

Becker County Board of Adjustments
June 9, 2004

Present: Jim Elletson, Harry Johnston, Terry Kalil, Jerome Flottemesch, John Tompt, and Planning & Zoning Staff Debi Moltzan.

Chairman Johnston called the meeting to order at 7:00 p.m. Debi Moltzan recorded the Minutes.

The following corrections were made to the May 12, 2004 Minutes:
Second Order of Business, second paragraph should read one additional building;
Second Order of Business, third paragraph should read lakeside of the road;
Second Order of Business, motion should read one additional building.

Elletson made a motion to approve the minutes of the May 12, 2004 meeting with the above corrections. Kalil second. All in favor. Motion carried. Minutes approved.

FIRST ORDER OF BUSINESS: Dan Holzgrove. Request a variance to construct a dwelling on a non buildable lot as defined in Section 17, Subdivision 9, of the Becker County Zoning Ordinance for the property described as: Outlot A; Section 16, TWP 139, Range 41; Detroit Township. PID Number 08.1255.000.

Pat Kenney, attorney for Holzgrove, explained the application to the Board. Kenney stated that they are here to ask for a variance to allow this lot as a buildable lot and to appeal the decision of the Zoning Office for revoking the site permit previously issued. Holzgrove purchased Outlot A in good faith and obtained a site permit. The permit was then revoked, stating that the lot was not a lot of record. With amendments to the Zoning Ordinance, it has been determined that this is a lot of record, but now the Zoning Office takes the stand that this lot is contiguous to another lot, thus making this lot unbuildable. This is the decision that is being appealed and asking for a variance because the lots are not contiguous.

Kenney stated that the original plat shows that Outlot A is separate from the property to the West of the rear of Outlot A and the cul-de-sac. New surveying techniques now show the lots abut each other by 4.70 feet, thus making Outlot A unbuildable.

Flottemesch questioned what the original plat of Town & Country Estates shows. Kenney stated that the original recorded plat of Town & Country Estates, which is the recorded plat on file, does not show the connection by 4.70 feet, but total separation.

Kenney read Section 17, Subdivision 9 regarding lots of record in contiguous ownership. Kenney stated that the Zoning Ordinance does not have a definition for adjacent or contiguous. Kenney stated that when a definition is absent from an Ordinance a common meaning must be found. Kenney stated that Webster's Seventh New Collegiate Dictionary describes adjacent as: not distant, nearby, having a common border, abutting. Abutting meaning being in close proximity. Adjacent may or may no imply contact but

always implies absence of anything of the same kind in between. Adjoining definitely implies meeting and touching at some point or line. Contiguous implies having contact on all or most of one side.

Kenney stated that there was an Ordinance change in 1982, which stated that all lots legally recorded prior to March 2, 1976 were considered lots of record, thus making Outlot A a lot of record and buildable.

Speaking in favor of the application was Eilene Horn, former owner of the property. Horn stated that the property was sold with belief that this lot was a separate buildable lot, as told to them by Roy Smith the surveyor.

Speaking in opposition to the application was John Postovit in behalf of Floyd Shores Association. Posovit stated that required lot size in 1972 was 100 ft of width and when platted the lot in question only had 70 ft of width, thus making this an unbuidable lot. This should not be a variance request because the lot was substandard when platted.

Kalil asked Kenney to re-read the Zoning Ordinance Amendment from 1982. Kenney re-read the amendment, which stated that all lots legally recorded prior to March 2, 1976, which do not meet the requirements of this Ordinance shall be allowed as buildable lots.

Merlin McDougall was against the application. He did not want to look out his bedroom window into another structure.

Pat Eidenschink was against the application because his plat was denied in 1990 and this lot is more substandard than the lots he proposed.

Curt Sitko was against the application because this was more of a deviation than a variance.

Gordon Grabow was against the application because the intent of this lot was to give the back property access to the lake.

Written correspondence was received from:

- Don Busker in opposition
- Floyd Shores in opposition
- Eugene Pavelko in opposition
- Patrick Eidenschink in opposition
- Jan & Cindy Orvedal in opposition
- Merlin & Janis McDougall in opposition

At this time testimony was closed.

