

Approved Minutes of the Stearns County Board of Adjustment

A meeting of the Stearns County Board of Adjustment was held on Thursday, August 24, 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, David Peschel, Michael Haehn, Bonnie Massmann, Dennis Gregory, Dave Gamradt and Ken Massmann.

Members Absent: None

Environmental Services Staff Present: Chelle Benson, David Knafla, Brian Krippner 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 July 27, 2017 minutes

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

David Peschel arrived at 6:35 p.m.

Regular Agenda Items:

1. Request for a variance from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439, submitted by James Scegura, Avon, Minnesota. File #P-008475.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by James Scegura, Avon, MN from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439 to leave as constructed a total confinement barn that is located 63 feet from the nearest property line. Said Ordinance requires a 100 foot setback to a property line for a feedlot that is registered for 10 animal units or more. Affected property: 119A N3/4NE4 of Section 32, T126N, R30W, Holding Township. Property address: 38778 County Road 9, Avon, MN.

Applicants, James and Tammy Scegura, was present at the meeting.

Brian Krippner gave an overview of the staff report. No correspondence was received regarding this request.

Michael Haehn and David Peschel both stated that they met with the applicant on site and it was further noted that all Board members present visited the site prior to the meeting.

James Scegura stated that when the barn was permitted in 2014, he had worked with Environmental Services staff on the barn's location along the Township road. They had come to the conclusion that the 63 feet was all that was required to meet the Township road setback.

Mr. Krippner clarified at Chairperson Massmann's request that the current barn is not in the location where it was originally permitted.

Chairperson Massmann asked the applicant if he made a decision to move it to a different spot after the permit was issued or how that came about. Mr. Scegura responded that all they got was just this picture and it has no dimensions, no measurements, nothing.

Chelle Benson stated the confusion comes from the multiple setbacks that exist. The setback to this property line is 100 feet and the setback to a road is 63 feet from the centerline of the road. There is a Township right-of-way adjacent and along that line. If the applicant read the setbacks and saw that it's a Township road, they may have perceived it as that being the setback to follow but the property line setback of 100 feet also applies in this situation. The confusion was between the two types of setbacks and what applied in this particular case.

Mr. Haehn asked if that County road ends at the property or is it goes straight through. Mr. Scegura responded yes, it goes all the way to the end of their property.

Chairperson Massmann asked if that road is maintained by the Township. Mr. Scegura responded not right now. It used to be.

Dennis Gregory asked staff to distinguish between a right-of-way and a road. Ms. Benson responded that often times, there are road rights-of-way, which can be dedicated or managed and maintained by Townships. The road is often the traveled portion. How the road is maintained and who maintains it is something that we run into a lot of (is it privately owned, is it Township maintained). In this case, it's a Township regulated road. The Township's standards apply but the Township isn't maintaining it; therefore, it appears to be a private road because there is no one else using it.

Mr. Gregory asked what the County's options are if someone gets a permit and then they don't follow the permit. Ms. Benson stated the permit does not specifically state the setbacks. This can result in a variance request. The intent is to meet the setbacks. We are working to correct that issue so that it is clearer. These are the kind of things we like to avoid, especially when there is a road and a property line because the more restrictive standard applies. Mr. Krippner added in a scenario when the lesser of the two setbacks would apply is where there are a property line and a road at the front of the property. In this case, the front of the property would be County Road 9 so that is where the less restrictive setback would apply but the barn was built in the more restrictive setback location.

Mr. Gregory asked staff if the applicant would have received anything indicating that they needed to be 100 feet back from the Environmental Services team back in 2014. Mr. Krippner responded that there is a scale bar on the map that comes with the application and it is the

applicant's responsibility to follow the setbacks in the Ordinance that are communicated. Mr. Gregory asked how that gets communicated. Mr. Krippner responded a lot of times those setbacks are communicated at the time of the application and those setbacks would be communicated prior to issuing a permit so that we would know whether the applicant needs a variance, a Conditional Use Permit or if that permit can be issued without any additional permitting requirements.

Chairperson Massmann asked whether that information is conveyed verbally or in writing. Mr. Krippner responded that it is mostly verbally and confirmed it would be in writing as far as with the scale and the drawing. Ms. Benson stated they are not specifically labeled and those are things that we have changed to make sure that we don't run into this again.

