

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN SEPTEMBER 25, 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:

¹Motion by D. Monroe seconded by J. Fritzingler and carried to approve the August 28, 2006 Board of Adjustment Agenda. Motion carried 6:0.

²Motion by S. Klair seconded by R. Juliar and carried to approve the July 24, 2006 Board of Adjustment as amended. Motion carried 6:0.

Staff Updates: M. Wozniak said that he would like to bring to the attention of the Board of Adjustment that the Planning AC has requested that staff speed up the process of amending the ordinance to address Wind Turbines. There has been a few inquiries and our current ordinance does not address them. We will bring something forward to the PAC for discussion for their October meeting. It is not ready for a public hearing.

C/B. Anderson asked how we address them now.

M. Wozniak said that we could have them apply like a communications tower, but that does not address the issue associations with wind power generation.

J. Fritzingler asked if we are talking about commercial or personal property.

M. Wozniak said that we would address both.

J. Fritzingler said that Welch just had two approved.

K. Gross clarified that about a year ago two were approved based on the fact that they were for personal use and under smaller scales. We allowed it through a building permit.

Conflict/Disclosure of Interest: None to be discussed.

Neil & Cheryl Brogger –

M. Wozniak presented the staff findings as follows:

Summary & Background

Neil & Cheryl Brogger are requesting a variance to build a dwelling 30' from the east property line instead of the required 100' setback in the A-2 Agricultural District (variance is for 70'). The property in question is zoned A-2 Agricultural District. In reviewing the variance request staff came across another potential issue with building the dwelling where proposed. The soil map indicates the soil rating in the proposed location is KnA which has a crop equivalency rating (CER) of 90. Next to that is MaE which has a CER of 10, but is a steep slope. Then, there is ToD, which has a CER of 55. As you recall dwellings must be sited on land rated below 60 CER or in a wooded area. Mr. Brogger will need an appeal granted to the CER in order to build near the shed. Even though Mr. Brogger's request was not for the CER, staff would like to address it now because it pertains to the location Mr. Brogger may build his dwelling.

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The parcel file for this property contained a letter written to Mr. Brogger in 1996 regarding the requirements for building in the A-2 District. A soil map was also attached to the letter. (A copy of the letter is attached.)

When Mr. Brogger built the shed there was a provision that if a property was a "Parcel of Record" prior to 1993, the side and rear yards were reduced to 30'. The parcel of record provision was written into the ordinance when the setbacks changed in 1993 to 100'. The parcel of record clause was allowed 10 years to be built under. The clause was extended an additional year and expired in June, 2004.

Please see the attached statement from the applicants regarding their request. It explains in detail their reasoning for their request. They state that they will actually build approximately 35-40' from the east line. They identify the terrain of the property as their hardship.

After viewing the site it is apparent that the proposed location is very aesthetically pleasing. The location was designed with the idea of a walk out basement and was utilizing the breathtaking views of the property. The applicants were hoping for privacy from the road by building the shed in front of the dwelling. The adjacent property contains significant slopes. Building the dwelling 30' from the property line would not impact the adjacent property as long as property erosion control measures were followed. There is an alternative location that would meet all yard setbacks. It would not be as well hidden from the road. The Township has indicated that they support the request.

Findings

Please note that in the following findings the variance request is "1)" and the CER issue is "2)".

- 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. **The sun-setting of a clause in the ordinance does not constitute a hardship or special circumstances. The parcel of record provisions and sun-setting thereof could apply to other property in the same vicinity.**
 - b. **The terrain on this property is comprised of steep slopes. If the dwelling was built on the lower CER, the driveway would have to be snaked down steep slopes and would be unpractical. The area with the high CER rating is not large enough to be considered productive agricultural land.**
 - 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. **There are no foreseeable adverse affects to the health or safety of persons residing or working in the area adjacent to the property. The request will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property.**

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- b. **Since the shed is already built on land rated higher than 60 CER the granting of the variance or appeal would not alter the essential character of the locality.**

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.

- 1) **A hardship is not present. The dwelling can be located at the required 100' setback. The terrain on the opposite side of the driveway is similar to that where the proposed dwelling is. The reason for wanting the property line variance is financial in nature and created by the applicant.**

Staff Recommendation/Resolution

1) Based on the above stated findings of fact staff recommend denial of the variance to build a dwelling 30' from the east property line instead of the required 100' setback in the A-2 Agricultural District (variance is for 70').

2) Based on the above stated findings of fact staff recommend approval of an appeal to build a dwelling on land with a CER of more than 60 in the A-2 District.

