

Draft
MINUTES OF THE CARLTON COUNTY BOARD
OF ADJUSTMENT MEETING
July 21, 2015

- (1) Chair Ezell called the Board of Adjustment meeting to order at 7:00 p.m.
- (2) Members Present: Howard Eskuri, Jack Ezell, Philip Johnson, Thomas Skare (alternate), Office Representative Mike Torma, and Recording Secretary Bonita Peterson.
- (3) Motion by Johnson, seconded by Eskuri, and carried to approve the June 16, 2015, 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 July 2, 2015, and published in the Star Gazette on July 9, 2015.
- (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 #315007 – Janet and Jerry Bailey**

Janet and Jerry Bailey of 13319 Eidelweiss Street Northwest, Andover, MN 55304 have requested a variance to construct an addition (screen porch and deck) onto an existing nonconforming dwelling. The structure is considered nonconforming as it does not meet the 100 feet setback from the ordinary high water level (OHWL) of Park Lake. The property is located in Lots 12 and 13 except Southwest ½ of Lot 13, Block 1 of Sunset View Plat in Section 29, Township 48 North, Range 18 West in Atkinson Township on Park Lake. The property address is 2169 Park Lake Lane (PIN 33-220-0240).

Janet and Jerry Bailey were present to speak in their own behalf. Mrs. Bailey said they have an existing cabin with a deck to the south and one that faces the lake. They are proposing a screen porch coming off the deck. The application says proposed deck, but it is actually a walkway to get into the screen porch.

Mr. Bailey said it will be the same level as the current deck. They would cut a section of the railing out so they have walkway space to get into the screen porch.

Skare asked if it would be on posts.

Mr. Bailey said yes, it will be like on sonotubes and with big beams.

Mrs. Bailey said the screen porch will be connected to the current cabin and they would build it inside the peak rather than shift it toward the lake.

Mr. Bailey said it will be set under the original roof.

Eskuri wanted clarification and asked if the roof of the screened in porch will share the roof of the cabin.

Mr. Bailey said it will be lower; it will be set below the current roof.

Mr. Bailey said the application says proposed deck and it could say walkway or entrance.

Mrs. Bailey said walkway or entrance if three decks are too many.

Ezell held up their drawing and clarified the deck location.

Mrs. Bailey said that one deck is actually a step to get into the cabin.

Ezell said there was a concern from the Zoning Office regarding the proximity of the proposal to the holding tank.

Mrs. Bailey said she talked to Heather Cunningham about putting the deck on sonotubes which would be at least ten feet from the sewage holding tank, but the building would be up higher.

Torma said he inspects sewers for Carlton County and they measure from the building line to the tank for the required setback and not from the foundation.

Skare said that when the sewer tank is emptied he assumes the truck is on the road and not on the property when they come to pump.

Mr. Bailey said they could come on the property if they want to, but most of the time the septic pumper parks on road.

Skare asked about their position on the sewer issue. They have what looks like six feet of setback and the requirement is ten feet.

It was clarified that the request is five feet setback from the tank according to the updated drawing.

Skare asked what their position is for the five feet setback for the sewer.

Mrs. Bailey said they would need a variance for the tank to approve the five feet setback.

Skare clarified that the Baileys feel, with the sonotubes, the integrity of the tank would not be affected.

Mr. Bailey said it would be at least ten feet to the tank from the first post.

Torma again said they do not measure from the posts but from the building line.

Skare said he understood but the Baileys were looking for a variance. Cunningham was concerned about the integrity of the tank. It does not sound like there would be any impact for the integrity of the tank.

Torma said we are looking at habitable space and this rule has been in effect for twenty or more years.

The question was asked if the Baileys had to seek a variance from Minnesota Pollution Control Agency (MPCA).

Torma said no, this is a 7080 MPCA code requirement only.

Eskuri asked if the screen porch has to be this big. Can they make the porch five feet shorter so they have the ten feet setback from the building.

Torma brought up skirting or enclosing the new addition.

