

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 Kuehmichel, 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:

12.5 CRITERIA FOR GRANTING VARIANCES

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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 bluffs. 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 20th 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 2nd 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.

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 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.

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 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.

Houston County Board of Adjustment
May 24, 2018

Approved on June 21, 2018 by Ken Anderson and Dana Kjome

The Houston County Board of Adjustment met at 5:30 p.m. on Thursday, May 24, 2018. A summary of the meeting follows.

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

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

Dana Kjome made a motion to approve the minutes of March 22, 2018. Ken Visger seconded. Motion carried.

Notice of Public Hearing No. 458 was read for **David Faas**, 5055 County 9, Houston, MN 55943.

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

David Faas, 5055 County 9, Houston, MN 55943, is seeking a variance of 15 feet to meet the required 50 foot setback from the southwest property line for an existing garage and shed in Section 33 of Houston Township.

Aaron Lacher, Zoning Administrator, commented on the application:

- Petitioners seek a variance of 15 feet to meet the required 50 foot setback from the southwest property line for an existing garage and shed.
- This is an after the fact permit for an existing 16 x 22 shed and an existing attached garage. The dwelling, attached garage, and deck was permitted in 2001 on, presumably as a replacement dwelling for an older home that is not inhabited. An additional dwelling is located in the quarter quarter which Assessors records show was built in 1968. In 2013, approximately 4 acres was split off the parent parcel including the house permitted in 2001; the split placed the southwest line 35' from the attached garage. The shed was built in 2018 without a permit. The applicant indicates they intended to match the house setback (35'), which they assumed, incorrectly, to be compliant.
- The site is a 3.93 acre parcel along County 9 at the foothill of a bluff. The building locations are in an area with less than 5% slope and approximately 300 feet off the highway. The undeveloped portion of the parcel contains steeper slopes and part of the area to the east of the house contains the septic system.
- Township and the ten nearest property owners were notified. No comments were received.

Chairman Hafner asked David Faas if he had anything to add. Mrs. Faas indicated they have talked to Duane Von Arx, the previous owner and adjacent landowner to the south about the situation. He is agreement on granting the variance and has no objections.

Ken Visger asked if the shed was completed. David Faas indicated it was not, there is a roof on it.

Ken Visger asked if the house was in existence when they bought it. David Faas indicated it was.

Larry Hafner stated that Duane Von Arx would be the only landowner impacted.

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. Bryan Van Gorp seconded. Motion carried.

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: The official controls are intended to provide for orderly development and provide for the protection of public health, safety or welfare. The proposal is compatible with these goals.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with staff analysis.
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

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. If the shed is located between the house and the hillside it could impede the view of the hillside and garden to the north. It also minimizes roadway onto the property. The undeveloped parts of the parcel also have steeper slopes and contain the septic system. The BOA must find that views, slopes, and potential costs constitute practical difficulties.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		
Bryan Van Gorp		X	Agrees on existing garage, but not with shed.
Ken Visger	X		

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

Analysis: The area east of the home contains the septic. The abundance of steep slopes on the site is atypical. The current location of the shed provides for ease of use as it houses similar items as the garage and allows for better flow of the property. The BOA must find that this, or other unique attributes, constitute special circumstances.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with staff analysis.
Larry Hafner	X		
Dana Kjome	X		
Bryan Van Gorp		X	Agrees with existing garage, but not with shed.
Ken Visger	X		

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 shed is existing. The Petitioner built the shed to match the setback of the home based on his assumption that the setback for the home was applied correctly from the property line during the split. The BOA must find that it is unreasonable to require the garage and/or shed to be removed or relocated.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		No one will be disadvantaged or hurt by the variance. Not reasonable to move the shed.
Dana Kjome	X		There are steep slopes.
Bryan Van Gorp		X	Agrees with existing garage, but not with shed. Two separate issues.
Ken Visger	X		

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: Sheds are commonly found in this neighborhood. A shed is not anticipated substantially affect neighboring property values. No impact is anticipated on public health, safety or welfare.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		Agrees with staff analysis, will enhance value.

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 buildings are not located in a floodplain. Garages and accessory buildings are permitted uses in the Ag District.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

There was overall approval for both variances.

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 Anderson made the motion to grant the variance requested. Ken Visger seconded. Motion carried.

Notice of Public Hearing No. 459 was read for **James and Kathryn Hall**, 5337 15th Street SE, Rochester, MN 55904.

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

James and Kathryn Hall, 5337 15th Street SE, Rochester, MN 55904, are seeking a variance of 40 feet to meet the required 50 foot setback from the east property line to build a pole shed and variance of 45 feet to meet the required 50 foot setback from the east property line for an existing shed in Section 6 of Spring Grove Township.

