



CARVER COUNTY BOARD OF ADJUSTMENT

Regular Meeting – **December 4, 2024, 7:00 PM**

Commissioners' Meeting Room

2nd Floor Human Services Bldg

Government Center – Chaska, Mn

AGENDA

1. Convene

1.1. Call to Order

1.2. Attendance

1.3. Agenda review and adoption

1.4. Approve Minutes from November 4, 2024 meeting.....2-6

2. Agenda

2.1. File #20240045 - Public hearing on request by Donald Schlegelmilch
for a variance.

(Agricultural Parcel under 20 Acres & Exceeds Allowable Prime Ag
Soils)

Dahlgren Township.....7-18

3. Other Business

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Land Management

November 22, 2024

TO: Carver County Board of Adjustment & Dahlgren Town Board

FROM: The Land Management Department

SUBJECT: Application for a Variance (Ag Parcel Acreage, No Reasonable Use, Prime Ag Soils)

FILE #: PZ20240045

APPLICANT: Donald Schlegelmilch

PROPERTY OWNERS: Eugene & Joan Schlegelmilch, trustees of J. Schlegelmilch Trust

SITE ADDRESSES: 6350 Hampshire Rd, Chaska, MN 55318

VARIANCE TYPE: Parcel Less Than 20 Acres w/No Building Eligibility (No Reasonable Use) and Excessive Prime Ag Soils in a newly created lot.

PURSUANT TO: County Code Sections 152.033 (C)(3) & (F)

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCELS #: 04-002-0710

BACKGROUND:

1. Eugene and Joan Schlegelmilch, Trustees of J. Schlegelmilch Trust, own an approximate 72.48-acre parcel located in the West Half (W½) of the Northwest Quarter (NW¼) of Section 2, Dahlgren Township. The property is improved with an existing farmstead including a single-family home and associated agricultural buildings and tillable farmland. The property is located in the Agricultural Zoning District, and the Carver County Water Management Organization (CCWMO) – West Chaska Creek watershed. The property is currently enrolled in the Agricultural Preserve program, expiring in 2026.
2. The applicant is requesting a variance that would allow for a minor subdivision to create an approximate 16.5-acre parcel. If approved, the new parcel would consist of less than 20 acres, which is the minimum for an agricultural parcel with no building eligibility, defined as a parcel with no reasonable use. The new parcel would also contain 6.6 acres of prime agricultural soil, exceeding the allowable 2 acres of prime ag soils for a parcel under 20 acres in total size. Therefore, a variance has been requested pursuant to Sections 152.033 (C)(3) & (F) of the Carver County Zoning Code.

LEGAL BACKGROUND:

§ 152.010 DEFINITIONS

AGRICULTURAL BUILDING. Any structure located on a parcel of 20 acres or more that is used exclusively for agricultural purposes and is not subject to State Building Code.

AGRICULTURE. The principal use of a parcel of land of 20 acres or more for any one or combination of the following activities:

- (1) The production and storage of fruits, vegetables, herbs, floriculture, grains, seeds, trees, forage, cider, maple sap, honey or other crops;
- (2) The keeping, raising, feeding, breeding, or production of animals whether on range, pasture, or feedlot (cattle, sheep, hogs, poultry, ostriches, emus, alpaca, farmed elk, farmed deer, farmed buffalo and the like); or
- (3) Dairying.

REASONABLE USE. For purposes of this chapter, REASONABLE USE shall be a lot or parcel of land with at least one of the following characteristics: at least 20 acres that is primarily good farmland suitable for agriculture; a single-family dwelling exists or there is at least one building eligibility available; or a conditional use permit has been issued for the property as provided by this chapter. Vacant or “no” use shall not be considered a reasonable use.

RESIDENTIAL LOT. A parcel that is less than 20 acres in size, which has an available building eligibility or an existing single-family residence.

§ 152.033 LOT REQUIREMENTS.

