

**Becker County Board of Adjustments  
February 10, 2005**

**Present:** Members Jerome Flottesmesch, Tom Oakes, Harry Johnston, Jim Elletson, Terry Kalil, Zoning Administrator Patricia Johnson and Zoning Staff Debi Moltzan.

Chairman Harry Johnston called the meeting to order at 7:00 p.m. Debi Moltzan was recording secretary.

**Minute approval:** Elletson stated that there were a few minor corrections that needed to be made: 1<sup>st</sup> Order of Business, second page, third line the word “sting” should be “string”; 3<sup>rd</sup> Order of Business, third paragraph the word “build” should be building; 6<sup>th</sup> Order of Business, second paragraph, fourth line, the word “and” should be placed between “her the boys”; 6<sup>th</sup> Order of Business, fourth paragraph, the word “owners” should be “owner”; 11<sup>th</sup> Order of Business, fourth paragraph, the word “if” should be “it”. Kalil stated that, since she was not at last month’s hearing, when she read the minutes, Order #9, was not clear. Kalil questioned which structure was being talked about in the last lines of the fourth paragraph. Flottesmesch stated that the word “it” pertained to the garage and that the minutes should be changed to reflect this.

With the changes, Elletson made a motion to approve the January 2005 minutes. Kalil second. All in favor. Motion carried. Minutes approved.

Administrator Johnson stated that the Department has received word that the water body affecting the J & K Marine/ Macpherson was a wetland and not part of Wine Lake. Therefore, there is no need for a variance and the application will be removed from the agenda.

**FIRST ORDER OF BUSINESS: Bruce Paakh.**

Johnson explained that this application was postponed from the January Meeting to obtain a legal opinion from the County Attorney. The request was to add a second story on a portion of the structure. During the last meeting, it was found that a basement had been constructed under the house, without permits. An opinion was sought to find out if the violation was a violation of a previous variance or a violation of a site permit. The opinion from the Assistant County Attorney stated that Paakh was not in violation of the previous variance, but was in violation of not obtaining proper site permits. Johnson further stated that the outcome of this hearing would determine what administrative action the Zoning Office will take on this matter. The Board will have to act on an after the fact variance for a basement and second story onto the structure.

At this time, Chairman Johnston explained the protocol for the meeting and had Elletson read the criteria that had to be met to grant a variance.

Paakh explained the application to the Board. He removed the roof and is increasing the wall height approximately 3.9 feet to utilize the floor space. This space had been a loft at

one time. A variance for the basement had not been applied for, but if one is needed, then it should be acted upon.

Flottemesch questioned if the roofline that is there now (gable end rafter in place and a portion of the roof finished) would be the same pitch and height as the finished roofline. Paakh stated that it would be. The only difference from this roof to the “old roof” is that the pitch and wall height on the north half has changed, but the peak height will be the same. Paakh stated that an error was made when he installed floor heat he ended up with a full basement instead of a crawl space. Lori Paakh asked the Board what their recommendation for dealing with this issue would be because she would like to keep the basement.

Johnston questioned if the Board should act on each issue (basement and second story) separately or together. Johnson stated that it did not matter, but the Board did have to act on both, which would ultimately amend the 2002 variance.

Paakh stated that he did have a hardship because he cannot expand the structure in any other direction.

Elletson questioned how much land Paakh owned to the south of the ditch. Paakh stated that he has about 70 acres to the south of the ditch, which he does not plan on building on – he does not want to disturb the wildlife.

No one spoke in favor of the application. Speaking in opposition to the application were: Harlan Koenig – the 2002 variance was to relocate the existing structure, this is not the existing cabin and it could have been moved further north.

Don Young – agrees with Koenig, also the shoreline has been changed with fill.

Paul Highness – questioned the basement, a variance was denied for the garage basement because of potential ground water contamination; and pylons went up when a deck was denied. Does not understand the hardship due to the flooding, but there is 70 acres on the other side of the ditch, could relocate on that side. There is no hardship; this is a new structure, which could have been relocated on the other side of the ditch.

Wes Borah – agree with other people. The living space originally was a small loft, now a complete new building, where does it stop.

There was no written correspondence either for or against the application. At this time, testimony was closed.

Further discussion was held. Kalil stated that she was not at last month’s meeting, but has seen the structure on two different occasions. Kalil stated that the previous variance was to relocate an existing structure, but there is nothing left of the original structure. If you compare this structure with the criteria for a variance, she was having a hard time finding a hardship. The 2002 variance stated that the structure was to be moved as far

north as possible and that the Zoning Office must approve the location. Kalil questioned if the location was approved. Paakh stated that he talked to Johnson, in the Zoning Office, about the location. Johnson stated that when an inspection is called in, an inspection report is started; an inspector visits the site, and completes the form with the findings of that inspection. Johnson stated that there is no inspection report in the file and she is not aware of an inspection being done.

Flottemesch stated that the site does look differently due to the high water, the fill and the relocation of the structure. The original structure was in the ground, but now the structure is 2 ½ stories high. Flottemesch felt that the location was no problem. Kalil felt that this was a new construction, not an existing building. Johnston felt that this should be looked at as a new structure because it was definitely more than maintenance.

Elletson referred back to the 2002 hearing. Paakh had requested to raise and move the existing structure. The minutes reflect that the structure was to be raised approximately five feet; the only thing prohibited by the variance was an attached garage and a deck. Elletson further stated that the structure does have many structural changes, but did that really matter because the structure is still in the same location. Flottemesch stated that basements and second stories are not prohibited. Flottemesch further stated that the variance was granted, the size of the structure was not changed, just the height of the structure. Further discussion was held regarding the original structure, original location present location and previous variance.