Aaron Lacher, Zoning Administrator, commented on the application:

- Petitioners request a variance of 40' to meet the required 50' setback from a property line in an Ag District for a new 30' x 40' pole shed, and a variance of 45' to meet the required 50' setback from a property line for an existing 12' x 16' shed.
- The Applicants purchased the subject property in 2007. The purchase involved a parcel split that separated 38.25 acres from current PID 130055000 and added it to current PID 130057002. The split separated flatter ground from steeper ground.
- The 12' x 16' shed for which the 45' variance is sought was not required to be permitted per HCZO section 29.14 subdivision 3 (2): *"Accessory buildings 200 sq. ft. in area or less that are portable and not attached to any foundation, and which meet all other requirements of the ordinance, are permitted uses and do not require a Zoning Permit."* However, setback standards continue to apply to such buildings, thus prompting the variance application.
- The applicants have indicated plans to construct a dwelling on this site in the future.
- The parcel area is 43.3 acres. The property consists primarily of steep, wooded slopes and valleys. The proposed location is currently grassed yard area. The alternative location presented here is restored prairie. Note that there may be more alternative options; the intention of staff is simply to illustrate one possible alternative. Slopes were measured onsite using a clinometer at the proposed site, and at an alternative location, and using software; the results are shown below.
- A driveway is currently in place which accesses the proposed location. Access to the alternative location would be a continuation of the existing driveway utilizing an existing mowed ATV trail. A natural drainage currently runs across the ATV trail.
- Access from Braaten Dr. is via an estimated 320' drive with an average slope of 2-3%. The steepest section of this segment is a 105' section with an average slope of 6-7%. Access to the alternative location requires continuing 130' north over an average slope of 2%, the majority of which is on a contour. Elevation profiles to both locations are shown below.
- Spring Grove Township and the ten nearest property owners were notified. Staff received phone calls from Jay Solum, adjacent property owner to the east, in support of the granting the variance, and Gordon Espelien, neighboring property owner to the east in support of the granting the variance.

Chairman Hafner asked James and Kathryn Hall if they had anything to add. James said he appreciated the board stopping out and doing site visits. He believes they have been good stewards of the land. About ten years ago, much of the land was put into prairie grass. They love their site and the Spring Grove area and would like to build a house and retire there eventually. His builder also recommends the building site location, as it's the best possible spot.

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.

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: The proposed location is not on ground that has historically been tilled, and is supported by the policy of preserving prime agricultural land for future agricultural production. Slopes at the proposed location are acceptable for development. The preservation of prairie is supported by goals of protecting natural resources that protect and enhance land resources.

(Pole Barn)	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp	X		
Ken Visger	X		

(Existing Shed)	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with staff analysis.
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

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: BOA must conclude that an access road crossing a drainage and/or the disturbance of the reclaimed prairie in conjunction with economic considerations constitute a practical difficulty.

(Pole Barn)	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		It is the best use of that piece of property.
Dana Kjome	X		
Bryan Van Gorp	X	X	There are alternative sites.
Ken Visger	X		

(Existing Shed)	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		It is the best use of space.
Dana Kjome	X		
Bryan Van Gorp		X	There are alternative sites.
Ken Visger	X		

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

Analysis: While there are other instances occurring in the County, a 40+ acre parcel in the Ag District with the degree of natural limitations to development found on this parcel is not typical. However, prior to the 2007 parcel split, the parcel was not as limited as it is now. The BOA must find that the Applicants did not create the conditions caused by the split.

(Pole Barn)	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		
(Existing Shed)	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		
Bryan Van Gorp		X	The need for variance was created by property owner.
Ken Visger	X		

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 BOA must find that the obstacles presented by the drainage, the loss of the prairie, and additional costs render the alternative location presented in this analysis unreasonable, and that no other reasonable alternative exists.

(Pole Barn)	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Slope/grading around structure make variance necessary.
Larry Hafner	X		Alternative site has significant downsides, not justified by additional costs. No future disadvantage to neighbors.
Dana Kjome	X		
Bryan Van Gorp		X	There are other alternatives.
Ken Visger		X	Could be built to meet setbacks.
(Existing Shed)	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		No one disadvantaged by the location.
Dana Kjome	X		
Bryan Van Gorp		X	Must take a long term view.
Ken Visger		X	

