

DRAFT
MINUTES OF THE CARLTON COUNTY
BOARD OF ADJUSTMENT MEETING
October 15, 2019

- (1) Chairman Ezell called the meeting to order at 7:00 p.m.
- (2) Members Present: Jack Ezell, John Manninen, Howard Eskuri and Recording Secretary Dave Hurst. Members Absent: Thomas Skare (Alternate).
- (3) Motion by Eskuri, seconded by Manninen, and carried to approve the September 17, 2019, Board of Adjustment meeting minutes as presented.
- (4) Old business: None.
- (5) Chairman Ezell called the Public Hearing to order at 7:01 p.m.
- (6) Chairman Ezell read that the legal ad was sent to the Star Gazette on September 26, 2019, and published in the Star Gazette on October 3, 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 #319020 – Cynthia and Gary Tyman**

Cynthia and Gary Tyman of 309 Chestnut Street, Cloquet, MN 55720 have requested a variance to retain construction of a new nonconforming dwelling rather than a dwelling addition as allowed under Variance #318003 and permitted under Zoning Permit #118139. The dwelling is considered nonconforming as it does not meet the required setback to the ordinary high water level (OHWL) of Big Lake. The subject property is described as Lots 3, 4, 5 and 6, Block 2, Plat of Shady Shore in Section 28, Township 49 North, Range 18 West on Big Lake in Perch Lake Township. The property address is 1016 Lakeview Drive (92-280-0240, 0260, 0280 and 0300).

Gary and Cynthia Tyman were present to speak on their behalf. Mr. Tyman said he has been a Carlton County resident for over fifty years, and has been an employer in Carlton County for 25 years. He said he feels like his honor is being challenged. He said he doesn't feel like they should have to apply for this variance because the project remained in the same footprint and the height did not exceed regulations from the previous variance. He said the only exception is when the trusses were redesigned for the roof it gave them more room than expected. They originally had a four piece monolithic roof but the contractor had concerns with it leaking. Mr. Tyman said they had the trusses redesigned to address these issues and that ended up giving them four feet of additional room upstairs. Mr. Tyman said the appearance of a variance violation is more of a misunderstanding than anything. He said there are two bearing walls with the original studs from the old cabin. The floor is supported from old 2x12's from the original cabin. The existing foundation is still being used for the new cabin. He said they did not intend to build a new building but when you put sheetrock and siding on a building it looks new. He said the biggest problem they are having is following the new shoreland mitigation plan. He said it seems punitive like they did something wrong. He said they were in total agreement to working with the original shoreland mitigation plan. He said the new plan does not give them any room to put his pontoon boat in the water, it only leaves them access to their little dock for kayaks.

Manninen asked if the dirt had been removed that was requested by the Zoning Office. Mr. Tyman said yes and a bio log barrier has been put in place around the property to catch sediment.

Ezell asked the Tymans why they didn't contact the Zoning Office when the scope of their project changed from what was granted on the previous variance. Mr. Tyman said neither him nor the builder knew that they had to go back and contact the county since they were staying within the same footprint.

Mr. Tyman said if it really did appear that they violated the variance he would understand why the board would be more punitive in regards to the shoreland mitigation. He said they acted in good faith and used as much of the old cabin as they could but their builder would not warranty a building with a sawdust floor in it. He said they were naïve to the process and did not realize they needed to come back to the Zoning Office.

Mr. Tyman said the new shoreland mitigation plan does not allow him to enjoy his property.

Manninen asked if an extra bedroom has been added to the cabin. Mr. Tyman said yes.

Manninen asked if the required septic system compliance inspection has been completed. Hurst said yes.

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

Ezell asked if the Board had any questions.

Ezell read Heather Cunningham's Development Review #319020 dated October 10, 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. Tyman had questions regarding the conditions. Ezell said the first 3 conditions are required on almost all variance applications. Mrs. Tyman said they were only allowed 35 feet originally for their access corridor not 40 feet that was referenced in the development review and now they are only allowed a 25 foot access corridor. Mr. Tyman asked if they could shift the 25 foot access corridor to their pontoon dock instead of in front of the cabin. Hurst said that would be allowed, but the area in front of the cabin would need to remain vegetated and not mowed up to ten feet from the cabin. Mr. Tyman asked if they need to hire a professional for the modified shoreland mitigation plan. Hurst said yes and they should contact Zoning Administrator Cunningham for further details. Mrs. Tyman questioned whether or not county zoning staff could design the modified shoreland mitigation plan. Hurst said no, they would need to hire a professional. Hurst provided some resources to Mrs. Tyman regarding professional shoreland contractors. Mr. Tyman said they will hire somebody to help them out.

Hurst asked if they were on the same page and if the Tymans were agreeable to the conditions. Mr. Tyman said yes.

Mr. Tyman asked if it was necessary that they paid the fee for this variance meeting. Hurst 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.

Ezell read a letter in opposition to the request from Keith Depre, 833 Brower Drive, Cloquet, MN 55720.

(10) The public hearing closed at 8:04 p.m.