Mr. Haehn asked the applicant if he and staff came up with this 63 feet when they talked. Mr. Scegura responded yes.

Mr. Gregory asked about the compliance agreement that was signed and what would be required by the applicant to bring the existing barn into compliance. Mr. Scegura stated that their understanding is that they are going to get a variance for it so it would be okay. Tammy Scegura stated that with the miscommunication, they went and did what staff had said because that 63 feet was okay. That's why it was built where it was. If they would have known differently, they could have moved it because there is plenty of land. It wasn't that they were confined to just that space. Mr. Scegura added if we would have known but we had permission to put it where we did put it.

Mr. Gregory asked the applicant what action they would have to take if the variance isn't granted. Mr. Scegura stated he didn't know. Ms. Scegura stated the idea that they would end up having to tear it down and rebuild would be very costly. It wasn't their intent that it was out of compliance. They thought they had done everything correctly and they absolutely knew to ask. Mr. Scegura stated they didn't know anything for two years and they never would have known anything if they wouldn't have applied for another barn.

Ms. Benson stated one of the reasons that we went with the compliance agreement was because they wanted to construct another barn. In order to do that, our Ordinance states that they can't be out of compliance somewhere else. We said the only way to build the other structure would be to sign the compliance agreement but yet let's go to the Board of Adjustment and discuss the concerns for what occurred. Then the Board could make their decision and if they say no, then we have to deal with that after but we do this so that they can continue to do what they need to do in that process.

Dave Gamradt asked if they were to build this barn today, would they be given a plat or something with how many feet it has to be from the setbacks with the permit. Mr. Krippner responded what we are looking for now is any applicant that requests to construct a structure within 25 feet of a known setback, they would need to provide a survey that identifies that setback and the exact distance that they intend to be. Additionally, they would provide a drawing that is hand drawn by the applicant with the identified setbacks on it and is signed by them so that we know they understand what the setbacks are and so we can double check and have that documentation that was the setback that was maintained.

No one was present to speak at the public hearing.

Motion was made by Dave Gamradt, seconded by Dennis Gregory, 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. It is A-40 zoning and broiler barns would be permitted in A-40 zoning.

OVERALL BOARD CONSENSUS: **YES** (All 7 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. It is in the A-40 zoning district and agriculture is the primary purpose of that district so it is in harmony. That would be under Land Use & Zoning Ordinance #439, Section 1.2.B, which is promoting development of agriculture.

OVERALL BOARD CONSENSUS: **YES** (All 7 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. Where the land and where that road are located, the location of the barn really isn't going to have an impact. It would have one positive impact in that by being built a little closer to the road, it saves more agricultural land and in the Land Use & Zoning Ordinance # 439, Sections 9.1.1A and 9.2.1A talk about the preservation of farm land. That would apply, as putting the door of the barn closer to the property line protects more farm land.

We need to be careful about setting some type of a precedent that we want people to go within the setbacks to preserve agricultural land. That's a case by case basis. Our encouraging that is not necessarily a positive thing to do.

OVERALL BOARD CONSENSUS: **YES** (All 7 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. Having a barn in this location, and again, with the misunderstanding that occurred, the applicant is using it in a reasonable manner. We want to encourage all future applicants to meet the setbacks.

OVERALL BOARD CONSENSUS: **YES** (All 7 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 is more a miscommunication between the applicant's understanding of the regulations and how staff presented it to them. It's not really circumstances unique to the property. It's just unique in the application process.
- OVERALL BOARD CONSENSUS:** **YES** (All 7 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 is an agricultural area. It will maintain that same essence.
- OVERALL BOARD CONSENSUS:** **YES** (All 7 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
- Yes. As stated, there was a miscommunication or a misunderstanding between staff and the applicant. The consequences to the applicant would not outweigh any benefit to the County in asking them to remove it or asking them to stop using a portion of the building.
- 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 Dave Gamradt, to approve the request to leave as constructed a total confinement barn that is located 63 feet from the nearest property line. Motion carried unanimously.

2. Request for a variance from Section 6.2.1P of the Stearns County Subsurface Sewage Treatment System Ordinance #422, submitted by Douglas & Anne Valley, Plymouth, Minnesota. File #P-008641.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Douglas & Anne Valley, Plymouth, MN from Section 6.2.1P of the Stearns County Subsurface Sewage Treatment System Ordinance #422 to place a subsurface sewage treatment area (mound absorption area) 15 feet from a structure (residential dwelling). Said Ordinance requires a setback of at least 20 feet from a structure for the placement of a subsurface sewage treatment area (mound absorption area). Affected property: Lot 1 of Islewood Beach, Section 13, T124N, R30W, Colledgeville Township. Property address: 29651 Island Lake Road, St. Joseph, MN.

