

MINUTES

Blue Earth County Board of Adjustment

Regular Meeting Wednesday, October 7, 2015

Continued October 14, 2015 and November 4, 2015

7:00 p.m.

1. CALL TO ORDER

The meeting was called to order at 7:00 P.M. by acting Chairman Kurt Anderson. Board of Adjustment members present were Bill Anderson, Kurt Anderson, Chuck Grams and Barry Jacques. Planning & Zoning staff members Chris Meeks, Aaron Stubbs, Ben Effah and George Leary were also present.

2. APPROVAL OF MINUTES

Mr. Bill Anderson made a motion to approve the minutes from the September 2, 2015 regular meeting of the Board of Adjustment. Mr. Jacques seconded the motion which carried unanimously.

3. APPROVAL OF AGENDA

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

4. NEW BUSINESS

BOA 12-15

Doug and Julie Sargent - Request for an after-the-fact variance to reduce the setback from the top of a bluff from 30 feet to less than zero feet for a 12' x 12' structure with a 5' x 12' deck and an 8' x 12' canopy overhang. The project also included removal of vegetation in excess of the amount allowed by the county Shoreland Ordinance. The property is located in part of the Northeast Quarter of the Northeast Quarter of Section 16, McPherson Township and is zoned Conservation. The property is also within the Shoreland Overlay District of the Le Sueur River, an Agricultural River as established by the Minnesota Department of Natural Resources.

Mr. Stubbs presented the staff report.

The applicants were present. Mr. Sargent provided a packet of information to the Board to review. He indicated that he and his wife went through the proper channels with the DNR etc. He advised the Board that his neighbors are supportive of his project and the actions are not detrimental to the bank. He also indicated he had worked with Leo Getsfried and Randy Schindle, both from the Minnesota DNR. The issue at the time was three bur oak trees with oak wilt disease. Mr. Sargent indicated with input from the DNR and the University of Minnesota the diseased trees were removed and the impacted bluff area was stabilized with the placement of the boulders including the sod and patio areas. Mr. Sargent indicated that over 200 tons of boulders have been placed in the area. He provided the Board with a picture of the remaining bur oak and added that over 100 willow trees have been planted in the area without cost share assistance.

Mr. Sargent indicated he had talked with county staff in the fall of 1987 and no permits were required for replacing an existing building. In 2001 permits were required. In 2002, the assessor's office reviewed the property and indicated a permit had not been issued. Mr. Sargent continued. He indicated while obtaining a passport at the courthouse, he learned from a county employee that a 12 foot by 12 foot structure did not require a permit.

Mr. Sargent had a registered home inspector review the site and he has recommended leaving it.

Mr. Sargent indicated he talked with Dan Girolamo from the DNR. He stated that Mr. Girolamo had not been advised of the oak wilt disease. Mr. Sargent again stated that Randy Schindle from the DNR had given approval to the oak wilt tree removal.

Mr. Sargent asked how could it be beneficial to remove a structure determined to be stable?

There was no other public comment.

Mr. Leary suggested the option of meeting on site to review the project.

Kurt Anderson stated that after-the-fact requests are never an easy decision for the board. He added that the requests are taken seriously and each application is unique. He complimented the applicant on the information provided and complimented county staff on the report provided.

Mr. Grams indicated he had visited the site and the applicant had explained the project to him. He added that there is no evidence of erosion and agreed that it would be good to go to the site.

Mr. Jacques agreed on the site review idea. He added that the applicant has gone out of his way to make it work.

Kurt Anderson stated that he had received two phone calls from the applicant.

Mr. Leary asked the board to consider reconvening back in the court room following the site visit.

There was no further discussion.

Bill Anderson made a motion to continue the meeting on site.

Mr. Grams seconded the motion.

The board agreed to meet on site at 9:00 on October 14th. The motion carried.

Mr. Jacques made a motion to adjourn the meeting. Mr. Grams seconded the meeting and the meeting was adjourned at 7:50 p.m.