(11) The Board of Adjustment meeting re-opened at 8:17 p.m.

Variance Request #319020 – Cynthia and Gary Tyman

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 October 15, 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 original proposal (Variance #318003/Zoning Permit #118139) for the dwelling addition and deck and removal of screen porch and car port was determined to be a reasonable request. The original proposal did not include construction in the shore impact zone and removed a portion of the dwelling/deck within the shore impact zone. The applicants are requesting to retain new construction in the shore impact zone. This office does not support new construction in the shore impact zone. As such, this office is proposing conditions to mitigate potential impacts. As the new construction is in the same footprint (square footage) as previously approved, it appears reasonable to allow the applicants to retain the new dwelling with modified shoreland mitigation to offset potential impacts and compensate for the dwelling and driveway in the shore impact zone.

- 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 for the subject property appears to be the steep slope located 100 feet from the OHWL. This lot was developed prior to the adoption of official controls. The first zoning permit was issued in 1972 and five zoning permits have been issued since that time. It is not the intent of the zoning ordinance or state statutes to render lots which were developed prior to official controls, unusable. That said, the applicants could have moved their new dwelling out of the shore impact zone. In order to remedy this issue, it appears reasonable to allow the applicants to retain the new dwelling with modified shoreland mitigation to offset potential impacts.

- 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 several dwellings along Lakeview Drive that do not meet the structure setback. The footprints of the dwellings located within 500 feet of the subject property are as follows: 1,568 square feet, 1,216 square feet, 408 square feet, 948 square feet, 1,180 square feet, and 1,232 square feet. The applicant is requesting 1,848 square feet for a dwelling.

- 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 of this property. The dwelling cannot be replaced to meet the 100 feet setback from the OHWL due to the steep slope. While the new construction could have been pushed back out of the shore impact zone, it appears reasonable to allow the applicants to retain the new dwelling with modified shoreland mitigation to offset potential impacts.

- 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. The use will be residential.

- 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 if the applicants agree to a modified shoreland mitigation plan.

As this request is an after-the-fact, additional factors are considered:

- i. *Why did the applicant fail to obtain a variance, and did the applicant act in good faith;*

The application indicates the applicants were not aware they needed to request a new variance for their dwelling as it is in the same footprint. This is not accurate. The previous variance was for a dwelling addition, this is a new dwelling. The builder or the applicants should have called this office to verify.

- j. *Did the applicant attempt to comply with the law by obtaining permits;*

The applicants are attempting to comply by the submission of this after-the-fact variance request.

- k. *Did the applicant obtain a permit from another entity that violated the law;*

It does not appear that the applicants obtained a permit from another entity that violated the law.

- l. *Did the applicant make a substantial improvement in the property;*

The applicants made a substantial improvement to the property with the construction of the new dwelling.

- m. *Did the applicant complete repairs, construction before the applicant was informed of the impropriety;*

The applicants completed the construction before they were informed of the impropriety.

- n. *Is the nature of the property residential/recreational and not commercial;*

The nature of the property is residential/recreational.

- o. *Are there similar structures in place;*

There are similar structures in place in the locality as noted above.

- p. *Would the benefits to the public be outweighed by the detriments to the applicant if regulations were enforced?*

The benefits of moving the dwelling do not outweigh the detriments to the applicant. Historically, this office does not support new construction or placement of structures in the shore impact zone in Carlton County. The applicants could have moved their new dwelling out of the shore impact zone. In order to

remedy this issue, it appears reasonable to allow the applicants to retain the new dwelling with modified shoreland mitigation to offset potential impacts.

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: Retain construction of a new nonconforming dwelling rather than a dwelling addition as allowed under Variance #318003 and permitted under Zoning Permit #118139.

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. The zoning permit shall also include the shed that was relocated from the shore impact zone.
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. A modified shoreland mitigation plan shall be required. The viewing/access corridors for this property shall be reduced from 40 feet in width to 25 feet in width along the shoreline for depth of 50 feet. All areas outside of the viewing/access corridors for a depth of 50 feet shall be vegetated with three canopy layers, including forbs, shrubs and trees (buffer area). A 10 feet wide area within the buffer area shall be allowed around the dwelling for access. The plants planted within the designated buffer area shall be species native to Minnesota. The modified mitigation plan shall be prepared by a qualified professional and submitted to this office for approval by June 1, 2020. The modified shoreland mitigation plan shall be installed by a licensed professional and implemented by June 1, 2021.
5. The buffer area shall be surveyed and recorded as a “Shoreland Vegetation Buffer Agreement” on a form approved by this office and the County Recorder. The agreement shall include the legal description of the property, survey of the buffer area, notice of the perpetual maintenance of the buffer for heirs, successors and assigns and a statement indicating if the property owner fails to maintain or degrades the buffer area, the Board of Adjustment may revoke the variance. This agreement shall be submitted for approval by June 1, 2020.
6. If the applicant fails to meet the conditions set forth by the Board of Adjustment, the Board of Adjustment may revoke the variance.

(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 8:21 p.m.

Respectfully submitted,

Dave Hurst
Recording Secretary