

Becker County Board of Adjustments
January 14, 2004

Present: Members Harry Johnston, Jim Elletson and Jerome Flottesmesch.
Zoning Staff Debi Moltzan.

Vice Chairman Harry Johnston called the meeting to order at 7:15 p.m. Debi Moltzan recorded the Minutes.

FIRST ORDER OF BUSINESS: Thomas Hanson. A request for a variance to extensively remodel an existing 24 ft by 36 ft garage 21.6 ft from the centerline of the Township Road and 6 inches from the side property line on the property described as: Lots 2 & Pt Lots 3 & 4, Eddy Lodge Addition; Section 20, TWP 138, Range 41; Lake View Township.

No one was present to explain the application. The Board reviewed the application, site plan, pictures and letter from Patrick Kenney.

Flottesmesch stated that this is a large lot with an existing nonconforming garage that is too close to the road right-of-way and too close to the lot line. There is plenty of room to move or relocate the garage, build a new one, or the owner can maintain the garage where it is without making any changes. The proposal before the Board is to make major alterations to change the shape and size in height.

Johnston agreed that the proposal is major structural changes.

Elletson stated that a variance could be granted if the garage was relocated or rebuilt in a different location. The Board has the option of denying the variance, producing a footprint to relocate or rebuild the garage, the owner can maintain the structure as is or the owner could ask for a postponement and try to come with a new proposal.

Flottesmesch stated that there is a new house under construction on this property with a large attached garage. There is reasonable use with the property without intensifying the nonconformity of a nonconforming structure. There are other sites on the property that a structure could be rebuild or relocated to decrease the nonconformity.

Elletson stated that there was no hardship of the property to allow a nonconforming structure's nonconformity to be intensified.

Flottesmesch made a motion to postpone the meeting until 7:25 p.m. to allow the applicant more time to arrive and explain the application.

At this time, Patrick Kenney, lawyer for the applicant, arrived. Flottesmesch withdrew his motion and the hearing continued. Tom Hanson, applicant then arrived.

Kenney explained that Section 17 of the Ordinance allows maintenance of a nonconforming structure without structural changes. Hanson would like to change the roofline of the garage to match the house, for aesthetics. The footprint of the garage would not change. The garage would not be any closer to the road or the side lot line. The sidewalls would remain the same. Safety is not a concern because the garage is entered from the side, not directly off the road. The garage roofline would match the neighbor's garage, and the neighbor, Phil Hanson, has no objection.

Kenny further explained that Section 20 of the Ordinance states that a hardship can be defined, as the plight of the landowner is due to circumstances unique to the property not created by the landowner. This structure was constructed before 1971, when Zoning went into effect. The garage cannot be moved closer to the lake because of the septic system and topography. The variance is not asking to create a nonconforming use and the variance will not alter the character of the neighborhood.

Kenny stated that there are other new structures in that area that are closer than 78 feet to the centerline of the road. The structure would blend in with the area and the request is well within the discretion of the Board.

Flottesch stated, that according to the site plan, the existing garage is 6 inches from the property line and 21 ft 6 inches from the centerline of the road. The centerline of the road is not in the center of the road right-of-way and the present garage is abutting the road right-of-way.

Hanson stated that when he started his house project he did not know that he needed a permit to change the roofline of the garage. Now he has had to make modifications in his plans to reduce the height to 18.5 ft.

Johnston stated that the current landowner did not create the location of the existing garage. Johnston also stated that the neighbor, Phil Hanson was not able to remodel his existing garage, but was given a variance to construct a new one. The existing garage was up to the road right-of-way and on the property line, just like this application. Flottesch stated that P. Hanson was able to maintain the nonconforming structure, which he has resided and reshingled.

Kenney stated that the road use to be a County Road, but was given back to the Township.

No one spoke in favor of the application. Speaking in opposition to the application was Gail Hahn, Lake View Town Board. Hahn stated that the Town board is in opposition to the application for safety and the change in roofline would increase runoff onto the neighboring property.

