

BOARD OF ADJUSTMENT & APPEALS AGENDA

Date: October 16, 2023

Time: 7:00 p.m. (doors open at 6:45)

Location: Nicollet County Board Room, 501 S. Minnesota Avenue, St. Peter, MN

Copies of the meeting agenda and packet are available on the Nicollet County website at:
<https://mn-nicolletcounty.civicplus.com/AgendaCenter>

Questions or comments regarding the meeting can be directed to Spencer Crawford, Deputy Zoning Administrator, at 507-934-7071, or spencer.crawford@co.nicollet.mn.us.

1. Call to Order
2. Roll Call
3. Review of Cancellations and Additions
4. Approval of Minutes: *September 18, 2023*
5. Approval of Findings of Fact:
 - **PLN23-16, R&G Construction**
 - **PLN23-17, Clement**
 - **PLN23-15, MN Valley Lutheran High School**
6. Public Appearances
7. **PUBLIC HEARING: PLN23-20**
 - Applicant: Marjorie Carlson
 - Landowner: Keith Carlson Revocable Inter-Vivos Trust
 - Request: Reduction of the State right of way setback from 85 feet to 28.2 feet for the purpose of installing a septic tank and drain field
 - Location: Southwest ¼ of the Northeast ¼, Section 01-109-27, Oshawa Township
 - Parcel Number: 10.301.0500
8. Old Business
9. Other Business
10. Communications
11. Adjourn

Mission Statement

Providing efficient
services with innovation
and accountability.

Vision Statement

Setting the standard for providing superior and efficient county
government services through leadership, accountability and
innovation to a growing and diverse society.

Core Values

Leadership. Integrity.
Accountability.
Efficiency. Innovation.



BOARD OF ADJUSTMENT & APPEALS REGULAR MONTHLY MEETING MINUTES

SEPTEMBER 18, 2023	6:00 PM	NICOLLET COUNTY BOARD ROOM
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ROLL CALL	BOARD MEMBERS PRESENT	BOARD MEMBERS ABSENT EXCUSED	NICOLLET COUNTY STAFF PRESENT
	☐ Justin Laven, <i>Chair</i> ☒ Lloyd Hoffmann, <i>Vice Chair</i> ☒ Randy Schwab ☒ Jon Thoreson ☒ Dave Ubel* <i>*appeared at 6:50 pm</i>	☒ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Randy Schwab ☐ Jon Thoreson ☐ Dave Ubel	☒ Spencer Crawford, Deputy Zoning Administrator (DZA) ☐ Shana Jackson, County Assessor (Assessor) ☒ Roxann Klein, Assistant County Attorney (ACA) ☒ Crystal Madden, Recording Secretary ☐ Other Staff: ☐ Other Staff:

REVIEW OF CANCELLATIONS & ADDITIONS	None.
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APPROVAL OF AUGUST 21, 2023 MINUTES	MOTION	2 ND
APPROVE	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Randy Schwab ☒ Jon Thoreson ☐ Dave Ubel	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Dave Ubel ☐ Jon Thoreson ☒ Randy Schwab
VOTE TO APPROVE MINUTES	☒ PASS ☐ FAIL	VOTE: 3 - 0

FINDINGS OF FACT PLN23-10, LONG	MOTION	2 ND
APPROVE	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☒ Randy Schwab ☐ Jon Thoreson ☐ Dave Ubel	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Randy Schwab ☒ Jon Thoreson ☐ Dave Ubel
VOTE TO APPROVE FINDINGS OF FACT	☒ PASS ☐ FAIL	VOTE: 3 - 0

PUBLIC APPEARANCES	None.
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PUBLIC HEARINGS – Variance

PLN23-16	APPLICANT/LANDOWNER: R&G Construction / Kevin Johnson
DESCRIPTION	Reduction of the temporary mineral extraction county road setback from one hundred (100) feet to thirty (30) feet for a temporary mineral extraction pit along County Road 3 / 425 th Avenue, in the Agricultural Preservation Zoning District.
CONFLICT OF INTEREST	None.
SITE VISIT & PUBLIC CONTACT	Board Member Thoreson visited the site. There was no contact with the Board from members of the public.
STAFF REPORT PRESENTED BY	DZA Crawford
APPLICANT TESTIMONY	Erika Coudron with R&G Construction, 2694 County Road 6, Marshall, provided testimony about the request, along with the property owner Kevin Johnson, 34908 425 th Avenue, Le Sueur.

