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# **Le Sueur County, MN**

**Thursday, June 21, 2018**

**Regular Session**

## **Item 1**

**Approved June 21, 2018 Minutes**

Staff Contact: Joshua Mankowski or Michelle Mettler

# LE SUEUR COUNTY BOARD OF ADJUSTMENT

Mailing address: 88 SOUTH PARK AVE  
Physical Address: 515 SOUTH MAPLE AVE  
LE CENTER, MINNESOTA 56057

**June 21, 2018**

**MEMBERS PRESENT:** Colin Harris, Jeanne Doheny, John Wolf, Francis Cummins

**MEMBERS ABSENT:** Jim Mladek

**OTHERS PRESENT:** Joshua Mankowski, Michelle Mettler

1. **Call to Order** at 3:00 by Chairperson Jeanne Doheny.
2. **Agenda:** Additions/Corrections: Two corrections to the agenda. Item #2 Kurt Lukes, Glenville, MN, variance request is for 54 feet from the road Right-Of-Way, not 55 feet. Item #3 David & Sarah Keller, Section 13 should read Section 17 and add "and enlarging a non-conforming structure" to the variance request. Motion to approve agenda by John Wolf. Seconded by Colin Harris. Motion approved. Motion carried.
3. **Meeting Minutes:** May 17, 2018 Jeanne Doheny stated that there needed to be one correction. On the fourth line under the discussion for Richard & Cynthia Cotes, it should state more invasive, not move invasive. Motion to approve minutes as amended by Fritz Cummins. Seconded by John Wolf. Motion approved. Motion carried.
4. **Applications**

**ITEM #1: CAMP FO HO CHA, CLEVELAND, MN (APPLICANT); GRAND LODGE OF MN IOOF, WINDOM, MN (OWNER):** Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to install a septic tank 54 feet from the Ordinary High Water Level (OHWL) & 5 feet from a cabin; construct a septic drainfield 69 feet from the West OHWL and 71 feet from the East OHWL in a Special Protection "SP" District and a Flood Fringe "FF" Floodplain Overlay District on a Recreational Development "RD" lake, German Lake . Property is located in Government Lot 5 (Island), Section 5, Elysian Township. **VARIANCE IS FOR OHWL AND STRUCTURE SETBACK. PREVIOUS VARIANCE EXPIRED APRIL 20, 2017.**

Tony Nichols was present for application. Township: None. DNR: None. Letters submitted: None.

Discussion was held regarding: Jeanne Doheny stated that a variance was issued and it expired. Then you applied for it again. Tony Nichols stated that, due to the weather they have been unable to finish construction. We have finished most of the construction but will not be able to complete the project until after the variance was set to expire. Jeanne Doheny then asked if they would plan to complete before this variance would expire. Tony Nichols stated that they would finish before the expiration.

Motion was made by Colin Harris to Approve application. Seconded by Fritz Cummins. Motion approved. Motion carried.

**ITEM #2: KURT LUKES, GLENVILLE, MN, (APPLICANT); KURT & VALERIE LUKES, GLENVILLE, MN, (OWNER):** Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to construct a single-family dwelling 54 feet from

the road Right-Of-Way (ROW) in a Recreational Residential "RR" District, on a Recreational Development "RD" lake, German Lake. Property is located at Lot 17, Glens Beach Subdivision, Section 4, Elysian Township. **VARIANCE IS FOR ROAD ROW SETBACK.**

Kurt and Valerie Lukes were present for application. Township: None. DNR: None. Letters submitted: Holly Kalbus, Environmental Resources Specialist recommending approval with conditions.

Discussion was held regarding: Kurt Lukes stated that the bump out on the house totaled eight square feet. We are lined up with the homes next door. We tried to say farther away from the lake. Only issue is the bump out and going closer to the road.

Public Comment: Charlotte Traxler asked if it was a new dwelling or if it was for work being done on the old house. Kurt Lukes stated that it was a new dwelling.

Motion was made by John Wolf to Approve the application. Conditions: Point downspouts away from German Lake to reduce stormwater flow as stated in Holly Kalbus' letter. Seconded by Colin Harris. Motion approved. Motion carried.

**ITEM #3: DAVID & SARAH KELLER, MAPLETON, MN, (APPLICANT\OWNER):**

Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow total impervious surface of 32.5 % and to enlarge a non-conforming structure in a Recreational Residential "RR" District, on a Recreation Development "RD" lake, Lake Washington. Property is located at Lot 2, Block 1, Auditor's Subdivision, Section 17, Washington Township. **VARIANCE IS FOR IMPERVIOUS SURFACE.**

Dave and Sarah Keller were present for application. Township: None. DNR: None. Letters submitted: Holly Kalbus, Environmental Resources Specialist recommending approval with conditions.

