

## **MINUTES**

### **Blue Earth County Board of Adjustment**

**Regular Meeting Wednesday September 6, 2017**

**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, Barry Jacques and Joe Smentek. Planning & Zoning staff members Aaron Stubbs, Garrett Rohlfiging, and George Leary were also present.

#### **2. APPROVAL OF MINUTES**

Mr. Jacques made a motion to approve the minutes from the July 5, 2017 regular meeting of the Board of Adjustment. Mr. Smentek seconded the motion which carried unanimously.

#### **3. APPROVAL OF AGENDA**

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

#### **4. NEW BUSINESS**

##### **BOA 12-17**

**Jim Gross** - Request for review and approval of a multiple component After-the-Fact Variance to allow the impervious surface coverage on the lot to exceed 25%, to allow an already constructed Lake Access Path greater than 4 feet in width, and to allow an already constructed Beach Blanket that exceeds both County and State standards. The property is zoned Rural Residence, and is also within the Shoreland Overlay District of Lake Washington. The property is described as Lot 6, Block 1 of the Gurni Subdivision, and the portion of the now vacated CSAH 2 adjacent to the property. All located in part of the Northwest Quarter of the Northwest Quarter of Section 20, Jamestown Township.

Mr. Stubbs presented the staff report.

The applicant was present. He advised the Board he received the Staff Report at 6:00 PM the previous evening, and did not look at it until 8:00 PM. He stated the lake is green as grass, so it already had water quality issues. He stated that he has been blindsided by the Staff Report. He said when he purchased the property he called and asked about permit requirements for the interior of the house, and had no idea there were permits required for work to the actual property. The applicant presented photos to the Board of Adjustment, of properties on the Le Sueur County side of Lake Washington. He claims his project is due to ice heave damage. The applicant stated that staff has conducted inspections on his property without his knowledge. He asked the Board if staff is allowed to do so.

Mr. Stubbs stated that Mr. Gross signed his application on August 8, 2017, and he did not visit the site without the applicant's knowledge prior to him signing the application.

Mr. Gross stated that the pictures which show run-off were taken after a five-inch rain, he believes the hillside has sufficiently held up to the rain events. Mr. Gross stated that when he bought the property, an access path to the lake already existed. When he was cleaning the property, he had his contractor level the existing path. Mr. Gross stated he also cleared vegetation from the hillside.

Mr. Gross stated he purchased the property so he could take his wife and mother up and down the hill without using the stairs. The applicant stated he does want to remove the stairs. He also stated that the day he was onsite, Dan Girolamo was in support of the actions he had taken onsite as long as he replaced some trees. The applicant then questioned the letter sent by the Minnesota DNR that was not in support of the request.

Mr. Gross explained to the Board that the 2013 aerial image used in the Staff Report shows that there was sand on the property previously. He then questioned staff's use of historical images of the property in the Staff Report. Mr. Gross stated that he did not take pictures before he completed the project so there is no record to prove whether or not he increased the impervious surface on the property. He contends that he has not increased the impervious surface anywhere on the property. He stated the path, and beach blanket were already there.

Mr. Stubbs showed aerial images on the property from 2016, and explained there is no evidence to support the claim that the sand beach blanket was already there.

Mr. Gross asked that the aerial image from 2013 be shown. He claims that image shows sand on the beach area.

Mr. Stubbs stated that is snow that is shown in the area where the applicant claims there was a sand beach blanket.

Mr. Gross claims his property is so densely covered by vegetation, no grass or other vegetation will grow. He claims the sand will hold the water better than grass. He asked whether or not permits are required for the work he has done. He claims all he did was add rock to an existing path.

Mr. Femrite suggested the Board of Adjustment would be better served by conducting a Site Visit.

Mr. Gross stated he was in support of an onsite meeting.

Mr. Gross stated that staff has made a lot of assumptions in calculating the current impervious surface coverage. He stated the rock parking area was vegetation when he purchased the property. By adding the rock, he brought the property back up to standard.