Mrs. Bailey said it is all grass underneath.

Mr. Bailey said they don't plan to enclose it.

Skare said in other words, where it says proposed deck, could they enclose it as part of the screen porch and exit from the existing deck directly into the screen porch if they could back up that six feet.

Mrs. Bailey said so rather than having twenty-two feet they would make it twelve?

Skare said leave the twenty-two, but include the six feet on there.

Mrs. Bailey said that because of the roof line, their proposal would be easier.

Eskuri said that one of Cunningham's recommendations was to enclose an existing deck as a screened porch.

Baileys said this would not be an option.

Eskuri said another option was to reduce the screen porch to twelve feet by twelve feet. Would this be an option?

The Baileys said this would not be an option. It would be too small.

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

Ezell said it would be nice if they could meet the ten feet setback from the holding tank.

Skare suggested cutting back six feet making it sixteen by sixteen.

Mr. Bailey said they would only have to reduce it by five feet. Sixteen by seventeen would give them plenty of room.

Mrs. Bailey said this would then be sixteen by sixteen with a walk on deck?

Mr. Bailey said or walkway.

Mrs. Bailey said that there is no other way they can do it since there has to be a ten feet setback. That's the Minnesota state law?

Torma said MPCA 7080 is the standard state rule.

Mrs. Bailey said so there isn't really a variance for the sewer setback.

Skare said not through this agency. He did not know if MPCA has a variance policy or procedure.

Mrs. Bailey asked about setting a door in a different place.

Johnson said if they plan to do something else then the Board of Adjustment would need to table this request for their new proposal.

Mr. Bailey said all they would have to do is shorten it up five feet.

Ezell said they could recommend moving back five feet this evening, but anything more elaborate would need another meeting.

Torma said getting back to the septic situation; they could apply for a septic setback variance through the Zoning Office. He has never seen one for a holding tank less than ten feet from a dwelling, but they could try. He wanted to make sure this is clear to them. They need to weigh their options as the holding tank setback is a pretty steadfast rule.

Ezell said the rule was for safety reasons.

Skare said a variance is an option, but having it approved may take an attorney who can research case laws to be sure it can be granted.

Johnson asked if they are willing to cut the deck back five feet.

Bailey's said they would be willing to cut back five feet.

Ezell asked if there were any more questions.

Ezell read Heather Cunningham's Development Review #315007 dated July 15, 2015.

Ezell asked if Baileys understood the seven conditions.

Mrs. Bailey indicated yes.

Ezell read two pieces of correspondence. The first was from Mark Grenager, 2165 Park Lake Lane, Mahtowa, MN 55707, in support of the variance request. The second was a letter from Heather Cunningham clarifying the septic setback.

Skare commented that Heather talked about three decks. He wanted to clarify that it is a misrepresentation since the walkway is not used as a deck.

Johnson commented that it is above ground so it would be considered a deck.

Johnson referred to the development review regarding square footage. According to his math, there is currently 460 square feet of deck. If 96 square feet are added, the Baileys would have over 500 square feet of deck area.

Skare asked about the definition of a deck.

Torma said it is a platform more than twelve inches above the ground.

Ezell asked Baileys if they are now requesting a sixteen feet by seventeen feet porch with a walkway.

Mrs. Bailey said yes.

Robert Asproth of 3117 County Road 144, Mahtowa, MN 55707, was present to speak. He is an adjacent landowner, Atkinson Township Supervisor, and also on the Park Lake Association Board. He is opposed to this request and feels it is a bit much. He feels the Baileys have a lot of deck. He would like to see more of a drawing, especially the screen porch part. He asked if the screen porch will be considered part of the cabin or just part of the deck.

Torma said it is part of the building.

Asproth said they should stay with the ten feet setback from the holding tank.

Asproth asked about shoreline.

Ezell said this is mitigation regulated by the Carlton County Zoning Office and they will follow up on it. The Baileys will have until July 1, 2016, to comply.

