

Houston County Board of Adjustment
January 24, 2019

Approved on May 23, 2019 by Ken Anderson and Dana Kjome

The Houston County Board of Adjustment met at 6:00 p.m. on Thursday, January 24, 2019. 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. Dana Kjome made the motion to accept the agenda. Ken Visger seconded. Motion carried.

Ken Anderson made a motion to approve the minutes of November 7, 2018. Ken Visger seconded. Motion carried.

Election of Chairperson for 2019 took place. Dana Kjome nominated Larry Hafner for Chairperson, Ken Anderson seconded. There were no other nominations. Motion carried unanimously.

Election for Vice Chairperson for 2019 took place. Bryan Van Gorp nominated Dana Kjome for Vice-Chairperson, Ken Visger seconded. There were no other nominations. Motion carried unanimously.

Notice of Public Hearing No. 464 was read for **Jacob and Erin Lampert**, 12397 Knollwood Road, Caledonia, MN 55921.

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

Jacob and Erin Lampert are seeking a variance of 24 feet to meet the required 65 foot setback from the centerline of a township road to build an addition on an existing house in Section 24 of Caledonia Township.

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

- The Applicants are requesting a variance of 24' to meet the 65' setback required from a township road to accommodate a proposed addition.
- The property is located in the Green Acres Subdivision, and was created by a platting process in 1972. Tax records indicate a 1248 square foot, three bedroom house was constructed in 1973. The estimated setback of the existing house is 69'; this appears to be consistent with the setbacks prevalent throughout the subdivision.
- The variance is requested to accommodate an addition to include a garage and living area, with the existing garage being converted to a master bedroom. Staff estimate the proposed addition will be setback 41' from the centerline of Knollwood Road, requiring a 24' variance.

- The Green Acres subdivision is serviced by private sewers. The addition of a bedroom may require the owners to upgrade their septic system, pending an inspection of the existing system. The county does not have records for a current system, however the applicant indicates a system location. The lot is substandard in size, which may present challenges in locating a suitable area for a new system, should one be required, however the proposed addition location does not detract from potential suitable areas as it is atop the existing driveway.
- When the parcel was created by the 1973 plat, the minimum area requirement for residential lots with individual sewers was 22,000 s.f.; the current ordinance requires a one acre minimum area. An exception for lots created prior to the adoption of the modern rules exists that permits building on lots with areas of 22,000 s.f. or more (HCZO 15.11). The Applicants' lot is 27,442 s.f., therefore, though the site does not conform the modern standards, this specific exemption provides a means to permit the addition.
- The parcel is 0.63 acre lot located on a corner in the Green Acres subdivision. Slope measured across the parcel perpendicular to the contours using LiDAR data indicates a 6% slope. There are no water features mapped on the parcel; the nearest mapped water feature is an intermittent stream 450' to the east.
- Caledonia Township and the ten closest property owners were notified. No comments were received.

Chairman Hafner asked the Lamperts if they had anything to add. Jacob Lampert said they need a little more space with their family of four. They really like the neighborhood they are in, so would like to build an addition on their home.

Ken Anderson asked what the setback would be if this parcel were in the City of Caledonia. It was determined the setback would be 30 feet.

There was general discussion on Figure 6 in the staff report and it was determined that the addition wouldn't affect driving sightlines and does not appear to create a driving hazard.

Edward Voight of Caledonia Township was present and stated that the township is in favor of the application.

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.

Dana Kjome and Ken Visger stated they both visited the site and think the addition is a favorable idea.

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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: As part of the residential development policies included in the comprehensive plan, the county is to encourage the rehabilitation of existing older homes (0100.0506 subd. 2 policy 10).

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with Staff Analysis (SA).
Larry Hafner	X		Is in harmony/supports decision to stay in home.
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.

Staff Analysis: The lot cannot accommodate an addition without a variance of some sort. Generally speaking, modern homes are tend to be larger than those built in the 1970s, thus a request to add onto a smaller home from that area is reasonable.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA, only thing they can do.
Dana Kjome	X		Agrees with SA.
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.

Staff Analysis: The lot is typical among those found in the Green Acre subdivision, however the house is smaller than a typical house in this neighborhood, and represents a circumstance unique to the property. Looking at the houses located on the island on which the Applicant's home is located, square footage ranges from 1248 s.f. to 2783 s.f., with the applicants' house being the smallest. The average s.f. of these neighboring homes is 2136 s.f.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Dana Kjome	X		Smaller house/corner lot, variance makes sense.
Bryan Van Gorp	X		
Ken Visger	X		Improvement to existing home/neighborhood.

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: An addition of the size proposed would require a variance in configuration on the parcel except to the east of the existing house. Placing an addition to the east of the house is not reasonable for multiple reasons: first, the existing septic field is located in this area; second, there may be areas of undisturbed soils east of the house, and preserving them for a future replacement septic system is prudent; third, the addition being proposed is a garage, and the existing driveway does not lead to the east of the house. Additionally, there may be layout consideration given the existing floor plan (e.g. it would not be reasonable to separate a bedroom addition from the rest of the living space by a garage).

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		
Bryan Van Gorp	X		Agrees with SA.
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: Houses in Green Acres subdivisions substantially, if not completely, comply with the standard setback requirements, however, it is unlikely that the granting of a single variance would have the effect of an essential character change. The house would remain a single family dwelling and be similar in size to neighboring houses. Because the existing house is located on a corner lot, consideration of the effect on driving sightlines is appropriate. Caledonia Township is the road authority for Knollwood Road, has been contacted regarding the request, and did not submit any comment of concern on this topic. The effect of the proposed addition does not appear to create a driving hazard.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
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: A reduction in road setback is an area variance. Single family homes are a permitted use in the Residential District. There are no mapped flood hazard areas on the property.

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

RECOMMENDATION

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.

Ken Visger made a motion to accept the findings. Ken Anderson 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 a variance of 24 feet from the township road. Dana Kjome seconded. Motion carried.

Notice of Public Hearing No. 465 was read for **Peter and Pamela Orr**, 9755 County 4, 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.

Peter and Pamela Orr are requesting a variance of 45 feet to meet the required 50 foot setback from the north property line for an existing shed in Section 22 of Yucatan Township.

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

- A variance of 45 feet to meet the required 50 foot setback from the north property for an existing shed.
- In 1981, 4.4 acres were split from a parent parcel creating PID#170258004. The need for this variance request was created by this split because the newly created property line was 5' from an existing 20' x 40' shed (doc #135771); a 50' setback was required at the time and continues to be the requirement. As is often the case with splits separating dwellings from outbuildings within an farmstead, the proximity of the existing buildings did not provide for the setback distances required for the newly created parcels; additionally, compliance with setback requirements does not appear to have been an objective of the 1981 split.
- The current house on the property was constructed in 2007, and required the granting of a CUP (house on less than 40 acres) and a variance of 600' from feedlot that is still operated on the

parent parcel. In 2012 a permit was granted for a deck, which was converted into a 3-season room in 2015 under a subsequent permit. In the spring of 2018, an application was submitted for a 36' x 54' pole shed and denied by the zoning office based on the noncompliance created by the 1981 split, as well as the proposed location of the proposed shed being within the property line setback. At that time there were questions as to the precise location of the property line, and the owner had a survey completed.

- The north line was redefined via quitclaim deeds ahead of the 2018 survey, placing the line 5' north of the existing outbuilding, and re-creating the need for a variance or alternate cure. The new line could have been placed more equidistant between the existing buildings, but no division scheme providing for continued ownership of the respective buildings could have achieved the required setbacks. In this instance, a more equidistant placement of the line would serve no practical purpose.
- The parcel is bordered to the southeast by the Root River South Fork. The eastern third of the parcel is located in the flood hazard area, included the existing shed for which the variance is sought. The entire parcel is located within ¼ mile of two feedlots, both operated by the applicant's brother on the parent parcel. Immediate family members are exempt from the feedlot setback, however the applicant was granted a 600' variance from feedlot setbacks for his house in 2006.
- Yucatan Township and the ten nearest property owners were notified. No comments were received.

Chairman Hafner asked Peter Orr if he had anything to add. Peter said he recently had the land resurveyed to put the property line where they thought it always was.

