

**BOARD OF ADJUSTMENT
GOODHUE COUNTY, MN
September 26, 2016 MEETING MINUTES**

The meeting of the Goodhue County Board of Adjustment was called to order at 5:30 pm on September 26, 2016 by Chair Bob Benson in the Goodhue County Board room in Red Wing, Minnesota.

1. Roll Call

Commissioners Present: Robert Benson, Richard Ellingsberg, Mike Hinsch, and Howard Stenerson, Richard Mallan

Commissioners Absent: Brandon Schafer

Staff Present: Planner/Zoning Administrator Wozniak, and Zoning Assistant Casey MacCallum

2. Approval of Agenda

¹Motion by Commissioner Stenerson and seconded by Commissioner Mallan to approve the agenda for the September 26, 2016 meeting; but moved O'Flaherty and Witte before Nibbe: the new agenda is O'Flaherty, Witte, Nibbe, Clemens, and then Bye. Motion carried 5:0.

3. Approval of Minutes

²Motion by Commissioner Hinsch and seconded by Commissioner Mallan to approve the August 22, 2016 minutes. Motion carried 5:0.

4. Conflict/Disclosure of Interest

None of the Board members declared a conflict of interest.

PUBLIC HEARING AGENDA ITEM: O'Flaherty – Variance request from the A-2 Agricultural District's General District Regulations Lot Size requirement, to subdivide a lot less than 2 acres (7,000 square feet) for a septic system; and from the MN Rules 7080 Septic System Front Yard setback at 33073 Lake View Drive. Part of the N ½ of the SW ¼ of Sec. 30, T112N, R12W, SW of the centerline of Lakeview Drive, Except the plats of Lakeview Heights and Lakeview Heights 2nd Add; in Florence Township.

Zoning Administrator Mike Wozniak presented the staff report and attachments. Well and Septic Inspector Pam Holst detailed the reasons for the variance request.

The O'Flaherty's were present and available to answer questions regarding their request.

Chair Benson opened the public hearing: no one commented.

³Chair Benson asked three times for comments. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Ellingsberg to close the public hearing.

Motion carried 5:0

Commissioner Stenerson asked about future sale of the property and if there is a need to stipulate that both parcels are sold together. Zoning Administrator Wozniak explained that the proposed 7,000 square foot parcel would not meet the minimum lot size requirement (in the A2 Zone District) required to build any structures and that under the terms of the variance may only be used for the new wastewater system that will serve the O'Flaherty's dwelling site.

⁴Motion Commissioner Stenerson, second by Commissioner Mallan, that the Board of Adjustment

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- **adopt the staff report into the record (dated September 16, 2016);**
- **adopt the findings of fact; and**
- **based on the application, testimony, exhibits, and other evidence presented,**

APPROVE the variance request of Richard and Barbara O'Flaherty from the A-2 Agricultural District's General District Regulations Lot Size requirement, to subdivide a lot less than 2 acres (7,000 square feet) for a septic system; and from the MN Rules 7080 Septic System Front Yard setback

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated August 25, 2016,
2. Conformance with all applicable requirements set forth in the Goodhue County Septic Ordinance and State of Minnesota Rules: Chapter 7080 (Individual Sub-surface Sewage Treatment Systems).

at 33073 Lake View Drive. Part of the N ½ of the SW ¼ of Sec. 30, T112N, R12W, SW of the centerline of Lakeview Drive, Except the plats of Lakeview Heights and Lakeview Heights 2nd Add; in Florence Township.

Motion carried 5:0

PUBLIC HEARING: Tonya Witte - Variance request from the MN Rules 7080.2150 Septic System Drain Field Medium, to use a non-registered septic product for a replacement dwelling at 7005 County 9 Blvd; west 10 acres of the SW ¼ of the SW ¼ of Section 20, T111, R17 in Leon Township.

Zoning Administrator Mike Wozniak and Environmental Health Inspector Pam Holst presented the staff report and attachments.

Commissioner Mallan asked Pam Holst to clarify some points of the variance requirement.

Commissioner Stenerson clarified that the Board approval is for the continued use of the system, and denial would require a new system.

Stenerson also asked about the conditions that were recommended to be applied to the variance. Zoning Administrator Wozniak described the rules.

The Witte's were present. The Applicant informed the Board that they purchased the property knowing the house was uninhabitable, but they did not know that the existing septic system would not be compliant for a new dwelling. The Witte's acknowledged that a failure would require a new system.

