

**MINUTES OF THE MEETING
OF THE
OTTER TAIL COUNTY BOARD OF ADJUSTMENT
Thursday, July 3, 2008**

The Otter Tail County Board of Adjustment met Thursday, July 3, 2008, with the following persons in attendance:

Marion Gill	Michael Harris	Paul Larson
Randall Mann	Steve Schierer	Carl Zick
Mark Ronning, Land and Resource Management		
David Hauser, Otter Tail County Attorney		

Called to Order – Randall Mann, Chair called the meeting of the Board of Adjustment to order at 6:00 p.m.

Supreme Court Decision – Cyril and Cynara Stadvold

David Hauser, Otter Tail County Attorney, reviewed with the members of the Otter Tail County Board of Adjustment a recent ruling of the Minnesota Supreme Court regarding the decision of the Otter Tail County Board of Adjustment to deny the variance application of Cyril and Cynara Stadvold. The Supreme Court has remanded the decision back to the Board of Adjustment and has provided guidance as to the factors that should be considered when the Board of Adjustment reconsiders the Stadvold application based on the existing record. The following materials were provided and reviewed:

1. Minnesota Counties Insurance Trust June 2008 Alert.
2. Supreme Court Decision,
3. Findings Required for an Area Variance,
4. Findings Required for a Use Variance,
5. Items to consider when reviewing After the Fact Applications, and
6. an Example from Stearns County of "Finding of Facts Supporting/Denying an Area Variance".

These documents are attached and incorporated as a part of the official minutes of the July 3, 2008 Board of Adjustment meeting.

Minutes Approved - The Board of Adjustment approved the minutes of the June 5, 2008 meeting as mailed.

The Board of Adjustment considered the following applications for variance:

Terrance L. and Kathryn L. Russ – Approved the variance as requested with a condition. (6:38 p.m.)

Terrance L. and Kathryn L. Russ, Lot 16 Seifert Beach, Lake Lizzie in Dunn Township, requested the following: Because there is no building on the adjoining property on one side, the building additions are then subject to the 100' setback instead of the 50' setback which they do meet. Requesting a variance of 26' from the ordinary high water level setback in order to build a 6' by 8' entrance and a variance of 20' from ordinary high water level setback to add a 12' by 22' addition, proposed additions will be no closer than the existing house. The audience was polled with no one speaking for or against the variance as requested. After discussion and consideration, Steve Schierer made a motion, second by Paul Larson and unanimously carried, to approve a variance of 26' from the required ordinary high water level setback of 100' for the construction of 6' by 8' entrance 74' from the ordinary high water level and a variance of 20' from the required ordinary high water level setback of 100' for the construction of 12' by 22' addition 80' from the ordinary high water level as described in the variance application dated June 5, 2008 and as depicted on the drawing submitted with the application with the condition that no more than 25% of the total eligible lot area can be covered with impervious surfaces. It was noted that no portion of the proposed development will be ahead of the existing structure, the proposed 12' by 22' addition is a single story addition and after completion of the proposed development the applicant will have reduced their impervious surface coverage to 25% or less. Hardship/practical difficulty is a substandard lot of record.

Maurice R. and Heidi J. Schwartz – Approved the variance as requested. (6:42 p.m.)

Maurice R. and Heidi J. Schwartz, Lot 34 Block 1 Brightwood Shoreline, Dead Lake in Star Lake Township, requested a variance of 50.5' from the required ordinary high water level setback of 200' in order to replace a 16' by 24' garage with a 24' by 24' garage 149.5' from the ordinary high water level. The audience was polled with no one speaking for or against the variance as requested. After discussion and consideration, Marion Gill made a motion, second by Carl Zick and unanimously carried, to approve a variance of 50.5' from the required ordinary high water level setback of 200' for the replacement of a 16' by 24' garage with a 24' by 24' garage 149.5' from the ordinary high water level as depicted on the drawing submitted with the variance application. It was noted that the proposed development is away from the lake and towards the road. It was also noted that there are other similar structures in this immediate area that are closer to the ordinary high water level. The granting of the variance as requested will provide the applicants with the ability to enjoy the same rights and privileges as other in this immediate area.

Julie M. Larson – Approved the variance as requested. (6:45 p.m.)

