

Minutes of the Stearns County Board of Adjustment

A meeting of the Stearns County Board of Adjustment was held on Thursday, January 26, 2017, in Room 121 B/C/D of the Stearns County Service Center, 3301 County Road 138, Waite Park, MN beginning at 6:30 p.m.

Members Present: Jacob Holck, Dennis Gregory, Michael Haehn, Bonnie Massmann, Dave Gamradt, David Peschel and Ken Massmann.

Members Absent: None

Environmental Services Staff Present: Chelle Benson, Amber Mielke and Laurie Lokken.

Vice Chairperson Gamradt called the meeting to order at 6:30 p.m.

Pledge of Allegiance

Vice Chairperson Gamradt gave an introduction of the Board of Adjustment Public Hearing process.

Election of Officers

Motion was made by Vice Chairperson Gamradt to nominate Bonnie Massmann as Chairperson. Dennis Gregory seconded the motion. Motion carried unanimously.

Dave Gamradt volunteered to be Vice Chairperson. All voted in favor.

Motion was made by Dave Gamradt to nominate David Peschel as Secretary. Motion carried unanimously. David Peschel hereby delegated duties to the Environmental Services Department staff.

Oath of Office

The Oath of Office was given to new members Dennis Gregory, Michael Haehn, Jacob Holck and Kenneth Massmann and to reappointed member Dave Gamradt.

Code of Ethics

The Code of Ethics forms were passed out to all members. The forms were returned and given to staff in the Administration Department.

Approval of December 1, 2016 minutes

Motion was made by Dave Gamradt, seconded by David Peschel, to approve the minutes from the December 1, 2016 meeting. Motion carried unanimously.

Regular Agenda Items:

1. Request for a variance from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439, submitted by Richard & Marlys Janski, South Haven, Minnesota. File # P-007264.

Chairperson Massmann announced that there would not be a Public Hearing for the variance application submitted by Richard & Marlys Janski. The applicant's variance request has been postponed and future notice will be sent when the item will be ready to be heard.

2. Request for a variance from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439, submitted by John Ritzer, Albany, Minnesota. File #P-007265.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by John Ritzer, Albany, MN from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439 to construct a new feedlot structure 530 feet from a residence. Said Ordinance requires a 700 foot setback to a residence. Affected property: 11.87A NE4NW4, Section 20, T125N, R30W, Avon Township. Property address: 34866 Tower Road, Albany, MN

Applicant, John Ritzer, was present at the meeting.

It was noted that Board members Dennis Gregory, Dave Gamradt, David Peschel and Ken Massmann visited the site prior to the meeting and there was no communication on site.

Amber Mielke gave an overview of the staff report. No correspondence was received regarding this request.

John Ritzer stated that he would like to build in this location because he wouldn't want to take trees out or bulldoze down a little knoll or hill located in that area. He wouldn't want to put a barn further back. It was a cow yard and is partly cemented. He would like to come closer to the farm site and use buildings that are already there.

Erik Larson, 30154 Clear Lake Road, stated they purchased adjacent property from the Ritzer Estate on July 29, 2016. On November 7th, they applied with the Township for a driveway permit. On November 17th, they contacted Environmental Services about getting a Conditional Use Permit. They were told they would need to apply for a Conditional Use Permit through the Township to be able to build there. On November 22nd, they talked to the Township and got on their agenda for a Conditional Use Permit. On November 30th, they were at the Township Planning Commission meeting where they applied for the Conditional Use Permit and their driveway permit.

Mr. Larson gave Board members a site map of his property to review. He stated the property was advertised for a building site on the south line of the property. Mr. Ritzer's feedlot is going to totally encapsulate it. They advertised this as a parcel that could be built on in this specific area (where he is proposing to now put a feedlot). At the last Township meeting, they did receive their Conditional Use Permit but they still cannot move forward pending this variance request.

Mr. Larson showed Board members the location of his proposed building site on the site map provided in the staff report.

