

**OFFICIAL PROCEEDINGS OF THE
RICE COUNTY BOARD OF ADJUSTMENT
Commissioner's Room / Government Services Building
Thursday, December 5, 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, Garrett Johnson, Matt Purfeerst, Kenneth Engen.

Staff present were: Director Julie Runkel, Zoning Administrator Trent McCorkell, Senior Planner Jeremy Edwards, Administrative Coordinator Anna Aguilar, Office Support Specialist 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, Garrett Johnson, Matt Purfeerst, Ken Engen,
NAYS: None

C. Motion by Ken Engen, seconded by Garrett Johnson, Approval of the Agenda

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

D. Motion by Garrett Johnson, seconded by Matt Purfeerst, to approve the minutes of November 7, 2024

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

II. New Business

1. Appeal/Hale - Section 22, Forest Township

James Hale has applied to appeal the denial of a building permit.

The property is described as: Part of Government Lot 6, Section 22, Forest Township, Rice County, Minnesota. PID# 06.22.3.50.002. The property is Zoned RDS, Recreational Development Shoreland. The above entitled matter came to be heard before the Rice County Board of Adjustment on December 5, 2024 on a petition for an appeal pursuant to the Rice County Zoning Ordinance.

Motion by Charlie Peters, seconded by Garrett Johnson, to deny the appeal made by James Hale with the following findings. The property is located in Section 22 of Forest Township.

RESULT: Appeal Denied, AYES: Charlie Peters, Julia Hogan, Garrett Johnson, Matt Purfeerst, Ken Engen, NAYS: None

FINDINGS OF DENIAL – Hale

- Proposed building exceeded the 16-ft peak height limitation.
- Proposed building exceeded the 120-sqft accessory storage shed size limitation.
- Proposed Personal Accessory Use structure must have a principal use. Property does not have a home on it to allow for onsite personal storage
- Proposed Agricultural use would have needed to have been exclusive Ag use and the applicant would have needed to apply for an agricultural structure permit instead of a building permit.
- Because of the parcel size being under 10-acres and tax use classification not being agricultural the parcel does not qualify for an ag structure permit.
- Property is not in zoning compliance due to unpermitted structure(s) having been placed on the property between 2016 and present.

Hearing Minutes:

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

JH - This might be a question for the applicant, or the representative for the applicant, but is that house directly west the property owner's main house? Is this main property just vacant land with no dwelling?

TM - The dwelling is on a neighboring property. The one to the west is not owned by the applicant.

JH - That is not, okay.

TM - I believe there is a connection with the property to the north, but the applicant can talk about that.

CP - TM what is the history of the property, was it re-platted in 2017?

TM - I believe it was around that time, maybe 2016 that it was split. It had been a long narrow property, I think it may have included the property to the west even, then it was split. The parcel as it sits does qualify as a home site. And the split created it that way.

The BOA asked the applicant, James Hale (JHale), to come forward to add comments or answer questions regarding the request.

