

Houston County Board of Adjustment  
January 25, 2018

**Approved on March 22, 2018 by Ken Visger and Dana Kjome**

The Houston County Board of Adjustment met at 6:00 p.m. on Thursday, January 25, 2018. A summary of the meeting follows.

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

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

The agenda was reviewed. Ken Visger made the motion to accept the agenda. Dana Kjome seconded. Motion carried.

Ken Visger made a motion to approve the minutes of September 28, 2017. Dana Kjome seconded. Motion carried.

Guidelines for the public hearing were reviewed.

**Notice of Public Hearing No. 453** was read for **J. Peter Petersilie**, 4007 Tschumper Road, La Crescent, MN 55947. Ken Visger stated he will recuse himself from a vote due to being friends with the Petersilies.

Dana Kjome made a motion to close the Board of Adjustment meeting and open the public hearing. Ken Visger seconded. Motion carried.

J. Peter Petersilie, 4007 Tschumper Road, La Crescent, MN 55947 is seeking a variance of 13 feet to meet the required 65 foot setback from a township road to build an addition on an existing house in Section 30 of Hokah Township.

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

- The applicant purchased the parcel in 1975, and a permit was issued for a mobile home later that year. A building permit for a house was issued in 1983; it is presumed that the trailer was replaced by the house. A garage and addition were permitted in 1987.
- The standard setback requirement from a township road in the Agricultural District is 65'. The existing house is approximately 73' from the centerline. A proposed 20' x 30' addition would come within 52' of the road centerline.
- As part of the application, a letter from a licensed architect was provided that discusses the reasoning for locating the addition on the western side of the existing house.

- The applicant owns four parcels totaling 170 contiguous acres accessed off of Tschumper Road. The properties are primarily steep forested slopes with fields on top. The home site was developed with the current improvements in the 1980s; an older barn and well on site suggest earlier development.
- A mapped wetland (pond) is located 500' southeast of the house and is not anticipated to be impacted by the proposal.
- The site appears to be in compliance with all applicable zoning requirements.
- Hokah Township and the ten nearest property owners were notified. No comments were received.

Chairman Hafner asked Peter Petersilie if he had anything to add. Peter stated the variance request could actually be less once the final addition plans are in place. They wanted to be covered, however, so they requested the most footage that may be needed.

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

Ken Visger made a motion to close the public hearing and open the Board of Adjustment meeting. Dana Kjome seconded. Motion carried.

There was general discussion on the Petersilie site and the variance request. There was a consensus that this would be the logical location for the addition.

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

#### 12.5 CRITERIA FOR GRANTING VARIANCES

The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

#### Subdivision 1. Findings Required

1. The variance request is in harmony with the intent and purpose of official controls?

Analysis: 0100.0501 Subd. 2 Policies 7 & 9 speak to the suitability and build ability of potential sites. The proposal satisfies these requirements. The proposal is also supported by 0100.0506 Subd. 2 Policy 10, which encourages the rehabilitation of existing homes. Larry Hafner stated it is in line the comprehensive plan. Dana Kjome stated it supports the rehabilitation of existing homes.

2. There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable. Economic considerations alone do not constitute practical difficulties.

Analysis: The architect's letter provided by the applicant outlines practical reasons why alternative options do not work. The variance is needed to allow for an addition on the existing home. It is impractical to place the addition on the other sides of the home. Larry Hafner stated it is the most practical location for the addition. There is no harm on where it is located. Dana Kjome stated the septic system location is a factor on where the addition can go.

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

Analysis: The variance is the result of the proximity of the house to the township road, and the interior configuration of the house. The house location was determined by the owner, yet the available options at the time of permitting – 1980s – were finite due to topography, access, and other considerations. The old barn on the site suggests the site was a historic building site, as does an unverified well mapped nearby, and it is reasonable that the house was located in-part to take advantage of existing improvements, which in turn can be reasonably presumed to have been located with consideration of the features and limitations of the natural landscape. Larry Hafner stated there was no intent to initiate the variance. The proximity of the house to the township road is within reason.

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

Analysis: The west side of the house is the only option for a first-floor expansion. Dana Kjome stated this is the only practical location for the addition.

5. 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.