Applicants, Douglas and Anne Valley, were present at the meeting.

David Knafla gave an overview of the staff report. It was noted that all Board members present visited the site. No correspondence was received regarding this request.

Douglas Valley stated that they had been postponing work as long as they could. This plan by their septic designer keeps everything in this area. Their septic designer said this was the best bet so this is what they are proposing.

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.

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 R-1 zoning and this is residential so it's allowed.

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 purpose of the R-1 zoning district is residential development and this will be in harmony with that purpose.

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 is concerned with water quality. The applicants have used a licensed contractor to come up with a plan that protects the water quality in this case so it is consistent.

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 an R-1 zoning district, which promotes residential structures.

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 size of the lot and the location for the request don't give many options. This was designed by a certified designer, who stated this to be the best location for that application for that lot size.

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 doesn't change anything that already exists.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. Economic considerations were not a part of it. It needs to go in a certain spot and because of the lot size, has to go in that spot.

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

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Chairperson Massmann, seconded by Jacob Holck, to approve the request to place a subsurface sewage treatment area (mound absorption area) 15 feet from a structure (residential dwelling). Motion carried unanimously.

3. Request for a variance from Section 6.2.1P of the Stearns County Subsurface Sewage Treatment System Ordinance #422, submitted by Mark & Brenda Berg-Arnold, St. Joseph, Minnesota. File #P-008657.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Mark & Brenda Berg-Arnold, St. Joseph, MN from Section 6.2.1P of the Stearns County Subsurface Sewage Treatment System Ordinance #422 to place a subsurface sewage treatment area 12 feet from a structure (residential dwelling). Said Ordinance requires a setback of at least 20 feet from a structure for the placement of a subsurface sewage treatment area. Affected property: Lot 9, Block 2, Rassier Addition, Section 35, T125N, R29W, St. Wendel Township. Property address: 9297 Narcissus Road, St. Joseph, MN.

Applicant, Mark Berg-Arnold, 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.

Mark Berg-Arnold stated the stakes were left up all summer because they had been noticed about the noncompliance when they had pumped in May. They had Watab out there to try to design a compliant system. Really, all they are asking to do is to put it right back in the same place it is and come up to the existing code for the size of the tank and everything else. Obviously, they are trying to meet all those requirements of a larger lift station and just have the maximum drainfield that they can for that lot. There is really not a lot of other space on the lot to put it in.

Ken Massmann stated that the alternative is to place a smaller Subsurface Sewage Treatment System on this lot and asked staff if they were to put a smaller one on, would it be big enough for the house with bedrooms and stuff. Mr. Knafla responded it would be considered a Type III system; therefore, it would be smaller but it would have dual alternating pumps and another tank. It would have to have a surge tank for when the water use exceeds what the dual alternating pumps could handle or the drainfield could handle. It would end up with more tanks in the same location than making a drainfield smaller.

Mr. Massmann stated it seemed like more expensive then. Mr. Knafla responded yes and confirmed also more things that could go wrong.

Dennis Gregory stated that based on the setbacks, it would still have to go in the same area. Mr. Knafla responded that it's going to go in the same place and it's just going to be a different size. Mr. Berg-Arnold added that if you make the system smaller, it is more likely to fail. They are just trying to maximize the space and put it in the same spot.

Mr. Gregory asked that in these cases, is all of the current soil removed and then everything is put in so it's a brand new drainfield. Mr. Berg-Arnold responded yes, that's his understanding. Mr. Knafla added what they would do, is they would excavate to the bottom of the drainfield, take out any contaminated soil and then replace that with clean sand and drainfield rock back on that sand.

Mr. Massmann stated the system they've got now is called the other system and asked what the new system is going to be called. Mr. Knafla responded this is the third system that has failed in the same location as previous systems. The rules and our Ordinance at that time had if removing this system and not putting it on virgin ground, that was called an other system so there would be monitoring and mitigation. Also at that time, the Ordinance allowed us to deviate from the required setback. As staff, we could make that determination that 12 feet from a residential dwelling is okay when they can't meet the 20 foot setback but this is the only place it can go. The Ordinance and Minnesota Rules changed and now the other system is called a Type III system. It's just a different way to classify a system.

