

**Becker County Board of Adjustments
December 8, 2004**

Present: Harry Johnston, Terry Kalil, Tom Oakes, John Tompt, Jerome Flottemesch, Zoning Administrator Patricia Johnson, and Zoning Staff Debi Moltzan.

Chairman Johnston called the meeting to order at 7:00 p.m. Debi Moltzan recorded the minutes. Kalil explained the criteria that must be met in order to grant a variance.

FIRST ORDER OF BUSINESS: Doyle Nordby. Request an after the fact variance to keep a deck that is 41.5 feet from the ordinary high water mark of White Earth Lake and to allow 25.7% lot coverage for the property described as: Lot 3 Nemec Beach; Section 8, TWP 142, Range 40; Maple Grove Township. PID Number 20.0548.000.

Nordby explained the application to the Board. Nordby explained that the homes were planned and proper permits were obtained. Ronni Nordby explained that she filled out the initial permit and the box for a deck was checked. House was constructed at the string line. The new house was constructed in same location as old cabin and new deck constructed where old deck was. R. Nordby stated she was not sure if they were there for a variance on the deck or impervious or both because the new deck is in the same location as the old deck. R. Nordby stated that the impervious was calculated on the lot size when the road was vacated. R. Nordby stated that they did not deliberately bypass zoning regulations and felt everything had been done correctly. The Nordby's stated that they did not know that the deck had to be on the permit and was not questioned about a deck. They were made aware that everything had to be in the same location as the existing structure and the contractor was told that the new had to go in the same location as the old.

Flottemesch questioned if the deck was on a cement foundation. Nordby stated that the deck was setting on blocks and enclosed so leaves could not get under the deck. The deck is enclosed with plywood and faced with rock. Flottemesch questioned what was under the deck. Nordby stated that there was rock and landscape fabric under the deck. Nordby further stated that the septic tanks are behind the house and the drainfield is located on the property across the road. The septic system is located on the back lot and shared by four owners.

Johnston questioned if there was plastic under the rocks. Nordby stated that there was plastic under the rock on the Roger Nordby house. They used plastic to drain water to the drain tile. Johnston questioned when the road was vacated and when the vacation rescinded. Nordby stated that the vacation was complete prior to building and the rescinding of the road took place in 2003. Johnson stated that the road was vacated 10/01; the site permit was issued after road was vacated; and the road vacation rescinded in 2003. D. Nordby explained the vacation process.

Kalil questioned the comment about re-vacating the road in 2005. D. Nordby explained. Johnston questioned if it was a township road now. D. Nordby stated that it was a

township road. Flottemesch stated that if the road was vacated at the time that the site permit was issued, then 33 ft of the vacated road becomes part of this lot. The lot coverage was calculated at that time for the additional 33 ft of land. Since the road vacation was rescinded, now the lot is smaller than when the permit was issued by act of the Township, not that landowner.

There was no one speaking in favor of the application. There was no one speaking in opposition to the application. Letters were received from: Arthur and Sarah Dubious in favor of the application stating that the new deck is not larger than the old one; Doris Schmidt in favor of the application stating both Doyle's had decks prior for; Fred and Karen Brower in favor of the application; Terra Guetter against the application; Ed Knutson in favor of the application; Mary Gilbertson in favor of the application; John Duchene in favor of the application; Roger Nordby in favor of the application. At this time, testimony was closed.

Further discussion was held. Johnston restated that at the time that the permit was issued, the road was vacated. This should be considered for lot coverage and decks in the shore impact zone. Flottemesch stated that the sequence of happenings must be kept straight. Flottemesch restated, that with the road vacation, the lot was large enough for this much lot coverage, deck should have been considered at that time, a deck would not be allowed in the shore impact zone. The permit was issued for the house and impervious then the township rescinded the vacation. This then makes this a nonconforming lot and a nonconforming building. This should be looked at this way. Kalil questioned how this could have been built in the same location if the permit states 59 feet and now is 41.5 feet. D Nordby stated that a dotted line was shown for a deck, but it did not have a setback. D. Nordby stated that they concentrated on the house setback, which was the same as the old structure and felt that this was the only thing that mattered.

