

**OFFICIAL PROCEEDINGS OF THE
RICE COUNTY BOARD OF ADJUSTMENT
Commissioner's Room / Government Services Building
Thursday, October 10, 2024 at 6:00 PM**

I. Call to Order

A. Roll Call

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

Members present were: Charlie Peters, Julia Hogan, Matt Purfeerst, Kenneth Engen.

Members absent were: Garrett Johnson

Staff present were: Director Julie Runkel (via ZOOM), Zoning Administrator Trent McCorkell, Senior Planner Jeremy Edwards, Administrative Coordinator Anna Aguilar, Clerk MacKenzie Klett.

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

B. Motion by Charlie Peters, seconded by Matt Purfeerst, Reading of the Notice

RESULT: Approved, AYES: Charlie Peters, Julia Hogan, Matt Purfeerst, Ken Engen, NAYS: None

C. Motion by Matt Purfeerst, seconded by Ken Engen, Approval of the Agenda

RESULT: Approved, AYES: Charlie Peters, Julia Hogan, Matt Purfeerst, Ken Engen, NAYS: None

D. Motion by Ken Engen, seconded by Charlie Peters, to approve the minutes of September 5, 2024

RESULT: Approved, AYES: Charlie Peters, Julia Hogan, Matt Purfeerst, Ken Engen, NAYS: None

II. New Business

1. Parker/Variance - Section 21, Wells Township

Dennis Parker, on behalf of landowners Dennis and Becky Parker Trust and landowners Michael and Kayleen Vieburg, has requested the following variance:

- A variance from the 18% slope grading limitation to allow grading and filling of current failed slopes between 60-90%.

The properties are described as: Lots 5 and 6, Block 1, Roberds Shores Subdivision, in Section 21, Wells Township, Rice County, Minnesota. PID#s 10.21.4.26.006 & 10.21.4.26.007. The property addresses are 4345 & 4355 Roberds Lake Trail, Faribault, MN 55021. The properties are Zoned GDS, General Development Shoreland.

Motion by Matt Purfeerst, seconded by Ken Engen, to approve the Variance request with the following conditions and findings for Dennis Parker, on behalf of landowners Dennis and Becky Parker Trust and landowners Michael and Kayleen Vieburg. The property is located in Section 21 of Wells Township.

RESULT: Approved, AYES: Charlie Peters, Julia Hogan, Matt Purfeerst, Ken Engen, NAYS: None

CONDITIONS OF APPROVAL – Parker

1. The Variance is to allow for repair and stabilization of existing failed steep slopes/bluff along the shoreline area of both lots, subject to compliance with all other regulations and conditions.
2. Prior to issuance of permits for the repair/stabilization, final plans signed by a licensed engineer shall be created and submitted to Rice County.
3. The application site plan shall be followed except those modifications required by the engineer or Rice County may be included.
4. Variance shall be void if permit for the work is not obtained within one year of the variance approval.
5. The restored/stabilized sloped area shall be revegetated to the maximum extent possible. The majority of the revegetation shall be of species native to Minnesota.

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).

The BOA asked the applicant, Dennis Parker (DP), to come forward to add comments or answer questions regarding the request.

DP - My neighbor and I are working together on this due to the heavy rain in June. Both of us have been working on maintaining our slopes. You saw the rock retaining walls we had and the stairs. I had also planted vegetation to help stabilize it. But this was different. It was not the tow from the lake causing the failure. It was that the whole thing sluffed down and took everything with it. I had 7 terraces of stone retaining walls and it just dropped it all down, so complete failure of the bank. There were 60% slopes before that were vegetated and holding. I think a lot of this was accentuated from the tornado a few years ago, we both lost major big oak trees on that hillside. If that started some of the undercutting, we don't know but the rain just took it down. At this time we are in the process of working with engineering services and seeing what our options are. We know we are going to have a slope greater than 18%. It may be a combination of some walls, we are looking at the idea of compacting and refilling it and then seeding it with native plant material. But we may get into an option where we need to do some types of walls along there.