Further discussion was held. Kalil stated that the Board needed to look at the definition of a lot of record. According to the amendments, this lot is a lot of record. The Board agreed that by that definition, this is a lot of record. Flottemesch stated that there was a lot of confusion when the Zoning Ordinance was first enacted and action had to be taken

for clarification. With that action a date was picked to define a lot of record and clear up the language. Kalil stated that if it was Busker's intent to use this lot as an access lot, the amendment nullified the intent. Elletson stated that Busker's intent may have been verbal, but there is nothing on record or in writing.

Discussion was held regarding the plat recorded and the new survey. Then the Board held discussion on what contiguous, adjacent and abutting meant. Elletson stated that the Board has dealt with variances for lots much smaller than this lot. Johnston stated that this lot does not meet the requirements for an access lot. Flottemesch stated that there is not a definition for an outlot and the amendment now makes it a buildable lot. Kalil felt that the wording of the Ordinance was intended for lakeshore lots lying side by side, both lots having lake frontage not lots back to back with one lot having lake frontage and the other lot to the rear of the first lot. Kalil stated that a lot of record is entitled to reasonable use. Elletson stated that if it were intended to be an access lot, the only person that would gain from that is the owner of the property to the West, which were the Horne's. The Horne's have given up that right. This decision has not hurt or benefited anyone else. Flottemesch agreed with Kalil's statement about the lot of record being entitled to reasonable use. Flottemesch also stated, that by the dictionary's definition, this lot is not contiguous. Tompt agreed.

Motion: Kalil made a motion to approve a variance to allow Outlot A as a buildable lot based on the fact that this lot was recorded prior to 1976 thus the 1982 amendment makes this lot a lot of record; Outlot A is not contiguous as defined by Webster's Seventh New Collegiate Dictionary; Outlot A is not adjacent because there is not enough contact as defined by Webster's Seventh New Collegiate Dictionary; and a lot of record is a buildable lot in which the owner deserves reasonable use of the property. Tompt second. All in favor except Johnston. Majority in favor. Motion carried. Application approved.

SECOND ORDER OF BUSINESS. Barry Halverson. Request a variance to construct a dwelling 61 feet from the centerline of the township road and 43 feet from the ordinary high water mark of the lake for the property described as: Lot 3 Morton Oak Lane Beach Third Addition; Section 21, TWP 138, Range 42; Lake Eunice Township. PID Number 17.1007.000.

Halverson explained the application to the Board. They would like to build a small home on a 65 ft lot. The structure would be a summer home and would be constructed pretty much in line with the neighboring structures, which would not hinder the neighbor's view.

Kalil questioned if there would be a lakeside deck. Halverson stated that there would either be a deck or screen porch. Elletson questioned if it was shown on the plan. Halverson stated that it was not shown on the plan.

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.

Discussion was held. Elletson stated that this is a bare lot. The stakes were approximately 2 to 3 feet being the string line and close to meeting the setback from the road. Elletson stated that his notes showed the proposed house being 56 feet from the OHW and 77 feet from the centerline of the road. The structure would be located outside the shore impact zone. Flottemesch stated that the deck or porch would have to be included in the setback given. Elletson stated that two variances would be needed; one from the lake and one from the road and consideration should be given for a future garage. Johnston stated that a footprint should be set and let the applicant find a way to meet the footprint.

Motion: Elletson made a motion to approve a variance to allow a structure 65 feet from the centerline of the township road and a lake setback determined by the established building line (which would be approximately 53 feet from the ordinary high water mark of the lake) and deny the original variance request to allow a structure forty-three (43) feet from the ordinary high water mark of the lake based on the size of the lot. Flottemesch second. All in favor. Motion carried. Application approved.

THIRD ORDER OF BUSINESS. Earl Hallstrom. Request a variance to amend Document No. 506059, to construct a dwelling 47 feet from the centerline of the County Road and 82 feet from the Ordinary High Water mark of the lake and a garage 42 feet from the centerline of the County Road and 46 feet from the Ordinary High Water mark of the lake for the property described as: Beg E Line Hwy 525 feet W & 58.1 feet North of SE; Section 3, TWP 139, Range 40; Erie Township. PID Number 10.0016.000.