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: No impact to public health, safety or welfare is anticipated. Examining setbacks within a half mile radius from the proposed site, approximately 34 buildings are found, 91% of which meet the setback requirement. An accessory building is located 15' from a property line 800 to

the east; an accessory building is located 11' from a property line 1,600' to the southeast; and, an accessory building is located 14' from a property line 2,220' to the east. All other buildings within this radius satisfy standard setback requirements. Granting the variance would result in approximately 86% of building in this radius not meeting the required setback. The BOA must find that this will not change the character of the locality. This analysis is based on property lines as shown on the County's Beacon GIS site, which does not warrant accuracy.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
(Pole Barn)			
Ken Anderson	X		Agrees with staff analysis.
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp		X	
Ken Visger	X		

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
(Existing Shed)			
Ken Anderson	X		
Larry Hafner	X		
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp		X	
Ken Visger	X		

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: Accessory buildings are a permitted use in the Ag District. The proposed site is not located in a floodplain.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
(Pole Barn)			
Ken Anderson	X		
Larry Hafner	X		Complies with all requirements stated in #6.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
(Existing Shed)			
Ken Anderson	X		
Larry Hafner	X		Complies with all requirements stated in #6.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

There was overall approval for both variances.

Ken Visger made a motion to accept the findings for the pole barn. Ken Anderson seconded. Bryan Van Gorp voted no. Motion carried.

Ken Anderson made a motion to accept the findings for the existing shed. Dana Kjome seconded. Bryan Van Gorp voted no. Motion carried.

Ken Anderson made a motion to grant the variance requested for the pole barn. Dana Kjome seconded. Bryan Van Gorp and Ken Visger voted no. Motion carried.

Ken Anderson made a motion to grant the variance requested on the existing shed with the condition that the variance shall only apply to the existing (12' x 16') shed as long as it exists. Ken Visger seconded. Bryan Van Gorp voted no. Motion carried.

Notice of Public Hearing No. 460 was read for **Loran Johnson**, 6044 Union Ridge Drive, Houston, MN 55943.

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

Loran Johnson, 6044 Union Ridge Drive, Hokah, MN 55941, is seeking a variance of 45 feet to meet the required 50 foot setback from the west property line to build a garage/shop in Section 1 of Union Township.

Aaron Lacher, Zoning Administrator, commented on the application:

- Applicant is requesting a variance of 45' to meet the required 50' setback in an Ag District to construct a garage/shop.
- The Applicant purchased the property in 2003. The parcel is presumed to be a Lot of Record, although a deed containing the present legal description predating official controls could not be located in the limited time allotted to the search. Facts supporting the Lot of Record status include a November 1967 (two months after the adoption of official controls) deed containing the present legal, and the fact that many of the houses in the nearby parcels were constructed prior to, or shortly after, the onset of official controls, suggesting the parcels were created previously. No permit records for the houses with 1968 build dates were located, suggesting that construction may have been underway in August of 1967. Lot of Record status would afford the current structure legal nonconforming status for the existing structure. For the purposes of this analysis, both assumptions are made.
- The subject lot and neighboring lots are in the agricultural protection district. The lot areas are not consistent with those typical in this district, and more closely resemble residential district lots. The subject lot is one acre; the median lot area for this and the six neighboring, similar lots is approximately 0.94 acres. A minimum of one acre is required for all lots served by ISTS in both Ag and Residential Districts, however there exists a Lot of Record exemption in the Residential District.
- The application for the variance is driven by the width of the parcel. The average lot width for these parcels is approximately 140'. Subtracting the standard 50' property line setbacks for the Ag District, 40' is available for building space; the average structure width of these lots is approximately 65'. The setbacks for existing buildings are consistent with those typical in the Residential District.
- Several neighboring houses are located nearby. The site is at the foot of a bluff raising 300+ feet to the north at slopes greater than 30%. The subject parcel has a 19% average slope north to south and a 4% average slope east to west. Drainage from the site is north to south; the nearest mapped water feature is an unnamed intermittent stream 270' south across the township road.
- Union Township and the ten closest property owners were notified. A letter was received from the neighboring property owner to the west in support of the request.

Chairman Hafner asked Loran Johnson if he had anything to add. Loran said the area he has available is limited and this is the best location to build the shed.

There was general discussion on the slope of the property.

Ken Visger asked Loran if he plans on connecting the shed to his house. Loran indicated he does not.

Larry Hafner asked what type of roof Loran plans to have. Loran said it will be a one story building with a pitched roof.

Bryan Van Gorp asked if the property lines are known. Aaron Lacher said the County Surveyor indicated they are fairly accurate, but it is not surveyed.

Loran Johnson said he plans to have an agreement with this neighbor on where the west property line is.

Ken Visger stated he believes a survey is needed.

Chairman Hafner asked if anyone wanted to speak.

Bruce Kuehmichel, City of Caledonia resident, stated a survey should be required.

