

The Goodhue County Board of Adjustment was called to order at 7:00 p.m. by Chairman Darwin Fox in the Goodhue County Justice Center located at 454 West Sixth Street in Red Wing, Minnesota.

Present: Darwin Fox Stanley Klair Brad Anderson Dennis Monroe Howard
Stenerson
Lisa Hanni Bill Warmka Joanne Wood

¹Motion by D. Monroe seconded by B. Warmka, and carried to approve the May 24, 2004, Board of Adjustment Agenda.

²Motion by S. Klair seconded by D. Monroe, and carried to approve the April 26, 2004, Board of Adjustment Minutes.

Staff Updates: Lisa Hanni introduces Kristi Patton as new staff. Lisa announces there are two more weeks of Grandfather Clause.

Conflict/Disclosure of Interest: none to be disclosed.

Carl Slifka

Carl Slifka is present requesting a variance to locate an on-site septic system 2 ft. from the road right of way of Willard Avenue located in Woodland Heights Subdivision, Stanton Township. Willard Avenue ends and Stanton Township is not planning on continuing the road through. The area is platted. Mr. Slifka presently has a variance from the township in regards to his driveway. Mr. Slifka owns the property up to the river. The property owned by the Slifka's is a residential lot in Woodland Heights Subdivision and has been determined by the DNR to be floodplain. It has been determined that the dwelling will be located outside the floodplain. Since the property contains floodplain it is a difficulty in locating the on-site septic system in an area outside the 10 year floodplain. Consequently, the septic system will be required to be sited in an area that would not meet the setbacks as outlined in the MN Rules Chapter 7080. The required setback from the road right of way line is 10 ft. The variance will be for 8 ft.

Pam Holst, Environmental Health Department, has reviewed the proposal and has recommended that the Board approve the variance request so a compliant septic system will be installed. Stanton Township has approved the same.

Based on approval by the Environmental Health Department and the fact that this parcel is located in a residential subdivision, staff would recommend approval of the variance as requested, and further, based on the findings of fact:

A hardship exists. The property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls; the variance will not alter the essential character of the locality.

C/D. Fox opened public hearing.

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

³Moved by S. Klair seconded by B. Anderson and carried to approve closure of public hearing. Motion carried 6:0.

⁴Moved by B. Anderson and seconded by S. Klair, and carried to approve the Variance to locate an on-

site septic system 2' from the road for Carl Slifka-Lot 1, Block 6, Woodland Heights Subdivision, Section 24, Stanton Township based on staff recommendation and recommendation from public health. Motion carried by 6:0.

Tim Coss

Tim Coss is present requesting a variance to locate an on-site septic system 50 to 40 ft. from Butler Creek and not the required 75 ft. located in Section 4 of Leon Township. The Coss's are rebuilding their home that was destroyed by fire and are required to replace the on-site septic system. Upon review of the area it was determined that there is no other undisturbed area for the septic system other than the proposed location. This places the mound system within the required setback from the Ordinary High Water Mark of Butler Creek. The required setback is 75 ft. The variance request is for 35 ft. There is one other location however, there was a corral there at one time and the ground is too compacted to be considered undisturbed.

Pam Holst has reviewed the site and has recommended approval of the variance request based on no other undisturbed area for the system. It has also been stated that a replacement system is required. Leon Township is aware of the request.

Based on the fact that the applicant is required to replace the on-site septic system in order to rebuild the dwelling, and, the Environmental Health Department has approved the site, staff recommends approval of the variance as requested based on the following findings of fact:

A hardship exists. The property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls; the plight of the landowner is due to circumstances unique to his property not created by the landowner, and the variance will not alter the essential character of the locality.

S. Klair asks if the DNR had to approve such a variance J. Wood believes that the DNR does not need to approve. They may need to be aware. H. Stenerson asked if Mr. Coss would not be able to build his house.

C/D. Fox opened public hearing

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

⁵Moved by B. Anderson seconded by S. Klair and carried to approve closure of public hearing. Motion carried 6:0

⁶Moved by D. Monroe, and seconded by S. Klair, and carried to approve the Variance request for Tim Coss - Pt of N 1/2 of SE 1/4, Sec 4, T111N, R17W, Leon Township based on staff recommendation. Motion carried by 6:0.

Donald Gates

Donald Gates is present requesting a variance to build a dwelling on a 3.22 acre parcel 85 ft. from the south property line and not the required 100 ft. setback located in Section 34 of Kenyon Township. The applicant is proposing to build a dwelling on a newly created parcel located in an Agriculture Preservation (A-1) Zoning District. The proposed dwelling meets the applicable zoning criteria except for the setback from property lines. The dwelling will be sited 85 ft from the property line and not the required 100 ft. setback. The variance request is for 15 ft. There are currently three (3) dwellings in the section and the parcel contains a minimum of 100 ft. of road frontage.

Upon the site visit and the photos attached, the stakes as shown indicate where the dwelling will be sited. The property contains a row of evergreens on the south side and is mainly tillable on the south side of the evergreens. It was noted at the site visit that the proposed dwelling could potentially be moved somewhat further north to meet the 100 ft. setback requirement. It is not clear as to why the applicant is requesting the variance to locate the dwelling 85 ft. from the property line and not the required 100 ft. setback.

The 100 ft. setback from property lines was established in the Goodhue County Zoning Ordinance on June 4, 1993. The purpose and intent was to create a buffer between location of dwellings and adjacent tillable land in an effort to alleviate any conflict between land owners. In this case as previously mentioned the site contains a line of evergreen trees on the south side which appears to create a buffer between the parcel and tillable land. The entire property is surrounded by tree cover. Kenyon Township has approved a variance and a building/zoning permit to the Gates. The proposed dwelling is intended to be built by the Gates' son.

