

Houston County Board of Adjustment
November 21, 2019

Approved on January 30, 2020 by Ken Visger and Ken Anderson

The Houston County Board of Adjustment met at 5:00 p.m. on Thursday, November 21, 2019. A summary of the meeting follows.

The meeting was called to order by Chairman Larry Hafner. Members present were Ken Anderson, Larry Hafner, Dana Kjome and Ken Visger.

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

Ken Anderson made a motion to approve the minutes of October 24, 2019. Ken Visger seconded. Motion carried.

The meeting procedures were reviewed.

Notice of Public Hearing No. 473 was read for **Kruckow Companies, LLC**, 506 South Highway 44/76, Caledonia, MN 55921.

Kruckow Companies, LLC, 506 South Highway 44/76, Caledonia, MN 55921, is seeking a Zoning Appeal in regard to a zoning decision affecting land that is owned by Gary Meiners, 15497 Meiners Road, Caledonia, MN 55921 and operated by Bonanza Grain, Inc. /Kruckow Rock Products, 506 South Highway 44, Caledonia, MN 55921 in Section 5 of Winnebago Township. This matter was previously considered and denied at the Board of Adjustment meeting on June 21, 2018. It was then appealed to District Court in January of 2019 and was subsequently remanded back to the Board of Adjustment for re-determination.

Chairman Hafner asked Aaron Lacher, Zoning Administrator and Jay Squires, counsel for the County, for their presentation.

Jay Squires gave a review of the appeal process that took place and why the Board of Adjustment is re-doing the zoning appeal hearing. The non-conformity definition was explained. He stated mines were allowed to exist without permits until conditional use permits were added to the Houston County Ordinance in 1968. Under state law non-conforming sites cannot continue if they have not been in use for a year or more. The County Ordinance provision says six months of discontinuance of use is a loss of non-conforming rights. The Schutz Quarry has had long periods of non-use. The owner could apply and continue under a conditional use permit.

Aaron Lacher explained that in order for a site to retain legal nonconforming status, the use of the property (in this case a quarry) must not have been discontinued. State law provides that nonconforming rights are lost if a use is discontinued for more than one year.

The County Ordinance provides that nonconforming rights are lost if a use is discontinued for more than six months (Section 9.1, Subd. 4). It was his determination that the use of the property as a commercial quarry discontinued for more than six months, and as a result, its legal nonconforming status was lost. His presentation included:

- Aerial photographs that showed the quarry growing in with vegetation over time from the 1960's until the mid-2000's.
- A photograph of the site taken from the road in 1991 showing trees growing in the quarry with a note saying the quarry was abandoned 25 years earlier.
- State mining permit coverage history showing the quarry was first covered in 2007.
- A 1965 MNDOT Quarry inventory listing the site as inactive.
- Tax information showing the property was first taxed as a quarry in 2013.
- Efforts by the County to obtain information from the landowner and quarry operator.
- The response the County received from the landowner indicating the mine was inactive when he purchased it in 2005 and has not been continually operated since that time.
- Efforts by the County to obtain procurement records, but no procurement records could be obtained for purchases before 2008.
- The County compiled a listing of rock quarries, gravel, sand and shale pits in 1972. This was done in preparation for a hearing, and ultimately, zoning, however neither took place. The prior zoning administrator relied on this 1972 list when making determinations. This list is ambiguous because in many instances, site locations are given only by the quarter-quarter section. The 1972 list was never validated (i.e. there was no process of distinguishing between those who had a legitimate mining operation and those who may have thought it was advantageous to include themselves on such a list. The County Board did not act to adopt, accept, or bestow any status on the list, nor has the Board subsequently taken such an action. The BOA members should place very little importance on these prior decisions when determining this case, and should instead focus on the criteria for nonconforming status required by the County ordinance.
- The zoning administrator must use 3 criteria when making decisions on legal nonconforming quarries which include: 1) Existence before the adoption of official controls 2) No expansion beyond parcel boundaries at the time of official controls; no increase in the intensity of the use 3) The operation of the mine has not been discontinued. Discontinuance creates a presumption of abandonment that must be rebutted. When making his decision on the Schutz Quarry, Lacher found that it did not satisfy the 3rd criteria. The conclusion is that the quarry lost its legal nonconforming status and that a conditional use permit (CUP) is needed for any future quarrying at the site. *(All exhibits are on file and the presentation can be viewed on the County website.)*

Ken Anderson said both quarries appear to be shrinking in the aerial photos (Winnebago Quarry and Schutz Quarry). He doesn't believe you can validate either one with aerial photos.

Chairman Hafner asked Kruckow Companies, LLC for their presentation. Ranelle Leier and Michael Kruckow were present for Kruckow Companies, LLC. Michael Kruckow talked about a due process issue having Attorney Jay Squires previously represent the Board of Adjustment in the appeals process in district court. Mr. Squires is also present tonight representing the County in an advocacy role. He is doing overlapped dual rolls which is not constitutionally acceptable. Mr. Squires is representing a client in front of a client. Ranelle Leier explained that Mr. Squires represented the Board of Adjustment in the appeal process and now he's representing the zoning administrator.

Ranelle Leier went on to explain the law surrounding non-conforming uses. She covered state law surrounding non-conforming sites and discussed the periods of time that are required. Non-conforming uses are allowed to continue as a property owner's right. The Houston County Ordinance states (9.1 Subd. 4) if a non-conforming use of a structure or building, other than a residential-use structure, is discontinued for a period of 6 months, use of a structure or property shall conform to the Ordinance. This is for a structure or building, which is not the same for a mine. The County needs to show the mine was discontinued for a length of time, which is 12 months.

Michael Kruckow stated in 2008 the County confirmed the Schutz Quarry was open and useable and could continue to operate under its registered status as a legal non-conforming mine. They relied on zoning's decision. In 2015 when the Schutz Quarry status was investigated, they cooperated with the investigation and provided everything that was asked of them. It was determined to be a legal non-conforming mine that had not been discontinued. When the County asked for a reclamation plan for the site, they spent the time and money and submitted one. They have complied with everything the County asked for and now Mr. Lacher is reversing the County's previous decisions and they are treated like they are operating an illegal mine.

Michael Kruckow made a submission of two packets. (After reviewing both packets, Jay Squires stated for the record that the packet submitted to the County was different than the packets submitted to the Board of Adjustment members.)

Michael Kruckow covered several documents in his presentation. All are on file in the Environmental Services office. The documents included:

- Township purchase records reviewed from Winnebago and Caledonia Townships.
- Thomas Molling declaration states he was a County Highway employee for 26 years. In statement #9 he indicates "The Schutz Quarry, a small rock quarry in Winnebago Township, was always considered an active source for aggregate material and was used by the Highway Department on an intermittent basis during my tenure."
- Several years of records from the Schutz Quarry were reviewed – the majority of customers were private.
- Assessor taxation records were reviewed.
- Error made by Assessor's office – in April of 2013 staff changed the classification of the property so that the entire acreage was classified as a mine instead of only the

open mining area. February 6, 2018 County Board minutes talk about the necessary abatement correction. The site is still being taxed as a quarry.

- Kenneth DeCramer of MNDOT email – Email states MNDOT does not regulate mining, the information MNDOT has collected on rock quarries is for internal use only, the information collected has never been verified for accuracy, MNDOT does not inspect all rock quarries every 12 months to determine whether they were active or being used, classification of a rock quarry's use by MNDOT is only based on MNDOT or local government agency's use of that quarry, MNDOT performs testing for aggregate quality on quarries where rock is being used for a MNDOT or local government agency's project or intended to be used for a project, the information MNDOT has collected on rock quarries is meant for MNDOT use only.
- A MNDOT 1965 listing states the Schutz Quarry is inactive, but that was according to MNDOT only and for their use only.
- Courtney McGinn - geological specialist opinion on the 12-17-1991 MNDOT photograph and the difference between the Lager and Schutz photos. Her opinion is the 1991 MNDOT photo is not the Schutz Quarry.
- Auditor file cards- Hector Construction never owned the Schutz site, as listed on the photo. (Ken Anderson stated for the record, the 1965 Minnesota Highway Department quarry log lists Hector Construction as owning the Lager Quarry.)
- MNDOT aggregate source information report indicates the Schutz Quarry and Lager Quarry have the same quarry number. Last time this was reviewed was 1985. MNDOT information should not be used or relied on because it is for their use only.
- Steve Speltz of MPCA email – State records for nonmetallic mining activity only go back to 1998. Verified the Schutz Quarry was added to the Bonanza Grain Inc. /Kruckow Rock & Redimix permit on January 4, 2007. Kruckow wasn't the exclusive operator of the site until then.
- Gary Meiners – County Request for Information responses – Mr. Meiners took ownership of the Schutz Quarry in July 2005. Given the timeframe in dispute from 1967-2005, the only relevant question is #7 which states, "Provide any knowledge you may have of the quarry operation prior to your ownership of the parcel." His answer was "None". Gary Meiners Declaration addresses the reasoning behind his answers to #3 and #6 in the County Request for Information. When Mr. Meiners answered "No" to #3 "Was the quarry active when you took ownership of the parcel?" Mr. Meiners did not understand Mr. Lacher's definition of what constituted "active". He took "active" to mean whether there was operating equipment within the site actively mining when he took ownership. When Mr. Meiners answered "No" to #6 "Has the quarry been continually active during the time you have owned the parcel?" Mr. Meiners understood that to mean whether there was operating equipment continually mining the site.
- Aerial photos were previewed. In time frames that are not in dispute and the quarry is actively used, it appears to be shrinking in size. Aerial photos do not accurately show use, they distort the view and do not pick up the use; vegetation can blur what is going on, on the ground.
- Darren Wilke email response to Aaron Lacher states that aerial photos may be hard to use as a method of determining usage because quarries tend to go deep before

outward expansion. The Schutz Quarry has been growing at a small rate because shot rock is still sitting there.

- 1980 United States Geological Survey (USGS) Maps show the Schutz Quarry as an open, active quarry.
- Gary Kruckow Declaration – Statement #7 talks about the five phases of mining operations of a small quarries, like the Schutz Quarry.
- There is no evidence of a 12 month period of discontinuance. Bob Scanlan's 2008 and 2015 reviews and statements, as well as, Teresa Walter's email all support this.
- Equitable estoppel was reviewed. Equitable estoppel prohibits the zoning administrator from reversing prior decisions.

Ken Anderson asked if they were ever advised to go through a conditional use permit process. Michael Kruckow stated they were told the zoning office didn't have time to go through a hearing when they inquired because the Winnebago Quarry expansion hearing was going on at that time.

Larry Hafner clarified the statement that the County was too busy. He asked when would be a good time to do a conditional use hearing and could they continue to operate until a hearing can be done. Larry Hafner also reviewed the taxation records of the site.

Dana Kjome talked about the statements from Tom Molling and reviewed aerial photos. Not used heavily because shot rock is sitting in the quarry.

Chairman Hafner asked if anyone wanted to speak.

Bruce Kuehmichel stated it is an interesting argument that one can't rely on aerial photos, yet one does. He said he does not recall the site being used for years when he would take his dogs down to Camp Winnebago to let them run. There has been discontinued use and there has been no reclamation on the site. A conditional use permit would allow the site to sit intermittently indefinitely.