Chair Benson opened the public hearing: no one commented.

5Chair Benson asked three times for comment. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Hinsch to close the public hearing.

Motion carried 5:0

6Motion Commissioner Stenerson, second by Commissioner Ellingsberg, that the Board of Adjustment

- **adopt the staff report into the record (dated September 16, 2016);**

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- **adopt the findings of fact; and**
- **based on the application, testimony, exhibits, and other evidence presented,**

APPROVE the variance request of Paul and Tonya Witte from the MN Rules 7080.2150 Septic System Drain Field Medium, to use a non-registered septic product for a replacement dwelling at 7005 County 9 Blvd; West 10 acres of the SW ¼ of the SW ¼ of Section 20, T111, R17 in Leon Township.

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated August 26, 2016,
2. Compliance with all necessary State and Federal permits and licensing,

Motion carried 5:0

PUBLIC HEARING: Daniel Lubahn – Appeal of Zoning Administrator’s denial of a replacement dwelling request at 19000 Block of 360th Street, Goodhue, MN; E ½ of the NE ¼ of Section 17, Township 111, Range 15 in Goodhue Township.

Zoning Administrator Mike Wozniak presented the staff report and attachments.

Daniel and Chelsea Lubahn were present. *The Applicant Chelsea informed the Board that they plan to build a home. Currently actively farming the land and the farm has been in the family for more than a Century. The commute from the farm to home has presented a challenge for Daniel to coordinate his day job, farm work and family responsibilities.*

Commissioner Stenerson asked about the continuation of milking. The Applicant is planning to transition to raising of beef cattle. Commissioner Stenerson asked if the Applicant moves to their proposed replacement dwelling site could Mr. Nibbe continue longer with the farm, which the Applicant affirmed.

Chair Benson opened the public hearing: no one commented.

7 Chair Benson asked three times for comment. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Hinsch to close the public hearing.

Motion carried 5:0

Commissioner Stenerson visited the site and told the Board that there is no evidence of a dwelling; but observation showed that there was certainly a dwelling there at some point. The Applicant could apply for a second farm dwelling but there is not enough room within the existing farm yard for another home. The Applicant could also apply for a mobile home for medical purposes because of their family member's condition.

8Motion Commissioner Stenerson, second by Commissioner Ellingsberg, that the Board of Adjustment:

Approve the appeal of Chelsea and Daniel Lubahn to determine that property located at 19809 360th Street, Goodhue Township (E ½ of the NE ¼ of Section 17, Township 111, and Range 15 in Goodhue Township) qualifies as “Replacement Dwelling Site”, based upon the following evidence:

1. **The Applicant has provided an aerial from 1938 that illustrate a more defined farm yard.**

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2. **The Applicant has provided a letter from the owner that states the owner's father talked about a barn on the property; and provided pictures of a well.**
3. **The Applicant has provided pictures of a cement well and pictures of a foundation that could be determined to be a foundation of a dwelling.**
4. **The Applicant has supplied a note (confirmed by LUM staff) that Richard Nibbe (the Applicant's Uncle) worked on and knew of people living on the property.**

Motion carried 5:0

PUBLIC HEARING AGENDA ITEM: Deloris Clemens - Variance request from the A2 Agricultural District, General District Regulations, Density Requirements, which limits each Section to 12 dwellings (currently there are 15 dwellings) and limits development to one dwelling per ¼ ¼ section (currently there is 1 dwelling); to build a residence at 13489 Sunset Trail; part of the E ½ of the NW ¼ of Section 5, T112, R16 in Vasa Township.

Mike Wozniak presented the staff report and attachments

Deloris Clemens was present, but did not have anything to add before the Public Hearing.

Commissioner Mallan said the findings are the same and that the County may see other requests for variances to Section and/or ¼ ¼ density standard and this might be the best way to manage it.

Chair Benson opened the public hearing:

Daryl Peters at 1350 Sunset Trail (neighbor) informed the Board that he was aware of denial of a previous variance request (to allow a second farm dwelling outside of a farmyard) proposed for the site. Mr. Peters opposed the Variance because of the proximity to his home, and the amount of hazards on the property.

Jackie Peters at 1350 Sunset Trail informed the Board that the area is very beautiful and that approval would be setting a precedent. She described the land and the neighborhood, and that the Applicants property has three campers and a fishing shack. She stated the area would end up more like a camp ground if approved.

