

Houston County Board of Adjustment
February 25, 2021

Approved on March 25, 2021 by Franklin Hahn and Wayne Runningen

The Houston County Board of Adjustment met by zoom/phone conference at 6:00 p.m. on Thursday, February 25, 2021. 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, Wayne Runningen and Ken Visger. Aaron Lacher, Environmental Service Director and Amelia Meiners, Environmental Specialist were present for zoning.

Franklin Hahn made a motion to approve the minutes of December 11, 2020. Ken Visger seconded. Roll call vote was taken. All were in favor. Motion carried.

Election of Chairperson for 2021 took place. Franklin Hahn nominated Ken Anderson for Chairperson. Wayne Runningen seconded. There were no other nominations. Roll call vote was taken. All were in favor. Motion carried unanimously.

Election for Vice Chairperson for 2021 took place. Larry Hafner nominated Ken Visger for Vice-Chairperson. Wayne Runningen seconded. There were no other nominations. Roll call vote was taken. All were in favor. Motion carried unanimously.

Notice of Public Hearing No. 485 was read for **Jared Lemke and Andrea Langan**, 3700 Old Vineyard Road, La Crosse, WI 54601. (Site location is on Looney Valley Road, Houston, MN 55943.)

Applicants are seeking a variance to locate a new dwelling within a quarter mile of two existing registered feedlots.

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

- In 2020, Jared Lemke and Andrea Langan sold off a portion of their family farm including the old farmstead, leaving them with over three hundred acres of vacant ground. Approximately 60% of the property is comprised of timber and pastureland with the remaining portion being tillable acreage that is actively farmed. Both families still enjoy the recreational opportunities of the property and because neither party lives within the County, they would like to have a building available for equipment storage and temporary housing for the families. While they are only proposing a small living quarters for seasonal use, the nature of the proposal does not meet cabin requirements so the next option becomes a dwelling. Agricultural buildings and farm dwellings (dwelling on more than 40 acres) are both permitted uses in the agricultural protection district (Houston County Zoning Ordinance [HCZO] 14.2 subd.1). Two main factors limit their buildable areas: feedlots and access.
- There are two feedlots within a quarter mile. The feedlot at 1206 County 9 is currently registered (as of August 2020) for 21.6 animal units of beef cow and calf pairs. The feedlot at 1444 Looney Valley Road was actually the Lemke's home place and part of the farm they just sold. Jared

Lemke completed the last registration in August of 2020 for 52.5 animal units of beef cattle of various sizes. The new owner has rented that facility for approximately fifteen years and that registration seems to reflect his current numbers. Both feedlot facilities have buildings, open lots and pasture components and are in designated shoreland so are at a level in which they are required to register.

- A Feedlot Advisory Committee review is required by the HCZO. The Planning Commission acts as the Feedlot Advisory Committee and members reviewed the site at their convenience. As of the date of publication, five of the seven members responded, all providing responses recommending that they did not see an issue with the site.
- Access must be from Looney Valley Road for this location, not CSAH 9 because access for new structures needs to be from the lesser volume roadway when possible. The applicants plan to utilize an existing field road off Looney Valley Road, but if necessary, a new driveway can be constructed to the north of the existing.
- This proposal is on a 74.98-acre parcel that is part of 319 contiguous acres owned by the applicants spanning four parcels. The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11 is open. Since the applicants have more than 40 acres, they are able to build on any soil type including class II soils as is found here. The soils are 455B2, a Festina silt loam that is adequate to accommodate a dwelling with no basement as well as septic absorption fields. Both Sather Creek and Silver Creek are within 300 feet making this location designated shoreland, but the location is out of floodplain. There is mapped wetland along Silver Creek, but it does not extend beyond the floodplain boundary and it will not affect this proposal. There is no bluff or shoreland bluff near this location. Slopes are acceptable for both structure and driveway and adequate land base exists to accommodate a septic system. For the purposes of comparison a couple alternative locations are discussed below.
- Alternative buildable area options were identified. These locations alleviate the need for a variance and are in open quarter-quarters. In addition, both locations allow them to build outside of shoreland and floodplain. There are numerous soil types within these locations, but again a majority of the area is considered prime agricultural soils. Note again, soils do not prohibit siting of a dwelling on over 40 acres; it is noted because retaining agricultural resources is an important concept of the Comprehensive Plan. Slopes are similar to the proposed location. No option was identified in PID 06.0060.000 (easternmost) because it does not appear to be accessible as required for dwellings. A dwelling within these locations would require an extensive driveway of approximately 1,000 feet at a minimum.
- Houston Township and the ten closest property owners were notified. Multiple comments were received. The applicants supplied a statement of support signed by both feedlot owners.

Amelia Meiners read the comments from the feedlot advisory committee. (On file).

Chairman Anderson asked Jared Lemke if he had anything to add. Jared indicated he talked to the closest feedlot neighbors and they approved of the proposed project. This would be more a of weekend home for family to use; commonly called a shouse.

Wayne Runnigen verified with Jared the location of the field road and what size the proposed building would be. Jared indicated the shouse would be approximately 70' x 120'.

Chairman Anderson asked if anyone else wished to speak. There were no comments. Aaron Lacher read public comments submitted prior to the hearing. (On file).

Franklin Hahn asked if a condition could be added on the dwelling for any future owner to protect the feedlots. Aaron Lacher said there is nothing in the ordinance to

restrict the use of a dwelling. The variance is recorded and a new buyer should be aware of this. There was general discussion and the ordinance was reviewed on requirements for a feedlot expansion.

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

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 applicants grew up on one of the farms in which they are requesting a variance from and fully understand the sights and sounds of farm life. Should it be approved, the recorded variance should inform any future buyers of the implications of the agricultural district as described in HCZO 14.1 subd. 3. The Comprehensive Plan does highlight the preservation of tillable acreage and while this proposal will be removing some crop ground, the location adjacent to a township road will minimize the length of driveway and overall reduce the amount of crop ground lost.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA, minimizes loss of crop land.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runnigen	X		Agrees with SA.
Ken Visger	X		

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

Staff Analysis: A dwelling is a reasonable and common request to accompany acreage in the agricultural district. The applicants wish to retain as much ground in tillable acreage as possible and this location allows them the ability to build close to a township road, which reduces the amount of tillable acreage lost. While they do have property off Watercrest Drive, ground near that township road falls within an occupied quarter-quarter or does not meet slope requirements.

In addition, other locations adjacent to County 9 would still require a feedlot variance unless they put in an extensive driveway. A long driveway would require a greater initial investment and a great deal of maintenance during the year. The Board can determine whether the removal of the small amount of acreage justifies the request. A one-rod road, 1000 feet long driveway would take away approximately 0.4 acres of crop ground.

	<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, proposed site is good, alternate site would have erosion issues.
Wayne Runnigen	X		Agrees with SA, the building site is in the best location.
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: As can be seen in Figure 1, this farm is unique in that there are a number of small farms nearby along County 9 as well as limited access from roadways to open and buildable quarter-quarters. Area outside of feedlot setbacks would require extensive driveways. The Board may also think it unique that the applicants previously owned one of the feedlots for a number of years. Had they waited to sell until after construction of the new dwelling then one less variance would have needed to be requested.

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

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

Staff Analysis: There are multiple registered feedlots in this area and it is not possible to move the structure within the general area of the proposal to avoid a variance to one feedlot and not the other. In order to avoid any setback area and alleviate the variance process altogether, the applicants would have to move their building to an alternative location that would require a long driveway and removal of a greater amount of crop ground.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runnigen	X		
Ken Visger	X		Agrees with SA, concerns about future feedlot issues will rely on zoning and feedlot committee.

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

Staff Analysis: A dwelling on agricultural acreage is a common request in the agricultural protection district. This proposal is likely to increase property values and is consistent with other farms and rural properties in Looney Valley.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runningen	X		Agrees with SA.
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: Reducing a feedlot setback is an area variance, and a dwelling is a permitted use in the Ag Protection District. The request does not affect flood protection elevations and standards required within the Shoreland District. This project borders both Silver Creek and Sather Creeks and is outside of floodplain.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runningen	X		Agrees with SA, out of floodplain.
Ken Visger	X		

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

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

Larry Hafner made the motion to grant the variance of 478 feet to meet the 1,320-foot setback to the existing registered feedlot at 1206 County 9 and a variance of 473 feet to meet the 1,320-foot setback to the existing registered feedlot at 1444 Looney Valley Road.

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

Notice of Public Hearing No. 486 was read for **Steven Goetzinger and Amber Miller**, 21341 County 19, Spring Grove, MN 55974.

Applicants are seeking a variance of 32 feet from the east property line for an existing outbuilding.

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

- The property is located in the agricultural protection district of Black Hammer Township. The dwelling was constructed in 1892 while the building in question appeared between 1968 and 1980 based on aerial imagery. In November of 1993, this small acreage was parceled-off and sold, separating the house and an old granary from the surrounding crop ground. There is no survey on record, but that is common for rectangular parcels in flatter country such as this. Shortly after, an addition to the granary was constructed. Permit #1633 from January of 1994 cited that there is a 100-foot setback to County Road 19 and 50-foot property line setback requirement. It is hard to say how the County approved the 1994 permit considering the original structure does not meet the 50-foot setback. Because property lines cannot be observed in the field, it is presumed that the County may have mistakenly thought the property line was the boundary with crop ground, which seemed to be more easterly at that time. Aerials show that additional buildings existed during the split, which could have contributed to discrepancies, but the addition of GIS technology has allowed us to make determinations that are more accurate as well.
- Because the parcel split took place after 1967, since which time the minimum property line setback has been 50', it does not qualify as a non-conforming use. Specifically, the Houston County Zoning Ordinance (HCZO) amended in September of 1993 required a 50-foot property line setback (603.5 subd.3), the same as exists today (14.8 subd. 2). A recent zoning permit application for an addition on the dwelling started the parcel review process that revealed the noncompliance, note, however, that the proposed addition will be compliant.
- This is a 2.94-acre parcel in Black Hammer Township. There is an intermittent stream approximately 130 feet east of the parcel. Beyond that, there are three intermittent streams around 2000 feet away, one to the west, one to the east, and one southeasterly. Riceford Creek is approximately one mile west of this homestead. There are no concerns with floodplains, shoreland, wetlands, slopes or bluff. The current septic system is located north of the house with a replacement location identified along the west property line and the well is located in the southcentral area of the parcel. The soils in this location are class III, but the soils along with the feedlot and mine setbacks are not relevant for this situation.
- Black Hammer Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked the applicants if they had anything to add. Amber Miller said everything was explained well and they were unaware of the restrictions until applying for the zoning permit.

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

Franklin Hahn asked if the board would deny the variance if the applicant would have to tear down the existing outbuilding. Aaron Lacher indicated the options available are to move a building, move a property line or tear it down. Most situation are resolved through a variance.

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

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). The applicants purchased the property in 2020 and a parcel review triggered by a zoning permit application for a dwelling addition prompted this corrective action. Correction on the noncompliance on the parcel serves to encourage continued investment in the property.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA, appreciates applicants correcting issue.
Franklin Hahn	X		
Wayne Runnigen	X		Agrees with SA.
Ken Visger	X		

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

Staff Analysis: Previous owners established the property lines in 1993 when the homestead was split from the surrounding tillable acreage. The applicants do not wish to remove this outbuilding so seeking a variance is the only reasonable method to regain compliance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runnigen	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 current landowners just purchased the property in 2020, unaware of the non-compliance. It is presumed the property was split in this manner to allow the original owners to retain maximum tillable acreage and still sell off the homestead, which has transferred owners three times since then.

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

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

Staff Analysis: The structure is in decent shape and the applicants would like to utilize it in the future, leaving a variance as the only reasonable option. To the knowledge of this office, this property line has been recognized between the neighboring parties for 28 years with no issue.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runningen	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 situation has been non-compliant for 28 years with no ill effects to property values, public health, safety or welfare. Rural non-farm residential properties are commonly found in the agricultural district throughout Houston County. In addition, the applicants are looking to improve this dwelling, which in turn will improve property values.

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

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

Staff Analysis: The request is an area variance and the location is not in the immediate vicinity of floodplain.

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

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

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

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

Franklin Hahn made the motion to grant the variance of 32 feet to meet the required 50-foot property line setback for an existing outbuilding.

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

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

Submitted by Houston County Board of Adjustment Clerk on February 26, 2021.

Houston County Board of Adjustment
March 25, 2021

Approved on April 22, 2021 by Ken Visger and Larry Hafner

The Houston County Board of Adjustment met by zoom/phone conference at 6:00 p.m. on Thursday, March 25, 2021. A summary of the meeting follows.

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

Franklin Hahn made a motion to approve the minutes of February 25, 2021. Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 487 was read for **Douglas and Julie Heintz**, 9001 State 76, Caledonia, MN 55921.

The applicants are seeking multiple variances in preparation for a parcel split, including: 1) a variance of 38' from a property line for an existing garage, and; 2) variance of 38' from a property line for a proposed garage. These variance requests would be applied to the proposed parcel which will include the existing dwelling. An additional variance is sought for the parent parcel: variance of 46' from a property line for an existing machine shed.

- The request will facilitate one phase in farm transition plan, whereby the Applicants' son would purchase the house and garage with approximately 20 acres. The Applicant's son is involved in the dairy operation, and the Applicants intend to transition the remaining farm infrastructure and acreage in subsequent phases. The variances are necessary due to the relative proximity of the existing buildings. Three existing buildings, as well as one proposed building, are involved. The garage and pole shed are approximately 28 feet from one another, making the division as proposed incapable of meeting the setback standards of the Agricultural Protection district. A future attached garage is proposed on the east side of the house, which would extend from the house to the east side of the existing detached garage, necessitating the same degree of variance as is sought for the existing garage.
- Considering alternative parcel divisions, there appears to be no method of separating the existing house from the existing outbuildings that would satisfy the setback standards of the Agricultural Protection district. A minimum of 100 feet is needed between buildings to provide for a 50-foot setback from a new property line separating them. The house is approximately 40 feet and 70 feet from the garage and pole shed, respectively. Absent a variance, a compliant division could only be achieved by removing buildings; however, both structures are in good condition, being relatively recent additions to the 100-year old farmstead.
- Regarding the proposed attached garage, the location selected best accommodates the existing driveway, house entry, and the site generally. The septic tank and drainfield are located to the west of the house, precluding use of that area, and the logical site for a replacement drainfield is to the west of the house.
- The Applicant owns seven continuous parcels totaling 309 acres. The subject parcel contains the original farm dwelling and an operating dairy (feedlot registration 055-120114000, 444 animal units), Heintz Badger Valley Farm LLC. The Applicants wish to divide the parent parcel, splitting off approximately 20 acres containing the house and garage.

- Sheldon Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked Doug Heintz if he had anything to add. Doug Heintz said Aaron Lacher summarized everything well. The garage addition project may not happen right away, but they want to apply for it now, so they are covered.

Franklin Hahn indicated he visited the site and he thinks they have all their bases covered and is convinced there are no issues.

Wayne Runnigen said he also visited the site and also sees no issues with the application. The continuation of the farming operation is important.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

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

(SA = Staff Analysis)

Subdivision 1. Findings Required

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

Staff Analysis: The Comprehensive Plan states as a goal, "[the] preservation [of] commercial agriculture as a viable, permanent land use" (0100.0502 subd. 1 goal 1). The Applicants' pursuit of the requested variances serve the purpose of easing the transition of an active farm, and contribute to the attainment of this goal.

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

Ken Visger X

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

Staff Analysis: The relative proximity of buildings, and in particular, the dwelling, constitutes a practical difficulty. Additionally, the cost of entry into commercial agriculture can be considered, and may underscore the reasonableness, or necessity, of a phased approach. A 2007 USDA report concluded that “the average asset base of farms with annual sales of \$50,000 or more was over \$1.9 million”. Given the high costs of entry, the Board may find a phased transition of a farming operation to be reasonable, and the removal of buildings to satisfy official controls, when alternatives exist, to be unreasonable.

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

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

Staff Analysis: The variance is requested due to the proximity of existing buildings that were constructed in 1920, 1983, and 1993, and an envisioned placement of new buildings within the limitations presented by the existing infrastructure. The BOA should consider whether the original placement of these buildings was done to facilitate a future variance, which would require the variance to be denied. The BOA should also consider whether the desire to separate the dwelling from the agricultural buildings for the purpose of a phased farm transfer is a special circumstance, which would support the granting of the variance.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA, they are splitting an existing farmstead rather than an area where the house is easily separated from outbuildings.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		Agrees with SA, there were no variance requirements when the buildings were built years ago.
Wayne Runnigen	X		Agrees with SA.
Ken Visger	X		

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

Staff Analysis: The dwelling cannot be separated from the outbuildings in a manner that provides a 50' setback for each building on both parcels. Any division that achieves the objectives of the Applicants' would require a variance. The location of the existing and logical future, septic components limits the area available for a garage addition on the house.

