



Le Sueur County, MN

Thursday, August 16, 2018

Regular Session

Item 1

Approved August 16, 2018 Minutes

Staff Contact: Joshua Mankowski or Michelle Mettler

LE SUEUR COUNTY BOARD OF ADJUSTMENT

Mailing address: 88 SOUTH PARK AVE
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LE CENTER, MINNESOTA 56057

August 16, 2018

MEMBERS PRESENT: Jeanne Doheny, Jim Mladek, John Wolf, Francis Cummins

MEMBERS ABSENT: Colin Harris

OTHERS PRESENT: Joshua Mankowski

1. **Call to Order** at 3:00 p.m. by Chairperson Jeanne Doheny.
2. **Agenda:** Corrections- ITEM #1 should state 9 feet from the septic tank, not 6 feet. Motion to approve corrected agenda by John Wolf. Seconded by Jim Mladek. Motion approved. Motion carried.
3. **Meeting Minutes:** July 19, 2018 Additions/Corrections None. Motion to approve minutes by Jim Mladek. Seconded by John Wolf. Motion approved. Motion carried.
4. **Applications**

ITEM #1: ROBERT & ANN HARTZ, DES MOINES, IA, (APPLICANT/OWNER): Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to construct a dwelling addition 41 feet from the road Right-Of-Way (ROW), 5 feet from the west property line, and 9 feet from the septic tank; total impervious surface of 33.1% in a Recreational Residential "RR" District, on Lake Tetonka, a Recreational Development "RD" lake. Property is located at Lot 4, Grays Unrecorded Plat, Section 20, Waterville Township. **VARIANCE IS FOR ROAD ROW, PROPERTY LINE, & SEPTIC SETBACKS AND IMPERVIOUS SURFACE.**

Robert and Ann Hartz were present for application. Township: None. DNR: None. Letters submitted: Holly Kalbus, Environmental Resources Specialist recommending approval with the condition that the applicant install a 100 square foot rain garden located just off of the southwest corner of the deck and existing cabin. Plant vegetation that is native to Minnesota within the rain garden. This specific location was chosen in order to capture as much stormwater runoff as possible from the proposed building addition, existing cabin, driveway, and deck.

Discussion was held regarding: Ann Hartz wanted to add that, to address the impervious surface, they would be willing to remove the detached garage. Jeanne Doheny asked if we knew how much that would reduce. Ann Hartz stated that they did say they would be willing to remove the detached garage on the application. Jeanne Doheny asked about the timeline to do so. Ann Hartz stated they would need to keep the garage up until they completed construction. Jeanne Doheny inquired if it would be within a year. Ann Hartz stated yes. Jim Soulek asked for the definition of impervious surface. Joshua Mankowski stated that impervious surface is any surface that doesn't allow water to move through it such as concrete or a gravel driveway. Jim Soulek asked how the Ordinary High Water Mark is determined. Joshua Mankowski replied that it is an elevation determined between the County and the Department of Natural Resources. Charlie Hirn stated that impervious surface, to his understanding, the reason we have restrictions is to prevent erosion and runoff. Joshua Mankowski stated that, normally water would fall on a surface and infiltrate at that location, people's actions prevent the water from infiltrating and causes it to sheet off of the surface. Jim Soulek asked if the percentage shown was the percentage of the lot. Joshua Mankowski replied yes, determined by the surveyor. Fritz Cummins asked if there was a

