

Houston County Board of Adjustment  
March 23, 2017

**Approved on April 20, 2017 by Dana Kjome and Ken Visger**

The Houston County Board of Adjustment met at 6:15 p.m. on Thursday, March 23, 2017. A summary of the meeting follows.

The meeting was called to order by Aaron Lacher, Zoning Administrator/Feedlot Officer. Members present were Dana Kjome, Larry Hafner and Ken Visger. Aaron Lacher, Zoning Administrator/Feedlot Officer was present for zoning.

Election of Chairperson for 2017 took place. Dana Kjome nominated Larry Hafner for Chairperson, Ken Visger seconded. There were no other nominations. Motion carried unanimously.

Election of Vice Chairperson for 2017 took place. Ken Visger nominated Dana Kjome for Vice Chairperson, Larry Hafner seconded. There were no other nominations. Motion carried unanimously.

**Notice of Public Hearing No. 443** was read. **Robert Witt**, 531 South 4<sup>th</sup> Street, La Crescent, MN 55947, is seeking a variance of 5 feet to meet the 50 foot setback requirement from the south property line to build a dwelling and variance of 820 feet to meet the required ¼ mile setback from an existing feedlot to build a dwelling in Section 30 of Mound Prairie Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- A unique situation exists within the right-of-way at this location. At some point, the location of County 21 was changed, preventing the movement of cattle between parcel 060142000 and parcel 110341000. An agreement was reached between the two affected property owners and the County whereby a fencing corridor was allowed to be constructed in the right-of-way, among other things. The agreement was “put in writing” in a letter from then County Engineer Gary Bruggemen dated March 31, 1995. The County Attorney weighed in in 2010 encouraging the parties to follow the agreement.
- The site is located on a 39.75 acre parcel (considered 40 acres for permitting purposes) on an area that winds along the base of a bluff. Slopes are 5%-10%. Soils are Class VI, suitable for buildings when designed to conform to the natural slope of the land. The proposed site is a naturally flat area. The steep slopes to the east are considered bluffs, and the existing and proposed buildings meet the required 25’ setback from the bluff toe. The areas downslope to the west and northwest are not considered bluffs as the required 50’ of elevation change is not present. Thus, no setback is applicable; however, the petitioner wishes to keep the building setback from the edge of the slope, creating the need for the 5’ variance.
- The area is outside of the floodplain. An unmapped drainage way runs parallel the existing driveway to the north, and is directed to the south side at the driveway’s approximate mid-point. Approximately 2/3 of the driveway measures a 15% slope, exceeding the 12% maximum. Land shaping will be required to reduce the slope to acceptable levels.

- According to a survey conducted in 2016, the parcel has 70.5' of frontage on the right-of-way on County 21.
- The parcel is a lot of record. The site was first developed in 1965 when a trailer home was placed there. A shed was built in 1982; the shed was presumably considered an agricultural building, which did not require permitting at the time. No nonconformities are known on the parcel.
- A feedlot is located 500 feet west of the proposed site, creating the need for a variance. The feedlot was registered at 70 animal units in 2013. Registration is required every four years. The County began re-registering feedlots in December of last year, with registrations requested by January 17<sup>th</sup>. To date, no registration has been received from this site.
- Mound Prairie Township and the closest ten property owners were notified. Questions regarding the permitting requirements were received from one party.

Chairman Hafner asked Robert Witt if he had anything additional to add. Attorney Tim Murphy, representing the Witt's, spoke. He said the variance is straight forward and should be granted according to other recent and similar in nature variances. The Witt's bought the site in 2015 and there is one good, suitable place to build. Aerial photos show a mobile home and shed were previously on the property. There is an agreement in place for the road access. Robert Witt said he needed the variances to proceed with building a new home.

Diane Orr had a question on the offset model for odors from the feedlot. Aaron Lacher said there is no requirement to run it; this is an inverse relationship and is only run when a feedlot is building or expanding closer.

Kendra Van Gundy questioned if their current feedlot would want to expand what would happen. It was explained they would need to follow the same variance process.

Shelly Thompson questioned about building on sand and the type of soil at that location. Aaron Lacher said if you own over 40 acres the county does not dictate on the type of soils you can build on. Larry Hafner said at some locations you cannot build on, but this is not one of them.

Kendra Van Gundy asked about building closer to a well. Aaron Lacher said that it was okay for the Witt's to proceed. She was also concerned about putting a septic system there. Aaron explained setbacks for septic systems. Ken Visger indicated they would still have to go through the zoning permit process where all that would be checked.