JH - Are you aware of the 6 conditions?

DP- Yes.

JH - Are you able to comply with all 6?

DP - Well we plan for sure to get to it within a year and if not I know we have to ask for an extension. We are doing it with an engineer. We know that with the amount of money we have involved, we have to get this done right and that will probably involve some soil borings. We will definitely revegetate it. And when we actually apply for the permit there may be some other stipulations involved with the permit. We have been working with the county, we have had SWCD out there and we will be working with the DNR, so we are doing the right thing.

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

Chair Hogan closed the public testimony portion of the item to the public.

Discussion:

CP - They have got to do something.

KE - Exactly.

CP - They have engineers involved and SWCD and DNR which is good.

JH - They are working with all parties that need to be talked to before any work gets done.

MP - I motion to approve.

KE - I second, with the 6 conditions.

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:

- *The variance request in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan? **Yes***
- *The proposed use is an allowed use in the zoning district in which the property is located? **Yes***
- *The proposed sewage treatment system is or can be made compliant with the Rice County Sewage and Wastewater Treatment Ordinance? **Yes***
- *The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance? **Yes, they are trying to repair the lake bank***
- *The plight of the landowner is due to circumstances unique to the property not created by the*

landowner? *Yes, they mentioned storm damage and a steep existing slope*

- *The variance, if granted, will not alter the essential character of the locality? Yes*
- *The applicant has established that there are practical difficulties in complying with the Zoning Ordinance, not constituting economic considerations alone? Yes*

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

TM: From your discussion, pointing out that it was caused by a major rain event happening on the site. The slope appeared to be very well vegetated prior to the failure, so it wasn't anything that they appeared to cause.

Motion made, seconded, and approved unanimously.

2. **Oertli/Variance - Section 31, Forest Township**

William Oertli, on behalf of landowner Lake Mazaska North Shore Coop, has requested the following variance:

- A variance from the limit of three detached sheds on a single riparian property to allow for the addition of a 200-sqft storage shed.

The property is described as: Part of Government Lots 1 and 2 in the N1/2 of Section 31, Forest Township, Rice County, Minnesota. PID#s 06.31.2.25.001 & 06.31.2.25.917. Property address is: 6551 143rd St W #16, Lonsdale, MN 55046. The property is Zoned RDS, Recreational Development Shoreland.

Motion by Charlie Peters, seconded by Matt Purfeerst, to approve the Variance request with the following conditions and findings for William Oertli, on behalf of landowner Lake Mazaska North Shore Coop. The property is located in Section 31 of Forest Township.

RESULT: Approved, AYES: Charlie Peters, Julia Hogan, Matt Purfeerst, Ken Engen, NAYS: None

CONDITIONS OF APPROVAL – Oertli

1. The variance is to allow for a 10-ft by 20-ft accessory storage shed with a 14-ft peak height, subject to compliance with all other Ordinance regulations.
2. Approved site plan shall be followed.
3. A compliance/integrity inspection for the cabin 16 septic tank shall be completed prior to issuance of any structure permits for the shed. If the tank is non-compliant a compliant tank shall be installed within one year of the variance approval.
4. Proper permits shall be obtained prior to any onsite construction.
5. Variance shall be void if a permit for the proposed building is not obtained within one year of the variance approval.
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).

MP - I understand it is all one large parcel with a bunch of cabins but why do we have a limitation of 3? Why does this property need the variance?

TM - Any single parcel in the shoreland district is allowed a cabin or home and up to 3 detached buildings. So because this is a single parcel and not subdivided up into individual pieces they have that limitation. The limitation applies all over, they are just already over the 3 out buildings they are allowed.

KE - Because of the way it is being used?

TM - To be able to split the property up, the biggest issue with that in the past has been a road. They would have to try and plat a road through there. All of the existing cabins are closer to the lake and the

existing shared driveway than allowed already so it would be very difficult.

JH - The applicant is aware they need to follow the wetland setback?

