



Le Sueur County, MN

Thursday, September 20, 2018

Regular Session

Item 1

Approved September 20, 2018 Meeting 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

September 20, 2018

MEMBERS PRESENT: Colin Harris, Jeanne Doheny, Jim Mladek, Francis Cummins

MEMBERS ABSENT: John Wolf

OTHERS PRESENT: Joshua Mankowski

1. **Call to Order** at 3:00 by Chairperson Jeanne Doheny.
2. **Agenda:** Motion to approve agenda by Jim Mladek. Seconded by Fritz Cummins. Motion approved. Motion carried.
3. **Meeting Minutes:** August 16, 2018. Motion to approve minutes by Fritz Cummins. Seconded by Jim Mladek. 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 6 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. (APPLICATION WAS TABLED AT THE AUGUST 16, 2018 MEETING).

Robert Hartz was present for the application. Township: None. DNR: None. Letters submitted: Letter from Holly Kalbus, Environmental Resources Specialist, with recommended condition for approval. 1) 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: Robert Hartz stated that since the last meeting, they reached out to Mary, Paul Marzahn's sister, to address her concerns that were raised by Paul Marzahn and were informed by Randy, Mary's husband, that Mary and Paul have not been talking for a while. It was difficult to find a property on Tetonka that had a walk out, limited number of stairs for the access and was at a good price point. They have been doing improvements on the existing house. When the house was purchased, the family was smaller, they had 3 grandchildren and now there are 7 and they enjoy visiting the lake. Goal is to make this their primary residence and accommodate the people that visit. Also sponsor a weekend getaway once a year to raise funds for St. Jude's Hospital. There is a tall row of evergreens on the east border that buffers the visual that we are that big. The current house is much smaller than the Marzahn's. Jeanne Doheny stated that there have been some adjustments made to the elevation since the previous meeting which puts it more in line with what is there. Jeanne Doheny also brought up the concern of the heater exhaust vent from the last meeting and looking at it today it seems to be much less of a concern. Fritz Cummins stated that he spoke with Mary Chromy on the phone for about an hour and they found quite a few discrepancies about what they want to do. Fritz Cummins also stated that he heard that Robert Hartz wants to be a guide on the lake so he is going to invite people to

come to stay at his house and take them fishing. If this is the reason he wants this garage here to put bedrooms in he doesn't think that is right. Still thinks it should be farther away from the property line, the snow is still going to fall on Marzahn's property and it just isn't fair. Jeanne Doheny asked Fritz Cummins for some clarification, he stated there were a number of things. What other issues have been raised that hasn't been discussed? Fritz Cummins stated he didn't want to get into it because it is stuff between her brother and her and now the neighbors are mad at her. Jeanne Doheny said to the applicant that, if he does receive the variance, he is not authorized to operate a business out of the house. Robert Hartz state he wasn't. Jim Mladek asked Robert Hartz if they plan to remove the old garage. Robert Hartz responded that they do plan to remove it. Colin Harris then asked if that would impact the impervious surface. Robert Hartz responded in the affirmative. Jeanne Doheny recommended that the condition to remove the existing garage be added as a condition if they move to approve the variance request.

Motion was made by Jim Mladek to Approve the application. Conditions: 1) 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. 2) Remove existing garage. Seconded by Colin Harris. Motion approved. Motion carried.

ITEM #2: 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 within the bluff; and construct a septic drainfield 0 feet from the road Right-Of-Way (ROW) and 9 feet from the dwelling in a Recreational Residential "RR" District, on a Recreational Development "RD" lake, Lake Frances. Property is located at Lot 2, Muellerleile Subdivision, Section 33, Elysian Township. **VARIANCE IS FOR BLUFF, ROAD ROW AND STRUCTURE SETBACKS. (APPLICATION TABLED AT THE JUNE 21, 2018 MEETING.)**

Wayne James (James Brothers Construction) and Milan Behr were present for the application. Township: None. DNR: Letter from Garry Bennett, Area Hydrologist outlining The DNR's view that dirt work in a bluff should be greatly restricted and only be permitted when there is no other option. Letter from Holly Kalbus, Environmental Resources Specialist stating her recommendation that the application should be denied. If the request was approved, she recommended the following conditions: 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.