Discussion was held regarding: Dave Keller stated that they would like to move in year round soon. They would like to be able to enclose both vehicles and have some room for storage. Jeanne Doheny asked the applicant for some clarification about the application. In the application, the applicant started out listing items stating that each one would be removed and then it seems to continue to just list items. Jeanne Doheny then stated that she was then just assuming that these were all items to be removed. Is that the case? John Wolf then added that this included a small shed and a deck on the west side. Dave Keller responded yes. Jeanne Doheny state that she was just verifying.

Motion was made by Fritz Cummins to Approve the application with the conditions listed in Holly Kalbus' letter.

- 1) Plant vegetation that is native to Minnesota within the designated landscaping areas (shrubs, grasses, and/or forbs).
- 2) Replace any trees that have been or will be cut down due to disease, construction, etc.
- 3) Point downspouts away from Washington Lake to reduce stormwater flow.

Seconded by John Wolf. Motion approved. Motion carried.

**ITEM #4: KEVIN & SHANNON BAKER, MADISON LAKE, MN, (APPLICANT\OWNER):**

Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to create a new property line 15 feet from an existing shed in a Special Protection "SP" District, on an Unnamed Natural Environment "NE" lake. Property is located in the NW 1/4, Section 11, Washington Township. **VARIANCE IS FOR STRUCTURE SETBACK.**

Kevin and Shannon Baker were present for application. Township: None. DNR: None. Letters submitted: None.

Discussion was held regarding: Kevin Baker stated that they are zoned Special Protection due to a pond that they enjoy. Their daughter would like to purchase the existing house. They plan to construct a retirement home on the new parcel. Fritz Cummins asked if they will have a driveway easement, is a new driveway going to be constructed or will the current one be shared? Kevin Baker stated that it will be shared with an easement. John Wolf stated that it was a little confusing when onsite, everything shown appears to be at a 90 degree from the road but the shed isn't. Kevin Baker state that yes, the shed is squared with the house and not the road. Jeanne Doheny asked the applicant about their timeframe. Kevin Baker stated that they also have to do a transfer so they will be coming back for that. Jeanne Doheny then clarified that the Transfer of Development Right will come before the Planning and Zoning Commission. Shannon Baker then stated that they already missed the deadline for the next meeting so that it will be tight for this year. Kevin Baker then said that the soonest we could get the permit would be the tail end of August which puts us at the end of the season.

Motion was made by John Wolf to Approve the application. Conditions: None. Seconded by Colin Harris. Motion approved. Motion carried.

**ITEM #5: BOHN WELL DRILLING, JORDAN, MN, (APPLICANT); ANDREW & HEIDI KNIGHT, NEW PRAGUE, MN, (OWNER):** Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to install a septic system drainfield 11 feet from an existing accessory structure in an Urban/Rural Residential "R1" District. Property is located at Lot 18, Eastwood Acres Subdivision, Section 1, Lanesburgh Township. **VARIANCE IS FOR STRUCTURE SETBACK.**

Charlie Bohn was present for application. Township: None. DNR: none. Letters submitted: None.

Discussion was held regarding: John Wolf asked where the current drainfield was located. Charlie Bohn stated it was in the front. It is a pretty tight lot. It is about our only option the way we have it laid out now. Colin Harris stated that the site was very well staked and made it easier.

Motion was made by Fritz Cummins to Approve application. Conditions: None. Seconded by Colin Harris. Motion approved. Motion carried.

**ITEM #6: MILAN BEHR, ELYSIAN, MN, (APPLICANT\OWNER):** Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to install a septic tank and septic drainfield within the bluff and 64 feet from the Ordinary High Water Level (OHWL) in a Recreational Residential "RR" District, on a Recreational Development "RD" lake, Lake Francis. Property is located at Lot 2, Muellerleile Subdivision, Section 33, Elysian Township. **VARIANCE IS FOR BLUFF AND OWHL SETBACKS.**

Wayne James and Milan Behr were present for application. Township: None. DNR: E-mail response.