Applicant gave handouts to all staff and board members

JHale - First I would like to clarify that our building permit application is for an accessory building, and we are not looking for an ag structure. These are two distinctly different things and staff is conflicting the two in their arguments here. The property is currently assessed as 4BB1 which is residential non-homestead single unit and we are not seeking to change that designation. There are examples of accessory structures on similarly sized properties without a dwelling that are also 4BB1. The property is used for ag, vegetables, fruit, trees, etc. Since we've purchased the property, we have planted 140 trees on the property, and we intend to change the size of our vegetable plots and add additional trees and honeybees. That is what we use our property for. This is what we enjoy doing and why we bought the property. It is difficult to care for a large property without equipment and a secure place to store it. We have a long list of additional equipment that we would like to obtain, but we cannot do that without a storage solution. So we are kind of stuck. After reviewing the ordinances, it was clear to us that the building should be allowed. If you look at the first handout, Table 508-1, Section H, shows that structures accessory to permitted uses are allowed in Recreational Development Shoreland (RDS). These include detached garages, storage sheds, outbuildings and other structures typically incidental and clearly subordinate to use. It does not say structures are accessory to a permitted dwelling. It speaks of permitted uses, we use the property for agricultural purposes. Section B, in the same table (501-B), we see that it says agricultural uses is permitted in RDS. Again, we use the property for agricultural use, therefore the structure we want to build is a permitted accessory structure to the permitted use. It is clearly written in the Rice County Zoning Ordinance (RCZO). So, this is why an accessory structure permit application was submitted to obtain that building permit. When our permit was rejected, we were given two stated reasons and several additional factors, but neither of those appear to be correct according to the zoning ordinance. The two reasons that we were given for denial are as follows. The first one is about a 120-sqft maximum size. The staff clearly state that this 120-sqft maximum size applies to non-riparian RDS. This is completely fabricated, the only size limitations listed in 516-1, which is on the second page, apply for riparian parcels, nothing else. This is a very basic oversight, the table includes callouts for non-riparian limitations, but not for size. The second reason for denial was in regard to the building height. The county states that 16ft is the maximum allowed "peak height", again Table 516-1. This is incorrect, because height is not measured to a building peak. The Rice County Zoning Ordinance defines building height, and it is not to the peak, it is average gable height, which can be calculated but was not. A method for measuring building height with respect to grade is also included in that definition in the zoning ordinance. I am not necessarily saying this building height won't need a variance for height, I am simply pointing out that the building height was not properly calculated to make such a determination. The Rice County Zoning Ordinances are clear and specific but are being misconstrued by the staff. We were also told in the denial notice that there may be "additional factors" to the denial and to contact staff for those details. After 23 days of sending emails and making phone calls to the staff to try and get more info about that denial, the County Attorney finally contacted our lawyer to ask that we cease our efforts to communicate with the County Staff even though the denial notice told us to contact County Staff for that additional information. The only thing that seemed to work in getting the attention of staff, was by contacting our commissioner. It wasn't until November 12th, over one month later and 40 days after our lawyer sent a letter about our upcoming application that the county lawyer verbally communicated the unwritten reasons for denial to our attorney, which was one day after the appeal deadline. Even then, the county did not give us additional factors in writing until we filed our appeal and saw the staff report. Throughout this whole experience, we do not feel that County Staff has

treated us fairly in this process. Pole buildings like this are common in the area and the zoning code says it should be allowed here as an accessory to our agricultural use. If a dimensional variance is needed, we would like staff to tell us that, just like they do for other people. And we should not have to reach out to our commissioner for a response. We feel that our materials completely explain why our pole barn should be approved, based upon the existing zoning code, and we are asking you to approve our appeal. Thank you.

JH - Where is your main residence in conjunction with where this parcel is?

JHale - Our main residence is across a privately maintained road, Cyrus Trail. Across the street.

JH - Okay, so directly across the street?

JHale - Yes.

JH - With your building permit application, your proposed new accessory building, it was a combination of personal storage and ag equipment/hay storage/grain bin. It wasn't strictly cold storage? You wanted personal storage with it?

JHale - That is correct. That is what we checked. I think that the grain bin and the hay storage and all that was just part of the same check box, perhaps.

JH - Okay, but you wanted a mixture of cold storage and personal storage?

JHale - Correct.

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

Jake Sauflley (JS) - Members of the Board, Chair Hogan, my name is Jacob Sauflley, I am an attorney and I represent the appellant. I'd ask that the time limit not apply to me as I am among the appellants contingent. I think that when you asked the question to Mr. Hale about personal use, I think that he was answering that question in a nontechnical way, what he means is it's not going to be used for business use. We can discuss that and clarify in more detail later, but I just wanted to be clear, I think he is just thinking it's for me, it's for us, we are using it and we are farming the land. I would like to start off and say I understand that you don't hear a lot of appeals to decisions of the Zoning Administrator. I also want to let you know that I spent 10 years in my community sitting on a similar board, so Member Peters, kudos to you and all the time you have spent here. When I took a look at this question and took a look at the zoning code, I was really confused about the denial because it does seem very apparent that use is defined as the way you use a property or the way you intend to use a property. This property is used for agricultural purposes. There is nothing else that they do with the land. They have vegetation plots right now. The use is also defined as the intent, and they intend to expand their vegetation operation, as he said, plant trees and add honeybees. There is no size limit for agricultural use, you don't have to have 40 acres, you can have 1 acre or even half an acre. There is absolutely no limit in your code. So it doesn't flow that you can claim there is no agricultural use when there clearly is. And as we know agricultural use requires equipment, and expanding that use requires additional equipment. They have maxed out the amount of equipment that they can store safely on their property with the available storage. There are some existing buildings. I believe there is a misunderstanding between staff and the applicant. Our understanding is that they are all less than 200-sqft and that makes them exempt from the building permit under Chapter 503. That also seems pretty clear in the code, but if there is something to clear up there, we are happy to do that. In addition, the reason for the request is to construct a building large enough to store the equipment, so it's fair to say that those buildings will disappear if a larger structure is authorized. Turning back to agricultural use, your code also makes it clear in the table of uses that it is a specific use in the RDS zone, it can be the primary use even though it is zoned for RDS not for agriculture. And as laid out in your table of uses, you can build structures that are accessory to an agricultural use. Where staff has really jumped the shark on this one, is they have applied a very narrow exception that exists for building code exemptions under state law that are applied to specific agricultural structures, and they have sought to apply that broadly to any structure that is accessory to agriculture. By that definition, you would never get any accessory structures on lots that are less than 10 acres. What's interesting about that is that state laws replete with instances where ag land is not required to be 10 acres in size, including the tax statute cited by staff. What's important here is that it's a pretty simple question. There is nothing in the code that requires a maximum size of 120-sqft, it doesn't exist. It says riparian land, but there is not shoreline, there is no waterway, this is non-riparian and staff acknowledges that. You cannot apply a 120-sqft maximum size to any structure on non-riparian land, your code doesn't allow it and it is illegal to apply a zoning ordinance that hasn't been approved by the board. Zoning ordinances have to be written and they have to be construed expressly as written. When we think about statutory interpretation in Minnesota law, we have to review terms and phrases in their

