

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
JULY 27, 2009**

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

Present: Brad Anderson Judy Fritzinger Stanley Klair Mike McKay Mike Wozniak
Bernie Overby Dennis Monroe

Absent:

¹Motion by J. Fritzinger seconded by S. Klair and carried to approve the July 27, 2009 Board of Adjustment Agenda. Motion carried 5:0.

²Motion by B. Overby seconded by J. Fritzinger and carried to approve the June 22, 2009 Board of Adjustment minutes. Motion carried 5:0.

Staff Updates: M. Wozniak said that we completed early in July our series of meetings to evaluate the comprehensive plan to determine whether any changes are in order. We are going to be preparing a report for the planning advisory commission in regards to some input we received during the meetings. We are not seeing a case for dramatic change, but there are some things that we should consider.

M. McKay arrived at the meeting.

M. Wozniak said that we are in the process of amending the zoning ordinance to incorporate the new digital flood insurance rate maps. Many properties are impacted by modest changes to the floodplain and others have more significant changes to properties. That will go to the Board of Commissioners August 4th and will be in effect on September 25, 2009.

B. Overby asked if there was any talk of density increase or decrease.

M. Wozniak said that there were a couple of individuals that came to a couple of the element discussions and we got comments from several people who thought we were a little too strict and should show some flexibility. We didn't get very many comments that we should allow residential subdivisions. We also heard a lot of comments that said we shouldn't change anything.

C/B. Anderson asked if we had a choice in adopting the flood plan.

M. Wozniak said that we really don't. If we are going to participate in the National Flood Insurance Program which allows citizens to get flood insurance we needed to adopt the new maps.

Conflict/Disclosure of Interest: None.

St. Paul's Evangelical Lutheran Church – Pt of the E ½ of the NE ¼ Section 13, T112N, R18W, Stanton Township. The request is for a variance to create a 10 acre parcel instead of the required 35 acres in the A-3 Urban Fringe District.

M. Wozniak presented the staff report, findings of fact and recommendation:

Findings of fact:

The property currently is less than 35 acres in size. The request is to reduce the parcel size by 1.23 acres. The use of the parcel will remain the same. Granting the variance should not be detrimental and should have no adverse affects on adjacent properties. A hardship does not exist. The entire property could be

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rezoned to residential, but then the church would need to obtain a conditional use permit to continue operations. The church council is apprehensive of changing the zone of the church. Since the use of the property for the church would remain the same, the church counsel does not feel it should need to change the zone of the church parcel to R-1 to avoid the need for the variance. The parcel is currently under 35 acres, the request would allow the parcel to decrease in size by 1.23 acres. The character of the property would remain unchanged. The lot would be slightly diminished. The feasible method to alleviate the practical difficulty would be to change the zone of the entire parcel to R-1 Suburban Residential. A church is allowed by a conditional use permit in that zone. The practical difficulty exists because the A-3 district requires a minimum of 35 acres lot size. The difficulty also exists because the church counsel does not want to change the zone of the church. In weighing all of the factors above, the interests of the justice are most likely not served by denying the variance. The request is for a minimal adjustment to the current acreage of the church. Although a church is allowed in the R-1 zoning district, so are other development not currently allowed by A-3. By allowing the variance, the Board would allow the use to remain the same.

Staff recommendation:

Based on the findings of fact, staff recommend that the Board of Adjustment adopt the staff report into the record, accept the findings of fact, and approve the variance to create an approximate 10 acre parcel instead of the required 35 acres in the A-3 Urban Fringe District. This action is not approving the proposed parcel size of 1.23 acres and this variance will become void if the action to change the zone and plat the proposed 1.23 acre parcel is not approved.

Discussion:

M. McKay asked about the sequence of doing this before changing the zone.

M. Wozniak said that we can put conditions on the variance, we cannot put conditions on a change of zone. If they are unable to get the zoning change approve and the subdivision this variance won't mean anything to them.

M. McKay said it sounds like a short-cut.

M. Wozniak said that with the requirements of the A-3 Zone they can't approve the split of less than 35 acres. If they would change the zoning of the whole parcel to R-1 we wouldn't be dealing with this variance.

M. McKay said that you said that their intention was not to create is residential, but that is what they are doing.

M. Wozniak said they want to create one parcel. If the balance of the church parcel was zoned R1 a developer could come in plat the whole church parcel with multiple lots.

