

**Lincoln County Board of Adjustment
Minutes of Thursday, November 21, 2013 at 10:00 a.m.
Lincoln County Service Center, Meeting room #156**

1. Open meeting and Call to Order – Due to an error on the posted agenda, instead of starting at 8:30 a.m. as listed in the public hearing notice the meeting was postponed until 10:00 a.m. Meeting was called to order at 10:00 a.m. in the Room 156. Members present: Lamer, Hornischer, Steffenhagen, Brixius, Adams & Alternates Prain and Rusch. Also present were Dan Bowers; Zoning Program Manager, June Winters; Program Assistant and 3 others.
2. Approve minutes from the October 10, 2013 meeting - Motion by Hornischer, seconded by Steffenhagen to approve the minutes from October 10, 2013 meeting. Motion carried all ayes.
3. Public Hearing – The public re-hearing was opened for the request listed below.

Before Chairman Lamer proceeded with the public hearing, Board Members Hornischer & Adams asked to be recused from item #1 on the public hearing. Alternate Board Members Prain & Rausch took their places.

Variance

1. A request for a variance Margaret Schulz Family Trust and Daniel Schulz from sections 21.07(1) of Lincoln County Ordinances to allow for a patio less than 75' to Lake Alexander. The property is located in Section 31, T32N, R06E, in the Town of Harding and has an address of N2688 Alexander Lake Road.

Attorney Randy Frokjer was present and sworn in. He is attending on behalf of the applicants, Steve & Cheryl Schulz. He reviewed the history of the property stating when the retaining walls were originally built and the need for their recent replacement. He said that the non-conforming structure was in existence before Zoning regulations were in place and that a party is allowed to restore that non-conforming structure if there is an "infestation". He believes that this falls under that because the original railroad ties were infested with ants. The original variance was granted for the retaining wall but the patio was to be removed. He believes that it is a safety issue & that removal of the patio would affect the integrity of the wall based on statements from 2 different contractors. Frokjer referenced a letter that was received from Jeff Babl P.E. stating that, after a site visit, the removal of the patio would be detrimental to the integrity of the retaining wall. He also commented that there is an erosion problem with the negative run-off from Alexander Lake Road and he believes that the retaining wall prevents that erosion being worse. He said that this retaining wall & patio are not an issue with the DNR, neighbors, lake residents or the Town of Harding. He again cited his reasons for believing that this variance should be granted. He reviewed the purpose of the Board of Adjustment and he argued that this request meets the criteria.

Brixius questioned the fact that the DNR was o.k. with the patio & retaining wall. Frokjer stated that Schulz's understanding from the DNR is that they have no issue with it. Brixius read from the only letter that Zoning had received from the DNR, stating their opposition. Schulz may need to clarify that issue.

Steve Schulz was present and was sworn in. He stated that when Dan Bowers first came to the site, it was a joint on-site with personnel from the DNR & others. Schulz said that he showed them pictures of what was previously there, and they could see that it had since been replaced with this

retaining wall & patio. He said that run-off from Alexander Lake Rd does cause erosion on the driveway. Schulz didn't believe that the DNR person that had written the letter of objection had even visited the site and was basing his opposition on information given to him by Zoning. Brixius said that it was unfortunate that there was no documentation from the original DNR onsite that Schulz was referencing. Brixius ask Schulz to confirm that Jeff Babl, P.E. was at the site and Schulz confirmed that he was. Prain had questions about the construction of the retaining wall that Schulz tried to clarify by showing him on the photos. Schulz said that the patio surface has cuts in it and the fire pit has no bottom to it so they will both allow water to filter through. Rausch asked when the patio was poured. Schulz said that it was immediately after the rock wall was set.

Dan Bowers, Zoning Program Manager, was present and sworn in. He read a portion of the ordinance from Chapter 17.8.60(7)(d), regarding self-imposed hardship. He said that the DNR is on record of being opposed to the request because of it being a self-imposed hardship. He referenced a photo and a discussion between Diane Hanson, Steve Schulz & himself, on what was agreed upon to resolve the violation. He indicated the portion of the patio directly at the base of the rock wall that could be left to support the rock wall. He read from a portion of the 4/12/13 letter from Jeff Babl, P.E., which stated "My recommendation would have been to place a row of boulders below grade in the patio area to help with frost protection and to help stabilize the wall." Bowers questioned why the concrete was utilized on this side of the walkway to stabilize the wall but not on the other side of the walkway, where there is grass in front of the retaining wall. Prain said that he thought that was discussed earlier and it was agreed that the boathouse stabilized the integrity of the retaining wall on the other side of the walkway.