PUBLIC TESTIMONY	No one was present to provide public testimony. No other correspondence was received.		
BOARD DISCUSSION	Further discussion between the Applicant, Board, and Staff took place.		
BOARD ACTION	MOTION	2ND	
APPROVE VARIANCE WITH CONDITIONS, as recommended	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Randy Schwab ☒ Jon Thoreson ☐ Dave Ubel	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☒ Randy Schwab ☐ Jon Thoreson ☐ Dave Ubel	
VOTE TO APPROVE REQUEST	☒ PASS	☐ FAIL	VOTE: 3 - 0

BOARD RECESS	The Board recessed at 6:30 pm, and resumed the meeting at 6:45 pm.
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PLN23-17	APPLICANT/LANDOWNER: Thomas Clement / Thomas & Mary Clement		
DESCRIPTION	After-the-fact reduction of the accessory structure side yard property line setback from ten (10) feet to four (4) feet in the Urban/Rural Residential Zoning District for an existing detached garage.		
CONFLICT OF INTEREST	None.		
SITE VISIT & PUBLIC CONTACT	There was no contact with the Board from members of the public.		
STAFF REPORT PRESENTED BY	DZA Crawford		
APPLICANT TESTIMONY	Present to represent the application were Tom & Mary Clement, 52991 Deerwood Trail, N. Mankato		
PUBLIC TESTIMONY	Public comment was received before the hearing from Paul Prah, 52995 Deerwood Trail, N. Mankato, and was entered into the record stating they opposed the request. Paul & Donna Prah, 52995 Deerwood Trail, N. Mankato were present to provide public testimony in opposition of the request.		
BOARD DISCUSSION	Further discussion between the Applicant, Board, and Staff took place.		
BOARD ACTION	MOTION	2ND	
DENIAL OF THE VARIANCE	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☒ Randy Schwab ☐ Jon Thoreson ☐ Dave Ubel	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Randy Schwab ☒ Jon Thoreson ☐ Dave Ubel	
VOTE TO APPROVE REQUEST	☐ PASS	☒ FAIL	VOTE: 4 - 0

PLN23-15	APPLICANT/LANDOWNER: Ken Opitz / MN Valley Lutheran High School		
DESCRIPTION	Increase the maximum multi-faced sign square footage from 40 square feet to 192.5 square feet, and increase the maximum number of allowed signs per property from 2 to 3 in the Conservancy Zoning District.		
CONFLICT OF INTEREST	None.		
SITE VISIT & PUBLIC CONTACT	Board Members Ubel visited the site. There was no contact with the Board from members of the public.		
STAFF REPORT PRESENTED BY	DZA Crawford		
APPLICANT TESTIMONY	Present to represent the application were Ken Opitz & Tim Plath, with Minnesota Valley Lutheran High School located at 45638 561 st Avenue, New Ulm.		
PUBLIC TESTIMONY	No one was present to provide public testimony. No other correspondence was received.		
BOARD DISCUSSION	Further discussion between the Applicant, Board, and Staff took place.		
BOARD ACTION	MOTION	2ND	

APPROVE VARIANCE WITH CONDITIONS, as recommended	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Randy Schwab ☒ Jon Thoreson ☐ Dave Ubel	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Randy Schwab ☐ Jon Thoreson ☒ Dave Ubel
VOTE TO APPROVE REQUEST	☒ PASS ☐ FAIL	VOTE: 4 - 0

