

**Lincoln County Board of Adjustment  
Minutes of Thursday, August 25, 2011 at 9:00 a.m.  
Lincoln County Service Center, Meeting Room #156**

1. Open meeting and Call to Order – Meeting was called to order at 9:00 a.m. in the Zoning Office. Members present: Lamer, Hornischer, Steffenhagen, Brixius, Adams & Prain. Also present was Diane Hanson; Land Services Administrator, Dan Bowers; Zoning Specialist and June Winters; Program Assistant.
2. Tour the sites for the Public Hearing to be held at 12:30 p.m. – The Board, Bowers & Hanson left to tour the sites.

When they concluded the tours the Board didn't have time to go to lunch as planned so they stopped at Subway in Tomahawk. They then reconvened in Room #156 in the LCSC. At 12:30 p.m. Chairman Lamer called the meeting back to order to proceed with the rest of the agenda and the public hearing.

Members present for the public hearing: Lamer, Hornischer, Steffenhagen, Brixius, Adams & Prain. Visitors: Diane Hanson; Land Services Administrator, Dan Bowers; Zoning Specialist, June Winters; Program Assistant and 11 others.

3. Approve minutes from June 23, 2011 meeting - Motion by Adams, seconded by Steffenhagen to approve the minutes from the June 23, 2011 meeting. Motion carried all ayes.
4. Public Hearing – The public hearing was opened for the requests listed below.

**Variance**

1. A request for variance by Doug and Lora Walters from sections 21.07(1) of Lincoln County Ordinances to allow for a storage building at less than 75 feet to Long Lake. The property is located in Section 15, T34N, R08E, in the Town of Harrison and has an address of N8716 Chipmunk Trail.

Doug Walters was present and sworn in. He explained their request. They would like to leave a structure that is now an existing cabin to use as a storage building once the addition to their garage is done and they then convert that to their new dwelling. Walters passed around photos to the Board and also a petition signed by his neighbors in support of his request. They were entered into record. Hornischer asked the situation with livable area in the structure in question and Walters explained how much was livable area and what occupied the rooms. Walters explained that they had added a basement to the structure previously when that was their seasonal dwelling. Now they wish to live there year round so are adding to the garage and converting that to the dwelling structure. He really hopes that he doesn't have to tear down the previous dwelling structure in this process.

Dan Bowers, Zoning Specialist, was present and sworn in. He stated that the reason for the variance is because of the possibility of the 2<sup>nd</sup> dwelling on the property. The frontage and lot area do not allow for the 2<sup>nd</sup> dwelling. Therefore the only way the subject structure may remain is to assure that it will not be used as a dwelling and authorize that it be at the 50' setback from the OHWM. He stated that there is room to move the subject structure back on the property but that may not be practical. Bowers stated that the shoreline is in a very natural state. Staff recommendation is for denial of the request but with recommendations if the Board does feel that the request should be granted, several conditions be imposed. Board discussed options to expand the structure and impervious surface limitations. Bowers said that Walters would still be under the impervious surface

cap even if both structures stayed. Brixius agreed that moving the current structure back would not be practical. There was discussion on whether the deck or the structure itself was at the 50' mark.

Lamer closed the public hearing for the Walters 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 the recommendations on the staff report. Conditions:

- 1) The deck be removed from the existing cabin structure.
- 2) All plumbing fixtures be removed from the existing cabin structure. No plumbing shall be allowed in the existing cabin structure.
- 3) The existing shoreland vegetative buffer remain and no further view corridors be allowed, except for the existing staircase down to the water.
- 4) The structure is to be used for storage purposes only and not to be used as a dwelling.
- 5) These conditions shall be recorded in a deed affidavit to notify future property owners.

Motion carried 3-1 with Hornischer voting no.

2. A request for variance by Larry Krause from sections 21.07(4) of Lincoln County Ordinances to allow for the tear down and rebuild of a boathouse on Somo Lake a moderate sensitivity water body. The property is located in Section 21, T35N, R05E, in the Town of Wilson and has an address of N10794 Somo Lake Drive

Attorney Randy Frokjer was present to represent Larry Krause. Frokjer was sworn in. He submitted copies of e-mails, photos and letters to the Board, some of which was already included in their packets. He stated that Krause, at the time the permit was issued, had discussed at length with Dan Miller, the Zoning Administrator at that time, the options for repair of the boathouse. He stated that because 40% of the structure needed to be removed he did not believe that would be feasible without completely removing the foundation. He said that the definition of "repair" does not exist in the Lincoln County ordinance and he felt that this was a repair. Frokjer stated that Krause agreed to restore the buffer in order to repair the boathouse.

