

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, JULY 20, 2021
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

Members Present: Bill Davis, Perry Bushaw, Paul Krabbenhoft, Ezra Baer, Tim Brendemuhl

Members Absent: None

Others Present: Russell Pesola, James Venette, Steven Venette, Lee Wallin, Matt Jacobson, Erika Franck, Rita Rueckert, Caitlin Hurlock, Kenneth Vail, Rick Granrud, Mark McGrew, Scott Gierke, 218-850-0352, Kent Severson, Patricia Venette, Ken Hall, Stefan Boehm

The meeting was called to order at 7:00 PM by Chair William Davis. Roll call was taken for this meeting.

APPROVAL OF AGENDA:

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board approved the meeting Agenda.

APPROVAL OF MINUTES JUNE 22, 2021:

On motion by Ezra Baer, seconded by Paul Krabbenhoft, and unanimously carried, the Board approved the Minutes from June 22, 2021.

PUBLIC HEARING(S):

LIGHTHOUSE CONSTRUCTION, INC. – REQUEST FOR VARIANCE

The applicant is seeking approval of variances to the Ordinary High Water Level setback, minimum lot size and minimum lot width of Clay County Development Code to allow the construction of a residential dwelling in Lot 21 of L-M Oak Shore Acres, 27609 82nd Ave S, Hawley, MN 56549, Parcel ID 24.055.0121, Section 15, Township 138N, Range 44W in Parke Township.

On motion by Ezra Baer, seconded by Tim Brendemuhl, and unanimously carried, the Board opened the public hearing.

Matt Jacobson, Planning & Zoning Director, stated the Applicant is seeking the following variances from 8-5B-5: Dimensional Standards for Special Protection – Shoreland (SP), Recreational Development (RD), and Special Protection – Low Development (SP-LD) Districts, Table 8-5-1 to the following:

1. Reduce the 150-foot structure setback from the Ordinary High-Water Level (OHWL) of Lake 15 to 100 feet (33%);
2. Reduce the 150-foot structure setback from the OHWL to 135 feet for the septic system (10%);
3. Reduce the minimum lot size from 58,806 square feet (1.8 acres) to 26,076 sq ft (0.6 acres) (64%); and,

4. Reduce the minimum shoreline length from 225 feet to 85 feet (63%).
- 5.

This property is a Lot of Record. Lots of record are buildable if the following standards are met:

8-2-1: LOTS OF RECORD:

All lots legally recorded in the office of the County Recorder prior to the effective date of this Ordinance are considered to be lots of record and, therefore, buildable even though such lots may not conform to the provisions of this Ordinance, provided all of the following requirements are met:

- A. **Separate Ownership:** Such lots have separate ownership from abutting lands;
- B. **Sanitary, Setback Requirements:** All sanitary and setback requirements of the County are complied with insofar as practical;
- C. **Lot Frontage Area:** Such lots occupy no less than seventy-five percent (75%) of the minimum requirements of the appropriate district for lot frontage and minimum lot area. This provision shall not apply to nonconforming, substandard lots of record with existing structures thereon;
- D. **Permissible Use:** The proposed use is an allowed use within the applicable zoning district; and
- E. **Floodproofing:** Within any flood plain zone, the proposed use must be elevated on fill or floodproofed to the regulatory flood protection elevation according to the standards contained in this Ordinance.

Furthermore, for lots of record located in shoreland districts, the following applies:

A. Construction on Lots of Record:

1. **Allowed:** Lots of record that do not meet the lot area and width requirements of Chapter 5, Article 3B of this Ordinance may be allowed as building sites without variances from lot size requirements provided that all of the following provisions are met:
 - a. The proposed use is a permitted use in the zoning district in which the lot of record is located;
 - b. The lot has been in separate ownership from abutting lands at all times since it became substandard;
 - c. The lot was created compliant with official controls in effect at the time;
 - d. All sewage treatment requirements of this Ordinance are met; and
 - e. All setback requirements for the Shoreland district where the lot of record is located are met.
2. **Variance Required if Setbacks Not Met:** If a proposed structure does not meet the setback requirements for the Shoreland District where the lot of record is located, a variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued. In evaluating the variance, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

The applicant has identified hardship or practical difficulty due to the size of the lot. The owners have reached out to adjacent landowners to inquire about purchasing additional land to increase the lot size so they would not require any variance; however, the neighboring lots have not shown any interest in selling property. The original intention of this lot when it was platted was for residential use. The impervious surface of the proposed building is well under the 25% impervious surface limit.