Chair Benson asked three times for further comment. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Ellingsberg to close the public hearing.

Motion carried 5:0

Commissioner Mallan said that the neighbor's testimony changed his opinion. Zoning Administrator Wozniak explained County zoning and building permit requirements to construct a new dwelling.

Commissioner Stenerson said it was difficult that this Variance came just one month after another density variance request in the same Section; and that the Board needs criteria for evaluating these density variances. Commissioner Stenerson noted that they should table the item until the Board can meet with the Planning Advisory Commission. He asked the Applicant if she would like build right away or if they were planning to wait. The Applicant said they would like to start building right away...

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Commissioner Benson and Zoning Administrator Wozniak informed that Applicant that if she was not willing to accept having the item tabled for up to 3 months to allow time for a joint meeting of the BOA and PAC, and then her request may be denied. The Applicant (Deloris Clemens) agreed to accept having consideration of her variance request tabled for up to 3 months.

Commissioner Stenerson said the Board should have a joint meeting with the PAC in October or November; and then make a determination on the following regular meeting of the Board of Adjustment.

¹⁰Motion Commissioner Stenerson, second by Commissioner Hinsch, that the Board of Adjustment

Table the variance request from the A2 Agricultural District, General District Regulations, Density Requirements, which limits each Section to 12 dwellings (currently there are 15 dwellings) and limits development to one dwelling per ¼ ¼ section (currently there is 1 dwelling); to build a residence at 13482 Sunset Trail. Part of E ½ of the NW ¼ of Section 5 in Vasa Township; for up to 3 months until the regular Board of Adjustment to be held in December, 2016.

Motion carried 5:0

PUBLIC HEARING: David Bye - Variance request from Goodhue County Zoning Ordinance, Article 13 (Confined Feedlot Regulations), Section 7 (Required Setbacks for New Facilities), Subd. 6: "New feedlots shall not be located within 1,000 feet from any existing dwelling (other than those designated as an accessory to a feedlot or the feedlot operator's dwelling)". The request is to build a feedlot at 50130 158th Avenue (on the west side 158th Avenue - NW ¼ of the NE ¼, Section 27) in Roscoe Township.

Zoning Administrator Mike Wozniak presented the staff report and attachments.

Commissioner Hinsch asked Zoning Administrator Wozniak if there were other locations for the feed lot on the Applicants property. The Zoning Administrator informed the Board that there were other places for the feed lot to be placed, but that it is up to the Applicant to justify the request.

Commissioner Stenerson asked for clarification on the owner's house and the feed lot outside of the farm yard. The Zoning Administrator informed the Board that the owner's house has no setback from his feedlot.

David Bye was present. *The Applicant informed the Board of his practical difficulty: the house that was allowed a density variance by the BOA in an agricultural district; he thought the rules would protect his future plans to expand to the western field; the proposed location is on the cow path that has been used for generations; and that the variance process is unacceptable for a farmer and his family to go through in a district designed for agricultural.*

Commissioner Stenerson asked for clarification on the Applicant's future plans. The Applicant described his plans to expand to his western field.

Cory Weis read a letter to the BOA from Mr. Bye's son requesting the approval of the variance because he wanted to continue the family tradition of farming, the Peterman house should not have been allowed, and the area has historically been agricultural and the district is designed to preserve agricultural.

Chair Benson opened the public hearing:

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David's wife informed the BOA that their *timing has been short, and they have nothing against the Vogel's. She said that she has felt threatened and their place has been vandalized. She told the Board that her daughters have married and moved away, and one of her son's has a disability and that they have been planning to leave the farm to her other son so they can both succeed. She said the new feed lot will allow the flexibility their sons will need for future farming.*

Melinda Vogel noted that she has no problem with the Bye family and the expansion of the feed lot for cattle, but did express concerns about hogs being raised on the proposed sit. She noted that she grown up on a farm. She asked the Board why the variance to the 1,000 foot would be acceptable because it is there to protect her family; the builder and their family did not intend to encroach on the 1,000 foot setback from the Bye's feedlot; they changed their planes to accommodate the 1,000 foot setback by moving their access; the request does not meet the practical difficulty because the feedlot can be placed elsewhere on the property that would meet the setback; the animal units can have a significant impact on the area; and she asked that if the variance were approved then conditions should be applied that limited the number and type of animals in the feed lot.