Aaron Lacher stated that a conditional use permit process cannot be refused to anyone. No preapproval is needed. The permitting process is available online to anyone. Findings from the previous meeting were reviewed. The Highway Engineer was never on the Schutz quarry site, he received a complaint about a crusher that was sitting in the right-of-way and his email reviewed.

Jay Squires discussed the statutory provision that requires the Board of Adjustment to provide written reasons on their decisions. The MNDOT records were discussed and the difference between the Lager and Schutz Quarry photos and numbers. Hector Construction is listed on both. The lack of credibility of the consultant who reviewed the quarry photos. The 1960s, 70s, and 80s are unaccounted for and Aaron Lacher's research shows there was lack of use. The Tom Molling affidavit does not address any use in the early years of the quarry. The Board of Adjustment only has to find that there is one year of nonuse.

Dana Kjome clarified that non-conforming rights are lost when there hasn't been use for one year. Jay Squires stated that was correct for state rules, the County Ordinance states six months.

Michael Kruckow discussed the quarry site photos further. The numbers do not match. The MNDOT records should never be used or relied on. Bob Scanlan, the previous zoning administrator, did not use aerial photos in his decisions because they do not show accuracy. They do not show slow levels of use or activity. Bob Scanlan's opinions were relied on for business decisions and they have been using it and taxed on it. No one has records from the 1960's.

Larry Hafner stated there is no evidence of use from 1968 to 1970. Ranelle Leier stated there are no photos either way, Aaron Lacher did not have any either, so it cannot be proved or disproved. Jay Squires stated the period of time in question is 1968 to 1990.

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

Ken Anderson stated he has low reliance on the aerial photos as the Winnebago quarry, an active quarry, shows shrinkage as well in the aerial photos provided. They are tasked with the burden of proof that the site has not been active. He recommends granting continued use until a conditional use permit can be applied for and received. There was group discussion and it was decided that the conditional use process was beyond the scope of the Board of Adjustment.

Ken Visger stated the 1991 photo contains trees that are 10-15 years old, so he is comfortable saying there has not been continuous use. It was also not taxed as a quarry until 2013. He weighs heavily on Gary Meiners' first response as it's easy to change your mind when the situation changes. He is not comfortable with McGinn's report on the quarry photo as they are shown at different angles. He has little confidence in Bob Scanlan's previous decisions as he believes he relied heavily on the 1972 list. He also stated that the quarry is a legal non-conforming use, so it is open to review at any time. That review is to determine whether it conforms, so he doesn't believe the previous zoning administrator's decision was correct.

Dana Kjome stated there are mature trees in the photos and he believes this provides evidence that the site has not been used for a long time. He also agrees with Ken Visger's statement regarding Gary Meiners' first response.

General discussion took place regarding Findings of Fact.

Ken Visger reaffirmed his previous thoughts.

Larry Hafner stated his issue is with the first 5-10 years and the best evidence they have is that a neighbor lived there. The Board of Adjustment must determine whether the current zoning administrator's decision is reasonable.

Ken Anderson stated he believes Bob Scanlan's response (2008 and 2015) was also reasonable.

Larry Hafner stated the County still has the obligation to bring the site into conformity. Just because it's grandfathered in doesn't mean it shouldn't be brought into conformity.

Ken Visger stated the quarry was there in 1972, but was it in continual use? That is the only decision that has to be made.

Larry Hafner believes the current zoning administrator did his research and to the best of his knowledge made the right decision.

Ken Anderson stated there have been two zoning administrators and Bob Scanlan did his research too.

Ken Visger stated Bob Scanlan's decision did not include much documentation while Lacher had reams of documentation. The County does not have to continue with Scanlan's previous decision. Legal non-conforming uses are subject to review at any time and they have a legal obligation to make sure they are conforming.

Ken Visger made a motion to reject the petitioner's request and instructs staff to bring back findings consistent with the decision. Dana Kjome seconded. Ken Anderson opposed. Motion carried.

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

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

Houston County Board of Adjustment
December 2, 2019

Approved on January 30, 2020 by Ken Visger and Larry Hafner

The Houston County Board of Adjustment met at 9:00 a.m. on Monday, December 2, 2019. A summary of the meeting follows.

The meeting was called to order by Chairman Larry Hafner. Members present were Larry Hafner, Dana Kjome and Ken Visger. Ken Anderson was absent.

The purpose of the meeting was to consider and adopt findings for an appeal of a zoning decision submitted by Kruckow Companies, LLC. The appeal hearing took place on Thursday, November 21, 2019 at 5:00 p.m. in the Houston County Commissioner's Room.

Chairman Hafner wished to address the Thomas Molling declaration that was submitted by Kruckow Companies, LLC. He is of the opinion that the declaration is ambiguous; nothing in the statement demonstrates that the Schutz Quarry was continuously active. There was general discussion with the consensus that another finding be added regarding the Thomas Molling declaration.

Chairman Hafner asked that the findings be read.

FINDINGS

This matter came before the BOA on November 21, 2019 on the May 29, 2019 Order of the District Court requiring re-hearing of Kruckow Companies' appeal of a decision of County Zoning Administrator Aaron Lacher. Having considered the evidence presented at the re-hearing, the BOA makes the following findings:

1. This matter involves an appeal of County Zoning Administrator Lacher's determination that any nonconforming rights to mine at the Schutz Quarry had been lost due to discontinuation of use, and that a conditional use permit was required for Kruckow Companies to continue to engage in mining on the property.
2. Houston County regulates the use of land pursuant to its Zoning Ordinance (the "Ordinance"). The Ordinance was adopted in 1967. Mining requires procurement of a conditional use permit, which has never been issued for the Property.
3. The central issue in this matter is whether the Property presently has legal nonconforming status that would allow Kruckow Companies to mine without a conditional use permit. The Ordinance and state law provide that nonconforming rights, if they ever existed, are lost if a use is "discontinued." State law provides that nonconforming rights are lost if a use is discontinued for more than one year. Minn. Stat. § 394.361. The Ordinance provides for a loss of nonconforming rights after twelve months of discontinuance. Ordinance Section 9.1, subd. 4.

4. Zoning Administrator Lacher has presented to the BOA the facts he has gathered in his research of historical use of the Property that support his challenged February 2, 2018 determination. They include the following:
 1. Historical aerial photos from 1979 to 2000, which show the quarry area growing in with vegetation as time progressed during this period. (Exhibit 10).
 2. A 1965 MnDOT document referring to the Schutz Quarry as "inactive". (Exhibit 12).
 3. A 1991 MnDOT photograph showing the site in an abandoned state. (Exhibit 13). The photograph states the site was "abandoned 25 years ago". It contains a reference to the site as Quarry No. 28033 and was provided by MnDOT in a response for information on Quarry No.28033. This is the Quarry number assigned to the Schutz Quarry. (Exhibit 27). The photograph indicates it was taken "facing NW". A NW facing photo can be taken of the Schutz Quarry rock face. It cannot be taken of the nearby Lager Quarry.
 4. No evidence has been found or presented by Kruckow indicating the Schutz Quarry was covered by a state nonmetallic mining permit prior to 2007.
 5. No evidence has been found in township or County records or presented by Kruckow supporting operation of the Schutz Quarry in the late 1960's, when the Ordinance was adopted, in the 1970's, in the 1980's or in the 1990's.
 6. In a response to questions from the County, the landowner, Gary Meiners, signed a written statement indicating there was no active mining when he acquired the Schutz Quarry in 2004. The questions put to Meiners were unambiguous. In materials first offered during the remand hearing on November 21, 2019, Meiners amended his previous position and claimed there was active mining when he acquired the Schlitz Quarry. Meiners initial response is determined to be more credible. Kruckow did not enter an agreement with Meiners and recommence mining until 2008.
 7. The letter supplied by Kruckow from Thomas Molling lacks specificity and is generally ambiguous. Nothing in the letter demonstrates that the Schutz Quarry was continuously active.
5. Kruckow Companies has provided no records in support of any historical mining at the Property prior to Kruckow recommencing mining activity in 2008 pursuant to a lease entered into with the fee owner Gary Meiners. The absence of such records is consistent with other evidence of a long period of disuse.

Based on the above findings, the BOA makes the following decision:

1. Given the above facts, evidence supports Zoning Administrator Lacher's conclusion that any nonconforming right to mine that may have existed had been lost due to discontinuance of the operation under Minn. Stat. § 394.361 and Ordinance Section 9.1, subd. 4.
2. Administrator Lacher's determination is upheld by the BOA.

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

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

Submitted by Houston County Board of Adjustment Clerk on December 2, 2019.

Houston County Board of Adjustment
January 30, 2020

Approved on April 30, 2020 by Franklin Hahn and Larry Hafner

The Houston County Board of Adjustment met at 6:00 p.m. on Thursday, January 30, 2020. 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, Franklin Hahn, Bryan Van Gorp and Ken Visger. Amelia Meiners, Environmental Specialist, were present for zoning.

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

Ken Visger made a motion to approve the minutes of November 21, 2019. Ken Anderson seconded. Motion carried.

Ken Anderson questioned the meeting notification process for the December 2, 2019 meeting. Aaron Lacher said special meeting notices are given 48 hours in advance. There were e-mails and phone calls made in efforts for everyone to attend.

Ken Visger made a motion to approve the minutes of December 2, 2019. Larry Hafner seconded. Ken Anderson abstained, as he was not present. Motion carried.

Election of Chairperson for 2020 took place. Bryan Van Gorp nominated Ken Visger for Chairperson. There were no other nominations. Motion carried unanimously.

Election for Vice Chairperson for 2020 took place. Ken Visger nominated Larry Hafner for Vice-Chairperson. There were no other nominations. Motion carried unanimously.

Notice of Public Hearing No. 474 was read for **Dustin Klinski**, 16231 County 24, Brownsville, MN 55919. Site address is 9035 County 14, Caledonia, MN 55921.

Dustin Klinski is seeking a variance to allow a new dwelling on land which is of Class I-III soils as rated in the Soil Survey – Houston County.

Amelia Meiners, Environmental Services Specialist, commented on the application:

- Some background information will be helpful in determining the reason for this request. In 2018, the original 60-acre parent parcel was split, separating the tillable acreage from the farmstead. The farmstead parcel is 2.34 acres and contains an old dwelling and multiple outbuildings. The existing dwelling is in disrepair and so the applicant plans to demolish it and build a new home in the southern parcel. A small adjacent parcel was purchased in late 2018. Non-farm dwellings are a conditional use; however, there are a few more requirements that must be met as well. First, it has to have retained its zoning status as a dwelling. To retain status as a dwelling a structure must

have been inhabited for eight of the last ten years. This particular dwelling was occupied continuously through 2018 and therefore has met the habitation requirement. For this reason, the petitioner does not need to complete a conditional use hearing for replacing the house. A new build is subject to all items dictated in the Houston County Zoning Ordinance (HCZO) and there are five items single-family non-farm dwellings are then subject to: the quarter-quarter rule, feedlot setbacks, road frontage requirements, soil requirements, and wetland and floodplain requirements. This site meets all those requirements with the exception of soil classification. The HCZO states in Section 14.3 subdivision 10 (c) that, "Non-farm dwelling units shall not be permitted on land which is of soil classification of Class I-III soils rated in the Soil Survey – Houston County by the USDA NRCS, except in cases where the land has not been used for the production of field crops...for a period of ten years or more". The location in which the applicant proposes to build contains Class I-III soils, which is considered prime agricultural land and has only been out of production one season. For this reason, a variance must be sought for the applicant to build at the proposed location.