Diane Orr asked if the Witt's were okay with the cattle pass. Robert Witt indicated he is okay with that. Kendra Van Gundy indicated there has been an access for 30 some years. The previous owner used the site for recreational purposes and now it will be residential.

Steve Van Gundy wondered about potential runoff and the driveway access. He is concerned they may want the gates out.

Larry Hafner indicated these questions are not part of this hearing process. Everyone has to do their part and be considerate of the existing agreement. It's not part of

the deliberation of this board. Larry asked if the access was dependent on the existing agreement. Tim Murphy said it was not and was irrelevant on granting the requested variance. It's simply being good neighbors on the access and the gates. The gates should be closed when no animals are going through.

Mary Witt said she is aware of some of the issues they have stated and plans to be neighborly. She has no issues with the cows.

Steve Van Gundy stated there is a fence line that needs to be straightened out.

Chairman Hafner asked if anyone wanted to speak. There were no other comments.

Chairman Hafner asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

The Houston County Zoning Ordinance establishes the following criteria for granting variances:

#### Subdivision 1. Area Variance Standards – Practical Difficulties

1. Is there a substantial variation in relation to the requirement?

A 62% reduction of the feedlot setback is requested. This distance is consistent with proximity of nearby dwellings and feedlots: ½ mile to the west, Steve and Kendra Van Gundy were granted a variance of 800' from the dwelling setback from a feedlot in 2009, ¾ mile west; a house is located 970' from a feedlot.

A 10% reduction in the setback from the property line is requested.

2. Will the variance have a negative effect on governmental services?

No effect is anticipated.

3. Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties?

The change in use of the property has the potential to affect the agreement for the use of the right-of-way for cattle crossing. As staff understands the agreement, the agreement requires consent from all parties (i.e. Houston County, Van Gundy, and Witt). Should consent be withdrawn and the agreement terminated, the potential for a detrimental effect would also cease. Thus, each party has the ability to affect the other. The County has previously encouraged the private parties to reach agreement on their own. That continues to be the most prudent option. It is the BOA's task to determine to what extent consideration of this potential affect is proper. Ken Visger said there are previous residential homes nearby. Larry Hafner said the site is a level spot.

4. Can the practical difficulty be alleviated by a feasible method other than a variance?

Potential building sites are substantially limited by the topography of the site. The previous developed site was selected for good reason; the balance of the parcel is bluff lands inaccessible by vehicle.

5. How did the practical difficulty occur? Did the landowner create a need for the variance?

The proximity of the adjacent feedlot and the slopes surrounding building site create the need for a variance.

6. In light of all of the above factors, will allowing the variance serve the interests of justice?

The BOA should consider the above criteria, as well as information gathered at the hearing in making this determination.

Larry Hafner said it serves the interest of justice; there is no contention with what's being done in the area.

#### 0110.1207 FINDINGS REQUIRED

The Houston County Zoning Ordinance requires the following findings when granting variances:

Subdivision 1. Findings. The Board of Adjustment shall not grant an appeal unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property.

Larry Hafner indicated it was the only spot to build.

2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

Larry Hafner said you are in the country for wanting to be in the country.

#### ADDITIONAL FINDINGS

Required by Minnesota State Statute 394.27 Subd. 7.

1. The variance request is in harmony with the intent and purpose of official controls (ordinance and comprehensive plan).

The Comprehensive Plan seeks to preserve agricultural land. The proposal does not remove land from production. The Comprehensive Plan seeks to minimize urban/rural conflicts by controlling placement of nonfarm dwellings. The proposal is for a farm dwelling. The Comprehensive Plan seeks to protect woodland areas. The proposal is to build on a previously developed site.

2. There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable.

Potential building sites are substantially limited by the topography of the site, thereby creating practical difficulties. The previous developed site was selected for good reason; the balance of the parcel is bluff lands inaccessible by vehicle. The proposed use is reasonable and consistent with past practices of granting permits in the area.

3. The variance request is due to special conditions or circumstances unique to the property not created by the property owner.

A practical difficulty directly created or attributed to the applicant is considered self-imposed. The Petitioner did not establish the feedlot nor determine the placement of the bluffs.

4. The variance will not alter the essential character of the locality nor substantially impair property values, or the public health, safety or welfare in the vicinity.

The granting of the variances will permit uses that are consistent with established uses in the area.

