

**MINUTES OF THE CARLTON COUNTY BOARD
OF ADJUSTMENT MEETING
June 21, 2016**

- (1) Chair Ezell called the Board of Adjustment meeting to order at 7:00 p.m.
- (2) Members Present: Howard Eskuri, Jack Ezell, and Thomas Skare (alternate), Zoning Office Representative Mike Torma, and Recording Secretary Bonita Peterson.
- (3) Motion by Eskuri, seconded by Skare, and carried to approve the May 17, 2016, Board of Adjustment meeting minutes as presented. Motion carried.
- (4) Old business: None
- (5) Chair Ezell called the Public Hearing to order at 7:02 p.m.
- (6) Chair Ezell read that the legal ad was sent to the Star Gazette on June 2, 2016, and published in the Star Gazette on June 9, 2016.
- (7) Chair Ezell read the *Finality of Decisions* from Zoning Ordinance 27.
- (8) Chair Ezell read the *Findings of Fact to Grant a Variance* from Zoning Ordinance 27.
- (9) Variances

a) **Variance Request #316011 – Premier Horticulture, Inc.**

Premier Horticulture, Inc. of 1320 Kallie Road, Cromwell, MN 55726, represented by Ron Richard, has requested a variance to construct a nonconforming storage building. The proposed storage building is considered nonconforming as it will not meet the required setback from the centerline of Kalli Road. The property is located in the Northwest ¼ of the Northwest ¼ or Government Lot 4 in Section 5, Township 48 North, Range 20 West in Eagle Township. The property address is 1320 Kalli Road (90-010-0820).

Ronald Richard of 2711 County Road 35, Barnum, MN 55707, was present to speak on behalf of Premier Horticulture, Inc. He explained that the storage building will allow expansion to the plant and allow it to run for three months in winter. Peat granules come from American Peat Technologies and the storage of these granules would be best on a testing slab. The building would help with dust and noise complaints. The area is not treated and the building would be used for storage for three to four months during the year.

Ezell explained that the company wants to build on the existing slab and it is four feet too close to the road.

It is not feasible to move it farther back and moving the slab would allow more chance for water infiltration. Expanding inward from the road will cause the building to be built off the slab.

The original slab was poured for peat storage. At that time the setback from the road was at 85 feet. Mr. Richard was not there at the time so he could not say why it was put at that setback.

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

Ezell clarified that the variance request is specifically for the slab setback and building location. It has nothing to do with the peat operation itself.

Mr. Richard said there will be no curb cuts and no extra driveway. The doors will be facing the peat operation inside the yard.

Ezell read Heather Cunningham's Development Review #316011 dated June 13, 2016.

Ezell asked Mr. Richard if he understood those six conditions listed in the development review.

Mr. Richard said he understood them.

Skare asked about the history of complaints.

Mr. Richard said MPCA has been at the plant. They were compliant with dust fencing and noise. There are concrete blocks and foam which are used as insulators. The dust fencing is wire mesh.

Skare asked about the cement blocks on the edge of the slab.

Mr. Richard said they are to keep the peat from falling over the edge. Otherwise the peat would go further toward Kalli Road. He said that the wind has taken down the existing dust control fence but the fence only helps if there is a southeast wind. The peat granules are a new product that Premier Horticulture will be handling. There will not be much dust from them.

Ezell asked if there was anyone in the audience neutral or supportive of the request.

Craig Harp of 1183 Rosicky Road, Cromwell, MN 55726 was in support of the request. He said the building would help with dust and noise control.

There was no one who spoke against the request.

b) **Variance Request #316012 – Paul and Julie Haberle**

Paul and Julie Haberle of 1591 Circle Drive, Carlton, MN 55718 have requested a variance to allow a group of contiguous lots under the same ownership to be two separate buildable lots as long as all applicable setback and sewage treatment requirements are met. The two lots individually would be considered nonconforming as they do not meet lot width requirements. The properties are described as the North 100 feet of Lot 7 (81-340-0200) and South 100 feet of

Lot 8 (81-340-0220) Old Point Comfort Plat; Part of Lot 1, Block 2 (81-450-0200) and Lot 5, Block 2 and Part of Park Place A (81-450-0280) Watkins Addition to Old Point Comfort. All located in the Southern 1/2 of Southeastern 1/4 in Section 23, Township 48 North, Range 17 West on Chub Lake in Twin Lakes Township. The property addresses are 1591 and 1597 Circle Drive.

