

MINUTES
Blue Earth County Board of Adjustment
Regular Meeting
Wednesday, February 5, 2014
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, Chuck Grams and Perry Wood. Planning & Zoning staff members Mark Manderfeld, Mike Schulte, Owusua Yamoah and George Leary were also present.

2. APPROVAL OF MINUTES

Mr. Kurt Anderson made a motion to approve the minutes from the December 4, 2013 meeting of the Board of Adjustment. Mr. Grams seconded the motion which carried unanimously.

3. APPROVAL OF AGENDA

Mr. Leary indicated that staff had made some revisions to the findings of fact checklists and would like to review them with the Board.

4. NEW BUSINESS

Findings of Fact Checklist Review

Mr. Manderfeld reviewed some changes staff made to the findings of fact checklist and the after-the-fact checklist. The changes included the addition of four questions to the findings of fact checklist. The sequence of the questions was also modified to provide a better flow of the questions. The after-the fact checklist was also modified by breaking question number two into two separate questions.

The Board discussed the proposed revision deciding to remove question number nine from the findings of fact checklist. Question number nine stated: *The proposed variance will not confer on the applicant any special privilege that is denied by the ordinance to owners of other lands, structures or buildings in the same district.*

The Board also discussed the proposed revision of the after-the-fact checklist. Proposed question number three "*Did the applicant act in good faith?*" was removed. The Board approved the addition of the question asking: *Has the applicant adequately explained why they failed to obtain a variance/or comply with the applicable requirements before commencing work?* The Board directed staff to leave the original question "*Does it appear the applicant has acted in good faith and tried to comply with the ordinance?*"

Mr. Manderfeld asked Chair if staff could use the new checklist for the items on the agenda. The Board agreed.

BOA 01-14

Rick Nienow - Request for a variance to reduce the required feedlot to dwelling setback of an existing residence to an existing total confinement swine barn from 1,000 feet to 300 feet to allow for the creation of separate parcels for the residence and the feedlot. This proposal does not include an expansion of the existing feedlot. The site is located in the Agricultural District in the Northeast Quarter of the Southwest Quarter of Section 35, Beauford Township.

Mr. Schulte presented the staff report.

The applicant was not present and there was no public comment.

Mr. Wood expressed some concern with the request, more specifically with situations that include a farmstead that is too close to other buildings. In this case the remedy is to sell the house with a variance. He questioned how frequent this is occurring and if there is the possibility of developing a policy to differentiate between someone trying to build something vs. something that already exists. He added that it is likely that eventually this farmstead would be sold to someone else that may be moving into a situation they may see as a difficulty in that the ordinance requires a 1,000 foot setback. Mr. Wood indicated his concern for the unsuspecting buyer while acknowledging that the buyer should be aware of all factors involved with the property.

Mr. Bill Anderson asked when the barn and house were constructed.

Mr. Leary indicated the barn was constructed in the mid-nineties and the house possibly in the early 1900's.

Mr. Kurt Anderson indicated that the well review provided by Environmental Health indicated the well was drilled in 1994 and presumably the barn was constructed around that same time.

Mr. Bill Anderson asked if the feedlot ordinance has changed since then.

Mr. Leary said the feedlot ordinance was approved in 1995 and has not changed.

Mr. Kurt Anderson stated that a future buyer of the farmstead will notice that there is a hog barn nearby.

Mr. Leary indicated that as owners of some feedlots get older, there may be situations where they want to retain ownership of the feedlot and land, but sell off the house to a son or daughter interested in returning to the farming operation. They may find it difficult to obtain financing to purchase the entire site. He acknowledged this may not address Mr. Wood's concerns. However, future buyers should be aware that there is a feedlot nearby and the resolution of the variance, if approved would be recorded.

Mr. Femrite asked what the owners of these facilities are to do if the variance is not approved.

There was some additional discussion regarding the possibility of future sale of the property to others that have no involvement with the farming operation.

