

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
AUGUST 27, 2007

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

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

Absent: none

¹Motion by S. Klair seconded by B. Overby and carried to approve the August 27, 2007 Board of Adjustment Agenda. Motion carried 6:0.

D. Monroe said page 5 was confusing.

J. Fritzingler said Lisa's name needs to replace Mike Wozniak's.

K. Gross said she will listen to the recording again, she did not take the minutes at the last meeting.

²Motioned by B. Anderson, seconded by D. Monroe and carried to approve the July 23, 2007 Board of Adjustment minutes as amended. Motion carried 6:0.

Staff Updates: M. Wozniak said that at last week's Planning Advisory Commission meeting they had a discussion regarding the side and rear yard setbacks. The main point raised was whether or not there was a way to keep a buffer between homes if the setbacks were reduced. The board directed staff to come back next month with some options that would allow some more flexibility for the property owners and help reduce the amount of setback variance requests that come to the board. Any comments you have to add to that would be welcome.

Conflict/Disclosure of Interest: none

Robert Johnson – N ½ of the NE ¼ of Section 28 T112N R13W, Florence Township. The request is a variance to build another dwelling over the allowed 4 per section in the A-1, Agricultural Protection, District.

M. Wozniak presented the staff's recommendation and findings of fact: Section 28, T112N R13W, Florence Township is zoned A-1, Agricultural Protection District and has 8 dwellings currently in it. It is considered "full" by our density standards of 4 dwellings per section. Mr. Johnson's daughter and son-in-law would like to be part of the farming operation in the future. If the proposed site was approved, it would give them a direct view of the home farm site and would allow them to keep a closer eye on the farm activities. The applicant stated in their application they are willing to give up building sites in Sections 21 or 33 in T112N, R13W, Florence Township, if the proposed location in Section 28 is approved. Florence Township has indicated they support the request.

After much review by staff it is unclear why the proposed location is more ideal than the possible location in Section 21. Section 21 is zoned A-2, currently has 4 dwellings (12 allowed) the SW ¼ of the SE ¼ has no dwellings yet, (see enclosed map), there is plenty of wooded area for the dwelling to be sited in. The dwelling would have to be sited at least 1,000 feet from the Johnson's due to the feedlot setback, but there are potential locations. Steve Schmidt, the county feedlot officer, has provided staff with the enclosed OFFSET map showing the distance a dwelling would need to be from the feedlot. The applicants would also need to ensure they have 100' of road frontage coming from Section 21 to the building site when they split it off. Topographically, there is little difference between the possible location in Section 21 and the proposed location in Section 28.

The other location that the applicants would be willing to give up so they could build in Section 28, is located in Section 33 T112N, R13W, Florence Township (see map). This proposed location does not have true road frontage since the road frontage is currently in Section 28. Therefore we cannot consider there being a building site at that location until a variance is granted.

Findings of Fact: It is un-apparent what the special circumstances or conditions are that affect the land than that do not apply generally to other property in the same vicinity. There are potential building sites available in Section 21 that are the same proximity to the farmyard as the proposed location in Section 28.

The applicant has not provided sufficient evidence of a hardship in this situation to warrant the variance to allow another dwelling in Section 28, Florence Township T112N, R13W.

Based on the findings of fact, staff recommended denial of the variance to build an additional dwelling in Section 28, T112N, R13W, Florence Township.

DISCUSSION

B. Overby asked if the feedlot was on the Robert Johnson farm.

Mr. Johnson said it was.

M. Wozniak said that if they were to be part of the farming operation that separation may become less of an issue.

Mr. Johnson said that for the last 40 of the 44 years that he would have been able to build there without a problem, but now he can't. He is one of the last farmers in Florence township that derives 99% of their income from farming. One of the reasons he would like to build in Section 28 is because this area was all logged off and they left the stumps to re-grow and it is now filled with Box Elder and Poplar trees. The land in Section 21 was also logged off and is now hardwood. He found out in section 21 would also need a variance. If we get denied tonight we would be looking at another couple of months and we wouldn't get started until next spring. The proposed building site has a view of our building site and the pasture. His daughter and son in law want to be part of the feedlot operation. They will be able to see the cow yard and the pasture from their property. That is part of life you learn about being around livestock everyday and they hope that someday their grandchildren will be apart of it. If you have to get in your vehicle and drive down the road a ½ mile you won't see them quite as often.