Discussion was held regarding: Wayne James explained that they moved the drain field from the lake side of the house to the front of the house in a very small area. This design moves the septic up and away from the lake. Jeanne Doheny clarified that the absorption area was moved but the tank is still in the bluff. Wayne James replied yes, the tank will have a pump in it and everything will be pumped up on top. Before there was concern about the water being put into the bluff and with this design it is all pumped up on top. We meet the lake setback and the garage setbacks, the only thing is the tank is sitting in the bluff area. No matter what we do we will need to work in the bluff, that is where the existing tank is now. Jeanne Doheny reiterated that Wayne James said this is the only thing we can do. Wayne James responded yes. Jeanne Doheny responded by saying "So you have absolutely no other options?" Wayne James responded that there are not a lot of other options, no matter what is done, they will need to do work in the bluff. The current plan is to cut the basement floor and run a new pipe out the back into a new tank and then pump it up. Colin Harris clarified that Wayne James meant towards the lake. Wayne James responded yes, on the lake side. There are other options, they could put the tank on the side of the house. You can always move stuff around, but by bringing the pipe around the house there will be more problems with plumbing and freezing up. There is no water coming out of the tank, it will all be pumped to the top of the hill. Jeanne Doheny stated that the main concern of Holly Kalbus and the DNR is digging in the bluff. Fritz Cummins stated that they will need to dig in the bluff even if they put in a holding tank. Water doesn't run uphill. Wayne James said everything in the house runs out that way. We need to dig in the bluff if we are going to put in a pump. No matter what we do we will be in the bluff or the bluff impact zone. Even if

we hook into that pipe and put it up to the front and take the driveway out, the tank will be down there like ten feet deep and they are not designed to be that deep. To do that we will need to dig in the bluff. Jeanne Doheny asked if a holding tank could be installed where the absorption area is planned. Wayne James started to reply that they would need to dig down here to get hooked up. Fritz Cummins interrupted to ask how they would get the stuff up there; it has to go down in order to come up. Wayne James explained that the pipe is coming out about 6-8 inches below the basement floor. We need to get the sewage up to the top. Colin Harris stated his concern was having the septic tank placed in the bluff area. It is something we shouldn't be doing. It doesn't feel right, thinking about the environment. You should be looking at doing something else up on top. If you need to bury a pump, that is less than a septic tank. Wayne explained, if they put a pump station down below, it would still be about half the size of a septic tank and we could pump it up. We would then need to install a tank up on top to dose the mound, but no matter what we do we still need to do work in the bluff. Colin Harris asked if they would have less in the bluff. Wayne explained that a septic tank is a sealed vessel and it would be a 1500 gallon tank, they could put in a 500 gallon pump station and then pump it up on top and put a tank up on top to dose it but we will still be in the bluff no matter what we do because that whole area is in the bluff or bluff impact zone. Colin Harris asked if that would be further from the lake. Wayne James responded no, that it would be the same distance. We show that tank as 13 feet from the deck, we could get a variance and move that tank to do a zero foot setback from the deck, the tank right now is about 80-90 feet from the OHWL. On the old design the drain field was only 60 feet away and now we are looking at 80-85 feet. We could move it closer to the house and then pump it all up on top. Fritz Cummins explained, that according to the map that was supplied today, you are 94 feet from the OHWL. Jeanne Doheny clarified that the variance isn't for OHWL setback. Wayne James responded no, we can meet that now. On the old map, the septic was going to need a variance for setback from the lake, but by moving the drainage area up on top and only having the tank down there, we are taking all the water and pumping it up above. Jeanne Doheny stated that you will need to dig in the bluff area to do this. Wayne James responded that no matter what they do they will need to dig in the bluff; to hook onto that line or to cap and fill the old tank, they will need to dig in the bluff. Jeanne Doheny asked Joshua Mankowski if he had any other idea that might work. Joshua Mankowski responded that he is not a septic designer, Wayne James is. He didn't know if installing a grinder pump in the house and pumping up to a tank would work or something like that. Those would be options Wayne James would need to explore. Jeanne Doheny asked Wayne James if they had explored that option. Wayne James said yes, they had been in the house and looked at it, the way the plumbing in the house is situated, is it an option, yes, but is it a good option, no. With a grinder pump, there is only about a five to six gallon capacity and then it gets full and runs over. With the current design there is 500-600 gallons of reserve capacity. With a pump in the basement you only have five-six gallons. Jeanne Doheny asked how often that is likely to be an issue. Wayne James explained that if something got flushed down the toilet and got caught in the impeller in the grinder, that is something that can happen. Milan Behr added that it would be an issue if the power went out. Wayne James added that when the power goes out you are usually limited on water from the well. You are then stuck with a very small reservoir. Around Lake Washington, they have the big 30 gallon or 30 inch tanks sunk into the ground around all the houses and they pump that into the main. We could do something similar to that but it would need to be installed outside. Colin Harris asked to review, what were the complications to installing a holding tank up on top. Wayne James responded that you would need to get a pump to pump up to it. Need to get the water from down below pumped up. If we are going to install a holding tank up there we might as well install the absorption area up there so we can get rid of water since we are out of the bluff area. Colin Harris asked Wayne James how big the pump tank would need to be again. Wayne James asked for clarification, a tank that the board would be proposing or in the design. Colin Harris said in the design. Wayne James responded that the tank is seven feet wide and 14 feet long. Colin Harris said he meant the pump station. Wayne James responded about four by six, about half the size of this tank, less than half. Colin Harris asked if that no matter what is done, they will need to install something in the bluff. Wayne James responded yes. Jeanne Doheny said so it is doable. Wayne James responded that yes it is doable, but we could cut down the square footage. Fritz Cummins said you would need to put some kind of mat over the top if you did the work for erosion control. Wayne James responded yes, on that slope they would need to use erosion control blanket. It would get seeded, the soil would then settle around the tank and they would need to come back next spring to finish. Fritz Cummins asked if the work was planned for this fall if the variance passes today. Wayne James responded yes, plan is to do it this fall.

