

## BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN

OCTOBER 26, 2009

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

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

Absent: Mike McKay

***<sup>1</sup>Motion by B. Overby seconded by S. Klair and carried to approve the October 26, 2009 Board of Adjustment Agenda. Motion carried 4:0.***

***<sup>2</sup>Motion by S. Klair seconded by D. Monroe and carried to approve the September 28, 2009 Board of Adjustment regular meeting minutes. Motion carried 4:0.***

**Staff Updates:**

*J. Fritzingler arrived at the meeting.*

M. Wozniak said that there are no applications for the November meeting as of yet.

**Conflict/Disclosure of Interest:** None.

**Sharon Dorner** – SE ¼ of SW ¼ and S ½ of the SW ¼ of the SW ¼, Section 36 T112N R17W, Cannon Falls Township. The request is for a variance to allow a dwelling to be located on a parcel that contains 33' of lot width along a public road right of way instead of the required 100' of lot width (variance for 67'). The request includes a variance to be able to build an additional dwelling in the SW ¼ of the SW ¼, Section 36 T112N R17W, Cannon Falls Township.

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

**Findings of Fact:**

There are special circumstances affecting this land. The Township road dead ends at their property which does not provide them with the required 100' of lot width along the right of way, however it does provide for 66' of lot width along the public road right of way. The topography of the property make the SE ¼ of the SW ¼ a less desirable location for a dwelling. The SW ¼ of the SW ¼ would limit the length of the driveway needed for the dwelling site, and would have less topographic issues. The request would have no affect on neighboring properties. The hardship is created by the ending of the township road, and the topography of the property. The parcel in question has access, therefore the intent of the ordinance is met. Also, the applicant would not build in the SE ¼ of the SW ¼ so if the additional building site is allowed the density would remain unchanged. The character of the neighborhood will remain unchanged. The township would need to extend the road in order for the required lot width to be met. The SE ¼ of the SW ¼ could be built on, but is not ideal due to the topography of the area. The practical difficulty is naturally occurring, when the township set their road boundaries, and the natural topography of the land. In weighing all of the factors above, it appears that practical difficulties exist and that the interests of the justice would not be served by denying the variance.

**Staff Recommendation:**

Based on the findings of fact, staff recommends that the Board of Adjustment adopt the staff report into the record, accept the findings of fact, and approve the variance to be able to build a dwelling on a parcel containing 66 ft of road frontage instead of the required 100' of road frontage. The request also includes a variance to be able to build an additional dwelling in the SW ¼ of the SW ¼ T112N R17W Cannon Falls Township with the condition that the recording of this variance serves as notice that no dwellings will be allowed in the SE ¼ of the SW ¼ Section 36 T112N R17W until such time as the zoning district or density changes.

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**Discussion:**

B. Overby asked if the 110<sup>th</sup> avenue ends at her homesite.

M. Wozniak said yes.

B. Overby asked what the plans are to get back to the building site.

M. Wozniak said there would be a driveway constructed.

B. Overby said that the driveway would go down, and all the way over to the building site.

J. Fritzinger asked if there was road frontage on the SE ¼ of the SW ¼.

K. Gross said that is what the request is for.

J. Fritzinger asked how can it be a potential building site if there is no road frontage.

M. Wozniak said that even if the ¼, ¼ was not moving the variance could be requested for the road frontage.

J. Fritzinger said as the lot is configured today there is not a potential building site because there is not road frontage.

S. Klair said the original building site does not have any road frontage.

C/B. Anderson said that they are not creating that parcel to get that road frontage to that building site.

Ms. Dorner said that it is in the abstract.

B. Overby asked what the use of the land is in the preferred building area.

Ms. Dorner said it is a rolling hills meadow. The farming is where it is bright green.

J. Fritzinger asked what she is asking for.

C/B. Anderson said she is asking for the road frontage and to move a ¼, ¼.

J. Fritzinger said if it was done years ago, wasn't a variance already granted?

M. Wozniak said that in years past it was interpreted differently, but that hasn't been done for a number of years now.

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

John Miller from Leon Township said that his land joins in the corner. Asked he thought the County was trying to get away from driveways across agricultural land. He ran the land years ago and there are steep hills. The driveway is going to be a problem.