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

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: The Residential Development Goals of the County include providing safe, healthful, blight-free residences. To achieve this goal, it is suggested that rehabilitation of existing older homes should be encouraged. Investment in accessory buildings has the effect of adding value to the property and thus may encourage the upkeep of the existing primary home.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

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: Consideration of the parcel width is warranted as the long narrow shape presents setback challenges that may constitute a practical difficulty. Views from the house, and how building placement might affect them, can also be considered.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		He is doing what he can to improve his property, no other way to do it.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

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

Analysis: The property area and width is atypical within the Ag District.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with staff analysis.
Larry Hafner	X		
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

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: Alternative placement is limited to the rear of the existing house, which would require a curved driveway and obstruct views of the bluff. The Board must determine if these or other factors are reasonable reasons to grant the variance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		After viewing site, there is no other alternative.
Larry Hafner	X		
Dana Kjome	X		

Bryan Van Gorp	X	Unclear that this is the minimum variance, unsure of where the property line is.
Ken Visger	X	Parcel is like a residential lot and should have 15' setback.

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: None of the nearby structures meet the required setbacks for the Ag District. The request would permit building closer to a line than is currently observed, but would not be a drastic departure from the status quo. The neighbors most likely to be affected by the project have indicated their support and stated that the project may aid drainage.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp	X		
Ken Visger	X		

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: Accessory buildings are permitted in the Ag District. There are no mapped floodplain areas on the subject parcel.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Complies with requirements of #6.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

Bryan Van Gorp stated that most of the buildings in that area are probably not in compliance. Since it is much like a residential area a 15 foot setback could be applied and the boundary should be surveyed.

Ken Anderson asked if the Beacon lines could be used.

Larry Hafner stated Loran doesn't have a lot of room to build and this is a logical request. It will not disadvantage anyone.

Bryan Van Gorp made a motion that a survey be required and 15 foot setbacks apply. There was lack of a second. Motion failed.

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

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

Ken Anderson made the motion to grant the variance requested with the following condition:

1. Prior to the issuance of a zoning permit, a survey of the west north-south line must be completed by a licensed land surveyor.

Dana Kjome seconded. Bryan Van Gorp voted no. Motion carried.

Ken Visger made a motion to adjourn. Bryan Van Gorp seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on May 25, 2018.

Houston County Board of Adjustment
November 7, 2018

Approved on January 24, 2019 by Ken Anderson and Ken Visger

The Houston County Board of Adjustment met at 6:00 p.m. on Wednesday, November 7, 2018. A summary of the meeting follows.

The meeting was called to order by Chairman Larry Hafner. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Dana Kjome, Bryan Van Gorp and Ken Visger. Aaron Lacher, Environmental Services Director, was present for zoning.

The agenda was reviewed. Ken Anderson made the motion to accept the agenda. Bryan Van Gorp seconded. Motion carried.

Dana Kjome made a motion to approve the minutes of June 21, 2018. Ken Anderson seconded. Motion carried.

Notice of Public Hearing No. 462 was read for **Adam and Jessica Heberlein**, 10337 State 44, Caledonia, MN 55921.

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

Adam and Jessica Heberlein (applicants) and Thomas and Colleen Heberlein (landowners) are requesting a variance of 410 feet to meet the required ¼ mile setback from an existing feedlot to build a dwelling in Section 29 of Union Township.

Aaron Lacher, Environmental Service Director, commented on the application:

- The request is for a variance of 410 feet to meet the 1,320 foot setback for a dwelling from an existing feedlot.
- The applicants are proposing to split approximately 7 acres from PID 14023100, an eighty acre parcel consisting of two quarter quarters less road right-of-way, for the purpose of building a house; an additional 33 acres would be purchased contract-for-deed. The applicants indicate the proposed location was selected with consideration of personal preference, effects of highways, soil productivity, and the needs of the current farming operation.
- A house and two accessory buildings are currently located on the parcel within an existing farmstead, much closer to State Highway 44 than the proposed location (Figure 1). The house is 1,428 sq. ft. and was constructed in 1962. The assessed value of all these buildings for 2017 was \$55,100. The proposal includes removal of the existing house, and there are no additional dwellings within the quarter quarter.
- Feedlots are located to the north and south of the parcel. The variance request is due to the proximity of the southern feedlot and the proposed location. Figure 2 illustrates these feedlots and the approximate setback requirement from each. The feedlot to the south has confinement buildings and open lots with approximately 60 cow and calf pairs. The existing house is located within the setback area, closer to the feedlot than the new house is proposed.

- Union Township and the ten closest property owners were notified. The applicant submitted a statement of support signed by 4 adjacent landowners. No comments were received.