TM - I believe they are, that would certainly be a good question for them.

The BOA asked the applicant, William Oertli (WO), to come forward to add comments or answer questions regarding the request.

WO - We just want to put up a shed out there. We used to have two sheds there, 8x8's, but they were like 50 years old and deteriorated badly, so during COVID we had them removed. We weren't aware of all the zoning requirements and everything else. So we are finally getting around to taking care of it. And with the variance, I was part of those who helped form the association because there was already 50 cabins on the parcel. But otherwise I think that sums it up pretty well.

JH - The 2 previous sheds, were they in that same exact location?

WO - Yes, they were 8x8's. And really crappy.

JH - You are aware that it needs to be setback, TM was it 20 feet?

TM - 20 feet from wetland.

JH - 20 feet from wetland, so it needs to be setback far enough from that wetland area that is shown.

WO - Yeah, we are figuring 30 feet minimum.

JH - Okay, just making sure you are aware.

WO - And I think we are like 200 feet from the lake.

JH - Are you aware of the 6 conditions?

WO - Yes.

MP - Is the shed going to have footings?

WO - No, no footings.

MP - Ok, no footings so just a concrete pad and built on top

WO - Not even a concrete pad.

MP - Just dirt floor, ok.

WO - It's just to store recreational stuff, like a lawnmower.

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

Chair Hogan closed the public testimony portion of the item to the public.

Discussion:

CP - He took two down and maybe at that time he could have come in and done a replacement. I looked at the pictures, and he doesn't have sheds like some of the others, so I don't see an issue with it.

JH - As long as it's far enough away from wetland area.

KE - And the road.

MP - And it is not blocking the view of the lake for anyone else.

CP - I motion for approval with the 6 conditions.

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:

- *The variance request in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan? **Yes***
- *The proposed use is an allowed use in the zoning district in which the property is located? **Yes***
- *The proposed sewage treatment system is or can be made compliant with the Rice County Sewage and Wastewater Treatment Ordinance? **Yes***
- *The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance? **Yes***
- *The plight of the landowner is due to circumstances unique to the property not created by the landowner? **Yes***

- *The variance, if granted, will not alter the essential character of the locality?* **Yes**
- *The applicant has established that there are practical difficulties in complying with the Zoning Ordinance, not constituting economic considerations alone?* **Yes**

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

TM: From your discussion, pointing out that it is a small storage shed on a very large parcel. The applicants' cabin doesn't have other storage buildings, and they did previously have structures that were removed and not treated as replacements.

Motion made, seconded, and approved unanimously.

3. **Kappelmann/Variance - Section 3 and 4, Warsaw Township**

Jacob Gergen, on behalf of landowner Ken Kappelmann, has requested the following variances:

- A 49-ft variance from the 50-ft road right of way setback to allow for a replacement home to be attached to an existing garage located 1-ft from the Road Right of Way of County Road 12.
- A 60-ft variance from the 75-ft lake setback to allow for a replacement home to be located 15-ft from Cannon Lake.

The property is described as: Part of Government Lot 1 in Section 3 and Part of Government Lot 1 in Section 4, Warsaw Township, Rice County, Minnesota. PID# 14.03.2.25.002. Property address is 3990 Cannon Lake Trail, Faribault, MN 55021. The property is Zoned GDS, General Development Shoreland.

Motion by Charlie Peters, seconded by Ken Engen, to approve the Variance request with the following conditions and findings for Jacob Gergen, on behalf of landowner Ken Kappelmann. The property is located in Section 3 & 4 of Warsaw Township.