- (A) *Generally.* A new lot shall not be created unless it conforms to all of the following requirements. Any action that changes the size, configuration, or shape of a lot is considered to be creating a new lot. The only exception is where changes are being made to correct discrepancies in a legal description or to recognize actual occupation.
- (B) Reasonable use. All new lots created must have a reasonable use as defined by this chapter. If there is no reasonable use, the lot shall not be created.
- (C) Minimum lot area requirements.
 - (3) A parcel for which agriculture is the only reasonable use as defined by this chapter must be a minimum of 20 acres.
- (F) *Use of prime AG land.* Lots of less than 20 acres created for a new residential building site shall contain no more than 2 acres of prime agricultural land under till. The setbacks as required by this chapter shall not be included in the calculation.

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

§ 152.070 PERMITTED PRINCIPAL USES.

- (A) *Generally.* The permitted principal uses in the “A” District are agriculture, including animal agriculture, on parcels of 20 acres or more and single-family residences provided a building eligibility is available pursuant to this chapter. Both uses shall be conducted only in accordance with the provisions of this chapter.
- (B) *Agriculture.* As a permitted use, agriculture often includes such activities as the intense use of farm equipment and machinery; plowing during dry and windy conditions; the raising of livestock and fowl; the use of soil amendments, including manure, herbicides, and pesticides; and storage of manure. These activities may occur during any 24-hour period. Thus, owners or renters of property, that abut agricultural operations may be subject to discomforts such as odors, dirt, dust, insects, and noise, arising from the operations. While these activities may be considered nuisances in a more urban setting, they are common in an agricultural community and vital to the sustenance of an agricultural economy. Pursuant to M.S. § 561.19, as it may be amended from time to time, agricultural activities shall not be considered a public nuisance, provided the activities do not violate any state statute, rule, or other law.
- (C) *Single-family residence.* The residence shall be maintained as one contiguous living space served by one set of utilities. Guest quarters and extended family accommodations are permitted provided they are integrated into the principal structure. A separate rental unit, an additional address, dual utility meters or distinctly segregated entrances shall be prohibited.

(Ord. 47, passed 7-23-02; Am. Ord. 47 03-1, passed 5-5-03; Am. Ord. 97-2021, passed 7-20-21)

BOARD OF ADJUSTMENT

§ 152.210 CREATION.

The Board of Adjustment is hereby established and invested with the authority as is hereinafter provided and as provided by M.S. §§ 394.21 through 394.37, as they may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

§ 152.215 VARIANCES.

- (D) *Grounds for variance.* The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall be granted in accordance with M.S. Chapter 394, as it may be amended from time to time, in cases where the applicant establishes that there is a practical difficulty in the way of carrying out the strict letter of any official control.

- (1) A variance shall only be permitted when the following can be found as fact:

- (a) The variance is in harmony with the general purpose and intent of the official control.
 - (b) The variance is consistent with the intent of the comprehensive plan.

- (2) In addition, a variance may be granted when the applicant establishes a practical difficulty in complying with the official control. A practical difficulty is established when the following items are found as fact:
 - (a) The property owner proposes to use the property in a reasonable manner not permitted by an official control.
 - (b) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.
 - (c) The variance will not alter the essential character of the locality.
 - (d) The practical difficulty includes more than economic considerations alone.
 - (E) In consideration of an after-the-fact variance request, and in addition to the criteria listed in § [152.215\(D\)](#), the Board of Adjustment shall take into consideration and weigh the following:
 - (1) Whether or not the applicant acted in good faith or attempted to comply with this chapter.
 - (2) Whether a substantial investment of money has been made.
 - (3) Whether the construction is fully completed.
 - (4) Whether there are similar structures or similarly situated structures in the area.
 - (5) Whether the benefit to the county is outweighed by the burden on the applicant if the applicant is required to comply with this chapter.
 - (F) Other provisions related to variances.
 - (1) 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.
 - (2) Inadequate access to direct sunlight for solar energy systems is considered a practical difficulty.
 - (3) Variances shall be granted for earth shelter construction as defined in MN State Statute section 216C.06, subdivision 14, when in harmony with the official controls.
 - (4) The board of adjustment may impose conditions on the granting of any variance pursuant to subsection 152.216 (B).
 - (5) Granting of the variance shall not have the effect of violating a state or federal rule or law.
 - (6) *Floodplain standards.* A variance issued to property within the Floodplain Overlay District must meet the requirements set forth in §§ 152.143 through 152.156.
 - (7) *Shoreland Overlay District.* A variance issued to property within the Shoreland Overlay District must meet the requirements set forth in §§ 152.108 and 152.135.
 - (8) That the granting of the variance will not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.
- (Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

§ 152.216 DECISION.