Chairman Hafner asked the Heberleins if they had anything to add. Adam Heberlein stated they would like to build a new house and have it sit farther back from the highway than the current home. The new house location will not affect cropland; the existing house would be removed and that land will be turned into cropland.

Ken Anderson asked if this proposal would affect the requirements of the feedlot to the south if they wanted to add buildings in the future. Aaron said it would if any buildings were built to the north, they would be required to go through a variance. Aaron indicated the Heberleins submitted a signed statement of support from the closest neighbors including the feedlot in question.

Larry Hafner asked if they intended to remove the existing house. Adam said that was correct.

Larry Hafner asked if the alternate site was an option they considered. Adam said it would be taking pasture away from his parents and they would have more driveway costs and maintenance.

Ken Anderson confirmed that the proposed new house location is further from the existing feedlot than current house. Adam indicated that was correct.

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. Bryan Van Gorp seconded. Motion carried.

Ken Visger and Bryan Van Gorp both stated they visited the site. Ken Visger said he like the proposed plan and understood the reason for moving it back from the highway. Bryan Van Gorp stated there was no downside to the proposed plan since the new house is farther back from the road.

Bryan Van Gorp suggested there be a stipulation on the time frame for the existing house removal.

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?

Staff Analysis: As a policy, the comprehensive plan list the preservation of historically tilled ag land, which the request does. As a justification for limiting nonfarm development, the comprehensive plan sites minimizing urban/rural conflicts that can result from close proximity between residences and operating farms. Presumably, the setback required of a house from a feedlot is the implementation of this concept. The BOA may consider that the applicant's current house is located in close proximity to active feedlots, as this may be an indication of the likelihood of future conflicts.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Benefits everyone involved.
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp	X		
Ken Visger	X		New home will be further from existing feedlot.

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.

Staff Analysis: State 44 represents a practical difficulty due to the traffic noise it creates and the potential danger of having a yard for children to play in very close to a highway with a high volume of high-speed traffic. A second consideration is the tillable crop land actively being farmed, which the applicants wish to leave undisturbed, and the pasture to the east where the alternative site was identified. The proposed location was selected in order to avoid the noise and hazards presented by State 44 and avoid impacting existing prime cropland and pasture. The alternative site utilizes some pasture area, requires increased driveway length, and requires construction on steeper slopes. The Board may find that State 44 represents a practical difficulty and it is reasonable to grant the variance to avoid the requirements of the alternative site, or other sites.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Preserves agricultural land.
Larry Hafner	X		Agrees, children will be away from highway.
Dana Kjome	X		New house farther from highway.
Bryan Van Gorp	X		No downside on proposal.
Ken Visger	X		Alternate site doesn't improve situation, reasonable request.

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

Staff Analysis: The NW SW quarter quarter is the likely building location on the existing parcel due to its proximity to State 44. Building on much of the NW SW quarter quarter is limited by feedlot setbacks from the north and south. Traffic counts on this section of State 44 are estimated at 4,400 trips per day; staff estimate this to be in the top 5% for the county, making it relatively unique. As a reference, the section of State 16 connecting the City of Houston to the City of Hokah has half the traffic.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp	X		Agrees with staff analysis.
Ken Visger	X		

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.

Staff Analysis: The alternative site presented above represents a means of alleviating the practical difficulty without a variance. Doing so would require increases in initial and maintenance costs of the driveway, which the BOA can rely on in part to make a decision. In addition, slopes at the alternative site a steeper, though within the range accepted for building. Lastly, farm use of land is a consideration, and the applicant has stated a need to retain the current pasture available on the property.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis, proposed driveway is already used as field access.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

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.

Staff Analysis: The proposal is not untypical for the area or county. The existing home on the property and nearby homes are located within ¼ mile of a feedlot. No impact is anticipated.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with staff analysis.
Larry Hafner	X		Agrees with staff analysis, improve property values.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

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.

Staff Analysis: The request is for an area variance. A dwelling is a permitted use in the Ag District. The site is not located in a floodplain.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		
Bryan Van Gorp	X		Agrees with staff analysis.
Ken Visger	X		

The Board must consider the information presented above and the criteria findings pursuant to Section 0110.1205 of the Houston County Zoning Ordinance. Should the Board elect to grant the variance request, staff does not recommend any additional conditions.

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

Bryan Van Gorp made a motion to accept the findings with following condition: The existing house and outbuildings must be removed no later than 18 months after occupying the proposed new house. Ken Visger seconded. Motion carried with overall approval.

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 requested with the condition stated above. Dana Kjome seconded. Motion carried.

