

DRAFT
MINUTES OF THE CARLTON COUNTY
BOARD OF ADJUSTMENT MEETING
August 20, 2019

- (1) Chairman Ezell called the meeting to order at 7:02 p.m.
- (2) Members Present: Jack Ezell, John Manninen, Howard Eskuri, Thomas Skare (Alternate) and Recording Secretary Dave Hurst. Members Absent: None
- (3) Motion by Eskuri, seconded by Manninen, and carried to approve the July 16, 2019, Board of Adjustment meeting minutes as presented.
- (4) Old business: None.
- (5) Chairman Ezell called the Public Hearing to order at 7:03 p.m.
- (6) Chairman Ezell read that the legal ad was sent to the Star Gazette on August 1, 2019, and published in the Star Gazette on August 8, 2019.
- (7) Chairman Ezell read the *Finality of Decisions* from Zoning Ordinance 27.
- (8) Chairman Ezell read the *Findings of Fact to Grant a Variance* from Zoning Ordinance 27.
- (9) Variances

a) **Variance Request #319011 – David Bylund**

David Bylund of 714 85th Lane Northwest, Coon Rapids, MN 55433 has requested a variance to construct an addition onto a nonconforming dwelling. The dwelling is considered nonconforming as it does not meet the required setback from a bluff. The subject property is described as Part of Government Lot 2 or Part of the South ½ of the Southeast ¼ of Section 11, Township 46 North, Range 19 West on Hanging Horn Lake in Barnum Township. The property address is 4102 County Road 138 (PIN 39-030-1240, 1250, 1260 and 1310).

Mr. Bylund was present to speak on his behalf. Mr. Bylund said the cabin was built in 1948 and an addition was put on the cabin in 1984 which encroached on the bluff. He said there were no bluff setbacks when this work was done. The addition they are proposing is on the opposite side of the cabin and is forty one feet from the bluff. The addition will be used for indoor plumbing and he said they already have an approved holding tank installed, which was inspected by Carlton County Zoning.

Zoning and Environmental Services Administrator Heather Cunningham's video was viewed. Mr. Bylund narrated the video.

Ezell asked if the Board had any questions.

Ezell read Heather Cunningham's Development Review #319011 dated August 15, 2019.

Ezell read the six conditions listed in the development review and asked if the applicant understood and was okay with those six conditions. Mr. Bylund said yes.

Ezell asked if anyone in the audience was neutral or in support of this request. Olivia Smith of 4120 Pike Lane, Barnum, MN 55707, was in support of the request.

Ezell asked if anyone in the audience was in opposition of this request. There was no response.

b) **Variance Request #319012 – Chris and Mary Maas**

Chris and Mary Maas of 5982 Saint Albans Street North, Shoreview, MN 55126 have requested a variance to allow an after-the-fact placement of a nonconforming dwelling. The dwelling is considered nonconforming as it does not meet the required setback requirements for the ordinary high water level (OHWL) of Silver Creek. The property is described as part of the Southwest ¼ of the Southeast ¼ of Section 1, Township 46 North, Range 21 West on Silver Creek in Split Rock Township. The property address is 6191 Silver Creek Road (PIN 75-010-0150).

Chris and Mary Maas were present to speak on their behalf. Mr. Maas said they need a variance because the cabin location does not meet the setback from the Ordinary High Water Level (OHWL) of Silver Creek. He said they tore down the existing house and abandoned the existing septic system. He said the cabin was non-permanent and it was placed in the same location as the existing house. He said he was unaware that he needed a permit because the cabin is non-permanent. He said he has cleaned up the property which was littered with garbage, tires, junk, etc. He said the cabin was already built and was moved onto the property in the winter while the ground was frozen. He said he got the necessary permits from MNDOT to move the cabin.

Ezell asked if the Board had any questions.

Skare asked why Mr. Maas didn't get a zoning permit for the cabin if he needed permits to move the cabin. Mr. Maas said he didn't know he needed a zoning permit.

Mr. Maas said he has been into the Zoning Office and met with staff onsite and was never told that the Zoning Office would not support his request. He does not think the location that Zoning and Environmental Services Administrator Heather Cunningham proposed will work because it is too wet. Mrs. Maas indicated the only dry spot would be in the middle of the driveway. He would like to meet on site with Cunningham before the Board makes a decision.

Zoning and Environmental Services Administrator Heather Cunningham's video was viewed. Mr. Maas narrated the video.

Ezell read Heather Cunningham's Development Review #319012 dated August 15, 2019.