- There are two soils of importance to this site, 103B and 103C2. Soil type 103B is subclass IIe, while 103C2 is subclass IIIe. While we identify soil class I-III as prime agriculture soil in the HCZO, the Soil Survey – Houston County does not recognize 103C2 as prime farmland. On the other hand, soil type 103B did make the list of prime farmland soils and the location of the proposed dwelling primarily lies in 103B area. According to the Soil Survey, soil type 103C2 is well suited to cropland, pasture or woodland and soil type 103B is suited to forage crops and pasture. Both identify the hazard of erosion as the limiting factor and are suitable for septic system absorption fields and building site development as well.
- The well is located 35 feet south of the dwelling, circled by the driveway. Slopes are not a concern for this site as average grade is less than 5%; however, localized areas in the northeast corner of the parcel do reach 15%. Much of the area around this farmstead contains the same soil types as described above, but because it has been out of production for a period of ten years or more it is exempt. Note that in 2019, parcel 16.0031.003 was not in crop production. This site meets feedlot and bluff setbacks and is not near floodplain, shoreland or wetlands.
- Winnebago Township and the ten closest property owners were notified. No comments were received.

Chairman Visger asked for clarification of setbacks on the aerial photos. Amelia Meiners explained that Dustin would meet the setbacks for the new home he is proposing, he is planning to combine both parcels as well.

Larry Hafner stated if there is not common ownership, it's a potential issue in the future.

Ken Anderson stated Dustin bought additional land in order to build.

Chairman Visger asked Dustin Klinski if he had anything to add. Dustin said there is not a good location to build a house on the existing site, that's why he bought additional land. He wants to build a new home farther back from the highway since the existing home is too close to the highway as it is. Gary Klinski stated the other buildings are in good shape, so they don't want to remove any.

Larry Hafner asked what will happen to the old house. Dustin said it will be taken down and he wants to combine both parcels to make them one parcel.

Ken Visger asked if there would be an issue on meeting the 50 setbacks. Dustin said there would not.

Bryan Van Gorp asked what the time frame was to remove the old house. Dustin said he plans to remove it once approval is granted to build a new one. Amelia Meiners said that is dictated in the zoning permit process.

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

Franklin Hahn clarified the timeframe that is granted to remove old homes in the county. Aaron Lacher explained the process on the removal of old homes through the zoning permit process. Some homes have also been converted into storage buildings under a change of use permit.

Chairman Visger 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: While the County Land Use Plan advocates for keeping prime agricultural soils in production, it also encourages rehabbing of existing dwellings and urban development in accessible locations. The BOA may see fit to use the thought process for encouraging urban development in accessible locations and apply it to non-farm dwellings on existing sites where utilities and services are already provided.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with rehabbing the existing dwelling site.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with Ken A.
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: This is an existing farmstead; however, the current dwelling is in disrepair and will be demolished. The petitioner wishes to construct a new dwelling and keep this site a rural residential property. The applicant proposes to build further away from the county highway for the benefit of increased privacy and the safety of children and pets.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp	X		
Ken Visger	X		This is a better site for a house.

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 original 60-acre parent parcel was divided in 2018 so that all the tillable acreage could be sold as a unit while the farmstead remained a separate parcel. The petitioner purchased the parcel containing the outbuildings and dwelling at that time. The current property layout, combined with required highway and property line setbacks make locating a building difficult within 16.0031.001. The BOA may differentiate this site from others on the fact that it is an existing farmstead built on prime farm soils prior to zoning regulations, rather than an undeveloped site.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		
Franklin Hahn	X		
Bryan Van Gorp	X		
Ken Visger	X		Difficult to build on existing site, using a small amount of farm soil is better than trying to build on existing site.

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

Staff Analysis: If the petitioner did not seek the variance in parcel 16.0031.003, for prime soils, he would most likely need one for property line setbacks in parcel 16.0031.001. Because of the way the building site was parceled off from the tillable acreage and the property layout, it would be difficult to maintain all necessary setbacks, avoid existing utilities/services, and place the house in a spot that logistically works. The BOA must decide whether a variance for prime soils is a lesser variance than a setback variance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA, this is a reasonable use.
Larry Hafner	X		Best use of property, home away from the road is better.
Franklin Hahn	X		The old house doesn't even meet the road setback.
Bryan Van Gorp	X		
Ken Visger	X		

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

Staff Analysis: This is an existing farmstead, but the applicant wishes to replace the dwelling on the property. Non-farm dwellings on small acreages are commonly found in Winnebago Township as well as throughout the County.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	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: This is not a use variance since a dwelling is an allowable use, either conditional or permitted, in the agricultural district. In addition, the regulatory flood protection elevation is not applicable to this proposal and it does not propose a use that allows lower standards than required by state law.

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

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

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

Bryan Van Gorp stated he would like to see a condition that the old house be torn down and the land reclaimed within one year after the completion of new house.

Ken Visger stated he would like to see the two parcels be combined or if not, setbacks must be met.

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

Ken Anderson made the motion to grant the variance to allow a new dwelling on land which is of Class I-III soils with the following conditions:

1. The old house must be removed a year after completion and occupation of the new house.
2. If the parcels (16.0031.003 and 16.0031.001) are not combined, then the new dwelling must meet all property line setbacks as if parcels were not under common ownership.

Bryan Van Gorp seconded. Motion carried.

Franklin Hahn made a motion to adjourn. Bryan Van Gorp seconded. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on January 31, 2020.

Houston County Board of Adjustment
April 30, 2020

Approved on June 25, 2020 by Ken Anderson and Larry Hafner

The Houston County Board of Adjustment met by phone conference at 6:00 p.m. on Thursday, April 30, 2020. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Visger. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn, Bryan Van Gorp and Ken Visger. Aaron Lacher and Jim Gardner were present for zoning.

Franklin Hahn made a motion to approve the minutes of January 30, 2020. Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 475 was read for **Arick and Anne Hendrickson**, 2975 North Pine Creek Road, La Crescent, MN 55947.

The Hendrickson's are seeking a variance of setback requirements to meet the required 15 foot setback from the west property line to build a garage.

Jim Gardner, Environmental Services Specialist, commented on the application:

- The applicant is seeking to place a garage 5' from the west property line. A community well is located on the property that provides water to the homes located within County Living Estates. The placement of the garage in the proposed location is necessary to accommodate multiple utility easements related to the well and equipment for future well upgrades.
- This proposed garage would be 24' x 30' and would be 5' away from his western property line. According to Mr. Hendrickson, the location of this garage is very intentional. He and his neighbors wish to make some improvements to the community well located on Mr. Hendrickson's property and these new well components must be located in a heated garage and be as close to the well as possible.
- The site is near Pine Creek, the proposed shed site is located outside of Shoreland and floodplain districts. The slope leading down to the creek is not considered a bluff.
- La Crescent Township and the ten closest property owners were notified. No comments were received.

Ken Anderson questioned the need for the garage to be that close to the west property line.

Franklin Hahn asked what the normal setback requirement is in this area. Aaron Lacher indicated this is a residential area, so the normal setback requirement is 15 feet.

Chairman Visger asked Arick Hendrickson to discuss his proposed project. Arick asked the board to refer to the aerial photo on page 18 of the staff report. He discussed the color coded legend and how the electrical and water supply lines run and the need for building to be in that location. The placement of the shed is based on the proximity of the current well system.

Ken Anderson asked for clarification on the well location. Arick indicated the blue lines were the water lines and where the well heads were located.

Bryan Van Gorp asked if there will be stairs in the garage. Arick indicated there will be an overhead storage area in the garage and stairs for access. The height of the proposed garage does not exceed the height of their existing home.

Aaron Lacher asked where the well equipment will be stored in the building. Arick said the well components will be on the north wall.

Larry Hafner asked if the building will be heated. Arick indicated the entire garage will be heated.

Ken Anderson stated he has concerns on allowing the building to only be 5 feet off the property line. He asked Arick if there was any way he could move it 5 more feet. Arick said in all actuality it will probably be more like 7 feet off the property line.

Larry Hafner stated the situation warrants the need for the building. Arick said it is a very specific use as the well serves 16 homes in the subdivision. He wants it to look nice and in harmony with their house. The wells are tied together and will benefit from this upgrade.

Aaron Lacher noted there was one comment submitted after the deadline. It was from the neighbor to the west, Brian Beeson, he is not in opposition of the request.

Chairman Visger 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: Yes. The proposed garage is in a very intentional location that is close enough to the well and can serve as a garage. In the residential district 5 feet is the closest you can get.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
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 proposed use is reasonable. This is a residential neighborhood and the property owner wants to construct a two chamber detached garage. The location the property owner wants to put the garage does not interfere with his septic system or any underground utilities. The location of this garage being as close to the community well as possible also serves as the location of the proposed well upgrades.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp	X		
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 community well on his property were installed as the homes in this neighborhood were being constructed. Additionally, the proposed upgrades Mr. Hendrickson and his neighbors wish to install on the well were not available when the well was installed 40 or so years ago. These new controls must be in a heated garage but they would allow the community well to run much more efficiently.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA and Ken Visger's comment.

Franklin Hahn	X	Agrees with SA.
Bryan Van Gorp	X	Agrees with SA.
Ken Visger	X	Agrees with SA, benefit to the entire subdivision.

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 community well serves 16 homes and cannot be disturbed or altered. The well component upgrades must be in a heated building close to the well.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp		X	Could be moved over as much as 10 feet.
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 proposed garage is a typical residential-type garage. It will not affect the character of this neighborhood or negatively affect land use on neighboring properties.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp	X		
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: Accessory buildings are permitted uses in the Residential District. The variance request does not affect compliance with floodplain requirements.

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

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

Ken Anderson made a motion to accept the findings. Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

Chairman Visger 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 ten feet to allow construction of a garage five feet from the west property line.

Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

Ken Anderson made a motion to adjourn. Bryan Van Gorp seconded. Roll call vote was taken. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on May 1, 2020.

Houston County Board of Adjustment
June 25, 2020

Approved on August 27, 2020 by Franklin Hahn and Larry Hafner

The Houston County Board of Adjustment met by phone conference at 6:00 p.m. on Thursday, June 25, 2020. A summary of the meeting follows.

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

Ken Anderson made a motion to approve the minutes of April 30, 2020. Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 476 was read for **Dana Burtness and Nicholas Nguyen**, 23970 County 19, Spring Grove, MN 55974.

The applicants are seeking a variance of setback requirements to meet the required 50 foot setbacks from the north and east property lines for existing buildings and variance of setback requirements to meet the 50 setback from the east property line to install a ground mounted solar array.

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

- Multiple variances are requested to correct a 2013 property split that did not comply with zoning standards. One additional variance is requested for the placement of ground mounted solar panels.
- PID 01.0334.001 consisted of 158 acres in 2013, and was split into four parcels in 2013. The split created new north and east property lines for 01.0334.004 that do not satisfy the setback requirement for the zoning district. According to County records, the house was built in 1880, and the most recently added outbuilding was the grain bin, added in 1973.
- The applicants became owners of the property in 2018. The Zoning Office does not review proposed property parcel splits. Enforcement of setback requirements is most commonly done upon receipt of an application for a zoning approval.
- The property consists of a 2.7 acre farmyard accessed from County 19. Fillmore County borders on the west. The 155 adjoining acres that previously comprised the parent parcel are cropland, woods, and pasture.
- The slope is flat, less than 5% in most areas. There are no mapped water features or wetlands on the parcel, with the nearest being several freshwater ponds and emergent wetlands approximately ¼ mile away in multiple directions. Mature evergreens line the western 2/3rds of the southern property.
- Black Hammer Township and the ten closest property owners were notified. Two comments were received from the public, both in favor of approving the variance.

