

CARVER COUNTY BOARD OF ADJUSTMENT
Regular Meeting February 5, 2025
Minutes

Members Present: Gerald Bruner, Amanda Gorra, Robin Bielefeldt, Scott Selken, Andy Steinhagen, Steve Washburn

Members Absent: Jeff Thompson

Members Late: None

Staff Present: Jason Mielke, Donovan Hart, Christina Neel

Pursuant to due call and published notice thereof, the February 5, 2025, meeting of the Carver County Board of Adjustment was called to order by Chairman Bruner at 7:00 p.m.

Chairman Bruner announced the roll call indicated six members are present with the absence of Jeff Thompson.

Agenda – Chairman Bruner asked if there were any additions or deletions to the agenda. Hearing none, he asked for a motion to approve the agenda. A motion was made by Gorra to approve the agenda as printed. Bielefeldt seconded the motion for approval. All voted aye. Motion carried.

Minutes – Chairman Bruner asked if there were any corrections to the minutes from the January 8, 2025, meeting. Hearing none, he asked for a motion to approve the minutes. A motion was made by Gorra to approve the minutes of the January 8, 2025, meeting. Bielefeldt seconded the motion for approval. All voted aye. Motion carried.

Public Hearing - File #20250001 – Rufino Mendoza – Chairman Bruner called the public hearing to order at 7:01 p.m. to consider the application of Rufino Mendoza for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request to exceed the maximum number of business vehicles for a Home Extended Business Accessory Use pursuant to Chapter 152 of the County Code. The property is in Section 16 of Laketown Township.

The following were present: Rufino Mendoza, Peter Parris, Cynthia Ruiz, Eddy Mendoza, Anayeli Mendoza, Jose Padilla

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated January 9, 2025

Exhibit F – Staff Report addressed to the Board of Adjustment and Laketown Town Board dated January 27, 2025, and all attachments.

Hart stated the applicant owns an approximate 3.02-acre property improved with a single-family residence and an approximate 1,600 square foot accessory structure. The general scale of the applicant's business classifies it as a Home Extended Business Accessory Use. The maximum number of work vehicles for a HEBAU on a

parcel of less than five acres is two vehicles, and only one vehicle with more than one-ton capacity is allowed. The applicant's operation would exceed the commercial vehicle threshold, as he has a total of four business vehicles, two of which have more than one-ton capacity. Therefore, a variance is being requested. An approved variance would allow the applicant to apply for the Conditional Use Permit (CUP) to operate his landscaping business from the property. The applicant provided a Business Operating Plan, dated January 9, 2025, with detailed information about the business operations. The applicant's letter indicates he was told by his realtor that he would be able to run his business from the property. He discovered there were additional permits and other expenses which were not explained to him. He also intends to construct a shed for the business to keep the property tidy. If the variance and CUP are approved, the applicant intends to construct a 4,200 square foot structure, along with employee parking and temporary outdoor storage, which will be screened by existing and proposed trees. This was illustrated on an aerial view of the parcel. The neighborhood consists of a mix of agricultural and residential uses, as well as several properties with CUP's. The parcel is within the City of Victoria's future growth area. In an email dated January 15, 2025, from Brian McCann, City Planner for the City of Victoria, he states:

- *"The current Zoning Code for the City of Victoria would not permit a home business of this magnitude (number of outdoor vehicles stored, types of vehicles stored, home occupation requirements, accessory structure requirements). When the property is annexed into the City of Victoria in the future, this would likely become a nonconforming use."*
- *The City of Victoria does not see a legal allowance for a Variance in this case. Expansion of a business does not create a practical difficulty.*
- *The proposed use may be undesirable to annex into the City because the property could not be developed with the landscaping business in operation."*

