

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 26, 2007**

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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: Dennis Monroe Brad Anderson Judy Fritzingler Lisa Hanni Mike McKay  
Stanley Klair

Absent: Randy Juliar

M. Wozniak said that staff wanted to add an item to the agenda under other business. The board had granted an appeal for a replacement site for Raymond Matthees, and the property was purchased by Alfred Bear. The reason that we are here today is because when the appeal was presented information was given that there was a well on the property and now they are saying there was not a well. If the board feels that any reconsideration of the action is necessary, we will schedule a hearing for the April meeting.

*<sup>1</sup>Motion by S. Klair seconded by D. Monroe and carried to approve the revised March 26, 2007 Board of Adjustment Agenda as amended. Motion carried 5:0.*

*<sup>2</sup>Motion by D. Monroe seconded by J. Fritzingler and carried to approve the February 26, 2007 Board of Adjustment minutes as amended. Motion carried 5:0.*

**Staff Updates:** none

**Conflict/Disclosure of Interest:** None

**Kelly Bolin** – NE ¼ of Section 24 T111N R16W, Belle Creek Township. The request is for a variance to split the property in a manner that would create less than the required 100' setback from existing structures, the closest setback would be 30', in the A-1 Agricultural Protection zoning district.

M. Wozniak said that there is a slight change to the request. There is a feedlot located on this property that would need to be addressed if the board would choose to consider approving the application.

M. McKay asked for clarification.

K. Gross said that there is a 100' setback requirement for feedlots to property lines, which is separate than the structural setback. It was brought to her attention today that there was a feedlot on this property so that variance would need to be addressed as well.

M. McKay asked if that is a stand alone variance.

M. Wozniak said that is a separate issue that is tied together with this request. Then he presented the staff report and findings as follows:

Kelly Bolin is requesting a variance to split his property with a minimum of a 30 foot side/rear setback between structures and the new property line instead of the required 100' setback.

**Background**

The reasoning for not meeting the required setback is due to the current lay of the agricultural land. The land is currently being farmed right up to the structures. The proposed setbacks would allow for a straighter field for planting. Putting the property line further into the field would be taking up more agricultural land for the home site and would be more difficult to plant according to the applicant.

Belle Creek Township has indicated that they support the request.

**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

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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.
  - 1. **The special circumstances and conditions affecting the land do apply generally to other property in the same vicinity, case in point the other variance requested on this agenda.**
  - 2. **The field outline was established by the farmer who probably wasn't thinking about yard setbacks at the time. The setback requirements establish a needed buffer for both the farmyard and the agricultural field.**
- 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. **Staff does not have an issue with this requirement.**

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. **The intent of the setback distance is to offer a buffer area around to avoid conflict between structures and neighboring property.**
- B. **The landowner is creating the need for the hardship. They are subdividing the property and have the control of where to place the property lines. Creating them any smaller would be creating non-conforming buildings.**

**Staff Recommendation/Resolution**

Based on the above stated findings of fact, staff recommends denial of the variance to split the property in a manner that would create less than the required 100' setback from existing structures.

B. Anderson asked if the planning commission has discussed it at any length to keep it the same or adjust it.

M. Wozniak said that they have talked about the issue and they have devoted some time with it, a big part of the rationale is the desire to maintain a separation between dwellings. But they haven't shown any inclination to establish a different standard. There are other counties, in fact ours was less, and there are other setbacks used in rural areas and we are on the higher spectrum. But it is what it is. There is a criteria that has to be met to justify a variance and we are not seeing it here.

Mr. Bolin said there is only one place that is 30' they went by all the rules and went with the 100' the farmers that run it want a straight line.

M. Wozniak said that it is their choice where to run the line, you can make it 100' and not make it crooked.

Mr. Bolin said that who is going to rent 6 or 7 acres. We have to go way out to make it square.

M. Wozniak said that this is a standard that is applied throughout the county. We are trying to treat folks uniformly.

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Mr. Bolin said that you have a 19 acre building site. I already have 5 acres to mow, how much more land do I need to mow. Every building site that gets split you have to look at separately. You want to keep as much as your farmland. It is right here in your bylaws. How is he creating the hardship?

M. Wozniak said this is a choice that you are making. You decide where that line runs.

Mr. Bolin said this is a matter of things to come. Many people are trying to split their homesteads for different reasons. He can't imagine you can take that much farm land out of production.

M. Wozniak said that he thinks the standard needs to be changed.

M. McKay asked where the feedlot it.

Mr. Bolin said in the south corner.

M. McKay clarified that you can't get a variance and create a necessity for another variance.

B. Anderson said that we have granted variances for feedlots up to 10' from property lines.

J. Fritzinger asked where they are tilling up to.

Mr. Bolin said that it has always been tilled up to the red line, the rest they seeded down to grass. The blue line is where we squared off. They had is surveyed two ways. They use to till all the way up to the building. They had it surveyed in 2006 and had it re-surveyed a month ago.

