

MINUTES
Blue Earth County Board of Adjustment
Regular Meeting
Wednesday, June 2, 2010
5:30 p.m.

1. CALL TO ORDER

The meeting was called to order at 5:30 P.M. by Lyle Femrite. Board of Adjustment members present were Bill Anderson, Kurt Anderson, Lyle Femrite, and Chuck Grams. Land Use and Natural Resources staff present was George Leary and Sara Isebrand.

2. APPROVAL OF MINUTES

Kurt Anderson made a motion to approve the minutes from the May 5, 2010 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 03-10 Paul Young - Request for a variance to reduce the side yard, bluff and ordinary high water mark (OHM) setbacks for the purpose of replacing an existing storage area and expanding the bathroom facilities of an existing cabin. The property is zoned Rural Townsite and Shoreland and is located in the NW ¼ of the NE ¼ of Section 27, Jamestown Township.

Mr. Leary presented the staff report.

Mrs. Young was present and had no additional comment.

Kurt Anderson stated that he was familiar with the property and it is substandard and difficult to do anything without a variance.

The Board proceeded with 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?
Lyle Femrite – No. Kurt Anderson – Yes, it is a non-complying property and State Statute says no further expansion.
2. Will the request have an adverse effect on government services? Why or why not?
Kurt Anderson – No. Chuck Grams – No
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?
Bill Anderson – No. Chuck Grams – No

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?
Lyle Femrite – No. Kurt Anderson – No. Chuck Grams – No
5. How did the need for a variance arise? Did the landowner create the need for the variance? Explain.
Lyle Femrite – Yes. Kurt Anderson – Yes.
6. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?
Chuck Grams – No. Kurt Anderson – No. Bill Anderson – No.

There was no further discussion.

Kurt Anderson made a motion to approve the request to reduce the required side yard setback from ten feet to two feet, and to reduce the setback requirement to a bluff from 30 feet to nine feet, and to reduce the setback requirement to the OHM from 75 feet to 45 for the purpose of constructing a bathroom addition and replacing an existing attached storage structure.

Mr. Grams seconded the motion which carried unanimously.

BOA 04-10 Ray Phelps – Request for a variance a variance to reduce the required setback to the centerline of a Township road from 65 feet to 40 feet for the purpose of constructing an attached garage. The property is zoned Agricultural and Shoreland and is located in the SW ¼ of the SE ¼ of Section 27, Mapleton Township.

Mr. Leary presented the staff report.

Mr. Femrite asked if the current structure has a garage.

Mr. Phelps indicated they have a small garage that is not large enough for a pickup truck. Mr. Phelps added that the drainage ditch is not an unnamed ditch. It is County Ditch number 95.

Mr. Femrite asked for the dimensions of the proposed garage.

Mr. Phelps stated that the proposed garage will be 30 feet by 30 feet.

There was no public comment.

The Board proceeded with the Variance checklist.

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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?

Kurt Anderson – Yes.

2. Will the request have an adverse effect on government services? Why or why not?

Kurt Anderson – No. Chuck Grams – No

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. Chuck Grams – No

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?

Lyle Femrite – No. Chuck Grams – No

5. How did the need for a variance arise? Did the landowner create the need for the variance? Explain.

Lyle Femrite – No.

6. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?

Kurt Anderson – No. Bill Anderson – No.

There was no further discussion.

Kurt Anderson made a motion to approve the request to reduce the required setback to the centerline of a Township road from 65 feet to 40 feet for the purpose of constructing an attached garage.

Bill Anderson seconded the motion which carried unanimously.

BOA 05-10 Harold Abbas – Request for a variance to reduce the required side yard setback from 50 feet to 10 feet for the purpose of constructing a single family dwelling. The property is zoned Agricultural and is located in the NE ¼ of the NW ¼ of Section 20, Cambria Township.

Mr. Leary presented the staff report.

Kurt Anderson asked about the location of the nearby garage and its location relative to the property line.

Mr. Abbas stated that the garage is totally on the neighbor's property and not on the property line.