Abigail Couture, Permitting Technician with Minnehaha Creek Watershed District, reviewed the variance request and commented, "If the applicant proceeds with the proposed work – such as adding outbuildings or pavement for their landscaping business – they may need to obtain permits from MCWD to do this work." Jacob McLain, Carver County Senior Environmentalist, reviewed the applicant with respect to the septic system and reported, *"The system was installed in 2023 and is compliant. An alternative site has also been identified. The site plan shows the driveway and employee parking in a location that does not interfere with the existing mound system. The owner should be reminded of the potential negative impacts of driving on a septic system. Otherwise, it appears the proposed commercial structure is intended for storage. However, if the use changes and septic is required, a design must be completed."* The property access is from State Hwy 5, and an email from Cameron Muhic, MnDOT Transportation Planner, stated he had no comments. Land Management received a petition in support of the business operation signed by ten neighborhood residents. An additional email sent by a family member of the previous property owner expressed support also. Granting the variance aligns with the general purpose and intent of the official control, which is to minimize the intrusion of commercial operations that could negatively affect neighboring households. Any impact appears to be minimal with direct access to Hwy 5, complete screening of the vehicles, and houses located more than 1,000 feet away. The plight of the landowner arises from circumstances created by the landowner and the unique characteristics of the property. If the subdivided parcel had been increased by about 2 acres in size, the variance would not be necessary. This is an after-the-fact variance. The zoning code outlines criteria to be considered, including whether the applicant acted in good faith to comply with the zoning code and whether a substantial investment has been made, presumably in the property. In this case, according to the submitted narrative, both criteria appear to be met. Granting the variance should not materially or adversely affect the health or safety of person residing or working in the area and should not be materially detrimental to the public welfare of injurious to property or improvements in the area adjacent to the property. Granting the variance does not appear to conflict with the intent of the Comprehensive Plan and would not alter the character of the neighborhood. The City of Victoria's Comprehensive Plan Future Land Use Plan designates this area for medium-density housing, with 6 to 12 units per acre. The economics of development may make it

attractive for the property owner to sell the property for more intensive residential use in the future. The Laketown Town Board reviewed the request and recommended approval of the variance at their January 13, 2025, meeting. Hart read the proposed conditions for consideration if the request is approved. If the Board of Adjustment determines that a practical difficulty has not been identified, and that approving the variances would not serve in the interest of justice, the Board of Adjustment would need to identify reasons to support the denial.

Chairman Bruner asked the applicant if he had any additional comments.

Rufino Mendoza, 7485 State Hwy 5, stated he had no comments.

Peter Parris, representing the Laketown Town Board, confirmed the applicant and his son attended their meeting, and the board feels it would be a good addition in the township. He commented on the City of Victoria growth/development appears to be taking place along County Rd 11 (to the south). He estimated it could be several years before this area would be annexed into the city.

There was no one present from the public to make any comments about the request.

A motion was made by Steinhagen and seconded by Bielefeldt to close the public hearing. Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:11 p.m.

Bielefeldt stated he visited the site and talked with the owner. He noted this is an after-the-fact variance and he is looking to identify a practical difficulty which was not created by the landowner. He referred to the information in the letter stating the realtor did not inform him of the County Zoning Code requirements for his business and the number and size of vehicles allowed.

Mr. Mendoza stated his realtor did not inform him about the restriction to a number of vehicles. They wanted to expand their business and were happy to find this property. He was unaware of the regulations surrounding operating a business and is now working to comply with the Zoning Code. He stated there are times when he could use more than four vehicles, but he will comply with the limitations of a maximum of four vehicles and four employees.

Bielefeldt asked if there was a representative from the City of Victoria present for comment on the request.

There was no one present representing the city.

Steinhagen noted that the property has been identified by the City of Victoria as a future growth (annexation) area. It is not currently annexed or actively being annexed.

Hart confirmed this area is identified in the Comprehensive Plan as a part of their future growth area. Often, the city will designate these areas as 'transition' which carries more strict rules about land use; however, that is not the case with this parcel. He used an aerial photo of the area as an illustration. This parcel is still in the Agriculture Zoning of the County.

Steinhagen concluded that the property is still within Laketown Township and the decision for the variance should reflect what the current status is of the property and not what could or might happen in the future. He reiterated the recommendation of the township for approval of the request. He commented that the property appears to be more orderly and cleaner than it had been and commended the owners for that.

Mielke referred to the aerial map and further explained the different areas and agreements between the township and city for future growth possibilities. He clarified that this parcel is outside of the growth area and is designated in the city's comp plan as future growth area but is still in the Ag Zoning district of the County at this time.