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

S. Klair asked if the field road goes all the way back there now.

Ms. Dorner said no, there is a four wheeler trail.

M. Wozniak said that it wouldn't be required to build that far back. You could build further to the west. There is probably a small amount of agricultural land acreage that would be affected.

C/B. Anderson asked where she else she could build.

K. Gross said the township requires a setback.

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B. Overby asked if she asked the township if you could build closer than 1000'.

Ms. Dorner said she is not asking for the building site at this time. That would come with the buyer.

B. Overby said that we have given the ok of less than 100' of road frontage in the past. And we have approved the transfer. It doesn't look like anything that is different than has been done before.

***<sup>3</sup>Motion by B. Overby and seconded by D. Monroe to accept the staff report into the record, adopt the findings of fact that staff has prepared and approve the variance to be able to build a dwelling on a parcel containing 66 ft of road frontage instead of the required 100' of road frontage and the variance to be able to build an additional dwelling in the SW ¼ of the SW ¼ T112N R17W Cannon Falls Township with the condition that the recording of this variance serves as notice that no dwellings will be allowed in the SE ¼ of the SW ¼ Section 36 T112N R17W until such time as the zoning district or density changes. Motion carried 4:1.***

**Audrey Novek/Robert Augustin** – Pt of the N ½ of the SW ¼ of Section 31 T112N, R14W, Hay Creek Township. The request is for a variance to create a parcel without the required 100' lot width along a public road right of way.

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

**Findings of Fact:**

Mr. Augustin's property is surrounded by tax boundaries, there is a Section boundary to the West prohibiting him from gaining lot width along a public road right of way, and the school district boundary to the south. Even if the proposed parcel contained 100' of lot width along a public road right of way, it would not provide access to the top of the hill, there is a creek and the bluff which would restrict the placement of a driveway. Mr. Augustin has the clearest access to this land since it is at the same elevation as the rest of his property. Staff would allow the split to occur if Mr. Augustin could combine the new parcel with his existing, but the school district boundary does not allow for this to happen. The request would have no affect on neighboring properties. The hardship in this case is due to the taxing boundaries that surround Mr. Augustin's property. The clearest way to access the proposed property is through Mr. Augustin's parcel, a driveway could not be constructed within the confines of our ordinance on the side of that hill. It is logical that the proposed parcel be owned by Mr. Augustine. The character of the neighborhood will remain unchanged. A 100' strip could extend from County 3 Blvd to the parcel, however that would then separate Ms. Noveks property and give Mr. Augustin extra land that he does not desire, and does not flow with the natural boundaries of Mr. Augustin's property. The difficulty occurred when the school district boundaries were set. In weighing all of the factors above, it appears that practical difficulties exist and that the interests of the justice would not be served by denying the variance.

**Staff Recommendation:**

Based on the findings of fact, staff recommends that the Board of Adjustment adopt the staff report into the record, accept the findings of fact, and approve the variance to create a parcel without the required 100' lot width along a public road right of way with the condition that the recording of this variance serves as notice that the newly created parcel cannot be sold separately and distinctly from Mr. Augustin's parcel without the granting of an easement to ensure access to the property.

**Discussion**

B. Overby asked what the property is zoned.

M. Wozniak said A-2.

B. Overby asked if they could build a dwelling there.

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K. Gross said she did not review it for that.

M. Wozniak said that the request would have to be worded that way. This request is just to create the property.

Mr. Augustin said that Brian Augustin rents the land and drives across his property to get there which is what prompted this.

C/B. Anderson said it made sense when he went out there. Ms. Augustin can't create a road to access this point of the property. And it is a taxing policy that creates the hardship.

Mr. Augustin said that they checked with the zoning office earlier and they said it was not a problem just attach it to your parcel. They feel like it is a technicality that they are being caught on here. He is looking for a buffer zone rather than add more neighbors out there. Nowadays it is virtually inaccessible for Ms. Novek.

S. Klair clarified that they have had it surveyed out.

Mr. Augustin said yes.