The Board of Adjustment reconvened the meeting at the Sargent property at 9:00 a.m. October 14, 2015. Board of Adjustment members Kurt Anderson, Chuck Grams and Berry Jacques were present. County Board Member Kip Bruender was also present along with staff members Effah, Meeks, Stubbs and Leary. Pat Christman and Mark Fischenich were present from the Free Press along with the applicants Doug and Julie Sargent.

Mr. Sargent reviewed the oak wilt disease issue. He also reviewed the extent of the bank repair. He added he had talked with Dan Girolamo from the DNR. Mr. Girolamo advised him that the DNR wants to continue bluff stabilization.

Kurt Anderson asked the applicant if he had done anything to armor the bank.

Mr. Sargent mentioned an area up on another hillside away from the bluff. Julie Sargent indicated they had not touched the river banks.

Mr. Bruender asked about the structure foundation.

Mr. Sargent stated the front is on rock and the back is on posts.

Mr. Anderson asked about the location of the willow trees.

Mr. Sargent reviewed the area of the willow plantings to the group. The willows are to the east and are at the top of the bluff and at the base.

Mr. Anderson asked if Dan Girolamo from the DNR had visited the site. Mr. Sargent said he hadn't.

Mr. Anderson asked if Mr. Girolamo would be making any further comments. Mr. Sargent mentioned a report that Mr. Girolamo has which reviewed the patio but not the oak wilt.

Mr. Anderson asked if the maple trees had been planted. Mr. Sargent responded yes.

Mr. Anderson asked about the pre-existing grade and Mr. Sargent provided a brief explanation of the grade.

Mr. Anderson asked they had attempted to establish grass in the patio area. Mr. Sargent indicated they had tried. The joints of the patio do allow water to pass through. Mr. Anderson opined that with the clay base, there may not be a lot of absorption.

Mr. Anderson observed the presence of a lot of ground between the structure and the river. He further opined that the DNR vegetation removal language is often times geared toward lake frontage vs. rivers and that the desire is to screen structures from a view from the water. He stated that he did not see any evidence of erosion.

Mr. Anderson asked staff about the calculation of the size of structures and if the overhang is considered in the calculation. Mr. Leary said that due to the supportive posts, the overhang in front would be considered part of the structure.

Mr. Grams and Mr. Jacques both indicated they had no further questions or comments.

Mr. Anderson asked for a motion to continue the meeting on November 4th.

Mr. Grams made a motion to continue the meeting at 7:00 p.m. on Wednesday November 4th. Mr. Jacques seconded the motion and the motion carried.

Mr. Grams made a motion to adjourn the meeting. Mr. Jacques seconded the motion and the meeting was adjourned at 9:22 a.m.

The meeting was continued on November 4, 2015. All members of the Board of Adjustment were present and Kurt Anderson proceeded as chair of the meeting. Mr. Anderson provided a brief overview of the proceedings of the October 7th regular BOA meeting and the meeting continuation on-site on October 14th.

The chair asked staff if there was any further information. Mr. Leary provided the Board with information supporting the applicant's request. This included a postcard from a unanimous individual and a supportive email from Jerry Groebner from the Lake Region Times. Mr. Leary also provided a copy of an email update from Dan Girolamo, DNR Area Hydrologist. In his email update, Mr. Girolamo reiterated his position that the bluff vegetation should be restored and the structure should be removed. Staff had no further testimony.

The applicants were present and had no further comment.

Mr. Femrite indicated he had not been to the site. He added that there are two issues involved, the erosion of the bluff and the structure.

Bill Anderson indicated he was able to meet with the BOA on October 14th, but he did have an opportunity to visit the site on his own.

The chair moved on to the findings of fact checklists.

