

MINUTES

Blue Earth County Board of Adjustment Regular Meeting Wednesday July 6, 2016 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 Bill Anderson, Kurt Anderson, Lyle Femrite, Chuck Grams and Barry Jacques. Planning & Zoning staff members Chris Hedin, Aaron Stubbs, and George Leary were also present.

2. APPROVAL OF MINUTES

Bill Anderson made a motion to approve the minutes from the June 1, 2016 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 07-16

Tom Davis - Request for review and approval of a variance to reduce the side yard setback from 50 feet to 38 feet for the purpose of constructing an addition to an existing dwelling. The property is zoned agricultural and is located in part of the Northeast Quarter of the Northeast Quarter of Section 5, Decoria Township.

Mr. Hedin presented the staff report.

The applicant was present and had no comment.

There was no public comment.

Mr. Femrite and Mr. Grams commented on the thoroughness of the report.

There were no further questions or comments from the Board.

The Board proceeded with the Findings of Fact Checklist.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *All indicated yes.*
2. Has the applicant thoroughly explained the need for a variance from the official controls? *All indicated yes.*
3. Is the alleged practical difficulty due to circumstances unique to this property? *All indicated yes.*
4. Were the circumstances causing the practical difficulty created by someone other than the landowner or previous landowners? *All indicated yes.*
5. Does the alleged practical difficulty involve more than economic considerations? *All indicated yes.*

6. Without the variance, is the owner deprived of a reasonable use of the property? *All indicated yes based upon the applicant submittal and comments provided by staff.*
7. Is the request the minimum variance necessary to afford relief? *All indicated yes.*
8. Will the issuance of the variance maintain the essential character of the locality? *All indicated yes.*
9. Will the public health, safety and environment be preserved if the variance is approved? *All indicated yes.*

Following the discussion, Mr. Grams made a motion to approve the variance as proposed.

Kurt Anderson seconded the motion and the motion passed unanimously.

BOA 08-16

David and Christy Keinz - Request for an after-the-fact variance to reduce the required setback from a bluff from 30 feet to 11 feet for an already constructed detached garage. The property is zoned agricultural and is located in the Northwest Quarter of the Northeast Quarter of Section 19, Decoria Township.

Mr. Leary presented the staff report.

The applicants were present. Mr. Keinz expressed his apologies to the Board for not obtaining a permit for the structure. He indicated he was unaware that a permit was required. He added that had they known of the setback requirements, they would not have placed it there. Mr. Keinz advised the Board that the structure has been in place for three years and there is no sign of erosion.

There was no other public comment.

Mr. Femrite indicated he is familiar with the property and the site is on the top end of the ravine system. He observed from the photos that there does not appear to be an erosion problem. He added that a mini pond could possibly be created to hold rainwater from the roof of the structure.

Mr. Jacques commented on the photos and indicated that with the addition of rain gutters, it looks good.

Mr. Grams asked where the water flows.

Mr. Femrite stated that it looks fairly flat.

Mr. Keinz stated that the farm field is well tiled. He added that the outlets go to the bottom of the ravine.

The Board moved on to the Findings of Fact Checklists.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *All indicated no. Mr. Femrite added that the action is in violation of the regulations.*

2. Has the applicant thoroughly explained the need for a variance from the official controls? *All indicated yes.*
3. Is the alleged practical difficulty due to circumstances unique to this property? *Kurt Anderson and Bill Anderson both indicated no.*
4. Were the circumstances causing the practical difficulty created by someone other than the landowner or previous landowners? *All indicated no.*
5. Does the alleged practical difficulty involve more than economic considerations? *Kurt Anderson indicated yes.*
6. Without the variance, is the owner deprived of a reasonable use of the property? *All indicated no.*
7. Is the request the minimum variance necessary to afford relief? *Kurt Anderson indicated yes.*
8. Will the issuance of the variance maintain the essential character of the locality? *Kurt Anderson and Mr. Femrite indicated yes.*
9. Will the public health, safety and environment be preserved if the variance is approved? *Kurt Anderson stated it could be answered either way. In three years there has not been any erosion although erosion could happen in the future. He also stated that taking proactive measures such as a pond and rain gutters will take pressure off the bluff. Mr. Grams and Mr. Femrite both indicated yes.*

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? *Kurt Anderson and Mr. Femrite both indicated approximately 90% is completed.*
2. Has the applicant adequately explained why they failed to obtain a variance/or comply with the applicable requirements before commencing work? *All indicated yes based upon the applicant's testimony.*
3. Does it appear the applicant has acted in good faith and tried to comply with the Ordinance? *Kurt Anderson said yes based upon the applicant's testimony.*
4. Are there similar structures in the area? *Kurt Anderson indicated staff has said yes.*
5. Does the applicant's burden of complying with the Ordinance outweigh the County's benefit of enforcing the Ordinance? *Kurt Anderson provided his opinion that approval of after-the-fact variances may give others the idea to proceed without a permit. He added that others may view the actions as a deterrent. He further added that with after-the-fact variances the Board often hears the applicants say they did not know of the obligations. The Board has already taken action on this request in 2014.*

Lyle Femrite stated it is not an easy decision to make.