Analysis: The proposal is unlikely to affect the neighborhood or property values. The primary concern is how the variance might impact future work on the township road. The township has not indicated opposition to the request. Buildings are located closer to the road on a property a mile to the west. Larry Hafner stated this is consistent with other properties close by. The township road will not be negatively impacted.

6. 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.

Analysis: The request is for an area variance to reduce the setback for an activity allowed in an Ag District. There are no mapped floodplains on the parcel. Granting the variance will not undermine standards required by state law. Larry Hafner stated granting the variance will not allow anything that is not normally allowed.

Dana Kjome made a motion to accept the findings. Larry Hafner seconded. Motion carried.

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

Dana Kjome made the motion to grant the variance requested. Larry Hafner seconded. Motion carried.

**Notice of Public Hearing No. 454** was read for **Scott Schiebel**, 6466 State 26, Hokah, MN 55941.

Ken Visger made a motion to close the Board of Adjustment meeting and open the public hearing. Dana Kjome seconded. Motion carried.

Scott Schiebel, 6466 State 26, Hokah, MN 55941, is seeking a variance of 14 feet to meet the required 50 foot setback from the north property line to replace a barn in the existing footprint, variance of 47 feet to meet the required 50 foot setback from the north property line for an existing pole shed, variance of 15 feet to meet the required 50 foot setback from the north property line for an existing shed in Section 2 of Hokah Township.

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

- The variances sought are necessary to bring the parcel into compliance in order to obtain a zoning permit to reconstruct the existing barn within the existing footprint. The noncompliance is the result of an illegal split that occurred in 1980, 13 years before the applicant took ownership of the property.
- In 1973, Walter and Martha Minor owned the parent parcel of the applicant's parcel and had a portion of their property surveyed. The property was already improved with the barn (1955), pole building (1966) and shed (1966) for which the variances are sought, as well as a house (1955). The zoning ordinance in effect in 1973 required a 50' setback from property lines, and the completed survey did not provide for this standard between the existing buildings and what would become the north property line. The surveyed north line runs along the southern edge of a large ditch, and the ditch may have been viewed as a natural break between properties. The survey was recorded in 1973, but the property was not split until later on.
- In 1980, the Minors split their property, selling the 3.6 acres surveyed in the aforementioned survey to the Conklings. The zoning ordinance in effect in 1980 required a 50' setback from property lines, and the newly created parcel did not provide for this standard between the existing buildings and the north property line. The existing structures on the property that had previously met all zoning setback requirements no longer did because of the creation of a new northern property line. Thus the property split created a nonconforming parcel, with the result being the need for the variance at this time.
- The proposed development associated with the request is a reconstruction of a barn within the footprint of the existing barn that will be demolished. Zoning permits are withheld from non-conforming parcels, thus the variance is needed for any future improvements. Consideration of setbacks, dwelling status, and access is necessary. Aside from the variances sought, all property line and road setbacks are satisfied. Because it is located on less than 40 acres, the current house is a non-farm dwelling for which there is no CUP. The ordinance in effect in 1980 defined farm as 10 acres or more. The parcel is 3.5 – 5 acres, therefore a CUP should have been sought at the time of the parcel was created. However, the current ordinance allows for legally established houses to continue through a split provided that ten years passes between the establishment of the house and a parcel split. In this case, Assessor's records show that the house dates to 1955, 45 years prior to the split, and therefore, can continue as a permitted use. Use of the existing

driveway for access was provided for in earlier deeds, but is not included in the most recent deed. Because the applicant has 250+ feet of owned frontage on State 26, it is not necessary that an easement for use of the driveway be recorded.

- The site consists of 5 acres along State 26 at the foot of the Mississippi River Bluffs. There are no mapped floodplain or water features on the property. The proposed development associated with the request is a reconstruction of a barn within the footprint of the existing barn that will be demolished.
- Hokah Township and the ten nearest property owners were contacted. No comments were received. A statement signed by Carl Helke, the property owner to the north, was submitted with the application and indicates no objection to the variances.

Larry Hafner asked Scott Schiebel if he had anything to add. Scott stated Aaron summarized everything well. He plans to replace an old barn with one that looks similar.

Chairman Hafner asked if anyone wanted to speak.