Chairman Visger asked the applicants to discuss their proposed project. Dana Burtness said they submitted all the necessary documents for the board members to review. They have also talked to their neighbors and they are favor of their project. She said she would be happy to answer any questions.

Franklin Hahn questioned why the evergreen trees couldn't be removed on the south side of the property. He stated the lighting would probably be better in that location.

Dana Burtness said they had a solar placement expert come out to view the site and it was determined the east side of the property was the best location. They even checked the roof top. They would like to leave the evergreen trees where they are and apply under practical difficulties.

Franklin Hahn asked who is responsible for making sure property splits meet set back requirements. Bryan Van Gorp was in agreement with Franklin's comment and stated the Houston County Commissioners are the only ones that can take charge of these splits. Ken Visger concurred.

Aaron Lacher said the zoning office has been doing a good amount of property split reviews, but it's not formal or required. The zoning office is providing guidance when asked.

Ken Anderson commented that the setback request for the solar panels is the largest variance requested.

Comments that were submitted were read. (On file).

Chairman Visger 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 2013 split appears to have divided the parent parcel into sections of farmstead, cropland, and woods/pasture. Such a split can be seen as having aided in the preservation of commercial agriculture. Due to the general trend of increasing farm size, commercial farmers require additional cropland, but do not necessarily require additional farmsteads.

The selection of a suitable location for solar is supported by comprehensive plan section 0506 subd. 2 policy 3 which encourages consideration of natural resources in site design. The investment in infrastructure contribute to comprehensive plan section 0506 subd. 2 policy 10, which encourages the rehabilitation of older homes.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp	X		Property split was done by prior owner.
Ken Visger	X		Improvement to existing 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: Concerning the existing buildings, any resolution other than a variance would involve the acquisition of additional land, which necessitates a willing seller, or the relocation of buildings, which may not be structurally feasible.

Practical difficulties include inadequate access to direct sunlight for solar energy systems. Solar panels are commonly oriented to face south. The presence of mature evergreens along the southern property line reduce the areas suitable for solar.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Franklin Hahn		X	Evergreen trees could be taken down.
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 the actions of the prior owner to split the property, the resulting noncompliance, and the current owners' limited options to resolve the issue represent a special condition not created by the property owner. The Board may further find that the limited areas with direct access to sunlight represent a special condition.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp	X		Agrees with SA.
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: The Board may find that the variances related to existing buildings are the only way to feasibly resolve the setback issue, and that the variance related to solar is the minimum variance that would alleviate the practical difficulty of limited solar exposure on the rest of the property.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with Ken Visger.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA.
Ken Visger	X		Agrees with SA, granted this type of variance in past.

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 existing buildings have been in their current location for decades, and their relative position to the property lines since 2013, without creating any known issues. The addition of the solar panels is not anticipated to have any effect on the above criteria.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with Ken Visger.
Ken Visger	X		Agrees with SA, solar panels are an improvement.

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: Accessory buildings and solar panels are considered accessory uses in the agricultural district. There is no mapped floodplain on the parcel. There are no known state standards applicable to the request.

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

Ken Visger

X

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

Larry Hafner made a motion to accept the findings. Ken Anderson seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Ken Anderson made the motion to grant variances of:

1. Variance of 17' from the north property line for an existing hay shed;
2. Variance of 25' from the north property line for an existing machine shed;
3. Variance of 3' from the north property line for an existing barn;
4. Variance of 8' from the east property line for an existing barn;
5. Variance of 7' from the east property line for an existing grain bin; and
6. Variance of 40' from the east property line for a proposed ground mounted solar panel.

Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 477 was read for **James Fuchsel**, 607 South 3rd Street, La Crescent, MN 55947. Site address is: 1175 Spring Hills Drive, Brownsville, MN 55919.

The applicant is seeking a variance of setback requirements to meet the required 40 foot shoreland setback from the top of a bluff to build a house.

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

- The applicant is requesting a 25' variance from the top of a Shoreland bluff to locate a dwelling.
- The property is located in the Agricultural Protection District; the Shoreland District is also applicable.
- Shoreland is defined as follows: 22.2 Subd. 5 (39) Shoreland - "Shoreland" means land located within the following distances from public waters: (a) 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and (b) 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater.
- Within the Shoreland District, a bluff is defined as follows: 22.2 Subd. 5 (3) A topographic feature such as a hill, cliff, or embankment having the following characteristics: (a) Part or all of the feature is located in a shoreland area; (b) The slope rises at least 25 feet above the toe of bluff; (c) The grade of the slope from the toe of the bluff to a point 25 feet or more above the toe of the bluff averages 24 percent or greater, except that an area with an average slope of less than 18 percent over a distance of at least 50 feet shall not be considered part of the bluff; and (d) The slope must drain toward the waterbody.

- Within the Shoreland District, the top of bluff is defined as follows: 22.2 Subd. 5 (6) Bluff, Top of - For the purposes of measuring setbacks, the higher point of a 50-foot segment with an average slope exceeding 18 percent.
- Within the Shoreland District, a bluff impact zone is defined as follows: 22.2 Subd. 5 (4) Bluff impact zone - A bluff and land located within 20 feet of the top of a bluff.
- Within the Shoreland District, structures are prohibited in bluff impact zones: 22.6 Subd. 4 (e) Bluff impact zones. Structures, impervious surfaces, and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.
- The standards utilized by the BOA to consider a variance are required under Minnesota Statutes Chapter 394.27 Subd. 7. These standards are in large part reproduced in the Houston County Ordinance in section 12.5., included below. The BOA should rely exclusively on the lens provided by these standards when considering this request.
- The State of Minnesota requires that counties have Shoreland rules, and ensures that rules meet minimum standards. This work is done by MN DNR, who are the subject-area technical experts, and who serve as a resource to jurisdictions dealing with Shoreland issues. DNR was asked to do a preliminary review of this application, and upon completion, indicated they would oppose granting the variance. The applicant was made aware of this prior to scheduling the hearing. DNR also submitted formal comments in opposition to the variance, which are enclosed.
- The subject parcel is a 128 acre parcel in Brownsville Township. A pole shed, build in 1984 by a previous owner, is near the proposed house site, and its current location prevents the proposed house location from shifting slightly to the east. Based on a review of Assessor records going back to 1992, there was not previously a house associated with the pole shed.
- An unnamed stream is located to the southwest of the proposed site. Its designation as a public water creates the Shoreland overlay district that encompasses the proposed house location and the bluff that lines between it and the stream. The bluff slopes from the plateau on which the house is proposed, to the wetlands buffer the unnamed creek at slopes greater than 40%.
- Top of bluff is defined in both the general definitions sections (3.6) as well as the Shoreland ordinance (22.2). Generally, definitions included in a specific section should be relied on over general definitions, however, the discussion below will explain why determining top of bluff based on the methods in section 3.6 is preferable in this instance. Note also that the top of bluff location provided by DNR in their comments is consistent with the outcome reached using section 3.6.
- Section 3.6 instructs that the top of bluff be determined by visually observing slopes and identifying the point of slope change. At the proposed site, a distinct change in slope occurs near the tree line, around the 710' contour, where slopes change from a 40% average below, to an average of less than 2% above.
- Using the standard from section 3.6, the top of bluff is estimated to be at the western edge of the 710' contour, and the proposed house location is approximately 10 feet from the estimated top of the bluff, which would necessitate a 30 foot variance. The granting of such a variance would allow a structure in a bluff impact zone which extends 20 feet from the top of bluff.
- Using the method outlined in section 22.2 moves the top of bluff approximately 15 feet to the east, resulting in the proposed house location extending below the top of bluff. Note that, due to the flat grade, the top of bluff elevation remains 710'. The variance required in this case would extend beyond the setback standard, and allow the structure to be placed atop the feature from which the setback is applied. As was the case earlier, the granting of such a variance would allow a structure in a bluff impact zone.
- A conflict within the definitions included in the Shoreland ordinance may bear on this request. As discussed above, the top of bluff definition provided in section 22.2 results in a more restrictive

outcome. However, when read together with the bluff definition also contained in section 22.2, provided above, a contradiction in terms presents itself. Section 22.2 Subd. 5 (3) (c) includes a qualifier "...that an area with an average slope of less than 18 percent over a distance of at least 50 feet shall not be considered part of the bluff." If one accepts that the top of a bluff must itself be *part* of a bluff, and must further be connected to it on the upslope end, it becomes apparent that the definitions provide competing outcomes.

- Brownsville Township and the ten closest property owners were notified. The Township commented in favor of granting the variance request. The MN DNR commented against granting the variance.

Chairman Visger asked the applicant to discuss his proposed project. James Fuchsel said he would discuss some history and how they got to this point, as well as, the statement provided by the DNR. He said they have been looking for a place to build a retirement home for some time. This location was purchased mainly for the views and then they begin drafting house plans. They worked with the architect for a single level home and also wanted to keep the existing pole shed that was there when they purchased the site. He met with Aaron Lacher when he learned about the Shoreland setbacks.

James Fuchsel went on to discuss the DNR statement (on file) and the justifications on why he disagrees. 1) The stream mentioned is an unnamed spring fed stream, it's not a stream that is used for recreation and there are no trout in it. It is also 250 feet away from his proposed building site. 2) There will be no erosion, they will not destroy any critical habitats. They just want to build a home on an existing mowed site. 3) As far as owning 128 acres that offers other alternative sites to build on, much of it has steep hillsides and agricultural land. He wants to preserve as much of the agricultural land that he can. He has 22 acres of farmland with corn and alfalfa. The grassy area around the shed is the best location to build in efforts to preserve agricultural land. 4) He does not need to clear any land, it has been that way for over 50 years. 5) On redesigning the house plans. The grassy area is the only place to build a home with the footprint they desire. They want the home to be one level, otherwise, they would have to build a 2 story home and that's not what they want for their retirement years. He's asking for a 25 foot variance. There should not be any erosion issues as the DNR stated.

Franklin Hahn asked what the soils were like there; are they sandy or heavy dirt. James said from talking to Delmer Ideker, who resides in the area, he was told that the soils are sandy to the north toward Spring Hills Drive, but by shed the soil is a heavy clayish type soil.

Ken Anderson asked what the existing pole shed is used for. James said he has tractors and other farming equipment stored in the shed to care for the land. He needs a shed for storage and would like to keep the one that is currently there.

Bryan Van Gorp asked how many acres were included in this parcel. James stated there are 128 acres.

Letter from DNR was read for the record. Brownsville Township letter was read for the record. (On file).

Ken Anderson asked about the waterway on the property and if there were any easements for the public to access the property. James said he's not sure why they are calling it a public waterway because it's not used by the public and there is no legal way anyone could access or use it. He said it is spring fed from a couple of houses.

Bryan Van Gorp stated that the DNR knows what is considered a public water way.

