

Morrison County Board of Adjustment

Minutes

January 7, 2020

Chairperson BethyJo Murphy called the meeting of the Morrison County Board of Adjustment to order at 7:00 p.m.

Members Present: BethyJo Murphy, Dave Stish, Russ Nygren, and Marvin Trettel.

Members Absent: None

Ex-Officio Members Present: Amy Kowalzek and Addison March

Ex-Officio Members Absent: None

PLEDGE OF ALLEGIANCE

1. Election of Officers

Dave Stish made a motion to nominate BethyJo Murphy as Board of Adjustment chairperson. Russ Nygren seconded the motion. The vote was all in favor.

Russ Nygren made a motion to nominate Dave Stish as Board of Adjustment vice chairperson. Marvin Trettel seconded the motion. The vote was all in favor.

2. KJD Properties/Kelly Doucette – No property address; - Application for a Variance to construct a home and septic system within the bluff & buff impact zone; located on Lots 40, 41, & 42 of Pan’s Shore Lots, Section 29, Township 132, Range 31, Scandia Valley Township.

Kelly Doucette & Robert Atkinson were present.

Amy Kowalzek entered into record Sections 706.2 and 707 of the Morrison County Land Use Control Ordinance, a plat map with the parcel location, variance application, background information questions, a site plan, a side view of the proposed dwelling, an updated application from the applicant, oblique imagery, a shoreline photo, seven (7) site photos, and a survey provided by the applicant. 83 notices were sent and three (3) emails and one (1) telephone call was received prior to the November hearing. Two (2) emails were received prior to the January hearing. All correspondence was against the proposal. Amy entered the finding of fact and decision questions.

Robert Atkinson stated that their neighbor, Thomas Wimmer, was unwilling to accept the survey results from Festler Land Surveying. The Wimmer’s were under the impression they owned more of the property. Robert Atkinson went on to state that Festler Land Surveying found the survey pins from 25 years ago, and that Thomas Wimmer had hired two (2) other surveyors since then and no other surveyors would complete the survey for him.

Kelly Doucette stated that he met with Amy Kowalzek prior to purchasing the property, and it was stated at that time that the property was buildable.

Robert Atkinson stated that Kelly and himself had met with Galen Gruber, the Morrison County Shoreland Specialist, to complete the corrective actions listed in their violation letters. He stated that is has been a learning process, but the site is currently stabilized and vegetated.

Kelly Doucette stated that the neighbors were complaining about the driveway sediment runoff, but the same neighbors would dump their leaves and lawn clippings into the lake.

Kelly Doucette stated that their three (3) lots combined were twice the size of other lots so the impervious surface with the new cabin would not be an issue.

Dave Stish asked the applicants to review their practical difficulty and explain why they did not choose the building envelope outlined by the surveyor for the cabin's location. Robert Atkinson stated that the building envelope was right on the property line, so they would have needed a variance to build in that location as well, and the location they chose would cause the least amount of soil disturbance.

Dave Stish asked what the practical difficulty of the property was. Kelly Doucette stated that when he purchased the property he was told it was buildable lots and he was not aware of the bluff being on both sides of the property, he was only aware of the bluff to the North.

Russ Nygren stated that the applicants may consider seeking legal recourse since they were told that the lots were buildable at the time of purchase. He went on to state that the proposed 30' x 40' cabin was not a very modest request. Kelly Doucette stated that the first-floor garage was actually only 26 ft. deep, and then the wall was staggered so the second-floor would be 30 ft. deep.

Marvin Trettel stated his concerns with the possibility of living quarters downstairs and asked if the applicants would be willing to work with the Board of Adjustment on the size of the proposed cabin. Robert Atkinson stated that they were willing to adjust the size of the cabin and asked what would be considered modest. Marvin Trettel stated that no more than 800 to 1,000 sq. ft. would be modest in his opinion.

Amy Kowalzek interjected that the Board of Adjustment could not negotiate with applicants and that the applicants would need to propose something new if they wished to change their application.

Robert Atkinson proposed a 26' x 35' cabin instead of 30' x 40'.

BethyJo Murphy stated that she would like to see the garage be designated as garage only without the option to convert to living space. She went on to state that garage space would be needed for storage as well, since any additional structures would be requiring a variance. Robert Atkinson stated that he was willing to agree to that.

