

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

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

Absent:

[\[1\]](#)

*Motion by B. Anderson and seconded by D. Monroe and carried to approve the October 24, 2005 Board of Adjustment Agenda. Motion carried 5:0.*

[\[2\]](#)

*Motion by J. Fritzingler and seconded by B. Anderson and carried to approve the September 26, 2005 Board of Adjustment Minutes. Motion carried 5:0.*

Staff Updates:

L. Hanni stated we have the Planning and Zoning Administrator position advertised until the 11<sup>th</sup> of November. Accessory buildings, Retreat Centers and Kennels went to the last Planning Advisory Commission which recommended approval to the County Board. The Planning Commission made a slight adjustment to the accessory structures to say in agricultural districts on lots two or more acres may have an accessory structure 3,400 square feet.

Conflict/Disclosure of Interest: none to be discussed.

**Gerald McRae** – S ½ of SE ¼ Section 36 T113N R16W and N ½ of SW ¼ Vasa Township. The request is a variance to split and build a dwelling on 5-7 acres rather than the required 35 acres in an A-3 Urban Fringe District.

**STAFF REPORT:**

Mr. McRae contacted staff to do a site visit to determine whether this property would qualify as a replacement building site in September, 2005. On the way to the property staff realized that this area is zoned A-3 Urban Fringe which allows for one dwelling per 35 acres. Mr. McRae owns over 400 acres in Section 36 of Vasa Township. Therefore he has more than enough land to be able to build without needing a site to qualify as a replacement dwelling. The weather had turned foul, and the location of the replacement dwelling was not visited.

After staff told Mr. McRae that he could build without the replacement site he had stated that his goal was to split off 5-7 acres for this dwelling. Whether the site qualified as a replacement site or not Mr. McRae needs a variance to split the parcel less than the required 35 acres. Therefore Mr. McRae's request is to split and build on less than 35 acres.

Staff has found little evidence that this would qualify as a replacement dwelling. There is an existing well and cistern and a row of foundation blocks. The 1938 photos do not show any farmyard in the location Mr. McRae would like to build the new dwelling. If the Board would like to label this a replacement site, you would need to grant an appeal that this would qualify as a replacement dwelling.

The site visit with the Board member raised some concerns to the safety of the potential driveway. Mr. McRae would need to provide an engineered driveway plan showing that the access drive meets the requirements of Article 3, Section 6 of the Goodhue County Zoning Ordinance: Access driveways two hundred (200) feet in length or more shall be constructed with a driving surface of at least fourteen (14) feet in width. Access drives cannot exceed fourteen (14) percent grade over any portion of the drive. Mr.

McRae would also need to split the land in a manner that provides the location with 100' of road frontage. This should not be a problem.

Mr. McRae has stated his intent in splitting the land in a smaller area is not to increase the density, but to allow for him to sell or give his daughter five to seven acres and keep the rest as pasture land. This area would meet all the requirements to build without a variance as long as this parcel would obtain 100 feet of road frontage. Where Mr. McRae is proposing the new dwelling would also maintain 35 acre spacing between dwellings. Vasa Township has approved this request. The City of Red Wing has been contacted and their comments are attached. The (A) district they are referring to is the zoning district within the city limits of Red Wing, which is adjacent on the East side of the parcel the request is located on.

Based on the following findings of fact, staff recommends denial of the variance to split and build a dwelling on 5-7 acres rather than the required 35 acres in an A-3 Urban Fringe District.

There is no hardship. Mr. McRae could meet all the requirements to build without the need of a variance. The request is not in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control.

#### BOA DISCUSSION:

Mr. McRae stated his request. He would like to keep the rest of the land in agriculture. This area is the old "Madsen Farm." The site has a well a cistern and two foundations. It had an old township road going to it. They are going to re-build an old road going out there from Leeson Lane. They will meet the standards for the driveway even though the city doesn't meet the standards.

S. Klair stated the last bit of the driveway seemed steep.

Mr. McRae stated that they are going to rap around the valley and they won't have a problem meeting the 14% grade. His goal is to keep the rest of it in agriculture. His daughter and son-in-law would like to move from the cities.

S. Klair stated that they talked about road frontage.

Mr. McRae stated he can live with the 100' road frontage.

B. Anderson asked what the skinny strip of land is bordering John Anderson's property.

Mr. McRae stated it was a driveway easement.

J. Fritzingler asked why they couldn't use it as farm property if they kept it 35 acres.

Mr. McRae stated that they would have to rent it back.

*S. Pettit arrived at the meeting.*

B. Anderson asked if the intent of the 35 acre minimum is to limit the number of dwellings in the section or to limit the spacing between dwellings.

L. Hanni stated that the intent that we heard through the comp plan was to keep it one per 35 acres to keep the spacing to make for smoother annexation into the cities.