There was general discussion on visiting the site and the DNR recommendation for denial. Ken Visger questioned whether there are other buildable sites on the property. Franklin Hahn stated he was unsure why the waterway could be considered a public waterway. Ken Visger stated the property is in a shoreland district and it can't be eliminated. Bryan Van Gorp stated that if it was not a public waterway, the DNR wouldn't be able to weigh in.

Bryan Van Gorp made a motion to proceed with the Findings. Franklin Hahn seconded. Roll call was taken. Motion carried.

Chairman Visger 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: Section 22.6 Subd. 4 (e) defines bluff impact zones as extending 20 feet from the top of a bluff. Granting a variance that allows placement of a structure within a bluff impact zone is contrary to this section. Many policies set forth in the comprehensive plan are intended to protect steep slopes, three of which are highlighted in the comments received from DNR. The applicant's

application addresses the concern of visual aesthetics from a public water by correctly stating that the unnamed creek is not navigable, but does not address many other purposes of the Shoreland district regulations.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees, questions if it is applicable Shoreland district.
Larry Hafner	X		
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp		X	DNR points #3 and #5.
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 Board may find that a practical difficulty is rooted in a two-part desire of the Applicant that seeks to achieve: 1) the construction of a home with a specific exposure and vantage point intended to achieve a certain view from the house, and to optimize energy performance, and; 2) to preserve the existing pole shed on the site. In order to satisfy this condition, the Board must find that the above goals are reasonable, the house size and layout is reasonable, and that there exists reasons that the existing shed could not be relocated beyond cost.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson		X	Should not have to build around existing shed, it should be relocated.
Larry Hafner	X		All reasonable.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp		X	DNR points #3 and #5.
Ken Visger		X	More reasonable place to build this house.

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

Staff Analysis: In large part, the variance is caused by the placement of the existing pole shed by the prior owner, and the design preferences of the applicant. If the Board understands the concept of "property owner" to mean current *and past* owners, the shed cannot be relied upon to satisfy this condition. If the Board understands property owner to mean *only* the current owner, they may find that the actions of the prior owner, and how they impact the future layout of the property, constitute a special condition.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees, request is due to special conditions.
Larry Hafner	X		Property owner actions mean current owner.
Franklin Hahn	X		Prior owner wasn't thinking about next owner building.
Bryan Van Gorp		X	DNR points #3 and #5.
Ken Visger	X		Prior owner action does create a unique situation.

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: Given the size of the property, there are numerous alternative locations that could accommodate the proposed house footprint. Further, there are alternative locations that provide a southern exposure for passive solar. However, the alternative locations likely do not provide the desired view, which the applicants have indicated influenced their decision to purchase the property. The Board should consider whether a change in location that does not provide an equivalent view is reasonable.

Similarly, there are likely design changes that could be made that would accommodate a house to the west to the existing shed. For instance, a much smaller house may well fit there without the need of a variance. The Board should consider whether the current design is reasonable, and whether it would be reasonable to require the Applicant to redesign the house to satisfy the setback.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson		X	Agrees with Ken Visger.
Larry Hafner	X		No equivalent alternative location.
Franklin Hahn	X		
Bryan Van Gorp		X	DNR points #3 and #5.
Ken Visger		X	There are alternative sites.

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: Considered through the lens of existing nearby homes, the proposal has a minimal impact as the existing shed will be in the line-of-site of the proposed house from the public road, and other impacts stemming from the addition of one house in the area will be negligible. The DNR raises potential hydrological and bluff impacts, understanding the term locality to include the surrounding natural environment. Erosion control plans are required as part of a standard zoning permit for a house, and address many of the concerns raised by DNR. The Board may find the standard erosion control standards to be adequate.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees, does not affect other properties.
Larry Hafner	X		Agrees with SA, erosion control standards are adequate.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA.
Ken Visger	X		Would be a nice place for a house.

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 Shoreland ordinance includes a description of the bluff impact zone, within which structures are not permitted. However, structures are not prohibited generally in the Shoreland district, nor are they in the underlying agricultural protection district. No reduction in flood plain regulations is requested. Minimum Shoreland bluff setbacks are required by the state, but the state also provides for the variance process as a means of reducing them.

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

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

Bryan Van Gorp made a motion to accept the findings. Ken Anderson seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Ken Anderson made the motion to deny the variance.

Bryan Van Gorp seconded. Roll call vote was taken. Ken Anderson – Yes, Larry Hafner – Yes, Franklin Hahn – No, Bryan Van Gorp – Yes, Ken Visger – Yes. Motion for denial carried.

Larry Hafner made a motion to adjourn. Bryan Van Gorp seconded. Roll call vote was taken. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on June 26, 2020.

Houston County Board of Adjustment
August 27, 2020

Approved on September 24, 2020 by Ken Anderson and Franklin Hahn

The Houston County Board of Adjustment met by phone conference at 5:30 p.m. on Thursday, August 27, 2020. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Visger. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn, Bryan Van Gorp and Ken Visger. Aaron Lacher and Amelia Meiners were present for zoning.

Franklin Hahn made a motion to approve the minutes of June 25, 2020. Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 478 was read for **Jason and Diane Larson**, 1701 State 76, Houston, MN 55943.

The applicants are seeking a variance to reduce side and rear yard setbacks in an agricultural district (14.8 subdivision 1 and 14.9 subdivision 1) to place an addition on the existing home and a variance to reduce rear yard setbacks in an agricultural district (14.9 subdivision 1) for an existing accessory building in Section 12 of Money Creek Township.

Amelia Meiners, Environmental Services Specialist, commented on the application:

- The petitioners are seeking a variance of 30 feet to construct a roof structure over an existing patio off the rear of the dwelling and a variance of 45 feet for an existing play structure/garden shed to meet the 50-foot property line setback requirement.
- This is a 1.41-acre property located in Money Creek Township, adjacent to the unincorporated village of Money Creek. The original parcel included the parcel south of this property as well (PID 10.0411.003), but that was split off in 1998, prior to the applicant's acquiring the property. According to Assessor's records, the dwelling was constructed in 1992. While many of the surrounding parcels are zoned residential, this particular parcel remains in the agricultural protection district. A conditional use permit was granted on March 17, 1992, to build a house with the conditions that they meet a 130' state highway setback and 50' property line setbacks. The house was permitted right at 50-feet to both the north and east property lines, making future expansion in either direction difficult. Rezoning this parcel to residential was investigated as an option, but since this type of structure is considered an addition to the principal building, a 50-foot rear yard setback is still required in the residential district. Therefore, rezoning is not a viable solution.
- The concrete patio off the east side of their dwelling was poured over six years ago, which requires no permit. The applicants identify they have two handicap children and a covered outdoor structure will provide a more ideal situation for them to enjoy being outside. After considering setbacks, the only location in which there is room to expand on this property is towards the highway, but that does not work with the layout of the home/attached garage. In addition, the homeowners would like to reserve that area for a future garage to accommodate a handicap accessible vehicle.
- The applicants constructed the existing play house/garden shed in 2011. This location was chosen to maximize the functionality of the property. The only available area to relocate this structure and

meet setbacks would be between the highway and dwelling, which is not in proximity to the garden area and as easily accessible from the dwelling. Buildings less than 200 square feet do not always require permits, but are still required to meet setback standards (HCZO 29.14 subd. 3(2)). The alley east of the property was vacated in 1998 with Order#193460, but no additional property was granted to this parcel at this time. Since a variance was being sought for the porch structure anyway, the petitioners decided to seek a variance for the garden shed as well, since location options are limited and proximity to the garden/backyard is important. This will bring their property into compliance for when they have future permitting needs.

- This site consists of a dwelling on a 1.41-acre parcel. The 2,800 square foot one-level house sits right at the 50-foot setback to the east and north and just off the south property line setback. The septic system is located south of the house, but the exact footprint is not known. The well is located in front of the house.
- Slopes at this site are minimal. Money Creek is approximately 950 feet to the west, but this site is outside of floodplain or shore land. No effect to the regulatory flood protection elevation is anticipated.
- Money Creek Township and the ten closest property owners were notified. Comments were received from the Township indicating no concerns with proposal.

Ken Anderson asked what the land was behind the Larson house (to the east). Amelia Meiners indicated that it was a vacated alley.

Bryan Van Gorp asked if just a roof structure was being added or if it would be enclosed with sides. Jason Larson indicated that it was just a roof structure.

Bryan Van Gorp asked if the cement slab would also be expanded since the structure itself is bigger. Jason Larson indicated that the cement slab would not be expanded.

Chairman Visger 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.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp	X		
Ken Visger	X		The proposal is an improvement.

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: This is very much a residential type lot, but located in the agricultural protection district. This home was originally permitted right at the 50-foot setback to the north and east property lines, limiting future landowner's ability for expansion. When the parcels were split, it was done in such a way as to maintain a 50 setback to the south property line, but leaving no room for expansion in that direction either. Re-zoning this lot to residential would not solve the setback issue, as a 50-foot rear yard setback is required for the proposed structure. Re-locating the garden shed is possible, but the only area in which to do so is not logistically feasible for this family and practical with the layout of the dwelling/property. Additionally, that location is reserved for a future garage.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA, except any future development.
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: This is a small acreage with an existing large one-level home with large required setbacks due to bordering a state highway and being in the agricultural protection district. After considering highway and property line setbacks, the allowable area for expansion on this parcel is not ideal to accommodate the proposed structure, because it does not fit the layout of the dwelling.

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

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

Staff Analysis: Aside from purchasing additional property from neighbors, there is no other option for the patio structure. The playhouse and utility shed is mobile so could be re-located to the front of the home, but that severely affects the usability of that structure. Rezoning this parcel to residential is not a solution for this proposal.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp	X		
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: Both proposals are for structures that coincide with the essential character of the surrounding properties and will not impair property values, public health, safety or welfare. Improving their home will add value to their home and therefore the neighborhood.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp	X		
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: A dwelling with a covered patio and an accessory building is a permitted use in the agricultural district and a reduction of property line setbacks is an area variance. This proposal will not affect the regulatory flood protection elevation and will only allow a use that is consistent with uses of surrounding properties.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA, continue use and rehab of property.
Franklin Hahn	X		
Bryan Van Gorp	X		
Ken Visger	X		

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

Larry Hafner made a motion to accept the findings. Ken Anderson seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Ken Anderson made the motion to grant variances of:

- 1) Variance of 30 feet to reduce the east property line setback to 20 feet for a proposed addition on the house.
- 2) Variance of 45 feet to reduce the east property line setback to 5 feet for an existing garden shed.

Larry Hafner seconded. Roll call vote was taken. Ken Anderson – Yes, Larry Hafner – Yes, Franklin Hahn – Yes, Bryan Van Gorp – No, Ken Visger – No. Motion carried.

Notice of Public Hearing No. 479 was read for **Derek and Rachel Kasten**, 865 Selke Road, La Crescent, MN 55947.

The applicants are seeking a variance to reduce side yard setbacks in an agricultural district (14.8 subdivision 1) to place an accessory structure in Section 17 of La Crescent Township.

