

MINUTES
Blue Earth County Board of Adjustment
Regular Meeting
Wednesday, February 3, 2010
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 Bill Anderson, Kurt Anderson, Lyle Femrite, Chuck Grams and Don Gerrish. Land Use and Natural Resources staff present was George Leary and Sara Isebrand.

2. APPROVAL OF MINUTES

Chuck Grams made a motion to approve the minutes from the December 2, 2009 meeting of the Board of Adjustment. Bill Anderson seconded the motion which carried unanimously.

3. APPROVAL OF AGENDA

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

4. NEW BUSINESS

BOA 01-10

Paul Collis – After-the-fact variance request to reduce the required setback to a bluff line from 30 feet to zero feet for a four-season structure located in the Conservation and Shoreland Zoned Districts in the NE ¼ of the NW ¼ of Section 19, South Bend Township.

Mr. Leary presented the staff report.

The applicant was present. Mr. Collis provided the Board with additional pictures of the site. He indicated that the deck is placed on two cement filled columns and that the basement of the structure is 21 feet away from the bluff. Mr. Collis advised the Board of his opinion that moving the structure would create other environmental problems.

Mr. Collis stated that he is willing to work with staff and would install rain gutters and was open to an annual inspection by staff to make sure that the bluff remains stable.

Mr. Collis provided a petition signed by neighboring residents indicating they had no objection to the requested variance. He added that he would add rain gutters to the structure if needed.

Mr. Collis disagreed with some of staff's measurements stating that he measured the distance to the bluff at 21 feet vs. 15 feet indicated by staff and that Minneopa Creek is more than 180 feet away from the structure as indicated by staff.

There was no other public comment.

Mr. Femrite asked the applicant if he was aware that permits were needed.

Mr. Collis responded saying that he had talked with Veryl Morrell from Planning and Zoning and that Mr. Morrell advised him that a permit was not required. Mr. Collis added that he decided to put in a foundation and should have obtained a permit.

Mr. Femrite stated that the structure appears to be something more than a storage shed.

Bill Anderson asked if staff had reviewed the site during the summertime.

Mr. Leary indicated that he was first on the site in the fall of 2009.

Bill Anderson asked if erosion appears to be a problem on site.

Mr. Leary indicated that the site looks fairly stable. He added that the applicant has stated that the majority of the drainage flow is toward the southwest.

Mr. Gerrish stated that this is a difficult item. He added that the Board has had training on variance review and that ordinances are in place for a reason. Mr. Gerrish added that the site could become a problem in the future.

Kurt Anderson agreed with comments made by Mr. Gerrish. He stated that it is an unfortunate situation in which the owner of the property neglected to contact staff regarding the location of the structure. Mr. Anderson added that the permit issued by staff in 1998 included reference to the bluff setback requirements and that wetlands, conservation areas, shoreland areas and ravines are taken seriously.

Mr. Grams asked if the deck hangs over the bluff.

Mr. Femrite said it appears that one corner is fairly close to the bluff line.

Mr. Leary stated that the northeast corner is right next to the bluff. He added that the applicant's claim that the structure is 21 feet from the bluff compared to staff's measurement of 19 feet is debatable but he did not intend to argue over a couple feet. Mr. Leary did reiterate that the setback of the structure and deck ranges from 19 or 21 feet down to zero feet.

Mr. Femrite asked if there had been any excavation for the walkout basement.

Mr. Collis responded that there had been a natural road through that area.

Mr. Grams asked staff if there is any sign of active erosion in the area of concern.

Mr. Leary said no, adding that the bluff is fairly uniform and the grade ranges from 35% to greater than 50% according to the two-foot contour maps available to staff.

Mr. Collis stated that the structure has been there for six years and there is no sign of erosion. He added that he would accommodate inspections by staff to verify that the bluff remains stable. He also discussed the general flow of stormwater indicating that most of it flows to the south.

Mr. Femrite stated that it is very unfortunate that the structure was built in a bluff zone. He continued by expressing his discouragement with after-the-fact variance requests.

Mr. Femrite said that there appeared to be a flat area outside the building that may act as a deterrent to the bank slipping away.