Chairperson Massmann asked Mr. Larson what the consequences would be to him if this variance request was approved. Mr. Larson responded that in talking with the County, he would not be able to build there. He would have to meet these setback requirements to build on this property. It doesn't seem right that he would be going to the Township to get this Conditional Use Permit and Mr. Ritzer could go to the County in two weeks and have a feedlot.

Dennis Gregory asked staff to clarify whether Mr. Larson's building site would be included within the 700 foot setback from the existing feedlot. Ms. Mielke responded that this feedlot is currently less than 10 animal units and until it goes to 10 animal units or more, there is not a 700 foot setback in effect. Chelle Benson added that if they would add additional animal units without changing anything else, then the 700 foot setback applies.

David Peschel asked staff for clarification that the property to the northeast of Mr. Ritzer's property is an existing house and that it is also within the 700 foot setback. Ms. Mielke confirmed that is an existing house.

Ms. Benson stated that there is an existing dwelling and the applicant is requesting the setback variance from the proposed feedlot expansion above 10 animal units to the existing dwelling unit. This variance request is only between the existing house and the proposed expansion. Mr. Larson would be another person who would potentially be affected by that feedlot because he got his Conditional Use Permit to build within that area that would be covered by the setback if the variance is granted.

Michael Haehn stated that in order for Mr. Larson to build his house on the land that he just purchased from the Ritzers, he would also have to request a variance. Ms. Benson responded he could, unless he were to build on his property outside of the 700 foot setback area.

Mr. Gregory asked if the impact on Mr. Larson would still be the same should Mr. Ritzer build his facility by meeting all the requirements and not needing a variance. Mr. Ritzer stated no, it would be worse. He added that he was not involved with sale of the Ritzer Estate. Mr. Larson purchased his property two months prior to Mr. Ritzer purchasing his. Once purchased, he started working with Environmental Services staff.

Chairperson Massmann asked the applicant if the land Mr. Larson purchased was from an estate and not from Mr. Ritzer personally. Mr. Ritzer replied that was correct.

Mr. Larson stated that they met with Mr. Ritzer and his sister, the Personal Representative for the estate, at his property and they went through their advertisement for bid (which included that building site) and was told it was a nice place to build back there. It was advertised that he could build wherever he would like.

Mr. Ritzer stated he was not the Personal Representative for the estate.

Mr. Larson stated that they are opposed to this variance request.

Joseph Ritzer, 34866 Tower Road, stated that it was his understanding that the Township wasn't going to make a decision about granting a Conditional Use Permit until they heard from the County regarding the granting of this variance request. His sisters were the Personal Representatives of their estate. He owns property to the south. He does not have any problems with this variance request. It was his understanding that Mr. Larson's building site was going to be in the middle of the field and not in the wooded area as described.

LeRoy Gondringer, 18093 360th Street and a member of the Avon Township Planning Commission, stated that when the Larsons approached the Township Planning Commission at their November meeting, the Larsons did tell them where they wanted to locate the house and that location was where it is reflected on the variance site maps. The Township wanted clarifications from the County as to how to proceed. The timeline is a mess. He would like to see it resolved so that both parties get what they want.

Richard Bresnahan, Chair of Avon Township Board and Supervisors, stated the Larsons contacted Environmental Services on July 7th to make sure that there was a building site. They were informed that this property is part of the Avon Hills Environmental Overlay and this is also then part of the Township's MOU with the County that the Township handles all CUPs for the Avon Hills Initiative, outside of lakeshore residential. This process was started November 22nd. They came to the Township to formally apply for the CUP. On December 7th, the Township Planning Commission met and approved the driveway permit.

Mr. Bresnahan provided Board members with copies of December 12th affidavits of posting and mailing of the Larson's public hearing notice for the Township's December 28th meeting.