Bruce Kuehmel, City of Caledonia resident, questioned the 14 foot variance request on the north property line. Aaron Lacher stated it is a 14 foot reduction, so a 36 foot setback from the north property line to replace a barn. Bruce then questioned how the property lines were established, as there is a ditch present. Scott Schiebel indicated the surveyed north line runs along the southern edge of a large ditch, and the ditch may have been viewed as a natural break between properties. The survey was recorded back in 1973.

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

Ken Visger made a motion to close the public hearing and open the Board of Adjustment meeting. Dana Kjome seconded. Motion carried.

Ken Visger stated he looked at the site and replacing the building is reasonable and granting the other 2 variances is not unreasonable either. It's a logical request. It is in harmony with the other homes along the highway.

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

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### Subdivision 1. Findings Required

1. The variance request is in harmony with the intent and purpose of official controls?

Analysis: The proposal is supported by 0100.0506 Subd. 2 Policy 10, which encourages the rehabilitation of existing building sites. Ken Visger stated this is an improvement of an existing site.

2. There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable. Economic considerations alone do not constitute practical difficulties.

Analysis: The property lines are long established. Reuse of building sites is reasonable. A variance is more reasonable than removing the buildings or acquiring more property. Larry Hafner stated the old barn needs to be replaced as it will become a hazard. Ken Visger stated it would be an unreasonable request to move existing buildings.

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

Analysis: The parcel is near the toe of bluff and overlooks the Mississippi. Locations to the east would obstruct views. The property split was done three property owners ago in 1980 and was not done for the purposes of facilitating a future grant of variance. The decision of locating the northern property line likely made use of the presence of a ditch, which is a unique feature of the property. Larry Hafner stated the Schiebel's inherited the situation, as the split occurred three property owners ago. Dana Kjome stated it was not the intent back in 1980. Ken Visger stated Mr. Schiebel did not create these circumstances.

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

Analysis: Two of the requests are for existing buildings whose locations cannot be changed. The third request wishes to re-use the existing footprint—a practice encouraged by the County. Due to the grades of alternative locations on the property there are no reasonable alternative locations. Space to the west is at the toe of bluff and development may have destabilizing effects on blufflands. Sites to the east could impair views of river and occupy space needed for future wastewater treatment. Ken Visger stated this is the minimum request and it would be unreasonable to move buildings. Larry Hafner stated there is no other reasonable alternative.

5. 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.

Analysis: The proposal to rebuild in-kind with the existing footprint is anticipated to have a negligible to positive effect on neighbors' properties. Ken Visger stated the request is in harmony with the other properties along the highway.

6. 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.

Analysis: Request is an area variance. Site is entirely outside of 1% floodplain. Ken Visger stated this is a permitted residential use with no floodplain issues.

Ken Visger made a motion to accept the findings. Dana Kjome seconded. Motion carried.

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

Ken Visger made the motion to grant the variance requests with the following condition:

1. *No structural repairs shall be made to the 30' x 40' pole building for which the 47' variance is granted.*

Dana Kjome seconded. Motion carried.

**Notice of Public Hearing No. 455** was read for **Paula Streit**, 502 State 76, Houston, MN 55943.

Ken Visger made a motion to close the Board of Adjustment meeting and open the public hearing. Dana Kjome seconded. Motion carried.

Paula Streit, 502 State 76, Houston, MN 55943, is seeking a variance of 47 feet to meet the required 50 foot setback from the north property line for an existing barn, variance of 20 feet to meet the required 50 foot setback from the north property line for an existing pole barn, variance of 30 feet to meet the required 50 setback from the north property line for a proposed pole barn addition in Section 2 of Money Creek Township.

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

- The variances sought are necessary to bring the parcel into compliance in order to obtain a zoning permit for a 40' x 56' addition to an existing pole barn. Work began on the addition without the required permits. The applicant was informed of the permit requirements and has cooperated with zoning to work to resolve the matter.
- Assessor's records show that the 36' x 64' pole barn was constructed in 1984, before the parcel was split and before permits were required for ag buildings. The pole barn was a compliant structure until an illegal split occurred that placed the northern property line 30' from the pole barn in 1991. A small 10' x 35' barn was constructed 3' from the northern property line after 2008 without permits. A variance and zoning permit are needed in order to make this building compliant.
- The current owner acquired the property in January of 2013, 22 years after the split occurred. Just as permits "run with the land" and are transferred from seller to buyer, the lack of permits similarly passes. Therefore, it is true that the current owner did not cause much of the noncompliance, but it is equally true that the current owner is responsible for correcting nonconformities occurring on the property.