An aerial photo was shown of this lot on the north end of Lake Fifteen, which is in the L-M Lakeshore Acres Development. Part of the width issue with this lot is that the east neighboring parcel has a portion that wraps around the southeast end of the parcel in question.

Applicant is looking at building a little over 1400 square foot residence with 2 bedrooms and 1 bathroom. They are looking at placing the structure 110'10" feet from the OHWL of the lake and this measurement is from the deck off the front. They would be 64'5" from the roadway centerline of 82nd Avenue South. Total impervious for this project is just under 17% (code requirements state maximum of 25%). This proposed structure would meet all the side-lot setbacks for road and only short on the OHWL setback. They are also proposing a vegetative berm for runoff prevention.

There is a flat spot on the roadside portion of the property, but the elevation does drop to a steep slope on the way to the lakefront. Steep slope is 12% or greater. It is not a bluff.

Proposed Conditions, if approved, include:

- Perennial vegetative berm must be installed on the lake shore side of the house to mitigate runoff.
- Construction must be no closer than 20 feet to the top of the slope.

The 17% impervious surface calculation does include the future planned garage area.

Lake Fifteen has a 150-foot setback from OHWL; whereas all other natural environmental lakes have a 200-foot OHWL setback. The Minnesota Department of Natural Resources was noticed on this request; there was no response from them. There have been no previous variance requests on this property.

Stefan Behm of Lighthouse Construction spoke on behalf of the landowner. He addressed the setback from the septic system. They have set back part of the septic to be closer to the roadway instead of the lake. They are able to get back 33 feet from the centerline of the roadway, however they are unable to get further back to fulfill the 20 feet of the road right of way setback. Mr. Behm asked if they could request a lesser setback. Kevin Lafay of Lighthouse Construction clarified the setbacks and placement of the drainfield for the septic system.

Matt Jacobson advised that the variance request for the road setback was not included in the public hearing notice, the Planning Commission is unable to address such a request. Mr. Behm then asked if they could re-work the setback for the OHWL.

Russell Pesola stated he was concerned about the health of the lake and came to the meeting to share that concern.

James Vennette owns Lot 17 and 18 and is co-owner of Lot 16. Mr. Vennette states that most of the trees were removed and that it is his hope that there will be additional trees planted to re-establish that vegetation which were previously destroyed.

Steven Vennette stated this lake is to be a natural lake and the homes on the lake are intended to be unseen from the water due to the vegetation and required setbacks. He feels the variance given should be from the road instead of the OHWL of the lake. He feels this is a greater priority than having the residence closer to the lake. He feels all the lots within this subdivision are compromised lots due to their size and shape.

Mark McGrew states he and his wife own lots 1, 2, 3, 4 and 5. He asked if the DNR had come out to look at this parcel and he understood that there have been other projects in the past that area residents had the DNR come out to look at and the projects were stopped because of the elevation issues. He also stated that there needs to be additional trees replaced on this lot.

Paul Krabbenhoft asked the two Vennettes if they were aware when the trees were removed and the best guess was approximately 25 years ago this occurred.

Kenneth Hall owns Lot 20. He states Ben Blair previously owned this lot and had talked to previous County management Magnusson and Jaster and was told that he could not build a home on this lot. He opposes any building on this property. Mr. Hall states that he had to purchase the lot next to his when his septic failed and he had to reconstruct it into compliance.

Rick Granrud feels that the proposed septic system is too close to the lake. He states that there have been several owners of this lot and all of them have sold the property because they have been told they are unable to build on the property.

Kent Severson, Director of Clay County Environmental Health, states that he has visited the property. He states that a 2-bedroom structure would require roughly a 1000-gallon tank and about 500+ square feet of drainfield. There would be the option to go with a mound system which would require approximately 10 feet wide and 27 feet long and add a few more feet on each side for the slopes coming down. Ezra Baer questioned Mr. Severson if a septic system would fit on this property; Mr. Severson states that he feels that it could fit but he was not aware of the plans for the well which would require a 50-foot setback. It was pointed out that there was a well placement included and, after review, Mr. Severson stated he feels that this could work. Bill Davis asked Mr. Severson about the setback from the OHWL and Mr. Severson stated that the setback would need to be less than the requested 150 but he needed clarification regarding changing the setback to the road instead of from the lake.

Paul Krabbenhoft asked Mr. Severson for clarification on the footprint/size of the septic. Mr. Severson felt that a mound system could be very workable in this area. Mr. Krabbenhoft inquired about leeching and evaporation. Mr. Severson states that they would need a minimum of 3 feet to separate the bottom of the drainfield from OHWL and he does not see a problem with that at this point and that a mound structure would be easier due to the space confinements. He also stated that a trench system or a mound system would be workable at this point.

