

Applicant

Smiths Mill Implement
63065 206th Street
Janesville MN 56048

Request and Location

Variance to allow for the expansion of a pre-existing legal non-conforming use located in part of the NE quarter of the NE quarter of Section 25 LeRay Township. The property is zoned Highway Business and Shoreland. The variance will allow for the remodeling and expansion of an existing building which will also encroach approximately one foot closer to the center line of County Road 184.

Legal Description

Part of the NE quarter of the NE quarter of Section 25, LeRay Township.

Zoning

The property is zoned Highway Business and Shoreland.

General Site Description, History and Project Proposal

Smiths Mill Implement was incorporated on February 2, 1967 and has been used as a farm implement dealership ever since. The property consists of an office, display room, parts department, shop area and a detached storage building. An open lot on the property is used for outside storage and display of new and used farm equipment that is offered for sale. Customer owned equipment in for repair is also stored outside.

Construction permits were issued in 2002 for the detached storage building and again in 2005 for an addition to the primary building.

The property is zoned Highway Business. Farm implement sales, repair and storage businesses are listed as a conditional use in the Highway Business Zoned District. The property is also located in the Shoreland Zoned District of Born Lake, a Natural Environment lake. Farm implement sales, repair and storage businesses are not listed as a conditional use within the shoreland district of a Natural Environment Lake. The use is grandfathered in as a legal nonconforming use.

Existing Land Use within 1/2 Mile

- North:** County Road 184, US Hwy 14 and cropland
- South:** Five residences, a railroad line owned by the Dakota, Minnesota and Eastern Railroad Company
- Southeast:** Multiple residences within the unincorporated area of Smiths Mill
- East:** CSAH 37 and multiple residences within the unincorporated area of Smiths Mill
- West:** A railroad line owned by the Dakota, Minnesota and Eastern Railroad Company, Born Lake, cropland and open space

Access – Existing access to the property is provided by County Road 184. No change in access is proposed.

NATURAL RESOURCES INFORMATION

Topography

The topography of the property is fairly flat.

Floodplain

The proposal is not within a floodplain area.

Shoreland

The proposal is within a shoreland area.

Township Review

The Township Board has indicated they have no issue with the request.

Environmental Health Review – See Attachment A-3.

Applicable Sections of the County Land Use Ordinance

Sec. 24-305 Nonconformities subpart (b) states: *A nonconforming use may not be enlarged, but may be continued, altered or restored in accordance with this section.*

Sec. 14-4 Rules and definitions subpart (d) describes shoreland as land within 1,000 feet of the ordinary high water level of a lake

Sec. 24-47. Board of adjustment.

(d) *Powers and appeals.*

(1) *Powers.* The board of adjustment shall have power to grant a variance to any of the provisions of this chapter to the extent of the following and no further:

a. To vary or modify the strict application of any of the regulations or provisions contained in this chapter in cases in which there are practical difficulties or unnecessary hardships in the way of such strict applications; no variance or modification of the uses permitted within a district shall be allowed, except as otherwise provided in this chapter.

Section 24-47 (e) Findings Required states: The board of adjustment shall not grant an appeal unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the board of adjustment may require:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
2. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

State Statute 394.27 Subd. Variances; practical difficulties. The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Applicant's Statement of Practical Difficulty

The business has been at this location for a number of years. Due to the increase in size of today's farm equipment there is a need to remodel the existing shop area. The parts department and office area are also in need of updating due to the large inventory of parts that must be maintained. The size of many of the parts used today also take up considerable space. Due to the zoning regulations, a variance is requested

Staff Review

Because "use" variances are relatively uncommon, staff has consulted by email with Scott Anderson, an attorney with the Law Firm of Ratwik, Roszak & Maloney. Mr. Anderson and his attorney associate Jay Squires are frequent educators at training workshops offered by the Minnesota Association of County Planning and Zoning Administrators. These workshops offer training opportunities on various planning and zoning topics including variances. In a recent email exchange, Mr. Anderson was advised of the situation including the fact that there is an existing legal nonconforming business due to the location within the shoreland district. Mr. Anderson indicated in his email response that based upon the information provided that this is the type of provision and the type of use that is allowed to have an application from a variance. Mr. Anderson added not to forget State Statute 394.27 which says the Board of Adjustment has exclusive authority to order a variance from the requirements of any official control including restrictions placed on nonconformities. He added that this was exactly the provision that was cited by the Supreme Court in the Appeal of Kenney case. The Appeal of Kenney case was a legal case that is often times referred to in variance decisions.

Opinions

1. That there **are** special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
2. The Board of Adjustment **does** find that the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

RECOMMENDATION

Staff recommends approval of the request to allow for the expansion of the pre-existing legal non-conforming use with the following conditions:

1. That the applicant obtains a construction permit prior to commencement of the proposed construction.
2. That a code complying septic system be installed as required by the Blue Earth County Environmental Health review.
3. The well must be fitted with a one piece well seal or insect / vermin proof cap meeting current code requirements.