B. Anderson clarified the land east of the road is in a government program.

Mr. Johnson said no, east of Section 28.

B. Anderson clarified section 27.

B. Anderson clarified the land in Section 21 would require a variance.

M. Wozniak said it would depend on how they split it and where their driveway would run. If they wanted their driveway to come from Section 28 and didn't want a flag lot to get their road frontage it would require a variance and most likely a variance to the subdivision controls ordinance as well because the part in section 28 would be less than 2 acres.

J. Fritzinger clarified that there is road frontage on the east side.

Mr. Johnson said there is.

K. Gross clarified that as the property is currently configured, it has road frontage all along the east side. It would be how they would choose to split it off that would instigate the need for the variance.

Mr. Johnson said that Section 21 is not the normal A1 section. It is very wooded and would be hard find another A1 section that looks like that.

M. Wozniak said that there is a tracking challenge since they would be transferring a site from one zoning district to another.

B. Overby asked if the proposed dwelling would be in a wooded area. It is not eliminating any agricultural land.

Mr. Johnson said the only agricultural land would be the driveway and they would run that with the contours.

D. Monroe asked if this is going to be a residence or would there be agricultural buildings.

Mr. Johnson said it would be a residence and possibly a storage shed. No cattle barns.

C/J. Fritzinger opened the public hearing.

Jim Brooks said that he is here to support the proposal. They have lived on their property since 1991, Bob farms their tillable ground. They have had a long relationship the entire time. He did the same for the people who lived beforehand. Some time ago he read through the comprehensive plan. Things have changed around him. His view towards the lake used to be corn field, now it is sprouting houses like crazy. He drives around the county quite a bit. He sees a lot of houses and wonders how did that get there. Bob and his family has farmed this a long time. For the kind of ground we have he has done as good of job as anyone in this county. Their intention is to maintain their property, which is meticulously maintained. We have the opportunity to make the case tonight that is able, to make the right choice. There is a lot more people in Florence Township than there were 50 or 60 years ago. But where they live he would suggest there is probably fewer home sites than there were 80 years ago. Bob and his family have worked very hard to make that a viable farmstead.

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

M. McKay said he is sympathetic to all the nice and good things here, but he doesn't understand why if the house is in 21 instead of 28 that all the other things can't still apply. He hears there is a site line, but what he struggles with is you are taking from A2 to A1 and he doesn't see a hardship.

B. Overby said if we go strictly by the book that is a very valid statement. He is thinking that sometimes we have to bypass the book. This situation is that it is not taking any farmland except for the driveway.

B. Anderson said that he sees a big problem with a messed up legal description and everything else.

B. Overby said that he is torn with this thing. There is a logical thing that makes sense instead of the book. If there is going to be a variance in Section 21 he is looking at approving it.

D. Monroe clarified that they would be 1000' setback.

K. Gross said that it is close enough that they would have to have a survey to show they are the right setback.

Mr. Johnson said they could move it back if they needed to.

M. Wozniak clarified why they couldn't go to the northern part of section 21.

Mr. Johnson said that his neighbor wouldn't be speaking in favor of it because it would be closer to him.

B. Overby clarified that the township has approved the proposed location.

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Mr. Johnson asked the supervisor and they approved it. They missed July's Board of Adjustment meeting, but are here now. He said the other site in 21 would be too close to the neighbor. In Section 21 you are getting closer to the neighbor's land.

Mr. Johnson said that there is 7 and you have one as a site that would be questionable.

B. Anderson said he is leaning toward supporting it. All you have to go through to build in section 21 just doesn't seem worth it to him.

M. Wozniak said he can understand from an economic standpoint.

B. Anderson said that if there was a difference in the land he could say no in a heartbeat. But there is little difference.

M. McKay said he doesn't see it that way. You are talking about a long driveway.

S. Klair said that 21 is walnut and hardwood, where he is proposing is box elder.

C/J. Fritzing asked how many acres you would be taking from ag to pastureland.

B. Anderson said that pastureland is ag land.

Mr. Johnson said about 4 acres.