Julie M. Larson, Lot 2 Block 1 Lakewood Point, Little Pelican Lake in Dunn Township, requested the following: Given this lake lot's location on a point, a structure setback variance is requested to build west side of a new home 20' closer to the lake (80' structure setback rather than 100') than ordinance requirements. The other sides of the house would meet setback requirements. Brad Larson appeared with the applicant at the public hearing. The audience was polled with no one speaking for or against the variance as requested. An email from Danny and Merilee Ottoson in support of the variance as requested was read for the record. After discussion and consideration, Carl Zick made a motion, second by Marion Gill and unanimously carried, to approve a variance of 20' from the required ordinary high water level setback of 100' for the placement of the west side of a new dwelling 80' from the ordinary high water level as depicted on the drawing submitted with the variance application. It was noted that the variance as approved will provide the applicant with the ability to enjoy the same rights and privileges as others in this immediate area and the proposed location does fit the area.

William Lind and Lana Ogden – Denied. (6:52 p.m.)

William Lind and Lana Ogden, Lot 8 O.C. and Elsie Ewert Beach, Marion Lake in Dead Lake Township, requested a variance of 4' from the required road right-of-way setback of 20' for the placement of a garage 16' from the road right-of-way. The audience was polled with no one speaking for or against the variance as requested. A letter from Anton Cichy in support of the variance application was read for the record. After discussion and consideration, Randall Mann made a motion, second by Steve Schierer and unanimously carried, to deny the variance as request as no adequate hardship and/or practical difficulties unique to the property had been shown that would allow for the granting of the variance as requested or that would prevent the applicants from obtaining a reasonable use of their property. It was noted that there are no terrain or topography issues with the applicant's lot that would make the placement of the garage in a legal location impossible, that there is adequate room to place the garage in a location that would meet the required 20' setback from the road right-of-way, that the applicant's building permit stated that the garage would be 20' from the road right-of-way, the office was not called after the footing had been placed for an inspection and the only existing hardship is self imposed. It should be noted that the structure must be brought into compliance on or before September 30, 2008.

James K. Bell – Approved the variance as requested with conditions. (7:04 p.m.)

James K. Bell, part of the Southwest Quarter of the Northwest Quarter, part of the North Half of the Northwest Quarter and part Government Lots 1 and 2, Section 29 of Lida Township by Lake Lida, requested the following: I have a substandard lake shore parcel attached to my 123 acres farm, of which I wish to separate from the farm and attach to separated 5.38 acre parcel – totaling 5.6 acres. The existing water frontage is 65' which is substandard lake frontage for the 5.6 acre lot. The audience was polled with no one speaking for or against the variance as requested. After discussion and consideration, Steve Schierer made a motion, second by Michael Harris and unanimously carried, to approve the proposed subdivision as described in the variance application and as depicted on the drawings submitted with the variance application with the following conditions: 1.) a registered surveyor's drawing must be provided at the time of conveyance, 2.) the remaining acres in this 123.21 acre parcel cannot be granted access to the lake over the newly created 5.6 acre parcel, and 3.) there can be no structures placed between the dedicated road and the lake (the 65' wide strip). It should be noted that development/building can only occur to the rear of the 65' wide strip.

Gary Schroeder – Denied. (7:21 p.m.)

Gary Schroeder, part of Government Lot 1, Section 10 of Elizabeth Township by Long Lake, requested a variance of 57' from the required ordinary high water level setback of 100' for the placement of a second level to the existing house 43' from the ordinary high water level. The audience was polled with no one speaking for or against the variance as requested. A letter from Shirley and Willis Stelter in support of the variance as requested was read for the record. After discussion and consideration, Michael Harris made a motion, second by Randall Mann and carried with Marion Gill and Steve Schierer voting no to deny the variance as requested as no adequate hardship and/or practical difficulties unique to the property had been shown that would allow for the granting of the variance as requested and noting the existence of a second dwelling which is a prohibited use. After additional discussion and consideration, Steve Schierer made a motion, second by Marion Gill to approve the variance as requested with the condition that the second dwelling must be eliminated before a site permit for the proposed development could be issued. After discussion this motion was withdrawn as this type of condition would not be appropriate since the second dwelling was a pre-existing nonconformity.

