

**OFFICIAL PROCEEDINGS OF THE
RICE COUNTY BOARD OF ADJUSTMENT
Commissioner's Room / Government Services Building
Thursday, October 5, 2023 at 6:00 PM**

I. Call to Order

A. Roll Call

The meeting was called to order both in-person and electronically by Acting Chair Charlie Peters at 6:00 p.m.

Members present were: Charlie Peters, Garrett Johnson, Matt Purfeerst.
Members absent were: Michael Streiff, Julia Hogan

Staff present were: Director Julie Runkel (*via Zoom*), Zoning Administrator Trent McCorkell, Administrative Coordinator Anna Aguilar.

Others present: see Sign-in Sheet and Registrant List.

B. Motion by Garrett Johnson, seconded by Matt Purfeerst, Reading of the Notice

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

C. Motion by Garrett Johnson, seconded by Matt Purfeerst, Approval of the Agenda

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

D. Motion by Garrett Johnson, seconded by Matt Purfeerst, to approve the minutes of September 7, 2023.

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

II. New Business

1. Variance/Enberg - Section 3, Richland Township

Crystal and Jason Enberg have requested the following variance:

- A 49-ft variance from the 100-ft Road Right of Way (ROW) setback to allow for a home addition and an attached garage addition to be added to an existing home located 51-ft from a ROW.

The property is described as: Part of the NE1/4 of the SE1/4, Section 3, Richland Township, Rice County, Minnesota. PID#: 16.03.4.00.003. Property address is: 10911 Kenyon Blvd, Kenyon, MN 55946. The property is Zoned A, Agricultural.

Motion by Matt Purfeerst, seconded by Garrett Johnson, to approve the Variance request with the following conditions and findings for Jason Enberg. The property is located in Section 3 of Richland Township.

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

CONDITIONS OF APPROVAL – Enberg

1. The variance is to allow for home and attached garage additions onto an existing home which is located 51-ft from the Road Right of Way of Kenyon Blvd, subject to compliance with all other Ordinance regulations.
2. Approved site plan shall be followed.
3. A building permit shall be obtained and construction started within one year of the variance approval or the variance will be void.
4. Failure to comply with the terms of this variance may result in termination of the variance.

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA).

The BOA asked the applicant, Crystal & Jason Enberg (CE & JE), to come forward to add comments or

answer questions regarding the request.

CE - We have nothing to add.

Acting Chair Peters opened the public testimony portion of the item to the public and no one spoke.

Acting Chair Peters closed the public testimony portion of the item to the public.

Discussion:

CP - Seems straight forward, and it's not encroaching on the road any further.

MP - They are replacing what is already there. It is going to improve the property and not affect anything.

GJ - The house is existing and going to be the closest part.

MP - I will motion to approve.

GJ - I will second.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance are met by this proposal:

- *Proposed use is allowed in the property's zoning district;*
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan;*
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance;*
- *The request stems from circumstances unique to the property, not one created by the landowner;*
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties;*
- *This is the minimum variance necessary to afford relief;*
- *Adequate sewage treatment and water capabilities can be provided;*
- *The variance would have no significant impact on public health or safety; and*
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district*

The findings were read by Purfeerst with the conditions as stated above and with the following additions by staff:

TM: For finding #3 - the addition doesn't get any closer, #4 - It is an existing home that has been there for many years that they are adding on to, #5 - There are many homes nearby that are similarly situated, some being closer than this is, and for finding #6 - They are not getting any closer to the roadway.

Motion made, seconded, and approved unanimously.

2. **Variance/Pillar - Section 23, Richland Township**

Jake Pillar, on behalf of landowner Pillar Properties LLC, has requested the following variance:

- A 3-ft variance from the 100-ft Road Right of Way (ROW) setback to allow for maintenance/repair to an existing home located 97-ft from the ROW to exceed 50% of the home assessed value.

The property is described as: Part of the SE1/4 of the SE1/4, Section 23, Richland Township, Rice County, Minnesota. PID#: 16.23.4.75.001. Property address is: 24780 Lamb Ave, Kenyon, MN 55946. The property is Zoned A, Agricultural.