Kurt Anderson stated that the request seems logical as the hillside presents a challenge. He added that he is somewhat concerned with the neighboring garage.

Mr. Abbas indicated that he would be using the building for a garage.

Mr. Femrite asked the applicant if he plans to construct a garage.

Mr. Abbas stated that a garage could eventually be added behind the intended home.

Mr. Femrite asked the applicant if he has an access easement.

Mr. Abbas responded yes, adding that he originally owned 14 acres but he sold some of the property to his niece.

Mr. Abbas provided a survey showing the neighboring garage to be 10 feet off the property line. He added that the proposed home will be 20 feet from the neighboring garage.

Kurt Anderson commented that the applicant may want to amend his request to include a future attached garage as it is possible that it would also encroach upon the property line setback.

Mr. Abbas state that is not his intent.

The Board proceeded with 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?
Lyle Femrite – Yes. Kurt Anderson – Yes.
2. Will the request have an adverse effect on government services? Why or why not?
Kurt Anderson – No. Chuck Grams – No. Lyle Femrite – No.
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?
Bill Anderson – No. Lyle Femrite – No. Chuck Grams – No
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?
Lyle Femrite – No.
5. How did the need for a variance arise? Did the landowner create the need for the variance? Explain.
Lyle Femrite – Yes. Kurt Anderson – Yes.
6. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?
Lyle Femrite – No. Kurt Anderson – No.

There was no further discussion.

Kurt Anderson made a motion to approve the request to reduce the required side yard setback from 50 feet to 10 feet for the purpose of constructing a new single family home.

Mr. Grams seconded the motion which carried unanimously.

BOA 06-10 Curt and Joyce Ireland – Request for an after-the-fact variance to reduce the required setback to the ordinary high water level of a protected stream from 100 feet to 60 feet for the purpose of constructing an in-ground swimming pool. The property is zoned Agricultural and Shoreland and is located in the SE ¼ of the SW ¼ of Section 1, Sterling Township.

Mr. Leary presented the staff report.

Lewis Fritz was present on behalf of the applicant and had no additional comment.

There was no public comment.

Mr. Femrite indicated that the Board of Adjustment frowns on after-the-fact variance requests.

Mr. Fritz stated that at the end of 2009 Sawatzky Pools had a good price on a pool. He acknowledged that they did make a mistake.

Mr. Femrite stated that you can't place structures just anywhere.

Mr. Fritz stated that the septic inspection has shown that the septic system needs to be replaced.

Mr. Grams stated that considering the physical therapy needs of the applicant's daughter there are not many options.

The Board proceeded with 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 Stads vold and Cynara Stads vold.:

1. Is the request a substantial variation from the requirements of the zoning ordinance? Why or why not?
Lyle Femrite – Yes. Kurt Anderson – Yes.
2. Will the request have an adverse effect on government services? Why or why not?
Lyle Femrite - No. Bill Anderson – No
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?
Chuck Grams – No
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?
Lyle Femrite – No, not with the circumstances presented. Chuck Grams – No
5. How did the need for a variance arise? Did the landowner create the need for the variance? Explain.
Lyle Femrite – Yes. Kurt Anderson – Yes.

6. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?
Chuck Grams – No. Kurt Anderson – No. Bill Anderson – No.

There was no further discussion.

Chuck Grams made a motion to approve the request to reduce the required setback to the ordinary high water level of an unnamed protected tributary stream from 100 feet to 60 feet for the purpose of constructing an in-ground pool.

Kurt Anderson seconded the motion which carried unanimously.

BOA 07-10 Arlo Jaeger – Request for a variance to reduce the required centerline setback from 130 feet to 100 feet for the purpose of constructing a new single family dwelling. The property is zoned Agricultural and is located in the NW ¼ of the SW ¼ Section 31, Rapidan Township.

Ms. Isebrand presented the staff report.

Ray Cornelius was present on behalf of the Township Board. He indicated the applicants had not met with the Township. He added that he could not speak on behalf of the entire Township Board but he did not anticipate any problem.