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

Larry Hafner	X	Agrees with SA.
Franklin Hahn	X	
Wayne Runningen	X	
Ken Visger	X	

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

Staff Analysis: The location is surrounded by the Applicant's property. Those most likely to be affected by the proposed parcel division are the Applicants and their son, as they have a significant investment in the existing dairy. Nearby subdivisions resulting in parcels of similar acreage appear to have occurred nearby (i.e. PID 12.0165.002 split of 23 acres; PID 12.0179.001 split of 20 acres, and; PID 12.0118.000 split of 2 acres, all within ½ mile from subject parcel).

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		
Franklin Hahn	X		
Wayne Runningen	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: The request is for three area variances, and does not affect requirements related to flood protection, nor run afoul of known 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		
Wayne Runningen	X		
Ken Visger	X		

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

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

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

Larry Hafner made the motion to grant the following variances to satisfy the 50 foot property line setback in an Agricultural Protection District. The variances will apply to parent parcel, shown as Parcel A, and the subdivision, shown as Parcel B, in the attached Exhibit 1. Two variance orders are to be drafted and recorded to the respective parcels.

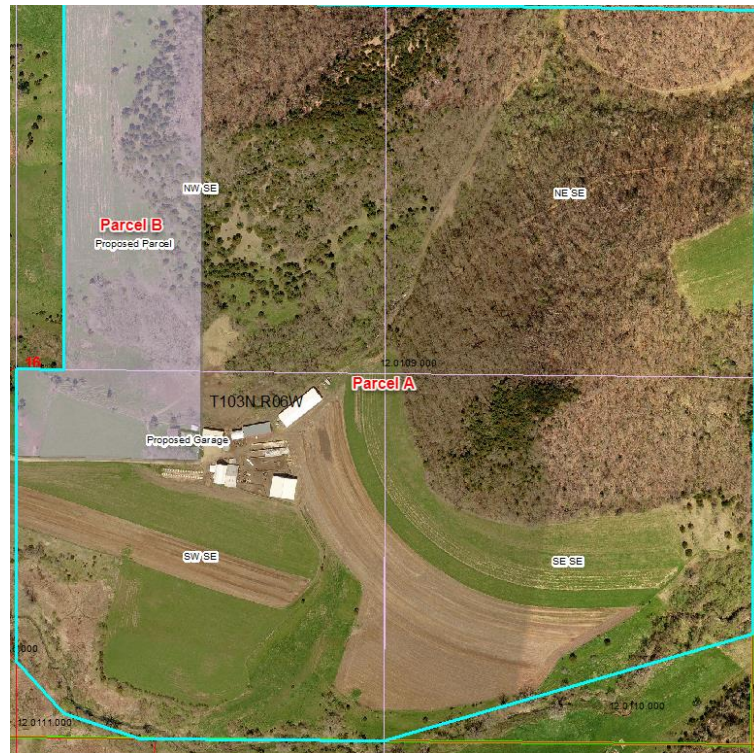
1. Variance of 36' from the east proposed property line for an existing garage on Parcel B;

2. Variance of 36' from the east proposed property line for a proposed garage on Parcel B, and;
3. Variance of 46' from the west proposed property line for an existing pole shed on Parcel A.

With the Condition:

Variance approval is contingent on the completion and submission to the County of a certified survey substantially similar to the proposed parcel as described in the application, with deviations to the connection to the State Highway being acceptable.

Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.



Notice of Public Hearing No. 488 was read for **Edward and Janice Hammell**, 20455 Bluebird Road, Caledonia, MN 55921.

The applicants are seeking two variances to reduce setbacks from public road for a shop (accessory building) proposed near the intersection of Bluebird Road and County Highway 14.

- 2 variances are requested. Variance of 36' from the township road for the placement of a proposed accessory building, and; Variance of 20' from the county highway for the placement of a proposed accessory building. Staff recommends that the Board consider the requests together and approve or deny all variances as a unit. However, the Board can consider each request individually, which would require separate findings for each decision.
- Minimum setbacks required from public roads vary by road authority (i.e. state, county, township) and are measured from the centerline of the highway. The minimum setback required on county highways is 100' from the centerline, or 20' beyond the right-of-way (ROW), whichever would result in a greater setback. The minimum setback required on township roads is 65' from the centerline, or 20' beyond the right-of-way (ROW), whichever would result in a

greater setback. The proposal is to place a building approximately 83' from County 14 and 27' from Bluebird Rd, as measured from the centerline.

- The typical ROW distance of a town road is 4 rods, or 66'. To ensure the building is not placed within the ROW, the maximum variance grant recommend by staff would be 32', slightly less than what is requested.
- The existing dwelling on the subject parcel is setback only approximately 33' from the town road centerline. The dwelling was constructed with a permit (#921). No variance reducing the setback could be located, and the reason for the reduced setback is unknown. However, because it is the result of a permitting action, it is presumed to have been properly placed, and can continue.
- Historically, accessory buildings have been allowed on property continuous with the primary building location. For instance, a landowner with 120 contiguous acres on 4 parcels would be allowed to build a nonagricultural storage shed as an accessory building on any of the contiguous parcels. Further, historically, property line setbacks are not applied to parcels under common ownership. In this instance, the northeast portion of the building would extend across the parcel line into the adjoining property, which is under the same ownership.
- Jefferson Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked Ed Hammell if he had anything to add. Ed said Aaron Lacher explained everything well. The site is where his parents lived and they will be moving there. They would like to have a shop located relatively close to the house, but the topography of the land causes issues for building placement. They also would like the shop on the same side of the road so they do not have to cross traffic. This location also does not interfere with existing farmland. He also spoke with Brian Pogodzinski, Highway Engineer, a couple times and he was in favor of the proposal.

Franklin Hahn asked whether the existing dwelling needed a variance as well. Aaron Lacher said the dwelling permit was issued by the county with the existing road already in place, so the existing dwelling permit is honored.

Wayne Runningen asked if the township was okay with the application. Aaron Lacher said there were no comments received.

Larry Hafner wondered if the township would ever want to increase the width of the road. Wayne Runningen asked if the township road was a dead-end road. Ed Hammel said it is very unlikely the township would want to widened the road as it is a dead-end road with only one other dwelling located on it.

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

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

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). The addition of an accessory shop adds value to the property, which in turn will encourage future upkeep, and when needed, rehabilitation of the home.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA, it's good not to have buildings separated by roads.
Franklin Hahn	X		
Wayne Runningen	X		Agrees with SA and township.
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 ground slopes prevalent to the east and south of the existing house represent a practical difficulty.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runningen	X		Agrees with SA.
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 manner in which public roads divide the commonly owned contiguous property, and how that division relates to the existing house location, creates a circumstance unique to this 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
Wayne Runningen	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: It is reasonable for the Applicants to locate a shop near their dwelling that can be accessed without crossing a public road that does not require an additional driveway connection, and that does not require converting large amounts of lawn to driveway in order to extend the existing driveway.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runningen	X		Agrees with SA, better not to cross road.
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 setback requested is similar to that of the existing house, which has not resulted in any known issues. Allowing the shop on the same side of the road as the house will aid public safety.

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

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

Staff Analysis: The request is an area variance. No floodplain is present on the property, nor is the request known to be afoul of 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		
Wayne Runningen	X		
Ken Visger	X		

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

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

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

Larry Hafner made the motion to grant the variance of 36' to allow placement of an accessory building 33' from the centerline of Bluebird Road, and a variance of 20' to allow placement of an accessory building 80' from CSAH 14.

Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Submitted by Houston County Board of Adjustment Clerk on March 26, 2021.

Houston County Board of Adjustment
April 22, 2021

Approved on May 27, 2021 by Larry Hafner and Wayne Runningen

The Houston County Board of Adjustment met by zoom/phone conference at 6:00 p.m. on Thursday, April 22, 2021. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Anderson. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn, Wayne Runningen and Ken Visger. Amelia Meiners, Environmental Specialist and Aaron Lacher, Environmental Service Director were present for zoning.

Ken Visger made a motion to approve the minutes of March 25, 2021. Larry Hafner seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 489 was read for **Scott Sanness**, 13467 County 27, Spring Grove, MN 55974.

The petitioner is requesting a variance to the west and south property lines for an existing building.

- This property is located in the agricultural protection district of Wilmington Township. This parcel contains the full farmstead, which includes a dwelling, multiple animal confinement buildings, a compost building, machinery storage and manure storage. The applicants currently operate a confined swine operation under jurisdiction of the MPCA. The dwelling is the oldest existing building dating back to 1890 while almost all of the other structures have been constructed since 1985. The only exception is believed to be the non-compliant building, which appears to be present in the 1968 aerial, although an addition was constructed on the south end in the early 1990's. This is consistent with Assessor's records.
- When the applicant purchased this site in 1990, it included the adjacent tillable acreage of PID 15.0293.000, 15.0292.003, 15.0390.000, 15.0396.000 and 15.0292.002. In 2004, a survey was completed and the surrounding tillable was sold, reducing this parcel to 21.69 acres. As the west line was established prior to zoning, albeit was under common ownership, it is reasonable to consider the property line running north-south from County 27 and splitting the SE SW ¼ and the SW SE ¼ and the resulting building setback to be a legal nonconformity. However, because they are before the Board due to the south line setback, there is no harm in clarifying that the west setback is proper by including it in the variance request, which may actually clarify the matter for future owners. The adjacent parcels were always been under common ownership until the 2004 split. However, the south property line was drawn in 2004 and seems to match how the land was managed in respect to the fact that it was traditionally the field edge and lines up with an existing fence line. The non-compliant building footprint was the same in 2004 as it is today and the 50-foot property line setback was required in the 2002 Ordinance as well (0110.1308 Subd. 1). All other structures meet the required setbacks.
- The applicants recently applied for a zoning permit, triggering a parcel review. Agricultural buildings did not require zoning permits until 2004, but they did need to meet zoning standards. The petitioners have received three permits since the illegal property split and all are compliant. The current permit application meets all necessary zoning standards.

- This is a 21.69-acre parcel in Wilmington Township off County 27. There is an intermittent stream approximately 250 feet due east of the building site and one 1,150 feet to the west. There are no concerns with floodplains, shoreland, wetlands, slopes or bluff. The well and septic system location will not affect this proposal.
- Wilmington Township and the ten closest property owners were notified. One comment was received.

Chairman Anderson asked Scott Sanness if he had anything to add. Scott said Amelia covered everything well.

There was general discussion on the west and south property lines and what occurred in the past and the need for both variances. Aaron Lacher stated the west line was established prior to zoning and runs on the actual quarter quarter line, so it is grandfathered in, but since Mr. Sanness is before the board due to the south line setback, there is no harm in clarifying that the west setback is proper by including it in the variance request. This may actually clarify the matter for future owners.

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

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

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 Houston County Zoning Ordinance identifies the purpose of the agricultural protection district is to retain, conserve and enhance agricultural land for agricultural uses. Correcting this non-compliance will allow the applicants to continue to develop their commercial agricultural operation.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA. Keep as much land in Ag as possible.
Larry Hafner	X		Agrees with SA and Ken A's comment.
Franklin Hahn	X		
Wayne Runningen	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 building that cannot be relocated or removed and the use of this property is consistent with other agricultural operations found around 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		
Wayne Runningen	X		Agrees with SA.
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 property owners unknowingly created this non-compliance when they subdivided and sold a portion of their property in 2004, and it is reasonable for them to have assumed that the County would not facilitate a noncompliant subdivision. It is unique in the fact that the non-compliant structure pre-dates zoning along with the western property line and may be viewed as continuation of a non-conforming use. However, the south property line should have been drawn in such a way as to achieve compliance. Staff presume this line was chosen because it followed the natural boundary provided by the tillable acreage and eventually aligned with an existing fence. The fact that the County facilitated the placement of the southern line can be viewed as a special condition.

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

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

Staff Analysis: This is an existing building that has been maintained well and so removal or relocation are not options at this point. Purchasing additional land would allow them to achieve compliance, but these property lines have existed for 17 years so it could be viewed that a variance is the most practical option.

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

Franklin Hahn	X
Wayne Runningen	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: Farmsteads are commonly split from tillable acreage and this variance will not change any dynamic between this site and the neighboring property. This proposal has no effect on the public health, safety or welfare of adjacent 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		
Wayne Runningen	X		Agrees with SA.
Ken Visger	X		

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

Staff Analysis: The request is an area variance and the location is not in the immediate vicinity of floodplain.

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

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

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

Larry Hafner made a motion to grant a variance of 40 feet to the west property line and 36 feet to the south property line to meet the required 50-foot property line setbacks for an existing building.

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

Notice of Public Hearing No. 490 was read for the following property owners:

Paul & Pamela Albrecht	Parcels 08.0665.000 & 08.0776.000
Tiffany & Eric Beck	Parcel 08.0872.000
Jens & Katherine Brabbit	Parcel 08.0783.000
Russell & Sharie Brunk	Parcels 08.0878.000 & 08.0879.000
Kern Minehan, for Eden Management LLP	Parcel 08.0670.000
Kathleen Hill	Parcel 08.0784.000
Robert & Patricia Karpinsky	Parcel 08.0684.000
Jerry & Kerry Kulinski	Parcel 08.0689.000
Neil & Amy Mighall	Parcel 08.0669.000
Jane Mc Nulty	Parcel 08.0867.000
S N & Shamala Rajagopal	Parcel 08.0688.000
Robert and Linda Schwandt Trust	Parcel 08.0875.000
Thomas Tornstrom	Parcel 08.0677.000
Daniel and Jennifer Wilson	Parcel 08.0791.000 & 08.0793.000
Jonathan & Michelle Zlabeck	Parcel 08.0668.000

- All owners of undeveloped lots within the Crescent Hills and Horse Thief Ridge subdivisions were contacted and offered an opportunity to participate in this proceeding.
- General relief from Ordinance standards is sought by the participating parties, including:
- 1) Variance to allow new dwellings on lots that are not buildable lots as defined by Ordinance (15.9 subd. 1); 2) Variance to reduce the setback required from a public road (15.6 subd. 3); 3) Variance to allow a structure within a bluff impact zone (29.17 subd. 1); 4) Variance to reduce setback from the top of a bluff (29.17 subd. 2); 5) Variance to minimum sewage treatment and disposal area standards (29.22 subd. 10); and, 6) Variance to minimum side yard setbacks (15.7 subd. 1).
- The requests are submitted together, for consideration by the Board as one, because of the similarity among lots and the uniqueness of the included area—while not identical, the lots included share common challenges in complying with Ordinance standards that are unique to these subdivisions for reasons discussed below. A multi-lot variance approached was considered by Zoning Staff, and discussed with the County Attorney, none of whom are aware of anything that would prevent such an approach, provided the findings can be satisfied.
- Three subdivisions sit atop a bluff west of the City of La Crescent. These subdivisions were platted at different times. Crescent Hills First Addition was approved in 1979, Crescent Hills Second Addition in 1982, and Horse Thief Ridge in 2004. Development standards are set forth by Ordinances, which are amended, and thus change, from time-to-time. When zoning staff consider an application for a zoning permit, the current standards in effect are applied (Houston County Zoning Ordinance, effective 11/28/2018).
- Applicable Ordinance citations include: 3.5 establishes buildable lot requirements, including 9/10th acre of buildable area in residential district. 15.6 subd. requires a 65' highway setback. 15.7 requires 15' side yard setback. 15.9 subd. 1 (1) requires 43,560 s.f. lot. 15.11 exempts existing lots from area requirements, but does not exempt from setback and septic requirements. 3.5 defines bluffs both in and out of shoreland. 29.17 subd. 2 requires setback from top of bluff. 29.22 subd. 10 requires primary and secondary septic drainfield location.
- Crescent Hills First & Second Additions were approved under the La Crescent Township Zoning Ordinance, effective 11/11/1977 (Note that this is the recording date, not the adoption or publication date. In this case, this distinction has no impact on the matter). Many modern standards were not contained in this Ordinance, including bluffland protections.
- The Horse Thief Ridge Plat was approved by the La Crescent Town Board on 8/20/2004. The effective Ordinance at the time was adopted 7/29/2002 (Note that the Township amended their

Ordinance shortly after the approval of the plat, on 9/7/2004). The 2002 Ordinance did contain bluff land protections, requiring a 40-foot setback from the top of a bluff (Section 2817), and prohibiting intensive vegetation clearing.

