

DRAFT
MINUTES OF THE CARLTON COUNTY
BOARD OF ADJUSTMENT MEETING
June 18, 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 May 21, 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 May 30, 2019, and published in the Star Gazette on June 6, 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 #319004 – Kerry Enlund**

Kerry Enlund of 1534 Bluebird Avenue, Cloquet, MN 55720, represented by Spencer Thorman of Thorman Building and Landscaping LLC, has requested a variance to replace a deck on a nonconforming dwelling on a nonconforming lot. The dwelling is considered nonconforming as it does not meet the setback from a platted road right-of-way. The lot is considered nonconforming as it does not meet the required lot depth or lot area. The property is described as Lot 5, Block 13 of Nordquist Villas Plat in Section 2, Township 48 North, and Range 17 West in Twin Lakes Township. The property address is 1534 Bluebird Avenue (PIN 81-300-1760).

Mr. Thorman of 2115 Selmsier Avenue, Cloquet, MN 55720, was present to speak on Mr. Enlund's behalf. Mr. Thorman said the homeowner removed the existing deck and then hired Mr. Thorman to build the new deck. He said the new deck will be approximately 12 feet by 12 feet.

Ezell asked if the new deck is the same size as the old one. Mr. Thorman said yes.

Zoning and Environmental Services Administrator Heather Cunningham's video was viewed.

Ezell asked if the Board had any questions.

Ezell read Heather Cunningham's Development Review #319004 dated June 13, 2019.

Ezell read the five conditions listed in the development review and asked if the representative understood and was okay with those five conditions. Mr. Thorman 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 #319005 – Lennon and Melva Hecker (Dionne Durham)**

Lennon and Melva Hecker of 4069 North Road, Moose Lake, MN 55767, represented by Dionne Durham (proposed purchaser of 5 acre parcel) of 5089 West Road, Moose Lake, MN 55767, have requested a variance to subdivide their property without having two sites available for Type I Sewage Treatment Systems. The property is described as the Southeast ¼ of the Southeast ¼ of Section 8, Township 46 North, Range 19 West in Moose Lake Township. The property address is 4069 North Road (PIN 63-022-0490).

Melva Hecker was present to speak on her behalf. Mrs. Hecker said they would like to split out five acres of their land and sell it. They have a proposed purchaser (Dionne Durham) for the five acre parcel. Mrs. Hecker said when licensed designer Roger Hurd came out to do the soil borings they did not have the required soil for two Type I septic sites. Mrs. Hecker said Dionne Durham would like to build a house on the five acre parcel.

Ezell asked if the Board had any questions.

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

Ezell read Heather Cunningham's Development Review #319005 dated June 13, 2019.

Ezell read the four conditions listed in the development review and asked if the applicant and representative understood those four conditions. Mrs. Hecker 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 #319006 – Vernon and Catherine Larson (Joe Rademacher)**

Vernon and Catherine Larson of 5135 Brownwood Avenue, Las Vegas, NV 89122, represented by Joe Rademacher of 6032 Allen Circle, New Hope, MN 55428, have requested a variance to replace a nonconforming dwelling with a nonconforming dwelling with attached deck and screen porch. The request also includes constructing a nonconforming garage. The new structures are considered nonconforming as they will not meet the required setback from the centerline of Jarvi Road. The property is described as Part of Government Lot 5 in Section 17, Township 48 North, Range 20 West on Eagle Lake in Eagle Township. The property address is 5859 Jarvi Road (PIN 90-010-3010).

Mr. Rademacher was present to speak on his behalf. Mr. Rademacher said he is going to tear down the existing cabin and water orientated accessory structure that do not meet the setback from Eagle Lake. He said after speaking with the zoning office he moved the location of the new house so it will meet all structure setbacks. He said the proposed detached garage will not meet the setback from Jarvi Road and this why he needs the variance. He said the proposed garage will meet the setback from Eagle Lake.

Ezell asked if the Board had any questions.

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

Ezell read Heather Cunningham's Development Review #319006 dated June 13, 2019.

Ezell read the nine conditions listed in the development review and asked if the representative understood those nine conditions. Mr. Rademacher 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.

d) **Variance Request #319007 – Sophia Campbell**

Sophia Campbell (FKA Sophia Kiheri) of 4305 16th Avenue South, Minneapolis, MN 55407 has requested a variance to replace trusses, foundation and a porch, and construct an addition and porch/deck all on a nonconforming dwelling. The dwelling is considered nonconforming as it does not meet the required setback from the ordinary high water level (OHWL) of Tamarack Lake. The subject property is described as Part of the Northwest ¼ of the Southeast ¼, Part of Government Lot 5 and Part of Government Lot 6 in Section 3, Township 48 North, Range 21 West on Tamarack Lake in Lakeview Township. The property address is 1417 Costello Road (PIN 57-010-0430).

Mrs. Campbell was present to speak on her behalf. She said the house was originally built in 1890. Twenty two feet of the foundation wall on the north side of the house needs to be replaced. It was built out of railroad ties and is falling apart. She said the southeast corner of the house is eighty feet from the lake. She said the new proposed construction will not encroach any closer to Tamarack Lake. She said some of the reasons for the proposed additions are to align an unsafe set of stairs and to provide room for utilities to be brought upstairs which currently does not have heat.

Ezell asked if the Board had any questions.

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

Ezell read Heather Cunningham's Development Review #319007 dated June 13, 2019.

