

**LINCOLN COUNTY
ZONING BOARD OF ADJUSTMENT**

Thursday, November 21, 2019 at 11:00 a.m.
Lincoln County Service Center
801 N. Sales Street, Merrill, WI 54452
Public Hearing - Meeting Room #156

Agenda

- 1) 11:00 a.m. Call Meeting to Order
- 2) Approve minutes from October 24, 2019 public hearing
- 3) **11:00 a.m. Public Hearing** – Testimony will be taken on the appeal hearings as noticed (See public hearing notice). Following each hearing for a variance there will be Discussion, Deliberations, Findings of Fact, Conclusions and Determinations
 - a) A request for variance by Michael Neumann (Co-applicant: Michelle McMullen) from sections 21.07(4)(a) & 17.4.10 of Lincoln County Ordinance to allow for the building of a structure which is less than the required horizontal setback from the ordinary high water mark (OHWM) of the nearest navigable waters and less than the minimum required street yard setback.
- 4) Old Business - Board re-organization & election of officers
- 5) Calendar Discussion
- 6) Adjourn

DISTRIBUTION:

Zoning Board of Adjustment Members – Lonni Lamer, Kim Brixius, Mike Prain, Phillip Rausch, & Curtis Powell
County Board Supervisors
Administrative Coordinator
Department Heads
Others

News Media - Notified on _____ at _____ .m by _____

Bulletin Boards

Service Center – Posted on _____ at _____ .m by _____

While there may be a quorum of other Lincoln County committees present at this meeting, no other Lincoln County committee business will be conducted at this meeting.

Requests for reasonable accommodations for disabilities or limitations should be made prior to the date of this meeting. . Please contact the Lincoln County Clerk at 715-539-1019 as early as possible so that proper arrangements may be made. Requests are kept confidential.

GENERAL REQUIREMENTS:

1. Must be held in a location which is reasonably accessible to the public.
2. Must be open to all members of the public unless the law specifically provides otherwise.

NOTICE REQUIREMENTS:

1. In addition to any requirements set forth below, notice must also be in compliance with any other specific statute.
2. Chief presiding officer or his/her designee must give notice to the official newspaper and to any members of the news media likely to give notice to the public.

MANNER OF NOTICE:

Date, time, place, and subject matter, including subject matter to be considered in a closed session, must be provided in a manner and form reasonably likely to give notice to the public.

TIME FOR NOTICE:

1. Normally, a minimum of 24 hours prior to the commencement of the meeting.
2. No less than 2 hours prior to the meeting if the presiding officer establishes there is a good cause that such notice is impossible or impractical.

EXEMPTIONS FOR COMMITTEES AND SUB-UNITS:

Legally constituted sub-units of a parent governmental body may conduct a meeting during the recess or immediately after the lawful meeting to act or deliberate upon a subject which was the subject of the meeting, provided the presiding officer publicly announces the time, place, and subject matter of the sub-unit meeting in advance of the meeting of the parent governmental body.

PROCEDURE FOR GOING INTO CLOSED SESSION:

1. Motion must be made, seconded, and carried by roll call majority vote and recorded in the minutes.
2. If motion is carried, chief presiding officer must advise those attending the meeting of the nature of the business to be conducted in the closed session, and the specific statutory exemption under which the closed session is authorized.

STATUTORY EXEMPTIONS UNDER WHICH CLOSED SESSIONS ARE PERMITTED:

1. Deliberation of judicial or quasi-judicial matters. Sec. 19.85(1)(a)
2. Considering dismissal, demotion, or discipline of any public employee or the investigation of charges against such person and the taking of formal action on any such matter; provided that the person is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action is taken. The person under consideration must be advised of his/her right that the evidentiary hearing be held in open session and the notice of the meeting must state the same. Sec. 19.85(1)(b).
3. Considering employment, promotion, compensation, or performance evaluation data of any public employee. Sec. 19.85(1)(c).
4. Considering strategy for crime detection or prevention. Sec. 19.85(1)(d).
5. Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specified public business whenever competitive or bargaining reasons require a closed session. Sec. 19.85(1)(c).
6. Considering financial, medical, social, or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of specific charges, which, if discussed in public would likely have an adverse effect on the reputation of the person referred to in such data. Sec. 19.85(1)(f).
7. Confering with legal counsel concerning strategy to be adopted by the governmental body with respect to litigation in which it is or is likely to become involved. Sec. 19.85(1)(g).
8. Considering a request for advice from any applicable ethics board. Sec. 19.85(1)(h).

