if the staff would accept a shallower depth for restoration he said that they would if the Board ordered it but he wouldn't recommend anything less than 20 feet because the functional benefits of a buffer would be compromised if it were less. He stated the basis of the regulations for requiring a vegetative buffer is found in 281 of the state statutes which was created as a result of the 1965 "Water Resources Act". The buffers are intended to protect wildlife habitat, preserve scenic beauty and water quality. The waters belong to everybody thus the need to regulate near shore uses and vegetation removal. The regulations were a component of the 1968 shoreland zoning ordinance in Lincoln County, albeit they were loosely enforced until 1998.

He also explained that concerns about a septic system that old should not influence the Board. If the drainfield is installed in an area less than 50 feet from the lake it is illegal. Likewise, given the topography and the low elevation above the lake it likely pollutes the groundwater.

Lamer closed the public hearing for the White request. The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination. Some conclusions were not unanimous (see official form).

Motion by Adams, seconded by Brixius to approve in part the variance request with the following conditions:

- 1) The larger deck off the bedroom and which sits the furthest from the lake can remain.
- 2) The south deck must be removed and may be replaced with a 40 square foot landing.
- 3) A vegetative buffer must be restored to a depth of 20 feet in compliance with a restoration plan approved by Zoning.
- 4) Eve troughs and downspouts must be installed on the lake side of the home to direct runoff from the roof away from the lake.

Motion carried all ayes.

5. Discuss DNR appeal of Molski decision – Miller explained that the record had been collected and provided to the Court. We will receive directions from it on how the appeal will proceed; either by briefs alone or if additional testimony will be received. The Court may make a decision to affirm, overturn or remand back to the Board for further action. Details of the case should not be discussed while it is being litigated. Nancy Bergstrom, Lincoln County Corporation Counsel is representing the Board.
6. Service recognition of retired Board Member Schmidt at 3's Company – The Board recessed at 11:00 a.m. to travel to 3's Company to recognize Elroy Schmidt who retired from the Board.
7. Adjourn – Motion by Steffenhagen, seconded by Brixius to adjourn at 12:20 p.m. Motion carried all ayes.