No one was present to speak at the public hearing.

Motion was made by Ken Massmann, 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. The property is in R-1 zoning, which is residential area, and septic systems go right along with residences so it would be acceptable in this area.

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 is in harmony. It is R-1 zoning, it is residential and septic systems are a necessity. The Land Use & Zoning Ordinance #439, Section 1.2.A talks about public health and putting in a working septic system is definitely under the charge of public health.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. The system the applicants are proposing protects the natural resources just as the current system does and the process they are going to go through to replace the drainfield makes this a better system so it is consistent.

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 single family residence and that is how it is being used.

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. Lot size is the key factor in the determination of the size of the drainfield so it's created by the land and not the owner.

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. Once the work is completed, it will all be in the same location and won't even be evident after the works completed.

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 a part of the discussion. Public health would be the primary reason here.

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

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Dave Gamradt, seconded by Ken Massmann, to approve the request to place a subsurface sewage treatment area 12 feet from a structure (residential dwelling). Motion carried unanimously.

4. Request for a variance from Sections 5.1.2 & 10.2.11A(2) of the Stearns County Land Use & Zoning Ordinance #439, submitted by the Derryn J. Grey Revocable Trust & the Angela J. Ziebol Revocable Trust, Maple Grove, Minnesota. File #P-008674.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by the Derryn J. Grey Revocable Trust and the Angela J. Ziebol Revocable Trust, Maple Grove, MN from Sections 5.1.2 & 10.2.11A(2) of the Stearns County Land Use & Zoning Ordinance #439 to increase the height, full second story addition, on to a legal nonconforming structure located in the Shoreland Overlay District that is located ahead of the established building line. Said Ordinance does not allow for the expansion of a legal nonconforming structure unless the addition or alteration meets the minimum setback requirement for the applicable lake or river classification for structures located in the Shoreland Overlay District. Affected property: .62A of Lot 2, Section 2, T122N, R29W, Maine Prairie Township. Property address: 19203 East Shore Drive, Kimball, MN.

Applicants, Derryn Grey-Ziebol and Angela Ziebol, were present at the meeting. Chris Nelson, legal representative for the applicants, was also present.

David Knafla gave an overview of the staff report. Mr. Knafla read additional correspondence received from what was included in the staff report. This correspondence was from Patricia Hinds, 2280 230th Street, in support of this variance request. All correspondence is on file as part of record.

It was noted that all Board members present visited the site prior to the meeting. Chairperson Massmann stated that they did have communication with a neighbor.

Chris Nelson stated the applicants own a seasonal cabin on this site where they spend time during the summer but they presently live in Maple Grove and hope to move out to Pearl Lake full time and have it be their year-round residence. The issue with the property is the fact that it is shaped like a piece of pie. It is very narrow towards the road and expands at the lake. The well and the septic system are between the cabin and the road. The applicants worked with Stearns County Environmental Services from the beginning before plans were drawn up. Staff

visited the site and talked with the applicants and their contractor about what they could do as far as turning their seasonal cabin into a year-round home. The design in the staff report was a result of those conversations. The issue with moving the cabin back to the 100 foot setback is the location of the well and the septic system. Those would need to be replaced and moved and given the orientation of the lot, there really is no place for them other than moving closer to the lake, which would potentially increase the impact to the lake. In addition, moving the home back and building an entirely new structure would create potential issues with setbacks from the neighboring lot. The 18'x18' addition that's proposed was designed to be set back parallel with the home to create the minimum possible impact. In drawing a building line from the northern western corner of their seasonal cabin to the southern western corner of the neighboring home, the entire 18'x18' addition is behind that line. The neighbor immediately South, whose view would be most greatly impacted by the change, is supportive of the applicant's variance request. There's really no difference in impervious surface. The proposed structure is well under the height requirements and is an appropriate use of the property as a single family dwelling. For those reasons, the applicants ask the Board to approve their variance request.

Dennis Gregory stated the variance request is for a second story but they are increasing the footprint of the house and they have decks that are being added to this house. He asked staff if they need variances for any of the other changes that they are proposing to this house. Mr. Knafla responded the proposed second story deck on the lakeside, was not taken into consideration in their request. They would be allowed a four foot walkway for egress that would have to be discussed with the applicants as part of their proposed Construction Site Permit. That was not brought up in any conversation for this request. As for adding the second story on the existing structure, that's where it gets confusing. The question is can the existing structure handle having a second story constructed on it.