Motion by Garrett Johnson, seconded by Matt Purfeerst, to approve the Variance request with the following conditions and findings for Jake Pillar. The property is located in Section 23 of Richland Township.

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

CONDITIONS OF APPROVAL – Pillar

1. The variance is to allow for the existing interior and exterior work that exceeded 50% of the home value with the home being located 97-ft from the Road Right of Way of Lamb Ave,

subject to compliance with all other Ordinance regulations.

2. Approved site plan shall be followed.
3. A building permit shall be obtained and all required inspections completed within one year of the variance approval or the variance will be void.
4. Failure to comply with the terms of this variance may result in termination of the variance.

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA).

The BOA asked the applicant, Jake Piller (JP), to come forward to add comments or answer questions regarding the request.

JP - I have nothing to add. It is pretty straight forward.

Acting Chair Peters opened the public testimony portion of the item to the public and no one spoke.

Acting Chair Peters closed the public testimony portion of the item to the public.

Discussion:

CP - It looks pretty straight forward. The 50% rule is because it is a non-conforming lot?

TM - Yes. If it was 3ft more, they wouldn't need the variance.

MP - It is improving the property. I drove by it before and it looked pretty bad. It is an improvement to the area.

GJ - I will motion to approve.

MP - I will second.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance are met by this proposal:

- *Proposed use is allowed in the property's zoning district;*
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan;*
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance;*
- *The request stems from circumstances unique to the property, not one created by the landowner;*
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties;*
- *This is the minimum variance necessary to afford relief;*
- *Adequate sewage treatment and water capabilities can be provided;*
- *The variance would have no significant impact on public health or safety; and*
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district*

The findings were read by Johnson with the conditions as stated above and with the following additions by staff:

TM: It is repairing and maintaining an existing home. The home was built many years ago, prior to any setback requirements. There are several similarly situated homes in the area. It is a very small variance amount with it being 3ft from the 100ft setback.

Motion made, seconded, and approved unanimously.

3. **Variance/Farmer - Section 21, Walcott Township**

Neriah Farmer has requested the following variance:

- A 45-ft variance from the 70-ft rear property line setback to allow for conversion of an existing shed, located 25-ft from the rear property line into an Accessory Dwelling Unit.

The property is described as: Part of the N1/2 of the NE1/4 of the NE1/4, Section 21, Walcott Township, Rice County, Minnesota. PID#: 15.21.1.00.002. Property address is: 3865 240th St E, Faribault, MN 55021. The property is Zoned A, Agricultural.

Motion by Matt Purfeerst, seconded by Garrett Johnson, to table the Variance request for Neriah Farmer until the November 2, 2023 Board of Adjustment meeting. The property is located in Section 21 of Walcott Township.

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA).
GJ - Is it because the use is changing that they need the variance? Since the shed is already existing.
TM - It is because they are converting it. A shed only requires a 20ft setback from the rear property line, where a dwelling requires 70ft, so if they are converting it to a home, they need a variance from the 70ft setback requirement.

MP - This is just for the ADU, not for removal of the shed or for the other shed that is proposed?

TM - Correct. This issue needs to be resolved before he can move forward with the other issues on the property.

The BOA asked the applicant, Neriah Farmer (NF), to come forward to add comments or answer questions regarding the request.

APPLICANT NOT PRESENT

Discussion:

MP - Motion to table this item to the end of the meeting to allow time for the applicant to come.

GJ - I will second.

APPLICANT STILL NOT PRESENT AT END OF MEETING

MP - I motion to table until the November 2, 2023 meeting.

GJ - I second.

Motion made, seconded, and approved unanimously.

4. **Variance/Elwood (Hyatop Webster LLC) - Section 9, Webster Township**

Todd Elwood, on behalf of landowner Hyatop Webster LLC, has requested the following variances:

- A 10-ft variance from the 10-ft side property line setbacks to allow for conversion of an existing commercial building, located 0-ft from the side property lines, into a single-family dwelling.
- A 20-ft variance from the 20-ft front property line setbacks to allow for conversion of an existing commercial building, located 0-ft from the front property line, into a single-family dwelling.