Ezell asked if there were others for or against this request.

b) **Variance Request #315008 – Robert Baxter**

Robert Baxter of 8969 Neal Avenue South, Hastings, MN 55033, represented by C & C Builders, has requested a variance to construct an addition, replace an existing deck and construct a new deck onto an existing dwelling on a nonconforming lot. The lot is considered nonconforming as it does not meet lot area requirements for a general development lake. The request also includes considering the lot buildable in the future as long as all applicable setback and sewage treatment requirements are met. The property is located in Lots 1 and 2, Block 1 of City of Cromwell Green Hill Addition Plat in Section 34, Township 49 North, Range 20 West in City of Cromwell on Island Lake. The property address is 1237 Mingus Road (17-090-0020).

Mr. Baxter was present to speak on his own behalf as his builder was not able to make the meeting tonight. Baxter showed a drawing of the proposal to the board.

Ezell asked if he was on city sewer.

Baxter said he was.

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

Ezell asked if Baxter was aware of Cunningham's recommendation that the water oriented structure be moved back to meet the ten feet setback from the lake.

Baxter said he could move it back. It is sitting on blocks.

Torma said when this is moved it can be included in the zoning permit for the house addition.

Ezell read Heather Cunningham's Development Review #315008 dated July 13, 2015.

Ezell asked if he understood these conditions.

Baxter asked if the addition would be twenty feet by twenty-eight feet.

Ezell said the proposed addition is twenty by twenty-four feet.

Baxter said he called Chad (C & C Builders) a couple weeks ago and had him change it to twenty-four feet out to the property and go another four feet the other way to twenty-eight.

Johnson said that on the request the board received June 13, 2015, it said twenty feet by twenty-four feet.

Baxter said he had Chad call in the change of twenty-four feet by twenty-eight feet. Twenty feet would not be enough.

Ezell asked if this would bring it flush with the back.

Baxter said it would, with the deck. He would still be approximately sixty-two feet from the lake.

Johnson said that with the four foot deck it would bring it out to roughly thirty-two feet.

Ezell asked if the Board can make this change considering the public notice said twenty feet by twenty-four feet. This request would bring it to twenty-four feet by twenty-eight feet.

Baxter said plus a four foot deck.

Torma said we could make the adjustment.

Johnson said in the development review, on the second page, fifth paragraph from the bottom it says *“The applicant would like to construct an addition on to the existing cabin, which is 6 feet from the side yard line. We should not enforce the side yard setback for a property in the City of Cromwell. Only those standards that are located in the Shoreland Management Program.”* When you read further it says, *“The proposed addition and decks will meet the setback from the OHWL.”* Johnson said he assumed the twenty-eight feet will meet that setback. He was not sure this is even a variance issue.

Torma said the county still must issue a permit. Mr. Baxter must apply for a City of Cromwell and a Carlton County zoning permit.

Setbacks were considered on all sides.

Ezell asked if there were other questions. He then asked if anyone in the audience was neutral or in support of the request.

Norbert Wollak of 7661 Away Way, Citrus Heights, CA 95610 (winter) and 1245 Mingus Road, Cromwell, MN 55726 (summer) spoke in support of the request. He lives two lots away from Mr. Baxter.

Ezell asked if there was anyone in the audience against the request.

c) **Variance Request #315009 – Jack and Janet Martin**

Jack and Janet Martin of 1072 Bonnieview Circle, Woodbury, MN 55129 have requested a variance to construct a new nonconforming dwelling by replacing the existing mobile home with a stick-build dwelling. The dwelling is considered nonconforming as it will not meet the setback from a platted road right-of-way and 100 feet setback from the ordinary high water level of Tamarack Lake. The property is located in Lot 12, Block 1 of Tam Acres Plat in Section 10,

Township 48 North, Range 21 West in Lakeview Township on Tamarack Lake. The property address is 6632 Tam Acres Road (57-230-0240).

Jack and Janet Martin were present to speak on their own behalf. Mr. Martin said they would like to remove their existing fourteen by forty-eight trailer home and twelve by twenty-four addition and replace it with a new twenty-six by forty-eight slab home. He would like to extend the front part of the cabin down equal to the back line of the existing trailer house.

