

**LE SUEUR COUNTY  
BOARD OF ADJUSTMENT**

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

**November 17, 2022**

**MEMBERS PRESENT:** Jim Mladek, John Wolf, Jeanne Doheny, & Colin Harris

**MEMBERS ABSENT:** Roy McIntyre

**STAFF PRESENT:** Aaron Stubbs

1. **Call to Order:** 3:00 p.m. by Chairperson Jeanne Doheny.

2. **Agenda: November 17, 2022,**  
Additions/Corrections: NONE.  
Motion to approve the agenda with the above listed correction by **COLIN HARRIS**.  
Seconded by **JIM MLADEK**.  
**MOTION APPROVED. MOTION CARRIED.**

3. **Minutes: October 20, 2022,**  
Additions/Corrections: NONE.  
Motion to approve the agenda by **JIM MLADEK**.  
Seconded by **JOHN WOLF**.  
**MOTION APPROVED. MOTION CARRIED.**

4. **Applications:**

**ITEM #1: BRIAN SWANSON, KASOTA, MN (APPLICANT/OWNER):** Request that the County grant an After-The-Fact (ATF) Variance from the Le Sueur County Zoning Ordinance to allow the applicant to reduce the required Ordinary High Water Level (OHWL) setback from 100 feet to 31 feet to accommodate an existing attached deck; reduce the required side yard setback from 10 feet to 7 feet to accommodate an existing ramp; and allow 60.4% total impervious surface coverage of the lot; and create 320 square feet of impervious surface in the Shore Impact Zone (SIZ) in the Recreational Residential "RR" Shoreland District, Lake Washington, a Recreational Development "RD" lake. The Property is Lot 12 of the Baker Bay Subdivision, located in Section 12, Kasota Township.  
**ATF VARIANCE IS FOR OHWL AND SIDE YARD SETBACKS, AND IMPERVIOUS SURFACE.**

BRIAN SWANSON was present for application.

TOWNSHIP: Notified on October 10, 2022 – NO COMMENTS RECEIVED

PUBLIC CORRESPONDENCE: Mr. Stubbs read review comments from the MN DNR into the Record.

PUBLIC COMMENT: None.

Discussion was held regarding: **Deck:** Mr. Swanson stated the deck was a result of an error on his part. His parents owned the home in 2009 when the previous variance was approved. Their builder went bankrupt during the construction process so he stepped in to complete the project. Mr. Swanson stated he was unaware of the permits did not include a deck and ramp. He also stated the ramp was added to improve mobility for his mother. **Neighboring Properties:** The applicant stated the neighboring properties are also not compliant with County regulations. He believes his property is being singled out because he contacted the County to request a permit. **Retaining Walls:** Mr. Swanson stated his retaining walls were in place to help slow stormwater runoff and give the water time to filter before entering the lake. He also stated his retaining walls have recently had issues due to the amount of water they are holding back. **Utilities:** Mr. Swanson stated there are utilities throughout the rear yard of his property and he would not be able to create a basin or rain garden. **Soil Conditions:** The applicant stated the property consists of heavy clay soil. Because of this, no grass will grow and he believes the clay is less pervious than concrete. **Safety Concerns:** Mr. Swanson stated the need for the additional parking stalls is related to safety. He said the two-car garage and a driveway that can accommodate another two cars is not sufficient for his family. They need additional parking because the road is too narrow.

