

MEETING MINUTES
POPE COUNTY BOARD OF ADJUSTMENT
Thursday, March 28, 2024

The Board of Adjustment convened in regular session on Thursday, March 28, 2024 at the Pope County Courthouse, 3rd floor Meeting Room.

Members Present: Roger Isdahl, John Messenger, Ivie Cooley, Ted Kannegiesser, Mark Halls and Russell Barkeim

Other Officials Present: David Green (Land & Resource Management Director), Jessica Hill (Zoning Administrator), Galen Gruber (Land Use Specialist II) and Paul Gerde (County Commissioner)

Call to Order

The meeting was called to order by Chairman Isdahl at 6:01 p.m.

Additions and Corrections to the Agenda

There were no additions or corrections to the agenda. A motion to accept the agenda as prepared was made by Barkeim and seconded by Messenger. Motion carried with no dissenting votes noted.

Review minutes of February 22, 2024 Regular Meeting of the BOA

The minutes of the Board of Adjustment meeting that was held on February 22, 2024 were submitted for approval. Motion to accept the minutes as written was made by Messenger and seconded by Barkeim. Motion carried with no dissenting votes noted.

Review minutes of February 29, 2024 Special Meeting of the BOA

The minutes of the Board of Adjustment meeting that was held on February 29, 2024 were submitted for approval. Motion to accept the minutes as written was made by Halls and seconded by Kannegiesser. Motion carried with no dissenting votes noted.

General Business

There was no General Business to discuss. Director Green addressed the variance applicants regarding the application review procedures by staff and the Practical Difficulty criteria by which the Board of Adjustment (Board) must weight each variance request.

Tabled/Old Business

Chairman Isdahl recaps/summarizes the Special Meeting event, discusses Findings options and provides instruction to the Board members. The Chair states that they will address the issuance of the Shoreland Alteration Permit firstly followed by the issuance of the Floodplain Development Permit. The Board members proceed to discuss the Findings. Following discussion, a motion to deny the appeal of the issuance of Shoreland Alteration permit #23327 was raised by Halls and seconded by Barkeim. The motion passes with Isdahl, Messenger, Kannegiesser, Halls and Barkeim in support of the motion. Cooley abstains. There were no dissenting votes. Shortly thereafter, a motion to deny the appeal of the issuance of Floodplain Development permit #23328 was raised by Barkiem and seconded by Messenger. The motion passes with Isdahl, Messenger, Kannegiesser, Halls and Barkeim in support of the motion. Cooley abstains. There were no dissenting votes.

New Business

Variance #24017, applicant Kevin and Kim Banks (PID# 02-0477-000)

Applicant seeks to locate/construct a seasonal residential structure with deck on their Lake Villard shoreland property at less than the minimum setback of 100 feet from the ordinary high water level (OHWL) of the lake. The property is currently fully developed with an older mobile home and deck that are to be removed and replaced with the new structures. The new structures will result in less of an encroachment toward the shoreline of the lake as compared to the existing structures. Specifically, the new residential structure will be located at fifty (50) feet from the OHWL with a deck that extends ten (10) feet shoreward of the cottage. Zoning Administrator Hill presents the staff report and concludes that staff does not object to the issuance of a variance in this case. Following Zoning Administrator Hill's presentation, the Banks were offered an opportunity to defend their application. Kim Banks explained the circumstances by which they acquired this property and that it was a much bigger mess than they anticipated. They had spent most of this past summer just trying to clean up the property and not being able to enjoy it as a recreational destination. They have come to the realization that the old structures were not safe and needed replacement. The design of their new structure will include easier access for inhabitants and visitors. A public hearing was called at 6:24 pm. With no one providing comment in support of or against the variance request, the Chairman closed the public hearing. The site team debriefed the rest of the Board members regarding onsite conditions. At the conclusion of the site visit report there was brief discussion followed by the ensuing motion to approve of the variance by Cooley: *Based upon the information as presented in the staff report and facts as gathered this evening, I move to approve of the variance request.* Motion is seconded by Messenger. Motion passes unanimously. Conditions include:

- That the residential structure shall not encroach any closer than 50 feet from the Ordinary High Water Level (OHWL).
- That the deck shall not encroach any closer than 40 feet from the OHWL.
- That County staff may enter onto the property at reasonable times and in a reasonable manner to ensure that the variance holder is in compliance with the conditions imposed and all other applicable statutes, rules and ordinances.
- As this application is being considered based upon standards and procedures as established by the Pope County Land Use Controls Ordinance, the effect of this Variance is specific to those standards.
- That the property owner is responsible for reaching out to the Township to assure compliance with any Township standards.