The property is described as: Part of the NW1/4 of the NE1/4, Section 9, Webster Township, Rice County, Minnesota. PID#: 02.09.1.25.013. Property address is: 4452 40th St W, Webster, MN 55088. The property is Zoned VMU, Village Mixed Use.

Motion by Matt Purfeerst, seconded by Garrett Johnson, to approve the Variance request with the following conditions and findings for Todd Elwood. The property is located in Section 9 of Webster Township.

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

CONDITIONS OF APPROVAL – Elwood (Hyatop Webster LLC)

1. The variance is to allow for the existing commercial building to be converted into a single-family dwelling, subject to compliance with all other Ordinance regulations.
2. Approved site plan shall be followed.
3. Variance shall be void if the building permit is not obtained and construction started within one year of the variance approval.

4. Failure to comply with the terms of this variance may result in termination of the Variance.

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA).
CP - Are there any other buildings in that row that are residents or apartments?

TM - Yes. The ordinance lays out if you have a business on the lower level, you can have apartments in the upper level. This is a single story structure, so the ordinance doesn't allow that without getting a variance.

The BOA asked the applicant, Todd Elwood (TE), to come forward to add comments or answer questions regarding the request.

TE - Directly west is the same type of structure where the wall joins up on the west side, the next structure is a single family home, between there and the post office building. There is a mix on that street.

MP - Is it going to be apartments or a single family?

TE - Just a single family. I am not allowed to make it into apartments with the way the village laws read.

Acting Chair Peters opened the public testimony portion of the item to the public and the following spoke:

Chuck Rud - *Webster Township* - I live close and I don't see any reason why they shouldn't be able to do this. Currently, it is only used as storage and this way they will get some use out of the building.

Acting Chair Peters closed the public testimony portion of the item to the public.

Discussion:

CP - They are old structures.

MP - You can't tear it down with the shared walls. I will motion to approve.

GJ - I will second.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance are met by this proposal:

- *Proposed use is allowed in the property's zoning district;*
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan;*
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance;*
- *The request stems from circumstances unique to the property, not one created by the landowner;*
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties;*
- *This is the minimum variance necessary to afford relief;*
- *Adequate sewage treatment and water capabilities can be provided;*
- *The variance would have no significant impact on public health or safety; and*
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district*

The findings were read by Purfeerst with the conditions as stated above and with the following additions by staff:

TM: It's a very old, existing building. The setback is only due to the change in use. There will be no change to how the building looks from the exterior and there is the same type of use right next door.

Motion made, seconded, and approved unanimously.

5. **Variance/Heiderscheit - Section 31, Forest Township**

Patrick Heiderscheit has requested the following variance:

- A 4% variance from the 18% slope grading limitation to allow for lot grading/home construction

on a slope of 22%.

The property is described as: Lot 13, Block 1 of Jen-Wayne Dells 1st Addition, Section 31, Forest Township, Rice County, Minnesota. PID#: 06.31.4.26.013. Property address is: 14574 Fairfax Way, Faribault, MN 55021. The property is Zoned RDS, Shoreland.

Motion by Garrett Johnson, seconded by Matt Purfeerst, to approve the Variance request with the following conditions and findings for Heiderscheit. The property is located in Section 31 of Forest Township.

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

CONDITIONS OF APPROVAL – Heiderscheit

1. The variance is to allow for grading and filling on the lot to allow for a single family home to be located in an area with an existing slope exceeding 18%, as shown on the applied for site plan, subject to all other ordinance requirements.
2. Variance shall be considered void if home construction is not commenced within one year of the variance approval.
3. Proper erosion control measures shall be utilized. All exposed soil areas shall be revegetated.
4. Onsite trees shall be preserved to the maximum extent practical.
5. Failure to comply with the terms of this variance may result in termination of the Variance.

Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA).

MP - That's where the proposed house is going, where the truck is located in the photo?

TM - No, the truck is on the roadway. The proposed home is to be located between the truck and where the photo is being taken, to show the grading.

