

Polk County
Board of Adjustments
October 25, 2013

Call to Order: 9:09 A.M.

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

Members Absent: None

Also Present: County Commissioner Craig Bunes, Travis Brua, Scott Mcfarlin. Polk County Environmental Services' staff: Josh Holte & Jacob Snyder.

Minutes: A motion was made by Moe to approve the minutes from August 23, 2013 meeting. Second by Franks. All in favor.

Public Hearing: Variance Travis Brua Parcel #12.00199.02

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

Holte stated the applicant has requested a variance to reduce the front yard setback off the right-of-way of US Highway 2 to 78 feet. In order to build a 30' x 60' garage (the ordinance calls for a 100 foot setback).

Holte went over the pertinent facts that the property is 4.47 acres and the road right-of-way is 100 feet. The applicants stated practical difficulty due to the property topography. A variance is needed because they are on the top flat part of the hill, and behind the garage the hill slopes off. The garage has already been built 178 feet off the centerline of Highway 2. The applicant requested an application back in June, and I mailed out an application and stated that the garage must be 200 feet from the centerline of Highway 2. The applicants inquired in September about the status of their permit, and the applicants stated they never received the application. I resent the application and original letter sent in June. When the application was submitted I did a site visit and noticed the garage was already constructed and was only 178' from the centerline of Highway 2. Since the setback wasn't met, and they didn't obtain the proper permits before construction, this request is being processed as an after the fact variance, which has a \$1,000 fee.

Holte stated that no comments were made regarding the variance request. (Staff recommends approval of the variance request.)

The Board had no further questions for Travis Brua. Holte asked the board the hardship questions.

Question	Pulkrabek	Moe	Franks	Wright	Winkelmann
1.	Yes	Yes	Yes	Yes	No
2.	No	No	No	No	No
3.	No	No	No	No	No
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 25 No's and 10 Yes's the criteria has been met if the Board wishes to grant the variance.

Pulkrabek asked if the landowners built the structure themselves or had a contractor construct the building.

Travis Brua replied that they built the structure themselves.

A motion was made by Pulkrabek to approve the variance, second by Wright. All in favor. Variance has been approved.

Public Hearing: Variance Scott McFarlin Parcel #30.00450.00 & #30.00449.00

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 allow a non-conforming contiguous lot of record that is under the same ownership as an abutting riparian lot, to be split from its back lot, and sold separately for the purpose of sale or development; with both riparian lots maintaining their lot of record status, thereby being buildable lots.

The applicant owns two non-conforming contiguous lots on Maple Lake. The applicant purchased the lot he is hoping to sell last October from his neighbor. The applicant has his home on the one lot that he wishes to keep. The lot is 75 feet wide and 175 feet long (13,125 sq.ft.). The lot the applicant recently purchased, and wishes to sell is 75 feet wide and 175 feet long (13,125 sq.ft.) on the riparian portion of the lot, but this lot also includes a back lot that is 150 feet wide and 200 feet long (30,000 sq. ft.). This lot has a home on the front lot and a large shed on the back lot portion of the property. The intent of the applicant is to keep his existing lot that has his home on it and sell the front lot portion of his recently acquired lot, while keeping the back lot with the large shed on it. The applicant's stated practical difficulty is that if he had to combine the lots into one parcel, 1) having 2 lake homes, he could not sell the property for \$610,000 versus the \$190,000 it is valued at now. 2) The subdivision was created before the ordinance. 3) Nothing will change on this property. 4) Having all parcels combined, applicant stated he would never be able to sell the property. 5) The applicant stated if he didn't live next door, there would be no questions about

this request. If the variance is approved the applicant would need to submit a passing septic compliance inspection on both lots. This would need to be submitted before any variance permit could be issued.

Polk County Zoning Ordinance 8.2030 states: If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the lot size requirements of this ordinance the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the lot size requirements of this ordinance as much as possible. Polk County Zoning Ordinance 22.3100 All lots shall be created to conform to the standards set forth in the applicable section of the Zoning Ordinance for that Zoning District in which the property is located. Polk County Zoning Ordinance 18.2100 Lot Area and Width Standards. Recreational Development Lake must be 40,000 square feet, 150 foot width to be buildable lot.

