

**Becker County Board of Adjustments
October 8, 2003**

Present: Board Members Jerome Flottemesch, Tom Oakes, Harry Johnston and Terry Kalil. Zoning Staff Patricia Johnson and Debi Moltzan.

Vice Chairman Harry Johnston called the meeting to order. Debi Moltzan recorded minutes.

Johnston stated that there were a few discrepancies with the Minutes from the last meeting and the Board would like to take time to discuss them, so the approval of the Minutes would be done at the end of the meeting.

OLD BUSINESS:

First Order of Business: Jaye & Laura Edvall. An application for a variance to construct a garage 40 ft from the centerline of the township road due to the location of the septic system has been filed for the property described as Lots 10 & 11 Ex Nly 5 ft Sugar Island, Section 32, TWP 139, Range 42, Audubon Township.

Johnson stated that this application had been postponed by the applicant at the September meeting.

Edvall stated that with the location of the septic system, there is little room to locate a garage. Kalil questioned which plan he was referring to. Edvall stated that he would consider any of the three plans- the original or the two alternate plans submitted to the Zoning Office.

Flottemesch questioned Plan #2, if the garage could be moved closer to the house or the garage made smaller because the corner of the garage is actually abutting the road right-of-way, it would be nice to get the garage five feet off the right-of-way and five feet off the property line. Edvall stated that it could be possible.

Flottemesch stated that Plan #3 did move the garage further from the road, but much closer to the lake. Flottemesch felt that Plan #2 was the better solution.

Oakes questioned the elevation difference from the garage site to the road. Edvall stated that the elevation difference was 2 to 3 feet.

Flottemesch stated that since the garage was at an angle and the doors were not facing the road, cars would be parked off the road right-of-way.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Further discuss was held regarding the road setback, lake setback, property line setback and drainfield location.

Motion: Flottesch made a motion to approve a variance to allow a garage five (5) feet from the side lot line and five (5) feet from the road right-of-way due to the topography of the lot and the location of the septic system as per Plan #2 on file with the Zoning Department. Kalil second. All in favor. Motion carried.

Second Order of Business: Don & Nancy Kinslow. An application for a variance to construct a garage 30 feet from the centerline of the County Road and 87 feet from the ordinary high water mark of the lake has been filed on the property described as .19 ac lying 2 rds E & 100 ft N of ¼ cor in S Pt Lot 2, Section 11, TWP 139, Range 40, Erie Township.

Johnson explained that this application was postponed at the September meeting to allow the applicant's time to come up with a new proposal that would better fit the lot.

Mrs. Kinslow explained that they were able to find a way to locate the garage below the hill, placing the garage 55 feet from the centerline of the road, entering the garage from the side, and the garage being 93 feet from the lake. The existing storage shed would be removed and enough asphalt to comply with the 25% impervious coverage.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Kalil stated that this plan addressed the impervious issue, placed the garage further from the road, and kept the garage off the septic system.

Motion: Kalil made a motion to approve a variance to construct a garage fifty-five (55) feet from the centerline of the County Road and ninety-three (93) feet from the ordinary high water mark of the lake due to the topography of the lot and location of the septic system with the stipulation that impervious coverage cannot exceed 25%. Flottesch second. All in favor. Motion carried.

NEW BUSINESS:

First Order of Business: Wayne Borgen. An application for a variance to construct a garage 55 feet from the centerline of the County Road and allow a substandard size lot with less than 2,000 sq ft of buildable area and less than 2.5 acres of lot area in an Ag zone has been filed for the property described as S 150 ft of Govt Lot 4 E of Cty Rd #131.

Carl Malmstrom explained the application for Borgen. The land was purchased with the intent of a storage shed. After the real estate closing, it was found that a variance was

needed due to the area of wetlands. The property is not suitable for residential development. The hardship is the way the land was acquired and because of the circumstances, a variance is needed. The 50 ft x 100 ft building would be used for personal storage.

Kalil questioned why the plan shows 110 ft and they are saying 100 ft. Borgen stated that he decided to down size the structure. Flottemesch questioned if any wetlands would have to be filled. Borgen stated that Soil & Water Conservation flagged the wetlands and stated that they could fill 400 sq ft, but they are trying not to touch the wetlands.

