

Approved Minutes of the Stearns County Board of Adjustment

A meeting of the Stearns County Board of Adjustment was held on Thursday, July 26, 2018, in Room 121 B/C/D of the Stearns County Service Center, 3301 County Road 138, Waite Park, MN beginning at 6:00 p.m.

Members Present: Jacob Holck, David Peschel, Bonnie Massmann, Dave Gamradt and Michael Proell. Michael Haehn arrived at 6:08 p.m.

Members Absent: Dennis Gregory

Environmental Services Staff Present: Angie Berg, Jamie Lucas, BethyJo Juetten and Laurie Lokken.

Chairperson Massmann called the meeting to order at 6:00 p.m.

Pledge of Allegiance

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

Approval of June 28, 2018 minutes

Motion was made by Jacob Holck, seconded by Michael Proell, to approve the minutes from the June 28, 2018 meeting. Motion carried unanimously (5 members present).

Regular Agenda Items:

- 1. Request for a variance from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439, submitted by Gary & Anita Hentges (Roch Ruhland, applicant), Richmond, Minnesota. File #P-011045.**

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Gary & Anita Hentges (Roch Ruhland, applicant), Richmond, MN from Section 6.7.5D of the Stearns County Land Use & Zoning Ordinance #439 to construct a new residential structure 550 feet from a registered feedlot. Said Ordinance requires a 700 foot setback to an animal feedlot that is registered for 10 animal units or more.

Chairperson Massmann announced that agenda item #4, Courtney Zack, has been postponed until the August 23, 2018 Board of Adjustment meeting. Agenda item #10, Michael & Marlene Pflipsen, has also been posted to the August 23, 2018 Board of Adjustment meeting. Agenda item #9, Lucky of Albany, LLC, has withdrawn their request.

Applicant, Roch and Gail Ruhland, were present at the meeting.

BethyJo Juetten gave an overview of the staff report. No correspondence was received regarding this request.

It was noted that all Board members present, except David Peschel and Michael Proell, visited the site prior to the meeting and there was no communication on site.

Chairperson Massmann stated that she would abstain from voting since there is an even number of Board members present.

Roch Ruhland did not have anything further to add to the staff report.

Mary Gruenes, 18054 State Highway 22, stated they are the neighboring feedlot property and their concern is that there would be future problems. Their land is not lakeshore and it would only be used for farming. Due to the economy, at this time, they have a minimal amount of cattle. In the future, they would not want to be restricted from the opportunity to have a feedlot.

John Gruenes, 18054 State Highway 22, added that they would look at purchasing additional cattle next spring.

Ms. Gruenes stated this could affect future use of the farm land. They are concerned that their farm land would be devalued. They would want to have the opportunity to sell it for raising cattle and for farm use.

Chairperson Massmann stated that the Gruenes' are currently registered for 100 animal units and asked if that is what they would typically anticipate being registered for and using the buildings for. Mr. Gruenes responded yes.

David Gamradt asked staff if a new owner were to purchase the property and wanted to increase animal units, would this variance, if granted, weigh in on that at a later date. Ms. Juetten responded they would be allowed to expand further to the North and to the East without encroaching any more in shoreland. According to the current Ordinance, any expansions that occur within shoreland require a Conditional Use Permit application in addition to a feedlot application. Chairperson Massmann stated that regardless of whether that house were there or not, they would need to apply for a Conditional Use Permit to expand their operation. Ms. Juetten responded yes, adding that this is further outlined in the staff report.

Ms. Gruenes stated that they are 700 feet away from the lake. If the Ruhlund's would build in the crest of the hill rather than closer to the road, it wouldn't be a problem.

Motion was made by Michael Proell, 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. Homes are allowed to be built in R-1 and A-40 zoning districts.

OVERALL BOARD CONSENSUS: **YES** (All 5 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. Building a single family home is allowed in both R-1 and A-40 zoning in the Ordinance so it is in harmony with the general Ordinance zoning requirements.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. Goal 6, Objective 1 under Growth and Development is to provide a diversity of housing prices and styles meeting the needs of the residents of different ages, income and lifestyles.

OVERALL BOARD CONSENSUS: **YES** (All 5 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. Building a house on a piece of land that is owned is reasonable.

OVERALL BOARD CONSENSUS: **YES** (All 5 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 circumstances of the property are that the best location for building is encroaching and other areas aren't suitable for building. There is a fair amount of elevation and the natural setting is something that is beyond the landowner's control.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
6. The variance, if granted, maintains the essential character of the locality? Yes or No?
 - Yes. There are lake homes in and around that area, both in the Shoreland District and outside of that in the farm setting. The essential character would be maintained. There is residential on one side of the road and a farm on the other side but the farm is grandfathered in, as far as their current feedlot, so that would maintain the character of that neighborhood.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. Economics did not play a role in the request.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)

Ms. Juetten clarified for Mr. Gamradt and the applicants that a minimum of 1 animal unit is required in a consecutive 12 month time period to remain as an active feedlot. If without animals during that time period, the feedlot would be deactivated and would lose their grandfathered in status.