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

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

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

***4Motion by S. Klair and seconded by J. Fritzinger to accept the staff report into the record, adopt the findings of fact that staff has prepared and approve the variance to create a parcel without the required 100' lot width along a public road right of way with the condition that the recording of this variance serves as notice that the newly created parcel cannot be sold separately and distinctly from Mr. Augustin's parcel without the granting of an easement to ensure access to the property. Motion carried 5:0.***

**Paul Ekblad** – SE ¼ of SW ¼ and Pt of E ½ of the SW ¼ of Section 17, T112N R13W, Florence Township. The request is for a variance to build an additional dwelling in the SW ¼ of SE ¼ in Section 17, T112N R13W, Florence Township which is zoned A-2 Agricultural District.

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

**Findings of Fact:**

The potential building site is limited in size due to the proximity to the road and floodplain. The proposed building location would provide a greater buffer to the creek. The request should have no affect on neighboring properties. The hardship is created by the topography of the property. The potential building site is sloped towards the creek and would take a lot of excavation and to provide adequate location for a dwelling. There is less area to work within the confines of the road setback and the distance to the creek. The proposed location is naturally more level, and would take significant less excavating to provide for a dwelling. The request is to build an additional dwelling in the SW ¼ of the SE ¼, but the applicant would no longer be allowed to build in the SE ¼ of the SW ¼, so the density would remain unchanged. The character of the neighborhood should remain unchanged. The applicant could build in the allowed ¼, ¼ but would have less area to work with due to the required setbacks. The difficulty occurred by the topography of the property and location of the creek compared to the road. In weighing all of the factors above, it appears that practical difficulties exist and that the interests of the justice would not be served by denying the variance.

**Staff Recommendation:**

Based on the findings of fact, staff recommends that the Board of Adjustment adopt the staff report into the record, accept the findings of fact, and approve the variance to allow an additional dwelling site in the SW ¼ of the SE ¼ in Section 17, T112N R13W, Florence Township with the condition that the recording of this

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variance serves as the notice that no dwellings will be allowed in the SE ¼ of the SW ¼ of T112N R13W Florence Township until such time as the zoning or density changes.

**Discussion**

B. Overby asked if the floodplain on the property is in blue. So the building of the property is not in the floodplain. Could anybody build there without moving soil?

C/B. Anderson said that it is sloped.

B. Overby said that you couldn't build a house without doing extensive work.

C/B. Anderson said that it is pretty sloped and you would be removing trees.

Mr. Ekblad said that there are two culverts that pour water onto this site, there are drainage issues.

J. Fritzinger asked if the site he wants to build on is ag property.

Mr. Ekblad said yes.

J. Fritzinger asked if they can build there.

K. Gross said it is not a clear negative.

M. Wozniak said that there are circumstances that you can build closer to the road, we take into account the effect on the agricultural land.

J. Fritzinger asked if this is prime ag property, or not prime.

M. Wozniak said that the prime ag property is pretty extensive. But we don't have it mapped in front of us.

J. Fritzinger asked how much area they would take out of ag.

B. Overby said it didn't look like anything according to the picture.

C/B. Anderson said it was beans.

M. Wozniak said that we are going to go more toward density as the prime limiting factor. There is no across the board assumptions you can make.

B. Overby said we don't use the CER in determination any more.

J. Fritzinger asked if we approve this move it does not allow another two people the right to build.

K. Gross said the other property affected would be Jay Wiberg

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

Dan Fliegel attorney from Hastings representing Olson who live across from the preferred building site. The preferred site would be directly across from their driveway on County 2. They bought their property knowing that another building could not be built. Over the last few months they have applied to build a new home. They just closed on that loan and got the notice for this hearing. They made plans for that house thinking they would have an agricultural field across the street. The Goodhue County does not provide for a transfer of development rights or clustering as other ordinances do. There are different standards the board has to look to. The variance cannot alter the character of the locality, it doubles the density by 100%. The findings of fact fail. This alters the character of the neighborhood. The site is a productive ag field. The transfer from is not a productive site. It is purely an economical question. There is nothing in the ordinance that prohibits him from building in the section he can build in. We are saying the property can build. If he could not build on his existing property it would be appropriate. That does not justify the variance. There is nothing before the board tonight. Without a record how does it raise to an extreme level. What we are asking for is one of two things. This does not meet the level of hardship or

