

DRAFT
MINUTES OF THE CARLTON COUNTY
BOARD OF ADJUSTMENT MEETING
August 21, 2019

- (1) Chairman Ezell called the meeting to order at 7:00 p.m.
- (2) Members Present: Jack Ezell, John Manninen, Howard Eskuri, Thomas Skare (Alternate), Jason Kuboushek (Attorney representing Carlton County Zoning & Environmental Services), Zoning Administrator Heather Cunningham, Zoning Office Manager Jody Meyer and Recording Secretary Dave Hurst. Members Absent: None
- (3) Old business: None.
- (4) Chairman Ezell called the Public Hearing to order at 7:02 p.m.
- (5) 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.
- (6) Chairman Ezell read the *Finality of Decisions* from Zoning Ordinance 27.
- (7) Chairman Ezell read the *Findings of Fact to Grant a Variance* from Zoning Ordinance 27.
- (8) Variances

a) **Variance Request #317015 – Ron and Jennifer Fuchs (Remand from District Court)**

Ron and Jennifer Fuchs of 2104 Ponderosa Avenue, Duluth, MN 55811 have requested a variance to retain an exterior wall that was replaced, retain a conversion of a garage door to an exterior wall and retain the replacement of roof trusses all on a nonconforming accessory structure. The lot is considered nonconforming as it does not meet lot width or lot area requirements. The applicant would like the dwelling, accessory structure and the lot to be considered buildable in the future without a variance. The property is described as Lot 22, Block 1 of the Maple Grove Plat in Section 33, Township 49 North, Range 18 West on Big Lake in Perch Lake Township. The property address is 3191 Maple Drive (92-170-0400).

Attorney Kouboushek summarized Development Review #317015 (which he prepared) dated August 15, 2019, into the record. He also read the District Court Order with the seven conditions. He informed the board that they will not issue any findings in support of the variance. Additionally, under the Court's Order the Board of Adjustment may not attach additional conditions on this variance.

Kouboushek read a letter into the record from Attorney Shawn Reed (who is representing Mr. and Mrs. Fuchs) dated August 19, 2019, in regards to the Development Review Kouboushek prepared.

Attorney Reed explained he was there on behalf of Mr. and Mrs. Fuchs (who were both present) and he asked the Board to adopt what the Court is in essence directing the Board to do.

Reed asked Ezell if the Court Order was part of the record. Ezell and Kouboushek said yes.

Reed said they had a previous hearing on this matter and the court has directed the action on this matter tonight. He said that he didn't know if Kouboushek's Development Review was necessary for tonight's hearing. He said he had some objections and questions to avoid any confusion down the road. He wanted to make clear that the controlling document for this hearing was the Court Order. He was pleased with

the clarification regarding the Water Orientated Accessory Structure being permitted. He said the Court has ordered the Board to grant the Variance and his clients are aware that any work done on the property in the future will require a permit. He said his clients are intending to follow the ordinance moving forward.

Ezell opened up the meeting for public comment.

Ezell called individuals up to speak from the sign-up sheet that was provided before the meeting. Ezell directed the audience to follow the Rules of Procedure and Decorum that were adopted by the County Board on February 18, 2014. Copies were placed on tables so those in attendance could review. Those in attendance that wanted to speak were instructed to sign up and were told they would be limited to 4 minutes to speak.

Sam Ojibway of 3189 Maple Drive, Cloquet, MN 55720, spoke with concern as to the variance making the dwelling buildable. He said the dwelling is four inches from his property line and the eaves of the dwelling hang over his property. His second concern was whether or not Fond du Lac Band was allowed to give feedback to the variance requests on Big Lake. He said Fond du Lac has an interest in the lake.

Heidi Ojibway of 3189 Maple Drive, Cloquet, MN 55720 had similar concerns as her husband with regards to the dwelling being so close to the property line.

Sean Oswald of 3193 Maple Drive wanted to know what the applicable setbacks are and if the septic requirements have been met. Zoning Administrator Cunningham said the principle and accessory structure setback from the side property line is ten feet, the setback from the ordinary high water level is 100 feet, and the setback from the centerline of the road is 85 feet. She said the applicants have a permitted holding tank.