#### ADDITIONAL COMMENTS FROM THE BOARD OF ADJUSTMENT:

- Mladek** – The Board is more concerned with the amount of impervious surface than the location of the existing deck and ramp. The Board feels the applicant should be looking at ways to reduce the impervious coverage back to the 49.53% as approved in 2009.
- Wolf** – Gravel is considered an impervious surface. The applicant should be considering alternatives that would reduce the size of the parking areas or consider using a permeable solution. The applicant disagrees and stated the survey does not accurately describe the size of impervious areas on the property.
- Harris** – Asked if the applicant had reviewed the proposed conditions and whether Mr. Swanson had an issue with what is being proposed. The applicant stated reducing the impervious coverage to 49.53% is cost prohibitive.
- Mladek** – Stated the Board of Adjustment is looking for co-operation from the applicant. The applicant stated the Board is asking him to spend money he does not have.
- Doheny** – Asked the applicant if he had met with County staff to discuss the proposed conditions. The applicant stated he was willing to meet the conditions and would meet with staff as soon as he was done with the Board of Adjustment.

#### STANDARD VARIANCE FINDINGS BY MAJORITY VOTE:

- The request is in harmony with the general purpose and intent of the official control. (4-0)*
  - If the applicant were to follow the proposed conditions, the request meets this standard.***
- The request is consistent with the comprehensive plan. (4-0)*
  - If the applicant were to follow the proposed conditions, the request meets this standard.***
  - The objective of the plan is to improve water quality.***
- The property owner is proposing to use the property in a reasonable manner, not permitted by an official control. (4-0)*
- The plight of the landowner is due to circumstances unique to the property, not created by the landowner. (4-0)*
  - Deck and ramp were built before he purchased the property.***
  - There was a variance issued previously but the contractor went out of business during the completion of this project.***
- Whether the variance would alter the essential character of the locality. (4-0)*
  - Reducing the impervious from 60+% to 49.53% would be an improvement to the area..***
- Whether the request for the variance involves more than economic considerations. (4-0)*

#### AFTER-THE-FACT VARIANCE FINDINGS BY MAJORITY VOTE:

- Whether the landowner acted in good faith or attempted to comply with the Zoning Ordinance. (4-0)*
  - The applicant should be applauded for contacting the County to check on required permits.***
- Whether a substantial financial investment has been made towards the project. (4-0)*
  - The deck and ramp are complete so a financial investment has been incurred.***
- Whether the construction for the project has been completed. (0-4, all in dissent)*
  - The project is not complete because the impervious is not at 49.53% as approved in 2009.***

4. *Whether there are similarly situated structures in the area. (4-0)*
5. *Whether the benefit to the County is outweighed by the burden on the applicant, if the applicant were required to comply with the Ordinance. (3-1, Doheny in dissent)*

**Motion was made by JIM MLADEK to APPROVE the application with the proposed conditions listed in the staff report, and adding one condition requiring the applicant to meet with Environmental Services staff prior to January 1, 2023 to discuss options for impervious surface removal.**

**Second by JOHN WOLF.**

**MOTION APPROVED. MOTION CARRIED.**

**ITEM #2: M.S. EXCAVATING INC, NEW PRAGUE, MN (APPLICANT); TRACY NELSON, MONTGOMERY, MN (OWNER):** Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to allow the applicant to reduce the Ordinary High Water Level (OHWL) setback from 200 feet to 116 feet for a septic system absorption area in the Recreational Residential “RR” Shoreland District of Lake Pepin, a Natural Environment “NE” lake. Property is Lot 9, Block 1 of Benson’s Subdivision, located in Section 28, Lanesburgh Township. **VARIANCE IS FOR OHWL SEBACK.**

MIKE SKLUZACEK was present for application.

TOWNSHIP: Notified on September 16, 2022 – NO COMMENTS RECEIVED

PUBLIC CORRESPONDENCE: Mr. Stubbs read review comments from the MN DNR into the Record.

PUBLIC COMMENT: None.

Discussion was held regarding: **SSTS Location:** Mr. Skluzacek stated the proposed location was the best available option due to neighboring wells.

**ADDITIONAL COMMENTS FROM THE BOARD OF ADJUSTMENT:**

**Mladek** – Asked when the original system was installed. The applicant stated he thought it was the early 80’s and no part of the new system would be re-used.