Emery L. and Carol J. Kraft – Approved the variance as requested with a condition. (7:35 p.m.)

Emery L. and Carol J. Kraft, Lot 9 Block 3 Lizzie View Estates, Lake Lizzie in Dunn Township, requested the following: would like to split part of Lot 9 Block 3 Lizzie View Estates, adjoining Lot 1 and attach it to Lot 1 Block 3 Lizzie View Estates. The size of the piece to be split is approximately 33' by 328'. The audience was polled with no one speaking for or against the variance as requested. After discussion and consideration, Steve Schierer made a motion, second by Carl Zick and unanimously carried, to approve the variance as requested and as depicted on the drawing submitted with the variance application with the condition that a registered surveyor's drawing must be provided at the time of conveyance.

Richard and Susan Hennes – Tabled. (7:38 p.m.)

Richard and Susan Hennes, part of Government Lot 2, Section 10 of Pine Lake Township by Lake Niche, requested a variance of 78' from the required ordinary high water level setback of 200' for the purpose of constructing a new dwelling with attached garage and deck 122' from the ordinary high water level. Jay Weiher, Contractor appeared with the applicants at the public hearing. The audience was polled with Steve Palubicki speaking for the variance as requested. After discussion and consideration, Marion Gill made a motion to approve an ordinary high water level setback of 132'. This motion died for lack of a second. After additional discussion and consideration, Steve Schierer with the verbal permission of the applicants made a motion, second by Carl Zick and unanimously carried, to table this public hearing until the August 7th, 2008 meeting of the Board of Adjustment to allow the applicants an opportunity to consider other locations, to establish the structure locations at the 150' and 200' setbacks from the ordinary high water level and to provide elevation information.

Mike J. Ebner Tst – Approved the variance application as requested with conditions. (7:58 p.m.)

Mike J. Ebner Tst., part of Government Lots 9 and 10, Section 4 of Otter Tail Township by Otter Tail Lake, requested the following: Asking variance to split a 2.146 acre tract. Split to be approximately 162.5' by 265' (approximately 43,062 square feet). The new parcel to be permanently attached to parcels 46-000-99-0289-000 and 46-000-99-0291-000 (West 12.5' of Lot 47, all of Lot 48 and Easterly Half of Lot 49 Pleasure Park Beach). The remaining portion of the 2.146 acre tract will be approximately 230' by 240' (approximately 50,418 square feet). The impervious ratio of the remaining parcel would be approximately 6.5%. Both lots to be non-residential lots. Jeff Peterson, Attorney appeared with the applicant (Deborah Ebner-Tougas and John Ebner) at the public hearing. The audience was polled with no one speaking for or against the variance as requested. After discussion and consideration, Steve Schierer made a motion, second by Marion Gill and carried with Michael Harris voting no, to approve the proposed subdivision as stated in the variance application dated June 11, 2008 with the following conditions: 1.) a registered surveyor's drawing must be provided at the time of conveyance, and 2.) the area within the back lot cannot be used when determining impervious surface coverage for front lot development. It was noted that the size of the proposed lots are consistent with other lots in this immediate area.

Forsgren Family Revocable Living Trust – Approved the variance application as requested with conditions. (8:02 p.m.)

Forsgren Family Revocable Living Trust, Lot 1 Block 4, The Palms of Lida and Lot 10 Forsgren's First Addition to Outlet Beach, Lake Lida in Lida Township, requested the following: Applicant request a variance from the Shoreland Management Ordinance, and it's requirements with respect to subdivisions and platting, in order to be allowed to subdivide Lot 1 Block 4, The Palms of Lida, into 3 separate tracts. Each of the 3 separate tracts comprising the entire area of said Lot 1 Block 4 would be permanently attached to 3 separate and pre-existing, improved lots within the shoreland management district. The purpose of this request is to provide the opportunity and right to subdivide Lot 1 Block 4 as set forth above, without requiring the applicant to plat the subject property, even though this subdivision involves parcels less than 5 acres in size. These proposed splits are for non-residential purpose. Greg Larson, Attorney, appeared with Darrel and Kathryn Forsgren at the public hearing. The audience was polled with no one speaking for or against the variance as requested. After discussion and consideration, Steve Schierer made a motion, second by Carl Zick and unanimously carried, to approve the proposed subdivision as stated in the variance application dated June 12, 2008 and as depicted on the drawings submitted with the variance application with the following conditions: 1.) a registered surveyor's drawing must be provided at the time of conveyance, and 2.) the area within the back lots identified as "B" and "C" cannot be used when determining impervious surface coverage for front lot development. It was noted that approving the variance as requested will provide other smaller properties in this immediate area with additional space for septic systems and storage. It was also noted that the benefits to Otter Tail County by requiring platting of this proposed subdivision would not out weigh the cost of the platting process.

