

Polk County
Board of Adjustments
August 23, 2013

Call to Order: 9:53 A.M.

Members in Attendance: Kerry Winkelmann, Robert Franks, Osmund Moe, Rolland Gagner, and Donovan Wright.

Members Absent: Courtney Pulkrabek

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

Minutes: A motion was made by Wright to approve the minutes from July 26, 2013 meeting. Second by Franks. All in favor.

Public Hearing: Variance WJS Nelson Parcel #37.00033.01

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 Highway 70 to 10', in order to build 6-16' hopper bins. 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.

The applicant's property is approximately 7.17 acres in size and the road right-of-way is 75 feet. The applicants stated practical difficulty is that there is 100' of yard that is worthless and provides no room for the hopper bins and future expansion.

The property is located within the 100 year floodplain for which the applicant has already provided our office with a LOMA removing the proposed site from the floodplain. No comments have been received on this request.

Holte showed slides of the applicants location and property. Staff does not have a recommendation one way or the other for this variance.

It was asked if this property has been surveyed? The applicant stated that it has. The applicant was asked what type of road runs in front of the property. It is a tarred County road.

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

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

Holte stated with 32 No's and 3 Yes's the criteria has been met if the Board wishes to grant the variance.

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

Public Hearing: Variance Debra Johnson Parcel #74.00576.00

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 site variance to reduce the side yard setback from 10' to 5' for the construction of a 22' x 30' garage on her lot on Maple Lake. Polk County Zoning Ordinance, Section 18.2212 (e), states: setback is 10 feet from side lot lines.

The applicants lot is 400 feet deep by 50 feet wide. The applicant has submitted a passing septic compliance inspection. The applicant's stated practical difficulty is that with her 50 foot wide lot and a pressure septic line going from her septic tank to her septic drain field, it makes it impossible to stay within the setback without impacting the septic system. The applicant received an administrative variance to place her septic system 5 feet from the property line in 2000.

Holte showed slides of the property and location. No comments have been received on the request. Staff would like to leave the judgment of whether the variance for the garage should be approved to the Board of Adjustment.

Dennis Yell stated that the MLID has no issues with the applicants request. Winkelmann asked if the property has been surveyed? Johnson stated that when she brought in the current home there were pins used to locate the house exactly 12' from each property line. There are survey pins at the road and markers at the lake end of the property.

Wrights asked about the distance between the pressure bed and the garage. Johnson said there should be no issue, it was discussed with Bob Ramberg, the installer. Holte stated that he has been on site and feels that it will work.

The Board had no further questions for Debra Johnson. Holte asked the board the hardship questions.

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

Holte stated with 34 No's and 1 Yes's the criteria has been met if the Board wishes to grant the variance.

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

Public Hearing: Variance Terry Longtin Parcel #74.00278.02

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

Holte stated that the applicant has three separate requests that each would require a variance:

1. Requesting a variance to reduce the Ordinary High Water setback off of Union Lake from 100' to 30' and reduce the right-of-way setback from 50' to 41' for the placement of a 10' x 12' storage shed.
2. Requesting a variance to reduce the OHW setback from 100' to 36' for a deck addition onto an existing non-conforming residential dwelling.
3. Reduce the setback off the ROW from 50' to 15' to allow railings to be installed on an existing 17' x 18' deck and an existing 8' x 13' deck on the residential dwelling. (The decks were allowed originally because they didn't have railings and were less than 3' in height.)

Polk County Zoning Ordinance Sections 8.3000, 8.3010, 18.2211, and 18.2212 that deal with the variance requested above were read to the Board.

The applicant's lot is approximately 180 feet wide and 87 feet deep (15,660 sq. ft) and is a riparian lot on Union Lake. The applicant currently has a 20' x 58' (1160 sq. ft.) residential dwelling and a 8' x 12' (96 sq. ft.) accessory structure on the property.

The existing house is located 42' from the OHW and 69' from the centerline of County State Aid Highway 42. CSAH 42 has a 50' ROW. The applicant is asking to move in a 10' x 12' storage shed and place it next to the existing 8' x 12' storage shed on the property both of which would be within the shore impact zone (within 50' of the OHW).