Frokjer stated that that this request may fall under Wis. Statute 59.692 due to infestation and he would be able to replace the boathouse because of the rotted foundation. Frokjer said that Krause hopes to be able to rebuild the boathouse agreeing to restore the buffer and agreeing to remove some existing impervious surface as a compromise. He feels that the spirit of the code would be met. He stated that Krause started this project in good faith and believed he was proceeding under the condition of the permit that was issued by Dan Miller.

Hornischer asked for clarification on the statute that Frokjer was referencing (59.692). Frokjer shared his interpretation of the statute and what Krause would be allowed under that statute. Brixius questioned the length of time that the "rot" existed before deciding to do something to rectify it. Frokjer said that when it became a safety issue Krause wanted to redo the boathouse. Frokjer explained the different options that Krause had explored with the DNR and Zoning. He discussed the different issues that arose with each of those options. Brixius questioned why Krause did not come back to Zoning when, with his builder, he discovered that it could not be "repaired". Frokjer said that because the definition between repair and rebuild was not clearly identified, Krause believed that he could do this "complete" repair. Adams asked if the boathouse would actually house a boat. Frokjer said that it will be used to store boat accessories and a canoe.

Larry Krause was present and sworn in. He stated that he felt that this was a miscommunication between he and Dan Miller and he believed that he was following what was allowed by the permit. He said that he felt that the county was not following through with what he had been told by Dan Miller. He feels that he will lose equity in his property if he loses this boathouse.

Hornischer asked the size of the boathouse to be rebuilt. Krause stated that it would be approximately 8' x 10'. Adams asked if there were a more practical location for the boat accessory storage structure. Krause said that the most practical location is the existing location.

Mary Gloudemans was present and sworn in. She is an adjoining property owner. She said that the boathouse was very much deteriorated and feels that the smaller structure is more practical, would be an improvement and would no longer be partially in the water.

June Winters stated that there were 6 letters received from neighbors before the hearing all in support of Krause's request. They were submitted by Mary Gloudemans, Theodore Wadzinski, Robert McGinnis, Daniel Pretasky, Harold Lueck & Phyllis Marquart.

Dan Miller, Solid Waste Manager, previous Zoning Administrator, was present and sworn in. He gave the timeline of contact with Mr. Krause, and briefly described his own onsite to the property on September 1, 2010. He explained the different jurisdictions that could be involved. He reviewed e-mails with Jim Grafelman at the DNR and the different issues/options. He said that our ordinance does define "rebuild" as tearing down so that nothing remains above the foundational element but that "repair" is what Krause asked for on the permit application. Miller stated that a month or more ago, Krause brought loads of rotted wood to the landfill and asked to speak to Miller at that time. In that conversation, Miller said had he learned the boathouse had been completely torn down. He stated to the Board that the intent of the permit that he issued was not to rebuild the entire structure. Miller said that he did not recall a phone conversation giving Krause "a complete do over". Miller gave his interpretation of 59.692(1)(s). He said an application under that statute would need to have the "infestation" verified.

Hornischer discussed the size of the structure & questioned the definition of boathouse. He also questioned if Miller would have taken a different approach had this issue been brought back to Zoning's attention before he proceeded in a complete rebuild. Hornischer again questioned the applicability of 59.692. Miller said that Frokjer had been in contact with him with questions about 59.692. Miller stated that he was brought into this situation at the last minute. Miller shared with the Board, a couple of examples where the statute has been used to replace a structure. He said that he may have issued the permit in this situation based on proof that the structure was destroyed by natural causes. Hornischer asked if Miller had an opportunity to speak with Zoning staff and Miller said that he had not been consulted.

Dan Bowers, Zoning Specialist, was present and acknowledged being sworn in. He explained that the original permit was issued as a "repair" and what clearly is taking place is a "rebuild". He pointed out Krause's legal options. He stated that most of the structures on the property are non-conforming structures. He does not see a hardship in this case. He also does not feel that 59.592 should be a "blank check" to replace non-conforming structures as a result of natural deterioration over time, and that the department's recommendation is that the variance be denied. Brixius questioned if the size of the structure included the overhangs. Hornischer had questions about the amount of the buffer that needs to be restored should the variance be granted. Hornischer asked Bowers if Krause had come to Zoning would there have been options. Bowers stated by the time we were made aware of the issue, the evidence of the rotting foundation had already been destroyed, so he sees the variance as the only option. Brixius asked Bowers about mitigating the situation by removing some of the impervious surface and continuing with the buffer restoration.

Hornischer said that the miscommunication is unfortunate and both Krause & the Board are left in the middle. He asked that Krause return to the podium. Krause understood that the size of the structure be reduced from 18' x 10' to 8' x 10' and would be willing to go even smaller along with removing some concrete to reduce the impervious surface. After discussion, if the 8' x 10' included the overhang, he would not be able to go any smaller.