FINDINGS OF FACT SUPPORTING/DENYING A VARIANCE

Name of Applicant: Doug Sargent Date: October 7, 2015 Variance Application #BOA 12-15

Parcel #R45-15-16-200-005

A variance may be granted only where the strict enforcement of county zoning controls will result in a practical difficulty. A determination that a "practical difficulty" exists is based upon consideration of the following criteria:

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? LF – Not in harmony, otherwise we would not be here. KA, BA, & BJ all agreed.

2. Has the applicant thoroughly explained the need for a variance from the official controls? Yes

Why or why not? KA – The applicants have done a good job explaining the need. BJ, BA & CG all agreed.

3. Is the alleged practical difficulty due to circumstances unique to this property? Yes

Why or why not? KA – Yes, the property is unique but it does include a lot of area before the river. BJ & BA agreed. LF indicated that a good job may have been done on the erosion control, but the building could have been placed anywhere and it may not be unique to the property.

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

Why or why not? KA – there are two issues, topography/erosion control and the structure. The applicant built the structure but the testimony and chronology provided indicates he did talk with someone from the county regarding a 12' x 12' structure and no permit required. What was actually discussed will not be known. There is blame to go around in a couple directions. All agreed.

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

Why or why not? KA – Protection of the bluff and shoreland areas.

6. Without the variance, is the owner deprived of a reasonable use of the property?

Why or why not? KA indicated NO adding that the applicant had lived there a long time and the building is an accessory building. CG stated that if the applicant hadn't done anything, the bluff issues may have affected his home. KA agreed and stated it is probably best to deal with both issues together.

7. Is the request the minimum variance necessary to afford relief?

Why or why not? KA – The applicants will not be moving stone walls to make more room.

8. Will the issuance of the variance maintain the essential character of the locality? Yes

Why or why not? KA – issuing the variance will keep things in place. It is a unique property and will not set future precedence. All agreed.

9. Will the public health, safety and environment be preserved if the variance is approved? All indicated YES.

Why or why not? All indicated it will not change.

Additional Findings of Fact for an After-The-Fact Request

1. Has the construction been completed? If not, what percentage of construction has been completed?
YES

2. Has the applicant adequately explained why they failed to obtain a variance/or comply with the applicable requirements before commencing work? YES

Why or why not? KA & CG – Yes. LF asked if the applicant obtained enough information from the county when he initially met with staff.

3. Does it appear the applicant has acted in good faith and tried to comply with the Ordinance? Yes

Why or why not? LF – The applicant did not know what the ordinance was. BA agreed. KA stated years ago the bank was failing. The applicant did seek input from the County Commissioner and the DNR to stabilize the bluff. He has also obtained the necessary permits for other structures.

4. Are there similar structures in the area? NO

Why or why not? All agreed that to their knowledge the answer is NO.

5. Does the applicant's burden of complying with the Ordinance outweigh the County's benefit of enforcing the Ordinance?

Yes () No ()

Why or why not? BA – Not sure. We want to protect the water, but moving the structure will possibly create some problems. The bank may not be as stable and equipment will be needed to remove the structure. LF – Erosion left unchecked will get worse and complying will be a burden on the owner. KA – yes, it will be of benefit to the county by not infringing on the bluff impact zone and the structure not in the bluff. LF, BJ and CG agreed with KA.

The Board provided some final comments. The general consensus was that the applicants had done a very good job on erosion control and stabilizing the bluff. There was some concern with the placement of the structure,

but all agreed that moving the structure would possibly negatively impact the integrity of the bluff. It was also indicated that removing the overhang of the structure and the deck would not likely accomplish anything. Disappointment of the matter involving the structure was expressed by Mr. Femrite.

There was no further comment by the Board.

Mr. Femrite made a motion to approve the request as presented.

Mr. Grams seconded the motion and the motion passed unanimously.

5. ADJOURNMENT

Mr. Femrite made a motion to adjourn the meeting. Mr. Anderson seconded the motion and the meeting was adjourned at 7:40 p.m.

Board of Adjustment Chair

Board of Adjustment Secretary