Amelia Meiners, Environmental Services Specialist, commented on the application:

- The Petitioners are requesting a 20-foot variance off the required 50-foot setback to the north property line to construct a solar array.
- The applicants own two parcels in La Crescent Township totaling 43.63 acres comprised of their homestead, tillable acreage and timber. This property was purchased in 2009 and the existing, old farmstead was demolished. Since then multiple permits were issued by La Crescent Township to construct a new homestead. In October of 2010, a permit was issued to build a pole shed followed by a single family residence in March 2012. The Township handled driveway and septic system permits at that time as well. In 2012, a small amount of acreage was split off and transferred to re-locate a neighbor's driveway that originally had an easement through this property and was displaced by construction of the new dwelling.
- The Houston County Zoning Ordinance designates that solar energy systems and solar structures are a permitted use provided the system is in compliance with minimum lot requirements and setbacks (HCZO 29.8 subd.1) and that they may be exempted from setback, height, and lot coverage restrictions in all districts by variance (HCZO 29.8, subd 2).
- This proposal includes two rows of panels tilted south facing, away from the adjoining property, that will be approximately eight feet tall. The contractor, Solar Connections, states these will be very similar to other ground mount solar arrays as commonly seen along State Highways 14 or 52, but on a much smaller scale.
- As can be seen in the enclosed site plan, there are multiple systems obstructing building in the east and south directions around this homestead. East of the home is a pond and the septic system and to the south is an underground LP tank and geothermal system. The property line is approximately 85 feet south of the house so to build beyond the LP tank would require a variance as well.
- When looking at aerials, the Board may ask why this array cannot be constructed west of the homestead on tillable land rather than seeking a variance. That location appears to be ideal - at the crest of the hill with no obstruction. Note it is active farmland and the County identifies preserving commercial agriculture as a goal. The contractor has studied this property and looked at both

locations, but from a solar technology standpoint, the proposed location is more ideal. If placed west of the shed, it would require a longer trench and in return a greater amount of material. This is not necessarily an issue from a financial perspective; one of the goals in implementing renewable energy is to reduce environmental impact. In addition, the total number of sun hours is approximately 20% less in the field location than the proposed location, which will only lose some energy in the winter due to the sun's lower position in the sky. Moving the array toward to residence to avoid needing a variance, significantly reduces the amount of sunlight available. As with any structure there will be runoff, but healthy groundcover will be established to diminish its impact. Overall, the contractor states the proposed location will provide the best, most efficient system possible.

- In the site plan there are obstacles east of the dwelling that prevent the array from being constructed there. These include a pond and the septic system. Once beyond those, slopes on the tillable acreage become 18% or greater on average. There is minimal distance between the dwelling and south property line and outside of that setback area lies an underground LP tank and geothermal runs. Nothing currently exists to the north or west of the homestead, but there is limited distance to the north to utilize. West of the pole shed is tillable acreage. The proposed location is also in close proximity to an existing banner board and it is generally desirable to limit or minimize the impact on agricultural ground.
- The closest water features are intermittent streams in the ordinal directions varying from 900-1500 feet away. Slopes at the proposed location are variable ranging from 2-23%. This is not located in shore land or floodplain.
- La Crescent Township and the ten closest property owners were notified. One comment was received.

Chairman Visger asked the applicants to discuss their proposed project. Tim Clancy from Solar Connections gave an overview of the proposed project. There was lengthy general discussion on placement of the panels and if there were other location options available.

Comments that were submitted were read. (On file).

Tom Weibel, neighbor to the north, commented on the location of the panel placement and was of the opinion that other locations existed.

There was general discussion on taking a site visit and table the application.

Motion made by Larry Hafner to table the application and visit the location. Seconded by Ken Anderson. Roll call vote was taken. Ken Anderson – Yes, Larry Hafner – Yes, Franklin Hahn – No, Bryan Van Gorp – Yes, Ken Visger – Yes. Motion carried.

Notice of Public Hearing No. 480 was read for **Andrew and Kristi Esser**, 1298 Lost Park Drive, La Crescent, MN 55947.

The applicants are seeking a variance to reduce setback requirement from the toe of a bluff (29.17 subdivision 2) to place an accessory building and a variance to allow door height in excess of 10 feet (29.14 subdivision 1 (5)) in Section 9 of La Crescent Township.

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

- Applicable Ordinance language include:
Bluff setback standards: *29.17 Subdivision 2. Setback from the Toe of a Bluff. Structures shall be set back forty (40) feet from the top of a bluff and twenty-five (25) feet from the toe of a bluff.*
Accessory building standards: *29.14 Subdivision. 1. Accessory Buildings and Structures in Residential Districts. (5) No private garage used or intended for the storage of passenger automobiles shall exceed fifteen hundred square feet of gross area nor shall any access door or other opening exceed the height of ten (10) feet. Setback standards shall meet the requirements as set forth in section 14 of this ordinance.*
- When read in context Section 29.14 is ambiguous, and a zoning policy was drafted in 2019 to ensure consistent application of these standards.
- The subject parcel is located in the Cliff View Second Addition subdivision, platted in 2001. Parcel 08.0855.000 consists of Lots 1 & 2 of Block 1. The existing house is located on Lot 1, and the shed is proposed on Lot 2. Lots 1 & 2 separate parcels until they were combined in 2016.
- While it does not supersede modern zoning standards, it is worth noting that Lot 2 is shown as a buildable lot on the plat that was approved in 2001, and that the shed is now presumably proposed where the principle structure was envisioned at that time.
- The site is located along the footslopes that bound Pine Creek Valley to the north. The parcel contains 4+ acres. The bluff to the east of the site rises 80+ feet at a 28% slope. The proposed shed location has been modified, work done by the previous owner according to the applicant, who speculates it was done around the time of the platting. During a site visit, a change in post alteration slope was identified, which was determined to be the toe of bluff.
- No floodplain, water features, or wetlands are mapped on the property. Drainage does occur from north to south along the western property line, and a drainage easement is shown on the plat.
- La Crescent Township and the ten closest property owners were notified. No comments were received.

Bryan Van Gorp asked if there had been prior disturbance at the toe of the bluff. Aaron Lacher explained the alteration that occurred. Andrew Esser indicated this had been done prior to him owning the property.

Andrew Esser went on to say that he owns a parcel that he can't seem to build anything on. They simply would like to build a storage shed to have all their equipment stored at their location instead of other places. The proposed site is the only possible location he can build on.

Chairman Visger 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: Diversity in housing types is included as a residential development policy goal. Approving the application would provide an option to a landowner whose preferred housing type includes proximity to an urban center as well as a large shed.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
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 Applicants have identified the only reasonable location to locate a shed on the property. The area to the south along the public road is not a viable alternative because of the drainage that occurs in that area. Additionally, because accessory buildings are required to be setback beyond the principal structure, the location would require a variance as well.

The door height request to accommodate the Applicants vehicles. Such vehicles are commonly incident to the permitted uses in the district (i.e. single family dwellings) as many people own recreational vehicles. Indoor storage of these vehicles is preferable.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp		X	Shed could be modified.
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 request is the result of the existing house location and the surrounding topography.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA, only reasonable spot, will not hurt.

Franklin Hahn	X	
Bryan Van Gorp		X
Ken Visger	X	

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

Staff Analysis: No other viable option for locating the shed is available. This is predicated on the Board's agreement that the shed size is reasonable, and that a reasonable shed design will accommodate taller vehicles owned by the applicant.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp		X	Size and shape of shed could be altered.
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 property is on a cul-de-sac with two other homes at the end of the street, so it is anticipated the visual impact will be negligible. While most properties in the nearby subdivisions do not have accessory buildings, the larger properties, such as the applicants, do have similar sized sheds.

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

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

Staff Analysis: Sheds are an accessory use in the Residential District. No floodplain is mapped on the property.

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

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

Ken Anderson made a motion to accept the findings. Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Larry Hafner made the motion to grant variances of:

- 1) Variance of 18 feet to allow a shed to be built 7 feet from the toe of a bluff.
- 2) Variance of door height requirements to allow a 13 foot garage door.

Franklin Hahn seconded. Roll call vote was taken. Ken Anderson – Yes, Larry Hafner – Yes, Franklin Hahn – Yes, Bryan Van Gorp – No, Ken Visger – Yes. Motion carried.

Motion to adjourn made by Larry Hafner. Seconded by Ken Anderson. Roll call vote was taken. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on August 28, 2020.

Houston County Board of Adjustment
September 24, 2020

Approved on November 19, 2020 by Ken Anderson and Larry Hafner

The Houston County Board of Adjustment met at 6:00 p.m. on Thursday, September 24, 2020. A summary of the meeting follows.

The meeting was called to order by Vice Chairman Larry Hafner. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn and Bryan Van Gorp. Aaron Lacher and Amelia Meiners were present for zoning. Tom Weibel was present as a member of the public. Tom Clancy, Aaron Benson and Derek Kasten were present. Ken Visger was absent.

Ken Anderson made a motion to approve the minutes of August 27, 2020. Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Continuation of Public Hearing No. 479 was read for **Derek and Rachel Kasten**, 865 Selke Road, La Crescent, MN 55947.

The applicants are seeking a variance to reduce side yard setbacks in an agricultural district (14.8 subdivision 1) to place an accessory structure in Section 17 of La Crescent Township.

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

- The Petitioners are requesting a 20-foot variance off the required 50-foot setback to the north property line to construct a solar array.
- The applicants own two parcels in La Crescent Township totaling 43.63 acres comprised of their homestead, tillable acreage and timber. This property was purchased in 2009 and the existing, old farmstead was demolished. Since then multiple permits were issued by La Crescent Township to construct a new homestead. In October of 2010, a permit was issued to build a pole shed followed by a single family residence in March 2012. The Township handled driveway and septic system permits at that time as well. In 2012, a small amount of acreage was split off and transferred to re-locate a neighbor's driveway that originally had an easement through this property and was displaced by construction of the new dwelling.
- The Houston County Zoning Ordinance designates that solar energy systems and solar structures are a permitted use provided the system is in compliance with minimum lot requirements and setbacks (HCZO 29.8 subd.1) and that they may be exempted from setback, height, and lot coverage restrictions in all districts by variance (HCZO 29.8, subd 2).
- This proposal includes two rows of panels tilted south facing, away from the adjoining property, that will be approximately eight feet tall. The contractor, Solar Connections, states these will be very similar to other ground mount solar arrays as commonly seen along State Highways 14 or 52, but on a much smaller scale.
- As can be seen in the enclosed site plan, there are multiple systems obstructing building in the east and south directions around this homestead. East of the home is a pond and the septic system and to the south is an underground LP tank and geothermal system. The property line is approximately 85 feet south of the house so to build beyond the LP tank would require a variance as well.

- When looking at aerials, the Board may ask why this array cannot be constructed west of the homestead on tillable land rather than seeking a variance. That location appears to be ideal - at the crest of the hill with no obstruction. Note it is active farmland and the County identifies preserving commercial agriculture as a goal. The contractor has studied this property and looked at both locations, but from a solar technology standpoint, the proposed location is more ideal. If placed west of the shed, it would require a longer trench and in return a greater amount of material. This is not necessarily an issue from a financial perspective; one of the goals in implementing renewable energy is to reduce environmental impact. In addition, the total number of sun hours is approximately 20% less in the field location than the proposed location, which will only lose some energy in the winter due to the sun's lower position in the sky. Moving the array toward to residence to avoid needing a variance, significantly reduces the amount of sunlight available. As with any structure there will be runoff, but healthy groundcover will be established to diminish its impact. Overall, the contractor states the proposed location will provide the best, most efficient system possible.
- In the site plan there are obstacles east of the dwelling that prevent the array from being constructed there. These include a pond and the septic system. Once beyond those, slopes on the tillable acreage become 18% or greater on average. There is minimal distance between the dwelling and south property line and outside of that setback area lies an underground LP tank and geothermal runs. Nothing currently exists to the north or west of the homestead, but there is limited distance to the north to utilize. West of the pole shed is tillable acreage. The proposed location is also in close proximity to an existing banner board and it is generally desirable to limit or minimize the impact on agricultural ground.
- The closest water features are intermittent streams in the ordinal directions varying from 900-1500 feet away. Slopes at the proposed location are variable ranging from 2-23%. This is not located in shore land or floodplain.
- La Crescent Township and the ten closest property owners were notified. One comment was received.

