

Polk County
Board of Adjustments
July 26, 2013

Call to Order: 9:20 A.M.

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

Members Absent: None

Also Present: Polk County Environmental Services' staff: Josh Holte & Jacob Snyder. Huntsville Township staff; John Jeffrey, Tom Wald, & Arlet Phillips; Lynn and Judd Stauss (landowner/applicant), David Jacobson (applicants' father), Paula Davis & Dennis Nabben (neighbor).

Minutes: A motion was made by Pulkrabek to approve the minutes from June 28, 2013 meeting. Second by Wright. All in favor.

Public Hearing: Variance Mark Jacobson Parcel #28.00118.01

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

Holte stated the applicant originally requested a variance to reduce the front yard setback off of County Road 12 to 70 feet, for a porch and deck addition to the existing house (the ordinance calls for a 100 foot setback). The applicant was working on renovating the second story of his house and ran in to some big issues. So the applicant ended up demolishing his house and wishes to be allowed to rebuild his house in the same location while still requesting a variance to 70'.

Polk County Zoning Ordinance section 13.8434 states: There shall be a front yard setback of 100 feet on all State, Federal, County, and County State Aid Highways.

Holte went over the pertinent facts about the property. It is approximately .98 acres. The property is located just north of the City Limits of Fertile. The road right-of-way is 50 feet. The house was constructed in its current location in the 1940's. The house foundation currently is located 77 feet from the road right-of-way. The applicant is asking to build 7 feet closer to the right-of-way. The applicants stated practical difficulty is that due to the homes age it wouldn't be practical to relocate the structure to meet current code and any deck or porch addition would need to go on the south side of the house. With the change in plans the applicant would now like to construct his house in the same location with the practical difficulty being he wants to be able to utilize the existing foundation.

No comments have been received.

Staff recommends approval of the variance to reduce the front yard setback to 70' for the construction and replacement of the applicant's house with the following condition:

- 1) Applicant must submit a passing septic compliance inspection before any building permit can be issued. If the septic compliance inspection fails applicant must submit a septic design and permit fees for an upgraded system, and new system must be installed before July 26, 2014.

Courtney Pulkrabek asked if Mark was present at the meeting this morning?

David Jacobson (Mark's father) was at the meeting and stated that he was there to represent Mark as he was unable to attend the meeting due to his work schedule. David stated Mark is an airline pilot and bought the property with the intention of fixing the house up. They were unaware of the Counties setback requirements before purchasing the property. When they started to remodel the second story they had several issues with the existing structures integrity.

The Board had no further questions for David Jacobson. 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	No
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.

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

9:30 A.M.

Public Hearing: Variance Judd Stauss Parcel #40.00225.02

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

Holte stated the applicant is requesting a site variance to construct and develop a residential building site 50 feet from the OHW of an Agricultural River. (The ordinance calls for a 100 foot setback from

the OHW on an unsewered Agricultural River). The Polk County Zoning Ordinance section 18.2211 states: Placement of structures must be located 100 feet away from the OHW of all Agricultural Rivers. Septic Systems must be located 75' away from Agricultural Rivers. Applicant is proposing a site variance of 50'.

Holte went over the pertinent facts that the property is along the Grand Marais River in Huntsville Township. If variance is granted the applicant would be purchasing the property from his uncle Lynn Stauss. The lot is 4 acres in size. The requested variance if approved would create a building site approximately 104' x 400'. The site is located within the 100 year floodplain, but the building site would be located out of the floodplain. Existing trees provide thick vegetative cover around the entire property. Property is surrounded by water on three sides leaving approximately 4' of buildable area if adhering to the 100' setback. The applicant is proposing between a 4500-4700 square foot home with a 3 stall attached garage.