Further discussion was held. Kalil stated that this couldn't be looked at as a nonconforming structure. At the time it was built, it needed to be constructed in compliance and the deck is part of the structure. With the road vacation and had they applied for the variance at that time, the deck would not have been allowed in this location. Flottemesch stated that the house was built then the vacation rescinded; now the lot is nonconforming. Flottemesch stated that, according to the pictures, the old deck looks more like a patio rather than a deck. Flottemesch stated that the Board should consider allowing a deck 15% of the setback. Johnston stated that he did not like the fact that new construction cannot have decks in the shore impact zone, but old houses in the shore impact zone can. Flottemesch stated, that if the string line were used, the string line would have been in the shore impact zone. Kalil stated this is an after the fact variance and a decision must be based on what would have been allowed prior to the deck being placed there. Kalil asked if there was reasonable use of the property without a deck or if the lack of a deck is not reasonable.

Flottemesch questioned if the owner was entitled to stairway and entry into the house. Johnson stated that an ingress/egress is allowed and a pervious patio would be allowed in the shore impact zone. Flottemesch stated that the Board must find a reason to grant a

variance. Kalil recalled two cases in which the owners wanted decks after the house was constructed; the houses were constructed at the string line with no allowance for a deck and their requests were denied.

Johnston questioned if there is a concern about the impervious coverage because the lot size has been reduced by the Township's rescinding of the vacation order. Flottemesch stated that it was not because lot coverage was in compliance at the time the house was constructed, but with the reduced lot size there is an impervious problem. Kalil questioned when the deck was constructed. Nordby stated that the deck was constructed a few months after the house was completed. Johnston stated that the string line might have allowed for some type of a deck.

Motion: Flottemesch made a motion to allow a deck 15% of the house setback (based on a setback of 55 ft) due to the change in the lot size created by the rescinding of the road vacation, which would be an 8.25 ft deck; and allow 25.7% lot coverage based on the fact that the calculations were based off the lot size at the time that the site permit was issued, and the lot size has decreased by action of the Township's rescinding the road vacation, not at the fault of the landowner. Tompt second. All in favor except Kalil. Kalil questioned if a deadline is needed. Johnson stated that a deadline should be set for compliance with the variance. Flottemesch made a motion to set the date for compliance with the variance for September 1, 2005. Tompt second. All in favor. Motion carried. Variance approved with stipulations.

SECOND ORDER OF BUSINESS: Roger Nordby. Request an after the fact variance to keep a deck 36 feet from the ordinary high water mark of White Earth Lake and to allow 26% lot coverage for the property described as: Lot 2 Nemec Beach; Section 8, TWP 142, Range 40; Maple Grove Township. PID Number 20.0547.000.

Nordby explained the application to the Board. This request is very similar to Doyle Nordby's request and situation. The only differences are that this deck is 36 feet from the ordinary high water mark and the permit states the structure is to be 45 feet from the ordinary high water mark; the elevation of the lot is different; and his original plan showed a 12 ft by 12 ft deck. During construction a side door was eliminated, and the lake front door ended up extremely high off the ground. The deck is a two-tiered deck. The adjoining lot to the north has a large deck closer to the lake than this one.

Johnston questioned the material under the deck and if it was impervious, shiny plastic. Nordby stated it was and was willing to remove it. Flottemesch questioned the run off from the roof and stated that the run off from the roof does more damage to the lake than a lot of other things and should be diverted away from the lake.

No one spoke in favor of the application. No one spoke in opposition to the application. Written correspondence was received from: Arthur and Sarah Dubious in favor of the application stating that the new deck is not larger than the old one; Doris Schmidt in favor of the application stating both had decks prior for; Fred and Karen Brower in favor of the application; Terra Guetter against the application; Ed Knutson in favor of the

application; Mary Gilbertson in favor of the application; John Duchene in favor of the application; and Doyle Nordby in favor of the application. At this time, testimony was closed.