- The included lots were initially conceived as building sites (as opposed to outlots) in the approved plats. Assessor's records indicate that most of these lots have been valued as buildable lots historically. At least one lot has been granted a variance reducing road setbacks previously.
- Throughout all three subdivisions, steep slopes severely limit the area available for development. Estimates are that only 34% of the total area of the subdivisions, including the public road right-of-way, has slopes of 20% or less. According to the National Cooperative Soil Survey, of the area within Crescent Hills 1st & 2nd Additions, and the Horse Thief Ridge subdivisions, estimates for appropriate sites for dwellings with basements range from "very limited" (89.7% of the area) to "somewhat limited" (10.3% of the area). Suitable areas for wastewater treatment are also limited, with 95% being "very limited" or "extremely limited" when rated for mound systems.
- There are eight undeveloped lots in the Crescent Hills First Addition. Broadly speaking, these lots consist primarily of slopes of 24% or greater. The undeveloped lots are not substantially different from those already developed.
- There are five undeveloped lots in the Crescent Hills Second Addition. Broadly speaking, these lots consist primarily of slopes of 24% or greater. The undeveloped lots are not substantially different from those that already developed.
- There are ten undeveloped lots in Horse Thief Ridge. Broadly speaking, these lots consist primarily of slopes of 24% or greater. The undeveloped lots are not substantially different from those that already developed.
- La Crescent Township and property owners within one-quarter mile were notified. Staff fielded multiple questions regarding the request, several of which expressed concerns about tree removal. One comment was received in opposition to the variance.

Commissioner Teresa Walter asked Aaron Lacher to clarify why this hearing was treated as a group variance. Aaron said the hearing fee was waived primarily due to logistics – apportioning an amount to every participant, and ensuring all fees were collected before scheduling was thought to be overly complicated. Because the County was proactively moving toward a solution, the costs were absorbed. Comparatively, it would be more expensive to tax payers for the Zoning office to conduct 18 separate hearings and charge each applicant a fee.

Franklin Hahn was of the understanding that La Crescent Township would have had to follow the Houston County Zoning Ordinance in any zoning activities when the township did their own zoning. He stated he would like to view the sites and made a motion to table the hearing in order to do that. Wayne Runnigen seconded. Ken Visger stated he did not agree and expressed the need move forward as the zoning office has provided variance conditions that have to be met by anyone wishing to build. Ken Anderson agreed. Aaron Lacher indicated no agencies expressed concerns with the proposed variances. Roll call vote was taken (Yes to table). Franklin Hahn – Yes, Wayne Runnigen – Yes, Ken Visger – No, Ken Anderson – No. The hearing proceeded.

Aaron Lacher reviewed the site maps for the 3 subdivisions and the recommended conditions that are deemed critically necessary for any future homes.

Franklin Hahn questioned if all the sites had a lot of trees. Aaron Lacher indicated most lots had many trees and the aerial imagery in the staff report was reviewed. Aaron also indicated there are regulations for residential subdivisions and rules against clear cutting trees.

Chairman Anderson asked if any applicants wanted to speak.

Russ Brunk said he owns 2 lots in the Horse Thief Ridge subdivision. He has owned the lots for approximately 20 years. The lots were sold as buildable lots. He agrees that the variances should be limited to the original buildable lots, not out lots. He said most lots are too narrow and barely meet area requirements for a buildable area, that's why he bought 2 lots. Many of the existing trees are hard to keep because there needs to be room for a driveway and sewer; both can be difficult to install. He requests that applicants be allowed to replace trees after development. He has enough area to build, but has not checked for septic locations.

John Zlabek stated that the lots were acquired as "buildable" lots and have been valued as buildable lots.

Tom Fuchsel said he lives below on Old Hickory Drive. He stated most lots are single lots and they will have to clear cut the trees in order to make room to build. He is worried about run off, sewage and ground water issues. The rules should not be loosened up as they were made to protect the health, safety and welfare of everyone. He believes ninety percent of the lots are considered non buildable.

Bruce Norgard lives below on Old Hickory Drive. The trees were clear cut above him and he gets run off and debris washing down quite often. The bluff encroachment will affect all the lots down below. He hopes that if approved zoning laws will be strictly enforced.

Donna Schulze lives below on Old Hickory Drive. She built in 1986 and has never had run off problems until 3 years ago. She is very concerned about the pre-cutting of trees and erosion and what it's doing to her property.

Mary Ellen Fuchsel lives on Old Hickory Drive and was wondering why she received a letter about this hearing if it doesn't affect her.

Russ Brunk said he agrees with all the statements and was happy that the County was going to address these issues. As long as the conditions are addressed what else are they to do with their lots. These lots were sold as buildable.

Dan Wilson said he owns three lots and does not want to see different requirements for future homeowners than the existing homeowners.

Kasey Nicewander lives below the bluff and they often experience runoff and debris coming down. They are concerned that the volume of runoff will increase with new homes being built.

Kern Minehan stated there should be precedence for setback relief in the area.

Ken Visger stated they owe it to the landowners the right to build on the lots they purchased. He is confident that the conditions the zoning office has proposed will be enforced for anyone wishing to build.

Wayne Runningen stated there is a lot of concern from residents and would like to visit the sites.

Ken Visger believes they are stalling the process by not visiting the site ahead of time. It is not an efficient use of time for all involved.

Ken Anderson said there are concerns on both sides, but the conditions would help alleviate them.

Franklin Hahn made a motion to table the hearing. Wayne Runningen seconded. Roll call vote was taken. Franklin Hahn – Yes, Wayne Runningen – Yes, Ken Visger – No, Ken Anderson – Yes. Motion passed to table.

Franklin Hahn made a motion to adjourn. Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on April 23, 2021.

Houston County Board of Adjustment
May 27, 2021

Approved on July 22, 2021 by Wayne Runnigen and Franklin Hahn

The Houston County Board of Adjustment met by zoom/phone conference at 7:00 p.m. on Thursday, May 27, 2021. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Anderson. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn, Wayne Runnigen and Ken Visger. Amelia Meiners of Environmental Services was present for zoning.

Larry Hafner made a motion to approve the minutes of April 22, 2021 with corrections. Wayne Runnigen seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 491 was read for **Tony and Lynette Privet**, 14145 South Prairie Drive, Caledonia, MN 55921.

The petitioners are seeking a variance of 1,122 feet to add an addition on an existing dwelling within 1,320 feet of a registered feedlot and a variance of 15 feet to meet the required 50-foot property line setback from the south property lines for an existing dwelling.

- The property is located in the agricultural protection district of Wilmington Township. The dwelling was constructed in 1923 and additionally, the site includes confinement barns and machine sheds. The parent parcel, which includes the farm operation from which this was split, has been in the Privet family since at least 1948 and the applicant's help run the farm. In 2019, this dwelling was surveyed and sold to the applicants. Proximity between the dwelling and outbuildings make it difficult to accommodate the 50-foot property line setback. The split could have been completed in such a way as to achieve compliance on one parcel, leaving only one non-compliant parcel, but the well and gas barrel fall between the dwelling and farm buildings and they wished to keep both with the farm operation. A zoning permit application to construct a dwelling addition on the north side of the house initiated the parcel review that found the non-compliance.
- In addition, because the dwelling addition will be encroaching on the neighboring feedlot, the applicants are also asking for a reduction from the quarter-mile feedlot setback. Both the dwelling and feedlots existed before zoning and feedlot rules were in place, but because this is an expansion of the dwelling towards the feedlot, a variance is necessary. The neighboring feedlot was most recently registered for 150 dairy steers. The applicants also operate a feedlot, but are exempt from setback requirements for that site. The Houston County Zoning Ordinance (HCZO) requires a Feedlot Advisory Committee review. 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 the seven members responded, all providing responses recommending that they did not see an issue with the variance.
- This is a 1.6-acre parcel in the agricultural protection district of Wilmington Township. There are intermittent streams approximately 900 feet to the north and 1,350 feet to the east. The site is outside of shoreland, floodplain and bluff impact zones. Slopes are under 10%. The current septic system is located in front of the house and they will be replacing it as part of the project.

- Wilmington Township and the ten closest property owners were notified. There was one inquiry, but no comments were received.

Chairman Anderson asked the Privets if they had anything to add. Tony Privet indicated the addition to the front of the home will be the only improvement they plan to do to their home.

Ken Visger asked if this variance request covers only this improvement or if it includes any future improvements. Amelia said if a future improvement encroaches even closer toward the feedlot, it would require another variance.

Franklin Hahn thought anything built later would probably be too close to the township road. Amelia indicated that eventually it probably would, but this request currently meets setback requirements.

Amelia stated that she received an e-mail from Tracy Schnell/MNDOT. The project is acceptable to MNDOT.

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

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

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		
Wayne Runningen	X		Agrees with SA.
Ken Visger	X		

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

Staff Analysis: The proximity of buildings did not allow the dwelling to be split from the farmstead in such a way as to keep two compliant parcels. The well is only 35 feet from the dwelling so in order to maintain that on the farm parcel, two non-compliant parcels were created. In respect to the feedlot variance, this is almost a 100-year-old dwelling with two bordering feedlots presumed to be of similar age. The applicants also operate a feedlot and understand the nuisances that result.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runningen	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: Splitting up farmsteads becomes difficult because of the proximity of buildings and farm components. In this situation, it was their wish that the well and fuel barrel remained on the farm parcel and the well is 35 feet from the dwelling. In respect to the feedlots, both existed since before zoning and feedlot rules were in place.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees with SA.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runningen	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: Since the buildings or well cannot be moved a variance is the most practical method to alleviate the non-compliance.

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

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

Staff Analysis: The variance will not create a situation out of character for this particular site or zoning district. As they complete the addition, the improvement will help to increase property values and have no threat to public health, safety or welfare. As part of this project they are planning to replace what's most likely an outdated septic system that could be impacting public health.

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

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

Staff Analysis: The request is an area variance and the location is not in the immediate vicinity of floodplain nor does it permit standards lower than those required by State Law.

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

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

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

Ken Visger made a motion to grant a variance of 1,122 feet to add an addition on an existing dwelling within 1,320 feet of a registered feedlot and a variance of 15 feet to meet the required 50-foot property line setback from the south property line for an existing dwelling.

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

Chairman Anderson indicated the La Crescent subdivision hearing that was tabled from April has now been withdrawn by Houston County. Each applicant will apply individually through the Zoning office.

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

Submitted by Houston County Board of Adjustment Clerk on May 28, 2021.

Houston County Board of Adjustment
July 22, 2021

Approved on August 26, 2021 by Ken Visger and Franklin Hahn

The Houston County Board of Adjustment met at 5:40 p.m. on Thursday, July 22, 2021. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Anderson. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn, Wayne Runnigen and Ken Visger. Amelia Meiners was present for Environmental Services.

Wayne Runnigen made a motion to approve the minutes of May 27, 2021. Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 492 was read for **Steven Kennedy**, 6797 Arkansas Avenue, Inver Grove Heights, MN 55077.

The petitioner is requesting a 45-foot variance to the south property line for an existing woodshed and a 15-foot variance for an existing shed to Skadsen Drive.

- This parcel is part of 294.46 contiguous acres owned by Kennedy Irish Ridge Farms LLP in Houston County. Steven Kennedy, the applicant, is the registered agent for this partnership. This parcel consists of timber ground, tillable acreage, and a small building site near the end of a dead end road. There are three existing buildings – a small pole shed, a larger pole shed and woodshed occupying an acre-building site. The applicant submitted a building permit for a dwelling addition on to the larger pole shed in May, triggering a parcel review. This review yielded the discovery of two non-compliant buildings. The dwelling proposal itself meets all necessary requirements and can be completed upon achieving parcel compliance.
- Remember that while agricultural buildings did not require a building permit until 2004, property line and road setbacks have been consistent from the initial adoption of the ordinance in 1967. Assessor's records indicate the small buildings origins in 1989 and the larger shed in 2001. It is unclear when the woodshed was constructed as leaf cover often interferes in aials. The other two dates are fairly consistent with aerial imagery. No permits have been issued to this site and that is often times what notifies the county of non-compliance of this sort. While the applicant maintains the road, Skadsen Drive is a township road based upon the 1991 recorded township road map.
- This is an 82.96-acre parcel in Black Hammer Township, right on the Fillmore County line. There is an intermittent stream approximately 455 feet to the northeast and 1,000 feet to the south. Soils are irrelevant for this request and there are no floodplain, shoreland, wetland, slope or bluff concerns. Well and septic location have no impact on this request.
- Black Hammer Township and the ten closest property owners were notified. No comments were received.

Franklin Hahn stated there was a locked gate blocking the road that kept him from viewing the property prior to the meeting. Franklin stated that he called the supervisors of Black Hammer Township and was told that Skadsen Road is a public road. Franklin wanted to make it clear that Skadsen Road is not an abandoned road and that it is still a legal township road.

Amelia stated that she spoke with the surveyor's office and was told that it takes 40 years for a road to become abandoned and right now the road is at 30 years since the last township roads were looked at. Amelia added that the surveyor stated that if he were to go out there and look at it he would consider it a legal township road and that is why a variance is needed.

Chairman Anderson asked Steven Kennedy if he had anything to add.

Steven explained that the building site has three structures, a larger pole shed, a smaller pole shed and a three-sided woodshed. Steven explained that when he applied for a permit to add an addition on the largest pole shed and, in the process, it was discovered that the other two buildings were not in compliance. Steven explained that one of the buildings was built too close to the township road and one was built too close to Dan Vesterse's property. Steven explained that in order to get a building permit for the addition to the pole shed a variance was needed for the other two buildings. Steven stated that 2/3 of this road is in Preble Township and that the gate was placed there by Preble Township. Steven stated that his property surrounds the entire road except for Vesterse's at the end and that was apparently the justification for allowing the gate. Steven stated that in exchange for the gate the property owners took over maintenance of the road and they have been maintaining it for the last 30 years. Steven stated that when he talked to Black Hammer Township Board member Bruce Johnson, it was Bruce's understanding the Skadsen road was abandoned. Steven shared that he felt that this was a big misunderstanding and technically Skadsen Road is not abandoned even though the landowners have been maintaining it for 30 years.

Amelia Meiners read an email from Dan Vesterse supporting the variance and Steven's opinion that Skadsen road is an abandoned road.

Steven stated that his property is split between Houston and Fillmore counties, that the gate in question was put up before his time and is near the Preble Township line. Chairman Anderson asked Steven if his property in Fillmore County was on both sides of the township road. Steven confirmed that it is and stated that the county line comes within about 100 yards of his property.

Wayne Runningen asked Steven if he had a permit on his building that was built in 2001. Steven replied that he did not have a building permit for that building. Amelia explained that a permit would not have been required for that building in 2001. Chairman Anderson explained that agricultural buildings did not require building permits back then. Amelia stated that it wasn't required prior to 2004.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

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

alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subdivision 1. Findings Required

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

Staff Analysis: The applicant is looking to add a dwelling addition onto the larger pole shed and that proposal meets the density requirement. This is an existing building site they would like to continue to develop rather than remove additional agricultural ground from production.

Board agreed to the finding by a unanimous vote.

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: Both existing buildings have been present for a number of years with no issue. Due to the size and good building condition, it is not practical to move or remove the small pole shed. While the woodshed is smaller in size it was not constructed to be portable and moving the structure may compromise its integrity.

Board agreed to the finding by a unanimous vote.

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

Staff Analysis: Ag buildings did not require building permits until 2004, a permitting process could have prevented incorrect placement of buildings. Previous landowners placed these structures and it is presumed this location was chosen for development because of its proximity to a road and to reduce the amount of tillable acreage removed from production.

Board agreed to the finding by a unanimous vote.

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: These are existing buildings so a variance is the only reasonable method to achieve compliance.

Board agreed to the finding by a unanimous vote.

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 variance request will not alter the physical site in any way that has been in place for over twenty years. The County is not aware that the request has any component that will impair property values or affect public health, safety or welfare.

Board agreed to the finding by a unanimous vote.

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 an area variance. There is no floodplain in the proximity and the proposal does not authorize standards lower than State Law.

Board agreed to the finding by a unanimous vote.

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

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

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

Ken Visger made a motion to grant a 45-foot variance to the south property line for an existing woodshed and a 15-foot variance for an existing shed to Skadsen Drive.

Larry Hafner seconded. Roll call vote was taken. Franklin Hahn opposed. Motion carried.

Notice of Public Hearing No. 493 was read for **Philip and Sara Brand**, 23536 Bridge Creek Drive, Rushford, MN 55971.

The petitioners are requesting a variance of 8' to the side property line for an existing building and 13' to the south property line for a proposed building.

The Board may consider the requests together and approve or deny all variances as a unit. If considered individually, separate findings are required for each decision.

- This property is located in the agricultural protection district of Yucatan Township. The parcel contains a dwelling and multiple outbuildings. While this parcel was created in 1997, this farmstead dates back long before that. The applicant recently submitted a zoning permit application and during the parcel review process it was discovered that a 50' by 88' pole shed had been constructed between 2017 and 2020 without a building permit. That same building is also located too close to the adjacent property line. An application has since been submitted, but approval is contingent upon the granting of a variance.
- The site of the proposed building was a former building site. It is unclear how long that building has been gone in the proposed location, but in aerials it disappears between 2005 and 2010. The survey shows a 33' easement along the south property line, which is the south line of the SE-SW quarter-quarter. It should be noted that the line is incorrectly represented on Beacon and the proposed building site will be outside of that easement area.