A few inquiries were received, but callers didn't leave comments. Stephanie Klamm, Area Hydrologist, DNR stated in a letter: I have reviewed the CUP for Judd Stauss (Lynn & Marjorie Stauss). During our meeting with Judd in June, I was asked to come out and make a determination on the Ordinary High Water Level to help determine the setbacks for the shoreline ordinances. This determination and the 100' set back from OHWL left the property owner with 4' to build on all three sides of the property. As there are other places to build within the property that he is purchasing, I see maybe moving the house or making a smaller footprint to be the best solution. This peninsula that he is looking at building on has the potential to flood and by removal of the vegetation and trees that are currently established, there is a potential to weaken the landmass and cause erosion or slumping. I think that there are other options here instead of the variance of the smaller setbacks that need to be evaluated further; such as smaller setback on one side and leaving the other at 100', smaller footprint for the house/garage, building out near the road or open area, etc. Even though this reach of the Grand Marais Creek is more of a wetland in character than an active flowing river, it is still an active river and as we all know, rivers move and evolve and change their current, course and cross-section. Please consider my comments at your meeting and advise your board as you see fit.

Staff recommends denial of the variance request as proposed. This property is a unique property because it is surrounded by the Grand Marais River on three sides. Staff feels that a 50' variance on this site is too great to preserve and protect the character and the habitat of the Grand Marais River. Staff would recommend that the applicant reconsider his plans and change the layout of his house in order to maintain a further setback off of the Grand Marais River. Staff feels that granting a 75' site variance would provide adequate protection on the Grand Marais River and would still allow the applicant to have a 54' x 400' building site. Staff feels that this is more than enough space to create a very nice residential home.

Lynn Stauss stated that he was interested in developing this site for a home but was unable to complete the task so it's his wishes to have his nephew build a home on the property. Since this property is unique and quite beautiful he would like to keep it in the Stauss family name. Also, he felt the variance request would not have any negative impacts to neighboring property. He added that Judd will make it a really beautiful structure and have his family grow up in this area.

Judd Stauss stated that in relation to moving the structure closer to the roadway as Stephanie from DNR suggests, there is really nowhere on this site where the setbacks can be met. The County Road to the south and the setback off the river overlap on the southern portion of the lots he is looking at purchasing from his uncle Lynn. The land is not eroding and changing actively the river is stagnant during the summer months. Flooding along this site is non-concern as the building will be at an elevation of 842' above sea level making it 10 feet over the base flood elevation. He stated that upon approval he will seek a LOMA from FEMA and that a surveyor has already confirmed elevations for the proposed building area. Also, he stated he wishes to utilize the site as a building site and place an angled house or L-shaped dwelling on the lot with the river surrounding it on three sides. With all due respect to Jake/Josh 50 feet in width is just not enough room to place the dwelling he is planning. It is a great property and without the variance I am unable to build on this site.

Mike Powers asked what is the elevation of the Grand Marais River?

Holte replied he did not recall the OHWM elevation but the base flood elevation was determined at 832 feet above sea level and the applicant stated the preliminary survey will go through the LOMA process. This will remove the building area from the 100yr floodplain.

Mike Powers than asked if the plan includes having a basement?

Judd Stauss replied that yes he plans to do a basement.

John Jeffrey (Huntsville Township) asked what is the purpose of the 100 feet setback?

Holte replied the 100 feet setback for structures is to preserve the sensitive areas for water quality and to protect the water body.

John Jeffrey replied that farmers can farm right to the edge of water ways so if a variance is denied they could clear cut all the trees to the rivers' edge?

Holte responded that the Ordinance does not allow clear cutting within 50 feet of the ordinary high water mark on this classification of river.

John Jeffrey stated that the setback for a structure is 100 feet but the vegetation standards apply to 50 feet from the rivers' edge. So, he feels the variance should be consistent with the 50 feet setback regulations.

Pulkrabek stated that the river is stagnant but does have flow in the spring. The Grand Marais River system is not actively flowing all year but more of a wetland in the dry summer months.