Joshua Mankowski read the correspondence from Holly Kalbus, Environmental Resources Specialist and from Garry Bennett, Area Hydrologist DNR. Jeanne Doheny asked Wayne James if he had seen the letter from the DNR. Wayne James responded, no that this was the first time he heard it. Jeanne Doheny asked if he had ever talked with Garry Bennett. Wayne James responded that they met onsite and showed him what they were doing. This location is very difficult. The main concern, even if a traffic rated tank is set right next to the house, they would still need to dig in the bluff to get a pipe to the tank. Jeanne Doheny replied that would be less digging. Wayne James agreed, but he would still need to dig in the bluff and he would still need his setbacks for the absorption area but we would need to design it with the traffic rated tank and would only be about five feet off the property line. If the concern is the tank and the pump tank in the bluff area, we could hook on and move it over. Colin Harris stated that that is his biggest concern. Wayne James said he could do that and put the tank in the driveway area. Collin Harris stated that it would be mostly out of the bluff. Wayne James responded yes, they would still need to dig in the bluff to run the pipe and fill in the old tank. They can take those steps if that is what it will take. County resident Clark Meyer, located in lots 8 & 9, stated he has probably been located out in the area the longest. He appreciates the concern about the bluff but he has never seen any erosion out there along the lines of what is being asked about. He stated that with Wayne James, you probably have the best septic tank installer in Southern Minnesota so you can take what he says really seriously. Jeanne Doheny clarified that it isn't just their concern but also the concern of the DNR and the quality of the lake. Milan Behr stated that the house has been there for over 40 years and there hasn't been any erosion at all. Jim Mladek asked that if they are moving the tank, they will now have an issue with side yard setback. Wayne James responded that yes, if he is going to stay out of the bluff he will need to crowd the property line. Jeanne Doheny said if it is tabled they can come back with that request. Jim Mladek asked what the setback requirement was for the side yard. Wayne James responded ten feet. In order to make that setback he would need to use a three foot wide tank and they don't make that.

