

BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
NOVEMBER 26, 2007

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

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

Absent: none

¹*Motion by B. Overby seconded by S. Klair, and carried to approve the November 26, 2007 Board of Adjustment Agenda. Motion carried 6:0.*

²*Motioned by S. Klair seconded by D. Monroe, and carried to approve the October 22, 2007 Board of Adjustment minutes. Motion carried 6:0.*

³*Motioned by B. Anderson, seconded by B. Overby and carried to approve the October 29, 2007 special meeting of the Board of Adjustment minutes. Motion carried 6:0.*

Staff Updates: L. Hanni said that there will be no December meeting at this point.

Conflict/Disclosure of Interest: none

Robert Luhman – NW ¼ of the NW ¼ Section 24 T113N R16W, Welch Township. The request is a variance to split a dwelling on 4 acres from an existing 40 acre tax parcel in the A-3 Urban Fringe District.

L. Hanni presented the staff's recommendation and findings of fact: This particular property is located in Section 24 of Welch Township. Section 24 directly abuts the city limits of Red Wing, and is therefore zoned A-3, Urban Fringe District. Welch Township does not recognize the A-3 zoning district. According to their zoning, this section is zoned A-2, Agricultural.

Mr. Luhman received a building permit for the dwelling on May 2, 2007. He did not mention, at the time of applying for the building permit, his intentions for splitting the proposed home on four acres. Had he informed us of his intentions we would have suggested that he should obtain the variance first.

Mr. Luhman stated in his application that "the location of this parcel to the City of Red Wing makes the affect on future expansion non-existent." This is a fair assumption, however, there is a newer subdivision in the city limits less than one mile away from this parcel.

Mr. Luhman also stated in his application that the parcel "conforms to all A-2 requirements for a dwelling which was in effect when purchased in 1991." Our zoning ordinance went through a major revision in 1993. The A-2 zoning district was created in 1993. When the zoning revision occurred there was a "Grandfather Clause" written into the ordinance allowing tax parcels that were buildable under the previous guidelines, to still be buildable until June of 2004.

The Township signed the request acknowledging Mr. Luhman was requesting a variance with no recommendations. As stated earlier, the township regulations go by our A-2 standards and do not require thirty-five acres minimum lot size.

The parcel in question is currently forty acres in size. If the request is granted, as proposed, over thirty-five acres would remain.

Findings: There are no special circumstances affecting the land that do not apply generally to other property in the same vicinity. There are no other dwellings in this section on less than 35 acres. There are no special circumstances affecting the land that do not apply generally to other property in the same vicinity. There are no other dwellings in this section on less than 35 acres. The hardship in this case was

created by the landowner. The property owner was aware of the thirty-five acre lot size requirements prior to obtaining the building permit for the house. If it truly is not feasible for Red Wing to expand its city limits into this direction, then a change of zone would be more appropriate than a variance to the A-3 requirements.

Based on the findings of fact presented thus far, staff recommends denial of the variance to split a dwelling on four acres instead of the required thirty-five acres in the Urban Fringe District (A-3).

DISCUSSION

B. Overby asked what was meant by the change of zone.

L. Hanni said he could request that the section change zone by going through the Planning Advisory Commission and County Board.

Mr. Luhman said there is a dwelling on a ten acre parcel. Within a mile there are seven or eight dwellings on less than 35 acres. The original dwelling on this parcel was built in 1920 and was added onto. The house that was there was not feasible to add onto, it is too close to the road and the back property line. So they decided to build a new house. The house sits on about one acre of tillable ground. They moved the driveway further to the west so it would not take up the tillable land. When he went to apply for the building permit they were told they didn't need the variance because they were on the 40 acres. To speed up the process he financed it himself. He did not see a problem splitting off four acres to give to his son. It's not economically feasible, practical or even feasible to keep it connected with Luhman construction. It has to have its own parcel number. You can't borrow money on it and you can't insure it.

C/J. Fritzinger clarified the existing house will be torn down.

B. Overby clarified that this replaced the old house.

L. Hanni asked why he didn't build back where the original house is.

Mr. Luhman said that it wouldn't fit there.