plain and ordinary meaning, unless they are explicitly defined in the code. And using the specific definitions that exist in the RCZO, this application meets the requirements for an accessory structure in the agricultural use district. If there is any ambiguity, and when I say ambiguity, what I mean is that if two people could have an honest to goodness difference in opinion to what something means, indifference needs to be given to the property owner, because we respect private property rights. This is not just me saying this, this is actually Madigan land use law, when there is a point of confusion about what a term means and it is a reasonable difference in opinion, it has to be held against the property owner in the least restrictive way. And in this case, that again would suggest you have to grant the building application as applied because the code allows it. The stated reason for exceeding the maximum height, as Mr. Hale said, we don't actually know. But the code clearly defines building height as the average of the highest peak on a gable roof. Average is peak to eave, that a midpoint, and they have cited the max height as being the peak. And as Mr. Hale said, perhaps the midpoint exceeds the height limit, but we don't know, and it was defined for that reason. But staff again, performed the analysis under their own guidelines, rather than what the ordinance actually requires. I think you all got the handout, the three sheets of paper, this sort of summarizes the arguments we have, pointing out the tables in section 508 and 516 of the zoning ordinance. And then on the backside, or the third page is a truncated chart that amounts to all the written and unwritten reasons for denial from the county and why we think that those are factually inaccurate. So in the context of being accessory to a dwelling, if they were constructing a home certainly they could construct an accessory building under the code. Whereas I discussed, agricultural use is a specific standalone use and you are plainly allowed to have an accessory building to an agricultural use. Staff completely disregards this. And I think that is an error, to say agricultural lots must be 10 acres in size minimum. Again, this is inflating a state building code requirement under 326B, it has nothing to do with a zoning aspect, it has nothing to do with agricultural use. Staff cites to the quote-unquote agricultural lot, but this is not an agricultural lot, this is an RDS lot. Again, we feel like that decision has been made in error. To say that agricultural accessories are only allowed when lots exceed 10 acres, again, we aren't talking about a grain bin or a hog barn or something used directly in agricultural production, we are talking about a pole barn. Pole barns exist throughout the county, they are subject to building code requirements, and we are asking for a building permit and we are asking to be subject to those building permit requirements. The issue cited by staff, is for the very narrow exception for buildings that are not subject to building code. If the county is going to enforce and impose that regulation, the zoning code needs to make a specific reference to what the definition of an agricultural building is. Because it doesn't, there is no definition in the code. And because there is no definition in the code, I would argue it is ambiguous as to what is and isn't an agricultural building. You can't stand there and tell me what is and isn't. And we are talking about a pole building here, there is honest to goodness ambiguity there. One, I would say that the county position is unlawful, but two, even assuming that they are reasonable, it is ambiguous, in which case you have to side with the property owner. With regard to the exclusive use of an accessory building for agriculture, that again relates to the building code exemption under state law. If you obtain that exemption, then one of the requirements is that you only use it for agriculture, but that is not a requirement of accessory buildings in general. And I understand that there is distinction of commercial use and personal use, and to be very clear this is not intended to be used, and will not be used for commercial use. So I don't know if we captured these on the overhead, AA if you could zoom in a little.