Ezell asked if anyone in the audience was neutral or in support of this request. Kathy Burbul of 6168 Silver Creek Road, Kettle River, MN 55757 was in support of the request. Ms. Burbul said the property has been an eyesore for many years. She said the existing house was falling down and was a health hazard. She said the new property owners have cleaned up the property and she doesn't think a variance should be required if the new cabin is in the same location as the existing house. She said the water levels in the flood of 2012 never came up to the existing house.

Ezell asked if anyone in the audience was in opposition of this request. There was no response.

Mr. Maas said he would like to meet onsite with Cunningham to discuss the location that she proposed, he feels that location is too wet. He would like his request to be tabled.

c) **Variance Request #319013 – Christine and Charles Watkins**

Christine and Charles Watkins of 404 Gillette Street, Unit A, LaCrosse, WI 54603, have requested a variance to construct a dwelling with an attached garage on a nonconforming lot. The lot is considered nonconforming as it does not meet the required lot width or lot area requirements. Although the applicants did not request it on the application, this office would suggest considering the lot buildable in the future, as long as setbacks, lot coverage and septic requirements are met (as discussed with applicants on May 16, 2019, in office). The property is described as Lot 7, Block 1, Maple Grove Plat in Section 33,

Township 49 North, Range 18 West on Big Lake in Perch Lake Township. The property address is 3159 Maple Drive (PIN 92-170-0120).

Mrs. Watkins was present to speak on their behalf. She said the existing cabin is very old and has become a health hazard. The roof is deteriorated and there is mold in the cabin. She said there are animals living in the cabin as well. She said they would like to tear down the existing cabin, shed, and privy and replace it with a slightly larger cabin and attached garage. She said the new cabin will meet the required setback of 100 feet from Big Lake and the required ten feet setback from the side property lines.

Ezell asked if the Board had any questions.

Zoning and Environmental Services Administrator Heather Cunningham's video was viewed. Mrs. Watkins narrated the video.

Ezell read Heather Cunningham's Development Review #319013 dated August 15, 2019.

Ezell read the seven conditions listed in the development review and asked if the applicant understood those seven conditions. Mrs. Watkins said yes.

Ezell asked if anyone in the audience was neutral or in support of this request. Jen Serafin of 3155 Maple Drive, Cloquet, MN 55720 was neutral of the request. Ms. Serafin had concerns with the new structure not meeting the required 20 feet setback from her septic system drainfield. Mrs. Watkins said the new structure will meet the 10 feet setback from their adjoining property line.

Ezell asked if anyone in the audience was in opposition of this request. Mike Murray Jr. of 1050 Lakeview Drive South, Cloquet, MN 55720 was in opposition of this request. Mr. Murray is a resident of Big Lake and he said that Carlton County Zoning and the Carlton County Board of Adjustment have failed to regulate the lake. He said there are a number of failing onsite septic systems, and the lake has become over developed. He said Carlton County should cease to issue any other permits on Big Lake for non-conforming lots. Mr. Murray also submitted a letter from Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee opposing this variance and all other variances for properties located on Big Lake.

c) **Variance Request #319014 - Tyler Rule**

Tyler Rule of 3220 County Road 1, Wrenshall, MN 55797 has requested a variance to subdivide his property without having two sites available for Type I Sewage Treatment Systems. The property is described as Part of the Northwest ¼ of the Southwest ¼ in Section 21, Township 47 North, Range 16 West in Wrenshall Township. The property address is 3220 County Road 1 (PIN 84-020-3400).

Mr. Rule was present to speak on his behalf. Mr. Rule said they have 32 acres and would like to subdivide the property into a twelve acre parcel and twenty acre parcel. He said the twenty acre parcel has the existing buildings and they are planning on selling that parcel. The remaining twelve acre parcel he would like to keep because it gives him access to his forty acre parcel which is adjacent to this parcel.

Ezell asked if the Board had any questions.

Zoning and Environmental Services Administrator Heather Cunningham's video was viewed. Mr. Rule narrated the video.

Ezell read Heather Cunningham's Development Review #319014 dated August 15, 2019.

Ezell read the four conditions listed in the development review and asked if the applicant understood those four conditions. Mr. Rule said yes.

Ezell asked if anyone in the audience was neutral or in support of this request. Marvin Durkee of 3297 Highway 23, Wrenshall, MN 55797 was neutral of this request. Mr. Durkee was there on behalf of Wrenshall Township. The Township was concerned that this subdivision would land lock Mr. Rule's forty acre parcel east of the proposed subdivision. Mr. Durkee said the Township did not want to be responsible for having to create a cartway to that forty acre parcel. Mr. Rule said he was keeping the proposed twelve acre parcel so he could access his forty acre parcel.

Ezell asked if anyone in the audience was in opposition of this request. There was no response.