Notice of Public Hearing No. 463 was read for **David and Sharon Giles**, 2110 Alcana Lane, Burnsville, MN 55306.

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

David and Sharon Giles are requesting a variance of 8 feet to meet the required 25 foot setback from the toe of a bluff and a variance to allow a structure on a buildable area 0.2 acres in size in Section 7 of Caledonia Township.

Aaron Lacher, Environmental Service Director, commented on the application:

- Two variances are requested: A variance of 8 feet to meet the required 25 foot setback from the toe of a bluff; and a variance to allow a structure on a buildable area 0.2 acres in size.
- The applicant's intention is to construct a 36' x 68' garage/shed. A CUP will also be necessary to build a recreational building as a primary structure. Because both variances are necessary for the project to move forward, it is recommended that the two requests be handled together.
- The parcel is one of three splits from a parent parcel, and has itself been split and joined several times beginning in 1978. The parcel has existed in its current form and size (2.98 acres) since at least 2001. The applicant also owns a 7.02 acre parcel which is contiguous, for a total of 10 contiguous acres.
- A conditional use permit was granted to David Dickman in 1984 to build a house on 10 acres. A garage with a half second story was constructed in 1984. A house was never constructed; it may

be that the garage was intended to also be the house, although no well or septic was ever installed, as required by the permit. Dickman sold the property in 1987.

- The applicants acquired the property in 2011. From aerial photos, it can be determined that the garage was there in the spring of 2014 but had been removed by the spring of 2017. The contractor stated the garage had been removed prior to his involvement with the project, which he believed to be about 4 years ago. As part of the application materials, a 1997 zoning permit was submitted (#2031) as evidence that building had been approved at the site at the time. This is incorrect. The permit was for construction on a nearby parcel (030067001) which happened to be under the same ownership at the time. The garage permitted by permit #2031 was ultimately constructed and is now located on parcel 030067002, presumably as a result of a subsequent and imprudent parcel split.
- Having been quasi-lawfully permitted, it can be held that previous garage gained legal nonconforming status when bluff protection language was incorporated into the ordinance and rendered the garage noncompliant. However, the legal nonconforming status was lost when the building was removed and not replaced within twelve months.
- The ordinance defines buildable lot as follows:

Buildable Lot. *A lot of record, or other lot, tract, or parcel legally recorded with the County Recorder that meets the requirements of this Ordinance. Buildings or structures shall not be permitted on land which has a slope of twenty-four (24) percent or greater. The buildable lot shall have the minimum lot area required for the district in which it is located, and which not more than ten (10) percent of the required lot area is collectively comprised of: 1) Area of a slope of twenty-four (24) percent or greater. 2) A shoreland impact zone as defined by this Ordinance. 3) Protected waters as defined in this Ordinance. 4) Wetlands as classified in the U.S. Fish and Wildlife Service, Circular No. 39.*

All access roads that service a new building site or dwelling shall be constructed with a final slope of less than 12%. All finished driveways shall be constructed in conformity with section 0110.2919. In the Ag District, the minimum lot area required in 1 acre, thus 9/10ths of an acre are required to meet the buildable lot standard.

- The ordinance regulates structures in drainage ways: *26.1 GENERAL WATERWAY PROVISIONS Subdivision 3. Restriction of Flow Prohibited. No fences or structures shall be constructed across the waterway that will reduce or restrict the flow of water.*
- The ordinance requires a setback from a bluff: *29.17 BLUFF LAND PROTECTION Subdivision 2. Setback from the Toe of a Bluff. Structures shall be set back forty (40) feet from the top of a bluff and twenty-five (25) feet from the toe of a bluff.*
- The site has been previously altered and analysis will focus on the present day condition. When the permit was granted in 1984 for the dwelling, there were no bluff land protection standards in the ordinance, and the site work associated with the construction of the garage was permitted by the County.
- The site lies on a cutout between W. Beaver Rd and a bluff rising 200+ feet to the north with an average slope of 52% (Figure 3). Sometime prior to the construction of the garage in 1984, an area was leveled near the toe of the bluff. The applicants indicated that within the last 10-12 years the site was again altered. Aerial photos show that the alteration occurred after 2014 (Figure 4). Two foot contours were gathered by the State in 2011 using LiDAR technology and show the grade that existed before the garage was removed. Using the LiDAR data, it is estimated that the leveled area was increased in size by 30-50% (Figure 5). A permit should have been applied for if this work involved the movement of more than 10 cubic yards of material.
- During the most recent site work, a robust block wall was installed at the termination of the slope, leaving a present day leveled area measuring approximately 108' x 69' and totaling 7,452 square feet or approximately 0.2 acres. This area represents the only buildable area on the property – therefore the site does not satisfy the requirements for a buildable lot (0.9 acres).
- The current ordinance requires structures to be setback 25' from the toe of the bluff. In determining the toe, we first look for a visible break in slope. Due to the previous leveling, an

observable break is pronounced at the block wall. The applicants are requesting a variance to locate a 36' x 68' garage/shed 17' from the block wall. Note that there is a steep slope at the south of the property that drops 16' to W. Beaver Rd, preventing the building from being placed further south.

