

Draft
MINUTES OF THE CARLTON COUNTY BOARD
OF ADJUSTMENT MEETING
August 16, 2016

- (1) Chair Ezell called the Board of Adjustment meeting to order at 7:00 p.m.
- (2) Members Present: Howard Eskuri, Jack Ezell, John Manninen, Zoning Office Representative Mike Torma, and Recording Secretary Bonita Peterson.

Member Absent: Thomas Skare (alternate)
- (3) Motion by Eskuri, seconded by Manninen, and carried to approve the July 19, 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 July 28, 2016, and published in the Star Gazette on August 4, 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 #316016 Gordon Hanson**

Gordon Hanson of 2317 Byrd Avenue North, Golden Valley, MN 55422 has requested a variance to replace a roof on a nonconforming dwelling. The dwelling is considered nonconforming as it does not meet the required setback from the ordinary high water level of Big Lake (OHWL). The request includes retaining an after-the-fact second water-oriented accessory structure (WOAS) and relocating an accessory structure (pit privy) to a location that will not meet the side yard setback but include a watertight holding tank. The request also includes considering the two lots together buildable as long as all applicable setback and sewage treatment requirements are met. The property is described as Lots 3 and 9 of Reliable Investment Company's Addition to Lyndhurst Bay on Big Lake in Perch Lake Township. The property address is 835 Lyndhurst Bay Drive (PIN 92-260-0060 and 0180).

Gordon and Barbara Hanson were present to speak on their own behalf. They have two lots; one is adjacent to the lake and the other is across the road. The property with the cabin was purchased in 1930 by his grandparents and the property across the road was purchased in 1932. The cabin was built prior to 1940 and they have added on to it. They are currently trying to make it winter friendly. By doing that they want to change the roof line so they can add R49. They are not changing the cabin footprint; they are changing the roof design.

There has been a wind problem affecting the second WOAS. They have watched the gazebo roll across the yard several times and they have lost the roof twice this year. The wind coming across the lake creates a serious problem. Putting a deck on the WOAS is to add weight to roof.

The privy has been in various parts of the yard but never ten feet into the yard. Current regulations require a holding tank underneath and a 10 foot minimum side yard setback.

Torma said the privy must meet the setback from all wells which is 50 feet minimum.

G. Hanson said this is not a problem. Their well is on the north side of the cabin. On the neighbor's land south of them, the well is south of the building. Both wells are beyond the 50 feet minimum. The most likely spot would be about 10 feet from the road where there's an old stump from a birch tree. They are safe if they use this spot.

Ezell said that typically, if this is moved, it should meet the requirements thus the 10 feet side lot line.

G. Hanson said that the lot line and neighbor's garage are synonymous. 10 feet side setbacks have not been followed on the 75 feet lots. The building to the other side is on the lot line. He has no problems with this.

Ezell asked about the trailer.

G. Hanson said the trailer has been on the property for a long time. A proposed 40 feet by 50 feet storage building on the back lot would allow them to store the trailer inside during the winter. Someone from the county told him it would add a significant amount to taxes if he added power to the back lot.

Ezell said the other part of request is to make the two lots buildable.

G. Hanson said yes, according to ordinance the back lot is not buildable. These two lots have been in the family since 1932 and there is no intention of selling them.

Manninen asked about the privy tank size.

G. Hanson said it would be a 50 gallon plastic drum. He has concerns with this because it is a two-hole privy. He said they may look at 150 gallon tank like used in a pickup.

Torma said 55 gallons is the minimum. He has heard of larger tanks floating up from the ground.

G. Hanson said they might be looking for a tank that is 6 feet in diameter and 2 feet wide.

Torma said this is something that can be worked out when he applies for a permit.

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

G. Hanson said the water oriented accessory structure goes back to 1940.

Manninen asked if there was a crawl space under cabin.

G. Hanson said yes, if there was anything more underneath it would be a swimming pool. He showed the members 2012 flood pictures. The back lot goes up hill so it would be a good spot for building.

Ezell read Heather Cunningham's Development Review #316016 dated August 8, 2016.

G. Hanson said when he spoke to the people in the Zoning Office, they said he could say the sewer system is non-compliant and would be forced to hook to the sanitary district or they could tell him the system is non-compliant, which is the same thing.

Ezell said he did not understand.

Torma said a compliance inspection would cost about \$300.00. Since the Zoning Office does not have record of this sewer system on file, G. Hanson could hire a private sewer inspector.

G. Hanson said basically he could say the sewer is non-compliant.

Torma said then G. Hanson would send the Zoning Office documentation regarding the non-compliance, and the Zoning Office would send out an abatement notice. Torma said what if the sanitary system does not go through?