ADDITIONAL ITEMS			
OLD BUSINESS	None.		
OTHER BUSINESS	Discussion concerning a Zoning Ordinance revision to include requiring a survey for zoning permits within the Urban/Rural Zoning District. Member Ubel would like to know if the aggregate tax was applied to the PLN23-16.		
COMMUNICATIONS	None.		
MOTION TO ADJOURN MEETING	MOTION	2ND	
08:32 PM	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Randy Schwab ☒ Jon Thoreson ☐ Dave Ubel	☐ Justin Laven, <i>Chair</i> ☐ Lloyd Hoffmann, <i>Vice Chair</i> ☒ Randy Schwab ☐ Jon Thoreson ☐ Dave Ubel	
VOTE TO ADJOURN MEETING	☒ PASS ☐ FAIL	VOTE: 4 - 0	

SPENCER CRAWFORD, DEPUTY ZONING ADMINISTRATOR		DATE	10/16/2023
JUSTIN LAVEN, CHAIR		DATE	10/16/2023



BOARD OF ADJUSTMENTS AND APPEALS CRITERIA FOR GRANTING A VARIANCE

Name of Applicant R&G Construction

Hearing September 18, 2023

Property Owner Kevin Johnson

Continuation N/A

File PLN23-16

Parcel ID 07.007.1100

Variance Request Reduction of the temporary mineral extraction county road setback from 100 feet to 30 feet in the Agricultural Preservation Zoning District for a temporary mineral extraction pit

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute 394.27, subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	Reducing the setback does not appear to harm the right of way.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

2. The variance is consistent with the intent of the Comprehensive Plan.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The variance request will not harm the right of way or the road.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

3. The variance establishes a practical difficulty in complying with the official controls.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	Leaving the knoll would make the land more difficult to farm.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The physical factors of the property where no created by the landowner. The knoll is natural.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

5. The variance will not alter the essential character of the locality.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The field should look typical for the area after restoration is complete.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

6. The practical difficulty includes more than economic considerations alone.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The property owner may gain some economic benefit from being able to farm the land, but the cost of the restoration may offset it.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS

☒ APPROVES THE REQUESTED VARIANCE ☐ DENIES THE REQUESTED VARIANCE

THIS DECISION WAS BASED UPON

- | | |
|--|---|
| ☒ Application | ☒ Site visit (Board Member Thoreson only) |
| ☒ Information received at public hearing | ☒ Staff Report |
| ☒ Photographs | |

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD.

FACTS SUPPORTING THE ANSWER TO EACH QUESTION ABOVE ARE HEREBY CERTIFIED AS THE FINDINGS OF THE NICOLLET COUNTY BOARD OF ADJUSTMENT & APPEALS.

Date: _____ Chair: _____

DRAFT



BOARD OF ADJUSTMENTS AND APPEALS CRITERIA FOR GRANTING AN AFTER-THE-FACT VARIANCE

Name of Applicant Thomas Clement Hearing September 18, 2023
Property Owner Thomas & Mary Clement Continuation N/A
File PLN23-17 Parcel ID 01.451.0080

Variance Request After-the-fact variance to reduce the side yard setback from 10 feet to 4 feet in the Urban/Rural Residential Zoning District for a detached garage

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute 394.27, subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	There are no negative affects to the health, safety and welfare.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

2. The variance is consistent with the intent of the Comprehensive Plan.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The Comprehensive plan is designed to provide areas for urban development, which is associated with a higher density and lesser setbacks.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☐	☒	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

3. The variance establishes a practical difficulty in complying with the official controls.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The size of the garage could have be reduced to comply with official controls.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☐	☒	☐	☐	
Jon Thoreson	☐	☒	☐	☐	
Dave Ubel	☐	☒	☐	☐	

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The plight is related to the landowner not doing due diligence to locate the property line.
Lloyd Hoffmann	☐	☒	☐	☐	
Randy Schwab	☐	☒	☐	☐	The landowner is trying to fit too large of the building on the property.
Jon Thoreson	☐	☒	☐	☐	
Dave Ubel	☐	☒	☐	☐	
					The landowner did not get a survey and relied on aerial photos, which contained a disclaimer that there no guarantee to the accuracy or reliability of the data.