Upon review of the application and the site visit, the Board would have the following options:

1. To approve the variance to build a dwelling 85 ft. from the south property line and not the required 100 ft. setback based on a reasonable use of the property and, further that the site contains an existing buffer (evergreen trees) alleviating conflict between tillable land and a residential use; the variance will not alter the essential character of the locality. The variance 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.
2. To deny the variance as requested based on the fact that the site contains an area where the dwelling could meet the 100 ft. setback based on no hardship exists. A reasonable use of the property exists and the plight of the landowner is **not** due to circumstances unique to the property and **is** created by the landowner.

In order to place the house facing the road there would have to be a fifteen (15) foot variance on each side. It was asked by D. Monroe if the house had to be centered, Mr. Gates stated it does not have to be centered; however the property is already planned and would be an inconvenience to set the house at a different location in the lot.

J. Wood asked where the septic would be located. Mr. Woods stated the septic would run west and south of the house, 20 ft in from the trees on the east end and 40 ft from the trees on the other end. There is already a plot of trees grown up and the driveway is already planned. Mr. Gates could offer up another 30 ft. in order to avoid a variance, however then he would have to pay for another survey and septic location and such.

C/D. Fox opened public hearing

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

⁷ Moved by D. Monroe seconded by S. Klair and carried to approve closure of public hearing. Motion carries 6:0.

⁸ Moved by S. Klair, seconded by D. Monroe, and carried to approve the Variance for Donald Gates- 15 ft variance for the North line and 15 ft variance for the South line based on staff recommendations. Motion carries 6:0.

Lance Schuster

Lance Schuster is requesting a variance to construct a garage less than 60 ft. from the road right of way line of County Road 12. The variance will be setback 42 ft. from the right of way line (18 ft. variance) and 230 ft. from the center of County Road 12. Mr. Schuster is proposing to build an entry way and attached garage onto his existing dwelling. The proposal is the most likely and feasible location. According to the township variance request the proposed garage will contain a handicap access. County Road 12 was relocated creating a corner piece and a much larger right of way. In discussion with the County Engineer, he has indicated he has no problem or concern with the variance as requested. In this situation there is no concern with obstruction of site view from the roadway. Kenyon Township has approved a variance and issued a building permit for Mr. Schuster's project.

Staff recommends approval of the variance request to locate an attached garage 42 ft. from the road right of way line and not the required 60 ft. setback (variance of 18 ft.) based on the following findings of fact:

A hardship exists. The proposed location is the only feasible area where the garage could be located. The proposed garage will not create obstruction from the roadway and will not alter the essential character of the locality. The plight of the landowner is due to circumstances unique to the property.

- C/D. Fox opened public hearing

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

⁹ Moved by B. Anderson seconded by S. Klair and carried to approve closure of public hearing. Motion carries 6:0.

- J. Wood clarified that it is a large right of way and that technically the garage will be set far back from the actual road. County Road 12 had been relocated and left a very large right of way behind. There is no intent at this time to do anything with the remaining right of way.

¹⁰ Moved by B. Anderson, seconded by H. Stenerson, and carried to approve the Variance request to build an attached garage less than the required 60ft. setback from the road right-of-way, County road 12 (garage will be setback 42', variance is for 18') for Lance Schuster-W 1/2 of the SW 1/4 Sec 16, T109N, R18W, Kenyon Township based on staff recommendations and approval from the county engineer. Motion carried by 6:0.

Chateau Frontenac/William Flies

Bill Flies is requesting a variance to construct a garage onto an existing dwelling less than 8 ft. from the property line (variance is for 5 ft.) located in Block 1 and 2, Town of Frontenac, Florence Township. The Flies' own the property in question referred to as Chateau Frontenac and are proposing to add a garage onto an existing dwelling. The use of the dwelling was a Bed and Breakfast at one time, however, is now being used as a single family dwelling where the Flies' reside. The property line in question is owned by Florence Township, which is used as a buffer between the Flies property and Lake Pepin and will never be allowed a building site. As noted on the photos, the garage location will be an extension of the porch area and will be in line with the top of the landing. The two car garage will extend to the east creating the need for the variance request. This is a unique area whereby the existing dwelling has been located at the site dating back to the early 1900's and was remodeled by the Flies'. The property is located on Lake Pepin in a flood fringe area. The proposed garage will be required to be elevated one foot above the Regulatory Flood Protection Elevation which is reviewed upon the building permit application. The only decision for the Board is the setback from the east property line. Since the property is located in the

Frontenac Heritage Preservation District, approval is required by the Heritage Preservation Commission. You will note on the site plan that the approval has been granted. Additionally, Florence Township has approved the variance request and issued a zoning permit to William Flies. Florence Township is the property owner most affected by the variance request.

Staff recommends approval of the variance request to allow an attached garage 3 ft. from the east property line and not the required 8 ft. setback based on approval by the Florence Township Board and the Frontenac Heritage Preservation Commission, and further based on the following findings of fact:

A hardship exists. The existing dwelling has been located at this site prior to County Zoning Ordinances and the proposed garage will not alter the essential character of the locality. The plight of the landowner is due to circumstances unique to the property not created by the landowner. The garage will be required to meet floodplain standards as established in the Goodhue County Zoning Ordinance and elevations of the garage will be required.

J. Wood asked how far back the garage would be from the right of way. Mr. Flies stated the garage will be further back from right of way than the house.

J. Wood would like it be known that this is in a flood plain and would need to be elevated.

J. Wood stated the proposed location is the best possible location. It is only a small area between the Flies' property and Lake Pepin. The Flies' own the majority of the property in the area. This is an isolated area.

C/D. Fox opened public hearing.

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

11 Moved by B. Anderson seconded by D. Monroe and carried to approve closure of public hearing. Motion carries 6:0.

C/D. Fox noted there have been quite a few variances granted in the Wacouta and Frontenac area due to the lots dating back so far.

12 Moved by S. Klair, seconded by H. Stenerson, and carried to approve the Variance request to construct an attached garage 3 ft from the south property line and not the required 8 ft setback (Variance is for 5 ft) for Chateau Frontenac/William Flies-Block 1&2 PT of vacated Agate, T112N, R12W, Town of Frontenac, Florence Township based on staff recommendation. Motion carries 6:0.

