

DRAFT
MINUTES OF THE CARLTON COUNTY
BOARD OF ADJUSTMENT MEETING
September 17, 2019

- (1) Chairman Ezell called the meeting to order at 7:05 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 August 20 and August 21, 2019, Board of Adjustment meeting minutes as presented.
- (4) Old business: None.
- (5) Chairman Ezell called the Public Hearing to order at 7:09 p.m.
- (6) Chairman Ezell read that the legal ad was sent to the Star Gazette on August 29, 2019, and published in the Star Gazette on September 5, 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 #319017 – Randy Walters (Keith Clark)**

Randy Walters of 109 6th Street South, Hoffman, MN 56339, represented by Keith Clark of 237 Highway 73, Wright, MN 55798, has requested a variance to install a nonconforming holding tank. The holding tank is considered nonconforming as it will not meet the required setback to the ordinary high water level (OHWL), road right-of-way and side yard line. The property is described as Lot 11, Block 1 of Hugdahls East Bay Plat in Section 3, Township 48 North, Range 20 West on Island Lake in Eagle Township. The property address is 1421 South Lake Street (PIN 90-110-0220).

Randy Walters was present to speak on his behalf. He said the lot was purchased a long time ago before a lot of the ordinances were in effect. He said the lot is unique in that it is very small. He said because of that they are having a difficult time meeting any of the zoning requirements. He said they wanted to put in a 750 gallon holding tank but found out that a 1000 gallon holding tank is the minimum size allowed. He said licensed designer John Walsh did all of the measuring and drew up the site plan.

Brad Walters (Randy's brother) of 2513 Southwest Samuel Lane, Lees Summit, MO said they have a well on the property and they want to get the holding tank installed so the property is compliant.

Zoning and Environmental Services Administrator Heather Cunningham's video was viewed. Brad Walters narrated the video.

Ezell asked if the Board had any questions.

Ezell read Heather Cunningham's Development Review #319017 dated September 12, 2019.

Ezell read the four conditions listed in the development review and asked if the applicant understood and was okay with those four conditions. Mr. Walters 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.

b) **Variance Request #319018 – Robert and Denise Matuseski**

Robert and Denise Matuseski of 4236 County Road 61, Moose Lake, MN 55767 have requested a variance to replace a nonconforming garage with a nonconforming garage/carport. The garage/carport is considered nonconforming as it does not meet the required setback from the ordinary high water level (OHWL) of the Moose Horn River and setback to the road right-of-way. The property is described as Part of the Northeast ¼ of the Southeast ¼ and Part of the Southeast ¼ of the Southeast ¼ in Section 16, Township 46 North, Range 19 West in Moose Lake Township on the Moose Horn River. The property address is 4236 County Road 61 (63-022-1250, 1300, 1305, 1320 and 1360).

Mr. Matuseski was present to speak on his behalf. He said the existing garage was built with the walls on the ground and the concrete slab was poured inside the walls. He said the walls are starting to sink and the garage is leaning. He said he would like to replace the existing garage with a bigger structure. He would like to attach a carport to the garage which would cover his existing driveway but he understood Zoning and Environmental Services Administrator Heather Cunningham's recommendations and was ok with that.

Ezell asked if the Board had any questions.

Skare asked why Mr. Matuseski needed additional garage space.

Mr. Matuseski said the existing garage is not long enough to have a workbench and a full size vehicle parked inside. He said if he built on the existing slab the garage would be even smaller than it currently is.

Manninen asked if there was an existing driveway in the proposed car port location.

Mr. Matuseski said yes and you would be able to drive through the car port. It would be constructed with just a couple of posts and a beam.

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

Ezell read Heather Cunningham's Development Review #319018 dated September 11, 2019.

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

Ezell asked if anyone in the audience was neutral or in support of this request. Jeff and Madge Courtney of 4226 County Road 61, Moose Lake, MN 55767 were in support of the request.

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

c) **Variance Request #319019 – Robert Kachinske**

Robert Kachinske of 4324 Carlson Road, Moose Lake, MN 55767 has requested a variance to subdivide his property without having two sites available for Type I Sewage Treatment Systems. The property is described as the West ½ of the Northwest ¼ of the Northeast ¼ in Section 23, Township 46 North, Range 20 West in Silver Township. The property address is 4324 Carlson Road (PIN 66-016-3840).

