

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
APRIL 28, 2008

The Special Meeting of the Goodhue County Board of Adjustment was called to order at 6:30 p.m. by Chairman Dennis Monroe in the Goodhue County Justice Center located at 454 West Sixth Street in Red Wing, Minnesota.

Present: Dennis Monroe Brad Anderson Judy Fritzingler Bernie Overby Stanley Klair
Lisa Hanni

Absent: Mike McKay

L. Hanni said that we need to amend the agenda to add the voting and election of the vice chair for the 2008-2009 year. The vice chair will be the chair next year, April 2009.

¹*Motion by B. Overby seconded by J. Fritzingler and carried to approve the amended April 28, 2008 Board of Adjustment Agenda. Motion carried 4:0.*

²*Motion by S. Klair seconded by J. Fritzingler and carried to approve the March 3, 2008 Board of Adjustment minutes. Motion carried 4:0.*

Staff Updates: K. Gross said that the May meeting will be May 27th which is a Tuesday.

B. Anderson arrived at the meeting.

Conflict/Disclosure of Interest: B. Anderson stated that he knows Dean Whitmore, but no conflict exists.

Vice Chair Election: B. Anderson volunteered for the vice-chair position.

³*B. Overby motioned to cast a unanimous ballot and elect B. Anderson as the vice chair. S. Klair seconded. Motion carried 5:0.*

James & Patricia Walter – The NE ¼, ex RR, and N ½ of SE ¼ N & W of RR Section 20 T109N R15W, Pine Island Township. The request is an appeal to staff's decision that the location does not meet the definition of a replacement building site. The request includes a variance to move the replacement site, if approved, from parcel 39-020-0100 to parcel 39-020-0200.

L. Hanni presented the staff recommendation and findings of fact:

Findings of fact: The 1938 aerial photo clearly shows multiple buildings present in the location of the potential replacement building site, indicating a potential farmyard. There is an intact foundation present in the location of the potential replacement site. There is a record of the well being sealed, further giving indication of a farmyard being present at the location. The location of the potential replacement building site is in prime agricultural land. The preferred building location is currently in the CRP program and trees have been planted there by the applicants. There are no foreseeable adverse material affects on the health or safety of persons residing or working in the area adjacent to the property of the applicant. The hardship in this case only pertains to moving the location from parcel 39-020-0100 to 39-020-0200. Goodhue County is an agricultural community that values its agricultural land. Moving the site from high quality agricultural land to lower quality CRP land would be in accordance with the intent of the ordinance.

Base on the above stated findings of fact, staff recommends approval of the appeal so that the site qualifies as a replacement building site based on it meeting two out of the three criteria for a replacement building site: 1) The farmyard is evidenced by the well abandonment permit and by the 1938 photos and 2) the existing foundation present on the property.

Furthermore, based on the findings of fact, staff recommends approval of the variance to move the replacement building site to parcel 39-020-0200 as indicated by the map provided by the applicant.

B. Overby asked what the density was in that section.

K. Gross said that there are four dwellings there currently, and there are four allowed.

B. Overby asked if the approvals went through would they remove the foundation and farm over it.

Mr. Walter said that they would.

C/D. Monroe *opened the public hearing.*

No one present wished to speak for or against the request.

With no public comment J. Fritzinger motioned and B. Anderson seconded to approve the closure of the public hearing. Motion carried 5:0

S. Klair asked if there was a foundation on the site.

B. Overby said there was. And the place they would like to move it to would be beautiful with the trees and the hill.

⁴Motion by B. Anderson and seconded by B. Overby to approve the appeal to staff's decision that the location does not meet the definition of a replacement building site and accept this as a building site based on staff recommendations and findings of fact and the 1938 aerial photo. Motion carried 5:0.

B. Overby said that he would like to point out that the replacement location is prime agricultural land.

S. Klair said that looks like a long driveway.

Mr. Walter said that he measured it at about 450'.

B. Anderson said that moving the site would distance it from other dwellings.

⁵Motion by B. Overby and seconded by J. Fritzinger to approve the request for a variance to move the replacement site from parcel 39-020-0100 to parcel 39-020-0200 as sited in the application based on staff's recommendation and findings of fact. Motion carried 5:0

Dean Whitmore – The SW ¼ of NE ¼, NE ¼ of NW ¼, and the S ½ of NW ¼ Section 24 T113N R16W, Welch Township. The request is for a variance to split an approximate 8.5 acre parcel instead of the required 35 acre parcel in the A-3, Urban Fringe District.