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by David Peschel, seconded by Jacob Holck, to approve the request to construct a new residential structure 550 feet from a registered feedlot. Motion carried unanimously.

2. Request for a variance from Section 6.1 of the Stearns County Subsurface Sewage Treatment System Ordinance #422 & 7080.1550 Subp.2.B.(1) & 7080.2150 Subp.3.K of Minnesota Rules Chapters 7080 through 7083 Subsurface Sewage Treatment Systems Program, submitted by Semi Properties, LLC, St. Cloud, Minnesota. File #P-010972.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Semi Properties, LLC, St. Cloud, MN from Section 6.1 of the Stearns County Subsurface Sewage Treatment System Ordinance #422 & 7080.1550 Subp.2.B.(1) & 7080.2150 Subp.3.K of Minnesota Rules Chapters 7080 through 7083 Subsurface Sewage Treatment Systems Program to use the existing Subsurface Sewage Treatment System as designed and installed for the treatment of sewage that exceeds the influent and effluent domestic waste strength concentrations. Said Ordinance and State Code require pretreatment of sewage with high strength waste.

Jeff Schmitz and Nicole Schmitz, representing the applicant, Semi Properties, LLC, were present at the meeting. Bernie Miller from Miller Sewage was also present.

It was noted that all Board members present, except David Peschel, Michael Haehn and Michael Proell, visited the site prior to the meeting. There was no communication with Board members while on site.

Jamie Lucas gave an overview of the staff report. No correspondence was received regarding this request.

Jeff Schmitz stated they have an automotive repair facility on this property as well. They previously did daycare out of the home that's on the property and that has a septic already there. They decided to expand into a center and had a septic system designed for this application. They installed the septic as it was designed and are now trying to get a variance to use that septic as it was designed for the daycare center.

Bernie Miller stated that Stearns County required them to do sampling to make sure they don't have high strength waste. He took a BOD sample and it was 30% over. Septic systems are designed based on the life of it on the mass flow. The amount of stuff that's in the water has very little to do with the treatment of it, as long as it is biological and not chemical. We are not talking about chemicals so the system as designed is a compliant system. It was sized for this facility and the house next to it. We look at the mass flowing of that system, which helps determine the life of it. Their water use is about 25% of what it was designed for so the system concentration doesn't affect the treatment but it affects the life of the system. If they ever operate that system at full capacity, they would end up plugging up their system but the more the system starts to plug, the better the treatment it actually provides. This is not a matter of treatment, it's simply a matter of the life expectancy of it. If they were to use more water, it would probably lower the concentration and they would end up with a lower BOD. The property is basically consumed with all drainfield right now. They would end up having to take all that out, which is only four years old, and put in a pressurized system instead of a gravity system as the code requires to have pressured distribution after pretreatment. Looking at just the concentration, concentration that high, with the design flow, would plug up the system in 7 years. It's still a 30 year system and in 4 years, the system has no indication of any ponding in

the drainfield. It's like it's still brand new. We are here because MPCA rules don't allow a pretreatment system so their only alternative is to put in a full system or ask for a variance to operate the way it is.

Chairperson Massmann asked staff if there was a change in requirements from when they originally put in their system to now that triggered this request. Mr. Lucas responded there wasn't a change. The design for this additional tanking and drainfield was for just domestic strength waste. When they applied for a commercial kitchen, it was determined by the menu provided to the County that it might not be domestic strength waste. That's why we required them to do testing on it for three years to determine whether it is domestic strength waste or not.

Nicole Schmitz stated she did home daycare for nine years before they opened the center. It was a standard household septic. The menu is the same from when they went from household daycare to daycare center. Instead of 14 kids, they are licensed for 67. Everything is pretty much the same. There is only one chemical that's different in the kitchen and that's the sanitizer for the dishes. They said it would be domestic strength waste and to her, that is the same as what was in the home daycare system before it was built bigger for having a daycare. There was no pretreatment or anything in that.

Mr. Schmitz added that they don't use any grease or anything like that in the kitchen. It's all baked in an oven and nothing is deep fried so it's all basically the same as domestic. Home septic is going to be similar, if not more than, what they use.

Dave Gamradt commented that chances are that there would be some systems that would be stronger like this if they were to sample all the systems that are operating in the County. Mr. Lucas concurred with his statement.

Mr. Miller stated that when they troubleshoot residential systems, just about every system that they test is over this limit, especially ones that are having problems. Again, we are talking about a concentration. If you use more water, that concentration is going down. He thinks that the estimation for a daycare use is way less than what it actually is designed for so what's going out is more concentrated.

Chairperson Massmann asked staff if these numbers that are set are set up by the County or are State guidelines. Mr. Lucas responded the numbers are from the MPCA.