The BOA asked the applicant, Patrick Heiderscheit (PH), to come forward to add comments or answer questions regarding the request.

PH (via Zoom) - We purchased this property in 2019, after the first variance was granted for the RV platform with the previous owner. We then had this variance previously approved in July of 2020, but then with the pandemic it came to a halt with supply chain issues. We have been working with builders in Rice County on a design. What we brought forward 3 years ago, we have scaled back. It will be a smaller home - 2300-2400sqft. We don't want to encroach on the lake, we are not asking for any other variances, just the grade so we can build. We intend to be a good neighbor and a good resident.

CP - You are aware of the 5 conditions?

PH - Yes.

Acting Chair Peters opened the public testimony portion of the item to the public and the following spoke:

Dave (DS) & Kathy Smith (KS) - *Fairfax Court* - We have the property next door to the South.

Question #1 - there are 5 conditions that went with the previous variance. We have no notification as to what those were. Does anyone have what they are?

TM displayed the conditions on the screen

DS - We are continually battling a water problem.

KS - These are the 5 conditions of approval?

CP - Yes.

KS - Is the current grading at 22% or 18%?

CP - The lot is at currently 22%, but since it is over 18% that is what stemmed the need for the variance.

KS - They want to leave it at 22%?

CP - To do anything on a lot over 18%, they need a variance. I would assume they plan to make a flat spot for the house.

KS - As you can see in the picture, the properties slope down from the road. We would like to know where the variance is going to be. Is the slope going to match ours or will it be a different slope?

MP - You would have to talk with the applicant more on that.

TM - Normally we do not go back-&-forth during public comment. You state your concern or questions

and the board discusses after.

KS - Ok, we want to know what the slope is going to be. The reason we want to know what the slope is going to be is if it is going to be higher or lower than our property. We bought this house 2 years ago before the previous variance was approved. We don't have a real big problem with the variance. We just want to address any potential drainage problems from the road, down to the cul-de-sac, down to our property and the other properties down there. This year there seems to be a drainage problem and we have called the City and the County to try and address it.

DS - We just want to make sure that we are not getting flooded on both sides. The sidewalk and some of the other features are starting to deteriorate from the water flowing through there. If you raise the other side, it is going to create a funnel. We want to avoid that.

KS - Drainage is our concern and we want to make sure the lots are of the same grade to avoid any further issues.

James Fischer - *Fairfax Way* - Again, I want to restate my stance on variances and zoning regulations and trying to stay within the regulations as written that are meant to protect our properties and their values. I appreciate PH for making an attempt to conform and try to work with the site. It is a difficult site to work with. My biggest concern along with the drainage and ensuring that erosion control is in place; there are 11 of us that access our properties via that cul-de-sac. I ask that board that we discontinue the use of public roadways and right-of-ways for construction equipment and materials. This is an ongoing problem out in the rural areas. We use the public right-of-ways, 11 of us that use it for access, it is a safety concern. Snow removal and nails have been an issue in the past. I would appreciate some enforcement on that.

Rebecca Carlson - *Fairfax Way* - co-owner of the lot to the north, lot 12. Erosion control needs to be in place before the contractor breaks ground because that is not always done. Putting construction material in the public right-of-way should not happen. It is a tough site, but they are going to have to figure out another place to put equipment and material besides in our ditches. that doesn't happen in town, it should not happen in the township or the county. Planning & Zoning and the contractor should check the survey setbacks. They have done a great job at putting the setbacks in and modifying their plans. I thank them for that. Please check the survey. There is a new building that is over the property line. I don't think planning & zoning is following up stuff like this. I don't know if the driveway will be concrete or gravel or what, or if it has to have a setback from the property line. There are two properties that access the cul-de-sac to the north. There is one driveway down the middle of them but that's a handshake agreement. There could be three driveways there, so we need to make sure the ditches and the water doesn't affect the neighboring properties. You need to consider the runoff of the hard surface. There is no septic system location listed. Same thing with the variances, it is affecting property values if people are allowed to build over the line. Please check as you go along instead of trusting the contractor.