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practical difficulty. In the alternative they ask that the board refer it back to staff to get more information. Just looking at the findings that are set forth to you. Under A it states that the findings is limited in size. Under finding number B, it states the character of the locality would be unchanged, Mr. and Mrs. Olson feel strongly the character of the locality would be changed. There is no hardship other than financial. Legislatively, the commissioners have not added clustering or transferring of building rights, and the Board is left with doing this by variance. There should be very firm findings of fact and that is not met here. Under #3, we disagree that with a little more cost he can build in the existing position. It is not the type of request that should be the basis for looking for a variance.

Jay Wiberg said that he lives across the road from the site that can be built there now. How do you come up with a building site to be there to begin with.

M. Wozniak said that we look at setbacks to property lines. The county does not have a separation between dwellings, so that wouldn't be an issue. He explained the required setbacks that were reviewed. To our knowledge Mr. Ekblad hasn't received approval for a waste water system.

Mr. Wiberg said that you haven't even established that can be built on.

B. Overby said that this is zoned A-2 you can have 12 dwellings per section, and one per  $\frac{1}{4}$ ,  $\frac{1}{4}$ .

M. Wozniak that is the very basic, after that they need to talk to a licensed designer to get a septic system permitted.

C/B. Anderson asked if his contention is that there is not enough room to build a house on that property.

Mr. Wiberg said he is opposed to a dwelling being built in that area. The character of the neighborhood would change.

Ed Church said that he lives East of Mr. Ekblad. If he so desired, this would take away from him to be able to build there. Why would we add one more to that  $\frac{1}{4}$ ,  $\frac{1}{4}$ . He does not want to put more houses in this area.

B. Overby said that zoning rules allow 2 more houses in the section.

Mr. Church said that he understands the rules and is not trying to change the rules.

Leon Klenke said that he has the potential to build two building sites over there. He would like to sell them. He thinks Paul should be able to build in the preferred site.

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

Mr. Ekblad said Olson's are good neighbors, it will happen regardless if it is this way from their driveway or that way. There is a conflict of interest with the Olson's. They approached me when they expanded their landscaping business they wanted to buy that land to put their landscaping stuff on. I would rather see a well placed house there than piles of dirt. Part of this is a financial problem, I haven't worked for awhile and my son is more financially stable than me and this is an option. Thought that moving the site would take it out of the trouble area; staying away from the floodplain and the drainage issues off the county road itself. The preferred site is the preferred site.

J. Fritzingler asked if there is potential to build on the other side of the road.

Mr. Ekblad said it was bluff.

B. Overby asked if the floodplain just got revised what are the septic rules.

K. Gross said the floodplain rules wouldn't apply.

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C/B. Anderson said it would fall under shoreland.

J. Fritzinger asked what the size of the potential area is.

Mr. Ekblad said about 3 acres.

M. Wozniak said that the staff recommendation was focused more on the environmental issues to the creek. We have many building sites that are built closer to the creek and require more details that would cause problems would be avoided, but the preferred site would cause less impact to the creek.

S. Klair said his feelings are financial. The potential would cost more, but that is not a hardship.

M. Wozniak said that since the ottertail county vs. Statstsvold decision that we have received advise that on these area variances that the practical difficulty standard should rise to a greater level of concern in the decision making. There is an environmental concern here.

S. Klair said that without having an on-site septic system approved it might not even be a building site.

M. Wozniak said the board has done this before and hasn't required that an SSTS plan be submitted beforehand.

C/B. Anderson said there is always a way to handle a sewer system.

Mr. Ekblad said that the sewer is not a problem. He is licensed by the state.

B. Overby said that if Mr. Ekblad's house wouldn't be there the preferred site but we have to look at a hardship. If it is available it can be done.

J. Fritzinger asked how much of a slope is there?

C/B. Anderson said that in the shoreland district 12% is steep slope and is a potential problem for runoff.

J. Fritzinger said she would like to see whether or not it is a potential building site.

M. Wozniak said that if they came in with a building permit those are things we would consider.

S. Klair said that if we transfer this we won't know if this was a legal site to begin with.

B. Overby said that if there was not enough information available we could postpone this would it be helpful in making the decision. The possible cost of excavation, if a septic can be placed there.