Roger Rolf explained the application to the Board. There was a previous variance granted for this project. When laying out the final plan in preparation for the new house's delivery, it was found that the wrong measurements were given for the previous variance and thus the new structures will not fit onto the property.

Speaking in favor of the application was Pete Sabo. No one spoke in opposition to the application. Written correspondence against the application was received from Lois Flatau. At this time, testimony was closed.

Discussion was held regarding the visit to the property, the staked location, and the measurements from the lake and the road. Elletson stated that the setback from the road to the house was not as big of a concern as the setback of the garage to the road. Elletson stated that this is the most reasonable site for both structures. Elletson stated that this garage is proposed larger than the original garage, but the garage cannot be moved any closer to the edge of the bank.

Flottemesch stated that topography is a concern but the door of the garage should be 20 feet off the road right-of-way. Kalil questioned what would happen in the future if new owners wanted a second door and how that would be regulated. Further discussion was held.

Motion: Elletson made a motion to approve a variance to allow a house 98 feet from the ordinary high water mark of the lake and 47 feet from the centerline of the County Road; and a garage 26 ft by 36 ft in size 20 feet from the road right-of-way (45 feet from the centerline of the road) and 62 feet from the ordinary high mark of the lake based on the topography of the lot and the fact that this is a lot of record. The original request on the application has been denied. This variance nullifies Document #506059. Kalil second. All in favor. Motion carried. Application approved.

FOURTH ORDER OF BUSINESS: Vicki Sweeney. Request a variance to construct a porch 33 feet from the ordinary high water mark of the lake for the property described as: W 5 rods of E 30 rods of Gov't Lot 1; Section 7, TWP 141, Range 38; South Round Lake Township. PID No. 25.0014.000.

Sweeney explained the application to the Board. She would like to enclose the existing porch with windows instead of screen.

Elletson asked Sweeney to explain the proposed construction. Sweeney stated that the screen would be replaced with windows. The roof may have to be raised because the existing roof is too flat. Kalil questioned if new walls would be built. Sweeney stated that new walls would be built on the existing slab.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from the Lake Association against the application. At this time, testimony was closed.

Further discussion was held. Kalil stated that the porch is in front of the established building line and the structure is a nonconforming structure located in the shore impact zone. A new porch could be relocated to the side of the structure. Kalil stated that, from what she heard, this is a major structural change, not just replacing screen with windows.

Tompt questioned what the shore impact zone is on this lake. Elletson stated that the shore impact zone is 50 feet. This structure is 31 ft to 37 ft from the lake, with an average of 33 feet from the lake; therefore, the structure is in the shore impact zone by 17 feet. Kalil as the Board to consider this: if this were a request for an addition toward the lake, how would the Board look at it. Flottesch stated that the intent of the Ordinance is to get structures out of the shore impact zone and remove old structures.

Elletson stated that a variance may be granted if the variance is in harmony with the official controls; if the property is deprived of reasonable use; if the hardship is unique to the property; if the hardship is created by something other than the landowner; if the variance will not alter the essential character of the locality; and economics alone cannot constitute a hardship.

Motion: Kalil made a motion to deny the variance to construct a porch thirty-three (33) feet from the ordinary high water mark of the lake based on the fact that the porch is

located in the shore impact zone; the porch is located in front of the established building line; this is a structural change to a nonconforming structure; there is no hardship of the property to justify this variance request because there are alternative locations to locate a porch; and the property has reasonable use. Elletson second. All in favor. Motion carried. Application denied.

FIFTH ORDER OF BUSINESS: Erwin Visto. Request a variance to construct an addition onto an existing dwelling 110 feet from the ordinary high water mark of the lake for the property described as: Lots 3 & 4, Block 1; Golden Fawn Estates; Section 23, TWP 139, Range 40; Erie Township. PID Number 10.0673.000.

Visto explained the application to the Board. This addition would be placed to the side of the existing cabin and be 26 ft by 30 ft in size.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from Jeffrey Stowman, in favor of the application. At this time, testimony was closed.