Acting Chair Peters closed the public testimony portion of the item to the public.

Discussion:

CP - I am on the Forest Township board. We discussed at our meeting last night about Fairfax Court. There are a couple of culverts and ditches we are looking at. We have had issues with people parking stuff in the cul-de-sac to where we are unable to snow plow it. We are planning on going out to look at the ditches and culverts this week to try and clear some of the water issues. This is a difficult lot which is probably why it is the last lot to be built on up there.

MP - It would be nice to speak with the applicant regarding grading and slopes. TM was septic identified for this site?

TM - There was septic identified. I do not see it on this site plan, but they did identify a septic location for this site. As part of the building permit, they have to obtain a septic permit as well.

The Chair called the applicant back on to speak.

PH - I would anticipate our lot being at or below the lot to the south. A concern of our engineer, who drafted this plan for us, was the volume of water that will come down onto our property. It will depend on the slope of the driveway, but we would run it down either the north or south property line. We will make sure we are not encroaching on anyone else. Currently, there are water runs on the south of our property, that we plan on addressing. That is what we are looking to honor would be to run it down in the setback area, down to the lake. We do not plan on being higher than the property to the south. We had previously asked for a driveway easement with the driveways to the north, and those property

owners declined. We were hoping to not have to build our driveway parallel to those. We were hoping to go down the road and turn left, but that idea was declined. Like we said earlier, we full intend on being a good neighbor. We want good relationships with our neighbors. We will contain the water on our property and get it to the lake. If there is an issue, we will correct it if it is truly the result of our property, but there is a large amount of water that comes to our lot from above us.

CP - With concerns about piling building materials on the roadway?

PH - We will communicate with the builders that there is to be no equipment left. I believe before there was a motorhome, we do not have a motorhome. But we will make sure to speak with the builders to ensure they are not encroaching on or frustrating neighbors.

CP - With erosion control needs to be in place before, during and after.

PH - Yes.

MP - One of the conditions covers erosion control, #5.

GJ - It is tough due to the way the lot is. By building on the lot, it will still take on the same amount of water. He is not pushing water to the neighboring properties. All of the properties are taking on water enroute to the lake and he will divert his appropriately.

MP - I like the fact that he was very diligent on staying within the setbacks.

CP - Sounds like he has done his homework. Hopefully, the grading will blend well with the lots to the north and south.

GJ - Did any if the other homes in the area have variances or problems with slopes and grading?

TM - Along the east side of the lake we have had several that have needed variances. Most of the lots were built on prior to the current restrictions.

GJ - I move to approve this item.

MP - I will second.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance are met by this proposal:

- *Proposed use is allowed in the property's zoning district;*
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan;*
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance;*
- *The request stems from circumstances unique to the property, not one created by the landowner;*
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties;*
- *This is the minimum variance necessary to afford relief;*
- *Adequate sewage treatment and water capabilities can be provided;*
- *The variance would have no significant impact on public health or safety; and*
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district*

The findings were read by Johnson with the conditions as stated above and with the following additions by staff:

TM: No additional comments from Staff.

Motion made, seconded, and approved unanimously.

6. **Variance/Ludvigson (Cannoli LLC) - Section 26, Wheatland Township**

Kelly Ludvigson, on behalf of landowner Cannoli LLC, has requested the following variances:

- A 88-ft variance from the 100-ft Road Right of Way (ROW)/front property line setback to allow for a deck addition onto an existing home located 12-ft from the ROW/Front property line.
- A 11-ft variance from the 20-ft side property line setback to allow for a home deck addition to be located 9-ft from a side property line.
- A 51-ft variance from the 70-ft ROW setback to allow for garage deck addition to be located 19-ft from the ROW.
- A 17-ft variance from the 20-ft side property line setback to allow for a garage deck addition to be located 3-ft from a side property line.

- A 10% variance from the 25% lot impervious surface limitation to allow for additions to a lot resulting in a 35% lot impervious surface coverage.

The property is described as: Part of the NE1/4 of the NE1/4, Section 26, Wheatland Township, Rice County, Minnesota. PID#: 01.26.1.01.105. Property address is: 8150 70th St W, Lonsdale, MN 55046. The property is Zoned UR, Urban Reserve.

