

Draft
MINUTES OF THE CARLTON COUNTY BOARD
OF ADJUSTMENT MEETING
October 20, 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), Zoning Representative Mike Torma, and Recording Secretary Bonita Peterson.
- (3) Motion by Johnson, seconded by Eskuri, and carried to approve the September 15, 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 October 1, 2015, and published in the Star Gazette on October 8, 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 #315019 Kent Grandlienard**

Kent Grandlienard of 4477 Northbrook Boulevard, Stillwater, MN 55082 has requested a variance to allow an after-the-fact nonconforming dwelling. The dwelling is considered nonconforming as it does not meet the required 35 feet setback from an access easement right-of-way. The property is described as Part of the Southeast ¼ of the Southeast ¼ in Section 27, Township 46 North, Range 18 West in Moose Lake Township. The property address is 4651 County Road 11 (PIN 63-010-0480).

Kent Grandlienard applied for a fire number because the property did not have one. The request started this process. When the property was purchased, the trailer was already there and on blocks. He thought the side setbacks had been met. He said he was told there were no building permits or inspections necessary and he did not have to follow state building codes. The property was used mainly for grouse hunting and occasionally used as a base camp for deer hunting. It was used five to ten times a year by him, his son, and a friend. A green steel roof was put over the trailer to keep the snow off because he noticed most trailers in the area were covered by a blue tarp. A porch on the side was added the following year. They started to pay tax on the addition the year after that. He did not know there was a problem until he applied for the fire (E-911) number. He received a violation letter from Mike Torma saying the building was too close to the easement and that he built without a permit. An easement is clearly listed on

the south side of their property in the plat and also on his 2008 property tax statement. The north side easement was not indicated on either document. He did not pay attention to the easement on the north side of the property but he knew there are two adjoining property owners and there are no structures on either properties. He knew the owners went through there, but he has ¼ mile of road frontage so he did not care about the easement part of it. Then Mr. Torma told him he had to be 35 feet away from the easement.

Johnson asked for clarification if the assessor assessed him on the new structure.

Grandlienard said he was paying taxes on the trailer and then was reassessed the year after he put on the porch.

Johnson said Grandlienard mentioned someone told him he did not need a permit and a couple of other things.

Grandlienard said he called Moose Lake Township when he initially bought the property. He was told they have no building inspector. Grandlienard said he planned to put a roof over the trailer to keep the snow away from it and got carried away when he added the porch and then added the steel walls.

Skare asked if the deed showed the easements.

Grandlienard said the deed shows the easements but the property tax statement did not. He thinks this has been corrected after conversations Mr. Torma had with that office. When he purchased the property he could see the easement to the south between him and Doug Johnson, but there was nothing indicated to the north. He didn't pay much attention to it because he knew he had road frontage on County Road 11 and the trailer sits back about 500 feet from County Road 11. The other neighbors own 120 acres and the one who has owned the property the longest said the easement was a 16 feet cartway. Obviously it is not a 16 feet cartway, it is a 33 feet easement.

Johnson asked if he knew who Grandlienard spoke to at the Township.

Grandlienard could not remember. He just called a township number. He said he also talked to some local people who told him they do not follow the state building code and there is no building inspector. He also said he put the footings for the roof down five feet so is not going to fall down. It is built quite well.

Johnson asked how far he would have to move it if he was forced to do so.

Grandlienard said it would ruin the structure if it had to be moved. The building is approximately 4 ½ feet from the easement so it would have to be moved about 30 feet back.

Grandlienard said the only feasible building site off the easement road is about 50 feet behind the trailer. When he purchased the trailer and property he did not know how much he would use it. He did not want to put a lot of money into it because it is just a hunting property. If he wanted to

put in a more permanent structure, he would put it behind the trailer and outside of the right-of-way. The current trailer would be removed.

Skare asked for clarification if the trailer was there when Grandlienard purchased the property.

Grandlienard said yes, it was all up on blocks with 6 x 6 timbers and cement blocks underneath.

Grandlienard assumed there were side yard setbacks but he was not aware of the easement setback. He looked at the driveway requirements and saw that it did not fit the requirements of a road because it did not serve more than two structures. It is not accessible by the other properties behind him by anything other than ATVs and four wheel drive vehicles due to the road being flooded. According to the driveway rules it is a driveway; according to zoning rules it is an easement road.

