

Houston County Board of Adjustment
June 23, 2022

Approved on September 22, 2022 by Ken Visger and Larry Hafner

The Houston County Board of Adjustment met at 5:00 p.m. on Thursday, June 23, 2022. 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, Ken Visger and Wayne Runningen. Martin Herrick and Amelia Meiners were present for Environmental Services.

Wayne Runningen made a motion to approve the minutes of April 28, 2022. Franklin Hahn seconded. Roll call vote was taken. All were in favor. Motion carried.

Notice of Public Hearing No. 508 was read for the applicant, **Gary and Karmin Van Domelen**, 4665 Tschumper Road, La Crescent, MN 55947.

The petitioners are seeking a variance to construct a ground mounted solar array within the top of bluff setback and bluff impact zone.

- The applicants have 108 contiguous acres in Hokah Township. It is an old farmstead consisting of timber acreage and grassland on the ridge top. The solar array is being proposed within the farmstead in an area that was likely an old feedlot. This location will provide optimal sun exposure and hide the array from public view.
- Bush Valley Creek is approximately 3,300 feet to the west and there are intermittent streams approximately 2,288 feet to the northeast and 1,590 feet to the southeast. There are no floodplain, wetland or shoreland concerns. The feedlot and mine setback are not relevant to this proposal and property line setbacks will be met.
- This farmstead is located immediately adjacent to steeper slopes and dates back to the early 1900s. While those structures are considered legal, non-conforming, any new projects must meet our current standards. This project is proposed on slopes under 4%; however, it will not meet the required setback from the top of the bluff. There is an old road that goes down the hill, but slopes above are greater than 24% up until the concrete around the old dairy barn.
- While sun exposure is an obvious factor when considering locating solar, another item to consider is proximity to the main meter. This property has many open locations, but they end up being located further from the main box, which both increases costs and may affect productivity.
- 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 (90% rating).
- Hokah Township and the ten closest property owners were notified.

Chairman Anderson asked Gary Van Domelen if he had anything to add. Gary explained that the site location was chosen because of proximity to the transformer, for optimal solar gain and to best hide the array from view. He stated that the solar array will sit in the concrete of the old cattle yard. Chairman Anderson questioned if the solar array were to slide off the hill in a heavy rain event would the power lines attached to the array be dangerous. Emily Windsor, representing Olson Solar Energy stated that if anything were to happen the array will shut itself down. Larry Hafner asked how big the array would be. Emily stated that the solar array will be 56 feet long by 13 to 15 feet high. She explained that they will use a pile driver to place the posts in the ground about 8 feet. Larry Hafner asked how steep the drop off would be where the solar array would be placed. Gary

explained that there was 40 to 50 feet before the hill starts to slope down. Larry asked where the transformer would be. Emily stated that MI Energy's transformer is located closer to the home. Martin asked if the power was for consumption or if there would be excess power produced. Emily stated that the goal is to offset usage and that they do not seek to produce excess power. Larry asked what the life expectancy of the array would be. Emily stated that the life expectancy is about 30 plus years. Larry asked if the array would be susceptible to hail. Emily stated that they have not have any problems with hail.

There was brief discussion about the future of recycling solar panels.

Larry Hafner asked how long the business has been in operation. Emily stated that they have been in business for 6 years and that they've installed almost 500 systems this year and they are starting to sell for next year.

Ken Visger stated that Gary is his neighbor and that he has no concerns about the project as the ground won't be disturb, so the issue of runoff and erosion is not a concern. He stated that we should be supporting solar.

Larry Hafner asked how they plan to install the posts through the concrete and what kind of soil was under it. Gary stated that they will cut through the concrete and then pound into a mixture of rock and clay.

Chairman Anderson asked that the Findings be read being there were no others present to comment.

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 HCZO Section 29.8 subd. 2 states that solar structures are allowed the same variance requests as other structures while the Comprehensive Land Use Plan encourages alternative energy solutions.

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. There may be other locations on this parcel, but proximity to the main meter is important as well and other locations would increase that need. This location also hides the array from the public eye.

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 farmstead was built right on the ridge top and dates back to the early 1900s. There is a narrow building envelope in this location and numerous other buildings all hinder potential locations 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 may require a greater demand in equipment and materials, and alteration to vegetation to provide optimal service.

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 already impervious surface so this use shall not affect existing water runoff capabilities. 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 request is for a reduction of required setback distances which is an area variance and 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.

Larry Hafner made a motion to accept the findings. Ken Visger seconded. 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 34 feet to allow placement of a solar array within the top of bluff setback and bluff impact zone.

Ken Visger seconded. All were in favor. Motion carried.

Notice of Public Hearing No. 509 was read for the applicant, **Marlin & Mary Ann Carrier** PO Box 367, Rushford, MN 55971.

The applicants are requesting a variance to the side lot for a proposed addition and a variance to the rear yard setback for an existing dwelling.