Mr. Bresnahan stated the feedlot application went in on December 20th, which is eight days after the mailings went out to all the adjoining property owners. In this process for the Environmental Overlay for Avon Hills, the Township voted to approve the CUP at the existing site that was the cited by the Larsons. The Township has this relationship with the County in dealing with the Avon Hills Environmental Overlay with CUPs and so to have this process be interrupted by the feedlot issue, they would ask two considerations from the Board of Adjustment. One consideration would be to allow this CUP process to go forward, since it has already started its process, and that this decision on the Ritzer feedlot be postponed for 60 days so that they can go through the Administrative Subdivision and the building site permit to finish this CUP. If that's not part of the consideration, they ask for the Board to then consider that if there is a feedlot permit that is viewed as a variance to the Ritzer feedlot, then a positive consideration be given to the Larsons to build their home within the 700 feet of the feedlot designation.

Mr. Gregory asked Mr. Bresnahan if he knew the distance between the house and the proposed building. Mr. Bresnahan responded he thought it was 530 feet. Mr. Larson stated that it would be 400 feet.

Mr. Ritzer stated he was in Environmental Services in November. Ms. Mielke stated that the feedlot application was submitted to the County on December 20th and that was the first application received. Environmental Services did not have an application for building the home so protocol is to take the feedlot application first.

Chairperson Massmann stated it is a rather difficult situation when there are two different governmental agencies working and they are both accepting applications. Understandably, the County would not know about the Township's applications and the Township wouldn't necessarily know about what's happening at the County level.

Dave Gamradt asked if Mr. Larson is against the variance request because there would be a feedlot 400 feet away from their house or if it is the fact that they are worried about not being able to build. Mr. Larson replied that at this point in time, they are opposed to it for the fact that they would like to build there. Chairperson Massmann asked him to clarify that he is opposed to it for the reason that they are concerned that they wouldn't be able to build at all or are they concerned for the fact that once they would build, there would be a feedlot 400 feet from their home. Mr. Larson responded it would be both.

Ms. Benson asked Mr. Bresnahan what Mr. Larson would have to do if he doesn't build within the envelope that was approved. Mr. Bresnahan stated they had contacted their Township attorney, Rinke Noonan, and Mr. Larson would then have to basically start the whole process all over again and reapply for the CUP. Ms. Benson asked if he could request an amendment to the CUP. Mr. Bresnahan stated they had that discussion and the amendment would be for alternative sites because he would not be able to meet the setbacks for the feedlot. He confirmed for Ms. Benson that there is an opportunity for amendment but it still requires process and at a cost to the individual.

Chairperson Massmann asked staff to identify the amount of acres that the Larsons own and the amount of acres that Mr. Ritzer owns. Ms. Mielke responded that Mr. Ritzer owns 11.87 acres. Chairperson Massmann referred the question to Mr. Larson. Mr. Larson responded that it is 38.77 acres. Chairperson Massmann asked him to describe the 38 acres. Mr. Larson replied that it appears they did try farming some of it. The farm land that is there is not very good farm land. It is very hilly and wooded. The slopes on the north side of the property are steep. That's why it makes it hard to build over on that side of the property. The south half is more flat. Where he proposed to build (his preferred site) is a flatter area and is more suitable to building. The rest of it is hills that go up and down.

Mr. Ritzer stated that he is eligible for a feedlot without any variance. He is trying to help Mr. Larson with the location of his proposed feedlot and construction. Ms. Mielke added that he could amend the location with the current application.

Joseph Ritzer apologized if he had the wrong information from the Township meeting.

Mr. Gamradt asked staff whether the feedlot had been more than 10 animal units at one time. Ms. Mielke stated it was not registered until after the County's registration time had ended for grandfathering everything in. It had not been grandfathered in for over 10 animal units and that is why he now needs a variance.

Mr. Larson stated he would be curious if there was any record of the amount of animals that they had prior to being grandfathered in for a feedlot. Chairperson Massmann stated they wouldn't qualify for any grandfathering in so it would not be an issue at this time. Ms. Mielke added that in 2009, it was less than 10 animal units.

Motion was made by Dennis Gregory, seconded by Michael Haehn, to close the public hearing. Motion carried unanimously.

Ms. Benson provided additional process information at Mr. Gregory's request. The feedlot application is the application the County had received first for County processing. That doesn't mean that the other applicant missed doing something in the Township's process. There are multiple jurisdictions that have their own administration processes for certain parts of the Zoning Ordinance. A decision on this variance request would still have to occur.