Dave Pritchett from Rudy Law Firm, 813 Cloquet Avenue, Cloquet, MN 55720 was present to speak on behalf of Paul and Julie Haberle. He said they have two side by side lots on Chub Lake. The lots were acquired separately. Each lot was developed as individual properties. They have their own buildings, septic system and driveway. The improvements were done prior to zoning controls. They would like to convey one of these properties and they want to make sure the buyer can build and do what they can on the property without running afoul of zoning regulations.

Pritchett also said that the lots behind Circle Drive come around and Haberles own most of the property inside and south of Circle Drive. They have many different parcels and they would like to straighten this out. Mr. Pritchett said he spoke to County Auditor Paul Gassert. If the lots are clarified as nonconforming, the parcels can be reorganized.

Skare asked if the back lots are going to be joined with the front lots.

Pritchett said they are in different plats so they cannot have the same parcel number.

Skare asked about the existing garage.

Pritchett said this will be dealt with by an easement. A 10 feet setback will remain so the garage can be maintained.

Skare asked if they will be 100 feet lots.

Pritchett said that is correct. He then added that Heather Cunningham asked Pritchett to speak with Paul Gassert to get the parcel numbers straightened out.

Skare said it looks like there is a big building on a parcel.

Julie Haberle clarified that it is a small, single-car garage.

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

Ezell read Heather Cunningham's Development Review #316012 dated June 13, 2016.

Ezell asked if Pritchett understood the five conditions listed in the development review.

Pritchett said that he did.

Ezell asked if anyone in the audience was neutral or in favor of the request. He then asked if there was anyone against the request. There was no audience comment.

c) **Variance Request #316013 – Craig Harp**

Craig Harp of 1183 Rosicky Road, Cromwell, MN 55726 has requested a variance to replace foundations on two existing nonconforming dwellings. The dwellings are nonconforming as they do not meet the required setback from the ordinary high water level (OHWL) of Island Lake. The request also includes exceeding the density standard for a sewer lot on a General Development Lake. The property is located in Part of Lot 1 of the Auditor's Subdivision #7 or Part of the Eastern ½ of the Southeast ¼ of Section 33, Township 49 North, Range 20 West on Island Lake in the City of Cromwell. The property address is 5545 Dahl Road (17-050-0020).

Ezell read various correspondence regarding the variance and discrepancies regarding sewer hookup with the City of Cromwell. The City researched back to 2005 and found no record of Mr. Harp applying for a sewer connection and no record he is connected to the sewer.

John Mattonen, Cromwell City Engineer, sent a copy of the city code for sewer hookup and this was also read.

Craig Harp was present to speak on his own behalf. He said he spoke to the City of Cromwell. The cabins are not connected to water yet so he has not connected to sewer either. His hope is to connect to city sewer this summer, but it depends on getting the cabins fixed.

Harp said that at one time there was no city sewer on that side of the lake. When it was offered, the previous owners declined to hook up since they did not have running water in the cabins. Harp put in a well, but there is no water going into the cabins.

The 2012 flood caused building damage. The cabins are sinking and falling off the beams. The beams are rotted. He would like to level them up and make them stable again. If needed, he would add steel beams and lift them a couple of feet, but the cabins will not move off the current footprint. There is a six (6) to ten (10) foot difference in the slope right now.

Harp again reiterated that they did not hook up to city sewer because there was no water connection. He wants to get the buildings leveled up before the hook up.

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

Harp said the cabins were built in the 1950s and the city installed the tanks. He said they cannot move the cabins farther back because of road setbacks. There is a hill and neighbors on the sides of the lots. He pointed out in the video that the deck and cabin have separated due to shifting.