- The northeast area of the parcel has some area for a building site, but the applicant states the slopes are steeper and there is a lot of rock to contend with. Slopes are 8-10%. This location does not allow easy access during winter and spring when ground conditions are saturated so the proposed location adjacent to existing driveway would allow for a more functional site.
- This is 5.13-acre parcel off Bridge Creek Drive in Yucatan Township. There is an intermittent stream approximately 1,100 feet to the north and one 2,200 feet west of the site. There are no concerns with floodplains, shoreland, wetlands, slopes or bluff. The well and septic system location will not affect this proposal.
- Yucatan Township and the ten closest property owners were notified. No comments were received.

Amelia stated that nothing had changed in the board packets but, that she did make a little bit of a modification to the variance.

Chairman Anderson asked the Brands if they had anything to add.

Philip Brand stated that he had assumed that the contractor that built his shed in 2018 had applied for a permit but when he applied for the recent permit it was found that his existing pole shed was noncompliant. Brand explained the reasons why he chose the proposed placement of the building.

Franklin Hahn asked if there were any repercussions to the Brands due to not applying for a permit in 2018. Amelia stated that Philip had to pay an after the fact permit fee.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

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

Subdivision 1. Findings Required

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

Staff Analysis: These proposals include development within an existing farmstead, which minimizes impacts to the surrounding natural environment.

Board agreed to the finding by a unanimous vote.

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 of both buildings is consistent with this zoning district.

Board agreed to the finding by a unanimous vote.

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 unpermitted existing building was the result of lack of communication between the applicant and a contractor. If the building had been permitted, any setback issues would have been discussed at that time. The applicant is hoping to utilize an existing concrete pad adjacent to existing driveway to locate the new building. It could be considered unique that had replacement of the building taken place in-kind and immediately following demolition, it may have been administratively approved as a continuation of a legal non-conforming structure.

Board agreed to the finding by a unanimous vote.

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 unpermitted building is existing and a variance is the only reasonable method to alleviate the non-compliance. The proposed building is adjacent to a driveway connection and will partially utilize a former building site.

Board agreed to the finding by a unanimous vote.

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: Bridge Creek Drive consists agricultural land and farmsteads. While this site does not include a large amount of tillable acreage, it is consistent with the character of other properties in this area. One of the sheds is existing and does not appear to have affected nearby property values, public health, safety or welfare. The proposed building will meet the township road setbacks and should not impair visibility on the road.

Board agreed to the finding by a unanimous vote.

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 property line setback request is a use variance and does not permit a lesser degree of flood protection or standards contravening State Law.

Board agreed to the finding by a unanimous vote.

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

Ken Visger made a motion to accept the findings. Wayne Runnigen seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Amelia stated that she had changed the recommended distance to the south property line to 15 feet.

Larry Hafner made a motion to grant a variance of 8' to the side property line for an existing building and 15' to the south property line for a proposed building.

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

Notice of Public Hearing No. 494 was read for **James and Judy Voshart, 1246 State 16, La Crescent, MN 55947.**

The applicants are requesting a full reduction of the toe of bluff setback and a variance to locate an accessory building in front of their dwelling in a residential district of La Crescent Township.

- La Crescent Township was the previous zoning authority for this site so records are limited. The applicants built their house in 1996 and at that time, La Crescent Township required them to plat a subdivision. All the parcels owned by the applicants plus the dwelling at 1214 State 16 comprised the parent parcel. Since there was already a dwelling in the NW NE quarter-quarter, rezoning to residential allowed them to build a new house at 1246 State 16. This is why there are multiple parcels and a cul-de-sac mapped in this area (PIDs 08.0662.000, 08.0661.000, 08.0660.000 and 08.0664.000). There is no plan to develop the vacant lots at this time; it would be difficult, if not impossible, to place dwellings on Lots 2 & 3 (see plat).
- The applicant states that service vehicles visiting their property heavily use the flat area east of where they wish to locate the structure to turn around. Therefore, tucking the building as close to the hillside as possible allows more usable space for that purpose. The small knoll shown in Fig. 3 will be relocated. The residential district does require that an accessory building cannot be placed prior to a primary, but these are small lots that would not allow for primary dwellings under current standards. In other districts, we view adjacent parcels under common ownership as one property.
- The bluff and slopes are the main concern at this site. The toe of the bluff is at elevation 698 feet. Staff estimate that the side of the building will be approximately 4 feet from the toe. There is a limited building envelope here, but slopes closer to the toe are more ideal for building than those further east towards to the state highway.
- There are no wetland or floodplain concerns at this site and this is outside of shoreland. There is a perennial stream 420 feet northeast of this proposal and the Mississippi River Wildlife Refuge is east of Highway 16.
- La Crescent Township and the ten closest property owners were notified. No comments have been received at this time, but staff anticipate a response from MnDOT before the hearing.

Chairman Anderson asked the Vosharts if they had anything to add.

Jim Voshart stated that he has a 30 ft travel trailer that is extremely hard to back off the highway and that is the reason for why he would like to place the building.

Wayne Runningen commented that their property is immaculate.

Franklin Hahn stated that there are some trees there that he's not going to disturb and that those will help with erosion problems. Jim stated that the only tree he plans to remove is a box elder.

Jim briefly explained the drainage system.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

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

Subdivision 1. Findings Required

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

Staff Analysis: The Comprehensive Land Use Plan encourages residential site design in such a way as to protect natural resources. Utilizing this location is the best option to do so.

Board agreed to the finding by a unanimous vote.

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: Much of this property is hillside. If the applicant had to move to lower ground it may require a variance from the state highway setback and could potentially impact steeper slopes than this location.

Board agreed to the finding by a unanimous vote.

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

Staff Analysis: This property has limited area to accommodate structures due to slope.

Board agreed to the finding by a unanimous vote.

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

Staff Analysis: Without this variance, the topography would not allow the landowners the ability to locate a structure.

Board agreed to the finding by a unanimous vote.

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: Nearby properties are in the agriculture district and then the building location in front of the dwelling would not be a concern. Adjacent properties have similar situations so as a result it will not alter the character of the location at all. This proposal will allow service trucks to turnaround rather than back down onto the state highway, which is a much safer action.

Board agreed to the finding by a unanimous vote.

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 request is an area variance and is a permitted use in the residential district. The proposed use is not in the proximity of floodplain.

Board agreed to the finding by a unanimous vote.

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

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

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

Wayne Runnigen made a motion to grant a variance of 25' to reduce toe of bluff setback and a variance to allow an accessory building nearer the front lot line than the principal building.

Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 495 was read for **Eriah and Katharine Hayes** 1165 Tschumper Road, La Crescent, MN 55947.

The applicants are seeking a variance of 1,108 feet for an existing dwelling to meet the required 1,320 foot setback from a feedlot in La Crescent Township.

- This is a 120-acre property in the agriculture protection district of La Crescent Township. There is currently an old farmstead located in the SE NW quarter-quarter that the applicants occupy. They planned to build a second dwelling on the property for Eriah's parents and both the SE NW quarter and SW NE quarter quarter are open. The applicants worked with the former zoning administrator prior to making the application for the dwelling. While reviewing option for building multiple criteria are considered, including bluff setbacks, floodplain, wetlands, shoreland, structure and driveway slope, soils, density, property line setbacks, feedlot and mine setbacks, access, potential septic locations and if the site meets buildable lot standards.
- When evaluating the feedlot situation, due to a mapping error, staff were not aware that the building at 1356 Tschumper Ridge was a registered feedlot. Based on our GIS layer at that time, the closest feedlot appears to be well over a quarter of a mile away. If neighboring sites appear to be occupied by animals more investigation is done, but that site did not fit the criteria. Aerial imagery show the building was used for equipment. There is not fencing or any indication animals were or had recently been on-site. Permit #4958 was issued on 9/15/2020 for construction of the dwelling. Construction was not started until road bans were removed in the spring of 2021 and in mid-June, presumably a few weeks after construction commenced, the feedlot location was brought to the attention of the Zoning office.
- Feedlot registration updates have been taking place over the last year and a half and the registrations were returned for this site approximately a week after the building permit was issued. At that time, staff realized and corrected the location error within the state-mapping database, but different staff completed each task and the connection between the error and permit issuance was not made at that time. The MPCA requires registration based upon the number of animal units and Houston County has committed to completing that work. While the state has requirements for the program in Minnesota Statute 7020, the County can have more restrictive rules, one of which is a feedlot setback from a dwelling. The purpose is to educate applicants requesting to build within the setback area that livestock operations are in place and with that, there may be nuisances associated with that. Each county adopts their own setback requirements and the MPCA is often not aware of those. It is also not the intent of the state program for producers to maintain their feedlot registrations for the sake of protecting a zoning right. If the feedlot owner wishes to expand his site, he will be required to complete a variance as well. Note that due to the proximity of the house at 1165 Tschumper Road, which was built in 1960, any future expansion would have required a variance request on the part of the feedlot owner as well.
- After investigating the situation more, it does that appear that site has dramatically changed from the last time in which animals appear to be present.
- The applicant owns 120 acres on Tschumper Ridge in La Crescent Township. The building site met all the necessary requirements, with the exception of the unknown aforementioned feedlot issue. Alternative locations outside of the feedlot setback in PID 08.0221.000 were available had staff been aware of the situation. However, this would have required an extensive driveway so it is possible that some feedlot setback request would still have been necessary. Note too that the applicants, although they will not be the residents of that dwelling, live within the feedlot setback area as well.
- While this dwelling is located only a few hundred feet from the registered feedlot, the prevailing winds generally come from the northwest and the south.
- La Crescent Township and the ten closest property owners were notified. One comment was received.

Ken Visger recused himself on this petition.

Chairman Anderson asked the Hayes if they had anything to add.

Eriah Hayes stated that they had worked with the past Zoning administrator Aaron Lacher to find the most suitable spot to place their new home. Eriah stated that they did everything correct and by the book to the best of their knowledge.

Amelia explained that when the application was reviewed there was an error in the GIS mapping in that the nearest of Ken Tschumper's feedlots was not mapped. Amelia stated that generally when they look at a site and it looks like it could potentially be a feedlot they will look into it more but it did not appear to meet that criteria. Amelia stated that the permit was issued under the understanding that there was no feedlot within a quarter of a mile. Amelia stated that it was brought to her attention a few weeks ago and that the Hayes have agreed to go through the variance for their dwelling.

Chairman Anderson asked if anyone else wished to speak. Ken Tschumper, the owner of the neighboring feedlot, raised concerns with the application in regard to that feedlot. Chairman Anderson stated that the board already received a letter from Ken Tschumper.

Greg Myhre asked when the last time there were cattle in the feedlot. Amelia Meiners stated that aerial photos show that the feedlot was empty sometime between 2015 and 2016.

Bruce Kuehmichel spoke in support of Ken Tschumper's arguments.

Franklin Hahn made a motion to table this petition until they could investigate the ordinance further to see if the Board of Adjustment has the authority to make a decision on this petition. Amelia stated that the ordinance doesn't specifically address after the fact permits and we are not really looking at this as an after the fact permit. Amelia stated that the first three hearings all dealt with existing buildings. Amelia stated that the ordinance does give the Board the authority to administer the provisions of the ordinance which would include permitting and under the definition of zoning permit applications includes variances. Amelia stated that according to the ordinance the board has the authority to hear variances and it doesn't specifically say whether or not the Board has the ability to grant an after the fact permit.

Chairman Anderson said that whether there's a building there or not we should deal with it as though there's an application for a building permit not an existing building. Chairman Anderson stated then the Board can decide and that a variance can be granted if we so decide. Chairman Anderson shared that he had a personal experience where a building was built too close to his feedlot by a permit variance and that the Board has that prerogative. Chairman Anderson told Franklin Hahn that he understood his motion but that he felt it was better to move on and get this variance taken care of.

Eriah Hayes refuted Ken Tschumper's objections and Ken Tschumper responded.

Chairman Anderson closed the hearing to public comment.

Larry Hafner stated that this is part of the Board of Adjustments functions as half the time they are ruling on existing buildings that do not fit the zoning requirements. Larry stated that part of the board's job is to figure these things out and that they must use their best judgment. Larry stated that an error was made and we have to figure out how to correct it. Larry stated that the

Board must balance the needs of all parties and that is why this group was formed. Larry stated that he agreed with Chairman Anderson that the hearing should continue.

Chairman Anderson stated that regardless of where the house was placed a variance would have been needed because of the proximity to both feedlots. Discussion by the Board continued to seek ways to protect both parties from future disturbances caused by each property owners personal use.

Amelia Meiners stated that if Ken Tschumper did expand his feedlot he would need a variance and that he would not need a variance as long as he did not expand the feedlot.

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

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: This meets the density control system put in place by the Comprehensive Land Use Plan and the Zoning Ordinance.

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

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 zoning office issued a permit for this dwelling last fall and it was constructed in compliance with that permit. It was not until substantial construction took place that the error was brought to the county's attention.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Fits ¼ ¼ section requirement.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	X		
Wayne Runningen	X		Agrees with SA.
Ken Visger			Recused himself.

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

Staff Analysis: The applicants worked extensively with zoning staff prior to making an application for a zoning permit which was later granted, unknowingly allowing them to build within the feedlot setback area.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Fits section requirement; no other premise in that ¼ ¼ .
Larry Hafner	X		
Franklin Hahn	X		
Wayne Runningen	X		
Ken Visger			Recused himself.

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

Staff Analysis: By the time the county became aware of the situation, construction was at the stage in which the only practical option is a variance.

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

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: Tschumper Ridge now consists of primarily rural residential properties. Commercial agriculture in the general vicinity of this proposal consists of apple orchards and row crops. This proposal will not affect the public health, safety or welfare in the vicinity and is consistent with other properties in the area.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Will not affect public health and safety.
Larry Hafner	X		Agrees with SA.

Franklin Hahn	X	Yes, there is a commercial apple orchard noted in SA.
Wayne Runningen	X	Agrees with SA.
Ken Visger		Recused himself.

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 an area request and will not permit lesser standards than those required by State Law. There is no floodplain in the proximity of this request.

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

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

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

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

The Board again discussed ways to protect the feedlot and the applicant.

Larry Hafner made a motion to grant a variance of 1,108 feet to an existing dwelling within 1,320 feet of a registered feedlot.

Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 496 was read for **Eric and Tiffany Beck**, 561 Zumbro Street, Winona, MN 55987.

The applicants are requesting multiple variances to locate a dwelling and garage on their lot in the Horse Thief Ridge Subdivision of La Crescent Township.

- 1) Variance to allow new dwellings on lots that are not buildable lots as defined by Ordinance (15.9 subd. 1);
- 2) Variance to reduce the setback required from a public road (15.6 subd. 3);
- 3) Variance to allow a structure within a bluff impact zone (29.17 subd. 1);
- 4) Variance to reduce setback from the top of a bluff (29.17 subd. 2);
- 5) Variance to minimum sewage treatment and disposal area standards (29.22 subd. 10); and,
- 6) Variance to allow an accessory building nearer the front lot line than the principal building (29.14 subd. 2).
- On 8/20/2004, La Crescent Town Board approved the Horse Thief Ridge Plat. Development standards are set forth by Ordinances, which are amended, and thus change, from time-to-time.

When zoning staff consider an application for a zoning permit, the current standards in effect are applied (Houston County Zoning Ordinance, effective 11/28/2018). The effective La Crescent Township Ordinance at the time of platting was adopted 7/29/2002 (note that the Township amended their Ordinance shortly after the approval of the plat, on 9/7/2004). The 2002 Ordinance did contain bluff land protections, requiring a 40-foot setback from the top of a bluff (Section 2817), and prohibited intensive vegetation clearing.

- All lots were initially conceived as building sites (as opposed to outlots) in the approved plats. Assessor's records indicate that most of these lots have been valued as buildable lots. Twelve lots in this subdivision have been developed, most between 2005 and 2015. Eight are vacant and two are presumed to be outlots. The undeveloped lots are not substantially different from those that are already developed.
- Steep slopes severely limit the area available for development. Only 20% of this lot has slopes that meet the building standard. According to the National Soil Survey, suitable areas for wastewater treatment are also limited, with 100% of the area of interest below being "very limited" or "extremely limited" when rated for septic tank absorption fields and dwellings with basements (Figure 4). This is due to slope, slow water movement, and bottom layer seepage in the relevant soil types.
- The applicant worked with former Zoning Administrator Lacher to determine how many trees could be removed. Of an estimated 2.5-acre lot, the applicant has cleared approximately 0.3-acres or 12%. The septic will be located in a flatter area on the south side of the parcel. The proposed layout puts the house at the edge of all useable land so that the area between the road and the dwelling will be available for yard and the kids to play.
- There are no wetland, floodplain, or shoreland concerns.
- La Crescent Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked the Becks if they had anything to add.

Eric Beck stated that he wanted to place the house in the proposed spot so that their children would have room to play and the longer driveway will provide necessary off-street parking. Tiffany Beck stated that the house will take up most of the lot and that their home owner's association requires they have off street parking and a three car garage with three working garage doors.

Eric explained and discussed with the board, his plan to install a berm at the base of the hill to combat erosion. Tiffany stated that they would like to get the berm and the basement finished this fall to avoid spring erosion.