Mr. Femrite again suggested the Board of Adjustment conduct an onsite visit. Mr. Kurt Anderson stated he was not opposed to that idea.

Mr. Bill Anderson stated a site visit would give him more insight on the proposal.

The Board of Adjustment discussed several different options for the onsite meeting.

Mr. Femrite asked the applicant if Tuesday, September 12<sup>th</sup> at 9:00 AM was acceptable to him. Mr. Gross agreed.

Mr. Kurt Anderson made a motion to continue the meeting at 9:00 AM on Tuesday, September 12, 2017, at the applicant's property. Mr. Smentek seconded the motion, which passed unanimously at 8:04 PM.

The onsite meeting was called to order at 9:00 a.m. by Chairman Lyle Femrite. Board of Adjustment members present were Bill Anderson, Kurt Anderson, Lyle Femrite, Barry Jacques and Joe Smentek. Planning & Zoning staff members Aaron Stubbs, Garrett Rohlfing, and George Leary were also present. In addition, Dan Girolamo from the MN DNR, and three neighbors were in attendance during the onsite meeting.

Mr. Femrite indicated that the Board had received emailed comments from Mr. Gross. Mr. Femrite requested that each item be reviewed and that the Board make a decision following a review of the findings-of-fact checklists.

Mr. Stubbs provided the Board members and the applicant handouts with pictures of the property and discussed the significance of each photo.

Mr. Gross asked Mr. Stubbs if he had permission to use the photos.

Mr. Stubbs responded that they were found on the internet.

Mr. Femrite discussed the parking area impervious surface. He indicated it is common to the area. He also indicated it appeared to be in the 50-foot public right-of-way.

Mr. Gross stated it is a private road. Mr. Gross also stated that the satellite images have different angles and they do not show the road. He added that the 3-inch rock can handle the runoff. He stated they have a large family and parking was limited. Mr. Gross stated that 15 to 20 stumps were cut out of the parking area.

Mr. Gross then demonstrated how the water flows and soaks into the area by dumping five gallon pails of water on various surface points.

Mr. Gross stated the rock area was all hostas and landscape at one time.

Mr. Femrite opined the rock area is a permeable surface.

Barb Birr asked for clarification of the ROW jurisdiction.

Mr. Femrite stated the ROW extends 25 feet from the centerline and that the jurisdiction is of the township.

Jerry Kallheim said Frank Hecht developed the area. Until it was blacktopped a few years ago, there were ditches on both sides of the road. He stated the road is owned by Deb Hecht and is designated on the plat as ROW.

Mr. Smentek asked if there was any parking in the area before.

Mr. Gross stated he could park there, but it was hostas and landscape. Ms. Birr stated that her parents had maintained the road and the ditches were critical. She added that the rock looks horrible.

Mr. Jacques asked Mr. Kallheim about the drainage.

Mr. Kallheim stated that before construction of the road, a holding pond was installed along with drainage intakes.

Mr. Leary stated the concern of staff is that over time fines will settle into the rock area and it will become impervious. Mr. Leary asked if the findings prepared by staff were available.

Mr. Kurt Anderson stated for the record he would suggest the findings of fact be reviewed at the October 4<sup>th</sup> meeting.

Mr. Smentek suggested the Board proceed with the review of the property.

Mr. Gross stated that the pictures and square footage area of the impervious surface on the west side of the house are inaccurate.

Mr. Stubbs stated the numbers were listed as approximate.

Mr. Gross stated there had been a path on the property. He added that the new path has handled the rain and that you can't see the path from above. He indicated he talked with the previous owner and the original path had been installed 25 years ago. He said the path was improved for his wife and parents to use.

Mr. Gross proceeded with a water demonstration by dumping five gallon pails of water over the rock trail and an area of seeded grass and erosion control fiber netting. He pointed out to the Board that the rock absorbed the water, while over grass it traveled some distance. He said the rock will not move and the path is five to six feet wide.