Bowers referenced the original variance and conditions and the importance of the re-vegetation. Lamer asked why there is a need to camouflage structures along the shoreline. Bowers said considering the part of the reason that we regulate shoreland is to maintain natural scenic beauty and that a huge rock retaining wall does not conform with the definition of natural scenic beauty and that is why there is a requirement to re-vegetate. Bowers summarized by saying that he believes that this is compounding the non-conformity of the situation. He reviewed the items that constituted violations on the property and questioned why this should be allowed to be compounded. He said if they were compelled to grant this variance his recommendation would be to ask that the deck be removed as mitigation or some of the other non-conformities be addressed in the mitigation. Steffenhagen noted the letter to Schulz from Zoning dated 7/27/12, that the plumbing was supposed to be removed from the boathouse by 7/12/12, and asked Bowers if that had taken place. Bowers said that he has not been asked back to the site to confirm that.

Prain referenced 59.692(1t) & asked Bowers how they can take action against those non-conformities. Bowers stated that statute just gives the deck a "non-conforming" status. Brixius asked to clarify the mitigation that may be considered. There was discussion on the mitigation and what powers the Board has under this statute. Brixius stated that it is appropriate for the Board to consider mitigation in granting a variance. Brixius said that it would have been helpful to have the engineer appear in person to ask if there would be any other options. Prain asked what the dimensions of the concrete that Bowers recommended leaving for support. Bowers said that he did not have an exact dimension. Bowers said that he didn't agree that the entire patio needed to remain for support. Prain argued that the process for removing the patio would be more detrimental. Bowers reiterated that a self-imposed hardship is not a legitimate hardship and that when you are evaluating the request for variance you must assume that the patio is not there currently. Prain said that the DNR's letter doesn't address the environmental impact of removal of the patio. Brixius commented that this being an after-the-fact request certainly makes it more difficult to deal with.

Randy Frokjer returned to the podium. He said that he questioned that Lincoln County even had control over Schulz "maintaining" his non-conforming structure according to how the State Statutes read. He stated that Schulz was only required to obtain the letter from the engineer and he has

provided that. He said that there is nothing in the engineer's letter about partially removing the patio. Frokjer believes that there is a strong arguable right to let this patio remain. Brixius asked Frokjer if the patio existed previously and Frokjer said just a grass patio. The concrete patio was put in to support the retaining wall that replaced the old one. Brixius said that she still is not convinced that it is necessary to leave the patio in its entirety. Frokjer said that it is all tied together in order to support the rock wall.

Cheryl Schulz came to the podium and was sworn in. She wanted to address the issue that Brixius had questioned why the entire area did not need the patio for support. She said that they wanted a grassy area for the kids to play and in that area, there were boulders buried underneath the rock wall for support. She also stated that it was presumptuous of Mr. Bowers to state what he thought the engineer "meant" in his letter and not just taking it at what he "said" in the letter. She also stated that they have already replanted lots of vegetation around and within the rock wall. Brixius asked why, what was done in the grassy area to support the rock wall, couldn't have been done all along the rock wall. Cheryl Schulz said that was just not what the plan had been when they had done it. Brixius clarified that the wall could have all been supported by boulders along the entire wall as it was in the grassy area. Schulz said that on the grassy area side there is a slope for the water to drain naturally and on the other side there is not.

Steve Schulz returned to the podium and wanted to clarify that the wall was rebuilt with the same drainage fashion that the original wall was built. He explained the topography of the lot and pointed out the issues that it created and the problems with the solutions that may have been considered.

Chairman Lamer closed the public re-hearing for the Schulz request. The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination.

Motion by Brixius, seconded by Rausch to DENY the variance request.

Motion carried 3-2. Brixius, Rausch & Steffenhagen voting yea. Lamer & Prain voting nay.

4. Approve 2014 meeting schedule – Motion by Steffenhagen, seconded by Brixius to accept 2014 schedule as proposed. Motion carried all ayes.

Before adjourning Frokjer asked a question as far as complying or appealing what is the time frame for doing either. Bowers said that a reasonable timeframe would be allowed for complying.

5. Adjourn – Motion by Steffenhagen, seconded by Rausch to adjourn at 11:10 a.m. Motion carried all ayes.