Malmstrom stated that there was over 6,000 sq ft of buildable area. Johnson stated that it appears that there is less than 2,000 sq ft of buildable area within the building setback lines. Johnson also stated that lot area needs to be 2.5 acres, excluding wetlands.

Speaking in favor of the application was Doug Coen, who stated that this would be a good use of the property.

Speaking in opposition to the application were:

John Postovit speaking for the Floyd Shores Association and area residents. Postovit stated that the hardship was self-created, the subdivision did not follow proper County procedures and that the hardship claimed does not fit the criteria of the Zoning Ordinance.

Malmstrom questioned Postovit's ability to speak for the Lake Association, since his clients were not invited to a meeting. Postovit stated that he is on the Board of Directors and that the Board of Directors has the authority to act on such matters.

Jim McGough stated that he has a building on the same side of the road, further down the road and when he applied for a variance, he had to conform to the 115 ft road setback and size had to fit into the neighborhood. The Board must be consistent; this request is for a farm building not a residential building.

Maggie Ritschie – that size of the building is excessive for that area, there is no hardship demonstrated and the wetlands must be protected because they feed several lakes.

Robert Swenson – he tried for a variance to be closer to the road and could not and was told that he could not have any higher than 9 or 10 ft sidewalls. The Board must be consistent.

Tom Swenson – he would have to look at the structure and this structure is definitely out of character with the neighborhood.

Mike Evans – a lot of people not around this time of year and when they return in the Spring will be devastated by the huge building.

Written correspondence was received from:

Brad Wentz, Co Highway Department in opposition

Terra Guetter, Pelican River Watershed District in opposition

Brad Grant, Soil & Water Conservation with concerns for the wetlands

Thomas Swenson in opposition

Dave & Shirley Stenseth in opposition

Philip Thompson in opposition

E. Jane Sinner in opposition

William & Susan Ferryman in opposition

Mike Evans in opposition

John Postovit, Floyd Shores Lake Association in opposition

At this time, testimony was closed.

Malmstrom stated that there were two issues that were addressed that are not a concern of this Board, these issues being the height of the structure and the character of use. Both issues are to be dealt with by the Planning Commission.

Johnson clarified for the Board that they need to act on the issues of allowing a substandard size lot and a structure 55 ft from the centerline of the County Road.

Flottesch stated that all Board Members received copies of the letters to read on their own but wanted Johnson to read the letter from the Highway Department to be entered into the Minutes. Johnson read the letter.

Flottesch stated that two actions must be taken tonight. One action on the substandard size lot and the other action on the setback from the road. Before the Planning Commission can act on the Certificate of Survey, the Board of Adjustments must grant a variance. A hardship cannot be found to justify a hardship. Borgen created his own hardship. This is not a lot of record.

Kalil stated that the hardship mentioned by Malmstrom was created when Borgen bought a small amount of land without checking out the regulations, creating his own hardship. Kalil also stated that the letter from the Highway Department must be taken into consideration. Kalil also stated that the Board must be consistent with other variances in the area.

Oakes stated that setbacks must be taken into consideration for future road improvements. Flottesch stated that the road setbacks are there for a purpose, to maintain safety and space for rebuilding roads.

Motion: Flottesch made a motion to deny a variance to allow a substandard size lot with less than 2,000 sq ft of buildable area and with less than 2.5 acres of lot area in an ag zone based on the fact that no hardship could be proven and to deny a variance to

construct a garage fifty-five (55) feet from the centerline of the County Road based on the on fact that no hardship could be proven. Kalil second. All in favor. Motion carried.

Second Order of Business: Dean & Mae Wieland. An application for a variance to allow an addition onto a dwelling 32 ft from the ordinary high water mark of the lake has been filed on the property described as Unit 2 Clark Gable Cluster, Section 32, TWP 139 Range 41, Detroit Township.

Wieland explained the application to the Board. The addition would not be lakeside and would fit into the expansion area of the cluster.

Johnston questioned what the by-laws stated. Wieland stated that the by-laws allow for a unit up to 1400 sq ft in size, the property outside of the 1400 sq ft is common property. This addition would maximize this unit. The patio would remain in the current location. This patio is a catch basin for rain and acts like a French drain.

No one spoke in favor of the application. No one spoke against the application. Written correspondence against the application was received from the Pelican River Watershed District. At this time, testimony was closed.