Joan Martin Stobie – No Action Taken.

Joan Martin Stobie, Lot 17 and North Half of Lot 18, K-B Beach and Lot 3 Block 1 Tomlinson Oaks, Little Pine Lake in Corliss Township, requested the following: 1) Change roof line of existing 14' by 28' 1 – story. The north portion of home is located 1.5' from the lot line and 58' from the ordinary high water level. Requesting a variance of 8.5' from the required lot line setback of 10' and a variance of 17' from the required ordinary high water level setback of 75', 2) Remove existing middle section of home and construct a 34' by 45' 2 story addition 64' from the ordinary high water level. A variance of 11' from the required ordinary high water level setback of 75', and 3) Change existing 18' by 26' 1½ - story. South portion of home to a full 2-story located 7.5' from the lot line and 64' from the ordinary high water level. A variance of 2.5' from the required lot line setback of 10' and a variance of 11' from the required ordinary high water level setback of 75'.

September 6, 2007 meeting - The audience was not polled as there was no one in attendance at the time of this public hearing. A letter signed by Lois Bossert, Stephen Fox, Kathy Johnson and Steven Bigler in support of the variance as requested was read for the record. During discussion concern was expressed with the exact location of the side lot lines and the need to have additional information regarding the lot line location before acting upon the requested variances. After consideration and discussion, Steve Schierer made a motion, second by Paul Larson and unanimously carried, to table this hearing until the October 4, 2007 meeting to provide the applicant with an opportunity to provide additional information regarding the location of the side lot lines. **October 4, 2007 meeting** – Prior to the meeting the applicant submitted a letter requesting the tabling of her application until the June 2008 meeting of the Board of Adjustment. After consideration, Randall Mann made a motion, second by Steve Schierer and unanimously carried, to acknowledge the applicant's letter, to grant the applicant's request and to table this public hearing until the June 2008 meeting of the Board of Adjustment. **November 1, 2007, December 5, 2007, January 3, 2008, April 3, 2008 and May 1, 2008 meetings** – No hearing held as the applicant requested in October 2007 to have their hearing tabled until June 2008. **June 5, 2008 meeting** – The applicant was not in attendance. After consideration, Michael Harris made a motion, second by Joe Maske and unanimously carried, to deny the variance as requested due to the failure of the applicant to appear at the June 5 meeting and due to the fact the Board has no written permission to table the applicant's application past June of 2008. **July 3, 2008 meeting** – It was noted that after the June 5, 2008 meeting the secretary of the Board received a letter from the applicant requesting that her hearing be tabled until the August 7, 2008 meeting.

Jason Tester – No Action Taken

Jason Tester, Lot 15 and part of Lot 16 Bowery Beach, Pelican Lake in Dunn Township, requested the following: Requesting general building line setback from ordinary high water level. Lot is to shallow to move back behind the shore impact zone of 37' 6". Setback will be approximately 25' behind the ordinary high water level. The audience was polled with no one speaking for or against the variance as requested. **June 5, 2008 meeting** - Andrea and Jody Arneson appeared with the applicant at the public hearing. A letter from Eulyn M. Feist opposing the variance as requested was read for the record. Also, an unsigned letter was noted for the record, but was not read as the contents did not provide any significant information for the decision making process. After consideration and discussion, Randall Mann made a motion, second by Steve Schierer and carried with Paul Larson and Carl Zick voting no, to deny the variance as requested as there are other options available that would keep the proposed structure out of the shore impact zone and the development as proposed, which does not depict a driveway or parking area, will result in impervious surface coverage greater than the allowable 25%. After additional discussion, Randall Mann made a motion, second by Steve Schierer and unanimously carried, to rescind and withdraw the previous motion to deny. After additional discussion and consideration, Randall Mann made a motion, second by Michael Harris and unanimously carried, to table with the verbal permission of the applicant, this variance application hearing until the next scheduled meeting of the Board of Adjustment to provide the applicant with an opportunity to consider other alternatives, to review the driveway/parking area requirements with the Land and Resource Department and to determine what impact those requirements will have on the impervious surface calculation. **July 3, 2008 meeting** – It was noted on July 3, 2008 the secretary of the Board received a fax from the applicant requesting that his hearing be tabled until the August 7, 2008 meeting.