Ezell said this is another issue to work out with the Zoning Office.

Ezell also said that after watching the video the Hansons could meet the 10 feet setback for the privy.

G. Hanson said it is tight to get the truck in there.

B. Hanson said it is an extended cab pickup with an eight foot bed. It is not a small truck.

Manninen said they were going to take trees down.

G. Hanson said in the back lot.

B. Hanson said she is not going to take trees down. The entire driveway is tree lined.

Ezell said they do not pull that far into the driveway. There should be room for the privy.

G. Hanson said it is still tight. Right now the truck is less than three feet from the privy. The privy is not visible where it sits.

Ezell said that according to Heather Cunningham's recommendation the camper trailer could be parked in the back lot.

B. Hanson said she cannot vacuum or anything because there is no electricity in the back lot. She said it cannot go behind the garage because that is where the leeching field sits.

Torma asked how wide Brower Drive is.

G. Hanson said it is 35 feet with a 33 feet easement.

Ezell asked how far back the privy is currently.

G. Hanson said it is about 100 feet from the road and about 5 feet from the side lot line.

Ezell asked if there was anyone in the audience either neutral or supportive of the request. There was no comment. He then asked if there was anyone opposed to the request. There was no comment.

Ezell asked if they understood and agreed to the seven conditions listed in the development review.

G. Hanson said yes. His biggest concern is doing the compliance inspection. He does not see that it would pass.

b) **Variance Request #316019 – Kylie Williamson and Alicia Nelson**

Kylie Williamson and Alicia Nelson of 1030 Dennis Street South, Maplewood, MN 55119 have requested a variance to construct a deck on a nonconforming dwelling and construct a nonconforming shed on a nonconforming lot. The dwelling and shed are nonconforming as they do not meet the required setback from a road right-of-way (ROW). The lot is nonconforming as it does not meet the lot width or lot area requirements. The property is described as Lot 24 and Part of Lot 25, Block 2, Torch Light Lake Cabin Sites, Section 8, Township 48 North, Range 18 West in Sawyer Township. The property address is 2320 White Pine Lane (PIN 98-220-0820).

Kylie Williamson and Alicia Nelson were present to speak on their own behalf. Williamson said that she had a correction. The property address is 1610 South Loon Lane. Williamson said that their cabin does not have lake access. They share the park with everyone else on Torchlight Lake Cabin Sites. They have an existing deck roughly seven feet by eight feet. They have a grill on it and there are stairs, but it is not big enough. They want to add a deck on the left side so they have more space to sit, grill, and enjoy the view of the lake. The shed will be in approximately in the same place of the previous shed. They have been dragging their lawnmower, kayaks, garden tools, paddle board and other things from under the cabin crawl space, and they would like a 10 feet by 12 feet shed for storage.

Ezell asked if they would be willing to downsize the deck to stay out of the road right-of-way.

Williamson said she understands the concern and talked about moving the deck out of the right-of-way or making it smaller.

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

Manninen asked if the road was a private drive or township road.

K. Williamson said it was private and maintained by property owners.

Ezell read Heather Cunningham's Development Review #316019 dated August 8, 2016. Ezell asked if she understood and accepted those six conditions listed in the development review.

KW said yes, she does.

Ezell asked if there was anyone in the audience supportive or neutral of the request. There was no public comment.

Jerod Clampitt of 1602 Graham Lake Road, Holyoke, MN 55749 asked why the county has jurisdiction on a private road.

Ezell said it is still platted and they must meet setbacks.

Ezell asked if there was anyone in the audience neutral or against the request. There was no public comment.

c) **Variance Request #316020 – Norbert Wollack**

Norbert Wollack of 1245 Mingus Road, PO Box 210, Cromwell, MN 55726 has requested a variance to replace a roof and foundation on a nonconforming dwelling. The request also includes constructing an addition on the nonconforming dwelling. The dwelling is considered nonconforming as it does not meet the side yard and road right-of-way (ROW) setback. The property is located in Lot 5, Block 1 of the Green Hills Addition in Section 34, Township 49 North, Range 20 West on Island Lake in the City of Cromwell. The property address is 1245 Mingus Road (PIN 17-090-0100).

Norbert Wollack was present to speak on his own behalf. Water seeps into the east side of the cabin. There is a need to change the grade level to alleviate this issue. He wants to build a bathroom addition to add a full tub, washer, drier, and hot water tank. This addition would expand the entire back bathroom 2' out and 8' across making the side wall flush with the existing cabin. Part of the proposal is to change the roof line. He wants to raise the wall up to 8' and add a gabled roof with valleys. The cabin will remain in the same location. Wollack provided a new sketch during the public hearing to amend the roof pitch. Mike Torma and the Board of Adjustment members did not indicate objection to the amended request.