Gorra echoed the comments from Steinhagen regarding comments from the township and the city. She found the support of surrounding property owners for his business to be fantastic and realized a practical difficulty with the information or lack of information shared by the selling agent. She felt the request was reasonable and would support the variance.

Selken also echoed the previous comments and commended the landowner for contacting the adjacent landowner and attempting to purchase more land to create a conforming parcel and alleviate the need to for a variance. He is in support of the variance.

Washburn also echoed the previous comments and thanked staff for the information and discussion with the map of the growth areas. He agreed that the practical difficulty was not being given the information about the property size and the relation to operating a business prior to purchasing the parcel. He commended the applicant for cooperation and perseverance to follow the property channels to make this work. He initially wondered about the access and additional truck traffic on Hwy 5 but there was no concern mentioned from the road authority about it. He spoke about the mention of an after-the-fact variance, however, he stated this is something that most homeowners wouldn't be aware of or understand when purchasing the property.

Bruner stated he visited the property and acknowledged how it has been cleaned up and looking better than it had been. He valued the family business aspect and their intention to succeed.

Mr. Mendoza stated they want to keep the property clean and orderly to be a good neighbor.

A motion was made by Steinhagen to **approve and issue Order #PZ20250001** to allow a total of four work vehicles, including two vehicles with more than one-ton capacity, associated with the operation of a Home Extended Business Accessory Use pursuant to Section 152.079 (C)(9)(b)3 & (b)5 of the Carver County Code, for property legally described on the attached Exhibit "A". The Board of Adjustment further orders approval with the following conditions:

1. Prior to applying for a Building Permit, a Conditional Use Permit application shall be submitted, reviewed and approved. If the CUP application is denied by the County Board, the Variance shall be considered null and void. The existing business and/or property shall meet all other requirements of the Carver County Zoning Code and MN State Building Code.
2. If the future CUP application is approved, the operation of the business shall not expand beyond four employees and four work vehicles, two of which may be vehicles with greater than one-ton capacity.
3. The permittee shall obtain building permits and all required permits for the proposed commercial structure.

Selken seconded the motion for approval of the request. Chairman Bruner called for a vote on the motion. Washburn, Bruner, Gorra, Steinhagen, and Selken voted aye. Bielefeldt voted nay. Motion carried.

Public Hearing - File #20250002 – Ryan & Esther O'Donnell – Chairman Bruner called the public hearing to order at 7:24 p.m. to consider the application of Ryan & Esther O'Donnell for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request to exceed the maximum structure height pursuant to Chapter 152 of the County Code. The property is in Section 2 of Waconia Township.

The following were present: Ryan O'Donnell, Esther O'Donnell

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated December 9, 2024

Exhibit F – Staff Report addressed to the Board of Adjustment and Waconia Town Board dated January 27, 2025, and all attachments.

Neel stated the applicants own an approximate 1.22-acre parcel which is improved with a single-family dwelling with attached garage and a detached shed, The property includes a small wetland/seasonally flooded basin area. The applicants are proposing a two-story personal storage accessory structure measuring 19 feet x 30 feet, with a total structure height of 22 feet 10 inches. The structure meets the Zoning Code requirements for total personal storage space on a property of this size but exceeds the 17-foot maximum height requirement. The applicants' letter states the proposed accessory structure would shelter *“yard equipment, bikes, fertilizer, and snowblower”* on the first level and seasonal storage on the upper level, for *“decorations, kid's toys, clothing, and camping equipment.”* It further states, *“We will not utilize the shed for any type of rental or commercial application, it will be purely for personal use.”* The existing small shed has been damaged by water and the owners have deemed it unrepairable. They plan to demolish it after the proposed structure is constructed. The only storage space within the house is a 4-foot crawl space, with is difficult to navigate. Due to the lot size, elevation changes, existing structure, a wetland, and septic system setbacks, a two-story structure was chosen. The applicants explained that the two-story structure design is shorter than the peaks of their house and neighboring structures and would reduce the impervious coverage compared to a one-story larger structure footprint. The site plan identifies the location of the proposed structure on the parcel which meets all required setbacks. The request was reviewed by Tim Sundby, Carver County Water Resources Supervisor, who stated in an email, *“This project does not trigger any stormwater of ESC permit as it is greater than 50' away from a sensitive area, however, it is highly recommended to have erosion control measures in place while working on this project.”* Taylor Huinker, DNR Area Hydrologist, reviewed the request and stated in an email that there are no comments or concerns from the DNR. The challenges faced by the landowner stem both from circumstances created by the landowner and the unique characteristics of the property. The parcel has existed in its current configuration since prior to 1974, deeming it a legal non-conforming lot. The available building area is restricted by the existing house, SSTs, required setbacks, and wetlands. The applicants cannot acquire adjacent land to expand their property to create more space for construction of a one-level shed with equivalent accessory storage space. Granting the variance would not conflict with the intent of the Comprehensive Plan nor would it alter the character of the neighborhood, nor would government services be negatively impacted by the additional storage structure. Granting the variance would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property and it would not be materially detrimental to the public welfare of injurious to property or improvements in the area adjacent to the properties. The Waconia Town Board reviewed this request at their November 25, 2024, meeting and recommended approval of the height variance and stating they *“have no issues with wetland”*. Neel read the conditions for