Michael Haehn asked if any danger to groundwater or to anything around that area is foreseen. Mr. Lucas stated the basic harm is going to be to their system. It's just going to fail sooner than it probably should. It's still going to treat the effluent the way it should. Do not see any harm to nature or downstream from them. It's what it's going to cost them when that life span of the system is shortened. It's either pay now or wait until the system fails and then reinstall a new system.

Mr. Gamradt asked if adding bacteria to the system would compensate for some of this. Mr. Miller responded that he doesn't think that the addition of bacteria would necessarily do it. They proposed to add an NBBR that costs \$2,500 to install and their system could last for a lot longer but they can't get through that part of the rule.

Mr. Schmitz stated they are choosing not to do that because of the fact that not only would they have to pay the \$2,500, they would have an additional cost to have somebody come in and test it as well. He would also be concerned that proposal may cause a bigger problem down the road. It would be smarter for them, as the property owners, to decide for themselves if they want to change the septic system down the road, if and when it fails, and put the expense towards bringing it to code at that time. The codes protect them, as the owners of the property, and that's why they have to hire people to put the system in. It would have been more cost effective if they would have had the right system at the beginning. Now they are stuck in this situation where it looks bad on everybody's part. The sad part is that at the end of the day, the people that paid the money to have the system put in are going to wind up have to pay more money down the road. They are not hurting the environment at all as it is filtering and holding the bacteria and they should be able to say they will just leave it the way it is and fix it down the road.

No one was present to speak at the public hearing.

Motion was made by Michael Proell, seconded by Jacob Holck, 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.)

Mr. Lucas confirmed for Board members that this property is located within the City of St. Augusta so County zoning does not apply.

- Yes. Daycares and septic systems are allowed.

OVERALL BOARD CONSENSUS: **YES** (All 5 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. The official controls are based around protecting the environment and protecting the health of citizens. This request would not have an impact on that.

OVERALL BOARD CONSENSUS: **YES** (All 5 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. Septic System Ordinance #422 has minimum standards. The system was originally designed and developed according to the needs of a daycare center.

OVERALL BOARD CONSENSUS: YES (All 5 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. The applicants are using their daycare business and their repair separately and everything that's being used is used in the manner it was designed to be used.

OVERALL BOARD CONSENSUS: YES (All 5 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. Originally, the system was designed and approved by the County. It is just not performing as it was originally designed to do because there's not enough water flow through the system to reduce the waste strength levels.

OVERALL BOARD CONSENSUS: YES (All 5 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. Nothing will change in the locality with the septic system.

OVERALL BOARD CONSENSUS: YES (All 5 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. Economics were not really a part of the discussion. The applicants would have to pay for a new system so it's somewhat involved but there's not really any options. They will pay one way or the other. It lets them recoup the investment they've already made. The system works and for however many years it works, they will be money ahead. Economics were not the key factor.

OVERALL BOARD CONSENSUS: YES (All 5 members voted yes.)

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Michael Haehn, seconded by Jacob Holck, to approve the request to use the existing Subsurface Sewage Treatment System as designed and installed for the treatment of sewage that exceeds the influent and effluent domestic waste strength concentrations with the condition that the variance shall only apply to the existing Subsurface Sewage Treatment System and that any future replacement systems must meet all the applicable requirements. Motion carried unanimously.

3. Request for a variance from Section 6.5 of the Stearns County Subsurface Sewage Treatment System Ordinance #422, submitted by Midcontinent Communications, Sioux Falls, South Dakota. File #P-011050.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Midcontinent Communications, Sioux Falls, SD, from Section 6.5 of the Stearns County Subsurface Sewage Treatment System Ordinance #422 to install a holding tank for another establishment on a parcel that is able to accommodate a Type I or Type III system. Said Ordinance does not allow for holding tanks for other establishments, except where it can be shown conclusively through exploration of site conditions that a Type I or III system cannot be feasibly installed.

Tim Haeg, Watab Inc., representing the applicant, was present at the meeting.

It was noted that all Board members present visited the site prior to the meeting. Chairperson Massmann spoke with one of the employees and was shown where things would be placed while visiting the site.

Jamie Lucas gave an overview of the staff report. No correspondence was received regarding this request.

Tim Haeg stated this is low volume use. The building is seldom occupied but when someone is there, they want to have facilities. The subsequent design process for that type of facility resulted in such a very small number for drainfield design criteria to meet their needs. Environmental Services staff suggested that in the future, they may make changes to the Ordinance that would allow holding tanks for low volume uses like this. That's not the current language so the only way to get there is through the variance process. This is what the applicant wants. From a practical standpoint, if they did put in a drainfield, he would be extremely concerned that they don't use enough water to keep it from freezing.

Linda Salzer, 9802 328th Street, stated the road that goes to that facility is a dead end street and she lives on that road. There are lots of trucks on that road. She is opposed to this and her concern is how many employees are going to be there. The property is too small for semis to turn around.