The path was then measured. It measured 8 ½ feet at the top, 8 feet in the curve, 8 feet a bit further down the path, and 10 feet at the bottom curve.

Mr. Femrite asked Mr. Stubbs about the placement of sand. Mr. Stubbs suggested that Dan Girolamo from the DNR address the question.

Mr. Girolamo stated the sandy beach blanket could extend out 10 feet beyond the ordinary high-water level of the lake.

Mr. Femrite stated that sand would certainly wash out into the lake.

Mr. Femrite asked the applicant what was in place of the sandy area before.

Mr. Gross stated it was mossy lawn. He said he added the boards to keep the sand in place. He also stated the hillside will be left as-is. He said he created a flat surface terrace.

Mr. Gross proceeded with the water test. He poured a five-gallon pail of water over the sand and one over the grassy area.

Mr. Gross stated there are still weeds growing under the stairs.

Mr. Gross asked about the sand box. He said Mr. Stubbs has sent him over 300 pages.

Mr. Femrite said the sandy area could be called a beach blanket, but he would call it covering the earth.

Mr. Gross said it is washed sand and native to the area.

Mr. Kurt Anderson asked Mr. Kallheim what the ice ridge situation was like.

Mr. Kallheim said the rock was pushed back.

Mr. Anderson asked what may have happen to the rock. He stated it does not match up with the photos and that it appears the stone has been moved. Mr. Anderson also observed that sand is infiltrating the rock.

Mr. Femrite stated that sand will move into the lake from an allowed sand blanket.

Mr. Smentek asked the applicant about the depth of the sand.

Mr. Gross said the sand is 6 to 8 inches deep and in some places 10 inches deep.

Mr. Femrite asked if the impervious surface area had been measured out to the road.

Mr. Stubbs stated he stopped the measurement at the approximate edge of the property.

Mr. Femrite suggested that calculation is correct as the area is not included in the ROW.

Mr. Gross asked Mr. Stubbs where he found the property line.

Mr. Stubbs indicated the lines were taken from county maps and are not survey accurate.

The group proceeded to the top of the stairs using the stairway.

While at the top, Mr. Leary directed the Board's attention to the area of fill in the bluff impact zone.

Mr. Bill Anderson asked if a berm could be constructed.

Mr. Femrite said it would concentrate the flow.

Mr. Femrite thanked Mr. Gross for access to the property.

Mr. Gross thanked everyone for coming out to the site.

Mr. Smentek made a motion to continue the meeting on October 4<sup>th</sup> at 7:00 p.m. at the County Board Room.

Mr. Kurt Anderson seconded the motion and the motion carried.

The meeting continuation 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, Barry Jacques and Joe Smentek. Planning & Zoning staff members Aaron Stubbs, Garrett Rohlfing, and George Leary were also present.

Mr. Femrite asked if staff had any additional information. Mr. Stubbs indicated staff had no further information to provide.

Mr. Femrite asked the applicant if he had any further comments.

Mr. Gross addressed the Board and provided review on a number of items. He started with the placement of rock near the driveway and road. He stated this area was impervious surface prior to the addition of the rock. The three-inch rock was added over the existing rock. Mr. Gross moved on to the stairs. He advised the Board that the stairs and walkway were there when he purchased the property. He added that the path is not made to be walked on. Mr. Gross finished his comments focusing on the sandy beach area. He indicated the DNR allows sand and that the area has not experienced major erosion even during five-inch rain events. He stated he did ad a box around the sand following his conversation with Mr. Stubbs who he said advised him that he could have a sand box and that there are no standards for them. Mr. Gross stated the area was a former roadbed and that grass does not grow there.

Deb Hecht James and Troy Leiferman addressed the Board. Ms. James stated that Valley News owns the road. She said Mr. Gross did fill in the parking area with gravel, cut down trees and filled in the drainage way. She said it is unacceptable and opined that some of the information provided by Mr. Gross was not factual. Ms. James said the road needs to be put back to the way it was. She said if this is ok for Mr. Gross, then it is ok for others.