L. Hanni presented staff recommendation and findings of fact.

Findings of fact: The A-3 district is intended to be a buffer area for the city. The request should not put any undue hardship on the city if it were to ever run services through this area. The request will not increase the density of residences in the area. There are no foreseeable adverse material affects on the health or safety of persons residing or working in the area adjacent to the property of the applicant. It is staff's understanding that the potential buyer of the property is only interested in the minimum amount of land needed to build an accessory building. The applicant is not proposing to build a dwelling on the small parcel, which would not increase the density of dwellings in the area. The parcel that would contain the residence would remain over 35 acres.

Base on the above stated findings of fact, staff recommends approval of the variance to split a property with approximately 8.5 acres, instead of the required 35 acres in the A-3, Urban Fringe zoning district, with the condition that a dwelling cannot be built on the 8.5 acre parcel unless the zoning district, or ordinance changes to allow such a use on that lot size.

Mr. Whitmore said that it would be about 13.8 acres.

B. Anderson clarified why he needs a variance if he is not building a house.

L. Hanni explained that the minimum lot size is 35 acres for any permitted use.

J. Fritzinger said at the township level the buyer said that he intended to build.

C/D. Monroe opened the public hearing.

Pete Valliant said that he purchased land from Mr. Whitmore. Mr. Valliant passed out written comments to the board He reviewed them with the board: They bought 35 acres adjoining the parcel in question. They oppose the variance. He said that he is not able to find any special circumstances. The question is not answered to address what special circumstances are there. Letter B. When he looks at the findings of fact. The elements are not addressed. The drawing shows the shed located 100' from each property line, 100' from his access driveway. He looked up discharge of weapons. MN statutes require 500' from any building. With this building being located 100' from his property, it would limit the first 400' of his property would not be hunt-able. The site would require a switchback road, the County is frowning on switchback roads.

D. Whitmore said that he has one on his land.

Mr. Valliant said thank you for putting that in for us before we bought it. The findings of fact does not support a hardship. The recommendation to approve the variance is inappropriate and incomplete. The applicants application does not state a hardship. The shed would be very close to his property and would limit their use of the property. The property is steep and rugged. The entire area are comprised completely of those soil types. Construction is frowned up in those areas. Someone would come for a variance to build up there and you would have to turn someone down. There are outcroppings of limestone on the hillside. He doesn't see a hardship and is concerned about the precedent. Other people may be interested in buying a four acre piece of land. Sit on it. Eventually the county will come along and change it, but a lot of landowners will sell off little acreages. If this passes, it would be very likely that I would come before you and split my property into many different tracts.

B. Anderson said that you may not be likely to do that because you don't have the road frontage.

Mr. Valliant said he would probably have three. He probably has 300' on the road.

B. Overby asked about the bluff. It is steep going up the hill.

L. Hanni said that we are not approving the building site. He is showing the building 100' from the property line, which is all on the bluff, we would not approve a building on the side of the bluff.

D. Whitmore. Said that Mr. Valliant is mad because he didn't split the property how they wanted it split.

Mr. Valliant said that they have right of first refusal to purchase the property.

Matt Luhman adjoining property owner said he thought it was going to be a dwelling. Our picture window is of the hillside. We assumed it would be in the field at the bottom of the hill. He was wondering about the legality of buying the land and putting a shed on it.

B. Overby said that the issue of the hardship. A hardship is required for the variance.

C/D. Monroe said we will address that after public comment.

Mr. Luhmann said that when this person wants a building permit would he be notified.

L. Hanni said that if it was an ag building it would be a permitted use, it would not require a public notice. If something required a variance it would be a public hearing and the neighbors would be notified.

Mr. Luhmann said that this fall he was granted a variance. You made him give him another 2 acres so that he couldn't build there. How is that fair that they can split 8.5 acres and your granting them a building.

L. Hanni said that nobody is requesting a dwelling at this time.

Mr. Valliant said that they are concerned about the precedent set by this variance.

After no further public comment it was moved by B. Anderson and seconded by J. Fritzinger to close the public hearing. Motion carried 5:0.