Kurt Anderson answered the question by stating yes if appropriate measures are attached.

Following the review of the Findings of Fact Checklists, the Board resumed their discussion.

Mr. Femrite indicated the Board could meet on site, could consider alternative measures, or could act on the variance at face value.

Kurt Anderson indicated the staff report was thorough and complete. He added that the photos are of limited value. Mr. Anderson also stated that in the past he has been more comfortable after reviewing the site, but that he was ok with acting on the request based on the information provided.

Bill Anderson stated he was hung up on the fact that the variance was once denied. He agreed that a site visit might be beneficial, but also indicated there might be enough information to act on the request.

Mr. Jacques agreed with the comments expressed by Kurt Anderson and Bill Anderson.

Following the discussion, Kurt Anderson made a motion to continue the meeting and conduct a site visit with the Board and then return at the next monthly meeting to take action on the findings gathered at the site visit. Bill Anderson seconded the motion and the motion passed unanimously.

The meeting was not adjourned and will continue in August.

Continuation

The meeting reconvened at 7:00 p.m. August 3rd 2016.

The applicants were present.

With the exception of Mr. Femrite, all of the Board of Adjustment members visited the site.

Kurt Anderson indicated he walked down the ravine area and saw no evidence of additional erosion concerns.

Mr. Jacques also indicated he saw no erosion concerns and opined that the berm appears to be working.

Mr. Grams and Bill Anderson both concurred with statements made by Kurt Anderson and Mr. Jacques.

Mr. Femrite stated that with a berm and down spouts, the majority of the water could be kept from going over to the ravine.

Mr. Keinz thanked the Board members for reviewing the site. He indicated he was ok with rain gutters and a berm or running a line to the bottom of the ravine. He also advised the Board of the expenses associated with moving the structure.

Kurt Anderson thanked the applicants for their willingness to allow the Board members access to review the property. He added that it was valuable to review the site and gather the facts. Mr. Anderson referred to the Land Use Plan and the goal of preserving agricultural land. He added that in this case, the development of the property has not used up a lot of agricultural land and that the creation of the driveway may have prevented some the runoff from becoming an issue. He indicated that the structure has been in place for three years during which time there have been some pretty significant rainfall events. He added that enforcement is a deterrent and he believes the statements made by the applicant. He opined that the financial hardship to move the structure is relevant and moving the structure will likely require changing the bed of the driveway and will use up additional farm land.

Mr. Grams offered the option of adding oversized gutters to get the water away from the building.

Mr. Femrite indicated that the area to the side of the building is quite large and that a berm along the ravine may work. With a berm, a holding pond may not be needed. Mr. Femrite stated he was not in favor of directing the runoff into the ravine.

Kurt Anderson commented on the engineering of a holding pond. He offered instead, to have fill brought in for the berm. Mr. Femrite agreed and offered that the large area will allow the stormwater to infiltrate.

Mr. Jacques agreed with the fresh fill idea and the berm.

Bill Anderson indicated rock could be placed behind the building. Mr. Anderson explained how a waterway between the field and driveway could be graded that will take the runoff to the southwest.

Mr. Anderson continued by making a motion to approve the variance request with the following conditions:

- A one foot high berm shall be constructed at the top of the bluff area running to the north and south of the structure fifty feet each way.
- Rain gutters shall be added to the structure.
- Downspouts shall be added to carry the water to the sides.
- A waterway shall be graded between the field and the driveway to divert the water to the southwest.

Kurt Anderson seconded the motion with a cautionary statement. Mr. Anderson stated that the action taken by the Board is not intended to set precedence and those residents that proceed without permits are taking a financial risk by doing so. The motion carried unanimously.

5. ADJOURNMENT

There was not further business. Kurt Anderson made a motion to adjourn the meeting. Bill Anderson seconded the motion and the meeting was adjourned at 7:30 p.m.

Board of Adjustment Chair

Board of Adjustment Secretary