5. Economic considerations alone do not constitute practical difficulties.

Variances are sought due to topographical features and neighboring property uses.

6. The variance cannot be alleviated by a reasonable method other than a variance and in the minimum variance which would alleviate the practical difficulty.

The buildable area is very limited. As such, placement anywhere within the area would require a variance from the feedlot. The properly line setback affords a more prudent building location.

7. The request is not a use variance and shall not have the effect of allowing any use that is not allowed in the zoning district, permit a lower degree of flood protection than the regulatory flood protection elevation or permit standards lower than those required by State Law. The variances sought are area variances.

Chairman Hafner asked for a motion on the variance if there were no additional comments or questions.

Dana Kjome made the motion to grant the variance as submitted. Ken Visger seconded. Motion carried.

**Notice of Public Hearing No. 444** was read. **Peter Shimshak**, 3821 Bush Valley Road, La Crescent, MN 55947, is seeking a variance of 25 feet to meet the required 50 foot setback requirement for an existing dwelling in an agricultural district in Section 23 of Mound Prairie Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application.

- Petitioner is requesting a variance of 25' to meet the required setback from a property line for an existing dwelling in an Agricultural Protection District.
- Petitioner was granted a CUP and issued a zoning permit to build a house in October of 2016. The house was constructed on 3.79 acres the petitioner owns 3.79 acres split from a 68.95 acre parcel under the ownership of a trust to which the Petitioner is a beneficiary. When this trust is executed, the Petitioner will own more than 40 contiguous acres, including the property adjacent to his 3.79 acres. After the CUP process was initiated, the Donor to the Shimshak Trust waived his right of appointment, thereby removing any ability to modify the distribution scheme and assuring that the Petitioner will become a co-owner of the adjacent land. Additionally, the Donor and all Beneficiaries of the trust indicated support for the project in writing.
- In light of these special circumstances, the County concluded that the Petitioner could reasonably be determined to have contiguous ownership of 40 acres. Therefore, it is staff's opinion that a CUP and a variance are not absolutely necessary. However, the petitioner wishes to obtain these permits and documents as added certainty should the County's interpretation ever be challenged.
- The site is located in the SE quarter of the SE quarter of Section 23 of Mound Prairie Township. Access is from Bush Valley Rd; the parcel has approximately 600' of road frontage. Driveway slopes are approximately 4.5% and the building site is on a 12% slope. The site is located outside the floodplain. The Donor designed the property split in a manner that kept the traditional field access road on the parent parcel—ultimately to be co-owned by multiple beneficiaries. This is logical as the fields accessed by this road will also be co-owned. The property line was located approximately 40' from existing tillable ground. The house was constructed on the outer edge of a grass-way, jutting slightly into the tillable, and extending within 25' of the property line. The placement was selected with multiple considerations, one being to minimize taking ground out of production.
- Mound Prairie Township and the ten nearest property owners were notified. No comments were received.

Chairman Hafner asked Peter Shimshak if he had anything additional to add. Peter said everyone in the family agreed that it was okay building that close. He helps out on the farm and takes care of his Dad. Future assurance is what is needed here with the variance application he has requested.

Chairman Hafner asked if anyone wanted to speak. There were no other comments.

Chairman Hafner asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

The Houston County Zoning Ordinance establishes the following criteria for granting variances:

Subdivision 1. Area Variance Standards – Practical Difficulties

1. Is there a substantial variation in relation to the requirement?

A 50% reduction of the standard is requested.

2. Will the variance have a negative effect on governmental services?

No effect is anticipated.

3. Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties?

The use is consistent with dwellings present on nearby properties. The use is not anticipated to affect neighboring properties.

4. Can the practical difficulty be alleviated by a feasible method other than a variance?

Other options include moving the house or acquiring additional land. The land is now in an irrevocable trust, with the Petitioner designated to become co-owner. Moving the house is not feasible or reasonable. A variance is the most reasonable option.

5. How did the practical difficulty occur? Did the landowner create a need for the variance?

The Donor determined the location of the property line.

6. In light of all of the above factors, will allowing the variance serve the interests of justice?

The BOA should consider the above criteria, as well as information gathered at the hearing in making this determination.

Larry Hafner said it will serve the interests of justice. Peter has the property and access to it; he is just crossing the T's and dotting the I's.