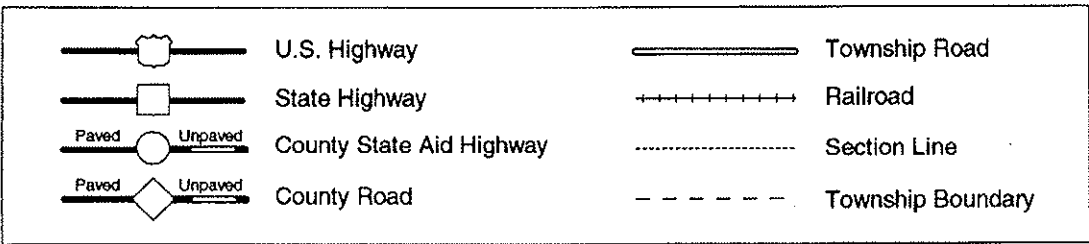
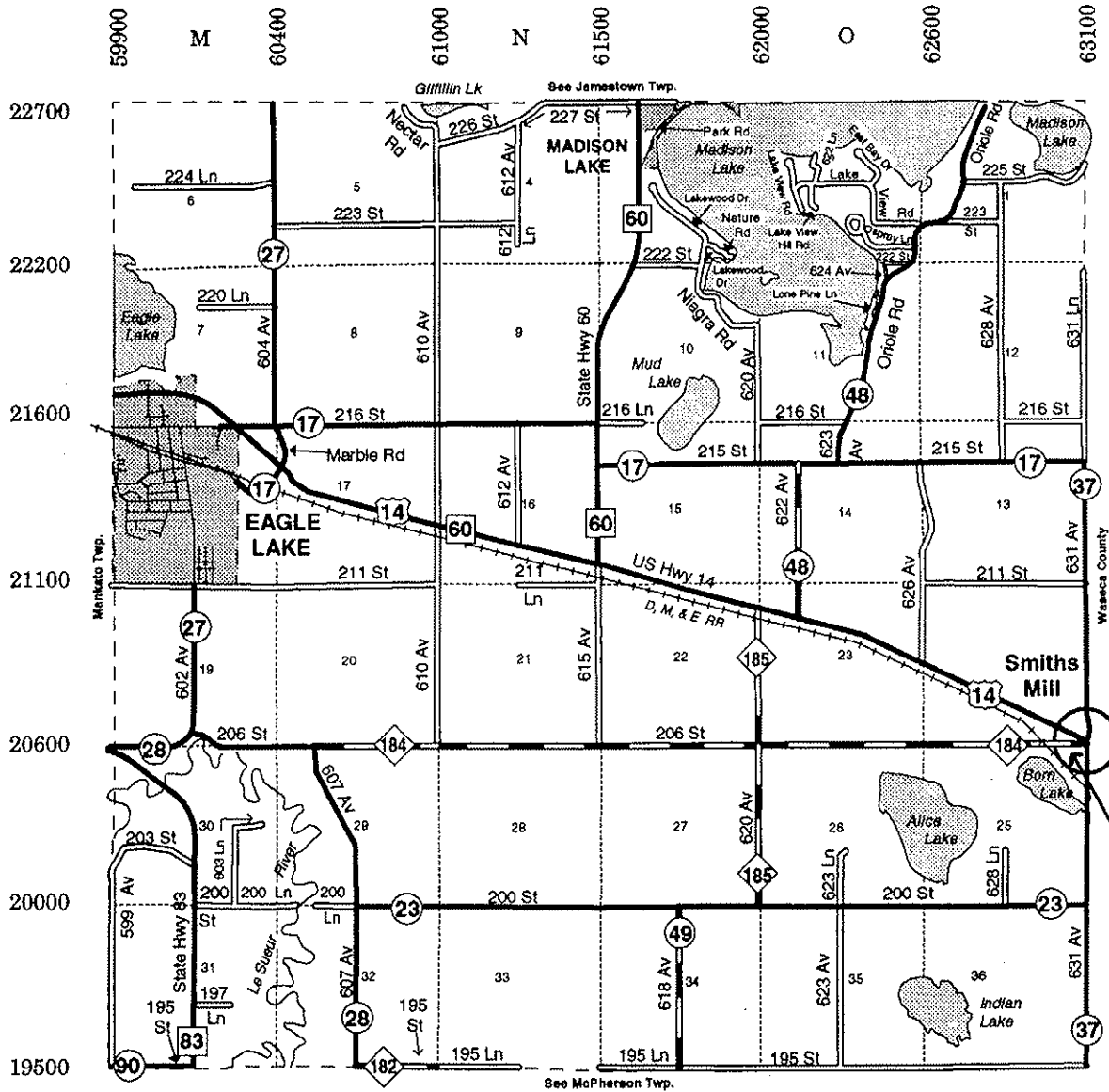
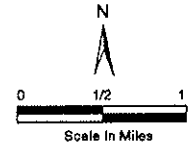
Attachments

