

**Lincoln County Board of Adjustment  
Minutes of Thursday, May 28, 2015 at 8:30 a.m.  
Lincoln County Service Center, Meeting room #156**

1. Open meeting and Call to Order – Meeting was called to order at 8:30 a.m. in the Zoning Office. Members present: Hornischer, Steffenhagen, Adams, Brixius & Alternates Prain & Rausch. Also present were Diane Wessel; Land Services Administrator and June Winters; Zoning Program Assistant. Lamer was excused.
2. Tour the sites in the Town of Bradley that are the subject of the Public Hearings to be held at 10:00 a.m. - Board Members & Wessel left to tour the sites. The Board & Wessel returned to Room #156 and re-convened at 10:30 a.m. to continue the meeting.
3. Approve minutes from the November 21, 2013 meeting - Motion by Steffenhagen, seconded by Adams to approve the minutes from November 21, 2013 meeting. Motion carried all ayes.

Members present for the public hearing: Hornischer, Steffenhagen, Brixius, Adams, and Alternates Prain & Rausch. Visitors: Diane Wessel; Land Services Administrator, June Winters; Zoning Program Assistant and 7 others. Lamer was excused.

4. Public Hearing – The public hearing was opened for the request listed below.

**Variance**

1. A request for a variance by Judy Schroeder from sections 21.13(3) of Lincoln County Ordinances to allow for the rebuilding of a home which is less than 75 feet to Clear Lake. The property is located in Section 10, T35N, R06E, in the Town of Bradley and has an address of W5694 Clear Lake Rd.

Jeff Cole was present in support of the request. He is Judy Schroeder's son-in-law. He wanted to clarify/correct some of the information from the staff report on the request. He said that there is only going to be a crawl space and not a full basement (not livable area). Also the ceiling in the 2<sup>nd</sup> story is not high enough to be considered all livable area. They are planning on 1966 sq.ft. (1<sup>st</sup> level) + 1046 sq.ft. (2<sup>nd</sup> level) = 3012 sq. ft. Hornischer asked the size of the original structure. Cole said that footprint was just over 1600 sq. ft. He agreed that it is a larger footprint but they are proposing moving it back slightly as a compromise. He said that if the Board would allow a full 2<sup>nd</sup> story on the original footprint they would be open to that compromise also. Cole said that there is a fair amount of water towards the back of the property. Moving the home to a compliant location would require removal of several trees. They are hoping for a compromise at either the current location or moving back a little.

Brixius explained that the Board is bound by DNR rules. Brixius asked that when the original structure was built if it needed to be filled in order to build at that time. Cole said he believes that is correct but Mark Schroeder will need to answer that question when he testifies. Cole said that would be very costly to fill and move back. Brixius then clarified that non-conforming structures are protected by state statute to rebuild in the exact same size. She said that cost & proximity to the lake are not hardships in the states eyes when you can rebuild exactly what you had. Hornischer reiterated what the state statute protects and that this Board has no latitude from that. Cole said he didn't see the problem with going somewhat higher. Hornischer & Brixius explained that the statute does not allow for going larger than what was previously there. Cole said that the proposed deck would also be decreased in size from what existed. Cole said that they are trying to get to a "workable" solution of a little bit larger structure without pushing the home back to 75'.

Brixius said that a previous variance that had been granted and the “sleeping cottage” was supposed to have been removed at that time. There was discussion on that but Hornischer said it may be a pertinent fact but not really relative to this request. Brixius said that the applicant has still not shown a legitimate hardship. Cole said that they felt that their request was a compromise to get additional space by moving it back slightly. There was a discussion on the mitigation. Hornischer said he understands the train of thought but they are restricted with the rules that they need to follow for requests.

Prain asked if they had done soil borings done. Mark Schroeder, Judy Schroeder’s son, was sworn in to give testimony regarding that question. He said that the test pits that were dug in the back yard vicinity show that there was 7-8 feet of organic peat with groundwater directly under that. He said where the structure is now the groundwater is just under the crawl space. There was discussion on the problems created with the high groundwater that is present. Prain feels that this may be a hardship and that the proximity to the wetlands may also be an issue although that would require more information to determine.

Hornischer read an e-mail from Jeff Lewis, an adjoining land owner, in opposition to the request. He feels that this request should be denied as he was with his requests to build closer to the lake.

Dale Rezabek, Regional Water Specialist with the WDNR, submitted a letter stating that the applicant must prove their hardship and that has not been done. They have legal options and feels that the request should be denied.

Cole returned to the podium and talked about the previous request and said that the “zoning permit review checklist” he was seeing said that the small structure that they refer to as “the little cottage” was supposed to just be “moved” not “removed”. If removing that cabin would make any difference in this current request they would be willing to have that conversation.

Hornischer called Diane Wessel to the podium to review the staff report. She is the Lincoln County Land Services Administrator. She said that the applicant does not meet the statutory requirements of a variance. She doesn’t see that there is a hardship present and they have 2 legal options and therefore does not feel that this variance should be granted. She discussed the issue that they have not moved the other structures or discontinued their use as “sleeping quarters”. By our ordinance, technically there are still 2 dwellings on the property (the guest house & also the loft area of the garage). This is a violation but a separate issue. There was discussion on that subject. Wessel said that they need to have the house that they are rebuilding be the ONLY dwelling on the property & they have 2 legal options to do that. Adams & Prain had questions about the wetland issues. There was more discussion. Wessel said that without formal wetland delineation she cannot answer their questions.