CLOSED SESSION RESTRICTIONS:

1. Must convene in open session before going into closed session.
2. May not convene in open session, then convene in closed session and thereafter reconvene in open session within twelve (12) hours unless proper notice of this sequence was given at the same time and in the same manner as the original open meeting. Sec. 19.85(2).
3. Final approval or ratification of a collective bargaining agreement may not be given in closed session.

BALLOTS, VOTES, AND RECORDS:

1. Secret ballot is not permitted except for the election of officers of the body or unless otherwise permitted by specific statutes.
2. Except as permitted above, any member may require that the vote of each member be ascertained and recorded.
3. Motions and roll call votes must be preserved in the record and be available for public inspection.

USE OF RECORDING EQUIPMENT:

The meeting may be recorded, filmed, or photographed, provided that it does not interfere with the conduct of the meeting or the rights of the participants.

LEGAL INTERPRETATION:

1. The Wisconsin Attorney General will give advice concerning the applicability or clarification of the Open Meeting Law upon request.
2. The municipal attorney will give advice concerning the applicability or clarification of the Open Meeting Law upon request.

PENALTY:

Upon conviction, any member of a governmental body who knowingly attends a meeting held in violation of Subchapter IV, Chapter 19, Wisconsin Statutes, or who otherwise violates the said law shall be subject to forfeiture of not less than \$25.00 nor more than \$300.00 for each violation.

**Lincoln County Board of Adjustment
Minutes of Thursday, October 24, 2019 at 11:00 a.m.
Lincoln County Service Center, Meeting room #156**

Members Present for Tour and Meeting: Lonn Lamer, Michael Prain, Phil Rausch, and Curtis Powell

Members Absent: Ron Hornischer (excused), Kim Brixius (excused)

Department Heads/Staff: Matt Bremer (Land Services Administrator), Mike Huth (Zoning Program Manager), and Elizabeth Peronto (Program Assistant)

Visitors: Tim Perrin and Julie Perrin

1. Open meeting and Call to Order – Meeting was called to order by Chair Lamer at 11:03am
2. Approve minutes from the September 28, 2017 meeting - M/S Rausch/Prain to approve the minutes. Motion carried on a voice vote.
3. 11:00am Public Hearing – Public Hearing was called to order at 11:04am by Chair Lamer. Chair Lamer explained the rules of conduct for public hearings and introduced the Committee members and staff.

Variance

1. A request for variance by TD Hills Properties LLC (Tim Perrin) from sections 21.07(4)(a) & 17.4.11 of Lincoln County Ordinance to allow for the building of a home and garage which is less than the required horizontal setback of 75 feet from the ordinary high water mark (OHWM) of the nearest navigable waters. The property is located in Government Lot 5, Section 16, T34N, R8E, in the Town of Harrison and has a parcel number of 010-3408-164-9897 with an address of N8515 Long Lake Dr.

Tim Perrin was present and sworn in. He is the applicant and explained his request. The new cabin that he is requesting is aesthetically designed to fit in better with the surroundings. The new architectural style would require larger eaves which would make the proposed cabin itself smaller than the current cabin since it would have to fit in the same footprint. In order to build the cabin as desired, he is requesting a variance from the setbacks to the OHWM. Perrin believes that the ordinance qualifies as an unnecessary hardship because the aesthetics of the lake will be compromised if he is not allowed to build the home as proposed. Discussion occurred.

Mike Huth was sworn in. He reviewed his staff report for the Board. Per the report, denial is recommended for the request because staffs analysis of the request is that there is not a hardship present, that legal alternatives are available to rebuild in the same footprint of the existing cabin, and there are legal options for the applicant to explore building on another portion of the parcel. It was noted that aesthetics should not be considered a hardship.

Lamer closed the public hearing for the variance request.

