

Polk County  
Board of Adjustment  
October 3, 2014

Call to Order: 10:58 A.M.

Members in Attendance: Kerry Winkelmann, Robert Franks, Courtney Pulkrabek, Donovan Wright and Alternate, Rolland Gagner.

Members Absent: Osmund Moe

Also Present: Polk County Environmental Services' staff: Josh Holte & Jacob Snyder.

Minutes: A motion was made by Pulkrabek to approve the minutes from the June 27, 2014 meeting. Second by Wright. All in favor.

**Public Hearing: Variance                      Tom and Renee Rongen                      Parcel #30.00219.01**

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 construct a 2,142.6 sq. ft. accessory structure with a 700 sq. ft. attached guesthouse. The accessory structure would be over the allowed square footage on a riparian lot on Kittleson Lake (the ordinance allows for an 800-1600 sq. ft. accessory structure depending on lot size).

The PCZO 18.2225 F states: A CUP is required for one single story accessory structure over 800 sq.ft on a riparian parcel, or for the placement of an additional single-story accessory structure on any riparian parcel where the total combined square footage of both accessory structures will exceed 800sq.ft. No more than two single-story accessory structures shall be permitted on any parcel. The Conditional Use Permit will be subject to the following criteria:

1. Vegetative screening will be required between the Ordinary High Water Mark (OHW) and the one story accessory structure(s). Screening must be to the satisfaction of the Polk County Planning and Zoning Office.
2. The maximum height of the one-story accessory structure(s) will be 15 feet.
3. The accessory structure(s) must meet the setback requirement for structures as defined in Section 18.2211 of the Polk County Zoning Ordinance. The string-test rule will be prohibited for determining the setback from the OHW.
4. The square footage of the riparian parcel will determine the maximum square footage or combined square footage of the one-story accessory structure(s). See chart below for maximum accessory structure square footage per riparian parcel square footage.

<u>Parcel size in sq. ft.</u>	<u>Max. acces. structure in sq.ft.</u>
0 – 20,000	800
20,000 – 30,000	1000
30,000 – 40,000	1200
40,000 and over	1600

- Any additional requirements or restrictions that are deemed necessary to preserve the character of the area and to meet the intent of the Polk County Zoning Ordinance may be placed as a condition of the CUP.

Holte went over the pertinent facts. Holte stated that the applicants' lot is currently 47.76 acres. The current property will be split to create a new building site. The new building site will be approximately 33.59 acres (Survey of lot split will be shown during hearing.) Kittleson Lake is classified as a Natural Environment Lake.

Holte added that the applicants are requesting a separate variance to construct a new home on this site 100' from the OHW (The setback on this lake is 150') The applicants will need to submit a new septic design before any building permit will be issued. The applicants meet the lot size requirements to have a 700 sq. ft. guesthouse.

Holte stated that the main purpose of the guesthouse will be for office space and to live in while their new house is being built. The applicants originally planned to have a 1600 sq. ft. shop/shed attached to the guesthouse, which would have been allowable through a Conditional Use Permit process. The applicants changed their plans to include a 7 ft wide roof shelter over the entrances and along the east side of the shed, therefore needing variance approval. The applicants' stated practical difficulty is that they would like the extra roof shelter over the entrances for horses and for extra protection from snow. The variance would allow them to have a shop and horse stall in one building without having to construct another structure.

Holte went over the pictures, maps, and explained the proposed land split that has yet to be done.

Holte stated that no comments were received on the variance request. Holte added that staff recommends approval of the variance request.

Winkelmann asked if the applicants were present at the hearing. They were present.

Tom Rongen answered that the proposed structure is for a steel building and that he is worried about snow sliding down the structure into the openings of the structure. That is the reason they are requesting a variance due to the over hangs/covered porch over the entrances.

Winkelmann asked if the structure would be habitable.

Tom Rongen replied that it will have a portion that is living quarters and used while the house is being built. Then when his kids come home from college they will stay in there. The structures main purpose will be parking and storage once the house is constructed. It will also be utilized as an office for his wife.

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

Question	Pulkrabek	Gagner	Franks	Wright	Winkelmann
1.	No	No	No	No	No
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	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 or deny the variance request.

