

**Official Minutes of the Board of Adjustment  
Law Enforcement Center  
August 12, 2019**

Approved as submitted  
9/9/2019

The Lake County Board of Adjustment sat in session on this date in the Law Enforcement Center.

**Members Present:** Jon Fogelberg, Ron Brodigan, Bob Sanders, and Mike Hoops (alternate)

**Members Absent:** None

**Planning and Zoning staff present:** Christine McCarthy (Environmental Services Director), Neva Maxwell (Land Use Specialist), Jill Paron (Environmental Services Specialist)

Chair Jon Fogelberg opened the meeting at 5:00 p.m. and explained the hearing process.

Motion by Brodigan supported by Sanders to approve the July 11, 2019 minutes as submitted. Motion passed by unanimous vote.

The first hearing, **V-19-007**, was a variance application filed by **Jeff and Sylvia LeMaster** which if approved, would allow relief from the shoreline setback to replace and expand an existing non-conforming cabin with less than 50% of the required setback (Section 28.03 parts A & B), and after-the-fact relief for a vertical addition at 14025 Chickadee Lane, Ely on property described as: Lots 15 and 16 of Lot 2 of Romberg North Shore Plat, Section 17, Township 63, Range 11, 2.18 acres, zoned R-R/Residential-Recreational District, one-acre minimum, Fall Lake Township. PID: 28-6372-17100/17090

Jeff and Sylvia LeMaster represented the application. They explained the original portion of the cabin, built in the 1950's is deteriorating. They plan to keep the 2004 2-story addition, tear down the original portion, and rebuild to match the 2004 height and extend into the lake setback to have the front of the cabin squared-off.

McCarthy gave the staff report and legal requirements. There were 2 items of correspondence. One from a neighbor in favor

of the project. The other was a comment from Lake County Soil and Water Conservation District Engineer, Derrick Passe, with suggestions for minimizing lake impacts from the proposed project.

Maxwell explained that when this variance application was reviewed, it was discovered that the 2004 addition was built with an approved Land Use Permit, but the Planning and Zoning Office overlooked the need for a variance for the height increase. Planning and Zoning asked LeMaster's to add the addition to their request as a way to fix the mistake. The required lakes setback is 100 feet, the cabin is at 45 feet.

There was no one in the audience, so Fogelberg closed the public portion of the meeting and turned discussion over to the Board.

There was general discussion about the addition and controlling runoff.

Fogelberg stated he took measurements during his site visit and found there is adequate room for building outside the lake setback. He also stated the BOA rarely grants variances to further encroach on a lake setback for an existing non-conforming structure. There was further discussion about the addition.

Motion by Sanders supported by Brodigan to approve the variance to allow rebuilding in the existing footprint, but encroaching no further into the setback, and allow a height increase no greater than the height of the 2004 addition with the conditions suggested by the SWCD.

The test questions were applied with the following findings:

**Findings:**

1. **Is the variance in harmony with the general purposes and the intent of the official control and consistent**

**with the Comprehensive Plan?** Yes; this is a grandfathered, non-conforming structure.

2. **Is the owner proposing to use the property in a reasonable manner not permitted by the official control?** Yes; with the recommended conditions.
3. **Is the practical difficulty due to circumstances unique to the property?** Yes; lot development history and slope behind existing cabin restricts options.
4. **Is the need for the variance created by actions other than the landowners or prior landowners?** Yes; built before zoning.
5. **Will the issuance of the variance maintain the essential character of the locality?** Yes; it won't be highly visible from the lake or neighboring properties.
6. **Does the practical difficulty involve more than economic considerations?** Yes; changing the footprint could lead to impacts on the lake per the SWCD comment.  
**Additional Findings of Fact to support/deny an after-the-fact variance request (for the 2004 addition):**
7. **Did the applicant act in good faith and attempt to comply with the law by obtaining the proper permits?** Yes; a Land Use permit was issued.
8. **Did the applicant make a substantial investment in the property and complete the repairs/construction before the applicant was informed of the impropriety?** Yes; the need for a variance wasn't apparent before this application was submitted.
9. **Are there similar structures in the area?** Yes; there are other non-conforming structures.
10. **Would the benefit to the County appear to be far outweighed by the applicant's burden if the applicant were required to comply with the Ordinance?** No; the addition has been there for 15 years.