Mr. Leary stated that a construction permit would not be issued until the applicants obtain Township approval.

The Board discussed the limitations of the building site and the placement of the home in relation to the required setbacks.

The Board proceeded with the Variance checklist.

Findings of Fact Supporting an Area Variance

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1. Is the request a substantial variation from the requirements of the zoning ordinance? Why or why not?
Bill Anderson – Yes. Lyle Femrite – Yes.
2. Will the request have an adverse effect on government services? Why or why not?
Bill Anderson – No. Chuck Grams – No. Lyle Femrite – No.
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?
Bill Anderson – No. Chuck Grams – No. Lyle Femrite – No.
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?
Kurt Anderson – Yes, the home could be adjusted.

5. How did the need for a variance arise? Did the landowner create the need for the variance? Explain.
Lyle Femrite – Yes. Bill Anderson – Yes.
6. In light of all of the above factors, would denying a variance serve the interests of justice? Why or why not?
Chuck Grams – No. Kurt Anderson – No. Bill Anderson – No. Lyle Femrite indicated that there needs to be a legitimate hardship. Bill Anderson disagreed saying the applicants need a single story home.

The Board continued discussion regarding the site plan and the need for a variance.

Mr. Femrite and Kurt Anderson were not convinced of the hardship.

Bill Anderson asked the applicants if the existing basement foundation could be used for the new home.

Mrs. Jaeger responded no.

There was no further discussion.

Bill Anderson made a motion to approve the applicants request to reduce the setback to the centerline of the road from 130 feet to 100 feet for the purpose of constructing a single family home.

Chuck Grams seconded the motion and the motion was approved.

BOA 08-10 Martin & Shelly Leenhouts - Appeal to the County Board of Adjustment to review and rule on the County Planning Departments interpretation of “organized group camp”.

Mr. Leary presented the staff report.

Mr. Leenhouts was present and offered pictures of the facility to the Board.

Kurt Anderson indicated that the request is to review the definition of an organized group camp and he was not interested in the pictures.

Mr. Leenhouts stated that an organized group has a wide variety of uses. He added that the use would not conflict with agricultural practices. He also stated that groups need a place to get away to a rural setting and that they are not looking to open a hotel or banquet facility.

Mrs. Leenhouts thanked the Garden City Township Board for their assistance. She advised the Board of Adjustment that they had met with the Township. She read a letter from the Township Board indicating their approval of the proposed use. Mrs. Leenhouts indicated that they had come before the Planning Commission one year ago with a request to change the hours of operation. She stated that clients are now required to travel to other locations for lodging and they do not want to leave. She added that travel is harder on the environment.

Marvin Fleming from the Township Board stated that their board did pass a motion to approve the applicant's proposal. He stated that he did not see a problem with overnight stays and that the goal is to improve the county and the neighborhood.

Mr. Fleming also stated that he farms within one quarter mile of the facility and he has had no problem. He added that they are not trying to be a motel. If they have guests that do not like the farming practices they won't come back.

Earl Hanson from the Township Board agreed with Mr. Fleming's comments.

Bill Anderson stated that he is familiar with the area and he has known Township Board Member Marvin Fleming for a long time. He added that if Mr. Fleming is in favor of the request he would be also.

Mr. Leary advised the Board that the task at hand is to rule on the interpretation and not the specific use. He added that the ruling by the Board of Adjustment would likely be presented by the applicant at a future meeting to the Planning Commission and County Board as a request to operate an organized group camp.

Bill Anderson asked if the Township would have the responsibility to watch over the activities taking place on site.

Mr. Leary stated that the Township has no zoning ordinance. Therefore, enforcement would be the responsibility of the County.

Bill Anderson stated that it looked like it should revert back to the Township and asked if we could ask the Township for assistance.

Kurt Anderson stated that the Board is being asked to rule on the definition of an organized group camp. He also asked the following questions: Do the appellants reside on the property? Do they operate for profit or not for profit? Are they charging a fee for use of the facilities and services rendered and if so, does the fee vary for overnight lodging.

