

## BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN

SEPTEMBER 28, 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    Mike McKay    Dennis Monroe

Absent:

***<sup>1</sup>Motion by J. Fritzingler seconded by D. Monroe and carried to approve the September 28, 2009 Board of Adjustment Agenda. Motion carried 6:0.***

***<sup>2</sup>Motion by B. Overby seconded by S. Klair and carried to approve the August 24, 2009 Board of Adjustment regular meeting minutes. Motion carried 6:0.***

**Staff Updates:**

M. Wozniak said the County hosted a meeting regarding the two wind projects that seem to be drawing controversy as of late which are in the Goodhue and Belle Creek areas. The County Board requested that we host this meeting to provide opportunity for Geronimo and Goodhue Wind to present information on their projects and be able to answer questions from the public. It was quite a meeting. By and large they are covered by the state. Nevertheless, we have some folks requesting the County to change our regulations to make it less viable for the projects to happen. We will be working with Attorney Betcher on that issue.

On another note, the Planning Advisory Commission held a workshop to take comments on Agricultural Tourism uses and Farm Wineries. The purpose is to write in provisions to cover various types of uses that Agricultural Tourism brings into the properties. Sometimes property owners ask us, on other instances the neighbors call and ask if it is allowed. There is a number of events going on over the weekends this fall. What we are doing is trying to come up with some reasonable regulations that will balance this stuff. So that we have something to provide guidance and reasonable limitations so the rights of other property owners are addressed as well. We will be bringing this back to the Planning Commission for their October meeting.

B. Overby said that it was an interesting meeting. One of the things that was stated was if it is an agricultural use, it is permitted, if it is not an agricultural use it requires a conditional use permit. That is where we are going to need some input on, defining what an agricultural use is.

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

**Virgil Hernke Estate**— Pt of SW ¼ of SW ¼ of Section 21, T111N R17W, Leon Township. The request is for a variance to create a property line 20' from an accessory building instead of the required 30' side/rear yard setback.

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

**Findings of Fact:**

The garage, which goes with the house, is not currently located on the parcel with the dwelling. The current property line causes a problem with the driveway and cuts too close to the feedlot. The adjacent property would benefit from the re-configured property lines. The hardship is due to the existing configuration of the farmyard. Relocating the property line would bring the property more into compliance. The request is not a substantial variation from the intent of the zoning ordinance. The character of the neighborhood will remain unchanged and the request will benefit the adjacent property. There is no feasible method to alleviate the practical difficulty without the variance. The practical difficulty exists because of the configuration of the farmyard. For whatever reason the garage was not

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included in the original split of the dwelling from the feedlot. It makes sense that the garage is located on the same parcel as the dwelling. 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 property line 20' east of an existing accessory building instead of the required 30 feet rear yard setback.

**Discussion:**

Jim Hernke was present and said he had nothing further to add.

B. Overby said that it is a practical thing. You can see it all on the picture. It makes a whole lot of sense to do that.

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

No one present wished to speak for or against the request

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

***<sup>3</sup>Motion by B. Overby and seconded by M. McKay to accept the staff report into the record, adopt the findings of fact that staff has prepared approve the variance to create a property line 20' east of an existing accessory building instead of the required 30 feet rear yard setback. Motion carried 6:0.***

**Darrell and A. Louise Rainey**– Pt of Government Lot 15, Section 24 T112N, R13W, Florence Township. The request is for a variance place an on site septic drainfield 3' from an accessory building instead of the required 20' setback and a variance to place that on-site septic drainfield 3' from the property line instead of the required 10' setback.

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

**Findings of Fact:**

The lot is not large enough to replace the on-site septic system and meet all required setbacks. The neighbor that would be affected agrees to the variance. The request could hinder the placement of a well on the adjacent property, but that property has area that this should not be an issue. The hardship is due to the lot size and the current configuration of the property. The request is not a substantial variation from the intent of the zoning ordinance. The character of the neighborhood will remain unchanged. To alleviate the practical difficulty, the applicants would have to downsize the system which could cause early failure. The practical difficulty exists because of the size of the parcel. 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 place an on-site septic drainfield 3' from an accessory building instead of the required 20' setback and a variance to place that on-site septic drainfield 3' from the property line instead of the required 10' setback.