C/J. Fritzinger asked why he picked four acres.

Mr. Luhman said that you have to have 100 feet of road frontage and they went straight back from that and got 4 acres.

B. Anderson said this is all within the same parcel.

M. McKay said that he is having a hard time seeing the hardship.

Mr. Luhman said that there is no hardship. He said that he thought he should be able to give his son 4 acres.

B. Overby asked if he had any intentions of splitting this off prior to getting the building permit.

Mr. Luhman said not really. He thought of it once he found out that they could not get financing or insurance on the dwelling.

B. Overby asked what is it zoned.

L. Hanni said that the township cannot be less restrictive.

Mr. Luhman said that what is less restrictive then? The A-2 district doesn't allow as many dwellings in the section.

C/J. Fritzinger said that she would like to see five acres so that there would not be another building site.

M. McKay said that it is not a density issue.

C/J. Fritzingler asked if they started building the house already.

Mr. Luhman said that the house is there. It was done in June.

C/J. Fritzingler said we have done this before.

M. McKay said that would be different if he came in ahead of time.

Mr. Luhman said that he was told he didn't need a variance.

K. Gross said that he never mentioned splitting it off.

Mr. Luhman said it was his intention to do it that way, but ran into complications and now it can't be done.

B. Overby said that what they have to look at it is A-3, 35 acres per house. Unless there is a hardship that is not financial.

Mr. Luhman said that he didn't know the constitution said he couldn't give his son land.

M. McKay said that you got a permit and got everything legally. What you are trying to do now is split it off on four acres.

L. Hanni said that you knew that you were doing this in June when you just had your footings there.

Mr. Luhman said his son did not want 35 acres to pay taxes on.

C/J. Fritzingler asked if he could split the business on five acres and give 35 acres to his son.

D. Monroe said that might be a better situation for him than you think.

C/J. Fritzingler opened the public hearing.

Darwin Fox said that the change of zone is pretty much impossible. Back when the ordinance was adopted they didn't take different areas into consideration. The reason the township did not recognize the A-3 was because of this situation. It bothered the township, all its doing is creating issues for people who owns this land. When you say you can't grant this based on financial. But you can take financial and other circumstances. If he were to request a change of zone the city would stand up and say that can't happen.

B. Overby asked if the township is in favor of it.

Mr. Fox said the township is in favor of it.

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

B. Overby asked the Township if this went through there would be enough land to put another house on there would you be ok with that.

Mr. Fox said the quarter, quarter would be full.

B. Anderson said that we have approved this by tying up the rest of the 35 acres. When you go in with 35 acres in the country you can't get a normal mortgage company to take it. It is really hard to get a loan on 35 acres on a house in the country. That is financial, but it is the reality.

D. Monroe asked what the hardship he is talking about is.

M. McKay said it is financial.

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D. Monroe said that he doesn't have bad feelings about this if there couldn't be another house there.

M. McKay said that Mr. Fox had alluded to the uniqueness of the property.

Mr. Fox said that they aren't going to be able to come into streets and blocks on this property. The terrain is rolling and it is up against the block.

B. Overby said the other issue is that they created the hardship when they built the house. People try to take advantage of the situation.

Mr. Luhman said that he is not doing this for a profit because he is giving him the four acres.

B. Anderson said that even if the house was built on the other side of the road it was still a variance.

L. Hanni said that this discussion could have occurred before the house was built and now you're stuck over a barrel.

M. McKay said we are supposed to look at the exceptions. This is purely financial and you can't create your own hardship and that is what they've done here. We are in a bad spot.

B. Overby asked if we could agree that Red Wing is not going to go in this direction.

B. Anderson said it is six miles from town. What you would consider the city limits.

K. Gross clarified that it is one mile from the nearest subdivision.

Mr. Luhman said to the east there are no building sites. There are no township roads. The city of Red Wing isn't going to want development there unless they want the liability that goes along with it. Adjacent to this property there is a rock quarry.

