

Minutes of the Stearns County Board of Adjustment

A meeting of the Stearns County Board of Adjustment was held on Thursday, May 25, 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: Michael Haehn, Bonnie Massmann, Dennis Gregory and Ken Massmann.

Members Absent: Dave Gamradt, Jacob Holck and David Peschel

Environmental Services Staff Present: Chelle Benson, David Knafla and Laurie Lokken.

Chairperson Massmann called the meeting to order at 6:31 p.m.

Pledge of Allegiance

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

Approval of April 27, 2017 Minutes

Motion was made by Dennis Gregory, seconded by Michael Haehn, to approve the minutes from the April 27, 2017 meeting. Motion carried unanimously.

Regular Agenda Items:

- 1. Request for a variance from Section 6.5 of the Stearns County Subsurface Sewage Treatment System Ordinance #422, submitted by Arthur Harlander Jr., Holdingford, Minnesota. File #P-007797.**

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Arthur Harlander Jr., Holdingford, MN from Section 6.5 of the Stearns County Subsurface Sewage Treatment System Ordinance #422 to use a holding tank, Type II, as the sewage treatment system where there is ample land area for the placement of standard, Type I, Subsurface Sewage Treatment System. Said Ordinance does not allow for the use of holding tanks except as under the applications listed. Affected property: 75.00A SE4NE4 & NE4SE4 LESS 5.00A OF SE4NE4, Section 9, T126N, R30W, Holding Township. Property address: 42755 165th Avenue, Holdingford, MN.

Applicants, Arthur Harlander Jr. and Rene Harlander, were present at the meeting.

David Knafla gave an overview of the staff report. No correspondence was received regarding this request.

It was noted that all Board members present visited the site prior to the meeting.

Arthur Harlander Jr. stated that they are preparing for the eventuality that after his father can't live there anymore or passes away, the house is going to be abandoned or torn down. The lines are very old and they would like to move the pressure tank from the basement over to the milk house in the barn.

Chairperson Massmann stated that she and Ken Massmann did communicate with the owner when they visited the site.

Michael Haehn asked the applicant if they are doing this for the sole purpose that a drainfield, obviously, isn't going to get used enough to function properly over a winter. Mr. Harlander Jr. replied that, too, but to put a whole new system in now when they don't know if a house would be built after his dad leaves, might be a waste of money and resources.

Dennis Gregory asked staff how, as a Board, they would reconcile this variance request that has to do with a personal situation when the variance runs with the land versus another situation, which may be different in circumstance. There is enough room to put an entire sewage system but due to personal circumstances, it may not make sense to. Mr. Knafla responded that Environmental Services does have a set of criteria and a policy that is followed when a design comes in for a holding tank. When staff agrees with the designer that there isn't sufficient room to put a standard system or a Type I system in, then staff issues a permit without going to the Board of Adjustment. In situations like this, the applicants have the opportunity to apply for a variance and present their case to the Board of Adjustment for relief from that Section of the Ordinance.

Chelle Benson added that every party is allowed to make that request to the Board of Adjustment. The Board of Adjustment can place conditions on variances they grant. To address this situation, the property owner suggested to add a condition that once that party is no longer able to be in that dwelling, the system is either disconnected or removed.

Mr. Haehn asked staff if that condition is added or if in the future someone wanted to build on the property, wouldn't a system be required at that time anyway. Mr. Knafla responded in the affirmative. Mr. Haehn asked whether the holding tank wouldn't just be grandfathered in. Ms. Benson stated that if the variance is granted without the condition, it would remain a holding tank. If the dwelling is removed, then the whole system gets looked at when there is a request to build a new residence.

Mr. Gregory asked staff for guidance on answering the question in the Findings of Fact pertaining to whether the plight of the landowner is due to circumstances unique to the property when it's a personal situation. Ms. Benson confirmed that is one of the criteria to be considered and that's what makes this very difficult for Board members. The Board is to decide if there is some compelling reason that it is unique, such as, the age of the house, the situation, or any host of reasons.

No one was present to speak at the public hearing.

Motion was made by Michael Haehn, seconded by Ken Massmann, 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. It is an A-40 zoning district and a residential dwelling is an approved use.

OVERALL BOARD CONSENSUS: **YES** (All 4 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 is minimal use of water within the system and the general purposes and intent of the controls is for public health and safety. When you have a sewage system that doesn't work properly because there isn't enough water flow, it's not necessarily helping with the health and safety of the citizens. It is not unusual for this type of system to be used in a situation like this.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. The Comprehensive Plan looks at natural resources protection and water proportion and this system will still provide that protection.

OVERALL BOARD CONSENSUS: **YES/NO** (All 4 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 single family home on a farm and that is what the applicants will be using it for.

