

MINUTES
PINE COUNTY BOARD OF ADJUSTMENT
February 3, 2016 4:30 p.m.
Pine County Health and Human Services Board Room
1610 Hwy. 23, Sandstone, MN

Members Present: David Koland, Tom Mestemacher, Richard Stepan, Gary Valvoda,
Members Absent: Carolyn Tuckner
Staff Present: Kelly Schroeder, Land Services Director; Caleb Anderson, Land and
Resources Manager
Others Present: Kevin Hofstad, Christopher Dubose

Call To Order: 4:30 p.m. Chairman Mestemacher asked all to rise and recite the Pledge of Allegiance to the Flag.

Approval of Minutes:

Valvoda/Stepan 4-0 to approve the Minutes of January 6, 2016 as presented.

Hearings:

Christopher Dubose is requesting a variance at 94464 State Forest Rd 4A-1, Nickerson. – Pine Parcel Number 21.0057.000; Section 1, Township 45, Range 17, (Nickerson Township) as follows:

Pine County Shoreland Management Ordinance Section 5.21 (A) requires that structures on unsewered recreational development lakes have a setback of 100 feet from the ordinary high water level (OHWL). The owner is requesting a variance of 36 feet for a 64 foot setback from the OHWL.

Staff **Caleb Anderson** gave an overview of the request. **Anderson** explained that the floodplain map does show that the proposed site is in the 100 year floodplain. However, a surveyor has established this to be incorrect and the proposed site is in fact out of the 100 year floodplain. **Anderson** shared that there is not room to move the proposed structure to the west due to the existence of a wetland. However, staff's visit to the property confirmed that there are other suitable locations on the property to build a structure that would not require a variance.

Christopher Dubose made a statement in support of his variance request. **Dubose** explained that he has owned the property for twelve years. He also shared that it is possible to build a cabin farther to the south but it would not be practical to have the cabin so far away from the lake. **Dubose** explained that he has designed the cabin and its placement as strategically as he can to meet his needs while conforming to the ordinance but he was unable to fit it down by the lake without needing an OHWL setback variance. **Chairman Mestemacher** questioned what **Mr. Dubose's** plan was for a septic system is. **Dubose** explained he would install a holding tank that meets code.

Chairman Mestemacher opened the public hearing at 4:45 p.m.

No members of the public spoke. **Anderson** shared with the Board a letter that was received from the public stating disapproval of the request for variance.

Chairman Mestemacher closed the public hearing at 4:52p.m.

County Attorney Reese Frederickson was not present to share comments. However, **Kelly Schroeder** shared that in conversation **Frederickson** noted that the property was purchased twelve years ago and was subject to the same restrictions at the time of purchase.

Anderson read the **Minnesota DNR Area Hydrologist Heidi Lindgren's** letter commenting on the variance request. The letter stated that the **DNR** recommends denial of the variance request because the applicant has not demonstrated a practical difficulty. The letter cited that "wishing to build in a certain location to see the lake, is not an unique circumstance to the property it is a design preference."

Dubose explained that when he purchased the property a variance was allowable when an applicant demonstrated that a hardship prevented them from conforming to the ordinance and statute has changed now to allowing practical difficulty too.

Discussion/Decision on Variance Request:

Mestemacher stated conforming to the ordinance OHWL setback is particularly important with the beaver activity and floodplain present at this property.

David Koland agreed that being close to the shoreline when a river was involved was a concern.

Koland stated there are other places to build on this property involving wetlands, that may be more costly. However, the Board cannot consider cost in its determination.

Mestemacher commented that he agrees with the DNR that wishing to build close to the lake is a design preference and he would like to see the applicant build farther back.

Stepan asked staff if there is an option to build the cabin farther back in the floodplain on raised ground. **Schroeder** shared that the building could be built on stilts or piers as an alternative to fill. **Dubose** shared that he is not opposed to moving the building farther back if he could do so on piers rather than fill.

Koland motioned. **Stepan** seconded. **4-0 to deny the variance because the applicant has other options to build a structure that will conform to the ordinance.**

Old Business:

The Donald Uldbjerg Variance Request was tabled from the January meeting.

Mestemacher offered **Kevin Hofstad** 3-5 minutes to comment on the Uldbjerg variance request.

Hofstad shared that **Mr. Frederickson's** letter, which was sent to the Board of Adjustment, was a misrepresentation of the facts.

Hofstad stated that this property is unique because it is large (140 acres in size) and it is owned by two brothers that inherited it.

Mestemacher stated that he is aware of several properties with lakeshore and additional property across the road, therefore he feels this property is not demonstrating a practical difficulty that is unique. **Mestemacher** added that the need to split the property is created by the landowner and not by the property itself.

Koland suggested that the applicants are not proposing to do something prohibited by the ordinance as they do not want to build on the property. **Anderson** shared that the variance is in fact needed because the proposed parcel division is not compliant with section 5.1 of the Shoreland Management Ordinance.

Valvoda suggested that the division could have the 65' access strip attached to a 10 acre parcel across the road. Then the remainder of the land could be subdivided at a later date and would not be able to offer lake access for other lots.

Anderson interjected that the Board is looking closely at how to approve the variance but has not yet established that statutory requirements for granting a variance are met.

Valvoda asked whether his initial suggestion would meet the ordinance. **Anderson** read section 5.1 of the Shoreland Ordinance aloud. **Valvoda** agreed that the proposed parcel division does not meet the ordinance standards.

Koland stated that the proposed variance is consistent with the comprehensive plan. **Mestemacher** expressed disagreement.

Mestemacher stated that he does not want to break state statute by approving the variance.

Valvoda commented that the proposed variance with proper conditions would not have adverse impacts to the lake. However, the landowners do have an alternative option of doing a compliant subdivision with access via an easement.

Mestemacher agreed with **Valvoda** as well as **Frederickson** and the **DNR** that there are other ways to divide the property and maintain access via an easement.

Hofstad explained that the applicant views an easement as an inferior option due to liability issues between the owner and easement holder.

Mestemacher cited that the variance request does not satisfy criteria 3.61 of the Shoreland Ordinance state that "the condition causing the hardship is unique to that property."

Mestemacher once again said there are many properties with land across a road from the lakeshore.

Mestemacher cited that the variance does not satisfy criteria 3.63 of the ordinance because further subdivision of the land could result in increased use of the access strip, which is contrary

to public interest.

Koland motioned to grant the variance in three deeds with no conditions. The motion did not receive a second. Motion failed.

Mestemacher motioned to stand behind the County Attorney and go by the Shoreland Ordinance and do not grant this variance and that the option may have other options. **Valvoda** seconded the motion.

Koland suggested to reword the motion to simply deny the variance request.

Motion made by Mestemacher. Seconded by Valvoda. 3-1 to deny the variance request for the Uldbjerg property at this time.

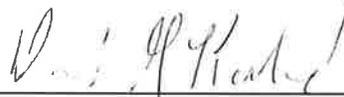
ADJOURN

Mestemacher/Koland 4-0 to adjourn the meeting at 5:55 p.m.

ATTEST:



Tom Mestemacher, Chairman



David Koland, Secretary