Further discussion was held. Johnston stated that this is the same situation as the last application, but impervious is greater because of the plastic under deck. Flottesch stated that the drain tile and run off should also be addressed.

Motion: Flottesch made a motion to allow a deck 15% of the house setback (based on a setback of 49 ft), which would be a 7.73 ft deck; and allow 26% impervious lot coverage based on the fact that the calculations were based off the lot size at the time that the site permit was issued, and the lot size has decreased by action of the Township's rescinding the road vacation, not at the fault of the land owner with the stipulation that the present tile system must be diverted away from the lake; the material under the deck must be pervious and other impervious material must be removed to meet the 26% lot coverage and that this must be brought into compliance with the variance by September 1, 2005. Tompt second. All in favor. Motion carried. Variance approved.

THIRD ORDER OF BUSINESS: Michael Watson. Request a variance to amend Document Number 510599 and 418398 to allow a dwelling located above a garage on a substandard size lot and an After the Fact Variance to relocate the garage 15 feet from the right of way of the township road and 21 feet from the rear property line on the property described as: Pt of Lots 8 & 9; Section 5, TWP 142, Range 40; Maple Grove Township. PID Number 20.0584.001.

Watson explained the application to the Board. The variance is to ask for an extension of the November 1, 2004 removal deadline and relocate the garage and keep the garage as is. The Township does not have a problem with the location of the garage. Watson stated that they have asked the Township to vacate a portion of the road and TWP was not in favor of this after dealing with the Nordby vacation situation. During the earlier variance, there were 8 letters of support and 1 letter of opposition. Currently the garage is 15 inches into the right of way. Watson stated that he has talked to County Commissioners, who supported their effort to keep the garage. The garage is 9 feet behind the string line. The extension would allow them to keep the garage as is. They have been trying very hard to figure out a solution.

No one spoke in favor of the application. No one spoke in opposition to the variance. Written correspondence was received from Robin Hadlich in favor of the application and Mark & Lu Dungeon in favor of the application. At this time, testimony was closed.

Kalil stated that the Board was back to the same problems, nothing has changed. The original variance stated that this back lot was for an adequate septic system and no dwelling. The purpose of the back lot clear, first for septic, second for storage. Previous Minutes state that there was television, bed, microwave and determined that the garage was a dwelling. The height or use of the structure has not changed. The last variance not granted because of the dwelling and the setbacks were violated. Kalil questioned what is

different. Watson stated that the location is different. Watson stated that there is no water, kitchen or bathroom so it is not a dwelling. They have tried everything possible to try to save the garage. Kalil stated that the current septic system is located in the road right of way and questioned where it would be placed should it fail. Flottemesch stated that he had a problem with height, whether right or wrong, no dwelling was allowed per previous variance and per ordinance. The purpose of the lot was first for a septic system and secondly for storage. Flottemesch stated that he would not have problem with a footprint meeting 20 ft off road right of way and adequate area for septic but this structure is over height. Kalil stated that there may be a letter from current TWP but another Town Board may not look at this the same way, and this Board cannot allow construction in the road right of way. Kalil restated the criteria for the granting of the variance.

Motion: Kalil made a motion to deny the variance to amend Document Numbers 510599 & 418393 and to deny an after the fact variance to relocate a garage 15 feet from the township road right of way and 21 feet from the rear property line based on the fact that nothing about the structure has changed; the height has not changed and the use has not changed; the Variance from 1995 does not allow for a dwelling on this property and the hardship was created by the landowner; the landowner violated the setbacks on the original site permit issued; and there is no hardship to support the extension of the November 1, 2004 removal date; therefore, the structure must be removed immediately. Oakes second. All in favor. Motion carried.

FOURTH ORDER OF BUSINESS: John Volkerding. Request a variance to construct a breezeway and new garage that will be 65 feet from centerline of the township road. The existing bunkhouse, garage and other impervious coverage will be removed to be within the allowable 25% impervious lot coverage. Variance request is for the property described as: Lot 20 RV Corbetts Second, Section 20, TWP 138, Range 41; Lake View Township. PID Number 19.0983.000.

