

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN
SEPTEMBER 22, 2008**

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

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

Absent:

¹Motion by B. Anderson seconded by J. Fritzinger and carried to approve the September 22, 2008 Board of Adjustment Agenda. Motion carried 6:0.

²Motion by S. Klair seconded by B. Anderson and carried to approve the August 25, 2008 Board of Adjustment minutes. Motion carried 6:0.

Staff Updates: The Planning Advisory Commission recommended approval for the side and rear yard setbacks from 100' to 30' with the exception of animal buildings.

Conflict/Disclosure of Interest: None to be discussed

James & Theresa Murin – Part of Lots 9 and 14 of the SW ¼ of Section 36 T109N, R16W, Roscoe Township. The request is for a variance to build an accessory building 75' from north property line instead of the required 100' setback (variance for 25').

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

Findings of Fact: The terrain of the parcel limits where the accessory building could be located on the property. There are no foreseeable adverse affects to the adjacent properties. The hardship in this case was caused by the terrain of the property. The ideal location of the accessory building would be in close proximity to the dwelling, this would be the most logical location for the accessory structure.

Staff Recommendation

Staff recommends that the Goodhue County Board of Adjustment:

1. Accept the staff report into the record.
2. Approve the request for a variance to build an accessory building 75' from the north property line instead of the required 100' setback (variance is for 25')

Adopt the above stated findings of fact along with any additional information that may be presented at the public hearing.

Discussion:

Jim Murin was present.

B. Overby clarified the SW ¼ of Section 36 is A-3.

K. Gross stated that the SW ¼ was from their legal description, and the entire section of 36 is zoned A-3.

B. Overby said that the map is wrong then.

C/D. Monroe opened the public hearing.

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Todd Roberson said that he wants to make sure they go off the property line, the fence line is 3' north of the property in that spot.

Mr. Murin asked how he marked the property line.

Mr. Roberson said he put a white stake in. He doesn't have a problem with it.

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

B. Anderson said that if you look at the topomap there is no other place to put it.

³Motion by B. Anderson and seconded by M. McKay to accept the staff report into the record, adopt the findings of fact that staff has prepared and approve the variance to build an accessory building 75' from the north property line instead of the required 100' setback bearing in mind the 3' difference that Mr. Roberson had mentioned. Motion carried 6:0.

Scott Gentry – Part of the SE ¼ of the SE ¼ of Section 5 T111N R15W, Goodhue Township. The request is an after the fact variance for an accessory building to be 5 feet from the septic drainfield instead of the required 20 feet (variance is for 15').

M. Wozniak presented staff recommendation and findings of fact.

The property is .21 acres in size. This limits the property greatly with the placement of structures. The property is zoned A-1, Agricultural district. It is not clear whether the drainfield is even located on Mr. Gentry's property. The setback to the drainfield protects the drainfield from water runoff causing early failure of the system. The 20' is to allow enough space between a structure and the drainfield to allow the drainage to be rerouted around the drainfield. If the drainfield fails, it could affect the health and safety of persons residing in the area adjacent. It could affect the water quality of the area. It is not clear whether the drainfield is even located on Mr. Gentry's property, if it fails, it would have a direct impact on the adjacent landowner's property. The property in question can be put to reasonable use if used under the conditions allowed by the official controls. The property is residential in nature and can continue to be used for a dwelling location. A garage is not an inalienable right and the lack of a garage does not deem the property useless. The hardship was created by the property owner. The property owner knew the requirements and built the structure without the required permits. "Not wanting to pay storage fees" (reason stated in minutes from November 24, 2003 meeting) is economic in nature and cannot be the sole consideration for a variance.

Staff Recommendation

Staff recommends that the Goodhue County Board of Adjustment:

1. Accept the staff report into the record.
2. Deny the request for an after the fact variance to allow an accessory building to remain 5' from the on site septic drainfield instead of the required 20'.
3. Adopt the above stated findings of fact along with any additional information which may be presented at the public hearing.

