

MINUTES
Blue Earth County Board of Adjustment
Regular Meeting
Wednesday, June 1, 2011
7:00 p.m.

1. CALL TO ORDER

The meeting was called to order at 7:00 P.M. by Lyle Femrite. Board of Adjustment members present were Kurt Anderson, Lyle Femrite, Chuck Grams, Bill Anderson and Don Gerrish. Land Use and Natural Resources staff present was George Leary and Sara Isebrand.

2. APPROVAL OF MINUTES

Mr. Bill Anderson made a motion to approve the minutes from the June 1, 2011 meeting of the Board of Adjustment. Mr. Gerrish seconded the motion which carried unanimously.

3. APPROVAL OF AGENDA

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

4. NEW BUSINESS

BOA 02-11

Paul Collis - Request for an after-the-fact variance to reduce the required 30 foot bluff setback from 30 feet to zero feet for a four-season structure and deck located in the Conservation and Shoreland Zoned Districts in the NE 1/4 of the NW 1/4 of Section 19, South Bend Township. The location address is 53804 208th Lane, Mankato MN 56001.

Mr. Leary presented the staff report.

The applicant was present and read a prepared statement to the Board of Adjustment. In his statement he indicated he had discussed his proposal to construct a small storage shed with former Zoning Administrator Veryl Morrell. He added that Mr. Morrell indicated that a permit was not needed for a small storage structure. Mr. Collis also indicated he was unaware of the permit threshold for a storage structure.

Mr. Collis stated when his original request was presented to the Board of Adjustment that one of the members indicated he was tired of these after-the-fact variances. Mr. Collis expressed his concern with the potential impact on the bluff if the structure were to be moved. Mr. Collis finished with a brief discussion on informing the public of the permit requirements and asked for the Board's approval.

There was no public comment.

Bill Anderson asked Mr. Leary if there was any evidence of erosion of the bluff area due to the placement of the structure.

Mr. Leary responded that he was unaware of such erosion and added that he was on the site after the heavy rains that occurred in September of 2010 and there appeared to be no negative impact.

Kurt Anderson stated he had visited the site and asked the following questions:

1. To the Board – Had any members had any contact regarding the second application? All indicated no with the exception of Mr. Femrite who indicated he had received a copy of the Omni Environmental letter from Mr. Leary.
2. To Mr. Leary – Was the structure in question constructed in 2004? Mr. Leary responded yes.
3. To applicant – What was the original cost of the structure? Mr. Collis responded between \$15,000 and \$16,000.
4. To applicant – What was the original intent for the structure? Mr. Collis responded for storage and an outdoor getaway.
5. To applicant – Have you received any compensation for the use of the structure? Mr. Collis responded no.
6. To applicant – Have you obtained any estimates to move or remove the structure? Mr. Collis responded that he looked into this and was told that the structure would likely be destroyed during the process. He stated the person he talked to was from the Madelia or St. James area.
7. To applicant – Did Omni Environmental indicate anything in particular that needed to be addressed? Mr. Femrite stated no.

Kurt Anderson stated his opinion that the hardship claims were self inflicted and that they are the same as a couple of years ago. He added that being it is a storage structure and the fact that the applicant has a 60 by 120 foot storage structure, the applicant will not suffer the loss of the use of the structure. He added that it is his professional opinion that the structure can be moved in tact if done correctly. Mr. Anderson added that the applicant has had ample opportunity to make changes or to appeal the original decision to district court and this has the appearance of a willful disregard for the land use ordinance. Mr. Anderson stated that the county is zoned and that it is widely known that permits are required and this was apparent of the applicant when he asked the questions at the time of purchase.

Mr. Femrite asked Mr. Leary if the storage structures referred to by Mr. Morrell are not generally or exclusively portable. Mr. Leary agreed. Mr. Femrite added that these structures are intended to be portable and on skids, a moveable structure, not something on a permanent foundation.

At this point the Board moved on to the Variance Checklist.

FINDINGS OF FACT SUPPORTING/DENYING A VARIANCE

Name of Applicant: Paul Collis Date: 07/06/2011 Variance Application #BOA 02-11

Parcel #R50-08-19-100-005

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? Yes (0) No (3)
Kurt Anderson, Gerrish, and Femrite all indicated NO.
 Why or why not? No comments.