Perry Bushaw asked again about setback from lake as opposed to setback from roadway. Matt Jacobson stated that the setback from the roadway would not be able to be considered at this time since the public hearing notice did not include that request. Kent Severson agreed that reducing the setback from the roadway would be a better option than reducing the setback from the lake. Bill Davis asked if reducing the setback to the lake would cause any problems and Kent Severson did not feel that the reduced setback from the lake would cause a problem.

Scott Gierke attended the meeting virtually and asked if the proposed home was year-round or seasonal. This proposed home is a year-round residence. Mr. Gierke feels there are several people that are clear-cutting in front of their homes to improve their view of the lake and asked how this was going to be enforced? He also wondered if previous owners were told that they were not allowed to even request for a Variance, how could this lot now be able to be buildable? Mr. Jacobson advised that anyone is always allowed to request a Variance; and that the clear-cutting is regulated through the Shoreland Ordinance of the County and he clarified the regulations within the Shoreland Ordinance. Mr. Jacobson also stated that he feels the size of this lot is on par with many of the other properties on the lake.

Kevin Lefay of Lighthouse Construction stated that if they could be granted a Variance for 135-1/2 feet from the OHWL, they would then not need a Variance setback for the roadway and would be able to install a mound system.

Paul Krabbenhoft asked for clarifications regarding the setbacks from OHWL vs. roadway. Kevin Lefay stated that this is the flattest area of the property.

Rick Granrud asked what is meant by future development. Matt Jacobson responded that the garage would meet the 150-foot setback of the OHWL and the footprint of it is already included in the impervious surface percentage calculation.

Mark McGrew asked how much further back they could move the house. Matt Jacobson indicates that the house could be moved 11'5". Mr. McGrew felt that is what they would then need to do.

James Vennette states that the soils are very heavy gumbo clay and he does not feel that these are loamy soils, which may require a change to the design of the septic. Russell Pesola again stated that the lake is very fragile, and it was a few years ago that Turtle Lake was flowing into Lake Fifteen and extensive weed growth resulted from that occurrence.

Paul Krabbenhoft asked the owner Lee Wallin about restoring the trees. Mr. Wallin stated that he and his wife want to have more trees and do not want to lose any additional trees that are on the property. They are not opposed to planting more trees of like kind and have already considered doing this.

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the public hearing was closed.

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested permit. All items can be addressed through conditions.

Matt Jacobson confirmed that all building permits issued for residential homes require a septic system design that is approved by Environmental Health Director Kent Severson. Mr. Severson confirmed that he reviews, approves and inspects all septic systems and that the septic size is predicated on the number of bedrooms.

On motion by Ezra Baer, seconded by Paul Krabbenhoft, and unanimously carried, the Board of Adjustment *GRANTED* a Variance with the following conditions:

- **Reduce setback of 150-feet from OHWL to 105 feet from OHWL, with setback measurement to begin at the deck**
- **Reduce setback of 150 feet to 135 feet from the OHWL for the septic system**
- **Reduce minimum lot size from 58,806 sq feet (1.8 acres) to 26,076 sq ft (0.6 acres)**
- **Reduce the minimum shoreline length from 225 feet to 85 feet**
- **Septic system installed must be a mound system**
- **Vegetative berm must be installed working through the Soil and Water Conservation District (SWCD) to install to NRCS guidelines**

Practical difficulties include:

- **Lot size**
- **OHWL setback**
- **Side property line setback affected by the proximity of neighbor's existing well**
- **Inability to acquire additional land from neighboring properties**

UNFINISHED BUSINESS:

- **Matt Jacobson – Clay County Comprehensive Plan Update:** There will be Comprehensive Plan Public Input Meetings at the following dates/locations:
 - ❖ **Hitterdal Community Hall** Monday July 26th 6:30-8:00 PM
 - ❖ **Buffalo Red River Watershed District Office – Barnesville** Tuesday, July 27th 6:30-8:00 PM

All are invited to attend and to spread the word to encourage attendance.

NEW BUSINESS:

- **Ezra Baer Term Expiration / Reappointment** On Motion by Perry Bushaw, seconded by Tim Brendemuhl and unanimously agreed, there was a recommendation to appoint Ezra Baer to a second term on the Board of Adjustment and to be forwarded to the Board of Commissioners for their final approval

ADJOURNMENT:

On motion by Ezra Baer, and seconded by Perry Bushaw, and unanimously approved, the meeting was adjourned at 6:54 PM. .



William Davis, Chair
Clay County Board of Adjustment