M/S Powell/Prain to DENY THE REQUEST. Upon discussion, it was determined that there are legal alternatives to building as proposed. The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination. Motion carried on a voice vote.

4. Board re-organization & election of officers –

Powell recused himself. Tabled to next meeting.

5. Adjourn – M/S Rausch/Prain to adjourn at 11:44 a.m. Motion carried on a voice vote.

Minutes prepared by Elizabeth Peronto

NOTICE OF PUBLIC HEARING

The Lincoln County Board of Adjustment will hold a Public Hearing on Thursday, November 21, 2019 at 11:00 a.m. to take testimony regarding the following:

VARIANCE

1. A request for variance by Michael Neumann (Co-applicant: Michelle McMullen) from sections 21.07(4)(a) & 17.4.10 of Lincoln County Ordinance to allow for the building of a structure which is less than the required horizontal setback from the ordinary high water mark (OHWM) of the nearest navigable waters and less than the minimum required street yard setback. The property is located in the NW/NW ¼ of Section 32, T32N, R6E, in the Town of Merrill and has a parcel number of 014-3206-322-9982, with an address of N2841 Taylor Drive.

The Board of Adjustment will also tour the site on Thursday, November 21, 2019 departing from the Lincoln County Zoning office at 801 North Sales Street at 10:00 a.m.

The above hearings will be held in **Meeting room #156 of the Lincoln County Service Center, at 801 N. Sales Street, Merrill, WI.** Both written and oral testimony will be entered into the record and considered when making the decisions. All those wishing to testify must be sworn in. Original materials may be viewed in the Lincoln County Zoning office, upon request, at 801 N. Sales St. in Merrill from 8:15 a.m. to 4:30 p.m. weekdays. All parties wishing to be heard are requested to be present.

NOTE: A final decision on any of the above requests may be made at a later date. Items not acted upon or laid over will come before the Board again as "Old Business." The Board is not obligated to take any additional testimony.

Kim Brixius, Secretary

OCT 23 2019

PETITION FOR VARIANCE

Variance # VAR-19-002

Date filed 10-23-2019

Fee \$ 450.00

Receipt # 13917

LINCOLN COUNTY ZONING

Owner Information: Name Michael Neumann

Mailing Address: W6939 Georges Rd

Daytime Telephone Number: () _____

Legal description of the property: GL NW 1/4, NW 1/4, Sec 32, T. 32 N, R. 6 E
and/or Lot Number _____, Subdivision Name _____

Property Address N2841 Taylor Dr

Tax Parcel Number 014-3206-322-9982 PIN _____

Zoning district RR-2 Lot size 1.63 acres

Current use and improvements Vacant-Septic + Well

Proposed use and improvements Residential

Ordinance section relating to variance request _____

Relief is requested to allow: us to build a structure within the road & the ordinary high water setback.

Address each of the following criteria for granting a variance (please be specific).

- 1) Unnecessary hardship is present because... the property setbacks don't allow for construction of a residence.
- 2) Unique features of this property prevent compliance with the terms of the ordinance; they include... the configuration of the land consists of 2 intersecting roads and a lake in lot that create a unique property footprint making it impossible to place a structure and still meet the current setbacks
- 3) A variance will not be contrary to the public interest because... this is a residentially zoned area and it is our intent to create a residential structure.

Names of adjoining property owners: Clinton Kasper, Shirley Gremler, & James Leindecker

See reverse side for additional requirements and signature line

Owner Neumann Last Name

Property Desc (1.63 acres) GL NW 1/4, NW 1/4, Sec. 32, T. 32 N, R. 6 E Lot Block Subdiv.

Tax Parcel # 014-3206-322-9982 Town Merrill

A SCALE DRAWING MUST BE ATTACHED that accurately depicts the following:

1. The location and size of the property including all lot line dimensions
2. Indicate north
3. Show the location and names of all surrounding roads / highways
4. Show the location of all area water bodies (lakes, rivers, streams, ponds, etc.)
5. Indicate all existing buildings and mark with "EB"
6. Indicate all wells and sanitary systems and mark as such
7. Include all directly abutting properties and structures, sanitary systems, etc.
8. Show the requested change or construction and include the following measurements:
 - a. Distance from the centerline of all roads
 - b. Distance from the right-of-way of all roads
 - c. Distance to all lots lines
 - d. Distance to all water bodies
 - e. Distance from sanitary system drainfield and tanks
 - f. Distance from well

Application will be dismissed if a scale drawing is not received in the Zoning Department within 10 days of the application deadline.