S. Pettit stated that they heard from the cities during the comp plan when parcels aren't kept 35 acres it makes it very difficult to annex.

L. Hanni stated that it is a lot easier to annex when it is 35 acres rather than trying to buy out a lot of houses.

B. Anderson asked if you split 7 acres and dedicate the 28 acres surrounding it as unbuildable. What is wrong with that.

S. Pettit stated that it becomes a legal battle because it gets put on the deed and gets locked up.

L. Hanni stated that they have to put it on the deed restrictions and it is difficult to follow-up on. It becomes a financial battle also because mortgage companies won't mortgage 35 acres and you can't look at financial hardships.

B. Anderson said that financial hardships cannot be the only criteria we look at.

M. McKay stated that financial hardships cannot be a criteria period. In this instance all he is hearing is a financial hardship.

Mr. McRae stated that it is not financial, it is a logistic reason. You allowed Larry Fox to do it. It is discrimination if it is for future development.

L. Hanni said it is not discrimination when it is in the ordinance and has been this way for a long time. She reads from MN State Statutes of what defines a hardship.

Mr. McRae stated he did not state it was economical. The way it lays there is no way to develop the rest of the land anyway.

M. McKay asked when he bought the property.

Mr. McRae said 12 years ago.

M. McKay said that it had these restrictions when he bought it.

Mr. McRae said he didn't know it had restrictions.

B. Anderson stated that Mr. McRae could go right down Leeson Lane and split off chunk after chunk. He encourages the cities to have input, but he doesn't encourage the cities to tell them what to do.

S. Pettit stated that during the comprehensive plan process, one of the biggest complaints they heard was the Board of Adjustment allowing variances in this district to the 35 acres.

B. Anderson stated they already have. The rationality behind Larry Fox's property was that he had it all carved up and those three building sites out of it anyway.

L. Hanni said that this is an 80 acre parcel.

K. Gross said that it is technically 160 acre parcel.

B. Anderson stated that he doesn't think that it compromises our zoning to allow this variance and it keeps more land in the hands of the farmer.

D. Monroe said that since he is selling it to his daughter and son-in law.

Mr. McRae stated he wasn't selling it he was gifting it.

D. Monroe stated that when he gifts it he could write it into the contract that he has the right to use it for agricultural purposes.

Mr. McRae stated he could do it that way, but it is logical to do it the other way also. If you could see the terrain you would understand a little better.

S. Klair stated that to have 100' strip back to the building site that would take up quite a bit of acreage.

Mr. McRae stated that he understands that and he wants to do the minimum road acreage he can do to do the legitimate road frontage and work with the terrain.

M. McKay said that if we grant this variance he could get more building sites in here since he would be using less land.

B. Anderson stated that he would only do this if he dedicated the remainder of the 35 acres as not buildable.

L. Hanni stated that that restriction would stay as long as it is in the county, but once it is annexed the restrictions would go away/

*C/S. Klair opened the public hearing.*

Bonnie McRae, Mr. McRae's wife, stated that if you have 5 acres deeded to their daughter and son-in-law, they would pay the tax. If you make them have 35 acres who would pay the tax all of that land.

M. McKay said whoever owns it pays the tax. Whoever's name is on the deed pays the tax.

Mr. McRae stated that you are saying that you should take the land out of agriculture and putting it in development.

M. McKay said that he is not saying that, it is not his position at all.

Mr. McRae said yes you are, you are saying to take 35 acres out of agriculture to build a house.

M. McKay stated that you are asking for a variance and asking for a hardship that hasn't convinced him very well. You have stated to use logic and it is easier for you

*Moved by D. Monroe and seconded by S. Pettit and carried to approve the closure of the public hearing. Motion carried 5:0.*

J. Fritzinger asked for clarification why it is any harder to use the land as pasture land whether you own it or they own it.

Mr. McRae said that part of it is the number of animal units that he can have on his land when you take away pasture land.

J. Fritzinger asked if you could use rented land as part of that equation.

Mr. McRae stated he probably could, but it creates more of a hassle and more of a hardship. He is asking the Board to look at the lay of the land.

S. Klair said that looking at the map it looks like if you run a 100' strip back to that property, you will end up with a little piece of land on the other side of that driveway.

Mr. McRae stated that it would probably be about 10 acres to give them a straight stretch to the road.

B. Anderson asked if Steger property was 10 or 20 acres.

Mr. McRae said it was 11 acres.

S. Klair said that he thinks it would end up being 12-15 acres once they get the road back there.

Mr. McRae said when he asked for 5-7 he didn't know that they needed an extra-wide road frontage that was more than township right of way.