- (A) *Order adopted.* The Board of Adjustment shall make its decision by the adoption of an order either approving or denying the variance or appeal. The Board of Adjustment shall adopt findings of fact supporting its order. The Board of Adjustment shall make its decision in compliance with M.S. § 15.99.
- (B) *Conditions.* The board of adjustment may impose conditions on the granting of any variance. Conditions are to be directly related to the variance, bear a rough proportionality to the impact created by the variance, and shall be what the board of adjustment considers reasonable and necessary to protect the public health, safety and welfare.
- (C) *Floodplain standards.* For floodplain standards, see the Floodplain Overlay District regulations in §§ 152.143 through 152.156.
- (D) *Final notice to applicant.* The Department shall send written notice of the Board of Adjustment's action to the applicant.
- (E) *File with Commissioner of Natural Resources.* A copy of any order issued by the Board of Adjustment for property within the Floodplain or Shoreland District shall be filed with the Commissioner of Natural Resources within ten days of issuance. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance shall include the Board of Adjustment's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.
- (F) *Board decision final.* All decisions by the Board of Adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision or determination shall be final.

(G) *Appeal to District Court.* Any aggrieved person or persons, or any department, board or commission of the jurisdiction, or of the state shall have the right to appeal the decision to the Carver County District Court on questions of law and fact. The appeal shall be made within 30 days after receipt by the applicant of notice of the decision.
(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 88-2018, passed 11-20-18)

STAFF ANALYSIS:

1. The applicant is proposing a minor subdivision to create a new land-only parcel w/associated agricultural buildings. The County Code typically requires the platting process (Major Subdivision) be completed for any subdivision request that does not meet the criteria for the minor subdivision as follows: the subdivision must comply with the comprehensive plan, zoning code, and any official map. The approval of the variance would negate the major subdivision requirement.
2. The parcel, owned by the Schlegelmilch family was an approximate 77-acre parcel until 2012, when a residential parcel north of the Twin Cities and Western railroad was subdivided off. That minor subdivision required a feedlot setback variance (V-PZ20110001). An original quarter-quarter building eligibility, that could have been used for the current proposed lot, instead was allocated to that parcel (PID #0400207020).
3. The applicant is proposing a minor subdivision, as shown in the site plan, dated September 19, 2024. Although the proposed 16.5-acre parcel would meet road frontage, width-to-depth ratio, and all setbacks, it is too small to be considered a conforming land-only parcel. As County Code requires agricultural lots to be a minimum of 20 acres in size, the applicant is requesting a 3.5-acre variance. County Code limits a new parcel under 20 acres to contain no more than 2 acres of prime ag soils. The proposed parcel contains approximately 6.6 acres of prime ag soils, reflecting a 4.6-acre variance. The proposed remnant parcels (e.g., the existing house w/acreage and remnant tillable farmland south of Hampshire Road) would meet all setbacks and lot requirements for both a residential parcel and agricultural parcel respectfully. The proposed 16.5-acre parcel would also lose its agricultural status if created and would not allow for storage of personal belonging due to the absence of a principal use (i.e. house); therefore, requiring all buildings to remain in agricultural use only.
4. In the applicant's letter dated October 14, 2024, the applicant explains that they wish to split the farm buildings and the easternmost field from the home site and surrounding tillable acreage in accordance with the will of Joan Schlegelmilch. The existing house and four adjacent buildings north of the house, are willed to her son (Donald). The proposed 16.5 acres is designated in the will for Ms. Schegelmilch's grandchildren. The applicant states the proposed parcel "will be short acreage due to the railroad tracks, township road, and the neighboring property line that surrounds it."
5. The request was reviewed by Jacob McLain, Carver County Senior Environmentalist – Subsurface Sewage Treatment Systems (SSTS). Mr. McLain reported in an email (dated November 21, 2024) that the existing SSTS was designed and installed in 2017 and a secondary site was identified at that time, but there is no updated certificate of compliance on file. If the variance is granted, a minor subdivision would require a certificate of compliance prior to recording deeds.
6. This request was reviewed by Matt Steele, Senior Environmentalist and Feedlot Officer, who stated the following in an email dated November 21, 2024:
 - *The Eugene Schlegelmilch Farm operation originally registered for 80 slaughter steer/stock cow (80 animal units) on September 26, 2001, and re-registered for the same number of animals during the registration cycle of September 30, 2009, through September 30, 2013.*
 - *A feedlot registration form was submitted to Carver County on August 28, 2020, that identified a maximum animal number of 2 horses (2 animal units) on site within the past 5 years.*
 - *Matt Steele, Carver County Feedlot Officer, permanently terminated the feedlot registration on November 21, 2024, after corresponding with the applicant.*