Further discussion was held regarding the size of the existing structure, the location of the existing structure, the location of the proposed addition, topography of the lot and size of the lot. Kalil stated that the existing structure is nonconforming. Elletson stated that the Board measured the proposed addition to be 92 feet from the lake rather than the requested 110 feet. Flottesch stated that if this were a vacant lot, the proposed structure would be moved back to the required setback. Elletson stated that this is an enlargement of a nonconforming structure. Elletson further stated that there needs to be a hardship of the property to grant a variance. Kalil stated that the addition is larger than the existing structure. Flottesch stated that, when the cabin was constructed, there was no such thing as a shore impact zone to be worried about and was not quite sure what the setback from the lake was at that time.

Motion: Kalil made a motion to deny a variance to construct an addition onto the existing cabin 110 feet from the ordinary high water mark of the lake based on the fact that the addition would increase the nonconformity of a nonconforming structure; there is no hardship of the property to justify a variance; and the property has reasonable use without a variance. Elletson second. All in favor. Motion carried. Application denied.

SIXTH ORDER OF BUSINESS: Casey Hokenson. Request a variance to locate a dwelling 13 feet from the right of way of a County Road and 18 feet from the ordinary high water mark of the lake for the property described as: Pt Lot 6; Section 3, TWP 139, Range 40; Erie Township. PID Number 10.0020.000.

Jim Hokenson explained the application to the Board. The existing 14 ft by 56 ft mobile home would be removed and replaced with a 16 ft by 56 ft mobile home. The lot is quite small and it will be a tight fit. Hokenson has been looking for a 14 ft mobile home to put onto the lot, but the availability of 14 ft mobile homes is rare.

Flottemesch stated that this is a small lot but was questioning if the mobile home could be moved closer to the retaining wall, which would move the structure further from the lake. Hokenson stated that the mobile home could be moved a couple of feet. Tompt questioned the location of the septic tank. Hokenson stated it was in/under the retaining wall.

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 regarding size of lot, location of structure and impervious lot coverage.

Motion: Elletson made a motion to approve a variance to allow a 16 ft by 56 ft mobile home to be placed on the lot a distance of not more than two (2) feet from the existing retaining wall and not to exceed 25% impervious lot coverage based on the size and shape of the lot of record. This variance does not allow for any storage shed. The original request on the application has been denied. Kalil second. All in favor. Motion carried. Application approved.

SEVENTH ORDER OF BUSINESS: Jesse Disse. Request a variance to construct a garage 40 feet from the centerline of a township road for the property described as: Pt of Lot 7; Section 5, TWP 138, Range 41; Lake View Township. PID Number 19.0064.000.

Disse explained the application to the Board. The existing garage is in poor shape and would be removed. The new garage would be placed in the same location. Disse does not want to remove any trees because there are a limited number of trees on the lot. Moving the structure closer to the house and lake would create a bigger erosion problem.

Flottemesch questioned how the garage would be accessed. Disse stated that the new garage would be accessed the same way as the old garage; the access would be lakeside, not roadside. Tompt questioned if there would be any doors on the roadside of the structure. Disse stated that there would not be.

No one spoke in favor of the application. No one spoke against the application. Written correspondence was received from Al and Bonnie Mohs and Roland and Elaine Peterson. At this time, testimony was closed.

Further discussion was held regarding the location of the house and the topography of the lot.

Motion: Flottemesch made a motion to approve a variance to construct a garage forty (40) feet from the centerline of the road based on the topography of the lot and the location of the existing home with the stipulation that the garage doors face the lake, not the road. Tompt second. All in favor. Motion carried. Application approved.

EIGHTH ORDER OF BUSINESS: Dale Hansen. Request a variance to construct an addition 33 feet from the ordinary high water mark of the lake for the property described as: Lot 4 Fern Beach Third Addition; Section 30, TWP 138, Range 41; Lake View Township. PID Number 19.1292.000.

Jim Osowski explained the application to the Board. The back portion of the cabin would be removed and a new addition constructed in its place. The roof would be removed and the ½ story rebuilt into a full story.

Tompt questioned if this would be considered structural change. Osowski called it maintenance and repair. Johnston stated that new footings and removing the roof and replacing with different style rafters was structural changes.

No one spoke in favor of the application. No one spoke against the application. There was not written correspondence either for or against the application. At this time, testimony was closed.