Motion by Charlie Peters, seconded by Garrett Johnson, to deny the garage deck (3rd & 4th) variance requests for Kelly Ludvigson. The property is located in Section 26 of Wheatland Township.

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

Motion by Matt Purfeerst, seconded by Garrett Johnson, to approve the house decks and impervious surface (1st, 2nd, & 5th) variance requests with the following conditions and findings for Kelly Ludvigson. The property is located in Section 26 of Wheatland Township.

RESULT: Approved, AYES: Charlie Peters, Garrett Johnson, Matt Purfeerst, NAYS: None

CONDITIONS OF APPROVAL – Ludvigson (Cannoli LLC)

1. An 88-ft variance from the road right of way setback requirements and an 11-ft variance from the west property line setback is to allow for an after the fact home deck addition on the west and south sides of the existing home, subject to compliance with all other Ordinance regulations.
2. A 10% lot impervious surface variance is to allow for after the fact improvements to the lot resulting in a 35% lot impervious surface percentage, subject to compliance with all other Ordinance regulations.
3. Approved site plan, excluding the garage deck, shall be followed.
4. A septic system compliance inspection shall be submitted to Rice County Environmental Services prior to issuance of any building permits or before December 1, 2023 if permits have not been obtained before that time. If the onsite septic system is found to be not in compliance with County regulations a compliant system shall be installed by no later than August 1st, 2024.
5. A building permit shall be obtained by December 1, 2023 for the deck construction and final building inspections/approval of the decks completed within 6-months of the building permit approval or the variance will be void and all unpermitted construction shall be removed.
6. Failure to comply with the terms of this variance may result in termination of the variance.

----- Hearing Minutes:

Zoning Administrator Trent McCorkell (TM) presented the request to the Board of Adjustment (BOA).

TM - Comments from the City of Lonsdale - most are after-the-fact variance requests.

MP - What we are deciding on is the decks, not the fence?

TM - Correct, the request is for the deck additions to both the house and garage.

CP - And the impervious surface?

TM - Yes.

The BOA asked the applicant, Kelly Ludvigson (KL), to come forward to add comments or answer questions regarding the request.

KL - As you can see, the property was not good at one point. I am trying to make it nicer, especially for the neighbors, since it was sitting vacant for so long. We did talk to the City of Lonsdale about the fence. We set it back further from the road due to plowing issues. The City said that was fine. We also did talk to them about the driveway in the back as well, which they do have that signed form.

MP - I have a question about the second story garage deck. What is the purpose or planned use for that?

KL - It is mainly to access the 2nd story and for patio furniture. I was planning to convert it into a game room for my kids.

Acting Chair Peters opened the public testimony portion of the item to the public and the following spoke:

Adam Hollinger - I live directly west. The construction has continued. There are railings up now. I also

spoke with Joe and Gary at the City and they said the 2nd driveway was not authorized. They said they called the Township and the County, but no one ever got back to them. It was just poured. It is definitely an eye sore and is bringing down property values in our neighborhood. I don't have a problem with the fence. It is 79" from the City roadway, which is 6.5ft. I don't know what the setback is, but the neighbors next to us have kids and have concerns with people pulling out too fast and possibly hitting a kid.

Acting Chair Peters closed the public testimony portion of the item to the public.

Discussion:

CP - I do know they spoke to the City about the fence and backed it up. These are after-the-fact and they are decks. They are real close to the property lines. We also have a concern from the neighbor about water issues.

GJ - How come the property was not annexed into the City?

TM - I don't have the whole history other than this house was there before this development happened. Normally, the City only annexes properties that request to be annexed, so this property must have been a separate piece to the development around it when it was annexed in.

MP - I have a concern with the 2nd story deck. That's a privacy issue from the neighbors standpoint. If they are going to entertain up there, they are able to look down on the neighboring property. A 3ft setback property line setback for a 2nd story deck is concerning to me. Simple access is one thing, but with the expansion of the area to set lawn furniture up there, concerns me. As a neighbor, I would not like that.