height restriction on the structure. Jeanne Doheny agreed with the question, how high is the peak on the garage? Ann Hartz replied that it should be on the plan. Jeanne Doheny said it looks like it will be taller than adjacent properties. Ann Hartz responded yes, but she wasn't sure what it was. Fritz Cummins said the structure is 20 feet and then you need to add the peak and he thought that was already over the limit. Joshua Mankowski stated he would grab a copy of the Ordinance. Jeanne Doheny asked about the planned timeline. Ann Hartz responded that they hoped to start this fall but they needed to get approval before they started. Joshua Mankowski stated that the max peak height is 35 feet. Jeanne Doheny stated that the structure would be within the limits. Fritz Cummins said he thought that that was a farm building. Joshua Mankowski responded that is the limit for a house in the RR District. Fritz Cummins implied that we changed the rules. John Wolf said it would be about 27 ½-28 feet tall. Jeanne Doheny reiterated that it would be within the limits, but inconsistent with the surroundings. Jeanne Doheny asked if Joshua Mankowski had determined the difference in impervious surface with the detached garage removed. Joshua Mankowski replied no. Ann Hartz responded that the 31.1% impervious surface in the application is including the detached garage. Fritz Cummins asked what would keep the snow coming off the roof and landing on the neighbor's property. Robert Hartz stated that snow would be coming from the north and the snow will blow south. There is a line of trees that should help protect from the snow. Jeanne Doheny asked how far the neighbor's house was from the property line. Robert Hartz thought it was about 10 feet. Jeanne Doheny asked Fritz Cummins if he was more concerned about the snow landing on the neighbor's property. Fritz Cummins stated that the exhaust from the furnace comes out on that side of the house. Jeanne Doheny asked if Ann and Robert Hartz had talked with the neighbor about this potential issue. Robert state yes, the neighbors to the west, the Marzahns. Jeanne Doheny asked if this specific issue was discussed. Robert Hartz responded no. Jim Mladek asked Paul Marzahn if he was the neighbor and if he has any issues with the proposal. At this time public comment was heard. Paul Marzahn replied that he was the neighbor and his sister has concerns. Paul Marzahn stated that he didn't know enough about the property to know about the snow building up on the side of the house. Jim Mladek asked if Ann and Robert Hartz had looked into other design options for the house. Robert Hartz responded not really, not at this point. Jeanne Doheny stated that they didn't meet all the criteria so they could deny or table the application. Jeanne Doheny asked Joshua Mankowski if they could approve. Joshua Mankowski responded that you could approve the application but the issue is that one of the findings was no, so the Board should not approve the application. Jim Mladek stated they could table it. Joshua Mankowski stated that they could table application with the direction to address the concerns that were raised during the meeting.

Motion was made by John Wolf to Table the application to address the concerns that the proposed height, though allowed, does not fit in with the neighborhood and the issue caused by snowfall coming off the roof and falling along the neighbor's house due to the proposed side yard setback. Seconded by Jim Mladek. Motion approved. Motion carried.

ITEM #2: STEVE GRIEP, CLEVELAND, MN, (APPLICANT/OWNER): Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to construct a dwelling addition 7 feet from the east property line, 46 feet from the Ordinary High Water Level (OHWL), 24 feet & 28 feet from the road ROW; create impervious surface within the shore impact zone; and driveway width of 9 feet in a Recreational Residential "RR" District, on Lake Jefferson, a Recreational Development "RD" lake. Property is located at Lots 23 & 24 French Addition and Lot 22 Auditor's Subdivision, Section 6, Elysian Township. **VARIANCE IS FOR PROPERTY LINE, OHWL, & ROAD ROW SETBACKS AND IMPERVIOUS SURFACE.**

Steve Griep was present for application. Township: None. DNR: None. Letters submitted: Holly Kalbus, Environmental Resources Specialist recommending approval with the condition that the applicant install a 100 square foot rain garden on the property located north of the road near the shed. Plant vegetation that is native to Minnesota within the rain garden. The rain garden should assist with erosion and runoff issues from the adjacent agricultural field and prevent additional runoff and erosion continuing across the road.

Discussion was held regarding: Steve Griep stated that his is what he needs to in order to do the addition. Jeanne Doheny asked if he saw the recommendations from Holly Kalbus. Steve Griep

said he had. Jeanne Doheny asked if he any issues with the recommended conditions. Steve Griep responded no. Public comment was taken. Jim Soulek asked if the addition was on the lake side of the house. Steve Griep replied no, the garage will be built on the back lot. The current garage will be torn down and the addition will come around and be located where the current garage sits. So, part of it will be on lake side, but on the west north side of the house. It won't be closer than the current garage. Joshua Mankowski stated it would be 28 feet from the request. Steve Griep said it would be 25 feet from the road. Jeanne Doheny said the application says 24 feet and 28 feet. Joshua Mankowski stated he apologized for only stating 28 feet. Jim Soulek stated the septic tank is currently located behind the house. Steve Griep stated it is located where it states lot 24 on the survey. Jeanne Doheny asked Jim Soulek if that answered his question. Some clarification on the location of the tank was given. Jim Soulek wanted to ensure there was adequate setback between the addition and the septic tank. Steve Griep stated yes. John Wolf asked Joshua Mankowski if the total impervious surface was going to be 24.4% and clarified that that was for the lot across from the road. Jeanne Doheny responded that they are both under 25%.