consideration if the permit is approved. If the Board of Adjustment determines that a practical difficulty has not been identified, the reasons to support the denial would need to be identified.

Chairman Bruner asked the applicant if he had any additional comments.

Ryan O'Donnell, 10670 North Shore Rd, replied he had no comments.

There was no one present representing the Waconia Town Board for comments.

There was no one present from the public to make any comments about the request.

A motion was made by Gorra and seconded by Bielefeldt to close the public hearing. Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:31 p.m.

Selken commented that there is not a neighbor directly to the rear of the proposed structure and the plans indicate a beautifully designed shed that should be a good fit on the property. The increased height is offset with the reduced footprint on the property. He would support the variance request.

Bielefeldt stated there have been similar structures in the area which have been approved and he would be in support of the request.

Steinhagen noted that most of the houses in that area only have crawl spaces for storage, which is not always convenient for everyone's items. The proposed structure will offer the needed storage space.

Washburn echoed the comments about the structure and is pleased that they want to keep their items stored inside a building and out of view. He asked for an explanation of the 'red line' setback designated by Carver County WMO, as noted on the property survey.

Hart explained that was an area determined by a Program Analyst from the Water Management Organization based on a site visit as an estimate of the wetland boundary and the appropriate setback. The structure is outside of the setback area. The setback line also indicates another limiting factor on the property for available buildable area.

Bruner visited the site and agreed that the proposed structure will be a nice addition to the property.

A motion was made by Steinhagen to **approve and issue Order #PZ20250002** for a variance to construct an accessory structure exceeding the maximum allowable structure height pursuant to Section 152.073 (A)(1) of the Carver County Code, for property legally described on the attached Exhibit "A". The Board of Adjustment further orders approval with the following conditions:

1. The proposed structure shall be used only by the occupant(s) of the residence for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and as otherwise regulated by this Ordinance. Guest quarters and/or additional dwelling units are strictly prohibited. No products or services shall be offered for sale for pay or similar remuneration except as permitted for a home occupation or as otherwise regulated by this Code.
2. The permittee shall obtain the appropriate building permit(s) prior to the construction of the proposed structure. All work shall be done in accordance with the submitted plan and shall comply with the approved variance and plans. The proposed structure shall comply with all required setbacks from property lines,

existing buildings, and Subsurface Sewage Treatment System (SSTS) locations. The maximum height of the proposed accessory structure shall be limited to 20 feet 10 inches which is calculated from the average grade of the surrounding topography.

3. The permittee shall obtain any necessary erosion & sediment control permits from the Carver County Water Management Organization (if applicable), prior to beginning any construction activities.

Selken seconded the motion for approval of the request. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried.

Other Business

Mielke talked to the board members about their preference for receiving the meeting packet information. He mentioned timely postal service issues, emailing options and information available posted on the County website.

Adjournment

A motion was made by Bielefeldt and seconded by Selken to adjourn. All voted aye. The meeting was adjourned at 7:40 p.m.