Brixius asked if this is denied if the applicant could obtain a wetland delineation to prove that there may be a hardship. Wessel said that they could but a hardship still doesn’t exist because they can build in the same location & size as the previous home. Prain had a question about the previous variance & how much “livable” area there existed previously. Wessel wasn’t sure of the exact figure but said that they would be allowed no more than they had previously. There was discussion on that. Wessel said that even if they build in the previous location OR at a compliant setback the violation issue of the other dwellings would need to be resolved first.

Cole returned to the podium. He said he feels that the interpretation of the term “dwelling” is confusing. He said that there are beds in the loft of the garage but he doesn’t see it as a dwelling because that is not the primary purpose. He said that they are still hoping to compromise and if it takes removing that building they are willing to do that.

Hornischer closed the public hearing for the Schroeder variance request. The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination.

Motion by Prain, seconded by Brixius to DENY the request.

Motion carried all ayes.

2. A request for a variance by Steven Jasinski from section 21.14(3) of Lincoln County Ordinances to allow for the rebuilding of a home on a lot which is less than 65' wide. The property is located in Section 4, T35N, R06E, in the Town of Bradley and has an address of W6437 Camp Rice Point Rd.

Steven Jasinski was present to explain his request to the Board. He purchased the property last year that was an old resort. They have already removed 2 of the old cabins. He was going to try to remodel the house that remained but found that he may need to tear it down and rebuild. He had met previously with Dan Bowers from the Zoning office to see what his options were. He would just like to rebuild to have a home on that lot. Hornischer asked about another structure on the property and Jasinski said that they would be removing that also, when finances allow, because it is beyond repair.

Prain asked about the location of the structure and the access to get equipment onto the property because of the narrow lot. Jasinski explained their setbacks and he didn't feel that access for equipment would be an issue. There was discussion on where his viewing corridor & lake access would be.

The only recommendation Jasinski did question in the staff report was that he be at least 85' back instead of the required 75'. He had questions about removing the sea wall and maintaining the correct ordinary high water mark (OHWM). Prain commented that he also lives on Nokomis and he has lost over 5' of the setback from his OHWM from erosion over time. Jasinski said that his home would be at 85' but he was planning on the deck be on the water side of the home. There was discussion with the setback requirements. Brixius asked Jasinski how he felt about the increased buffer depth recommendation and Jasinski stated that he doesn't feel that he should be required to do that either when the typical buffer depth is 35'.

Hornischer read into the record the letter from WVIC regarding the request. It explained the use agreement that needs to be signed between WVIC & Jasinski before any permits may be issued involving any activities on WVIC land. They did not have an opinion on the request to rebuild for anything except how it affected WVIC land. They did not object to the recommendation for removal of the platform, retaining wall, seawall & grading within that area and the increased setback as listed in the staff report. Jasinski said he is currently working on the license agreement paperwork.

Hornischer read into the record the letter from Dale Rezabek with the WDNR regarding meeting the hardship present. They had no opposition to granting the request with the staff recommendations.

Brixius discussed the rules that the Board needs to adhere to & the compromise that staff is making in their recommendation. Jasinski feels that he has already done a lot of improvements on the property and Brixius agreed.

Wessel came to the podium to review the staff report. Wessel said regarding the 85' setback, 45' buffer depth & removal of the deck are in fact a compromise. She said that they are just recommendations to the Board but Jasinski has been very pro-active in improving the property. She

said that they do have concerns about the sea wall failing. Hornischer questioned the scenario where there would be enough erosion to make the structure non-conforming. Wessel explained that it would be “legal non-conforming” because it was legal at the time approved but may create issues in future permitting. Brixius had questions about the platform. Wessel said that the Board has latitude regarding the location of platform & steps and explained their options. There was discussion on the retaining wall, platform & seawall. Wessel said that in speaking with the WVIC it may be best to do all of the work at the same time because they are all tied together and within the 2 year timeframe to comply with the timeframe for buffer restoration. (2 growing seasons). There was discussion on the buffer restoration.

Jasinski returned to the podium. He wanted to clarify the recommendations regarding the platform & stairs. There was discussion on the legal non-conforming deck. Wessel explained the options for repair <50% of the structure. Jasinski said he intends doing the rip-rap eventually but is hoping to finish the structures as his priority financially.

Hornischer closed the public hearing for the Jasinski variance request. The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination.

Motion by Adams, seconded by Steffenhagen to GRANT ON CONDITION per recommendations in the staff report with the 2 changes as noted below.

CONDITIONS:

- 1) Only 1 dwelling is allowed on the parcel. The existing “guest house” shall be removed.
- 2) Minimum setback of ~~85~~ 80’ of any structure to the ordinary high water mark.
- 3) The shoreland buffer shall be restored to a depth of 45’ with a view corridor no greater than 15 feet wide.
- ~~4) Removal of the non-conforming platform.~~
- 5) All other ordinance requirements shall be met.
- 6) Must meet state regulations for minimum setback of 5’ from septic tank and 10’ from drainfield.

Motion carried all ayes.

5. Board re-organization & election of officers – Winters shared with the Board that Steffenhagen & Rausch had been reappointed to the Board of Adjustment at the June 17, 2014 County Board meeting.

Nominations for Chairman were called. Hornischer nominated Lamer, seconded by Brixius. There were no other nominations. Unanimous vote cast for Lamer. Lamer remains the Board Chairman.

Hornischer called for nominations for Vice Chairman. Brixius nominated Hornischer, seconded by Adams. There were no other nominations. Unanimous vote cast for Hornischer. Hornischer remains the Board Vice-Chairman.

Hornischer called for nominations for Secretary. Adams nominated Brixius, seconded by Steffenhagen. There were no other nominations. Unanimous vote cast for Brixius. Brixius remains the Board Secretary.

6. Adjourn – Motion by Brixius, seconded by Steffenhagen to adjourn at 12:05 p.m. Motion carried all ayes.