Mr. Martin has been working with Karola Dalen on the shoreland mitigation which has been completed.

Johnson asked about a deck in the drawing.

Mr. Martin said it is the shed that will be removed.

Mr. Martin said that with how the shoreline goes, the closest setback will be seventy-six feet on right side of the lake, and the left hand side the lake curves so the setback is a good 85' from the OHWL.

There were no other questions.

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

Ezell read Heather Cunningham's Development Review #315009 dated July 13, 2015.

Ezell asked for clarification if the forty-eight foot measurement included the existing shed.

Martin said yes. The trailer is fourteen by forty-eight and the stick built addition that sits on the east side is twelve feet by twenty-four feet. It is not going to be wider than forty-eight feet.

Ezell asked if Martin understood those six conditions in the development review.

Johnson asked about the shoreland mitigation required to be done by July 1, 2016.

Torma said that in the development review it says that Mr. Martin would have to work with Karola Dalen.

Martin said he worked with her on the plan, she approved it, and she sent him a letter. He spoke to her saying that he was done. She said she will have to get out and look at it.

Torma said this will come up in next year's July tickle file.

Ezell asked if anyone in the audience was neutral or supportive. He then asked if anyone was against the proposal.

d) **Variance Request #315010 – Catherine Rudebeck**

Catherine Rudebeck of 4180 County Road 61, Moose Lake, MN 55767 represented by Rusty Wekseth of 3010 MT Nelson Road, Barnum, MN 55707, has requested a variance to replace the roof and trusses on part of an existing nonconforming dwelling. The dwelling is considered nonconforming as it is less than 150 feet from the ordinary high water level of the Moose Horn River. The property is located in Lots 1 through 7 and adjacent ½ of vacated Riverside Drive and Nord Avenue, Block 2 of Agateville Plat in Section 15, Township 46 North, Range 19 West in Moose Lake Township on the Moose Horn River. The property address is 4180 County Road 61 (63-030-0280).

Catherine Rudebeck was present to speak on her own behalf along with her contractor, Rusty Wekseth of Rusty's Construction, LLC. Rudebeck said the roof is currently a flat roof, a rolled roof, and she would like a pitched roof. She would also like new gutters.

Ezell said this does not change the footprint of the house at all, it is just roof work.

Rudebeck said she has been working with Karola Dalen on the shoreland mitigation. Rudebeck asked if she should contact the office when her shoreline mitigation is completed, or if the office gets in touch with her.

Johnson said it never hurts to contact someone.

Johnson complimented Rudebeck and wanted to say thank you for a nice, neat and well filled out variance application.

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

Ezell asked if there were any questions.

Ezell read Heather Cunningham's Development Review #315010 dated July 15, 2015.

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

Rudebeck said yes.

Ezell asked about the pitch of the roof.

Wekseth said the pitch is 5:12.

Ezell asked if the board had questions. He then asked if there was anyone in the audience that was neutral, supportive or opposed.

(10) The public hearing closed at 8:22 p.m.

(11) The Board of Adjustment meeting re-opened at 8:40 p.m.

Variance Request #315007 – Janet and Jerry Bailey

Motion by Johnson, seconded by Eskuri and carried by all yeas votes to **GRANT** Variance #315007, to include those seven conditions listed in Administrator Cunningham’s Development Review dated July 15, 2015, and to decrease the size from sixteen feet by twenty-two feet (16’ x 22’) to sixteen feet by seventeen feet (16’ x 17’) to meet the holding tank setback requirement of ten feet (10’).

