

## **MINUTES**

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

#### **Regular Meeting**

**Wednesday, October 2, 2019**

**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 Kurt Anderson, Bill Anderson, Lyle Femrite, Barry Jacques and Joe Smentek. Staff members Aaron Stubbs, Garrett Rohlfing, Alex Murray and George Leary were also present.

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

Mr. Bill Anderson made a motion to approve the minutes for the September 4<sup>th</sup>, 2019 regular Board of Adjustment meeting. Mr. Smentek seconded the motion and the motion carried unanimously.

#### **3. NEW BUSINESS**

##### **BOA 14-19**

**Medo Lutheran Church** - Request for review and approval of a series of Variances to reduce the required buildable area of a parcel from one acre to zero and to reduce the property line setback from 50 feet to 10 feet to allow the parcel to be split. The property is zoned Agricultural and is located in the northwest corner of the Northwest Quarter of the Northwest Quarter of Section 25, Medo Township.

Mr. Leary presented the staff report.

Mr. Brad Potter, a representative of Medo Lutheran Church, was present and had no initial comments.

Mr. Femrite asked for clarification on the buildable area of the parsonage. Mr. Leary stated the double road frontage and the property line setbacks reduced the buildable area to 2,120 square feet. Future locations for a septic drainfield were also discussed.

Mr. Leary advised the Board of an email he had received from the County Public Works Director indicating the parking areas along the County Road need to be removed at the County's expense.

Mr. Kurt Anderson commented that the removal would not leave much room for parking.

Mr. Brad Potter expressed some concern with the removal of the parking area. He added that the church is looking at a similar use to what they have now, it could be a church retreat. It would not be good to have no parking on site, for example if there was a funeral. The cemetery still has burial plots and parking would be required for the funerals. It would be convenient for future property owners.

Mr. Femrite stated it would not be part of the action of the Board of Adjustment.

Mr. Leary added that it may not be needed as a condition of the resolution, but rather something that the applicants need to work out with the Public Works Department.

The Board moved on to the Findings of Fact Checklist.

**FINDINGS OF FACT**

**SUPPORTING/DENYING A VARIANCE**

Name of Applicant: Medo Lutheran Church

Date: 10/02/2019

Parcel #: R46.20.25.100.006

Variance Application #: BOA 14-19

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.

1. The variance is in harmony with the general purpose and intent of the official control.  
*All indicated Yes. The stated purpose of the Agricultural district is to allow extensive areas of the County to be preserved for agricultural-related uses. No new development is proposed, and none is likely in the future due to the extreme limitations of each proposed parcel. Therefore, it appears the request is in harmony with the general purpose and intent of the official control.*
  
2. The variance is consistent with the intent of the Comprehensive Plan.  
*All indicated Yes. The agricultural Goal of the Land Use Plan is to maintain the County’s agricultural areas by limiting new development. As discussed previously, no new development is proposed, and future development appears unlikely. Therefore, it appears the request is consistent with the intent of the Comprehensive Plan.*
  
3. The property owner proposes to use the property in a reasonable manner not permitted by an official control.  
*All indicated Yes. As a combined parcel, the property has limited options other than as a church with an associated parsonage and cemetery. If allowed to be split, the parsonage could be sold as a single-family dwelling and the church parcel could be sold and repurposed. The proposed cemetery parcel would remain under control of the Medo Lutheran Church or a similar entity. Therefore, it appears the property owner is proposing to use the property in a reasonable manner that is not permitted by official control.*
  
4. The plight of the landowner is due to circumstances unique to the property, not created by the landowner.  
*All indicated Yes. The property was developed throughout the 40’s and 60’s. Since its time of development, regulation changes have made it difficult for the church to expand or be separated and repurposed within the confines of those regulations. Therefore, it appears the plight of the landowner is due to circumstances unique to the property, and not created by the landowner.*
  
5. The variance will not alter the essential character of the locality.  
*All indicated Yes. The essential character of the locality is both residential and agricultural in nature. No new development is proposed, and future development would be extremely limited, if not doubtful. Therefore, it appears the issuance of the variance will not alter the essential character of the locality.*
  
6. The practical difficulty includes more than economic considerations alone.  
*All indicated Yes. The need for a single parcel to support a church, its associated parsonage, and cemetery no longer exists. The remaining members no longer have a need for the church or parsonage. Separating these two structures onto their own retaining ownership of the cemetery, better meets the needs of the applicants. Therefore, it appears that the practical difficulty in this request includes more than economic considerations alone.*

There was no further discussion and no further questions.