³Motion by B. Overby and seconded by S. Klair to approve the variance to build an additional dwelling in Section 28, T112N, R13W, Florence Township and removing the building site from 21 based on the possible difficulty in obtaining road frontage in Section 21 and the potential for extra variance that may be needed for that. Motion carried 5:1 M. McKay dissenting.

Harry Hadler – E ½ of NW ¼ Section 13 T110N R16W, Minneola Township. The request is for a variance for the second dwelling allowed for medical purposes to be a permanent pole building with temporary living quarters within instead of a mobile home.

The applicants were not present for the request.

J. Fritzing asked for clarification because the whole packet speaks of a mobile home.

K. Gross explained she copied the wrong packet and apologized.

M. Wozniak apologized for the misunderstanding and explained that the request is for a dwelling unit in a pole shed. The applicants are proposing to remove or modify the dwelling unit when there is no longer a need for the second dwelling. Staff recommends approval of the request based on the economic hardship of putting a mobile home on a property for potentially a limited amount of time as well as based on the fact that the dwelling is still temporary in nature and will still be removed when there is no longer a need for the second dwelling. He clarified that some people are not comfortable living in mobile homes due to potentially hazardous weather we face in Minnesota, like tornados.

B. Overby clarified that the cost of putting a mobile home on there and then taking it off could be high for something that would be there a limited amount of time.

M. Wozniak said that there is an economic issue.

D. Monroe asked if they were looking at the pole building as being the residence for the property owners or the care-takers.

M. Wozniak said that the care-takers would be living in the pole building.

B. Anderson said that if they need wheelchair access that is really hard to rig on a mobile home.

C/J. Fritzingler opened the public hearing.

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

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

J. Fritzingler said she doesn't feel like she has enough information. She would like to see what they were proposing. It feels like it is going to be a second home there with 3 bedrooms and 2 bath.

K. Gross said she would hate for this to get tabled because of her error. She will run and get the correct packet if they feel it is necessary, she has the application in front of her. She read through the applicant's narrative on the application and said they were proposing a 24x80 foot structure that would be 1 to ½ stories and include garage area, 2-3 bedrooms without closets on open area for kitchen/dining/living room and one ¾ bath and possibly a loft area for storage or children's play area. The applicants plan is to make improvements on the original farmhouse upon the elder Hadler's passing, assuming they are able to stay on the property. They will strip the pole building of the things that make it a dwelling.

J. Fritzingler said it still sounds like it is another house going onto this property.

M. McKay said he doesn't want to see the applicants delayed any further either.

⁴Motion by M. McKay and seconded by D. Monroe to approve the variance to allow a temporary dwelling unit inside a permanent pole building as a second dwelling for medical purposes with the per staffs recommendation. Motion carried 5:1 C/J. Fritzingler dissenting.

Discussion - Eric Stelter – New request for grading permit on property located on parcel 43-251-0011, located in Hidden Valley 3rd addition, Wacouta Township T113N, R14W.

M. Wozniak presented the issue at hand: Eric Stelter has applied for a Land Use/Land Alteration Permit to bring his Bayview Drive property into compliance with zoning ordinance requirement for the R-1 Zone District that 20,000 square feet of lot area must not exceed 12% grade in order for the property to be considered a "buildable lot". This permit request is subject to administrative review by LUM Staff. However, because of past consideration of the grading permit by the BOA, LUM Staff and the County Attorney determined that it would be appropriate to forward the permit request to the BOA for discussion and comment prior to any staff action.

DISCUSSION

M. McKay clarified the process of the grading permit.

B. Overby clarified what they are trying to get is a lot that has less than a 12% grade.

M. Wozniak said that you need 20,000 square feet of lot area less than 12% grade to build. He said there is some removal of dirt needed.

C/J. Fritzingler said if she read right there is still a significant retaining wall.

M. Wozniak said that in the beginning of August Mr. Stelter applied for a grading permit to construct a driveway. That was another incremental project that led to a rough driveway. There was grading for the on-site sewer system, which he previously obtained a permit for. The plan that is in the packet differs from their previous plan because there was a retaining wall proposed from Gary Sharp's property that would hook around to the street side of the property. What is being proposed in the plan they have today,

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that retaining wall would not be needed. There is a retaining wall along Roy Hakala's property that would be from 0 to 4 feet.