Mr. Oswald questioned if the septic system was compliant with use right now. Cunningham said yes. He asked if the holding tank has been inspected. Hurst said yes.

Mr. Oswald asked if the drain tile has been verified. Mr. Hurst said no. Oswald asked who the regulating body is regarding drain tile. Cunningham asked if Oswald meant the drain tile discharging to the lake. He said the drain tile around the buildings discharges into the wetlands. Oswald questioned if there was a formal process to pursue this issue further. Cunningham said he can submit a signed written complaint if the wetlands are being drained. Oswald said they are draining water from the buildings to the wetlands. Cunningham said there is no rule regarding discharging of storm water from drain tile to a wetland or the lake. Oswald asked if it involves the DNR. Cunningham said there are no regulations, as it is a permitted use. Oswald asked if they got a permit. Cunningham said that is not something you need a permit for, as you are allowed to do it.

Jason Johnson of 1098 Lakeview Drive South, Cloquet, MN 55720 had concerns with the lowlands and water on the property. He said the Fuchs have changed the lowlands and water on the property. He said the property is too low and too small and shouldn't have been built on. He said any additional building on the property will change it even more.

Mike Murray of 1050 Lakeview Drive South, Cloquet, MN 55720 wanted to express that the Fon du Lac band is opposing the variance. He said he was at the previous Board of Adjustment meeting and presented a letter from Fond du Lac in opposition to that request as well. He said they are working on appealing that decision. He said he is a resident of Big Lake and a tribal member, and Big Lake is being overpopulated created by the lack of environmental concerns of the lake because of the lot size that was permitted before any regulations were set. Now that the board is giving variances on non-conforming lots it is not correcting the problem that Carlton County has set forth by lack of regulating and proper zoning ordinances around the lake. He said he understands the applicants inherited the problem when they

bought the property. He wants this request tabled until Carlton County Zoning comes up with a plan to address the overpopulation on the lake. He doesn't think a holding tank is a standard type of septic system. He said the rest of the people on the lake have to have conforming septic systems. He said the area is already congested and he nor Fond du Lac Band feel this variance should be granted.

Ezell closed the public comment period regarding Variance #317015.

Kouboushek advised the board pursuant to the District Court's Order to make a motion to:

Grant the variance requested by applicants to make the lot buildable; allow existing structures to be able to be maintained, repaired, restored, improved, or replaced, including cosmetically and structurally. This includes future ability to expand [and] develop site as long as any structure meets applicable setbacks, including the provision that no variance will be required but the applicants will be required to have a zoning permit if they do any other things on the property, and subject to the following seven conditions:

1. The applicants must undertake the project according to plans and specifications as determined by the Board of Adjustment.
2. The permit will be periodically reviewed by the County to assure compliance with permit and permit conditions.
3. The County may enter onto the premises at reasonable times in a reasonable manner to ensure the permit holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.
4. The subject property will be considered buildable in the future as long as all applicable setbacks and sewage treatment requirements are met.
5. If the applicants fail to meet the conditions set forth by the Board of Adjustment, the Board of Adjustment may revoke the variance.
6. The subsurface sewage treatment system compliance inspection must be completed and submitted to the office before September 1, 2017 (system abandoned August 1, 2017, and replaced August 14, 2018.)
7. The accessory structure, shed can only be used for storage and cannot be used for sleeping quarters or habitation.

Variance Request #317015 – Ron and Jennifer Fuchs (Remand from District Court)

A motion was made by Eskuri, seconded by Manninen, and carried to issue the variance according to the District Court Order.

(9) The public hearing closed at 7:32 p.m.

(10) The Board of Adjustment meeting re-opened at 7:39 p.m.

b) Variance Request #319015 – Ellen Burke (Eric Palkie)

Ellen Burke of 20576 Easthill Drive, Yorba Linda, CA, 92887, represented by Eric Palkie of 5905 Little Cloquet Road, 55726, has requested a variance to subdivide her property without having two sites available for Type I Sewage Treatment Systems. The property is described as Part of Government Lot 11 in Section 18, Township 48 North, Range 20 West in Eagle Township. The property address is 5907 Eagle Lake Road (PIN 90-010-3335).