**Harris** – Asked Mr. Skluzacek if the existing SSTS was non-compliant. The applicant stated it was, and the new system would make use of the current system’s location.

There were no additional questions or comments from the Board of Adjustment.

**FINDINGS BY MAJORITY VOTE:**

1. *The property owner is proposing to use the property in a reasonable manner. (4-0)*
  - ***They need to bring the system into compliance.***
2. *The alleged Practical Difficulty is unique to the property. (4-0)*
  - ***There are no other suitable locations on the property.***
3. *The circumstances creating the Practical Difficulty were created by someone other than the landowner. (4-0)*
4. *The issuance of the Variance will maintain the essential character of the locality. (4-0)*
5. *The alleged Practical Difficulty involves more than economic considerations. (4-0)*
6. *The Variance is consistent with and supported by the Statement of Purposes, Policies, Goals and Objectives in the Ordinance. (4-0)*
7. *The Variance is consistent with the Comprehensive Plan. (4-0)*

Motion was made by JOHN WOLF to APPROVE the application with the proposed conditions listed in the staff report.

Second by COLIN HARRIS.

**MOTION APPROVED. MOTION CARRIED.**

**ITEM #3: NEIL & KELSEY KOEPP, HENDERSON, MN (APPLICANT/OWNER):** Request that the County grant an After-The-Fact (ATF) Variance from the Le Sueur County Zoning Ordinance to reduce the required road Right-Of-Way (ROW) setback from 75 feet to 58 feet to accommodate the construction of an Accessory Structure in the Agricultural "A" District. The property is located in the SW 1/4 of the SW 1/4 in Section 6, in Derrynane Township. **ATF VARIANCE IS FOR ROAD ROW SETBACK.**

KELSEY KOEPP was present for application.

TOWNSHIP: Notified on October 17, 2022 – NO COMMENTS RECEIVED

PUBLIC CORRESPONDENCE: Mr. Stubbs read review comments from the Le Sueur County Highway Engineer.

PUBLIC COMMENT: None.

Discussion was held regarding: **Contact with County:** The applicant stated her husband contacted the County and was told the required setback was 50' from the road right-of-way. **Existing Concrete:** The applicant stated the concrete was poured before the County discovered they had started without a permit and identified the incorrect location. Mrs. Koepp also stated she would be willing to expand the concrete if needed, to meet the setback. **Variance:** The applicant and her husband thought requesting the variance was an easier option rather than starting over on new concrete. **Timeline:** Mrs. Koepp stated if approved, the plan is to build the structure in February of 2023.

Additional comments from the Board of Adjustment:

Mladek – Asked how think the concrete was poured. The applicant stated she believed it is four inches thick throughout the interior but the edges were a little thicker.

Mladek – Stated pouring additional concrete could create a shifting issue in the future.

Mladek – Asked staff about the road right-of-way and the requested distance on the permit site plan. Mr. Stubbs stated the road right-of-way along CSAH 11 is 100' wide. The applicant's site plan shows a requested setback of 125'. Even if that 125' were measure from the actual road and not the right-of-way, the structure would still be at the required 75'.

#### **STANDARD VARIANCE FINDINGS BY MAJORITY VOTE:**

1. *The request is in harmony with the general purpose and intent of the official control. (4-0)*
2. *The request is consistent with the comprehensive plan. (4-0)*
3. *The property owner is proposing to use the property in a reasonable manner, not permitted by an official control. (4-0)*
4. *The plight of the landowner is due to circumstances unique to the property, not created by the landowner. (3-1, Doheny in dissent)*
  - **Issue is not unique to the property. The applicants have other available locations on the property. This location was selected for convenience.**
  - **Folks may not be aware of what the actual road right-of-way is or where to measure from.**
  - **I feel the issue was created by the landowner but I'm also in favor of the request.**
5. *Whether the variance would alter the essential character of the locality. (4-0)*
6. *Whether the request for the variance involves more than economic considerations. (3-1, Doheny in dissent)*