5. The variance will not alter the essential character of the locality.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	There are other outbuildings or structures within the required setback in this subdivision.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☐	☒	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

6. The practical difficulty includes more than economic considerations alone.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The bluffs and design of the building outweigh the economic burden to the applicant.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☐	☒	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

ADDITIONAL AFTER-THE-FACT CRITERIA FOR USE ONLY AFTER THE FIRST SIX CRITERIA ARE MET

7. Did the applicant make a good faith effort to obtain a zoning permit prior to completion of the construction?

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	Yes- a permit was obtained. No- The applicant obtained a permit, but did not make an adequate effort to locate the property line.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☐	☒	☐	☐	
Dave Ubel	☐	☒	☐	☐	

8. In relation to the subject variance, are there similar structures in the area?

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	There appear to be other structures in the area within the required setbacks.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

9. Does the burden on the applicant of compliance outweigh the benefit to the County?

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	There would be considerable expense to the applicant to remove the addition. This outweighs the benefit as there is no threat to public health, safety or welfare.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

10. Was the act of the violation by the applicant unintentional?

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	Although the applicant obtained the proper permit, the location of the property line should have been known.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☐	☒	☐	☐	
Jon Thoreson	☐	☒	☐	☐	
Dave Ubel	☐	☒	☐	☐	

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS

☐ APPROVES THE REQUESTED VARIANCE

☒ DENIES THE REQUESTED VARIANCE

THIS DECISION WAS BASED UPON

☒ Application

☐ Site visit

☒ Information received at public hearing

☒ Staff Report

☒ Photographs

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD.

FACTS SUPPORTING THE ANSWER TO EACH QUESTION ABOVE ARE HEREBY CERTIFIED AS THE FINDINGS OF THE NICOLLET COUNTY BOARD OF ADJUSTMENT & APPEALS.

Date: _____ Chair: _____



BOARD OF ADJUSTMENTS AND APPEALS CRITERIA FOR GRANTING A VARIANCE

Name of Applicant Ken Opitz Hearing September 18, 2023
Property Owner MN Valley Lutheran High School Continuation N/A
File PLN23-15 Parcel ID 04.035.1905

Variance Request Increase the maximum multi-faced sign square footage from 40 feet to 192.5 square feet, and increase the maximum number of allowed signs per property from 2 to 3 in the Conservancy Zoning District

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute 394.27, subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	There are no detrimental effects to health, safety and welfare. Additionally, the ground signs are replacing signs that existed from previous years. The school desires to create an attractive environment for neighbors and citizens.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

2. The variance is consistent with the intent of the Comprehensive Plan.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	There are no detrimental effects to the Conservancy District or light pollution concerns for neighboring developments. A large school already exists on the property and the sign will be a part of the building. The school is kept clutter free and will have an attractive appearance on the outside.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

3. The variance establishes a practical difficulty in complying with the official controls.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The highway expansion and the sound barrier make it difficult for signage to be seen on the property. The old sign provided visibility from Highway 14, and the applicant wishes to reestablish that visibility.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
	☒	☐	☐	☐	
Dave Ubel					

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The plight is due to changes in Highway 14 and the construction of the noise barrier wall, which restricts the placement of signage.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

5. The variance will not alter the essential character of the locality.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☒	☐	☒	No light pollution is expected and the monument sign matches what was previously on the property. The wall mounted signs are a part of the building.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

6. The practical difficulty includes more than economic considerations alone.

BOARD MEMBER	YES	NO	ABSTAIN	ABSENT	REASON
Justin Laven	☐	☐	☐	☒	The practical difficulty is due to the highway expansion, as well as the sound barrier.
Lloyd Hoffmann	☒	☐	☐	☐	
Randy Schwab	☒	☐	☐	☐	
Jon Thoreson	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS

☒ APPROVES THE REQUESTED VARIANCE ☐ DENIES THE REQUESTED VARIANCE

THIS DECISION WAS BASED UPON

- | | |
|--|---|
| ☒ Application | ☒ Site visit (Board Member Ubel Only) |
| ☒ Information received at public hearing | ☒ Staff Report |
| ☒ Photographs | |

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD.