Chairperson Massmann questioned Ms. Salzer why she thinks a regular septic system would be better than a holding tank on that property. Ms. Salzer questioned how often the septic system would be pumped out and with the number of trucks going in there and the number of employees, they could possibly be looking at another holding tank going in. Mr. Lucas confirmed for Board members and the applicant that a larger or additional tank would require them to submit a new request.

Chairperson Massmann asked Mr. Haeg to clarify how many employees were discussed with the applicant. Mr. Haeg responded that the applicant represented to him, as the designer of the system, that there would not be many people spending a lot of time working at the building to the extent that they would need to use a restroom. There may be other service trucks that come and go to the site but the intended user of the facility is the person that will maintain the switches and the equipment inside the building. It is not intended to be a public restroom at all.

The traffic experienced by Ms. Salzer may have to do with the installation and construction of the equipment that's there. He has been to the site several times and that hasn't been his experience but he can't speak beyond the septic system.

Michael Haehn asked how often the holding tank would be scheduled to be pumped. Mr. Haeg responded that it will have a high water alarm set at 75% of the capacity. He proposed a 2,000 gallon holding tank and with the design flow, he would expect to pump it a couple times a year. If it could be as much as once a month, he would have recommended a septic system for them versus a holding tank. The alarm would dictate when they call to have it pumped.

Michael Proell asked for the location of the well on the property. Mr. Haeg identified the location on the site plan.

Motion was made by Michael Haehn, seconded by David Peschel, 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. Both septic and holding tanks are allowed uses.
OVERALL BOARD CONSENSUS: **YES** (All 5 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 was designed to hold the waste of the bathroom that is required on any property that has one. It is in harmony with the Ordinance.
OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. Economic Development Plan Goal 2, Objective 1 is to assist businesses with job retention and expansion opportunities and because a building is getting used, it is reasonable to have a bathroom in a building that is used even by a few employees so they don't have to run to town to use it. That is an expansion opportunity and meets the Comprehensive goal.
OVERALL BOARD CONSENSUS: **YES** (All 5 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. For the same reasons. It is reasonable to put a bathroom in a facility that would have employees that would be there for more than an hour or two at a time. It's not a public bathroom so it is not open to the public.
OVERALL BOARD CONSENSUS: **YES** (All 5 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 landowner built the building without the bathroom and then realized the need for it so now they are in need of installing a bathroom. Putting in a holding tank rather than a complete septic system in this situation is reasonable because regular septic systems are designed for a minimum amount of usage in order to work properly. There would be more concern about contamination with a regular septic system with extreme low usage.
- OVERALL BOARD CONSENSUS:** **YES** (All 5 members voted yes.)
6. The variance, if granted, maintains the essential character of the locality? Yes or No?
- Yes. It will not change the character of the locality at all.
- OVERALL BOARD CONSENSUS:** **YES** (All 5 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
- Yes. It was not a factor in this situation.
- OVERALL BOARD CONSENSUS:** **YES** (All 5 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 install a holding tank for another establishment on a parcel that is able to accommodate a Type I or Type III system. Motion carried unanimously.

4. Request for a variance from Sections 6.2.1P Table M of the Stearns County Subsurface Sewage Treatment System Ordinance #422 & 10.2.11A(1)(a) of the Stearns County Land Use & Zoning Ordinance #439, submitted by Courtney Zack, St. Joseph, Minnesota. File #P-011042.

Variance request submitted by Courtney Zack, St. Joseph, MN from Sections 6.2.1P Table M of the Stearns County Subsurface Sewage Treatment System Ordinance #422 & 10.2.11A(1)(a) of the Stearns County Land Use & Zoning Ordinance #439 to construct an 88.5 foot by 36 foot (3,186 square feet) single family residential dwelling 15 feet from a subsurface sewage system soil treatment area and 80 feet from the Ordinary High Water Level (OHWL) of Watab Lake, classified as Recreational Development, is postponed to the August 23, 2018 Board of Adjustment meeting. New notices will be sent prior to that meeting.

5. Request for a variance from Sections 7.27, 10.2.11A(1)(b) & 10.2.11D of the Stearns County Land Use & Zoning Ordinance #439, submitted by Paul Wenner, Sartell, Minnesota. File #P-010981.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Paul Wenner, Sartell, MN from Sections 7.27, 10.2.11A(1)(b) & 10.2.11D of the Stearns County Land Use & Zoning Ordinance #439 to construct an 18 foot x 36 foot (648 square feet) swimming pool 85 feet from the Ordinary High Water Level (OHWL) of the Mississippi River, classified as Agricultural, and to construct a 6 foot fence between the building line and the OHWL. Said Ordinance requires swimming pools to be located 100 feet from the OHWL of a river classified Agricultural and a maximum fence height of 4 feet between the building line and the OHWL.