Applicants are required to clearly mark on their property the location of:

1. The proposed change or construction
2. All property lines
3. Sanitary system components (drain fields, tanks, etc.)
4. Wells
5. Other physical features pertinent to the decision

These features should be marked with high visibility flags, tape, or stakes.

Additional information beyond what has been specifically requested in this application may be required by the Lincoln County Board of Adjustment before rendering a decision. Failure to provide all requested information could result in the dismissal or denial of your application. The Lincoln County Board of Adjustment is governed by Rules of Procedure. A copy of the Rules of Procedure are available to any interested party upon request.

To the Lincoln County Zoning Administrator / Lincoln County Board of Adjustment: The undersigned hereby makes application for a PETITION FOR VARIANCE for work described and located as shown herein. The undersigned agrees that all work shall be done in accordance with the requirements of the Lincoln County Zoning Ordinance and with all other applicable County Ordinances and the laws and regulations of the State of Wisconsin. I declare that the information that I am supplying is true and accurate to the best of my knowledge and I acknowledge that this information will be relied upon for the issuance of this permit. By signing this application I am also granting permission to the zoning department staff to enter my property at any reasonable time for the purpose of inspection to assure compliance with the zoning laws relative to the issuance of this permit.

Signed: see attached Date: _____
property owner's signature(s) required

Signed: _____ Date: _____
property owner's signature(s) required

Co-Applicant information (other than owner)

Name Michelle McMullen

Address 1606 E. 6th St

City,ST,Zip Merrill, WI 54452

Phone # (262) 488-5079

IF GRANTED, NO CONSTRUCTION SHALL BEGIN UNTIL A LAND USE PERMIT HAS BEEN ISSUED

SCALE DRAWING MUST BE ATTACHED that accurately reflects the following:

1. The location and size of the property including all lot line dimensions
2. Indicate north
3. Show the location and names of all surrounding roads / highways
4. Show the location of all area water bodies (lakes, rivers, streams, ponds, etc.)
5. Indicate all existing buildings and mark with "BP"
6. Indicate all wells and sanitary systems and mark as such
7. Include all directly abutting properties and structures, sanitary systems, etc.
8. Show the requested change or construction and include the following measurements:
 - a. Distance from the centerline of all roads
 - b. Distance from the right-of-way of all roads
 - c. Distance to all lots line
 - d. Distance to all water bodies
 - e. Distance from sanitary system drainfield and tank
 - f. Distance from well

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3. Sanitary system components (drain fields, tanks, etc.)
4. Wells
5. Other physical features pertinent to the decision

These features should be marked with high visibility flags, tape, or stakes.

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Signed: Michael Reumann Date: 10/27/19
 property owner's signature(s) required

Signed: Kathleen Reumann Date: 10/27/19
 property owner's signature(s) required

Co-Applicant information (other than owner)

Name: Michelle McMullen

Address: 1606 E. 6th St

City, ST, Zip: Marechal WI 54452

Phone #: (262) 488-5079

IF GRANTED, NO CONSTRUCTION SHALL BEGIN UNTIL A LAND USE PERMIT HAS BEEN ISSUED

Mike Huth

From: McMullen, Michelle E. <MMcMullen@churchmutual.com>
Sent: Wednesday, October 23, 2019 9:15 AM
To: Mike Huth
Subject: RE: Variance
Attachments: signed variance.pdf

Here is what I got from my realtor. I will bring the full application with to add the top copy.

Michelle E McMullen, AIS, AINS
Claim Representative II
Church Mutual Insurance Company
3000 Schuster Lane
Merrill, WI 54452
Phone: (715)539-4112
Fax: (715) 539-4651
www.churchmutual.com

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From: Mike Huth <Mike.Huth@co.lincoln.wi.us>
Sent: Wednesday, October 23, 2019 9:08 AM
To: McMullen, Michelle E. <MMcMullen@churchmutual.com>
Subject: RE: Variance

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I see. You can just bring them when you come to the office.

