

Draft
MINUTES OF THE CARLTON COUNTY BOARD
OF ADJUSTMENT MEETING
August 18, 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, Zoning Representative Mike Torma, and Recording Secretary Bonita Peterson.

Member Absent: Thomas Skare (alternate).
- (3) Motion by Eskuri, seconded by Johnson, and carried to approve the July 21, 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 30, 2015, and published in the Star Gazette on August 6, 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 #315011 – John Humphreys**

John Humphreys of 209 Martha Street North, Stillwater, MN 55082 has requested a variance to construct an addition (screen porch) onto an existing nonconforming dwelling. The dwelling is considered nonconforming as it does not meet the required 100 feet setback from the ordinary high water level (OHWL) of King Creek. The property is located in Part of the Southwest ¼ of the Southwest ¼ in Section 18, Township 47 North, Range 18 West in Mahtowa Township on King Creek. The property address is 3086 MT Nelson Road (60-040-3280).

John Humphreys was present to speak on his own behalf. He is planning to put an addition on the north end of the existing building which is on the opposite side from the creek. This is so they can enjoy the property and get away from bugs. The addition will be an eight feet by sixteen feet (8' x 16') open porch with a roof. The closest corner is eighty-six and one half feet (86½') from the creek.

Johnson asked if this setback is from the current building.

Humphreys said this distance is from the southwest corner of the existing building.

Johnson asked what the closest distance to the creek was from the proposed porch.

Humphreys said it would be just under one hundred feet (100').

Johnson asked about the length of the building.

Humphrey said sixteen feet by thirty-two feet (16' x 32').

Mrs. Humphrey said from the audience the current building is sixteen by twenty-four feet (16' x 24').

Ezell said they are proposing to build a privy.

Humphrey said yes. The privy will be about fifty feet (50') to the north of the existing structure and about one hundred fifty feet (150') from the creek.

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

Humphrey commented that the property is very secluded. There is no electricity. You cannot see the creek from the structure. Humphrey said he bought the property in January.

Ezell questioned if he has been in contact with Karola Dalen regarding vegetation and shoreline maintenance.

Humphrey said yes that twenty-five feet (25') on each side of creek has natural habitat.

Ezell read Heather Cunningham's Development Review #315011 dated August 10, 2015.

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

Humphreys said yes.

Ezell asked if there were questions from the Board.

Ezell asked if there were comments from the audience or people in support or neutral of the variance. Mrs. Humphreys said she supported the request.

Ezell asked if there was anyone opposed to this request.

b) **Variance Request #315012 – Ron Johnson**

Ron Johnson of 1202 Summit Avenue, Cloquet, MN 55720 has requested a variance to exceed the density standard on a nonconforming shoreland lot. The request includes allowing two camping trailers as permanent dwellings along with an existing dwelling. The lot is considered nonconforming because it does not meet lot width requirements. The request also includes considering the lot buildable in the future as long as all applicable setbacks and sewage treatment

requirements are met. The property is located in Part of Government Lot 1 in Section 21, Township 49 North, Range 18 West in Perch Lake Township on Big Lake. The property address is 872 Wolner Drive (92-010-3690 and 92-010-3700).

Ronald Johnson was present to speak in his own behalf. His wife, daughter, and he purchased the property last year. Their idea was to place their campers on the property for now. There is an existing twenty feet by twenty feet (20' x 20') cabin that does not have enough room for both families. They have two eight feet by thirty-eight feet (8' x 38') campers, one on each side of the property, situated one-hundred feet (100') from the ordinary high water level. Aardvark Septic Pumping pumps the campers every two weeks. There is also a holding tank on the property that is pumped once a year and they are aware that this tank will not pass a sewer inspection. They are hoping that the new sewer line will go around Big Lake next year. Their desire is to have the campers on the lot until they can add on to the existing cabin or build a new one.

P. Johnson said it shows on the drawing that the campers are eight feet by thirty-eight feet (8' x 38'). Does this include slide outs?

R. Johnson said no, there are three slide outs on each camper that go out. There are two on one side and one on another on each camper.

P. Johnson said that the campers could be eight feet by forty-two feet (8' x 42') with slide outs.

R. Johnson said yes and then said the slide outs do not go lengthwise; they go out sideways [12' x 38'].

P. Johnson said on the original diagram there is a picture of the property. At the time of this diagram there were three campers on the land.

R. Johnson said at that time his sister and husband stayed there for a couple of weeks, and then they moved to the campground.

P. Johnson asked if R. Johnson was charging rent.

R. Johnson said that they are not charging rent.

P. Johnson said that at one time last summer there were four campers out there.

R. Johnson said there may have been this many over a weekend.

P. Johnson said so they will limit the campers out there to just these two.

R. Johnson said yes.

P. Johnson had a question about the drawing. He said the lot width showed 120 feet and the county website showed it being 110 feet.