**Discussion**

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Darrell and Louise Rainey were present and had nothing further to add.

M. McKay asked if there was any comment from the neighbor.

Mr. Rainey said that they received a letter from the neighbor they are encroaching on has written a letter supporting the request.

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

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

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

S. Klair asked if this was next to a trailer park.

Mr. Rainey said that is a trailer park on that side.

S. Klair asked if they had a sewer.

Mrs. Rainey said that they need a new system this year too.

S. Klair said he was just wondering if their was a sewer they could hook into.

M. Wozniak said that it doesn't appear that Lake City will move north with their city sewer.

Mrs. Rainey said they will not.

***4Motion 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 place an on site septic drainfield 3' from an accessory building instead of the required 20' setback and a variance to place that on-site septic drainfield 3' from the property line instead of the required 10' setback. Motion carried 6:0.***

**Robert Schroeder** – Pt of Lot 3 Section 2, T112N, R13W, Florence Township. The request is for a variance to build an accessory building closer than the required 75' setback to the ordinary high water mark of Lake Pepin, and closer than the required 30' setback to the toe of the bluff.

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

**Findings of Fact:**

Opportunities to build (replace) an accessory structure on Mr. Schroeder's property are extremely limited based on Bluffland and Shoreland setback requirements. The existing driveway and wastewater treatment further limit opportunities to increase setback from the OHWL. The proposed accessory structure would be sited in spot with limited visibility from adjoining properties or the river based on the isolated nature of the property and existing Bluffland and vegetative cover on the property. The primary concern would be visibility from the Mississippi River/Lake Pepin due to the proposed height of 25'. The structure would be partially screened from the river by mature deciduous trees and hence would be less visible during the spring through fall seasons and somewhat visible during the fall through spring period. The hardship is due to the limited amount of buildable area of the site based on Bluffland and Shoreland Regulations. The County's Ordinance would normally require a 75' setback from OHWL and a 30' setback from the bluff impact zone. The proposed structure would fall with a few feet of the toe of bluff and would be sited approximately 10' from the OHWL. Given that the proposed structure would be replacing an existing structure of similar footprint it does not appear that the requested variance would represent a substantial variance from the intent of the ordinance. It does not appear that the requested variance would result in a

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substantial change in the character of the neighborhood. The isolated location of the property and the physical conditions including the bluff and the vegetative cover would serve to limit impact on neighboring properties and the Mississippi River. The proposed building site for the accessory structure represents the only feasible site. The biggest question in regarding to alleviating the practical difficulty of the applicant would involve whether allowing a structure to be built to the height of 25' (maximum height permitted in the Shoreland Area) is appropriate. The practical difficulty related to physical conditions found on the site (bluff and river) and associated zoning regulations which were imposed after construction of the existing cabin and accessory building. The landowner did not create the need for the variance. It does not appear that denying the variance would serve the interests of justice. The applicant by all appearance is maintain the subject property in an exemplary manner including maintaining a substantial vegetative buffer of mature trees, shrubs and understory plants along the shoreline. The issue that warrants discussion and deliberation by the Board of Adjustment is whether a variance should be granted that would allow Mr. Schroeder to construct the accessory building to a height of 25' as proposed or to a height of 10' as recommended by MNDNR.

**Staff Recommendation:**

Land Use Management Staff feel that approval of a "variance" to build an accessory structure is appropriate. However, the comments from Bill Huber, Area Hydrologist, MNDNR and the well thought out proposal of the applicant both have merit. Staff is withholding a specific recommendation regarding whether a variance should be granted to allow a structure to be built to a height of 25' or whether a variance should be conditioned to limit the height of the proposed structure per Mr. Huber's comments.

**Discussion**

C. B. Anderson clarified that the Zoning Ordinance Shoreland regulations state 25' in height.

M. Wozniak said that because a variance to the ordinary high water mark is required the position Bill Huber said was if you are going to allow it, you should use these alternative standards.