Volkerding explained the application. A new garage would be constructed and attached to the house with a breezeway. They would remove the old garage, bunkhouse and other impervious material. Flottemesch questioned if the new driveway would be a hard surface. Volkerding stated that they would be turning around in the yard so they can drive out onto road, not back out onto road. They could use echo block or other pervious material for the driveway if lot coverage became an issue.

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. Gail Hahn, TWP, does have extra land across the road, but how does it look to the neighbors if they put all the impervious on the lakeside. At this time, testimony was closed.

Further discussion was held. Kalil stated that Volkerding was removing some of the impervious and adding some. Is there is hardship to justify this? Is the garage in harmony to the area? Volkerding stated he was proposing a single story garage. Flottemesch stated that they must look at what is being removed and where the garage

would be relocated. Safety is a big benefit. The new garage would be further from the road and the entrance to the garage would not be directly off the road.

Motion: Kalil made a motion to approve garage at 65 ft from centerline from the township road and that the impervious lot coverage can not exceed 25% lot coverage and the garage is to be a single story garage not to exceed the height of the house with the stipulation that the bunkhouse and dog run be removed based on the fact that the hazardous garage is being removed; the new garage would be further from the road and the lot is not large enough to meet the required setbacks. Tompt second. All in favor. Motion carried.

FIFTH ORDER OF BUSINESS: Thomas Shafer. Request a variance to construct an addition onto an existing garage 64 feet from the centerline of a county road and five feet from the side lot line for the property described as: Lots 58 & 59, Floyd Lake Beach; Section 15, TWP 139, Range 41; Detroit Township.

Shafer explained the application to the Board. This would be an addition to the existing garage. The existing garage is 2.5 feet from the lot line. With the required setback of 10 feet, the new addition would start in the middle of the existing garage. The addition would be for storage only. The entrance would be toward the neighbor's lot (on the east side).

No one spoke in favor of the application. No one spoke against the application. Written correspondence from Rose Barton and Jay and Audrey Erickson in favor of the application. At this time, testimony was closed.

Further discussion was held. Oakes questioned if the new roofline would follow the existing roofline. Shafer stated that the roofline would follow the same as the old. Tompt questioned the concrete slab. Shafer read the letter sent to the Zoning Office regarding the placement of the concrete before the granting of the variance.

Flottesch stated that he understands where Shafer is coming from. But if the garage would burn down, where would the new one go, probably 20 ft from right of way and 10 feet from the side lot line. This would place a new garage where the concrete slab is now. Shafer questioned why this question was not asked of the other applicants. Shafer stated that there is only 15% impervious. Kalil stated that under impervious does not mean can grant variance and that the previous question is taken into consideration in every application whether or not it is asked out loud. Johnston how about a basketball court in the location and a storage shed elsewhere. Shafer stated that he is here before construction. Johnston stated that Ordinance states there is a 10 ft setback. Flottesch stated nonconforming garage too close to the road. Kalil stated that there is reasonable use with a garage and house. Flottesch stated that, with string line and 10 ft side yard setback, a structure could be constructed without a variance.

Shafer stated that this is a simple application. Flottesch stated that there is no hardship of the property. There are alternatives for placement of a storage structure.

Motion: Oakes made a motion to deny a variance to construct an addition on to an existing garage 5 feet from the side lot line and 64 feet from the centerline of the county road based on the fact that there is no hardship of the property could be found and there is reasonable use of the property without a variance. Kalil second. All in favor. Motion carried.

SIXTH ORDER OF BUSINESS: Robert Buth. A variance request to amend Document Number 503794 to construct a dwelling and garage 66 feet from the centerline of the township road and 50 feet from the ordinary high water mark of the lake for the property described as: Lots 66 & 67, Trade Winds Beach, Section 7, TWP 138, Range 42; Lake Eunice Township. PID Number 17.1310.000.