Mr. Femrite asked for the number of overnight guests.

Mr. Leenhouts stated that they do live on site in a separate dwelling. He also indicated that the fee is based on the length of time and the facilities used by guests. They do not currently offer overnight lodging but if approved overnight lodging would be offered in separate rooms.

Mr. Leary stated that the difference in interpretation of organized group camp may not be with which group activities are offered to but rather the activities themselves, i.e. wedding receptions, graduation receptions, and family reunions.

Kurt Anderson stated that this will have an impact on the use of the property. He added in many situations the Board looks at previous situations when reviewing a request. He commented that the Board has had discussions regarding the need for better definitions in the past due to unanticipated problems that have resulted across the state. He added that it is important to support the definition offered by staff.

Mr. Femrite discussed some of what he learned at a Level II Home Occupation seminar he attended within the past year. He indicated there are extreme cases showing up across the state of activities that could be considered organized groups. In many instances there are alarming conditions that evolve from something that was not originally anticipated.

Ms. Isebrand informed the Board that the definition will ultimately be added to the Code of Ordinances.

Bill Anderson asked if there is anything that would limit the use.

Mr. Leary stated that the Mass Gathering Ordinance would. He added that the business plan presented by Mr. Leenhouts limited the daily events to 90 people but this would be addressed by the Planning Commission.

Mr. Leenhouts suggested that the size of the daytime group was determined by the County Environmental Health Department.

Mr. Leary disagreed, saying that the existing waste treatment system is compliant for the existing use. He added that it is not the responsibility of the Environmental Health staff to design a system for the proposed use.

Kurt Anderson stated that the process is kind of in reverse. Mr. Anderson also stated that the concern is with the language of an organized group camp and less about the specifics. He added that Morgan Creek Vineyard is open to the public and the County has established some guidelines for operation. He stated that some events are very popular and parking did become an issue.

Kurt Anderson said he has read the language proposed by staff. He asked the Board if they wanted county staff to develop language that will be used in the ordinance or do they want the applicant to define what will be used.

Mr. Leenhouts stated that they are not in disagreement with the opinions developed by staff. It is not intended to be open to the general public and people need a reservation. He indicated that it is not their intent to have a campground, resort, hotel, motel, or banquet facility. He added that the staff does not approve of family groups such as graduation receptions, family reunions, etc.

Marvin Fleming asked why staff would attempt to eliminate scrapbooking, woodcarvers, and quilters from organized groups.

Mr. Femrite stated that it is a subjective definition.

Mr. Leary stated that Mrs. Leenhouts has suggested that people from out of state need overnight lodging. This is no different from a motel or hotel.

Ms. Isebrand indicated that the definition does say for use by the general public. She added that reservations are typically required for resorts, hotels, motels and other such businesses.

Mr. Leenhouts again stated that they have no intention of becoming a hotel, motel or resort. He added the problem is with the elimination of quilters, scrapbookers, woodcarvers, family reunions, graduations, etc.

Kurt Anderson stated that staff should obtain an opinion on the definition from the County Attorney and that the meeting should be continued. He then made a motion to continue the meeting.

Mr. Leary asked the chair if a continuation date should not be added to the motion. Mr. Anderson agreed to the July 7th addition.

Bill Anderson seconded the motion.

Mr. Leenhouts indicated that timing is important as they are turning away business.

Mr. Leary advised the Board that the activity will require a conditional use permit hearing which will not be presented until July at the earliest.

Mr. Leanhouts suggested that the conditional use permit would be coming forward with the support of the county.

Mr. Leary stated it would not have the support of the county at that point. The request would need to be reviewed by the Planning Commission and a recommendation forwarded to the County Board who would then act on the request.

The motion on the floor to continue the meeting to July 7, 2010 was unanimously approved.

5. ADJOURNMENT

There was no further business. Kurt Anderson made a motion to adjourn the meeting which was seconded by Chuck Grams. The motion carried and the meeting was adjourned at 7:40 P.M.

Board of Adjustment Chair

Board of Adjustment Secretary