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Lowell Scheffler

Lowell Scheffler is requesting an appeal that this parcel would not qualify as a replacement site based on the definition as outlined in Article 2, Section 2, Subd. 31 of the Goodhue County Zoning Ordinance. Mr. Scheffler has stated that a mobile home was located at this site dating back to the 1970's up until a few years ago. Evidence is present of an existing windmill, an electric pole, a driveway access, and a cement slab where the mobile home was located. Middle 1980's the mobile home was moved. Based on the definition in the Zoning Ordinance the site does not qualify for a replacement dwelling based on no foundation or house currently on the site nor does it contain any accessory structures. There is evidence, however, that there was a home on the site at one time. It was indicated to Mr. Scheffler that the Assessor's records may contain information relative to a mobile home being there; however, at this point the issue had not been discussed with the Assessor. The application form that Mr. Scheffler submitted does not contain an area for the Township to sign. The form was given to Mr. Scheffler last year prior to the added language on the form. At the time Mr. Scheffler submitted the application it was not reviewed until later and consequently there is no indication as to approval by the Township Board. The Township received a notice of the appeal request and to date I have not received any recommendation from the Town Board. Prior to the meeting time I will contact one of the Township Supervisors to determine if they object to the appeal request.

Staff recommends approval of the appeal based on the site visit indicating there being evidence to support the fact that the site contained a dwelling at one time and further, based on there being 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 approval decision is contingent on evidence in the Assessor's record that a dwelling (mobile home) was sited on the property.

S. Klair noted that there is not an actual foundation just a cement slab.

J. Wood pointed out to C/D. Fox on the map where on the property the cement slab was located.

J. Wood did not get a chance to check whether or not there was actually a mobile home on the property at one time. S. Klair would like to see more evidence to this effect.

C/D. Fox opened public hearing

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

¹³ Moved by D. Monroe seconded by H. Stenerson and carried approve closure of public hearing. Motion carries 6:0.

Bob Noser spoke from Pine Island Township. Mr. Noser remembers there being a mobile home on the land. The township does not have any feelings one way or another toward this variance.

J. Wood explains to Mr. Scheffler that the 60 day limit will expire if this matter is tabled until the next Board of Adjustments meeting on June 11, 2004. In which case, Mr. Scheffler will have to sign a timeline waiver agreeing to extend this time limit.

¹⁴ Moved by H. Stenerson, seconded by S. Klair, and carried to table the appeal for Lowell Scheffler-S 1/2 of SE 1/4, Sec 24, T109N R15W, Pine Island Township until the June 28 Board of Adjustments meeting so that the board can have more time to talk with the assessor to verify that there was in fact a mobile home present on the property at one time.

Lounge Management LTD., Vanguilder Construction

The property in question is owned by Lounge Management who has authorized VanGuilder Construction to represent their interest. Vanguilder Construction is present requesting a variance to build an accessory structure 1,920 sq. ft., 720 sq. ft. over the required 1200 sq. ft. located in an R-1 Zoning District. Lounge Management (Richard Jacobson) owns a five (5) acre parcel in Section 25 of Stanton Township, which is zoned Suburban Residential (R-1). The property is located at a dead end street adjacent to a residential platted subdivision. The proposed location of the accessory structure will meet all applicable setbacks. The use of the structure is to store a motor home and antique cars. The Stanton Township Board approves the application.

Staff recommends approval of the variance request to build an accessory structure 1,920 sq. ft. based on the fact the variance is in harmony with the general purpose 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, and the variance will not alter the essential character of the locality.

This structure would be more like an actual garage with siding and roofing to match the house rather than a shed.

C/D. Fox opened public hearing.

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

15 Moved by B. Anderson seconded by H. Stenerson and carried to approve closure of public hearing. Motion carries 6:0.

16 Moved by S. Klair, seconded by D. Monroe, and carried to approve the Variance to build an accessory structure 1,920 Sq. Ft., 720 sq ft. over the required 1200 sq. ft. limitation in an R-1 Zoning District for Lounge Management LTD., Vanguilder Construction-N330 FT of E 660 FT of SE ¼, of SE ¼, Sec 25, T112N, R18W, Stanton Township based on staff recommendation. Motion carried 6:0.

Alan & Dennis Gadiant

Alan Gadiant is present applying for an appeal that this site would not qualify as a replacement site based on the definition as outlined under Article 2, Section 2, Subd. 31, of the Goodhue County Zoning Ordinance. The Gadiant's have stated that the site in question contained a dwelling and accessory structures at one time. Upon the site visit it was noted that there no longer was a foundation or dwelling still standing, nor any accessory structures. The applicant has stated that they purchased the farm in 1980 and vandals burnt down the house. The foundation and one accessory structure were buried. In 1981 the property contained two hand dug wells that were filled for safety reasons. At the present time the site contains a wooded area. In the packet is an aerial map dating back to 1938 indicating there were structures located at the site. The Gadiants have also stated that neighbors in the area remember a dwelling being sited at this location. This property is located in an Agriculture Preservation (A-1) Zoning District and currently contains two (2) dwellings. The applicant wishes to preserve this site for one of his children in the event that the section would become filled. Belle Creek Township has approved the request.

Staff recommends approval of the appeal that this site qualifies as a replacement site based on the 1938 aerial view and the fact that the site contains a wooded area where a farm house was located, and further based on 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.

Wells were capped and buildings were covered on this site. Mr. Gadiant has a map that shows the buildings that were present at one time.

C/D. Fox opened public hearing.

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

17 Moved by B. Anderson seconded by H. Stenerson and carried to approve closure of public hearing. Motion carries 6:0.

18 Moved by S. Klair, seconded by B. Anderson, and carried to approve the appeal for Alan & Dennis Gadiant-WE ½ of SE ¼, Sec 13, T111N, R16W, S ½ of SW ¼, Belle Creek Township based on staff recommendations. Motion carried 6:0.