Pulkrabek made a motion to approve the variance request. Second by Franks. All in favor.

**Public Hearing: Variance                      Tom and Renee Rongen                      Parcel #30.00219.01**

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 construct a new home 100 feet from the ordinary high water mark (OHW) of Kittleson Lake (the ordinance calls for a 150 foot setback from the OHW).

The PCZO 18.2211 states: Placement of structures must be located 150 feet away from the OHW of all Natural Environment Lakes.

The applicants' lot is 47.76 acres. The current property will be split to create a new building site. The new building site will be approximately 33.59 acres. Kittleson Lake is classified as a Natural Environment Lake. The applicants are requesting a separate variance to exceed the accessory structure size for a riparian lot. The applicants will need to submit a new septic design before any building permit will be issued.

The applicants' stated practical difficulty is that they are building their house on a knoll that is substantially higher on the front of their property and slopes backwards. The applicants added that practical difficulty exists because of the unique land formation of the knoll that slopes from the front of the property to the back of the property. They will also be deprived of reasonable use of their property since there will not be an adequate view out of the front of their new home.

Holte read the letter that Tom and Renee Rongen submitted with their application. A complete copy of

the letter is on file with the PCPZ office.

Holte read the complete letter sent by DNR Area Hydrologist, Stephanie Klamm, who recommended denial of the variance request. A copy of the letter is on file with the PCPZ office.

Tom Rongen stated that the feasible method to improve the view and for better accessibility is to pull back the earth on the front of the knoll, however it damages the original natural formation of the land and very possibly would kill the trees in the process.

Holte went over the pictures, maps, and showed contour imagery for the site.

Winkelmann asked what side of the lake the site is on.

Tom Rongen replied they are on the north side of the lake.

Gagner asked if the water fluctuates on the lake.

Tom Rongen replied that the lake is 550 acres and in twenty years it has fluctuated within a foot of its normal level. It has an outlet through Kittleson Creek that helps maintain its water level.

Gagner asked if there was a potential for development on the lake.

Tom Rongen replied that the lake has about four families that own large portions of the shoreline of the lake. He added that his wife and he love the trees and moving it back will force them to remove 40 trees rather than 8 trees. Moving the cabin back to the 150 foot setback will also cause us to have to remove some of the knoll to create drainage around the house. If we can build at 100 feet than the drainage would actually flow away from the lake.

Holte went through the pictures of the knoll Mr. Rongen was referring too and showed the topo maps.

Winkelmann asked if the house was moved to the setback then you would not have a view of the lake.

Tom Rongen replied that they would have to remove the knoll for a vantage point and drainage.

Holte stated that staff feels that there are both positives and negatives to approving this variance request. Therefore staff would like to let the Board of Adjustment determine whether a practical difficulty exists and whether the variance should be approved or denied. If approved the following condition should be placed on the variance:

- 1) The applicants' sale of their existing home must be completed and/or the property must be split off to form its own parcel as indicated by the recent survey before the building permit for the new house can be issued.

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

Question	Pulkrabek	Gagner	Franks	Wright	Winkelmann
1.	No	Yes	Yes	Yes	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	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 stated that the board still must justify a practical difficulty.

Ganger responded that the character of the land formation and the drainage concern is what he feels the practical difficulty is. The landowner did not create the land formation and based on that Gagner made a motion to approve the variance request with staff recommendation. Second by Pulkrabek. All in favor.

**Public Hearing: Variance                      Richard Westacott                      Parcel #74.00282.02**

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 subdivide his property to create two conforming independent parcels which do not meet the lot width requirements on a recreational development lake.

The PCZO 22.3100 states: 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.

The PCZO 18.2100 states: Lot Area and Width Standards. Recreational Development Lake must be 40,000 square feet, 150 foot width to be buildable lot.