Ezell said this will be 28 feet from the road (ROW).

Wollack said it will be 37 feet from the road centerline.

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

Ezell read Heather Cunningham's Development Review #316020 dated August 8, 2016. Ezell asked if he understood and accepted those four conditions listed in the development review.

Wollack said that he did.

Ezell asked if there was anyone in the audience neutral or in support of this variance.

Marshall Johnson of 709 28th Street, Cloquet, MN 55720 said he supports this request. He is five cabins away from Mr. Wollack.

Ezell asked if there was anyone in the audience against this variance. There was no audience comment.

d) **Variance Request #316021 – Jerod Clampitt**

Jerod Clampitt of 1602 Graham Lake Road, Holyoke, MN 55749 has requested a variance to replace roof trusses and deck on a nonconforming water oriented accessory structure (WOAS), replace roof trusses on a nonconforming dwelling (rear yard setback), and replace an accessory structure all on a nonconforming lot. The lot is nonconforming because it does not meet lot width or lot area requirements. The request includes two years to complete the project. The property is described as Part of Lot 6, County Auditor's Subdivision #33, Section 23, Township 46 North, Range 17 West on Graham Lake in Clear Creek Township. The property address is 1602 Graham Lake Road (PIN 86-050-0125).

Jerod Clampitt was present to speak on his own behalf. He purchased property next to him and is in the process of getting the lots combined. The boathouse is in lousy shape and he wants to upgrade it and add a deck on top. There is a steep slope at the boathouse so the roof at least needs rails so the kids don't fall

off. He spoke to Heather Cunningham in the Zoning Office. If he removed the lake side support posts and overhang, his request should be fine. The house has 7 feet ceilings and he would like to have 9 feet ceilings and redo the roof. The metal shed in back was hit by a tree so his plan is to remove the current shed and build a bigger one. The property was bought as a foreclosure this spring. Because he works long hours he would like two years to complete his projects. He would also like to have the two lots, when combined, considered a buildable lot.

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

Ezell read Heather Cunningham's Development Review #316021 dated August 8, 2016. Ezell asked if he understood and accepted those six conditions listed in the development review.

Clampitt said yes.

Ezell asked if there was anyone in the audience neutral or in support of the request. He then asked if there was anyone opposed. There was no public comment.

(10) The public hearing closed at 8:29 p.m.

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

Variance Request #316016 Gordon Hanson Motion by Eskuri, seconded by Manninen and carried to **GRANT** Variance #316016 and include those seven conditions listed in Administrator Cunningham's Development Review dated August 8, 2016.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. It appears reasonable to replace the roof on the nonconforming dwelling to accommodate insulation. The structure is located within the shore impact zone (50% of the building setback). Expansion in the shore impact zone should be discouraged and therefore an attached deck should not be permitted. The gazebo/deck should serve this purpose. The applicant should consider other locations for the privy that would meet the side yard setback such as behind the garage. It doesn't seem reasonable to allow variance from the side yard setback to accommodate the storage of a recreational vehicle. The recreational vehicle could be stored on the non-riparian property. The privy is in the viewshed of the adjacent property with no screening. It appears reasonable to allow the two lots together to be considered one buildable lot.*

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 creation and development of the lots prior to any official controls. This office does not feel there is a practical difficulty with respect to the privy not meeting the side yard line setback.*

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. Most of the lots in this plat are substandard and most dwellings do not meet 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 practical difficulty appears to be the creation and development of a substandard lot.*

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 within the 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 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 shoreland mitigation plan should address this issue.*

The applicant should address the after-the-fact findings of fact to the satisfaction of the Board of Adjustment:

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 necessary.*

2. Did the applicant attempt to comply with the law by obtaining permits? *No. The owner was not aware of the requirement.*

3. Did the applicant obtain a permit from another entity that violated the law? *No. The owner was not aware of the requirement.*

4. Did the applicant make a substantial improvement to the property? *No. The improvements were not substantial.*

5. Did the applicant complete repairs, construction before the applicant was informed of the impropriety? *Yes. The owner was not aware of permit requirements.*

6. Is the nature of the property residential/recreational and not commercial? *Yes. The property is residential.*

7. Are there similar structures in place? *No. We are unaware of any.*

8. Would the benefits to the public be outweighed by the detriments to the applicant if regulations were enforced? *No. There would be no impact.*

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 two years 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 August 16, 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.
7. The subsurface sewage treatment system compliance inspection must be completed and submitted to this office before November 1, 2016. This includes both the existing pit privy and subsurface sewage treatment system.