There was general discussion on the new survey and the corrected north property line.

Ken Anderson clarified that Peter was building a new building. Peter said he was. The new building will not need a variance. The existing building needs a variance.

Chairman Hafner asked if anyone wanted to speak.

John Dewey was present for Yucatan Township and stated the township was in support of Peter's application.

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

Ken Visger and Bryan Van Gorp stated they both visited the site. Neither see a problem with the request. Ken Visger said there is no harm with the request, but wishes there was a way to correct the need for these after-the-fact variances. Bryan Van Gorp has a resolution he would like to present at the end of the meeting.

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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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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: Formal review of parcel splits for zoning compliance has not been part of the official controls. The Comprehensive Plan calls for encouraging rehabilitation of existing homes. When a home is beyond rehabilitation, a logical extension of this policy is the reuse of existing home sites, as this has no net reduction in the productive ag land base. In large part, the 1981 split allowed for the continued use of the agricultural infrastructure and the construction of a new house without reducing ag land in cultivation.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with Staff Analysis (SA).
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA.
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.

Staff Analysis: The proximity of the existing buildings makes the 1981 subdivision unattainable within the parameters of the setback requirements as a 100' separation does not exist. The relocation or demolition of buildings has economic considerations. Many factors may have represented practical difficulties which reasonably contributed to the placement of property lines in 1981: If a goal was to provide the parcel with outbuildings, slopes present on the parcel and parent parcel may have affecting decisions. The prevalence of floodplain and the knowledge of areas susceptible to flooding limit areas acceptable for future building.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
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.

Staff Analysis: The variance is requested due to the proximity of existing buildings that were constructed prior to county zoning rules. The BOA should consider whether the original placement of these buildings and subsequent split was done to facilitate a future variance, which would require the variance to be denied, or if the split was done for good cause with the property features in mind (existing farmstead, natural features, etc.), which would allow for granting the variance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Only alternative, split did not change usage.
Larry Hafner	X		Done years ago, wasn't done to hurt.
Dana Kjome	X		Agrees with SA.
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.

Staff Analysis: Without removing existing structures or deviating significantly from the existing line location, the required setbacks cannot be achieved.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Dana Kjome	X		
Bryan Van Gorp	X		Agrees with SA.
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 required setback has not been in place since 1981, with little or negative effect. The applicant's brother owns the neighboring property, and he indicates both parties freely travel on the respective parcels.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		
Bryan Van Gorp		X	Irrelevant that same family owns both sides.
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. The shed for which the variance is sought is located in the flood hazard area, and is considered a non-compliant structure for which there are

specific and strict rules regarding use, improvement, and replacement. The granting of the variance will not change this status.

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

RECOMMENDATION

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.

Ken Visger made a motion to accept the findings. Dana Kjome 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 a variance of 45 feet from the north property line for an existing shed. Ken Anderson seconded. Motion carried.

OTHER BUSINESS:

Bryan Van Gorp stated that something needs to be done with parcel splits so they are done correctly and according to the county ordinance. He read the following statement: ***“The Board of Adjustment encourages the County Board to take action to limit future land parcel splits that will create situations that violate the ordinance and limit options for constructive outcomes. A significant number of the cases coming before the Board of Adjustment deal with problems created by splits that should not have occurred or could have been dealt with in a more constructive way proactively. Perhaps the Board of Adjustment could have a role in evaluating the appropriateness of these splits rather than attempting to deal with the problems they create after the fact when options are limited. We leave the specifics of how best to create a workable policy to the County Board, Zoning Administrator and legal advisors. We only ask that you deal with an ongoing problem proactively to reduce the future work load, reduce violations, reduce controversy and create better outcomes for the citizens of Houston County.”***

Ken Visger made a motion to submit the above statement to the County Board. Ken Anderson. Motion carried.

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

Submitted by Houston County Board of Adjustment Clerk on January 25, 2019.

Houston County Board of Adjustment
May 23, 2019

Approved on June 27, 2019 by Ken Visger and Ken Anderson

The Houston County Board of Adjustment met at 6:30 p.m. on Thursday, May 23, 2019. 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 Visger made the motion to accept the agenda. Bryan Van Gorp seconded. Motion carried.

Notice of Public Hearing No. 466 was read for **Kyle Meyer**, 12735 Tower Drive, Caledonia, MN 55921.

Kyle Meyer is seeking two variances. The first request is for a variance of 25 feet to meet the required 65 foot setback from the centerline of a township road for a proposed 25' x 42' shed. The second request is for a 10' variance from the west property line to meet the required 50 foot setback for an existing shed in Section 36 of Sheldon Township.

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

- The subject parcel is a 1.37 acre parcel located on Tower Drive, a dead-end township road. The parcel was created by a parcel split in 1968 (Doc# 103738), when an existing farmstead was split from the adjacent farm land, and remained under the same ownership until 1995. In 1995, the property was sold, and a permit to install a mobile home was issued (#1789); the original farmhouse was demolished around this time. In 2000, a permit to build a house, garage, and deck was issued (#2356) to a new owner, and the mobile home was removed. Subsequent permits were issued for accessory buildings in 2005 and 2013, with the latter being a lean-to for which variance request #2 is brought. The existing house is considered to be a legal nonconforming use, thus no CUP is necessary for a dwelling on less than 40 acres.
- Per the applicant, a fence is located on the west property line. The parcel line on Beacon displays east of this fence.
- The proposed shed will accommodate vehicles and equipment used for the applicants contracting business, as well as provide residential storage. Contracting work is not performed at the site, nor do customers come to the applicant's home. While many contractors live and work in the county, a search of permits does not indicate that any have been granted permits for home businesses.
- The parcel is located at the midpoint of Tower Drive, a dead-end township road ½ mile long. Tower Drive is understood to have a 4 rod, 66' right of way (ROW). There is one house located beyond the applicant's property on Tower Drive; a commercial tower is also accessed via Tower Drive. The proposed shed is located just beyond the approximated ROW. The size of the parcel provides for limited space for buildings. The effect of property line and road setbacks limit the buildable area on the lot to approximately 0.4 acres.
- The septic drain field is located east of the house and the well is on the southern end of the property. Should the septic need to be replaced in the future, the most likely location for this

would in the NE portion of the parcel—the proposed shed location does not appear to be an ideal drain field located based on proximity to buildings and driveways. Slopes on the property are predominantly 2-18%. There are no water features or wetland mapped on or near the property, with the closest being a wetland 1/8 mile east.

- Sheldon Township and the ten closest property owners were notified. Sheldon Township contacted the County, and does not object to a reduced road setback.

Bryan Van Gorp asked what year the reduction in parcel size from 10 acres took place. Aaron Lacher said around 1990.

Chairman Hafner asked Kyle Meyer if he had anything to add. Kyle indicated he had met with some members of the BOA on his site and showed them around. The location is in the best possible spot to build due to the existing septic system and utilities. He also doesn't want to interrupt the area that is available for the kids to play. He would like to pull in by the existing shed and back in away from where the kids play. He measured other locations, but any location would require a variance request.

Bryan Van Gorp clarified that the right-of-way setback from the township road was 33 feet from the centerline. Aaron Lacher said was correct, however, the greater of the two setbacks is the 65 foot setback from the centerline of the township road, so you go with whichever setback is greater.

Bryan Van Gorp asked how long Kyle has had ownership of the parcel. Kyle said since November of 2018.

Dana Kjome asked if the owner of the tower was notified. Aaron Lacher indicated Midwest Wireless Communication was on the list of those notified.

Ken Anderson clarified that the road is a straight road and equipment turning around would have clear vision of any oncoming traffic. Kyle Meyer indicated that was correct.

Aaron Lacher indicated there is an existing shed very close to the west property line. The board may want to consider having that building come into compliance with setbacks. Kyle Meyer said the shed was portable, on skids and can be moved. There was discussion on Aaron working with Kyle to give him time to relocate it.

Bryan Van Gorp asked when the mistakes of previous owners would ever be addressed or are all old sins forgiven. There was brief discussion on the continuing problem with variance requests.