Mr. Nelson reviewed the building plans. The proposed addition is set 12 feet back from where the existing structure is. The addition is a 10'x16' deck off the existing structure. The proposed deck would be smaller than the existing one. This new addition was designed to be parallel with the structure that exists on the neighboring house.

Mr. Gregory asked Mr. Nelson if the current nonpermitted deck is going to be torn off and a new deck put in its place. Mr. Nelson stated that is correct. The new deck will be smaller in scope than the original deck and it will be four feet closer to the structure than the deck that currently exists. Mr. Knafla stated that deck is on the second story. Mr. Nelson stated correct. Mr. Knafla stated that would be closer to the setback than what would be allowed. Chairperson Massmann stated that's because the first deck wasn't permitted. Mr. Knafla confirmed that the deck would be considered new and not part of the original existing nonconformity.

Chairperson Massmann stated then that the deck and that addition were not part of the public notice. Mr. Knafla stated the 18'x18' addition meets the setback and confirmed that doesn't need a variance and that it's behind the building line.

Mr. Nelson stated that the contractor is here and he can answer any questions including the questions about the structure and the rebuild that were raised by staff.

Dave Weyer, building contractor, stated the existing structure is 30 feet wide now and follows the line of the house. The only thing that does not, is the 18'x18' addition and that follows parallel to the neighbor's home. The deck is a second story walkout deck that will come out of their bedroom so there will be nothing on the lower except for where they have to come out other doors and such. The deck will be much smaller than what is there now.

Chairperson Massmann stated that the issue is that what is there now was not permitted. The new deck can't be counted as a replacement because the original deck was not permitted. The Board's concern is that a deck isn't part of the variance request.

Derryn Grey-Ziebol stated the unpermitted deck on the ground floor that goes out to the lake was put on before they purchased the home and that's going away. Chairperson Massmann stated it doesn't matter whether its ground floor or second floor, it's still a deck and because it's not permitted, it can't just automatically be replaced on the same footprint like the rest of the house can. Mr. Gregory added that it's within the setback so that's why it would need a variance.

Mr. Nelson asked if they could go forward on the second story variance and then do another proposal on the deck. Chairperson Massmann responded that they could but they would go through the entire process again, including paying fees. Mr. Nelson further asked about the deck not being covered by the variance that's being requested. Chairperson Massmann responded it wasn't included in the original request and it wasn't public noticed. An alternative would be to table it, add those to your variance request, republish it and then bring it back to the Board as one variance.

Angela Ziebol stated the deck was part of the original variance plan request. Chairperson Massmann stated the notice that was published in the newspaper to the general public did not specify the deck with the full second story addition. Mr. Nelson stated he would argue that it is part of the second story addition considering that it was submitted with the plans and with the site drawing. Mr. Knafla responded it would be a second request due to the fact that we don't know the measurement of the proposed deck to the OHWL and would have to public notice that setback variance request. Chelle Benson stated they would be expanding beyond a nonconforming structure with that footprint of the deck. Without the deck, they could go forward. With the deck, it changes the picture because now it's expanding beyond that footprint of what currently exists. It's that illegal piece that creates the problem.

Mr. Nelson stated that a lot of the frustration comes down to the fact that this was worked on with staff in detail and the deck has been known. If it's absolutely necessary, tabling it and coming back is appropriate. That being said, this was part of the full second story addition that's been displayed routinely on the plans and its part of what's been shown to staff. They know the exact measurements of that deck; therefore, they know the exact distance it is from the OHWL. There is nothing surprising about the deck. Chairperson Massmann stated it's on the drawings but if it was not published in the newspaper that the permitted parts are getting closer to the lake then they currently are, it could cause legal concerns because the general public wasn't notified.

Ms. Grey-Ziebol stated the neighbors have seen the plans and were aware of that deck. Chairperson Massmann stated it's not only the neighbors next door but it's the entire residents of the County that have to be notified.

Chairperson Massmann stated their options would be to proceed with the second story addition, excluding the deck portion, or ask for it to be tabled, add it in, get it published in the newspaper and then the Board would review it at their next meeting. Mr. Nelson stated they would like to go forward.