Mr. Palkie was present to speak on his behalf. Mr. Palkie said they would like to split the existing property in half. He said all of the requirements have been met except one of the tracts does not have the two type I septic sites. He said there is plenty of room for a type III septic system.

Ezell asked if the Board had any questions.

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

Ezell read Heather Cunningham's Development Review #319015 dated August 15, 2019.

Ezell read the four conditions listed on Development Review #319015 and asked if the applicant understood and was agreeable to those conditions. Mr. Palkie said yes.

Ezell asked if anyone in the audience was neutral or in support of this request. There was no response.

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

c) **Variance Request #319016 – David Guckenberg (Twin Lakes Township)**

David Guckenberg of PO Box 214, Wrenshall, MN 55797, represented by Twin Lakes Township C/O Susan Chapin, Twin Lakes Township Clerk, of 3176 County Road 103, Barnum, MN 55707, has requested a variance to construct a nonconforming booster station building for a municipal water distribution system. The station is considered nonconforming as it will not meet the required setback from the road right-of-way or centerline of Highway 210. The property is described as Part of the Northeast ¼ of the Northwest ¼ of Section 10, Township 48 North, Range 17 West in Twin Lakes Township. The property address is XXXX Highway 210 (PIN 81-030-2020).

Diane Felde-Finke (Twin Lakes Township Chair), Sue Chapin, and Derek Berg (City of Carlton), and Mr. Guckenberg were present to speak on their behalf. Mr. Berg said they are asking for a variance to move the booster station closer to Highway 210 so there is less pipe to put in the ground which would reduce the amount of soil disturbance and environmental impacts. He said the project started last year with a new treatment plant being constructed in Carlton. The waterline is going to start in the City of Carlton and will run west along the right-of-way of Highway 210. The waterline will serve the residents of Olsenville, the County Transportation Building, and residents along the Highway 210 corridor. The booster station will allow the water pressure to be increased so the waterline can be ran up to the Schmitz Road past the Carlton County Transfer Station. He said they have also been working with Fond du Lac to put in an emergency connection in the event that the casino has a break in their primary waterline. He said the site is very suitable to meet the needs of the booster shed placement.

Ezell asked if the Board had any questions.

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

Ezell read Heather Cunningham's Development Review #319016 dated August 15, 2019.

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

Ezell asked if anyone in the audience was neutral or in support of this request. There was no response.

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

(11) The public hearing closed at 7:57 p.m.

(12) The Board of Adjustment meeting re-opened at 8:00 p.m.

Variance Request #319015 – Ellen Burke (Eric Palkie)

A motion was made by Eskuri, seconded by Manninen, and carried to **Approve** the findings of fact, decision, and four conditions listed on Carlton County Findings of Fact Worksheet dated August 21, 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 types.

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 R-1 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.

Variance Request #319016 – David Guckenberg (Twin Lakes Township)

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 21, 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 applicant is proposing a reasonable use of the property. The property is severely limited by wetlands and the setback to Otter Creek. Approximately 4 acres of the 21.4 acre property is wetlands. It appears reasonable to locate the booster station close to the water main connection and the road right-of-way.

- 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, while not unique to the subject property, is unique to the situation in that the booster station needs to be adjacent to the road right-of-way and water main.

- 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. There are other structures along the Highway 210 corridor that do not meet the setback to the road right-of-way.

- 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 practical difficulty is unique to the situation in that the booster station needs to be adjacent to the road right-of-way and water main.

- 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 C-2 Zoning District. Public facilities 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 water line is an essential service.

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 nonconforming booster station building for a municipal water distribution system.

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. If the applicant fails to meet the conditions set forth by the Board of Adjustment, the Board of Adjustment may revoke the variance.

(13) Other Business. There was none.

(14) A motion was made by Eskuri, seconded by Manninen, and supported by all yeas votes to close the Board of Adjustment meeting at 8:01 p.m.

Respectfully submitted,

Dave Hurst
Recording Secretary