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 requesting an addition of a screen porch on their structure to provide an area free of insects. The applicants proposed a new porch size of sixteen feet by seventeen feet to meet the ten feet setback from the holding tank.*
2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. The lot was platted in 1929 and the cabin was constructed before official zoning controls were in existence. The dwelling cannot meet the lake setback.*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. Lots in the Sunset View Plat are all non-conforming. Most dwellings do not meet the setback to the ordinary high water level of Park Lake.*
4. Does the practical difficulty involve more than economic considerations? *Yes. The applicants would like to add on a screen porch and small deck to serve as a walkway.*
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. This approval will not be granting a use not allowed in an R-1 Zoning District.*
6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. This request does not appear to be in conflict with the Plan.*

Conditions

1. The applicant must undertake the project according to the plans and specifications submitted to the County with the application 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 applicant shall institute the mitigation practices by July 1, 2016.
6. The applicant and subsequent property owners shall not be allowed to enclose the screen porch addition. The use will be allowed for a 3-season screen porch only.
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 #315008 – Robert Baxter

Motion by Eskuri, seconded by Johnson and carried by all yeas to **GRANT** Variance #315008 and include those six conditions listed in Administrator Cunningham's Development Review dated July 13, 2015, and to change the size from twenty feet by twenty-four feet (20' x 24') to a twenty-four feet by twenty-eight feet (24' x 28') house addition.

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 has purchased an additional lot to increase the lot area for this parcel.*
2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. This plat was created prior to official zoning controls being in existence.*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. Development in this plat is typically conducted on non-conforming lots.*
4. Does the practical difficulty involve more than economic considerations? *Yes. The applicants would like to add living space and have the lot considered buildable.*
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 the City of Cromwell. The lot is connected to city sewer.*
6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. This lot is connected to city sewer, thus a fifty feet setback is used.*

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 lot shall be considered buildable in the future as long as all applicable setback, lot coverage and septic requirements are met.
6. The water oriented accessory structure needs to be permitted and moved to meet the setback from the ordinary high water level within six weeks of granting of the variance.

Variance Request #315009 – Jack and Janet Martin

Motion by Johnson, seconded by Eskuri and carried by all yeas votes to **GRANT** Variance #315009 and include those six conditions listed in Administrator Cunningham’s Development Review dated July 13, 2015.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. It is not unreasonable to have a 1,248 square foot dwelling. The applicants are swapping out a mobile home with a stick built in the same footprint as previously approved.*
2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. The lot was platted in 1961 before official zoning controls were established in 1968. The dwelling cannot meet either the right-of-way setback or the lake setback.*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. Several dwellings in this plat do not meet the setback for OHWL or road right-of-way.*
4. Does the practical difficulty involve more than economic considerations? *Yes. The applicants are rebuilding in the same footprint as previously approved.*
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. This approval is not granting a use not allowed in an R-1 Zoning District.*
6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. This variance does not appear to be in conflict with the Carlton County Community Based Comprehensive Plan. The applicant will complete a shoreland mitigation plan.*

Conditions

1. The applicant must undertake the project according to the plans and specifications submitted to the County with the application.
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 institute the mitigation practices by July 1, 2016.
6. 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 #315010 – Catherine Rudebeck Motion by Eskuri, seconded by Johnson and carried by all yeas votes to **GRANT** Variance #315010, and include those six conditions listed in Administrator Cunningham’s Development Review dated July 13, 2015.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. The request is to replace a flat roof with a pitched roof. This request does not change the footprint of the structure. The applicant’s contractor indicated the roof will have a 5:12 pitch.*
2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. The home was in existence prior to official controls.*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. The home has been in existence for more than forty years.*
4. Does the practical difficulty involve more than economic considerations? *Yes. The new roof will help deal with snow loads and leaks.*
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. It will not be granting a use that is not allowed in an A-2 Zoning District.*

6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. It is not in conflict with the Carlton County Community-Based Comprehensive Plan and will allow completion of a shoreland mitigation plan.*

Conditions

1. The applicant must undertake the project according to the plans and specifications submitted to the County with the application.
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 institute the mitigation practices by July 1, 2016.
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 by Eskuri, seconded by Johnson, and supported by all yea votes to close the Board of Adjustment meeting at 8:50 p.m.

Respectfully submitted,

Bonita L. Peterson
Recording Secretary