S. Klair clarified if the person buying the property won't have a problem building another structure.

Mr. Bolin said there are tons of land and enough buildings they shouldn't have a problem. There are too many buildings on there right now. It's almost 20 acres.

B. Anderson clarified the setbacks. Said that it is no secret how he feels on this issue for quite a while.

M. McKay said that he sees what Brad is saying. But he is not seeing the hardship.

Mr. Bolin said that the hardship is the guy buying the land wants it square, and you don't need to take it out of production. That's the hardship you are taking it out of production

M. McKay said that you are plowing right up to the building. You still could.

Mr. Bolin said they are selling.

M. McKay said you are creating it.

*C/B. Anderson opened the public hearing.*

Craig Henslin said he is the man trying to purchase the bare land from Kelly. He is not interested in the building, are you saying that he can't purchase the bare land.

M. McKay said that he is allowed to do that. You are suppose to have 100' setback though, you are asking for a variance to that ordinance.

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Mr. Henslin said that his hardship is that he doesn't care to farm around the crooked lines. That's not considered a hardship to you.

M. McKay said that usually it isn't considered a hardship. If you wanted to square it off you could.

Mr. Henslin said you don't farm then do you?

Mr. Bolin asked who defines what is a hardship and what's not.

M. Wozniak said that we can clarify what the definition of a hardship is.

Mr. Henslin said that M. McKay's never farmed and doesn't understand what a hardship would be.

M. McKay said that you can do that.

M. Wozniak read from the ordinance the definition of a hardship. Nobody is saying the property has to be made to meander and wiggle, but the property can be made to be put into reasonable use without granting the variance, and there isn't grounds for this board to grant it. As staff has explained, we have talked with this issue on great length. The board can't be granting these unless it meets these criteria for a hardship.

Mr. Henslin said that if you set this up this will be the boundary for years. So you are taking that land out for year. What is it going to be used for? It's going to be lawn and mowed?

L. Hanni said that people are out to the rural area so that you don't have that intense agricultural use next to your home. That is why it was originally set up between your buildings and your property lines.

Mr. Bolin asked if she saw that picture. The home is far from the field. There is plenty of room from the house.

L. Hanni said that is the believed intent of the ordinance. And if that is to change it needs to change in the ordinance not by a variance.

Mr. Bolin said that every situation is different. It shouldn't be that this is the way it is.

J. Fritzing asked how much acreage are we talking about between the proposed and what's allowed.

Mr. Bolin said its not much.

D. Monroe said so all of this is over less than an acre of land.

Mr. Bolin said if they want to square it out it is probably four or five acres.

Mr. Henslin asked if we were here to be closer than the 100' how would that be.

B. Anderson said that he doesn't make any decisions before he gets here. He is very familiar with Mr. Bolin's property. The issue to him, that they can square this property out, and you may take an acre two acres to do it and at this point, under this ordinance this is what we have to live with.

Mr. Henslin said that this is what we have to live with and they could come back and change this in a month.

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*With no further public comment M. McKay motioned and J. Fritzingler seconded to approve the closure of the public hearing. Motion carried 5:0.*

B. Anderson said that he would like to see a hardship here, but he is not able to pin point it.

<sup>3</sup>*Motion by M. McKay and seconded by J. Fritzingler to deny the variance to split the property in a manner that would create less than the required 100' setback from existing structures, the closest setback would be 30', in the A-1 Agricultural Protection zoning district. Motion carries 4:1 B. Anderson dissenting*

**Bill Gadiant** – NE ¼ and the E ½ of the NW ¼, Section 25, T111N R16W, Belle Creek Township. The request is for a variance to split the property in a manner that would create less than the required 100' setback from existing structures (the closest setback would be 30') and a variance to create a setback of 30' from a feedlot instead of the required 100' to the property line, in the A-1 Agricultural Protection zoning district.

M. Wozniak presented the staff's recommendation and findings as follows:

Bill Gadiant is requesting a variance to split his property with a 30 foot side/rear setback to structures instead of the required 100 feet. Included in the farmyard is a feedlot, which would also require a variance to the 100' requirement.

**Background**

Mr. Gadiant Jr. would like to buy the farmyard from his dad. The applicant's reasoning for not meeting the required setback is due to the current lay of the agricultural land. The land is currently being farmed right up to the structures. Mr. Gadiant would continue to farm this property and would like to keep the lay of the land as it currently is. Putting the property line further into the field would be taking up more agricultural land for the home site.

Belle Creek Township has indicated that they support the request.