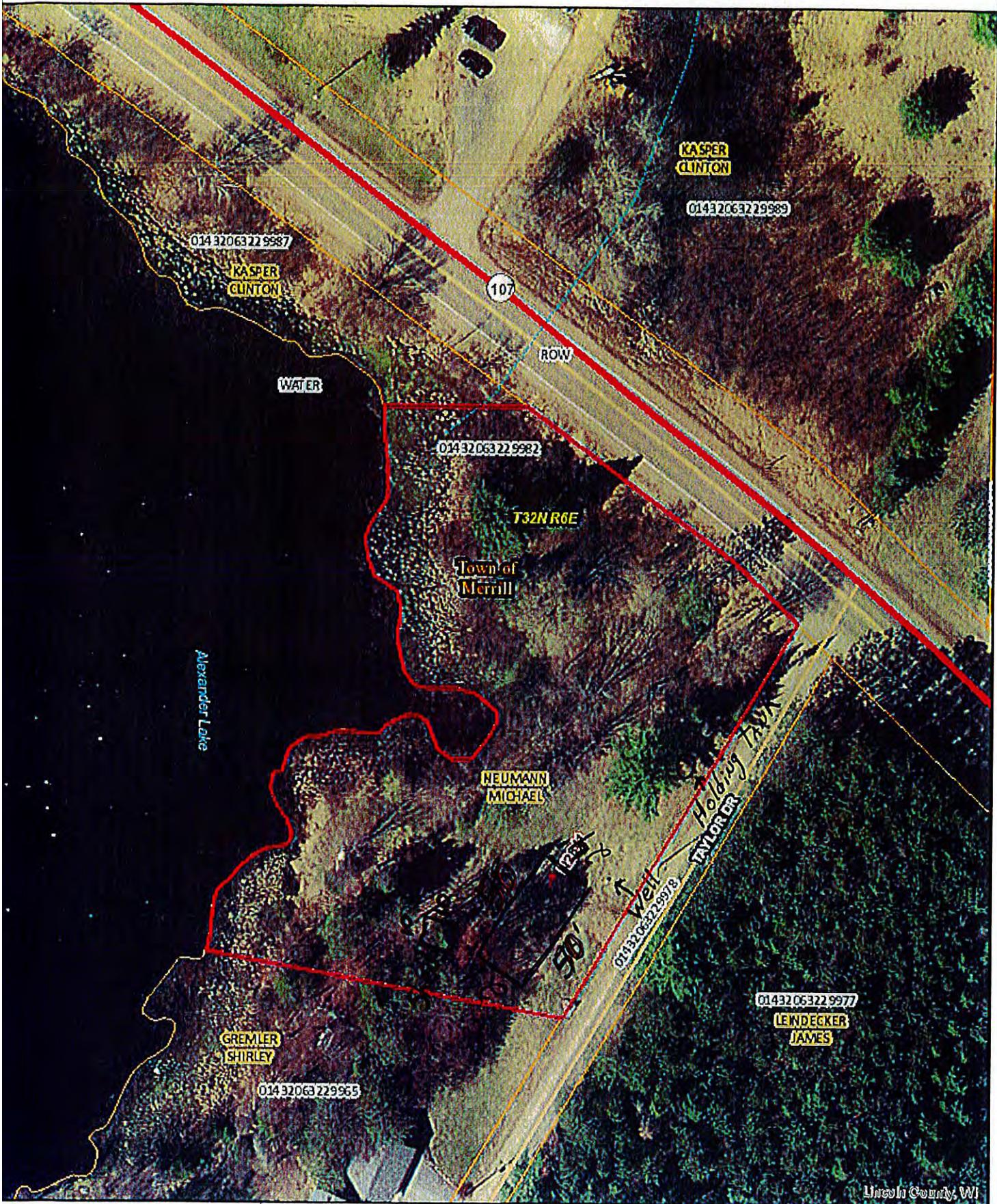
Mike Huth

Zoning Program Manager
Lincoln County Land Services Department
801 N. Sales Street, suite 103
Merrill, WI 54452
(715) 539-1087
mike.huth@co.lincoln.wi.us

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Elected Officials and Members of Official Committees: In order to comply with open meeting requirements, please limit any reply to only the sender of this electronic communication.

