

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006

The Goodhue County Board of Adjustment was called to order at 7:00 p.m. by Chairman Brad Anderson in the Goodhue County Justice Center located at 454 West Sixth Street in Red Wing, Minnesota.

Present: Stanley Klair Brad Anderson Dennis Monroe Judy Fritzingler Mike McKay
 Randy Juliar Mike Wozniak

Absent:

¹*Motion by S. Klair seconded by J. Fritzingler and carried to approve the October 23, 2006 Board of Adjustment Agenda. Motion carried 6:0.*

²*Motion by D. Monroe, seconded by R. Juliar and carried to approve the September 25, 2006 Board of Adjustment as amended. Motion carried 6:0.*

Staff Updates: M. Wozniak said that they are going to bring to the PAC to regulate wind generation facilities for wind energy production. It was the only item scheduled for the last meeting, but that meeting was cancelled because of a number of the PAC members were unavailable. It is available if the BOA would like to look at it and make any comments about it.

M. Wozniak said that Carie Fuhrman will be leaving the LUM staff this month. She is going to Northwest Consultants in the cities and she will be greatly missed. She has done a wonderful job here.

Conflict/Disclosure of Interest: None to be discussed.

Stephen and Stephanie Stodden/Sheldon and Mary Schiebe –

M. Wozniak presented the staff findings as follows:

Stephan and Stephanie Stodden are requesting a variance to build another dwelling in the NE ¼ of the SE ¼ of Section 22 in Cannon Falls Township.

Background

The section Mr. and Mrs. Stodden would like to build in is zoned A-2 Agricultural District. This district allows for 12 dwelling per section, one dwelling per ¼, ¼, and on land with a crop equivalency rating (CER) below 60 or in a wooded area. Section 22 of Cannon Falls Township currently contains eight dwellings. The CER rating at the proposed dwelling location is TOD 55. There is 100' of road frontage and is not within 1000' or 94% OFFSET to any feedlots. The site meets all criteria for a building site except for the ¼, ¼.

The applicants state in their request that the location they are proposing to build would maintain the characteristics of the surrounding area. The applicants' father farms the land they would like to buy. If they were able to build a dwelling he would be nearby to assist with the fieldwork. Only one acre will be disturbed for the dwelling. (See application and attached letter).

The staff doesn't know what the Cannon Falls Township has decided about this request at this time. That decision should be forthcoming before the Board of Adjustment meeting.

Findings of Fact

Subd. 1. In exercising its authority to review any order, requirements, decision or determination made by any administrative official, the Board shall not grant any appeal or variance unless they find the following facts at the

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006

hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:

- A. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
 - a. **If the applicants were able to build, they would be close by to assist family with the fieldwork.**
 - b. **Building two dwellings in one $\frac{1}{4}$, $\frac{1}{4}$ could potentially take away a building site from another $\frac{1}{4}$, $\frac{1}{4}$ that could possibly be built on. The aerial map labeled "Section 22 $\frac{1}{4}$, $\frac{1}{4}$'s" (attached) shows that there are potentially nine other $\frac{1}{4}$, $\frac{1}{4}$'s that would be able to be built on.**
 - c. **Dwelling permits are issued on a first come first serve basis, the $\frac{1}{4}$, $\frac{1}{4}$ is full.**
 - d. **There are other $\frac{1}{4}$, $\frac{1}{4}$'s in this section with the same characteristics as this property, but do not have dwellings in them.**
- B. That the granting of the application 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, and that the granting of the variance will not alter the essential character of the locality.
 - a. **We have not issues with this section.**

Subd. 2. In the case of variances, they shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control. **There is no hardship. The property can be put to reasonable use without the issuance of a variance. The property is currently being farmed and can continue to be farmed. The current property owner could still sell this part of the property without the availability of a dwelling.**

Staff Recommendation/Resolution

Based on the above stated findings of fact, staff recommends denial of the variance to build an additional dwelling in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 22, Cannon Falls Township.

Stephen Stodden stated that the proposed building site is not visible from the roads or the other two houses. This would be the best use of the land; it would only take an acre of 55 CER out of the agricultural production. It could benefit the county and township in better ways.

Sheldon Schiebe said that the area where the proposed dwelling is would make a perfect area for a dwelling. It is not productive agricultural land.