Darle and Melva Miller – Approved the variance as modified. (8:12 p.m.)

Darle and Melva Miller, Lots 41 and 42 Block 1 Crystal Beach, West McDonald Lake in Dora Township, requested a variance of 13' from the required road right-of-way setback of 20' for the placement of a dwelling 7' from the road right-of-way, a variance of 50' from the required ordinary high water level setback of 100' for a 36' by 60' irregular shape addition 50' from the ordinary high water level and variance of 56' from the required ordinary high water level setback of 100' for the placement of a 10' by 24' deck 44' from the ordinary high water level. **June 5, 2008 meeting** - The audience was polled with no one speaking for or against the variance as requested. A letter from the Dora Towns Board of Supervisors in opposition to the variance as requested was read for the record. At the hearing it was noted that the variance from the road right-of-way would be 14' instead of 13'. After discussion and consideration, Randall Mann made a motion, second by Steve Schierer and unanimously carried, to table with the verbal permission of the applicant, this variance application hearing until the next scheduled meeting of the Board of Adjustment to provide the applicants with an opportunity to review there proposed development with the Dora Town Board of Supervisors. **July 3, 2008 meeting** - A letter from the Dora Town Board of Supervisors in support of a 14' variance from the required road right-of-way setback of 20' was read for the record. After discussion and consideration, Steve Schierer made a motion, second by Michael Harris and unanimously carried, to approve a variance of 14' from the required road right-of-way setback of 20' for the placement of a dwelling 6' from the road right-of-way, a variance of 50' from the required ordinary high water level setback of 100' for a 36' by 60' irregular shape addition 50' from the ordinary high water level and variance of 56' from the required ordinary high water level setback of 100' for the placement of a 10' by 24' deck 44' from the ordinary high water level. The Board noted as there reasons for approving this variance application the letter of support from Dora Township and the substandard lot of record.

Janet M. Berg – Denied. (8:16 p.m.)

Janet M. Berg, part of Lots 15 and 16 Beauty Beach on Deer Lake in Everts Township, requested a variance of 3' from the required lot line setback of 10' for the placement of 6' by 6' addition 7' from the lot line. **June 5, 3008 meeting** - The audience was polled with Tom Volden speaking for the variance as requested. After consideration and discussion, Steve Schierer made a motion, second by Joe Maske and unanimously carried, to table with the verbal permission of the applicant, this variance application hearing until the next scheduled meeting of the Board of Adjustment to provide the applicant with an opportunity to consider other alternatives and to consider the voluntary removal/relocation of the existing shed and toilet/outhouse. It was noted that there is adequate room on the property to place the proposed development in a location that would not require a variance. **July 3, 2008 meeting** – The audience was not polled as there was no one in attendance at the time of this hearing. After discussion and consideration, Randall Mann made a motion, second by Steve Schierer and carried with Mike Harris and Paul Larson voting no, to deny the variance as request as no adequate hardship and/or practical difficulties unique to the property had been shown that would allow for the granting of the variance as requested or prevent the applicant from obtaining a reasonable use of her property. It was also noted that there is adequate area on the applicant's property to place the proposed development in an area that would not require the granting of a variance.

Clarification –

From the April 3, 2008 meeting -

David Geiszler – Approved as requested with a condition. (7:38 p.m.)

David Geiszler, Lots A3 and A4 of the Survey Lots of Government Lots 8 and 9, Section 1 of Dora Township by Sybil Lake, requested the following:

1. To have this substandard lot declared buildable for single resident use and
2. a variance of 35' from the required ordinary high water level setback of 100' for the enclosure of a 9' by 24' patio located 65' from the ordinary high water level.