Lincoln County Public Access Land Records Viewer



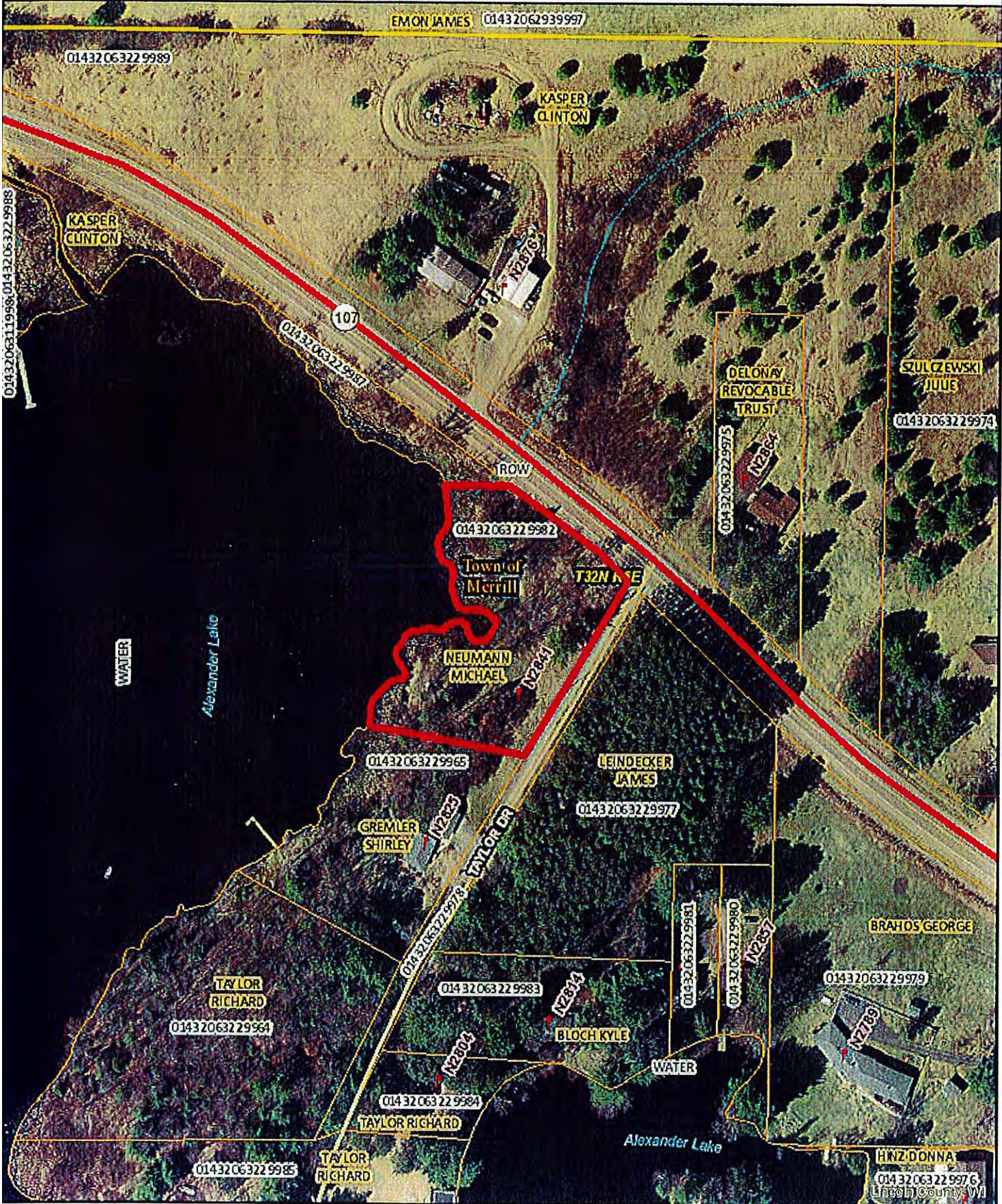
Author: Public
Date Printed: 10/22/2019



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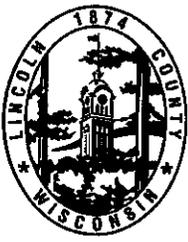
Lincoln County Public Access Land Records Viewer