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

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

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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: Comprehensive Plan Section 0100.0506 Subd. 2 (10) encourages the rehabilitation of existing older homes. The application of this policy to a homestead is appropriate insofar as it provides that new buildings be located on existing home sites rather than undisturbed areas. While no build date is known for the original house, it is suspected that a home has been located at this site for more than 100 years. The BOA must find that a goal of the official controls is the continued use of an existing site, that limiting accessory buildings at existing sites would have the effect of encouraging development at new sites with fewer spatial limitations, and that these goals outweigh the utility of requiring strict adherence to setback standards.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Allowing building on existing homesteads has effect of reducing demand on undeveloped sites.
Larry Hafner	X		Agrees with SA, goal to rehabilitate existing homes extends to homesteads.
Dana Kjome Bryan Van Gorp	X	X	Site is too small for what he wants to do. The number of allowed buildings needs to be limited on sites like this.
Ken Visger	X		Benefit of allowing variance in this case outweighs strict adherence to setback requirements.

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 primary practical difficulty is the limited space available due to the small parcel size. Other economic considerations can also be considered, including the locations of an outdoor boiler and utility lines.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA, placement is reasonable, he is positioning it away from family use of the yard.

Dana Kjome	X	
Bryan Van Gorp	X	Parcel size is the practical difficulty.
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.

Staff Analysis: The parcel size was established in 1968, and eight owners have held title to the parcel since that time. Existing buildings and driveways occupy much of the buildable space after setbacks are applied. The BOA must find that decisions made by previous owners regarding property line and structure placement do not carry over to the current owner such that he would be considered to have created the need for the variance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA and additional observations.
Dana Kjome	X		Prior permits were not adhered to.
Bryan Van Gorp	X		
Ken Visger	X		Apparent from history of parcel he did not create the need himself.

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 request #2, only three remedies exists: obtain a variance, move the building, or move the property line. The BOA must find that the grant of a variance is the most reasonable among these. Further, the BOA must find that the proposed shed size is reasonable. Lastly, the applicant indicates that the proposed shed location serves to utilize the existing driveway and turnaround, accommodate the continued use of an outdoor boiler, and, to a degree, bifurcate the parcel such that a play area for children remains east of the primary driveway. The BOA must find that these objectives are reasonable and warrant a variance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		A variance is most reasonable way to solve the issue.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Location of septic does not allow building east of driveway.
Bryan Van Gorp		X	There are other locations available.
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: No impacts are anticipated. The road has minimal traffic. The Township did not object to the proposal. The number of accessory buildings is not dissimilar to other parcels in the ag district.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Building will be good for equipment storage and make it a neater looking parcel.
Larry Hafner	X		

Dana Kjome	X	
Bryan Van Gorp	X	
Ken Visger	X	Agrees with SA.

- 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 variances of area. The parcel is not located in or near a floodplain.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Not in a floodplain.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		
Bryan Van Gorp	X		
Ken Visger	X		

RECOMMENDATION

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 recommends the following conditions:

- Before a zoning permit shall be issued, the permittee shall present a plan to bring the existing 16' x 23' shed located in the NW corner of the parcel into compliance, and the plan shall be approved by the zoning office.

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

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

Ken Visger made a motion to accept the findings. Ken Anderson 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 a variance of 25 feet to meet the required 65 foot setback from the centerline of a township road for a proposed 25' x 42' shed. The second request is for a 10' variance from the west property line to meet the required 50 foot setback for an existing shed. Ken Visger seconded. Motion carried.

OTHER BUSINESS:

Ken Anderson made a motion to approve the minutes from January 24, 2019. Dana Kjome seconded. 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 24, 2019.

Houston County Board of Adjustment
June 27, 2019

Approved on July 11, 2019 by Ken Visger and Dana Kjome

The Houston County Board of Adjustment met at 6:00 p.m. on Thursday, June 27, 2019. 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.

Notice of Public Hearing No. 467 was read for **Jeremy and Dawn Klinski**, 51 Crescent Avenue, La Crescent, MN 55947.

Jeremy and Dawn Klinski are seeking a variance of one rod (16.5') to meet the 33' driveway width standard in order to apply for a zoning permit for a single family dwelling.

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

- The parcels owned by the applicants are among several contiguous parcels previously owned by one individual, Raymond Klinski, all accessed from Indian Springs Road. As such, there was no need to establish easement access prior to 2015, when the properties came to be owned by multiple owners. In 2014, Al, Rich and Steve Klinski participated in mediation to determine ownership of the subject and adjacent parcels, this mediation was the basis for a settlement agreement signed by all parties in 2015, which included a one rod (16.5') easement, with an additional provision stipulating that easement temporarily expanded to two rods for construction or repair, covering a 3,000+ foot length.
- The applicants have been in contact with the zoning office regarding a potential dwelling periodically since 2016. Most past interactions have been related to issues stemming from the creek running through the property (e.g. floodplains, bridges, wetlands). In 2019, it was revealed that the existing easement did not meet the County standard.
- Amendments to the zoning ordinance in 2016 included changes to access requirements and resulted in a reduction of access standards. The previous ordinance, adopted in 2014, stated that a buildable lot required 150' on a public road: *0110.0306 Definitions. 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 and **which has 150 foot frontage on an improved and maintained public road.** 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...*
- Single family dwellings (i.e. dwellings on 40 or more acres in the agricultural protection district, also referred to as farm dwellings) were held to the buildable lot standard via performance standards included in the Agricultural District: *0110.1410 Lot Area Standards, Subd. 1 Minimum Lot Area (1) All new farm dwellings, and the division of farmsteads having two (2) or more dwellings, **shall have a Buildable Lot**, as defined in this Ordinance, with a minimum lot area of one (1) acre for each dwelling.*
- The 2016 amendments reduced the access requirements to 33' of frontage or a 33' easement. *0110.1402 Permitted Uses Subd. 1 Permitted Uses (4) Single Family Dwellings. Single family dwellings located on 40 or more contiguous acres subject to one dwelling per quarter-quarter*

section and having ownership of at least 33 feet of road frontage on a public roadway or a legally recorded perpetual access at least 33 feet wide from an existing public roadway, on sites considered Buildable Lots as defined by this Ordinance. An erosion control plan, as set forth by Section 24, shall be submitted with all applications for new single family dwellings.

- Thus, the subject parcel did not meet the access requirements under either the 2014 or 2016 ordinance. The ordinance has undergone subsequent amendments, however, there have been no additional changes to the access requirements. Note that the ordinance has been renumbered, with 0110.1402 being replaced by 14.2 in the current document.
- The applicants own two parcels totaling 180 acres, all accessed from Indian Springs Road via easement. The property is primarily forested, consisting of steep slopes and narrow valleys. Thompson Creek runs through the subject property, resulting in areas of floodplain. The applicants are proposing a house location outside of floodplain. The proposed drive would cross Thompson Creek at two locations, and the applicants are working with DNR on the necessary permits for this. DNR has prepared a hydraulic analysis calculating the impacts of the proposed structures showing the flood stage increase.
- There are no elevation requirements for driveways. The proposed house would be required to be elevated above the 100 year flood elevation, calculated after any stage effects caused by the creek crossing structures.
- Union Township and the ten closest property owners were notified. No comments were received from the Township. The Hokah Fire Chief provided a letter indicating the proposed driveway location was inspected and determined to provide sufficient access for emergency vehicles. MNDNR is aware of the application and did not submit comments. MNDOT indicated no anticipated impacts and stated the proposal is acceptable. Written comments were received from two private parties, one in support and one in opposition, which are attached to this report. Staff received one phone call inquiring about the application that did not result in comments.

Bryan Van Gorp asked what the most pressing issues are due to some of the land being in a floodplain. Aaron Lacher said the building site is out of the floodplain, but a portion of their location is in shoreland district. He said the Klinski's are proposing to do crossing work in two locations on the road and have been working with the DNR in this process.

Larry Hafner asked if the BOA needed to be concerned about those issues when they make their decision. Aaron said they do not, but it is a tie to the zoning permitting process for their home. There are two locations on Jeremy and Dawn's land affected by the crossings they are proposing.

Aaron Lacher stated this variance request is the only time the Klinski's need to go before a board to ask for permission to move forward in their building process.