D. Monroe asked if he was going to build it in the same site.

Mr. Schroeder said he planned on moving it back 5' to allow for better access for emergency vehicles to get at the cabin.

B. Overby said bluff wise there is no other place to put it.

M. McKay said he needs a variance to the setback to the high water mark.

M. Wozniak said that the normal setback to the OHWM is 75'. Mr. Huber has suggested if a variance is going to be granted it could be allowed within 10' height.

M. McKay said that basically these structures are grandfathered in. There are certain ones you just don't give.

B. Overby said the space doesn't allow to build anything.

D. Monroe asked what has changed that requires him to store twice as much stuff.

Mr. Schroeder said the former outhouse right now holds the wood and is rotten. It is a one room cabin, there is no storage space. The drawing of the structure didn't even begin until he sat down with Mr. Wozniak and the building official and this concept came out of that meeting. The concept of the height. He loves the idea of sitting up in the watch tower. He recognizes he is asking for more than just the shed.

M. McKay said the top is another thing that is suggested not to do.

J. Fritzinger asked if there was anyway to add onto the cabin.

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Mr. Schroeder said that when he redid the cabin 5 years ago he made a concous effort to keep the character of the cabin the same and not expand the footprint of it. Plus there is issue with the septic system because it is right there in the middle.

M. McKay asked what the hardship is.

Mr. Schroeder said that because of the toe of the bluff and the OHWM he can't build anything.

M. McKay said that we can solve that by giving you a setback variance. What he is struggling with is the height. And that he doesn't have a legitimate hardship.

B. Overby said that there will be three levels.

C/B. Anderson said that as I see our ordinance this is not outside our regulations. If DNR wants that regulation, let them have it.

K. Gross said that DNR has a right per our ordinance to comment on shoreland variance, that is their recommendation.

M. McKay is saying if you are going to grant a variance to be that close, we can go with that if it meets these standards.

M. Wozniak said that the hard one that we had as staff is that it is not really a water oriented structure.

B. Overby asked if DNR was a recommendation or a demand.

M. Wozniak said you get a little different response once the project is proposed than you got when it was in concept. Mr. Schroeder proceeded in good faith.

M. McKay asked when Mr. Huber had weighed in on this issue.

K. Gross said that Mr. Schroeder had applied for a building permit.

M. McKay asked if Mr. Huber was involved in those discussions.

M. Wozniak said that he met Mr. Huber on the site.

Mr. Schroeder said the M. Wozniak brought up a good point. The Villa Angela which was put up for sale in 2008. He spent the majority of 2008 looking into possibly buying it. In that instance Mr. Huber said that you can take a straight line and say you cannot pass this pre-existing line rule. He wanted to make the structure usable. He sat down with Mike, Doug, Scott and Lisa and talked it through. With what he believed to be a good faith nod, he commissioned the drawings. The height of the structure came out of the meeting with Mike and Doug.

M. Wozniak said that we weren't thinking of the water oriented height limits because that is not in our ordinance.

J. Fritzinger said on page two there are flags in the picture, are they where the building is going, they look closer to the water.

Mr. Schroeder said that some of the flags are for a stairway access going to the water.

M. McKay said that all in good faith he took your recommendations, you brought Bill way too late in the process.

M. Wozniak said that we were working with the ordinance and were trying to work within the perimeters that we had to work with.

M. McKay said that it is the incremental, then there is the boat ramp that makes that structure stand out.

Mr. Schroeder said that DNR rules allow me to have access to the river. Right now I have none, I have to use my neighbors. The sensitivity that I have to this property should be clear to you. My intention is to put something here that is very tasteful that is not standing out. He has made the effort to build it this

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way. Given the constraints of the property, which are very real, he has no other options. Mr. Huber is not here tonight. There was a discussion that was had on Friday with Mr. Huber that my name came up on positively, he would be here.

M. Wozniak said in this location it would have very little negative impact, if any on neighboring properties. But it does require variances.

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

No one was present in the audience.

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

D. Monroe said that in essence this does meet our ordinances.

C/B. Anderson said the only two variances are the bluff and the OHWM.