- After-the-fact permits are subject to a tripling of standard fees; should the variance be granted, zoning permit fees for the addition and the 10' x 35' barn will be tripled. The house on site dates to 1900.
- The parcel is approximately 6 acres. It is the first split off of an approximately 58 acre parent parcel. Located at the intersection of State 76 and Gates Coulee Drive, the parcel has frontage on both roads. Floodplain and wetlands affect significant portions of the parcel, and steep slopes are present in the transition from higher ground to the lower, flood prone areas; more than 50% of the parcel is not buildable due to floodplain, wetlands, or slope. An intermittent stream runs through the southwestern portion of the parcel.
- Money Creek Township and the ten nearest property owners were notified. No comments were received. Included in the application was a signed statement from the applicant's neighbor to the north indicating support for the variances sought.

Chairman Hafner asked Paula Streit if she had anything to add. Paula stated she did not.

Aaron Lacher asked Paula to elaborate on the existing lean-to type building for which the 47 foot variance is requested. Paula stated she did not build it; it was there when she purchased the property. It is used as a feeding area and is a wind break/shelter area when the horses need protection from the elements. She believes it was located there due to the topography of the site.

Ken Visger agreed with Paula and stated it is located in the most logical location.

Larry Hafner asked if any of the buildings are located in the floodplain. Aaron Lacher stated that none of the buildings were in the floodplain.

Aaron Lacher asked Paula to elaborate on why she needs to build the proposed addition where she is planning to build it. Paula again discussed the limitations of the site and that the location of the addition is mainly due to having to maneuver horse trailers around in the yard.

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

Dana Kjome made a motion to close the public hearing and open the Board of Adjustment meeting. Ken Visger seconded. Motion carried.

Ken Visger indicated he was at the site and understood that Paula did not know she needed to obtain a permit for an agricultural building nor did the contractor. Ken Visger stated the location of the new structure makes sense due to limitations on moving trailers around and given the fact it is not intrusive to any other property owners.

Dana Kjome questioned the location of the existing lean-to type building and was concerned that it was very close to the property line. Ken Visger stated there really isn't another spot for it on the property. If she were required to move it, then it should just be removed entirely. Paula stated the building was already there when she bought the site. Larry Hafner stated it is not a big structure and it is not harming anything.



There was general discussion on the existing lean-to type building and it was the consensus that the building was not harming anything and due to the fact that there are limitations on where it could be relocated.

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

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### Subdivision 1. Findings Required

1. The variance request is in harmony with the intent and purpose of official controls?

Analysis: The buildings for which variances are sought are used for horses, and thus there is a tie to agriculture and recreation, two reoccurring themes in the Comprehensive Plan. The buildings are located on a buildable lot. The buildings in question are not located on ground that was historically in production. Ken Visger stated the buildings are in harmony with others in the area.

2. There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable. Economic considerations alone do not constitute practical difficulties.

Analysis: The existing buildings are already located. Relocating them would involve practical difficulties in identifying new locations, as well as the associated costs. This is more so true for the pole shed than the small barn. The driveway is used for a 28' trailer and requires room to negotiate; less room would be available if the buildings were moved south to satisfy the setback requirements. It may be possible to relocate the smaller barn without impacting the turn-around area of the driveway. Ken Visger stated there is no practical way to move it to another location due to the topography of the land. It is reasonable to leave the existing buildings where they are and the new proposed addition is in the best location.

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

Analysis: The current owner finds herself in the unique position by having unknowingly purchased a property with existing zoning nonconformities. The lot has limited pasture area, and the area of the addition was selected to minimize loss of pasture. Topography and floodplain

prevents building on southern and western sides of parcel. Ken Visger stated the prior property owners built the buildings and she is limited on where she can build the addition.

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

Analysis: The existing buildings have been cited for years. Relocating or removing structures can be viewed as unreasonable; this is truer of the larger pole shed than of the smaller animal barn. It may be possible to relocate the smaller structure to provide for the required setback but it is most reasonable to grant variance due to topography of the land. There is no intrusion on other property owners.

The location of the proposed pole shed addition is a result of the current pole shed location, the limitation of the driveway, and the building width necessary to accommodate the height of a horse trailer. Ken Visger stated the addition would be built in the best possible location.