- The applicants purchased the property in 1977. A conditional use permit was issued in 1978 for a dwelling on 30 acres. It is understood that at the time of purchase they thought the south property line was beyond the existing and 1968 aerials do seem to confirm as much. It seems the intent was for the dwelling to be constructed at the 50-foot setback to the east line and well beyond the setback to the south. The agricultural district has required 50-feet since the adoption of the first ordinance in 1967. There have been two permits issued within the last ten years for replacement projects that have brought the south property line into question, but were not proposing an encroachment beyond the existing structure.
- In early 2022, the applicants submitted a building permit application for an ensuite addition off the east side in order to allow themselves to age in place. After review of the site, it was determined that they could not expand to the east due to the location of their septic system, but due to the layout of the dwelling, the only feasible location for the ensuite was off the southeast side of the home. After taking a step back, the landowners decided to replace their septic system that will then allow them to abandon the old trench system restricting them on the east. With that resolved (after installation is complete) they are able to move forward, but still need to encroach slightly on the east property line. There is no proposal to expand southward, but since a public hearing was necessary regardless staff thought the Board of Adjustment would consider both.
- The parcel between this property and State 16 is not adequate for building due to slopes and road setbacks so there should be minimal disturbance to neighboring properties.
- The parcel primarily consists of steep slopes with a plateau about 1 acre in size. Since much of this parcel exceeds the slope limitation, siting all infrastructure becomes difficult.
- The Root River is approximately 2,800 feet to the east and Daley Creek is 1,200 feet to the south. There are no wetland or floodplain concerns and soil type is irrelevant to this proposal. The site meets slope requirements as well as bluff setbacks. The septic system is being replaced and design work has been completed on that.
- Yucatan Township and the ten closest property owners were notified. The township responded that they have no issue.

Amelia explained the variance for the existing dwelling is mainly to clean up the parcel to fit the ordinance. Mary Ann passed out pictures of their yard and explained that there was confusion about where the property lines were when the property was purchased. She stated that they would like to add a 12 by 13-foot bathroom and a closet so they can age in place. Wayne Runningen asked who owns the property to the south. Mary Ann explained that Craig Colbenson lives there and that

he is a first cousin. She explained they have talked to him about purchasing some ground to clean up the property, but he stated that he has no issues with the property lines and that there is no need being they are family. Chairman Anderson asked how close the house is to the perceived property line. Mary Ann stated that they need an additional 9 feet to meet the setbacks. She stated the distance to the bluff will be 63 feet from the addition.

Chairman Anderson asked that the Findings be read being there were no others present to comment.

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 the rehabilitation of existing homes and sometimes that requires additions to meet modern standards.

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: While the applicants do own 33 acres, there is a limited building envelope on this property and due to the dwelling layout, the only location for an ensuite is the east side of the dwelling.

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 landowner did construct the original dwelling to meet the 50-foot setback, but the Board of Adjustment may consider that inhabitants needs change in a home after fifty years.

Chairman Anderson stated that it is reasonable to make those adjustments.

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 only location for this addition is off the east side of the house. If approved, the applicants will be relocating their septic system in order to accommodate this 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: An addition onto an existing dwelling should not have a greater effect on the neighboring property than the existing situation and will not impair property values or effect the public health, safety or welfare of those in the vicinity. This project also forced the homeowners into replacing their septic system, which may be an improvement to public health.

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 this location is outside of flood plain.

Board agreed to the finding by a unanimous vote.

Larry Hafner made a motion to accept the findings. Franklin Hahn seconded. 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 variance of 9 feet from the east property line to meet the required 50-foot property line setback for a proposed dwelling addition and a variance of 46 feet to meet the required 50-foot property line setback to the south line for an existing dwelling.

Wayne Runningen seconded. All were in favor. Motion carried.

Notice of Public Hearing No. 510 was read for the applicant, **Alan and Kathleen Sheehan**, 15680 Old 44 Road, Caledonia, MN 55921.

The petitioners are seeking a variance to construct a ground mounted solar array within the top of bluff setback and bluff impact zone.

- The applicant's approached the Zoning Office earlier this year in regards to a dwelling addition and it was discovered at that time that there are inconsistencies with the north property line and

required setbacks. The only reasonable method to correct these at this point in time are by variance. The applicants have decided not to pursue their project, but would like to clean up their parcel for the future.

- This is an existing homestead with the house dating back to 1900. When the applicants purchased the property in 1997, a new parcel was created and the north property line was drawn just off the 30' x 60' Quonset hut. The ordinance at that time required a 50-foot property line setback and the lines should have been drawn to accommodate that, but there was no County review process that would have mitigated the issue at that time. Then Permit #4252 to build a shop was issued on 8/20/2014. A site sketch drawn by County staff during field review of the permit application was attached to the application after issuance and clearly indicates the building in its present location. However, when the permit was issued it stated that a 50-foot property line setback should be met. It is speculated that staff at the time of permitting the newer structure allowed the building based on the fact that it was not proposed to encroach further than the existing 1950 era building. The issue is that existing encroachment was a result of an illegal split and in addition, there is no documentation to support the previous staff member's decision. A variance request was the recommendation of county legal counsel to resolve the indiscrepancies.
- The applicants own just over 70 contiguous acres in this location and this request will not facilitate any change to the existing property. There are no floodplain, wetland, shoreland or slope issues. There is a mine within approximately 600 feet of the homestead. The mine is owned by the applicants, but operated by Bonanza Grain. There are no concerns with this site aside from the property line setback issues discussed above.
- Caledonia Township and the ten closest property owners were notified. No comments were received.

Amelia stated that the applicants are not seeking a building permit at this time, but they were looking into it this spring and that discussion brought these property line issues to light. She stated that once the applicants were made aware of the issues they opted to get them taken care of right away. Martin explained that they are seeking a 49 foot variance to the 50 foot required setback and the other is a 46 foot variance to the 50 foot setback.