⁴Motion by M. McKay seconded by S. Klair to deny the request for a variance to split a dwelling on 4 acres from an existing 40 acre tax parcel in the A-3 Urban Fringe District, based on the four acres and adopting staff recommendation that there is no real hardship, especially the four acre doesn't meet the critical size of a lot that we would ask for if it was in front of us. Motion failed 3:3 Anderson, Monroe, and Fritzingier dissenting.

Mr. Luhman asked what his next option is, this has to be split. He would agree to six acres.

B. Anderson moved to approve a 6 acres split based on the topography and keeping the business separate from the residence seconded by D. Monroe 6:0.

⁵Motion by B. Anderson and seconded by D. Monroe to approve the variance to split a dwelling on 6 acres from an existing 40 acre tax parcel in the A-3 Urban Fringe District, based on the topography of the land and the need to keep the business separate from the residence. Motion carried 6:0

Christy Childs – SE ¼ of NE ¼ Section 36 T114N R16W, Welch Township. The request is a variance to split 10 acres off a 31.93 acre tax parcel in the A-3 Urban Fringe District.

L. Hanni presented the staff's recommendation and findings of fact: This particular property is located in Section 36 of the northern part of Welch Township. Section 36 directly abuts the city limits of Red Wing, and is therefore zoned A-3, Urban Fringe District. Welch Township does not recognize the A-3 zoning district. According to their zoning, this section is zoned A-2, Agricultural. This property was divided into separate pieces when County 18 Blvd was re-aligned in 1992. Welch Township signed the request stating it approved the request. The dwelling that was on the remaining parcel has been removed.

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Findings: The road divides the tax parcel. It creates a natural divide for two separate tax parcels. The created parcel would not be large enough for an additional dwelling without a variance or a change of zone. There are no foreseeable adverse material affects on the health or safety of persons residing or working in the area adjacent to the property of the applicant. The realignment of the road is the practical difficulty in the way of carrying out the strict letter of any official control.

Based on the findings of fact presented thus far, staff recommends approval of the variance to be able to split ten acres from an existing 31.93 acre tax parcel in the Urban Fringe (A-3) district.

DISCUSSION

Josh Willgrubs said that being the whole piece already is under the 35 acres, if we split the ten acres off. The idea came because we would like to develop it residential or commercial; there is a huge need in that area. If we do split the 10 acres off how would that affect the building site that is there?

L. Hanni said that they would have a replacement site.

Mr. Willgrubs said they would like to re-zone it residential or commercial. One step at a time, we have to start somewhere, so he thought it would be a good place to start to split them into two separate tax parcel.

M. McKay said that he should be careful that he is not creating his own hardship.

K. Gross clarified that our non-conforming requirements allow for it to be replaced even though it does not meet area requirements. Non-conforming requires buildings to be built to conformity, unless they were non-conforming due to size, area or setback.

Mr. Fox said that the township is right on with the same thinking. They could replace the dwelling. If they want to do anything on the ten acres, they would need to rezone it.

C/J. Fritzinger opened the public hearing.

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

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

⁶Motioned by M. McKay and seconded by B. Overby to approve the request for a variance to split 10 acres off a 31.93 acre tax parcel in the A-3 Urban Fringe District, based on staff recommendation and findings of fact. Motion carried 6:0

Dora Boe— W ½ of NE ¼ Section 23 T112N R16W, Vasa Township. The request is a variance to build a horse feedlot approximately 600 feet from the nearest dwelling instead of the required 1,000' minimum setback in the A-1 Agricultural Protection District.

L. Hanni presented the staff's recommendation and findings of fact: Ms. Boe has had horses on this property in the past. They were never registered as a feedlot. She is proposing a 15 stall barn with an indoor arena. The topography of the property is very rolling and does not easily warrant the placement of the barn elsewhere away from the neighbor's dwelling. The affected neighbors have submitted a statement in support of the request. Vasa Township has approved the requested and issued a zoning permit for the building.

Findings: The property in question has been utilized as a feedlot in the past for horses that was never registered.

The nearest dwelling is about 600 feet from the nearest dwelling. The owner of the dwelling has indicated they support the request. There are no foreseeable adverse material affects on the health or safety of persons residing or working in the area adjacent to the property of the applicant. The topography of the property prohibits the applicants placing the building any further from the nearest dwelling. This creates the hardship that is in the way of carrying out the strict letter of the official control.