The applicant is asking to build a 6' x 8' deck 6 feet closer to the OHW than the house currently sits. A string test does not apply because the house is currently located within the shore impact zone. A land alteration permit was issued in 2008 to put up retaining walls on both sides of the house.

The applicant has a 17' x 18' deck on the side of his home and an 8' x 13' deck on the front of his home that was allowed in 2009. There is a railing that was allowed on his deck facing the retaining wall. In 2008 the previous owner was ordered to remove the railings on the existing decks because he would be violating his previous variance.

Holte went over slides showing the property and its location.

Previous Variances:

- 1) The previous owner received a variance (June 25th, 2004) to reduce the 100' setback from the OHW of Union Lake and to reduce the 50' setback from a County State Aid Highway for the placement of a residential dwelling.
- 2) The site previously had a mobile home located approximately 30 feet from water's edge. The mobile home was 16' x 60' (960 sq.ft.).
- 3) The cabin was a nonconforming structure because it did not meet either of the lake or road setback regulations. Jon Steiner had stated to the previous owner that the home on the property could not be replaced with another.
- 4) This lot can not comply with the setback from the lake or the road right-of-way because it is not deep enough and the setbacks overlap.
- 5) The previous owner stated that he signed a purchase agreement sight unseen, just based off the last owner's statements.
- 6) The applicant stated that the previous structure was not repairable; he had a contractor from Grand Forks look at it.
- 7) **The variance was granted with the following conditions:**
 - a) The dwelling must be on wheels.
 - b) The dwelling must be 20' or less in width
 - c) The dwelling cannot contain a garage.
 - d) The dwelling cannot be grandfathered (on the County Board of Adjustment Findings of Fact and Decision) / The dwelling cannot be on a permanent foundation (The June 25th 2004 Board of Adjustment meeting minutes).

INSTALLATION OF FOUNDATION (October 10, 2007):

- 1) A Notice to Cease & Desist was ordered, from the Planning & Zoning Administrator (Dan Johanneck), to stop all construction on the permanent foundation with a walkout basement. Dan stopped the work because it was in violation of the previously granted variance.
- 2) Dan Johanneck (P&Z Administrator) then required the previous owner to proceed with one of the two following options by 10-26-07.

- a) Option 1 - Eliminate any openings in the foundation and fill the inside of the foundation with sand to within 24" (inches) of the top of the walls and backfill on the lake side. This will allow for the installation of a manufactured home (must leave wheels and axels attached to the frame of the structure). Install silt fence around the project to mitigate the potential for the deposit of soil into the lake.
- b) Option 2 - Completely remove foundation and repair site to allow placement of manufactured home on fill at an established grade (home must have wheels and axels attached to the frame of the structure). Install silt fence around the project to mitigate the potential for the deposit of soil into the lake.
- 3) The previous owner chose to proceed with Option 1.

EXTENSION OF PERMIT (November 5, 2007):

- 1) In May 9, 2007 correspondence Dan Johanneck told the previous owner that his variance had become permanent. Mr. Johanneck was in error. He was also in error by allowing the variance to continue without expiring, without an extension being granted by the Board of Adjustment, when the work had not been completed within 1 year of the variance being granted.
- 2) On November 5, 2007 Dan Johanneck (P&Z Administrator) informed the previous owner that his permits (variance & building permit) would expire on November 30, 2007 if he had not completed the work on his property.
- 3) The previous owner needed to complete the following items before that date to not have his permit expire.
 - a) Permanently fill the foundation to within 24 inches of its top (*no openings or open space(s) allowed below 24 inches from top of foundation*).
 - b) Place your trailer on the foundation *as stipulated in the permit*.
 - c) Install the holding tank *as permitted*.
- 4) The previous owner completed conditions a & b by November 30, 2007. He was allowed to wait until the spring of 2008 to install the holding tank due to the frozen soils present throughout the winter months. He got the holding tank installed on June 27th, 2008.

VARIANCE TO ADD BASEMENT AND DECK (September 24, 2010):

- 1) The previous owner requested to add a basement to the nonconforming & non grandfathered residential dwelling. (Variance was granted to allow applicant to remove sand from basement, against staff recommendations.)
- 2) The previous owner also requested a variance to construct a deck on his residential dwelling 32 feet from the OHW (Ordinary High Water) of Union Lake (the ordinance calls for a 100 foot setback from the OHW). This variance was denied because
 - a. the applicant did not produce sufficient evidence to establish that there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
 - b. The granting of the application would materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and would be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

Comments: Stephanie Klamm (DNR Area Hydrologist) commented and stated that the DRN recommends denial of the variance requests. (In 2010 and 204 the DNR recommended denial of those variance requests also. Copies of the letters are available for viewing on the power point presentation).