M. Wozniak said that Bill was comfortable with replacement of something was fine, it was just a matter of how tall.

B. Overby said that it is a steep incline, he wouldn't want to walk down there.

M. McKay said that the township, the only stipulation they put on there was the siding.

Mr. Schroeder said the roof, the original drawings identified steel seamed roof, they were not ok with that.

M. Wozniak said just for the interest of the board, we went out to the Villa Angela, we visited with the new neighbors on that site, what they were doing was going through an exercise with their contractor whether they could keep it or replace it. The answer was you would need a variance if you would want to expand it, or if you wanted to replace it. That was a little different than what we heard when people were talking in concept. We are trying to treat the property owner reasonably but the question is what

***<sup>5</sup>Motion by M. McKay and seconded by S. Klair 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 closer than the required 75' setback to the ordinary high water mark of Lake Pepin, and closer than the required 30' setback to the toe of the bluff the DNR doesn't have jurisdiction here.***

J. Fritzinger asked about the deck.

Mr. Schroeder said it was a cantilevered deck.

C/B. Anderson said that we measure from the footing.

K. Gross said we do not. Setback is measured from the edge of the structure not the foot print. In all instances we measure from the edge of the structure.

M. McKay said he was approving the request as presented in the report.

***Motion carried 6:0.***

**Karen & Kraig Zibolski** – N660 Ft of NE ¼ of NE ¼ Section 31, T111N R17W, Leon Township. The request is for a variance to build an accessory structure less than 30' from the East property line or encroaching on the East property line instead of the required 30' setback.

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

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**Findings of fact:**

The property is heavily wooded and has topographical challenges to placing the structure elsewhere. The proposed location is the most practical. The property is so heavily wooded the structures are not visible from the road, or other properties. A future hardship may be created if the structure was allowed to encroach on the section line. The hardship is due to the topography and the nature of the building site. The intent of the zoning ordinance would be met. The applicant owns both parcels, and has a significant setback to their furthest north property line. If the applicant could combine the two parcels, they would. It is our tax laws that prohibit them from simply combining the two tax parcels. The character of the neighborhood will remain unchanged and will not cause detriment to the neighboring properties. In order for the garage to be built in accordance to the setbacks it would have to be placed elsewhere, away from the exiting driveway, mature trees would need to be removed to accommodate any other location. The practical difficulty exists because of the lay of the land and the location of the section line. 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 build an accessory structure up to 6 inches from the East property line instead of the required 30' setback (variance is for 29.5').

**Discussion:**

Mr. and Mrs. Zibolski were not present.

B. Overby said that where they want to build the building is right in the middle of the section line.

M. Wozniak said that

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

No one was present in the audience.

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

***6Motion by M. McKay and seconded by B. Overby 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 structure up to the property line, but must all be on one property. Motion carried 6:0.***

***7Motion by J. Fritzinger and seconded by M. McKay to adjourn the September 28, 2009 Board of Adjustment meeting at 7:34 p.m. Motion carried 6:0.***

Respectfully Submitted,

Kristi Gross

Secretary

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**MINUTES**

<sup>1</sup> APPROVE September 28, 2009 Board of Adjustment Agenda. Motion carried 6:0.

<sup>2</sup> APPROVE the August 24, 2009 Board of Adjustment regular meeting minutes. Motion carried 6:0.

<sup>3</sup> APPROVE to create a property line 20' east of an existing accessory building instead of the required 30 feet rear yard setback. Motion carried 6:0.

<sup>4</sup> APPROVE and approve the variance place an on site septic drainfield 3' from an accessory building instead of the required 20' setback and a variance to place that on-site septic drainfield 3' from the property line instead of the required 10' setback. Motion carried 6:0.

<sup>5</sup> APPROVE the variance to build an accessory building closer than the required 75' setback to the ordinary high water mark of Lake Pepin, and closer than the required 30' setback to the toe of the bluff. Motion carried 6:0.

<sup>6</sup> APPROVE the variance to build an accessory structure up to 6 inches from the East property line instead of the required 30' setback (variance is for 29.5'). Motion carried 5:0.

<sup>7</sup> ADJOURN September 28, 2009 Board of Adjustment meeting at 7:34 p.m. Motion carried 6:0.