Chairperson Massmann asked staff whether there had been any correspondence or comments received from the homeowner of the existing house. Ms. Mielke confirmed that there has been no correspondence from them.

Ms. Mielke indicated for Mr. Peschel on the site map the other possible location mentioned for Mr. Ritzer to build.

Jacob Holck asked the applicant how much of a hardship it would be to him to move the location to the wooded area. Mr. Ritzer responded that it would take a little more time to bulldoze the hill down and remove all the trees. At the proposed location, it would not be seen from the road and the trees would remain.

Ms. Mielke clarified for Mr. Gregory that the applicant would not need a variance to increase the number of animal units. He just would not be able to increase anywhere within the 700 feet of a house because he would have to meet all the setbacks required by a feedlot that is 10 animal units or more. He could use these current buildings but he could not put more than 10 animal units in this area. Ms. Benson clarified that it is where the additional animal units are housed that has to meet the setbacks.

Mr. Peschel made the observation that in terms of aesthetics, where it is proposed, it is a perfect place for it. There's a buffer of trees and a hill that would be between the barn and the road.

Ms. Mielke confirmed for Chairperson Massmann that if this variance request is approved, the Larsons would need a variance in order to build where they are proposing to build. If this variance request is not approved and Mr. Ritzer were to build in an area that meets setbacks, the Larsons would also need a variance in order to build.

Findings of Fact.

1. The proposed use is allowed in the zoning districts in which the subject property is located? Yes or No?
 - Yes. It is an A-40 zoning district, which allows agricultural use.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)
2. The variance will be in harmony with the general purposes and intent of the official control(s) (any related Ordinances)? Yes or No?
 - Yes. The general purposes and intent of the Ordinance is for health and safety of people in the County and the setbacks are set in order to keep livestock away from homes. No opposition had been received from the owner of the existing home

there. It is a difficult issue when it is a proposed home that would be there. It would be in harmony with the general purposes and intent of the official controls.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)

3. The variance will be consistent with the Comprehensive Plan? Yes or No?

- Yes. The Comprehensive Plan speaks a lot about the agricultural nature of the County and promoting the agriculture so it fits very well with the Comprehensive Plan.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)

The variance may be granted if there are Practical Difficulties in complying with the official control(s) as determined by items 4 through 7 below:

4. The property owner proposes to use the property in a reasonable manner? Yes or No?

- Yes. It is a farm and the applicant wants to continue farm use and farm animals. It is a very reasonable plan, with all things considered, and is a responsible way to do things.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)

5. The plight of the landowner is due to circumstances unique to the property, not created by the landowner? Yes or No?

- Yes. It is unique to the property because the applicant could build outside the parameters of needing a variance but the applicant is doing the best usage of the property that is there and keeping it closer to the operation of the farm business.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)

6. The variance, if granted, maintains the essential character of the locality? Yes or No?

- Yes. It is a farm and it would continue as a farm.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)

7. The need for the variance involves more than economic considerations? Yes or No?

- Yes. Economics were not part of this discussion. The applicant is looking for the location that makes the most sense in comparison to a farming operation.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Dennis Gregory, seconded by Jacob Holck, to approve the request to construct a new feedlot structure 530 feet from a residence. Motion carried unanimously.

3. Request for a variance from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439, submitted by Michael & Judy Gondringer, Albany, Minnesota. File #P-007270.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Michael & Judy Gondringer, Albany, MN from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439 to construct a new feedlot structure 75 feet from an intermittent stream. Said Ordinance requires a 100 foot setback to an intermittent stream for a feedlot that is registered for 10 animal units or more. Affected property: 60.00A NE4SW4 & S2NW4SW4, Section 13, T125N, R31W, Albany Township. Property address: 20185 Quaker Road, Albany, MN.

Applicant, Michael Gondringer, was present at the meeting. LeRoy Gondringer was also present as representation for the applicant.

It was noted that all Board members present, except Michael Haehn and Jacob Holck, visited the site prior to the meeting and there was no communication on site.