Ken Visger asked Kathy Sheehan if they had to pay for the variance hearing and she stated that they did not. Ken agreed with not charging for the hearing and stated that it was the County's mistake. Amelia explained that this application was initiated by the County.

Franklin Hahn asked if they could get another variance if they desired to build another building close to a property line in the future. Amelia stated that is how it has been treated in the past. She stated that while we are willing to correct these, future applications will need to meet the setback requirements or they can request another variance. Martin agreed.

Chairman Anderson asked Kathy Sheehan if she had anything to add. Kathy stated that her husband was told by Zoning staff that they could build in that location because the other building was already that close to the property line. She stated that the 2014 permit allowed the building to be built near the property line even though the back of the permit stated that they must stay 50 feet from the property lines. Amelia stated that it was probably standard language that didn't get changed. Amelia stated that unfortunately we don't have documentation to say that is why he made that decision and since the permit says something different it was the County Attorney's recommendation that this be heard by the Board of Adjustment.

Wayne Runnigen asked why the land was split this way. Kathy stated that the land was split at the time of her father-in-law's passing. She stated that they received the parcel containing the farm and her mother-in-law received the other portion. Amelia stated that the Zoning staff was

not regularly consulted on parcel splits around that time. She explained that the way the property was split created the setback issues for the Quonset at that time and based upon the field notes regarding the 2014 building the building clearly would not have met the required setbacks.

Chairman Anderson asked that the Findings be read being there were no others present to comment.

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 it seems the existing property line was drawn with the thought of retaining as much tillable acreage as possible for the adjacent landowner.

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 property to the north is under different ownership and removing the buildings is not realistic. The landowners were not trying to hide anything during the property split and while permitting the other building as the County did facilitate both of those. The use of the property has not changed over the years and is likely less intense than in the past.

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 was split in 1997 when the applicant purchased from his parents. It appears that putting the property line close to the building followed the natural boundary of the landscaped yard and minimized impacts on the amount of tillable acreage in that location.

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: At this point in the time, the only reasonable method to resolve this issue is a variance. The BOA may consider that the County facilitated both instances by either recording a deed or approving a permit application.

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 request is correcting issues with two existing buildings and is not allowing any new structures, therefore it will not be altering the essential character or have any effect greater than existing conditions.

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.

Board agreed to the finding by a unanimous vote.

Larry Hafner made a motion to accept the findings. Wayne Runnigen seconded. 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 49 feet to reduce setback requirements for a 2014 building to the north property line and a variance of 46 feet to reduce setback requirements for a Quonset structure to the north property line to meet 50-foot setback requirements.

With the following condition:

Any future buildings must meet the 50-foot required setback or seek independent variances.

Franklin Hahn seconded. All were in favor. Motion carried.

Notice of Public Hearing No. 511 was read for the applicant, **Michael Rogich**, 315 Ramsey Street S, Caledonia, MN 55921.

The applicant is proposing to convert a wing of the commercial building into a single-family dwelling and convert the Quonset portion into storage units.

- On May 10, 2022 a conditional use permit was issued in accordance with Houston County Zoning Ordinance (HCZO) 17.3 Conditional Uses Subdivision 1. In the general business district, the following uses may be allowed only after obtaining a conditional use permit in accordance with the provision of the ordinance:
 - Single and Multi-Family Dwelling Units.
 - Other Uses: Other uses as determined by the Planning Commission and the Houston County Board of Commissioners that are similar to those uses listed above, and are found to be compatible to with other uses already permitted in the district.
- The structure consists of multiple wings and has functioned in a historic residential and commercial capacity.
- The former Elmer's Supper Club is zoned general business. The property was split on July 7, 2008 with the parcel having virtually no setbacks for the side yard, rear yard, a mine and adequate area for two soil treatment dispersal areas for septage. Prior to the property split the septage treatment was sized for both the supper club and the neighbors design flows. The treatment area is located on the neighboring property along with the well. The parcel has maintained an agreement with the adjacent neighbor for water supply and septage treatment. Additionally, while the parcel is adjacent to the city of Caledonia the likelihood of hooking up to the city's Publicly Owned Treatment Works is very cost prohibitive.
- Houston County has the authority to grant a variance to the requirements in MN CH 7082.0100 for the two soil treatment areas based on the demonstration of performance and agreement to neighbor's treatment system under MN CH 7082.0300.
- The ten residences closest to the parcel were contacted regarding this proposal and no comments were received on the variance request.

Martin and Amelia explained that the property lines were cut next to the building at the time of the property split making it impossible to locate a septic anywhere other than the adjacent property. They noted that the building might have a foot to spare on the backside of the building.

The septic system agreement and well agreement were discussed.

Marty explained the terms of the Conditional Use Permit that was granted by the Board of Commissioners on May 10th.

Ken Visger asked if the current zoning of the property would prevent additional residences within the building. Martin stated it would.

Chairman Anderson asked if anyone else wished to speak being the applicant was not present. Neighbor, Robert Schieber asked if there was a basement under the Quonset and asked if the building was sound enough to handle seven storage units. Franklin Hahn stated there is no basement in the Quonset portion of the building. Martin stated that the revamp of the structure was discussed with Zoning staff and explained the project briefly.

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: Houston County's Comprehensive Land Use Plan encourages smart growth adjacent to incorporated areas with efficient use of land and facilities. There is a need for storage facilities. Repurposing an existing commercial structure to a residence and storage units with less impact meets the smart growth goal. Additionally, this will not require any additional utilities or infrastructure.