**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.
  3. **The special circumstances and conditions affecting the land do apply generally to other property in the same vicinity, case in point the other variance requested on this agenda.**
  4. **The field outline was established by the farmer who probably wasn't thinking about yard setbacks at the time. The setback requirements establish a needed buffer for both the farmyard and the agricultural field. The setbacks are also required for animal feedlots for a buffer to neighboring properties.**
- 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.
  - a. **Staff does not have an issue with this requirement.**

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- 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.
- C. **The intent of the setback distance is to offer a buffer area around to avoid conflict between structures and neighboring property.**
- D. **The landowner is creating the need for the hardship. They are subdividing the property and have the control of where to place the property lines. Creating them any smaller would be creating non-conforming buildings.**

**Staff Recommendation/Resolution**

Based on the above stated findings of fact, staff recommend denial of the variance to split the property in a manner that would create less than the required 100' setback from existing structures and a variance to create a setback of 30' from a feedlot instead of the required 100' to the property line, in the A-1 Agricultural Protection zoning district.

Mr. Gadiant said that he is confused. He doesn't understand why you want these yards bigger when you have a big yard already.

L. Hanni said that in 1993 they made these standards.

Mr. Gadiant said that the next thing you know you have weeds. Do you want yards looking like that driving down the road?

B. Anderson said that the only thing he needs to be a described piece of field put into the FSA, that's the only way anybody is going to farm it. You can't risk that with two or four acres.

Mr. Gadiant asked why can't we get this changed.

L. Hanni said that if we do change the ordinance, we need to have some setback because it is not going to be that area. It would have to be an ordinance change and you would have to have some setback.

D. Monroe said it is when it changes hands that it becomes a problem.

B. Anderson said from our perspective you can continue farming how you are farming. He can't make the motion, but he can dissent to get the Planning Commission to see his perspective.

Mr. Gadiant said he doesn't sound that it could happen.

B. Anderson said the big problem is that you need to have a hardship.

Mr. Gadiant said why didn't you save me the time of coming here.

K. Gross said that she warned him that this might happen and that you need a hardship.

*C/B. Anderson opened the public hearing.*

*With no public comment M. McKay motioned and D. Monroe seconded to approve the closure of the public hearing. Motion carried 5:0.*

*<sup>4</sup>Motion by D. Monroe and seconded by J. Fritzingler to deny the variance to variance to split the property in a manner that would create less than the required 100' setback from existing structures (the closest setback would be 30') and a variance to create a setback of 30' from a feedlot instead of the*

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*required 100' to the property line, in the A-1 Agricultural Protection zoning district. Motion carries 4:1, B. Anderson dissenting.*

**Discussion – Ray Matthees**

M. Wozniak said that back in November, 2006 the Board considered and approved an appeal for a replacement building site on property owned by Ray and Marcia Matthees. The reason for the appeal was because the evidence of the buildings were dug under. At the time they had thought there had been a well on the property. The property had since been sold. In putting together their building permit application they were not able to find any evidence of a well on the property. He passed around a copy of the 1951 aerial photo that more clearly showed where the structures on the property. There was a clay pit on the property and there was a water source in the clay pit. Given the decision the BOA made to approve it as a building site to approve it with a well present. We are asking if the Board is comfortable with their past decision, or if they feel they need to look at it again.

Ray Matthees said that he wasn't convinced himself that there wasn't a well there. What they had was a clump of trees and there was just a cistern. Marcia Buck was 8 years old when they left the place, they had no electricity, she couldn't remember a windmill. He met with Curt Struss mother that said there was no well there, they went down to the clay pits to get water.

M. McKay clarified since they were here, they would like to still go forward with this?

M. Wozniak said that they felt that they should bring this to the Board's attention.

M. McKay said there was no discussion on the well at all.

B. Anderson asked if there was any issues?

M. McKay thanked staff for bringing it back to their attention but there is not an issue.

Alfred Bear asked if he is more than willing to seal an old well if there is one there. How does he deal with environmental health?

M. Wozniak said that staff will talk with Environmental Health and try to help work things out.

Discussion ensued regarding the setback requirements.

B. Anderson said 50' side and rear yard keep the front the same and put a distance between dwellings.

*<sup>5</sup>Motion by J. Fritzinger and seconded by D. Monroe to adjourn the March 26, 2007 Board of Adjustment meeting at 8:05 p.m. Motion carried 5:0.*

Respectfully Submitted,

Kristi Gross  
Secretary

## MINUTES

<sup>1</sup> APPROVE March 26, 2007 Board of Adjustment Agenda. Motion carried 5:0.

<sup>2</sup> APPROVE February 26, 2007 Board of Adjustment minutes as amended. Motion carried 5:0.

<sup>3</sup> DENY the variance to split the property in a manner that would create less than the required 100' setback from existing structures, the closest setback would be 30', in the A-1 Agricultural Protection zoning district. Motion carries 4:1 B. Anderson dissenting

<sup>4</sup> DENY the variance to variance to split the property in a manner that would create less than the required 100' setback from existing structures (the closest setback would be 30') and a variance to create a setback of 30' from a feedlot instead of the required 100' to the property line, in the A-1 Agricultural Protection zoning district. Motion carries 4:1, B. Anderson dissenting.

<sup>5</sup> ADJOURN the March 26, 2007 Board of Adjustment meeting at 8:05 p.m. Motion carried 5:0.