OVERALL BOARD CONSENSUS: **YES** (All 4 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 a unique situation in which there are a combination of things happening. This house is probably not going to go beyond the current resident, there is going to be minimal use of the septic system and the length of time that this septic system would be used is unknown but in all likelihood, it won't be for an extended period of time.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
6. The variance, if granted, maintains the essential character of the locality? Yes or No?
 - Yes. It's not changing the locality or the essence of the residence.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. If the applicants needed a full system and needed to pay that, they probably would. They are only doing it because with one person in the house using it, there is such a minimal amount of use that the septic system with a drainfield wouldn't function properly throughout the winter.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)

Chairperson Massmann noted that due to the number of Board members present, she would abstain from voting to prevent a tie vote.

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Dennis Gregory, seconded by Ken Massmann, to approve the request to use a holding tank, Type II, as the sewage treatment system where there is ample land area for the placement of standard, Type I, Subsurface Sewage Treatment System with the condition that once Mr. Arthur Harlander Sr. is no longer able to live in the home, the holding tank is properly abandoned. Motion carried unanimously.

2. Request for a variance from Section 10.2.11A(1)(a) of the Stearns County Land Use & Zoning Ordinance #439, submitted by Richard Massmann, Cold Spring, Minnesota. File #P-007800.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Richard Massmann, Cold Spring, MN from Section 10.2.11A(1)(a) of the Stearns County Land Use & Zoning Ordinance #439 to construct a 10'x36' deck and 26'x66' addition to a legal nonconforming structure 174 feet from the OHWL of an Unnamed Lake classified as a Natural Environment Lake. Said Ordinance requires a setback of at least 200 feet from the OHWL of lakes classified as a Natural Environment Lake. Affected property: 1.00A E 255' OF SE4SE4 LYING N OF TWP RD, Section 32, T123N, R29W, Maine Prairie Township. Property address: 11334 Evergreen Road, Cold Spring, MN.

Applicants, Richard Massmann and Katie Massmann, were present at the meeting.

David Knafla gave an overview of the staff report. No correspondence was received regarding this request.

It was noted that all Board members present visited the site prior to the meeting and there was no communication on site.

Richard Massmann stated he did not have anything to add.

Dennis Gregory asked the applicant if they considered the option of moving the addition to the back side of the house and putting the deck where they have the addition. Mr. Massmann responded that they considered that but then the deck would be on the other side of the house and facing the shed. The point of it was to look out at the lake. They wanted to add some dimension to the front of the house. They bumped it out like that so it wasn't just a flat structure in the front. Towards the back of their property is the driveway, well, their yard and trees.

Mr. Gregory asked the applicant what surface would be underneath the deck. Mr. Massmann responded that it will be a small pad of concrete to step on where the patio door would be going out and the rest would be mulch or landscape rock.

No one was present to speak at the public hearing.

Motion was made by Michael Haehn, seconded by Dennis Gregory, 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. The applicants have a previous variance for that dwelling in that district.

OVERALL BOARD CONSENSUS: **YES** (All 4 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 applicants are requesting an addition and a deck. That is pretty standard and in harmony with the purposes and intent.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. It is consistent with the Comprehensive Plan. The Comprehensive Plan is trying to protect the watershed and with the way the house is situated with a road in between the house and the lake, it wouldn't have an impact. It would be very hard for the water to get by the house to the lake.

OVERALL BOARD CONSENSUS: **YES** (All 4 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. The applicants are requesting to expand the house and make it more enjoyable to look at the lake. It is an extremely small house.

OVERALL BOARD CONSENSUS: **YES** (All 4 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 situation was probably caused by where the house was originally placed. It went through several different jurisdictions so it is difficult when measuring and looking at the difference in footage to know who was to control that.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
6. The variance, if granted, maintains the essential character of the locality? Yes or No?
 - Yes. It doesn't change the circumstances. It's just an addition to a residential dwelling that already exists.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. Economic considerations did not come up in the discussion or the application.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)

Chairperson Massmann stated she would abstain from voting in order to avoid a tie vote.

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Dennis Gregory, seconded by Ken Massmann, to approve the request to construct a 10'x36' deck and 26'x66' addition to a legal nonconforming structure 174 feet from the

OHWL of an Unnamed Lake classified as a Natural Environment Lake with the condition that they remove their existing driveway and reseed it to lawn so that we cut down on the impervious surface. Motion carried unanimously.

3. Request for a variance from Section 9.9.9A(1) of the Stearns County Land Use & Zoning Ordinance #439, submitted by Mark & Angela Janorschke, Avon, Minnesota. File #P-007786.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Mark & Angela Janorschke, Avon, MN from Section 9.9.9A(1) of the Stearns County Land Use & Zoning Ordinance #439 to leave as constructed a single family residential dwelling 8 feet from a side yard property line. Said Ordinance requires a 10 foot property line setback. Affected property: Lot 43 & NW'LY 20' of Lot 44 of Connaught's Addition, Section 33, T125N, R30W, Avon Township. Property address: 32791 Spunk Tree Circle, Avon, MN.

Applicant, Mark Janorschke, was present at the meeting.