Further discussion was held. Kalil stated, that in most cases, concerns of other agencies are taken into consideration. But after listening to this letter, it seems that the PRWD is either misinformed or doesn't understand the request. Impervious area does not apply due to the amount of common green space within the cluster, the expansion is allowed by the by-laws, and this is a small addition onto a sound cabin.

Flottemesch stated that consideration should be given to the applicant's statement that the patio, which acts as a French drain, will remain and continue to act as a French drain.

Motion: Oakes made a motion to approve the variance to allow an addition onto an existing cabin 32 feet from the ordinary high water mark of the lake based on the fact that the addition is on the back side of the cabin, not lake side; the addition is being added to a structurally sound structure; the addition is allowed by the by-laws of the cluster development; there is plenty of green space on the property and that the current patio acts like a French drain eliminating run off to the lake. Kalil second. All in favor. Motion carried.

Third Order of Business: Robert Buth. An application for a variance to construct a dwelling 70 feet from the road and 64 feet from the ordinary high water mark of the lake has been filed for the property described as Lots 66 & 67 Trade Winds Beach, Section 7, TWP 138, Range 42, Lake Eunice Township.

Buth explained the application to the Board. This lot is a substandard size lot and needs a variance because the road setback and lake setback cannot be met.

Flottemesch questioned if there would be a deck. Both stated that if there would be a deck, it would be placed on the side of the house, not lakeside. Flottemesch stated that if the adjoining lot contained a structure, the string line could be used and a variance may not be needed. Flottemesch stated that the proposal was in line with other structures on the beach.

No one spoke in favor of the application. No one spoke against the application. Written correspondence in opposition to the application was received from Linda Hertsgaard. At this time, testimony was closed.

Flottemesch stated that the lot on one side of this application is vacant and the lot on the other side has a house close to the lake with a deck that goes almost to the lake. This request is a good use of the property and the buildings fit in with the area.

Discussion was held regarding the road setback, lake setback and future deck.

Motion: Flottemesch made a motion to approve a variance to allow a dwelling seventy (70) feet from the centerline of the township road and sixty-four (64) feet from the ordinary high water mark of the lake as presented on site plan submitted with the application based on the fact that the lot is a lot of record and the required setback from the lake and road cannot be met; this plan is good use of the property and is in character with the neighborhood; with the stipulation that there cannot be a lakeside deck closer than sixty-four (64) feet from the ordinary high water mark of the lake. Oakes second. All in favor. Motion carried.

Fourth Order of Business: Doug Loudon. An application for a variance to construct a garage five (5) feet from the side property line has been filed on the property described as Lots 13 and S 25 feet of Lot 14 Woodland Park First Addition, Section 26, TWP 138, Range 42, Lake Eunice Township.

David McCulloch explained the application. McCulloch stated that Loudon would like to build a new garage and utilize the existing driveway. To the left of the proposed garage is the septic area and to the right of the garage is a vacant lot.

Kalil questioned turning the garage. This would give the room to move the garage the required side lot setback and there would not be such a tight turn into the garage. Oakes stated that it would appear that the way the entrance is proposed to the garage, he would be backing out onto the septic system.

Flottemesch stated that he could not see a hardship to justify being closer to the side lot line. Even though the adjoining lot is vacant today, it will be built upon in the future. One of the reasons for setbacks is privacy and safety. Oakes stated that trees are not a hardship and if the garage was turned, the trees could possibly be saved.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Oakes stated that he could not see a hardship. Kalil stated that the garage could be turned and the trees could be saved.

Motion: Flottesch made a motion to deny the variance to allow a garage five (5) feet from the side lot line based on the fact that a hardship of the property could not be found and that there is room to locate a garage on the property meeting the required setbacks. Oakes second. All in favor. Motion carried.

Fifth Order of Business: Michael Bentson. An application for a variance to construct a dwelling 57 feet from the centerline of the township road and 85 feet from the ordinary high water mark of the lake has been filed for the property described as Beg NW Cor Lot 1 Morton Oak Lane Bch 2nd Add Th W 38.55 ft NW Al Ctr Ln Rd To SW Cor Lot 1 Dorff Bch E to Lk S Al Lk to N Ln L1 Mortons 2nd & E to Beg; Section 21, TWP 138, Range 42, Lake Eunice Township.

Johnston stated that since no one was present for the application, the Board would wait with this application until the end of the meeting.