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Date: _____ Chair: _____

DRAFT



VARIANCE

REDUCTION OF THE STATE RIGHT OF WAY SETBACK FOR THE PURPOSE OF INSTALLING A SEPTIC TANK AND DRAIN FIELD

Marjorie Carlson

PLN23-20

**NICOLLET COUNTY
BOARD OF ADJUSTMENT AND APPEALS**

SUBJECT:	Variance PLN23-20
APPLICANT:	Marjorie Carlson
LANDOWNER:	Keith Carlson Revocable Inter-Vivos Trust
LOCATION:	Southwest ¼ of the Northeast ¼ , Section 01-109-27, Oshawa Township
PARCEL NO:	10.301.0500
EXISTING ZONING:	Conservancy
HEARING DATE:	10/16/23
60 DAYS FROM REQUEST:	11/21/23

REQUEST

Marjorie Carlson is requesting a reduction of the State Right of Way setback for the purpose of installing a replacement septic system and drain field.

Septic System	Required Setback	Actual Setback
Tank	85'	61.5'
Drain field	85'	28.2'

ORDINANCE

Nicollet County Zoning Ordinance 734.5 4 (A) IV: The required setback from a SSTS to a road right-of-way, State Highway, 85 feet.

PROJECT DESCRIPTION

The dwelling and its associated features sit next to a stream at the bottom of a ravine, with steep forested bluff rising to the north and south. The existing septic system consists of a pipe running into the stream, which does not meet Nicollet County Zoning Ordinance or state standards. The proposed location is more level than the surrounding area and is the only feasible option for a septic system; it would not be able to function properly on the surrounding steep slopes. The setback reduction is the smallest possible to install a working system within the vicinity of the home.

EXISTING LAND USE

The 10 acre parcel is situated along Highway 169 and is entirely covered in steep bluff. There is a ravine with an unprotected stream running through the center of the property.

SURROUNDING LAND USE

The property is surrounded by forested bluff to the north, west, and south, with Highway 169 and the Minnesota River to the east. The area is primarily rural with a few other residencies located in the vicinity along the highway.

SITE REVIEW

Staff visited the site and took photographs of the request on October 4th, 2023.

MINNESOTA DEPARTMENT OF TRANSPORTATION (MnDOT) REVIEW

Angela Piltaver with MnDOT provided the following comment: There is no objection to the proposed variance; however, we would caution the property owner and the contractor(s) who do the onsite work that they take care not to construct anything in MnDOT R/W.

NEIGHBOR NOTIFICATION

Property owners were notified of the request per the standards of Section 503 of the Zoning Ordinance and Minnesota Statutes Section 394.26.

VARIANCE CRITERIA

A variance to a provision of the Zoning Ordinance may be issued to provide relief to the landowner in those zones where the intent of the official control creates practical difficulties for the property owner in the use of their land. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. No variance shall permit standards lower than those required by state law. A variance may be granted only in the event that the following circumstances exist:

1. The variance is in harmony with the general purposes and intent of the official control?
 - The purpose of the official control is to separate septic systems from the road right of way. The separation serves to:
 - Prevent erosion or sewage from harming the right of way in the event the septic system fails.
 - Allow for expansion or repair of the right of way as needed.
 - The septic system, if property maintained, should not impact the road right of way.
 - The septic system is located close to the home in the bluff, which is an unlikely area for right of way expansion or repair.
2. The variance is consistent with the intent of the Comprehensive Plan?
 - The comprehensive plan states that right of ways are a valuable public asset to be maintained.
 - The proposal does not appear to be a threat to the right of way, provided it is properly maintained.
3. The variance establishes a practical difficulty in complying with the official controls?
 - There is no location on the property in which a septic system could be installed and meet the required setbacks.
 - Without a variance, there appears to be no way for the property owner to dispose of waste in a manner that meets Zoning Ordinance and state requirements.
4. The plight of the landowner is due to circumstances unique to the property not created by the landowner?
 - The plight is due to the location of the home in relation to the bluff, which is both unique to the property and not created by the landowner.
5. The variance will not alter the essential character of the locality?