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 Quonset structure does lend itself to many contemporary activities besides a storage facility and consequently the proposed use is reasonable. Historic development and property transfers necessitate variances for compliance with Houston County's ordinances.

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 parcel has virtually no setbacks from property boundaries and it has an agreement with the adjacent property for sharing a well and septic. The variances are needed to bring the parcel into compliance with Houston County's Zoning Ordinances.

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 only other means of achieving compliance with the Houston County Zoning Ordinances would be the demolition of existing structures and property transfers which is not reasonable. The variances are for the minimum distance to achieve the required setbacks in the Houston County Ordinances and a variance to the requirement to have two soil treatment dispersal areas for septage.

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 is correcting existing zoning issues and is not allowing new structures and does not alter the essential character of the locality nor substantially impair property values, or the public health, safety or welfare 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: The variances are for area activities regarding setbacks and not requiring two soil treatment dispersal areas for septage. There is no floodplain located in this immediate area.

Board agreed to the finding by a unanimous vote.

Franklin Hahn made a motion to accept the findings. Larry Hafner seconded. 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 of 50 feet to reduce side yard setback requirements for an existing building.
2. Variance of 50 feet to reduce rear yard setback requirements for an existing building.
3. Variance of 210 feet to reduce mine setback requirements for a proposed dwelling within an existing building.
4. Variance to reduce minimum requirements for sewage treatment.

Wayne Runningen seconded. All were in favor. Motion carried.

Notice of Public Hearing No. 512 was read for the applicant, **Wayne and Kris Houdek**, 12858 Malay Road, Caledonia, MN 55921.

The applicants are seeking a variance of 838 feet for a proposed dwelling to meet the required 1,320-foot setback from a registered feedlot in Mayville Township.

- The petitioners purchased the property in 2004 and have utilized the tillable acreage since that time. This parcel is primarily tillable acreage with just a small amount of timber. It is bordered by a township road to the west and county road to the north. There is approximately 385 feet of hard surface road frontage to CSAH 20 before it turns to gravel. The Highway Department reviewed the location and issued a driveway permit on March 2, 2022.
- A farm dwelling is a permitted use in the agricultural protection district and allows the applicants to build on prime agricultural soils. This parcel encompasses two quarter-quarters, but there is a dwelling occupying the SW NW quarter-quarter. There is area outside of the feedlot setback near the southeast corner of the NW NW quarter-quarter, but it would have a greater impact on the tillable acreage.

- The Feedlot Advisory Committee reviewed the site and we received four comments in return. All recommended granting the variance as they felt the proposed location provided the best option to minimize loss of tillable land and prevent drainage issues. Note that the applicants currently operate a 440-cow dairy and are well accustomed to feedlot activities. It should also be noted that this impacts the feedlot as a new dwelling would require the feedlot to undergo a variance for any future expansion activities.
- The feedlot at 12084 Leary Road is currently registered for 14.8 animal units, but was registered for up to 194 animal units on the initial registration in 2001. The ordinance requires that the setback be considered from the outermost boundary of the feedlot, which is the barn immediately off the road.
- There are no bluff, floodplain, wetland or shoreland concerns. The waterway approximately 300 feet south of the dwelling is classified as an intermittent stream so extra care should be taken to prevent any runoff. That stream flows to Sullivan Creek.
- The driveway and building site will meet slope standards and there is no dwelling within the NW NW quarter-quarter. The feedlot will be just slightly southwest of the proposed dwelling and based on the local windrose, the proposed location may be optimal for reduced odor.
- Mayville Township and the ten closest property owners were notified. The township has no issue with the proposal.

Amelia stated that currently the feedlot does not house many animal units and that it would be allowed to expand up to their largest registered record animal units. She stated that if the feedlot wanted to expand above that number they would need to seek a variance. Ken Visger stated that it seems unfair to allow a variance for a home, that will require the feedlot owner to seek a variance if they ever seek to expand beyond that. He asked if the home located to the south would also cause the feedlot to also seek a variance. Amelia stated that it would. Franklin Hahn asked if it has ever been a problem for an existing feedlot to seek a variance to expand once a home has been allowed within the feedlot setback. Amelia stated that to her knowledge it has not been an issue.

Chairman Anderson asked Wayne Houdek if he had anything to add. Wayne did not.

The Board further discussed the implications of allowing homes near existing feedlots.

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. The feedlot advisory committee has reviewed the site as well per 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: The applicants have almost 80 acres in this location and a farm dwelling is a permitted use. One of the quarter quarters is occupied and a majority of the open quarter quarter falls within the feedlot setback distance. While building within the setback is not optimal, it will minimize impacts to tillable acreage.

Chairman Anderson stated he was glad to see the effort to minimize impacts to tillable acres.

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 NW NW quarter-quarter is an open quarter quarter, but a majority of the property lies within the quarter mile setback. There is a small area outside of the setback distance, but it would require removing more tillable acreage. There is also a limited amount of hard surface road access in this location.

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 applicant would like to locate close to the hard surface road, which keeps them closer to the feedlot. There is likely no area north of the draw that would not require a feedlot or property line setback variance and as you approach the east property line there is greater slope.

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: Farm dwellings are commonly found in the agricultural district, as are feedlots. This proposal will not differ from other surrounding rural residential properties and should not negatively affect property value, public health, safety, or welfare of others 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 not in the vicinity of flood protection elevation.

Board agreed to the finding by a unanimous vote.

