

Polk County
Board of Adjustment
October 24, 2014

Call to Order: 9:14 A.M.

Members in Attendance: Kerry Winkelmann, Robert Franks, Courtney Pulkrabek, Donovan Wright and Osmund Moe

Members Absent: none

Also Present: Polk County Environmental Services' staff: Josh Holte & Michelle Erdmann.

Minutes: A motion was made by Wright to approve the minutes from the October 3, 2014 meeting. Second by Moe. All in favor.

Public Hearing: Variance

Tony Scheving

Parcel #30.00589.00

Winkelmann read the full notice and turned the meeting over to Holte.

Holte stated the applicant is requesting a variance to construct a new home 70 feet from the ordinary high water mark (OHW) of Maple Lake – the ordinance all for a 100 foot setback from the OHW.

The PCZO 18.2221 states: Placement of structures must be located 100 feet away from the OHW of all Recreational Development Lakes.

The applicant's lot is 1.6 acres located in Maplewood Manor on Maple Lake. The applicant will need to submit a new septic design before any building permit will be issued.

The applicant's stated practical difficulty is that a 70' setback would avoid having to remove a grove of ~25 maturing trees and enable the home to be built without removing any trees. There is also a limited amount of land available for the septic system and well due to a substantial amount of either wetland, low land, or mature trees on the property.

The applicant added more detail of a practical difficulty that exists regarding this variance – a copy will be shown in the slides. The applicant stated that the feasible method to alleviate the need for a variance is to cut down the grove of trees, but it would be challenging to locate a well or septic on the lot.

The development was platted in 2007 and on the plat drawing it showed locations for possible septic system locations and house locations while meeting all setbacks.

Diane Rosenberg, MLID, stated that the MLID has no problem with the request as long as the DNR approves.

Stephanie Klamm, DNR area hydrologist, submitted a letter and stated that the DNR recommends denial of the variance request as economic or design preferences should not be the sole consideration in a variance request. Mr. Scheving may have other options on house placement within the parcels that he owns and still meet the setbacks and have a view of the lake. A complete copy of the letter is on file at the PCZO.

Holte went over slides showing the property and its locations. A complete copy of the DNR letter was also shown and reviewed. Staff is recommending denial of the variance request for the following reasons:

1. Since this development was platted in 2007 with the intention of all houses and septic systems meeting the setback requirements the applicant should abide by the setbacks.
2. The entire lot is pretty heavily wooded and removing the small grove of trees wouldn't have that much of an impact.
3. The DNR has recommended denial of the variance request.

Staff also recommends that whatever decision, make sure to provide detailed answers and provide adequate findings of fact to justify the decision.

Winkelmann asked if there were any questions? Yell stated that it is very common to buy property and they always want to vary from the rules. Winkelmann asked if the trees are removed, will all the setbacks be met? Holte said yes and there would still be wooded area.

Winkelmann stated that he thought when we approved a plat we would not have to meet for something like

this. Wright asked about the wetlands? Scheving said pushing the house back would put the house in a small wetland area found (and indicated) on the plat map. It is not economic issues said Scheving. To him it is common sense to want to square the house up with the lake. Only part of the house would be at the 70' setback the other part is at the 100' setback.

Yell asked how much shoreline is there on this parcel? Scheving said about 181' – according to his sketch. He also said his neighbor Curt Block has no issue with the request.

The Board had no further questions for Mr. Scheving. Holte asked the board the hardship questions.

Question	Pulkrabek	Moe	Franks	Wright	Winkelmann
1.	Yes	Yes	Yes	Yes	Yes
2.	Yes	Yes	Yes	Yes	Yes
3.	No	No	No	No	No
4.	Yes	Yes	Yes	Yes	Yes
5.	Yes	Yes	Yes	Yes	Yes
6.	No	No	No	No	No

7.	No	No	No	No	No
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Holte stated with 20 Yes's and 15 no's the criteria has not been met to grant the variance request.

Winkelmann said a motion still needs to be made.

Moe made a motion to deny the variance request. Second by Pulkrabek. All in favor.

Public Hearing: Variance Ronald Bergman Parcel #74.00415.00

Winkelmann read the notice, waiving the reading of the full legal, and turned the meeting over to Holte.

Holte stated that the applicant has requested a variance to exceed the allowed square footage for an accessory structure on a riparian lot on Maple Lake. The applicant wished to construct a 36' x 40' (1440 sq. ft.) shed addition onto an existing 1760 square foot shed. This would bring the total size of the building to 3200 square feet.

PCZO requirements allows for an 800-1600 sq. ft. accessory structure depending on lot size. Those requirements can be found in Section 18.2225.

The applicant's lot is 75,625 sq. ft.. The lot is not directly on Maple Lake, but is along a bay that is tied to Maple Lake through a culvert. The lot is technically a riparian lot, since the bay is classified as part of Maple Lake according to the DNR. Therefore the same setbacks that apply to Maple Lake apply to this lot.