Chairman Hafner asked the Klinski's if they had anything to add. Jeremy Klinski stated the bridges they are proposing will be on their property only, not on the easement road. Currently, they have a legal "residential" easement that was granted when the land was divided in the 2014 mediation process. Dawn Klinski said they have contacted the owners of the land on which their easement is located about granting a wider easement, however, they have not been granted a wider easement at this time. They currently have a 16.5' permanent residential easement and a 33' easement for maintenance and major repairs of the road.

Bryan Van Gorp asked if the land that the easement is on is a family relative. The Klinski's indicated it was and they explained how the parcel splits took place.

The Klinski's stated they are not changing the actual road or making it wider they just need a "granted" permanent easement due to county ordinance requirements.

Ken Anderson talked about the abandonment of old public roads. He found that this road was an actual public road called the Hokah and Caledonia road which was vacated. Vacation of old major roads was done around the 1920s.

Bryan Van Gorp stated he has concerns with snow removal and that they won't be able to confine what's there in winter. He asked the Klinski's why they did not consider going to the township for a cartway first. Dawn Klinski said they were advised that the townships generally do not like to grant cartways. Ken Anderson said if the township grants a cartway, then the township is required to maintain it.

Bryan Van Gorp understood that easement requirements were actually made easier in the county ordinance. Aaron Lacher indicated that amendments to the zoning ordinance in 2016 included a reduction of access standards. The access requirement was reduced from 150' to 33' to avoid putting townships in a position where they must compel a cartway.

Jeremy Klinski stated they were granted a "residential" easement. He believes the intent behind the easement drafted in the 2014 mediation process was to create an easement in order to build a residence. The attorney's clearly did not check the easement requirements at that time. The Declaration of Easement requests were discussed.

Larry Hafner believes the Klinski's probably have a legitimate reason to pursue further legal action, however, the Klinski's want to move ahead with building a home now so the BOA needs to look at only the variance request at this time.

Aaron Lacher stated there were comments from some neighboring landowners. One was in favor of the request and one was against the request. The Hokah fire chief submitted a letter indicating the road is okay for travel and the access to the property is sufficient for emergency response.

Chairman Hafner asked if anyone else wanted to speak.

Steve Klinski spoke. He indicated he submitted photos from the beginning of the easement to the end of the easement. Much of the road is up against the hillside and he has concerns that there will be a lot of erosion. The area where the property ownership divides also floods frequently. He is also concerned that if he ever sold his property a wider easement would affect the value of his land.

Bryan Van Gorp asked Steve Klinski where the flooding occurs. Steve said it floods right at the property line division. Aaron Lacher indicated there are no county elevation requirements for driveways.

Jeremy and Dawn Klinski indicated they have been working extensively with the DNR on the floodplain requirements for their driveway. They also believe the road is safe for travel and in case of emergencies. The Hokah Fire Chief checked the road and it was determined that it would provide sufficient access for emergency vehicles.

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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: In 2016, the access requirement was reduced from 150' to 33' by an amendment to the zoning ordinance. This was done to combat the prevalence of "hourglass" parcels often created when a building is setback far from the road – parcels are created with 150' of frontage narrowing to a one rod driveway and, finally, expanding to create a building envelope. The 33' width was selected to avoid putting townships in a position where they must compel a cartway. In the documents submitted by the applicants, it states that if the variance is denied, their next action may be to petition the township to compel a cartway. The BOA may find avoiding a cartway petition to Union Township is in harmony with the intent of the official controls.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp		X	Cartway is recommended way to go.
Ken Visger	X		Agrees with SA.

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 BOA may find the lack of access from a public road constitutes a practical difficulty, that the ultimate goal of permitting a house is reasonable, and that the documentation of efforts to date to obtain a 33' easement by the applicants represent a reasonable effort to avoid a variance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp		X	They have not exhausted legal remedies.
Ken Visger	X		Agrees with SA.

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 BOA may find that the need for the variance stems from the manner in which the property was distributed within a family, and the details surrounding that distribution. Because the existing easement is the result of court actions, the BOA may find that it was not created by the property owner.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA and Ken V's comments.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp	X		Did not own the property at time easement was created.
Ken Visger	X		Intent was to create residential easement.

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 applicants have provided documentation of their past efforts to obtain a wider easement, which have been unsuccessful. Due to slopes, access off of Indian Springs Road represents the only reasonable method of travel to the proposed house site. An easement of one rod would provide the applicants with the minimum access required of a buildable lot.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA, any other access would require easement.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp		X	A cartway is a reasonable alternative.
Ken Visger	X		Has ½ mile driveway that is not 16.5' wide.

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 applicants require the driveway easement to proceed with their plans to build a house. The house would be associated with 180 acres, 180x the minimum lot size in the agricultural district, and 4.5x the minimum acreage required to build as a permitted use. The BOA

may find that this is not an alteration to neighborhood character, and is unlikely to affect adjacent property values.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA, the easement was at one time a public road.
Dana Kjome	X		Agrees with SA and Ken V's comments.
Bryan Van Gorp	X		Agrees with SA.
Ken Visger	X		Would be unreasonable to deny buildable lot.

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. The granting or denial of the request will have no effect on the application of applicable flood protection regulations.

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

RECOMMENDATION

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.

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 a variance of 16.5' from the required 33' driveway easement width. Ken Visger seconded. Motion carried.

OTHER BUSINESS:

Ken Visger made a motion to approve the minutes from May 23, 2019. Ken Anderson seconded. Motion carried.

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

Submitted by Houston County Board of Adjustment Clerk on June 28, 2019.

Houston County Board of Adjustment
July 11, 2019

Approved on September 26, 2019 by Ken Anderson and Dana Kjome

The Houston County Board of Adjustment met at 6:00 p.m. on Thursday, July 11, 2019. 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.

Notice of Public Hearing No. 468 was read for **Vincent and Jill Colbert**, 580 Skunk Hollow Road, La Crescent, MN 55947.

The Colbert's are seeking a variance of 25 feet from the east property for an existing accessory building.

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

- The variance request is due to a past parcel split which did not conform to zoning rules. In June, the applicants applied for a zoning permit for a ground mounted solar installation. The setback nonconformity was discovered during review for the solar application, and the application was denied based on the following rationale: The parcel for the primary use to which the solar system is accessory does not conform to zoning rules due to a setback violation. Personal use solar systems are a permitted accessory use in all zoning districts. In this case, the solar system is accessory to the home located on parcel 08.0180.003. Parcel 08.0180.003 was created in 2008 when 2.69 acres were split from parent parcel 08.0180.000 (acreage was later increased to 3.74 acres). This split placed a newly created eastern property line less than 30 feet from an existing building. The minimum required setback in the agricultural zone is 50 feet. Per policy, zoning permits are withheld from parcels that are nonconforming as the result of a parcel split, and the nonconformity.
- The parent parcel, 08.0180.000 was 72.74 acres. The parcel has been split four times. The applicants own two parcels created by these splits totaling 20 acres. The date of the first split of 08.0180.001 was not researched as information was not readily available and the split has little or no bearing on the current application. The second split occurred in 2007, when 08.0180.002 was created. A house was constructed on the parcel in 1977, and remains with on the subject property along with three accessory buildings. In 2008, the subject parcel, 08.0180.003 and 08.0180.004 were created.
- The property is located approximately 1,500 feet west of the City of La Crescent. On a saddle extending from a large bluff to the west, slopes are moderately steep, ranging primarily from 2-18% with smaller bands exceeding 24%. The site does not qualify as a bluff, however, and the back side of the saddle (northern aspect) does meet the bluff criteria.
- La Crescent Township and the ten closest property owners were notified. A letter from the adjoining property owners to the east in support was received and is included in your packets.

Chairman Hafner asked the Colbert's if they wished to speak. Vincent Colbert said they were working through the zoning permitting process to put up solar panels on their

property when the setback issue with an existing building was discovered. The building has been there since the 1970s. They bought the property in 2008, so this happened with the previous owner. He explained the property splits that occurred and that they combined two of their parcels recently.

Chairman Hafner confirmed that the parcel setback violation occurred prior to them buying it. Vincent Colbert stated that was correct.

Bryan Van Gorp asked Vincent if he would be able to purchase some land from the Walters. Vincent said they use the land to the east of the building for recreational purposes and they weren't looking to sell it.

