

Polk County
Board of Adjustment
June 27, 2014

Call to Order: 10:24 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 Moe to approve the minutes from May 23, 2014 meeting. Second by Wright. All in favor.

Public Hearing: Variance One N Only Parcel #19.00163.01

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 of the right-of-way of State Highway 75 to 7 feet; in order to build a 28' x 10' addition onto the existing establishment – the ordinance calls for a 50' setback. The applicant is also requesting a variance to further exceed the 25% impervious surface requirement for the addition.

PCZO requirements are found in sections 14.8432 and 12.4110. The property is 80' x 100' (8,000 sq. ft.). The road right-of-way is 50 feet. The applicant will have 2,984 sq. ft. of impervious coverage if the addition is approved (37.3%).

The applicants stated practical difficulty is that the whole property is in the right of way setback and they are looking at adding 280 sq. ft. onto the existing business. They will not protrude closer to the road than the existing structure. The building was constructed in the 1940's. The applicants added that they need to expand to meet their business needs to upgrade the coolers/bar area.

No comments have been received. Holte went over slides showing the property and it location. Staff is recommending approval of the variance with the following conditions:

- 1.) applicant must obtain any state permits that may be required for the proposed addition and follow any applicable state and federal rules.

Winkelmann asked if Mr. Weiland was present, he is. Diedrich said that he is very familiar with the location. He could not go west as there is a house there. He basically has no place to expand other than the proposed location. Holte stated that they will not be going any closer to the

highway than what is already there. Diedrich asked if MnDOT commented. Holte said they did not receive anything, but were notified.

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

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

Holte stated with 29 No's and 6 Yes's the criteria has been met if the Board wishes to grant or deny the variance.

Moe made a motion to approve the variance request with staff conditions. Second by Pulkrabek. All in favor.

Public Hearing: Variance David Sundberg Parcel #67.00179.01

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 County Road 21 to 25' in order to build an addition onto his house. The applicant also needs a variance to exceed 50% of the assessed value for an existing non-conforming structure.

PCZO requirements are found in sections 13.8432 and 8.1103. The property is 8.61 acres. The road right-of-way is 75 feet off County Road 21. The existing house is located 72' from the center of the road. The applicant is requesting a variance to 25 feet of the ROW to build the addition to the house on the property. The addition would be 100' off the center of the road.

The applicant submitted a septic design to upgrade this existing septic system. The applicant has proposed to build a 26' x 56' house and garage addition. The original house was built around 1900.

The applicant's stated practical difficulty is that this restriction prevents us from adding onto our existing

home and building a new home on the property is not practical. The applicant added that the home was built prior to the ordinance and that without it the personal needs of the property will be restricted.

Comments received were:

1. Rich Sanders, Polk County Engineer, stated: CSAH 21 was graded in 1996 and therefore the home was already figured into the design of the roadway.

Holte went over slides showing the property and it’s location. Staff would like to leave the decision of whether this variance should be approved or denied up to the Board of Adjustment but we don’t see any issues with the request.

Winkelmann asked if Mr. Sundberg was present – he is. Pulkrabek stated that he is not encroaching on the ROW, so no negative thoughts on this request.

The Board had no further questions for Mr. Sundberg. 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	No
7.	No	No	No	No	No

Holte stated with 29 No’s and 6 Yes’s the criteria has been met if the Board wishes to grant or deny the variance.

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

Public Hearing: Variance David Johnstad Parcel #74.00549.00

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 keep an existing guesthouse and to construct/replace a new home on a parcel of land that does not meet the guesthouse lot size requirements.

PCZO requirements are found in sections 18.2143 and 182110. The applicant’s lot is 76,000 square feet

(1.745 acres). The lot is 200 feet wide and 380 feet deep. The applicant's property is a riparian lot on Union Lake.

The applicant is planning on building a 104' x 82' house with attached garage. The site has already been prepped. Applicant would like to keep the existing guesthouse that was built in 1950. The applicant's practical difficulty is that if the guesthouse is required to be removed they would need to expand their current house plans to include more space. The new house would be around 146' from the OHW at the closest point. The guesthouse is around 90-100' from the OHW. A new septic system will be installed and that design was just received by our office.

A compliance inspection will be required on the guesthouse septic before any permit is issued and if failing the system will need to be upgraded or it could probably be tied into the new system for the house provided all setbacks can be met. The septic for the guesthouse was installed in 1994.

In 1993 a variance was applied for by the previous owners to split the current lot into two lots creating a separate lot around the guesthouse and their old house. This variance was denied.

Stephanie Klamm, MNDNR had no comment other than following staff recommendations. Holte went over slides showing the property and its location.

Staff would like to leave the decision up to the Board of Adjustment to determine if a practical difficulty exists to grant this variance. The applicant is just shy of having enough width and square footage to be allowed a guesthouse. If the Board of Adjustment wishes to grant this variance, staff would recommend the following conditions:

1. The guest cottage will remain a non-conforming structure, must follow the requirements of PCZO 8.1103 and cannot be replaced.
2. No additions will be allowed on the guest cottage.
3. The lot can never be split to create a separate lot around the guest cottage.
4. The septic system for the guest cottage must be inspected and if failing must be upgraded by 6/27/2016.

