

MINUTES
Blue Earth County Board of Adjustment
Regular Meeting
Wednesday, November 6, 2013
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 Lyle Femrite, Bill Anderson, Kurt Anderson, and Chuck Grams. Planning & Zoning staff members Mark Manderfeld, Mike Schulte, George Leary and Owusua Yamoah were also present.

2. APPROVAL OF MINUTES

Mr. Kurt Anderson made a motion to approve the minutes from the October 2, 2013 meeting of the Board of Adjustment. Mr. 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 16-13

Daniel & Kathleen Sonnek - Request for a variance to reduce the required side yard setback for a primary structure from 50 to 10 feet for the placement of a proposed greenhouse. The property is located in the Agricultural Zoned District in the Northeast Quarter of the Northeast Quarter of Section 35, Cambria Twp. Mr. Manderfeld presented the staff report.

The applicant was present and had no additional comment.

There was no public comment and no comment from the township.

Mr. Femrite asked why the parcels cannot be combined.

Mr. Manderfeld indicated that the parcel line is also the section line. Therefore, the two parcels cannot be combined.

Mr. Kurt Anderson added that the line seems arbitrary without which the setback requirement is only 10 feet.

The findings-of-fact checklist was reviewed by the Board.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *Mr. Kurt Anderson stated that this would be different if he did not own both parcels. Mr. Femrite agreed.*
2. Without the variance, is the owner deprived of a reasonable use of the property? *Chuck Grams and Bill Anderson – Yes.*
3. Is the alleged practical difficulty due to circumstances unique to this property? *Mr. Femrite stated yes*
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners? *Mr. Grams stated no*

5. Will the issuance of the variance maintain the essential character of the locality? *Mr. Femrite, Mr. Kurt Anderson and Mr. Bill Anderson all stated yes*
6. Does the alleged practical difficulty involve more than economic considerations? *Mr. Kurt Anderson stated yes*

There was no further discussion.

Mr. Grams made a motion to approve the requested variance based on staff recommendations and Findings of Fact.

Mr. Bill Anderson seconded the motion which carried unanimously.

BOA 17-13

Trishauna Johnson - Request for a variance to reduce the required front yard setback from the Right-of-Way of County-State Aid Hwy 69/US Hwy 169 from 100 feet to 50 feet and to reduce the required front yard setback from Union Street from 65 feet to 39 feet for the placement of an accessibility ramp. The property is located in the Rural Townsite Zoned District and the Urban Fringe Overlay District to the City of Mankato in the Northeast Quarter of the Northwest Quarter of Section 22, Southbend Twp.

Mr. Manderfeld presented the staff report.

Mr. Howard Rosten was present on behalf of the owner and had no comments.

Mr. Doug Schaller, South Bend Township Board member was present and indicated the application is straight forward since the lot is small and the proposal will improve the health, safety and welfare of the occupant of the home.

There was no other public comment

Mr. Grams and Mr. Kurt Anderson indicated that there a need for the proposal.

The findings-of-fact checklist was reviewed by the Board.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *Mr. Kurt Anderson and Mr. Grams stated yes*
2. Without the variance, is the owner deprived of a reasonable use of the property? *Mr. Kurt Anderson, Mr. Bill Anderson and Mr. Grams all stated yes*
3. Is the alleged practical difficulty due to circumstances unique to this property? *Mr. Femrite and Mr. Bill Anderson stated yes*
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners? *Mr. Femrite and Mr. Grams stated no as there is a limited footprint for the house*
5. Will the issuance of the variance maintain the essential character of the locality? *Mr. Kurt Anderson, Mr. Bill Anderson and Mr. Grams stated yes.*
6. Does the alleged practical difficulty involve more than economic considerations? *Mr. Kurt Anderson and Mr. Bill Anderson stated yes.*

There was no further discussion.

Mr. Kurt Anderson made a motion to approve the requested variance based on the supporting evidence and staff recommendations.

Mr. Bill Anderson seconded the motion which carried unanimously.

BOA 18-13

Scott & Amanda Bohlke - Request for an after-the-fact variance to reduce the required setback to a bluff from 30 feet to zero feet for the purpose of constructing a 14 foot by 20 foot utility shed. The property is zoned Conservation and Shoreland and is located in part of the Northwest Quarter of the Northeast Quarter of Section 28, South Bend Township.

Mr. Leary presented the staff report

The applicant was present and apologized to the Board for what was in his opinion a waste of time. He also indicated that some options that were discussed with Mr. Femrite, Mr. Leary and Commissioner Purvis during a site visit were not presented in the staff report.

Mr. Femrite indicated that one of the options was the use of rain gutters to disperse rain water.

Mr. Peter Roth, a neighbor to the west of the applicant indicated his structure has been in place since 1974/75. He stated that he did not see any problem with the request and that he supported the variance.

Doug Schaller was present on behalf of South Bend Township. He indicated that it was the understanding of the Township that the applicant was taking advantage of the pre-existing footprint. He also indicated that he personally was unaware of the one year requirement on non-conforming uses. He was unsure if the Township Board would change their position on the request based on the state statute. He did indicate the Board did give consideration of the impact on the value of the property.

Mr. Leary provided the Board with aerial photos of the property that the applicant could use to illustrate the other options that he indicated were discussed during the on-site visit.

