

**MINUTES  
CLAY COUNTY BOARD OF ADJUSTMENT  
5:30 PM, TUESDAY, JULY 17, 2018  
MEETING ROOM B, CLAY COUNTY COURTHOUSE**

**Members Present:** Amos Baer, Greg Anderson, Paul Krabbenhoft, Perry Bushaw

**Members Absent:** None

**Others Present:** Ben Oleson, Lynne Spaeth, Jenny Samarzja, Steve Beitelspacher, Mark Fradet, Brooke Fradet, Allen Otterson, Luke Hvidston, Christine Hvidston, Dave Overbo, Kevin Martin, Ezra Baer.

**APPROVAL OF AGENDA:**

**On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board approved the agenda.**

**APPROVAL OF MINUTES:**

**On motion by Paul Krabbenhoft, seconded by Greg Anderson, and unanimously carried, the Board approved the April 17, 2018 minutes as presented.**

**MARK AND BROOKE FRADET – REQUEST FOR VARIANCE**

The applicants are seeking approval of a variance to allow a structure to be located closer to a septic drain field than normally allowed. MN Rule 7080 as adopted by Clay County requires a structure to be set back a minimum of 20 feet from a septic drain field. The affected property is Lot 4, Block 2, Pearl View Estates Subdivision, Section 27, Township 137, Range 45 (Humboldt Twp.) and is in the Agricultural General zoning district.

**On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board opened the public hearing.**

Ben Oleson, Interim Planning Director, gave a presentation of the proposal. The residence meets the drain field setback, but the outbuilding (shed) does not. Initially, the landowner did not apply for a Building Permit but have since applied and will be granted an “after-the-fact” Permit if the variance is approved. Oleson pointed out the property line and play area. The reason for the 20-foot setback is so the system will not affect the foundation and maintenance of the drain field over time. Oleson stressed the presence of an adequate pump route to reach the tank and that there is some space between the structures. No written or public comments were received regarding this proposal.

The Board discussed when the current septic system was installed and if it had been inspected and approved. The system was reported to be 3½ years old.

The applicants were present for questions. Mark Fradet informed the Board that the shed and home are slab on grade. The septic system was put in at the time the house was built. The shed was built shortly after. Fradet stated that he was unaware he needed a separate permit for shed and had no knowledge of where the underground drain field was located. The applicants are selling their

property and plan to close in three (3) days. The closing required a septic permit and inspection. Larry's Excavating put in the septic system immediately after the home was built and before the shed was erected. Additionally, Fradet said the system had been inspected within the last month by Clay County. That inspection and advice from Bruce Jaster is what prompted the application for variance.

The Chair asked if anyone wanted to speak for or against the proposal.

**On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board closed the public hearing.**

The Board examined the setbacks of the shed and placement of the playset. Fradet assured the Board that the playset was not included in the sale. Conditions were reviewed.

**On motion by Perry Bushaw, and seconded by Paul Krabbenhoft, and unanimously carried, the Board of Adjustment approved Mark and Brooke Fradet's request for variance to allow a structure to be located closer to a septic drain field than normally allowed on property in Lot 4, Block 2, Pearl View Estates Subdivision, Section 27, Township 137, Range 45 (Humboldt Twp.) for the following reasons:**

- 1) **The variance is in harmony with the general purpose of the zoning district and intent of the Development Code;**
- 2) **The proposed variance constitutes approximately a 70% reduction in the required setbacks;**
- 3) **The circumstances related to this request may constitute a "practical difficulty" related to the size of the parcel and lack of space to relocate the structure;**
- 4) **The variance would not alter the essential character of the locality.**
- 5) **Any future replacement or movement of the drain field or shed shall meet all required setbacks (unless a new variance is granted);**
- 6) **That the applicant maintains at least a 10-foot width of yard space that will ensure access to the septic system for maintenance and repair purposes; and,**
- 7) **The applicant apply for and obtain an "after-the-fact" Building Permit for the shed and pay appropriate fees.**

#### **ALLEN OTTERSON – REQUEST FOR VARIANCE**

The applicant is seeking approval of a variance to allow a structure to be built as close as three (3) feet from an adjoining side property line. The Clay County Land Development Code requires a setback of at least thirty (30) feet from an adjoining lot in the UED zoning district (Art G. 8-3G-3B4). The applicant is also seeking a variance to the setback for a structure from the centerline of an adjacent roadway. The Clay County Land Development Code requires a setback of at least ninety (90) feet from the centerline of a road (Chap 3 8-3-3, Local Rd.). Affected property is a 3.12-acre parcel located in the SW Quarter, SE Quarter, Section 29, T139, R48W (Moorhead Twp.) and is in the Highway Commercial (HC) zoning district.