Skare asked if they could be hooked to city sewer by 2017.

Harp said they would like to be hooked up this summer if there are not difficulties with the project. There is one bad beam that may need replacing.

Skare asked about water hook up.

Harp said they do not want to do this right now because of the movement of the cabins. They will hook up to water and sewer at the same time. They are about 40 feet from the sewer hookup. It is an easy process but he does not want to do this until the cabins are secure.

Ezell read Heather Cunningham's Development Review #316013 dated June 13, 2016.

Ezell said an eighth condition was needed referring to a sewer hookup timeline. He asked if Harp understood those seven conditions listed in the development review along with the added condition regarding sewer hookup.

Harp said he understood.

Skare asked when the city put in the sewer option.

Harp thought it was about 1986.

According to the City of Cromwell their ordinance says residents have 65 days to hook up.

Torma said a hookup by July 1, 2017, would be sufficient.

Harp said he could foresee hooking up before that time.

Ezell asked if anyone in the audience was neutral or in favor of the request. He then asked if there was anyone against the request. There was no audience comment.

d) **Variance Request #316014 – Randy Thudin**

Randy Thudin of PO Box 142, Cloquet, MN 55720 has requested a variance to allow an after-the-fact deck replacement on a non-conforming water-oriented accessory structure (WOAS). The WOAS is considered non-conforming as it does not meet the setback from the side yard line and is greater than 160 square feet in area. The request also includes allowing an after-the-fact non-conforming stairway. The stairway is non-conforming as it is greater than 4 feet in width. The property is described as Lot 16 of Lake Park Plat in Section 31, Township 46 North, Range 19 West in Moose Lake Township on Sand Lake. The property address is 4894 Mirror Way (63-190-0320).

Randy Thudin was present to speak on his own behalf. He said the stairway request was probably the most complicated and he was guilty of doing it without a permit. He said his wife was dealing with cancer. The 28 percent grade was too steep not to have stairs. To get the wheelchair down to the lake, a person was needed on each side thus the reason for the six feet width. It was for medical purposes only. He replaced the deck on top of the sauna with a new deck of the same size. The stairs were dangerous because of rot and the walkway was moved to a safer location.

Ezell asked if the stairway was concrete.

Thudin said yes. He said the 28 percent slope was too steep to do a ramp safely. The steps were not a standard height; they were lower to get a wheelchair down them.

Skare asked if Thudin consulted with ADA (Americans with Disabilities Act) guidelines.

Thudin said he had not.

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

Ezell read Heather Cunningham's Development Review #316014 dated June 13, 2016.

Ezell asked if Thudin understood the six conditions listed in the development review.

Thudin said he did.

He was asked why he did not get a permit.

Thudin said he made a wrong assumption that a permit was not needed to replace the same deck.

He said he was in front of the Board of Adjustment in the past. There was a frustration in meeting the eight conditions if the request was approved. There were mandates about where he could cut vegetation and where he could put the dock. While making a recent pontoon tour he did not see other people following the shoreline vegetation guidelines. Was he guilty? Yes. They tried to make a four feet wide stairway work, but with the wheelchair, it wasn't feasible. The long term plan was to build a house which he is now doing.

Ezell asked if he could work with the shoreline mitigation?

Thudin said yes.

(10) The public hearing closed at 8:15 p.m.

(11) The Board of Adjustment meeting re-opened at 8:30 p.m.

a) **Variance Request #316011 – Premier Horticulture, Inc.**

Motion by Eskuri, seconded by Skare and carried by all yeas votes to **GRANT** Variance #316011 and include those six conditions listed in Administrator Cunningham's Development Review dated June 13, 2016.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. The applicant is requesting a reasonable use of the property. The use of the property as a peat processing plant was permitted under Conditional Use Permit #488020. It appears reasonable to have a covered storage area for peat.*