Ken Visger stated that he felt that the applicants bought this lot on the condition that the lots were buildable and he believes that the zoning office will restrict them in such a way that will safeguard erosion, septic, health and safety. Ken Visger stated that he is confident in the judgement of the Zoning officials.

Franklin Hahn stated that these lots are not buildable due to County Zoning ordinances. Franklin asked Amelia if she could plot out a house on this type of a lot without requiring a variance. Amelia responded that she could not.

Ken Visger stated that a lot of things are grandfathered in.

Chairman Anderson questioned the placement of the sewer in respect to the well. Eric stated that the well is across the street. It was agreed that distance between the sewer and the well was not an issue.

Franklin Hahn voiced concerns about the location of the corner of the house. Eric Beck stated that they are considering digging the basement 4 feet deeper in that corner to add extra strength in that corner.

Eric discussed the sewer drain field with the Board.

Chairman Anderson and Franklin Hahn both agreed that they would like to see the house closer to the road. Eric stated he is not asking to do anything more than the neighbors in that area have done in the past.

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

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

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 - In the preparation of the following analysis, the following requests are intended to be considered together, and to be approved or denied by a single motion:

- 1) Variance to allow new dwellings on lots that are not buildable lots as defined by Ordinance (15.9 subd. 1);
- 2) Variance to reduce the setback required from a public road (15.6 subd. 3);
- 3) Variance of 20' to allow a structure within a bluff impact zone (29.17 subd. 1);
- 4) Variance to reduce setback from the top of a bluff (29.17 subd. 2);
- 5) Variance to minimum sewage treatment and disposal area standards (29.22 subd. 10); and,
- 6) Variance to allow an accessory building nearer the front lot line than the principal building (29.14 subd. 2).

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

Staff Analysis: The Comprehensive Plan sets forth a strategy of balancing private incentives with protection of the public good. Allowing development on these existing lots with reduced

standards, coupled with specific attention to challenges posed by the ground slopes, strikes such a balance.

Board agreed to the finding by a unanimous vote.

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 practical difficulty stems from the limited area suitable for building site development. The applicants are asking to develop their lot much as neighbors have done in similar situations.

Board agreed to the finding by a unanimous vote. Franklin Hahn commented that this lot is steeper than the neighbor to the west because the neighbor to the west is right on the flat.

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 parcel is unique and special in that its part of an approved residential subdivision and is comprised predominantly of slopes in excess of 25%. It is estimated that only 20% of this lot contains buildable slopes. Areas with similar steepness are present in the County, but are not commonly found to comprise this percentage of area within a platted residential subdivision. The current owners did not control the platting process and likely acquired their properties with the understanding that the lots were buildable. The fact that they believed the lots to be buildable—a reasonable belief to have held—when in fact, the lots do not satisfy the criteria for building set forth in Ordinance created circumstances unique to these properties.

Board agreed to the finding by a unanimous vote. Franklin Hahn commented that a lot of these lots are similar in that they aren't built on and they won't be built on unless we change our ordinances in the county.

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: Variances are needed to facilitate building on these lots and there is no reasonable alternative means of locating structures.

Board agreed to the finding by a unanimous vote.

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 variances will allow the placement of structures in a manner similar to existing development in the area. Specific precautions related to slopes, erosion, and wastewater treatment are needed to ensure public health, safety, and welfare.

Board agreed to the finding by a unanimous vote.

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: These are area variances. There are no mapped flood plains within the subdivision and the proposal is not known to be afoul of State Law.

Board agreed to the finding by a unanimous vote.

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

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

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

Ken Visger made a motion to grant variances of:

1. Variance to allow new structures on lots that do not meet buildable lot standards.
2. Variance to allow a structure in a bluff impact zone.
3. Variance of 40' to reduce top of bluff setback.
4. After-the-fact variance to allow creation of lots that do not have minimum area standards for wastewater (post 1996 lots), and variance to allow development of lots that do not have minimum area standards for wastewater (pre 1996 lots).
5. Variance to allow an accessory building nearer the front lot line than the principal building.

With conditions 1-4:

1. One of the following must be achieved: Septic design by a licensed septic designer indicating option for effective use of a type I or III ISTS including identification of primary and secondary treatment areas, OR, septic design by a licensed septic designer indicating option for effective use of a type IV ISTS including identification of primary treatment area. If a type IV ISTS is used, maintainer records shall be submitted to the County annually.
2. Applicable setbacks between wells and septic components shall be achieved.
3. A site plan incorporating erosion & sediment control designed by a Professional Engineer, licensed in the State of Minnesota must accompany any future zoning application. The Professional Engineer shall be familiar with Houston County and the State of Minnesota policies and requirements, have good professional judgement and an understanding of erosion processes, materials and methods of erosion control, as well as working knowledge of soil mechanics. The Professional Engineer shall sign off on the completed project.
4. Documentation that applicants understand and plan to follow standards set forth in Houston County Zoning Ordinance Section 29.18 - TREE AND WOODLAND PRESERVATION IN RESIDENTIAL DEVELOPMENT – must be submitted with future zoning applications.

Larry Hafner seconded. Roll call vote was taken. Franklin Hahn & Wayne Runnigen opposed. Motion carried.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		
Larry Hafner	X		
Franklin Hahn		X	Don't want to see the house slide down the hill and wash out the road.
Wayne Runnigen		X	House is way over the edge and needs to be moved up. Can't approve it where they want it.
Ken Visger	X		

Notice of Public Hearing No. 497 was read for **Eden Management LLP c/o Kiernan Minehan**, 10111 Lakeshore Road, Newton, WI 53063.

The applicant is requesting multiple variances to locate a dwelling on a lot in the Crescent Hills Subdivision of La Crescent Township.

- 1) Variance to allow new dwellings on lots that are not buildable lots as defined by Ordinance (15.9 subd. 1);
- 2) Variance to reduce the setback required from a public road (15.6 subd. 3);
- 3) Variance to allow a structure within a bluff impact zone (29.17 subd. 1);
- 4) Variance to reduce setback from the top of a bluff (29.17 subd. 2);
- 5) Variance to minimum sewage treatment and disposal area standards (29.22 subd. 10).
- On November 11, 1977, La Crescent Town Board approved the Crescent Hills First Addition Plat. Note that this is the recording date, not the adoption or publication date. In this case, this distinction has no impact on the matter. Many modern standards were not contained in this Ordinance, including bluffland protections. Development standards are set forth by Ordinances, which are amended, and thus change, from time-to-time. When zoning staff consider an application for a zoning permit, the current standards in effect are applied (Houston County Zoning Ordinance, effective 11/28/2018).
- All lots were initially conceived as building sites (as opposed to outlots) in the approved plats. Assessor's records indicate that most of these lots have been valued as buildable lots. There are twenty-two "buildable" lots in this subdivision with fourteen that have been developed. Eight are vacant and there are four unbuildable outlots. The undeveloped lots are not substantially different from some of those that are already developed. At least one lot has been granted a variance reducing road setbacks previously.
- Johnson & Scofield have prepared appendices for review. They identified the top of the bluff almost right at the property line adjacent to Crescent Hills Drive (at the ridge top). When viewing the site, the dwelling is proposed 50' feet off the road. This is at the tree line (see photos below).
- This is estimated to be a 0.65-acre lot in the First Crescent Hills Addition. This property owner also owns the unbuildable outlot directly below the bluff from this subject lot. Slopes and bluff are the main concern at this site. Staff took slope readings while on-site and they are consistent with LIDAR data (see Fig. 2 above).
- There are no wetland, floodplain or shoreland concerns at this site. The Web Soil Survey identifies this area as very limited for septic tank absorption fields due to slope, bottom layer seepage and slow water movement.
- La Crescent Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked Kiernan Minehan if he had anything to add.

Brian Wodele, with Johnson and Scofield, presented a slide show explaining the site plan, in the absence of the landowner. Brian Wodele commented that the Staff Report was very well written and that he couldn't have done it better himself.

The Board discussed the project with several Board members voicing concerns about the characteristics of the lot. The Board agreed to seek counsel from both the County Engineer and the County Attorney.

Larry Hafner made a motion to table the meeting. Ken Visger seconded. Roll call vote was taken. All were in favor. Motion carried.

Chairman Anderson made a motion to adjourn the meeting. Ken Visger seconded. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on July 23, 2021.

Houston County Board of Adjustment
August 26, 2021

Approved on September 23, 2021 by Ken Visger and Ken Anderson

The Houston County Board of Adjustment met at 6 p.m. on Thursday, August 26, 2021. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Anderson. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn and Ken Visger. Wayne Runningen was not present. Amelia Meiners was present for Environmental Services.

Ken Visger made a motion to approve the minutes of July 22, 2021. Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 498 was read for **Dianne Oertel**, 19475 Old Indian Trail Road, Spring Grove, MN 55974.

The applicant is requesting a 40-foot variance to reduce the 50-foot property line setback to locate a solar array on the south property line, in Spring Grove Township.

- This is a 2.59-acre parcel in Spring Grove Township. The parcel was created in June of 2006 and the landowners were granted a Conditional Use Permit for non-farm single-family dwelling at the same time. The site consists of a dwelling and one outbuilding. The septic system is located east of the dwelling and the water line runs from an adjacent property. The size of the array prevents it from being a rooftop unit and the best southern exposure is at the south property line. That is the highest ground on this property. Slopes and tree cover decrease productivity for locating the array west of the dwelling and due to the size of the array and location of the septic system, a variance would most likely be required as well, in order to locate the array east of the dwelling.
- Slopes are variable across the parcel and there are areas over 24%. The structure will be located on slopes of 10-15% and there is no bluff concern. The soils are adequate to accommodate this proposal.
- Feedlot and mine setbacks are not relevant to this proposal. There are no floodplain, shoreland, or wetland concerns.
- The property to the south is tillable acreage and the closest dwelling in that direction is approximately 1,700 feet. The array will not be visible or affect the township road.
- Spring Grove Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked Dianne Oertel if she had anything to add.

Dianne Oertel stated that she believes that the installation of solar is very beneficial. Dianne stated that she had spoken with many of her neighbors prior to the hearing and none of them had voiced concerns with her request.

Larry Hafner stated that he thinks it's a great idea. Chairman Anderson agreed.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

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

Subdivision 1. Findings Required

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

Staff Analysis: The Houston County Zoning Ordinance identifies that we should encourage solar to conserve energy and identifies inadequate access to direct sunlight as a practical difficulty (Section 12.5).

Board agreed to the finding by a unanimous vote.

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 topography makes the south boundary the best southern exposure and unobstructed view. The array must also be located within 200 meters of the dwelling. Bordering property to the south is currently tillable acreage.

Board agreed to the finding by a unanimous vote.

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 south property line is the highest ground on this parcel contains an unobstructed view. While there are other obstacles to work around, such as building shading and the septic system, the elevation of this location and lack of tree cover are really the prime reasons for locating the array here.

Board agreed to the finding by a unanimous vote.

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: Moving the array away from the property line or relocating it will influence the productivity to the point that it will not be reasonable to take on the project.

Board agreed to the finding by a unanimous vote.

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: Solar arrays are becoming very popular across the county. It will not affect the essential character of the locality or impair property values, public health, safety or welfare of those in the vicinity.

Board agreed to the finding by a unanimous vote.

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 an area variance and there is no floodplain in the vicinity of this proposal.

Board agreed to the finding by a unanimous vote.

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

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

Franklin Hahn made a motion to grant a 40-foot variance to reduce the 50-foot property line setback to locate a solar array on the south property line.

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

Notice of Public Hearing No. 499 was read for **Greg and Jill Hahn**, 12565 Prairie Ridge Road, Caledonia, MN 55921.

The applicants are seeking a variance of 160 feet for a proposed dwelling to meet the required 1,320-foot setback from a feedlot in Crooked Creek Township.

- The petitioners purchased the 102-acre parcel within the agricultural protection district of Crooked Creek Township back in 2020 with the intent to build their retirement home. This location is an old farmstead, which offers an existing well and easy road access. This will be the only dwelling within the agricultural protection district of the SW NE quarter-quarter and it is above the regulatory flood protection elevation.
- The property encompasses three open quarter quarters, but a large portion of this acreage is mapped floodplain. If you consider the natural elevations, it likely extends beyond what is delineated in blue, lessening the buildable area even more. The north and south perimeter of the property then slopes upward towards the county roads. There are a couple buildable areas

adjacent to County 24 and 249, but slopes cause more extensive dirt work requirements in these locations.

- Relevant ordinance language below.
- **33.16 GENERAL FEEDLOT LOCATION AND SETBACK STANDARDS**
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.*
- The Feedlot Advisory Committee reviewed the site. A complete review will be presented at the hearing.
- **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 1/4 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.*
- This is 102-acre parcel located in Crooked Creek Township. Crooked Creek runs through the property approximately 500 feet from the proposed dwelling. This will be the only dwelling within the agriculture district in the SW NE quarter-quarter. An existing driveway from County 24 meets applicable standards and adequate acreage exists to meet property line setbacks. There is no mine within 1,000 feet.
- There is floodplain in the vicinity of this proposal. The DNR has verified the floodplain models in this location and found there to be more current data on hand than what the County maps show. They are located outside of the delineated floodplain, but there was concern about it extending due to natural elevations. A surveyor has been on-site and determined the site is above the regulatory flood protection elevation. The site is outside of shoreland and there are no wetland concerns.
- Prevailing winds generally come from the northwest and the south, although topography will affect this.
- Note that all of the Freeburg community lies within the quarter mile setback from the feedlot.
- Crooked Creek Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked the Hahns if they had anything to add. They did not have anything to add.

Amelia read comments from the Feedlot Advisory Committee.

Ken Visger stated that half of Freeburg is within that distance and it will not affect the feedlot. Chairman Anderson agreed.

Greg Hahn asked if they would need a variance if they wanted to start a feedlot. Amelia confirmed that they would.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the

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

Subdivision 1. Findings Required

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

Staff Analysis: This meets the density control system put in place by the Comprehensive Land Use Plan and the Zoning Ordinance.

Board agreed to the finding by a unanimous vote.

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: There are multiple factors that come into play for this site. In order to meet the density limitation requirement, the proposed dwelling must stay south or east of the NW NE quarter-quarter. This proposal is right on the quarter-quarter line and therefore cannot move north at all. Moving the proposal to the east will impact tillable acreage and possibly require floodplain considerations while pushing it to the south brings in floodplain and possibly shoreland concerns. There is no way to meet the feedlot setback and build within the existing farmstead location.

Board agreed to the finding by a unanimous vote.

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

Staff Analysis: Floodplain encompasses much of the 102-acre property. There are areas to build adjacent to County 249 and County 24, but slopes have a greater impact at those sites.

Board agreed to the finding by a unanimous vote.

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: They would like to utilize an existing farmstead and avoid disrupting tillable ground. The tradeoff is building within a feedlot setback area. Building in other areas will require more extensive erosion control methods and creative site planning.

Board agreed to the finding by a unanimous vote.

Chairman Anderson wanted to note that there are a lot of other houses within the setback area to that feedlot.

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 proposal is consistent with other sites within the Freeburg community and the whole community lies within the setback area. A farm dwelling will not impair property values, public health, safety or welfare for those in the vicinity.

Board agreed to the finding by a unanimous vote.

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 an area variance. The DNR recently provided updated models that dropped the base flood elevations and removed this site from floodplain. Therefore, this request will not permit standards afoul with State Law.

Board agreed to the finding by a unanimous vote.

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

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

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

Ken Visger made a motion to grant a variance of 160 feet for a proposed dwelling within 1,320 feet of a registered feedlot.

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

Notice of Public Hearing No. 497 was read for **Eden Management LLP c/o Kiernan Minehan**, 10111 Lakeshore Road, Newton, WI 53063.

The applicant is requesting multiple variances to locate a dwelling on a lot in the Crescent Hills Subdivision of La Crescent Township.

- 1) Variance to allow new dwellings on lots that are not buildable lots as defined by Ordinance (15.9 subd. 1);
- 2) Variance to reduce the setback required from a public road (15.6 subd. 3);
- 3) Variance to allow a structure within a bluff impact zone (29.17 subd. 1);
- 4) Variance to reduce setback from the top of a bluff (29.17 subd. 2);
- 5) Variance to minimum sewage treatment and disposal area standards (29.22 subd. 10).

- This hearing was tabled from the July 2021 public hearing to allow the Board of Adjustment members time to meet with the County Attorney and to consult with the County Engineer. This is an amended staff report and any changes will be in red text. The report itself has been reorganized

for efficient review - relevant citations from the Houston County Zoning Ordinance are included below in italics followed by an evaluation of the site in reference to each point. The dwelling design is for a walkout basement and the main floor, excluding the garage, is estimated to be 40 feet by 55 feet for a total of 2,200 square feet. Additional materials have been supplied by the applicant and are included in the packet.