Holte went over the pertinent facts of the request that the applicant owns a riparian parcel on Union Lake that contains two dwellings. The applicant would like to split each house off and create two substandard lots so he can sell the mobile home site. The total area of the current front lot is 250 feet wide and 327-386 feet long (88,728 sq.ft.). The applicant is proposing to split the riparian lot so that a lot is created around each dwelling. The proposed split would leave one parcel with 110-115 feet wide and 327 feet long (35,500 sq. ft.). The other lot would be 135-140 feet wide and 386 feet long (53,000 sq. ft.). (The zoning ordinance requires 150' wide and 40,000 sq. ft for a newly

created lot on Union Lake.). The applicant's stated practical difficulty is that the division of the lot doesn't impose any difficulty but is a practical solution to the owner. He also stated that the property is a very desirable lot due to the existing buildings being 172 feet apart.

Holte added that if the variance is approved the applicants will be required to submit passing septic compliance inspections on all septic systems on the property. This would need to be submitted before any variance permit could be issued. If failing the septic systems would need to be updated within 2 years. It appears the septic system on the applicant's main house wouldn't meet setbacks and would cross over the proposed new property line. A septic system is supposed to be 10' from a neighboring property line.

Holte stated that the applicant's property is currently involved in Boundary Commission #1. This is a re-plat of 15 lots along West Shore Drive, one of which belongs to the applicant. Boundary Commission #1 Plat has just been submitted for judicial review and the property legal description and boundary lines are in the process of changing. Staff advised the applicant that he should wait until after the plat is finalized before applying for any variance.

Stephanie Klamm, DNR Area Hydrologist commented on the request stating that the DNR recommends denial of the variance request. A complete copy of the letter is on file at the PCPZ office.

Holte stated that staff recommends either tabling the variance request or denial of the variance request for the following reasons:

- 1) Staff advised Mr. Westacott that this variance request should wait until after the plat is recorded for Boundary Commission #1. Boundary Commission #1 has been submitted for judicial review and the legal description and property boundaries could change as a result of this. Approving a variance at this time would not be wise and no lot split will be able to be completed until after the Boundary Commission #1 is completed anyway.
- 2) Staff has concerns that by splitting the property the septic system on Mr. Westacott's main home will cross over the new property line.
- 3) The DNR has recommended denial of the variance request.

Holte added that staff recommends that the Board of Adjustment carefully think about their decision on this request and if the Board doesn't decide to table the request make sure to provide detailed answers to the hardship questions to support your findings as this situation might come up again in the future. If the decision on the request is tabled, Mr. Westacott will need to agree to waive the 60 day zoning requirement until after Boundary Commission Plat #1 is finalized and recorded.

Franks commented that we need to table this request until after the Boundary Commission Plat #1 is finalized and recorded.

Richard Westacott stated that there has never been a discrepancy in his property lines and there have been

no changes to that property in 50 years. He added he has a strong legal description and the only thing hindering him from splitting the lot is the width. He asked how long the judicial review would take.

Holte responded, he hopes that it will be resolved by the end of this year.

Westacott added that he was under the impression that the Boundary Commission was done in September and applied because he goes to Arizona over the winter months.

Holte responded that the judicial review process is ongoing with the Boundary Commission #1.

Pulkrabek asked if Mr. Westacott could add the 13,000 sq. feet of area to be conforming.

Mr. Westacott replied that he has spoken to Mr. Vesedahl to purchase more property but that doesn't help him with the width on the parcel with the trailer home, which is the lot he intends to sell. He added the homes are 170 feet apart and if allowed it would be a beautiful lot for someone. He said he is getting older and could use the money so he would like to split it, but the width is the problem.

Holte asked Mr. Westacott if he is willing to waive the 60 day requirement to table the decision until the Boundary Commission Plat #1 is finalized and recorded.

Mr. Westacott answered yes, but that he will be away until spring, so just delay it.

Franks made a motion to table the matter until after Boundary Commission Plat #1 is finalized and recorded.

Holte added that the legal description will get updated through the BC#1 review.

Mr. Westacott again stated that we should just delay it then.

Motion to table the matter was seconded by Pulkrabek.

Mr. Westacott stated that he was fine with tabling the request but there is no loss in width or frontage through the BC#1 process. He added that the width is the same he just lost some frontage due to the BC#1.

Holte replied that the original septic inspection form showed the house to be 40 feet from the septic and it looked like it would be on the proposed property line. It is another issue which will need to be addressed.

Winkelmann stated that they cannot make two non-conforming lots. Mr. Westacott responded to just table the matter if that's the Boards wish.