Johnston reminded the Board to keep in mind that the correct site plans have not been obtained, so there will also be administrative fines to deal with. Flottemesch questioned the amount of dirt that was moved. Johnson stated that there was a land alteration permit, which would also have to be reviewed.

Kalil had the following questions: is the addition of a second story a hardship of the land or the land owner; is there reasonable use without the variance, what is the definition of reasonable; is the variance interfering with the character of the neighborhood; the is only hardship economic?

Flottemesch stated the wording of the 2002 variance may not have been as clear as it should have been, but if a footprint was created, then a structure can be rebuilt in this location; the Ordinance does not put a limit on basements or second stories. Johnson stated, that because of the current wording, if Paakh had come into the office before construction began and asked for a permit to rebuild the structure, he would have had to reapply for a new variance. Further discussion was held.

Elletson questioned if a new variance was granted, would this over ride the existing variance. Johnson stated that it could or the existing variance could be amended. Elletson felt that the language needs to be clarified. Elletson felt that the intent of the 2002 variance was to create a footprint to set the cabin on. The Board allowed the cabin to be raised and five feet creates space for a basement. Elletson felt that the height of the

roof would not be changed, just the pitch of the roof. Elletson felt that the deck and attached garage should still be prohibited.

Oakes questioned if the structure was in the shore impact zone. Flottemesch stated that there was enough of a hardship to allow the structure where it is now. Kalil questioned if there could be stipulations on the variance to prevent any further development on the property or shoreline. Elletson stated that it could be placed in the variance. Johnston questioned if that was harsh to not allow further development on 70 acres. Paakh stated that it was his intent that there be no buildings on the south side of the ditch; he wants to protect the land for the wildlife and the land is to be put into a perpetual easement to protect that land from future development and subdivision.

**Motion:** Elletson made a motion to amend the 2002 variance, Document #490287, to allow a footprint for a structure in the location of the present cabin. The current structure will be allowed a basement and to raise the roof to create more living space. The structure cannot have an attached garage or a deck. The applicant will be required to submit an accurate site plan showing the exact location of the cabin and storage shed, with distances from the lake and property lines and location of well and septic system. This site plan must then be approved by the Zoning Department. When the site plan is approved, it will be recorded with the variance. Flottemesch second.

Johnston questioned if a stipulation was going to be added about limiting this location as the only building site on the entire acreage. Elletson felt that it was in the minutes and did not have to be in the motion. Kalil stated that if it was not in the motion, it is not part of the variance and is not enforceable. Flottemesch stated that it should be in the motion.

Elletson made a motion to state: approve a variance to amend the 2002 variance, Document #490287, to allow a footprint for a structure in the location that the present cabin is now located. The current structure will be allowed a basement and be allowed to raise the roof to create more living space. The structure cannot have an attached garage or a deck. The applicant will be required to submit an accurate site plan showing the exact location of the cabin and storage shed, with distances from the lake and property lines and location of well and septic system. This site plan must then be approved by the Zoning Department. When the site plan is approved, it will be recorded with the variance with the stipulation that this location will be the only building site on this parcel of land and with the stipulation, as stated by the applicant, that the land to the south of the ditch be put into a perpetual easement to protect the land from future development and subdivision. Flottemesch second the amended motion. All in favor. Motion carried.

**SECOND ORDER OF BUSINESS: David Carlson.** Request a variance to construct an addition onto an existing structure 50 feet from the ordinary high water mark of the lake for the property described as: Lot 8 First Addition to Calico Beach, Section 25, TWP 140, Range 40; Holmesville Township, Cotton Lake. PID Number 16.0313.000.

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

The application was explained by Barry Poehl, Paul Davis Restoration. The Carlson's purchased the property a few years ago. The cabin only has one bedroom. The Carlson's would like to add onto the cabin for more living space. Their original idea was to put the addition to the rear of the structure in the location of the existing carport, but the addition would be too close to the septic tank. The addition cannot go on the lakeside because the cabin is already too close to the lake. Therefore, the most logical location is to the side of the existing cabin.

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. Oakes questioned how far the septic system was from the carport. Poehl stated that the septic tank was about four feet from the carport. Elletson stated that the structure should be 100 ft from the lake and it is only 50 feet from the lake. Elletson also stated that the entire dwelling is in front of the string line. Kalil questioned what was preventing the owner from removing the carport and constructing the addition in the carport location. Poehl stated that the separation distance from the septic tank would not allow the addition in the carport location. Kalil stated that the septic tank could be relocated. Kalil further stated that if this structure burnt down, the structure would not be permitted in that location. Kalil stated that she cannot support a variance to add onto the side, but could support a variance to add onto the rear of the cabin. Elletson agreed and suggested that if a variance was to be approved, that the variance be only for the addition and not tied to the existing cabin – if the existing cabin were to be removed or destroyed, the new structure would have to be setback at least the distance of the addition or further from the lake.

Johnston agreed and stated that this would place the addition behind the string line. Elletson stated that there was another alternative. This alternative would be for the representative to postpone the application until he had a chance to talk to the owner and come up with an alternate plan for either a different location for an addition or a new structure.

At this time, Poehl asked for a postponement of the application.

**Motion:** Kalil made a motion to accept the representative's request for postponement of the application. Oakes second. All in favor. Motion carried.

### **THIRD ORDER OF BUSINESS: Informational Meeting.**

Johnson stated that the next informational meeting is scheduled for Tuesday, March 3, 2005 at 8:30 a.m. at the Planning & Zoning Office. At this time, the two new Board Members would be present.

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

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Harry Johnston, Chairman

ATTEST

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Patricia Johnson, Administrator