Mr. Smentek asked Ms. James what the area looked like prior to Mr. Gross conducting the work. Ms. James provided the Board with a picture of the property.

There was no further public comment.

The Board discussed the three components of the variance request, starting with the impervious surface area. All seemed to suggest that the rock added near the road was out of character with the area.

Mr. Kurt Anderson provided a prepared statement addressing the impervious surface area including the gravel parking area in front. Mr. Anderson stated the Minnesota DNR considers crushed rock to be impervious. He said off street parking and emergency vehicle access is a concern for all the residents. With the 14-foot driving surface and t 50-foot ROW, it is unlikely to change in the foreseeable future and does present concerns for the health, safety and welfare of others. He added that the applicant's desire for additional off street parking is not a unique situation. Mr. Anderson stated that the aerial photography provided by staff is the most accurate depiction to date of the prior conditions existing on the property prior to the work on the property by the applicant. He added that photos are typically taken early in the year with leaf off conditions to allow for the clearest depiction of conditions beneath. He considered the photographic evidence to be credible.

Mr. Smentek concurred with Mr. Anderson's comments and added that the accuracy of the photos has been validated by others.

Mr. Jacques indicated he had talked with John Anderson, a former resident of the area. Mr. Anderson advised him that Brunz Construction was hired to construct the road. Mr. Anderson further advised him that the drainage has been altered. Mr. Jacques opined that someone else will receive the water. Other Board members agreed.

The Board moved on to a discussion of the width of the path.

Mr. Kurt Anderson provided a prepared statement on the access path. Mr. Anderson expressed his concern with the cutting and filling in the bluff zone, the placement of the material at the top of the bluff, future failure of the bluff, and further erosion. Mr. Anderson indicated the steep hillside is not unique and a request for prior approval to construct the path would not likely have been approved.

Mr. Smentek concurred with Mr. Anderson's comments. He added that he understood the need for an access path, but was concerned with the area of cut, slope of the path, width of the path and its construction. He added that a before the fact variance request would not likely have had his support.

Mr. Jacques concurred.

Mr. Bill Anderson suggested there will be problems with erosion.

Mr. Kurt Anderson opined that the fill is not stable, the project was not properly engineered and agreed that a before the fact variance would not likely have gained his support.

The Board moved on to the sandy beach area.

Mr. Femrite stated the DNR said sand may be placed next to the water. He added he was not concerned with sand entering the lake and that the project has far exceeded what is allowed by the DNR.

Mr. Smentek indicated he is concerned with sand and sediment. He also expressed his concern with the size of the beach area and that it did not fit the character of the area. He said it has covered up a lot of grass. He added the DNR standards allow a sand depth of six inches and the project measures 50' by 42 feet by twelve inches.

Mr. Kurt Anderson provided a prepared statement on the beach area. Mr. Anderson stated that the photos in the packet and others show the vegetation in the area similar to lawn. He added that problems with ice-out are common and the DNR is an excellent resource for property owners for information on ways to protect shorelines and to filter stormwater runoff. He said while on the site visit he observed shoreline alterations that had taken place since the April 2017 photos and that field stone that had been armoring were moved and a sloped access had been created. He stated that from the water's edge, it was apparent that significant runoff and erosion has taken place and the 50-foot by 42-foot area of sand placed above the ordinary high-water level is not stable and is very vulnerable to erosion either due to weather events or foot traffic. He stated that no practical difficulty that existed prior to the placement of the sand that would have been alleviated by what has been done. This is clearly a violation of the DNR rules and the county ordinance and the removal and restoration of the property is of a greater benefit to the county and its natural resources than the practical difficulty created by the order to remove.

Mr. Bill Anderson said a sandbox is fine, but not this large and added that the DNR standards would be good.

Mr. Smentek reviewed the state 50-foot buffer requirement.

The Board discussed the removal of the stairs and seemed to be in agreement this would be a detriment.