Vice Chairman Hafner asked the applicants to add any details about their proposed project.

Tim Clancy of Solar Connections discussed the additional materials supplied. One of the changes was to split the array in half in order to minimize encroachment. The east side will be moved away from the property line to meet the setback and still meet the energy production needs. This "plan B" will not reduce the variance itself, but just reduces the amount of the system that requires a variance to about 50%. After the site visit, they took measurements to confirm there would be no shading on the neighboring driveway. He also reviewed the opportunities and challenges to other options on the Kasten property. They felt the best solution was to make changes to the design to respect the proposed location. Aaron Lacher asked Tim to describe the newly provided documents. Revised plan is from 9-16-20. There were three documents: one shows proposed split array and utilities, one shows contours and one shows gradients. There is concern with moving it to the west side of the property because of the impact of trenching and the additional linear footage and increase in materials. They will also be crossing the fiber optic and power utility lines as well which creates a more complex system and changes the cost-benefit. Overall, their goal is to put in systems with minimal environmental impact. They want to respect the environment and county requirements while providing long-term benefit. There will still be a view-shed issue to the west with two owners and there is a concern that snow piling up will create issues with the

productivity and function of panels. Franklin asked about the attachment base and discussion followed.

Public comments were asked for. Tom Weibel, a neighbor to the north, discussed the other locations he felt would be acceptable, primarily south of the house. He feels there will be problems with runoff, etc. that will cause issues with his driveway. Items such as snow drifting, runoff from heavy rain, that he doesn't want to look at it and his road needs to be passable.

Tim responded. The driveway concern was that driveway shade during the winter would create ice and they found that it would not be an issue. It was noted that the trees planted there will create shade problems as well. The panels are facing away from the driveway and the driveway has been graded/sloped. In addition, they're approximately 4' wide and will drop water on the uphill side, to the south, and opposite the driveway. The panel posts will be driven into the ground, no concrete. On the driveway side they will be 9' tall and only 3' off ground on the opposite side. Snow drift will create more of a potential issue for the panels than creating one for the driveway.

Bryan Van Gorp asked if there is a significant difference between the value of using the electricity on-site rather than selling it back to the grid. Tim said they were equal.

Derek Kasten addressed the BOA. He's trying to mitigate extremely expensive rates, not to make enemies.

Discussion among BOA members. Franklin Hahn commented that he doesn't foresee a big erosion issue and feels it's a good location to take advantage of the sun. Larry brought up wind direction and effects on the driveway. Aaron asked for discussion on how they wished to proceed on the different proposals. The BOA asked for Tom's opinion and he stated his point again.

Comments that were submitted were read. (On file).

Vice 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 Zoning Ordinance identifies as a purpose is to promote the health, safety and general welfare of the citizens by implementing policies and standards that conserve energy, such as solar (HCZO 1.4 subd. 9). An additional goal that is identified in multiple locations of the Comprehensive Plan and Ordinance is preserving our agricultural land and the fact that the land in the proposed location is not used is one of many reasons the array is proposed in the location it is.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp	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 application identifies that obstacles such as the septic, geothermal, an underground LP tank and existing landscaping obstruct placement to the east and south of the dwelling. While there is vacant area west of the shop in active farmland, the contractor identifies that from a solar technology stand point the north location is more ideal. Shadow analysis show that there is less interference and therefore more sun exposure at the north location and the contractors identify a much smaller environmental impact in the proposed location. Solar arrays have gained in popularity in the county and do not alter the essential character of the agricultural district.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp		X	Site next to the garage would be adequate and better for neighbor.

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

Staff Analysis: While the landowners did in fact decide where to locate permanent structures, it is assumed that potentially locating a solar array was not a plan at that time. Topography is also important as southern exposure is necessary to make solar power efficient and of the two potential options, the proposed location provides the most functional location.

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

Franklin Hahn	X	Agrees with SA.
Bryan Van Gorp	X	Now another spot is used up, eventually all will be so need to plan ahead.

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 shown in the site plan there are multiple systems south and east of the dwelling that prevent the array from being constructed in those locations. Slopes on tillable acreage to the east (Fig. 4) become 18% or greater. The tillable acreage to the west does not provide as many total sun hours and is also active farmland while the area to the north is idle. In addition, moving the array toward the residence reduces the available sunlight and would require the array be raised which increases need for material.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp		X	Other locations available.

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: This is an area dominated by rural residential properties and agriculture. The landowners have implemented many systems to achieve energy independence and reduce environmental impact. In addition, this system will need to meet building, electrical and utility codes designed for minimizing hazards. If installed to code, solar arrays do not endanger public health, safety or welfare of those in the vicinity and most likely will increase property values.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		
Franklin Hahn	X		
Bryan Van Gorp	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: This location is not in floodplain or shoreland. The proposal will not affect the regulatory flood protection elevation and does not permit standards lower than those required by State Law. Solar arrays are a permitted use and becoming common throughout the County in all zoning districts.

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

Ken Anderson made a motion to accept the findings. Franklin Hahn seconded. Roll call vote was taken. Bryan Van Gorp was not in favor, all others approved. Motion carried.

Ken Anderson made the motion to grant:

1) Variance of 20 feet to allow placement of a ground-mounted solar array 30 feet from the north property line.

Condition:

1. This variance applies to 90 linear feet of panels.
2. Support posts shall be pile driven.

Franklin Hahn seconded. Roll call vote was taken. Bryan Van Gorp was not in favor, all others approved. Motion carried.

Notice of Public Hearing No. 481 was read for **Jared Cords**, 401 East North Street, Rushford, MN 55971. (Site address is 1086 Dump Hill Road, Rushford, MN 55971).

Amelia Meiners, Environmental Services Specialist, commented on the application:

- The petitioners are seeking a variance to locate a new dwelling within a quarter mile (1,320 feet) of an existing registered feedlot.
- In October of 2006, Jared purchased the 7-acre parcel from his parents in the Agriculture Protection district of Money Creek Township, south of his home farm. Later that year, he received a conditional use permit to build a dwelling on less than 40 acres (CUP #259 on 12/1/2006) and shortly thereafter a zoning permit was issued to build the dwelling (Permit #3212 on 12/4/2006). The original dwelling location met the feedlot setback requirements and all buildable lot standards still in place today.
- Non-farm dwellings are subject to the following ordinance requirements (HCZO 14.3 sub 1.):
(10) Dwellings. Single-family non-farm dwellings subject to the following: (a) No more than one (1) dwelling per quarter-quarter section. (b) Non-farm dwellings built after the adoption of this Ordinance shall be setback at least one-fourth, (1/4), mile from all feedlots, except as otherwise provided in this Ordinance. (c) Non-farm dwelling units shall not be permitted on land which is of soil classifications of Class I-III soils rated in the Soil Survey - Houston County by the U. S. D. A. Natural Resource Conservation Service, except in cases where the land has not been used for the production of field crops or enrolled in a government program whereby compensation is received in exchange for the removal of an area from production, for a period of ten years or more. (d) Non-farm dwelling units shall only be permitted on sites considered Buildable Lots as defined by this Ordinance, and shall not be permitted in areas classified wetlands, flood plain, peat and muck areas and other areas of poor drainage. Non-farm dwelling units shall not be permitted on land which has a slope of twenty-four (24) percent or greater. All non-farm dwellings must have an erosion control plan as required by Section 24. (e) Non-farm dwelling units shall be required to be located on lots having ownership of at least thirty-three (33) feet of road frontage on a public roadway or a legally recorded perpetual access at least thirty-three (33) feet wide from an existing public roadway and a minimum lot area of one (1) acre.
- On October 31, 2019, Jared and Erin Cords lost their home of thirteen years to a fire. That night, Jared and their three young daughters suffered burns and their son was injured when he jumped from a second story window. The house was a total loss and they are not able to use the concrete foundation that remains.

- In late August, the Zoning Office received a permit application from the applicant looking to construct a new dwelling. During the review process, it was discovered that the proposed location falls within the feedlot setback required by the Houston County Zoning Ordinance (Section 33.16 subd 6). There are no listed exceptions and it cannot be issued administratively. Richard and Julie Volkman operate that feedlot east of Dump Hill Road. They have registered the feedlot since the adoption of that ordinance in 2001 and it is currently registered for 16.875 animal units of beef cattle. See the Houston County Ordinance citations below. **33.16 Subdivision 1. Feedlot Advisory Committee Review.** *The Feedlot Advisory Committee shall conduct an on-site review of all variance applications relating to feedlots. Upon completion of the review, the committee shall prepare a report and recommendation for the Board of Adjustment's consideration.* **33.16 Subdivision 6. Residential Dwelling Setback from Feedlot.** *New dwellings and the expansion of existing dwellings, other than the feedlot owner's or family member's dwelling, less than one-fourth ¼ mile from a registered feedlot shall be reviewed by the feedlot advisory committee and shall require the granting of a site specific variance from the board of adjustment.*
- The Planning Commission acts as the Feedlot Advisory Committee and members reviewed the site at their convenience. As of the date of publication, four of seven members responded, all providing responses recommending approval. An updated memo will be available for the hearing.
- Soils at the proposed site are considered prime agricultural soils, as are the soils at the previous location of the house. Nonfarm dwellings are restricted from class III in the Agricultural Protection District, however in case, staff considers the proposed building location to be allowable as the continuation of a legal, non-conforming use. This conclusion is reached as follows: In 2006, the County issued a permit for the construction of the former dwelling, this permitting action conveyed a property right for the placement of a dwelling. The current application is to replace the former dwelling with a new dwelling on soils of the same class, thus a prior permitting action granted a property right for a dwelling, and the applicant is seeking replace the property right in a similar manner.
- As previously stated, this is a 7-acre parcel in the Ag Protection District of Money Creek. They are located approximately one and three quarter miles northeast of Rushford, with the only sensitive feature nearby being an intermittent stream approximately 550 feet to the north. They meet the feedlot setback to the north, which belongs to the Cords Family Trust, but are approximately 250-feet shy of the quarter mile setback to the feedlot east of the site. The parcel is long and narrow and slopes are under 18% until the very western edge, beyond the former building site. The existing driveway is the high point and the ground drops off in both the north and west directions. The land in the proposed location has been in production for a number of years, but was not planted this year in anticipation of rebuilding. This site is outside of floodplain and shoreland. It will be on class III soils.
- Money Creek Township and the ten closest property owners were notified. One comment was received.
- A memo regarding soils review was read as well as feedlot advisory committee memo.

Vice Chairman Hafner asked the applicant if he wished to add anything. Jared Cords quickly discussed why they could not reuse existing foundation and how they determined a new location.

Comments that were submitted were read as well as a staff response (On file). Memos regarding the feedlot advisory committee recommendation and site soils were read as well.

Franklin Hahn asked why he needs a variance and building permit. Aaron Lacher responded that he is not aware of being able to waive a permit requirement, but that the zoning office could waive the fee. General discussion took place.