Mr. Stodden said that his father and brother both run the agricultural land. With him being so close they would be able to help.

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006

Stephanie Stodden said that the township didn't deny the permit based on the section being full. They needed some more information.

C/B. Anderson clarified that they only have spacing between homes.

Mr. Stodden said that the township also wanted a survey to show the specific spot that it would not go into the 70 CER.

M. Wozniak asked how that would be determined.

Mr. Stodden said that they asked to see if the County had better maps that would show the CER in the proposed site.

M. McKay asked if the township addressed the issue for a hardship.

Mr. Stodden said that it is not a variance from the township.

M. McKay asked who made the comment that it was an ideal building site.

M. Wozniak said that it was the applicants comment.

S. Klair said that we are not supposed to grant variances for financial gain.

D. Monroe asked when we are going to have the digital format for the soil survey.

M. Wozniak said the target date is March of 2007.

C/B. Anderson said that there was an alternate site for a driveway mentioned. He was on the site visit and hiked up the hill. He went up the deer path, if that doesn't work where would the alternative location be?

Mr. Stodden explained.

C/B. Anderson said that his concerns were the driveway, but there will be issues down the road. His other issue is that there is not another piece of $\frac{1}{4}$, $\frac{1}{4}$ that we can transfer from. The split cannot occur as proposed because it would take away the Schiebe's road frontage.

M. McKay clarified that the alternative driveway could potentially have easement issues also. Would it take any land out of production?

Mr. Stodden explained that there is currently a grassy area on the edge of the field that currently being used as a walking path and a spot for cross country skiers that would be where the driveway would be located.

C/B. Anderson opened the public hearing.

With no public comment D. Monroe motioned and S. Klair seconded to approve the closure of the public hearing. Motion carried 6:0.

R. Juliar said that he doesn't see a hardship, there would be financial gain for what the a-2 is based on and there are other $\frac{1}{4}$. $\frac{1}{4}$'s available. We would be

M. McKay said he hasn't heard a legitimate hardship

³Motion by S. Klair and seconded by J. Fritzinger to deny the request for a variance to build another dwelling in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 22 in Cannon Falls Township based on staff recommendations. Motion carried 6:0.

Paul and Sara Freid/Tim Zastrow –

M. Wozniak presented the staff findings as follows:

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006

Paul & Sara Freid are requesting a variance to build a dwelling closer than the required 1,000' minimum setback from a registered feedlot.

Background

Paul & Sara Freid have a purchase agreement in place with Timothy Zastrow to buy this parcel. They wish to build a dwelling in the proposed location (see attached site plan and aerial photo). They recently discovered that Benjamin Boege, the adjoining property owner had registered part of his property as a feedlot. The Ordinance requires either 1000' setback or 94% OFFSET distance, whichever is greater, from a dwelling to a feedlot.

Mr. Zastrow received a variance from the County Board of Commissioners on September 5, 2006 to split this property within six months of dividing it. Mr. Zastrow sold parcel number 32-027-050 that now contains the feedlot on it to Mr. Boege in June of 2006. On June 26, 2006 Mr. Boege applied for his feedlot permit.

That same day Mr. & Mrs. Freid went to the township to obtain the township approval based on the purchase agreement they had in place with Mr. Zastrow. Mr. Zastrow was not aware of the County's 6 month requirement in between dividing and creating new tax parcels. Since the purchase agreement was in place Mr. Zastrow applied and was granted a variance to the 6 month requirement by the County Board of Commissioners.

Now that the land can be split, the Freid's find out that Mr. Boege has registered as a feedlot which puts their only option for a building site down a hill. Since the topography of the land is less than ideal they are requesting a variance to the 1000' minimum setback requirement.

Steve Schmidt the County Feedlot Officer has ran the OFFSET model for Mr. Boege's feedlot. The OFFSET model shows the 94% odor annoyance free rating setback distance at 453 feet. The Freid's are requesting to build their dwelling approximately 750' from the feedlot.

Florence Township has indicated that they approve of the request.

