

**MEEKER COUNTY BOARD OF ADJUSTMENT MEETING**

**May 23, 2023**

*Audio Available*

The Meeker County Board of Adjustment **met at the courthouse on Tuesday, May 23, 2023 at 5:00pm** to consider the following variance application and other business before the Board. Members present were Kim Hempel, Al Anderson, Galen Nyman and Zoning Administrator Schultz.

5:14pm

Hempel calls the meeting to order.

The Board states their name for voice recognition.

Hempel asks the Board if they have any corrections or additions to the April 4, 2023 meeting minutes. None are noted.

Nyman makes a motion to approve the meeting minutes.

Anderson seconds the motion.

Motion carried 3-0.

5:15pm

**Hempel opens the public hearing for Cody Wendlandt, 21670 746th Ave, Dassel, MN 55325. Lots Twenty Eight (28), Twenty Nine (29), Thirty (30), First Addition to Mar-Lyn and Lot Eighteen (18), Block One (1), Mar-Lyn Second Addition, Meeker County. An After-the-Fact Area Variance to reconstruct an addition to an existing house in variance to the required 100' setback to a Recreational Development lake in the R-1 Suburban Residential District and within the Shoreland District.**

Cody Wendlandt is present for this hearing.

Schultz: The property owner has applied for an After the Fact Variance for the construction project taking place on the property. A stop construction letter was issued September 22, 2022 shortly after noticing extensive construction had been done on the dwelling without permits. The property is approximate 22,350 square foot R-1 Suburban Residential zoned district parcel of Lots 28, 29 and 30 of 1st addition Mar-Lyn created December 1959 with the lots smaller in width, depth and area than current standards. Size requirements, however, were meet for the time in which it was created. In 1994 parcels 03-0788000 and 03-0554000 were combined for planning reasons. The parcels are located in Section 1, Township 118, Range 29 of Collinwood Township. Collinwood Lake is considered a Recreational Lake.

This lot currently has a house built in 1965 and garage built in 1975. In 1980 a variance was granted to build a deck 13 feet from the OHWL. In 1990 a variance was granted to build a garage 50 feet from the center line of a road and 43 feet from the OHWL. In 1994 a Variance was granted for the property to install a septic system 50' from the OHWL. Septic had a compliance done August of 2020. The structure had a connected boat house with roof since it was first constructed in 1965. The property owner indicated in a letter dated March 1, 2023 outlining some reasoning for the project and his decision to put living space over the entire boat house foundation rather than a new deck and partial living area as was there previous.

The property owner is requesting a variance to construct living area approximately 13 feet from the 1032.9' OHWL of Collinwood Lake and increasing the nonconforming structure within the set back of the OHWL. Currently Recreation Development Lakes have a building setback of 100 feet from there OHWL from Meeker Ordinance Article 19A Sec. 19A.04.B.A and do not allow the enlargement of nonconforming structures without a variance. Sec. 4.04.A Nonconforming Structures.

The following variance will be required for the project:

A variance to allow an enlargement to a dwelling that is 13 feet from the OHWL. The average set back to Collinwood lake for this property is 49'. Since any structure within 50' of the OHWL requires a variance. A variance of 37' would be required for this project.

Approve or Deny an area variance to allow the enlargement vertically of a nonconforming structure to be setback 13 feet from the OHWL of Collinwood Lake.

Hempel asks Wendlandt for comments.

Wendlandt: I initially planned to replace a rotten and failing structure that was over the existing boathouse. The existing structure on top of the boathouse consisted of about ¼ entry way that went out into the main structure. The remaining ¾ was an outdoor patio/deck. Because this was a flat surface, rain had soaked there throughout the years and we had mold and rot all the way into the basement.

In my decision to expand the structure, it was initially to peak the roof so that water could run off. This was done in the summer of 2022. The construction was initially done by a contractor who was suppose to be applying for permits. This contractor has since gone out of business. I was notified, after the fact, that I needed a variance for this structure. This was unknown to me. After we received the stop-work order in September of 2022, we did cease all construction and have been cooperating in good faith since this time. I'm finally getting around to applying for the variance at this point, as I had a medical event that took me out of commission for a couple months.

Hempel: When did the contractor went out of business.

Wendlandt: October-November of 2022.

Hempel: So, it was right after the cease and desist.

Wendlandt: We are not requesting to build a new structure to add new foundation, we are building on existing foundation that has been there for 60-70 years, based on Mr. Schultz report. And also replacing rotten decks.

Hempel: How long have you owned this property.