The audience was polled with no one speaking for or against the variance as requested. After consideration and discussion, Steve Schierer made a motion, second by Paul Larson and unanimously carried to declared Lots A3 and A4 of the Survey Lots of Government Lots 8 and 9 as a buildable lot for residential use and to approve a variance of 35' from the required ordinary high water level setback of 100' for the enclosure of a 9' by 24' patio area being approximately 65' from the ordinary high water level with the condition that the existing deck must in a legal location or brought into compliance before a permit can be issued for the proposed enclosure project. The legal status of the existing deck is to be determined/verified by the Land and Resource Management Department. It should be noted that the enclosed patio area will be no closer to the ordinary high water level than the lakeside of the existing 26' by 48' dwelling.

Land and Resource Department Request -

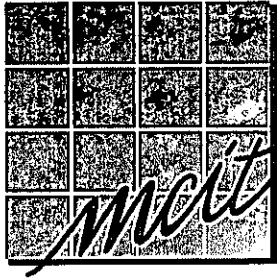
Mark Ronning, Land and Resource Department, noted that the 65' measurement was made when there was ice on the lake and that the measurement is incorrect. The actual distance is approximately 53'. Mr. Ronning requested approving the enclosure of the 9' by 24' patio area at the existing location of the patio instead of at the 65' setback as stated in the variance application. After discussion and consideration, Michael Harris made a motion, second by Steve Schierer and unanimously carried, to approve the proposed enclosure of the existing patio area as originally requested which should place the enclosure no closer to the ordinary high water level than the lakeside of the existing 26' by 48' dwelling.

With no further business, Randall Mann, Chairman declared the meeting adjourned at 8:30 p.m.

Prepared by:

Wayne Stein, Secretary

The minutes were mailed on Monday, July 7, 2008 to the Otter Tail County Board of Adjustment. Official action regarding these minutes will be taken by the Board of Adjustment at the next scheduled meeting.



ALERT

Phone: 866.547.6516

June 2008

Fax: 651.209.6495

Supreme Court Creates Second Standard for Variance Requests

In the Matter of the Decision of County of Otter Tail Board of Adjustment to Deny a Variance to Cyril Stadvold and Cynara Stadvold

Introduction

The Minnesota Supreme Court recently ruled that an area variance shall be permitted by a county board of adjustment ("BOA") when the applicant makes a showing of "practical difficulties" under Minn. Stat. § 394.27. It established factors for consideration under the "practical difficulties" standard. The Court also implicitly ruled that "use variances" can be granted by counties under state law (despite the language in the above statute prohibiting such variances). Finally, the court ruled that a BOA should not unreasonably limit its analysis by treating an after-the fact variance application as though it were a before-the-fact variance application. This case changes the current practice and understanding of variance law in Minnesota. It creates two standards: one to be applied to an area variance and another to be applied to a use variance. This ALERT will provide an overview of the case and risk management suggestions in light of this case.

Factual Background

Cyril and Cynara Stadvold ("Stadvolds") own lake shore property in Otter Tail County ("County"). The Stadvolds submitted an application for a site permit with the County in November 2001 and amended their application in May 2002. The County ordinance provides that an applicant for a site permit "shall stake out all lot lines and road right of ways" before the County's pre-approval inspection. The ordinance also establishes setback requirements. The Stadvolds' site permit application indicated that it would comply with the County's setback requirements.

The Stadvolds did not have the lot surveyed prior to construction. Rather the measurements set out in the application were based on stakes and pins put in place when the lot was initially platted. During the construction, the County physically inspected the lot three times. Construction of the house and garage was completed by July 15, 2003 and the County approved the completed project on that date.

In October 2004, it was discovered that the house and garage were built within the setback areas. In July 2005, the BOA cited the Stadvolds for violating the lot line and road right of way setbacks. At that point, the Stadvolds had invested \$236,917.44 in constructing the house and garage. The Stadvolds applied for an after-the-fact variance. The BOA denied the variance request stating that there was "no adequate hardship unique to the property." It stated that the BOA would not have approved the variance had it been requested before the construction because adequate room existed on the lot to obtain a reasonable use of the property without the variance.