2. Without the variance, is the owner deprived of a reasonable use of the property? Yes (0) No (3)
Kurt Anderson, Bill Anderson, and Gerrish all indicated NO.
 Why or why not? Because the structure can be moved.

3. Is the alleged practical difficulty due to circumstances unique to this property?
Bill Anderson – YES All others - NO Yes (1) No (4)
 Why or why not? *Bill Anderson stated that the engineering company has indicated there will be more harm than good and the applicant is willing to add rain gutters. Bill Anderson stated that the applicant has not created the problem. Kurt Anderson disagreed and stated the applicant has caused the problem.*
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners?
Bill Anderson, Kurt Anderson, Gerrish and Grams all indicated NO Yes (0) No (4)
 Why or why not? *No comments.*
5. Will the issuance of the variance maintain the essential character of the locality?
Kurt Anderson and Femrite indicated it was debatable but likely YES. Yes (2) No (0)
 Why or why not? *No other comment.*
6. Does the alleged practical difficulty involve more than economic considerations?
Bill Anderson, Femrite and Grams – YES Kurt Anderson and Gerrish – NO Yes (3) No (2)
 Why or why not? *Bill Anderson stated that the water runs away and it is more than an economic consideration. Kurt Anderson asked if any estimate was obtained for removal and added that technology would allow for the removal without compensating the integrity of the hillside.*

After-the-fact variance questions:

1. Has the construction been completed? – *Yes.* Why or why not? - *No Comment.*
2. Does it appear the applicant has acted in good faith and tried to comply with the Ordinance? *Femrite – No. Kurt Anderson – Stated there has been two years to fix the problem.* Why or why not? – *No other comment.*
3. Are there similar structures in the area? – *Bill Anderson and Femrite stated we do not know.* Why or why not? – *No other comment.*
4. Does the applicant’s burden of complying with the Ordinance out weigh the County’s benefit of enforcing the Ordinance? – *Gerrish stated maybe yes. Kurt Anderson asked if we don’t enforce the ordinance, why have it? Femrite stated if we look only at the Omni report, we are justifying the action based upon the report when we really faced with an after-the-fact violation.*

There was no other discussion.

Kurt Anderson made a motion to deny the variance with the added condition that the applicant shall obtain an after-the-fact construction permit prior to moving the structure and shall follow the Blue Earth County Environmental Services instructions for precautions that need to be observed and implemented for restoration of the site, or reclamation of the site to ensure no further damage will occur. Mr. Gerrish seconded the motion. The motion to deny the request was approved by a vote of four to one. Kurt Anderson, Chuck Grams, Don Gerrish, and Lyle Femrite voted in favor of the motion and Bill Anderson voted in opposition to the motion.

BOA 03-11

Dennis Leiding - Request for a variance to reduce the required setback to a neighboring dwelling from 1,000 feet to 245 feet and the required setback to a property line from 50 feet to 10 feet for the purpose

of expanding an existing swine finishing operation. The property is zoned Agricultural and is located in the NE 1/4 of the NE 1/4 of Section 35, Lyra Township.

Mr. Leary presented the staff report.

The applicant was present. He indicated his son will be the 4th generation which is why he is applying for the variance. He indicated the existing finishing barn is capable of housing 300 pigs and that most integrators require 500 to 1,000 head capacity. He added it is likely the proposal will be for one 500 head finishing barn bringing the total to 800 pigs. The manure will be used in place of fertilizer. The north finishing barn will require some repair as it was built in 1984 and has a concrete floor. The southern barn was a farrowing barn and will likely be taken down. He concluded by stating that he is open to possible remedies to reduce the odor from the site.

James Marble indicated he is purchasing the farmstead to the southeast. He added that the Leiding site is in a state of disrepair. If the site is brought up to standards, he would not have an issue with the request.

Mr. Femrite asked when the homes were constructed.

Mr. Leiding stated the closest home was constructed in 1994.

Mr. Leary stated the second closest home was likely constructed many years ago.

There was a discussion and clarification of the request to reduce the east property line setback.

There was also a question and clarification regarding the ownership of the closest affected home. Deutsch Bank from Fort Worth Texas owns the property and the county had received notice from their representative that they are opposed to the requested variance.

Mr. Gerrish indicated that it is not very often that the Board of Adjustment receives notice of opposition to variance requests and that this should be taken into consideration.

Mr. Femrite asked if this site is a permitted feedlot.

Mr. Leary stated that it is a permitted feedlot and reviewed the MPCA 7020 regulations involving site inactivity, recertification of manure storage structures and/or abandonment.