With Findings as follows:

1. **Variance request consistent with purposes and intent of the official controls and the comprehensive plan:**

Findings: The Minnesota DNR Shoreland Rules Ch 6120 as well as the Pope County Land Use Controls Ordinance regulate the location of structures in shoreland designated areas. The purpose of the requirements is to maintain neighborhood character and aesthetics as well as for the protection of surface water resources and personal property. The locating (as proposed) of either

of these structures does not create an aesthetic issue with the boating public or neighboring property owners and is not in conflict with the Pope County Comprehensive Plan. The locating of the residential structure and deck at a reduced setback distance will not impact the hydrology or natural characteristics of the riparian area of the lake.

2. **Use of property/structure is a reasonable use:**

Findings: Locating a residential structure and deck onsite is a reasonable and permissible use in all Shoreland zoned districts.

3. **Character of locality and detriment to neighboring properties:**

Findings: The proposed use of this property to locate a residential structure and deck is consistent with existing uses on other properties around the lake. Therefore, there is no change in character of the locality nor shall there be a detriment to the neighboring properties.

4. **Plight of the landowner is due to circumstances unique to the property and not self-created:**

Findings: The unique circumstance that contributes to the need for the variance relates to the dimensional limitations of the parcel.

Variance #24016, applicant Kevin and Kim Banks (PID# 02-0477-000)

Applicant seeks to install a Type I septic system on their Lake Villard parcel located on Quiet Cove Road. The parcel is dimensionally nonconforming which creates difficulties in locating structure and systems at minimally specified distances from other features. The property owner is seeking relief from the setback distance between their residential structure and the septic drain field. As designed, the drainfield will be ten (10) feet from the back of the seasonal residence. Zoning Administrator Hill presents the staff report and concludes that staff does not object to the issuance of a variance in this case. Following Zoning Administrator Hill's presentation, the Banks were offered an opportunity to defend their application. The Banks had secured the services of Elwood Septic Professionals for the design of their septic system. The design as presented offers the only possible way to locate an entire Type I septic system on this particular site. A public hearing was called at 6:33 pm. With no one providing comment in support of or against the variance request, the Chairman closed the public hearing. The site team debriefed the rest of the Board members regarding onsite conditions. At the conclusion of the site visit report there was brief discussion followed by the ensuing motion to approve of the variance by Messenger: *Based upon the information as presented in the staff report and facts as gathered this evening, I move to approve of the variance request.* Motion is seconded by Kannegiesser. Motion passes unanimously. Conditions include:

- The proposed septic drainfield may not be located any closer than ten (10) feet from the proposed residential structure.

With Findings as follows:

1. **Variance request consistent with purposes and intent of the official controls and the comprehensive plan:**

Findings: The purpose of the required setback for septic drainfields from residential structures is to protect personal property; public health; and surface and ground water quality. The proposed location of the septic drainfield is approximately ten (10) feet from the proposed residential structure. It is not likely that allowing the structure will create a hazard to public health.

2. **Use of property/structure is a reasonable use:**

Findings: Septic system drainfields are a component in individual subsurface sewage treatment systems and are permissible uses in Shoreland zoned districts.

3. **Character of locality and detriment to neighboring properties:**

Findings: Granting the variance will not change the character of the locality or be a detriment to the neighboring properties. The neighborhood will remain primarily rural residential in nature and use.

4. **Plight of the landowner is due to circumstances unique to the property and not self-created:**

Findings: The circumstances contributing to the need for the variance are that the parcel is dimensionally challenged with limited space to place septic system components, residential structures and wells on site to meet all required setbacks.

Variance #24019, applicant Andrew Gaffaney (PID# 01-0085-002)

Applicant seeks to locate/construct an addition to the existing attached garage at less than the required setback from the centerline of a roadway. The minimum setback between a structure and a road centerline is specified at one hundred (100) feet. As proposed, the structure would be located at forty-two (42) feet from the centerline of the roadway. Director Green presents the staff report and concludes that staff does not believe that a practical difficulty has been established. While the proposed garage is a reasonable use and its proposed location will not impact the essential character of the neighborhood, the applicant has failed to explain what is so unique about the property that a garage couldn't be constructed and located in conformance with the setback standards as prescribed in the ordinance. After the conclusion of the Director's presentation, applicant Gaffaney is offered an opportunity to defend his request for a variance. He comments that there are some limitations on the location of the garage addition which include the layout of the existing residential structure and garage, the septic system location and wanting to avoid having to access off of 160th Avenue. A public hearing was called at 6:44 pm. With no one providing comment in support of or against the variance request, the Chairman closed the public hearing. At the conclusion of the public hearing there was brief discussion followed by the ensuing motion to approve of the variance by Halls: *Based upon the information as presented in the staff report and facts as gathered this evening, I move to approve of the variance request.* Motion is seconded by Barkiem. Motion passes unanimously. Conditions include:

- The proposed attached garage structure may not be located any closer than 42 feet from the centerline of the road.
- That prior to any construction activities, all necessary permits are secured from Township,

County and State Agencies.

With Findings as follows:

1 Variance request consistent with purposes and intent of the official controls and the comprehensive plan:

Findings: The purpose of the required setback for structures from roadways is to protect personal property; provide for maintenance and potential expansion of public roads; ensure safety for all users of roads and for those adjacent to roads; and to preserve the neighborhood character and aesthetics. It is not likely that allowing the structure at 42 feet from the center of the roadway will create a hazard to motorists using the adjacent public road or limit future road improvement.

2 Use of property/structure is a reasonable use:

Findings: The locating/constructing of an attached garage addition on the parcel is consistent with existing adjacent uses in this neighborhood.

3 Character of locality and detriment to neighboring properties:

Findings: Granting the variance will not change the character of the locality or be a detriment to the neighboring properties. The neighborhood will remain primarily rural residential in nature and use.

4 Plight of the landowner is due to circumstances unique to the property and not self-created:

Findings: The residential structure and attached garage were built by previous owners and not permitted through Pope County, therefore county setbacks were not enforced. Hence the existing residential structure location has limited the ability of the landowner to construct an addition in conformance with today's Land Use Controls Ordinance.

Variance #24014, applicant Tim Heinze (PID# 11-0180-600)

Applicant seeks to locate/construct an accessory structure at less than the required setback from the centerline of a road. As proposed, the structure would be located approximately one hundred twenty (120) feet from the centerline of County Road 8 where the minimum specified distance is one hundred fifty (150) feet. Director Green presents the staff report and concludes that staff does not believe that a practical difficulty has been established. While the proposed shed structure is a reasonable use and its proposed location will not impact the essential character of the neighborhood, the applicant has failed to explain what is so unique about the property that a garage couldn't be constructed and located in conformance with the setback standards as prescribed in the ordinance. After the conclusion of the Director's presentation, applicant Heinze is offered an opportunity to defend his request for a variance. Heinze describes the proposed location as providing for operational integrity for farm equipment and truck access, and minimizing the amount of additional impervious surface coverage, i.e. gravel. He does not want to move the shed further north as that would result in the loss of trees and which may have an impact on snow drifting. Heinze comments that he prefers to leave as much green space as possible. A public hearing was called at 6:53 pm. With no one providing comment in support of or against the variance request, the Chairman closed the public hearing. At the conclusion of the public hearing there was brief discussion followed by the ensuing motion to approve of the variance by Halls: *Based upon the information as presented in the staff report and facts as gathered this evening, I move*

to approve of the variance request. Motion is seconded by Kannegiesser. Motion passes unanimously. Conditions include:

- The proposed residential structure may not be located any closer than 120 feet from the centerline of the road right-of-way.
- That prior to any construction activities, all necessary permits are secured from Township, County and State Agencies.

With Findings as follows:

1. Variance request consistent with purposes and intent of the official controls and the comprehensive plan:

Findings: The purpose of the required setback for structures from roadways is to protect personal property; provide for maintenance and potential expansion of public roads; ensure safety for all users of roads and for those adjacent to roads; and to preserve the neighborhood character and aesthetics. It is not likely that allowing the structure at 120 feet from the center of the roadway will create a hazard to motorists using the adjacent public road or limit future road improvement.

2. Use of property/structure is a reasonable use:

Findings: The locating/constructing of a new accessory structure on the parcel is consistent with existing adjacent uses in this neighborhood.

3. Character of locality and detriment to neighboring properties:

Findings: Granting the variance will not change the character of the locality or be a detriment to the neighboring properties. The neighborhood will remain primarily rural commercial/residential in nature and use.

4. Plight of the landowner is due to circumstances unique to the property and not self-created:

Findings: The circumstances contributing to the need for the variance relates to preservation of operational integrity and existing environmental systems including maintaining existing trees and minimizing impervious surface coverages.