The Board moved on to the findings of fact checklist.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? Yes. Mr. Wood did say no and indicated the focus is on the zoning ordinance. Mr. Kurt Anderson stated the goal is to preserve agricultural heritage. By allowing the variance, the Board is allowing the son to continue the farming operation. Mr. Bill Anderson agreed and added that it is extremely difficult to obtaining financing.
2. Has the applicant thoroughly explained the need for a variance from the official controls? Yes – No added comment.
3. Is the alleged practical difficulty due to circumstances unique to this property? Yes – No added comment.

4. Were the circumstances causing the practical difficulty created by someone other than the landowner or previous landowners? Mr. Kurt Anderson stated it was caused by county ordinance that was enacted after the building was built. Mr. Bill Anderson agreed.
5. Does the alleged practical difficulty involve more than economic considerations? Yes – No added comment.
6. Without the variance, is the owner deprived of a reasonable use of the property? Yes – of some of the assets on the property.
7. Is the request the minimum variance necessary to afford relief? Yes – The buildings can't be moved.
8. Will the issuance of the variance maintain the essential character of the locality? Yes - No added comment.
9. Will the public health, safety and environment be preserved if the variance is approved? Yes

Mr. Kurt Anderson, in light of the staff report and associated attachments, the discussion by the Board and the results of the findings of fact checklist, made a motion to approve the variance request.

Mr. Bill Anderson seconded the motion which carried unanimously.

BOA 02-14

Scott and Kay Ashley - Request for a variance to reduce the setback requirement from the Ordinary High Water Level of Lake Ballantyne, a Recreational Development lake, from 75 feet to 38 feet for the purpose of replacing an existing cabin. The property is located in the Rural Townsite and Shoreland Zoned Districts and the Urban Fringe Overlay District to the City of Madison Lake in the Southeast Quarter of the Northeast Quarter of Section 28, Jamestown Twp.

Mr. Manderfeld presented the staff report.

The applicants were present.

Mr. Kurt Anderson asked staff if there is an impervious surface threshold.

Mr. Manderfeld indicated that the shoreland ordinance allows for up to 25% impervious surface and the proposal does not surpass that threshold.

Mr. Kurt Anderson asked the applicants if they had received notice of the cost of an individual sewer hookup.

The applicants indicated the hookup would be \$25,550 if paid up front. It could also be set with the property taxes for up to twenty years with a total of \$39,500.

Mr. Wood stated he compared the existing structure with both options. 20' x 30' and 20' x 40'. He added if faced with the cost of hooking up to the sewer line, he would like to have the option of adding the extra bedroom. The proposal is what is allowed for impervious cover. He thought there may be

the option of removing the existing shed and restoring the shoreland in compromise of allowing the expansion.

Mr. Femrite asked staff for further clarification of what is allowed for replacement.

Mr. Leary stated that state statute allows existing residential structures to be replaced but not expanded.

Mr. Manderfeld also indicated that the proposed 80 square foot expansion offered by the 20' x 30' option is in line with the 96 square feet of expansion to accommodate dry cabins as discussed in a workshop with the Board in 2013.

Mr. Leary stated that the existing storage structure is permitted as a marine accessory structure and the shoreline has already been repaired following issuance of a shoreland alteration permit.

Mr. Grams indicated that even with the storage shed, impervious surface area is not an issue. He agreed with Mr. Wood that if he were paying the associated hookup fees to the sewer district, that he too would want the added bedroom.

Mr. Femrite stated that the issue is the increased footprint.

Mr. Kurt Anderson asked what year the property was subdivided.

Bill Ashley indicated it was subdivided in 1982.