RESULT: Approved, AYES: Charlie Peters, Julia Hogan, Matt Purfeerst, Ken Engen, NAYS: None

CONDITIONS OF APPROVAL – Kappelmann

1. The variance is to allow for a 34-ft by 52-ft house to be attached to an existing garage located 1-ft from the Road Right of Way and 15-ft from Cannon Lake, subject to compliance with all other Ordinance regulations.
2. Approved site plan shall be followed.
3. At least 100-ft of the lot's shoreline within 10-ft landward of the water shall be established and maintained in a natural condition as an un-mowed native vegetative lake buffer.
4. Tree removal must be limited to the minimum amount necessary for the construction and maintenance of the new building.
5. A certificate of survey to verify the as built lowest floor elevation of the home is meeting the 982.8-ft elevation and that land around the building is meeting floodplain elevation requirements.
6. Variance shall be void if a building permit for the proposed house is not obtained within one year of the variance approval.
7. 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 - How much in elevation will they have to bring it up?

TM - It is 2-3 feet, I don't have the exact amount. You will see the garage in the pictures, that is brought up to the elevation requirements.

JH - Would it be at an angle?

TM - It wasn't at the same angle as the garage, there is kind of a V-shape in between them that'll be a filled in connection. The actual closest point of this attached structure is the garage. So the house is actually still further away than the variance request states, but the garage is closest to the road.

The BOA asked the applicant, Ken Kappelman (KK), to come forward to add comments or answer questions regarding the request.

KK - It's pretty straight forward, during June the house had about 6-18 inches of water throughout the whole house. Water came up from the bottom, it didn't come up over the wall. There is a crawl space underneath. What happened when the water came up that way, it saturated all the beams. The house was level and it dropped. It took up to about 18-20 inches in depth in some places, if you put a level there is about that much drop now. Had an adjuster come out and he said the house isn't structurally sound, so it's not repairable. We did put the garage in like was talked about previously and we are looking to just replace the house and build it the right way like it should be. We will get it above floodplain and connect it to the garage rather than have that space between it. I think it adds value for everybody, the city, as well as the county, and us. We will keep the same footprint, we are not expanding anything there or going against another variance in that aspect. The problem is it is such a narrow lot we will always be too close to the water and too close to the road.

JH - Are you aware of the 7 conditions and are you able to comply with those?

KK - Yes, we have no problem with any of the conditions.

CP - The total square footage is going to basically be the same?

KK - Yes, the footprint is essentially going to be the same. I think we have to make it, and my builder is online, but I think we have to make it a little bit narrower than the current house because we want to keep it within that garage. The garage will be the closest to the road and the water. And yes, it will be at a slightly different angle. It's a soft "V" if you will.

MP - My question with the construction process, are you going to be able to keep the construction traffic off the road? Because it is a busy road.

KK - We did okay with the garage, it is tough. It is even tough for me to back boats in there but it is manageable. The nice thing is it's a long lot so a lot of the stuff can park off to the side until it is actually needed. But there probably will be times that one of the lanes might be closed down. The fortunate thing is it doesn't look like we will have to take down any trees. It's just really a matter of working around that construction piece, I don't foresee it being a problem but we haven't looked at it that closely.

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

Chair Hogan closed the public testimony portion of the item to the public.

Discussion:

KE - It looks pretty straight forward and they are raising it up to the same level as the garage. The garage was granted a variance already to be closer to the road.

JH - It is a tough lot, that's for sure. And with condition 5, I feel more comfortable with the replacement of the house, knowing it will be up higher. You can't control the size of the lot anymore because it has been existing for a long time.

CP - He is not going to encroach on the road any more, the garage is what did it.

MP - And he is keeping the same footprint. If he was increasing the house size or going two-stories, I would have more concerns about it. But he is keeping the same footprint as the existing house.

Hopefully it solves the problem of flooding.

JH invites applicant back up to speaker stand.

KK - We are looking at potentially going to a second story. I did ask about it ahead of time and I said nothing is defined I don't have the plans yet, we just have the footprint. But we would like to put a second story on. We are not getting rid of anyone's views because there is a lake on both sides, nobody is going to see a thing one way or another. So I just want to make sure that is clear.

JH - Them adding a second story is not going to change the location of the foundation footprint.

CP - And it still meets height requirement on lake shore properties.

JH - That is true.

CP - And as he stated there is a lake on both sides.