Variance Request #316019 – Kylie Williamson and Alicia Nelson Motion by Manninen, seconded by Eskuri and carried by all yeas votes to **GRANT** Variance #316019 and include those six conditions listed in Administrator Cunningham's Development Review dated August 8, 2016.

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. The applicants have reasonable use of property with respect to the deck. There is an existing 7 feet by 8 feet deck located on the east side of the property. If the applicants want to increase the amount of deck space, the deck should be expanded outside of the platted road right-of-way (ROW). The zoning office cannot support expansion or construction of structures within the platted road ROW. The zoning office recommends revising the request to move the deck back or shorten it by at least three feet.*

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 it is a substandard lot which was platted and developed before official controls.*

3. If the variance is granted, it will not alter the essential character of the locality? *Yes. As proposed, the granting of the variance could alter the essential character of the locality. Most of the structures are located within the platted road ROW of Loon Lane but the zoning office has denied other requests to expand structures within the road ROW of Loon Lane. Further expansion of an exceptionally non-conforming dwelling on a non-conforming lot does not appear to be consistent with neighboring properties or the character of the neighborhood. Further expansion does not appear consistent with the intent of Carlton County Zoning Ordinance #27, Article 1, Section 3, which states that development should consider safety issues and should lessen congestion in the public ROW. The zoning office recommends revising the request to move the deck back or shorten it by at least three feet to adhere to the character of the locality.*

4. Does the practical difficulty involve more than economic considerations? *Yes. It does not appear that economic considerations alone constitute the practical difficulty for the property. The practical difficulties for this property appear to be that it is a substandard lot that was platted and developed before official 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 request is not for a use that is not permitted 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. As proposed, the terms of the variance could be in conflict with the Carlton County Community-Based Comprehensive Plan, which promotes setbacks from roadways as a public safety and maintenance issue. Further expansion does not appear consistent with the intent of Carlton*

County Zoning Ordinance #27, Article 1, Section 3, which states that development should consider safety issues and should lessen congestion in the public ROW. The zoning office recommends revising the request to move the deck back or shorten it by at least three feet to adhere to the intent of the plan and ordinance.

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 deck shall not be constructed in the platted road right-of-way of Loon Lane.
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 #316020 – Norbert Wollak Motion by Eskuri, seconded by Manninen and carried by all yeas votes to **GRANT** Variance #316020 with amended roof pitch and include those four conditions listed in Administrator Cunningham's Development Review dated August 8, 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 existing cabin is 672 square feet. The applicant is requesting an additional 66 square feet.*
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 creation of the plat and development of the property before official zoning controls were 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. It appears that several of the surrounding properties have dwellings and accessory structures that do not meet the side yard setback and setback to the platted road right-of-way.*
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 would like to add living space.*

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 within the City of Cromwell or Carlton County Zoning Ordinance #27.*

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. The dwelling will meet the setback to the ordinary high water level for a sewer structure.*

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.

Variance Request #316021 – Jerod Clampitt Motion by Manninen, seconded by Eskuri and carried by all yeas votes to **GRANT** Variance #316021 and include those six conditions listed in Administrator Cunningham's Development Review dated March 10, 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 WOAS has been in this location since prior to official controls. Regardless if the deck was previously located on the WOAS, the shoreline is fairly steep and allowing a deck on the WOAS is a reasonable solution to excavation and leveling the shoreline. However, this office recommends that the covered roof portion of the WOAS with piers is not replaced. The zoning office does not support a setback of 1.5 feet to the OHWL when a reasonable alternative exists. It is also a reasonable request to replace roof trusses and replace an existing shed.*

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 creation and development of the lots prior to any official controls.*

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 neighborhood with respect to the dwelling request. Many of the lots along the north side of the lake do not meet lot width or area requirements. Most of the structures along Graham Lake Road do not meet setback requirements. This office does not support a setback of 1.5 feet to the OHWL of Graham Lake for the WOAS. This would be out of character for the neighborhood.*

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 practical difficulty appears to be the creation and development of a substandard lot.*

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 within the 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 Carlton County Community-Based Comprehensive Plan encourages preserving and restoring native vegetation along shorelines. As such, the zoning office does not support replacing the covered roof portion of the WOAS.*

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 WOAS shall not exceed 19 feet by 12 feet and shall not be constructed with the 6 feet by 12 feet covered roof with piers.

5. The property is considered buildable in the future without a variance as long as setback and septic system requirements met.

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 Manninen, and supported by all yea votes to close the Board of Adjustment meeting at 8:45 p.m.

Respectfully submitted,

Bonita L. Peterson
Recording Secretary