The applicant currently has a 30' x 52' shed with a 10' x 20' lean on the lot (1760 sq. ft.). The applicant would like to add a 36' x 40' (1440 sq. ft.) addition onto the existing shed. The applicant would need to submit a passing compliance inspection before any building permit could be issued.

The applicant's stated practical difficulty is that he would like additional storage to clean up the site and to store equipment. Normally on a back lot on Maple Lake an applicant would be allowed to have a 2400 sq. ft. structure and no more than 3200 sq. ft. total. Since this lot is along the protected bay, the applicant would need a variance/CUP for any building over 800 sq. ft.. The applicant is requesting to increase the building to 3200 sq. ft..

Diane Rosenberg, MLID, stated that the MLID is against this request because it is getting to be too commercial on the site.

Stephanie Klamm, DNR Area Hydrologist, stated that the DNR recommends denial of the variance request because they do not find that the applicant meets any of the three practical difficulty criteria. A complete copy of her letter is on file with PCPZ.

Holte went over slides showing the property and its location. Reading the majority of the DNR letter. Staff recommends denial of the variance request since this is considered a riparian lot and the DNR recommend denial of the variance request. If the board wished to grant a variance, staff would recommend that the following restrictions and conditions be placed on the variance:

1. The applicant may construct a second accessory structure with a maximum combine accessory structure square footage of 3200 sq. ft. on the property.
2. No individual structure shall be larger than 2400 sq. ft.

Winkelmann stated that this is a tricky situation – technically on a back lot, but DNR sees the bay as part of Maple Lake. Bergman stated that he was surprised it is considered a riparian lot and not a non-riparian lot. He built his house on what he considered a non-riparian lot. He also has concerns for taxes if this is classified as a riparian lot. The bay is basically a swamp as there are not beaches only weeds.

Holte said the basis of the DNR classification dates back to the 1970’s and since it is connected to Maple, it shouldn’t affect taxes. However it is a separate protected water body. If it was a natural environment protected water body the structure setback would be 150’. Bergman said he is out there to try and keep improving things.

After much discussion it was decided to go through the hardship questions. Holte asked the board the hardship questions.

Question	Pulkrabek	Moe	Franks	Wright	Winkelmann
1.	No	Yes	Yes	No	Yes
2.	Yes	Yes	Yes	Yes	Yes
3.	No	No	No	No	Yes
4.	Yes	Yes	Yes	Yes	Yes
5.	No	No	No	No	No
6.	No	No	No	No	No
7.	No	No	No	No	No

Holte stated with 21 No’s and 14 Yes’s the criteria has been met if the Board wishes to grant or deny the variance request.

Winkelmann asked if there was any more discussion or questions.

Pulkrabek made a motion to approve the variance with staff conditions. Winkelmann stated that if we are granting this, we need to look at this as a non-riparian lot (back lot). Holte said we can look at making changes to the ordinance for possible future similar situations.

Pulkrabek then asked if we should table this and make ordinance changes? Holte said changing the ordinance takes some time. Franks stated the Bergman is doing a service for the lake area. Winkelmann asked if we can allow/approve a smaller shed/addition? Holte said if we treat the lot as a riparian lot, he is already over the allowed square footage.

Pulkrabek withdrew his motion so we could discuss conditions and options.

Winkelmann said we need to move forward. Bergman questioned the DNR comment about 2400 sq. ft.. Holte re-read that portion of the DNR letter and it is confusing. Holte stated this is something to look at in the ordinance and that he doesn't have a problem with treating this lot as a backlot to Maple Lake, if that is what the Board wishes. But based on the decision we should look at changes to the ordinance.

Winkelmann stated that the crux is determining if we are viewing it as a back lot or front lot. Holte stated that it is a back lot on Maple Lake but a front lot on Bun Bay.

Diedrich asked if Bergman was willing to compromise? Bergman stated that he wants the property to look nice, but cannot finish the landscaping till this is determined. The new building would create an L-shaped area for parking. He would also like to respect his neighbors wishes and will keep equipment inside. Wright asked if staff recommendations would work for the applicant? Bergman said yes. Winkelmann asked if it will clean up the area? Bergman said yes, he would make sure equipment gets put inside.

Winkelmann said he is leaning towards treating the lot as a back lot, non-riparian. Franks and Moe feel the same way. Winkelmann said that needs to be clarified/defined as a back lot.

A motion was made by Winkelmann to treat this lot as a back lot and thereby recommends approval of the variance request

with staff conditions:

1. The applicant may construct a second accessory structure with a maximum combine accessory structure square footage of 3200 sq. ft. on the property.
2. No individual structure shall be larger than 2400 sq. ft.

Second by Wright. All in favor.

Public Hearing: Variance

James Hutton

Parcel #30.00419.00

Winkelmann read the notice, waiving the reading of the full legal, and turned the meeting over to Holte.

Holte stated the applicant is requesting a variance to 1.) rebuild an accessory structure 5' from property line, 2.) continue to exceed 25% of impervious surface coverage and 3.) exceed the accessory structure size of 800 sq. ft. in order to build a 24' x 30' replacement garage on his property on Maple Lake.