(10) The public hearing closed at 8:10 p.m.

(11) The Board of Adjustment meeting re-opened at 8:20 p.m.

Variance Request #319011 – David Bylund

A motion was made by Eskuri, seconded by Manninen, and carried to **Approve** the findings of fact, decision, and six conditions listed on Carlton County Findings of Fact Worksheet dated August 20, 2019, and signed by Board Chair Ezell.

FINDINGS OF FACT:

a. *Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance?*

Yes No Why or why not?

The property owner is proposing to use the property in a reasonable manner not permitted by ordinance with the construction of a modest addition for a bathroom.

b. *Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner?*

Yes No Why or why not?

It appears practical difficulty is unique to the subject property as the previous ordinance did not regulate the setback from a bluff.

c. *If the variance is granted, it will not alter the essential character of the locality?*

Yes No Why or why not?

If the variance is granted, it should not alter the essential character of the locality. There are three dwellings to the north of the subject property that do not meet the setback from the bluff. However, new construction should meet the setback when reasonable and feasible. The addition itself will meet the setback requirement.

d. *Does the practical difficulty involve more than economic considerations?*

Yes No Why or why not?

Economic considerations alone do not constitute the practical difficulty for reasonable use for this property. It appears practical difficulty is unique to the subject property as the previous ordinance did not regulate the setback from a bluff.

e. *If the variance is granted, it will not be granting a use that is not allowed in the zoning district in which the subject property is located?*

Yes No Why or why not?

The use as a single family residence is allowed in the R-1 zoning district in which the subject property is located.

f. *Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan?*

Yes No *Why or why not?*

The Carlton County Community-Based Comprehensive Plan does not specifically address development on bluffs.

DECISION:

If ALL answers are YES by a majority of the Board of Adjustment, the criteria for granting of the Variance have been met and the Variance is approved. Please confirm with the applicant that the following conditions are acceptable.

Granted: Construct an addition onto a nonconforming dwelling.

Denied: NA

CONDITIONS:

1. The applicant must undertake the project according to the plans and specifications submitted to the County with the application or as modified by the Board of Adjustment.
2. The applicant must have an approved zoning permit within one year. All work must begin within one year of issuance of the zoning permit. This means that there is enough of the structure(s) in place to determine that it meets the dimensions depicted on the zoning permit. If this condition is not met, the request shall be deemed null and void. The Zoning Administrator is authorized to extend that period of time for good cause shown.
3. The permit will be periodically reviewed by the County to assure compliance with the permit and permit conditions.
4. The County may enter onto the premises at reasonable times and in a reasonable manner to insure the permit holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.
5. The applicant shall divert all dwelling stormwater runoff away from the bluff and Hanging Horn Lake into subsurface drains, vegetated swales, etc. This shall include the utilization of gutters on all roof lines. Diversion of all water runoff away from the bluff and the lake shall be completed within one year of the granting of the variance.
6. If the applicant fails to meet the conditions set forth by the Board of Adjustment, the Board of Adjustment may revoke the variance.

Variance Request #319012 – Chris and Mary Maas

A motion was made by Manninen, seconded by Eskuri, and carried to table this variance request until the Zoning Administrator can meet on site with applicant to discuss location of wetlands.

Variance Request #319013 – Christine and Charles Watkins

A motion was made by Eskuri, seconded by Manninen, and carried to **Approve** the findings of fact, decision, and seven conditions listed on Carlton County Findings of Fact Worksheet dated August 20, 2019, and signed by Board Chair Ezell.

FINDINGS OF FACT:

a. *Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance?*

Yes No Why or why not?

The applicants are proposing a reasonable use of the property if the dwelling is moved back to meet the setback requirement to the OHWL. The applicants are requesting to remove a dwelling that does not meet the setback requirements to the OHWL and construct a dwelling with attached garage that will meet all setback requirements. It appears reasonable to allow the lot to be considered buildable if setbacks, lot coverage and septic requirements can be met.

b. *Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner?*

Yes No Why or why not?

The practical difficulty appears to be the creation and development of substandard lots in a plat that was established in 1921, prior to any official controls.

c. *If the variance is granted, it will not alter the essential character of the locality?*

Yes No Why or why not?

The granting of the variance should not alter the essential character of the locality. Several of the lot owners in this plat have requested their lots to be buildable and all the proposed structures will meet setback requirements.

d. *Does the practical difficulty involve more than economic considerations?*

Yes No Why or why not?