C/J. Fritzinger clarified that from Mr. Hakala's property there would be a 4 foot drop to the other property.

B. Overby clarified what has been done so far has been approved from Goodhue County.

M. Wozniak said it has. With the minor distinction that Mr. Stelter assumed that he could incrementally grade his property and we talked to him about that and he stopped, then he came in for his driveway permit.

B. Overby asked if there has really been 3,000 cubic yards removed.

Mr. Stelter said absolutely not, that was an estimate from a contractor what he thought it would be but the balance of the cut and fill is about ¼ of that.

M. Wozniak said that if you look at split level homes they have driveway cuts that have steeper slopes. We have a standard that hasn't been applied, and it is a difficult one to administer.

B. Overby clarified that it is going to be in district court in October.

M. Wozniak said that the action that is being considered in district court is an appeal to the granting of the variance to allow him to build without grading the property.

M. McKay asked if he exceeded the 12% slope from Hakala's yard.

Mr. Stelter said that he has been held to this standard that has had to supply certified topographic survey's. All he wants to do is build on land that was split off as buildable as signed by Joanne Wood. The process that is in front of them right now 9/10ths of the lot is within a raking of the maximum 12% standard with exception to the cut that is requested in the grading permit. When the building permit is issued there is no standard for the lot to remain 12% grade, people retain around their home all over, so the retaining wall is a temporary structure that gets us past the building permit process and will be returned to the slope that it is virtually at today.

Eric showed the Board current pictures taken this past weekend.

M. McKay said that last time this was before this board the grading permit was denied and the variance was granted because why move all that dirt if you don't have to.

M. Wozniak said that our feeling is we don't want to flatten out these sites if we don't have to.

B. Overby asked why it was in there.

M. Wozniak said that he doesn't know what it was. There isn't documentation when that version of the ordinance was written to know exactly why.

B. Anderson said there is not a good way to implement it.

M. McKay said there was a dozen reasons why they opposed this house and they are down to the 12% grade because that is the one thing he doesn't have.

Brian Alton said that he would like to respond to Mr. Stelter and Mr. Wozniak's reckless comment has no proof that nobody has been held to this standard. It is part of the shoreland protection ordinance.

M. McKay asked if he has proof that it has been upheld.

Mr. Alton said that he doesn't have any proof that it has been violated.

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Mr. Alton said that $\frac{1}{4}$ of 3,000 cubic yards is 750. Your ordinance allows removal of 50 cubic yards.

M. Wozniak said that his most recent work of the driveway was permitted and there wasn't a question if it was 50 cubic yards.

Mr. Alton said there is a survey, he passed out a highlighted survey.

M. McKay asked where the 20,000 square feet is dropped into this.

M. Wozniak said that everything to the top of the bluff is part of the 20,000 square feet.

Mr. Alton said that he applied for the grading permit which this board denied, and nothing happened until May in which he began to re-contour the lot without any sort of grading permit. He passed out photographs dated 5-14.

B. Overby said that if you look at the plan staff gave us the lines are different.

Mr. Alton said that is what he is proposing to do. The survey is the existing conditions before any conditions are done. He read through an e-mail between Mr. Stelter and Mr. Hakala in which he states he will continue to grade and disregard the law.

B. Overby asked if the land that is being moved, it is all pretty much approved here?

M. Wozniak said that there were two minor grading projects. The first fell under the provisions of our ordinance. The second did not, he was assuming that he could do 50 yards, 50 yards and 50 yards. The second 50 yards shouldn't have happened, but once we informed him that he stopped.

M. McKay asked what he based that information on.

Mr. Alton said it was Mr. Hakala.

M. McKay said he thought Mr. Hakala had to give up his business because he is blind.

Mr. Alton said that he has limited sight.

Mr. Alton said that he has removed several hundred yards of material.

M. McKay said that he is legally blind.

Mr. Alton said he is not legally blind but has some vision problems. There are other people in his home that he has a basis of making these allegations on. He passed out more photographs of work that was done the second weekend, May 27th.

M. McKay asked if that was the driveway.

Mr. Alton said yes.

M. Wozniak said there was a permit issued for the driveway.

B. Overby asked if Mr. Hakala's house is on the same level as Mr. Stelter's proposed dwelling.

M. Wozniak said there was no requirement for them to show whether or not they met that requirement. There is a tuck under garage and a substantial area of fill would have to be removed or moved to create that tuck under garage.