R. Johnson said he thought it was 110 feet but the county told him it was 120 feet.

P. Johnson said he lives five houses from this property and he has a plot map of this site. His map from 2006 says the property width is 110 feet. He is very familiar with the footage of these parcels and knew it was not 120 feet. He asked who R. Johnson spoke to at the county.

R. Johnson said it was either Heather Cunningham or the gal at the front counter.

P. Johnson said it was not the Auditor's Office.

R. Johnson said it was the Zoning Office.

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

Ezell asked if there were questions.

Ezell read Heather Cunningham's Development Review #315012 dated August 10, 2015.

Ezell asked if R. Johnson understood the conditions.

R. Johnson said he did.

Ezell asked if there is a contingency plan if the sewer does not go through.

R. Johnson said it would be back to the drawing board.

Ezell said it would change the game quite a bit.

R. Johnson said it would.

P. Johnson commented to Torma that he did not know where the lot size numbers came from but they are not correct. P. Johnson said he does not have 143 feet on his own property; he has 135 feet. His guess is that if the shoreline is measured it might be 143 feet. It may also be the case for this property and Cunningham is using these numbers to figure out the square footage of the property.

Ezell read five letters sent to the Board of Adjustment.

Ezell asked if there was anyone neutral or in support of this request.

Guy Wefelmeyer of 878 Wolner Drive, Cloquet, MN 55720 spoke in support of this request. He said that these neighbors have been nothing but cordial. His kids like to go over and play. There have been times when there have been five to twelve vehicles in his own driveway for birthday parties and when family comes over. He lives there year round and has no problem with the request.

Ezell asked if there was anyone opposed to request.

c) **Variance Request #315014 – Wade Oman**

Wade Oman of 18038 Kindred Court, Lakeville, MN 55044 has requested a variance to replace a foundation and allow an after-the-fact deck addition onto an existing nonconforming dwelling. The application indicates the lot is nonconforming due to lot width requirements. The dwelling is considered nonconforming as it does not meet the 100 feet setback from the ordinary high water level (OHWL) of Eagle Lake. The property is located in Part of Lot 8 of Northland Beach Plat in Section 18, Township 48 North, Range 20 West in Eagle Township on Eagle Lake. The property address is 6037 Eagle Lake Road (PIN 90-180-0165).

Wade Oman was present to speak on his own behalf. The cabin was built in the 1950s. The foundation underneath has failed and is starting to cave in. They would like to lift the cabin, replace the foundation, put in drain tile, and basically add sound structure without changing the foot print or location. There was a deck built in the 1960s or 1970s that came out ten feet (10'). His father added on to it at one time, and Oman felt it was old and no longer safe. He rebuilt and extended the deck across the front of the cabin about five years ago.

Johnson said Oman referred to the deck as all the way across the cabin. Is it all the way in front? It is hard to tell from the picture.

Oman said it does not go across the front of the whole cabin. There is a door where the deck starts approximately twelve feet from the corner of the house.

Johnson asked for the original size of the deck.

Oman said it was approximately ten feet by 12 feet (10' x 12').

Johnson asked about the type of footings or base they plan for the piers.

Oman said they were dug four feet (4') deep by sixteen inches (16") round and filled with concrete.

Johnson said the plan is to leave them there and add drain tiles. What is moving?

Oman said they will move the cabin and the existing concrete will be taken out. When the cabin was originally built it was only down about a foot, so the cabin shifts quite a bit in the winter with the freeze and thaw. He keeps the cabin heated in the winter but it really does not help. The contractor will go down about five feet to get under the frost line and keep this from happening, and the drain tiles will be added. Existing footings will be removed and replaced with concrete. The cabin will be removed and set towards the lake while the work is being done, and then it will be placed back in the same spot.

Ezell asked if there were questions.

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

Ezell asked if there were questions.

Ezell read Heather Cunningham's Development Review #315014 dated August 10, 2015.

Ezell asked if Oman understood the conditions.

Oman said he did.

Ezell read the after-the-fact part of the Findings of Fact. He then asked Oman to explain why the deck was built without a permit.

Oman said he was updating the deck. He did not think he was doing anything out of the ordinary except updating something that was already in existence. He thought pulling a permit was if they hired the work out so the County could make sure the work was compliant. He did not think he needed a permit for the cabin foundation until the subcontractor told him otherwise.

Ezell asked if there were questions from the Board.

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

Oman said the sewer inspection failed. He is putting together a plan for the sewer. Dave Hurst said he would have until September 1, 2016, to get the work done.

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

(10) The public hearing closed at 8:05 p.m.