Dave Stish stated that he agreed with BethyJo Murphy, and asked if the house could be moved closer to the road. Kelly Doucette stated that moving the house closer to the road would require less excavation. Robert Atkinson stated that he spoke with Galen Gruber, and the setback to the road right of way (ROW) was 30 ft., so they had the option of moving the house closer to the road.

Russ Nygren stated that he had an issue with the applicants selling the property to have the new buyers build. Whoever buys the property will not have been part of the variance discussions. Robert Atkinson asked to clarify if the variance moves with the land or with the landowner. BethyJo Murphy stated that the variance would go with the land.

Marvin Trettel asked about the septic location and asked if a holding tank tucked underneath the driveway could be utilized rather than a full system.

Russ Nygren asked Amy if the applicants could put a septic system in a bluff. Amy Kowalzek stated that a variance was needed for the septic as well.

Robert Atkinson clarified that they had never claimed to have a septic design. Mike Altrichter, a certified septic system designer, had been out on site and looked at the property. Their plan if the variance was granted would be to build up the drainfield on top of the bluff. The designated back-up septic location would still be in the bluff as well.

Audience Comment:

Mary Ann Karnowski stated that she did not believe that Kelly had been told the lot was buildable prior to purchasing. She believed he was well aware that the lots could not be built upon. She also stated that if Kelly had a party she didn't know where he was going to be able to park the cars because the road was so narrow. Mary Ann Karnowski stated that Thomas Wimmer had hired the two (2) surveyors to try and reconcile the property line dispute, and though the surveyors did not complete the job, it was not for a lack of trying on Thomas Wimmer's part. She also expressed concerns that the sediment would continue to run down the driveway, and she was the original complainant for the applicants' 2017 violation.

Matthew Morrow stated that the County Ordinance was in place for good reason, and asked that the board uphold the rules within the Ordinance.

Audience comment closed.

Dave Stish stated that the closer the house is moved to the road, the less parking would be available, there would be less excavation and a less steep driveway. He then asked the applicants what materials they would be utilizing for the driveway. Kelly Doucette stated that the driveway would be cement.

Dave Stish asked if the applicant would consider a crushed rock driveway, and suggested this be made a condition to be more permeable for stormwater control. Dave also asked if the hillside was currently stabilized with oats. Kelly Doucette stated that the hillside was planted to oats, rye, and grass. The oats will die out, but the rye and grass are perennial.

Dave Stish also asked that it be made a condition that no driveway ever be constructed to the top of the hill and no mowing be allowed on top of the hill. Kelly Doucette stated that they would plant the top of the hill to a wild flower mix.

Robert Atkinson asked if he could get a copy of the staff report being presented. Amy Kowalzek stated that the applicants should have received the staff report in the mail along with their application packet.

Dave Stish asked why the proposed condition did not contain much about maintaining and improving vegetation on that slope. Amy Kowalzek stated that the vegetation requirement was part of the violation corrective actions, and those corrective actions had already been fulfilled.

Amy Kowalzek asked the applicants what their plan for stabilizing future excavation would be. Kelly Doucette stated that the silt fencing would stay in place to prevent sediment runoff.

BethyJo Murphy stated that she was in agreement with Dave Stish, and there needed to be a condition that addressed long term vegetation on the property. Dave Stish stated he would like to see a no mow condition. Kelly Doucette agreed to this condition, and stated that the current flowers, trees, and shrubs that had been planted would remain in place.

Russ Nygren asked if the condition should have a 5-year lifespan. Amy Kowalzek stated that the condition would be ongoing. Dave Stish pointed out that the applicants did not plan to own the property long-term.

BethyJo Murphy stated that the no mow would either need to be added to the proposed condition in the staff report, or added as a separate condition. There was a consensus among the Board of Adjustment to add this as a separate condition.

Dave Stish asked the applicant if all of the walls touching soil were concrete. Kelly Doucette confirmed that they were. Dave Stish asked if this could be made a condition. Amy Kowalzek stated that this was a very specific condition, and the Board of Adjustment should not be making the house plan for the applicants.

BethyJo Murphy stated that 25 ft. is the maximum allowed principal building height in shoreland zoning. Dave Stish stated that the Board of Adjustment had the option to restrict that. Kelly Doucette said that no more than 22 ft. should be needed for the house. Russ Nygren agreed, but then pointed out that taking some other factors into account, 24 ft. in height may be needed. Kelly Doucette agreed that the house would need to be at least 24 ft. tall.