- A-1 Site Location
- A-2 Site Map
- A-3 Environmental Health Review
- A-4 Variance Checklist

**Attachment A-1
General Location Map**

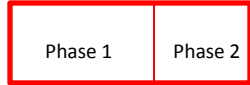
Le Ray

T 108 N - R 25 W



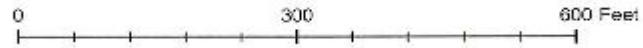
A-2 Site Plan

Proposed Construction



★ Well

⋯ Septic Drain Line



Disclaimer: This map was created using Blue Earth County's GIS and was created for specific internal County uses. It is intended to be used for reference purposes only and does not represent a land survey. No liability is assumed for the accuracy of the data delineated herein, either expressed or implied by Blue Earth County or its employees.

BLUE EARTH COUNTY ENVIRONMENTAL SERVICES

Environmental Health Section - Planning Application Reviews

Date Printed:	February 28, 2012	Permit Number:	PL2012013
Property Owner:	SMITHS MILL IMPLEMENT	Applicant:	SMITHS MILL IMPLEMENT INC
Parcel Number:	R39.10.25.200.004	File ID:	BOA 03-12

Application Description: Variance to allow for the continuation and expansion of a pre-existing legal non-conforming use located in part of the NE quarter of the NE quarter of Section 25 LeRay Township. The property is zoned Highway Business and Shoreland. The variance will allow for the remodeling and expansion of an existing building which will encroach approximately one foot closer to the center line of County Road 184.

Septic Review

Status: Complete - Comments Received

Comments: A compliance inspection is required as part of the variance request and the pending construction permit for the business associated with your property. On February 23, 2012, you chose to forego the compliance inspection and sign a waiver of this requirement and agreed to install a new system within 10 months. The waiver indicated that the sewage from your current septic system is discharging into an outdated location. As a result of this admission, your septic system is classified as an imminent threat to public health and safety. James Brothers Construction has been in contact with our office to discuss the design plans for the installation of a new holding tank system for the property. The construction of the designed holding tank system must be completed by December 21, 2012. P. Otterness 02/23/2012 11:38 AM

Well Review

Status: Complete - Comments Received

Comments: The site plan indicates that the well serving this facility lies within the current building footprint. This well is a Transient Noncommunity public water supply well, PWSID # 5070073 / unique # 258685, and is monitored by the Minnesota Department of Health (MDH). Information gathered from the MDH indicates that the well was drilled in 1968 and therefore would be considered a pre-code well. Currently the wellhead consists of a metal plate which is laid over the top of the wellhead which extends only a few inches above the floor. The bare minimum required upgrade to this well is that it must be fitted with a one piece well seal or insect / vermon proof cap which meet the current code requirements. One additional suggested upgrade to this well is that the casing should be (not required to be) extended so that it is a minimum of one foot above the finished grade of the concrete floor. This construction permit should not be issued if any portion of the proposed construction further restricts access to this well (i.e. - if there is an access port / hatch in the existing roof that the new roof also has an equally sized access port / hatch in the new roof). Blue Earth County recommends (not requires) that this well be properly sealed and a new well drilled in a code complying location. grant 02/28/2012 4:04 PM

Wetland Review

Status: Complete - Comments Received

Comments: I have looked at aerial photos back to 1979 and this site with the building and parking area has been in existence in all of those photos. They are proposing to add on to the existing building by expanding into the parking areas. This should not impact any wetland(s). There is a large wetland to the southwest of the property. The applicant must use proper erosion control and BMP's to ensure that all runoff and erosion during and after construction is kept in the proposed area and will not impact this wetland down gradient. S. Feser 02/23/2012 1:25 PM

BLUE EARTH COUNTY BOARD OF ADJUSTMENT

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

Name of Applicant: Smiths Mill Implement Date: March 7, 2012 Variance Application #: BOA 03-12
Parcel #R39-10-25-200-004

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 () No ()
Why or why not? _____
2. Without the variance, is the owner deprived of a reasonable use of the property? Yes () No ()
Why or why not? _____
3. Is the alleged practical difficulty due to circumstances unique to this property? Yes () No ()
Why or why not? _____
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners? Yes () No ()
Why or why not? _____
5. Will the issuance of the variance maintain the essential character of the locality? Yes () No ()
Why or why not? _____
6. Does the alleged practical difficulty involve more than economic considerations? Yes () No ()
Why or why not? _____

Facts supporting the answer to each question, above, are hereby certified to be the Findings of the Board of Adjustment. This is in accordance with _____ of the Blue Earth County Shoreland Management Ordinance.

APPROVED () DENIED ()

DATED: _____
Chairperson, Board of Adjustment