- On November 11, 1977, La Crescent Town Board approved the Crescent Hills First Addition Plat. Note that this is the recording date, not the adoption or publication date. In this case, this distinction has no impact on the matter. Many modern standards were not contained in this Ordinance, including bluffland protections. Development standards are set forth by Ordinances, which are amended, and thus change, from time-to-time. When zoning staff consider an application for a zoning permit, the current standards in effect are applied (Houston County Zoning Ordinance, effective 11/28/2018).
- Many lots were initially conceived as building sites (as opposed to outlots) in the approved plats. Assessor's records indicate that most of these lots have been valued as buildable lots. There are twenty-two "buildable" lots in this subdivision with fourteen that have been developed. Eight are vacant and there are four unbuildable outlots. The undeveloped lots are not substantially different from some of those that are already developed and at least one lot has been granted a variance reducing road setbacks previously.
- This is a four-rod road, so the right of way extends 33 feet from the centerline. The closest a structure can be to the right of way is 20 feet (53 feet from the centerline). The township road setback is 65 feet so the most the road variance can be reduced and not encroach on the right of way setback is 12 feet.
- This lot is 156 feet wide by 156 feet deep in the narrowest area. It measures at a total of 0.65 acres. The request for a variance from the buildable lot standards is a result of the area containing slopes greater than 24%. Approximately 60% of this lot has slopes over the limit. They have approximately 0.2 acres that meet the buildable lot slope standard, but the top of bluff setback influences that area. The ordinance requires 0.9-acres be considered buildable. Because the top of bluff is right at the property line, there is actually no part of this lot that is considered buildable area under current zoning standards.
- While this is not documented anywhere, the Board may consider that this lot, along with neighboring lots, were always intended to be sold with an outlot to meet the 1 acre minimum standard. The Board may find it interesting too, that this lot is actually larger than the developed Lot 7 (lot to the south).
- Johnson & Scofield have prepared appendices for review. They identified the top of the bluff almost right at the property line adjacent to Crescent Hills Drive (at the ridge top). When viewing the site, the dwelling is proposed 50' feet off the road. This is at the tree line (see photo above). Because of this, a full reduction from the top of bluff will be required. The intent of a reduction in top of bluff and buildable lot standards is also to allow structures on slopes over 24% grade.
- Note that there may be a possibility that this standard is met, but without having a contractor complete soils and design work, we do not know for sure.
- The Web Soil Survey identifies this location as very limited for dwellings with basements and sanitary sewer facilities. There are specific reports included for both in the packet.
- Jake Wieser, of Wieser Septic and Excavating provided a letter since the last hearing regarding the septic system feasibility at this site. It is included in the packet as well. The neighboring site he references was completed in 2013 and the standards have not changed since that time. The site at 1195 Crescent Hills Drive had a limiting layer of 18 inches, which required a mound. Soils work has been completed on an additional lot near this site and had a limiting layer of 16 inches. The mound system for 1195 Crescent Hills Drive is shared with 1185 Crescent Hills Drive and services a combined seven bedrooms. The total system measures 55.6 feet wide by 119.5 feet long. While specific details on number of bedrooms have not been provided for this site, if you consider a system half that size at 28 feet by 60 feet, there would be room for two systems as proposed. Pre-treatment options (Type IV systems) allow for a reduced soil treatment area.

- This is estimated to be a 0.65-acre lot in the First Crescent Hills Addition. This property owner also owns the unbuildable outlot directly below the bluff from this subject lot. Slopes and bluff are the main concern at this site. Staff took slope readings while on-site and they are consistent with LIDAR data. Red area is over 24% grade, orange/yellow is 18-24% and green is 0-18%.
- There are no wetland, floodplain or shoreland concerns at this site. The Web Soil Survey identifies this area as very limited for septic tank absorption fields due to slope, bottom layer seepage and slow water movement. Most site characteristic evaluations are included under noteworthy topics above.
- La Crescent Township and the ten closest property owners were notified. No comments were received.

Below are the sections of the HCZO relevant to the requested variances:

15.3 FRONT YARD SETBACK

Subdivision 3. Other Public and Private Roads. *There shall be a front yard setback of not less than sixty-five (65) feet from the center line of all other public rights-of-way and private roads.*

15.9 LOT AREA STANDARDS

Subdivision 1. Minimum Lot Area. *All new dwellings shall be located on a Buildable Lot as defined in this Ordinance and have a minimum lot area as set forth below:*

(1) Lots with Individual Sewage Treatment Systems and Water Wells. Dwelling units with individual sewage treatment systems and water wells shall have a minimum lot area of forty-three thousand five hundred sixty (43,560) square feet (1 acre). Individual sewage treatment systems and water wells must conform to the standards in this Ordinance.

Buildable Lot. *A lot of record, or other lot, tract, or parcel legally recorded with the County Recorder that meets the requirements of this Ordinance. Buildings or structures shall not be permitted on land which has a slope of twenty-four (24) percent or greater. The buildable lot shall have the minimum lot area required for the district in which it is located, and which not more than ten (10) percent of the required lot area is collectively comprised of:*

- *Area of a slope of twenty-four (24) percent or greater.*
- *A shoreland impact zone as defined by this Ordinance.*
- *Protected waters as defined in this Ordinance.*
- *Wetlands as classified in the U.S. Fish and Wildlife Service. Circular No. 39.*

All access roads that service a new building site or dwelling shall be constructed with a final slope of less than 12%. All finished driveways shall be constructed in conformity with Section 29.19.

15.10 LOT WIDTH AND DEPTH STANDARDS

Subdivision 1. Minimum Lot Width and Depth Standards. *Every lot or plat of land on which a single family dwelling is constructed shall have the minimum standards as set forth below:*

(1) Lots with Individual Sewage Treatment Systems and Water Wells. Lots with individual sewage treatment systems and water wells shall have a lot width of not less than one hundred (100) feet and lot depth of not less than one hundred fifty (150) feet.

29.17 BLUFF LAND PROTECTION

Subdivision 1. Prohibited in the Bluff Impact Zone. *Structures and accessory facilities must not be placed within bluff impact zones.*

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.*

Bluff.

Within Shoreland: A topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

- The slope rises at least 25 feet above the ordinary high water level of the waterbody; and
- The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 24 percent or greater.

Outside Shoreland: A topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

- The total vertical rise between the toe and top of the topographic feature is 50 feet or more; and
- The grade of the slope from the toe to the top of the topographic feature averages 24 percent or greater.

Toe of the Bluff. The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from gentler to steeper slope above. If no break in the slope is apparent, the toe of the bluff shall be determined to be the lower end of a 50-foot segment, measured on the ground, with an average slope exceeding 18 percent.

Top of the Bluff. The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from steeper to gentler slope above. If no break in the slope is apparent, the top of the bluff shall be determined to be the upper end of a 50-foot segment, measured on the ground, with an average slope exceeding 18 percent.

Bluff Impact Zone. A bluff and land located within 20 feet from the top of a bluff.

29.22 SEWAGE TREATMENT

Subdivision 10. Lots created after Jan. 23, 1996. All lots created after January 23, 1996 must have a minimum of two soil treatment and dispersal areas that can support trenches, seepage beds, mounds, and at-grade systems as described in MN Rules Chapters 7080.2200 through 7080.2230 or site conditions described in 7081.0270, subp. 3 through 7.

Chairman Anderson asked Brian Wodele, with Johnson and Scofield Land Surveying, a representative of the landowner if he had anything to add.

Brian explained that since the Board's last meeting Jake Wieser had submitted a septic plan to show that this site is feasible.

There was general discussion concerning guidance the Board had sought on this hearing.

Brian reminded the Board that the applicant is asking for the minimum variances to meet the zoning requirements.

Amelia read an email from Kiernan Minehan. Kiernan's email stated that he and his wife plan to use this property as their retirement home.

John Zlabek stated that he owns a lot two doors down and that he will be requesting this same variance in a couple months. John said he supports granting Kiernan Minehan's request as the owners of these lots have been paying taxes on buildable lots.

Franklin Hahn asked John who had told him the lot was buildable when he purchased it. John stated that there were homes surrounding the area.

There was general discussion concerning what governing body originally approved the lots.

Amelia stated that in the plat there are 4 outlots listed and those are not considered buildable. Amelia explained that this site is not listed as an outlot.

The Board discussed the road setback with Amelia.

Brian Wodele stated that all of the septic plans, site plans and erosion control plans will be designed by contracted professionals and if the Zoning office issues building and septic permits, those permitting standards will serve as a safeguard.

Amelia stated that the subdivision covenant addressed a lot of the same issues that have been considered by the Board. Chairman Anderson stated that the covenant expired after 40 years and can be renewed for five years contingent on the landowners of that group.

Amelia stated that a more in depth building plan, including number of bedrooms and soils work done was needed to finalize the size and layout of the septic plan. Franklin Hahn asked if building permits required the applicant to list the number of bedrooms. Amelia stated that a building permit will not be issued without a septic permit approval.

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

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

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 - In the preparation of the following analysis, the following requests are intended to be considered together, and to be approved or denied by a single motion:

- 1) Variance to allow new dwellings on lots that are not buildable lots as defined by Ordinance (15.9 subd. 1);
- 2) Variance to reduce the setback required from a public road (15.6 subd. 3);
- 3) Variance of 20' to allow a structure within a bluff impact zone (29.17 subd. 1);
- 4) Variance to reduce setback from the top of a bluff (29.17 subd. 2); 6
- 5) Variance to minimum sewage treatment and disposal area standards (29.22 subd. 10); and,

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

Staff Analysis: The Comprehensive Plan sets forth a strategy of balancing private incentives with protection of the public good. Allowing development on these existing lots with reduced

standards, coupled with specific attention to challenges posed by the ground slopes, strikes such a balance.

Ken Visger commented “I just have to respond to the fact that these people are paying taxes on a buildable lot. Houston county has a long history of grandfathering in properties and buildings when zoning changes or gets more restrictive. And I see this as something we have a history of doing with all kinds of properties and different situations; to grandfather in those properties but at the same time in this case making them subject to more restrictive conditions. To not grandfather them or to disapprove them because they don’t meet today’s standards seems unfair to the owners. And given the restrictions that are proposed here, I see this as a fair way to satisfy homeowners who have paid taxes over the years and also to honor the practice of grandfathering in previous developments and previous situations.”

Franklin Hahn asked Ken Visger if he thought the County should relax the Zoning Ordinance to make it easier for people who live in this county. Ken Visger stated that was not at all what he was saying.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson		X	Too many problems with this building lot, size and everything like that. The township road will be most affected if there’s problems. There are around 40 houses up there and there is no other way in or out of those properties.
Larry Hafner		X	Feel bad for the property owners. Don’t know the remedy. We have a responsibility to use our judgement. I think of that quarry we had lately. They did that within the boundaries but they dug it out so much that it’s falling away and it’s affecting the neighbor’s property. They assured us that they could do everything right. It’s our responsibility. These Ordinances were put in place for a reason. Our job is to see if there are some differences that are reasonable. The slope overall is supposed to be no greater than 24%, this is 33% overall, it’s bluff land, it’s setback from the road.
Franklin Hahn	X		Don’t want to disagree with staff’s analysis.
Ken Visger	X		

Chairman Anderson stated that three votes are needed to pass the finding. Ken Visger stated that if one of the findings fail they all fail.

The Board discussed continuing and decided to continue with the findings.

The Board discussed implications of granting/denying variances for lots with similar concerns and difficulties.

Ken Visger stated that the Board should let the professionals come up with a plan that addresses the characteristics of the site as not one of it’s members is an engineer, plumber, septic system installer or concrete professional.

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 practical difficulty stems from the limited area suitable for building site development. The applicants are asking to develop their lot much as neighbors have done in similar situations.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Agrees, there are practical difficulties.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	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: This parcel is unique and special in that its part of an approved residential subdivision and is comprised predominantly of slopes in excess of 25%. It is estimated that only 20% of this lot contains buildable slopes. Areas with similar steepness are present in the County, but are not commonly found to comprise this percentage of area within a platted residential subdivision. The current owners did not control the platting process and likely acquired their properties with the understanding that the lots were buildable. The fact that they believed the lots to be buildable—a reasonable belief to have held—when in fact, the lots do not satisfy the criteria for building set forth in Ordinance created circumstances unique to these 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.
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: Variances are needed to facilitate building on these lots and there is no reasonable alternative means of locating structures.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		No other way to do it.
Larry Hafner	X		Agrees with SA.
Franklin Hahn	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: The variances will allow the placement of structures in a manner similar to existing development in the area. Specific precautions related to slopes, erosion, and wastewater treatment are needed to ensure public health, safety, and welfare.

Franklin Hahn asked how close the septic is to the road. Chairman Anderson explained that the septic will most likely be located within 50 feet of the right of way.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson		X	Afraid of the road hazard. Septic systems are going to be almost on the road ditch.
Larry Hafner		X	Concerned with erosion, water treatment system, public safety and welfare.
Franklin Hahn		X	Concerned with sewer to close to the steep hill road. Did not realize the sewer would be that close to road.
Ken Visger	X		We are not professional contractors and we are making assumptions about building sewers, when we know very little about it. We need to be careful about making assumptions on engineering and sewer building and that sort of thing when there are restrictions in place to prevent those kinds of problems.

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: These are area variances. There are no mapped flood plains within the subdivision and the proposal is not known to be afoul of State Law.

Ken Anderson asked Amelia if there are any state laws protecting the bluff. Amelia stated that is where the top of bluff setbacks come in and the guidance is more for shoreland.

	<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.
Ken Visger	X		Agrees with SA.

Chairman Anderson stated that findings one and five were not passed and asked for a motion on the findings if there were no additional comments or questions.

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

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

Larry Hafner stated that he dislikes doing this. Larry Hafner reminded the Board of the house that washed down the hill in Brownsville during the flood. Larry Hafner continued that most of this property sits on 33% slopes. Larry Hafner stated that there has to be a limit to what we will allow.

Larry Hafner made a motion supported by the findings to deny variances of:

1. Variance to allow new structures on lots that do not meet buildable lot standards.
2. Variance to allow a structure in a bluff impact zone.
3. Variance of 40' to reduce top of bluff setback.
4. Variance of 12' reducing setback from Crescent Hills Drive west of the house.

5. After-the-fact variance to allow creation of lots that do not have minimum area standards for wastewater (post 1996 lots), and variance to allow development of lots that do not have minimum area standards for wastewater (pre 1996 lots).

With conditions 1-4:

1. One of the following must be achieved: Septic design by a licensed septic designer indicating option for effective use of a type I or III ISTS including identification of primary and secondary treatment areas, OR, septic design by a licensed septic designer indicating option for effective use of a type IV ISTS including identification of primary treatment area. If a type IV ISTS is used, maintainer records shall be submitted to the County annually.
2. Applicable setbacks between wells and septic components shall be achieved.
3. A site plan incorporating erosion & sediment control designed by a Professional Engineer, licensed in the State of Minnesota must accompany any future zoning application. The Professional Engineer shall be familiar with Houston County and the State of Minnesota policies and requirements, have good professional judgement and an understanding of erosion processes, materials and methods of erosion control, as well as working knowledge of soil mechanics. The Professional Engineer shall sign off on the completed project.
4. Documentation that applicants understand and plan to follow standards set forth in Houston County Zoning Ordinance Section 29.18 - TREE AND WOODLAND PRESERVATION IN RESIDENTIAL DEVELOPMENT – must be submitted with future zoning applications.

Franklin Hahn seconded. Roll call vote was taken. Motion carried.

	<u>YES</u>	<u>NO</u>	<u>COMMENTS</u>
Ken Anderson	X		Total area of lot is way too small with the slopes.
Larry Hafner	X		The property is so far beyond standard.
Franklin Hahn	X		Was not in favor of the previous site approved in this neighborhood. It's not a buildable lot. Feel sorry for those who have paid taxes for 40 or 50 years.
Ken Visger		X	

Ken Visger made a motion to adjourn the meeting. Larry Hafner seconded. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on August 27, 2021.

Houston County Board of Adjustment
September 23, 2021

Approved on December 16, 2021 by Larry Hafner and Wayne Runningen

The Houston County Board of Adjustment met at 6:20 p.m. on Thursday, September 23, 2021. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Anderson. Roll call was taken. Members present were Ken Anderson, Ken Visger and Wayne Runningen. Larry Hafner and Franklin Hahn were absent. Amelia Meiners was present for Environmental Services.

Ken Visger made a motion to approve the minutes of August 26, 2021. Chairman Anderson seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 500 was read for **Kyle Caley and Julia Vandenberg**, 8984 Golfview Dr, Houston, MN 55943.

The applicants are requesting a variance of 7 feet to meet the required 65-foot township road setback for a proposed deck.