7. The subject property is within 2 miles of the City of Victoria, the City of Carver, and the City of Chaska; therefore, the application materials were sent to each city for review. Jenn Brewington, Community and Economic Development Director at the City of Victoria stated in an email on November 18, 2024, that there are no comments or concerns from the city. Nate Kabat, Community Development Director for the City of Chaska, stated in an email dated November 19, 2024, that the proposal is outside the future annexation area, so they have no comment. At time of publication, no comments or concerns were received from the City of Carver.
8. The plight of the landowner is due to circumstances created by the landowner. It is possible to create a lot that would meet all regulations, either keeping the home, ag buildings, and small tillable acreage together on the north side of Hampshire Road or splitting the home site from all of the tillable acres. Staff discussed the option of creating conforming parcels with the applicant. However, the applicant is choosing a configuration that does not meet the minimum acreage for a land-only parcel and would contain an excessive amount of prime ag soils for a parcel of this size. The approval of the variance would create one new nonconforming parcel.
9. The applicant is proposing to use the property in a manner that is not in harmony with the general purpose and intent of the official control. The official control in this matter is the standard related to the amount of prime ag soil being included in a new parcel under 20 acres. The intent of these regulations is to prohibit the development of parcels that convert tillable acreage into residential development. Since no new residential development is being proposed and no building eligibility is available, this request does not appear to meet the intent of the prime ag soil regulations. The second official control in this matter is the standard related to the size of an agricultural parcel. The intent of official control is to maintain large tillable acreage to easily farmable swaths of land, and this request proposes a single 11.5-acre field, rather than keeping it combined with the 33 tillable acres across the road or with the existing house location north of Hampshire Road. The proposed minor subdivision is inconsistent with a stated purpose of the Subdivision regulations § 151.003 (C), “To preserve prime and good agricultural land in tracts large enough for viable commercial agricultural operations.”
10. The proposed minor subdivision would create a parcel with a collection of substantial agricultural buildings that would be inefficiently oversized to serve the adjoining 11.5-acre field. While the lot split is consistent with the current owner’s desires, it violates a Subdivision regulations policy to create orderly and efficient subdivision of land (§ 151.002 (A)). Also, the new parcel would also not “protect and conserve...the value of buildings and improvements upon the land.” § 151.003 (F). The structures were built to serve an almost 80-acre farm, not a 11.5-acre field.
11. The granting of the variance appears to be in conflict with the intent of the Comprehensive Plan. In the Comprehensive Plan, the preservation of agriculture land is listed as one of the major themes. Policy LU-17B provides for the long-term use of agricultural land and prime soils to be used in large, easily farmable parcels. Splitting the two tillable fields on this property also fragments the home from the agricultural buildings. Specifically, “The creation of parcels with no reasonable use shall be avoided.” Per Code, agricultural buildings may only be used to store farm machinery, crops, or livestock animals. Splitting the buildings with the smaller tillable acreage away from the home and larger tillable portion does not align with the Comprehensive Plan’s intent regarding the reasonable land uses of residential lots, combination home and farm, and agricultural lots.
12. The neighborhood is comprised of agricultural uses, and single-family residences. The request and subsequent minor subdivision would not cause a substantial change in the character of the neighborhood, nor would it have a negative impact on government services.
13. The granting of the variance would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicants and would not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the properties.
14. The Dahlgren Town Board reviewed the request at their October 14, 2024, Town Board meeting, and recommended approval, stating “*unanimous vote in favor.*”