Based on the findings of fact presented thus far, staff recommends approval of the variance to build a horse feedlot approximately 600 feet from the nearest dwelling instead of the required 1,000 foot minimum setback in the Agricultural Protection (A-1) district.

DISCUSSION

Ms. Boe said that they didn't realize they had a feedlot issue, but they were told that they should have gotten something in the mail and she doesn't recall getting anything. They have ten horses right now, five stalls. They are building off of something they already have; it is just time to get something nice to work out of.

B. Anderson clarified that if they had 20 horses in the pasture they wouldn't need to register as a feedlot.

C/J. Fritzinger opened the public hearing.

Greg Drewianka said that he owns one of the parcels adjacent and is strongly opposed as submitted. There are other places to put the barn without the need for the variance. The law requires 1000' and to grant a variance of 400' is a major deviation of the law. If the variance would be granted it would effect property values of four adjacent properties and severely limit the uses of the adjacent properties. The potential exists for expansion as the business grows. The huge dollar amount is intended to expand it at a later date. Larger operation means more variances. The area selected would remove several acres of the A-1 land of this agriculture land. Placing the operation on land nearby would be a better choice would make room for future expansion without these variances.

M. McKay asked if he was aware that the township approved this.

Mr. Drewianka said that the board had not been made aware they had an 80 acre parcel there.

M. McKay asked Boe if they provided a survey.

Ms. Boe said they asked where they lived.

M. McKay said that he finds it hard to believe that they didn't know it was 80 acres.

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

B. Overby asked if they will have water out there. They are out in the middle of the farmland.

C/J. Fritzinger clarified that it is pretty hilly.

B. Overby said that this is A-1 land and that is where feedlots go.

B. Anderson asked that there is a feedlot to the north.

K. Gross said that she didn't know that situation.

B. Anderson said that 15 horses don't seem like a big deal.

M. McKay said that Mr. Drewianka said they could put it here.

Ms. Boe said it goes down there and it is the waterway.

⁷Motioned by M. McKay and seconded by B. Overby to approve the request for a variance to build a horse feedlot approximately 600 feet from the nearest dwelling instead of the required 1,000' minimum setback in the A-1 Agricultural Protection District, based on staff recommendation and findings of fact. Motion carried 6:0

⁸Motioned by B. Overby seconded by B. Anderson to adjourn the November 26, 2007 Board of Adjustment meeting at 7:45 p.m. Motion carried 6:0.

Respectfully Submitted,

Kristi Gross
Secretary

MOTIONS

- ¹ APPROVE November 26, 2007 Board of Adjustment Agenda. Motion carried 6:0.
- ² APPROVE the October 22, 2007 Board of Adjustment minutes. Motion carried 6:0.
- ³ APPROVE the October 29, 2007 special meeting of the Board of Adjustment minutes. Motion carried 6:0.
- ⁴ DENY the request for a variance to split a dwelling on 4 acres from an existing 40 acre tax parcel in the A-3 Urban Fringe District, based on the four acres and adopting staff recommendation that there is no real hardship, the four acre doesn't meet the criteria that we feel comfortable with. Motion failed 3:3
- ⁵ APPROVE the variance to split a dwelling on 6 acres from an existing 40 acre tax parcel in the A-3 Urban Fringe District, based on the topography of the land and the need to keep the business separate from the residence. Motion carried 6:0
- ⁶ APPROVE the request for a variance to split 10 acres off a 31.93 acre tax parcel in the A-3 Urban Fringe District, based on staff recommendation and findings of fact. Motion carried 6:0
- ⁷ APPROVE the request for a variance to build a horse feedlot approximately 600 feet from the nearest dwelling instead of the required 1,000' minimum setback in the A-1 Agricultural Protection District, based on staff recommendation and findings of fact. Motion carried 6:0
- ⁸ ADJOURN the November 26, 2007 Board of Adjustment meeting at 7:45 p.m. Motion carried 6:0.