Author: Public
Date Printed: 10/22/2019



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PETITION FOR VARIANCE REQUEST
STAFF REPORT

Report Date: November 13, 2019
Hearing Date: November 21, 2019
Property Owner: Michael Neumann
Co-Applicant: Michelle McMullen
Property Address: N2841 Taylor Drive
Town of: Merrill
Tax Parcel Number: 014-3206-322-9982
Zoning District: RR2-Rural Residential
Zoning District Overlay: Shoreland
Staff Reviewer: Mike Huth – Zoning Program Manager
Submitted Materials: Request for Variance Application and supporting documents

OVERVIEW
REQUEST

A request for variance by Michael Neumann (co-applicant: Michelle McMullen) from sections 21.07(4)(a) and 17.4.10 of Lincoln County Ordinances to allow for the building of a structure which is less than the required horizontal setback from the ordinary high water mark (OHWM) of the nearest navigable waters and to build a structure less than the minimum required street yard setback.

SITE CHARACTERISTICS

The approximate 1.5 acre partially wooded parcel is located west of Taylor Drive (town road) and south of HWY 107 (state road), in Section 32 Town of Merrill. Access to the property is gained from Taylor Drive. It is located in the Rural Residential (RR2) zoning district. With the close proximity of the parcel to Alexander Lake, located west of the property, the property is within the S-Shoreland overlay zoning district. The proposed camping unit location is in the overlay zoning district, but the proposed structure location will have trouble meeting all applicable setbacks to the ordinary high water mark (OHWM) and the town road. Additionally, a portion of the property contains the general Flood Plain (Zone AE) designation on the western edge of the property along the Wisconsin River-Alexander Lake.

PROPERTY HISTORY AND SUMMARY OF NOTEWORTHY TOPICS

In, 1977 a variance was granted for replacing an existing structure to allow for the new structures to be built with the same setbacks. Those structures have since been removed from the property. At that time setbacks to the OHWM and roadway had different distance requirements. A well and septic are still present at the site and the co-applicant plans to reconnect the proposed structure to those utilities. The Co-applicant recently petitioned the Land Service Committee (LSC) to allow for a camping unit to be placed at the property for longer than 60 days per calendar year. The camping unit would need to be

placed in a manner to meet the proposed variance setbacks. In the future the co-applicant plans to build a structure in the location shown on the supporting document submittal.

PUBLIC NOTIFICATION

The legal notice of the request was noticed in the proper manner. Staff mailed 10 notices of the petitioner's request to neighboring property owners within 300' from the property boundary, the Town of Merrill, and the WISDOT. At the date of this report, staff has not received any formal comments from neighboring property owners or the town.

APPLICABLE ORDINANCE SECTIONS

The general purpose of the Lincoln County Ordinance is to "of protect the public health, safety, morals, comfort, convenience and general welfare of the residents of Lincoln County". While the intent of the residential district where the property is located is "for single-family and two-family dwellings on relatively small rural lots." In the RR2 zoning district, setback lines from roads and OHWM must comply with the requirements specified under general provisions for Lincoln County. The property abuts a town roadway and therefore has a setback requirement is 63' from the centerline or 30' to the edge of the ROWs (Whichever is greater). Additionally, the property abuts a body of water so the setback requirement is 75' from the OHWM. The proposed structure would be 55' from the OWHM and 28' from the ROW and 41' from the town road Centerline.