BOARD CONSIDERATION:

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for the ability to create a nonconforming lot with more than 2 acres of prime agricultural soils and no building eligibility, defined as a parcel with no reasonable use, would serve in the interest of justice, the following condition should be attached to the approved variance:

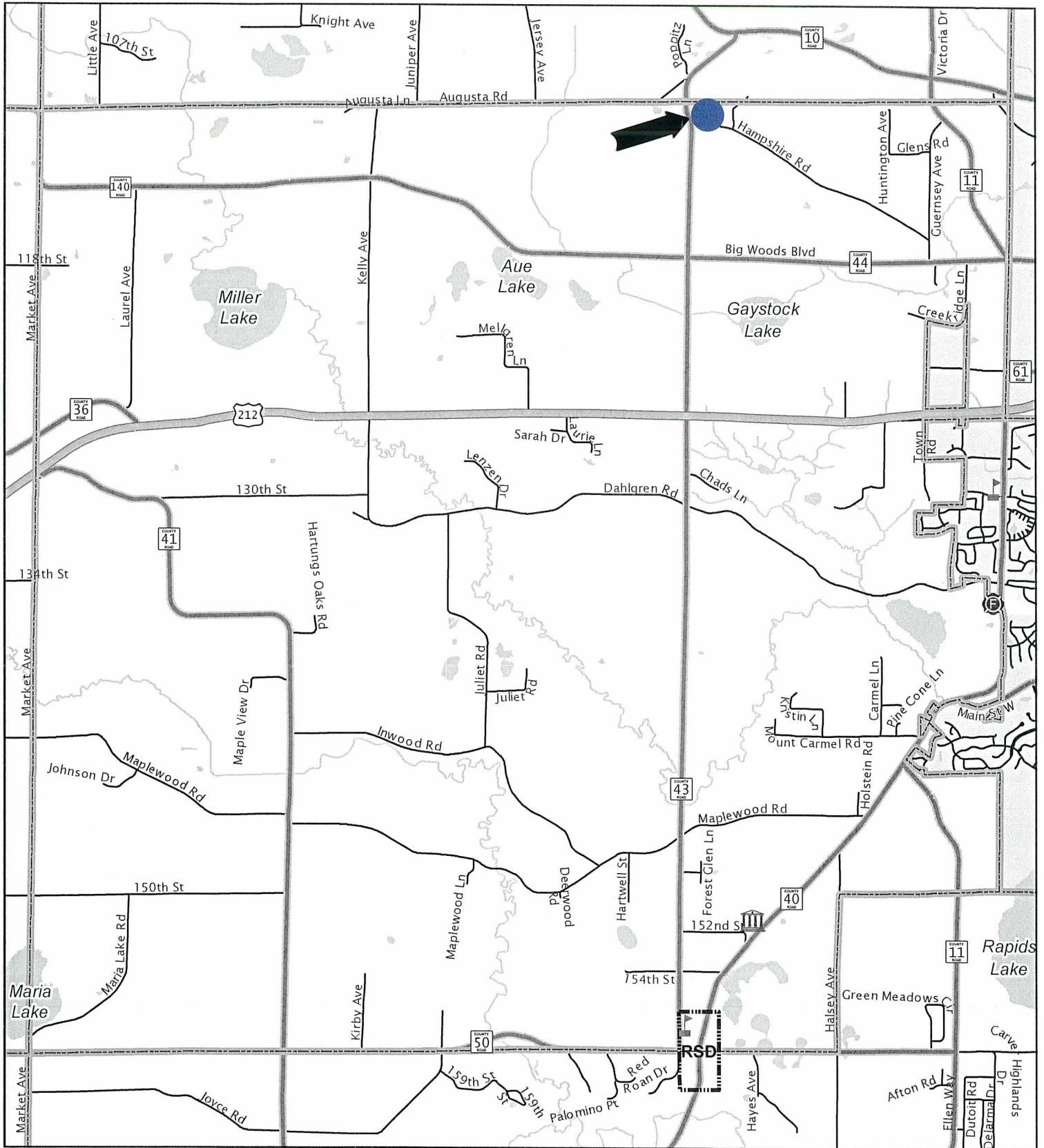
1. A Minor Subdivision application shall be submitted and approved prior to the recording of any deed(s). The parcels shall be subdivided in accordance with the County Zoning Code application requirements including by not limited to, a completed Minor Subdivision Application, Survey, SSTS Compliance, and easements, if applicable.
2. All existing agricultural buildings shall be for agricultural use only with no personal storage permitted. An agricultural building shall be used exclusively to store farm machinery, crop storage, or livestock. Any modification to the structures would require compliance with State Building Code standards.