Kurt Anderson asked the applicant if he owner other property where the setbacks can be met.

The applicant indicated that he owns other property but variances would be needed at these sites also.

Mr. Femrite commented that this is a permitted site and has been there for some time.

There was no further discussion and the Board of Adjustment moved on to review of the variance checklist.

FINDINGS OF FACT SUPPORTING/DENYING A VARIANCE

Name of Applicant: Dennis Leiding Date: 07/06/2011 Variance Application #BOA 03-11

Parcel #R42-18-35-200-006

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? Yes (2) No (3)
Kurt Anderson, Bill Anderson and Lyle Femrite indicated NO. Chuck Grams and Don Gerrish indicated YES.
Why or why not? No comments.
2. Without the variance, is the owner deprived of a reasonable use of the property?
Don Gerrish indicated yes, the intent is to farm. Kurt Anderson indicated NO. He added that the applicant has reasonable use of the property. If not granted a variance to put the barn at the proposed location he can still use the property in its current capacity. Bill Anderson also said no – because the applicant has a permit for the barn that is already there. Yes (2) No (3)
Why or why not? No other comment.
3. Is the alleged practical difficulty due to circumstances unique to this property?
Don Gerrish – YES, adding there are many property line issues with the exception of the one location in the field. Kurt Anderson stated this is not unique to this property and there are many feedlots around county that would run into these same difficulties and referenced the Pongratz feedlot site. Bill Anderson agreed with Kurt Anderson. Yes (2) No (3)
Why or why not? Bill Anderson stated that the engineering company has indicated there will be more harm than good and the applicant is willing to add rain gutters. Bill Anderson stated that the applicant has not created the problem. Kurt Anderson disagreed and stated the applicant has caused the problem.
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners?
All indicated NO and there was no comment. Yes (0) No (5)
5. Will the issuance of the variance maintain the essential character of the locality?
All indicated YES. Yes (5) No (0)
Why or why not? No other comment.
6. Does the alleged practical difficulty involve more than economic considerations?
All indicated YES Yes (5) No (0)
Why or why not? No other comment.

Bill Anderson made a motion to deny the requested variance for the feedlot expansion. He added (from a lending perspective) that there are a number of similar instances that lenders will not accept. He also stated that there are many places in Blue Earth County where swine barns cannot and should not be built. Mr. Anderson added his concern with the location of the nearest affected neighbors. He commented that the applicant does have one 300 head finishing barn already.

Kurt Anderson seconded the motion.

The motion was defeated by a vote of two in favor (B. Anderson and K. Anderson) and three opposed (Femrite, Gerrish, and Grams).

Mr. Gerrish made a motion to approve the requested variance. The motion died due to lack of a second.

Kurt Anderson stated that the Board of Adjustment members have many different experiences. He stated that many lenders want the home separated from the farming operation. He stated that it is unlikely that the bank, located in Fort Worth Texas will move into the home and that their interest is to sell the home. He commented that if the home was owned and occupied by the applicant he would be more likely to approve request. Mr. Anderson stated that constructing a swine barn is similar to other decisions made by farmers and in this instance the applicant does have other options.

Bill Anderson agreed with Kurt Anderson's comments. He added that if the proposed feedlot was 800 feet or more out into the field the variance proposal would have his support.

Kurt Anderson agreed with Bill Anderson's comments on the location. And made a motion to deny the request as it is presented.

Mr. Femrite stated that same motion has already been voted on.

Kurt Anderson indicated that motion was Bill Anderson's motion.

Mr. Grams asked of the difference between the two motions.

Mr. Femrite stated there is no difference.

Kurt Anderson indicated that more testimony had been introduced.

Bill Anderson seconded the motion on the table.

The motion was defeated by a vote of two in favor (B. Anderson and K. Anderson) and three opposed (Femrite, Gerrish, and Grams).

Mr. Femrite stated that the meeting would be continued and directed staff to arrange for a place and time to continue the meeting. He asked for the date of the next regularly scheduled meeting. Ms. Isebrand said the next meeting is scheduled for August 3rd.

5. ADJOURNMENT

There was no further business. Kurt Anderson made a motion to adjourn the meeting which was seconded by Bill Anderson. The motion carried and the meeting was adjourned at 8:47 P.M.

Board of Adjustment Chair

Board of Adjustment Secretary