Stephanie Klamm, DNR Area Hydrologist made these comments regarding the request via letter:

“In speaking with others in the division the DNR would recommend that denial be submitted on the variance request. The non-conforming lots of record were developed or plotted before the ordinances were adopted and in such they should stay as they were plotted. By granting this variance we are putting more pressure on our lakes for development. We are going to continue to impact our lakes and lands with more impairments, Maple Lake is already impaired for nutrients and as such; more development will not slow down the water quality impairments, but only increase the damage that we are all striving to control.

Mr. McFarlin’s request for a variance from the ordinance should be looked at with extreme scrutiny as allowing a variance to split a non-conforming lot of record could open up many others to change to split of parcels and increase the development on our lakes and thus increase the impacts to water quality and our resources. Mr. McFarlin in my opinion has not demonstrated that this variance of the ordinance is for a practical difficulty. Two homes is not a practical difficulty due to how the property was plotted out, splitting a parcel because you bought it for a shed, is not a practical difficulty due to the lots size or dimensions.

In the Planning and Zoning Ordinance for Polk County under Section 8.2 a Non-conforming lot of record:

8.2010 Lots of record in the office of the county recorder on the date of enactment of official controls that do not meet the lot size requirements of this ordinance may be allowed as building sites without variances from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this ordinance are met.

8.2020 If necessary variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a nonconforming lot. In evaluating the variance, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

8.2030 If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the lot size requirements of this ordinance the lot must be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the lot size requirements of this ordinance as much as possible,

Under the Minnesota State Statutes on zoning provisions 6120.3300 ZONING PROVISIONS Subp. 2b. <https://www.revisor.mn.gov/rules/?id=6120.3300> Mr. McFarlin's parcel 30.00449.00 (front lot/riparian lot) would not meet the RD requirements for square footage of 40,000 to be considered a separate parcel of land for sale or development.

B. Recreational Development, no sewer:

Lot area (square feet)

	<i>Riparian lots</i>	<i>Nonriparian lots</i>	<i>Lot width (feet)</i>
<i>Single</i>	<i>40,000</i>	<i>40,000</i>	<i>150</i>

MS 394.36 NONCONFORMITIES Subd. 5. c) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

- (1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;*
- (2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;*
- (3) impervious surface coverage must not exceed 25 percent of each lot; and*
- (4) development of the lot must be consistent with an adopted comprehensive plan.*

(d) A lot subject to paragraph (c) not meeting the requirements of paragraph (c) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

Just to clarify my comments; as the Area Hydrologist, I would recommend a denial of this variance request of hardship or practical difficulty. Neither the back nor front lot is creating a practical difficulty for the landowner in which he is unable to sell. The state statute and rule would not support such a decision."

Holte explained the Ordinance states contiguous lots means those that are tied together by common parcel ID numbers or are physically touching one another. He added that if you own two or more contiguous lots but those lots do not meet the standards of square footage and width requirements for new lots which are 40,000 sq. ft. and 150' respectively then we treat them as one lot. Holte showed slides of the property and location.

Scott McFarlin stated that this is not an unusual situation to buy and sell back-lots on Maple Lake, it happens all over the lake. He added that he had a list with him of twenty properties that the back-lot is under the same ownership as the front-lot but has been sold off to an independent party. Scott stated the Polk County Ordinance does not say parcel #'s dictate that they be treated as the one lot. Across the lake people are buying and selling back-lots for garages and in many cases their house sits on a 50 foot lot. These are two 75 foot lots and I am being burdened with them having to be treated as one. The property value jumps from being two lots at \$600,000 to \$119,000 if they are treated all as one lot. I just don't see how this is possible.

Holte stated that the DNR sets up the square footage requirements and that the Polk County Ordinance must enforce those standards.

Scott McFarlin asked Josh to look at this example of two 50 foot lots under the same ownership and the individual sold one of the lots. Scott asked Josh if this was legal to do, or should it have been able to be sold?

Holte stated we have no way to track a parcel being sold. Unless they are constructing on the parcels or are reworking the square footage through splits we would not be notified of that sale.