Applicant, Paul Wenner, was present at the meeting. Justin Molitor, landscaper, and Randy Hommerding, pool installer, were also present.

Jamie Lucas reported that the portion of the variance request regarding the construction of a fence would no longer be required. The owner had proposed a lockable pool cover, which we allow; however, it was our understanding that LeSauk Township would not allow it. We asked the applicant to talk to the Township to see if a variance would be needed for that. Mr. Lucas read the response received from LeSauk Township that a lockable pool cover in lieu of a 6 foot fence provided the cover is certified and complies with ASTM F 1346-91 requirements was approved for this applicant. This correspondence is on file as part of record.

It was noted that all Board members present, except Michael Proell, visited the site prior to the meeting.

Mr. Lucas gave an overview of the staff report and there was no additional correspondence received.

Dave Gamradt stated that he had a short visit with the applicant on site while he was shown the location of the request.

Paul Wenner stated that the whole property was planned around the pool. He doesn't know if the builder failed to see that the Northeast corner of the pool goes over the setback line but he has since bailed on the project. They probably have \$80,000 into the pool already. They had to dynamite the whole area and it was a huge ordeal. They have two to three feet down in solid granite. They are no longer able to dynamite because the house is there. Both he and his father are disabled and the pool would be a huge help for him to be able to get in there and do physical therapy. They got a letter stating that this was an issue that they were totally unaware of. They have looked all over the property for every option but unfortunately, they are stuck at this point.

Chairperson Massmann asked the applicant for an estimate of how many square feet of the pool would be outside the setback line. Mr. Wenner responded that it's maybe 20% of the pool so talking under a 100 square feet.

No one was present to speak at the public hearing.

Motion was made by Michael Proell, seconded by Jacob Holck, 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. Pools are allowed in an R-1 zoning district.

OVERALL BOARD CONSENSUS: **YES** (All 5 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. Technically, a permit is not required to put in a pool and a pool could be put in if it was in the required setback.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. Growth and Development Goal 6, Objective 1 is to provide a diversity of housing prices and styles to meet the needs of the residents of different ages, incomes and lifestyles. This request falls under this category.

OVERALL BOARD CONSENSUS: **YES** (All 5 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. Having a swimming pool for health benefits is reasonable.

OVERALL BOARD CONSENSUS: **YES** (All 5 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 fact that the granite ledge is so close to the surface makes it almost impossible or very expensive to relocate the pool to a new location.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
6. The variance, if granted, maintains the essential character of the locality? Yes or No?
 - Yes. The locality isn't changed. There are other swimming pools in that addition as well.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. Economics is part of it but as the applicants indicated, they had already done a lot of removal of granite so the majority of the disruption of the landscape is already done.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Dave Gamradt, seconded by Michael Proell, to approve the request to construct an 18 foot x 36 foot (648 square feet) swimming pool 85 feet from the Ordinary High Water Level (OHWL) of the Mississippi River, classified as Agricultural. Motion carried unanimously.

Board members took a four minute break.

6. Request for a variance from Sections 6.2.1A & 9.9.9A(3) of the Stearns County Land Use & Zoning Ordinance #439, submitted by Jacqueline R. Gruber Revocable Trust, St. Joseph, Minnesota. File #P-011025.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Jacqueline R. Gruber Revocable Trust, St. Joseph, MN from Sections 6.2.1A & 9.9.9A(3) of the Stearns County Land Use & Zoning Ordinance #439 to construct a 1,080 square foot residential accessory structure on a 1.4 acre property resulting in a total Maximum Accessory Building Area of 1,752 square feet and to locate the structure 36 feet from the centerline of Lilac Road. Said Ordinance allows for a total Maximum Accessory Building Area of 1,500 square feet for a property with a lot size of 1-1.99 acres and requires a 63 foot setback from a township road (privately maintained).

Applicant, Robert Gruber, was present at the meeting.

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

Jamie Lucas gave an overview of the staff report. No correspondence was received regarding this request.

Robert Gruber stated they would like to build this shed. They have a lot of stuff sitting outside and they would like to get everything inside and clean up the back yard. In the winter, he has to pay to store the pontoon and the boat since the one shed they do have is full. He measured everything out and building at this size, he could get everything in there for the winter. It would be cold storage as it would not be heated. He originally wanted to put it on the side where the house is but he didn't think that would work there and he would have to cut a lot of the trees down. He decided to go across the road with it because a prior owner already excavated quite a bit of that land so it would fit back there. He would have to do a little more excavating but it would fit without harming much more.

Michael Haehn stated that it looked like there's more than a 50 foot elevation difference and he is concerned about the amount of excavating needed. Mr. Gruber stated he had a person look at it already and it is doable. Mr. Haehn asked him what type of system he would use from excavating, such as, retaining walls or would the shed be built into the hill. Mr. Gruber responded they'd go back and would have a 10 foot buffer around the bottom with Class 1 and concrete. He was told they could feather it down so that on each side of the back would be flat 10 feet and then smoothed up the side of the hill. Mr. Haehn stated that 50 feet is a pretty significant slope so he would be concerned about erosion and stopping erosion from going into the building. Mr. Gruber stated that they would plant a lot of shrubbery and stuff to prevent that.