5. 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.

Analysis: It is common in the area for sites to have multiple accessory buildings, and variances for similar requests have been granted in the past. There is no impact to public health, safety or welfare anticipated by the construction of a pole shed addition. Ken Visger stated this is rural property. Larry Hafner stated it is consistent with other properties.

6. 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.

Analysis: The request is for an area variance, does not reduce flood protection, and is in compliance with applicable state law.

Dana Kjome made a motion to accept the findings. Ken Visger seconded. Motion carried.

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

Ken Visger made the motion to grant the variance requests with the following condition:

1. *No structural improvements shall be made to the existing 10' x 35' lean-to for which the 47' variance is granted.*

Dana Kjome seconded. Motion carried.

**Notice of Public Hearing No. 456** was read for **John Jordan and Ralph Zerbe**, 3 and 5 Stinson Road, Houston, MN 55943.

Ken Visger made a motion to close the Board of Adjustment meeting and open the public hearing. Dana Kjome seconded. Motion carried.

John Jordan and Ralph Zerbe, 3 and 5 Stinson Road, Houston, MN 55943, are seeking a variance of 25 feet to meet the required 50 foot setback from the proposed north property line for an existing house, variance of 30 feet to meet the required 50 foot setback from the proposed north and east property lines for an existing machine shed, trailer and pole barn, variance to locate a house on a 20% slope a distance 243 feet upslope from the toe of a bluff to the upslope most point of the house in Section 1 of Money Creek Township.

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

- Multiple variances are sought for this parcel. Two are related to a proposed parcel split. The third concerns a proposed building site for a non-farm dwelling.
- Currently there are two dwellings on parcel 10.0001.000, a 90 acre parcel. Both dwellings are located in the same quarter quarter. The dwellings are occupied by the applicants, who co-own two parcels totaling approximately 102 acres in Houston County. County records show that one dwelling was constructed in 1900 and the other was constructed in 1991; no permits were found for the 1991 dwelling, and it is believed it may have been repurposed as a dwelling.
- The Ordinance in effect in 1991 was adopted in 1982, and provided as a permitted use in an Ag District, *“Farm buildings or dwellings (frame or one mobile home) and their accessory buildings on one farm provided the resident or residents of said dwelling or dwellings either owns, operates or is employed on said farm.”*
- The one dwelling per quarter section density limitation was not applied to farm dwellings in 1991. At the time, the parcel was owned by Ralph’s Pretty Good Dairy, A Partnership, and it is presumed that the dwelling occupants participated in the partnership.
- The variance currently being sought is intended to allow parcel 10.0001.000 to be split and remain in compliance with the ordinance. A land survey was conducted whereby the new property line would run along the center of the existing driveway, which will continue to be utilized by both dwellings. The proximity of the existing buildings to the driveway will not allow for a split that provides driveway access for both proposed properties while meeting the standard 50’ setback requirements. Consideration of other farm infrastructure including accessory buildings and a garden further affect the proposed parcel lines.
- An additional variance is being sought for a proposed new non-farm dwelling to be located on approximately 5 acres to be split from the same parcel that is located in a separate quarter quarter to the west of the existing dwellings. The proposed building site is in a hayfield on class VI soils and 20% slopes. The County allows building on slopes up to 23%. The variance is needed due to the gradual nature of the slope increase at and around the building site. Because of this, no identifiable break in slope was observed, and the method described in the definition below was utilized, with the result being identification of the toe of the bluff lower in the field where slopes measure 14%.
- South site: The site is an existing farmyard containing two homes and multiple outbuildings that dates to the early 20<sup>th</sup> century. The site sits at the bottom of a bluff that extends into Winona County, and contains multiple ponds. Floodplains and wetlands are mapped on the site, with the proposed map updates reducing the floodplain in most areas where buildings are located.
- North site: The proposed site is on 20% slopes and class VI soils. The site has historically been in hay or other agricultural production. There are currently no dwellings located in the quarter quarter. Stinson Road cuts through the existing parcel. There are no mapped floodplains or wetland on the proposed parcel.
- Money Creek Township and the ten nearest property owners were notified. No comments were received.