Moe added that the river is not changing other than the vegetation on the landscape is changing.

Pulkrabek asked if the Grand Marais River flows into the Red River?

Holte responded that it flows into the Red River north of East Grand Forks.

The Board had no further questions for Judd Stauss. 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	Yes
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 24 No's and 11 Yes's the criteria has been met if the Board wishes to grant the variance.

A motion was made by Moe to approve the Variance, second by Wright. Moe, Pulkrabek, Wright, and Franks vote for approval. Winkelmann votes in opposition. Variance has been approved.

9:50 A.M.

Public Hearing: Variance Paula Davis Parcel #45.00335.00

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

Holte stated that the applicant is requesting a variance to reduce the side yard setback from 10' to 8' for a 9' x 24' addition onto the kitchen of her home on Union Lake – the Ordinance calls for a 10' setback from the side property lot line. The request was tabled from last month's Board of Adjustment meeting to allow for a survey to be done on the property lot line in question.

Applicant's lot is 150 feet deep, 100 feet wide. Applicant also owns a 100' wide by 200' deep back lot. Applicant had a new septic system installed in 2008. Applicant's stated practical difficulty is that she currently has a very small kitchen which was cramped even for seasonal use, but she is approaching retirement and plans to make the cabin her permanent home.

The hearing was tabled from June to allow time for the applicant to complete a survey. The survey was completed this week and it was determined that the applicant's house is 15.10 feet from the side property line at the closest point. This would mean that the applicant would need to change the addition from 9' x 24' to 7' x 24' in order to maintain the request for a variance to 8'.

Holte added that they received a copy of the survey from Jerry Pribula and they will take a look at the survey in relation to the current cabin. The survey has the closest corner of the existing cabin

15.10 feet away from the side property line. The applicant was requesting a 9' x 24' addition which now must be reworked to 7' x 24' addition if it is the boards' wishes to stay with the original request of 8 feet from the side property line.

Holte stated that he received several comments regarding the variance.

Applicant's neighbor Dennis Nabben called in and was against the variance and stated that the property line is closer than what the applicant thinks. Mr. Nabben also sent these comments by email: As the dwelling was recently remodeled that would have been the optimal time to make changes of convenience that didn't require such exceptions and the need to request a variance. The dwelling is already close. If she has an overhang and/or walk around deck/porch that would put it almost on the property line. It will add no value to our property. We hope to make many changes in the future, so our present structure shouldn't be used as a comparison. It's about the actual property. There are other options without needing a variance. The interior could be remodeled and/or she could build to the south as deep/wide as wanted. Making an exception for her would set a precedence that could affect many other homeowners on the lake.

Patrick Travnicek is a property owner on Union Lake (Not next to Davis Property) and is concerned that this variance will set a precedent that will allow further crowding and encroachment upon other property owners.

Todd Foy and Sheryl Foy commented that they support Mr. Nabben in his objection to the Davis Variance.

Renei Schmitz commented that she has no objection to Paula receiving the variance. She said that she has talked with Paula and she has told her about the plans for a larger kitchen (which she desperately needs). She does not see how this would cause any hardship to her neighbors.

Lynette Shaitberger commented that she has no objection to Paula receiving the variance. It will only improve the value of her cabin and thus improve the value of all surrounding cabins. She stated that her sister, Renei Schmitz, and herself are on the deed to the property located three parcels West of Paula.

Dennis Nabben stated that the survey shows the assumed property line and the actual property line showed a 2 foot discrepancy.

Osmund Moe stated that the change in the request would either be that we grant 2 feet more of a reduction in the Ordinance setback (from 8' to 6') or that the addition be scaled down (9' wide to 7' wide).

Courtney Pulkrabek asked Paula if they stay with the 8 feet side yard setback request, would a 7 foot wide addition work for her?