M. Wozniak said that the attorney brought up some issues with practical difficulties related to the potential site. The other aspect of it is what do we need to do. In terms of the wastewater system the applicant may be able to work with the County Environmental Health Department.

Mr. Ekblad said that accessing #2 is the biggest hardship. Everybody's driveway isn't the hottest in that area.

M. Wozniak said County public works would determine if the driveway would meet their standards.

C/B. Anderson said in his mind there may not be a strict hardship but there is a definite environmental effect. Our land use plan talks about protecting environmentally sensitive areas and moving that site

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takes the environmental factors away. You are asking whether the slope can be built on can the septic can be placed, did we ask that of the first request tonight.

J. Fritzinger said she would like to know the soil conditions, the degree of slope, the driveway situation, if the County would approve the septic, whether the septic would be potential.

B. Overby asked what we would require if he would build on that.

M. Wozniak said that we would require a site plan, septic and well plan.

K. Gross said we would need construction plans and a specific house plan. We would be approving the site for a specific building.

J. Fritzinger said if there is not a potential building site in that  $\frac{1}{4}$ ,  $\frac{1}{4}$  we would be taking it away from somebody else.

M. Wozniak said that we also need to consider the practical difficulty issue.

J. Fritzinger said we have always said this one is a potential site. She needs more information.

***<sup>5</sup>Motion by J. Fritzinger and seconded by D. Monroe to accept the staff report into the record, adopt the findings of fact that staff has prepared and table the variance to allow an additional dwelling site in the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  in Section 17, T112N R13W, Florence Township so that the soil conditions, the degree of slope, the driveway situation and whether the septic would be a potential and allow a 60 day extension to determine whether it is a buildable site.***

S. Klair said financially do we need to know what the cost is going to be build here versus here.

C/B. Anderson said that the cost doesn't matter. If it can be built it can be built.

M. Wozniak said we are also talking environmental impacts. What we could do is take another good look at this site, we can get Beau Kennedy with the SWCD to determine the impacts of the property.

B. Overby said what have we decided.

Mr. Ekblad said that you can get an in ground septic system in both places.

M. Wozniak said we can clarify whether that is a prime ag field or not.

B. Overby asked if he would be comfortable providing us with more information.

***Motion carried 5:0.***

***<sup>6</sup>Motion by B. Overby and seconded by D. Monroe to adjourn the October 26, 2009 Board of Adjustment meeting at 8:30 p.m. Motion carried 5:0.***

Respectfully Submitted,

Kristi Gross

Secretary

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**MINUTES**

<sup>1</sup> APPROVE October 26, 2009 Board of Adjustment Agenda. Motion carried 4:0.

<sup>2</sup> APPROVE the September 28, 2009 Board of Adjustment regular meeting minutes. Motion carried 4:0.

<sup>3</sup> APPROVE the variance to be able to build a dwelling on a parcel containing 66 ft of road frontage instead of the required 100' of road frontage and the variance to be able to build an additional dwelling in the SW ¼ of the SW ¼ T112N R17W Cannon Falls Township with the condition that the recording of this variance serves as notice that no dwellings will be allowed in the SE ¼ of the SW ¼ Section 36 T112N R17W until such time as the zoning district or density changes. Motion carried 4:1.

<sup>4</sup> APPROVE the to allow an additional dwelling site in the SW ¼ of the SE ¼ in Section 17, T112N R13W, Florence Township so that the soil conditions, the degree of slope, the driveway situation and whether the septic would be a potential and allow a 60 day extention to determine whether it is a buildable site. Motion carried 5:0.

<sup>5</sup> TABLE variance to allow an additional dwelling site in the SW ¼ of the SE ¼ in Section 17, T112N R13W, Florence Township with the condition that the recording of this variance serves as the notice that no dwellings will be allowed in the SE ¼ of the SW ¼ of T112N R13W Florence Township until such time as the zoning or density changes. Motion carried 5:0.

<sup>6</sup> ADJOURN October 26, 2009 Board of Adjustment meeting at 8:30 p.m. Motion carried 5:0.