#### **AFTER-THE-FACT VARIANCE FINDINGS BY MAJORITY VOTE:**

1. *Whether the landowner acted in good faith or attempted to comply with the Zoning Ordinance. (2-2, Mladek & Doheny in dissent)*
  - **Poured the slab without final approval.**
  - **Claims they called the County and do not need a permit for a concrete slab.**
2. *Whether a substantial financial investment has been made towards the project. (4-0)*
  - **Concrete and Ground Work have been completed.**
3. *Whether the construction for the project has been completed. (0-4)*
4. *Whether there are similarly situated structures in the area. (1-2-1, Mladek & Doheny in dissent, Wolf abstaining)*
  - **I did not see any similar structures nearby.**
  - **The area could mean anything, there is bound to be a similar structure somewhere in the area.**
  - **I did not check so I am not going to vote.**
5. *Whether the benefit to the County is outweighed by the burden on the applicant, if the applicant were required to comply with the Ordinance. (3-1, Doheny in dissent)*
  - **The benefit to the County is not outweighed by the burden of adding more concrete and shifting the building before it is constructed.**

Motion was made by COLIN HARRIS to APPROVE the application with the proposed conditions listed in the staff report.

Second by JIM MLADEK.

**MOTION APPROVED. MOTION CARRIED.**

**ITEM #4: THOMAS & JOANN DEMERIT, MADISON LAKE, MN (APPLICANT/ OWNER):** Request that the County grant a Variance from the Le Sueur County Zoning Ordinance to reduce the required Bluff setback from 30 feet to 20 feet in the Recreational Recreation "RR" Shoreland District of Lake Washington, a Recreational Development "RD" Lake. The property is Lots 2, 3, & 4 of Block 1 in Loeffler's Subdivision No. 1, located in Section 17, Washington Township. **VARIANCE IS FOR BLUFF SETBACK.**

THOMAS & JOANN DEMERIT were present for application.

TOWNSHIP: Notified by email on October 26, 2022 – NO COMMENTS RECEIVED

PUBLIC CORRESPONDENCE: Mr. Stubbs read review comments from the MN DNR into the Record.

PUBLIC COMMENT: None

Discussion was held regarding: **Location of Addition:** The applicants stated the proposed addition was situated in a manner that would respect the Bluff Impact Zone and would not require them to remove any existing trees from the property. **Timeline:** The applicants stated they hope to start construction in late spring of 2023. **Stormwater Management:** The applicants stated they had reviewed the proposed conditions, and believed the design of the addition would help direct stormwater away from the Bluff.

There were no additional questions or comments from the Board of Adjustment.

**FINDINGS BY MAJORITY VOTE:**

1. *The property owner is proposing to use the property in a reasonable manner. (4-0)*
2. *The alleged Practical Difficulty is unique to the property. (4-0)*
3. *The circumstances creating the Practical Difficulty were created by someone other than the landowner. (4-0)*
4. *The issuance of the Variance will maintain the essential character of the locality. (4-0)*
5. *The alleged Practical Difficulty involves more than economic considerations. (4-0)*
6. *The Variance is consistent with and supported by the Statement of Purposes, Policies, Goals and Objectives in the Ordinance. (4-0)*

7. *The Variance is consistent with the Comprehensive Plan. (4-0)*

**Motion was made by JOHN WOLF to APPROVE the application with the proposed conditions listed in the staff report.**

**Second by COLIN HARRIS.**

**MOTION APPROVED. MOTION CARRIED.**

**5. Discussion Items:**

- There are two applications on the December agenda.
  - December deadline was November 15, 2022

**6. Warrants/Claim-signatures:**

**7. Adjournment:**

**Motion to adjourn meeting by JIM MLADEK.**

**Second by JOHN WOLF.**

**Motion approved. Motion carried.**

Respectfully submitted,

**Aaron Stubbs**

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