Ken Anderson asked if the Walter's had a recorded easement on the shared driveway. Vincent said they do and they both maintain the road and split any costs.

Bryan Van Gorp stated the previous owners and the current owners to the east created the setback issued when then parcels were divided. This continues to be an issue the BOA has to deal with.

Chairman Hafner asked if anyone else wanted to speak.

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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: Comprehensive Plan Section 0100.0506 Subd. 2 (10) encourages the rehabilitation of existing older homes. The application of this policy to a homestead is appropriate insofar as it allows improvements of existing sites rather than development of new sites in undisturbed areas. The BOA must find that a goal of the official controls is the continued use of

existing sites, that allowing the continued use of the existing pole barn encourages continued investment in existing infrastructure, that additional investment extends the useful life of existing infrastructure, and that these goals outweigh the utility of requiring strict adherence to setback standards.

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

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 applicants cannot unilaterally move the location of the property line. The BOA may find that the absence of a willing seller represents a practical difficulty.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp	X		
Ken Visger	X		Agrees with SA, property line doesn't create issue for either property owner.

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

Staff Analysis: Areas suited for a 40' x 80' are limited on the property due to the prevalence of steep slopes. The location of the eastern property line was created by the prior owner. The BOA may find that decisions made by previous owners regarding property line placement do not carry over to the current owner such that they would be considered to have created the need for the variance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp	X		Current owners should not be held accountable for past actions.
Ken Visger	X		Agrees with SA.

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: As the request is for an existing building, only three options are available to cure the nonconformity: 1) move the property line 2) move the building and 3) reduce the required setback with a variance. The BOA may find that options 1 and 2 are not reasonable, and that option 3 represents the minimum variance needed to return the property to compliance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA, variance is best option.

Larry Hafner	X	Agrees with SA, no one is disadvantaged by this.
Dana Kjome	X	Moving line or building is not reasonable.
Bryan Van Gorp	X	Agrees with SA.
Ken Visger	X	Agrees with SA.

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 building for which the variance is sought has been in place for since the 1970s. The BOA may find that its location relative to the property line will not affect the character of the neighborhood, property values, or HSW.

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

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 building is agricultural building—a permitted use in the agricultural district. There is no floodplain present on the property, nor are there any known applicable state laws, beyond those governing variances, related to this request.

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

RECOMMENDATION

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.

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 a variance of 25' from the east property line for an existing 40' x 80' pole barn to meet the required 50' setback from a property line. Ken Visger seconded. Motion carried.

OTHER BUSINESS:

Ken Visger made a motion to approve the minutes from June 27, 2019. Dana Kjome seconded. Motion carried.

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

Submitted by Houston County Board of Adjustment Clerk on July 12, 2019.

Houston County Board of Adjustment
September 26, 2019

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

The Houston County Board of Adjustment met at 5:30 p.m. on Thursday, September 26, 2019. 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. Amelia Meiners, Environmental Specialist and Aaron Lacher, Environmental Services Director, were present for zoning.

Notice of Public Hearing No. 469 was read for **Tyler and Ashley Oldenburg**, 1814 Burns Valley Road, La Crescent, MN 55947.

The Oldenburg's are seeking a variance of 36 feet from the west property line for an existing garage, 33 feet from the north property for an existing woodshed, 46 feet from the north property line for an existing chicken coop and a 6-foot variance off the north property line for a proposed deck to meet the 50-foot property line setback requirements.

Amelia Meiners of Environmental Services, commented on the application:

- The property is located in La Crescent Township and the dwelling was constructed in 1977. Anthony and Lorie Oldenburg originally purchased the dwelling, land and multiple outbuildings in 2011 as a 77.86 acre parcel. Then in 2014 a 2.04 acre parcel was split off, creating PID 08.0053.001, and sold to Tyler and Ashley Oldenburg containing the dwelling, a garage and pole shed. Neither La Crescent Township or Houston County reviewed property splits at that time, but a survey was completed (Doc. A267760). This property is unique in that the original 77.86 acre parcel had two homes and multiple outbuildings. The proximity of those outbuildings to each other makes achieving setbacks impossible while still allowing for each dwelling parcel to include a garage.
- No building permits have been located for any of the buildings on this parcel, but older La Crescent Township records are limited. The Assessor's reports indicate the existing garage and wood shed were built in 1968 and the dwelling in 1977. The approximately 90 square foot chicken coop with a covered run area appears on aerial imaging between 2014 and 2017. Buildings less than 200 square feet do not always require permits, but they are still required to meet setback standards.
- The SSTS is located in the slope area west of the house while the well location is on the opposite side, between the house and the road. Therefore, while it may appear that slopes favor expansion towards the road, the well inhibits growth on that side. Any expansion to the east of the house also encroaches on the road setback in addition to being hindered by steep slopes. An attached garage is proposed towards the driveway as part of this project as well.
- There are four variances total proposed for this property. Two variances are requested to accommodate existing outbuildings on the parcel due to a property split, one is to accommodate a chicken coop that is utilizing limited buildable area on the property and the final is to accommodate a proposed addition to include a deck and living area. Note that the variance for the proposed addition will not infringe upon the property line any more than the existing buildings.

- This is a 2.04 acre parcel located in La Crescent Township. Slope measured across the parcel, perpendicular to contours is approximately 24%. Localized slopes vary greatly and the proposed addition will go on slopes less than 2%. There are no water features mapped on the parcel. The closest mapped water feature is a perennial stream approximately 270 feet to the northwest. Since some of the parcel falls into shoreland and slopes infringe on bluff land standards, the DNR hydrologist reviewed the project and determined it is not a shoreland bluff.
- La Crescent Township and the ten closest property owners were notified. One letter of support was received from Anthony and Lorie Oldenburg.

Chairman Hafner announced he would be recusing himself from the hearing as Tyler Oldenburg is a relative. Vice Chairman Kjome conducted the hearing.

Vice Chairman Kjome asked the Oldenburg's if they had anything to add. Tyler Oldenburg said they were not aware when they bought the parcel that there would be setback issues. Ashley said they are hoping to build an addition on their home, but need to clear up the variances first. There was a survey done and they assumed everything was done correctly by the attorney that took care of the legal work.

Bryan Van Gorp asked if Anthony and Lorie Oldenburg were relatives. Tyler indicated they are his parents. Bryan Van Gorp indicated the setback issues were created when the parcel was split. He believes there is a way to correct the parcel by changing the property lines.

Vice Chairman Kjome asked if anyone else wanted to speak. Lorie Oldenburg spoke. She indicated they did not expect to sell the property to Tyler and Ashley. When they expressed interest in buying it, they knew right away the house was going to be too small for their growing family. The Oldenburg's were not aware of any issues with the split, they thought they did everything correctly.

Bryan Van Gorp asked the Oldenburg's if they would be willing to change the property lines. Lorie indicated that Tyler uses the garage and they would not be interested in changing the lines.

Aaron Lacher stated it is best for the BOA members to use the same standards for everyone whether the landowners are relatives or not.

Larry Hafner spoke and indicated he was the zoning administrator for La Crescent Township at the time of the parcel split. His advice to them when the parcel was being split was to respect setbacks as best as they could, however, there was no requirement in the ordinance that controlled parcel splits at that time. Increasing the setbacks would also have taken from the tillable land.

Bryan Van Gorp asked Tyler if he built the chicken coop. Tyler indicated he did. He stated it is moveable and on skids, but there was no other level ground to put it on.

Erna Hafner spoke. She said Tyler and Ashley are a young couple with a growing family. They have tried to do everything correctly. If their building project is granted, it

will improve the value of the property and add tax revenue to the county. It would be a shame to not allow them the variances they have requested. She encouraged the board to grant the variances, as there are no negative impacts to anyone.

Bryan Van Gorp asked Larry Hafner if the La Crescent township setbacks were the same as the county setbacks during that time. Larry said they were pretty much, but there was nothing in the ordinance to address parcel splits.

Ken Visger stated these types of variances have been approved in the past and the the variances they are requesting are not harming anything.

Ken Anderson stated he is more concerned about protecting the ag land then with granting the requested variances. He thinks the 50 foot setback requirement is excessive when it is sitting against ag land.