The application was explained by Robert Buth and Julie Jernbreg, attorney. The former application was submitted according to the original plat and there was confusion on setbacks. Since then a surveyor was hired to survey lines and setbacks. The actual location is the same as the former location but the setbacks are different because of the location of the ordinary high water mark and the fact that the road is not in the center of the right of way. A mound septic system is required and more room is needed for the septic system. Two more feet have been added to the size of the garage to allow for more storage. Most of the lots in this plat are 70 feet wide. This property is 100 feet wide. Due to the location of the septic system, the house cannot be moved further toward the road. Most the structures in this area are larger and closer to the lake. This request is in harmony with the area and is out of the shore impact zone. Multiple hardships, required setbacks leaves no room to build a structure and there needs to be room for a septic system and the landowner has not created a hardship. This is a lot of record with one house and a vacant lot on the other side. There is no impervious coverage problem. Jernberg has attended the Lake Eunice TWP meeting and Watershed Meeting and both agencies did not have a problem with the application.

Kalil questioned the foundation of the house. Vern Muzik, contractor, stated that the structure would be tri level with a partial basement 4 feet deep and that the size of house has not changed.

Speaking in favor of the application were Joe Peterson, Dennis Peterson and Pearl Peterson. Speaking in opposition to the application was Carl Malmstrom on behalf of Linda Hertsgaard. Malmstrom explained that this application had gone to appeal after last variance. Now the property has been surveyed to establish the right of way, OHW and shoreline and a benchmark has been set for a starting point for measuring. The Zoning Ordinance has provisions for a string line and explained his position on the string line setbacks allowed and that structures are to be moved further back from the lake. Written correspondence was received from Jayne Anderson in favor of the application; Lloyd and Carol Stangeland in favor of the application; and Linda Hertsgaard, in opposition to the application. At this time, testimony was closed.

Johnston stated that the high water mark was in the same location as thought before. Flottemesch stated that the house can be built by string line but not the garage. With a variance, it has been practice to have a complete plan with garage and house. Flottemesch further stated that the optimal string line is in harmony with the neighborhood characteristics. The present variance of 64 feet is proper with the neighborhood. Past practice to allow structures 20 feet from the road right of way. Kalil suggested leaving original variance in place. Muzik stated that there is a setback from the house to the septic system. If the house is moved back, it cannot be met. Johnson confirmed that if house was moved back, the required setbacks from the septic to the house could not be met.

Johnson stated that the Board must look at the original variance to see if it should be amended and have findings to justify the change. Flottemesch stated that the 50 ft setback is in character with neighborhood. Kalil stated that the property was well staked. Malmstrom stated that there was no septic design on file. Flottemesch stated, that although a complete design was not on file, there was enough information in the file regarding the location to make a determination. Johnston felt the original variance should stand.

Motion: Kalil made a motion to amend Document 503794 to construct a dwelling and garage 66 feet from the centerline of the township road and 50 feet from the ordinary high water mark of the lake based on the fact that the property has been recently surveyed to show the true property lines and road right of way; the ordinary high water mark has been officially identified by the Cormorant Lakes Watershed District; this location is in the same general location as the location requested in the original variance with the difference being the above lines officially identified, which changed the distances; that these measurements will allow for a conforming septic system; and although the setback does not meet the “string line test”, the lake setback is consistent with most of the structures in that neighborhood. Flottemesch second. All in favor except Johnston. Motion carried.

SEVENTH ORDER OF BUSINESS: Chad Pazdernik. Request a variance to intensify a nonconforming structure by adding a second story 50 feet from the ordinary high water mark of the lake and to exceed total lot coverage by 3% for a total of 28% on the property described as: Lot 11 Brolin Beach, Section 16, TWP 139, Range 41; Detroit Township. PID Number 08.0771.000.

Pazdernik stated that he bought this lot without much knowledge of lake property. There is a vacant lot to the west of his cabin and a structure to the east. A portion of his cabin would be in front of the string line. Pazdernik stated that current impervious coverage is 46% and he is willing to remove 18% of the impervious, bringing total impervious down to 28% in exchange for the second story.