Wendlandt: 2-3 years. This was not my primary residence up until about 9 months ago. When I bought the property the boathouse that we are referring to tonight, was actually a livable space. The entrance was on top of the boathouse. That was the main entrance into the home and there was a stairwell that went down into the boathouse. It was sealed, heated, had electrical and it had a sliding window. The previous owner used it for basement and storage.

Hempel: Where was the stairwell that got torn off on the back side?

Wendlandt: That was part of the deck. There was a stairwell inside.

Hempel: That's where the gaping hole is?

Wendlandt: Yes, it actually extended all the way and wrapped around the side of the building.

The Board looks over the before and after pictures with Wendlandt.

Schultz: The variance is not for the setback to the OHWL, it is for the expansion of the structure that is existing.

Wendlandt: The deck previously extended all the way to the edge of the boathouse. We pulled that back about 6 feet from where it was previously and the stairwell came back as well.

Hempel: No matter what he built, this is a non-conforming structure.

Wendlandt: This is not an unprecedented thing either. There are other boathouses that have raised roofs on the lake. There are structures that exist on the lake that have building on top of the boathouse as well, that have livable quarters. This is not setting a new precedence.

Hempel: After the fact, or with permission?

Wendlandt: That's up to you guys.

Hempel: There is a difference when describing precedence. There is a difference from having a non-conforming structure that a person remodels and keeps because every single lake has non-conforming structures.

Wendlandt: There is a neighbor right down the road from me that recently raised the roof on a boathouse that is much closer to the lake.

Anderson: We can't speak of that, because that is someone else.

Nyman: Looking at what was existing—I'm my opinion if he would have kept some deck and move the structure to the west, lining up with the house more, it would be more acceptable. But this is after the fact. The foundation is good. I wish the contractor would have done a better job of getting this all straightened out prior to you building. At this point, the structure is up and should have been done differently. One good thing is that the structure is going up and not closer to the lake.

Hempel: I want to state a few things for the public record, no matter what ends up happening.

If a proper building permit was done, we would obviously be here under different circumstances—just for a variance. It would not be an after-the-fact.

If this variance was applied for prior to removing the old structure and starting the construction this would be less complicated. It adds a whole different element to it. We get many variance requests for dwellings like this. If it was to build a deck replacement, porch replacement or home repair to build as-is, it would be a totally different thing. Most likely a variance wouldn't have much issue passing. This is my opinion and here are the challenges which make this one difficult, or easy depending upon how you look at it. This has been the most difficult variance that I have had to deal with as a board member for a couple different reasons.

You removed a deck area and replaced it and added enclosed living quarters for a total area closer to the lake that may not have passed a variance if it was requested. We have no original wall or anything that remains. Everything was completely removed of the old structure. Not only that, you changed the roof line and went higher which now blocks neighboring view and neighborhood. Now the deck is on the opposite end, which is fine, but that isn't really the main point. The deck is kind of a moot point. You've got variances for the deck.

This doesn't appear to be a case like so many requests. It is unique to this property. It is a small lot, but appears you have ample room to build to the north. It may have been more expensive to do so, but you have that option elevating the need for a variance. My opinion is that you could have pushed back and still had a deck on the boathouse. I do not believe the circumstances are unique to this property. I believe this incident was created by you or someone who did work for you. When you completely remove the non-conforming structure, you alter the original build footprint. I feel that this is the way you wanted it and it is a want, not a need. I look at a few things to consider when reviewing this:

1. Would I have voted yes to the variance if it had gone through normal channels?
2. Is this a completed structure? Or what stage is it at?
3. When I look over the findings of fact for this variance decision, would it pass based on those answers?
4. Would this set a precedence going forward for other livable year-round building additions? *Not including decks and porches.*

My answer would have been that I most likely would not have voted yes as you currently have it built. But, I would have no issue with you rebuilding and doing what was there. I know it has been framed and has a roof, but it is an uncompleted roof because you got a cease and desist. There are no windows and it isn't completely finished. Based on the findings of fact, would have felt it wasn't passable. I do not feel this is unique to the property and it was created. I do feel it would set a precedence. I do not feel decks and porches are in this category, only enclosed living spaces.

Anderson: I agree with Kim has said. We do have rules here and they're set in writing. We need to conform to them. I follow the line that Kim said.

Nyman: I'm in full agreement, but the hard part is that it is on an existing foundation that has been there for 50+ years.