NOTE: The Board of Adjustment may consider it necessary to protect the public health, safety, and welfare; therefore, imposing additional conditions on granting the variance. Any conditions should bear a rough proportionality to the impact created by the variance.

OR

If the Board of Adjustment determines that a practical difficulty has not been identified, and that approving the variances would not serve in the interest of justice, the Board of Adjustment would need to identify reasons to support the denial.

DAHLGREN TOWNSHIP



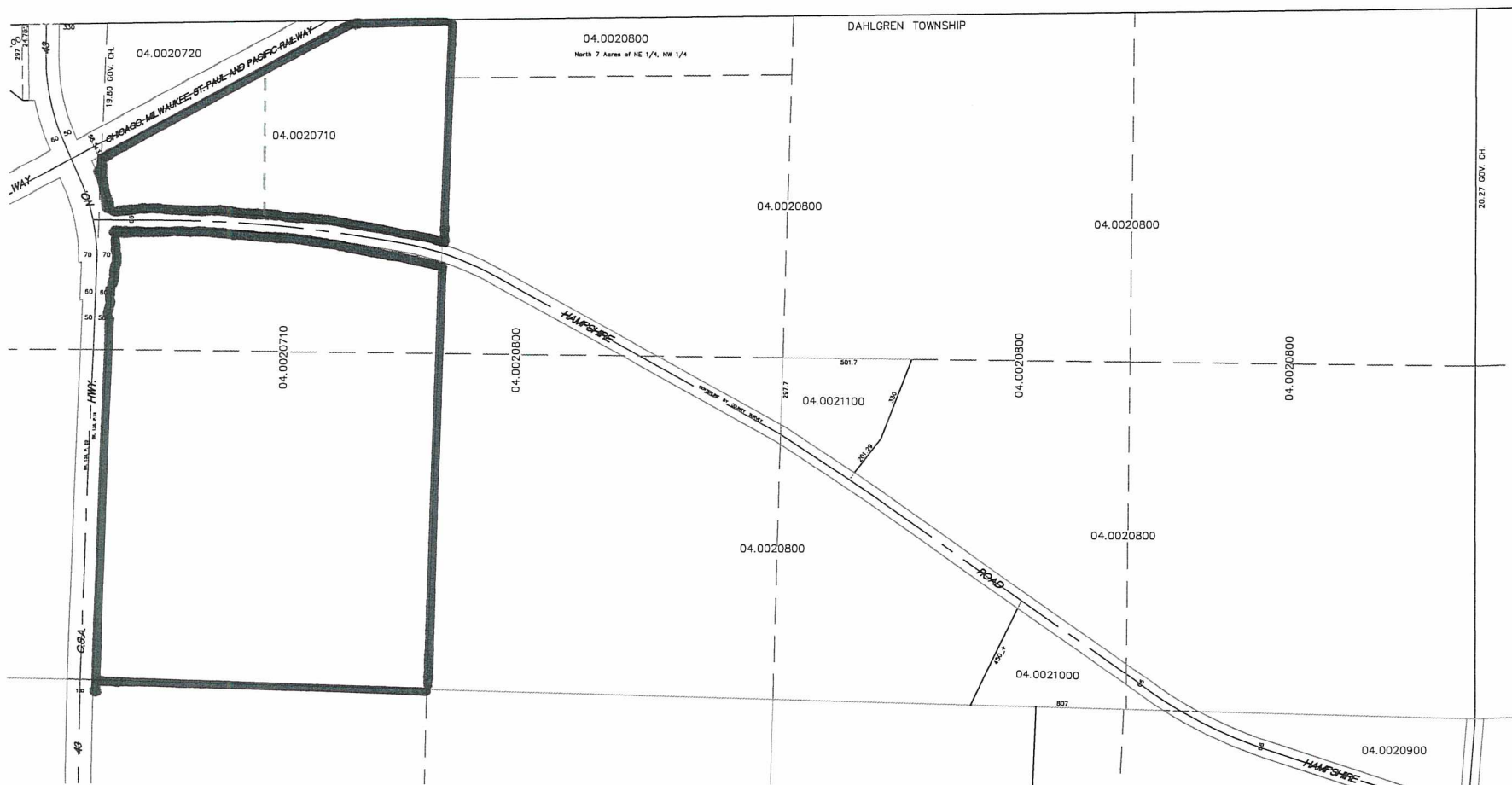
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Map Created by Carver County GIS