The Board moved on to the Findings of Fact Checklist

**FINDINGS OF FACT  
SUPPORTING/DENYING A VARIANCE**

Name of Applicant: Gross Revocable Family Trust

Date: 10/04/2017

Parcel #: R37-05-20-101-002 Variance Application #: BOA 12-17

The criteria for the granting of a variance are set forth in Chapter 24 of the Blue Earth County Ordinance, Section 24-48(j). Variances will only be issued when the Board of Adjustment answers “Yes” to each of the six questions set forth below.

Item (a) – To increase the maximum allowed impervious surface coverage from approximately 32% to approximately 42%

1. Is the variance in harmony with the general purposes and intent of the official control?  
*All indicated no. Mr. Smentek indicated for the reasons listed by staff and Board of Adjustment comments.*
2. Is the variance consistent with the goals and policies of the comprehensive plan (also referred to as the “Blue Earth County Land Use Plan”)?  
*Mr. Smentek indicated for the reasons listed by staff. Mr. Kurt Anderson agreed.*
3. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?  
*Mr. Smentek indicated for the reasons listed by staff. Mr. Femrite agreed along with observations made on site. Mr. Kurt Anderson agreed.*
4. Is the need for the variance due to circumstances unique to the property and not created by the landowner?  
*Mr. Bill Anderson stated it is different than the neighboring lots. Mr. Smentek indicated not for the reasons listed by staff. He added that the applicant created this.*
5. Will the issuance of the variance maintain the essential character of the locality?  
*Mr. Smentek, Mr. Bill Anderson and Mr. Kurt Anderson all stated no, it will not maintain the essential character due to the activities the owner has done.*
6. Does the need for the variance involve more than economic considerations?  
*Mr. Smentek said no, there are no other good reasons and it is nothing more than economic.*

Item (b) – To increase the maximum allowed width of an impervious Lake Access path from 4’ to a minimum width of 6’ but no wider than 8’.

1. Is the variance in harmony with the general purposes and intent of the official control?  
*Mr. Smentek, Mr. Femrite and Mr. Kurt Anderson all indicated no for the reasons listed by staff.*
2. Is the variance consistent with the goals and policies of the comprehensive plan (also referred to as the “Blue Earth County Land Use Plan”)?  
*Mr. Smentek, Mr. Femrite and Mr. Kurt Anderson both indicated no for the reasons listed by staff and due to erosion concerns.*
3. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?  
*Mr. Kurt Anderson referenced a segment of the staff report stating using an access path as a means for access to the lake is a reasonable use of the property. However, it is unclear how expanding the path beyond the allowed four feet in width is a reasonable request. Mr. Anderson stated what has been done is unreasonable. Mr. Femrite stated it is beyond what we would consider normal. Mr. Smentek said doing the path is reasonable, but not a path of this size.*
4. Is the need for the variance due to circumstances unique to the property and not created by the landowner?  
*Mr. Kurt Anderson, Mr. Smentek and Mr. Femrite all stated no for the reasons listed by staff.*
5. Will the issuance of the variance maintain the essential character of the locality?  
*Mr. Smentek, Mr. Jacques, Mr. Femrite and Mr. Kurt Anderson all stated no, for the reasons listed by staff.*
6. Does the need for the variance involve more than economic considerations?  
*Mr. Smentek said no, for the reasons listed by staff.*

Item (c) – To increase the maximum allowed vegetation removal in the Shore Impact Zone from zero to 2100 ft<sup>2</sup> to accommodate an already constructed 50’ x 42’ Beach Blanket.

1. Is the variance in harmony with the general purposes and intent of the official control?  
*All indicated no for the reasons listed by staff.*
2. Is the variance consistent with the goals and policies of the comprehensive plan (also referred to as the “Blue Earth County Land Use Plan”)?  
*All indicated no for the reasons listed by staff.*
3. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?  
*All indicated no for the reasons listed by staff.*

4. Is the need for the variance due to circumstances unique to the property and not created by the landowner?  
*All indicated no for the reasons listed by staff.*
5. Will the issuance of the variance maintain the essential character of the locality?  
*All indicated no for the reasons listed by staff.*
6. Does the need for the variance involve more than economic considerations?  
*Mr. Smentek said no. Mr. Kurt Anderson said the applicant has not offered a practical difficulty.*

Mr. Kurt Anderson stated the Board of Adjustment is often faced with making difficult decisions and their actions do not set precedence by allowing or denying a request. He added this matter is not taken lightly and it is preferred that residents of the county go through the proper process, especially in shoreland and that ignorance of the law is not an excuse.