B. Overby asked how close this is to the city limits are they under the city sewer.

M. Wozniak said they are on individual wells and septic.

Mr. Flotterud said that highway 52 divides the city from this area. The whole area is served by individual wells and septic. This subdivision the only improvement is that they recently paved the road there, otherwise they are all wells and septic.

K. Gross asked the applicants to introduce themselves for the record.

Richard Erickson, Dan Flotterud, Dick Busiahn were present representing the church.

M. Wozniak said that this is pretty logical, because it is almost like an infill. It looks like there should be a lot or even more than that, but to satisfy the Township requirements they are only proposing one lot.

B. Overby asked who owns the property.

The applicants responded the church owns it.

C/B. Anderson asked if they would like to add anything.

Mr. Erickson said that they purchased the parcel in 1970 and then there were 3 individual lots there. So they purchased a lot thinking they would put a parsonage there some day. They do not use that lot. It looks like the lot is part of the residential area. We don't use it actually, we don't mow the grass. These lots started off as residential lots and we are trying to go back.

Mr. Busiahn said that this was called the Greenfield addition. It was under rules of a long time ago.

C/B. Anderson asked if the Jeffery Haugen lot was one parcel.

Mr. Busiahn said that those bigger lots there were originally suppose to be two lots and at sometime the township changed their rules and they had to combine them.

C/B. Anderson clarified that it was never zoned R-1 with the County.

M. Wozniak said that the way that it currently exists the church is a metes and bounds subdivision it is all one tax parcel and is zoned A-3.

M. McKay asked why they would like to sell it.

Mr Busiahn said that it would be a source of income.

Mr. Flotterud said they were assessed with paving the road in front of the lot.

M. McKay asked what the hardship was.

M. Wozniak said that the hardship is being able to utilize the property in a manner that is being utilized along the same church. The practical difficulty is that the church does not want to change the zone of the whole parcel.

M. McKay said that he can follow M. Wozniak's logic, but it sounds like the church is requesting a variance based on economic reasons.

M. Wozniak said what is the likelihood of the

Mr. Busiahn said that the 10 acres do not want to be messed with, there is no need for the church to rezone to R-1. It would protect the County

M. McKay said that we have seen many variances for hard luck cases, and that this sounds like it is for financial reasons.

M. Wozniak said

C/B. Anderson said the hardship was that the County changed the ordinance

K. Gross said that the County did not change the zone, the Plat was never recorded.

M. Wozniak said that from the staff viewpoint we didn't see this as a pure hardship situation because there was another option. We have not heard of any comments from the city.

B. Overby said that the picture shows two lots.

Mr. Busiahn said they were originally proposing two lots, but Stanton Township only approved 1 lot.

M. Wozniak said what is proposed 1.23 acre parcel.

B. Overby asked if they could make it into 2 lots down the road.

M. Wozniak said that it would take a replat to do that, so it would take some work.

C/B. Anderson opened the public hearing.

Robert Benson Stanton Township supervisor said that we granted a variance so that the lot would be squared up more. The road goes right in front of it. It is all houses from that point down. The Township does not have any problem with this at all.

C/B. Anderson asked when this was laid out.

Mr. Benson said it goes back to the 1960's before any ordinances were in effect and they just threw them up there.

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

S. Klair said that it is hard to prove a hardship, but it is a practical thing.

D. Monroe said that it has no use right now.

S. Klair said that it has no use right now. You could go with the change of the ordinance to back it up.

C/B. Anderson asked if they have to come to the Township to have the property zoned R-1.

Mr. Benson said that the township has the area zoned R-1.

C/B. Anderson clarified the Township has the lot size in that area 5 acres.

Mr. Benson said that it was a hardship for them that the ordinance changed.

B. Overby said that practicality is one thing do we need to put a condition on this that they can't divide that up anymore or does that remain understood because it is A-3.

M. Wozniak said that there are a wider area of things that would be allowed by conditional use. There is actually more restricted use if it were to all go to R-1.

B. Overby clarified that they would have to come to the County to get it changed to R-1.

M. Wozniak said that if this were approved this evening, their next step would be to apply for the plat application, and apply for a change of zone.

C/B. Anderson said that he is familiar with this area and if we could clean this up and make better sense of what makes sense. The hardship is that the ordinance changed after they purchased it. No matter how the metes and bounds reads.

M. Wozniak said that it certainly set itself up to be a residential lot. If the Board does approve this if they do not proceed with the change of zone request or plat request, nothing is going to happen with it, and if the County does not approve the change of zone and plat nothing is going to come of it.

