

HUBBARD COUNTY

Planning Commission/Board of Adjustment meeting minutes

6:00 p.m. on Monday, October 26, 2015

Chairman Tim Johnson opened the meeting with the following members also present: Ken Grob, Tom Krueger, Ted Van Kempen, and Charlene Christenson. Also present was Environmental Services Officer Eric Buitenwerf.

Tim Johnson started the meeting by reading the procedure by which the meeting of the Planning Commission/Board of Adjustment will be conducted to the audience.

Planning Commission:

Approval of Minutes: September 28, 2015 meeting.

Grob made a motion to approve the September 28, 2015 minutes as presented.

Christenson seconded the motion.

The motion carried unanimously 5 – 0.

Old Business: None

New Business: None

Miscellaneous: None

Board of Adjustment:

Approval of Minutes: September 28, 2015 meeting

Krueger made a motion to approve the September 28, 2015 minutes as presented.

Van Kempen seconded the motion.

The motion carried unanimously 5 – 0.

Old Business: None

New Business:

Variance Application 52-V-15 by Jon Allen: Part of Gov. Lot 6, Section 15, Township 141, Range 32, Akeley Township on 11th Crow Wing Lake, a Recreational Development lake. Parcel 01.15.01610. Applicant is requesting a variance from Section 506 of the Shoreland Management Ordinance and Condition #1 placed on Variance 26-V-13 to allow a guest cottage over 700 square feet on a lot that does not comply with the 20,000 residential lot suitable area and allow the guest cottage to be connected to a holding tank instead of the primary dwelling's SSTS.

Jon Allen presented the request as an application for a guest cottage that would be serviced by a holding tank.

Christenson asked if when you purchased the property, you were aware of what was discussed when this property was split.

Allen answered no and commented that he does not have a copy of the variance. I believe that it was tied more so to the other property where the main house is. Eric Buitenwerf showed it to me when I met with him.

Christenson commented that part of the variance was that the former duplex sewer hookups must be disconnected and the toilets and sinks removed. Are they currently out of there?

Allen stated that the building has been completely gutted and ripped the top off of the tank that was there.

Christenson asked what your thoughts were when you looked at the property and saw that building in that condition.

Allen commented that it needed to be worked on; I was told it was a duplex in various stages of repair. I looked at it as an opportunity for a bunk house or guest house.

Christenson asked who told you that.

Allen answered that he believed it was the realtor.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence was received.

Johnson commented that on the RLSA figure, you wrote down 18,537 sq. feet and on the survey it shows that it is 16,537 sq. feet. That is a lot of difference, just wanted to point that out. Did a little calculation and the shed is 100 sq. feet, the garage is 806 sq. feet, and if the duplex was down to the 700 sq. feet to meet the guest house square foot requirement, it would still be 1851 square feet short of the 20,000 square foot requirement, that would be by deleting those structures.

Allen noted that he would like to find the drawing that shows the 16,000 vs. 18,000.

Johnson mentioned that you indicated in the application that on #6 in your narrative the 18,537 figure and in #7 of the site plan, it indicates 16,537.

Grob explained that this is problematic since the variance in 2013 went through a lot of review and as I recall there was concern about the size of that duplex as a potential guest area. There was concern about septic issues. We were fairly diligent in establishing the conditions and for seeing some of the issues that are now resurfacing. I do not see any of the criteria or information that has changed that would change the views that we had a couple of years ago.

Allen commented that he was not part of the original variance and think it was probably that the property was having trouble being sold by the bank that took it back. I was told it was going to be easier to sell the property if it was split and so what I understood is the variance was done. I think that the intent is different than the intent of my application for a variance. I think the intent was to get the property split so it could be sold and inhabited. My intent is to utilize it. In my view, the holding tank is a responsible way and I do not think there are environmental issues of a holding tank for a septic and I believe that a holding tank is a little bit more on the safe side.

Johnson explained that a holding tank is frowned on by the State of Minnesota. It is a last resort for special reasons. They do not care to use holding tanks because eventually an irresponsible owner will end up with them and they are not taken care of properly. Not saying that you are, but that is why they frown on them. Our ordinance for a guest cabin is to hook up to the primary residence and your septic is not large enough and the septic is in by variance. That is the last spot you have. The trade-off at the time was to have that duplex taken out completely and I was one in favor of leaving it for use of some kind. There is a cabin down next to the lake at 22 feet which could have been moved as a condition when that property was split. We mitigated to leave it where it is at right now.

Allen noted that at this meeting he was hoping that they could talk about past and then the future. I really do not know any of the people that were there in the past and have no affiliation with the bank. I have been coming up to Hubbard County for 40 years and am very respectful of this area. If I can continue to come here and enjoy it, for us it was an opportunity to get into a property affordably and our family is a family of five, we could use the extra space as you know the cabin is very small. I am very respectful of the property, of the city, and county and would assure that is why I am here because I know a lot of people that have dealt under the cover of night and many different ways of doing things and I am not one of those people. I am here trying to get it done in front of a board. I would like to do it correctly.