Motion was made by Fritz Cummins to Approve the application. Condition: Install a 100 square foot rain garden on the property located north of the road near the shed. Plant vegetation that is native to Minnesota within the rain garden. The rain garden should assist with erosion and runoff issues from the adjacent agricultural field and prevent additional runoff and erosion continuing across the road. Seconded by Jim Mladek. Motion approved. Motion carried.

ITEM #3: CHARLIE & MARY HIRN, CLEVELAND, MN, (APPLICANT/OWNER): Request that the County grant an After-The-Fact Variance from the Le Sueur County Zoning Ordinance to allow the applicant to construct a 10 x 50 deck 55 feet & 68 feet from the Ordinary High Water Level (OHWL), 8 feet, 22 feet, & 28 feet from the bluff and within the bluff impact zone, 6 feet from the south property line, and an After-The-Fact Variance for the dwelling 9 feet from the south property line and 78 feet from the OHWL; total impervious surface of 31.9% in a Recreational Residential "RR" District, on Lake Jefferson, a Recreational Development "RD" lake. Property is located at Lot 22, Cape Horn Subdivision, Section 1, Cleveland Township. **ATF VARIANCE IS FOR OHWL, BLUFF, & PROPERTY LINE SETBACKS; WITHIN THE BLUFF IMPACT ZONE; AND IMPERVIOUS SURFACE.**

Charlie Hirn was present for application. Township: None. DNR: None. Letters submitted: Holly Kalbus, Environmental Resources Specialist recommending to approve the application with the conditions listed below. The conditions that are listed will address stormwater, specifically preventing runoff and erosion from occurring. This will help protect and provide stability for the bluff. 1) Install rain barrels under all of the downspouts directed towards the bluff. 2) Plant vegetation that is native to Minnesota along the north side of the house by the boulder wall where there is steep grade. Since a downspout and the steep grade are located in the same area, the potential for runoff and erosion increases; native vegetation should help prevent this. 3) Remove part of the stairs that is used to access the deck. This would help reduce the impervious surface which is currently at 31.9%.

Discussion was held regarding: Charlie Hirn stated that he has lived on the property for a long time. It has been very important to him to maintain the property and reduce the potential for runoff and soil erosion. He plans to live there for another 20+ years, and that he has been a good steward of the land. When it rains, water passes through the deck and the surface under the deck is very flat so the water doesn't shed off. The temporary retaining walls and path are there so he doesn't need to go through the mud, the path will be removed. Jeanne Doheny stated that removal of the path was not part of the proposal. Charlie Hirn then stated originally he had plywood down and once he received the order to stop, he placed the wood path so he wouldn't need to walk through the mud. Jeanne Doheny then asked Joshua Mankowski if the path was included in the impervious surface calculation. Joshua Mankowski responded that it is included in the impervious surface. Jeanne Doheny stated that, even though it is your opinion that the water runs through the openings in between the boards of the deck, according to our Ordinance, the deck is impervious surface. Charlie Hirn then questioned the reason for having a control for impervious surface in the Ordinance. Jim Mladek stated it was to control runoff and erosion. Charlie Hirn stated roof, driveways, large bodies of water, runoff; you don't want that. That