- The essential character of the locality will not be changed as the septic system is underground and not visible.
6. The practical difficulty includes more than economic considerations alone?
- The practical difficulty is related to the topography of the property and not economic considerations.

RECOMMENDED CONDITIONS

Staff recommends the attachment of the following conditions if the variance request is approved:

1. The applicants undertake the project according to the plans and specifications submitted to the County with the application.
2. The County may enter onto the premises at reasonable times and in a reasonable manner to ensure the permit holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.
3. The applicants must obtain the appropriate septic permits prior to construction.

**Applicant/Property Owner:
Marjorie Carlson/ Keith Carlson Revocable Inter-Vivos Trust**

PLN23-20

ATTACHMENT A	Application
ATTACHMENT B	Submitted by Applicant
ATTACHMENT C	Aerial Map
ATTACHMENT D	Location Map
ATTACHMENT E	Site Photographs
ATTACHMENT F	Neighbor Notification List
ATTACHMENT G	Criteria for a Variance



PROPERTY SERVICES DIVISION
501 S MINNESOTA AVENUE, SAINT PETER, MN 56082
507-934-7070

BOARD OF ADJUSTMENT & APPEALS APPLICATION

TOTAL FEES: \$496.00

Map#: 18-01-200-002
Parcel#: 10.301.0500
Permit#: PLN23-20
Date: 9/22/2023

Applicant: MARJORIE CARLSON
Telephone: 507 380 9667
Owner: Keith Carlson Trust
Property Address: 46500 US HIGHWAY 169, ST. PETER, MN 56082
Abbreviated Legal Description: SE 1/4 OF SW 1/4 OF NE 1/4
Township: Oshawa Township
Zoning District(s): CONSERVANCY

Record Type: Variance
Subtype: Replace
Category: Residential
Description: Septic Variance
G.C. Licence#: n/a
Job Cost: TBD

HEARING DATE: 10/16/23

Marjorie Carlson
APPLICANT SIGNATURE

9/25/23
DATE

James Mueller
PROPERTY SERVICES

09/22/23
DATE

ATTACHMENT A

Name of Applicant: Marge Carlson

Date: Sept. 14, 2023

Request: Variance for installation of a new compliant Septic Treatment System

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

Why do you feel the request meets the following criteria?

1. The variance is in harmony with the general purposes and intent of the official control.

A variance is requested because of inherent difficulties of the current non-compliant septic system. My goal is to install a new compliant pressurized mound septic treatment system.

This improvement would comply with the Nicollet County requirements, and also improve the value of my property.

2. The variance is consistent with the intent of the Comprehensive Plan.

The variance, and subsequent installation of a new compliant septic system would meet the intent of the Nicollet County Comprehensive Plan.

3. The variance establishes a practical difficulty in complying with the official controls.

Space characteristics & peculiarities of the property create difficulty in meeting official County requirements.

4. The plight of the landowner is due to circumstances unique to the property not created by the landowner.

The property owner is under distress resulting from dimensional and septic features of the lot, e.g., bluff, creek.

