

MINUTES
Blue Earth County Board of Adjustment
Regular Meeting
Wednesday, September 4, 2013
7:00 p.m.

1. CALL TO ORDER

The meeting was called to order at 7:00 P.M. by Chairman Lyle Femrite. Board of Adjustment members present were Lyle Femrite, Bill Anderson, Kurt Anderson, Chuck Grams and Perry Wood. Planning & Zoning staff members Mark Manderfeld, Mike Schulte and George Leary were also present.

2. APPROVAL OF MINUTES

Mr. Wood made a motion to approve the minutes from the July 3, 2013 meeting of the Board of Adjustment and the August 7, 2013 Board of Adjustment workshop. Mr. Grams seconded the motion which carried unanimously.

3. APPROVAL OF AGENDA

Mr. Leary indicated there was no change to the agenda.

4. OLD BUSINESS – Continuation of the August 7, 2013 BOA workshop

Mr. Manderfeld advised the Board of research he had conducted since the August meeting. He indicated that it appears that in most instances, the 8' by 12' addition as previously discussed would accommodate bathroom facilities, a wet wall to accommodate a water heater and water softener, and a small kitchen.

Mr. Kurt Anderson commented on the interior construction requirements when retrofitting a cabin with plumbing. He indicated there are a number of sizes and styles of water heaters and water softeners and that an 8' by 12' addition is a good starting point.

Mr. Manderfeld referenced State Statute 394 and indicated that the addition of a bathroom seems reasonable.

5. NEW BUSINESS

BOA 11-13

Melvin Moore Family Trust & John Moore - Request for a variance to reduce the required feedlot to dwelling setback of an existing feedlot to a nearby dwelling from 1,500 feet to 445 feet. The request is also to reduce the required feedlot to dwelling setback from 1,500 feet to 590 feet to allow for the construction of one new total confinement swine barn. The site is located in the Agricultural District in the Northwest Quarter of the Southeast Quarter of Section 13, Mapleton Township.

Mr. Schulte presented the staff report.

The applicant was present and had no comment.

There was no public comment and no comment from the township.

The findings-of-fact checklist was reviewed by the Board.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *Yes – because the proposed building is further away from the home in question.*
2. Without the variance, is the owner deprived of a reasonable use of the property? *Yes*

3. Is the alleged practical difficulty due to circumstances unique to this property? *Yes – The structure is in place.*
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners? *Not applicable – the land owner had possession of the property long ago.*
5. Will the issuance of the variance maintain the essential character of the locality? *Yes*
6. Does the alleged practical difficulty involve more than economic considerations? *Yes – from a practicality standpoint.*

There was no further discussion.

Mr. Wood made a motion to approve the requested variance with the inclusion of the findings-of-fact checklist.

Mr. Bill Anderson seconded the motion which carried unanimously.

BOA 12-13

MaryAnn Nelson - Request for an after-the-fact variance to reduce the required centerline setback from County Road 34 from 130 feet to 120 feet and to reduce the required side yard setback from 50 feet to 25 feet for an already constructed deck onto an existing dwelling. Said property is located in the Agricultural Zoned District and Urban Fringe Overlay District to the City of Mankato in the Southwest Quarter of the Southwest Quarter of Section 28, Southbend Township.

Mr. Manderfeld presented the staff report.

The applicant was present and had nothing to add.

Doug Schaller, representing South Bend Township, indicated the township was unaware of the after-the-fact status of the request. He thanked staff for their thoroughness of the report.

There was no other public comment.

The findings-of-fact checklist was reviewed by the Board.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *Yes*
2. Without the variance, is the owner deprived of a reasonable use of the property? *Yes*
3. Is the alleged practical difficulty due to circumstances unique to this property? *Yes*
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners? *Not applicable.*
5. Will the issuance of the variance maintain the essential character of the locality? *Yes*
6. Does the alleged practical difficulty involve more than economic considerations? *Yes*

The findings-of-fact checklist for after-the-fact variances was reviewed by the Board.