D. Monroe asked Mr. McRae when he thinks it would be annexed into Red Wing.

Mr. McRae stated he hopes it would be a long time. His intent is far from what Larry Fox's intent was. He has no problem putting it on the title that this is non-developed land. You couldn't develop it anyway because it is all dry run and steep.

**[3]**

***Moved by B. Anderson and seconded by S. Klair to approve the variance to split and build a dwelling on 15 acres rather than the required 35 acres in an A-3 Urban Fringe District surrounding the acres to the west the acreage to meet 35 acres be surveyed and deeded as unbuildable because it doesn't compromise the intent of the ordinance because it is keeping more land in the hands of the farmer.***

S. Pettit asked what the hardship was.

B. Anderson said uniqueness of the property, topography and that it doesn't compromise the intent of this

ordinance. Our ordinance doesn't have any descriptions of a hardship. But an ordinance that he refers to quite frequently it addresses seven things that something has to meet in order to be considered.

L. Hanni said that ours does. The first paragraph.

B. Anderson read through his ordinance.

L. Hanni read the County Zoning Ordinance.

B. Anderson said that when he is looking at variances he looks at several different sources to make his decision. The city of Red Wing may want something different, but this isn't the city of Red Wing it is Goodhue County. The cities don't look to the County at what they do once the land is annexed.

D. Monroe said that he would oppose anything that would didn't keep from compromising the 35 acre requirement.

B. Anderson said he has to legally describe what goes with the house and that will go into the abstract. It will get recorded.

M. McKay asked if they can do that.

L. Hanni said that she doesn't know how they would enforce it.

M. McKay said he didn't think it would withstand a challenge.

L. Hanni said that the attorney's would not review that deed.

B. Anderson said that the piece that he is giving his daughter would have a separate PID number, on the remaining land there would be a legal description saying this area is not buildable.

L. Hanni said that nobody would review that legal description to see if it would be legitimate. There would be nobody to check it and keep track of it.

S. Klair stated he wouldn't be able to

M. McKay said that his argument is that it is easier to get

B. Anderson said that we've done stipulations on variances before.

L. Hanni said that we have an ordinance that says you have an ordinance says that you need 35 acres

***Motion fails 2:4 J. Fritzinger, M. McKay, S. Pettit, and D. Monroe dissenting.***

***[4]***

***Moved by D. Monroe and seconded by J. Fritzinger to deny the variance to split and build a dwelling on 15 acres rather than the required 35 acres in an A-3 Urban Fringe District based on no hardship. Motion carries 4:2 B. Anderson and S. Klair dissenting.***

**Marcia Dallman** – W ½ of SE ¼ Section 33 T112N R13W and E ½ of SW ¼ Florence Township. The request is an appeal to build a dwelling on land with a crop equivalency rating (CER) of 70 instead of the required less than 60 CER in an A-2 Agricultural Zoning District.

#### STAFF REPORT:

While applying for a building permit, it was discovered the area Ms. Dallman was proposing to build her dwelling on had a CER rating of 70 instead of the required less than 60 CER rating. Ms. Dallman's property met all other requirements for a building site.

The nearest farmyard to Ms. Dallman's property (owned by Scott Anderson) contains a feedlot. The minimum 1000' setback applies to Mr. Anderson's feedlot. Ms. Dallman is also proposing a feedlot on her property so it too will need to maintain the 1000' setback to existing residences in the area. A copy of the building permit Florence Township approved for the dwelling is attached to the application showing that they approve the request. The site visit raised some concerns of the driveway cutting through the

field and using even more agricultural land. One solution to this could be that the Board puts a stipulation on the appeal to have the driveway run the outskirts of the field as much as possible.

Based on the following findings of fact, staff recommends approval of an appeal to build a dwelling on land with a crop equivalency rating (CER) of 70 instead of the required less than 60 CER in an A-2 Agricultural Zoning District with the condition that the driveway runs the outskirts of the field to the residence and not through the center of the agricultural land.

Since Ms. Dallman is wishing to have a feedlot she is unable to build in the area that has the lower soil types. Cha tends to be wet and is most likely the water runoff area from the bluff. DuD2 is too close to an existing feedlot. Even though building in the higher CER would take crop out of production she would be adding to the animal agriculture in the area, therefore maintaining the agricultural integrity of the area. These factors make up the 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 granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant, will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant, and that the granting of the variance will not alter the essential character of the locality.

#### BOA DISCUSSION

Ms. Dallman stated her request. Because of the lie of the land. They picked the area because of the way the land rose and the contouring of the land for the crops. She is right in the center of her land where there would be no neighbors nearby.

S. Klair said that his request is CER.

Ms. Dallman said they have approved a barn, but she can't build the house too. She is close to town right now and would like to get further from they city.

L. Hanni clarified her request.

K. Gross clarified the reasoning for the recommended stipulation for the driveway.

Ms. Dallman shows where her driveway would go.