Mr. Kurt Anderson made a motion to approve the variance and to adopt the findings as proposed by staff.

Mr. Bill Anderson seconded the motion and the motion carried unanimously.

**BOA 15-19**

**Robert & Carla Diesch** - Request for review and approval of an After-The-Fact Variance to reduce the required setback to a bluff from 30 feet to 10 feet to allow a deck to remain in place. The property is zoned Conservation and is located in part of the Southeast Quarter of the Southwest Quarter of Section 6, Rapidan Township.

Mr. Rohlfing presented the staff report.

Mr. Diesch was present and accepted responsibility for not obtaining a construction permit and provided the following information:

1. The pre-existing structure needed to be replaced because of its age and condition.
2. Pictures of the old structures show deterioration of the retaining wall.
3. The new structure includes retaining wall support footings for the garage and a deck which protrudes 24 inches out from the previous retaining wall. The previous retaining wall did not meet the required 30-foot setback.

Mr. Diesch welcomed the Board to visit the site.

Mr. Kurt Anderson indicated that if the applicant were to remove the newly constructed deck, the corner of the garage would still not comply with the setback. Railroad tie walls age and are no longer ideal, so replacement of the deck and reduction of impervious surface is beneficial to the property.

Mr. Femrite concurred the pre-existing retaining wall was within the setback.

Mr. Smentek expressed concern that the Board did not see the pre-existing structure footprint which may cause issues.

Mr. Kurt Anderson questioned what the Board would have concluded if the applicant had asked for permission up front and encouraged the Board to review on site to gather more information, but not take action until the next meeting.

Mr. Jacques stated that it might not be advantageous to remove the newly constructed deck.

Mr. Bill Anderson stated that the applicants have spent a lot of time and money to prevent erosion.

Mr. Kurt Anderson made a motion to continue the meeting on-site at 1:00 p.m. Monday, October 7, 2019.

Mr. Smentek seconded the motion.

The meeting reconvened at 1:00 p.m. October 7<sup>th</sup>. All Board of Adjustment members were present. Blue Earth County staff and the applicant were also present.

Mr. Diesch provided comments on remarks previously made indicating there are no similar structures in the area. He said this is in part because there are no immediate neighbors. He added the area had been farmed prior to the construction of the house. Mr. Diesch showed the Board how the existing footings lined up with the previous deck. He added that the rock retaining wall is within the footprint of the previous structure.

The Board briefly discussed erosion concerns. The possibility of adding a slight berm to redirect runoff was discussed. Some concern was expressed with the possibility that a berm might create an issue in a focused spot. Potential impact of the redirected water on the septic drainfield was also mentioned. Mr. Diesch said he had received over 2 ½ inches of rain over the weekend and no erosion issues resulted.

Mr. Kurt Anderson and Mr. Femrite both commented that the bluff appears stable.

Mr. Jacques indicated as he compared the original deck with the new structure, he did not see a problem.

Mr. Bill Anderson concurred with Mr. Diesch on the amount of recent rainfall and that it did not appear to impact the area of concern.

Mr. Smentek also compared the old and the new. He added that the new structure could not have been much shorter, and he understands the need for the variance.

Mr. Femrite asked about roof drains. Mr. Diesch pointed them out.

Mr. Kurt Anderson commented on the retaining wall and the earth behind it. He added that the wall and soil provide the necessary frost protection.

Mr. Smentek concurred.

Mr. Femrite added the soil behind the rock wall is providing some water retention.

The possibility of adding some crushed rock near the deck steps would cover the bare soil in that area.

There was no further discussion and the meeting is scheduled to resume at 7:00 p.m. November 6<sup>th</sup>.

**The meeting reconvened at 7:00 p.m. November 6<sup>th</sup>.**

Mr. Femrite provided a summary of the October 7<sup>th</sup> on-site review.