Van Kempen explained that he was not part of the Board when the 26-V-13 variance was approved. If there was not that condition, it would be hard with the ordinance being 700 square feet for a guest cabin to approve a 1400 square foot guest cabin. Also with the septic, I have no doubt that you would be responsible, but there is always a possibility of future owners not being responsible.

Krueger commented that he was not part of that 2013 variance and also was not able to go to the lot viewal last Thursday. The cabin that is 22 feet is the primary residence. What is the shape of the duplex and why not use the duplex as a primary residence.

Allen answered that he has no idea. It has a mold problem and I believe that it started out as a rambler and then was turned into a veterinary clinic and then into a duplex, so there was a lot of manipulation of the building to get it through those three phases of life.

Krueger asked about the condition of the cabin on the lake.

Allen noted that it is in decent shape and honestly the property has been neglected for a long time. Our mission is to leave it better than when we got there. I believe it is in better shape than it was three years ago.

Christenson asked if you have looked into how much it will cost to have a tank pumped each year.

Allen responded that it is a \$175 for about 1800 gallons each time.

Christenson asked if they would be living here in the summer.

Allen replied that they live in Indiana but have been coming here since age 14 and met my wife here. I do have another property on Lake Ida that actually has a holding tank and I have been very responsible with that for many years so I do understand the pumping of it.

Grob explained that back when we were approached about splitting this into Tract A and Tract B and the board members at that point were not particularly excited about doing it and for all the same reasons we are having the discussion here. The cabin is in the shore impact zone which is not very desirable and the duplex was a livable unit which was not according to ordinance in terms of guest cabin and we had lots of discussions about could the duplex be the main cabin and remove the cabin down by the lake because there is only limited septic area. If we are going to do this, we have to put these conditions on and you are back now asking us to remove the conditions. I do not think things have changed. I express disappointment if whoever you dealt with from a real estate stand point was not up front with you as to what the restraints and conditions on this property were.

Allen explained that this was not included in the paperwork with the bank. I am not coming back since this is my first attempt to try to get a variance.

Johnson explained that what Grob is saying is that this property is coming back.

Grob explained that the restraints are still there and we cannot do anything about what pretenses you bought the property under. It is hard to change my views relative to conditions that were placed on this property. Do not know a lot about holding tanks and what the impacts are, but I do know that in the four plus years on the Board, I do not recall approving a holding tank.

Christenson made a motion to deny the variance application and adopt the staff report findings of fact.

Van Kempen seconded the motion.

Findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules?

Yes () No (X)

Why or why not? The proposed guest cottage is twice the size of the 700 sq. ft. maximum allowed guest cottage footprint. There is no undisturbed soil alternate SSTS drainfield site for the existing SSTS. A holding tank for a proposed 1400 sq. ft. residence is high risk due to potential tank leakage or improper pumping/disposal. The lot is barely large enough to support the current residence on the lot given its severe SSTS drainfield site limitations. Allowing a 150% increase in residence square footage in such a situation would not be in harmony with the ordinance or State shoreland rule's intent.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes () No (X)

Why or why not? There currently is a 904 sq. ft. residential structure, detached garage, and 1400 sq. ft. accessory structure on the lot which are all reasonable uses. The lot can also be used to enjoy the outdoors and access the lake for recreational enjoyment.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes () No (X)

Why or why not? The lot is only 3500 sq. ft. shy of the minimum residential lot suitable area requirement and otherwise meets all other lot size requirements. There are many lots in the County that have existed for quite some time and are thus short on available septic system drainfield space. The proposed guest cottage structure and detached garage on the lot are both of a standard rectangular construction with a straight series of roof trusses that are conducive to scaling down either structure to comply with the 700 sq. ft. guest cottage footprint requirement. The application does not state an alleged difficulty.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes () No (X)

Why or why not? The "difficulty" is created by the landowner's desire to have a guest cottage that is twice the maximum allowed footprint for such and connect said structure to a holding tank instead of to the existing SSTS. The proposed guest cottage and detached garage on the lot are of a design that is amenable to scaling down their size relatively easily to comply with the 700 sq. ft. footprint requirement.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes () No (X)

Why or why not? The area consists of single family year-round and seasonal residences. Allowing this lot to have a 1400 sq. ft. guest cottage on it in addition to the existing 904 sq. ft. primary residence would essentially cause two primary residential structures to be on a lot that is sized for a single residence. This would alter the locality's character by not fitting in with the surrounding residential structure density. If living space is the alleged need on this lot, such can be achieved by discontinuing use of the primary residence and making

the proposed guest cottage the primary residence and connecting it to the existing septic system instead of a holding tank. Or the structures on the lot could be removed altogether and the lot could then be developed with a single residential structure that met setback and could be sized to contain the ~2300 sq. ft. of living space proposed between the existing primary residence and proposed guest cottage.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The application does not state any practical difficulty.