2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. The applicant has not identified the practical difficulty other than they constructed a concrete slab at its present location and would be impractical and financially difficult to modify the existing slab. The concrete slab was constructed between 2003 and 2006 with the intent of constructing a storage building in this location as evident by the 12 inch footings. During this time period, the setback was still 85 feet from the centerline. It appears they created their own practical difficulty unless the applicant can provide some additional information. The building as proposed would reduce dust and noise from the operation.*

3. If the variance is granted, it will not alter the essential character of the locality? *Yes. It appears all other structures located along Kalli Road within a mile meet the 85 feet setback from the centerline. However, the granting of a variance for 4 feet should not alter the essential character of the locality.*

4. Does the practical difficulty involve more than economic considerations? *Yes. It appears economic considerations constitute the practical difficulty for this request unless the applicant can provide some additional information. Dust and noise would be reduced by having the structure at the proposed location.*

5. 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. The variance will not be granting a use that is not allowed in an A-2 Zoning District. The use is permitted under CUP #488020.*

6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. The terms of the variance do not appear to be in conflict with the Carlton County Community-Based Comprehensive Plan.*

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 permit is invalid, or expires, if the holder does not have the work completed within one year of the granting of the permit.

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 building shall be used for storage only.

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

b) **Variance Request #316012 – Paul and Julie Haberle**

Motion by Skare, seconded by Eskuri and carried by all yeas to GRANT Variance #316012 and include those five conditions listed in Administrator Cunningham's Development Review dated June 13, 2016.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. The applicants are proposing a reasonable use of the property. The lots have been developed individually since before official zoning controls. The lots meet lot area requirements. It appears that structures and future septic systems could meet applicable setbacks.*

2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. The practical difficulty appears to be that the lots were developed individually prior to official controls.*

3. If the variance is granted, it will not alter the essential character of the locality? *Yes. The granting of the variance should not alter the essential character of the locality. Several parcels in this plat do not meet lot width requirements.*

4. Does the practical difficulty involve more than economic considerations? *Yes. It does not appear that economic considerations constitute the practical difficulty for reasonable use for this property. The applicants have indicated they wish to sell one of the properties. However, as stated above, the lots have been developed individually since before official zoning controls.*

5. 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. The variance will not be granting a use that is not allowed in an R-1 Zoning District. Single-family residences are a permitted use.*

6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. The terms of the variance appear to be in harmony with the Carlton County Community-Based Comprehensive Plan. The applicants are proposing to meet all applicable setbacks, including from the ordinary high water level, except for one existing non-conforming garage that does not meet the minimum side yard setback. The proposed garage easement will not change the non-conformity for zoning purposes.*

Conditions

1. 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.
2. PIN 81-340-0220 and that part of 81-450-0200 lying west of Circle Drive shall be considered one buildable lot for zoning purposes without the granting of a variance so long as all applicable setbacks, lot coverage and SSTS requirements are met.
3. PIN 81-340-0200 and part of 81-450-0280 lying west of Circle Drive shall be considered one buildable lot for zoning purposes without the granting of a variance so long as all applicable setbacks, lot coverage and SSTS requirements are met.
4. The remnant lots must be configured to meet the requirements of Carlton County Zoning Ordinance #27, Carlton County Subdivision Ordinance #28 and Carlton County Subsurface Sewage Treatment System Ordinance #30.
5. 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 #316013 – Craig Harp

Motion by Eskuri, seconded by Skare and carried to **GRANT** Variance #316013 and include those seven conditions listed in Administrator Cunningham's Development Review dated June 13, 2016, and adding condition eight requiring the cabins to have City of Cromwell sewer connection by July 1, 2017.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. The applicant is requesting a reasonable use of the property. The use of the property with two nonconforming cabins predates official zoning controls. The applicant would like to repair the foundations.*
2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. The practical difficulty appears to be the construction of the dwellings before official zoning controls were in existence.*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. The granting of the variance should not alter the essential character of the locality. Development on this side of the lake is typically conducted on nonconforming lots with structures not meeting the setback to the OHWL.*
4. Does the practical difficulty involve more than economic considerations? *Yes. It does not appear that economic considerations constitute the practical difficulty for reasonable use for this property. The applicant would like to repair foundations.*

5. 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. The variance would not be granting a use that is not allowed within the City of Cromwell.*

6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. The terms of the variance do not appear to be in conflict with the Carlton County Community-Based Comprehensive Plan other than the plan encourages preserving and restoring native vegetation along shorelines. The additional shoreland mitigation plan should address this issue.*

Conditions

1. The applicant must undertake the project according to the plans and specifications as determined by the Board of Adjustment.