Rapidan Township Supervisor Ray Cornelius stated he was pleased that the Board of Adjustment met on site.

There was no further discussion on the request and the Board moved on to the findings of fact checklists.

**FINDINGS OF FACT**

**SUPPORTING/DENYING A VARIANCE**

Name of Applicant: Robert and Carla Diesch

Date: 11/06/2019

Parcel #: R48.13.06.376.010

Variance Application #: BOA 15-19

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.

1. The variance is in harmony with the general purpose and intent of the official control.  
*All indicated Yes. The setback requirement to the top of a bluff in the Conservation District is 30 feet. The purpose and intent of this regulation is to protect and preserve the integrity of the bluff and nearby structures. The placement of the deck expansion does not appear to compromise the integrity of the bluff. Therefore, the after-the-fact variance appears to be in harmony with the official control.*
2. The variance is consistent with the intent of the Comprehensive Plan.  
*All indicated Yes. The County Land Use Plan includes a Community Resilience objective designed to minimize bluff erosion and erosion hazards throughout the County. This project included removal of a concrete patio, concrete sidewalk, and landscape fabric. The removal of these items has increased the amount of pervious surface area. Therefore, the project appears to be consistent with the intent of the comprehensive plan.*
3. The property owner proposes to use the property in a reasonable manner not permitted by an official control.  
*All indicated Yes. A deck is a common accessory to a single-family dwelling. The condition of the pre-existing structures, including the deck, concrete patio and sidewalk, and railroad tie retaining wall, were all deteriorating beyond repair. The existing garage access needed to be updated to provide a safer access. The need for a safe access and the maintenance of the pre-existing structures represent a reasonable use not permitted by an official control.*
4. The plight of the landowner is due to circumstances unique to the property, not created by the landowner.  
*All indicated Yes. The existing house was constructed in 1980. The placement of the house in proximity of the bluff and the layout of the house, including its access points, have created circumstances that are unique to the property and not created by the current landowner.*
5. The variance will not alter the essential character of the locality.  
*All indicated Yes. The area is zoned conservation where decks are a common accessory to a single-family dwelling. The structure does not appear to alter the essential character of the locality.*
6. The practical difficulty includes more than economic considerations alone.  
*All indicated Yes. The pre-existing deck and retaining wall with sidewalk needed improvement. The previous layout left the homeowner with a significant sized step when coming out of the garage, which then led to a concrete sidewalk sloped down to a patio. The pre-existing conditions proved to be somewhat concerning during the winter months. Deck expansion appears to have provided a*

*safer access point in and out of the garage. The need to improve safety represents a practical difficulty that includes more than economic considerations.*

**ADDITIONAL FINDINGS OF FACT  
SUPPORTING/DENYING AN AFTER-THE-FACT VARIANCE**

1. Did the applicant act in good faith? Was there any attempt to comply with the ordinance? *All indicated YES. The applicant was made aware of this issue by the County Assessor's office. The applicant immediately contacted Planning and Zoning staff to inquire about how to proceed. A search of County records indicates the applicant has obtained several land use permits in the past and has no pending or closed code enforcement cases.*
2. Did the applicant make a substantial investment of money into the project? *All indicated YES. The applicants indicated the project cost in excess of \$20,000.*
3. Did the applicant fully complete the project? *All indicated YES. The construction of the deck is complete.*
4. Are there similar structures in the area? *All indicated No.*
5. Would the benefit to the county be outweighed by the burden on the applicant, if the applicant is required to comply with the ordinance? *All indicated No. Allowing structures to remain where constructed without a permit and without meeting the required setbacks only continues the problems associated with after-the-fact variance requests.*

Mr. Kurt Anderson thanked the applicant on how he handled himself and for the opportunity to meet on-site. Mr. Smentek concurred.

There was no further discussion and no further questions.

Mr. Smentek made a motion to approve the variance and to adopt the findings as proposed by staff.

Mr. Bill Anderson seconded the motion and the motion carried unanimously.

**4. ADJOURNMENT**

Mr. Smentek made a motion to adjourn the meeting. Mr. Jacques seconded the motion and the meeting was adjourned at 7:17 p.m.

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Board of Adjustment Chair                      Date

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Board of Adjustment Secretary              Date