It does not appear that economic considerations constitute the practical difficulty for reasonable use for this property. The applicants would like to replace a nonconforming dwelling with a conforming dwelling with attached garage on a substandard lot that was developed prior to official controls. The proposed structure will meet all setback requirements. The practical difficulty appears to be the creation and development of the plat prior to any official controls.

e. *If the variance is granted, it will not be granting a use that is not allowed in the zoning district in which the subject property is located?*

Yes No Why or why not?

The variance will not be granting a use that is not allowed within the R-1 Zoning District. Single family residences are a permitted use.

f. *Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan?*

Yes No Why or why not?

The terms of the variance do not appear to be in conflict with the Carlton County Community-Based

Comprehensive Plan. The proposed structure will meet all applicable setback requirements.

DECISION:

If ALL answers are YES_by a majority of the Board of Adjustment, the criteria for granting of the Variance have been met and the Variance is approved. Please confirm with the applicant that the following conditions are acceptable.

Granted: Construct a dwelling with an attached garage on a nonconforming lot. Consider the lot buildable in the future, as long as setbacks, lot coverage and septic requirements are met.

Denied: NA

CONDITIONS:

1. The applicant must undertake the project according to the plans and specifications submitted to the County with the application or as amended by the Board of Adjustment.
2. The applicant must have an approved zoning permit within one year. All work must begin within one year of issuance of the zoning permit. This means that there is enough of the structure(s) in place to determine that it meets the dimensions depicted on the zoning permit. If this condition is not met, the request shall be deemed null and void. The Zoning Administrator is authorized to extend that period of time for good cause shown.
3. The County may enter onto the premises at reasonable times and in a reasonable manner to insure the permit holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.
4. The dwelling and attached garage shall be constructed to meet the setback requirement of 100 feet to the OHWL.
5. Consider the lot buildable as long as setback, septic system and lot coverage standards can be met.
6. A septic system compliance must be completed on the system and privy by November 1, 2019.
7. If the applicant fails to meet the conditions set forth by the Board of Adjustment, the Board of Adjustment may revoke the variance.

Variance Request #319014 – Tyler Rule

A motion was made by Manninen, seconded by Eskuri, and carried to **Approve** the findings of fact, decision, and four conditions listed on Carlton County Findings of Fact Worksheet dated August 20, 2019, and signed by Board Chair Ezell.

FINDINGS OF FACT:

1. The property owner is proposing to use the property in a reasonable manner not permitted by this Ordinance.
Yes No Why or why not?

The property owner is proposing to use the property in a reasonable manner not permitted by ordinance. It could be argued that the use is permitted by ordinance as we allow for Type III

systems. In 2018, 44 Type I systems were installed and 42 Type III systems were installed in Carlton County.

2. Economic considerations alone do not constitute a practical difficulty if a reasonable use for the property exists under the terms of this Ordinance.

Yes No Why or why not?

Economic considerations alone do not constitute a practical difficulty for the property. The practical difficulty appears to be the soil type, Ontonagon silty clay.

3. The request will not effect a substantial change in the character of the neighborhood or will not result in a substantial detriment to neighboring properties.

Yes No Why or why not?

The request should not change the character of the neighborhood or result in a substantial detriment to neighboring properties. As stated above, in 2018, 44 Type I systems were installed and 42 Type III systems were installed in Carlton County. Type III systems treat sewage just as well as Type I systems if used properly.

4. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

Yes No Why or why not?

The variance request is not for a use that is not permitted in an A-2 zoning district. The proposed use is residential.

5. The practical difficulty is unique to the subject property and is not created by the property owner or prior property owners.

Yes No Why or why not?

The practical difficulty is unique to the subject property and was not created by the property owner or prior property owners. It appears that the practical difficulty is related to the soil type.

DECISION:

If ALL answers are YES by a majority of the Board of Adjustment, the criteria for granting of the Variance have been met and the Variance is approved. Please confirm with the applicant that the following conditions are acceptable.

Granted: Subdivide a property without having two sites available for Type I Sewage Treatment Systems.

Denied: NA

CONDITIONS:

1. The applicant must undertake the project according to the plans and specifications submitted to the County with the application.
2. The applicant must have an approved application for subdivision to the Carlton County Zoning Office within 12 months of granting the variance. If this condition is not met, the request shall be deemed null and void. The Zoning Administrator is authorized to extend that period of time for good cause shown.

3. The permit will be periodically reviewed by the County to assure compliance with the permit and permit conditions.
4. The County may enter onto the premises at reasonable times and in a reasonable manner to insure the permit holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.

(12) Other Business. There was none.

(13) A motion was made by Eskuri, seconded by Manninen, and supported by all yea votes to close the Board of Adjustment meeting at 8:22 p.m.

Respectfully submitted,

Dave Hurst
Recording Secretary