Mr. Brogger said that in the fall of 1996 he purchased the land from his father. He contacted Joanne Wood to see what was required for a building site. In 1998 he contacted Warsaw Township. They required a 1000' setback from another dwelling. He was granted for that. In 1999 he built the shed. At that time he told them he would like to build a house there. They installed the well and septic for the future house. His father passed away last year and that put their building plans back. In July they contacted the County and realized that the property line rules had changed. If they would have known the rules were going to change they would have found a way to speed up their plans.

M. McKay asked when the 30' setback changed.

K. Gross stated that it expired with the parcel of record in 2004.

M. Wozniak said that if the alternative location is in the way of the drainage way, that would be enough hardship to make reason for the dwelling in the proposed location.

C/B. Anderson said that everything on that driveway is going to drain to the southwest.

M. McKay asked if the alternative site would have bigger drainage issues.

C/B. Anderson said that it is easy to see when you go out there that there has been significant amount of work done.

M. Wozniak said that proper erosion control measures will need to be taken in the proposed location to make certain that the dwelling will not cause problems on the adjoining property.

C/B. Anderson said that there will not be anything built near it on the adjoining property owner's property because of the significant slope.

R. Juliar asked if he got a permit from the county for the septic system.

M. Wozniak said that environmental health department has to sign off on a building permit.

Mr. Brogger said that he has contacted environmental health and they need a compliance inspection because it has been over five years.

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C/B. Anderson opened the public hearing.

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

M. Wozniak clarified the staff recommendation that they did recommend denial for the variance, however there is merit in the need for the variance due to the drainage concerns.

³Motion by M. McKay and seconded by J. Fritzinger to approve the request for a variance to build a dwelling 30' from the east property line instead of the required 100' setback in the A-2 Agricultural District (variance is for 70') and the appeal to build a dwelling on land with a crop equivalency rating at or above 60; based on the premise and common sense of the proposed location is the best site and least intrusive on the property.

R. Juliar said that he feels that this is legitimately not planned where he was trying to get something when you can't get it. We should be careful for someone to put a foundation someplace and sit for a number of years and feel that a variance is owed. It wasn't just to throw something in there and wait.

M. McKay said that is why he did not base it on what he had already done because of the financial hardship case, but on the terrain of the property and the potential drainage impacts.

R. Juliar said that he would suggest to staff that proper measures are taken to control erosion on that slope.

Motion carried 6:0.

Charlotte Wohlers/Patricia Fox –

M. Wozniak presented the staff findings as follows:

Summary

Patricia Fox is requesting on the behalf of Charlotte Wohlers a variance to split a dwelling with a minimum of 12 acres instead of the required 35 acres minimum for the A-3 Urban Fringe District (variance is for a maximum of 23 acres).

Background

The property in question is divided by the township road of 244th Street. The property currently contains 81.94 acres. This section is zoned A-3 Urban Fringe District which allows for 35 acre lot size.

If the owners did not obtain a variance they would be able to split the dwelling with 35 acres and there would be 46.94 acres remaining. If the applicants split 12.5 acres there would be 69.44 acres remaining. Under our current restrictions of one dwelling per 35 acres the remainder would only allow for one dwelling. The request is not an attempt to increase the density in this area.

The applicants have stated that they wish to keep the agricultural land together. There is the natural divide of the township road.

The Township has indicated that they do not have any issues with the request. They do not recognize the A-3 zoning district therefore the minimum 35 acre lot size does not apply to their ordinance.

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Findings

- 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:
- C. 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. **The property is divided by the township road. The applicants would like to keep the agricultural land together.**
 - D. 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. **There are no foreseeable adverse affects of granting the variance. Since the property would be divided by the road the essential character of the locality would not be altered. The request is not potentially increasing the density of the area. Under the current ordinance the variance would not allow an additional dwelling to be built.**
- 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. **A hardship is not present. The property in question can be put to reasonable use without the need of the variance. However, keeping the agricultural land intact is a reasonable request and creates practical difficulties in the way of carrying out the strict letter of any official control.**

Staff Recommendation/Resolution

Based on the above stated findings of fact staff recommend approval of the variance split a dwelling with a minimum of 12 acres instead of the required 35 acre minimum for the A-3 Urban Fringe District (variance is for a maximum of 23 acres), with the stipulation that the land is subdivided as proposed along the natural divide of the township road.

R. Juliar asked that this would not open up another site for building.

S. Klair said we have not done too many of these. We have one in litigation now.

C/B. Anderson said we have not had another like this. The other one they were trying to have two dwellings on less than 35 acres. This is splitting it and not creating any additional dwelling locations.

M. Wozniak said that this is a different situation. They are not trying to attain another building site.

C/B. Anderson opened the public hearing.

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

⁴Motion by R. Juliar and seconded by D. Monroe to approve the request for a variance to split a dwelling with a minimum of 12 acres instead of the required 35 acres minimum for the A-3 Urban Fringe District (variance is for a maximum of 23 acres) based on staff recommendations Motion carried 6:0.