Findings of Fact

- Subd. 1. In exercising its authority to review any order, requirements, decision or determination made by any administrative official, the Board shall not grant any appeal or variance unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:
- A. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
 - a. **Mr. Boege registered for his feedlot on the same day that the Freid's requested a permit for the dwelling from the township.**
 - b. **The Freid's plans to buy and build a dwelling on the property have been setback due to the need for the variance to split the property within 6 months of Mr. Zastrow splitting Mr. Boege's property from the total**

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006

acreage.

c. **The topography of the land does not allow them to build elsewhere on the property.**

B. That the granting of the application 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, and that the granting of the variance will not alter the essential character of the locality.

a. **The OFFSET model shows a setback distance of 453 feet. If Mr. Boege would like to expand in the future he would only need to meet 91% OFFSET based on the expansion of the feedlot. Since the Freid's are requesting to be 750' away this should not impact the feedlot.**

Subd. 2. In the case of variances, they shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control. **The topography of the property and the high soil ratings compose the hardship to hinder the applicants from meeting the required setback. The request is in harmony with the general purpose and intent of the official control.**

Staff Recommendation/Resolution

Based on the above stated findings of fact, staff recommends approval of the variance to build a dwelling closer than the required 94% OFFSET distance or 1,000 in the Agricultural A-2 District.

R. Juliar asked about the timing of the split.

K. Gross explained the timing.

Steve Schmidt said that Mr. Boege contacted him in February; they talked again in March and April about what he needed to do to permit it as a feedlot. Mr. Schmidt said that June 26, 2006 was the first time Mr. Schmidt had to meet with him. It was registered for 30 animal units.

C/B. Anderson asked if the setback was based on 30 animal units.

Mr. Schmidt said that it was based on square footage and type of lot and odor emission, not on number of animal units.

Mr. Freid said that they too put a lot of work into finding out about this property and what was needed to build a dwelling here. They were working on this concurrently with Mr. Boege without the other's knowledge. This is the most ecologically sound and financially sound location also.

S. Klair clarified the location.

R. Juliar asked what their feelings were about Mr. Boege's livestock.

Mr. Freid said that they do not have any problems with that.

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006

Mr. Boege said that it would suck to have neighbors because he moved out to the county to get away from neighbors.

M. McKay asked who he bought the land from.

Mr. Boege said he asked Mr. Zastrow on several occasions if he was going to sell any building sites off and he always said no.

M. McKay asked if Mr. Zastrow knew he was going to put a feedlot on the property.

Mr. Zastrow said no, it did not come up in conversation.

M. McKay clarified that the six month variance was a result of how the property was split.

M. Wozniak said that since he wanted to split two pieces off within 6 months of each other, it required a variance from the County Board because of the requirements in the subdivision controls ordinance.

C/B. Anderson asked if it was an appeal or a variance.

M. McKay said that you cannot split and then cause a hardship.

R. Juliar said that timing is the problem.

K. Gross said that it could just as easily be Mr. Boege here. If the land would have been sold to the Freid's first Mr. Boege would be here applying for a feedlot variance.

M. Wozniak read from the ordinance "not created by the landowner" this is a process that this was happening concurrently. Did Mr. Zastrow create this situation, the answer would be no.

C/B. Anderson opened the public hearing.

Valerie Jacob said that they own land south of the boundary. They own a feedlot in the area. The land is currently in CRP, which will be going out in 2-3 years and would like cattle to be over there because she pastures her animals. There has always been a feedlot on Mr. Boege's property and there were always sheep on it for 14 years.

Robert Johnson said that he has farmed the land for 20 years. He said the timelines were very interesting. John Wall passed away in March, Mr. Zastrow signed the purchase agreement around Easter, which was April, and they closed in May. So suddenly there were a lot of things going on. When someone takes on a feedlot permit they are trying to keep their privacy. When they sold their first building site they had to be 1000' away from the neighbors. When you move out to the country you want to be in the country. If you look at this land, they could move 200-250' whatever it takes to the south it is the same contoured strip around there. It would be the same elevation all the way around there, but then it wouldn't need a variance.

Benjamin Boege said that when they went through the purchasing of this property he asked his realtor, he asked Mr. Zastrow a number of times if he was planning on selling a building site and was told on more than one occasion no. It sucks for him because there is not a whole lot he would do. If he would have known he might not have bought this land because he wanted to be away from people, and now when he looks out his front window he is going to see a house.

M. McKay clarified that Mr. Zastrow said he wasn't planning on selling other land. How much later was it that you bought the land?

Mr. Freid said it was early June.

Mr. Boege said they closed June 23rd.