CP - I agree. It looks like there was also a doorway added by the small side deck addition to the house based on the assessors' photos. The impervious surface I can see as it is a small nonconforming lot. I am not in favor of the first four variance requests. I don't have an issue with the impervious surface one.

MP - The one on the side of the house, I am lukewarm on as it is a single level attached to the main level of the house if they want to grill there or whatever, but I have a concern with the 2nd story one.

GJ - They are after-the-fact.

CP - The consensus then is that the little one on the house, you almost need an access there for that entry, but I would motion to deny the 3rd and 4th variance requests that coincide with the garage deck.

MP - Is there a way to modify the variance requests so they can have what they had before?

TM - The ordinance allows access as the minimal amount necessary to access the structure; typically a 4-6ft size. We would be able to permit that size without needing a variance. It would be done as a replacement to what was there before.

GJ - I would second the denial of the garage deck requests.

CP clarified the denied variance requests.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance are met by this proposal:

- *Proposed use is allowed in the property's zoning district; **No, not without a variance. It encroaches too much on the neighbors.***
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan; **No, it is not consistent with the surrounding lots in the neighborhood.***
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance; **No, the plan is to entertain on that 2nd story deck.***
- *The request stems from circumstances unique to the property, not one created by the landowner; **YES***
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties; **NO, it encroaches on neighbors and is not consistent with other decks in the area and does not meet setbacks from the property line.***
- *This is the minimum variance necessary to afford relief; **NO, they could go with the minimum needed for access.***
- *Adequate sewage treatment and water capabilities can be provided; **Yes***
- *The variance would have no significant impact on public health or safety; and **YES***
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district **NO.***

The findings were read by Peters with the conditions as stated above and with the following additions by staff:

TM: There are no similar situations nearby for the garage deck. An access to the 2nd story of the garage can be constructed without a variance. It is not the minimum amount proposed at this time. Not compatible with the neighboring properties and the requirements.

Motion made, seconded, and approved unanimously to deny 3rd & 4th variance requests.

GJ - The deck on the house is tough. It is probably one that would have been granted if it came to us before.

MP - It looks to provide access to the side of the home and is a further setback from the property line for this one.

CP - It is hidden more from the neighbors.

MP - I will motion to approve the 1st, 2nd, and 5th variance requests.

GJ - I will second.

The Board of Adjustment reviewed the variance application and found that the applicant has established that all of the following criteria from Section 503 of the Zoning Ordinance are met by this proposal:

- *Proposed use is allowed in the property's zoning district;*
- *Request is in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan;*
- *Applicant proposes to use the property in a reasonable manner not permitted by the Ordinance;*
- *The request stems from circumstances unique to the property, not one created by the landowner;*
- *If granted, this variance will not alter the essential character of the locality nor have any significant impact on the surrounding properties;*
- *This is the minimum variance necessary to afford relief;*
- *Adequate sewage treatment and water capabilities can be provided;*
- *The variance would have no significant impact on public health or safety; and*
- *Special privileges are not conferred to the applicant that are denied owner of other lands, structures, or buildings in the same district*

The findings were read by Purfeerst with the conditions as stated above and with the following additions by staff:

TM: To clarify on the conditions for approval from the report, it would eliminate condition #2 and amend #4 (*new condition #3*) to add "without the garage deck". So they need to follow the site plan without the garage deck.

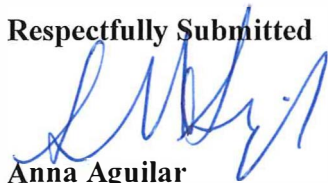
CP - So there will be 6 conditions with removing conditions #2 and amending condition #3 to exclude the garage deck.

Motion made, seconded, and approved unanimously.

III. Adjournment

Hearing no other items before the BOA, a motion was made by Johnson, second by Purfeerst, to adjourn the meeting at 7:08 pm. Motion carried 3-0.

Respectfully Submitted


Anna Aguilar
Administrative Coordinator

Board of Adjustment Acting Chair


Charlie Peters