- Caledonia Township and the ten nearest property owners were notified. No comments were received.

Chairman Hafner asked the Giles if they had anything to add. David and Gavin Giles were present as well as their contractor, Steve Bauer of Caledonia Lumber. David said when they approached the township about buying the site several years ago, they were told that someone had lived there. After buying the site it was found that the garage/dwelling was full of mold, so they tore it down. They did some excavating to stabilize the site; the current wall has been there for approximately 6 to 8 years. Drain tile was also installed. They recently approached Steve Bauer of Caledonia Lumber on building a storage building for their 4-wheelers and a tractor since they own the property and no longer wish to pay rent for storage. They are interested in putting in a holding tank to wash their equipment and when cleaning deer. They wish to be good stewards of the land with their waste water. Their fish house will also be stored there.

Ken Visger asked what the term recreational means. Aaron said it's not a term defined in the ordinance, but refers to those primarily looking to hunt, fish, hike, etc. It means non-agricultural and non-residential. It cannot serve as a primary residence. Ken wondered if the intent was to occupy due to the holding tank. Aaron said it may be to occupy, but not as a primary residence.

Larry Hafner asked where their source of water would come from. David indicated they may possibly drill a well for washing equipment and cleaning deer, etc. A hydrate may be a possibility. Larry asked if they would be heating the building. David said they don't really have any plans for that.

Bryan Van Gorp clarified there would be no drainfield. David said there would not be, just a holding tank for waste water.

Larry Hafner asked if they would have some type of toilet facilities. David said it could be stubbed in, but they don't have issues with using an outhouse. Gavin Giles indicated they had no plans for a toilet or shower. The holding tank is mainly for waste water use. A hydrant and holding tank are the only plans.

Larry Hafner asked if they owned additional property and if there were other locations they could build on. David Giles talked about their other parcels and it was concluded that there were no other options for building due to it being wooded and steep slopes.

Ken Anderson asked what type of roof would be on the building. Steve Bauer said it would be a pitch roof with run off directed to the back and front. There will be eaves on the back side. They were asked to move the building ahead 17 feet. There is good drainage to the south-southwest.

Bryan Van Gorp stated the Giles took ownership in 2011 and then sometime after 2014 there was a retaining wall built, so there apparently was some intent to do something with the property. David Giles said in talking to township about the mold issue in the existing building they believed they had the approval to go ahead and clean it up.

Aaron Lacher stated the old building was somewhat dug into the foot of the hill and wondered how the new retaining wall came about. David said there used to be a timber wall there and when they cleaned it up, instead of leaving it raw, they put up a stone retaining wall to prevent erosion. Steve Bauer indicated the wall is 2 blocks high and 110 to 130 feet long. Larry Hafner stated he understood why they want to build within the protection of the wall.

Aaron Lacher asked for the dimensions of the proposed building. Steve Bauer said the Giles were requesting a 36' x 68' storage building. Aaron asked if a smaller building may be a possibility due to Finding #4. Gavin Giles said they currently keep all their equipment at the neighboring property and they need to relocate it, so they want everything on their site.

Ken Anderson asked for clarification on where the toe of the bluff starts in this situation. Aaron referred the Figure 6 photo and stated the toe would be where the current wall is. The required setback would be 25 feet from the block wall. There was general discussion on erosion and heavy rain events and how the site has remained stable.

Aaron Lacher asked for clarification on the future intent of the site. Gavin Giles said he and his brother plan to buy the land from their Dad eventually. They want to keep their equipment there and be able to wash it and keep it nice. Gavin said their relatives have approximately 30 acres that they plant using their tractor.

There was general discussion on building closer to the wall. Gavin Giles said it's stronger back by the wall and building closer to the wall makes more sense than pushing it closer to the road. There was general discussion on allowing the building to be built closer to the retaining wall.

Dana Kjome asked where the doors will be located. Gavin said they will on the east end or driveway end.

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

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

Bryan Van Gorp and Ken Visger indicated they both visited the site. Ken said he had concerns on the excavation that was done and that it wasn't permitted. The building could also potentially be livable. A shed like this will allow them to occupy it.