JH - I am sure that will be discussed with the building permit portion of it.

CP - I motion for approval with the 7 conditions.
KE - I 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:

- *The variance request in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan? **Yes***
- *The proposed use is an allowed use in the zoning district in which the property is located? **Yes***
- *The proposed sewage treatment system is or can be made compliant with the Rice County Sewage and Wastewater Treatment Ordinance? **Yes***
- *The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance? **Yes***
- *The plight of the landowner is due to circumstances unique to the property not created by the landowner? **Yes***
- *The variance, if granted, will not alter the essential character of the locality? **Yes***
- *The applicant has established that there are practical difficulties in complying with the Zoning Ordinance, not constituting economic considerations alone? **Yes***

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

TM: Most of these are ones that you have discussed, but pointing out that the existing house was damaged due to flooding recently. The closest point of the proposed attached structure is actually the existing garage, so the home is actually proposed further back. It is a similar size, it will be taller but is meeting height limit requirements. And the lot shape creates overlapping setbacks which eliminates any options to build without a variance to those setbacks.

Motion made, seconded, and approved unanimously.

4. **Graves/Variance - Section 4, Warsaw Township**

Kris and John Graves have requested the following variance:

- A 19,624-sqft variance from the 40,000-sqft lot size requirement to allow for a 20,376-sqft lot to be considered a buildable lot.

The property is described as: Lot 2, Block 1, Lakeside Estates in Section 4, Warsaw Township, Rice County, Minnesota. PID# 14.04.3.53.002. The property is Zoned GDS, General Development Shoreland.

Motion by Charlie Peters, seconded by Ken Engen, to Deny the Variance request with the following findings for Kris and John Graves. The property is located in Section 4 of Warsaw Township.

RESULT: Approved, AYES: Charlie Peters, Julia Hogan, Matt Purfeerst, Ken Engen, NAYS: None

Hearing Minutes:

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

JH - These lots were platted prior to updated requirements for lots?

TM - Yes.

MP - When did those ordinances change?

TM - The ordinances changed many different times. The lot combination requirements came in with the DNR shoreland requirements which would've been the late 80's early 90's. And there have been

versions of that in any ordinance adopted since that time.

The BOA asked the authorized agent, Robert Kouba (RK), to come forward to add comments or answer questions regarding the request.

RK - I want to begin by saying my clients and our request are not attempting to circumvent the DNR by any means. I believe the DNR is not correct about the combination ordinance. I am not here to argue that with you today to the extent that Madam chair and the board have concerns about that my clients would be open to a condition that we work with the DNR to get approval from them. Ultimately, I think that this variance request comes down to one simple thing, we are asking the board to allow a home to be built on a lot that is very similar to almost every other lot in the area. Specifically, in that area there are 17 lots that are the same size or smaller than the lot in question. There are 12 lots that are larger. None of them reach the 40,000 sqft requirement, most of them are within approximately 5,000 sqft of this particular lot. Diving into the specific requirements under a variance, is this in harmony with the shoreland district and the variance? I would argue that it is, again there are multiple homes in that Echo Ct area and surrounding expanding area that have lots of similar size with homes on them. In terms of one of the things the staff report noted with the two locations for the septic system, in conjunction with the sketch house plans that were submitted, the sketch house plans submitted by my clients were just a rough drawing. The whole point of this lot since they purchased it was to sell the lot. Whoever wants to build a home on it would obviously need to come before this board to get the building permit. The sketch for lack of a better phrase of a home was just to demonstrate it is possible to build a structure, a home on that lot that fits within those setbacks. Regarding the ordinances requiring combination since the 80's, I believe there have been a number of houses that have been built. I believe one as recently as 2016 in this particular area that at one time had been owned right next to each other and was not combined. We are merely asking that this board allow this lot to be built like every other one. Including this lot, I think there are 3 in this particular location that are not built on. I believe 1 or 2 of the ones not built on are outlots and again most of the stuff is in the material. I am sure you guys have a number of questions, so I will stop there.