Chairman Hafner asked John Jordan and Ralph Zerbe if they had anything to add. Ralph Zerbe indicated that the 2<sup>nd</sup> home was originally a machine shed that was converted into a house in the 60's. A remodel of that house was done in 1991. John Jordan indicated the existing driveway is the most logical place to divide the two properties. The proposed new house location is the best spot due to lay of land and for a septic system. Aaron Lacher indicated the proposed new home will also need a conditional use permit. The first step is to obtain a variance permit.

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

Ken Visger made a motion to close the public hearing and open the Board of Adjustment meeting. Dana Kjome seconded. Motion carried.

Ken Visger stated he viewed the site and agrees with the driveway being the only way to split the properties since the buildings are also being split according to their usage.

Aaron Lacher indicated a variance would be needed no matter how they ended up splitting the sites.

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

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#### Subdivision 1. Findings Required

1. The variance request is in harmony with the intent and purpose of official controls?

##### Analysis:

**East Site:** The request was initiated by a desire to split the property in a manner that complies with ordinance requirements. Houston County currently has no authority to deny property splits, and could not prevent the split proposed in this instance. Often, variances are sought after a split has occurred; in this case, the applicants worked with zoning on the proposed parcel and are seeking the needed variances prior to splitting the property. Ken Visger stated they have done everything in good faith and checked with the proper agencies before starting the split process.

**West Site:** The proposed building site was selected so as to preserve flatter, more productive ground below. The Comprehensive Plan includes policies and goals intended to discourage building on prime agricultural ground. Ken Visger stated the location is the best spot due to the lay of the land and it also preserves Ag land.

2. There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable. Economic considerations alone do not constitute practical difficulties.

Analysis:

**East Site:** The applicants purchased the property in 1975 with the existing buildings in place, many of which predated zoning. The proposal will allow the dwellings to be separated onto independent parcels. It is not practical to move existing buildings or create an additional driveway. Larry Hafner stated the difficulty was inherited at the purchase. They are dividing things as reasonably as they can.

**West Site:** The practical difficulty in this case is preserving prime agricultural ground, which is a reasonable goal. Dana Kjome stated they would be losing Ag land if they built the house down lower.

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

Analysis:

**East Site:** The property is unique insofar as there are two dwellings sharing a driveway and located approximately 100' apart. The locations of ponds and wetlands between the farmyard and the public road are also unique, and prevent the installation of additional access roads. Dana Kjome stated the ponds would affect trying to change the driveway access. Larry Hafner stated there was no intent of manipulating the zoning ordinance.

**West Site:** The foothills of the bluff to the north are uniquely gradual. Larry Hafner stated it is the best possible location.

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

Analysis:

**East Site:** Access to the site dictates the proposed parcel split. Access to the existing farmstead is already established, and was not located with the intent of facilitating a future variance. Waterbodies and/or wetlands preclude development of a new access. Houses and outbuildings were established pre-zoning, and cannot be separated in a way that does not require a variance. Ken Visger stated the only reasonable way to split the property is through the driveway.

**West Site:** The proposed building site could be moved to flatter ground, but doing so would undercut the applicants' goal of preserving prime agricultural ground. It is necessary to weigh that goal against the variance request to determine what is and what is not reasonable. Ken Visger stated it is the best location to build. If they built down lower it would take away from Ag land.

5. 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.

Analysis:

**East Site:** The variances requested for the existing farmstead will not result in additional development and as such will not affect a change in the neighborhood or negatively impact the neighborhood. Ken Visger stated the area is agricultural. Larry Hafner stated the homes have been there long term and will not change the character.

**West Site:** The proposed new development complies with density regulations within an Ag district—such development is common during transition planning throughout the county. The proposed building site slope is within the range permitted by the County. Larry Hafner stated the proposed home will be complimentary to the area.

6. 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.

Analysis:

**East Site:** Area variances are sought. No new development is proposed, and as such, the degree of flood protection will not change. The proposal does not conflict with any known state laws.

**West Site:** The request is to locate a dwelling a specified distance above the toe of a bluff, which is a variation of area. There is no prohibition on locating a house above a toe of a bluff contained uniquely in any zoning district, including the Ag District. Ken Visger stated it is permissible to build in an Ag district.

Ken Visger made a motion to accept the findings. Dana Kjome seconded. Motion carried.

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

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

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

Submitted by Houston County Board of Adjustment Clerk on January 26, 2018.