Bryan Van Gorp indicated he had the same concerns and how it was developed over time.

Larry Hafner clarified that the Giles are requesting to have a hydrant with a floor drain and no plumbing. Ken Visger said he would be in favor of giving the permit with just a hydrant and no plumbing.

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?

Staff Analysis: Policies intended to achieve the general goals of the County include: *Prohibit Development in Unsuitable Areas*. Steep bluffs and undersized lots are identified as an unsuitable area. This would support denial of both requests, however, consideration should be given to the fact that the site was previously and lawfully developed, that the result of past development may be a site that is indeed suitable for some limited uses, and that no additional alteration of bluffs is proposed. In granting any variance, the BOA should be confident that the applicant has satisfactorily demonstrated that the site is suitable, including consideration of intended use, future structures, slope stabilization, and waste water treatment. If the applicant is able to do this, the above policy could support granting both requests.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Limited uses proposed is reasonable.
Larry Hafner	X		Agrees with staff analysis, limited use.
Dana Kjome	X		Agrees with staff analysis, limited use.
Bryan Van Gorp		X	Was not lawfully developed, altered in 2014. Not suitable for development.
Ken Visger	X		Site is stable and wall works. Some degree of development is reasonable.

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.

Staff Analysis: The limited buildable area on the property, coupled with the lack of alternative building sites on the contiguous properties, constitute a practical difficulty for both requests.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		There is no other alternative site.
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp		X	Variance requests are 30% and 500% and are unreasonable.
Ken Visger	X		Agrees with staff analysis.

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

Staff Analysis: This property is unique in that it was lawfully developed under prior rules, the land was altered as a result, but that the alteration resulted in a condition that does not satisfy current requirements. The BOA should consider the post-2014 alterations, as the request is based on the post-2014 dimensions, and determine if it is appropriate for the finished work to be the basis for the current request.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		2014 alterations were to stabilize existing building site.
Larry Hafner	X		Agrees with staff analysis, bought property assuming buildable due to past building and township statements.
Dana Kjome	X		
Bryan Van Gorp		X	2014 alterations should have been permitted.
Ken Visger	X		2014 alterations were to stabilize existing building site.

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.

Staff Analysis: Regarding the buildable area, the existing area is a fixed quantity and cannot be increased; in this sense, it is the minimum variance that would alleviate the difficulty. Regarding the setback, with every variance request involving a building, the building's dimensions are positively correlated to the variance request—the larger the building, the larger the requested reduction. In this case, the building width dictates the amount of variance requested. The BOA must be satisfied the proposed building size is reasonable for the location. If the BOA determines this to be the case, the limited area and slope to the south of the building prevent any significant alteration of the structure's orientation.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with Larry.
Larry Hafner	X		Agrees with staff analysis, minimizing variance amount will not impact anyone.
Dana Kjome	X		Agrees with Larry.
Bryan Van Gorp	X		
Ken Visger	X		Might be better to locate closer to wall.

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.

Staff Analysis: A structure previously existed on the property near the proposed location. Erosion from the alteration of the bluff toe is a potential concern, however the block wall appears to be effective and the slope above is vegetated.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with staff analysis.
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp	X		
Ken Visger	X		

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.

Staff Analysis: The request is an area variance. The proposed shed will require a CUP in addition to a variance, but is not prohibited in the district. The site is not located in a flood plain.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with staff analysis.
Dana Kjome	X		Agrees with staff analysis.
Bryan Van Gorp	X		
Ken Visger	X		

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

The Board must consider the information presented above and the criteria findings pursuant to Section 0110.1205 of the Houston County Zoning Ordinance. Should the Board elect to grant the variance request, staff does not recommend any additional conditions. Construction of a recreational shed as a primary structure will require a CUP. Should the applicants apply for a CUP, staff anticipate recommending that the Planning Commission attach conditions as appropriate.

Ken Visger made a motion to grant a variance of 13' to meet the required 25 foot setback from the toe of a bluff and a variance to allow a structure on a buildable area 0.2 acres in size with the following conditions:

- 1) No future development shall be permitted beyond the footprint of the 36' x 68' building proposed.
- 2) The proposed shed shall not be plumbed to receive toilets, sinks, showers or other features typically found in living quarters. A hydrant and utility sink shall be allowed.

Ken Anderson seconded and a final vote was taken.

	<u>YES</u>	<u>NO</u>
Ken Anderson	X	
Larry Hafner	X	
Dana Kjome	X	

Bryan Van Gorp		X
Ken Visger	X	

Motion carried with overall approval for both variances.

Ken Visger made a motion to adjourn. Bryan Van Gorp seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on November 8, 2018.