The motion passed unanimously 5 – 0.

Variance Application 53-V-15 by Lance & Sheryl Sumstad: SW1/4 of the NE1/4 and the west 33' of the NW1/4 of the NE1/4, Section 22, Township 140, Range 32, White Oak Township. Parcel 28.22.00120. Applicant is requesting a variance from Section 4, Subdivision A.1.a.2.a of the Subdivision Ordinance to create two tracts that do not comply with the 150' minimum public road frontage requirement.

Lance and Sheryl Sumstad presented the variance request as when they purchased the property, we had told our son that if they wanted to in the future, we would give them five acres. We did actually apply to have it done before the new ruling came out and we missed stamping the deed and recording the deed at the time and now with the new ordinance, we need to apply for the variance to meet the new requirements.

Johnson opened the discussion for public comment.

No public comment given.

No written correspondence was received.

Van Kempen asked if your son is living on the five acres.

Sumstad replied yes.

Van Kempen commented that during the lot viewal, it looked like they had been there for a couple years already.

Sumstad replied that they applied for the septic system permit in 2013, so they have been there since then.

Van Kempen asked if there were plans to lot off more of the property.

Sumstad stated no. We do have other children and grandchildren and they use the property to hunt and go four wheeling.

Grob commented that both the existing property and the new five acre split off have buildings and both have wells and septic systems that are in compliance.

Sumstad explained that we did the well permits and the septic.

Grob explained that the other five acres that are being split off are at the end of the road and if we do this, we need to put a condition on this that the property must have an easement for access.

Sumstad explained that there is a legal easement.

Buitenwerf explained that the administrative subdivision application that they submitted earlier this year prior to the amendment taking place to the Subdivision Ordinance included a proposed easement to that five acre tract from 190th Street. It is not of record as of yet to my knowledge, but it is proposed to be conveyed at the time that that tract can be conveyed to their son.

Grob asked if that should be a condition on the variance.

Buitenwerf replied yes, that would be recommended.

Grob made a motion to approve the variance application with the condition that a 33' ingress and egress easement from 190th Street be conveyed to the five acre tract and adopt the staff report findings of fact.

Van Kempen seconded the motion.

Findings of fact:

1. Is the variance in harmony with the intent of the comprehensive plan and zoning ordinance?

Yes (X) No ()

Why or why not? The application proposes to provide a 33' wide ingress and egress easement to the proposed five acre tract to give it legal access to 190th Street – the nearest public road. The existing driveway in this easement area is well maintained, relatively level, and has a wide enough clear lane of travel that is free of obstructions such that emergency services vehicles ought to be able to sufficiently access both proposed tracts.

2. Without the variance, is the owner deprived of a reasonable use of the property?

Yes (X) No ()

Why or why not? The property is 41.3 acres in size and oddly shaped with 40 acres being a quarter/quarter section of land that is ¼ mile from the nearest public road and the remaining acreage being a 33' wide "flag" that connects the bulk of the tract to 190th Street which is a public road. Being able to subdivide a five acre tract from a 41.3 acre tract that is largely located in the interior of the section with only 33' of frontage on a public road is a reasonable use of the property – especially since a 33' wide ingress and egress easement will be provided to the five acre tract so that it has legal access to 190th Street.

3. Is the stated practical difficulty due to circumstances unique to this property?

Yes (X) No ()

Why or why not? As stated in the answer to question 2, this property is uniquely shaped as a "flag lot" in that it only has 33' of frontage on 190th Street and the 40 acre bulk of the tract is ¼ mile away from 190th Street in the interior of the section. The property thus physically lacks the required 300' of public road frontage to be able to comply with the ordinance's requirement that any new tract that is created have at least 150' of frontage on a public road.

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner?

Yes (X) No ()

Why or why not? The property was this exact shape and size when the owner who sold it to the applicants acquired it in 1982 on a contract for deed.

5. Will the issuance of the variance maintain the essential character of the locality?

Yes (X) No ()

Why or why not? The area is a mixture of agricultural fields to the west, moderate density residential use to the north and northeast, and forested use to the east and south with a single residential structure on the forty acre tract immediately east of this property. Subdividing 41.3 acres into a five acre tract and 36.3 acre tract will not change the locality's mixed use character.

6. Does the stated practical difficulty involve more than economic considerations?

Yes (X) No ()

Why or why not? Economics were not cited in the application as the sole difficulty. The difficulty involves the property's unique "flag" shape that existed prior to the applicants owning the property.

The motion passed unanimously 5 – 0.

Miscellaneous: None

Communications:

Adjournment.

Grob made a motion to adjourn.

Krueger seconded the motion.

The motion passed unanimously 5 – 0.

Adjourned at 6:33 p.m.

Respectfully submitted,

Barbara Barth
Recording Secretary