#### 0110.1207 FINDINGS REQUIRED

The Houston County Zoning Ordinance requires the following findings when granting variances:

Subdivision 1. Findings. The Board of Adjustment shall not grant an appeal unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property.

Larry Hafner said this has been satisfied.

2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

The board agreed.

#### ADDITIONAL FINDINGS

Required by Minnesota State Statute 394.27 Subd. 7.

1. The variance request is in harmony with the intent and purpose of official controls (ordinance and comprehensive plan).

The Comprehensive Plan limits housing density and seeks to preserve farmland. The house complies with the density limiter, and the specific location was selected in part to preserve prime farmland.

2. There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable.

The location of the prime farmland and the property line create a practical difficulty. The Petitioner's use, and desire to put additional assurances in place surrounding that use, are reasonable.

3. The variance request is due to special conditions or circumstances unique to the property not created by the property owner.

A practical difficulty directly created or attributed to the applicant is considered self-imposed. In this case, the Donor created the property boundary, and the logic supporting the Donor's actions—the need to retain access to agricultural fields for all beneficiaries—is sound and stems from the unique layout of the property including the tillable ground, grass ways, township road, and quarter quarter section lines.

4. The variance will not alter the essential character of the locality nor substantially impair property values, or the public health, safety or welfare in the vicinity.

No effect is anticipated.

5. Economic considerations alone do not constitute practical difficulties.

The location of the house was not selected based on economics. The cost to build 50' from the boundary would have been equivalent.

6. The variance cannot be alleviated by a reasonable method other than a variance and in the minimum variance which would alleviate the practical difficulty.

Other options include moving the house or acquiring additional land. The land is now in an irrevocable trust, with the Petitioner designated to become co-owner. Moving the house is not feasible or reasonable. A variance is the most reasonable option.

7. The request is not a use variance and shall not have the effect of allowing any use that is not allowed in the zoning district, permit a lower degree of flood protection than the regulatory flood protection elevation or permit standards lower than those required by State Law.

The request is an area variance.



Chairman Hafner asked for a motion on the variance if there were no additional comments or questions.

Ken Visger made the motion to grant the variance as submitted. Dana Kjome seconded. Motion carried.

**Notice of Public Hearing No. 445** was read. **Mark and Sonia Lager**, 7912 Grinnell Way, Lakeville, MN 55044, are seeking a variance of 25 feet to meet the required 25 foot setback from the toe of a bluff to build a dwelling in Section 14 of Brownsville Township.

Aaron Lacher, Zoning Administrator, pointed out the site on the Arc Map Photo. He commented on the application:

- Petitioner is requesting a 25' variance to meet the required 25' setback from the toe of a bluff.
- The location in question is Lot #4 in the Spring Hills Subdivision, platted in 1981. In 1981, there were no slope requirements within the County Ordinance or State Law for building sites or driveways. In 1982, the Ordinance was amended to include new standards for slopes: *"Subdivision design shall be consistent with the limitations presented by steep slopes. Subdivisions shall be designed so that no construction or grading will be conducted on slopes steeper than 15% in grade."*
- This language has since been amended, and only the first sentence remains. Under the current rules, the maximum allowable slope is determined during the plat approval process, with the 23% maximum slope of a buildable lot serving as the ceiling.
- In 1993, the Ordinance was amended to include Bluffland Protection language. This restricted building on bluffs (at the time 30% slopes) and required a setback from the top and toe of a bluff. This language persists to today, although the slope threshold has been reduced to 24%. The Petitioner's lot has slopes measured in the range of 21%-37%. The extent to which the Petitioner's lot is within a Bluffland Protection Area has varied from partially, under the current rules, to entirely, under the 1982 rules, to not at all, under the 1981 rules.
- The site is approximately one acre located on the upper part of foot slopes. The site is currently unimproved. Slopes were measured at 21%-37%, with the house proposed on 23% slopes. Steep side slopes are present above, starting at 37% approximately 55' from the southern property line, and becoming increasingly steep to the north. A 65' setback from the centerline of the township road results in a 25' setback from the southern property line. Considered in conjunction with the 25' setback from the toe of the bluff, the buildable area is effectively reduced to a five foot width.
- Soils are a Class VI sandy loam, acceptable for building if structures are designed to conform to the natural slope of the land. To satisfy access road slope requirements, the driveway is proposed to be installed so as to gently rise with the contours.
- The area is outside of the floodplain and there are no mapped waterways or drainages present.
- Brownsville Township and the nearest ten property owners were notified. No comments were received.