**On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board opened the public hearing.**

Ben Oleson, Interim Planning Director provided photos of the proposed Variance location and surrounding area. He indicated the measurements to the center of the road and the side property. The Highway Department requested a setback of at least 65 feet. A letter was received from Greg Nord, the property owner to the northeast. He is opposed to the proposed setback. The property to the east is a narrow strip encompassing a driveway and is zoned Agricultural General (AG). Otterson's property is zoned Highway Commercial (HC). That would make the setback 24 feet.

The applicant was present for questions. Allen Otterson approached the Board. He would like to build six more buildings if the Variance is granted.

The Board discussed the location and surrounding setbacks. Alternative locations that would meet setbacks were proposed. Oleson explained why the setback was 24 feet and not 30 feet, as well as the different surrounding zoning districts. The neighbor to the east is concerned with snow removal and safety. The east and west property line setbacks are 24 feet and the rear setback is 40 feet. The lot width is 200 feet. Buildings would be 12x20 and there would be 12 units.

The Chair asked if anyone wanted to speak for or against the proposal.

Kevin Martin, Moorhead Township officer approached the Board stating the Township does not have any issues with granting the Variance. The Township took a position that Otterson could build with the setbacks of 30 and 50 feet. Ultimately, the Township would support the Board of Adjustment decision.

Dave Overbo, Clay County Highway Engineer explained that the setback of 65 feet was to ensure that there would be sufficient room to meet the minimum design standards for a rural or subrural undivided roadway should it ever be reconstructed and paced in the future.

**On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board closed the public hearing.**

**On motion by Paul Krabbenhoft, and seconded by Greg Anderson, and unanimously carried, the Board of Adjustments denied Allen Otterson's request for Variance to allow a structure to be built as close as three (3) feet from an adjoining side property line and 40-45 feet from the centerline of an adjacent roadway on property located in the SW Quarter, SE Quarter, Section 29, T139, R48W (Moorhead Twp.) for the following reason: Since a large portion of the parcel is still available for potential development without needing a variance, it does not appear that there is a valid practical difficulty associated with this request.**

#### **LUKE AND CHRISTINE HVIDSTON – REQUEST FOR VARIANCE**

The applicants are seeking approval of a variance to allow a structure to be located as close as one hundred fifty (150) feet from the Ordinary High Water (OHW) level of Lee Lake. The Clay County Land Development Code requires a setback of at least two hundred (200) feet from a structure to the OHW (Chap 5, Table 8-5-1). The affected property is Lot 7, Block 1, Timber Shores Subdivision in Section 9, Township 139, Range 44 (Egdon Twp.) and is in the Shoreland-Special Protection (S-SP) zoning district.

**On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.**

Ben Oleson offered photos and maps of the proposed undeveloped lot. The land is very steep as it rises from the lake. The applicants are seeking to build where there is a view of the lake. No comments or concerns were received by the public. Oleson indicated where the 200-foot setback would be located on the downslope of the land.

Greg Anderson and Amos Baer had viewed the property and concurred with the applicants.

The applicants were present for questions. Luke Hvidston approached the board. Hvidston said he has met with several developers and weighed several options before concluding the variance would be the least impacted result. He has also discussed the variance with his neighbor to the east, as they share the beach, and he had no concerns. The applicant plans to build a 2,500 square-foot family home with a basement. The basement will only have egress windows as possible and will not walk out to the lake. They have no intention of building a deck.

The Chair asked if anyone wanted to speak for or against the proposal.

**On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board closed the public hearing.**

**On motion by Greg Anderson, and seconded by Paul Krabbenhoft, and unanimously carried, the Board of Adjustment approved Luke and Christine Hvidston's request for a Variance to allow a structure to be located as close as one hundred fifty (150) feet from the Ordinary High Water (OHW) level of Lee Lake on property in Lot 7, Block 1, Timber Shores Subdivision in Section 9, Township 139, Range 44 (Eglon Twp.) for the following reasons:**

- 1) **The property owner proposes to use the property in a reasonable manner not permitted by an official control;**
- 2) **The plight of the landowner is due to circumstances unique to the property, not created by the landowner. Specifically, the steep terrain of the parcel makes it difficult to place the home elsewhere;**
- 3) **The variance will not alter the essential character of the locality.**

**OTHER BUSINESS:**

**Board of Adjustment Vacancy Update**

The Board of Adjustment applications were discussed. Either Ezra Baer or Laura Johnson would be positive additions to the Board. No recommendation will be forwarded to the County Board. Applicant, Ezra Baer was present. Baer stated he is Chairman on the Goose Prairie Township Board and has been an officer for 2½ years. Additionally, he believes a younger person would make a positive impact as they may hold a different perspective. Laura Johnson was unable to attend the meeting as she was in Georgia.

**On motion by Greg Anderson, and seconded by Paul Krabbenhoft, and unanimously carried, the meeting was adjourned at 6:55 p.m.**

By: \_\_\_\_\_  
Amos Baer, Chair