Hempel: He didn't do anything to the foundation, but he did make it higher, built out farther and it changes the neighborhood dynamics. It is an after-the-fact. Would we have voted for this as a board if this would have come across our desk before it was built? I am empathetic over this; it is horrible, but we have our findings of fact and our guidelines.

Anderson: I agree. I feel bad that your contractor didn't look into this first and say, these are your options. He didn't. Now you have a building sitting there that is not conforming.

Nyman: He must not have been a licensed contractor.

Wendlandt: Yes, he was.

Hempel: Did you get an insurance certificate from him?

Wendlandt: No.

Hempel: If you have a certificate of insurance or can find out who he might have been insured with, usually the company is liable.

Wendlandt: I disagree with your assessment of the property saying that this was a situation created by myself. There is no better spot for this addition. You are saying a little more north. That would actually put it within that 50' of shoreline. If you look at the house itself on the west side, there is a large well, a large power line and on the south there is a large septic system and a gas tank. Things that are not easily moveable. Logically, it makes sense that this was the best placement.

Nyman: But you could have moved it to the end of the house—to the west.

Wendlandt: There is cable and utilities running right in front of that.

Hempel: That comes down to money. It's not that it isn't doable.

Nyman: It isn't a hardship.

Hempel: We get so many variance requests where there is absolutely no choice—they can't move at all. You have more of an option on your land that others don't. That's why we go out there and view. From the findings it asks, "Are the practical difficulties claimed by the applicant based solely upon economic considerations alone?"

Wendlandt: No, they're not. There are practical applications that make this the right spot to put it in.

Hempel: I respect your opinion, but I feel there were other options. You changed the roof line and made it higher. This wouldn't have been so difficult if you would have stayed as the house appeared to look within that line.

Anderson makes a motion to close the public hearing.

Nyman seconds the motion.

Motion carried 3-0.

Nyman: It's all after the fact. I would have been all for it, if he would have moved it to the west and lined up with the house. He could have used a rubberized sealant and put a deck over that to eliminate the water problem underneath, then wouldn't have needed to build that deck in front of the house. It could have been done other ways.

Hempel goes over the Findings of Fact:

1. Is the proposed use of the property allowed in the zoning district in which the property is located? *Yes*
2. Is the variance requested due to the circumstances unique to the property and not created by the landowner? *No*
3. Is the variance consistent with the general purposes and intent of this Ordinance? *Yes*
4. Is the variance consistent with the County Comprehensive Land Use Plan and the Official map? *Yes*
5. Does the property owner propose to use the property in a reasonable manner not permitted by an official control? *Yes*
6. Can the practical difficulties be alleviated by some other feasible method for the applicant to pursue other than a variance? *No*
7. Are the practical difficulties claimed by the applicant based solely upon economic considerations alone? *No*
8. Is the proposed variance due to inadequate access to direct sunlight for solar energy systems? *No*
9. If granted would the variance effect a substantial change in character of the neighborhood and/or locality or will be a substantial detriment to neighboring properties? *Yes & No*
10. Is the proposed variance for an earth shelter? *No*
11. Will the interests of justice be served by allowing the variance when looking at the above factors and taking into consideration the manner by which the difficulty arose for the applicant? *No*

After-the Fact Findings of Fact:

1. Did the applicant act in good faith and attempt to comply with the ordinance? (obtain any other permits, what measures could be stated on the record) *No*
2. Did the applicant make a substantial investment? (State why it is or is not) *Yes*
3. Is the construction completed? (If not, how far along is the project) *No*
4. Are there similar structures in the area? *Yes*
5. Are the county's benefits outweighed by the applicant's burden if the applicant were required to comply with the ordinance? *No*

Nyman makes a motion to deny the request as written in this variance application.

Anderson seconds the motion.

Motion carried 3-0.

The Board discusses imposing conditions to allow for the structure to be moved/rebuilt.

Conditions:

1. The current non-conforming new construction structure is not allowed to remain as-is.
2. Rebuild in the same footprint of original structure on lakeside, with the same OHWL setback. Allowing additional 3' in height.
3. Allowing to expand an additional 500 square feet of foundation to the west of original structure.
4. Applicant must obtain a building permit prior to commencing construction.

Anderson makes a motion to approve amended request with conditions.

Nyman seconds the motion.

Motion carried 3-0.

Wendlandt: I would encourage you to contact your county attorney and review the new statute for that question about the county burden. I would encourage you to look at the statute.

The Board finishes comments on the findings of fact.

6:34pm

Anderson makes a motion to adjourn.

Hempel seconds the motion.

Motion carried 3-0.