Mr. Femrite discussed the possibility of discharging rainwater to a different location. He also indicated that the location of the structure is a natural location on the property and that people are not placing these types of sheds in their front yards. He went on to say that the structure is a very nice shed for cold storage.

The applicant did not provide any further input on the other options that he indicated were discussed on-site.

Mr. Kurt Anderson asked for more information regarding the on-site visit.

Mr. Femrite stated that the applicant called to arrange for an on-site visit.

Mr. Grams asked if adding rain gutters is possible.

Mr. Femrite said that rain gutters could be added.

Mr. Kurt Anderson asked what type of footing was used for the structure.

Mr. Bohlke indicated it has a concrete foundation.

The findings-of-fact checklist was reviewed by the Board.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? *Mr. Kurt Anderson stated "no." He added that this is base on the comments of DNR in the staff report on shoreland regulation. Mr. Grams agreed.*
2. Without the variance, is the owner deprived of a reasonable use of the property? *Mr. Grams stated "no." Mr. Femrite stated the question could be answered "yes" or "no." Mr. Kurt Anderson stated he did not think the owner is deprived of reasonable use of the property if the variance is denied. The previous shed was destroyed ten or eleven years ago and the applicant has gotten by fine without the shed for ten or eleven years. He added that he did not believe this affects the applicant's ability to occupy the residence and there are other options. He then indicated his answer to the question is "no."*
3. Is the alleged practical difficulty due to circumstances unique to this property? *Mr. Kurt Anderson and Mr. Grams indicated "yes."*
4. Were the circumstances causing the practical difficulty created by someone or something other than the landowner or previous landowners? *Mr. Kurt Anderson and Mr. Grams stated "no." Mr. Kurt Anderson stated that the land owner built the shed.*
5. Will the issuance of the variance maintain the essential character of the locality? *Mr. Kurt Anderson, Mr. Bill Anderson and Mr. Femrite stated "yes."*
6. Does the alleged practical difficulty involve more than economic considerations? *Mr. Bill Anderson and Mr. Grams stated "no."*

Additional Findings of Fact for an After-The-Fact Request

1. Has the construction been completed? *Mr. Femrite indicated it has been completed.*
2. Does it appear the applicant has acted in good faith and tried to comply with the Ordinance? *Mr. Grams stated "no." Mr. Femrite stated his belief that the question is subjective.*
3. Are there similar structures in the area? *Mr. Femrite stated there is no question that there are other similar structures.*
4. Does the applicant's burden of complying with the Ordinance outweigh the County's benefit of enforcing the Ordinance? *Mr. Kurt Anderson indicated it is a tricky question. He stated on one hand it is important to protect the bluff land around the river. We have very unique watersheds in Blue Earth County that is studied by people from all around the country. He stated that he had some concern that the removal of the footings may have some impact on the bluff. He also indicated his concern with "after-the-fact" variances and added that ignorance of the ordinance is not a defense. It is the applicant's responsibility to check on these things.*

Mr. Kurt Anderson asked Mr. Leary if the structure was less than 120 square feet, would that have made any difference.

Mr. Leary stated that the office used a policy that requires all structures to meet the setback requirements.

Mr. Bohlke stated at the on-site meeting Mr. Leary indicated if the structure was 10' by 16' feet there would have been no problem.

Mr. Leary stated that even if that were true, the applicant would need to go through the variance process.

Mr. Femrite brought the Board's attention back to the final question of the after-the-fact findings of fact checklist.

The Board of Adjustment members agreed that it is a tough question.

Mr. Femrite offered two suggestions. One is to arrange for site visit. The other is to handle the drainage to diminish the impact.

After some discussion on a day and time for a site visit, Mr. Kurt Anderson made a motion to table the request and to meet onsite to review the request and to take action on the request while on site. The Board decided to resume the meeting on site on November 20, 2013 at 1:00 pm.

The meeting was continued November 20, 2013 at 1:00 p.m. on site. In addition to those Board and staff members that were at the November 6th meeting, Perry Wood was also in attendance.

The Board discussed alternative drainage options, more specifically rerouting the roof water drainage from the structure to the east to an area where it could be dispersed over a flatter area. All of the Board members seemed to approve of this concept.

Mr. Leary reiterated staff's opposition to the after-the-fact variance. He cited the Board's previous displeasure with after-the-fact variances, the message that approval of such variances sends to the public and the predicament it places staff. Mr. Leary also stated that some other property owners, following denial of after-the-fact requests, had been required to make fairly significant changes to their structures to bring their property back into compliance.

Mr. Bill Anderson asked if a fine of some sort could be imposed on after-the-fact variance requests.

Mr. Leary stated the topic has been discussed at planning & zoning workshops. He indicated in some situations, particularly in shoreland areas, even an amount of \$10,000 would not likely deter some property owners from taking a chance on an after-the-fact variance.

Mr. Kurt Anderson discussed his recollection of a site on the west side of Loon Lake (Larry Blachowske) that included an after-the-fact variance request. He recalled the Board giving consideration to water quality of the lake and safety due to the placement of the structure relative to the nearby highway. With those considerations, he indicated that variance was approved.

Mr. Kurt Anderson made a motion to amend his motion made at the November 6th meeting. The amendment was to resume the discussion and action of the request at the December 4th Board of Adjustment meeting.

Mr. Bill Anderson seconded the motion which carried unanimously.

Board of Adjustment Chair

Board of Adjustment Secretary