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

Variance Request #315011 – John Humphreys Motion by Eskuri, seconded by Johnson and carried by all yeas votes to **GRANT** Variance #315011 and to include those six conditions listed in Administrator Cunningham's Development Review dated August 10, 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 applicant is requesting a reasonable use of the property with the addition of a screen porch. There are no other decks attached to the structure.*

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 issuing of an after-the-fact zoning permit for the dwelling in 1987. The applicant purchased the property in January of 2015 and was unaware of the zoning issues.*

3. If the variance is granted, it will not alter the essential character of the locality? *Yes. The property is fairly isolated, so granting the variance should not alter the character of the neighborhood.*

4. Does the practical difficulty involve more than economic considerations? *Yes. The applicant would like to add on a screen porch. It does not appear economic considerations constitute the practical difficulty for reasonable use of the 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. A seasonal dwelling is a permitted use in the A-2 Zoning District.*

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 property is well vegetated along shorelines which is consistent with the 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 vegetated buffer shall be maintained as indicated in the approved shoreland mitigation plan.

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 #315012 – Ron Johnson Phil Johnson excused himself from voting due to a conflict of interest. Motion by Eskuri, seconded by Ezell and carried to **GRANT** Variance #315012 and include those ten conditions listed in Administrator Cunningham's Development Review dated August 10, 2015, and add eleven and twelve for a total of twelve conditions.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. With the addition of the two camping trailers, the square footage of dwelling space for the subject property is 1,008 sq. ft. which seems reasonable.*
2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. The existing cabin is 400 sq. ft. and too small for the applicant's property.*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. The average square footage of structures for the locality is 2,029 and percentage of lot coverage is 3%. The applicant is proposing 1,339 sq. ft. of structure and 2% of lot coverage.*
4. Does the practical difficulty involve more than economic considerations? *Yes. It does not appear that economic considerations constitute the practical difficulty. The applicant would like to keep his two camping trailers on the property permanently and connect to municipal sewer.*
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 applicant is proposing to use the property as a seasonal residence as allowed in an R-1 Zoning District.*
6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. It does not appear to be in conflict with the Plan. Applicants have agreed to plant a thirty-seven and a half foot (37' 6") buffer along the shoreline and divert stormwater from the lake.*

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 setbacks, lot coverage and septic requirements are met.
6. The variance is to allow two camping trailers on the subject property, along with the existing cabin. A variance to exceed density standards shall be required if the applicant or future property owners request a second permanent dwelling on the subject property and

remove the camping trailers.

7. The applicant shall institute the mitigation practices by September 1, 2016.
8. No parking shall be allowed within the right-of-way of Wolner Drive for the property owner or guest of the property owner.
9. The property shall be limited to the current dock layout, which includes two docks and swimming platform. No additional docks may be added.
10. If the applicant fails to meet the conditions set forth by the Board of Adjustment, the Board of Adjustment may revoke the variance.
11. Trailer number shall be limited to two (2), and size shall be limited to eight feet by thirty-eight feet (8' x 38') excluding slide outs.
12. Within two (2) years of sewer completion, both trailers shall be removed and a permanent dwelling constructed.

Variance Request #315014 – Wade Oman Motion by Johnson, seconded by Eskuri and carried by all yeas votes to **GRANT** Variance #315014 and include those six conditions listed in Administrator Cunningham's Development Review dated August 10, 2015, plus one additional condition for a total of seven conditions.

Findings of Fact

1. Is the property owner proposing to use the property in a reasonable manner not permitted by this Ordinance? *Yes. The use of the property as a cabin predates official zoning controls. The applicant would like to repair a foundation and retain the deck.*
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 dwelling 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 variance will not alter the essential character of the locality. Development in this plat is typically conducted on non-conforming lots with structures not meeting the setback to the ordinary high water level.*
4. Does the practical difficulty involve more than economic considerations? *Yes. Economic considerations do not constitute the practical difficulty. The applicants would like to repair a foundation and retain the deck.*
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. Seasonal residences are a permitted use within the A-2 Zoning District.*

6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. The Plan encourages preserving and restoring native vegetation along shorelines which will be addressed in the Shoreline Mitigation Plan.*

If the variance is after-the-fact, the Board of Adjustment should consider the additional following factors:

1. Why did the applicant fail to obtain a variance and did the applicant act in good faith? *Yes. The applicant did not understand a permit was required.*
2. Did the applicant attempt to comply with the law by obtaining permits? *Yes. The applicant complied after-the-fact when he understood it was needed.*
3. Did the applicant obtain a permit from another entity that violated the law? *No.*
4. Did the applicant make a substantial improvement to the property? *No.*
5. Did the applicant complete repairs, construction before the applicant was informed of the impropriety? *Yes. The applicant completed work before learning a permit was needed.*
6. Is the nature of the property residential/recreational and not commercial? *Yes.*
7. Are there similar structures in place? *Yes. Neighboring properties are similar.*
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 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 institute the mitigation practices by September 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.

7. The Subsurface Sewage Treatment System shall be replaced by September 1, 2016.

12) Other Business - none

(13) A motion was made by Johnson, seconded by Eskuri, and supported by all yea votes to close the Board of Adjustment meeting at 8:32 p.m.

Respectfully submitted,

Bonita L. Peterson
Recording Secretary