

STAFF REPORT

Application:	Requests related to the construction of a home on a property. Approvals required include a Variance to allow for a 0.54 acre/100 ft wide lot without public road frontage to be used for the construction of a new dwelling (min. 2.25 acre/150 ft width required). Property accessed via an existing easement.
Applicant:	Brittany and Eric Smith
Property Owner:	Marilyn Klettenberg et. al., Carol Sievers
Agenda Item:	4(a)

Background Information:

- **Proposal:** The applicants are proposing to make use of a property that does not have any direct frontage on a public roadway and which does not meet the Township's minimum size standards to be used as a buildable lot for residential development.
- **Location:**
 - Property address: None (behind 19740 County 1, Park Rapids)
 - Sec/Twp/Range: 13-140-35
 - Parcel number(s): 27.13.00410, 27.60.02910, 27.60.02900
- **Zoning:** Rural Residential
- **Lot size:** Approx. 24,999 sq ft (0.57 acres) according to County GIS estimate. An additional approx. 5,400 sq ft parcel is adjacent and they would purchase a half-interest in this parcel to help provide access to the larger parcel where building is proposed from County Road 1.
 - Existing Impervious Coverage: About 0.0 sq ft (0.00%)
 - Proposed Impervious Coverage: Required to be less than 20% (with possibility of up to 30% by conditional use permit).
- **Septic System Status:** The property will need to be served with private sewer and water.
- **Natural Features:**
 - Floodplain: The existing and proposed structures are not within an identified floodplain.
 - Bluff/Steep Slopes: The lot does not contain a bluff. The lot does not contain steep slopes that would impact the proposed improvement(s) to the property.
 - Wetlands: There are not wetlands that are likely to be impacted by the proposed improvement(s) to the property.

Board of Adjustment Action: The Board of Adjustment may approve the variance request, deny the request(s), or table the request(s) if the Board should need additional information from the applicant. If the Board should approve or deny the request, the Board should state the findings which support either of these actions.

Staff Comments:

1. The lot requested to be considered buildable had previously been all one parcel with the land immediately to its west and slightly over 1 acre in size. At that time, the landowner also owned an adjacent 25' x 467' strip of land along most of the south portion of this 1+ acre parcel that was originally platted as "Outlot C" of the "Country Club Estates" plat in 1981. These combined parcels were originally purchased by a different landowner (Husby) in 1997 (Hubbard County Recorder Document #244518)

That same owner then requested a variance in 1999 from Hubbard County (Todd Township did not have its own zoning ordinance at that time) to split the parcel into two as the proposed lots would not meet the minimum County size standards. County requirements at the time were for lots to be 40,000 sq ft and 150 ft wide - these lots were about 25,000 sq ft and 100 or 125 ft wide (depending on whether the 25' strip of land at the south end is included or not). According to the minutes from that County variance hearing, access to the rear parcel was to be via a 20-25 ft easement along the south end (what is now Parcels 27.60.02900 and 27.60.02910 but at the time was one parcel). That variance was approved on a 3-2 vote.

However, after the variance was approved in 1999 the owner (Husby) did not actually record new deeds to effectuate the lot split until February 2004 (Recorded Doc #296851). In the meantime, Todd Township adopted its own Zoning Ordinance in 2001 and that ordinance required a minimum lot size larger than the County's minimum lot size. If the owner had recorded the lots as approved by the 1999 variance prior to the Township adopting its ordinance, those lots would have been considered legal nonconforming lots and whether they were buildable separately was subject to Section 6.01.2 of the Township Ordinance at that time. Because the lots were still under common ownership (Husby) at the time the Township adopted its ordinance, they still would have had to be considered one lot because they were less than 80% of the required lot width and size in the Township Ordinance (had they been sold separately before the Township ordinance was adopted they would have both been considered buildable with a conditional use permit and provided the owner could meet all required setbacks and provide adequate sewage treatment.

So because the lots were not split prior to 2001 and because the lots stayed under common ownership, the Township ordinance would not, and does not, allow for them to both be considered buildable without a variance. The splitting of the lots in 2004 was an illegal split of land under the Township ordinance.