Ezell asked if there were any other questions.

Grandlienard asked if the signed letters from property owners was received.

Torma indicated yes.

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

Ezell read Heather Cunningham's Development Review #315019 dated October 12, 2015.

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

Grandlienard said yes he did understand those conditions.

Skare asked about the completion within one year condition.

This is a standard condition even though the work is already completed. If the variance is approved a zoning permit is still required.

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

Peter Ulland of 903 West Willard Street, Stillwater, MN 55082 owns 120 acres west of Grandlienard. He uses the easement to access his land. He has no problem with this request.

There was no one in the audience opposed to this request.

b) **Variance Request #315020 – Mark Henshel**

Mark Henshel of 976 County Road 6, Wrenshall, MN 55797 has requested a variance to subdivide his property without having two sites available for Type I Sewage Treatment System. The property is described as Part of the Northeast ¼ of the Northeast ¼ in Section 29, Township 47 North, Range 16 West in Wrenshall Township. The property address is 944 County Road 6 (PIN 84-020-4610).

Mark Henshel bought a 40 acre farm thirteen years ago. He cleared his fields but has trouble selling hay off it. Farmers have told him there is not enough hay to justify coming over to bale it. He then bought the 40 acres next to him for the field but there is also a house on this property. He fixed the house up and went to put it on the market. The County told him he had to put in a new septic system so there is a brand new mound system in place. Then he went in to subdivide the house from the field and found out he needed a variance to sell the house with 5.4 acres. A neighbor called to ask how many houses he planned to build on this property and Henshel assured him the plan was to sell the current house and keep the field. Henshel said there are two other neighbors okay with this request. Henshel took a house that was basically condemned, had no heat, and is now like new inside. A new owner can live in it and pay taxes on it.

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

Ezell read Heather Cunningham's Development Review #315020 dated October 12, 2015.

Ezell asked Henshel if he understood the four conditions listed in the development review.

Henshel said yes.

There was no one in the audience neutral, in support of, or opposed to the request.

c) **Variance Request #315021 – Thomas Young/James Wackler**

Thomas Young and James Wackler of 1308 7th Avenue, Howard Lake, MN 55349, represented by Paul Wackler of 5549 Jeffery Avenue, Howard Lake, MN 55349, have requested a variance to install a Type II (holding tank) subsurface sewage treatment system (SSTS) on a property with Type I site availability. The property is described as the Northeast ¼ of the Southeast ¼ in Section 23, Township 49 North, Range 20 West in Red Clover Township. The property address is 733 County Road 120 (PIN 96-010-3670).

Paul Wackler said they have had a seasonal cabin for years and finally decided to upgrade. The purpose of the cabin will not change as far as being any more seasonal from the past 50 or 60 years, but they brought in electricity, would like to put in a well so they do not have to haul water, and add a gas stove so they do not freeze their tails off while warming the house by burning wood. With the pressurized water they have to add a sewage treatment system. They talked to the contractor and because they are seasonal, the cabin gets limited use in the winter, and in the summer the use is every other weekend except for the occasional week vacation especially during hunting season, they thought a holding tank would be less maintenance. Wackler is concerned that a mound would freeze up and there would be problems with the system since it is a seasonal place.

Johnson asked if Wackler is one of the owners.

Wackler said he is the son of James Wackler and an uncle to Thomas Young.

Skare asked how many people are involved in the project.

Wackler said there were nine investors.

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

Ezell said it looked like they have contacted someone about contracted pumping.

Wackler said Aardvark is on site now with a portable privy while construction is underway. He talked to them and has a contract in place to pump once a year. If the Board would like a specific date, a good time would be right after deer hunting because that is when the use would pretty much end until spring. The cabin may be used occasionally during the winter depending on the amount of snowfall.

Eskuri asked how big the holding tank would be.

Wackler said they are proposing a 1,650 gallon tank. His contractor said with this size tank a mound system could be added five or ten years down the road by adding a pump and putting the mound in.

Johnson asked Wackler to explain seasonal use.

Wackler said seasonal means very little use in the winter. They would use it in the spring if the snow melt is quick, every other weekend with an occasional week vacation during the summer, and in the fall they use it for bear hunting which is a one week vacation and then again every other weekend for hunting. There is usually someone using it for deer hunting season.