S. Klair said that some day this could be annexed by Cannon Falls. Was the city notified, did they have any issues.

K. Gross said that she spoke with Aaron Reeves and the City did not have any issues with the request.

³Motion by J. Fritzinger and seconded by D. Monroe to accept the staff report into the record, adopt the findings of fact that staff has prepared and approve the variance to create an approximate 10 acre

parcel instead of the required 35 acres in the A-3 Urban Fringe District. This action is not approving the proposed parcel size of 1.23 acres and this variance will become void if the action to change the zone and plat the proposed 1.23 acre parcel is not approved. Motion carried 5:0:1.

M. McKay stated he abstained because there was no other option.

Glen Craven— The Westerly 100 feet of the Easterly 200 feet of Lot A Block 6, Wacouta Beach Addition, Wacouta Township. The request is for a variance to allow an access drive greater than two feet below the base flood elevation in the Flood Fringe district.

M. Wozniak presented the staff report, the findings of fact and staff recommendation:

Findings of Fact:

The structure meets other aspects of the ordinance. The applicant is will also apply for a conditional use permit to allow the structure to be built with an alternative means of elevation instead of purely fill. This will allow the flood waters to more freely flow around the structure and could cause less impact on surrounding properties. The applicant has no control over the elevation of the road. It would be useless to elevate his own driveway since the road itself is greater than two feet below the BFE. The ordinance specifically allows a variance in this instance. Granting the variance should not be detrimental to any of these issues as long as the condition is adhered to that the dwelling be evacuated prior to the access drive being inundated with flood waters. The hardship is due to the elevation of the township road Greens Point. The property cannot be put to a reasonable use if used under the strict conditions of the ordinance, the plight of the landowner is due to circumstances unique to the property, and others in the area and was not created by the landowner and the variance will not alter the essential character of the locality. The request is to allow an access drive 5.5 feet below the BFE instead of the allowed two feet below the BFE, however the ordinance allows for a variance to be granted as long as a restriction is placed on when the structure can be inhabited. The variance will allow the character of the neighborhood to remain. Not allowing the variance could substantially alter the character of the neighborhood. The only feasible method to alleviate the practical difficulty would be to raise the road up 3.5 feet and then raise the driveway access 3.5 feet. This would substantially change the character of the neighborhood and would cause hardships on the rest of the driveway accesses on that road. The plat for Wacouta Beach is dated 1920, well before any floodplain regulations were created. There would be no interest of justice to deny the variance. The ordinance allows for such a variance as long as a condition is applied.

Staff Recommendation:

Staff recommends that the Goodhue County Board of Adjustment:

1. Accept the staff report into the record.
2. Approve the request for a variance to allow an access drive to be located greater than two feet below the base flood elevation (BFE) in the Flood Fringe Area (variance is for 3.5 feet).
 - a. With the condition that the dwelling must be evacuated prior to either Greens Point or the driveway access being inundated with flood waters. This condition must be disclosed if the property is ever sold.
3. Adopt the above stated findings of fact along with any additional information which may be presented at the public hearing.

Discussion:

B. Overby clarified that they are going to tear down the current residence and build a new one there.

J. Fritzinger asked if the driveway would be likely to remain.

M. McKay asked how much higher is their driveway going to be.

Mr. Craven said they would raise the driveway about a foot to get better drainage.

M. McKay said that they would never raise the road.

Mr. Craven said that they have had flood in the house twice. The new house would meet flood elevations.

M. McKay wanted to make it clear that they approving the driveway issue only today. Not a permit to build the house.

M. Wozniak said that there is some work to do prior to issue a building permit. The means of elevation will need a conditional use permit.

M. McKay said that Wacouta Township has similar requirements as well.

B. Anderson said it doesn't make sense to make the driveway come into compliance when the road isn't at the right elevation.

C/B. Anderson opened the public hearing.

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

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

⁴Motion by M. McKay and seconded by S. Klair to accept the staff report into the record, adopt the findings of fact that staff has prepared and approve the variance to allow an access drive to be located greater than two feet below the base flood elevation (BFE) in the Flood Fringe Area (variance is for 3.5 feet). With the condition that the dwelling must be evacuated prior to either Greens Point or the driveway access being inundated with flood waters. This condition must be disclosed if the property is ever sold. Motion carried 6:0.

Schafer Farms of Goodhue LLC – Pt of NW ¼ Section 32 T112N, R14W, Hay Creek Township. The request is for a variance to expand a feedlot closer than the required 91% OFFSET rating distance. The variance is also to build the structure closer than the required 30' setback to the toe of the bluff.