JH - Were the property owners aware? I know I read that a year after they purchased their property they purchased the neighboring property. Is that correct?

RK - Correct.

JH - Did they speak with the county prior to purchasing it about the potential of building on it in the future?

RK - My understanding is that when the vacant lot was purchased there were questions about setback requirements for building and other things required for building. And to my knowledge, no, my clients were never informed that this lot was not buildable. This was during the discussions about purchasing the lot. Again, part of my clients' decision about purchasing this lot was to be able to sell it as a lot that is buildable on the shore. I also believe that in the marketing materials when they did purchase it, it was marketed as a buildable lot.

JH - Unfortunately, a lot of the time real estate agents aren't always as aware with some of that. I highly recommend contacting the county when it comes to purchasing land to make sure it is buildable.

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

Damon Sonnek - *Echo Ct* - I have been living in the neighborhood for 12 years. This is, I believe, the only remaining lot that hasn't been built on. Other houses have been built since I have been there. If it wasn't built with a house and stayed as it was to be a shed or something, it wouldn't conform with all the other houses and lots in the area. I am for it being converted to a buildable lot.

Robert Lueken - *Echo Ct* - My only concerns or questions are just to make sure that we have the ability to make sure setbacks and everything are in accordance with all county restrictions. And to make sure that we are not going to be affected if we have to abandon our well. It is close to the property line, so if we have to move it, we need to be able to move it to another location. Those are the concerns that I have.

Martha Brown - *Echo Ct* - I am here with my partner, Kathy, we own what is called the house on the hill, you can't see it from the photographs. The first thing I'd ask that you consider is if the homes are +/- 5,000 sqft of the 40,000 sqft. 19,000 sqft is a big ask, that is a lot compared to the +/- 5,000 sqft. Our concern is that when John's father had the property developed there were certain properties that were exempt from the covenants that the rest of us have to abide by. And they are John's property, the

property in question and the one currently occupied by Michelle and Rob. One of the exceptions to the rule on this property was that those lots can have a two-story house. None of the rest of the lots can have a two-story house except maybe the top one. The idea was that the kids would all build houses along that tract and that never manifested. From our point of view, we currently have a lake view house. Should a two-story home be built on that property, we would no longer have a lake view house and this will negatively impact the value of the resale of our property as well. If you agree to approve this variance, we would then ask you to consider changing the two-story requirement. I don't know how that gets done, we just want to say that should you approve the variance and somebody comes in and builds a two-story because the lot is not that big so they can only go up, it would negatively impact the value of our property.

John Graves - *Echo Ct* - Just to talk about the covenants a little bit, those 3 lots do have covenants. The same covenants that are on the lakeshore. When my dad developed this property, he developed it in two different stages. The lakeshore, the 3 lots and 1 on top of the hill are included in the first platting with covenants. All the other lots have a separate group of covenants. So they do have covenants, and they are a little different but they are both valid and they are both recorded too.

Chair Hogan closed the public testimony portion of the item to the public.

Discussion:

CP - Well, I do have an issue with it being half the size that is allowed. Like JH stated, diligence in a sale with the title company has to be taken.

JH - That is the downside. A lot of potential property owners don't realize that there are questions that need to be asked before buying property. Especially because not everyone is informed when they buy a property. I am struggling with what our zoning code specifically says, stating that two parcels that are adjacent to each other need to be combined or they can't be built on. I get it is one of the last ones that isn't built on in this subdivision.

CP - But the other two are stated as outlots. Someday they could be transferred over. And they are small lots too.

JH - I think the potential findings stated within the staff report do explicitly outline how this would be a hard variance to pass, as variances do need to meet all the requirements that are found in the findings of fact, and you can't make all the findings with this one.

MP - TM can you talk about the question on the well that is close to the property line?