Motion was made by Colin Harris to Table the application to allow the applicant to explore other septic design options that would limit the amount of work being performed in the bluff. Seconded by Jim Mladek. Motion approved. Motion carried.

ITEM #3: JORDAN SMITH, MADISON LAKE, MN, (APPLICANT); KIM KUNKEL, MADISON LAKE, MN, (OWNER): Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow a total of 59.5% impervious surface on a lot in a Recreational Residential "RR" District, on Lake Washington, a Recreational Development "RD" lake. Property is located at Lot 3, Auditor's Subdivision, Section 18, Kasota Township. **VARIANCE IS FOR IMPERVIOUS SURFACE.**

Jordan Smith was present for the application. Township: None. DNR: None. Letters submitted: Letter from Holly Kalbus, Environmental Resources Specialist recommending conditions for approval. 1) Plant vegetation that is native to Minnesota near the downspout that is located closest to the lake on the northeast side of the house. 2) Reduce the size of the proposed sidewalk so that is not to exceed the width of the overhang of the house. 3) Redirect the downspouts of the detached garage so that they deposit storm water into the grassed area rather than the sloped driveway.

Discussion was held regarding: Jordan Smith explained that they need to get a variance for impervious surface so that they can replace the retaining walls on the property. They are degraded and starting to fail. Proposal will reduce the impervious surface by 9.5% which includes removing part of the asphalt driveway, converting all the landscaping beds to pervious. Correspondence was read into record. Jeanne Doheny asked if they had seen the letter and if they had any issues with it. Jordan Smith stated they had and there were no issues. Jeanne Doheny asked how they got so much impervious surface on the lot. Jordan Smith answered that the current owner purchased the lot with that much impervious surface. Jordan Smith also wanted to point out, that if only the house was located on the lot and nothing else, they would be at 24.7% impervious. The lot is too small for the house and it has been that way since it was built. Impervious surface was not added by the current landowner. Jordan Smith argued that there isn't that much that can be removed. The driveway extends past the entrance, so they are proposing removing that area. They are essentially adding a 20 foot green buffer to that area that

use to be asphalt. Colin Harris asked about the sidewalk on the side of the house, the recommendation is to reduce it. How much sidewalk is needed? Jordan Smith responded the land owner has family members that need wheelchair access to the house, the only way to access the house is via the front door that faces the lake. The other door has stairs in both directions. Proposing to remove 18 foot wide driveway and keep just enough of a strip or install a new strip so the front door can be accessed by hard surface. Colin Harris is concerned that the recommended width may be too small. Jordan Smith stated that the overhang is three and a half feet and the proposed sidewalk was four and half feet wide. Colin Harris asked if that would be enough room? Jordan Smith responded that, if in the future it was not enough room, they have the potential to add pervious pavers to widen the path.

Motion was made by Fritz Cummins to Approve the application with conditions. Conditions: 1) Plant vegetation that is native to Minnesota near the downspout that is located closest to the lake on the northeast side of the house. 2) Reduce the size of the proposed sidewalk so that is not to exceed the width of the overhang of the house. 3) Redirect the downspouts of the detached garage so that they deposit storm water into the grassed area rather than the sloped driveway. Seconded by Coin Harris. Motion approved. Motion carried.

ITEM #4: CHRIS SHORT, PRIOR LAKE, MN, (APPLICANT\OWNER): Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to install a holding tank 13 feet from the Ordinary High Water Level (OHWL) in a Recreational Residential "RR" District, on Lake Frances. Property is located at Lot 1, Auditor's Subdivision (Carpenter's Point), Section 28, Elysian Township. **VARIANCE IS FOR OHWL SETBACK.**

Wayne James (James Brothers Construction) was present for the application. Township: None. DNR: None. Letters submitted: None.