County Commissioner, Craig Bunes added that Scott called him regarding this matter and Rolland Gagner of the Planning Commission made him aware of another issue regarding square footages similar to this issue coming before the board in the following months. We went through this issue with Michelle, a real estate and abstract professional. We found numerous instances where cases like this arise but they are separate parcels and allowed to be sold independently. I just want the County Board to be consistent and fair. This is not a burden put on by Josh, he is just doing his job. I read the section in the Ordinance regarding the Construction on Non-conforming lots of record, but in this case we are not dealing with construction.

Commissioner Bunes added that he called Stephanie with DNR about twenty minutes before the meeting and they are going to be sending a letter to Josh and me stating that they do not oppose this variance request. The Ordinance reads construction on a non-conforming lot and we are not talking about construction in this case. We have a potential issue regarding sub-standard lots. I just want to make sure we are fair, we have the information available to make a fair decision, and we make the right decision.

Holte stated he was recommending denial of the request to allow the back lot to be split from the front lot not denial of selling the newly purchased parcel which would be allowed with the new Minnesota Statute in place.

Commissioner Bunes stated his only issue with the ordinance is that in section 8.2000 it states Construction on Nonconforming Lots of Record and that we make a fair decision.

Winkelmann asked if the new lot would meet the size requirements of the ordinance?

Scott McFarlin added that his front lot touches the back lot he is wishing to split.

Holte stated new Minnesota State Statute allow parcels to remain as two substandard lots if they have existing structures and are serviced by septic systems or public sewer. This would allow Mr. McFarlin to sell the newly acquired parcel to a different owner. The issue in this case is taking away square footage from a substandard parcel by splitting the back lot.

Pulkrabek added that he feels that the DNR should not be worried about a pollution concern on these lots as stated in their letter as they are already developed lots.

Holte responded the goal for substandard parcels is to combine substandard front lots to create one parcel that meets the square footage and width standards in the ordinance.

Winklemann asked if there was a way to get more information about sales that are occurring on Maple Lake and table a decision?

Holte explained that since we don't have a meeting next month than the 60 day rule would be in effect.

Wright asked if we could allow the split to occur and require he add that to his parcel that he has a house on currently?

Scott McFarlin stated that is what he is trying to do, and he isn't trying to reinvent the wheel.

Holte stated the issue is you are changing the square footage of a parcel in the split process making it more substandard in size.

Scott McFarlin stated that in his opinion, non-conforming lots should not have square footage requirements such as new lots do. It is a burden to try and get the required square footage and typically you can't meet the new lot standards for square footage.

Snyder explained a non-conforming lot is still a buildable lot as long as it was created and not altered before the ordinance was set in place. It is deemed as a buildable non-conforming lot. The issue is when you take away square footage from a substandard lot then its buildable non-conforming status is removed as well. If we would allow the split they would be non-buildable sub-standard lots created after the ordinance was in place and that is why there is a variance hearing today.

Winklemann added it is a lawyer thing. It is the practicality vs. legality of parcels and lots.

Scott McFarlin added that when he used to work for the County they would just split it and add it together with property of the same landowners.

Commissioner Bunes added the ordinance reads contiguous lots and not parcels.

Pulkrabek asked if the 20 other sales that Mr. McFarlin has a list of came to your office for approval Josh?

Holte stated that we have just recently been involved in the splitting of parcels process. Approximately five years ago we started to weigh in on parcels being split. If the sales Mr. McFarlin is speaking

of did not require splits then our office would be unaware of them being bought and sold to separate landowners.

Holte drew out an example of parcels that are contiguous and explained the square footage requirements on the whiteboard in the meeting room. He explained that currently you can use square footage of the back lot for building purposes. If you split that bottom portion of the lot you limit what can be done on parcel # 74.00449.00. Holte also reiterated that our office isn't opposed to selling parcel # 74.00449.00 as a whole. The issue is splitting the back lot and reducing the square footage of that parcel.

Scott McFarlin stated his neighbor just sold his backlot in 2008, and stated it would help Zoning issues by giving the back-lot its' own parcel number.

Winkelmann asked if the back-lot could be split in a manner to give both front-lots half of the back lot?

Scott McFarlin stated if its split off from the front lot it actually helps the lake.