Winkelmann called for the vote to table the matter. All in favor. Motions carriers to table the matter until after Boundary Commission Plat #1 is finalized and recorded.

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

Holte stated that the applicants are requesting a variance to construct an addition that will exceed 50% of the assessed value for an existing non-conforming structure. The existing house is located within the shore impact zone of Maple Lake and is only 1-2' from the east property line making it non-conforming.

The PCZO 8.1103 states: The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the Polk County Assessors value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the initial official controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the Polk County Assessors value of the structure, then the structure must meet the standards of this Ordinance for new structures;

The PCZO 8.3010 states: All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of this ordinance. Any deviation from these requirements must be authorized by a variance.

The PCZO 18.2210 states: Placement of structures on lots. When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone.

The PCZO 18.2212 states: Additional structure setbacks. The following additional structure setbacks apply, regardless of the classification of the water body: Setback From: Setback (in feet) e. side lot line 10.

Holte went over the pertinent facts that the property is 40,800 square feet. The front lot is 12,000 square feet and the back lot is 28,800 square feet in size. The lot is 80' wide. The property was recently surveyed and stakes were present during the site visit. The proposed addition wouldn't encroach further on any existing setback boundaries. The existing house is 43' from the OHW of Maple Lake. There is an attached deck that is proposed to be removed that is only 32' from the OHW of Maple Lake. The existing house is 2' from the east property line and 30' from the west property line. The proposed addition wouldn't encroach on the lake setback or the east property line. The proposed addition would be 20' from the west property line and 55' from the road right of way.

Holte added that the applicant will be upgrading their existing septic system. An at-grade system will be placed on the back lot. The applicant plans to remove two small sheds on the front lot. The applicant would be under the 25% impervious coverage if approved as indicated on sketch. The applicant's stated practical difficulty is that without rebuilding the entire structure the lot and cabin are positioned where they are currently and the addition will meet setbacks. Two sheds and a deck

will be removed to get as close as possible to conform to setbacks. The house was constructed in 1970.

Holte went over the pictures and maps of the request.

Pulkrabek asked what they were adding a second story onto.

Holte replied that it is currently a porch.

Gagner asked if they were going to tear down the porch and then build from the ground up.

Snyder replied that their original plan was to add a second story to the existing three season porch. Then when a contractor evaluated the project the porch could not withstand a second story over the top of it. So, they would most likely be redoing the porch to support the second story.

Holte explained that the only comment received was from, Diane Rosenberg Maple Lake Improvement District, who commented that the MLID board does not have a problem with the Miller's request for a variance.

Dennis Yell (MLID) stated that the MLID President and himself went to the site and looks like one of the sheds was very close to the roadway. He added if the Millers' were willing to tear down the shed closer to the road then the improvement district didn't have any problems with the request.

Gagner asked which shed was that, the 12' x 12' shed?

Dennis Yell stated the shed should be removed as its nonconforming and then the district doesn't have any issue with it.

Holte replied they could add a condition that the shed must be moved to meet the setbacks as well.

Holte stated staff would like to leave the decision of whether this variance should be approved or denied up to the Board of Adjustment. If approved staff recommends the following conditions be placed as part of the variance:

- 1) The deck on the front of the house must be removed by 10/3/2016.
- 2) The 5' x 10' shed and the 9' x 12.6' shed must be removed by 10/3/2016.
- 3) The septic system must be upgraded by 10/3/2016.
- 4) The applicants will be limited to 25% impervious surface coverage on property unless applying for a separate variance.

Holte added that if desired we could add the condition that the remaining shed must be moved to meet setbacks.

Gagner asked if the 25' x 25' proposed addition was a garage. Holte stated yes, garage and mud room.

Holte asked the board the hardship questions.

Question	Pulkrabek	Gagner	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.	No	No	No	No	No
6.	No	No	No	No	No
7.	No	No	No	No	No

Holte stated with 20 No's and 15 Yes's the criteria has been met if the Board wishes to grant or deny the variance request.

Pulkrabek made a motion to approve the variance request with the amended staff recommendations.  
Second by Gagner. All in favor.

12:35 P.M. - Meeting Adjourned