Amber Mielke gave an overview of the staff report. Ms. Mielke read correspondence received from the Albany Township Board of Supervisors in opposition to this variance request. This correspondence is on file as part of record.

LeRoy Gondringer stated they approached the Board of Adjustment on October 27, 2016 for a variance for a setback from the property line of 50 feet, which was granted. A few days before the hearing, it was discovered that there is an intermittent stream closer than 100 feet from where the original proposal was. In an effort to have the contractor keep on schedule last Fall and to keep the process moving, they pushed the barn to the south 25 feet. When completed, there will be a driveway going out to the Township road straight to the north. They have already instructed the contractor to slope that driveway and the pad at the north end of the barn away from the stream. In addition to that, they are going to put in a berm along the edge of the driveway so that virtually no water would be running off the chicken barn area into that stream.

LeRoy Gondringer stated the intermittent stream drains a wetland and it doesn't run all year. There is a tile that goes under the field that has been there for 50 years. They just replaced it this Fall when they started construction because it was an old clay tile. It would all slope to the west so there should be really little runoff running that way and the berm proposed would take care of any runoff. The way Gold'n Plump designs their barns, the small chickens are brought into one-half of the barn for the first couple weeks and then they let them into the whole barn. Consequently, only half of the barn is cleaned out and all that manure is pushed out the south side so there would be a larger stockpile on the south end of the barn. On the north end of the barn, there would be manure pushed out once a year. Typically, in the Fall. It would be hauled on to fields relatively quickly after that. Neighbors do not like looking at manure piles so they have no intention of leaving a pile there very long.

LeRoy Gondringer stated that Albany Township did not have an issue when they applied for the original variance. He has been in contact with the Township a number of times. Michael Gondringer added they had to get an overweight permit for the road initially so they have been

in contact with them throughout this whole project. They just learned about this correspondence a day or two before this meeting but they have not had any correspondence with them prior to that about this particular issue.

LeRoy Gondringer stated the Township wasn't aware that the north end of the barn would only be used once a year for manure and it would not be stockpiled there. It is called a permanent stockpile because the rules require it. They could do either a permanent or a temporary stockpile. If this variance isn't approved, they would do a temporary stockpile there, which wouldn't require a variance but they would still be required to stay 100 feet from the stream. That would make it a little more difficult for them to get the manure out of the barn. The Township's other concern was a berm and they had not contacted them about that. They intend to put a berm there to protect any runoff that potentially would go towards that stream. He does not feel there would be any runoff without a berm even because of the way it would be sloped. Ms. Mielke added that as part of the permit requirements, the permit would include a berm.

No one was present to speak at the public hearing.

Dennis Gregory stated that the Township indicated to move the building west. LeRoy Gondringer responded that was covered in the original variance request. At the time they applied for that setback, they did not know the stream would be an issue. The original intent was to protect more of the farm land. The variance was granted and the barn is going to be 50 feet from the property line. Michael Gondringer added it is a good field and they wanted to save crop land. There is not much value there between the barn and the property line.

Michael Haehn asked the applicant about the concrete referenced by the Township. LeRoy Gondringer replied they would do a concrete slab on the south end of the barn where most of the manure would be pushed out. On the north end of the barn, they are not proposing to do concrete like the Township referenced because the manure would be there for 10 days. It just does not make economic sense to do that.

Mr. Haehn asked for the square footage of concrete. Michael Gondringer stated that Gold'n Plump requests a 60'x80' pad on both sides of the barn, which they asked for. They will have the full value of that on the south side, which is where the manure will primarily be stored. They are working with a program to get some money to build a stacking slab. They are not going to do anything right now but there will be permanent concrete on the south side. Ms. Mielke stated that about 4,000 square feet is proposed. A short-term stockpile pad, in this case being that it's going to be there 6 days or less and for less than 10 days at a time, Minnesota Rules Chapter 7020 does not require a permanent pad to be in place or vegetation to reoccur (which is usually the case for short-term stockpiling). Only a berm would be needed.