1. Has the construction been completed? *Yes*
2. Does it appear the applicant has acted in good faith and tried to comply with the Ordinance? *To some extent. The deck only protrudes 7 feet and is for a very specific use.*
3. Are there similar structures in the area? *Yes in other parts of the county.*
4. Does the applicant's burden of complying with the Ordinance outweigh the County's benefit of enforcing the Ordinance? *Yes*

There was no further discussion.

Mr. Bill Anderson made a motion to approve the requested variance with the inclusion of the findings-of-fact checklists.

Mr. Kurt Anderson seconded the motion which carried unanimously.

BOA 13-13

David Gahl - Request for a variance to reduce the required centerline setback from County-State Aid Hwy No. 10 from 130 feet to 100 feet for the placement of a proposed addition onto an existing storage building. The proposal is located in the Agricultural Zoned District in the Northwest Quarter of the Northeast Quarter of Section 05, Medo Township.

Mr. Manderfeld presented the staff report.

The applicant was present and had no comment.

There was no public comment and no comment from the township.

The findings-of-fact checklist was reviewed by the Board.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *Yes*
2. Without the variance, is the owner deprived of a reasonable use of the property? *Yes*
3. Is the alleged practical difficulty due to circumstances unique to this property? *Yes*
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners? *Not applicable – many farmsteads have been in place for decades before the ordinance was implemented.*
5. Will the issuance of the variance maintain the essential character of the locality? *Yes*
6. Does the alleged practical difficulty involve more than economic considerations? *Yes*

Mr. Kurt Anderson stated that the existing structure has been in place for over 20 years and has not been an issue.

There was no further discussion.

Mr. Kurt Anderson made a motion to approve the requested variance with the inclusion of the findings-of-fact checklist.

Mr. Grams seconded the motion which carried unanimously.

BOA 14-13

Allen Klinkner - Request for an after-the-fact variance for the removal of trees and vegetation within the shoreland impact zone in excess of 12 feet in width. Said property is located in the Northwest Quarter of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter of Section 4, Garden City Township and is within the Conservation and Shoreland Zoning Districts.

Mr. Leary presented the staff report.

The applicant was present and provided some photos of the property to the Board for review. He indicated he did not realize he needed a permit. He added that he thought a permit would be for a structure such as a boat house. He started the project as an access track for his boat to and from the house and to bring in the boat, dock, and boatlift with as minimal impact as he could. He indicated that he decided to use natural stone to blend in with the environment. He stated that he needs 12 feet of width to get the boat and dock in and out of the lake and also needed to remove some of the dirt to get the proper slope. He continued his comments with a description of the pictures provided to the Board and indicated the south wall runs fairly straight to the lake with a slight curve. The north wall will include some stairs to get access to the lake. He added that the stone needs to be tapered. He also indicated that staff had measured from the very outside of the project. He thought the stone would be more appealing to the lake. He stated that they had tried to do their best with erosion control. Regarding the wetland issue, he indicated he was unaware of these issues but that he would address them.

Mr. Femrite asked the applicant if he had hired a contractor and was the contractor aware of the wetland issues.

Mr. Klinkner indicated he did hire a contractor but the contractor was unaware of the wetland issues.

Marvin Fleming, representing Garden City Township, disagreed with staff's assessment of erosion control. He said erosion will be in control when the project is done and that the township approves of the variance request.

There was no other public comment.

Mr. Femrite stated it appears there is some misunderstanding of the actions that needed to be taken. He added that things moved ahead that appear to be out of compliance with what is permitted.

Mr. Kurt Anderson asked to proceed with the findings-of-fact checklists included as attachments A14 and 15.

The findings-of-fact checklist was reviewed by the Board.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *No*

Why or why not? *Mr. Kurt Anderson stated that it was pretty clear based on the staff report and information provided by the applicant. Mr. Wood agreed and stated that there is a set of rules and a violation.*

2. Without the variance, is the owner deprived of a reasonable use of the property? *No*

Why or why not? *Mr. Kurt Anderson and Mr. Wood both indicated “no”.*

3. Is the alleged practical difficulty due to circumstances unique to this property? *No*

Why or why not? *Mr. Kurt Anderson indicated there are residential structures all around the lake and not all have constructed their own boat landing. Mr. Wood agreed.*