Lamer closed the public hearing for the Krause request. The Board started to review the Findings of Fact, Conclusions of Law, and Order and Determination. In the middle of deliberation Hornischer wondered if it may be more prudent to possibly to delay action on this request to allow the applicant & staff to come up with a mutual solution. He doesn't want to hastily come up with a decision.

Motion by Hornischer, seconded by Brixius to Layover the request until the September 22, 2011 Board of Adjustment agenda after Krause and Zoning staff meet to discuss the options.  
Motion carried all ayes.

At 2:05 p.m. Lamer called for a brief recess. Brixius was required to leave the meeting because of previous commitment. Alternate Mike Prain replaced her on the Board. The hearing re-convened at 2:17 p.m.

3. A request for variance by Rick Tjugum from sections 21.07(5) of Lincoln County Ordinances to allow for a patio greater than 200 square feet in area and closer than 35 feet to Lake Nokomis. The property is located in Section 4, T35N, R06E, in the Town of Bradley and has an address of W6417 Camp Rice Point Road.

Rick Tjugum was present and sworn in. Attorney Keith Ellison was also present and sworn in to represent the Tjugums. Ellison explained the request and supplied some pictures, a deed reference with WVIC regarding retaining walls that were approved for a previous owner and a letter of support from Tim & Brenda Rausch (neighbors). Ellison stated that the new retaining walls were simply replacing existing ones and that Tjugum wasn't aware that he was doing anything wrong by replacing them. They then presented a letter from The Bruce Company regarding planting a "living wall" to "face" (disguise) the existing retaining walls. Ellison also discussed what impervious surfaces the Tjugums would be willing to remove to mitigate. Ellison hope that a decision would not be made before all solutions to the issues could be discussed.

Tjugum said that they just had replaced a deteriorating existing retaining wall with the guidance of Winger Concrete. He said that there had never been "vegetation" in the buffer area just dead grass, stone & a couple of bushes. He would like to disguise the retaining wall with the planted "living wall". Hornischer asked if he had obtained a permit for the retaining wall. Tjugum stated that after they got into the project of replacing the retaining wall they realized what a massive project it was. To have to remove it would be even a larger project. Hornischer & Lamer questioned the deed document that had been presented and Ellison stated that the document was only proof that the retaining wall was previously there. There was discussion by the Board of WVIC's control of the 30' strip along the shoreline. Ellison questioned if the wall had previously been approved by WVIC, why replacing it would not be approved.

Lamer read into record a letter from Thomas Blake at the WDNR in opposition to the request. It stated that it was an after-the-fact permit and any hardship was created by the owner themselves. There is sufficient area on the property to construct a patio at a compliant setback and that granting this request would undermine the purposes for having the OHWM setback and vegetative buffer regulations.

Lamer also read into record a letter of opposition to the request from Lon Hoerter, at WVIC. It stated that the work that Mr. Tjugum had done in the 30' strip was never approved WVIC and are asking that the variance be denied.

Ellison commented on the letter from the DNR. He stated that the "runoff" situation was actually improved by "piping" that was installed in the retaining wall to direct the runoff. Tjugum questioned the DNR's comment about the quality of the aquatic life in the lake and did not think his project impacted that. He feels that WVIC's control of the lake level has more effect on that than the runoff does.

Dan Bowers, Zoning Specialist, acknowledged being sworn in. He stated that in brief discussion with the applicant he would recommend that the request be laid over to discuss possible modifications to the variance request. This may be accomplished by a joint onsite with the applicant, DNR, WVIC & Zoning Staff. Hornischer confirmed that Bowers would inform DNR & WVIC of the non-action of the Board at this time and set up the meeting. Bowers said that he would.

Motion by Adams, seconded by Steffenhagen to layover the request at minimum to next month's meeting possibly longer to address issues. Motion carried all ayes.

5. Board Re-organization & election of officers – There was one response to Diane Hanson's letter to the Town Boards seeking applications for the 2<sup>nd</sup> Alternate position. We hope to have an appointment for the 2<sup>nd</sup> Alternate position at the September 20, 2011 County Board meeting.

With the re-appointment of Marie Steffenhagen to the Board, it is necessary to hold the annual election of officers.

Motion by Adams, seconded by Hornischer for Lamer to continue as Chairman. Motion carried all ayes.

Motion by Steffenhagen, seconded by Lamer for Hornischer to continue as Vice-Chairman. Motion carried all ayes.

Motion by Steffenhagen, seconded by Adams for Brixius to continue as Secretary. Motion carried all ayes.

6. Adjourn – Motion by Adams, seconded by Steffenhagen to adjourn at 2:46 p.m. Motion carried all ayes