Houston County Board of Adjustment  
March 22, 2018

**Approved on May 24, 2018 by Dana Kjome and Ken Visger**

The Houston County Board of Adjustment met at 6:00 p.m. on Thursday, March 22, 2018. A summary of the meeting follows.

The meeting was called to order by Aaron Lacher. Roll call was taken. Members present were Ken Anderson, Dana Kjome and Ken Visger. Aaron Lacher, Zoning Administrator was present for zoning. Larry Hafner was absent.

Election of Chairperson for 2018 took place. Ken Visger nominated Larry Hafner for Chairperson, Ken Anderson seconded. There were no other nominations. Motion carried unanimously.

Election for Vice Chairperson for 2018 took place. Ken Anderson nominated Dana Kjome for Vice-Chairperson, Ken Visger seconded. There were no other nominations. Motion carried unanimously.

The agenda was reviewed. Ken Anderson made the motion to accept the agenda. Ken Visger seconded. Motion carried.

Ken Visger made a motion to approve the minutes of January 25, 2018. Dana Kjome seconded. Motion carried.

**Notice of Public Hearing No. 457** was read for **Anthony Koch**, 20411 Camp Winnebago Road, Caledonia, MN 55921.

Ken Anderson made a motion to close the Board of Adjustment meeting and open the public hearing. Ken Visger seconded. Motion carried.

Anthony Koch, 20411 Camp Winnebago Road, Caledonia, MN 55921, is seeking a variance of 30 feet to meet the required 50 foot setback from the southwest property line for an existing dwelling in Section 18 of Winnebago Township.

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

- A split of parcel 16.0192.000 (parent parcel) on 8/29/2017 created parcel 16.0192.001 (new parcel) (Note that the northwest portion of 16.0192.000 was subsequently combined with 16.0197.000). The goal of the split was to separate the dwelling from the outbuildings. The split rendered both the parent and new parcels nonconforming due to setback encroachments.
- The house and original outbuildings at the site were constructed between 1948 and 1965. Permits for additional outbuildings were issued in 2014 (calf barn and freestall barn) and 2016 (garage). The proximity of the house (1948) and the shop (1965) create the need for the variance as they are located 70' apart and cannot be split to allow for 50' setbacks for each building.

- The existing layout of the farmstead is such that a compliant split cannot be achieved without eliminating buildings; in the proposal includes the removal of a building in order to minimize the variances sought and achieve the required setbacks for both affected parcels. The useful lives of the existing house and the existing shop have not lapsed, and each structure continues to have utility that the respective owners wish to make use of.
- A survey was completed for the existing split; a new survey is proposed that will adjust the property lines so as to comply with setback requirements to the extent possible. Approximate proposed property lines have been provided; a professional survey based on the proposed lines is recommended by staff, and the Applicant has indicated their willingness to have one completed.
- The proposed parcel would be approximately 1.5 acres; the minimum parcel area is 1 acre. The existing dwelling is allowed to continue as a permitted use on less than 40 acres because it was constructed more than 10 years before the split. Setbacks from feedlots do not apply because the occupants of the home are the immediate family of the feedlot owners. A 33' easement is proposed to provide access.
- An addition to the existing house is proposed that will meet standard setbacks.
- The proposed parcel is approximately 1.5 acres split. This will be split from a parent parcel approximately 120 acres in size.
- Winnebago Township and the ten nearest property owners were notified. No comments were received.

Vice Chairman Kjome asked Anthony Koch if he had anything to add. He did not.

There was general discussion on the current parcel and the proposed change in the parcel that will adjust the property lines to comply with setback requirements. A permanent easement would need to be included in the new survey. All setbacks will be met with the proposed parcel changes.

There was discussion on when the outbuildings were built and it was determined that most were built prior to zoning regulations.

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

Ken Visger made a motion to close the public hearing and open the Board of Adjustment meeting. Ken Anderson seconded. Motion carried.

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

#### 12.5 CRITERIA FOR GRANTING VARIANCES

The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered



construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subdivision 1. Findings Required

1. The variance request is in harmony with the intent and purpose of official controls?

Analysis: The official controls encourage the rehabilitation of existing homes, orderly development, and support for agriculture. The applicant has indicated an intention to add additions to the existing home. A variance is necessary to return the parcel to compliance with the Ordinance and make the parcel eligible for future permits. The request is due in part to the intergenerational transfer of the Koch family farm.