Ezell read the seven conditions listed in the development review and asked if the representative understood those seven conditions. Mrs. Campbell 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 7:51 p.m.

(11) The Board of Adjustment meeting re-opened at 7:55 p.m.

Variance Request #319004 – Kerry Enlund

A motion was made by Eskuri, seconded by Manninen, and carried to **Approve** the findings of fact, decision, and five conditions listed on Carlton County Findings of Fact Worksheet dated June 18, 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 requesting a reasonable use of the property. The applicant would like to replace the deck on a nonconforming lot on a nonconforming dwelling. The lot was created and the dwelling was constructed prior to official controls adopted in 1968.

- 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 in meeting the ordinance requirements is the creation and development of a lot 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. The dwelling has been in this location since prior to 1968.

- 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. It appears that a practical difficulty is the creation and development of this lot 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 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 and Ordinance. Setbacks from roadways are primarily a public safety and maintenance issue. The setback allows for clear zones for traffic, snow removal, and maintenance, as well as emergency vehicles (police, fire and ambulance) to be able to properly travel and provide service through the area. This office is not aware of any past issues with a reduced setback.

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: Replace a deck on a nonconforming dwelling on a nonconforming lot.

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 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. 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 #319005 – Lennon and Melva Hecker (Dionne Durham)

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 June 18, 2019, and signed by Board Chair Ezell.

FINDINGS OF FACT:

- a. *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.

- b. *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 (tilled Duluth very fine sandy loam).

- c. *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.

- d. *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 authorized representative is proposing a residential use of the property.

- e. *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 #319006 – Vernon and Catherine Larson (Joe Rademacher)

A motion was made by Eskuri, seconded by Manninen, and carried to **Approve** the findings of fact, decision, and nine conditions listed on Carlton County Findings of Fact Worksheet dated June 18, 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 requesting a reasonable use of the property. The applicant would like to replace the nonconforming dwelling with respect to the setback to the OHWL with a dwelling that will now be conforming to applicable standards as amended per phone call with the authorized representative (proposed purchaser) on June 7, 2019. As amended June 7, 2019, the garage will be approximately 20 feet from the surveyed road right-of-way or approximately 53 feet from the centerline of Jarvi Road. This

road is a dead end with little traffic and the proposed setback should not limit the travel of emergency vehicles.

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 of the lot 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 properties on Eagle Lake have approved variances for structures that do not meet the setback to the road centerline. It is this office's opinion meeting the setback to the OHWL is more important for this property than meeting the setback to the centerline as Jarvi Road is a dead end and not heavily traveled.

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 applicant would like to replace the existing dwelling with a dwelling and detached garage. The practical difficult appears to be the creation of a lot 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 and Ordinance. Setbacks from roadways are primarily a public safety and maintenance issue. The setback allows for clear zones for traffic, snow removal, and maintenance, as well as emergency vehicles (police, fire and ambulance) to be able to properly travel and provide service through the area. This road is a dead end with little traffic and the proposed setback should not limit the travel of emergency vehicles.

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 per June 7, 2019, phone call with the authorized representative (proposed purchaser) of allowing the construction of a nonconforming garage. The proposed garage is considered nonconforming as it will not meet the setback to the centerline of Jarvi Road.

Denied: NA

CONDITIONS:

1. The applicants must undertake the project according to the plans and specifications detailed in 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 water-oriented accessory structure, subsurface sewage treatment system and dwelling with attached screened porch and deck shall be constructed to meet setback requirements.
6. The garage shall be at least 20 feet from the surveyed road right-of-way.
7. Vehicles and materials/equipment shall not be parked between the garage and Jarvi Road.
8. Erosion control best management practices shall be implemented during the demolition of the cabin and WOAS (if removed).
9. If the applicants fail to meet the conditions set forth by the Board of Adjustment, the Board of Adjustment may revoke the variance.

Variance Request #319007 – Sophia Campbell

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 June 18, 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 applicant would like to complete some structural repairs and construct an addition onto the dwelling that will not be encroaching any further on setback requirements. The porch/deck will not be encroaching any further on the natural shoreline of Tamarack Lake.

- 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 the development of the property prior to shoreland regulations adopted

in 1972. This house appears to be a historic farmhouse from the 1890s.

- 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. The dwelling has been in this location since the 1890s and the applicant is not requesting to encroach further on the setback to the natural shoreline of Tamarack Lake.

- 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 applicant would like to complete some structural repairs and construct an addition and porch/deck on a historic farmhouse. The farm was developed before consideration of environmental/shoreland standards.

- 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. The applicant should be advised that use of the property (existing barns) for agriculture (livestock, dairy animals, chickens, horses, etc.) is not a permitted use in the R-1 Zoning District and would require a Conditional/Interim Use Permit.

- 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 this request other than the plan encourages preserving and restoring native vegetation along shorelines. The applicant has an approved Shoreland Mitigation Plan.

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: Replace trusses, foundation and a porch; construct an addition and porch/deck all on a nonconforming dwelling.

Denied: NA

CONDITIONS:

1. The applicant must undertake the project according to the plans and specifications detailed in 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 institute the mitigation practices by June 18, 2020.
6. The dwelling shall be no more than three bedrooms or the septic system shall be upgraded to accommodate additional bedrooms.
7. 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 yeas to close the Board of Adjustment meeting at 8:00 p.m.

Respectfully submitted,

Dave Hurst
Recording Secretary