Winkelmann asked Scott McFarlin why he purchased the property?

Scott McFarlin stated his neighbor came to him to let him know he was having health issues and going in for surgery soon. He bought the lot as one parcel strictly for the back lot with the garage on it for storage. The young couple I am trying to sell the front lot can't afford to purchase the entire parcel. He added that he is a real estate appraiser.

Winkelmann asked what happens if the septic system fails compliance where are they going to put the new septic system without a back lot. Is there room on the front lot because you can't put a new septic over the old one?

Scott McFarlin stated he would be willing to sell them a portion of the back lot to upgrade the septic.

Winkelmann asked what would happen if you sold your back lot before they needed to upgrade the septic then the whole game changes.

Moe asked if they needed to do septic compliance?

Holte stated he is requesting septic compliance be submitted as a condition if the variance is approved.

Scott McFarlin stated he has no issue with the septic compliance requirements but that it is a timing issue for him. He added he is not going to invest more money in the property he plans to sell.

Pulkrabek asked if we need to see DNRs' new comments before a decision is made? Would the 60 day rule be in effect if the matter was tabled to next month?

Commissioner Bunes stated he just felt it was important to be noted that DNR does not oppose this variance request.

Holte added that since no meeting is scheduled next month the 60 day rule would hinder the decision making process if the matter was tabled to the December hearing.

Winkelmann asked if there was any further questions regarding the variance request?

Holte asked the board how they wanted to handle the issue?

All board members felt it was necessary to treat the variance as one request and consider it to have the front lot split from the back lot.

The Board had no further questions for Scott McFarlin. Holte asked the board the hardship questions.

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

Holte stated with 28 No's and 7 Yes's the criteria has been met if the Board wishes to grant the variance.

Winkelmann wanted to discuss the issue of the septic and well status. Also, if they fail can they be located on the back lot in the future?

Scott McFarlin stated that he has no issue with selling a portion of the backlot for a septic upgrade if needed in the future.

Moe asked if we will need that in writing or is it just something of a promise to do if needed.

Holte responded that it was a recommendation to have a condition, if the variance is approved, to have septic compliance inspections done.

Winkelmann said if we just take Scotts' word regarding the septic upgrades that, if need be, can be located on the back lot, and the property changes hands, then whomever purchases it may not allow them to uphold the agreement.

Scott Mcfarlin stated that where does he locate a new septic if his front lot fails a compliance inspection? He added that he would be willing to sell a portion of the back lot to allow other systems to be installed on the back lot.

Franks asked if Maple Lake Improvement District has any issue with the variance request?

Scott McFarlin stated they don't really have a say in it to deal with issues like this. They just add input to the board about certain issues.

Holte stated that the Maple Lake Improvement District got a notice of the variance but did not comment on the issue.

Scott McFarlin stated no offense to the Maple Lake Improvement District but they are more of a social club.

Franks stated that he has a lake cabin on Island Lake and that variances are first approved by the improvement district and then it goes in front of the County for final approval.

Commissioner Bunes stated that they have Dennis Yell and Rolland Gagner on the Planning Commission and they respectively represent Maple and Union Lakes. He added that Donovan is the board member present today that has a home on Maple Lake.

Winkelmann asked that if you sell your cabin is it a requirement to have the septic system checked? He said he was under the impression that it was a requirement.

Holte stated that it is not yet a Minnesota law to have them checked on the transfer of property, but some Counties are requiring it in their ordinances.

Scott McFarlin asked if he has to have his septic system checked on the parcel his house is located on?

Holte replied that it was his recommendation to have all the septic systems checked on all the parcels to make sure they are compliant. It is a requirement of any permit issued in the shoreland district.

A motion was made by Pulkrabek, without the conditions that staff recommended, to approve the Variance, second by Wright. Holte added that it is normally required to have septic compliance inspections done. The Board did not add any conditions to the request. All in favor. Variance has been approved.

Commissioner Bunes stated that what we want to be done in the end is the right thing. Some issues were brought to light today during the hearing.

Pulkrabek stated his concern is the Board has set precedence for future variances.

Winkelmann stated that there is no such thing as precedence for variances, based on our previous trainings.

Meeting was adjourned at 10:26 am