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006**

Mr. Freid said it was early June that they signed the purchase agreement

K. Gross stated that the purchase agreement May 31st.

Mr. Boege said that he feels bamboozled.

Mr. Johnson said that the issue here is hardship. There is no hardship in moving it back farther that he can see.

Mrs. Freid said that they had the septic person come out and this is the ideal location.

Mr. Johnson asked if you moved it back here. The contours are the same all the way around.

Mr. Freid said that they can only build in the wooded area. The CER ratings on the property are all too high; they have to build in the wooded land.

C/B. Anderson said the county has to pull out the soil maps. If the county looked at it and that is the site, they can look at moving it.

Mr. Schmidt said that there are contours in this area and the dwelling site can be moved it is all rated at SfC2.

K. Gross said that soil is rated too high the zoning ordinance specifically states that it needs to be below 60 CER or in a wooded area.

M. Wozniak said that if there is an issue with the CER rating, trees or no trees, the site that might meet the setback to the feedlot, you may wish to grant a variance to the CER rating.

Mr. Schmidt said the distance of the offset rating was 453'. The ordinance states 1000' or 94% OFFSET whichever is greater.

M. McKay said that the reason there is a board of adjustment like this is to take care of the junk balls. When I heard the 453' the proposed 700' sounded reasonable.

M. Wozniak said that there is some personal subjectivity here about what can be offensive as a nearby property owner. They know what they are getting into.

M. McKay said that if it was a feedlot guy sitting here, he would be looking at this differently than with the homeowner asking to be closer to him.

Ms. Jacob asked about the next owner 20 years down the road.

M. McKay said that they would buy it knowing there is a feedlot right there.

Mr. Johnson asked if they were going to give these people a feedlot if they wanted one.

M. McKay said that is not what is in front of them.

C/B. Anderson said that if they are going to have public comment it should be at the microphone.

Mr. Johnson asked if this house was going to be made of straw. Would that require another variance?

Mr. Fried said that it is going to be a standard stick-built house with straw infill which is in the code also. He has talked to the building official and he is open to that.

R. Juliar said that that would be taken care of in the building code.

Mr. Boege said that right now he is registered for thirty animals; is he stuck with a 30 animal unit operation? Mr. Zastrow wants to build a home up there someday; will he need a variance for that? Will his operation be able to grow at all?

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006

M. Wozniak said that the expansion would have to comply with the feedlot ordinance of course. If because the home was sited within 1000'

With no further public comment J. Fritzinger motioned and R. Juliar seconded to approve the closure of the public hearing. Motion carried 6:0.

M. McKay asked S. Klair about the site visit and about the alternative site.

S. Klair said that we never walked back that far either. The slope is pretty much the same all the way around.

C/B. Anderson said the question before them is this variance if they deny it they can look for a second site.

M. McKay said that is it the opinion that this is the most logical for the area.

C/B. Anderson said no matter where you go from there you would be looking at a longer driveway.

R. Juliar said that you can see the alternative building site slopes down, and is lower than what is proposed now.

Mrs. Freid said that is the area proposed for the septic system.

M. Wozniak said that it is a matter of expense for site preparation for the on site system.

⁴Motion by D. Monroe and seconded by M. McKay to approve the request for a variance to build a dwelling closer than the required 1,000' minimum setback from a registered feedlot based on staff recommendations and a thorough review of it. Motion carried 6:0.

⁵Motion by D. Monroe and seconded by J. Fritzinger to adjourn the October 23, 2006 Board of Adjustment meeting at 8:16 p.m. Motion carried 6:0.

Respectfully Submitted,

Kristi R. Gross
Secretary

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
OCTOBER 23, 2006

MINUTES

- ¹ APPROVE August 28, 2006 Board of Adjustment Agenda. Motion carried 6:0.
- ² APPROVE July 24, 2006 Board of Adjustment as amended. Motion carried 6:0.
- ³ DENY the request for a variance to build another dwelling in the NE ¼ of the SE ¼ of Section 22 in Cannon Falls Township based on staff recommendations. Motion carried 6:0.
- ⁴ APPROVE the request for a variance to build a dwelling closer than the required 1,000' minimum setback from a registered feedlot based on staff recommendations and a thorough review of it. Motion carried 6:0.
- ⁵ ADJOURN the October 23, 2006 Board of Adjustment meeting at 8:16 p.m. Motion carried 6:0.