TM - I'm not aware of the exact issue with the well. I believe it must have been the neighbor to the north. There are setback requirements between a well and a septic system. So I am not exactly sure where it is or if the well is actually placed over the property line. I am not aware of the exact issue with that. If it just is that it would necessitate this property having to move its septic system further from the well, that won't trigger getting rid of the well. It would just impact the lot being able to have a conforming septic system. If the well is over the property line or too close to the property line that could affect some things, but that is not likely a new situation being created because property lines aren't changing with this. Again, I don't know the exact details of this, but Rice County does not regulate wells. They are under the state well code. So it isn't really anything that we directly deal with.

MP - I have an issue with it because we have the DNR coming against them too. And it is in our ordinances. This is a unique situation where lots in the area seem to be noncompliant too, but this is the one we are dealing with today. And this is what our ordinances say. It is going to be hard to build a house in this spot without blocking views or with a big house where are you finding space to put the alternate site for the septic system. I have issues with this one.

JH - I think we have some good evidence in the record with what the DNR said, agreeing with what was stated by staff. And also these findings that are outlined. A big one for me is that properties that are nonconforming are required to be combined with the commonly owned adjacent property, as stated in the staff report. Also, homes aren't allowed on nonconforming properties if it is not a parcel of record.

KE - I agree with that.

CP - Historically, we have had some in the Agriculture District, the 35 acre rule. We have had some come in with 34 acres and we have denied them.

MP - We just had that happen about a year ago. We denied them because they were an acre under.

CP - I motion to deny this variance.

KE - I second.

The Board of Adjustment reviewed the variance application and found that the applicant has not established that all of the following criteria from Section 503 of the Zoning Ordinance are met by this proposal:

- *The variance request in harmony with the general purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan? No, the property is non-conforming. With the landowner living next door it should be combined.*
- *The proposed use is an allowed use in the zoning district in which the property is located? Yes*
- *The proposed sewage treatment system is or can be made compliant with the Rice County Sewage and Wastewater Treatment Ordinance? No, the soil boring information of the locations shows one being occupied by a proposed house location and you must maintain two suitable locations.*
- *The property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance? No, homes are not permitted on properties that are nonconforming and are not parcels of record.*
- *The plight of the landowner is due to circumstances unique to the property not created by the landowner? No, landowner acquired property without due diligence to find that it is a nonconforming property.*
- *The variance, if granted, will not alter the essential character of the locality? Yes, there are other properties on the lake shore that are that small.*
- *The applicant has established that there are practical difficulties in complying with the Zoning Ordinance, not constituting economic considerations alone? No, the applicant has a home on the property next to this property.*

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

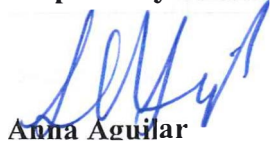
TM: The landowner acquired the property, just pointing out it is nonconforming and not a parcel of record. Other Rice County shore landowners with adjoining nonconforming properties have been required to combine them as required both by ordinance and statute. In the finding stating the applicant has a home on the neighboring property, it also stated that their intent with this was just to sell this property and not do any development of their own on it. Also pointing out that the lot is approximately 50% of the minimum lot size. DNR statues and provisions do have some allowance for lots that meet at least 66% of the minimum lot width. And I believe I mentioned it in the staff report, but just some additional documentation from the DNR that actually spells out if lots don't meet their criteria of 66% and some of the septic things that they are required to be combined. They also point out that because of the statutory language of that this is mandatory, local governments cannot grant a variance to this requirement.

Motion made, seconded, and denied unanimously.

III. Adjournment

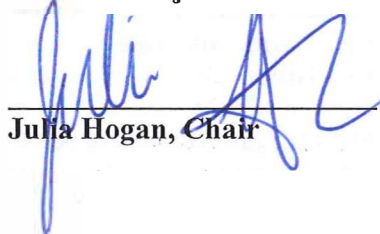
Hearing no other items before the BOA, a motion was made by MP, second by KE, to adjourn the meeting at 7:01 pm. Motion carried 4-0.

Respectfully Submitted



Anna Aguilar
Administrative Coordinator

Board of Adjustment



Julia Hogan, Chair