Ken Visger a motion to accept the findings. Larry Hafner seconded. 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 variance of 838 feet for a proposed dwelling within the required 1,320 foot setback for a registered feedlot.

Wayne Runningen seconded. All were in favor. Motion carried.

Notice of Public Hearing No. 513 was read for the applicant, **Rick Payne and Heidi Johnson**, 18592 State 26, Brownsville, MN 55919.

The applicants are seeking a variance of 1,060 feet for a proposed animal confinement building to meet the required 1,320-foot setback from a registered feedlot in Crooked Creek Township.

- The petitioners purchased the 1-acre property in 2019 and were able to purchase an additional 1.21-acre from the State of Minnesota in early 2022. The property historically had been a tavern that was converted into a house in the 1980s and an accessory mobile home was allowed in 1993. There is a small building behind the house that is currently being used a loafing shed and another mobile structure exists near the western property line.
- This site does not have enough animal units to meet the regulatory threshold for registration as a feedlot, but feedlot rules apply if the site meets the definition of a feedlot regardless of registration status. The Houston County Zoning Ordinance (HCZO) feedlot definition mirrors that of Minn. Rule 7020 which is the state feedlot rule.
- Existing conditions at this site meet the feedlot definition, but since they are putting up an animal confinement building this shall be considered a feedlot. Should a variance be granted the landowners will likely register it as such.
- Staff have a couple concerns with the small area of this site. Currently the septic system is located adjacent to the gravel parking area. There are no records, which means that the system is older and because of that its important a replacement location be identified when considering other development on a parcel. A new system will need to meet setbacks to the well, sensitive features, buildings and should be outside of animal grazing or confinement areas.
- The other concern is in regards to land application of manure. Using MPCA recommendations on stocking densities for confinement buildings a 1,200 square foot structure has the potential to house 24 head of beef slaughter steers. This property has no tillable acreage for land application of manure and cannot be applied within MnDOT right of way. Since this property has no tillable acreage, the landowners should be required to contract acreage for land application that meets all regulatory requirements.

- The Feedlot Advisory Committee reviewed the site. The general consensus was that a structure would improve the overall operation and natural screening would help odor. One member did question the existing conditions.
- OFFSET, which is a tool designed to assist in evaluating odor control estimates that the neighboring dwelling will be 98% odor free.
- This property is primarily surrounded by state land. Land to the north and west is part of the Richard J. Dorer Memorial Hardwood Forest and property to the east is right of way for State 26. Beyond that is the Upper Mississippi Wildlife Refuge. While this site does not have any shoreland, wetland, or floodplain, there are vulnerable water resources very close to the site. Beacon shows that the ditch that parallels Neumann Road is mapped as an intermittent stream, but this does not match other DNR resources and will be verified prior to the hearing.
- There is one permanent dwelling approximately 382 feet to the northwest of the proposed building and one recreational dwelling approximately 1,200 feet to the south. Existing conditions of the site appear to be open lots rather than pasture areas and should be considered in the setback as well. When taking those areas into account the reduction would become 1,072 feet.
- There is a sand point well within the dwelling. The proposed confinement building will meet the 50-foot setback required for feedlots under 300 animal units.
- Right of way extends 150-feet on the west side of State 26. There are no concerns with slope.
- Crooked Creek Township and the ten closest property owners were notified. The closest neighbor provided a comment the petitioners submitted with their application. It is included in the packet.

Amelia explained that even though the applicant does not have very many animals a feedlot variance is required to build a building to house livestock within 1320 feet of an existing dwelling.

Franklin Hahn asked if runoff was an issue being close to the Mississippi River. Amelia stated the site is just outside of the shoreland district. She explained that there is an intermittent stream on the north boarder of the property that runs adjacent to Neuman Rd that could be a potential runoff concern. Amelia stated that she has explained to the applicants that any runoff entering into Federal Waters is a big deal. Rick stated that there has not been any water in that ditch since he's lived there. Rick Payne explained that he would like to build a berm to avoid any runoff. Rick explained that he raises livestock for family and friends and he is not looking to keep very many head on site.

Franklin Hahn asked if the size of the operation would require a feedlot permit. Amelia stated that since he is outside of shoreland he does not need a feedlot permit at his current size.

Ken Visger asked how maximum capacity was calculated for this site. Amelia stated that she used the building size in correlation with the MPCA's stocking density recommendations. She stated that if they were to fully stock their building capacity would be about 24 head.

Current manure application in the right of way and establishing a landowner manure application contract were discussed. Amelia stated that a manure contact would need to be completed prior to granting a building. Ken Visger asked Amelia if she was confident that the manure would not runoff. Amelia stated that she has concerns due to the proximity to the Mississippi River. Ken Visger asked if the animals would be outdoors. Rick explained that it would be a three sided shed with an outdoor yard. Manure containment and construction of a berm to prevent runoff were discussed.

Wayne Runningen asked if the building would have a cement floor. Rick stated that it would have a lime screening floor. Wayne Runningen expressed concern about the floor asked how he plans to clean it. Rick stated he will use a Bob Cat and plans to clean it every one to three months.

Rick explained how the cattle would flow through the operation as they grow. Wayne Runningen expressed concerns about the shape of the land.

Future septic replacement sites were discussed.

Amelia inquired about the size of the outdoor lot area. Rick explained that the livestock area outside of the building would be about 48 by 80 feet. Rick stated that he wanted to have three separate pens housing 200 – 300 pounders, 500 – 800 pounders and 800 pounds to finish.