BethyJo Murphy asked the applicants to restate their proposal since it had changed.

Kelly Doucette stated that the proposal was to construct a 35' x 26' x 24' tall house within the bluff and bluff impact zone.

Russ Nygren asked if crushed rock would be used on the backside of the dwelling to allow rainwater to filter into the ground. Kelly Doucette stated that was part of the construction plan.

BethyJo Murphy requested that Amy Kowalzek review the conditions for the Variance application.

Marvin Trettel asked what parking limitations could be placed on the property. Amy Kowalzek stated that violations to any parking limitations would be difficult to enforce for staff. Russ Nygren pointed out that the property's access is off of a public road where anyone could park. Amy Kowalzek stated that law enforcement may respond to complaints of road blockage.

Dave Stish asked if the applicant would consider doing a crushed rock driveway. Kelly Doucette agreed that either crushed rock or some kind of pervious paver could be utilized for the driveway. BethyJo Murphy agreed that the driveway should be permeable.

The voting sheets were polled.

A motion was made by Dave Stish to approve the Variance request with the seven (7) conditions. The motion was seconded by Marvin Trettel. The vote was all in favor.

3. Terrance & Susan Dolan – 4609 Eagle View Trl; Cushing, MN 56443 – Application for a Variance to expand a non-conforming structure; located in pt of Govt. Lot 2, Section 27, Township 132, Range 31, Scandia Valley Township.

Amy Kowalzek entered into record Section 706.1 of the Morrison County Land Use Control Ordinance, a plat map with the parcel location, variance application, background information questions, a site plan, an architectural rendering of the addition, oblique imagery, six (6) site photos, two (2) shoreline photos, and an impervious surface calculation. 64 notices were sent and one (1) telephone call was received against the proposal prior to the hearing. An email from Shannon Wettstein, district manager of the Soil and Water Conservation District, was also received prior to the hearing and was against the proposal. Amy entered the finding of fact and decision questions.

Susan & Terrance Dolan were present.

Susan Dolan made a correction to the staff report that the DRT meeting was in 2019, not 2017. Susan Dolan went on to state that their plan was to make the cabin a permanent residence with a 500-sq. ft. addition. The current cabin is 1500 sq. ft. All new construction would be located behind the 75-ft. setback, and impervious surface would be below 25%. The terracing off of the front of the cabin acts as erosion control. No variance would be required if the first 30 ft. of the cabin were demolished and moved back to meet the 75-ft. setback. Susan Dolan also quoted several case laws and offered to plan trees and wildflowers.

Terrance Dolan stated that the terracing prevents direct runoff of rainwater into the lake by forcing the water to pause and seep into the ground.

Dave Stish asked if the impervious surface and living quarters within the boathouse would need to be addressed regardless of whether a variance is approved. Amy Kowalzek stated that existing non-conformities are allowed to be maintained, and it would be difficult to determine when the living quarters in the boathouse were established.

Terrance Dolan stated that the boathouse was built at the same time as the home, and he was not aware of a change in usage since its original construction. Marvin Trettel asked if the applicants would be willing to remove the boathouse, especially since two thirds (2/3) of it was located on the neighbor's property according to Festler Land Surveying. Terrance Dolan stated that he would not want to remove it considering they have paid taxes on it for fifteen (15) years. He also stated that there is an agreement between the Dolans and neighboring property owners that although the boathouse's location is partially on the other property, that it does in fact belong to the Dolans.

BethyJo Murphy asked the applicants why they chose to remove impervious surface to the rear of the lot rather than within the shore impact zone. Susan Dolan stated that there was not much that could be removed within the first 50 ft. Terrance Dolan stated that the dwelling may be effected by removing any of the concrete supporting the house.

Amy Kowalzek asked when the patio pavers were put in. Terrance Dolan stated that they were not sure. Amy Kowalzek asked if removing the pavers was something the Dolans would be willing to do. Terrance Dolan stated they needed the pavers for safety getting down to the lake. Susan Dolan asked if replacing them with pervious pavers would be an option. Russ Nygren asked if they would be willing to at least remove the patio area down by the lake, but keep the walkway. He also stated that the Variance is a give and take process.

Dave Stish asked the applicants to explain their practical difficulty again.

Terrance Dolan quoted case law and stated that because the home was built in the 1970's, it would not be practical to remove the majority of the house to meet setbacks.