Friends of St. Rose, Inc., Scott Groth-

Scott Groth is present requesting a variance to MN Standards 7080.0305, Subd. 4. f. that requires all lots created after January 23, 1996 to have a minimum of one additional soil treatment area that can support a standard on site septic system. Scott Groth contacted Land Use Management for approval of a survey to create a parcel of .55 acres with an existing structure (church) located there on. Upon review of the survey it was determined that the proposed parcels would not meet the performance standards in the Zoning Ordinance, Article 3, Section 8, pertaining to MN Standards 7080, and specifically 7080.0305 Subd. 4.f. The Standards were adopted to require any subdivision of land after January 23, 1996, to be able to support two (2) on site septic systems. In this case, the .55 acres is not designed to accommodate for two systems as required, consequently, they are applying for a variance to the requirement. As stated in the information provided by Mr. Groth, the Archdiocese of St. Paul announced its intent to demolish St Rose of Lima, an abandoned parish church and the oldest Catholic Church (1878) in Goodhue County. To preserve the church a small group of individuals organized the Friends of St. Rose, Inc., a non profit organization devoted exclusively to preserving, restoring, and conserving of the church. This would require the church be deeded to the Friends of St. Rose, and the cemetery will remain with 1.2 acres. These are referred to as Parcel A and Parcel B on the survey. Mr. Groth has stated that St. Rose will stand as a permanent historical marker of Irish Catholic immigration and religious services may be held at the site. At this time the structure is not being proposed to open to the public and would not require an on-site septic system be installed. They are focusing on preventing any further structural deterioration on the church at this time. In the event they would ever use the structure for any public events, they may be required to obtain additional land to accommodate for an additional on-site septic system. Based on the fact the proposed parcels contain less than two (2) acres, the proposed survey is required to be approved by the Board of Commissioners based on language in the Subdivision Controls Ordinance. Your review and decision is based solely on creating the .55 acre parcel without meeting MN Standards 7080.305.

Based on information presented staff would recommend approval of the variance to allow Friends of St. Rose to create a lot created after January 23, 1996 to have a minimum of one additional soil treatment area that can support a standard on-site septic system (MN Standards 7080.305 Subd. 4. f.) provided Environmental Health approves the variance request; and, further based on the following findings of fact:

The plight of the landowner is due to circumstances unique to his property not created by the landowner; and the variance will not alter the essential character of the locality. The variance is in harmony with the general purpose 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 Friends of St. Rose would like to split the property and keep the church in the name of Friends of St. Rose and the cemetery in the Arch Diocese name. In the case of any events port-a-potties will be use. The churches main concern at this moment is to put a new roof on.

C/D. Fox opened public hearing.

Carol Trelstad, Cherry Grove Township, questioned whether this was to avoid soil tests or if they were talking about the septic system.

J. Wood clarified that if you split a property after January 1996 you have to prove that you can install two septic systems in the event that something would happen to the first there would be enough room to install a second. This property is limited in only being able to install only one system. But, they are planning on purchasing more land in the future.

Mr. Groth says there is no septic system right now nor a well.

H. Stenerson clarifies that as it stands right now there is enough room to put a septic system in right now.

J. Wood said that unless the township issues separate permits, the township doesn't have to issue a septic permit. But as far as the roofing, the township may issue a permit for that.

19 Moved by B. Anderson seconded by H. Stenerson and carried to approve to close public comment. Motion carries 6:0

20 Moved by B. Anderson, seconded by H. Stenerson, and carried to approve the Variance to MN Standards 7080.0305, Subd. 4.f. that requires all lots created after January 23, 1996 to have a minimum of one additional soil treatment area that can support a standard on site septic system for Friends of St. Rose, Inc. Scott Groth-that pt of the NE 1/4 of the SE 1/4 of Sec. 28, T109N, R17W, Cherry Grove Township based on staff recommendation. Motion carried 6:0.

Othmar Fox/Ray Fox

Ray Fox is present requesting an appeal to build a single family dwelling on land rated 95 Crop Equivalency Rating (CER) and not the required less than 60 CER under the "Ten Year Parcel of Record" on property located in Section 18 Welch Township. Ray Fox is purchasing the ten (10) acres from his dad, Othmar Fox for the purpose of building a single family dwelling. The ten acres contains all woodland and has never been in crop production. Ray Fox has stated that even though the ten acres is fairly flat the site contains rocks and sandy soil conditions. When the CER's were established by the University of Minnesota it took into account the topography and productivity of the soil types. Under the Ten Year Parcel of Record, building sites were based on soil types and did not deviate from woodland versus land that was currently in production. Based on the Parcel of Record criteria, this site meets all applicable setbacks as outlined in the Zoning Ordinance previous to June 4, 1993 except for the soil type. Mr. Fox recently purchased enough land to obtain his 100 ft. of road frontage on a public road right of way. No building permit will be issued by the county until such time as Welch Township approves a building/zoning permit.

Staff recommends approval of the appeal as requested based on the fact the ten acres meets all applicable setbacks as established in the 1993 Zoning Ordinance and the ten acres contains a wood lot, with the condition that Welch Township approves the request and further, 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.

J. Wood stated that the soil type dropped to 82 CER in 1995. C/D. Fox explained the Welch Township parcel of record was not extended with the county.

Mr. Fox states that there are no driveways for two miles. It is an A1 section.

C/D. Fox opens public hearing.

Jim Papel a neighbor of the Fox's was wondering where to get a building permit.

Nick Reese neighbor states that the Fox's have been trying to get a permit for many years. Mr. Reese believes that building a single family dwelling is the best use of the land.

Bob Fox, Ray's brother, stated that the township did issue a permit in the past.

Alan Schaeffer owns 30 acres asking how many building permits are left. J. Wood stated that the section currently contains 4 or more sites. So there are no other sites left. Mr. Fox is trying to build under the grandfather clause. Mr. Schaeffer has a wood lot and is wondering if his taxes could get reduced. L. Hanni told him he must talk to the assessor about that.

21 Moved by B. Anderson seconded by D. Monroe and carried to approve closure of public hearing. Motion carries 6:0.

C/D. Fox clarifies to S. Klair that this is an appeal to the CER.