Prior to that 2004 split, in August 2003, Husby applied to the Township to construct a "quad" dwelling on the property as the original larger 1+ acre property. That application was denied as the Township Zoning Map (adopted in 2001) classified the property in a Commercial zoning district, which did not allow for residential dwellings.

In September 2004, Husby wrote a letter to the Township requesting that the Township amend its zoning map to change the zoning (presumably to a residential zoning district). The Township responded the next day with a letter that indicated there was a moratorium in place while the Township worked through amending its Zoning Ordinance and Comprehensive Plan and that no rezonings could take place at that time.

In October 2004, Husby then transferred the east portion of the split parcels to Otto/Klettenberg as undivided dual property owners (Otto and Klettenberg separately owned two adjacent lots to the south in the Country Club Estates subdivision) while retaining a 25-foot easement over the westerly split of Outlot C in the Country Club Estates property to allow access to the east portion of the lots.

In 2006 and 2007, Husby's attorney wrote to the Township recounting the 1999 variance and indicating that he felt that all that was required to make the lots as split in 2004 buildable for residential dwellings was to rezone the property from Commercial to Rural Residential. Written responses to that letter, and some follow up letters, from the Township are not in any file. It appears from the follow up letters that there was some conversation between Husby's attorney and the Township attorney at that time that eventually led to the Township attorney drafting a deed restriction combining the western portions of the split lots (current PIDs 27.13.00400 and 27.60.02900) which the Husby's then signed and which was later recorded with the County Recorder. The Township responded with a letter dated June 13, 2007 indicating that the Township Ordinance and Zoning Map were amended in March 2007 and that "any owner, present or future, may apply for a land use permit to build a single family dwelling on the combined property to the extent that said application conforms to the requirements of the new Township Ordinance and, in particular, continues to comply with Section 8.0 NON-CONFORMING USES, a permit would be issued." Section 8.02 was the section relevant to regulating non-conforming lots of record at the time and while it appears to have still prohibited the lots in question from being considered buildable (since they weren't legally created when they were split in 2004) it could be argued the Township's June 2007 letter implied that at least the western lot was being considered buildable by the Township.

The Deed Restriction mentioned above was recorded on June 29, 2007 and stated that "the two below described parcels shall be treated as one parcel and that there shall be no further divisions within the described parcels, except as may be permitted by Todd Township's Zoning Ordinance and/or amendments thereto." The legal description describes what is today PIDs 27.13.00400 and 27.60.02900. These are NOT the parcels currently being asked to be allowed to be buildable - they are the parcels to the west.

Under the current Todd Township Zoning Ordinance, the parcel requested to be considered buildable is subject to Section 8.04.01 (Nonconforming Lots - Parcel of Record). It indicates that to be considered legally buildable it must meet several conditions, including that it be 1) recorded prior to May 12, 2001; and 2) that it have been created compliant with the official controls in effect at the time. Since the parcel in question was not "created" (by recording a deed with its current legal description) until 2004 and wasn't compliant with Todd Township's size requirements at that time, it is not able to be considered buildable under that Section of the Ordinance. As such, a variance is required for the parcel to be considered buildable.

Given that the larger lot and Outlot C have since been split into two and sold to different owners a primary questions arises as to how Parcel 27.13.00410 (the lot on which the current applicant wishes to build a home) is accessed. They indicate that there is a pre-existing easement over PID 27.60.02900 already for this lot (as documented in previously mentioned land transfers) and that they are purchasing a one-half interest in PID 27.60.02910 from the same people selling them the other land, which would presumably provide them access over the last strip of land needed to access PID 27.13.00410. Staff has asked the applicant whether they have clear rights to use their half interest to construct a driveway within PID 27.60.02910. The other owner with a half interest in that property is Carol Sievers.

Staff Recommendation: Based on the findings of fact and discussion listed below, Staff recommends approval of the proposed Variance only if it is found that the 1999 Hubbard County variance approval - even though it wasn't effectuated until 2004 - along with the lot being of a similar size to that of the

adjacent lots in the Country Club Estates development are factors that outweigh the intent of the Township in requiring lots to be a minimum size of 2.25 acres and 150 ft width under today's ordinance.