Dave Stish stated that this was an economic difficulty and not a practical difficulty. Terrance Dolan quoted case law in which a church that was not meeting setback wanted to add on to their existing building and the Board of Adjustment was going to make them build a separate building meeting the setback. Dave Stish stated that this was not a valid argument because in this case only one (1) dwelling unit per parcel is allowed anyways.

BethyJo Murphy reminded the applicants that they are allowed to keep and utilize the existing building, including remodeling of the interior. Dave Stish asked the applicants why they couldn't meet their needs with a remodel of the interior of the cabin. Terrance Dolan stated that there was a large fireplace in the middle of the cabin that would hinder their remodeling ability. Susan Dolan stated that the kitchen is currently a hazard with its small size and the proximity of the gas stove to the walkway.

BethyJo Murphy asked the applicants what their intentions were when the property was originally purchased. Terrance Dolan stated that their plan was to live and work in Minneapolis with this cabin being a weekend getaway. Now, however, they wanted to utilize this house as a retirement home.

No Audience Comment.

Russ Nygren requested that the patio area near the water be removed as a condition of the Variance.

The voting sheets were polled.

A motion was made by BethyJo Murphy to deny the Variance request. The motion was seconded by Dave Stish. The majority vote was in favor, Russ Nygren was opposed.

4. Lynne Winkelmann – 35146 Logan Ln; Hillman, MN 56338 – Application for a Variance to place a park model within the setbacks to the lake; located in pt of Gov. Lot 6, Section 7, Township 42, Range 28, Richardson Township.

Amy Kowalzek entered into record Section 706.1 of the Morrison County Land Use Control Ordinance, a plat map with the parcel location, variance application, background information questions, a site plan, a building plan, an aerial photo, oblique imagery, a shoreline photo, six (6) site photos, and a wetland delineation. 58 notices were sent and two (2) comments were received prior to the hearing. One comment was in favor of the request, and the other was against the request. Amy entered the finding of fact and decision questions.

John & Lynne Winkelman were present.

John Winkelman stated that the property was inherited and had been in the family for 50 years. Because of this, him and Lynne had no control over the size or shape of the lot.

Dave Stish stated the lot was almost conforming with 370 ft. of shoreline and the shoreline being in good condition. He asked the applicants if they could fit the park model in the building envelope on site.

John Winkelman stated that the existing garage and driveway access would be hindered by placing the park model within the building envelope.

Dave Stish asked the applicant if they were planning on building on pillar footings or pouring a slab. John stated that they would like to pour a slab for the park model.

Russ Nygren stated that the addition of the park model would make this existing non-conformity of a property even more non-conforming.

No Audience Comment.

BethyJo Murphy stated that two (2) of the three (3) reasons for denial of the Winkelman's previous variance request had been addressed with this new request.

Russ Nygren asked the applicants if they could remodel the existing garage into a cabin. Amy Kowalzek stated that the change in use of the garage to a dwelling would still require a variance.

Marvin Trettel asked if the park model would be moved on and off of the property or if it would be a permanent structure. John Winkelman stated that the park model would be permanent.

Marvin Trettel stated that he was going to suggest class 5 underneath the park model, but that wouldn't make sense then if it was going to be a permanent structure because that area would be impervious surface either way.

Russ Nygren asked the applicants if they were planning on putting a skirt around the park model. John Winkelman stated that yes, they would be. Russ Nygren stated that an impervious pad would be needed for that skirting so that animals couldn't borrow underneath the park model. BethyJo Murphy stated that this did not need to be made a condition for the variance.

A motion was made by Marvin Trettel to approve the Variance request. The motion was seconded by BethyJo Murphy. The vote was all in favor.

With no further business at hand, the hearing was closed at 10:21 p.m.

A motion was made by Russ Nygren to approve the December 3, 2019 minutes. The motion was seconded by Dave Stish. The vote was all in favor.

New business – None.

Old business – None.

A motion was made by Marvin Trettel to adjourn the meeting. The motion was seconded by Dave Stish. The vote was all in favor.

With no further business at hand, the hearing was closed at 10:22 p.m.

Respectfully submitted,

Amy Kowalzek, Secretary

Morrison County Board of Adjustment

BethJo Murphy, Chairperson

Morrison County Board of Adjustment

Dave Stish, Vice-Chairperson

Morrison County Board of Adjustment