- *17.8.60 (1) - VARIANCE REVIEW AND APPROVAL PROCEDURE. PURPOSE.* The purpose of this section is to provide regulations which enable the Board of Adjustment to hear and decide requests for permitted variation from the terms of this chapter as will not be contrary to the public interest; where owing to special factors, a literal enforcement of the provisions of this chapter would result in practical difficulty or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done; as provided for by Wisconsin Statutes and applicable case law.
- *17.8.60 (9) TIME LIMITS ASSOCIATED WITH VARIANCES.* An approved variance shall expire 24 months from the date issued if the work described in the permit is not commenced, unless a one-time, one-year extension is applied for, without fee, from the Board of Adjustment prior to the expiration date.
- *17.4.11 MINIMUM REQUIRED SHORE YARDS.* The minimum required yard (setback from ordinary high water mark) for lands adjacent to navigable waters shall be as established in Chapter 21, Shoreland Zoning Ordinance. Chapter 21 also establishes minimum required shoreline frontages.
- *17.4.10(1) MINIMUM REQUIRED STREET YARDS.* Minimum required street yards, also known as "highway setbacks," shall apply to all yards which abut public roads. Such minimum required yards shall vary depending on the type of public road.
- *21.07(4)(a) BUILDING SETBACKS Shoreland Setback.* Unless exempt under [Section] 21.07(6) or reduced under [Section] 21.07(5), a horizontal setback of 75 feet from the ordinary high water mark of any navigable waters to the nearest part of a building or structure shall be required for all structures.

EVALUATION

APPROVAL CRITERIA

The Board of Adjustment shall review all variance petitions against the standards provided under Wisconsin Statutes and applicable case law, and with the consideration to the following three legal standards of the Lincoln County Zoning Ordinance. The petitioner has submitted responses to the variance standards outlined in the variance application (see variance application in packet) and below is the staff analysis of the request.

- 1) Unnecessary Hardship – Compliance with variance standards would unreasonably prevent the owner from use of the property for a permitted purpose, or would be unnecessarily burdensome.**

Staff Analysis: In the case of the standard "Unnecessary Hardship", the applicant does provide clear evidence that denial of the variance would unreasonably prevent them from using this property for a permitted purpose, and would be unnecessarily burdensome. The irregular shaped parcel, abutting both town and state roadways, and the limited area for construction/placement of a structure in conjunction with the proximity to Alexander Lake

present unique factors to the subject residential property which prevent compliance with the ordinance setback standards from the OHWM and town roadway.

2) Unique Property Features - this hardship is created because of unique qualities of the property, not the circumstances of the owner.

Staff Analysis: To meet this standard the hardship must be because of unique property features, rather than the circumstances of the owner. Examples of unique property features could include steep slopes or wetlands which prevent building in compliance with the ordinance. This property does have unique characteristics which create a hardship.

3) Public Interest – the variance would not harm the public interest, which is the purposed and intent of the ordinance.

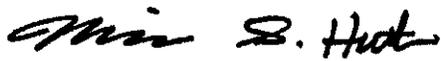
Staff Analysis: Under standard three the variance cannot be contrary to public interest or the intent of the zoning district. This standard is met by this application. By encroaching on the setback to the town road, the structure would not impede driver visibility or reduce public safety. Additionally, encroaching on the setback to the OHWM would not adversely affect the public interest of the navigable waters.

STAFF RECOMMENDATION

Based on the evidence available in the application and meeting the three variance standards, staff recommends **approval** of the variance to allow for the building of a structure 55' from the OHWM and 41' from the centerline of the town road.

Staff recommends the following conditions be placed upon a favorable approval:

1. The variance must be exercised within 24 months as required by 17.8.60(9).
2. All other applicable regulations shall be met.



Lincoln County - Zoning Program Manager

11/13/19

Date

**LINCOLN COUNTY BOARD OF ADJUSTMENT
2020 SCHEDULE**

PUBLIC HEARING DATES (Thursdays)	APPLICATION DEADLINE (Wednesdays)
April 23, 2020	March 25, 2020
May 28, 2020	April 29, 2020
June 25, 2020	May 27, 2020
July 23, 2020	June 24, 2020
August 27, 2020	July 29, 2020
September 24, 2020	August 26, 2020
October 22, 2020	September 23, 2020

- Schedule subject to change at call of Chairman – Check your Public Hearing Notice
- A Special Meeting may be called by an applicant - \$600.00 (Must still meet legal notice requirements.)

Rev. 9/18/19