2. The permit is invalid, or expires, if the holder does not have the work completed within one year of the granting of the permit.

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 have an approved shoreland mitigation plan submitted to the Resource and Recycling Coordinator by August 1, 2016.

6. The applicant shall institute the mitigation practices by August 1, 2017.

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

8. The applicant must have both cabins hooked up to City of Cromwell sewer by July 1, 2017.

Variance Request #316014 – Randy Thudin

Motion by Skare, seconded by Eskuri and carried to **GRANT** Variance #316014 and include those six conditions listed in Administrator Cunningham's Development Review dated June 13, 2016.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. The applicant is proposing to use the property in a reasonable manner.*

The water oriented accessory structure (WOAS) has been in this location since prior to official controls. It is reasonable to have access to the lakeshore. The ordinance however has defined that 4 feet in width is reasonable, not 6 feet in width, even for handicap accessibility. This width has been adopted by Carlton County directly from Minnesota Rule 6120.330 Subpart 3, a rule developed by the Minnesota Department of Natural Resources.

2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. With respect to the WOAS, it appears the practical difficulty is that it was constructed prior to any official controls. The applicant has indicated the practical difficulty justifying the increased stairway width is handicap accessibility.*

3. If the variance is granted, it will not alter the essential character of the locality? *Yes. If the variance is granted, it should not alter the essential character of the locality with respect to the WOAS. There are several nonconforming WOAS on Sand Lake. This office is not aware of other permitted stairways on this lake greater than 4 feet in width.*

4. Does the practical difficulty involve more than economic considerations? *Yes. It does not appear that economic considerations constitute the practical difficulty for reasonable use for this property.*

5. 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. The use of the property as a single family residence is a permitted use in the R-1 Zoning District.*

6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. The Carlton County Community-Based Comprehensive Plan does not address either issue other than the plan encourages preserving and restoring native vegetation along shorelines. The subject property is void of native vegetation along the shoreline and has been developed contrary to the Plan. If the variance is granted, the applicant should work with the Resource and Recycling Coordinator to establish native vegetation in Zone A via a shoreland mitigation plan as defined in Carlton County Zoning Ordinance #27.*

After the Fact Findings of Fact

1. Why did the applicant fail to obtain a variance, and did the applicant act in good faith? *Yes. The applicant did not know a permit was needed.*

2. Did the applicant attempt to comply with the law by obtaining permits? *Yes. The applicant was frustrated by the process.*

3. Did the applicant obtain a permit from another entity that violated the law? *No.*

4. Did the applicant make a substantial improvement in the property? *No. The applicant replaced a deteriorated deck and added a stairway.*

5. Did the applicant complete repairs, construction before the applicant was informed of the impropriety? *Yes. The projects were completed when discovered by the Zoning Office.*
6. Is the nature of the property residential/recreational and not commercial? *Yes.*
7. Are there similar structures in place? *Yes. There are other decks and stairs near the lake.*
8. Would the benefits to the public be outweighed by the detriments to the applicant if regulations were enforced? *No.*

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 permit will be periodically reviewed by the County to assure compliance with the permit and permit conditions.
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 application shall have an approved shoreland mitigation plan submitted to the Resource and Recycling Coordinator by August 1, 2016.
5. The applicant shall institute the mitigation practices by August 1, 2017.
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 - none

(13) A motion was made Skare, seconded by Eskuri, and supported by all yea votes to close the Board of Adjustment meeting at 8:33 p.m.

Respectfully submitted,

Bonita L. Peterson
Recording Secretary