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Richard Johnson –

M. Wozniak presented the staff findings as follows:

Summary

Richard Johnson is requesting a variance to build an accessory building 8’ from the right of way of Sevastopol Road instead of the required 40’ from the right of way line of any public road or highway in the R-1 Suburban Residential District (variance is for 32’).

Background

As you can see in the site plan; Mr. Johnson’s property lies on the corner of Sevastopol Road and Gadiant Lane. Gadiant lane curves around Mr. Johnson’s property so that three of the four sides of his property are road frontage. This property is zoned R-1 Suburban Residential District which allows for side and rear yard setbacks of 8’ and front setbacks are 40’ from the right of way of any public road or highway, but may be reduced to 25’ if the road only serves the subdivision. Sevastopol Road serves more than just the Hidden Valley subdivision so the 40’ setback would apply. Gadiant Lane serves the subdivision so the 25’ setback applies.

The property is not large enough to construct the building while meeting all required setbacks. Initially staff was concerned about the line of site for the corner of Gadiant and Sevastopol, however after viewing the site it was apparent that the line of site should not be affected. Mr. Johnson is going to remove the trees that are there now. Which you can see from the attached picture are closer to the road than the proposed building would be. Additionally, after grading is done for the building the building will sit at a much lower grade than the road.

Wacouta Township is holding a public hearing regarding this request on September 19, 2006.

Findings

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:

E. 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. **The fact that the property is surrounded on three sides by public roads and a larger setback is required from a public road than what is otherwise required in the R-1 District constitutes the special circumstances affecting the land that do not apply generally to other property in the same vicinity.**

F. 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. **Since the line of site appears to be unaffected there is no apparent adverse effects to the property owners or area adjacent the request.**

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 property is unique to this lot. Not many properties are surrounded on three**

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sides by a right of way. The variance would be in harmony with the general purpose and intent of the official control.

Staff Recommendation/Resolution

Based on the above stated findings of fact staff recommend approval of the variance to build an accessory structure 8' from the right of way of Sevastopol Road instead of the required 40' from the right of way line of any public road or highway in the R-1 Suburban Residential District (variance is for 32').

M. McKay said that there is a spot to put it and meet setbacks, he might encroach his drainfield a little, but it could screw up the site line even more. His hardship is that he is on three roads. This is a unique property.

K. Gross clarified that Sevastopol Road is a major road that serves more than just this subdivision, therefore it would require a 40' setback which would be where the house is.

M. Wozniak said that he has spoke with Jim Klevan with public works who said that he did not see an issue with it. He felt that the tree removal would benefit the sight line.

D. Monroe asked where the driveway would go to the shed.

Mr. Johnson said it would come off Gadiant Lane.

S. Klair asked what trees would be removed.

M. McKay said that the access issue was another issue but would not be an everyday access so that would be ok.

Mr. Johnson said that he marked the layout of the site pretty good so that everyone could see it. He really thinks that the site line is really good there; there is a yield sign. When he takes the trees out it will increase the site line.

C/B. Anderson said that where he sited the building makes the most sense. He was concerned with the drainage into his house if he moves it any closer to it.

M. Wozniak said that this is a reasonable use of the property.

C/B. Anderson opened the public hearing.

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

⁵Motion by S. Klair and seconded by J. Fritzinger to approve the request for variance to build an accessory building 8' from the right of way of Sevastopol Road instead of the required 40' from the right of way line of any public road or highway in the R-1 Suburban Residential District (variance is for 32') based on staff recommendation. Motion carried 6:0.

⁶Motion by J. Fritzinger and seconded by D. Monroe to adjourn the September 25, 2006 Board of Adjustment meeting at 7:35 p.m. Motion carried 6:0.

Respectfully Submitted,

Kristi R. Gross
Secretary

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 APPROVE request for a variance to create a side yard setback of 90' instead of the required 100' (variance for 10'), and a variance to split a dwelling on less than 35 acres in the A-3 Urban Fringe District. Motion carried 6:0.
- ⁴ APPROVE the request for a variance to split a dwelling with a minimum of 12 acres instead of the required 35 acres minimum for the A-3 Urban Fringe District (variance is for a maximum of 23 acres) based on staff recommendations Motion carried 6:0.
- ⁵ APPROVE the request for variance to build an accessory building 8' from the right of way of Sevastopol Road instead of the required 40' from the right of way line of any public road or highway in the R-1 Suburban Residential District (variance is for 32') based on staff recommendation. Motion carried 6:0.
- ⁶ ADJOURN the September 25, 2006 Board of Adjustment meeting at 7:35 p.m. Motion carried 6:0.