Dave Gamradt asked if there would be a significant amount of runoff that would go into the ravine. Mr. Gruber responded that they have never had any issues. There's a lot of dirt there and he hasn't seen any runoff to where there's been standing water or runoff into their yard from it.

Mr. Gamradt asked staff if they looked at potential runoff areas. Mr. Lucas responded that from the contours seen, there is a fairly steep slope there. They would be allowed to do work within 20 feet of the proposed structure. Anything beyond 20 feet may require a Minor Shoreland Alteration Permit.

Chairperson Massmann stated that there are two issues, the road setback and the size of the shed. She asked the applicant if he had considered sizing the shed to meet the permitted area. Mr. Gruber replied he had but that it wouldn't be big enough to house what he has to house. He went as small as possible without asking for more than he needs.

No one was present to speak at the public hearing.

Motion was made by Jacob Holck, seconded by Michael Proell, 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. Lake accessory structures are allowed in the R-1 zoning district.**OVERALL BOARD CONSENSUS: YES** (All 5 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. Section 9.9 talks about special considerations because of unique nature and topography characteristics. This request falls under this category. There is definitely unique topography and it is a special circumstance for the need of the building out there.**OVERALL BOARD CONSENSUS: YES** (All 5 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - No. Under the Natural Resources Protection and in looking at the limits that are set by the County for the Maximum Accessory Building Area, it could alleviate one part of this request by trying to build the building within those parameters. Understand the idea of wanting to put all belongings into a building but do not see a compelling reason for increasing the allowable size. The Comprehensive Plan for natural resource preservation is one of the reasons why the Shoreland Overlay District has those guidelines in.**OVERALL BOARD CONSENSUS: NO** (All 5 members voted no.)

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 reasonable to want an accessory building to put items into storage for the winter.**OVERALL BOARD CONSENSUS: YES** (All 5 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?
 - No. The landowner has a lot of stuff to put in storage so it's created by the landowner.

OVERALL BOARD CONSENSUS: **NO** (All 5 members voted no.)
6. The variance, if granted, maintains the essential character of the locality? Yes or No?
 - Yes. There are other residences around there that have accessory structures so the character won't change all that much. The topography or what impact it would have will change the character of the area but it won't be unusual to have an accessory structure out there.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. Economics were not part of the discussion or the problem.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)

Decision made by Board members to use the above Findings of Fact separately for the request to construct a 1,080 square foot residential accessory structure. They then went back to the above Findings of Fact and answered #s 3 and 5 specifically for the request to locate a structure 36 feet from the centerline of Lilac Road.

Board members discussed the likelihood of further construction of Lilac Road. Mr. Gruber stated that there is only one neighbor past him that uses the road year round. He confirmed for Mr. Haehn that the residents have a private person maintain the road and they split the cost.

3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. Natural Resources Protection Goal 7, Objective 1 is to evaluate the land and how it is going to affect it by having a shed set further back in the land would affect the environment much more. The 36 feet would be more in line and further back than a lot of other buildings are from the centerline.

OVERALL BOARD CONSENSUS: **YES** (All 5 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 property's topography is severe elevation plus the road is very small in nature and the options are very limited.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Dave Gamradt, seconded by David Peschel, to deny the request to construct a 1,080 square foot residential accessory structure on a 1.4 acre property resulting in a total Maximum Accessory Building Area of 1,752 square feet. Motion carried unanimously.

Based upon the evidence submitted regarding this variance application, motion was made by Michael Haehn, seconded by Jacob Holck, to approve the request to locate a structure 36 feet from the centerline of Lilac Road. Motion carried unanimously.

7. Request for a variance from Sections 5.1.2C & 10.2.11A(2) of the Stearns County Land Use & Zoning Ordinance #439, submitted by Aaron & Eve Justin, Avon, Minnesota. File #P-011026.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Aaron & Eve Justin, Avon, MN from Sections 5.1.2C & 10.2.11A(2) of the Stearns County Land Use & Zoning Ordinance #439 to reconstruct and expand a nonconforming residential dwelling and deck that is located in the Shore Impact Zone and ahead of the established building line. Said Ordinance does not allow additions or alterations to a nonconforming structure located in the Shore Impact Zone or ahead of the established building line.

Applicants, Aaron and Eve Justin, were present at the meeting.

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

Jamie Lucas gave an overview of the staff report. No correspondence was received regarding this request.

David Peschel asked staff if the alternative to construct the dwelling behind the established building line would take it out of the Shore Impact Zone. Mr. Lucas responded the Ordinance states that if a structure is within 50 feet of the lake, which this structure would be, it cannot be used for the building line. In that scenario, we go from the OHWL and measure back 50 feet on that property line and use that and the existing structure as the established building line for the new dwelling. It would not be in the Shore Impact Zone and he indicated all of this on the survey.