Franklin Hahn asked Amelia if she was comfortable with Rick's plan. Amelia stated that adding the berm would help to alleviate concerns. Ken Visger asked if Zoning staff could come up with a plan for a berm and if that could be a condition of the variance. Amelia stated that it could be.

Wayne Runningen stated that you are building in a valley and it's hard to prevent runoff. I can't support this proposal as it is. Martin expressed the need for more detailed information regarding runoff prevention. Ken Visger stated I am not prepared to approve this without more information.

Franklin Hahn asked if it would be more beneficial to build the berm first or the building first. Martin stated that he would like to see the site grading completed before building. Rick expressed concerns about the berm size and the amount of the water that would be held back.

Franklin Hahn stated that he feels the Board is seeking a plan that we can be comfortable with. Chairman Anderson stated we don't have enough details to move ahead.

Rick stated I am only asking to raise 10 to 15 head of cattle. Rick expressed frustration that it was fine for him to have cattle without a building, but now that he wants a building it's a problem. Rick questioned the cost of the berm. Larry Hafner stated he feels that the Board wants to see Rick succeed, but they would like more information. Ken Visger stated the reason we have a feedlot ordinance is because a feedlot has the potential to create water problems, soil problems and erosion problems and from what I've heard thus far those could all be issues for you. Unless I have more information I'm not prepared to approve this right now.

Rick expressed frustration that he sees larger feedlots with poor management.

Larry Hafner made a motion to table the hearing. Ken Visger seconded. All were in favor.

The Board explained to Rick that hearing will be brought back at his discretion and also would need to meet the minimum time requirements for approval or denial of the application.

Chairman Anderson adjourned the meeting.

Submitted by Houston County Board of Adjustment Clerk on June 24, 2022.

Houston County Board of Adjustment
September 22, 2022

Approved on October 27, 2022 by Ken Visger and Larry Hafner

The Houston County Board of Adjustment met at 5:00 p.m. on Thursday, September 22, 2022. 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, Ken Visger and Wayne Runnigen. Martin Herrick was present for Environmental Services.

Ken Visger made a motion to approve the minutes of June 23, 2022. Larry Hafner seconded. All were in favor. Motion carried.

Notice of Public Hearing No. 514 was read for the applicant, **Kathy Unnasch**, 17167 County 13, Houston, MN 55943.

A variance is requested to place a 24 ft by 40 ft garage within the 50-foot setback for side yards in the ag protection district.

- PID 060347001 is located adjacent to County Road 13. The proposed setback is from the Quarter Quarter property line. The site is wooded and vehicle access from County Road 13 to the side yard is limited.
- The property consists of 9.27 acres with farmland and woodlands. The area buildable is greater than .9 acres. The area where the garage is proposed is relatively flat with the toe of the adjacent bluff greater than 25 feet away. There are no mapped water features or wetlands on the parcel. Wooded land occupies the steeper portions of the site. Tillable soils are 76A Bertrand Silt Loam which has a subclass IIe and is good for forage and pasture.
- Houston Township and the ten closest property owners were notified. No comments were received from the public.

Chairman Anderson asked the applicants if they had anything to add. Kathy Unnasch stated she would like to build a garage. Kathy explained the garage can't be place on the other side because of the well. Franklin Hahn asked if there was a dry run behind her property. Kathy stated that there is a spillway. Wayne Runnigen asked if this is the only place the building would work. Kathy stated that she could put it in the field, but that would require crossing the dry run.

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 residence and associated structures are located in the non-tillable acreage of the parcel aiding the preservation of commercial agriculture which is a goal of the Comprehensive Land Use Plan. This is in harmony with the general trend of increasing farm size, commercial farmers require additional cropland, but do not necessarily require additional farmsteads.

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: Concerning the proposed building, any resolution other than a variance would involve the acquisition of additional land, which necessitates a willing seller. This is in concert with the lot's terrain which has limited buildable locations including the need for a second location for a septic 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 parcel has limited buildable locations due to steep slopes. The owners' limited options to resolve the issue represent a special condition not created by the property owner. The Board may further find that the limited areas represent a special condition.

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 Board may find that the variance related to the proposed building is the only way to feasibly resolve the setback issue, and that the 15-foot variance to the 50-foot side yard setback is the minimum variance that would alleviate the practical difficulty of limited buildable space.

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 existing building and proposed garage are blocked from most viewsheds by the terrain and the woodland. The garage will not have a septic system or any commercial activities. The addition of the garage is not anticipated to have any effect on the above criteria.

Wayne Runnigen asked if the garage would have water or electricity. Kathy stated that it will have electricity, but no water.

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: Non-attached automotive garages are allowed accessory buildings for a single-family dwelling in the agricultural district. There is no mapped floodplain on the parcel. There are no known state standards applicable to the request.

Board agreed to the finding by a unanimous vote.

Ken Visger made a motion to accept the findings. Wayne Runnigen seconded. 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 15 feet to reduce side yard setback requirements for a proposed building.

Ken Visger seconded. All were in favor. Motion carried.

Notice of Public Hearing No. 515 was read for the applicant, **Hickory Orchard, LLC**, 28085 County Rd 25, Elgin, MN 55932.

Variances are requested for two separate dwellings with one to reduce the side yard setback from the west property line and the second for another dwelling to reduce the rear yard setback to the south property line.