Staff recommends denial of all three variance requests for the following reasons:

- 1) The previous variances already have allowed development in shore impact zone, which is not allowed by the ordinance; staff finds that a practical difficulty does not exist to add a deck closer to the OHW, when the applicant already has two decks on the property and a walk out basement. (Staff suggests that the applicant could remove the patio doors and replace it with a window if it is a safety concern).
- 2) A variance was denied in 2010 for a deck addition closer to the OHW and staff doesn't feel that the circumstances have changed to justify granting this request.
- 3) Allowing further development into the shore impact zone could potentially negatively impact water quality for Union Lake. The goal of Polk County's Comprehensive Plan for our lakes is to maintain the high quality lake resources that we currently have by carefully managing the development of the Shore land areas.
- 4) The applicant already has a non-conforming storage shed within the shore land impact zone, adding another is only adding to the non-conformity of the lot. The lot simply is too small to accommodate additional storage buildings without further impacting the shore land or ROW setbacks.
- 5) In the previous variance issued in 2004 the conditions stated:
 - The dwelling must be on wheels.
 - The dwelling cannot be grandfathered (on the County Board of Adjustment Findings of Fact and Decision) / The dwelling cannot be on a permanent foundation (The June 25th 2004 Board of Adjustment meeting minutes)

Staff feels that the applicant is very lucky to have what he has on the lot and doesn't feel that there is a hardship to grant any of these three variance requests based on what was originally approved in 2004 and what the previous owner ended up constructing on the lot.

- 6) Staff feels that there isn't a hardship to add railings onto the existing decks. The decks were only allowed to be built in the first place because they didn't have railings. The height of the decks is 20 inches and 25 inches respectively from grade. Minnesota building code states that a deck less than 30 inches from grade isn't required to have railings.
- 7) The DNR has recommended that we do not allow buildings to be located in the shore impact zone because these areas serve as Shore land buffers to protect the lakes.

Winkelmann asked when Mr. Longtin bought the property. Longtin said the end of May 2013. He also stated that he was not sure of the County/Lake process for variances. The railings were asked for based on his home inspection recommending it, strictly for safety reasons. The front deck request could be smaller like a 6' x 5' and the suggestion of a window to replace the existing patio doors is more costly. This request is for safety reasons. The shed would be strictly for storage and appearance. He would like, at the minimum to be able to switch out the existing shed with the requested slightly larger, nice looking one. He cannot change the history of the lot and was not aware of everything when he purchased the property.

He would also like to move a portion of the gravel u-shaped driveway and make it a yard with grass. He understands that he can do that without a permit, just wanted the Board to be aware of that plan.

Holte asked the board the hardship questions based on the request for removing the existing 8 x 12 shed and replacing it with a 10 x 12 shed with extra natural screening on the lake side to hide the shed.

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

Holte stated with 34 No's and 1 Yes the criteria has been met if the Board wishes to grant the variance.

A motion was made by Wright to approve the Variance to replace the existing 8 x 12 shed with a 10 x 12 shed with the following conditions: a.) must remove the existing 8 x 12 shed, b.) must establish adequate vegetative screening between the OHW and the new shed, second by Gagner. All in favor. Variance has been approved.

Holte asked the Board the hardship questions based on the request to reduce the setback off the OHW from 100' to 36' for the addition of a 6' x 8' deck/balcony.

Question	Gagner	Moe	Franks	Wright	Winkelmann
1.	Yes	Yes	Yes	Yes	Yes
2.	Yes	Yes	Yes	Yes	Yes
3.	No	No	No	No	Yes
4.	No	No	No	No	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 Winkelmann to DENY the variance request, second by Moe. All in favor.
Variance has been denied

The applicant withdrew his request for the variance to reduce the setbacks from the OHW and ROW for placement of railings on the decks. He stated that he will work out something for safety staying under the 36" height restrictions, which would require a permit.

Next meeting is September 27, 2013.