Discussion was held regarding: Wayne James stated that there is no place on the lot where setbacks can be met. The well is located on the other side of the house. They were unable to find a neighbor that was willing to allow the septic on their property. Existing tank is below the house in the water table. Proposed tank will be 10 feet from the edge of the blacktop. They don't want to move it any closer to the road for fear that it could be hit by the snowplow. Jeanne Doheny asked for confirmation that they did look at setting the tank closer to the road. Wayne James responded yes, snow off the road will be on the tank. They will be placing an electrical box on top for the alarm. If they moved it closer to the road, they still would not be able to meet the lake setback. The house has been located here for years. They have already filled in the basement, rocked the shoreline; the house sat in the water. Jeanne Doheny asked why the house wasn't just torn down. Wayne James responded that the owner thought there was still value in the house. Fritz Cummins stated that when the house was originally built, it was probably fine. The DNR has raised the lake level over the years. That is why we have problems on these lakes is because of the DNR. Wayne James explained that the area was pasture in the past but it is all under water now. Joshua Mankowski raised the issue that there is now a violation. Being onsite today, it was noted that there was construction done on the house, mainly with the foundation, that would have required a zoning permit. Some discussion was had pertaining what activities would or would not require a zoning permit. It was argued by Fritz Cummins that they sure wouldn't had poured new concrete. Joshua Mankowski stated that there is a violation documented on the property, the Board can table the application until the issue is addressed or can make a decision today and the department would not be able to issue the variance until the violation is addressed. Colin Harris asked for clarification, they could approve the variance today at the meeting. Joshua Mankowski stated that was correct, the department just couldn't issue the variance until the violation was addressed. More discussion was had about what type of work would need a zoning permit and whether the type of work that was done would have required a permit. Colin Harris stated that he believed they could come to a decision today on the variance.

Motion was made by Fritz Cummins to Approve the application. Conditions: None. Seconded by Jim Mladek. Motion approved. Motion carried.

There was some discussion had after the last item. Wayne James stated that he believes the board made the wrong discussion when it came to tabling the variance for Milan Behr. Jeanne

Doheny stated that that is done. Wayne James said he knows, but there is no way that bank, with that tank in there will ever sluff off into the lake. Jeanne Doheny said that he can come back next time and make his argument.

5. Discussion Items: None

Jim Mladek asked about the upcoming issue with the shouse. Joshua Mankowski stated that issue will be on the next meeting. Jim Mladek then asked if anyone else had received a phone call to discuss a foundation for a building. No one else had received a call. Jim Mladek stated that someone wanted to build a house and doesn't want to use a whole footing foundation, he just wants to put post into cement in the ground and was told every other county allows it except Le Sueur County. Joshua Mankowski stated there would be more information provided at a future meeting. Jeanne Doheny said, if she ever receives calls she refers them back to Planning and Zoning. Jim Mladek stated it was a commissioner that told them to call him.

Colin Harris wanted to state that he is concerned about the bluff impact zone and the impact the actions that we take can have on the future. We need be very protective of the impact zones. Jim Mladek stated that just because something hasn't happened doesn't mean something can't happen. Colin Harris thought we should try to be consistent as a board. Fritz Cummins responded by stating well we haven't, you guys have approved some that should not have been approved. Colin Harris state that he is more concerned about this now then he was a year ago because of the information that has been provided. Jeanne Doheny said that the DNR has talked to them about it. Jim Mladek added that they have had more education on it since then. Jim Mladek stated to Fritz Cummins that it isn't you guys it is us guys. We are all in this together. Colin Harris stated that every property is different but we should try to be consistent as much as possible. Fritz Cummins stated that we need to stop and realize the DNR has caused these problems on these lakes. He can tell you everyone one of the lakes that the DNR has upped 4-6 feet in elevation. That has not helped things at all. If they would have left them alone, we wouldn't have half the problems we have today with any of this. They are the ones that caused this problem. Jim Mladek stated they want shoreline restoration but that they screwed up the shoreline. Colin Harris stated there is nothing we can do about that. Fritz Cummins said not now, they have already established it. Colin Harris stated that he believes our goals are to protect the environment and protect the neighbors. We can't deal with things other people have done and try to do our best to stay consistent.

6. Warrants/Claims: Sign warrants/claim sheets

7. Adjourn: Motion to adjourn meeting by Fritz Cummins. Seconded by Jim Mladek. Motion approved. Motion carried. Meeting Adjourned.

Respectfully submitted,

Joshua Mankowski

Approved October 18, 2018

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