22 Moved by S. Klair, seconded by B. Warmka, and carried to approve the appeal for Othmar Fox/Ray Fox-The W ten (10) acres of the E twenty (20) acres of the NE 1/4, of the SW 1/4 Section 18, T113N. R16W, Welch Township, pending Welch Township approval to the CER. Motion carried 5:1. H. Stenerson dissenting.

Dennis Kalow, etl,

Dennis Kalow is present and requesting an appeal to determine if this site qualifies as a replacement dwelling based on the definition as established in the Goodhue County Zoning Ordinance, Article 2, Section 2, Subd. 31. In March of 1993, a building permit was granted to Dennis Kalow for a single family dwelling. At the time Mr. Kalow had concerns about losing the building site on the property due to ordinance amendments and was told by Chuck Dornack to apply for a building permit for a dwelling. By doing so the Kalow's would be assured they would maintain a building site into the future. Additionally, a permit was issued for the on-site septic system but was never used. Mr. Kalow proceeded to build a dwelling on the site. When Mr. Kalow approached staff regarding the status of his building site he was told the Structure on the property does not meet the definition of a dwelling as stated in the Goodhue County Zoning Ordinance, (two or more rooms with bathroom and kitchen facilities). Mr. Kalow stated that it was always his intent to be considered as a dwelling. He has also stated in his grounds for the appeal that the Assessor's office has taxed the building site as residential. Since the site does not meet the criteria as a replacement site Mr. Kalow has applied for the appeal in order to be considered as a dwelling. In discussion with Mr. Kalow it was determined that he does not meet the definition of a dwelling based on the "cabin" being a one (1) room structure with no bathroom or kitchen facilities and the "cabin" is not connected to a sanitary facility or well. At the time Mr. Kalow brought the issue to staff's attention, the issue was discussed with Leon Township Clerk, Brad Anderson. It appears the Township has not signed the application form; however they are aware of the request. The Township does not object to the site being classified as a replacement site. As Mr. Kalow alludes to in his letter, the neighboring property is proposing a building site and will be within 1,000 ft. of Mr. Kalow's "cabin." If this site is approved as a replacement site will that prohibit the neighbor from building? Not until the site becomes an actual dwelling whereby the septic system and well are connected and the dwelling ultimately meets the definition of a dwelling. This is no different than other replacement sites that contain minimal foundations, etc. Technically, they are not considered as a dwelling until such time as they build a home. Therefore, the proposed dwelling on the neighboring property would be allowed.

Mr. Kalow states that he would like this to be classified as a replacement site. The site meets two of three standards as a replacement site. If the property were two rooms with septic and well the property would be a replacement site. Under Township ordinance it is a buildable site.

J. Wood clarifies that the facility currently located on the property is not classified as a dwelling. A dwelling is classified as two or more rooms with a kitchen and a bathroom with a septic system and a well. However this facility only has one room with a fireplace used to cook, but no septic system or well.

C/D. Fox opens public hearing.

Kent Canterdon has split his land and is planning on building on his part of the land. However the cabin is less than 1000 ft from Mr. Canterdon's proposed site. If the board approves it as a site, it will not be livable until a septic and a well is put in. Mr. Canterdon will be within the 1000 ft. under the parcel of record. It has been decided that it will not affect Mr. Canterdon.

Darla Kalow just wants to maintain their home as a buildable site. She is wondering whether or not Mr. Canterdon's house would effect the Kalow's being able to build on the replacement site.

J. Wood explains that replacement sites are not subject to the 1000 ft ordinance.

23 Moved by B. Anderson seconded by S. Klair and carried to approve closure of public hearing. Motion carries 6:0.

24 Moved by B. Anderson, seconded by D. Monroe, and carried to approve the appeal for Dennis Kalow, etl, NW ¼ of NE ¼, Section 19, T111N, R17W & 1.21 Ac of NE ¼ of NE ¼, T11N, R17W, Leon Township, based on staff recommendation. Motion carried 5:1 C/D. Fox dissenting.

Jon & Jodie Simon/Dale Kullberg

Jon and Jodie Simon were present and are applying for a variance to build a single family dwelling within 2000 ft. of a confined feedlot and an appeal to build the dwelling on land rated 60 CER and above (TmC 70 CER) as required in the Agriculture District (A-2) located in Section 21 of Vasa Township. Jon and Jodie Simon are proposing to purchase land from Dale Kullberg to build a single family dwelling located in an A-2 Zoning District. You will note in the packet that a survey was submitted indicating the 2000 ft. setback from the Peterson feedlot to the north. In addition the soil type at that site would indicate MaF (bluff land) or ToD (55 CER), however, accordingly the topography at that point contains a great deal of slope. The Simons wish to move the site slightly to the north and place the dwelling out of the sloped area onto a more desirable location. Upon the site visits we were unable to view the site due to conflict with the time element and missed Ms. Simon, however, Steve Schmidt, feedlot officer viewed the Peterson feedlot in relation to the proposed building site for the Simons. He stated at the site that the point at which the survey was taken was not in fact feedlot and the actual feedlot would begin 400 to 450 ft. further north. This would indicate that the Simons may not be required to apply for a variance to the feedlot setback. The proposed dwelling would still require an appeal as they are proposing to site the dwelling on TmC (70 CER). It would appear from the soils map that the MaF being bluff land and the ToD soils would contain slopes that may be inappropriate to build on and moving the site into the TmC would be a much better location for the dwelling. Additionally, it would appear that the dwelling site would disturb minimal tillable land. The Simons would purchase the 21 acres located in Section 21 and additionally the land that fronts on County Road 7.

Vasa Township has approved the request. Based on the information provided by Steve Schmidt, Feedlot Compliance Officer, it has been determined that the edge of the actual confined feedlot is located

approximately 400 to 450 ft. north allowing a dwelling to be sited on the parcel that would meet the 2000 ft. feedlot setback and a variance would not be required. The Board would not need to take action on this issue other than to state that the proposed dwelling for the Simons would meet the setback as established in the Goodhue County Zoning Ordinance.