doesn't happen with a deck, I understand it is part of the Ordinance. Jeanne Doheny responded that we are not going to recalculate the impervious surface based on your opinion. Charlie Hirn replied that in the spirit of the Ordinance, we don't want runoff and erosion into the lake. That won't happen with a deck, it will reduce. Webster's Dictionary defines of an impervious surface is anything that doesn't allow water or sunlight to penetrate through and the deck does. Jeanne Doheny then asked Charlie Hirn about his previous variance in 2016 to build the house, you didn't comply with that variance. Charlie Hirn responded that if you look at the other survey, it did show 80 feet, I don't know how it changed. It is 9.8 feet, that is 2 inches off on the west property line. We didn't change anything from the plans. Jeanne Doheny stated that yes you did change something. The deck was not part of the variance, you said you wouldn't put the deck on because of the impervious surface and you put the deck on. It is in the minutes from that meeting. Jim Mladek stated that you didn't follow the last variance and now you're not compliant. We have a hard time dealing with a person we can't trust to do what they say they are going to do and now are asking for another variance when you haven't fulfilled the first one. Jeanne Doheny followed with this is an after-the-fact so you have already done work and you had to know there was a variance required after your previous variance application. That is a big concern. Joshua Mankowski read Holly Kalbus' letter into the record. Jeanne Doheny asked Joshua Mankowski if we know how much of a change removing part of the deck would make. Fritz Cummins asked what part of the deck Holly Kalbus was recommending being removed. Jeanne Doheny stated that there is the deck in the back and stairways going up to the deck on both sides going up to the deck. It is in the picture. Charlie Hirn added, as for removing the stairway, part of the reason it is there is because there is quite an incline. Traffic would cause compaction and the grass to die which could increase erosion. There is also a greater risk of people falling because of the slope. I do things because I think things through. What is best for my piece of property. I realize you have Ordinances and I think you should have them but each individual property owners' property is unique. One size does not fit everybody. Jeanne Doheny stated that you didn't explore what those options were with the County. Charlie Hirn stated that it never even occurred to him, he knows what is best for his property. I look at things and say this is what is going to work the best, this is going to be the best for the environment, this is what is going to be the best as a steward of that piece of property so it is maintained for me and the next generation. Jim Mladek stated that the experts are not agreeing with you, the people that have knowledge of this and deal with it all the time. Charlie Hirn questioned who these people are. Jim Mladek mentioned Holly Kalbus. Charlie Hirn responded with do you know what I do for a living. Jim Mladek replied that we don't know what your background is but we have people serving our County that do this for a living. Charlie Hirn retorted that she made a recommendation and didn't take some consideration in reference to that particular piece of property. She didn't consider redirecting the traffic that way. Jeanne Doheny stated that if he had come in like he should have, he could have been privy to that knowledge and experience and you could have shared your knowledge and experience. That did not happen. Charlie Hirn stated that he thinks a lot of people don't do that because they think some of the restrictions are overbearing and go too far and if they weren't maybe more people would come in. Jim Mladek responded that there would be more erosion and lake problems if we didn't do it. Charlie Hirn replied maybe. Jim Mladek continued that we have seen some situations where we have seen when people do things on their own thinking they are making improvements, but they aren't. We deal with this every month. What do you think of Holly Kalbus' recommendations? Charlie Hirn responded that he had already planted native red fescue grass on the north side and under the deck. It is a native species and is shade tolerant. The recommendation for changing the stairway, I could eliminate it. I don't like the fact that traffic is redirected on the steep incline. Jim Mladek asked why the stairs couldn't be redirected back under the deck. Charlie Hirn stated the other reason he placed the steps there was to not impede the view of the lake. Removing it would be better than relocating it in the other spots. I am fine with rain barrels and the other suggestions. Jeanne Doheny stated the deck isn't essential to living on the property, it is nice to have. If you wanted to keep that deck, you would do as much as possible to comply with what Holly Kalbus is recommending. Charlie Hirn stated he is trying to get use to the thought that he might need to remove those steps.

Motion was made by Jim Mladek to DENY the application. Reasons for denial: 1) The circumstances causing the practical difficulty were created by the applicant/landowner. 2) The applicant/owner did not act in good faith to obtain a Variance or comply with the applicable requirements prior to commencing work. 3) The applicant/owner did not attempt to comply with the Ordinance by obtaining the proper permits prior to commencing work. 4) The proposed

Variance is not consistent with and supported by the statements of purposes, policies, goals and objectives in the Ordinance. 5) The proposed Variance is not consistent with the Comprehensive plan. Seconded by John Wolf. Motion approved. Motion carried.

5. **Discussion Items:** Update on Davis v. Le Sueur County appeal.

Discussion: Jim Mladek asked if we are looking into addressing the concerns that have been raised with decks being considered impervious surface in the County Planning and Zoning Ordinance. Joshua Mankowski responded with not at this time but it is on the list. We have been working on a number of other Ordinance revisions that have been more pressing but that is something that should be discussed. Fritz Cummins had some follow up discussions about the allowed peak height. Joshua Mankowski stated that the allowed peak height is different between an accessory structure and the house. Fritz Cummins doesn't think it makes sense that, just because the garage is attached to the house, it can be so much higher than a detached structure. Joshua Mankowski agrees that this is something that should be discussed. General discussion on side yard setbacks.

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

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

Respectfully submitted,

Joshua Mankowski

Approved September 20, 2018

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