Ashley Oldenburg stated they have no plans to move and plan to live there a long time.

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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: As part of the residential development policies included in the comprehensive plan, the county is to encourage the rehabilitation of existing older homes (0100.0506 subd. 2 policy 10).

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.

Bryan Van Gorp	X	Agrees with rehabilitating current dwelling and preserving ag land.
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.

Staff Analysis: The garage and woodshed date back to 1968 and the house to 1977. The dwelling is small compared to modern standards and the property slopes and site characteristics make expansion difficult in any direction. The area around the proposed addition has slopes reasonable for building an addition. The same is true for the area occupied by the chicken coop; while it is a portable building, all other ideal locations also fall within setback areas.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Dana Kjome	X		The size and shape of the property constitutes practical difficulties.
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.

Staff Analysis: The Applicants purchased the property in 2014 and the property lines were established by the previous owners. The property lines currently allow the tillable acreage and larger outbuildings to stay with the parent parcel in order to be utilized by the original landowner. Note again that this was a single parcel at one point so building proximity does not allow property line setbacks to be met when split into multiple parcels. Furthermore, the slope presents a challenge by severely limiting buildable area.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp		X	The chicken coop variance requirement was created by the property owner, believes lines could be drawn to alleviate all the issues.
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: Relocating buildings would be difficult as the slope alone presents a challenge for this parcel and limits any area that is reasonable for building. Trying to alter property lines would prove difficult as well unless moving in such a way that eliminates the garage from the parcel. Moreover, there are property line setbacks that need to be maintained for SSTS as well which is located west of the house.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp		X	Believes reasonable property lines could be drawn.

Ken Visger X

- 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: Improving their home by adding a living area, deck and garage addition will add value to their home and therefore the neighborhood. The property fits in line with the character of a typical rural residential property.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA.
Ken Visger	X		

- 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: A dwelling with accessory buildings is a permitted use in the agricultural district and a reduction of property line setbacks is an area variance. There are no mapped flood hazard areas on the property so any proposed structures will not lessen the degree of flood protection. The DNR hydrologist has reviewed the site for shoreland bluff requirements and determined it was not applicable.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Dana Kjome	X		
Bryan Van Gorp	X		Agrees with SA.
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.

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

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

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

Ken Anderson made the motion to grant the variances as requested by the applicant. Ken Visger seconded. Motion carried.

Notice of Public Hearing No. 470 was read for **Kittleson Masonry – George and Susan Kittleson**, 405 North Kingston Street, Caledonia, MN 55921. Site address is 11168 Kittleson Road, Caledonia, MN 55921.

The Kittleson's are seeking a variance of 13 feet to meet the required 33 feet of recorded perpetual easement access from an existing public roadway to be eligible for a zoning permit.

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

- The subject parcel, 12-0311-001, is the site of an old farmstead established in the early 20th century. In 1972, it is believed that the farmstead and land totaling two acres were split from parent parcel 12-0311-000, resulting in the subject parcel becoming accessible only by easement. The 1972 split arguably did not conform with the effective HCZO at the time, which defined a lot as "...having frontage on a public road" (HCZO 1967 Section 4 subd. 2 #19), and required that every lot "...shall have a minimum of not less than one hundred fifty (150) feet at the building setback line (HCZO 1967 Section 6 subd. 5 #6). Taken together, this could be interpreted as a 150' frontage requirement.
- In 1982, the HCZO was updated to include language that unambiguously categorized the 1972 split and resulting parcel as noncompliant: "All lots or parcels shall have direct adequate physical access for emergency vehicles along the frontage of the lot or parcel from either an existing dedicated public roadway, or an existing private roadway approved by the County Board" (HCZO 1982 Section 721 (4). In 1993, the HCZO was updated again, this time clearly specifying 150' of frontage for non-farm dwellings: "Non-farm dwelling units shall be required to be located on lots having at least 150 feet of frontage on an existing public road" (HCZO 1993 Section 603.4 (21) (e). The 150' requirement remained until 2016, at which time it was changed to 33' of owned or easement access.
- Interpreting the frontage requirements in a way that gives maximum benefit to the landowner, the lot became nonconforming in 1982, and the dwelling became nonconforming in 1993, in each case, as a result of an ordinance change. The question then becomes, can the house be replaced by right, or is relief from current rules needed.
- Making decisions regarding nonconforming uses and buildings requires an understanding of the rights enjoyed by owners of nonconforming property, as well as the limitations to those rights. In large part, rights are tied to requirements of continued use. From the period of 1980 to 2011, the property was owned by another party and the assessor's records show the parcel received a homestead credit in 2010, indicating that the property was used as a residence. Property title was transferred in late 2011, and again 2012, ultimately to Kittleson Masonry. 2013 tax records show the property was no longer receiving a homestead credit, suggesting, but not definitively demonstrating, that the house was no longer used as a residence. The house was then demolished sometime between 2010 and 2014. Three sections of the HCZO are applicable in instances where a dwelling is proposed to be rebuilt on the site of a previous dwelling:
 - 1) Section 9.1 subd. 6 governs the nonconforming use of real estate as a residence, and provides: "A non-conformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, *replacement*, restoration, maintenance, or improvement..."(emphasis added).
 - 2) Section 9.1 subd. 6 further provides: "If the nonconformity or occupancy is *discontinued for a period of more than one year*, or any nonconforming building or structure is destroyed by fire or other peril to the extent of 50% of its market value, and no building permit has been applied for within 180 days of when the property is damaged, *any subsequent use or*

occupancy of the land or premises must be a conforming use or occupancy” (emphasis added).

- 3) Section 3.6 subd. 2 provides that, “...to be considered a dwelling, a building must have been residentially occupied for eight of the last ten years.”
- Again interpreting the timeline to most benefit the property owner, we conclude that the house was demolished in 2014, and that demolition constituted discontinuance of the use, resulting in a discontinuation of five years at present. This timeline does not meet the requirements set forth in HCZO 9.1 subd. 6, and provided above, therefore, future use of the property must conform to the current access requirements.
 - The applicant wishes to permit the construction of a new residence or pole building on the parcel. The applicant has indicated he has been unsuccessful in attempts to acquire additional easement, thus the variance request.
 - The subject parcel is two acres in area, accessed via a 20’ easement overlaid on PID #12.0314.000 from Kittleson Rd. It is located in the NE NW of 33-103-6, in which there are currently no dwellings. Slopes on the parcel are 6-12%, and there are no bluffs in its vicinity. There are no water features or wetlands mapped on the property. Soils are class III silt loam, but are not known to have been in production previously. The nearest registered feedlot is approximately one mile southeast.
 - Sheldon Township and the ten closest property owners were notified. No comments were received.

Chairman Hafner asked the Kittleson’s if they had anything to add. George and Susan Kittleson were present along with their contractors, David and B.J. Augedahl. David Augedahl indicated they are here tonight because they have exhausted every available option. Others have gone through the same variance process in order to build. Barton Heintz owns the road and the Kittleson’s have a recorded easement to use it.

Ken Anderson asked if Barton Heintz owned property farther back to the west of the Kittleson site. David Augedahl indicated that was correct and he uses the road to get to his property.

Bryan Van Gorp asked if there were any issues with the Kittleson’s using the road with the current owner of the road. David Augedahl indicated there was not, the Kittleson’s have a recorded easement to use it.

Ken Visger asked if they had talked with the township officials. David Augedahl said he spoke to Pasty Wiste of Sheldon Township. He asked if the township would have any issues with the road use. Pasty was going to notify the other members and someone would be in touch if there were concerns, but they never heard anything.

Larry Hafner asked who maintains the road. David Augedahl indicated Barton Heintz owned it.

Barton Heintz asked how wide the road needed to be. Larry Hafner said it needs to be 33 feet wide, but it is only 20 feet wide. Barton said he wants to make sure he can still access his farm land. It was indicated the easement will not change, they just need to decide if 20 feet is wide enough, instead of the standard 33 foot requirement.

Bryan Van Gorp asked if the Kittleson's tore down the house that was there. Susan Kittleson indicated they did. They had hopes of restoring the home, as it was George's grandfather's home, but it was too far gone to restore it.