Letters submitted:

Holly Kalbus, Environmental Resources Specialist recommending denial of the application due to the installation of a septic tank and drainfield within a bluff. Placement of the drainfield in the bluff would greatly increase the hydraulic loading and significantly elevate the chance of bank failure which would deposit hazardous material into Lake Francis. A holding tank could be used as an alternative. The application states that the original grade would remain once installation is complete, but according to the septic plan there would need to be fill placed in the project area to meet the required 18 inches of cover. The variance request does not meet the bluff and OHWL setbacks and defeats the purpose for the FRST Septic Inventory to provide protection to an impaired lake. There are no conditions that would suffice to protect the bluff in the long term. If her recommendation for denial is not taken, proposed conditions were listed. 1) Plant a mix of Minnesota native vegetation designed for septic systems within the proposed project area (all located within bluff). 2) Plant deep rooted vegetation that is native to Minnesota in the remaining areas of the bluff where the septic system is not present.

Garry Bennett, Area Hydrologist, Minnesota Department of Natural Resources recommended denial. The minimum statewide shoreland standards require a 30-foot setback from the top of the bluff and no structure placement is allowed within the bluff impact zone, defined as within the bluff as well as the land located within 20 feet of the top of the bluff. The standard was designed to protect shoreland areas from negative impacts caused by development in bluff areas. Consideration is given to bluff areas because of their vulnerability to erosion and subsequent water quality impacts. The bluff impact zone is considered to be the area most susceptible to degradation, and even small amounts of development can dramatically affect a previously stable slope. Variance to shoreland standards are an important tool for balancing property rights with the public's right to clean water and healthy habitats. However, variances to shoreland standards should be rare and only for exceptional situations. The DNR strongly recommends against any encroachment into the bluff impact zone and within the bluff and is opposed to allowing any structure to be built within the top of the bluff setback. If the variance is granted, we recommend a condition prohibiting additional building within the bluff impact zone and mitigation activities should be identified for addressing any disturbance in the bluff resulting from the construction of the septic tank/drain field.

Discussion was held regarding: Colin Harris stated that his gut says no, when you get into the bluff impact zone. The DNR and everyone recommends against this. There is an alternative and that alternative is a holding tank. It scares me to think about what that hillside that faces the lake would look like if the septic tank and drainfield were allowed in. Wayne James stated that the tank would need to be installed there either way. Fill in the bluff would be removed and would only see a hump. The absorption would be boxed in and go into the ground. The current system is in the bluff. We have received variances for less than 64 feet to the OHWL in the past. The system is designed for the maxed sized that fits. There would only be more of a hump than what is currently there. The bluff will not sluff, this will be a gradual slope. We believe we have designed the best system to fit in this lot. It is not ideal to have a holding tank for a year-round residence. A holding tank could overflow and run into the lake. Jeanne Doheny stated that alternatives have not even been proposed and why they wouldn't work. There is concern about construction in the bluff. Wayne James stated that there wasn't anything else that could be done. Jeanne Doheny stated that they have heard that before but then you have come back with other options when needed. Wayne James thought that that comment was in reference to Ledvina's system. He stated that they keep going back and forth with the design and he wishes he had never taken that project. Jeanne Doheny reiterated that Wayne James has come back with alternatives before. Wayne James voiced that he believes that this is the best design for the lot. There are other alternatives, but this is the best for this lot. John Wolf replied that the issue is with the placement in the bluff, it increases the hydraulic pressure. Fritz Cummins asked the rest of the Board who approved all the variance applications for the German/Jefferson area, when it comes to the Waterville area we have to fight to get items approved. He had voted against some of those in the past but the Board always approved them. Now when we are down in my area and now we can't do that anymore. Jeanne Doheny stated that it has nothing to do with the area. Maybe we are just getting smarter over the years. Fritz Cummins stated that he is getting tired with what is being done to the Waterville area. John Wolf replied that this isn't the bluff impact zone, this is in the bluff. Fritz Cummins replied that we have approved them in the bluffs before, he voted against them and the board still approved them. John Wolf responded that the other approvals were in the bluff impact zone, not in the bluff. Jeanne Doheny asked Fritz Cummins if he thought there was a conspiracy against Waterville Township. Fritz Cummins responded that he really does, every time there is something going on in Waterville Township, we fight to get it approved. There is the same problem with the Planning and Zoning Board. Colin Harris stated that it is the principle of the request, not the location. It is the principals involved and the goals of Le Sueur County, if this were located anywhere else in the County, he would feel the same. We hear from the DNR and others to stay away from the bluff. There are other alternatives that may not be great. I don't disagree that you are trying to do a good job, I have issues with where you are trying to put it. Wayne James stated that he doesn't think there will be any issues with the bluff sluffing off because the work will be done in the toe of the bluff. Colin Harris replied that he would have less of an issue if the system was being put in closer to the house, as long as it was out of the bluff and that that would be more in line with what this board is trying to do. Wayne James stated that the house is in the bluff, the tank will be in the bluff, and the system will be in the bluff impact zone. This is a difficult lot and one of the reasons we placed it where we did was to try and put it into the landscape to limit the visual impact. There are other things we can