4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners? *No*

Why or why not? *Mr. Kurt Anderson and Mr. Grams stated the applicant had a good understanding of the issues prior to issuance of the permit for the house.*

5. Will the issuance of the variance maintain the essential character of the locality? *No*

Why or why not? *Mr. Wood stated it will change the area. Mr. Kurt Anderson agreed.*

6. Does the alleged practical difficulty involve more than economic considerations? *Yes*

Why or why not? *Mr. Kurt Anderson added that there are also environmental concerns. Mr. Bill Anderson stated he had been out to the site and that things may have changed if communication had been better. He added that it is not an eyesore or out of place and that more damage may result if repaired rather than completed. Mr. Bill Anderson added that no one else can pull their boat up to their house, but it does look better than before. Mr. Kurt Anderson indicated he still maintains “yes” and stated that the county established the ordinance for a reason. The topography map shows an elevation change of 14 to 16 feet. This is not a unique situation. He finished by stating that he is aware of others with much greater slopes and none of them have such a structure.*

The findings-of-fact checklist for after-the-fact variances was reviewed by the Board.

1. Has the construction been completed? *No*

Why or why not? *Mr. Bill Anderson indicated approximately 50% has been completed. Mr. Kurt Anderson indicated 100% of the damage to the shoreline has taken place. Mr. Bill Anderson stated that grass seed, black dirt and more rock is needed to finish the project. Mr. Femrite stated it is not 100% completed.*

2. Does it appear the applicant has acted in good faith and tried to comply with the Ordinance? *No*

Why or why not? *Mr. Kurt Anderson, Mr. Grams, Mr. Wood and Mr. Bill Anderson all agreed.*

3. Are there similar structures in the area? *There was no specific “yes” or “no” answer provided.*

Why or why not? *Mr. Bill Anderson stated that another project had taken place on a neighboring property. Mr. Kurt Anderson commented that many projects are for armoring the shoreline and that shoreline armoring projects also require a permit.*

4. Does the applicant's burden of complying with the Ordinance outweigh the County's benefit of enforcing the Ordinance? *No*

Why or why not? Mr. Wood indicated the county has ordinances to protect wetlands, slopes and lakes. Mr. Kurt Anderson, Mr. Grams and Mr. Bill Anderson all agreed.

Mr. Kurt Anderson stated that over 12 years of serving on the Board of Adjustment and Planning Commission, he had participated in a number of after-the-fact requests. Many have been in the shoreland district. He indicated that rules are in place for a reason. The burden of knowing the ordinance falls upon the property owner. Staff has thoroughly done their job in this situation; they had met on site with the applicant and advised him that if plans were to change that he should contact staff in an effort to avoid this type of situation. There was also an after-the-fact construction permit for a 24' by 30' building that was constructed outside of the original permit issued for the home. He added that we have to take these things seriously. Part of the limitations placed on vegetation removal is for aesthetics and not necessarily to provide for a parade of homes. The purpose of shoreland regulations is to maintain the natural vegetation and appearance. He stated that the issue involving the property to the south is a separate issue, but that the aerial photographs clearly show that there must have been some soil problems there as evident due to the lack of vegetation. He finished by stating that he did not see any leeway and he had no intent to support approval of the request.

Mr. Femrite concurred with Mr. Kurt Anderson's comments. He also indicated his frustrations with after-the-fact requests.

Mr. Wood also concurred with Mr. Kurt Anderson's comments with exception to those relating to the property to the south. He added that we need to stand up and protect these ordinances otherwise there is no sense in having them.

Mr. Kurt Anderson stated, in consideration of the discussion of the proposal, the review of the findings-of-fact checklists, the property owner's testimony and the report provided by staff, made a motion to deny the requested variance.

Mr. Wood seconded the motion which passed by a vote of four in favor to one opposed.

Mr. Femrite asked Mr. Leary if he would be sending a letter to the applicant.

Mr. Leary stated a letter would be sent to the applicant and that the applicant does have 30 days to appeal the decision to district court.