PCZO sections that apply to the request are found in: 18.2212, 18.2225 and 12.4110.

The property is approximately 28,360 square feet. The applicant also has a back lot that is 31,508 square feet in size. The front lot is 120' wide. The applicant currently has a 40' x 60' accessory structure on his back lot. The proposed garage would be 24' x 30' (720 sq. ft.). The applicant also currently has a 350 sq. ft. boathouse with 266 sq. ft. deck.

The applicant plans to replace a 22' x 31' (682 sq. ft.) garage on the same foundation. The applicant would remove the existing 254 sq. ft. shed and the 96 sq. ft. shed on the property. The proposed garage would be located on the same foundation 5 feet from the property line.

The applicant's septic system is pumped to his back lot. A compliance inspection would need to be completed before any permit could be approved.

The applicant has a large portion of his lot in concrete and asphalt pavement. Currently the applicant has about 4,869 sq. ft. of buildings and 5,160 sq. ft. of concrete and pavement on his lot, for a total impervious surface coverage on the lot of over 35%. The Ordinance only allows for 25% impervious coverage on a lot.

By removing the two small sheds, the owner is proposed to be at 9,707 sq. ft. or 34.4% impervious surface coverage on the lot. The applicant's stated practical difficulty is because of the additional cost of cement to move the structure to the 10' setback. The applicant added that the previous owner placed the garage that close to the property line and this location provides the best location for all their yard tools and equipment.

Diane Rosenberg, MLID, commented that the MLID board does not have a problem with the request for a variance, but looking at the aerial photo there could be boundary problems.

Stephanie Klamm, DNR Area Hydrologist, stated that the DNR recommends denial of the variance request because the applicant doesn't meet any of the three practical difficulty criteria. A complete copy of the letter is on file with PCPZ.

Holte went over the slides showing the property and its location. He also showed the DNR letter and read a portion of it. Staff recommends denial of the variance request for the following reasons:

- 1) Staff feels that there is no practical difficulty to moving a new garage to meet the 10' setback.
- 2) Staff feels that the impervious surface coverage on the lot is too high and the reason to have the 25% requirement is to adequately manage storm water runoff and sediments entering the lake. The applicant should work on lowering the impervious surface coverage on the lot.
- 3) The applicant has an existing 26' x 26' attached garage on the property and a 40' x 60' storage shed on the back lot. Staff feels that the applicant should abide by the 800 sq. requirement on the front lot.
- 4) The DNR recommended denial of the variance request.

If the Board wishes to grant this variance request staff recommends that the following changes and conditions below be placed on the variance:

- 1) The maximum size of the new garage will be limited to 650 sq. ft. (With the applicant’s lot being around 28,360 sq. ft. the applicant would be allowed a maximum of two accessory structures on the lot with a maximum size of 1000 sq. ft. through a CUP.)
- 2) The applicant must meet the 10’ property line setback and plant a vegetative buffer of at least 10’ between his east property line and the new garage.
- 3) The applicant must remove the two small storage sheds on the property.
- 4) No more than 32% of the lot shall be developed with impervious surface coverage. (Some pavement may need to be removed to meet this requirement)
- 5) The applicant/owner cannot add to the impervious surface coverage of the lot in the future without first obtaining a variance. (This shall include sidewalks, patios, pavers, etc.)
- 6) The above conditions must be satisfied by 10/24/2016.

Winkelmann asked if the applicant was present? Contractor Gary DeBoer was there representing Mr. Hutton as he is out of state. He stated that he was asked to check the old structures and see about constructing a new garage. The old garage is falling down/deteriorating. Mr. Hutton wants to update the garage by removing all three current structures and build a new 2 stall garage.

Yell stated that MLID stopped short of saying NO to the request, but Yell personally feels that Mr. Hutton could put the proposed structure on the back lot.

Holte asked the board the hardship questions.

Question	Pulkrabek	Moe	Franks	Wright	Winkelmann
1.	No	No	No	No	Yes
2.	Yes	Yes	Yes	Yes	Yes
3.	No	No	No	No	No
4.	Yes	Yes	Yes	Yes	Yes
5.	No	No	No	No	No
6.	No	No	No	Yes	Yes
7.	No	No	No	No	No

Holte stated with 22 No’s and 13 Yes’s the criteria has been met if the Board wishes to grant or deny the variance request.

Winkelmann asked what the Board's wishes are? He personally feels that all three should be taken out and new one put on the back lot. That would lower is impervious coverage substantially, even if money is a factor. Thereby I would recommend denial of the request.

DeBoer stated that he is not sure if the owner would like the shed moved to the back lot. He figures the owner would prefer to keep the lawn care stuff close. Holte stated that the applicant could take 3' off the proposed shed, move it 10' off the property line and be at the 1000' sq. ft. accessory structure limit, allowable by a CUP.

Winkelmann stated that he also feels that the property line should be found.

Winkelmann made a motion to deny the variance request. Second by Moe.

Ayes – Winkelmann, Moe, Wright, Franks

Nayes – Pulkrabek

Motion carries.

Meeting Adjourned