Michael Haehn asked if that option had been considered. Aaron Justin responded that it had. Their biggest concern is the size of the lot and the space for a septic system in moving it back that far. With the septic design they have, they already are within the lake setbacks. They already have to ask for variances on that, just with the neighbor's property being so close to theirs. Mr. Lucas confirmed that Mr. Justin is stating a fact that the property lines on the septic design are not survey accurate. They are a graphic representation of what the shape of that parcel would look like. The survey would be more accurate than what these parcel lines are showing.

Mr. Peschel asked if there would be room for the septic system ahead of the building line if the house were to be moved back. Mr. Lucas responded that there are lake setbacks that are required for septic systems so the tank would have to be 75 feet from the OHWL and the drainfield would need to be 100 feet. The septic area is back behind the house.

Mr. Haehn asked the applicants if this would be complete removal of the foundation and further questioned if they had considered using the existing foundation. Mr. Justin confirmed it would be complete removal and further responded that the building was built in the 1940s. The basement is not water tight and it leaks water considerably. It was essentially built as a cabin but was used as a year round home prior to their purchase. Eve Justin stated a concern of theirs with leaving the basement structure there and making it water tight is because of the closeness to their neighbors for bringing in equipment to dig around it to put in drain tiles, etc. to make it

water tight versus taking it out and starting over with something that would be completely water tight.

Dave Gamradt asked the applicants for the setback to their closest neighbor. Mr. Justin responded it is 4 feet from the property line for the neighbor to the North. Their proposed house would be 12 feet because they are going to go 10 feet from the South side. The foundation of the house gets a little bigger but it's only about a foot closer to the neighbor to the North and two feet closer to the neighbor to the South but still within the setbacks of their property lines.

Chairperson Massmann asked if the proposed deck that would be on the front of the house would be larger than the previous deck. Mr. Justin stated it would be the same depth but it would be as wide as the house so it would be larger.

Mr. Justin confirmed for Mr. Haehn that nothing would be closer to the lake than it is now and further confirmed for Chairperson Massmann that where it was larger, there was concrete under it.

Angie Berg clarified that on the lake side, the elevation underneath the deck has to remain open and not be screened in.

No one was present to speak at the public hearing.

Mr. Gamradt asked the applicant if they had considered moving it back 6 to 10 feet to alleviate the extra infringement. Mr. Justin responded they had. Their original thought was to move it back 50 feet, to the minimum, but when they staked it out, it seemed like they were encroaching on the neighbor to the North because the entrance to the neighbor's house is on that side and it seemed like they would shadow their entrance and they didn't want to infringe on them. Ms. Justin added that the neighbors have an overhang on their entrance area and the overhang basically comes to the property line so it felt like that corner of the house was right there.

Motion was made by Jacob Holck, seconded by Michael Proell, 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 single family home is allowed in an R-1 zoning district.
OVERALL BOARD CONSENSUS: **YES** (All 5 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. Building a house in an R-1 zoned area is within the scope of the Comprehensive Plan and Ordinance.
OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)

3. The variance will be consistent with the Comprehensive Plan? Yes or No?
- Yes. Growth and Development Goal 6, Objective 1 is to provide the diversity of housing prices and styles to meet the needs of residents of different ages, incomes and lifestyles. This request falls under that category.
- OVERALL BOARD CONSENSUS:** **YES** (All 5 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 house now and it will be a house again.
- OVERALL BOARD CONSENSUS:** **YES** (All 5 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 of where the house was originally built, the narrowness of the lot, the elevations and the need for septic.
- OVERALL BOARD CONSENSUS:** **YES** (All 5 members voted yes.)
6. The variance, if granted, maintains the essential character of the locality? Yes or No?
- Yes. There are all homes on the lake and the character would not change by updating this house.
- OVERALL BOARD CONSENSUS:** **YES** (All 5 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
- Yes. Economics were not discussed as a reason for this request.
- OVERALL BOARD CONSENSUS:** **YES** (All 5 members voted yes.)

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Jacob Holck, seconded by Michael Proell, to approve the request to reconstruct and expand a nonconforming residential dwelling and deck that is located in the Shore Impact Zone and ahead of the established building line. Motion carried unanimously.

8. Request for a variance from Sections 5.1.2C & 10.2.11A(2)&(3) of the Stearns County Land Use & Zoning Ordinance #439, submitted by Irving A. Cornwell & Flora Cornwell Revocable Living Trusts (Thomas & Patricia Bruce, applicants), Colorado Springs, Colorado. File #P-011039.