- PID 110154000 is located adjacent to Houston County HWY 25. The existing side yard setback for the dwelling located adjacent to the West Quarter Quarter property line is approximately 37 feet. And the existing rear yard setback for the dwelling located adjacent to the South Quarter Quarter property line is approximately 27 feet. Both the rear and side yard setbacks in the Agricultural Protection District are 50 feet.
- For compliance with Houston County Zoning Ordinance (HCZO) 14.8 Subd. 1. Side yard Setback Standards a variance of 13 feet is required from the West Quarter Quarter line. For compliance with HCZO 14.9 Subd 1. Minimum Rear Yard Setback a variance of 23 feet is required from the South Quarter Quarter line.
- The dwelling near the West Quarter Quarter line was expanded decreasing the side yard setback from approximately 42 feet to 37 feet. The structure near the South Quarter Quarter line was permitted as a 16 ft X 80 ft interim use dwelling on August 18, 2015. The permit is attached to the board packet. Pending placement, the trailer could have met the 50-foot setback. The structure that actually was placed was a 32 ft X 80 ft trailer. The structure is supported by piers and not

readily movable. Septage holding tanks with an alarm system are used for waste. Condition No 2 of the August 18, 2015 Interim Use Permit allows maximum of 8 people residing in the dwelling. The larger unit that was placed has a capacity exceeding 8 people. It is our understanding that the unit has exceeded the occupancy limit of 8 people.

- The property consists of 95.03 acres comprised of orchards, woodlands and agricultural buildings. The buildable area is greater than .9 acres. The area is relatively flat and is only restricted on the south border by power lines. A substantial portion of the area has been graveled over for vehicles and is used for agricultural purposes. There is one pond on the parcel, which is not in close proximity to the area of concern. There are no wetlands or floodplain concerns in the area. Part of the area is used for overflow parking for the event facility located North of HWY 25.
- Mound Prairie Township and the ten closest property owners were notified. One comment was received.

Ken Visger recused himself from this hearing due to his friendship with the applicant.

Fred Sandvick stated that there was a pump house addition made to the dwelling located on the west property line to protect the pump from freezing and provide additional space for a washer and dryer. Fred is a co-owner of Hickory Orchard, LLC with Fred Wescott from Elgin, MN. Fred explained that there were originally ten rooms in the trailer located on the south property line. One of the rooms has been turned into a mud room so there are now nine bedrooms. H-2A laws require a certain number of square feet per room per individual. In those rooms we can house two workers per room. Each room includes a full bathroom. Fred recalled that the zoning staff member at the time did not feel it was necessary to amend the interim use permit for the larger mobile home or the fact that it could house up to 18 people. He remembers having conversations with the neighbors concerning the property line encroachment. The current location provides privacy for employees and was the best location for utility hook up. He explained that the variance hearing was triggered by his zoning application for a sign for his wedding venue. He explained the cost and hassle that would be involved if the mobile home had to be moved.

Franklin Hahn asked if zoning staff had informed him of the property line setbacks and why didn't he apply for a variance at the time. Fred stated that he remembers talking to the adjoining property owners about the encroachment. Franklin Hahn clarified that he was talking about checking with the County. Fred was unsure.

Chairman Anderson asked if anyone else wished to speak. Paul Olson stated that he does not remember any conversation with Fred about the encroachment. He stated it would have been within the 50 foot setback even if it had been a single wide. He expressed frustrated that the encroachment was not addressed at the time of the mobile home's installation. He raised concerns that current zoning staff is using Beacon to measure property line setbacks.

Franklin Hahn stated that when he had applied for a permit zoning staff clearly told him that he would need to pay \$500 for a variance if he wanted to place his building closer than the required setbacks.

Paul stated that he doesn't want to be a bad neighbor, but he doesn't want this to affect his property in a negative way. Paul stated that it is very disappointing that this was not handled correctly. Ken Visger stated that most of the Board of Adjustment's work deals with variances caused by property splits and stated we are dealing with these kinds of things on a regular basis.

Wayne Runningen asked Fred why he didn't comply with the statement on the back of his permit requiring a setback of 50 feet. Fred stated that he placed the mobile home where he had told zoning staff he would be. He stated that he wished zoning staff would have inspected the site.

Paul stated he would like to know that those who are in charge of zoning are doing their job. Larry Hafner stated that the current zoning staff is applying the rules correctly and previous zoning staff may have been more lax. Paul asked if the Board ever reviews the way zoning staff performs. Larry Hafner asked Martin who reviews zoning staff performance. Martin stated that the Board of Commissioners reviews our job performance. Paul sought assurance that this would not be allowed to happen to anyone else in the future. Martin explained steps being taken to avoid future issues.

Franklin Hahn inquired about the terms of the interim use permit. Martin stated that the permit was issued for housing seasonal employees and when the business is no longer operating it must be removed in 60 days.

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: Dwellings for agriculture workers are allowed in the Agriculture Protection District. A goal of the Comprehensive Land Use Plan is the protection of agriculture.

Board agreed to the finding by a unanimous vote. (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 32ft X 80ft trailer was placed to work in concert with existing infrastructure and moving it would entail considerable expense. Neighboring property owners are not interested in selling at this time.

Paul Olson asked if this was claiming a financial hardship if this has to be moved. Martin stated that he was trying to identify what the hardships were. Paul stated you cannot cause a financial hardship on yourself. Martin stated that economic considerations alone are not the practical difficulties. Franklin Hahn asked if he was interested in selling land to Hickory Orchard, LLC. Paul stated he was not.