Kalil felt that this would be a good trade off for green space. Flottemesch stated that although there is a vacant lot adjoining this property, setback is in harmony with the neighborhood.

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.

Motion: Tompt made a motion to approve a variance to allow a second story addition onto a nonconforming house due to the size and shape of the lot and allow 28% impervious lot coverage based on the fact that the amount of impervious coverage would be reduced from 46% to 28% with the stipulation that the impervious material to be removed is in accordance to those items shown on the site plan submitted with the variance application. Kalil second. All in favor. Motion carried.

EIGHTH ORDER OF BUSINESS: Leslie Froiland. Request a variance to intensify a nonconforming house by adding a second story onto the existing structure 39 feet from the ordinary high water mark of the lake and construct an attached garage 77 feet from the centerline of the county road for the property described as: Lot 34 Floyd Lake Point; Section 10, TWP 139, Range 41; Detroit Township. PID Number 08.1008.000.

Froiland explained the application to the Board. They would like to add one story to house and attach a garage. The existing garage will be removed. The new garage will be smaller than the old garage. The purpose would be to turn the structure into a year round home.

Kalil questioned the depth of the lot, stating that the plat shows 169 ft of depth and the site plan shows 192 ft of depth, causing a difference in impervious lot coverage. Froiland stated that the driveway will be cut down in size, which will bring the impervious coverage down to 25%. Johnson stated that lot coverage will be addressed when Froiland obtains the site permit.

No one spoke in favor of the application. No one spoke in opposition to the application. Written correspondence was received from Susan and William Ferryman in favor of the application. At this time testimony was closed.

Flottemesch stated that there is a trade off by reducing the size of the garage, the garage would be further from the road, the impervious coverage would be reduced, and this would be the trade off for the second story onto an existing structure located within the shore impact zone.

Johnson questioned if the main floor would be renovated, not just the addition of a second story. Froiland explained the work to be done during the renovation. Flottemesch stated that the amount of work to be done is that equivalent to the construction of a new house. Johnson suggested postponing for more information. Oakes questioned the foundation. Froiland stated the foundation was block. Kalil stated she was having a hard time finding a hardship, there reasonable use. Further discussion was held.

Flottemesch suggested removing the structure from the shore impact zone and reduce impervious coverage to 25%. Johnston suggested that the applicant postpone the application due to the 60-day rule. Flottemesch stated that the Board does not have enough information to approve; but the applicant can postpone the application so that the Board can obtain the required information.

Froiland asked for a postponement. Flottemesch accepted the applicant's request. Oakes second. All in favor.

NINTH ORDER OF BUSINESS: Kandi Flake-Mitchell. Request a variance to construct a garage 32.5 feet from the centerline of the township road and five (5) feet from the side lot line for the property described as: Lot 8 Sauers Christina Beach, Section 32, TWP 139, Range 41; Detroit Township. PID Number 08.1234.000.

Mitchell explained the application to the Board. Flake-Mitchell would remove the existing garage and replace with a larger garage; there is a sharp drop off toward the house; so this is the only location to place for a garage. The garage would be 24 ft by 26 ft. The entrance to the garage would be parallel to the road. Tompt questioned if the side yard setback could be 7.5 ft. Flake-Mitchell stated that the current garage is 5.5 ft from the side lot line. Further discussion was held regarding the side yard setback.

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. The Board felt that there was no hardship to justify a reduction in the side yard setback but there was a topography problem.

Motion: Tompt made a motion to approve a 24 ft by 26 ft garage 32.5 feet from the centerline of the road based on the fact that the garage would be off the road right of way and the topography of the lot and deny the request for 5 feet from the side lot line because a hardship could not be found to justify the decrease in the side yard setback. Oakes second. All in favor. Motion carried.

TENTH ORDER OF BUSINESS: Informational Meeting. The tentative date for the next informational meeting is scheduled for January 6, 2005 at 8:30 am at the Planning and Zoning Office.

Since there was no further business to come before the Board, Chairman Johnston adjourned the meeting.

Harry Johnston, Chairman

ATTEST

Patricia Johnson, Administrator