Discussion was held regarding the location of the existing structure, the shore impact zone, the amount of work to be done to the structure, and the established building line. Elletson stated that the Board's measurements showed that the existing cabin is 29 feet from the lake not 33 ft. The porch is in front of the established building line. The structure is located in the shore impact zone. This is a structural change to a nonconforming structure and the nonconforming structure would be enlarged. Flottesch stated that this would be a major renovation of a nonconforming structure. Kalil stated that the structural changes are not a hardship of the property. Kalil further stated that a variance can only be granted if there is a hardship of the property, not of the owner or structure.

Further discussion was held regarding the shore impact zone, string line, maintenance of the existing structure and the proposed structural changes.

Motion: Flottesch made a motion to deny a variance to construct an addition thirty-three (33) feet from the ordinary high water mark of the lake based on the fact that the proposed work would be structural changes of a nonconforming structure located within the shore impact zone and the structure is located in front of the established building line. Tompt second. All in favor. Motion carried. Application denied.

NINTH ORDER OF BUSINESS: Donnel Cloud. Request a variance to construct a garage 57 feet from the centerline of the township road and 70 feet from the ordinary high water mark of the lake for the property described as: Lot 3 Bergquist Beach Second Addition; Section 27, TWP 138, Range 42; Lake Eunice Township. PID Number 17.0450.000.

Cloud explained the application to the Board. Cloud stated that the variance request needs to be 53 feet from the centerline due to the way it needs to be attached to the house, which is a split-level house. There would still be ample parking room.

Johnston questioned the size of the structure. Cloud stated the garage would be 28 ft East and West by 24 ft North and South.

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

Discussion was held regarding the location of the proposed garage, the size of the lot, setback from the road, parking and established building line. Elletson stated that the existing house is behind the established building line and the setback from the road is reasonable. There is no other alternative and the request fits into the character of the neighborhood.

Motion: Elletson made a motion to approve a variance to construct a garage fifty-three (53) feet from the centerline of the road and seventy (70) feet from the ordinary high water mark of the lake based on fact that there is no other alternate place to locate the garage, the garage will be twenty (20) feet off the road right-of-way and the lake setback is behind the established building line. Tompt second. All in favor. Motion carried. Variance approved.

TENTH ORDER OF BUSINESS: Jason Sjostrom. Request a variance to construct a dwelling 60 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: Lot 13, Bijou Heights, Section 29, TWP 139, Range 43; Lake Park Township. PID Number 18.0253.000.

Sjostrom explained the application to the Board. The existing structures will be removed and a 24 ft by 30 ft structure will be constructed. Sjostrom would also like to remove the boathouse and restore the lakeshore. Sjostrom would like to maintain the few trees that are on the lot.

No one spoke in favor of the application. No one spoke against the application. The Lake Park Township had concerns about the septic system and did not want the system in the TWP road right of way, but had no objections to the project. Written correspondence was received from Fred Wieck, in opposition to the application. At this time, testimony was closed.

Discussion was held. Elletson stated that no one could build on this lot without a variance. This is a lot of record and the owner is entitled to reasonable use. Flottesch stated that this proposal is wise use of the lot.

Further discussion was held regarding the removal of the existing structures, the established building line, the road setback, and lake setback.

Motion: Kalil made a motion to approve a variance to allow a 30 ft by 34 ft structure with a 10 ft by 30 ft deck, 63 ft from the Ordinary High Water mark of the lake and 60 feet from the centerline of the township road. Elletson second.

Further discussion was held regarding the wording of the variance and the fact that the size of the lot would not require that a stipulation be placed on the size of the structure.

Kalil rescinded her motion. Elletson then made the following motion: approve a variance to allow a dwelling sixty-three (63) feet from the ordinary high water mark of the lake and fifty-five (55) feet from the centerline of the township road based on the size and topography of the lot of record with the stipulation that the outhouse/ shed be removed at the same time as the trailer is removed and the boathouse is to be removed in accordance with County regulations by July 1, 2006. Flottemesch second. All in favor. Motion carried. Application approved.

ELEVENTH ORDER OF BUSINESS: Informational Meeting.

The next informational meeting is tentatively scheduled for Thursday, July 8, 2004.

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

Harry Johnston, Chairman

ATTEST

Patricia Johnson, Zoning Administrator