**Conditions:**

1. New construction on the site shall not create flow from impervious surface to the top of the lake.
2. Existing vegetation between the existing cabin and Fall Lake should not be disturbed.
3. Native vegetation with minimal maintenance (no mowing) should be maintained from the lake to the cabin. The property owner can contact the SWCD to develop a plating plan)
4. Vehicular or wheeled traffic shall be prohibited from the area between the lake and cabin.

The motion passed by a 2 to 1 vote; Brodigan and Sanders voting in favor, Fogelberg voting opposed.

The second hearing, **V-19-008**, was a variance application filed by **Wolf Ridge ELC** which if approved, would allow relief from the shoreline setback for a Designated Trout Stream and a Designated Trout Stream Tributary for a structure (Ordinance #12, Article 7, Section 7.03) on property described as: Gov't Lot 2 and that part of NW ¼ of SE ¼ lying SEly of HWY 61, Section 16, Township 57, Range 6, 67.9 acres, zoned R-C/Resort-Commercial District, two-acre minimum, Unorganized Territory #1. PID: 24-5706-16850

Peter Smerud, Executive Director of Wolf Ridge Environmental Learning Center, represented the application. He stated that Wolf Ridge has a 99-year lease of the property from Karen Rylander. He explained the history of the project that led to the variance request. The contractor for the project for the project was to obtain permits for a yurt and vault privy. They did not. When the contractor submitted the after-the-fact Land Use application, the measurements were inaccurate. Smerud met with County Staff on site to determine where they yurt and vault privy could be placed and meet all the setback requirements, including the setbacks for a Designated Trout Stream (Dragon Creek), Hwy 61 right-of-way, a bluff,

and a tributary that feeds into Dragon Creek. With all of the required setbacks, a compliant location couldn't be found for the yurt. He has spoken with Dean Paron from Finland Area DNR Fisheries about a revegetation plan for the trout stream. A location for the vault privy was identified that meets all setbacks. The proposed location for the yurt is on an existing parking area, so there will be no new soil disturbance. This location is [6-7 feet] in the tributary setback and [25-28 feet] into the DTS setback.

McCarthy gave the staff report and legal requirements. Two comments were received. Finland Area DNR Fisheries had no objection and SWCD Project Engineer, Derrick Passe gave recommendations to reduce potential impacts on Dragon Creek.

The Board discussed the requested. Hoops asked how many people would be brought on-site at one time? Smerud explained the lease limits them to a limit of 100 people on-site at a time, and no more than 30-people overnight. He explained they are leaving the easterly portion of the property undeveloped as it has the highest biodiversity and other unique features. A classroom is being planned with a bridge and access over Dragon Creek.

Motion by Brodigan supported by Sanders to approve the variance with the conditions suggested by the SWCD.

The test questions were applied with the following findings:

**Findings:**

1. **Is the variance in harmony with the general purposes and the intent of the official control and consistent with the Comprehensive Plan?** Yes; the property is zoned Resort-Commercial.
2. **Is the owner proposing to use the property in a reasonable manner not permitted by the official control?** Yes; they are trying to develop with the least impacts.

3. **Is the practical difficulty due to circumstances unique to the property?** Yes; the stream confluence, road, and bluff restrict options.
4. **Is the need for the variance created by actions other than the landowners or prior landowners?** No; limited by setbacks.
5. **Will the issuance of the variance maintain the essential character of the locality?** Yes;
6. **Does the practical difficulty involve more than economic considerations?** Yes; setbacks are the practical difficulty.

**Conditions:**

1. New construction on the site shall not create a concentrated flow from impervious surface to the top of the trout stream.
2. Existing vegetation between the platform and Dragon Creek should not be disturbed.
3. Vegetation below the bluff line of Dragon Creek and the tributary stream should not be disturbed.
4. Native vegetation with minimal maintenance (no mowing) should be maintained from the platform to Dragon Creek. (the SWCD is available to help develop a planting plan)

The motion passed by unanimous vote.

There being no further business, motion to adjourn the meeting made by Brodigan supported by Sanders. Motion passed by unanimous vote.

Respectfully submitted,

Christine McCarthy  
Environmental Services Director