Hanson responded to the TWP's statement by saying that even if the variance is not granted, it will not benefit the TWP because the structure will remain, not be moved.

Kenney stated that the structure would remain the same; there will not be any more runoff.

Written correspondence was received from James Hovland, in favor of the application. At this time, testimony was closed.

Further discussion was held. Flottemesch stated that the Board needs a hardship of the property, not the landowner to grant a variance. The Board did view the property and found that there is a new house under construction with an attached garage. There is room to relocate or rebuild a structure that would be more in compliance than the existing structure. The existing structure can be maintained but not structurally changed. If the structure was relocated or rebuilt in a location meeting 5 ft from the right-of-way and 5 ft from the side property line, he could maybe consider a variance. There are reasons for setbacks; access for service trucks and road rebuilding are two of them. In this circumstance, the driveway surface of the road is within inches of the existing garage, which makes maintenance of the road and utilities extremely hard.

Johnston stated that he did not see a hardship that could justify the variance, but would consider a variance for relocation or rebuilding.

Elletson agreed with Flottemesch. Elletson further stated that there are 6 decisional standards to consider when granting a variance and would like to take the time to go through those 6 things:

1. Is the variance in harmony with the general purposes and intent of the official control? No the structure is an existing nonconforming structure.
2. Without a variance, is the owner deprived of reasonable use of the property? No, the structure can be maintained.
3. Is the alleged hardship due to circumstances unique to the property? Yes
4. Were the circumstances causing the hardship created by someone or something other than the landowner or previous landowner? No
5. Will the issuance of the variance maintain the essential character of the locality? Yes
6. Does the alleged hardship involve more than economic considerations? No

Elletson stated that he answered more no's to the questions than yes's. With that many no's, the variance cannot be granted. Elletson stated he does not see a hardship. When a variance is granted, the variance stays with the land. If the garage were to be destroyed, the variance would allow a new one to be built in the same location. This is not keeping with the spirit of the Ordinance and he cannot support the variance.

Elletson further stated that he sees four options: 1) the owner can maintain the structure as is; 2) a variance could be granted for a footprint for the structure to be relocated or rebuilt; 3) the variance could be denied; 4) the owner could ask for a postponement to think about the options and come up with an alternate plan.

Johnston stated that he feels the same way as the other Board Members. The Board has to act on the application unless the applicant requests a postponement. Flottemesch stated that a variance changes the Ordinance for that piece of property forever and variances granted must follow the intent of the Ordinance. This request does not follow the intent of the Ordinance.

Kenney then questioned if the Board had a quorum. Johnston stated that the Board of Adjustments is a 5 member Board, with two alternates. 3 members is a quorum.

Hanson stated that he is not willing to move the structure and would not have started building the house if he has known that he could not change the garage; it is not logical to move the garage.

Flottemesch further stated if the present structure were destroyed, the structure could not be reconstructed in the same location. The new structure would require a variance to be located somewhere on the property.

Kenney stated that the Board has the right to put conditions on the variance.

Johnston stated that the Township Board has voiced against the application and that must be strongly considered. Flottemesch stated that there have been similar instances with similar findings for which the variance has been denied.

Flottemesch made a motion to deny a variance to extensively remodel an existing 24 ft by 36 ft garage 21.6 ft from the centerline of the Township Road and 6 inches from the side property line based on the fact that a hardship could not be proven as outlined in Elletson's testimony of the 6 decisional standards when considering a variance. Elletson second. Flottemesch, Elletson and Johnston in favor of the motion. Motion carried. Variance denied.

SECOND ORDER OF BUSINESS: Informational Meeting and Elections.

No applications were received, so there will not be a regular meeting in the month of February.

Flottemesch made a motion to postpone election of officers until the March meeting. Elletson second. All in favor. Motion carried.

Since there was not further business to come before the Board, Flottemesch made a motion to adjourn. Elletson second. All in favor. Motion carried. Meeting adjourned.

ATTEST

Harry Johnston, Vice Chairman

Patricia L. Johnson, Administrator