Vice 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: A dwelling in the Ag Protection District is a reasonable and common request. The comprehensive plan identifies a few major reasons for putting limits in place on non-farm development (i.e. building a dwelling on less than 40 acres). Aside from realizing that agriculture is a vital part of our economy and we want to preserve those resources, the goal is also to minimize urban/rural conflicts and minimize local service cost (Comprehensive Plan 0100.0302). Jared and Erin built their first home on this land they purchased from his parents, who actively farmed and utilities already exist here. This family fully understands farm and country living and is asking to continue that life.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp	X		Old building site should be reclaimed, cannot object to future feedlot expansion.

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: While the foundation from the old dwelling is still present, the applicant states it is not adequate to be reused. By locating the house closer to Dump Hill Road, less excavation and

disturbance will need to take place, which will reduce erosion potential. That land has been in row crops and is adequate to accommodate a dwelling. The applicant states that being further away from the site will be better for the mental health of his children who were traumatized from the event.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Bryan Van Gorp	X		Agrees with SA; only because it's a hardship case.

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 fire was out of the applicant's control and topography of the site limits them to rebuilding east of the old site. While there may appear to be adequate space to build between the feedlot setback and the existing foundation, as you get closer to Dump Hill Road the slopes lessen and the soil is better.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		
Franklin Hahn	X		Agrees with SA.
Bryan Van Gorp	X		Agrees with SA; family already experienced difficulties.

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: For the sake of his children's mental health, the applicant wishes to build further away from the old dwelling. The proposed location has better soil and the excavating contractor had concerns over settling if the structure was pushed further west, closer to the old site.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		
Franklin Hahn	X		
Bryan Van Gorp	X		Agrees with SA; family experienced difficulties.

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: This request will continue to allow the property to function as it has for the past thirteen years and is consistent with other properties in Money Creek Township and within Houston County. The applicant grew up just north of this site in addition to living here for over a decade and has an understanding of what living near a feedlot entails.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA; thinks it's significant.
Franklin Hahn	X		
Bryan Van Gorp	X		Agrees with SA; recommend condition to limit resistance to

future feedlot expansion.

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

Staff Analysis: Siting of a dwelling is an area variance and a permitted use in the Ag Protection District. In addition, this request will not affect flood protection elevations and standards.

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

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

Franklin Hahn made a motion to accept the findings. Ken Anderson seconded. Roll call vote was taken. All were in favor. Motion carried.

Vice Chairman Hafner asked for a motion on the variance request if there were no additional comments or questions. Discussion took place over the request of Bryan Van Gorp to add conditions that the Cords could not object to any future expansions of the feedlot and that the former site shall be reclaimed.

Bryan Van Gorp made the motion to grant a variance of:

- 1) Variance of 250 feet to meet the 1,320 foot setback to an existing registered feedlot.
- 2) And to remove the former building site or improved upon within two years of completion of the dwelling.

No second.

Franklin Hahn made the motion to grant a variance of:

- 1) Variance of 250 feet to meet the 1,320 foot setback to an existing registered feedlot.

Ken Anderson second. Roll call vote was taken. All were in favor. Motion carried.

After hearings were complete Bryan Van Gorp brought a concern to the attention of other members. County Commissioners voted on the September 8th Board meeting to grant a variance and the HCZO restricts them from having that ability. He's afraid the roll of BOA becomes irrelevant if this continues to happen and a precedent has been set. He suggested they could file an official complaint or appeal. Franklin Hahn proposing tabling the discussion

to give some members time to review the Board of Commissioners meeting video and talk with the attorney.

Motion to adjourn made by Ken Anderson. Seconded by Bryan Van Gorp. Roll call vote was taken. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on September 25, 2020.

Houston County Board of Adjustment
November 19, 2020

Approved on December 11, 2020 by Larry Hafner and Ken Anderson

The Houston County Board of Adjustment met by phone conference at 6:00 p.m. on Thursday, November 19, 2020. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Visger. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn and Ken Visger. Aaron Lacher was present for zoning.

Ken Anderson made a motion to amend the agenda to include discussion on the Schutz Quarry representative, Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 482 was read for **Herman and Melanie Laumb**, 20447 County 26, Houston, MN 55943.

The applicants are seeking a variance of 10 feet to place a storage shed 39 feet from a property line in Section 10 of Money Creek Township.

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

- Assessor's records indicate the house was built in 1979, and a subsequent permit was issued in 1996 for an attached garage. There are additional outbuildings, and it is assumed these were placed prior to permits being required for agricultural buildings.
- The property is 2.45 acres atop the ridge off County 26. Soils are Black Hammer Southridge silt loams with slopes of 6-12%. There are no floodplains or water features mapped on the property, with the nearest being a freshwater forested wetland approximately 300' to the southeast.
- The shed location is on the east end of the house, and will occupy space currently occupied by the temporary shelter. The location is easily accessible by the existing driveway. Well and septic information were not provided in the application. Department of Health records show an unverified well south of the house. The driveway location and the existing ground contour is sited by the applicant as preventing the shed from being located elsewhere.
- Money Creek Township and the ten closest property owners were notified. No comments were received.

Chairman Visger asked the applicants to discuss their proposed project. Herman Laumb said everything was presented well in the packet and they wished to move forward.

Chairman Visger asked that the Findings be read being there were no further comments.

Larry Hafner made a motion to accept the findings as presented in the staff report. Ken Anderson seconded. Roll call vote was taken. All were in favor. Motion carried.

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: CLUP 0100.0511 subd. 1 strategy 2 instructs to balance public and private interests. The Board may find that the hardship caused by placement of a shed in an alternative location outweighs the public interest in strict adherence to official controls.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Franklin Hahn	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 applicant indicated that the driveway location and ground contour prevent alternative locations from being suitable.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Franklin Hahn	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 placement of the house and driveway are assumed to have been determined by the property owner, however, such decisions are commonly influenced by ground contour. Additionally, the comparatively small area of the property is less accommodating to setback

requirements than many larger parcels in the district. Given this, the Board may find that the ground contour and small area of the property are unique, and that the initial site layout was affected by these factors – that is, the uniqueness of the property provided the applicant with no alternatives for the placement of his house and driveway.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Franklin Hahn	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: The Applicants are proposing a 12' shed approximately 40' from the property line. The Board may find that reducing the shed size is unreasonable. Because the applicants reasonably desire the shed to be accessible by vehicle, a driveway connection is needed. The Board may find that requiring the installation of an additional driveway to lessen the needed variance is unreasonable.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Franklin Hahn	X		
Ken Visger	X		

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

Staff Analysis: Accessory sheds are commonly found throughout the County.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Franklin Hahn	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 property is not located within floodplain, and the proposal is not known to be afoul of any applicable state laws.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Franklin Hahn	X		
Ken Visger	X		

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

Larry Hafner made the motion to grant a variance of:

1) Variance of 12 feet to place an accessory building 38 feet from a property line.

Ken Anderson seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 483 was read for **Edward and Jacquelynn Goessling**, 3622 Pleasant Avenue South, Minneapolis, MN 55409. (Site address location is on Hillside Road, Brownsville, MN).

The applicants are seeking a variance to place an accessory structure in Section 14 of Crooked Creek Township.

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

- The Applicants request a variance to property line setback requirements. They have indicated three options, ordered by preference. There are not substantial differences among the three options from a zoning perspective, except that the location of the eastern property line may be a factor when considering option three.
- The subject parcel has existed as it's currently described since at least 1999.
- Two conditional use permits have previously been granted to this property. In 1999, then owners Trip & Heather Kilander were issued a CUP to build a house in an ag district, which required construction to begin within 5 years. As this did not occur, this permit is no longer valid.
- In 2005, a second CUP was granted to build a house in an ag district, along with a zoning permit to change the use of the existing school house to a dwelling, and a septic permit. Septic was never installed, and the schoolhouse is not plumbed. It is used seasonally and has a portable toilet onsite.
- The subject parcel is 1.5 acres in area and sits atop a bluff. Access is from Hillside Rd. The site is fairly level with slopes of <5%. Soils are Blackhammer Southridge silt loam, a class II soil suitable for building. There are no floodplains or water features mapped on the property.
- Since taking ownership of the property, the applicants have worked to upkeep the structure while maintaining underlying architecture of the schoolhouse.
- Crooked Creek Township and the ten closest property owners were notified. No comments were received.

Chairman Visger asked the applicants to discuss their proposed project. Edward Goessling said they have owned the property for a long time and would like to build a storage building for lawn mowing and yard equipment. All the information was presented in the packet and they are hoping for approval of their request.

Ken Anderson asked how close to the property line they wished to be. Edward said they would like to be close, but far enough away to let a mower pass through.

The Goessling's explained the three options they provided in the packet. Option 1 is the preferred option. There was general discussion on the option locations.

Chairman Visger 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: CLUP 0100.0506 subd. 2 policy 10 encourages the rehabilitation of existing older homes. The applicants cite historic preservation among their goals for the property.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Ken Visger	X		It's great they are preserving the old schoolhouse.

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 indicate they wish to place a building along the periphery of the property for two reasons: 1) to maintain the existing hay field as intact as possible, and; 2) to preserve the traditions, stand-alone, appearance of the schoolhouse. The Board may find that the comparatively small area of the property along with its triangular shape create a practical difficulty for the Applicants in light of the above goals, that their goals are reasonable, and that their request is not driven solely by economic considerations.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	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: A unique feature of the property is the existing schoolhouse, which predates zoning. The location of the schoolhouse and the property lines were not determined by the Applicants. While subjective, their desire to maintain the layout of the homestead in a way they feel is historically accurate arguably bolsters the aesthetics of the County, while objectively enabling the neighboring farmer to continue to work remaining area in an efficient way.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	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: Because of the small area, any placement of a building 50' from a property line is not compatible with the Applicants' stated objectives. The Board may find that these objectives are reasonable, and if so, consider what the minimum amount of variance needed to accommodate these objectives is.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA, minimum of 5 feet from the property line.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Ken Visger	X		

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

Staff Analysis: Pole shed are commonly found throughout the ag county, and no impact is anticipated.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	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 property is not located within floodplain, and the proposal is not known to be afoul of any applicable state laws.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		
Franklin Hahn	X		Agrees with SA.
Ken Visger	X		

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

Ken Anderson made a motion to accept the findings. Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Franklin Hahn made the motion to grant Option 1, a variance of:

1) Variance of 45 feet from the north property line to place an accessory building.

Ken Anderson seconded. Roll call vote was taken. All were in favor. Motion carried.

General discussion took place on selecting a BOA member to represent the BOA in the Schutz Quarry mediation. Ken Anderson stated he did not think he should be involved since he did not vote with the majority. Franklin Hahn nominated Ken Anderson, there was no second. Motion failed. Ken Visger nominated Larry Hafner as the representative with Ken Visger serving as an alternate, Ken Anderson seconded. Roll call vote was taken. Ken Anderson – Yes, Larry Hafner – Yes, Franklin Hahn – No, Ken Visger – Yes. Motion carried.

Ken Anderson made a motion to approve the minutes of September 24, 2020. Larry Hafner seconded. Roll call vote was taken with Franklin Hahn abstaining. Motion carried.

Motion to adjourn made by Franklin Hahn. Seconded by Larry Hafner. Roll call vote was taken. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on November 20, 2020.