AA puts up photos on overhead projector

JS - These are a couple photos that weren't a part of the staff packet, just to show you some of the small equipment they have right now on the site. It's neat, it's orderly, it's kept to the side, this by no means triggers anything related to a junkyard or a salvage yard. There is not just things lying all over the property. So I want to be really clear, this is a well-kept piece of property, the health, safety and the welfare of the county will be well regarded by approving the application. So, with that I will conclude by saying that this is a very clear decision from my standpoint, and I think that a lot of folks in the county would understand it's a very clear decision that this should be approved. Staff has created a lot of confusion and complexity in formulating a denial. So I'd ask that you find that staff misapplied the ordinance and in doing so violated Minnesota statute by applying ordinances that have not been adopted and making unreasonable determinations.

Bryce Waldemar - *Cyrus Trail* - I am here in support of Jim and Denise. My back door faces where this new building will be, and I have no objection to it.

Dean Sunderlin - *Circle Lake Trail* - I am on the other side of the lake from where this building is being

proposed. I want to support what they are trying to do. The communication aspect between Denise and Jim and Planning and Zoning caught me by surprise and I consider it completely uncharacteristic. I have dealt with them in the past, I don't know how it broke down but I feel that's uncharacteristic. As far as this group's handling of situations like this, I have stood in front of you for variances and you have always worked really hard to accommodate what I wanted to do with my place. I just encourage you to do the same with these folks. Again, I support what they want to do and I have no objection to it.

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

Discussion:

CP - The first thing I would say is the height, we are set on that. That would be a definite variance.

JH - Yeah, even the 16ft outright says non-riparian.

CP - I remember when the lot was split. It is two buildable lots and I think the owner now knew that. So is it going to be a non-buildable lot in the future? The question of agricultural use we have, they have vegetables, do they show sales on that? And my next question is, if they live across the street, could they combine the two parcels?

TM - The property directly to the north has a home on it. If they were combined together into one, then we would allow accessory personal use storage on the property. It wouldn't be restricted to the agriculture use that was mentioned. A couple of things I did want to mention, and these are in the staff report. For us to administratively issue a building permit, all provisions of the ordinance have to be met. So, if even one provision of the ordinance is not met, we are not allowed to issue that permit. It can't rely on a variance for us to issue a building permit or a variance in the future or a possible one at that point. Once the building permit is issued, that is the end of that process. So that is a very significant issue with that. I had 5 main findings listed in your packet. Again, they went beyond what was cited to the applicant for the original denial, that was the height and the size. But also pointing out that there were several other factors that would probably come up should they be able to revise those items. Just to go through those findings, the first is the proposed building exceeds the 16ft max height limitation. Even if for sake of argument, you would use the applicant's definition and how they are interpreting that, the building has a 16ft indoor ceiling height. Clearly, it is well over the 16ft at that point, no matter how you measure it. I did review the measurement that we do with our building official and how that's determined, and he did agree that is how we would do that and how we've done maximum and the peak height. We have used that interchangeably, maximum and peak height versus building height in there. Again, there could be an argument possibly on what that is, but even under their own statement to that they're over the 16ft height and it couldn't be issued. The second one that I point out is the 120-sqft accessory size. That table has been interpreted to mean non-riparian lots, that those size buildings are subject to that. That's been consistently interpreted that way since 2004 when the last major revision was done to the ordinance. That interpretation was provided to us by legal staff at that time and we have consistently held to that. And as this group has seen many variances to that standard over time, that is a very common variance. The third item in there is that they had proposed personal accessory storage use, for personal use, the principal use would need to be a home on site. There is not a home on site. If they would combine these pieces, there would be a home on site. That is why it's cited that way. The next one was the proposed ag use, saying that it would need to be exclusively ag use. In the ordinance, I think I reference it in your packet, the ag structure permit section which is 503.02 subpart B. What it says is in all zoning districts an ag structure permit shall be obtained for the construction of new agricultural buildings and structures or for the additions to such buildings. Buildings and structures must meet the following criteria to be defined as an agricultural building or structure for purposes of this provision. So that's not getting just at building code requirements, that's saying if you want an ag building within Rice County it needs to meet this requirement. It then goes on to spell out that those buildings, the building or structure must be on a parcel at least 10 acres in size and used exclusively for storage of agricultural goods or equipment, or the building or structure must be used exclusively to house animals. It seems very clear that you do need to meet one of those two provisions if you are doing an agricultural building. The last item, that I had in the findings at least, had to do with the fact that the property is not within zoning compliance. So for us to issue building permits or sign off on those for zoning, the property needs to be in compliance with zoning. One of those items on this site is, as I've mentioned, are multiple sheds without any permits. The main building on there, it's cited by the Assessor's Office and it appears in the air photos is a 400-sqft building. So even the applicant saying they thought there was a 200-sqft exemption is not applicable to that. For buildings of 200-sqft and smaller, the exemption to that is