change, but at the end of the day it is still going to be in the impact zone. As far as sluffing off, with the nice slope that is on there already, it is not going to sluff off. The bluff isn't going to have the issue of being undercut by the lake. There is a 64-foot setback from the lake. Fritz Cummins inquired about moving the system to the East. Wayne James stated that moving it to the East would put it closer to the slope. Moving would also require changing the slope of the mound. Fritz Cummins stated that he thought moving it might get it farther away from the slope of the bluff. Some discussion about septic placement and design between Fritz Cummins and Wayne James. Joshua Mankowski stated that this isn't the place to discuss the septic design. The board is not qualified to offer septic system design comments; Wayne James is the designer, we are not. We are here to make a decision of the variance request. Milan Behr stated that they had lived at the location for 27 years and there had never been any washouts or any other issues with the bluff, even with the heavy rains. Wayne stated that the board had been onsite and that they saw how gradual the slope was. When we have talked about bluffs before, you're usually talking about a big drop. This design is in the impact zone, it is a nice gradual slope and that gradual slope will continue on after the system is built. The system will be 50 feet long and 10 foot wide. It will be pressurized and distributed out over the entire hillside instead of in one area. It will percolate down through the soil. There is good soil under the fill soil. When we cut that down, we won't have a great big hill. We will have the same hill we have now. We are not putting in a mound system 3-4 feet high, it will be cut down into the slope. Colin Harris suggested maybe tabling the decision. Joshua Mankowski asked for clarification on what type of addition information the board would like to see so they can make a decision. Jeanne Doheny requested to see some detail on possible alternatives and Wayne James should talk with the DNR to address their concerns and see if they have other alternatives. What we have here, what is in the ordinance and in the comp. plan is not consistent with what is being asked. John Wolf agreed and also stated that just because the bluff hasn't sluffed in the past doesn't mean it won't; we will be digging in it. Jeanne Doheny state that Wayne James needs to talk with the DNR, they have a lot of experience dealing with bluffs. Joshua Mankowski stated that in past conversations with the DNR, they are of the option that you stay away from bluffs. Jeanne Doheny said that they know that but maybe the applicant needs to hear it from the DNR. As it sits right now, she would not vote to approve the application. John Wolf agreed that he would not vote for it either. Wayne James then requested that the application be tabled. Jeanne Doheny then asked Joshua Mankowski if the board needed to go through findings in order to table the application. Joshua Mankowski stated no, you do not need findings to table. Jeanne Doheny made sure the applicant received a copy of the DNR's letter. Wayne James stated that they had and that it was very possible the individual from the DNR had never been out on site.

Motion was made by John Wolf to Table the application to allow the applicant and contractor to address concerns raised by this application. Seconded by Colin Harris. Motion approved. Motion carried.

Michelle Mettler clarified that, by tabling the application, it won't be able to be on the next meeting. The applicant would not have sufficient time to provide any information to the office to meet the requirement for the public notice. The applicant does not need to pay the fee again but it will not be on the next Board of Adjustment meeting.

##### **5. Discussion Items: None**

Fritz Cummins stated that Holly Kalbus gives a recommendation and he doesn't think it should be read at the meeting to the audience. Joshua Mankowski stated that it is public record. Fritz Cummins stated he feels like it is portraying to the public that the board does not know how to vote and she is telling them how to do so. You should read everything in her letter but the recommendation. Michelle Mettler stated that legal counsel advised that the recommendation is read into record. John Wolf said that because it is public record you have to read it. Staff replied yes. Jeanne Doheny stated that that applicant is provided with a copy. Fritz Cummins said that there isn't any point to them voting on it then because Holly recommended it.

6. **Warrants/Claims:** Sign warrants/claim sheets

7. **Adjourn:** Motion to adjourn meeting by John Wolf. Seconded by Colin Harris. Motion approved. Motion carried. Meeting Adjourned.

Respectfully submitted,

Joshua Mankowski

***Approved July 19, 2018***

***Tape of meeting is on file in the  
Le Sueur County Environmental Services Office***