Bryan Van Gorp asked if the well was useable. George Kittleson indicated they drilled a new well. The Breyer's who also own property near the vicinity of the well, asked if they could hook up to the well, so they sold a half interest in the well to them.

Bryan Van Gorp asked what type of structure the Kittleson's wanted to build. Aaron Lacher indicated the Kittleson's are unsure at this point, they needed road access approval first and then will have to go through the conditional use process if they plan to build a replacement dwelling.

Chairman Hafner asked if anyone else wanted to speak. David Breyer spoke. He indicated he owns the 78 acres around the Kittleson parcel. His concern is that his property value will decrease, due to lack of privacy, if a new structure is built there. He has talked to several realtors about this. The Kittleson property is basically an island in the middle his property.

Ken Visger asked David Breyer if the parcel the Kittleson's own was already there when they purchased their property. It was indicated the Kittleson parcel was in existence prior to the Breyer's purchasing their property.

Ken Anderson asked the Breyer's if they had an easement agreement to access their property. David Breyer indicated he did. Bryan Van Gorp asked if it was 33 feet. Mr. Breyer was unsure.

David Augedahl indicated he did some research and the Kittleson's have road access through a recorded easement. David Breyer may, but it is not recorded. David Breyer indicated he had a verbal agreement.

Aaron Lacher asked George Kittleson when he bought the site, approximately 8 years ago, what was there for buildings and the condition of them. George said there was a house, garage and small barn. The house was in too rough of shape to fix, but it was nice to have the family homestead back with his family.

In terms of property value, Aaron Lacher asked the Kittleson's if they thought the old buildings would make the property value higher or if new buildings would be better. David Augedahl said new buildings by far will increase the value.

Susan Kittleson stated when they bought the site eight years ago, they understood they would be able to rebuild and now they recently found out they are unable to.

David Augedahl stated the Kittleson's put in one bid for the property and they got it. They were not aware if anyone else bid on it.

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

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

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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: Comprehensive Plan Section 0100.0506 Subd. 2 (10) encourages the rehabilitation of existing older homes. The application of this policy to a homestead is appropriate insofar as it provides that new buildings be located on existing home sites rather than undisturbed areas. The BOA must find that a goal of the official controls is the resumed use of an existing site, and that this goal outweigh the utility of requiring strict adherence to setback standards.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA, existing site is adequate.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with rehabilitating older sites.
Ken Visger	X		Makes sense to rehabilitate where home used to be.

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 applicant indicates he attempted and was unsuccessful in acquiring additional easement width, resulting in a variance being his only avenue to building eligibility.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		The easement has been that size long enough to be grandfathered in.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.

Bryan Van Gorp		X	Unsure if a sincere effort was made.
Ken Visger	X		Agrees with SA.

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 current parcel access was established in 1972. The Board may find that the County’s lack of review of parcel splits created a special circumstance whereby property owners were unknowingly creating nonconforming situations.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA, parcel and access has been there since 1972.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp		X	Inappropriate to create a precedence.
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 applicant indicates he attempted and was unsuccessful in acquiring additional easement width, resulting in a variance being his only avenue to building eligibility. 13’ is the minimum reduction to access requirements needed to meet current standards.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Appears road easement is owned by one person and adjacent land by another making it difficult to accommodate.
Larry Hafner	X		Agrees with SA and Ken Anderson.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp		X	Did not attempt to acquire more easements.
Ken Visger	X		Confident roadway is acceptable.

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 variance request is made in the furtherance of a goal to build a dwelling or other structure—both would require a CUP. Similar structures are commonplace throughout the ag district. The elimination of dilapidated buildings, and the construction of modern buildings is likely to have a positive aesthetic effect, which is not anticipated to impair neighboring property values.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Is not adding a new building to new area, will not change property values.
Larry Hafner	X		Agrees with SA, will not change character, they have a right.
Dana Kjome	X		Removing old buildings will not devalue adjoining property.
Bryan Van Gorp	X		Net gain overall from vicinity perspective.

Ken Visger X Can't legislate privacy.

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. There is no mapped floodplain on the property.

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

Ken Anderson 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 a variance of 13 feet to meet the required 33 feet of recorded perpetual easement access from a public roadway. Dana Kjome seconded. Motion carried.

Notice of Public Hearing No. 471 was read for **Stuart Owens and Jeff Beckman**. The site address is 19016 Perkins Valley Drive, Houston, MN 55943.

The applicants are seeking a variance to allow a dwelling on a buildable area less than 0.9 acres in area.

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

- Section 3.6 subd. 2 (Definitions) provides the following: 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: Area of a slope of twenty-four (24) percent or greater, A shoreland impact zone as defined by this Ordinance, Protected waters as defined in this Ordinance, 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 29.19.

- In applying these requirements, the County seeks to identify a minimum building envelope of 0.9 acres. The rationale for the area requirement is understood to be a need for adequate space for wastewater treatment, both present-day and future, and adequate space for outbuildings commonplace in the Ag District.
- The variance is the first step in seeking the approvals needed to rebuild on an existing farmstead believed to have been established in 1888. The existing buildings are in various states of dilapidation, and the applicants have indicated plans to remove six of seven structures. The sole building to remain is a 20' x 40' garage constructed of concrete block, positioned very near the town road (approximately 20'), and considered to be a legal nonconforming structure on account of its 19th century origin.
- Ownership of the property was transferred to Jeffrey Beckman in 2005. The existing house is believed to have been inhabited until sometime in the early 2000s. Because it has been vacant since at least 2005, the house is no longer retains dwelling status for zoning purposes. There are no other dwellings is the quarter quarter.
- A conditional use permit is also necessary for this project, and the applicant has made an application.
- The farmstead is located on 34 acre parcel. Perkins Valley Drive extends through the farmyard, separating the house from the larger outbuildings. A building envelope approximately 1 acre in area is north of the road, upon which sit the house and several outbuildings, including the garage that is proposed to remain. Beyond maintaining the garage, no additional development is proposed in this area at this time. South of the road, bound by the road to the north and a steep slope to the south, there is building envelope measuring approximately 0.8 acres in area. Note that area calculations include the public road for which there is a four rod right-of-way. A new house, well, and septic are proposed in this area, and require the variance. As part of their application, the applicants submitted a preliminary assessment completed by a septic designer that identifies locations for two drainfields.
- Money Creek Township and the ten closest property owners were notified. No comments were received.

Chairman Hafner asked the applicants if they had anything to add. Stuart Owens and Pete Peterson, realtor, were present. Pete Peterson stated the property was previously listed by another realtor as a buildable site, however, it is only buildable by first applying for a variance and conditional use request. They have had Chance Nelson, licensed septic contractor, at the site to evaluate septic system locations. Pete presented photos to the board members of the old buildings that Stuart places to remove.

Ken Anderson asked for clarification on how the parcel lines ran.

Bryan Van Gorp asked why Stuart wasn't interested in building on the north side of the road. Pete stated there are already existing buildings there, owned by the neighbor, and he didn't want to build right next to the neighbor's buildings. Aaron Lacher stated both locations on either side of the road are about equal in size.

Bryan Van Gorp clarified that the road right-of-way decreases the buildable envelope of the site. Aaron Lacher indicated it does, but the size is primarily driven by the waste water treatment necessity. That's why he requested a septic contractor consult as part of the application.

Pete Peterson stated this will be a huge improvement to the area to remove the old buildings and build new ones.

Chairman Hafner asked if anyone else wanted to speak. Dennis Kinstler stated his land borders this parcel and other family member’s land does as well. They would like to see Stuart be able to do this project as it will be an improvement to the valley. He would be a good neighbor as well.

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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: The comprehensive plan sets forth a policy of encouraging the rehabilitation of existing older homes (0100.0506 subd. 2 policy 10). The BOA may choose to extend this policy to existing farmsteads.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with rehabilitating farm site.
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.

Staff Analysis: The limited area available surrounding the existing farmstead represents a practical difficulty. The proposed site is reasonable in that it is accessible from the road, and is on the same side of the road as the majority of the property.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		Agrees with SA, having it on north side would split up property.
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.