C/J. Fritzing said that we asked the grading permit to be revoked because we didn't want all the grading to happen. That is what we looked at last time. Forget about the 12% slope but we don't want to move all that dirt.

D. Monroe said that is why it is in court.

M. McKay said that they are objecting to him building his house.

J. Fritzinger said that people that have contacted her have stated they don't want the removal of all the dirt and they don't want the house on less than 20,000 square feet at less than 12%.

M. McKay said that if they truly didn't want the dirt to be moved they wouldn't have challenged the variance.

B. Overby said they don't want a house up there.

M. Wozniak said that is the problem with this; we are trying to be equitable and nobody else has been held to this standard. If it did remain a retaining wall safeguards can be taken. You could put a fence up.

B. Anderson said that he doesn't think they should take any action.

J. Fritzinger said that she has an objection about all the dirt to be removed out of there.

M. Wozniak said that with the permit additional grading can be allowed. We have allowed a lot of grading, most of it is under the context of a building permit being issued.

B. Overby said that if we hypothetically don't take any action it remains with staff. If the building permit is going to be approved they will have to go ahead with the grading permit.

M. Wozniak said they could wait to see what the court decides.

B. Overby said that from what he can tell is that the other homes are at the same slope and they weren't held to the same standards so we should let them go ahead.

M. McKay said that he is asking for our opinion. We don't have a role in enforcing grading that may or may not have been violated, so he doesn't even know why we are going through all these numbers that can't even be verified.

B. Overby said that we can go ahead.

Mr. Alton said that with the respect to the grading that was done without the permit that on July 3rd he again moved dirt around. Well over 50 cubic yards. These numbers can be verified. The County is in charge of their zoning ordinance and they can enforce that ordinance. Dr. Hakala did not say he had removed 3,000 cubic yards of dirt, he was saying the plan resembled the plan that called for the removal of 3,000 cubic yards. The county has denied the grading permit, to issue it now would be to simply turn your backs on your previous decision.

M. McKay read from Roy Hakala's e-mail stating that Mr. Stelter had removed 3,000 cubic yards.

Mr. Alton stated if you recall Mr. Stelter admitted to removing 750 cubic yards which only 50 cubic yards is legal.

M. McKay said that the majority of that was done under a permit with exception to that second 50 cubic yard which hasn't been stated that it was removed.

M. Wozniak said that Mr. Stelter has worked with the county and has gone above by and large to get certified grading permits. If we don't allow this to be used as a residential dwelling, we could be looking at a takings issue. That is where we stand, we are trying to balance the impact on the neighbors with the rights of the landowner. There doesn't seem to be problems with erosion and sediment control. If you drive to Thoreau Mountain we recently allowed grading of the lot to less than 12% so that a house could be built.

B. Overby asked if they have given approval for the grading.

M. Wozniak said that he has not issued this grading permit yet.

C/J. Fritzinger said that last time we said revoke the moving of the dirt. Now you want to re-issue it.

M. McKay said that this is a new plan with a lot less dirt. They were presented with a plan that said they had to move a lot more dirt. Beside that he has come up with a plan to move much less dirt.

B. Overby stated that it was a terrific discussion and we will leave it up to staff.

⁵Motioned by B. Anderson seconded by M. McKay to adjourn the August 27, 2007 Board of Adjustment meeting at 8:57 p.m. Motion carried 6:0.

Respectfully Submitted,

Kristi Gross
Secretary

MOTIONS

¹ APPROVE August 27, 2007 Board of Adjustment Agenda. Motion carried 6:0.

² APPROVE July 23, 2007 Board of Adjustment Agenda as amended. Motion carried 6:0.

³ APPROVE variance to build an additional dwelling in Section 28, T112N, R13W, Florence Township.. Motion carried 6:0.

⁴ APPROVE variance to allow a temporary dwelling unit inside a permanent pole building as a second dwelling for medical purposes with the special notation that the conditions as placed on the conditional use permit that was granted August 9, 2007 for this use remain the same. Motion carried 6:0.

⁵ ADJOURN the August 27, 2007 Board of Adjustment meeting at 8:57 p.m. Motion carried 6:0.