Discussion:

Scott Gentry stated that he stated at the time the drainfield was put in he was not there. The county issued him the permit to put it there.

C/D. Monroe asked how long it has been in.

Mr. Gentry stated 8 years maybe.

B. Anderson stated the permit states 12-6-1999.

Mr. Gentry said that there is a chance they could purchase some more land so that they could adjust the drainfield.

D. Monroe clarified they could alter the drainfield enough to be further from the garage.

B. Anderson asked when he purchased the house.

Mr. Gentry stated about 13 years ago.

D. Monroe asked how close the old garage was from the drainfield.

M. Wozniak stated that we haven't seen any evidence of the structure.

Mr. Gentry stated that the edge of the garage is 6' to the drainfield.

B. Anderson clarified that the garage was built on a foundation was already there.

Mr. Gentry stated that the back of the garage is to the south building.

B. Anderson said that what D. Monroe is trying to establish is whether the drainfield was built within a setback to the structure.

M. Wozniak said that normally when a building permit is issued we would have evaluated this issued.

D. Monroe said that one of the issues we had discussed at the site visit was altering the drainfield to meet setbacks.

M. Wozniak said that he still would not be in compliance with the setback.

Mr. Gentry said that behind the garage is the cornfield.

B. Overby said that if he understands this correctly, you applied for a permit in 2003, and withdrew, so then on your own you put the building up without a permit.

M. McKay asked if the drainfield is in compliance.

M. Wozniak said that it is in compliance at the time the permit was issued.

Mr. Gentry said that he is in the process of working if he can purchase the land so that he could move it from the garage so it would be in compliance.

M. McKay said that you built without a permit, and you knew you needed a permit.

C/D. Monroe opened the public hearing.

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

With no further public comment it was moved by S. Klair and seconded by M. McKay to close the public hearing. Motion carried 6:0.

S. Klair said that in order to become compliant he would have to buy property on two sides.

M. Wozniak said that the side yard would be an issue.

M. McKay said that if we denied it.

M. Wozniak said that we would order the building removed.

M. McKay asked if we could table it so that he could get an agreement in place.

Mr. Gentry said that he could do that.

M. McKay said to get in compliance he needs more property.

K. Gross said that another issue that isn't being addressed. If the Board wishes to the applicant a chance to fix the situation, then he would need to apply for a variance to the setbacks as well.

B. Overby said that we are trying to protect the neighbors. We need to get more compliance with these permits and setbacks.

M. McKay said that clearly the oneness is on him to get into compliance and clearly you need more land to do that.

M. Wozniak said that is a section line to the east and you cannot combine the additional property, the only way would be to plat it.

B. Overby said that we also need to have a variance to the property line.

M. Wozniak said for that structure to remain.

B. Anderson said a mistake has been made we realize that. In his mind he can't add property to the side. When it comes to the septic he would grant the variance to the septic as long as the property he bought had enough room to replace it if the septic fails. That's his biggest concern that there is enough space long term. When a building site is right up against the section line it is hard to know what to do.

M. Wozniak said that there was not a building there anytime in the near past.

M. McKay said that you didn't even use that foundation. You said that you ran across the foundation. You didn't even use that footprint.

B. Anderson said that we have to allow Scott enough time to resolve some of the issues. You will have to sign a waiver so that it is back to us by our November meeting.

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⁴*Moved by B. Anderson and seconded by J. Fritzinger to table the request to be brought back to the November meeting and that he would buy enough property to fix the septic setback and have enough space for a second system.*

B. Overby asked if it was ok with him.

M. Wozniak suggested if Mr. Gentry is able to acquire some additional property to make application on a variance to the setback and then make application for a building permit application.

K. Gross stated that he has a pending building permit application.

Motion carried 6:0

B. Overby said he will have to work with the County on that.

M. Wozniak said that he will have to come back to this board. Maybe make another application for that issue.

Mr. Gentry said on the side yard, if the neighbor signed something saying it could be that close would that help.

M. Wozniak said that could be part of the application.

Mr. Gentry asked if he could get everything in place by October if he could come back to that meeting.