Chairman Hafner asked Mark Lager if he had anything additional to add. Mark Lager said Aaron Lacher presented it well. One thing he wanted to make clear is they have an easement from the adjacent landowner to build a driveway. They need the full 25 foot variance due to septic requirements. There are also power line issues they are working around.

Ken Visger said he believed the Lager's bought the platted site not realizing some rules had changed or that the site presented building issues.

Larry Hafner indicated there are unique requirements building into bank. Mark Lager said they have a Type 3 soil erosion plan in place and will be using retaining walls. They have modified their building plans accordingly to meet these requirements.

Larry Hafner said the driveway meets 12 percent slope requirement with the easement.

Chairman Hafner asked if anyone wanted to speak. There were no other comments.

Chairman Hafner asked that the Findings be read being there were no further comments. The Findings were read and comments made as follows:

The Houston County Zoning Ordinance establishes the following criteria for granting variances:

#### Subdivision 1. Area Variance Standards – Practical Difficulties

1. Is there a substantial variation in relation to the requirement?

A 100% reduction in requirement is sought. Larry Hafner added there are other existing homes already in the subdivision. This is not a substantial reduction, not a lot of fill will be added and they are building according to existing slopes.

2. Will the variance have a negative effect on governmental services?

No effect is anticipated.

3. Will the variance effect a substantial change in the character of the neighborhood or will there be a substantial detriment to neighboring properties?

The subdivision contains five platted lots, three of which now have houses. Additional subdivisions are adjacent. The proposed use is consistent with established uses in the area, and will not have any detrimental effect.

4. Can the practical difficulty be alleviated by a feasible method other than a variance?

No, without a variance, the site is not buildable.

5. How did the practical difficulty occur? Did the landowner create a need for the variance?

The plat was approved and conformed to the standards at the time. Subsequent changes in the regulation of development on slopes created the need for the variance.

6. In light of all of the above factors, will allowing the variance serve the interests of justice?

The BOA should consider the above criteria, as well as information gathered at the hearing in making this determination. Dana Kjome indicated the variance will allow them to build.

## 0110.1207 FINDINGS REQUIRED

The Houston County Zoning Ordinance requires the following findings when granting variances:

Subdivision 1. Findings. The Board of Adjustment shall not grant an appeal unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property.

Larry Hafner indicated this is the only place to build.

2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

Larry Hafner indicated this is consistent with other area properties.

### ADDITIONAL FINDINGS

Required by Minnesota State Statute 394.27 Subd. 7.

1. The variance request is in harmony with the intent and purpose of official controls (ordinance and comprehensive plan).

The request would allow building on a site previously found to meet the requirements of a buildable lot by the County.

2. There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable.

The general steepness of the site presents a practical difficulty. The house would be situated in a similar manner to the existing houses in the Spring Hills Subdivision. For instance, the house to the east is built on similar slopes and has a steeper driveway than is being proposed.

3. The variance request is due to special conditions or circumstances unique to the property not created by the property owner.

A practical difficulty directly created or attributed to the applicant is considered self-imposed. The plat was approved and conformed to the standards at the time. Subsequent changes in the regulation of development on slopes created the need for the variance.

4. The variance will not alter the essential character of the locality nor substantially impair property values, or the public health, safety or welfare in the vicinity.

The subdivision contains five platted lots, three of which now have houses. Additional subdivisions are adjacent. The proposed use is consistent with established uses in the area, and will not have any detrimental effect.

5. Economic considerations alone do not constitute practical difficulties.

Cost of construction is not a factor; granting the variance will *allow* building, not make it more affordable compared to an alternative location.

6. The variance cannot be alleviated by a reasonable method other than a variance and in the minimum variance which would alleviate the practical difficulty.

Without a variance, the site is not buildable.

7. The request is not a use variance and shall not have the effect of allowing any use that is not allowed in the zoning district, permit a lower degree of flood protection than the regulatory flood protection elevation or permit standards lower than those required by State Law.

The request is for an area variance. There are no flood plain issues present. Granting the variance is allowable under state law.

Chairman Hafner asked for a motion on the variance if there were no additional comments or questions.

Dana Kjome made the motion to grant the variance as submitted. Ken Visger seconded. Motion carried.

Larry Hafner made a motion to approve minutes of October 23, 2016. Ken Visger seconded. Motion carried.

Ken Visger made a motion to adjourn. Dana Kjome seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on March 24, 2017.