Mr. Kachinske was present to speak on his behalf. He said he has a twenty acre parcel and he is going to sell the house and outbuildings with fourteen acres. He is going to keep the six acre parcel for future use.

Ezell asked if the Board had any questions.

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

Ezell read Heather Cunningham's Development Review #319019 dated August 11, 2019.

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

(10) The public hearing closed at 7:50 p.m.

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

Variance Request #319017 – Randy Walters (Keith Clark)

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 September 17, 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. There is no other suitable location for the septic tank. The property was developed before official controls. The dwelling has the availability to be connected to pressured water and requires a septic system.

- 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 the practical difficulty is the substandard lot that was platted in 1965 prior to 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. This office and the MDH have allowed variances on Island Lake for similar circumstances.

- 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 the substandard lot, created prior to 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 A-2 Zoning District. Single family residences or seasonal dwellings 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 plan does not address this issue specifically.

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: Install a nonconforming holding tank.

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 septic permit within one year. The septic tank must be installed within one year of issuance of the septic 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.

Variance Request #319018 – Robert and Denise Matuseski

A motion was made by Manninen, seconded by Eskuri, and carried to **Approve** the findings of fact, decision, and seven conditions listed on Carlton County Findings of Fact Worksheet dated September 17, 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 *IF AMENDED* No *Why or why not?*

The applicant is requesting a reasonable use of the property with respect to replacing the garage. It is not unreasonable to have a garage in close proximity to the dwelling. However, increasing the footprint from 396 square feet to 1,050 square feet within the shore impact zone is not reasonable. The applicants already have several accessory structures used for storage on the property. This office would consider

establishing a setback of no closer than 80 feet to the OHWL and 85 feet to centerline as reasonable for the proposed garage/carport. This would reduce the garage/carport from the proposed 30 feet by 35 feet to 22 feet by 30 feet (or could expand further west away from river and road).

- b. *Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner?*
Yes IF AMENDED No Why or why not?

This office does not feel a practical difficulty exists to allow new and expanded construction in the shore impact zone. If the applicants do not encroach further on the setback than 80 feet to the OHWL and 85 feet to centerline, this office would consider the practical difficulty of the unusual shape of the lot and its development prior to official controls.

- c. *If the variance is granted, it will not alter the essential character of the locality?*
Yes IF AMENDED No Why or why not?

The granting of the variance could alter the essential character of the locality. It would be precedence to allow expansion within the shore impact zone. This office would consider establishing a setback of no closer than 80 feet to the OHWL and 85 feet to centerline as reasonable for the proposed garage/carport. It would not alter the character of the locality as it would not be encroaching further on the setback to the OHWL than the existing garage. The existing garage pre-dates official controls.

- d. *Does the practical difficulty involve more than economic considerations?*
Yes IF AMENDED No Why or why not?

It does not appear that economic considerations constitute the practical difficulty for reasonable use for this property. This office does not feel a practical difficulty exists to allow new and expanded construction in the shore impact zone. If the applicants do not encroach further on the setback than 80 feet to the OHWL and 85 feet to centerline, this office would consider the practical difficulty of the unusual shape of the lot and its development prior to 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 A-2 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 IF AMENDED No Why or why not?

As proposed, the terms of the variance appear to be in conflict with the Carlton County Community-Based Comprehensive Plan. The plan encourages preserving and restoring native vegetation along shorelines and discourages development in the shore impact zone. If the applicants do not encroach further on the setback than 80 feet to the OHWL and 85 feet to centerline, this office would support the request with the condition of additional native vegetation as recommended in the conditions.

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: Amended request with a setback of at least 80 feet to the OHWL and 85 feet to centerline (22 feet by 30 feet garage or could expand further west away from river and road).

Denied: Proposed 30 feet by 35 feet garage/carport with a setback of 69 feet from the OHWL.

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. Native vegetation along the cleared path in the western shoreland buffer be established before a zoning permit can be issued.
5. Any trees, shrubs, seed mixes, or other plants planted within this designated buffer area needs to be native to Minnesota. Do not plant ornamental, horticultural varieties of plants within the designated buffer area. Transplanted native species of trees from other parts of the property is allowed.
6. The applicants must meet a setback of at least 80 feet to the OHWL and 85 feet to centerline for the proposed garage/carport.
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 #319019 – Robert Kachinske

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 September 17, 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 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 8:03 p.m.

Respectfully submitted,

Dave Hurst
Recording Secretary