Staff would recommend approval of the appeal to locate a dwelling on land rated 70 CER in order to locate the dwelling in a more desirable location which would disturb a minimal amount of tillable land, based on findings of fact:

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 site location is bluff land and ToD soils which generally contains too much slope to build a dwelling on. The Goodhue County Zoning Ordinance was created to protect the scenic bluff lands.

Steve Schmidt, feedlot, officer approached the board and commented on the Alan Peterson feedlot which is an eighty two (82) animal unit feedlot. There are 40 cows, 40 heifers to make about 82 animal units. If the new ordinance goes into effect, it would not affect this property.

Mrs. Simon states that you would not be able to see the feedlot from where the house would be. If the feedlot ordinance were to change the Simon's would not wish to move any closer to the feedlot line.

C/D. Fox open public comment.

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

25 Moved by H. Stenerson seconded by S. Klair and carried to approve closure of public hearing. Motion carries 6:0

H. Stenerson was concerned whether or not moving this property farther north it would encourage the Simons to run the driveway through the middle of the field. But if you put the build site on the bottom edge there would be a shorter access road and it would encourage them to run it along the edge.

Mrs. Simon clarified that they were not planning on running the driveway through the field.

Mr. Simon said they were planning on running it either through the north or south line of the property. The actual driveway is now on the neighbor's property, so they are planning on running it right next to the line.

B. Anderson was wondering if there were any spots with lower CER.

J. Wood clarified that the spot that the Simon's are proposing is the lowest CER local.

Mr. Simon said there is a farmer field access currently so it is already compacted.

Mrs. Simon said the field is rented and they may have their own animals in that area.

J. Wood said that the original site was picked out because it was in accordance with the feedlot setback, however when someone went out to the property they saw that that spot was actually in a slope and that it moved to get out of the slope but now needs a variance to the feedlot and the CER.

H. Stenerson said that they could wait a few months to see if the feedlot ordinance changes.

Mrs. Simon said that she fell in love with the spot and that it is beautiful.

J. Wood asked H. Stenerson if his concern was the CER or the feedlot setback.

H. Stenerson said “Anytime you have a building site and it takes more than one variance or appeal to make it buildable, then I always say ‘Ok, how many does it take to make it not buildable.’ That is my concern. Knowing that the feedlot issue is probably going to change, most likely, sounds like it, makes a smaller issue.”

J. Wood said that it hasn’t changed

H. Stenerson said that it has not changed and that we are dealing with this issue now.

H. Stenerson asked if they could put it in the motion to place that the driveway would have to be placed on either the north or south side.

S. Klair agrees with H. Stenerson however he is concerned that by stating where the driveway would have to go it may create a hardship the Board is not aware of.

Mr. Simon said that if placing the driving would help the Board feel more comfortable with their decision that is what they (the Simons) were planning on doing anyway.

²⁶ Moved by H. Stenerson, seconded by B. Anderson and approved the appeal to build a single family dwelling on land rated 60 CER and above (TmC 70CER) located in an A-2 Zoning District for Jon & Jodie Simon/Dale Kullberg-Pt of NE ¼ of NE ¼ of Sec 21, T112N, R16W, Vasa Township based on staff recommendation with the understanding that the driveway be positioned either on the north property line or the south side of the field. Motion carried 6:0.

²⁷ Moved by S. Klair seconded by D. Monroe, and carried to approve the Variance to build a single family dwelling less than 2000 ft. from a confined feedlot for Jon & Jodie Simon/Dale Kullberg-Pt of NE ¼ of NE ¼ of Sec 21, T112N, R16W, Vasa Township based on staff recommendation. Motion carried 6:0.

Foison Investments/Larry Fox

Larry Fox, Foison Investments is present requesting a variance to create and build three (3) dwellings on less than 35 acres located in Section 1, Vasa Township. Larry Fox is the owner of the property consisting of 145 acres. In April of 2003, he applied for and was denied by the Board a variance to create and build 3 dwellings on this parcel. At that time he proposed all three dwellings on the east side of the property close to a wooded area on a hillside. The neighbors had concerns as to the location of the dwelling specifically due to drainage patterns and road access at that point. Based on those concerns, Mr. Fox has redesigned his proposal by spreading out the dwellings in different locations. Another concern was that one of the building sites did not contain 100 ft. of road frontage which is a requirement in the A-3 Zoning District. He is proposing one dwelling in the wooded area and one dwelling on the top of the hill as well as one dwelling located towards the west. Mr. Fox owns enough land to be allowed to build three (3) dwellings in the proposed locations as he currently owns 145 acres. When Mr. Fox's son built a new home across County Road 41, he was granted a variance to build on less than 35 acres; however, the dwelling controlled the 35 acres. The same concept would be in place for this proposal.

If the Board approves the variance, each site would control 35 acres and no more building sites would be available on the remaining land. The intent and purpose to create the 3 building sites is in an attempt to maintain and conserve the tillable land. Mike Carlson, Vasa Township, has signed the application form approved; however, there is a note that the neighbors have concerns for development.

Based on the fact that the intent to create parcels less than 35 acres is to maintain and conserve the tillable land by keeping it in production staff recommends approval of the variance request to create and build three dwellings on less than 35 acres and each site controls the 35 acre lot size by not allowing any more dwellings on the remaining land.

The variance is in harmony with the general purpose 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 variance will not alter the essential character of the locality.

Mr. Fox states the purpose of the smaller parcels is to keep as much tillable farming land as possible. Mr. Fox currently has two building lots. The main purpose is to avoid cutting up farm land, instead using three smaller buildable lots in order to save the farm land. This has been before the township. What is actually being decided is whether or not Mr. Fox can build on a smaller piece of land.

C/D. Fox opens public hearing.

Duane Lindstrom believes his feedlot is less than 2000 ft. from proposed building lot. Also Mr. Lindstrom doesn't want more dust complaints from the semis with houses being close to the road. The county has no intention on paving the road. He is also concerned about where the driveway would go due to it being a hilly road, it could be dangerous.