Sixth Order of Business: Steve Gray. An application for a variance to construct a garage twenty (20) feet from the right-of-way of the township road and twelve (12) feet from the rear property line has been filed for the property described as Lot 1 Block 3 Willow Springs First Addition, Section 22, TWP 139, Range 41, Detroit Township.

Gray explained the application to the Board. Gray would like to construct a 24 ft x 24 ft garage. With the shape of the lot, the required setbacks cannot be met.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Flottesch stated that on paper, it appears that there is a lot of room to locate a garage meeting the setbacks. But after viewing the property, the topography, location of the cul-de-sac and dead road, location of present septic system and location of alternative system, there is very little room to locate a garage meeting the required setbacks. Placing the garage closer to the house could jeopardize the alternate septic location.

Further discussion was held regarding the proposed location, similar structures in the area and future development.

Motion: Kalil made a motion to approve a variance to construct a garage twenty (20) feet from the road right-of-way and twelve (12) feet from the rear property line due to the

topography of the lot and the proposed location is the best use of that area. Oakes second. All in favor. Motion carried.

Seventh Order of Business: Joyce & Prentiss Cole. An application for a variance to construct an addition onto an existing house six (6) feet from the side property line has been filed for the property described as Lots 11 & 12 Fern Beach Third Addition, Section 30, TWP 138, Range 41, Lake View Township.

At this time, Oakes removed himself from the Board due to a conflict of interest.

Ken Johnson explained the application for the Cole's. Johnson stated that repair work needs to be done to the cabin and it would be easier to do the repair work by adding the small addition. The addition would extend the kitchen, mechanical room and dining room.

Flottemesch questioned if the roadside deck could be replaced with an addition to accomplish the same thing. K. Johnson stated that could be done, but then the kitchen could not be expanded. Flottemesch also stated that lot coverage is at 25% and the addition would put them over the 25% allowable impervious. K. Johnson stated that there is two French drains in the back yard to handle run off.

No one spoke in favor of the application. No one spoke against the application. Written correspondence opposing the application was received from Terra Guetter, Pelican River Watershed District. At this time, testimony was closed.

Further discussion was held regarding the side yard setback, lot coverage, alternatives, French drains and whether or not a hardship exists to allow the addition.

Motion: Kalil made a motion to deny the variance to allow an addition six (6) feet from the side lot line based on the fact that there is no hardship to justify the side lot line encroachment. Flottemesch second. All in favor. Motion carried.

Eighth Order of Business: Matthew & Kelly Carrier. An application for a variance to construct a dwelling forty-eight (48) feet from the centerline of a township road and ninety (90) feet from the ordinary high water mark of the lake has been filed for the property described as Lot 3 Hanson Mountain View Shores, Section 8, TWP 139, Range 38, Toad Lake Township.

Jay Weiher, Whispering Pines Log Homes, Inc., explained the application to the Board. The 90 ft lake setback is at the established building line but the lot is too shallow to meet the road setback. This is a dead end road.

Kalil stated that a Township Official told her that this is not a township road. Johnson stated that it is a public road whether the Township maintains it or not.

Kalil questioned the location of the septic system. Weiher stated that the existing system will have to be abandoned and a new system will have to be installed. Kalil questioned if there were intentions of a future garage. Carrier stated that if a garage were to be built it will be years down the line.

Speaking in favor of the application was Bruce Ringstrom. No one spoke in opposition to the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Kalil stated that one Township Official told her that the Township did not have a problem with this application.

Motion: Kalil made a motion to approve a variance to allow a dwelling ninety (90) feet from the ordinary high water mark of the lake and forty-eight (48) feet from the centerline of the township road based on the size of the lot of record and the topography of the lot. Flottesch second. All in favor. Motion carried.

Ninth Order of Business: Kathryn Bjerke. An application for a variance to construct a garage sixty-four (64) feet from the centerline of the township road has been filed for the property described as .57 ac Pt W $\frac{1}{2}$ NE $\frac{1}{4}$ Beg 66 $\frac{2}{3}$ W of SW Cor Blk 3 Richwood Townsite th W 100 ft N 250 ft E 100 ft & S 250 ft to Beg, Section 2, TWP 140, Range 41, Richwood Township.