Staff Analysis: The fact that the town road runs through the existing farmstead creates challenges in redeveloping the building site. While the history of Perkins Valley Road was not researched in the preparation of this report, the overall layout was established prior to zoning rules, and can be found to represent a unique circumstance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		
Bryan Van Gorp	X		Agrees with SA.
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: Calculating building envelope without including the town road and ROW would require a variance for all locations within the existing farmstead, thus there are no buildable locations that would not require relief from the BOA.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		
Bryan Van Gorp	X		Agrees with SA.
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: A new dwelling on the site of the existing farmstead will return the neighborhood to the density that existed throughout the 20th century. The applicant has presented plans to remove several dilapidated buildings, which will have a positive effect on the neighborhood, both aesthetically and in terms of property valuation.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Dana Kjome	X		
Bryan Van Gorp	X		Will change things for the better.

Ken Visger X Neighbors support application.

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: Dwellings on less than 40 acres are a conditional use in the agriculture protection district. The proposed location is not within a floodplain.

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

Ken Visger made a motion to accept the findings. Bryan Van Gorp 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 a variance to allow a building on an area less than .90 acres in area. Ken Anderson seconded. Motion carried.

OTHER BUSINESS:

Ken Anderson made a motion to approve the minutes from July 11, 2019. Dana Kjome seconded. Motion carried.

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

Submitted by Houston County Board of Adjustment Clerk on September 27, 2019.

Houston County Board of Adjustment
October 24, 2019

Approved on November 21, 2019 by Ken Anderson and Ken Visger

The Houston County Board of Adjustment met at 5:00 p.m. on Thursday, October 24, 2019. 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, Bryan Van Gorp and Ken Visger. Aaron Lacher, Environmental Services Director, were present for zoning. Dana Kjome was absent.

Notice of Public Hearing No. 472 was read for **Tom and Carla Gavin**, 9897 County 20, Caledonia, MN 55921.

The Gavin's are seeking a variance of 42 feet from the west property line to meet the required 50 foot setback for an existing shed.

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

- The applicants inquired about the process of permitting a new accessory building in August of 2019. Staff did a preliminary review of the parcel, and concluded that it was not comply with zoning rules due to a setback violation on the western property line. Section 36.4 subd. 11 prohibits the issuance of permits to nonconforming parcels: Building Location Permits. No Building Location Permit shall be issued by the Houston County Board for the construction of any building, structure, or improvement to the land or to any lot in a subdivision, as defined herein, until all requirements of this Ordinance have been fully complied with.
- While similar situations are most commonly created by illegal splits, that is not the case in this instance. The subject parcel was created in 1977. A year later, a CUP was granted to the previous owner to build a house on 1.5 acres. The house was constructed, and first appears on assessor records in 1982. Sometime in the next four years, an accessory pole building was constructed without a permit. The absence of a permit may or may not have constituted an ordinance violation, as agricultural buildings did not require zoning permits until 2004. For the purposes of this application, as well as the anticipated zoning application for a new accessory shed in the event the variance is granted, the county will assume that the existing shed was agricultural, however, regarding the property line setback, the building classification is irrelevant; setbacks applied equally to all structures.
- In 1998, title was transferred to the applicants, who are only the second owners of the parcel.
- The parcel consists of 1.5 acres along the crest of the ridge with gentle slopes ranging from three to six percent. Access is from County 20. There are not mapped water features present. The area adjacent to the west is in crop production, with the nearest structure located approximately 750' to the west.
- Mayville Township and the ten closest property owners were notified.

Chairman Hafner asked the Gavin's if they had anything to add. Tom Gavin said they want to build a new shed for more storage space, but they have to take care of the variance issue with the existing building first.

Aaron Lacher said the existing building still has useful life left. Tom said it is approximately a 24' x 36' building with a dirt floor. It is still useful to keep things covered and out of the elements.

Bryan Van Gorp asked Tom if he realized the existing building was in violation when they bought the property. Tom indicated he did not.

Chairman Hafner asked if anyone else wished to speak. There were no comments.

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.

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: Comprehensive Plan Section 0100.0506 Subd. 2 (10) encourages the rehabilitation of existing older homes. The application of this policy to a homestead is appropriate insofar as it allows improvements of existing sites rather than development of new sites in undisturbed areas. The BOA must find that a goal of the official controls is the continued use of existing sites, that allowing the continued use of the existing pole barn encourages continued investment in existing infrastructure, that additional investment extends the useful life of existing infrastructure, and that these goals outweigh the utility of requiring strict adherence to setback standards.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with Ken Visger.
Larry Hafner	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA.
Ken Visger	X		Pole building contributes to continued use of property.

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 Board may find that the difficulty associated with removing or relocating the existing building constitute a practical difficulty, and that allowing the building to remain in its present location is reasonable. The applicants cannot unilaterally move the location of the property line. The Board may find that the absence of a willing seller represents a practical difficulty.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Any additional land would take out of Ag land.
Larry Hafner	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA.
Ken Visger	X		Agrees with SA.

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 Board may find that actions taken by previous owners regarding building placement do not carry over to the current owner such that they would be considered to have created the need for the variance. The Board may find the special circumstance on this property to be the shed location itself, which can be seen to be the result of the County policy which allowed agricultural buildings to be constructed with no oversight, and relied on expectations that land owners would successfully seek out and fully understand all applicable sections of the ordinance. It is not the rule itself that created the special circumstance, but rather the faulty codification and application of the rule, thus the Board may find that these expectations were unrealistic, and have resulted in special circumstances on select properties.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Building built by previous owner.
Larry Hafner	X		Agrees with SA.
Bryan Van Gorp	X		Last half of SA is incorrect, penalizes those that follow the rules.
Ken Visger	X		Building built before controls were enacted.

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: As the request is for an existing building, only three options are available to cure the nonconformity: 1) move the property line; 2) move the building; and, 3) reduce the required setback with a variance. The Board may find that options 1 and 2 are not reasonable, and that option 3 represents the minimum variance needed to return the property to compliance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA, #3 is the best option.
Larry Hafner	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA.
Ken Visger	X		Agrees with option #3.

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 building for which the variance is sought has been in place for since the 1980s. The Board may find that its location relative to the property line will not affect the character of the neighborhood, property values, or HSW.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
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 building is an accessory structure, allowable in the agricultural district. There is no floodplain present on the property, nor are there any known applicable state laws, beyond those governing variances, related to this request.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Bryan Van Gorp	X		
Ken Visger	X		

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

Ken Visger made a motion to accept the findings. Ken Anderson 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 recommends the following condition:

1. Any and all reliance on this grant of variance in the future is limited to repair or replacement of the existing 25'x 40' shed within the existing footprint.

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 a variance of 42 feet from the west property line for an existing shed with the condition recommended. Ken Visger seconded. Bryan Van Gorp opposed. Motion carried.

OTHER BUSINESS:

Ken Visger made a motion to approve the minutes from September 26, 2019. Ken Anderson seconded. Motion carried.

Bryan Van Gorp submitted a comment for the record. (See attachment below.)

For the record.

It would be inappropriate to hold the current land owner responsible for the mistakes of previous owners or for the oversights of county officials. So, I want to make it clear I am not saying there is accountability with the current applicant or with the current zoning administrator. There should however be accountability for the previous land owner who built a building in violation of the ordinance and with the previous zoning department for not noticing or perhaps enabling said violation. Similar, past practices are responsible for the vast majority of B of A cases.

Let's think about potential solutions. I understand that solving this issue is not up to this Board, and is the responsibility of the County Commissioners. Obviously they are flummoxed and have been unable to resolve this for the many years it has gone on.

What if the various departments in the County were to do some interdepartmental cooperation? For example the Assessors office inspects each property every few years and could report to the zoning office when a new building is built so that violations could be dealt with, and the current owner could be held accountable before the violation would be passed on to an unsuspecting victim. Or what if the Records office cooperated with zoning in such a way that splits or transfers could not be finalized until all violations were dealt with, again holding the responsible party accountable.

Once word got out that significant fines or removal was required, it would not take long for this type of violation to end. You might think this interdepartmental cooperation would be more work. The current way of dealing with things is also a lot of work and violators are never held accountable. Instead an innocent third party has to pay the price and do the work. That doesn't really look like justice to me.

There was general discussion by the board members on the submittal.

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

Submitted by Houston County Board of Adjustment Clerk on October 25, 2019.