Mr. Gregory asked about not being able to relocate the house and still be in compliance. Mr. Weyer stated it is virtually impossible. The lot is a pie-shaped and the septic and the well are literally within the standards to do this right now. If you look at the way the septic is designed, it actually pumps up that hill and the drainfield goes around both sides of the garage. Where would you put it and where would you put a drainfield. There is virtually no room left to go anywhere.

Joe Ziebol, seasonal cabin two doors down from the applicants, stated he is all for what they are doing. He doesn't have anything against it and he did submit a letter stating that. The neighbors and him are all for it. He doesn't know anybody that's against it. They are all happy that they are doing it and hope it goes through with it.

Angie Zupan, 19141 East Shore Drive, stated they are all very excited for them to be permanent residents here.

Mr. Haehn asked the building contractor if he intends to reuse any exterior walls that are currently on the house and the foundation that's currently there. Mr. Weyer stated they are not. Mr. Haehn asked if it's a complete demolition with new footings and new construction; nothing would be reused. Mr. Weyer stated yes. Mr. Knafla stated that would change what was public noticed in the fact that they are not reusing the legal nonconformity. They're constructing a new structure at the same setback. Once the legal nonconformity is removed, it can only be replaced to the same dimensions. Chairperson Massmann stated with the understanding that the current structure is going to completely be demolished and a new structure built, the Board can't move forward with the way it was published.

Mr. Weyer stated that he doesn't understand the confusion. They brought the team from Environmental Services out there to start this thing. They are following staff's diagram and they went through the process of trying to get a permit and keep the existing structure and it got turned down. This is the way that they told us to do it. Now they put in for a variance several months later and now the program completely changes. The same with the deck. The deck has been in since day one. They have called, they've asked questions, this plan has been down there and he doesn't understand how this could be where everybody is getting so confused.

Ms. Benson stated in the application that was submitted, it states "applicants seek a variance to renovate and expand their existing seasonal cabin". It doesn't say remove and replace and there is a difference and it's a statutory difference. It's not intentional to try to create confusion but the statute talks about existing nonconformities versus remove and replace. There are specific differences.

Mr. Weyer stated he understands that but they are only following the advice of staff. Chairperson Massmann stated that although we understand what you are asking for, you understand it and staff understands it but if it wasn't published that way, we can't act on it because it doesn't follow the law or statutes.

Ms. Ziebol stated they had called Environmental Services back in April so that they could do their due diligence. Before they even began this process, they had staff come out. They asked staff what's the percentage that they need to keep standing on this building to stay compliant in order to do this renovation and staff said there's an unwritten rule you could have 10% or 1%. They asked staff all these questions, they asked several different ways and the contractor asked it several ways. They asked staff if they need to apply for a permit or a variance and were told a permit would be fine. They met and they spent all this money with their designer according to their meeting because they wanted their due diligence to have this done correctly. Mr. Weyer went down to the County and sat in with staff showing page by page and was told this is great, no problem, permit should be there by Friday. She got a call on Friday that staff would be discussing this on Monday morning and they end up turning down the permit. They need to have a variance. Two days later they get it in writing. This is why they had to bring on an attorney.

Chairperson Massmann stated that she hears and understands their frustration. The Board is to make sure that their decision follows the statutes and the laws.

Ms. Grey-Ziebol stated it seems like the issue is what was printed in the newspaper and asked who wrote what was printed in the newspaper. Ms. Benson stated that staff writes it. Chairperson Massmann stated they would have written it off of the application that was submitted and the application that was submitted doesn't talk about new construction. Ms. Grey-Ziebol stated that this is what their goal was so if someone from the County mislead them or miswrote, that's not on them because they were guided by staff.

Ms. Ziebol stated if it's a matter of how they are building it, they've been flexible and they've changed it how many times now when they've talked with the County. If they want, they will raise it and they will get a new foundation and set back down if that's what has to happen. Staff told them no, that's fine, they can take it down. There are many ways they can build it. They were told then if they do this variance then they can just knock it all down.

Ms. Grey-Ziebol asked if they need to reword and republish. Chairperson Massmann stated to republish it with it stating new construction and with the property setbacks and whether there is a deck included is an option. There would not be any additional fees if the Board tables their request to the September Board of Adjustment meeting.