6. OTHER BUSINESS

Mr. Leary and Mr. Manderfeld discussed with the Board the possibility of issuing administrative variances in situations where accessibility needs require timely action. Mr. Manderfeld stated that staff has received a particular request from Howard Rosten representing SMILES. Staff indicated the use of administrative variances would only be used in circumstances where accessibility needs are involved. Mr. Manderfeld indicated that input would be sought from the applicable road authority and that all components of the proposal meet the minimum requirements of the Americans with Disabilities Act (ADA).

Mr. Femrite asked if some kind of temporary ramps be erected.

Mr. Leary indicated that in some instances ramps can accommodate the needs. Yet in other situations more permanent type structures are needed.

Mr. Femrite stated that there are some things that can be taken care of administratively.

Mr. Wood stated his opinion that the appropriate process would be to amend the ordinance to allow a provision for staff, under certain unique situations, to have administrative authority. It is also possible that even by phone vote or email vote action could be taken.

Mr. Curt Anderson agreed with Mr. Wood that the ordinance should be amended. He also stated that although he cannot suggest that the property owners move forward without obtaining a variance first, the Board would likely not look unfavorably on the request should it happen to take place.

Mr. Bill Anderson agreed. If someone is hurt due to an accident and needs access to their home, he did not want to stand in the way of it.

Mr. Leary asked the Board if they would consider directing staff to utilize a policy of administrative variances in situations where there are accessibility needs are present and that the ordinance could be amended to reflect these needs at a later date.

Mr. Wood stated that he did not see the need to delay reviewing the ordinance until the Land Use Plan is updated.

Mr. Femrite said that it is only those situations that involve handicap accessibility needs and not general variance requests.

Mr. Leary indicated that it is not a simple process of opening the ordinance for an amendment.

Mr. Kurt Anderson asked if in the interim if staff would be more comfortable if the Board were to approve a procedural policy to move forward in emergency situations like this.

Mr. Leary concurred and stated that a policy standard could be that the project obtains approval from the applicable road authority and the construction meet the standards set forth by the Department of Labor and Industry for accessibility requirements but not exceed them. Anything beyond that would require a variance.

Mr. Kurt Anderson stated his belief that it is a reasonable request, but the Board would certainly like to review a proposal prior to releasing that authority. If there is a need from an individual with an immediate unexpected hardship, he would probably look upon it favorably. However, the Board is not in a position to create a policy of intent for conduct that potentially usurps the authority of the Board to the county staff without some serious discussion. He indicated he understood that is the reason staff is bringing this forward because there is a need. Waiting the 60 days to work through the process is not practical. In this instance he indicated he would be inclined to support the decision for it in the future in order for this individual to do what they need to do.

Mr. Leary indicated to the Board that the following Tuesday is the application deadline for the October meeting and asked if the application involved should be on the October agenda.

Mr. Kurt Anderson stated that would formalize it and we would not have a policy in place by that time.

Mr. Manderfeld indicated that an after-the-fact variance could be interpreted as penalizing someone with accessibility needs.

Doug Schaller, representing South Bend Township, suggested that the Board may consider having staff give a recommendation to the chairman or a small committee of two members to review. Rather than placing the entire responsibility on staff.

Howard Rosten, representing SMILES in Region 9 indicated that Blue Earth County is the most difficult county he has to work with. He indicated that the ramps they build do not have any posts in the ground and could be removed within a half of a day. It is permit structure that is the issue. He compared the process to a similar project he was working in in Sibley County.

Mr. Kurt Anderson questioned Mr. Rosten about the differences between Blue Earth and Sibley County. He also stated that one would be hard pressed to find county staff in the state of Minnesota with authority to grant administrative land use variances for setbacks. He added that the Board does want to help the citizens of the county. However we also need to protect the integrity of the system. It would not be wise to have to litigate something later because appropriate review was not given earlier.

Mr. Femrite asked why some type of temporary ramp not an option.

Mr. Rosten said they do construct temporary ramps. He said he is only asking to streamline the process.

Mr. Kurt Anderson said if they were to put in a temporary system it would not require a variance.

Mr. Femrite indicated in consideration of time, we needed to move on.

7. ADJORNMENT

There was no further business. Mr. Wood made a motion to adjourn the meeting which was seconded by Mr. Gram. The motion carried and the meeting was adjourned at 9:22 P.M.

Board of Adjustment Chair

Board of Adjustment Secretary