Mr. Kurt Anderson stated that he lives on Madison Lake and will be hooking up to the sewer line. He indicated he has plenty of room for multiple septic drainfields, but is in support of the extension of sewer from a water quality perspective. He added that in situations as of the applicant with substandard properties it provides them with the opportunity to improve their property. And in the long run the county will benefit from the added taxes from increased property values. He added that he asked the applicant what their sewer hookup fees to indicate that if they were able to accommodate the property with a septic system, the associated costs would be approximately one third of the cost of hooking up to the sewer line. He asked what the property might look like 50 years from now with the existing older trailer. There is no proposal to get any closer to the lake, the road or within the required property line setbacks and the proposal is within the impervious surface limitations. He suggested therefore that the Board give consideration to the applicants use and enjoyment of their property in light of the associated sewer line hookup fees they will encounter.

Mr. Femrite mentioned previous discussions of the Board involving not increasing the footprint of cabins in the lakes region. He asked staff if making municipal sewer available to the area changes the applicant's ability to expand these structures.

Mr. Manderfeld stated that with this specific parcel, even with access to municipal sewer, the setback to the ordinary high water level of the lake cannot be met.

Mr. Kurt Anderson and Mr. Femrite discussed some of the smaller lots located around Duck Lake and Lake Ballantyne. Mr. Anderson stated that the issue had been no access to municipal sewer and the

affect it had on water quality. There is also the issue of impervious surface area which has an effect on water quality.

Mr. Leary indicated that the existing structure is approximately 38 feet from the ordinary high water level. The required setback to the ordinary high water level is 75 with municipal sewer. Taking into consideration the setback to the centerline of the road, if this were a vacant the lot, there is no building envelope. He agreed that the applicants do have a difficulty of reconstructing the L-shaped structure. However, the concern of staff is the potential precedent of allowing the expansion of the structure.

Mr. Anderson stated that from what he has gathered from previous zoning training workshops he has no fear of precedence when it comes to litigation. If the Board was to approve the 20' x 40' replacement structure and someone comes in with a larger proposal, the Board will weigh it on its individual merits. If the Board chooses to deny a future intensification request on another cabin, the county will have legal justification if forced to litigate. He added that based on the Stadsvold case; there are no two variance requests that are exactly identical. There is no such thing as precedence from a legal standpoint.

Mr. Bill Anderson stated that it is obvious that whether it is 20' x 30' or 20' x 40' it will be an improvement of the property. When looking at the neighboring structures, he personally did not see a problem with the proposal.

The Board moved on to the findings of fact in consideration of the 20' x 40' structure.

1. Is the variance in harmony with the intent of the comprehensive plan, zoning ordinance and State Shoreland Management Rules? No – Mr. Kurt Anderson indicated that the applicant is not in compliance.
2. Has the applicant thoroughly explained the need for a variance from the official controls? Yes – No added comment.
3. Is the alleged practical difficulty due to circumstances unique to this property? Yes – No added comment.
4. Were the circumstances causing the practical difficulty created by someone other than the landowner or previous landowners? Yes – The ordinance went into effect after the structure was already on the property.
5. Does the alleged practical difficulty involve more than economic considerations? Yes – No added comment.
6. Without the variance, is the owner deprived of a reasonable use of the property? The Board answered yes and no, with no added comment.
7. Is the request the minimum variance necessary to afford relief? No – No added comment.
8. Will the issuance of the variance maintain the essential character of the locality? Yes – No added comment.
9. Will the public health, safety and environment be preserved if the variance is approved? Yes – No added comment.

Mr. Kurt Anderson stated that based upon the unique situation presented to the Board with this property and this individual applicants request, he was in full support of going to the larger footprint because it has no impact from the alternative or the existing with regard to the shoreline or the centerline of the county road. The request is not in violation of impervious cover or side yard setbacks. Mr. Anderson continued by stating that based on the discussion by the Board, the findings of fact checklist, the information contained in the staff report and the statements made by the applicants, made a motion to approve the request for a variance to allow for the 20' x 40' structure.

Mr. Wood seconded the motion which carried unanimously.

5. ADJOURNMENT

There was no further business and the meeting was adjourned at 8:38 p.m.

Board of Adjustment Chair

Board of Adjustment Secretary