S. Klair asked if she was leveling off for the barn.

D. Monroe asked the distance from where the driveway would start to where she is planning to build.

L. Hanni stated it was roughly 1600 feet.

B. Anderson asked how many animal units she is proposing in her feedlot.

Ms. Dallman said she averages about 40 and 50 head of horses but here she is also proposing cattle on there too.

B. Anderson asked how many is on Scott Anderson's.

Ms. Dallman said that is hers also and that is 30 or 40 head. She has also been in contact with Steve Schmidt.

K. Gross said that Steve called her today and told her that he was working on the feedlot permit.

*C/S. Klair opened the public hearing.*

Dave Torgerson asked if it is legal to build in the agricultural land or if they have to be in the timber.

L. Hanni said that is why she is making her request based on the CER level, we don't look at whether it is

farmland or timber.

Mr. Torgerson said that his understanding is that you just can't put a house in the middle of a field.

L. Hanni said that there are other things we look at not whether it is farmed or not.

B. Anderson said that there is woodland that you cannot build on because the CER is too high.

Mr. Torgerson said there is agricultural land that you can build on.

The Board said correct.

Robert Johnson supports where she would like to build her house. The 100' right of way that you think you need, there's never anybody that builds 100' wide road, but it hasn't stopped anybody yet. If you want to stop it. You save more cropland by putting it where she wants it rather than putting it where the ordinance says it fits.

Terry Stuhr says that he would like to see the request. She has approval for a barn already.

K. Gross said that the barn is in progress to be issued

Mr. Stuhr asked for clarification for the request.

L. Hanni said the ordinance said that you can build on land rated below 60 CER.

Mr. Stuhr asked if the woods are an option.

Ms. Dallman said they are on the side of the bluff.

Mr. Stuhr asked if this house is approved in this area, would he be approved if he wanted to build in the same area.

L. Hanni said that he would have to apply. We look at each request separately.

Mr. Stuhr asked if she is approved would it help him.

L. Hanni said that each application is taken on an individual basis.

Mr. Stuhr asked how much land is required to build.

Mr. Stuhr asked if they could keep public comment open longer.

Mr. Torgerson asked how many houses are in that section.

K. Gross said that she couldn't remember, but the section wasn't full. The request meets all other requirements except the CER.

Mr. Torgerson said that as long as it doesn't set precedence he doesn't have any problems with it.

Mr. Johnson said that what he was going to say during Mr. McRae's hearing is that he can give his daughter 35 acres and after she builds she can give the excess back.

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

*Moved by M. McKay and seconded by J. Fritzinger and carried to approve the closure of the public hearing. Motion carried 5:0.*

D. Monroe asked about the terrain.

S. Klair said it was cropland. They were leveling off land for the barn. It is fairly rolling.

Ms. Dallman said that the Township visited the site too.

**[5]**

***Moved by B. Anderson and seconded by J. Fritzinger to approve the appeal to build a dwelling on land with a crop equivalency rating (CER) of 70 instead of the required less than 60 CER in an A-2 Agricultural Zoning District based on special circumstances. Motion carried 6:0.***

M. McKay said that there are special circumstances present: She is keeping it in agriculture.

Ms. Dallman asked if she can have the driveway where she wants it.

M. McKay said that they did not put any stipulations in their motion.

[6]

*Moved by D. Monroe and seconded by B. Anderson to adjourn the October 24, 2005 Board of Adjustment meeting at 8:00 p.m. Motion carried 5:0.*

Respectfully Submitted,

Kristi R. Gross

# MINUTES

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[1]

APPROVE the October 24, 2005 Board of Adjustment Agenda as amended. Motion carried 5:0.

[2]

APPROVE the September 26, 2005 Board of Adjustment Minutes. Motion carried 5:0.

[3]

APPROVE the variance the variance to split and build a dwelling on 15 acres rather than the required 35 acres in an A-3 Urban Fringe District surrounding the acres to the west the acreage to meet 35 acres be surveyed and deeded as unbuildable because it doesn't compromise the intent of the ordinance because it is keeping more land in the hands of the farmer. Motion fails 2:4 J. Fritzinger, M. McKay, S. Pettit, and D. Monroe dissenting.

[4]

DENY the variance to split and build a dwelling on 15 acres rather than the required 35 acres in an A-3 Urban Fringe District based on no hardship. Motion carries 4:2 B. Anderson and S. Klair dissenting.

[5]

APPROVE the appeal to build a dwelling on land with a crop equivalency rating (CER) of 70 instead of the required less than 60 CER in an A-2 Agricultural Zoning District. Motion carried 5:0.

[6]

ADJOURN October 24, 2005 Board of Adjustment meeting at 8:27 p.m. Motion carried 5:0.