Mr. Smentek concurred. He added that the Board went through the findings of fact and there was more in the report that was not reviewed since that threshold was not crossed, but that is what the Board has to consider. He added there are other things on the lake that are not so great and another county is involved and each county does things differently, but we are working under the Blue Earth County ordinances with these standards in front of us.

Mr. Femrite moved on to the vote. He suggested that the removal of the stairs should not be considered and that it was not reasonable to do so. Mr. Kurt Anderson agreed and said he did not support action to remove the stairs.

Mr. Smentek asked for justification for the removal of the stairs.

Mr. Femrite stated it was due to the amount of impervious surface area but we also need to consider the practicality.

Mr. Kurt Anderson made a motion to deny the after the fact request to increase the maximum allowed impervious lot coverage from approximately 32% to approximately 41% sighting the findings of fact provided by staff and comments made by the Board at both hearings as well as on site. And to change the dates for implementation of compliance to December 1<sup>st</sup>, 2017 and to remove item 2 from the list which required removal of the stairs from the property to October 1<sup>st</sup>.

Mr. Stubbs stated that condition number five comes from state statute and all of the other dates may be changed by the Board.

Mr. Smentek commented on the state statute regarding the 50-foot buffer law. He stated there had been vegetation there. He suggested that it was not under the Board of Adjustment's authority to override a state statute. He suggested to make the condition that the applicant remove sand and work with the Soil and Water Conservation District (SWCD) to meet the November 1<sup>st</sup> deadline of the statute. He added that the SWCD has the ability to grant up to an eight-month plan to get it accomplished. Mr. Smentek stated that if not completed by November 1<sup>st</sup> or without the extension, the property owner would be in violation of state law.

Mr. Kurt Anderson amended his motion to change the dates on item numbers one and three to December 1<sup>st</sup>, 2017, to strike item number two and to amend number five to continue to read November 1, 2017 and or to work with the SWCD office on a plan for compliance.

Mr. Smentek seconded the motion and the motion carried.

The Board moved on to the request to increase the maximum allowed width of an impervious Lake Access path from 4' to 6', but no wider than 8' feet at the turn.

The Board discussed the compliance dates of this item and acknowledged that the rock needs to remain in place in order to remove the sand. The added that erosion control is a priority. December 1, 2017 was discussed for the removal of the rock and November 1<sup>st</sup> was discussed for the installation of proper erosion control.

Mr. Smentek made a motion to deny the request to increase the maximum allowed width of an impervious Lake Access path from 4' to 6', but no wider than 8' feet at the turn with the conditions proposed by staff with amended dates for item one for the removal of the rock to December 1, 2017 and for item three for the installation of erosion control by November 1, 2017.

Mr. Kurt Anderson seconded the motion and the motion carried.

The Board moved on to the request to increase the maximum allowed dimensions of a beach blanket from 50' x 10' x 6" to 50' x 42' x 6".

Mr. Smentek made a motion to deny the request to increase the maximum allowed dimensions of a beach blanket from 50' x 10' x 6" to 50' x 42' x 6" as recommended by staff with an amendment to item five to a compliance deadline for erosion control to be installed prior to November 1, 2017.

Mr. Kurt Anderson seconded the motion and the motion carried.

## **5. ADJOURNMENT**

Mr. Kurt Anderson made a motion to adjourn the meeting. Mr. Smentek seconded the motion and the meeting was adjourned at 8:05 p.m.

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Board of Adjustment Chair

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Board of Adjustment Secretary