Variance #24015, applicant John and Virginia Donner (PID# 19-0049-000)

Applicant Donner seeks a variance that would allow for the construction of a three-season porch over an existing patio area. The patio area is located at less than the minimum distance, approximately fifteen (15) feet from the ordinary high water level of Lake Linka. Director Green presents the staff report and concludes that staff does not believe that a practical difficulty has been established. After the conclusion of the Director's presentation, applicant John Donner is offered an opportunity to defend his request for a variance. Donner explained the history of how and when they acquired this property. He also explained that due to the nature of the property that there are a lot of mosquitos and bugs that present a nuisance and hinderance to fully enjoying the property. Having a three-season porch would help with that issue. The porch would be located in the exact some area and on the existing patio slab so there would be minimal impact to adjacent environment. He stated that there is very little boat traffic on the lake and that the structure would not have any impact on the lake or other lake users. He stated that he is not really expanding because the patio slab exists. The Board members engaged Donner with several questions regarding alternative locations on site to which he replied that the parcel is heavily wooded and has

severe sloped terrain as it goes away from the lake. Any other location for a three-season structure would not be feasible or cause more environmental concerns. There was discussion by the Board as to the exact location of the patio and clarification that the proposed structure would be located upon that patio slab. There was also discussion regarding minimizing stormwater runoff by providing gutters on the new structure as well as the existing cabin. A public hearing was called at 7:13 pm. With no one providing comment in support of or against the variance request, the Chairman closed the public hearing. The site team debriefed the rest of the Board members regarding onsite conditions. At the conclusion of the site visit report there was brief discussion followed by the ensuing motion to approve of the variance by Halls: *Based upon the information as presented in the staff report and facts as gathered this evening, I move to approve of the variance request with the condition that gutters be installed on both the three-season porch as well as the existing cabin to mitigate stormwater runoff to the lake.* Motion is seconded by Messenger. Motion passes with Halls, Barkiem, Messenger and Kannegiesser in support of. Isdahl and Cooley vote in opposition to the variance. With Findings as follows:

1. Variance request consistent with purposes and intent of the official controls and the comprehensive plan:

Finding: The Minnesota DNR Shoreland Rules Ch 6120 as well as the Pope County Land Use Controls Ordinance regulate the location of structures in shoreland designated areas. The purpose of the requirement is to maintain neighborhood character and aesthetics as well as for the protection of surface water resources and personal property. The locating (as proposed) of either of these structures does not create an aesthetic issue with the boating public or neighboring property owners and is not in conflict with the Pope County Comprehensive Plan. The locating of the residential structure and deck at a reduced setback distance will not impact the hydrology or natural characteristics of the riparian area of the lake.

2. Use of property/structure is a reasonable use:

Finding: A three season porch type structure is a reasonable use on property situated near a shoreline and in a wooded area where mosquitoes and other insects can negatively impact ones use and enjoyment of property.

3. Character of locality and detriment to neighboring properties:

Finding: The proposed construction of a three-season structure on an existing patio base is not inconsistent with other uses and development in the neighborhood (south side of Lake Linka). There are very few developed parcels where the structures meet the minimum setback standards of 100' from the ordinary high water level.

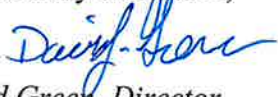
4. Plight of the landowner is due to circumstances unique to the property and not self-created:

Finding: The landowner is constrained by development decisions made by previous owners in regard to the patio location. Locating of the three-season room on the existing patio structure offers the most minimal impact to the existing natural environment. It preserves tree, and other rooted structures and avoids excavation activities in sloped areas near the lake. So, as a feature necessary to minimize the impacts of mosquitoes and other nuisance insects it is most logical to locate this structure on an already existing disturbed area. The unique circumstance is that the

existing patio is located in the shore impact zone.

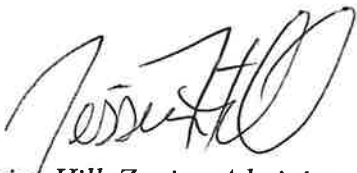
Adjournment 7:27 p.m. Motion by Kannegiesser to adjourn the Board of Adjustment meeting with a second by Barkiem. Motion carried with no dissenting votes noted.

Respectfully submitted,



David Green, Director

Pope County Land & Resource Management



Jessica Hill, Zoning Administrator

Pope County Land & Resource Management