Steve Lindstrom approached the microphone stating that the picture is a misrepresentation of where Mr. Fox could actually build because there is a water run in the picture that was in the packets.

Mike Carlson opposes the variance based on higher traffic.

Jerry from Cannon Realty states that Mr. Fox can build 3 houses one way or another whether or not the board grants the variance but by granting the variance the board will be saving tillable farm land. And the CER rating doesn't come into effect.

Pete Dudley, adjacent landowner. What portion is he obligated to build on, is there a portion he is obligated to build on? No matter where he puts it, it will be eating up farmland. A lot of water comes down the hillside. Mr. Dudley also opposes the variance.

Steve Carlson, rented farm from the Fox's, each of the building sites would be on the poorer side of the farmland and that building it this way does not affect the farmland.

Eric Pearson was wondering about the whether or not the new feedlot law is going to affect A3 sections.

Pete Douglas is wondering about the moratorium. J. Hanni states the moratorium has expired.

J. Wood states driveways have to be approved by highway so that no driveway would be in a dangerous area.

²⁸ *Moved by B. Anderson seconded by H. Stenerson and carried to approve closure of public comment. Motion carries 6:0.*

B. Anderson states that the variance meets and promotes the area. It doesn't completely meet hardship it does meet the terms of this ordinance. This way it helps the county keep control of the placement of buildings on this land. And it is a benefit keeping the agriculture land surrounding the area.

²⁹ *Moved by H. Stenerson, seconded by B. Anderson, and carried to approve the Variance to create and build three dwellings on less than 35 acres located in an A-3 Urban Fringe Zoning District for Foison Investments/Larry Fox-N 1/2 of SE 1/4, N 2 1/2 chains of S 1/2 of SE 1/4, N 1/2 of SW 1/4. All Section 1, T112N, R16W, Vasa Township based on staff recommendation. Motion carried 5:1 with S. Klair dissenting.*

Lavonne Holthe

LaVonne Holthe is present requesting an appeal to a decision that this site would not qualify as a replacement site based on the definition as established in the Goodhue County Zoning Ordinance, Article 2, Section 2, Subd. 31. Ms. Holthe has stated that she owns a parcel of land located in North Vasa Township along the Cannon River that contains an old foundation and a well. Based on the definition in the Goodhue County Zoning Ordinance, the site does not meet the criteria established as a replacement site. Upon the site visit and based on the photographs it appears that a foundation is located on the site. Additionally there is evidence of a well and an accessory structure. At this point I have not contacted the Assessors office to determine if they have any evidence that a building site existed on this property. The property was resurveyed in April of this year. Replacement sites are not subject to the same setbacks as vacant land. They do not require road frontage, just access, the number of dwellings per section, and the 1/4, 1/4, do not apply. A concern has been brought up regarding the parcel containing floodplain and that flooding has occurred at this site. The Board's decision on this request is to determine whether or not they consider this property to contain a replacement site. If there is floodplain at this site, the applicant is

required to survey the elevation where the dwelling will be sited and is required to meet the standards in the Goodhue County Zoning Ordinance, Article 18, Floodplain District, prior to the issuance of any building/zoning permit. This would include the location of the on-site septic system and any other structures on the parcel. Vasa Township has reviewed the variance request.

Based on evidence at the site that a foundation and well exist staff recommends approval of the appeal request based on 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.

C/D. Fox opened public hearing.

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

30 Moved by S. Klair seconded by H. Stenerson and carried to approve closure of public hearing. Motion carries 6:0.

31 Moved by B. Anderson, seconded by H. Stenerson, and carried to approve the appeal for Lavonne Holthe-All that Pt. of the NW ¼ of the SE ¼ Section 31, T113N, R16W, Vasa Township which lies south of the centerline of the Cannon River based on staff recommendation. Motion carries 6:0.

Darvin Laue

Darvin Laue is requesting a variance to create a lot less than 35 acres located in an Urban Fringe District (A-3) and located in Section 33 of Holden Township. Mr. Laue was approved a building site in 2003 to build a dwelling on a 35 acre parcel as a replacement site. He would now like to split off three (3) acres around the building site and since the property is located in an A-3 Zoning District, the Zoning Ordinance allows only one dwelling per 35 acres. By splitting off three (3) acres the remaining land will not contain enough acres to obtain an additional building site. The intent of applying for a variance to create parcels less than 35 acres is to not allow property owners in an A-3 to be able to split off land and maintain 35 acres in order to obtain an additional building site(s). In this situation the existing parcel contains 35 acres and by creating the 3 acre parcel the remaining land would be less than 35 acres, therefore, the existing dwelling would control the entire 35 acre parcel. Holden Township has approved the application and no variance is required on their part. The Kenyon City Administrator has been attempting to contact me and has requested additional information regarding this variance. At this point I have not connected with him but should have information as to whether or not the City of Kenyon would have any concerns regarding this variance available at your meeting.

Staff recommends approval to create a lot less than 35 acres (three acres) located in an Urban Fringe District (A-3) based on the following findings of fact:

The existing dwelling controls the 35 acres and no additional dwellings will be allowed on the remaining 32 acres. The variance will not alter the essential character of the locality and the granting of the variance 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 or injurious to property or improvements in the area adjacent to the property of the applicant.

C/D. Fox opened public hearing.

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

32 Moved by B. Anderson, seconded by S. Klair and carried to approve closure of public hearing. Motion carries 6:0.

J. Wood states the remaining property would not be buildable. She notices that the property is illegal at the moment because there are two buildings on one parcel so it need to be split in order to make the property in legal standing.

33 Moved by B. Anderson, seconded by S. Klair, and carried to approve the Variance to create a lot less than 35 acres located in an Urban Fringe (a-3) Zoning District for Darvin Laue-Pt of SE ¼ Sec 33, T110N, R18W, Holden Township based on staff recommendation. Motion carried 6:0.

Meeting Adjourned 10:45 p.m.