- This is Lot 1 of the Valley High Estates First Subdivision in Mound Prairie Township. The dwelling was constructed in 1985 and the applicants purchased the property in 2020. The dwelling was constructed 70 feet off the township road setback and the septic system is located immediately behind the dwelling. There is an existing deck off the backside of the house, but rather than look at the septic system, the applicants would like to overlook Mound Prairie. A concrete pad will be poured underneath the deck to redirect water that pools at the foundation. Alternative locations are on the sides of the house. The attached garage is located on the west side of the structure so dwelling layout will prevent expansion on that side and if the applicants were to relocate the proposed structure off the east side it would encroach on the side property line slightly as well.
- While the circumstances differ, Section 15.6 subd. 4 (1 & 3) both identify that road setbacks should not allow for a setback of less than 20-feet from the right-of-way. If that principle is applied in this situation, a minimum of 53-feet off the centerline is allowable since this is a four-rod road. The structures within 300 feet of this developed area are not significantly different from the dwelling on this parcel, which means that the exception afforded in Section 15.6 subd. 4 (3) could not be granted administratively.
- This is a one-acre lot in Valley High. There are intermittent streams approximately 1,000 feet south and 1,800 feet west of this proposal. There are no bluff, slope, floodplain, wetland, or shoreland concerns. There are no building restrictions for soils in this situation and the driveway will not change.
- Staff measured out the lot to compare with Beacon lines and believe that side property line setbacks will be met with this proposal. Feedlot and mine setbacks are irrelevant.
- Mound Prairie Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked Kyle Caley if he had anything to add.

Kyle Caley stated that they would like to add on to the existing deck so that they can have an outdoor space to enjoy family meals while overlooking the golf course. Kyle stated that neighbors

he had talked to thought it was a great idea and some had commented that it might increase the property value.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

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

Subdivision 1. Findings Required

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

Staff Analysis: The deck will meet the minimum setback required from right of way in the Houston County Zoning Ordinance. In addition, adding value to existing development is always encouraged.

Board agreed to the finding by a unanimous vote.

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 house was built 70 feet off the township road by previous owners. In order to accommodate a deck at the size proposed off the front of the house, the only reasonable method is to receive a variance. The applicant also identifies using this opportunity to address pooling water issues around the foundation.

Board agreed to the finding by a unanimous vote.

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 site is unique in that the replacement septic system location is immediately behind the dwelling. That work was completed prior to their ownership and the petitioners wish to overlook Mound Prairie rather than their mound septic system. Dwelling layout prevents the

structure from being located on the west side and if the proposal was to be relocated off the east side of the dwelling it may still require a small variance.

Board agreed to the finding by a unanimous vote.

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: A deck is a common request in the residential district and there are lots with road facing decks or patios in this subdivision. With the living space occupying the east portion of the structure the only reasonable location to add outdoor space is off the front or east side of the structure. The proposal will meet the minimum allowance from right of way.

Board agreed to the finding by a unanimous vote.

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 the residential district. Decks and patio areas off the front of the house are found within the subdivision. This proposal should not affect visibility on the road or for the adjacent intersection.

Board agreed to the finding by a unanimous vote.

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 an area variance and there is no floodplain in the general vicinity. Chairman Anderson asked for a motion on the findings if there were no additional comments or questions.

Board agreed to the finding by a unanimous vote.

Ken Visger made a motion to accept the findings. Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Ken Visger made a motion to grant a 7 foot variance to meet the required 65-foot township road setback for a proposed deck.

Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 501 was read for **Jacob Schulte**, 8978 County 22, Houston, MN 55943.

The applicant is requesting a variance of 50' to meet the required property line setback for an existing building.

- This is an 8.34-acre property located in Sheldon Township. The dwelling on this parcel dates back to 1900 and at one point the farmstead was combined with the surrounding tillable acreage. In 1990, the farmstead was split from the tillable acreage in a way that caused two existing buildings to not meet necessary property line setbacks. One of those buildings has since been removed, but the other building is in good shape and the applicant does not plan to remove it in the near future.
- To the knowledge of the Zoning Office, there have been no issues with the existing property lines since they were established. Unfortunately, there was no process in place to review parcel splits at the time of transfer and the landowners presumed the County approved the split. These situations are brought to the attention of the Zoning Office when permits are requested and a parcel review is completed. The applicant is looking to correct this issue in order to receive a permit for a dwelling addition.
- This is an 8.34-acre parcel located in Sheldon Township consisting of a dwelling and multiple outbuildings. All existing structures meet property line setbacks with the exception of a 40-foot by 60-foot barn. Since this is an existing building soils are irrelevant as are feedlot and mine setbacks.
- There are intermittent streams approximately 800 feet to the southeast and 2,000 feet west of this proposal. There are no bluff, slope, floodplain, wetland, or shoreland concerns.
- Sheldon Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked Jacob Schulte if he had anything to add.

Jacob Schulte explained that the property was split off in the nineties. Amelia commented that it is reasonable to believe that the property was split with the idea of protecting ag land.

Chairman Anderson asked how old the existing barn is. Jacob didn't know the age of the structure. Chairman Anderson stated that with that roof design it's probably pushing 100 years of age. Amelia stated that there was no record of the barn's age but on Beacon the house is dated in the early 1900's. Chairman Anderson stated that the barn looks to be in good shape. Jacob agreed.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

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

Subdivision 1. Findings Required

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

Staff Analysis: The Land Use Plan calls for promoting agriculture and staff presume the existing property line was drawn with the thought of retaining as much tillable acreage as possible for the adjacent landowner. In addition, the Plan encourages rehabilitation of existing homesteads. This variance is required to allow the landowners the ability to receive a permit for a dwelling addition.

Board agreed to the finding by a unanimous vote.

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 property line was established thirty years ago and to the knowledge of the office there has been no issue, but the adjacent landowner recently changed. The structure is in good shape so applicant does not wish to remove it.

Board agreed to the finding by a unanimous vote.

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 parcel was created approximately 30 years ago, prior to the current landowners acquiring the property. Staff presume the property line was established to preserve as much tillable acreage as possible.

Board agreed to the finding by a unanimous vote.

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 building is too large to move and too nice to demolish at this time. Therefore, a variance is the only reasonable method to return the site to compliance and allow the applicant to permit a dwelling addition.

Board agreed to the finding by a unanimous vote.

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: Hobby farms are common across Houston County and this property line will not affect the character of the locality or public health, safety or welfare.

Board agreed to the finding by a unanimous vote.

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 an area variance and the site is outside of floodplain.

Board agreed to the finding by a unanimous vote.

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

Wayne Runningen made a motion to accept the findings. Ken Visger seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Ken Visger made a motion to grant a variance of 50' to meet the required property line setback for an existing building.

With the Condition:

In the future, if this structure is to be replaced, the replacement structure must meet the required setback per the current Houston County Zoning Ordinance.

Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 502 was read for **Christine Custer**, 2818 County 3, Brownsville, MN 55919.

The applicant is seeking a variance to allow an accessory structure (ground mounted solar panels) on a bluff.

- The applicant has 158.68 contiguous acres in Brownsville Township. It is a farmstead consisting primarily of steep timber acreage opening up to clear pasture towards the base of the hill. Solar panels are proposed at the base of the bluff on slopes between 25-30%. The location is staked just below an old fence line, which staff believe to be slightly higher on the hill than what the contractor indicated in the site plan.
- An intermittent stream is located to the south of the proposal at about 240 feet, but there are no areas of mapped floodplain on the property. Soil type is irrelevant for this proposal, but adequate to accommodate the structure.
- A bluff rises approximately 310' east of the house at an average slope of 41%. The proposed panel location was measured on site at approximately 25-30% slopes, consistent with Pictometry. The property is in a narrow valley aligned east-west, with the potential for shading from the bluff to the south. After a site visit, staff believe the location is more accurate to the area in Figures 2 and 3. Regardless, if located in the area indicated by the contractor, ground slopes are still too steep (Figures 1 and 4). It is also in the applicant's interest to avoid the intermittent stream at the base. In addition, the location has dense vegetation that will help to circumvent any runoff issues.
- Feedlot and mine setbacks are irrelevant for this proposal and property line setbacks will be met.
- Using a program created by the UMN GIS Department, staff ran a Solar Suitability Report for the proposed location, which indicated the site is an optimal location for solar gain (99% rating). Moving the structure further south and off the bluff decreases the rating.
- Brownsville Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked Christine Custer if she had anything to add.

Christine Custer explained that the modification to the hillside will be minimal. Christine explained that her immediate neighbors had no objections and both were quite interested in the technology. Christine explained that Olson Solar Energy would be installing the panels.

Ken Visger asked how many panels would be installed. Dennis Brown a representative from Olson Solar Energy explained that there would be 24 panels installed. Dennis stated that they would install the posts 6' in the ground with a post pounder.

Dennis explained that the main soil disturbance would be caused by the trench for the electric cable between the array to the meter. Chairman Anderson asked how deep the wire would be buried. Dennis replied that they would bury the wire 4 feet deep.

There was general discussion about the slope of the land.

Ken Visger asked Christine what her plan was to maintain the vegetation surrounding the solar array. Christine explained that she planned to mow. Dennis shared that it would be reseeded with prairie grass.

Wayne Runningen asked if the array was being placed on pasture. Christine explained that it may have been pasture 30 years ago.

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

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

12.5 CRITERIA FOR GRANTING VARIANCES

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

Subdivision 1. Findings Required

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

Staff Analysis: Section 12.5 of the HCZO specifically addresses the appropriateness of variances for inadequate access to sunlight for solar energy systems.

Board agreed to the finding by a unanimous vote.

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: A primary objective when locating a solar array is to maximize solar exposure. No toe of bluff is definitively visible and slopes remain over 24% for much of the hillside area. Locating the array further south onto lesser slopes will influence the efficiency of the system.

Board agreed to the finding by a unanimous vote.

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 property is located in a narrow valley with a floor less than 300' in width, running east/west, and bookended by steep bluffs. There is an intermittent stream at the base of the valley that should be avoided as well.

Board agreed to the finding by a unanimous vote.

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: It is reasonable to consider access to direct sunlight a practical difficulty and alternative locations would yield a less efficient system.

Board agreed to the finding by a unanimous vote.

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

Staff Analysis: No effect to adjacent property values or health, safety and welfare is anticipated. This location is grassland area with dense vegetation so no runoff or erosion issues are anticipated. Solar installations have become common throughout the County so this proposal will not alter the essential character of the locality.

Board agreed to the finding by a unanimous vote.

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 relief sought by the Applicant is rooted in the ground slope of the proposed location and not on a prohibition of use proposed, thus the request is not a use variance. Residential use solar arrays are considered an accessory use in all zoning districts. There is no mapped floodplain on the property.

Board agreed to the finding by a unanimous vote.

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

Ken Visger made a motion to accept the findings. Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

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

Ken Visger made a motion to grant a variance to allow placement of a solar array on a bluff.

Wayne Runningen asked Dennis if another cable would need to be installed if there was an addition made to the solar array. Dennis replied that the original cable would be sufficient.

Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

Ken Visger made a motion to adjourn the meeting. Wayne Runningen seconded. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on September 24, 2021.

Houston County Board of Adjustment
December 16, 2021

Approved on January 27, 2022 by Wayne Runnigen and Larry Hafner

The Houston County Board of Adjustment met at 5:30 p.m. on Thursday, December 16, 2021. A summary of the meeting follows.

The meeting was called to order by Chairman Ken Anderson. Roll call was taken. Members present were Ken Anderson, Larry Hafner, Franklin Hahn and Wayne Runnigen. Ken Visger was absent. Amelia Meiners was present for Environmental Services.

Larry Hafner made a motion to approve the minutes of September 23, 2021. Wayne Runnigen seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 503 was read for **Shawn Allen**, 4643 County 6, La Crescent, MN 55947.

The Applicant is seeking two variances:

1. Variance to allow an accessory building nearer the front lot line than the principal building (29.14 subd. 2).
2. Variance to allow a garage door height in excess of 10 feet (29.14 subd. 1 (5)).

- This is a 4.2-acre lot in the South Pine Creek Addition subdivision in La Crescent Township. The subdivision was platted in 1980. The dwelling was constructed in 1993 with Permit #691 and Permit #1186 was issued for a pole shed in 2011. Both were issued by La Crescent Township Zoning.
- Section 29, General Provisions, of the Houston County Zoning Ordinance (HCZO) includes language regulating accessory structures in various districts, which contains the CUP requirement. There is no limit on the number of accessory structures allowed.
- **29.14 ACCESSORY BUILDINGS AND STRUCTURES**
Subdivision 1. Accessory Buildings and Structures in Residential Districts.
(1) No accessory buildings may be located within five (5) feet of the side lot line or within eight (8) feet of the rear lot line.
(2) No accessory building shall be located nearer the front lot line than the principal building on the lot.
(3) No accessory building shall exceed the height of the principal building.
(4) Accessory buildings, 200 square feet in area or less that are portable and not attached to any foundation, and which meet all other requirements of this ordinance, are permitted uses and do not require a building permit. All other accessory structures in the Residential District, except as provided in paragraph 5 below shall require a conditional use permit.
(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 15 of this ordinance.
(6) When a private garage is oriented so as to face onto a public street it shall not be less than twenty (20) feet from the right-of-way line.
 - The language is less-than-perfect and requires interpretation, thus a written policy has been drafted, which provides for placement of accessory buildings in the Residential District as follows:

=<200 sf	No permit required
201-1499 sf	Zoning permit required
=>1500 sf	CUP required

- No components that generate wastewater are proposed.
- This site is located south of County 6 in La Crescent Township. The parcel is approximately 4.2-acres, which is larger than most residential lots. It borders ag protection district to the east and residential zoning to the west. The lot has only gradual slope near the highway that increases dramatically behind the dwelling. Slopes may allow a building behind the house, but risk for erosion would be increased in that location. Since most septic systems are pressurized, this may be an ideal secondary septic location.
- Soils in the proposed location are 455B2, a silt loam. The limiting factor for this soil is its low strength. No floodplain, water features or wetlands are mapped on the property. Feedlot and mine setbacks are not relevant to accessory structures.
- The applicant will seek a CUP at the 5:00pm Planning Commission hearing for a structure over 1,500 square feet.
- La Crescent Township and the ten closest property owners were notified. Two comments were received.

Chairman Anderson asked Shawn Allen if he had anything to add. Shawn Allen explained that his lot is long and narrow, that the slope of the land behind the house is 30% grade and that the only real spot to put a building is in front of the house. Shawn explained that currently he parks his equipment in front of the house and that moving stuff inside the shed would improve the look of his property. Shawn stated that both the County Engineer and La Crescent Township Board have looked at it and neither party seemed to have a problem with it. Shawn state that he's spoken with the neighbors and none of them had an issue with it. Shawn stated that the building will be concealed by trees on two sides. Shawn explained that he needs a larger door to fit larger equipment.

Wayne Runningen asked what size the building is. Shawn explained that the building would be 40 x 60 feet and that the sidewalls will be 16 feet tall to accommodate a 14 foot door.

Franklin asked if he was using poles. Shawn stated that it would be a pole shed and that he's not sure if he will pour a concrete floor yet due to material costs.

The Board briefly discussed property lines with Shawn.

Amelia reminded the Board that both the County Engineer and a neighbor submitted comments in favor of the request.

Chairman Anderson asked if anyone else wished to speak.

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

12.5 CRITERIA FOR GRANTING VARIANCES

The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the

property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subdivision 1. Findings Required

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

Staff Analysis: The Comprehensive Land Use Plan identifies that urban development will be encouraged in rural areas adjacent to the City of La Crescent. Accessory structures are allowable within urban areas, but are limited in size.

Board agreed to the finding by a unanimous vote.

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 dwelling is located near the back of the lot similar to the neighboring lot, which makes building behind the dwelling difficult. To make matters more complex, the grade behind the house increases dramatically which would make for a greater potential erosion issue. In respect to the garage door height, the garage door must be larger to accommodate taller equipment such as an RV.

Franklin Hahn confirmed that it wouldn't work to build behind the house due to the slopes.

Board agreed to the finding by a unanimous vote.

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 natural topography prevents over half of the lot from being buildable and while the current landowners built the house back in 1993, the dwelling location at the toe of the hill is very similar to the other three houses in this subdivision. It is also reasonable to believe that they did not know what their needs would be in 30 years and the ordinance in effect at that time does not appear to have the same requirement had they planned for it.

Board agreed to the finding by a unanimous vote.

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 dwelling was constructed almost thirty years ago and would have needed to be located closer to CSAH 6 to allow for easily locating another structure behind it in this long, narrow lot. Slopes may allow a building behind the house at this point, but there is a high potential for erosion issues. The garage door height variance can be alleviated by storing taller

equipment outside, however the purpose of building this shed is to house equipment out of sight of neighboring properties.

Board agreed to the finding by a unanimous vote.

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 proposal would be a permitted use in the ag protection district and two out of the other three lots in this subdivision have sheds very near 1,500 square feet so larger accessory buildings are not out of character for the location.

Board agreed to the finding by a unanimous vote.

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: There is no floodplain in the vicinity of the building location and this will not allow a use not allowed in the zoning district, provided a CUP is granted. The Planning Commission did grant a CUP tonight. (Clarification: The Planning Commission did not grant a CUP but recommended approval of the request to the Board of Commissioners.)

Board agreed to the finding by a unanimous vote.

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

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

Larry Hafner made a motion to grant a variance to allow an accessory building nearer the front lot line than the principal building and a variance to allow a garage door height in excess of 10 feet.

Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 504 was read for **Greg Josewski**, 12040 Sahara Circle, Rogers, MN 55374.

The petitioner is seeking variances from the side lot setback requirement for an existing building and a structure under construction that is replacing an old building. *The BOA may need to consider whether to consider the variances independently.*

- This parcel is one of eight created with a land split back in the early 2000s and contains the original farmstead. When the applicant purchased this property in 2019, all that remained was two barns and a silo (see Fig. 1). According to Assessor's records, the buildings on the parcel have no value.
- A previous owner sought a conditional use permit (CUP) in 2007 to build a house on less than 40 acres in the agricultural district. He later removed the existing house, but never constructed a new dwelling, resulting in the CUP expiring after nine months. Multiple landowners own property in

that quarter-quarter and a different landowner was issued a dwelling permit in 2016. This quarter-quarter is now occupied so this building can never be repurposed into a dwelling.

- The applicant purchased this property not realizing the structures are non-compliant. As you will read in the application, the petitioner claims to have contacted the office with questions and was told that replacing a structure in kind did not require a building permit or variance. I have no record of contact for Aaron or myself from the applicant or for this parcel in general. If we research a parcel for landowners, it is documented in our digital notebook.
- On October 14, the Zoning Office received an inquiry into the building being constructed at this location. After finding no permit had been issued and construction was indeed taking place, a stop work order was hand delivered on October 22. The initial concern was the structure possibly encroaching on the township road setback. The applicant submitted a building permit application on October 27 and a site visit to investigate the township road setback found that the structure was 85 feet from Union Ridge Drive, but the east property line is only 32 feet from the building. The building on the western boundary is in the same situation and the landowner plans to utilize it in the future as well.
- Even though this building is replacing an older structure, the reality is that this was an illegal parcel split. The building that is being replaced could have been relocated to meet the standards, but regardless, a variance is still needed to make the other structure compliant since they do not plan to remove that. In addition, concerns have been raised over the use of the building. The landowner states he plans to use trailers (a camper and fish house) for sleeping quarters and the shed will provide a bathroom, kitchen, heat, electricity, and storage for equipment.
- The slopes at the building location are minimal. Approximately 1.8 acres near the road and outside of setback area could have been easily utilized for building. The existing driveway meets access requirements.
- There are no floodplain, wetland or shoreland concerns. The intermittent streams are about 1,200 feet to the northwest and southwest and one is approximately 2,000 feet to the east.
- Ag buildings have no soil restrictions. The soil type at the location of the new building is 103B, a Seaton silt loam, which is described as suitable for building site development based on the Soil Survey – Houston County. The remaining area near the road is 103C2 which sometimes requires more land shaping. A septic system will be required for the bathroom and will need to be designed by a licensed professional. Feedlot and mine setbacks are irrelevant to this proposal.
- Mound Prairie Township and the ten closest property owners were notified. Two comments were received.

Amelia explained the parcel split that took place in the early 2000's caused the two existing buildings to be located close to the property lines. Amelia stated that it was brought to her attention that a building was being constructed without a permit. Amelia explained that after contacting Greg Josewski he did submit a building permit but upon reviewing the parcel she realized that both buildings required variances to bring them into compliance prior to granting a building permit. Amelia stated that there is a lot of open acreage there and he could have relocated it, but Greg stated that he contacted the office and was told that he didn't need a building permit. Amelia stated that they could have solved half the problem by relocating it, but a variance would have still been needed for the other existing building as they do not plan to tear that down.

Chairman Anderson asked Greg Josewski if he had anything to add. Greg explained that he called the office and was told that he didn't need a permit. Greg stated that he still doesn't understand why he needs a permit being as it was an "in kind building" that was built in 1962. Greg explained that it's the same length width and height as the original building. He assured the Board that he didn't intend to build without a permit in hopes that he could get away with it. Greg stated that he was doing what he thought he was supposed to do. He said that he worked with two local companies to start the refurbish of the building and that neither of them felt he needed a permit. Greg stated that when he called the Zoning Office they even discussed what size the bathroom

would be and that the conclusion then was that he didn't need a permit. Greg stated that he applied for a permit once Amelia made it clear that a permit was needed and that he would have done that originally if he had been told it was necessary. Greg assured the Board that he went through the proper channels every single time he was asked to do something. Amelia concurred that once he understood that he need a permit and later a variance, he applied promptly.

Amelia clarified that the original building did predate zoning but the property line then was changed after that point. Amelia stated that if the property lines had not changed the existing buildings would have been considered legal non-conforming.

Franklin Hahn asked who Greg had spoken to in the Zoning Office. Greg stated that he spoke with a young lady on April 21st but he doesn't remember her name. Franklin Hahn asked Greg to clarify that work had stopped once the stop work order was issued. Greg stated that he told his builders to stop building right away when the stop work order was issued. Greg explained that the guy that was installing the tin didn't get the message right away and worked for an additional day.

Greg explained that he contacted Mound Prairie Township when he applied for the permit and reiterated that he has done everything possible to be in line with what he needed to do.

Franklin Hahn asked Greg if he resided on the property. Greg stated that he lives in Rogers, MN and that his mother lives in La Crescent. Greg explained that about five years ago he bought 205 acres near Hokah and that he spends as much time there as he can.

Larry Hafner stated that in Greg's documentation he consistently refers to the building as refurbished, having the same size, footprint and roof. Larry stated that this is a replacement and that requires a permit. Larry explained that whoever Greg spoke with on the phone would have been easily misled by him stating that it was a refurbished building and she would have been correct in saying that a permit wasn't needed for a refurbished building. Larry Hafner stated he struggles to see this building as refurbished. Ken Anderson agreed with Larry Hafner that the construction is totally different with the old structure being a pole construction and this is a stud framed structure with a concrete floor. Wayne Runnigen agreed stating that all new materials were used. Greg agreed that his plans had changed and stated that he had planned to leave the old timbers standing and pour the floor but then realized that that wasn't going to work. Greg continued explaining that they then planned to take the timbers down pour the floor and set the timbers on top of the concrete. Greg stated that he later realized that the timbers were coated in creosote and after some research decide it would be better to replace them. Greg explained that his original plan was to use all the same exact timbers and everything. Greg admitted that the plan had changed from the original plan.

Franklin Hahn stated that he was surprised that the contractor didn't make sure that he had a building permit. Franklin Hahn stated that he's not a huge fan of government rules but feels that if he has to abide by them so does everyone else. Larry Hafner and Ken Anderson agreed. Greg agreed. Greg explained that when he called initially he was clear about the project, what they were doing and that there would be a bathroom in it. Greg stated that the permit wasn't necessary as long as the bathroom was under 80 sq. ft. Greg stated that it will be used for the same purpose and even though it is different wood and materials. Greg stated that it would have been easier and cheaper to build it in a different spot.

Wayne Runnigen stated that he built a hay shed on an old cement pad and that he was required by Zoning staff to get a permit upon explaining his project. Wayne Runnigen stated he was happy to pay the fee because he had a brand new building over an old slab of cement. Wayne

Runnigen stated that this building is brand new and it's frustrating that Greg started building without a permit. Greg agreed and reiterated that he didn't know that he needed a permit. Greg stated that he is new to this and he made a mistake.

Franklin Hahn asked Amelia if any additional work was done after the stop work order. Amelia stated that there had been some additional tin put on and that matches Greg's explanation. The Board discussed the extra work that had been done.

Amelia read part of an email submitted by Matt Gullickson in opposition to the application.

Greg stated that this is an agricultural building. Greg stated that this is agricultural land and that his family is doing agricultural things. Greg stated that he feels Matt has a personal grudge against him.

Larry Hafner stated that he doesn't understand how Greg can honestly claim that this is a refurbished building. Larry Hafner stated that he feels Greg loses credibility in his continual misrepresentation of the structure. Larry Hafner disagreed with Greg about the height of the structure. Larry Hafner expressed frustration that the Board is expected to grant this because the building is already started.

Franklin Hahn stated that he believes that in this day and age that wherever a person lives a permit is required to build a building.

Larry Hafner asked if he planned to install a septic. Greg stated that he plans to have Wieser Septic install a system. Greg stated that there is an existing compliant well and electricity.

Dan Fuchsel from Mound Prairie Township Board asked if his email submitted could be read for the board. Amelia read Dan Fuchsel's email with the Township's concerns. Amelia explained that after receiving Dan's comments she had asked Greg to submit an interior layout plan which is included in the Board packet.

Chairman Anderson asked if anyone else wished to speak. Matt Gullickson stated that he has no problems with Greg Josewski. Matt stated that he feels that everyone needs to play by the same rules to keep things fair. Greg stated that it is an agricultural building and that this is not a cabin so he doesn't understand what the issue is. Matt asked the board if any of their ag buildings have lofts with tons of windows or if would they build their ag building without an overhead door. Matt stated he wants the description to be accurate. Larry Hafner asked Matt to clarify that he doesn't believe this is an ag building and Matt agreed that he doesn't believe that it is. Greg stated that it either has to be an ag building or a dwelling and since they have no intentions of sleeping there it is an ag building. Matt and Greg argued the features of the building and the intended use.

Matt stated that he felt that the notice was inaccurate and that had accurate information been included more people would have been at the hearing in opposition to the request. Matt explained that he has no issues with a cabin being built there as long as information is accurate and the project goes through the proper channels to be permitted. Matt stated that sometimes it's easier to beg for forgiveness later than to get permission and he feels like this is one of those situations.

Amelia explained that the notice was drafted by our office based upon the application made and it was a standard notice for this type of situation. Amelia also shared that ag buildings are allowed to have a bathroom of 80 sq. ft. Chairman Anderson asked if kitchens are permitted in ag

buildings and Amelia stated that kitchens are not mentioned in the ordinance. Amelia stated that the ordinance does state that ag buildings can never be residences.

Larry Hafner stated that he feels there is clearly a violation and he doesn't want to guess motivation. Larry Hafner discussed tripling the permit fee vs. having the building removed.

Dan Fuchsel asked what the difference in standards were for an ag building vs. a cabin. Amelia explained that a cabin is limited to 400 sq. ft. or less and it cannot have any utilities vs. ag buildings are not limited in size but you are limited in that it cannot be resided in at any point. Larry explained that the building could so easily be converted into a dwelling. Chairman Anderson agreed and stated that by everything he has seen it looks like it is being built as a residence.

Amelia stated that a variance permit will state what the intended use is for which is not a dwelling and if the property is ever sold and someone inquires about the building we will say it was permitted as an ag building.

Franklin Hahn expounded that the fines are not a good deterrent.

Wayne Runningen stated that when he visited the property he wondered why there was no overhead door in an ag building. Greg explained that he plans to use the other building on the property to store bigger items. Greg explained that he has a real issue with mice and doesn't want mice getting under an overhead door. Amelia reminded the board that there is no a requirement for an overhead door in an ag building. Greg stated that he doesn't have an unlimited budget and can't afford to move it. Greg stated that he didn't intend to mislead anyone. Larry Hafner stated that the building is not a rehab. Larry and Greg disputed the building's height.

Dan Fuchsel asked if there was any reason he couldn't build a house on this parcel. Chairman Andersen explained that the quarter-quarter rule would prevent it but that a variance could be granted for that as well. Amelia stated that a variance could be sought but it would be our recommendation that it be denied. Greg stated that he doesn't want a house in the area. Greg stated that he will do whatever he has to do to satisfy the Board's opinion to see to it that this as an ag building. Greg stated this is an ag building and it will be used for day use only and that there will never be a person residing there. Dan Fuchsel stated that it's so close to a house it's hard to overlook. The Board agreed with Dan.

The Board discussed seeking advice from the County Attorney.

Franklin stated that if we pass everything that comes before the board then we are not going to go by the letter of the Ordinance.

Larry Hafner stated that telling them to tear it down seems overly harsh but our penalty seems too lenient. Franklin Hahn asked who sets the penalty. Amelia stated that the ordinance states that penalty is triple the fee.

The Board discussed tabling the hearing.

Chairman Anderson stated that the Board needs to look at this as if Greg was coming before the Board prior to building. Chairman Anderson questioned, "Would we allow it if that was just a proposed location; no building had been done?". Chairman Anderson explained that then we would have to deal with the fact that he started construction without a permit as a separate item.

Greg stated that this will cause him financial hardship and reiterated that he tried to do everything right.

Amelia read the ordinance language regarding the fines for building without a permit.

The Board discussed findings, tabling the hearing and the 60 day rule.

Larry Hafner made a motion to table the hearing to consult the County Attorney. Franklin seconded. Roll call vote was taken all were in favor. Motion carried.

Notice of Public Hearing No. 505 was read for **Mark Erickson**, 9686 Day Valley Dr, Houston, MN 55943.

Amelia explained that the applicant was unable to attend and that she planned to present the facts. Amelia explained that if the Board felt they had issues with the application the applicant requested that the hearing be tabled so that he can be present to represent himself.

Dan Fuchsel of Mound Prairie Township Board stated that Mark Erickson added a second driveway that has caused debris to wash over the township road. Dan explained that the Township has had to make special trips to the site to clear the roadway after heavy rains. Dan stated that the Township would like the Board to consider adding a condition that Mark must install both driveways according to County specs with ditches and culverts to keep the debris off the road.

The Board discussed tabling the hearing so that any conditions imposed could be explained to the applicant and to allow him to personally represent himself.

Amelia read the hearing notice.

The petitioner is looking for a variance from the toe of bluff setback requirement and 12' to reduce side yard setbacks for the proposed building.

- This site was an old school house that was first repurposed into a cabin and then dwelling. On 5/28/2003, Permit #2640 allowed for an addition on the house and an attached garage. Permit #2522 from 5/21/2002 allowed for a pole shed. It is unclear to staff how the original pole shed structure was allowed because the same bluff standards existed at that time as do now. The landowner lost the existing shed to a fire in early 2021 and instead of rebuilding in the same location, he was hoping to move the building in line with the dwelling so he could create a covered access in between.
- After mapping the parcel based on the survey, staff believe that the western boundary is not correct as pictured on Beacon. As lines are drawn on Beacon currently the structure is right at the 50 foot setback requirement so this correction may require a side yard setback variance. The Surveyor's Office has been asked to confirm this, but that was not provided prior to this publication. A final determination will be provided at the hearing.
- County 25 right-of-way (Fig. 3) extends beyond the normal distance in this area to allow for repair of the hillside should an issue arise. This proposal will be very close to that line and the landowner has located the right of way markers. Brian Pogodzinski, the County Engineer, has been involved with the building permit review from the beginning and recommended the following conditions be part of the building permit approval.
 1. Property owner shall hire a registered land surveyor to survey and stake the right-of-way line adjacent to the construction site to ensure the new building is outside of the right-of-way.

2. No disturbance within the right-of-way shall occur without first obtaining a “Work in the Right of Way Permit” from the Highway Department.

- His other concern was the disturbance, “The area recently disturbed appears to be very close to, if not already across, the property line and has a vertical slope cut at the edge of disturbance. The vertical slope would not be a stable slope long-term which could negatively impact their building and the snowmobile trail above it that goes along the old roadbed. With the existing slope between the old roadbed and existing garage area already being very steep, engineering/geotechnical analysis may be warranted if the landowner disturbs the existing slope.”

- See applicable ordinance citations below:

14.8 SIDE YARD SETBACK STANDARDS

Subdivision 1. Minimum Side Yard Setback. There shall be a side yard width of not less than fifty (50) feet on each side of the building.

29.17 BLUFF LAND PROTECTION

Subdivision 2. Setback from the Toe of a Bluff. Structures shall be set back forty (40) feet from the top of a bluff and twenty-five (25) feet from the toe of a bluff.

- Slope and addressing water runoff issues are the main concerns at this site. Sites are to be evaluated based on the natural topography, but the applicant had begun excavation work by the time staff viewed the site. Realistically, the hillside was likely altered back in 2002.
- Soils are 388E, a Churchtown silt loam. The Soil Survey – Houston County identifies the main limitation as slope, which requires extensive land shaping. It recommends that buildings conform to the natural topography.
- There is an intermittent stream 300 feet to the northeast that skirts around the property and then ends up about 1,000 feet south of the site. There are no wetland, shoreland or floodplain concerns. Feedlot and mine setbacks are irrelevant to this proposal.
- The SWCD plans to review the site and will provide a report for the hearing.
- Mound Prairie Township and the ten closest property owners were notified. One comment was received.
- Mound Prairie Township has concerns with the second driveway that the applicant maintains and this will be addressed as a condition on the building permit.

Franklin Hahn made a motion to table the hearing. Wayne Runningen seconded. Roll call vote was taken. All were in favor. Motion carried.

Amelia explained that Martin Herrick would be starting as the new Environmental Services Director and updated the Board on the progress of the Comp plan.

Franklin Hahn made a motion to adjourn the meeting. Larry Hafner seconded. All were in favor. Motion carried.

Submitted by Houston County Board of Adjustment Clerk on December 17, 2021.