obtaining a building permit, there is still a land use permit within the zoning that is required for those. And that has to do with making sure that the number, location, size and use of those buildings are appropriate. It's just a difference under the building code and zoning with those. Again, I just wanted to try and clarify those items and hopefully that answered your question with the combination and what would be needed. From our review of this, there was not a simple change to solve this issue, there are very complicated things, such as combining the property or building a house or shouse to make the accessory structure work. Or increasing the size of the property, those aren't things that are typically very easy to accomplish.

CP - One other question, that lot, if they were to have a business, like a small ag business would it be an CUP/IUP?

TM - For an ag business, I would have to review the standards to that. We typically don't see those in the shoreland districts, so I can't give you an immediate answer on that. Farming of a parcel, tillage, and growing of crops, that is certainly allowed in the shoreland district. The buildings are what get to be the difference for that.

GJ - So it would be possible for them to combine with the parcel across the road?

TM - I believe it would be. They are listed under different ownership provisions at this point. So they would have to try and achieve making that the same to combine it. They'd also at that point be considered a riparian lot for the full property and have some items to deal with. So likely a variance even with that. But that would alleviate the use part of it.

GJ - Then they would have to come back for height and size variances?

TM - Yes. And we have had that discussion with that lakeshore lot in the past with the applicants, about what options there would be on that piece there. It's a much smaller parcel and already has buildings that are outbuildings, so typically there would be variances even if they were to propose an outbuilding on that piece.

JR - I just wanted to point out one other thing, I know a statement was made that there are buildings like this other places, however they are either in a different district or they are on lots that are combined. In all three shoreland districts, we can't think of any where we have issued a building permit for a pole building or a storage building without a primary residential structure or they've combined the parcels. Or they have been greater than 10 acres, if they've been ag in the shoreland. And you can't start comparing shoreland to non-shoreland, you really have to look at the recreational development standards for shoreland.

CP - That's where I come up with the issue.

JH - I think staff definitely showed multiple things that are outright in the code that wouldn't allow this to be approved as a building permit straight out, as well as the 16ft peak height. Like TM said, this is an appeal against the building permit, not a variance request in front of us. So if we approve this building permit, then it's done. With variances, we have conditions that things have to be done with the building permit, this is different from that.

CP - Yes, and that's where I have the issue. I think that we would set a precedent on the rest of the RDS district and shoreland districts.

JH - There definitely is a gray area. You could say agricultural, that's the primary use, but I guess for an RDS property, I don't see that as a primary use. I see that, as I interpret the code, as a primary dwelling, that's the main use and then an accessory structure is an accessory to that primary dwelling. That's how I see it at least within shoreland interpreted in our code.

GJ - If the appeal was to be denied, can they come back with a new building permit with variances? If they were to combine the lots or do something else?

JH - They would need a variance because it would become riparian, and that's where you have even more limitations on size and height. So they would have to come forward with a variance anyway, but it would be more of an allowed use per our code because it does have a primary dwelling on there. I personally think that'd be the best option.

CP - I agree with you. We just granted one to the west for that detached garage that had a height variance last month.

JR - To be clear, that had a primary residential structure on it.

CP - Yes, with a primary residence.

JR - And just to be clear if there are applications, you can grant variances for size and height. However, applications for use variances are illegal. You cannot grant variances for use.

MP - I think it makes the most sense if they can figure it out to combine the parcels and come back for variances later. I know it will be a riparian lot then, but I think that would be more entertainable to look at that with variances versus what we are seeing right now. There are a lot of hoops to jump through

with what they are asking for right now.

JH - Any further comments?

KE - I think I'm along the same line as what MP just said.

CP - To make this go along, it sounds like we are all in favor of the denial of the building permit.

TM - This would be a motion for denial of the appeal.

CP - I motion to deny the appeal with the 5 findings.

GJ - I second.

Motion made, seconded, and appeal 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 6:45 pm. Motion carried 5-0.

Respectfully Submitted

Board of Adjustment



MacKenzie Klett
Office Support Specialist



Matt Purfeerst, Vice Chair