If the application or some version of the application is approved, Staff would recommend consideration for the following conditions of approval (or tabling of the application to allow for review of revised plans consistent with the following):

1. The owner shall obtain all required permits relating to sewage treatment from Hubbard County, meet all required setbacks and impervious coverage limits from the Todd Township Ordinance and otherwise meet all other applicable local, state, and federal regulations.
2. A certified copy of the Variance shall be recorded by the Township with the Hubbard County Recorder or Registrar of Titles. It shall include the legal description and property identification number of the parcel as identified herein.
3. Applicant shall reimburse the Township for all reasonable administrative, legal, planning, engineering and other professional costs incurred in the creation, administration, enforcement or execution of this approval or any related approvals. Applicant agrees to pay all such reasonable costs within 30 days of billing by the Township unless an alternate timeline is approved by the Town Board. Bills not paid within 30 days of billing shall accrue interest at the rate of 6% per year. Further, if Applicant fails to pay said amounts within the time permitted, the Township may specially assess such costs against Applicant's Property. Applicant by accepting this condition knowingly and voluntarily waives any and all rights to appeal any certification/assessment under any applicable statutes, the Constitution, and case law.
4. Applicant shall at all times comply with the conditions of this Variance. Upon written notice of any violation the Applicant shall promptly remedy the violation within the time period specified by the Township. Any violation not remedied or addressed shall be subject to Variance review and may be basis for Variance termination.
5. The applicant shall work with the other half-owner of PID 27.60.02910 to ensure that there is sufficient legal documentation that a driveway is allowed to be constructed within that parcel for the benefit of PID 27.13.00410. Such documentation shall be reviewed and approved by the Township Attorney and recorded with the Hubbard County Recorder prior to the issuance of any permits to begin construction of any structures on PID 27.13.00410.

Applicable Statutes/Ordinances: See Appendix A.

Findings of Fact: The following findings of fact are presented by Staff for consideration by the Board of Adjustment:

- 1) **Variations shall only be permitted when they are in harmony with the general purposes and intent of the official control.**

The spirit and intent of the relevant ordinances are as follows:

The spirit and intent of the ordinance's limitation on building on undersized lots is to ensure that there is adequate space for private sewage treatment facilities, driveways, private wells and a typical number of buildings and structures while still being reasonably able to meet required setbacks and lot coverage limitations.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because a previous landowner (Husby) had obtained an approved variance from Hubbard County in 1999 to split the two lots so that they would each be buildable. While that lot split and the sale of one of the parcels to a new owner wasn't recorded until 2004 after the Township adopted its ordinance, it is consistent with the intent of the variance approval.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because the lot was the result of an illegal split of land not compliant with the Todd Township ordinances at the time. And even if the split had been legal, the lots weren't under separate ownership for another 7+ months during which time the Township ordinance wouldn't have allowed them to be sold separately because they were less than 80% of the required lot width and size. As such, allowing for the illegally divided and sold lots to be developed separately now is inconsistent with the intent of the Township ordinance in 2001 and ever since.

2) Variances shall only be permitted when they are consistent with the Comprehensive Plan.

Findings Supporting Approval

The granting of the requested variance(s) is not inconsistent with the Comprehensive Plan because a new single-family home would represent an anticipated use within the relevant zoning district(s). The applicant has provided information indicating they can install a conforming sewage treatment system and all required property line setbacks and impervious coverage limits can be met.

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because it would allow for an illegally split and sold lot to be developed separately. This would result in inconsistent application of the Township ordinances.

3) The property owner proposes to use the property in a reasonable manner not permitted by an official control.

Findings Supporting Approval

The proposed use of the Property is reasonable because the lot had been approved by Hubbard County to be split in 1999 and reasons given at the time included the fact that the proposed lots were larger than most of the lots already in the adjacent Country Club estates development (approved in 1981) and wouldn't create an unusual density of homes. Further they have shown the lots to be able to support a home and adequate sewage treatment and meeting all required setbacks.

Findings Supporting Denial

The proposed use of the property is not reasonable because it would allow for lots that weren't created and sold in compliance with the Township Zoning Ordinance to be considered separately buildable.