Mr. Nelson stated since that's where we are at, that's what we will do. Ms. Grey-Ziebol stated she is just floored that this comes down to wording in an article that they were not involved with but that someone on the County's end chose to write it that way. Chairperson Massmann stated that they didn't choose to write it that way, they copied it off of the application that was submitted. Ms. Grey-Ziebol stated the application they submitted followed what they were told to do. Chairperson Massmann stated the application did not state new construction either but regardless of where the error happened, it's the situation we are in right now and asked if the clients wish that this be placed on the September meeting. Mr. Nelson stated that is correct.

Ms. Grey-Ziebol asked if it's the setback for the deck that is what is being talked about, she would rather just nix the deck. Ms. Benson stated that new construction changes the issue of the nonconformity. Ms. Ziebol stated everyone knows its new construction. Ms. Benson stated that's the problem and apologizes.

Motion was made by Dennis Gregory, seconded by Michael Haehn, to table agenda item #4 to the September 28, 2017 Board of Adjustment meeting. Motion carried unanimously.

5. Request for a variance from Sections 5.12, 6.2.1A & 9.9.9A(1) of the Stearns County Land Use & Zoning Ordinance #439, submitted by David Meidl & Nora Job, Kimball, Minnesota. File #P-008691.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by David Meidl & Nora Job, Kimball, MN from Sections 5.12, 6.2.1A & 9.9.9A(1) of the Stearns County Land Use & Zoning Ordinance #439 to replace a legal nonconforming detached residential accessory structure that is proposed to have 11 foot sidewall height that is located 3 feet from a sideyard property line. Said Ordinance does not allow for an expansion for the replacement of a legal nonconforming structure, allows for the maximum allowable sidewall height of 10 feet for a lot that is .5-.99 acres in lot area and requires a sideyard setback of at least 10 feet. Affected property: .64A of Gov Lot 1, Section 13, T122N, R29W, Maine Prairie Township. Property address: 17132 Danzig Road, Kimball, MN.

Applicants, David Meidl and Nora Job, were present at the meeting.

David Knafla gave an overview of the staff report. Mr. Knafla read correspondence received from the applicants from Paul and Kimberly Steichen, 7818 Carnel Court, in support of this variance request. This correspondence is on file as part of record.

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

David Meidl stated the garage does need to be replaced because the footings are bad. They did get a building permit already approved to replace the existing size but they thought that for convenience and for future use, they could go a little bit higher and get more versatility. The proposed plan is for it to be about one foot higher than the attached garage on the house and it would be at about the same eave height as the house.

Nora Job added that being they are living on a lake, having that extra height was in foresight to have a place to properly store stuff during the winter. It adds to resale value and things like that. Right now they've got this big detached garage but they can't get a boat in it so the boat sits out in their yard all winter. This would give them the clearance to fit the boat in there. It's nice when you drive through a lakeshore neighborhood and their toys aren't sitting out in the lawn. It won't take away from their lawn or be an eyesore to everybody else in the neighborhood. It's also nice to have this space for storage instead of paying for offsite storage.

Mr. Meidl stated that their neighbors that live to the North of them were present to support their request but because of timing, they needed to leave before speaking.

No one was present to speak at the public hearing.

Motion was made by Dennis Gregory, 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 a residential area and accessory structures are allowed in residential areas.

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 applicants are replacing an existing garage so nothing is really changing other than the height. The size and the square footage on the lot won't change.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. The applicants are just replacing the garage on the same footprint so there will be no impact to any of the surrounding property.

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. As the applicant stated, their existing structure isn't tall enough to hold recreational equipment and this is only going to better the property and the views for the neighbors to not have stuff outside of the garage. They can properly secure and store their stuff inside of the building. It really won't impact the view corridor of the neighbors by raising the height of this building.

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 size of the lot was created by Ordinance so that's clearly unique and the location of the garage is also unique to the property.

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 does and as previously stated, it's being put on the same location so it won't impact the community.

OVERALL BOARD CONSENSUS: **YES** (All 7 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. Economic considerations were not a part of it.

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, seconded by Michael Haehn, to approve the request to replace a legal nonconforming detached residential accessory structure that is proposed to have 11 foot sidewall height that is located 3 feet from a sideyard property line. Motion carried unanimously.

ADJOURN

Motion was then made by Jacob Holck, seconded by David Peschel, to adjourn the meeting at 8:29 p.m. Motion carried unanimously.