Chairperson Massmann opened the Public Hearing and read the variance application submitted by Irving A. Cornwell & Flora Cornwell Revocable Living Trusts (Thomas & Patricia Bruce, applicants), Colorado Springs, CO from Sections 5.1.2C & 10.2.11A(2)&(3) of the Stearns County Land Use & Zoning Ordinance #439 to construct a 12 foot by 13 foot, 198 square foot, deck 30 feet from the OHWL of Big Fish Lake, classified as a Recreational Development Lake, and an approximately 23 foot by 56 foot, 1277 square feet, 2 story addition on an existing legal nonconforming residential structure ahead of the established building line and in the Shore Impact Zone. Said Ordinance requires that decks meet the required building line or lake setback and does not allow for the expansion of a legal nonconforming principal structure in the Shore Impact Zone and ahead of the established building line.

Applicant, Thomas Bruce, was present at the meeting. Maintenance/caretaker of this property, Matthew Peters, was also present.

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

Jamie Lucas gave an overview of the staff report. Correspondence from Dave Carlson on behalf of Erra Carlson Trust, 27245 Hidden Cove Road, was included in the staff report. No additional correspondence was received.

Thomas Bruce stated they are looking to purchase this property. It's a very unusual piece of property. Being an architect, his attachment to this property is that it's quite a historic piece. With the granite walkout and fireplaces, this is not a tear down structure. It's tricky to design around the structure to make it a livable space as there are no bedrooms in this unit. He tried to be sensitive to the setback line. Stormwater management would be improved from what's there now. He was very sensitive to the impervious area. The driveway had been shared and he would work with that neighbor on that. There aren't any windows or any openings on the side with the deck so the deck is really an unusable area from a living standpoint. He would align the existing deck so it ties into a dining room like you would see at any other home and landscape it all underneath. He would hold it back to minimize cutting of the grade there so there would be less runoff to the lake.

Jacob Holck stated it is a unique property.

Michael Haehn stated this property is listed for sale with Edina Realty. He works with Edina Realty but he has no vested interest in this property.

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

Board members agreed to complete one Findings of Fact for this request.

Findings of Fact.

1. The proposed use is allowed in the zoning districts in which the subject property is located? Yes or No?
 - Yes. Single family homes are allowed in an R-1 zoning district.

OVERALL BOARD CONSENSUS: **YES** (All 5 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. Section 9.9.1 is to give special consideration because of unique natural or topographical characteristics. This request qualifies for that.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
3. The variance will be consistent with the Comprehensive Plan? Yes or No?
 - Yes. Growth and Development Goal 6, Objective 1 is to provide diversity of house prices and styles meeting needs of residents of different ages, incomes and lifestyles.

OVERALL BOARD CONSENSUS: **YES** (All 5 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 applicant is looking to improve an old cabin and make it more functional by adding bedrooms and making more usable space so it is reasonable.

OVERALL BOARD CONSENSUS: **YES** (All 5 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 property is unique. The renovation is going to be the most respectful of that natural environment and not disturbing as much of it as if they did total demolition and rebuild.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
6. The variance, if granted, maintains the essential character of the locality? Yes or No?
 - Yes. The historic nature and character of that cabin and the preservation is keeping in character with that area.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)
7. The need for the variance involves more than economic considerations? Yes or No?
 - Yes. Economics were not part of this request.

OVERALL BOARD CONSENSUS: **YES** (All 5 members voted yes.)

DECISION

Based upon the evidence submitted regarding this variance application, motion was made by Michael Haehn, seconded by Jacob Holck, to approve the request to construct a 12 foot by 13 foot, 198 square foot, deck 30 feet from the OHWL of Big Fish Lake, classified as a Recreational Development Lake, and an approximately 23 foot by 56 foot, 1277 square feet, 2 story addition on an existing legal nonconforming residential structure ahead of the established building line and in the Shore Impact Zone. Motion carried unanimously.

9. Request for a variance from Section 7.25.2G of the Stearns County Land Use & Zoning Ordinance #439, submitted by Lucky of Albany, LLC, Albany, Minnesota. File #P-011055.

Variance request submitted by Lucky of Albany, LLC, Albany, MN from Section 7.25.2G of the Stearns County Land Use & Zoning Ordinance #439 to locate an electronic sign 0 feet from the right-of-way of County Road 54 was withdrawn by the applicant prior to the meeting.

10. Request for a variance from Section 6.5 of the Stearns County Subsurface Sewage Treatment System Ordinance #422, submitted by Michael & Marlene Pflipsen, Melrose, Minnesota. File #P-011020.

Variance request submitted by Michael & Marlene Pflipsen, Melrose, MN, from Section 6.5 of the Stearns County Subsurface Sewage Treatment System Ordinance #422 to use as installed a holding tank for an other establishment on a parcel that is able to accommodate a Type I or Type III system is postponed to the August 23, 2018 Board of Adjustment meeting. New notices will be sent prior to that meeting.

ADJOURN

Motion was then made by Jacob Holck, seconded by Dave Gamradt, to adjourn the meeting at 8:42 p.m. Motion carried unanimously.