Bjerke explained the application to the Board. Because she is located in the Townsite of Richwood, the lots are not large enough to meet the required setbacks. Flottesch asked Bjerke if she was located within the platted Townsite of Richwood, which was located within Richwood Township, which was never incorporated into a city. Bjerke stated that she was in the Townsite of Richwood and that Richwood never became an incorporated city.

Flottesch stated that Richwood was platted as a townsite that was never incorporated into a city.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Further discussion was held. Flottesch stated that this is reasonable use of the property and the land was platted in a townsite that never developed into an incorporated city.

Motion: Flottesch made a motion to approve a variance to construct a garage sixty (64) feet from the centerline of the township road based on the fact that the lot is a platted lot in a town site that never developed into an incorporated city and the platted lots are too small to meet the required setbacks. Kalil second. All in favor. Motion carried.

Tenth Order of Business: Eric & Becky Nephew. An application for a variance to construct a garage ten (10) feet from the rear lot line has been filed for the property described as Pt Lot 5 Beg 292.7 ft S of NE Cor Th NW 194.3 ft SE 145.9 ft NE 216.6 ft to Lk N Al Lk 30 ft & W 62.70 ft to Beg, Section 9, TWP 138, Range 41, Lake View Township.

Nephew explained the application to the Board. With the shape of the lot and location of the existing structures, the 40 ft rear lot line setback cannot be met.

Flottemesch questioned if the little building would be removed. Nephew stated that the building would be relocated. The new structure would be further from the lot lines than the existing structure.

Oakes questioned if this would be a garage or a storage shed. Nephew stated that it would be used primarily for storage.

Johnston questioned if the property to the rear of Nephew's property was owned by Beck. Nephew stated it was and that when he talked to Beck, Beck had no objections to the application.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Further discussion was held. Flottemesch stated that a similar variance was granted a couple of lots from this one, with similar circumstances. The property to the rear of Nephew's property would most likely not be developed.

Motion: Oakes made a motion to approve a variance to allow a garage/storage shed ten (10) feet from the rear lot line based on the topography of the lot and location of existing structures. Flottemesch second. All in favor. Motion carried.

Eleventh Order of Business: Michael Bentson. An application for a variance to construct a dwelling 57 feet from the centerline of the township road and 85 feet from the ordinary high water mark of the lake has been filed for the property described as Beg NW Cor Lot 1 Morton Oak Lane Bch 2nd Add Th W 38.55 ft NW Al Ctr Ln Rd To SW Cor Lot 1 Dorff Bch E to Lk S Al Lk to N Ln L1 Mortons 2nd & E to Beg; Section 21, TWP 138, Range 42, Lake Eunice Township.

No one was present to explain the application, so Johnson explained the application to the Board. The existing structure would be removed and replaced with a new structure. The lot is not deep enough to meet the required setbacks.

The Board held discussion. Johnston stated that the Board measured the setback from the OHW and came up with 67 feet and 69 feet to the water's edge. Flottemesch stated that the setbacks are compatible with surrounding setbacks.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Further discussion was held.

Motion: Flottemesch made a motion to approve a variance to allow a structure sixty-seven (67) feet from the ordinary high water mark of the lake and fifty-three (53) feet from the centerline of the township road based on the size of the lot and with the stipulation that there cannot be a lakeside deck placed on the structure. Kalil second. All in favor. Motion carried.

Twelfth Order of Business: Approval of Minutes.

The Board discussed some discrepancies in the minutes and made the following changes:

Third Order of Business, 10th paragraph, Flottemesch....could not find

Fourth Order of Business, Motion, Flottemesch second. All in favor. Motion carried.

Fifth Order of Business, 4th paragraph, Muff... were not structurally

Seventh Order of Business, 5th paragraph, Jim Watland

Eighth Order of Business, Motion, Johnston opposed

Ninth Order of Business, Motion, Kalil second. All in favor. Motion carried.

Tenth Order of Business, Motion, Flottemesch, Oakes, Johnston in favor.

With these changes, Kalil made a motion to approve the minutes. Oakes second. All in favor. Motion carried.

Thirteenth Order of Business: Informational Meeting.

The next informational meeting is scheduled for Thursday, November 6, 2003 at 8:30 a.m. at the Planning & Zoning Office.

Since there was no further business to come before the Board, Oakes made a motion to adjourn. Kalil second. All in favor. Meeting adjourned.

Harry Johnston, Vice Chairman

ATTEST _____
Patricia L. Johnson, Zoning Administrator