Paula Davis stated that would be fine to scale the project to 7 feet in width. She added that the public comments that were made regarding the variance did not come at her request as the Schmidt family was in favor of the variance. The comments received that were against the variance came from one property owner who no longer lives near her property (Pat Travnicek). She stated that

she did not believe Todd and Sheryl Foy were on the property deed for the cabin located near her in the name of Tami Foy. Holte added that the variance notice for the Foy's was sent out of state to Tami Foy et al, so he said he doesn't know for sure whether Todd and Sheryl Foy are on the deed. Paula added that she was in good terms with her neighbors and that some of the comments should have little bearing on her variance request.

Courtney Pulkrabek asked Paula Davis if she had a contractor yet, or a blueprint of the 9' x 24' addition?

Paula Davis stated if they cannot do 9' wide addition that was fine. She is planning on having her son do the addition and that she doesn't currently have a firm blueprint drawn up. She was waiting on the boards' decision and whatever the board decides she was fine with. She added that after the survey was done it was found out that the neighbors' (Dennis Nabben) boat and dock were located on her property, which she is fine with allowing him to continue to place them where they are.

Courtney added is there any chance the property lot line in question could be manipulated to allow 15 feet by the waters' edge to be swapped for land so the addition would meet the 10' ordinance setback?

Dennis Nabben responded that he had no problem moving his dock.

Paula Davis proceeded with providing the board with pictures of the property to further explain the request. They are planning to remove an existing access drive down to Union Lake and take out the overhang that extends off the cabin towards Mr. Nabben's lot.

Courtney asked the board if everyone was clear on the survey? Holte brought up the survey on the power point and they went over the cabins current location relative to the property line.

Holte added that the Ordinance section 18.2212 (e) calls for a 10 feet setback from side property lot lines in the shore-land district. The applicant's stated practical difficulty is that she currently has small kitchen which was cramped even for a seasonal use, but she is approaching retirement and plans to make the cabin her permanent home and needs a larger kitchen space.

Rolland Gagner stated that he has known that house for 30+ years and the kitchen is very small and if living there year round, it would not be feasible. Gagner added that eliminating the roadway to the lake was seen as a positive in his mind for the sake of it is an erosional concern and this would help benefit the water quality of Union Lake.

Dennis Nabben stated that he has a friend who lives on the lake permanently and has even a smaller kitchen, but it accommodates what he needs. Also, he added that Davis recently remodeled the cabin which would have been the time to redo the kitchen from the interior.

Staff does not have a recommendation one way or the other on this variance. If the variance is approved staff recommends that the applicant change their plans from 9' x 24' addition to a 7' x 24' addition to maintain the variance that was requested of an 8' setback off of the side property line.

Dennis Yell added that he lives on Maple Lake and he has noticed that neighbors fail to comment on variances as they want to stay in good graces with their neighbors.

Kerry Winkelmann asked if the board wished to change the variance request for the addition from 9' x 24' to 7' x 24' or allow the setback to be reduced from 8 feet to 6 feet? Discussion from the board followed and Holte recommended that the decision be based on the original 8 foot setback request and allow for a 7' x 24' addition to be considered by the board.

Dennis Nabben stated that he wants to take the issue to legal mitigation and there is no reason that she needs to go any closer to his property. She can go to the south with an addition and there are other options for her. He added he has a friend with a 6' x 8' kitchen and he gets by.

Kerry Winkelmann responded by saying the board currently has not made a decision regarding the variance request.

Holte asked Paula Davis if she would be okay with 7' x 24' addition?

Paula Davis stated whatever the board wishes she can live with.

Holte reiterated that he recommends the decision be based on the original request to reduce the side yard setback to 8 feet.

The Board had no further questions for Paula Davis. 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	Yes
7.	No	No	No	No	No

Holte stated with 24 No's and 11 Yes's the criteria has been met if the Board wishes to grant the variance.

A motion was made by Moe to approve the Variance, second by Franks. All in favor. Variance has been approved.

Next meeting is August 23, 2013.