K. Gross stated that she was taking applications in for the October meeting this week if he would like to make that application.

Gary Lohmeyer – NW ¼ Section 34 T112N, R16W, Vasa Township. The request is for a variance to build an additional dwelling in the SW ¼ of the NW ¼ of Section 34 T112N, R16W, (Vasa Township) which is zoned A-2, Agricultural District.

M. Wozniak presented staff recommendation and findings of fact.

The proposed building location would be in a densely wooded area. There should be no impact on surrounding properties to build in the desired location. Allowing the dwelling to be located in the wooded area closer to the road would preserve the more productive agricultural land. There are no foreseeable adverse affects to the adjacent properties. The property in question is heavily wooded. The hardship was created when Mr. Holz built the dwelling in the same ¼, ¼. This could have been avoided if a restriction would have been placed on the sale of the property stating that Mr. Holz could only build in the NW ¼ of the NW ¼. However, practical difficulties seem to be present. If the dwelling were built where it would be allowed a ¼ mile long driveway would need to be installed which would cross highly productive agricultural land. Not only would this take the land out of production, but a flag lot would need to be created to sell the portion to the potential buyer. The wooded area is close to the road, is not a flag lot and meets all other requirements of the zoning ordinance.

Staff Recommendation

Staff recommends that the Goodhue County Board of Adjustment:

1. Accept the staff report into the record.

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2. Approve the request for a variance to build an additional dwelling in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$
 - a. Also requiring a deed restriction placed on the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ stating that a dwelling will not be permitted until such time as the zoning ordinance changes to allow additional density in the zoning district.
3. Adopt the above stated findings of fact as well as any additional information that may be presented at the public hearing.

Discussion:

Gary Lohmeyer was present and said that at the time they were doing the transaction he didn't realize the $\frac{1}{4}$, $\frac{1}{4}$ requirement.

B. Overby clarified he owned the whole section of woods and sold part of it to Josh.

C/D. Monroe opened the public hearing.

Joshua Holz said that he doesn't have a problem with what he wants to do as long as whoever buys it meets the proper setbacks.

M. McKay said that the closest the house would be in 30' from the property line if the ordinance changes.

Mr. Holz clarified that the deed restriction would not allow a dwelling to be built there.

With no further public comment it was moved by B. Overby and seconded by B. Anderson to close the public hearing. Motion carried 6:0.

B. Anderson asked about CER.

K. Gross said that it is a wooded area.

⁵Moved by M. McKay and seconded by B. Overby to accept the staff report into the record, approve the request for a variance to build an additional dwelling in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, also requiring a deed restriction placed on the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ stating that a dwelling will not be permitted until such time as the zoning ordinance changes to allow additional density in the zoning district and adopt staff's prepared findings of fact. Motion carried 6:0.

⁶Motion by B. Overby and seconded by J. Fritzinger to adjourn the September 22, 2008 Board of Adjustment meeting at 7:40 p.m. Motion carried 6:0.

Respectfully Submitted,

Kristi Gross
Secretary

MINUTES

- ¹ APPROVE the September 22, 2008 Board of Adjustment Agenda. Motion carried 6:0.
- ² APPROVE August 25, 2008 Board of Adjustment minutes. Motion carried 6:0.
- ³ APPROVE variance to build an accessory building 75' from the north property line instead of the required 100' setback bearing in mind the 3' difference that Mr. Roberson had mentioned. Motion carried 6:0.
- ⁴ APPROVE table the request to be brought back to the November meeting and that he would buy enough property to fix the septic setback and have enough space for a second system.
- ⁵ APPROVE the request for a variance to build an additional dwelling in the SW ¼ of the NW ¼, also requiring a deed restriction placed on the NE ¼ of the NW ¼ stating that a dwelling will not be permitted until such time as the zoning ordinance changes to allow additional density in the zoning district. Motion carried 6:0
- ⁶ ADJOURN the September 22, 2008 Board of Adjustment meeting at 7:40 p.m. Motion carried 6:0.