Johnson said that with the number of owners and number of users it is a long season. Can they get by with one pumping?

Wackler said right now three owners are married, working out of state, and plan to come back in five to ten years. They would like to use this as a vacation type place. Three owners are retired and in their sixties and seventies. They want to come up and enjoy the place without a lot of labor involved. The others are in their fifties and want to build a place for the old guys that have kept it going for the past fifty years, and the young people want something nice when they come up here, too.

Ezell read Heather Cunningham's Development Review #315021 dated October 12, 2015.

Ezell asked Wackler if he understood Cunningham's argument.

Wackler said he understood.

Wackler does not understand where the applicant indicated verbally to the Zoning Office that the cost of the mound would be a hindrance to conform to the ordinance. He does not remember

doing that but it could be possible. That being said, the only economic concern would be if the mound failed.

Ezell said he has a lot of friends who have mounds and go south for the winter. They have no problem with their septic systems.

Wackler said no, this is why they are going through the variance process. They want to do it right the first time.

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

Steven M. Jarvi of 2341 County Road 3, Carlton, MN 55718 is in favor of the request. They have been neighbors for thirty plus years. He has had no problems with them, he believes they are sincere, and he has yet to see them up there after the snow flies. They do come up in the spring to check the cabin out and the weeks they spend up there are limited.

There was no one in the audience opposed to the request.

d) **Variance Request #315022 – Stanley Kregel**

Stanley Kregel of PO Box 137, Barnum, MN 55707 has requested a variance to replace a foundation on an existing nonconforming dwelling. The dwelling is considered nonconforming as it does not meet the setback from the ordinary high water level (OHWL) of the Moose Horn River. The request also includes considering Lots 3 and 4 separate buildable lots in the future as long as all applicable setbacks, lot coverage and subsurface sewage treatment system (SSTS) requirements are met. The property is located in Lot 3 and 4, Block 2 of Eagle Ridge Plat in Section 11, Township 46 North, Range 19 West in Barnum Township. The property address is 4073 County Road 138 (PIN 39-100-0110 and 39-100-0120).

Stanley Kregel has a crawl space under his home and he would like to put a concrete block basement underneath it. He is tired of the animals and he is getting too old to keep crawling underneath there for repairs. He does not have a telephone land line or internet because a squirrel chewed through the line. It took two months to get a skunk out of there. He tore the insulation for the floor out three times, and he is done.

Ezell said the nature of the request is to replace a foundation on a nonconforming dwelling because it does not meet the setback from the river.

Kregel said this setback was changed after he bought the property.

Ezell said this request also includes making the existing lots buildable in the future as long as all setbacks and sewage treatment requirements are met.

Ezell said Kregel is not reducing the setback.

Kregel said no. The requirement was 100 feet when he purchased the property and now the setback is 150 feet. He is at 112 feet.

Skare asked about making Lot 3 and Lot 4 buildable lots.

Kregel said he does not have the 150 feet required frontage but he does have enough acreage. Both lots have room for a septic system.

Skare said Kregel's house sits on Lot 4 and Kregel would like Lot 3 to be buildable.

Kregel said this is correct.

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

Ezell read Heather Cunningham's Development Review #315022 dated October 12, 2015.

Ezell asked if Kregel understood the seven conditions listed in the development review.

Kregel said yes.

There was no one in the audience neutral, in favor or opposed to this request.

(10) The public hearing closed at 8:00 p.m.

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

Variance Request #315019 – Kent Grandlienard Motion by Johnson, seconded by Eskuri and carried by all yeas votes to **GRANT** Variance #315019 with the six conditions listed in Administrator Cunningham's Development Review dated October 12, 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 would like a pole building for storage. The applicant would like a seasonal dwelling for hunting and recreation.*
2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *Yes. It appears the practical difficulty is the location of the travel trailer when the applicant purchased the property. The applicant thought the travel trailer was permissible in its present location.*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. There is not much development in the area, so granting the variance should not alter the character of the locality.*
4. Does the practical difficulty involve more than economic considerations? *Yes. The applicant would like to retain the dwelling.*

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 for hunting and recreation.*

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.*

After-the-Fact Findings:

1. Why did the applicant fail to obtain a variance and did the applicant act in good faith? *Yes. The applicant consulted with Moose Lake Township who directed him regarding the construction permits.*

2. Did the applicant attempt to comply with the law by obtaining permits? *Yes. The applicant consulted with Moose Lake Township who directed him regarding the construction permits.*

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? *Yes. Footings were installed for posts of structure. They go down five feet.*

5. Did the applicant complete repairs, construction before the applicant was informed of the impropriety? *Yes. Work was completed before he was made aware that a permit was needed. He did not try to hide improvements when he applied for an E-911 address.*

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

7. Are there similar structures in place? *Yes. There are similar structures in the neighborhood but not next door.*

8. Would the benefits to the public be outweighed by the detriments to the applicant if regulations were enforced? *No. There will be not benefit to the public.*

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. If a second dwelling is permitted on the property, it must meet the setback from the road right-of-way and the subject dwelling shall be removed from the property or permitted and moved to meet the setback from the road right-of-way.
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 #315020 – Mark Henshel Motion by Eskuri, seconded by Johnson and carried to **GRANT** Variance #315020 and include those four conditions listed in Administrator Cunningham's Development Review dated October 12, 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 could be argued that the use is permitted by ordinance as the County allows for Type III systems. In 2014, 65 Type I systems and 48 Type III systems were installed in Carlton County.*
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 soil type (silty clay soil).*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. The request should not change the character of the neighborhood or result in a substantial detriment to neighboring properties. Type III systems, if used properly, treat sewage just as well as a Type I system.*
4. Does the practical difficulty involve more than economic considerations? *Yes. The practical difficulty appears to be the soil type.*
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 is not for a use that is not permitted in an A-2 Zoning District. It is for residential use.*
6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. The terms of the variance would not alter the character of this rural agricultural area.*

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 has not made application for subdivision to the Carlton County Zoning Office within 12 months of granting of variance.
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 #315021 – Thomas Young/James Wackler Motion by Johnson, seconded by Eskuri and carried by all yeas votes to **DENY** Variance #315021.

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 as recreational property is a reasonable use of the property.*
2. Is the practical difficulty unique to the subject property and not created by the property owner or prior property owner? *No. The practical difficulty is not unique to the property.*
3. If the variance is granted, it will not alter the essential character of the locality? *No The request could change the character of the neighborhood as the Zoning Office is concerned with allowing a holding tank when a Type I SSTS could be installed and the site has a well and electricity.*
4. Does the practical difficulty involve more than economic considerations? *No. Rather, economic considerations may constitute the only practical difficulty for the request. The applicants indicated to the Zoning Office that the cost of the mound is a hindrance to conform to the ordinance.*
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 and recreational properties are an allowed use in an 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 Plan when there are appropriate given site conditions.*

Variance Request #315022 – Stanley Kregel Motion by Eskuri, seconded by Johnson and carried by all yeas votes to **GRANT** Variance #315022 and include those seven conditions listed in Administrator Cunningham's Development Review dated October 12, 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. The dwelling and deck were permitted at the present location under a previous ordinance. The applicant would like to repair a foundation. It appears reasonable to allow the two lots to be separate buildable lots.*
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 DNR changed the setback requirements one year after the property was developed. The dwelling complied with the previous rule.*
3. If the variance is granted, it will not alter the essential character of the locality? *Yes. The development in this plat is typically conducted on non-conforming lots with structures not meeting the DNR's 1992 setback to the ordinary high water level.*
4. Does the practical difficulty involve more than economic considerations? *Yes. The applicant would like to repair a foundation.*
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. Single family dwellings are a permitted use.*
6. Are the terms of the variance consistent with the Carlton County Community-Based Comprehensive Plan? *Yes. Shoreland vegetation on both lots has been maintained to the standards listed in the County zoning ordinance consistent with the Carlton County Community-Based Comprehensive Plan which encourages preserving and restoring native vegetation along shorelines.*

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 October 1, 2016.
6. Lots 3 and 4 shall be considered separate buildable lots in the future as long as all applicable setbacks, lot coverage and sewage treatment requirements are met.
7. If the applicant fails to meet the conditions set forth by the Board of Adjustment, the Board of Adjustment may revoke the variance.

(12) Other Business - 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