(Continued onto back)

ATTACHMENT B

5. The variance will not alter the essential character of the locality.

*the new septic system will not change the real estate, i.e.,
land and improvements to the land*

6. The practical difficulty includes more than economic considerations alone.

*A compliant septic system is required in Nicotlet County. It is impossible
to overlook the major landowner's cost to install a compliant septic system.
Again, the "practical difficulty" is maintaining and improving the value of my property.*

***ALL SIX VARIANCE CRITERIA MUST BE MET
IN ORDER FOR THE REQUEST TO BE APPROVED.***



VARIANCE APPLICANT QUESTIONNAIRE
PROJECT DESCRIPTION

Name of Applicant: Marge Carlson

Date: Sept. 14, 2023

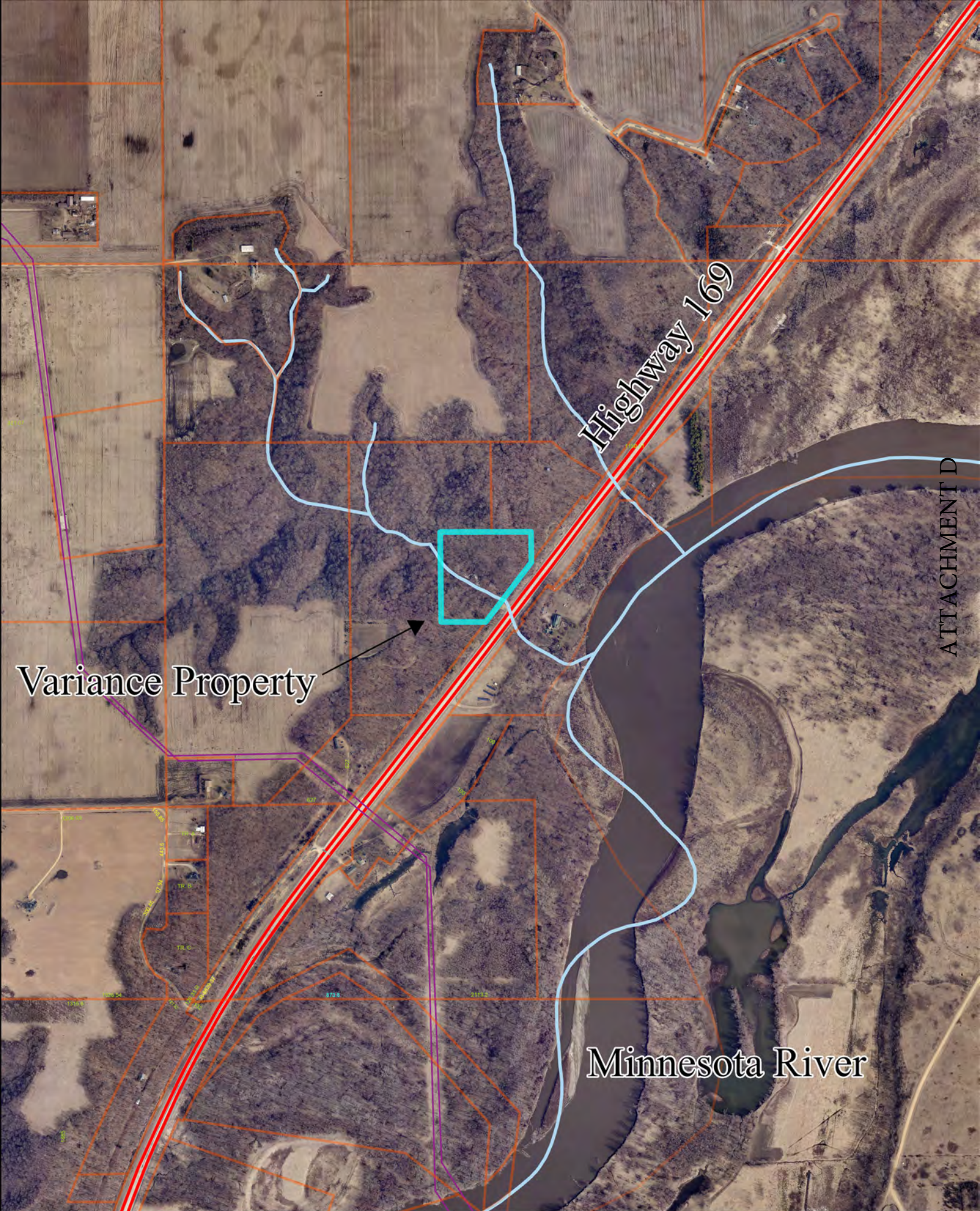
Please describe the specific details related to your request, including but not limited to:

- why you feel the project is a *need* rather than a *want*;
- what alternatives you explored and the reasons they were not reasonable for you; and
- what use, or uses, the project will provide for you;

If your request is approved, you will be **held** to the plans and specifications submitted to the County with your application.