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

Findings Supporting Approval

The plight of the landowner is due to factors that they did not create because the need for the variance(s) is due largely to the complicated history of this parcel and those around it - involving a 1999 County variance approval to split the lots, the failure of the previous property owner to effectuate that split and sale of land until years later, the subsequent adoption of a Township Zoning Ordinance, the sale of split parcels to nearby property owners and eventually the (pending) sale of the land to new owners.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they have not yet purchased the parcel and have been made aware of the need for a variance.

5) The variance, if granted, will not alter the essential character of the locality.

Findings Supporting Approval

The essential character of the area would not be altered because both the current area and the proposed use are residential in character. The density of housing allowed if the variance is approved will be similar to that of the nearby properties in the Country Club Estates subdivision.

Findings Supporting Denial

The essential character of the area would be altered because it would allow for two homes to be built in an area that currently has none and has long been a wooded buffer between lots within the Country Club Estates development and the adjacent golf course to the north.

6) Economic considerations alone do not constitute practical difficulties.

Findings Supporting Approval

Economic considerations are not the only reason the Applicant cannot meet the requirements of the ordinance because there are non-economic factors involved, as mentioned above - including the complicated history relating to the creation and sale of this property.

Findings Supporting Denial

Economic considerations are the only reason the applicant cannot meet the requirements of the ordinance because avoiding the need for the variance would require the additional cost of purchasing and re-combining the adjacent parcels to the west to make them one lot as they existed prior to 2004.

7) 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.

Findings Supporting Approval

The proposed use for a single-family dwelling is identified as a permitted use in the zoning district where the applicant's property is located (Rural Residential zoning)

Findings Supporting Denial

The proposed use is not identified as a permitted, conditional or interim use in the zoning district where the applicant's property is located because it would involve building an illegal non-conforming lot.

Appendix A

Applicable Statutes and Ordinances

Minnesota Statutes

462.357 (2016) OFFICIAL CONTROLS: ZONING ORDINANCE.

Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Todd Township/Hubbard County Regulations

3.12 VARIANCES

Variances may only be granted in accordance with Minnesota Statutes, Chapter 462, as applicable. No variance may be granted that would allow any use that is not permitted in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic

considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

3.12.02 Existing Developments

For existing developments, the application for variances must clearly demonstrate a conforming wastewater treatment system is present for the intended use.

3.12.03 Conditions for Variance

The Board of Adjustment should adopt findings addressing the following questions:

- A. Is the variance in harmony with the purposes and intent of this ordinance?
- B. Is the variance consistent with the comprehensive plan?
- C. Does the proposal put property to use in a reasonable manner not permitted by this Ordinance?
- D. Are there unique circumstances to the property not created by the landowner?
- E. Will the variance, if granted, alter the essential character of the locality?
- F. Additional conditions may be imposed on the granting of a variance if those conditions are directly related to and bear a rough proportionality to the impact created by the variance. Economic considerations alone do not constitute practical difficulties.
- G. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- H. Variances shall be granted for earth sheltered construction as defined in M.S. § 216C.06, subdivision 14, when in harmony with this ordinance.

3.12.04 Variance issued to Property

Variances will be issued to the property and are not transferable and shall remain in effect so long as any condition imposed by the board of adjustment is met.

3.12.05 Failure to Implement Variance

Failure by the owner or applicant to complete the improvements for which the variance was sought, or to comply with the conditions attached to the variance within twelve (12) months of the date of its approval shall void the variance. The board of adjustment, solely at its discretion, may extend the variance upon one occasion for sixty (60) additional calendar days beyond the date of expiration. Any additional extension shall require a new public hearing and approval by the board of adjustment.

3.12.06 Recording of Variance

Variances will be recorded with the Hubbard County Recorder or if Torrens property with the Registrar of Titles.

5.04 Rural Residential District

A Rural Residential district is intended to provide somewhat limited residential development opportunity on land that is near lakeshores and growth areas. The rural residential district is a transitional district, and to minimize future land use conflicts, new animal feedlots shall be prohibited and to maintain the area’s rural characteristics, conservation design development shall be encouraged. This district is intended to meet the following Todd Township Comprehensive Plan goals:

- o Promote land conservation / compatible land uses
- o Preserving nature and flavor of the quiet open space character of the township
- o Conservation based subdivision work -facilitate a preference for conservation designed work in the township for development
- o Consider green spaces / buffers – preserving and/or creating new green spaces with and around developments and differing land uses
- o Implement mobile home regulations to address problems
- o Allow some types of home business uses
- o Enforce parking / signage
- o Consider home versus commercial uses /standards
- o Review subdivisions concerns regarding roads and construction
- o Consider the total carrying capacity of township
- o Work towards identifying population growth and implement lifestyle housing for all landowners in the township to meet the changing times and aging population
- o Pave roads in new developments through developer’s agreements and contracts

5.04.01 Lot Requirements

- A. Minimum acreages: 2.25 acres
- B. Minimum lot width: 150 feet
- C. Setbacks from:
 - Property line – 20 feet
 - Public road right of way – 35 feet (from right-of-way) or 65 feet from the centerline of the traveled roadway, whichever is more restrictive.
 - County right of way – 35 feet
 - Township and other rights-of-way – 35 feet
- D. Maximum impervious lot coverage – 20%
 - 1. The allowable impervious coverage may be increased to 30% on legal nonconforming lots smaller than 2.25 acres by conditional use permit and with the submittal and implementation of a comprehensive stormwater management plan acceptable to the Township that emphasizes the onsite treatment and storage of stormwater and any irrigated water through a combination of methods which may include buffer strips, swales, rainwater gardens, retention or infiltration ponds or other acceptable best management practices. The Township may require such plans to

be designed by an engineer or other qualified professional and reviewed by an independent engineer or other qualified professional before approving such plan.

5.04.02 Permitted Uses

The following uses are permitted subject to any applicable performance and general development standards contained in Sections 6 and 7 of this ordinance:

- A. Conservation designed developments
- B. Dwelling-single family
- C. Earth shelter home
- D. Existing agricultural uses
- E. Family daycare
- F. Garage - attached and detached
- G. Guest cottage - less than six hundred (600) square feet
- H. Licensed residential programs
- I. Licensed nonresidential programs
- J. Public parks and trails
- K. Residential accessory buildings
- L. Solar Energy System - Accessory

5.04.03 Conditional Uses

The following uses may be allowed as conditional uses following the procedures set forth in Section 3.13 of this ordinance and further subject to the performance and general development standards contained in Section 6 and 7 of this ordinance.

- A. Antennas, personal wireless
- B. Bed & breakfast inns
- C. Cemeteries
- D. Churches
- E. Schools
- F. Dwelling-multifamily
- G. Golf course
- H. Guest cottages - greater than six hundred (600) feet but not more than 700 feet
- I. Manufactured home park
- J. Conventional designed developments

5.04.04 Interim Use Permits

The following uses may be allowed as interim uses subject to the procedures set forth in Section 3.13 of this ordinance and further subject to the performance and general development standards contained in Sections 6 & 7 of this ordinance:

- A. Concrete (ready mix) or asphalt mixing facility, temporary
- B. Group family day care
- C. Home business
- D. Home occupations
- E. Outside storage/display of goods less than 2 months
- F. Secondary dwelling unit
- G. Temporary uses/special events Rural Tourism and Event Center

8.04 Nonconforming Lots

8.04.01 Parcel of Record

All lots or tracts, the plat or deed or Torrens, to which has been recorded in the office of the county recorder on or before the date of May 12, 2001 shall be considered a parcel of record. A parcel of record shall be a legally buildable parcel even though such parcel may not conform to the lot area, lot width provided all the following are met:

- A. The use is permitted in the applicable zoning district:
- B. The lot was created compliant with the official controls in effect at the time;
- C. The applicable setback requirements of this ordinance are met; and
- D. The wastewater treatment system standards (2 wastewater sites) contained in the Hubbard County Sanitary Code and MPCA rules are met as amended; and
- E. The parcel or lot of record can meet proper placement and meeting of setbacks for a drilled well per Minnesota Department of Health rules and regulations, as amended; and
- F. The parcel or lot of record has no unusual topography which will create storm water problems.

8.04.02 Residual Parcels

A parcel of record, as defined in A above, that is subsequently reduced to a residual parcel because of a taking or dedication for a public purpose or public right of way shall continue to be considered a parcel of record and shall be considered a legally buildable parcel, provided the applicable setback requirements of this ordinance and the regulatory well and wastewater treatment standards are met.