Franklin Hahn stated for the record that the neighboring property owner is not interested in selling the adjoining land at this time.

Board agreed to the finding by a unanimous vote. (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 approved 16 ft X 80 ft trailer could meet the setback requirement and work with existing infrastructure. The unapproved 32 ft X 80 ft trailer that was placed exceeded the rear yard setback of the South Quarter Quarter line. The addition on the dwelling located close the West Quarter Quarter line appears to have exacerbated the non-compliance by an additional 5 ft.

Chairman Anderson stated that the owner is not solely at fault and blame can also be placed on the previous zoning administrator. Larry Hafner agreed with Chairman Anderson. Wayne Runnigen stated that we can't prove that. Chairman Anderson stated that he feels that the zoning administrator dropped the ball on this.

Board agreed to the finding by a unanimous vote. (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: The Board may find that the 27 ft variance of the South Quarter Quarter line is the only way to feasibly resolve the 50 ft rear setback issue and that the 13-foot variance to the 50-foot side yard setback for the West Quarter Quarter line are the minimum variances that would alleviate the compliance concerns.

Board agreed to the finding by a unanimous vote. (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: The zoning office has not received complaints about either of the existing dwellings. The 32 ft X 80 ft trailer's viewshed is partially blocked from Hwy 25 and has a holding tank with an alarm system for managing septage. In the immediate area, the parcel has general agricultural buildings and the character of the area is not altered by the existing activities.

Board agreed to the finding by a unanimous vote. (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: Housing for agriculture workers is allowed in the Agricultural Protection District. There is no mapped floodplain on the parcel. There are no known state standards applicable to the request.

Board agreed to the finding by a unanimous vote. (Ken Visger recused himself.)

Larry Hafner made a motion to accept the findings. Franklin Hahn seconded. 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 23 feet to reduce setback requirements for an existing dwelling to the south property line to meet 50-foot setback requirements and a variance of 13 feet to reduce setback requirements for an existing dwelling to the west property line to meet 50-foot setback requirements.

With the condition:

Any future buildings must meet current setback requirements or seek independent variances.

Wayne Runnigen seconded. All were in favor. Motion carried.

Notice of Public Hearing No. 516 was read for the applicant, **Norman & Lucille Lemke**, 10657 State 44, Caledonia, MN 55921.

A variance is requested to place a 24 ft by 26 ft garage within the 50-foot setback for side yards in the ag protection district.

- PID 140241001 is located adjacent to MN HWY 44. The proposed setback is from the East Quarter Quarter property line. The site is wooded and vehicle access is from MN HWY 44 to the side yard. A survey of the East Quarter Quarter line was submitted on 9/12/22. The survey, which is attached to this packet, indicates the house has a side yard setback of 26.3 ft from the quarter quarter property line. The proposed garage will encroach the line another 19 ft leaving 7.3 ft of remaining setback. Based on the 9/12/22 survey the application is revised to request a 43-foot variance to 50-foot side yard setback requirement.
- The property consists of 16.6 acres of primarily woodlands. The buildable area is greater than .9 acres. The area where the garage is proposed is steep with a mound likely requiring excavation with possibly a retaining structure for part of the driveway. There are two ponds located on the parcel and no wetlands. The site appears to be reforested in portions and native woodland in other sections. The site soils are comprised of the 1861 B Chaseburg Silt Loam and the 103C2 Seaton Silt Loam. The Chaseburg silt loam has a subclass of Vw and is good for tree production. The Seaton Silt loam has a capability class of I and is good for forestry.
- Union Township and the ten closest property owners were notified. No comments were received.

Chairman Anderson asked the applicants if they had anything to add. Norman Lemke stated they had discussed their plans with the property owner to the east and he had no problem with their request. Ken Visger stated that the project seems logical and he sees no problems with the application.

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 residence is allowed in an Ag Protection District and associated structures are located in the non-silviculture acreage of the parcel aiding the preservation of commercial agriculture which is a goal of the Comprehensive Land Use Plan. This is in harmony with the general trend of increasing farm size, commercial farmers require additional cropland, but do not necessarily require additional farmsteads. Additionally, the parcel's ponds and reforestation protect natural resources which is also a goal of the Comprehensive Land Use Plan.

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: Concerning the proposed building, any resolution other than a variance would involve the acquisition of additional land, which necessitates a willing seller. The difficulties are compounded by the lot's elevations and the need for a second location for a septic 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 parcel has limited buildable locations due to steep slopes. The owners' limited options to resolve the issue represent a special condition not created by the property owner. The Board may further find that the limited areas represent a special condition.

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 Board may find that the variance related to the proposed building is the only way to feasibly resolve the setback issue, and that the 43-foot variance to the 50-foot side yard setback is the minimum variance that would alleviate the practical difficulty of limited buildable space on the property.

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 existing building and proposed garage are blocked from most viewsheds by the terrain and the woodland. The garage will not have a septic system or any commercial activities. The addition of the garage is not anticipated to have any effect on the above criteria.

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: Non-attached automotive garages are allowed accessory buildings for a single-family dwelling in the Agricultural Protection District. There is no mapped floodplain on the parcel. There are no known state standards applicable to the request.

Board agreed to the finding by a unanimous vote.

Larry Hafner a motion to accept the findings. Ken Visger seconded. 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 43 feet to reduce setback requirements for a proposed dwelling addition to the east property line to meet 50-foot setback requirements.

Larry Hafner seconded. All were in favor. Motion carried.

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 September 23, 2022.