- My request for a variance is a NERD. As mentioned prior, I have a non-compliant septic system.
- There were no alternatives to explore, except the request for a variance.
- With a compliant septic system, my property value will increase. When I sell my property it will positively impact my sale.





Highway 169

Variance Property

ATTACHMENT D

Minnesota River



10 04 2023

ATTACHMENT E



10 04 2023

DISPLAYNAME	MAILINGADDR	MAILINGCITYSTATEZIP
CARLSON KEITH REV INTER-VIVOS TRUST	3125 PRAIRIE ROSE DR APT 351	MANKATO MN 56001
GUENTZEL LARRY K & TAMELA M TOLZMANN	1768 STEWART RIVER RD	TWO HARBORS MN 55616
OSBORNE MARK M FAMILY TRUST	36995 351ST LN	SAINT PETER MN 56082
STOLT DAVID R	46983 381ST AVE	SAINT PETER MN 56082
GILBERTSON GARY	602 SIOUX LN	SAINT PETER MN 56082
MN DNR & REAL ESTATE MANAGEMENT	500 LAFAYETTE RD	SAINT PAUL MN 55155-4030
WINDOM RICHARD L & REBECCA J WINDOM REVOCABLE TRUST	46613 US HIGHWAY 169	SAINT PETER MN 56082
GUSTAFSON DONALD & BEVERLY TRUST	45684 367TH AVE	SAINT PETER MN 56082
MOGENSEN DAVID B & MARY K MOGENSEN REVOCABLE TRUST	46599 391ST AVE	SAINT PETER MN 56082
HALL-FERGUSON LYNN C & TEDDY FERGUSON	46309 US HIGHWAY 169	SAINT PETER MN 56082
Linda Pell- Oshawa Township	38711 State Highway 99	SAINT PETER MN 56082



BOARD OF ADJUSTMENTS AND APPEALS CRITERIA FOR GRANTING A VARIANCE

Name of Applicant	Marjorie Carlson	Hearing	October 16, 2023
Property Owner	Keith Carlson Revocable Inter-Vivos Trust	Continuation	N/A
File	PLN23-20	Board Member	_____
Variance Request	Reduction of the State Right of Way setback for the purpose of installing a replacement septic system and drain field		

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute 394.27, subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

YES ☐ NO ☐ REASON: _____

2. The variance is consistent with the intent of the Comprehensive Plan.

YES ☐ NO ☐ REASON: _____

3. The variance establishes a practical difficulty in complying with the official controls.

YES ☐ NO ☐ REASON: _____

ATTACHMENT G

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

YES ☐ NO ☐ REASON: _____

5. The variance will not alter the essential character of the locality.

YES ☐ NO ☐ REASON: _____

6. The practical difficulty includes more than economic considerations alone.

YES ☐ NO ☐ REASON: _____

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS

☐ APPROVES THE REQUESTED VARIANCE

☐ DENIES THE REQUESTED VARIANCE

THIS DECISION WAS BASED UPON

- | | |
|---|---------------------------------------|
| ☐ Application | ☐ Site visit |
| ☐ Information received at public hearing | ☐ Staff Report |
| ☐ Pictures | |

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD.

FACTS SUPPORTING THE ANSWER TO EACH QUESTION ABOVE ARE HEREBY CERTIFIED AS THE FINDINGS OF THE NICOLLET COUNTY BOARD OF ADJUSTMENT & APPEALS.

Date: _____ Board Member: _____