B. Anderson said that he is reading the ordinance to state that any permitted or conditionally permitted "erected." That says when you build something.

L. Hanni said that any zoning district requires a minimum lot size. 35 acres is the minimum lot size in the A-3 District.

D. Monroe asked that a hardship is something we need to identify here.

Mr. Whitmore said that he is getting old. The rest of his land doesn't have road frontage.

B. Anderson said that he is struggling because the wording doesn't match what we are doing.

B. Overby said that if this variance was approved, the buyer could build an agricultural building without a public hearing.

L. Hanni said it would have to go through staff, and it would need to meet setbacks and bluff impact zone, if it could not meet those standards it would require another variance and would be back in front of you.

B. Overby said that if the building is built on the property it could take away 400' of what he wants to do with his property.

L. Hanni said that if he didn't split this property he could build a shed.

6Moved by J. Fritzinger to deny the variance to split an approximate 8.5 acre parcel instead of the required 35 acre parcel in the A-3, Urban Fringe District based on no hardship except financial and the 35 acre is the minimum lot size as far as the ordinance is concerned, S. Klair seconded.

B. Anderson said the language of the ordinance specifically said erected. And that language suggests a building site. He cannot go along with that because the ordinance doesn't say that.

B. Overby said that we need to think about what the hardship is. What is a hardship?

D. Monroe said that we haven't established a hardship outside of financial.

B. Anderson said we shouldn't be here. He doesn't know how we can deny it when the ordinance doesn't say it is wrong.

L. Hanni said the main reason they did not want any houses on less than 35 acres was so cities had more room to run their services.

B. Anderson said that he thinks that is how it began, to what the cities intentions are. We are not administrating this ordinance the way it is written. How do you deny something that is not founded in the ordinance?

B. Overby said that erected does indicate it needs to be a building.

D. Monroe called the question.

Motion carried 3:2 Monroe, Anderson dissenting

L. Hanni said when the A-3 was originally configured they took a mile around the city and protected it. We need to look at our zoning to see if it makes sense for these areas to be A-3.

B. Overby asked if there are any issues would it be brought up again.

B. Anderson said that he works hard to administer this ordinance

L. Hanni said that if we are having different interpretation on the same words is not good. We will have to have a discussion to what it should read. Can we do any research to bring further discussion.

B. Overby said his issue is valuable.

L. Hanni said that you should bring it forth that it is more important for building, or is it more important for any uses.

B. Anderson said that in his mind, that wording said that if somebody just wants to buy some land, to own some land, what should limit them. The way we are interpreting this would take those land owner rights away. In some ways, what we are doing there is infringing on landowner rights. Granted there are times when the zoning ordinance needs to prevent uses.

B. Overby said that what we are hung up on is what the meaning of that is.

L. Hanni said what this group needs to talk about is what this should say.

B. Anderson said that the wording is fine, you just need to let someone split less than 35 acres, and not build anything, you need to let them do it.

⁷Motion by S. Klair and seconded by J. Fritzinger to adjourn the April 28, 2008 Board of Adjustment meeting at 8:04 p.m. Motion carried 5:0.

Respectfully Submitted,

Kristi Gross

Secretary

MINUTES

- ¹ APPROVE April 28, 2008 Board of Adjustment Agenda as amended. Motion carried 5:0.
- ² APPROVE March 3, 2008 Board of Adjustment minutes as amended. Motion carried 5:0.
- ³ ELECT B. Anderson as the vice chair who will then serve as Chair for the 2009-2010 BOA year. Motion carried 5:0.
- ⁴ APPROVE the appeal to staff's decision that the location does not meet the definition of a replacement building site and accept this as a building site based on staff recommendations and findings of fact. Motion carried 5:0.
- ⁵ APPROVE the request for a variance to move the replacement site from parcel 39-020-0100 to parcel 39-020-0200 as sited in the application based on staff's recommendation and findings of fact. Motion carried 5:0
- ⁶ DENY the variance to split an approximate 8.5 acre parcel instead of the required 35 acre parcel in the A-3, Urban Fringe District based on no hardship except financial and the 35 acre is the minimum lot size as far as the ordinance is concerned
- ⁷ ADJOURN the April 28, 2008 Board of Adjustment meeting at 8:04 p.m. Motion carried 5:0.