	YES	NO
Dana Kjome	X	They have done their due diligence.
Ken Visger	X	They are revitalizing the existing house.
Ken Anderson	X	There is no other way to accomplish their need.

2. There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable. Economic considerations alone do not constitute practical difficulties.

Analysis: The existing house and shop are 70' apart and cannot be split in a way that complies with setback requirements. The Applicant worked with zoning staff to explore several alternative parcel boundaries, none of which provide for the required setbacks. The BOA should consider whether the desire to separate the dwelling from the agricultural buildings is reasonable.

	YES	NO
Dana Kjome	X	They have done their due diligence.
Ken Visger	X	It is reasonable to separate the house and ag buildings.
Ken Anderson	X	Have worked to be in compliance as much as possible.

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

Analysis: The variance is requested due to the proximity of existing buildings that were constructed in 1948 and 1965. The BOA should consider whether the original placement of these buildings was done to facilitate a future variance, which would require the variance to be denied. The BOA should also consider whether the desire to separate the dwelling from the agricultural buildings is a special circumstance, which would support the granting of the variance.

	YES	NO
Dana Kjome	X	The buildings were built before zoning.
Ken Visger	X	Buildings have been in existence a long time, can't do it any other way.
Ken Anderson	X	Buildings were built before zoning. Ag buildings were not part of zoning early on.

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

Analysis: The dwelling cannot be separated from the outbuildings in a manner that provides a 50' setback for each building on both parcels. To reduce the variances needed for compliance, the Applicant has indicated that an existing building located on parcel 16.0197.000 will be removed.

	YES	NO	
Dana Kjome	X		They are agreeing to remove existing garage.
Ken Visger	X		Worked with staff to minimize request. Only way to accomplish.
Ken Anderson	X		Continuing to make use of existing buildings should be encouraged.

- 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.

Analysis: The granting of the variance will allow the Applicant to pursue permits for additions on the existing house, which, if granted, would be the only physically observable effect of the variance. No effect to public health, safety or welfare is anticipated as the distance separating the house from the agricultural buildings have long since been established and would now merely be located on separate parcels. The BOA should consider how property values might be affected. The proposed additions to the existing house may cause the value of the new parcel to increase; without a variance, the proposed additions may not occur.

	YES	NO	
Dana Kjome	X		There is no objection from the neighbor.
Ken Visger	X		It will not alter.
Ken Anderson	X		Appropriate variance request. Slight concern about creating restriction on adjacent farm expansion.

- 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.

Analysis: The request is for a reduction of property line setback, which is an area variance. Dwellings are a permitted use in the Agricultural Protection District. There is no flood plain on either parcel. To the best of staff's knowledge, the proposal is compliant with applicable state laws.

	YES	NO
Dana Kjome	X	
Ken Visger	X	
Ken Anderson	X	

Ken Visger made a motion to accept the findings. Ken Anderson seconded. Motion carried.

Proposed variance conditions were discussed. A new survey needs to be completed based on the proposed property lines submitted. The survey needs to be filed with the County either before the issuance of future zoning permits or as a condition placed on future zoning permits. The issuance of future zoning permits on parcels 16.0192.001 would require a certificate of compliance prior to occupancy, which will not be issued prior

to the removal of the garage identified for removal. Parcel 16.0192.001 needs to have access to Camp Winnebago Road through a perpetual easement at least 33 feet wide recorded with the County.

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

Ken Visger made the motion to grant the variance requested with the following conditions:

1. A new survey shall be completed based on the proposed property lines submitted in the application materials. The survey must be filed with the County either before the issuance of future zoning permits or as a condition placed on future zoning permits.
2. The issuance of future zoning permits on parcels 160192001 shall require a certificate of compliance prior to occupancy, which shall not be issued prior to the removal of the garage identified for removal on the application materials. This requirement shall cease upon removal of the garage.
3. Parcel 160192001 must have access to Camp Winnebago Road through a perpetual easement at least 33 feet wide recorded with the County

Ken Anderson seconded. Motion carried.

Other Business: Discussion took place on the option of advertising for the need of hearing/meeting continuation if meetings run passed 10 p.m. No action was taken.

Ken Visger made a motion to adjourn. Ken Anderson seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on March 23, 2018.