Ken Massmann stated there actually wouldn't be a stream. The water would be under the dirt by several feet. Michael Gondringer stated the problem would be on the neighbor's land and he showed Board members the placement of the culvert and tile on the site map. LeRoy Gondringer stated the neighbor has a field road running across that stream with a culvert underneath. The culvert has been caving in and the neighbor wants to replace it. The neighbor told him that he might hook on to the pipe they have going under the field and just replace his culvert. This would then push where the stream would start back 30 feet.

Dave Gamradt stated they would have a berm between there and the building and the containment area. Michael Gondringer stated the topography of the land from the side of the chicken barn down to the road is a pretty good elevation drop so having the driveway and everything slope to the west, away from the stream and away from the neighbor's property, they were going to do it anyway.

Motion was made by Dave Gamradt, seconded by Michael Haehn, to close the public hearing. Motion carried unanimously.

Findings of Fact.

1. The proposed use is allowed in the zoning districts in which the subject property is located? Yes or No?
 - Yes. A-40 zoning district allows agriculture.**OVERALL BOARD CONSENSUS:** **YES** (All 7 members voted yes.)

2. The variance will be in harmony with the general purposes and intent of the official control(s) (any related Ordinances)? Yes or No?
 - Yes. It will be, especially with the placement of a berm in order to protect the stream.**OVERALL BOARD CONSENSUS:** **YES** (All 7 members voted yes.)

3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. Farming is promoted in the Comprehensive Plan and this is just promoting a farming operation.**OVERALL BOARD CONSENSUS:** **YES** (All 7 members voted yes.)

The variance may be granted if there are Practical Difficulties in complying with the official control(s) as determined by items 4 through 7 below:

4. The property owner proposes to use the property in a reasonable manner? Yes or No?
 - Yes. A chicken barn in an ag area is appropriate.**OVERALL BOARD CONSENSUS:** **YES** (All 7 members voted yes.)

5. The plight of the landowner is due to circumstances unique to the property, not created by the landowner? Yes or No?
 - Yes. The applicants want to utilize the best land for the crops and moving the location would be more harmful.**OVERALL BOARD CONSENSUS:** **YES** (6 members voted yes and 1 member voted no.)

6. The variance, if granted, maintains the essential character of the locality? Yes or No?
 - Yes. This is primarily an agricultural area and it will not affect the area as far as changing it. The existence of the chicken barn has already been approved so moving it a little bit as far as direction won't have a difference.**OVERALL BOARD CONSENSUS:** **YES** (All 7 members voted yes.)

7. The need for the variance involves more than economic considerations? Yes or No?

- Yes. The positioning of the barn works best with the chicken operation, as far as where the roads are and their needs along with the farm land needs.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by David Peschel to approve the request to construct a new feedlot structure 75 feet from an intermittent stream with the condition of a berm.

Board members further discussed description requirements for the berm. Chairperson Massmann asked the applicant for their comments on that requirement. LeRoy Gondringer responded that they would prefer that they would work with the County on what size berm.

Motion amended by David Peschel, seconded by Ken Massmann, to approve the request to construct a new feedlot structure 75 feet from an intermittent stream with the condition that an earthen berm be placed between the pad and the stream as a part of the construction permit approved by Environmental Services. Motion carried unanimously.

Chelle Benson presented to the Board that part of the variance application includes an area for the applicant to fill out that looks like a Findings of Fact for the applicant. That is a little deceiving because the Board has their Findings of Fact and there is a piece on there where the applicant would state “no” and the Board’s findings all require a “yes”. Staff is asking Board members whether that part of the application should have the boxes for “yes” or “no” be removed and just ask the questions so that they are filling it out and the Board has their responses or if the same Board’s Findings of Fact form should be there for the applicants to fill out.

Board members discussed the options and directed staff to use the same questions. Staff will remove the “yes” and “no” boxes for now and use the same questions.

ADJOURN

Motion was then made by Jacob Holck, seconded by David Peschel, to adjourn the meeting at 8:09 p.m. Motion carried unanimously.