Winkelmann asked if the Johnstad's were here? They are. Questions from the Board? Wright asked when the guesthouse was constructed? The Johnstad's believe in the 1950's. Winkelmann said that the property is 25' short in width and 4,000 sq. ft. short for the lot requirements for a guest house. Holte said that 700 sq. ft. is the maximum allowed size for guesthouse and the current guest house is 920 sq. ft.. This is why he suggested the conditions above.

Winkelmann asked if the Johnstad's recently purchased the property? Yes, with the old house on it. It was in total disrepair, there were mushrooms growing in the closet and mold throughout. Gagner stated that it is a nice lot and that the old house had about 7 additions, creating a nightmare for plumbing, electrical and maintenance. The guesthouse has always been there and strictly used as a summer cottage. The new house would be an asset to the lake and add to its beauty.

The Board had no further questions for the Johnstad's. Holte asked the board the hardship questions.

Question	Pulkrabek	Moe	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.

Franks made a motion to approve the Variance request with staff conditions. Second by Wright. All in favor.

Public Hearing: Variance WJS Nelson Parcel #37.00067.00

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

Holte stated the applicant has requested a variance to construct a 70' x 96' shop addition to an existing building which is below the base flood elevation. PCZO requirements are found in sections 17.5200, 17.5480, 5.3030, and 8.1100.

The property is 121.03 acres in size. The base flood elevation on the site is around 814.5'. The floor of the existing shop is 813'. The new addition is proposed to be built at the same elevation as the existing shop.

The ordinance requires that the new addition be built 1.5' above the base flood elevation. That would mean the addition would need to be built to 816' without a variance. We have been discussing the options with the applicant over the last year. The applicant decided to try to apply for a variance even though staff advised them that the likelihood of approval was very slim.

The applicant stated practical difficulty is that the existing shop is 1.5 feet below the floodplain. The new floor would have to be 1.5 feet higher than the floodplain. The applicant added that they are within the floodplain and the elevation is 814.5, and the property is at 813. We have a ring dike that is at 819.5 around the yard. The applicant stated that they will not be able to utilize existing structures without the variance.

Comments received from Suzanne Rhees, Floodplain Planner MNDNR and Ceil Strauss, State Floodplain Manager MNDNR, both lengthy comments are on file at the PZ office. The DNR recommended denial of the request

Holte went over slides showing the property and its location. Staff strongly recommends denial of this variance request for the following reasons:

1. Staff feels that is a major deviation from the requirements of the zoning ordinance.
2. Section 5.3030 states: No variance shall have the effect of allowing in an district used prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State Law. – the applicant is requesting to be about 3’ lower than required.
3. The DNR, which oversees the state floodplain program, has recommended denial of the variance.
4. Approving this variance request could put the flood insurance program in Polk County in jeopardy.
5. The applicant has other means that he could take to improve the likelihood of getting a variance or conditional use permit approved, like wet flood proofing or elevating on fill.
6. Staff doesn’t feel there is a practical difficulty in needing to attach a large shop onto an existing building. You could place this building right next to the other shop and elevate the structure or wet flood proof it to meet the requirements of this ordinance.
7. There are other places on the applicant’s property that are higher and might be better suited for a new shop.

Staff would advise the board to carefully consider the recommendations and the request as this issue is sure to come up again in the future. Staff feels that the applicant has some other options to build a shop or addition and staff is willing to help the applicant find the best solution.

Winkelmann asked if WJS Nelson was present. Steve Nelson is here.

Yell asked where on the property the ring dike goes ? Using an aerial photo it was shown. Gagner asked why if the ring dike is at 819.5’ there is an issue ? Holte said that FEMA does not recognize ring dikes as a way to remove a property/structures from the floodplain. The current shop was built in 1985 which Holte figures was before FEMA rules were enforced.

Winkelmann stated that to grant this variance puts the whole county at risk. Franks asked about the ability for the Nelson’s to sign a waiver? Holte said that Jon Steiner, Env. Svs. Admin, said that the question has been raised before and that it is not acceptable to FEMA.

Winkelmann said their options are to build it to height or wet flood proof. Ganger asked what happens to towns that construct ring dikes? Holte said town ring dikes are US-COE built so they are approved and recognized. Phillips asked if there was any way to get the ring dike certified? Holte said FEMA will not recognize and remove from the floodplain a ring dike around an individual farm site.

Nelson said that it would cost \$15,000 to put in vents into the shop and that they would lose too much

heat. And as far as raising the building up, you cannot do that when it needs to be next to another building. Holte said you could move the building over. Nelson said then you are having double heating units, as well as tools. Nelson questioned how other counties are doing it as he sees buildings going up all the time? Holte said FEMA rules are nationwide, so those counties should be following the rules.

Nelson asked why FEMA doesn't allow doors as wet flood proofing? Holte said he has asked that in the past and gotten a response, but doesn't recall exactly what the reason was. The main thing is that it would need to be designed by an engineer and approved by FEMA.

The Board had no further questions for WJS Nelson. Holte asked the board the hardship questions.

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

Holte stated with 10 No's and 25 Yes's the criteria has not been met to grant the variance.

Winkelmann stated that we don't have the criteria to grant the variance, however we still need an action on the request.

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

Meeting adjourned.