Respectfully Submitted,

Kristi Patton
Zoning Technician/Recording Secretary

Minutes

1. **Approve** May 25, 2004 agenda as written. (Motion carries 6:0)
2. **Approve** April 26, 2004 meeting minutes as written. (Motion carries 6:0)
3. **Approve** to close public hearing. (Motion carries 6:0)
4. **Approve** the Variance to locate an on-site septic system 2' from the road for Carl Slifka-Lot 1, Block 6, Woodland Heights Subdivision, Section 24, Stanton Township based on staff recommendation and recommendation from public health. (Motion carries 6:0)
5. **Approve** closure of public hearing. (Motion carries 6:0)
6. **Approve** the Variance request for Tim Coss - Pt of N ½ of SE ¼, Sec 4, T111N, R17W, Leon Township based on staff recommendation. (Motion carries 6:0)
7. **Approve** closure of public hearing. (Motion carries 6:0)
8. **Approve** the Variance for Donald Gates- 15 ft. to the N and 15 ft. to the S based on staff recommendations. (Motion carries 6:0)
9. **Approve** closure of public hearing. (Motion carries 6:0)
10. **Approve** the Variance request to build an attached garage less than the required 60ft. setback from the road right-of-way, County road 12 (garage will be setback 42', variance is for 18') for Lance Schuster-W ½ of the SW ¼ Sec 16, T109N, R18W, Kenyon Township based on staff recommendations and approval from the county engineer. (Motion carries 6:0)
11. **Approve** closure of public hearing. (Motion carries 6:0)
12. **Approve** the Variance request to construct an attached garage 3 ft from the south property line and not the required 8 ft setback (Variance is for 5 ft) for Chateau Frontenac/William Flies-Block 1&2 PT of vacated Agate, T112N, R12W, Town of Frontenac, Florence Township based on staff recommendation. (Motion carries 6:0)
13. **Approve** to close public hearing. (Motion carries 6:0)
14. **Table** the appeal for Lowell Scheffler-S ½ of SE ¼, Sec 24, T109N R15W, Pine Island Township until the June 11 Board of Adjustments meeting so that the board can have more time to talk with the assessor to verify that there was in fact a mobile home present on the property at one time. (Motion carries 6:0)
15. **Approve** closure of public hearing (Motion carries 6:0)
16. **Approve** the Variance to build an accessory structure 1,920 Sq. Ft., 720 sq ft. over the required 1200 sq. ft. limitation in an R-1 Zoning District for Lounge Management LTD., Vanguilder Construction-N330 FT of E 660 FT of SE ¼, of SE ¼, Sec 25, T112N, R18W, Stanton Township based on staff recommendation. (Motion carries 6:0)
17. **Approve** closure of public hearing. (Motion carries 6:0)
18. **Approve** the appeal for Alan & Dennis Gadiant-WE ½ of SE ¼, Sec 13, T111N, R16W, S ½ of SW ¼, Belle Creek Township based on staff recommendations. (Motion carried 6:0)
19. **Approve** closure of public hearing. (Motion carries 6:0)
20. **Approve** the Variance to MN Standards 7080.0305, Subd. 4.f. that requires all lots created after January 23, 1996 to have a minimum of one additional soil treatment area that can support a standard on site septic system for Friends of St. Rose, Inc. Scott Groth-that pt of the NE ¼ of the SE ¼ of Sec. 28, T109N, R17W, Cherry Grove Township based on staff recommendation. (Motion carried 6:0)
21. **Approve** closure of public hearing. (Motion carries 6:0)
22. **Approve** the appeal for Othmar Fox/Ray Fox-The W ten (10) acres of the E twenty (20) acres of the NE ¼, of the SW ¼ Section 18, T113N. R16W, Welch Township, pending Welch Township approval to the CER. (Motion carried 5:1. H. Stenerson dissenting)
23. **Approve** closure of public hearing. (Motion carries 6:0)
24. **Approve** the appeal for Dennis Kalow, etl, NW ¼ of NE ¼, Section 19, T111N, R17W & 1.21 Ac of NE ¼ of NE ¼, T11N, R17W, Leon Township, based on staff recommendation. (Motion carried 5:1 C/D. Fox dissenting)
25. **Approve** closure of public hearing. (Motion carries 6:0)
26. **Approve** the appeal to build a single family dwelling on land rated 60 CER and above (TmC 70CER) located in an A-2 Zoning District for Jon & Jodie Simon/Dale Kullberg-Pt of NE ¼ of NE ¼ of Sec 21, T112N, R16W, Vasa Township based on staff recommendation with the understanding that the driveway be positioned either on the north or south side of the area. (Motion carried 6:0)
27. **Approve** the Variance to build a single family dwelling less than 2000 ft. from a confined feedlot for Jon & Jodie Simon/Dale Kullberg-Pt of NE ¼ of NE ¼ of Sec 21, T112N, R16W, Vasa Township based on staff recommendation. (Motion carried 6:0)
28. **Approve** closure of public hearing. (Motion carries 6:0)
29. **Approve** the Variance to create and build three dwellings on less than 35 acres located in an A-3 Urban Fringe Zoning District for Foison Investments/Larry Fox-N ½ of SE ¼, N 2 ½ chains of S ½ of SE ¼, N ½ of SW ¼. All Section 1, T112N, R16W, Vasa Township based on staff recommendation. (Motion carried 5:1 with S. Klair dissenting)
30. **Approve** closure of public hearing. (Motion carries 6:0)
31. **Approve** the appeal for Lavonne Holthe-All that Pt. of the NW ¼ of the SE ¼ Section 31, T113N, R16W, Vasa Township which lies south of the centerline of the Cannon River based on staff recommendation. (Motion carried 6:0)
32. **Approve** closure of public hearing (Motion carries 6:0)
33. **Approve** the Variance to create a lot less than 35 acres located in an Urban Fringe (a-3) Zoning District for Darwin Laue-Pt of SE ¼ Sec 33, T110N, R18W, Holden Township based on staff recommendation. (Motion carried 6:0)