The Board moved on to the variance checklist.

Findings of Fact Supporting an Area Variance

An area variance may be granted only where the strict enforcement of county zoning controls will result in “practical difficulty”. A determination that a “practical difficulty” exists is based upon the consideration of the following criteria as defined by the Minnesota Supreme Court in In re the Matter of the Decision of County of Otter Tail Board of Adjustment to Deny a Variance to Cyril Stadvold and Cynara Stadvold.:

1. Is the request a substantial variation from the requirements of the zoning ordinance? Why or why not?
Don Gerrish - No, Lyle Femrite - No, Kurt Anderson – No. Mr. Femrite said that it in violation of the setback requirements. Mr. Anderson agreed.
2. Will the request have an adverse effect on government services? Why or why not?
Chuck Grams – No, Bill Anderson – No. Kurt Anderson stated that inspections will affect government services because it will place an encumbrance on staff.
3. Will the requested variance effect a substantial change in the character of the neighborhood or will it result in a substantial detriment to neighboring properties? Why or why not?
Kurt Anderson – No, Lyle Femrite – No. Mr. Anderson said due to proximity to neighbors and to Minneopa Creek.
4. Is there another feasible method to alleviate the need for a variance? (Economic considerations play a role in the analysis under this factor) Why or why not?
Don Gerrish – No, Bill Anderson – No, Kurt Anderson – No..
5. How did the need for a variance arise? Did the landowner create the need for the variance? Explain.
Kurt Anderson – Yes, Lyle Femrite - Yes. Mr. Femrite stated the structure could have been placed on another location. Mr. Femrite asked if there is a hardship in terms of locating the structure in this location – could the structure have been placed somewhere else? Kurt Anderson stated clearly yes and it is not the primary residence. Bill Anderson stated that it is isolated property and it is not an eyesore or safety hazard. Bill Anderson stated there should be a way to compromise. He added that there should be some way to annually review the site and that removal of the structure is not justifiable.
6. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?
There was no response from the Board on this question.

Kurt Anderson stated that each variance and after-the-fact variance is unique. He added that it is clear there is other property to place the structure.

Kurt Anderson stated that the property owner had gone through the permit process for his home. He added that the site does have the potential to affect Minneopa Creek.

Mr. Anderson added that appearance is subjective. He also stated that there is a financial hardship but it is 100% self inflicted. He stated that it is the position of the Board to hold residents responsible even though it is not enjoyed by the Board.

Mr. Gerrish stated that through training he has learned that ordinances are in place for a reason and that he preferred to follow the recommendation of staff.

Mr. Femrite stated that it is a difficult decision to make for everyone on the board. The applicant should have contacted staff and these things can be avoided.

Kurt Anderson asked the applicant if he purchased the structure from Blaschko Building Supplies – Mr. Collis responded yes. Mr. Anderson asked the applicant if it was a pre-manufactured structure – Mr. Collis responded yes.

Mr. Anderson indicated the applicant apparently contacted Veryl Morrell about purchasing a portable storage building to place on the site and that apparently Mr. Morrell indicated that he did not need a permit.

Mr. Femrite stated it is his impression that a portable structure on skids may encroach upon the setback to a bluff.

Mr. Leary stated that the policy used to determine when a permit is needed is if the structure is 120 square feet or more, a permit is required. Structures less than 120 square feet, although not required to obtain a permit, are required to abide by the setback requirements.

At this point the Chair brought the Board back to the final question of the variance checklist to which there was no response.

There was no further discussion on the request.

Kurt Anderson made a motion to deny the requested variance.

Don Gerrish seconded the motion which was approved by a four to one vote. Board members Kurt Anderson, Lyle Femrite, Don Gerrish and Chuck Grams voted in favor of the motion. Board member Bill voted in opposition to the motion.

5. ADJOURNMENT

There was no further business. Bill Anderson made a motion to adjourn the meeting which was seconded by Chuck Grams. The motion carried and the meeting was adjourned at 7:45 P.M.

Board of Adjustment Chair

Date

Board of Adjustment Secretary

Date