M. Wozniak presented the staff report, findings of fact and staff recommendation:

Findings of Fact:

The feedlot has existed in its current location for a number of years. The neighbor has submitted a letter indicating he supports the variance and does not feel that he will be impacted by the expansion. The variance to the bluff would have no impact on the integrity of the bluff. Runoff would not be changed by the structure. Granting the variance should not be detrimental to any of these issues the neighbor that would be most impacted supports the request. The need for the variance was created when the property was divided. Mr. Johnson's dwelling was the original dwelling for this farmyard but was divided off many years ago. The hardship for the bluff setback is the topography of the property. This is the most logical position for the expansion. It fits with the natural drainage of the property and will have no further impact on that. The OFFSET distance to the dwelling is 599' the expansion is going to be approximately

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422' from the dwelling (difference of 177'). The structure is going to be 15' from the toe of the bluff (difference of 15'). There is a feedlot currently in the location, staff does not feel that the characteristic of the neighborhood will change with the request. There isn't a good alternative to the variance. As the applicant stated in the application, they chose the location for many factors and they have done the best they could at alleviating the impacts of the variances. The existing feedlot was in existence prior to our current regulations. There is significant practical difficulties and hardship present.

Staff Recommendation:

Staff recommends that the Goodhue County Board of Adjustment:

1. Accept the staff report into the record.
2. Approve the variance request to expand a feedlot closer than the required 91% OFFSET rating distance to a dwelling.
3. Approve the variance request to build the structure closer than the required 30' setback to the toe of the bluff.
4. Adopt the above stated findings of fact along with any additional information which may be presented at the public hearing.

Discussion

B. Schafer said that there have always been livestock on that property. There were two parcels that we have joined. We had to parcels each with a building site. His grandfather split off the dwelling. Given the way the land is they have 20 acres on the bottom of the bluff. Most of the agricultural land is on top which is all used for grazing. This site allowed for less impact on the highway, and the other dwelling location was much lower and had potential floodplain issues. They have always had a good relationship to Marvin Johnson. They will not be moving closer to them. Why not somewhere else? What we are looking at doing is bringing a from Holland and there is not a breed in the United States. The reason we chose this site is because of livestock health reasons. County 3 is not heavily traveled for livestock transport.

C/B. Anderson opened the public hearing.

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

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

M. McKay asked who did the site visit.

S. Klair said that it really isn't that steep of bluff.

B. Overby said yes and you can tell the water doesn't run that way.

M. Wozniak said that there really is not much chance that the bluff would be impacted in any negative way.

B. Schafer said that it will also be engineered.

⁵Motion by M. McKay and seconded by B. Overby to accept the staff report into the record, adopt the findings of fact that staff has prepared and approve the variance request to expand a feedlot closer

than the required 91% OFFSET rating distance to a dwelling and approve the variance request to build the structure closer than the required 30' setback to the toe of the bluff. Motion carried 6:0.

⁶Motion by S. Klair and seconded by D. Monroe to adjourn the July 27, 2009 Board of Adjustment meeting at 7:47 p.m. Motion carried 6:0.

Respectfully Submitted,

Kristi Gross
Secretary

MINUTES

¹ APPROVE the July 27, 2009 Board of Adjustment Agenda. Motion carried 6:0.

² APPROVE June 22, 2009 Board of Adjustment minutes. Motion carried 6:0.

³ APPROVE the variance to create an approximate 10 acre parcel instead of the required 35 acres in the A-3 Urban Fringe District. This action is not approving the proposed parcel size of 1.23 acres and this variance will become void if the action to change the zone and plat the proposed 1.23 acre parcel is not approved.. Motion carried 5:0:1.

⁴ APPROVE the variance to allow an access drive to be located greater than two feet below the base flood elevation (BFE) in the Flood Fringe Area (variance is for 3.5 feet). With the condition that the dwelling must be evacuated prior to either Greens Point or the driveway access being inundated with flood waters. This condition must be disclosed if the property is ever sold. Motion carried 6:0.

⁵ APPROVE the variance request to expand a feedlot closer than the required 91% OFFSET rating distance to a dwelling and APPROVE the variance request to build the structure closer than the required 30' setback to the toe of the bluff. Motion carried 6:0.

⁶ ADJOURN July 27, 2009 Board of Adjustment meeting at 7:47 p.m. Motion carried 6:0.