THIS IS NOT A LEGALLY RECORDED PLAT.
THIS MAP IS A COMPILED OF RECORDS
AS THEY APPEAR IN THE CARVER COUNTY
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PURPOSES. THE COUNTY AND ITS AGENTS
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N 1/2 SEC. 2, T.115, R.24



Surveying & Mapping Office
Carver County Gov. Center
600 East Fourth Street
Chaska MN 55318

Oct 24, 2024

To: The Board of Adjustment
Date: 10/14/2024
From: Joan Schlegelmilch
Re: Land Variance Proposal

After reviewing Joan Schlegelmilch's will, Joan Schlegelmilch would like to propose a variance to include the farm buildings with the field adjacent to the east, totaling 16.5 acres. This will leave the parcel 3.5 acres short of the 20-acre requirement for a subdivision of this type. This subdivision of land will be designated in the Joan Schlegelmilch will for her grandchildren and son.

The subdivision will be short acreage due to the railroad tracks, township road, and the neighboring property line that surrounds it.

The second reason for this variance is Joan Shlegelmilch would like the house and four buildings that make up the home site to be willed to her son.

Thank you for your time,

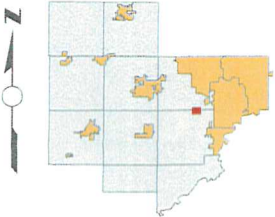
Joan Schlegelmilch

SCHLEGELMILCH SUBDIVISION PROPOSAL



Date: 9/19/2024

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Township Presentation & Recommendation Form

PARCEL # <u>04-002-0710</u>	Permit # <u>P220240045</u>
Owner's Name: <u>Joan Schlegelmilch</u>	Owner's Mailing Address: <u>6350 Hampshire Rd</u>
City: <u>Chaska</u>	Owner State: <u>Chaska</u> Owner Zip: <u>55318</u>
Applicant (if other than owner): <u>Don Schlegelmilch</u>	Site Address: <u>6350 Hampshire Rd, Chaska MN 55318</u>

Type of Request:	☐ CUP	☐ IUP	☐ Preliminary Plat	☐ Final Plat	☒ Variance	☐ Appeal
Description of Request: <u>nonconforming parcel.</u>						
Date of County Public Hearing: <u>Nov. 6, 2024</u>			Date of Township Meeting: <u>10/14/24</u>			

Actions:

Township Action Taken:	
☒	Recommends approval and use of the Township Road (if applicable) with the following comments:
☐	Recommends denial for the following reasons:
☐	No recommendation, but will comment on the request at the Planning Commission or Board of Adjustment hearing:
<u>unanimous vote in favor</u>	

****Important:** I understand that I must appear at the Town Board meeting to present my request and obtain their recommendation prior to appearing before the County Planning Commission or Board of Adjustment.

<u>Don Schlegelmilch</u> Signature of Applicant	Date <u>10-14-24</u>
<u>[Signature]</u> Signature of Township Official	Date <u>10-14-24</u>

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 04-002-0710

File#PZ20240045

APPLICANT: Donald Schlegelmilch

OWNER: Joan W Schlegelmilch Trust

* * * * *

The West Half of the Northwest Quarter (W $\frac{1}{2}$ of NW $\frac{1}{4}$) of Section 2, Township 115, Range 24, EXCEPTING the railroad right of way and also excepting all that part of said Northwest Quarter of said Northwest Quarter lying northerly and northwesterly of the said Northerly railroad right-of-way.

DRAFTED BY: Carver County Land Management Department