David Knafla gave an overview of the staff report. No correspondence was received regarding this request.

It was noted that all Board members present visited the site prior to the meeting. Dennis Gregory spoke to the builder while on site.

Mark Janorschke stated that a surveyor measured from the foundation. It was overlooked by everyone. If they would have known that, they would have just moved the house two feet to the South and would have been in compliance all the way around.

Dennis Gregory asked the applicant what the cost would be to remove the bump out or the cantilever. Mr. Janorschke responded he had no idea but at his guess, the repair would be \$15,000 or more.

Mr. Gregory asked staff whose responsibility it is to understand setbacks and compliance. Mr. Knafla responded that's a hard question as everyone involved should know what the setbacks are. In this case, staff believes the applicant knew what the setbacks were when he applied for his Construction Site Permit. It appears that at the point that when it was staked, the surveyor went off the foundation. The other thing that was difficult at the time that it was staked was the fact that the existing house was still there.

Mr. Gregory asked staff how to assist builders in understanding setbacks so there aren't variance requests like this in the future. Mr. Knafla responded that people are a lot more careful now and Environmental Services requires them to identify the property lines but there still will be someone who thinks they know where the property line is and start construction and it doesn't meet the sideyard setback. Their recourse is to come to the Board of Adjustment and ask for relief. Chelle Benson added that's the reason we now request Certificate of Survey. This is one of those odd circumstances where there was misunderstanding as to the foundation and that cantilevered portion. It's not common but when it's been constructed after the fact or because we had to go back for another reason to check, that's when this is usually found. The best thing for us to do is to take care of it right away so this person isn't sitting in a

nonconforming situation and that's why he's here to make that request for relief. If it's not granted, then we have a different question that we have to ask ourselves. We are trying to make sure we are on top of these situations. This is a little bit different because there was an existing dwelling there. We are doing our best to try to avoid any misunderstandings between surveyors, excavators and landowners. In general, builders should be responsible and recognize setbacks.

Mr. Janorschke stated he was the general contractor and he did contact the surveyor. The surveyor did tell him that he looked at the foundation.

No one was present to speak at the public hearing.

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

After the Fact Findings.

When considering an after-the-fact variance request, the Board of Adjustment should consider these additional factors when deciding the statutory criteria:

- a. **Did the applicant act in good faith and attempt to comply with the Ordinance?** (Obtain any other permits, what measures could be stated on the record);
- b. **Did the applicant make a substantial investment?** (State why it is or is not);
- c. **Is the construction completed?** (If not, how far along is the project);
- d. **Are there similar structures in the area?;** and
- e. **Are the County's benefits outweighed by the applicant's burden if the applicant were required to comply with the Ordinance?**

1. Is the proposed use allowed in the zoning district in which the subject property is located? (State the type of use and district for the record.)

- Yes. This request is to replace a previous, existing home. It is residential and there is no change in use.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)

2. Is the variance in harmony with the general purposes and intent of the official control? (Specifically which purpose statement is met or not met for the record.)

- Yes. Everything is the same. If the communication wouldn't have broken down, the house could have been moved over and the applicant would have met the setbacks. It's just communication breakdown between the surveyor and the builder that caused this error.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)

3. Is the variance request consistent with the Comprehensive Plan? (State specifically which goals or objectives are met or not met for the record.)

- Yes. It doesn't really change the situation as a residential dwelling would be there either way so it doesn't change the impact to the area.

OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)

4. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control? (State why it is reasonable for the record.)
 - Yes. A new residential dwelling, which is a reasonable use of that property.
OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
5. Is the plight of the landowner due to circumstances unique to the property not created by the landowner? (State what is unique to the property for the record.)
 - Yes. It's created by someone but not necessarily by the landowner.
OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
6. Will the variance maintain the essential character of the locality? (State how the request is similar to what others have in the area, number, size, setback.)
 - Yes. It's the same as it would have been. It got approved for a new house so nothing would change. In the Comprehensive Plan, setbacks are for emergency vehicles to get in. There are substantial sized trees and a fence there so that even if this were a 10 foot setback, that wouldn't be a possibility. That difference doesn't change the availability for safety.
OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. The County has nothing to gain by taking it away. It would significantly alter the inside and outside of the applicant's house. It would affect the roofline and everything if the applicant had to remove that.
OVERALL BOARD CONSENSUS: **YES** (All 4 members voted yes.)

Chairperson Massmann noted that due to the number of Board members present, she would abstain from voting to prevent a tie vote.

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Dennis Gregory, seconded by Ken Massmann, to approve the request to leave as constructed a single family residential dwelling 8 feet from a side yard property line. Motion carried unanimously.

Discussion on Impervious Surface Policy

The Impervious Surface Policy will be discussed at a Board of Adjustment meeting when all members are present.

ADJOURN

Motion was then made by Dennis Gregory, seconded by Ken Massmann, to adjourn the meeting at 7:33 p.m. Motion carried unanimously.