Carol Peterman told the Board that she nor her family have harassed the Bye family. Carol said that the Bye family works hard and have not been a disturbance to the neighborhood and that she regrets all of the hostility.

Mr. Peterman told the Board that he did not threaten the County with a lawsuit and he only wanted to sell a dwelling site for his family.

David Bye reiterated that the proposed location of the feed lot is the most suitable because of the proximity to water supply and access to electricity, proximity to the cow path and the topography. He noted that approval would give back what he feels was taken from him with the granting of the Peterman variance to allow the Vogel dwelling.

Commissioner Stenerson asked the Applicant about the creek and potential for animal waste to enter the watershed. The Applicant informed the Board that the proposed new feedlot would keep the animals away from the creek. Commissioner Stenerson asked about the water source.

¹¹Chair Benson asked three times for comment. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Mallan to close the public hearing.

Motion carried 5:0

Commissioner Ellingsberg asked about the 962 foot distance from the Vogel's house to the Bye's feed lot. Zoning Administrator Wozniak noted that the surveys for the Vogel's house and the Bye's feedlot were completed by Mr. Rapp. Staff does not have an answer for the discrepancy.

Commissioner Stenerson asked the Applicant if 90 animal units are enough. The Applicant informed the commission that 90 animal units was the total amount of the final phase for their plan.

Commissioner Stenerson voiced frustration that the Feedlot Officer was not present to discuss the odor offset.

Both Commissioner Hinsch and Stenerson supported approval based on Soil and Water Conservation District Officer Beau Kennedy's support the placement of the feed lot because it would be the least detrimental.

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¹²Motion Commissioner Stenerson, second by Commissioner Hinsch, that the Board of Adjustment to

- **adopt the staff report into the record (dated September 16, 2016);**
- **adopt the findings of fact; and**
- **based on the application, testimony, exhibits, and other evidence presented,**

APPROVE the variance request of David Bye from Goodhue County Zoning Ordinance, Article 13 (Confined Feedlot Regulations), Section 7 (Required Setbacks for New Facilities), Subd. 6: “New feedlots shall not be located within 1,000 feet from any existing dwelling (other than those designated as an accessory to a feedlot or the feedlot operator’s dwelling)”. The request is to build a feedlot at 50130 158th Avenue (on the west side 158th Avenue - NW ¼ of the NE ¼, Section 27) in Roscoe Township to a minimum setback of 650’ from the nearest dwelling (not occupied by the Feedlot Owner and/or Operator).

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated August 30, 2016; and
2. Compliance with all necessary state and federal permits and licensing.

Motion carried 4:1 (Commissioner Ellingsberg dissenting).

5. Staff Updates

The 2016 Goodhue Comprehensive Plan was distributed to all of the Commissioners.

6. Other Business

Chair Benson discussed the details of a joint meeting over the next few months.

Commissioner Stenerson said that he appreciates LUM staff, Ben Hoyt and Pam Holst work and support for the Commissioner; and voiced again how upset he was at the Feedlot Officer’s lack of involvement.

Tod Gresser spoke to the Board.

¹³Adjourn: Moved by Commissioner Hinsch, second by Commissioner Stenerson, to adjourn the September 26, 2016 Board of Adjustment meeting at 8:24 p.m.

Motion carried 5:0.

Respectfully Submitted,

Casey MacCallum
Zoning Assistant

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MOTIONS

- ¹ APPROVE the BOA meeting agenda. Motion carried 5:0.
- ² APPROVE the August, 2016 minutes. Motion carried 5:0.
- ³ CLOSE the Public Hearing. Motion carried 5:0.
- ⁴ Motion to Approve O'Flaherty Variance. Motion carried 5:0.
- ⁵ CLOSE the Public Hearing. Motion carried 5:0.
- ⁶ Motion to Approve Witte Variance. Motion carried 5:0.
- ⁷ CLOSE the Public Hearing. Motion carried 5:0.
- ⁸ Motion to appeal and overturn the Zoning Administrators decision. Motion carried 5:0.
- ⁹ CLOSE the Public Hearing. Motion carried 5:0.
- ¹⁰ Motion to table the Clemens Variance. Motion carried 5:0.
- ¹¹ CLOSE the Public Hearing. Motion carried 5:0.
- ¹² Motion to Approve the Bye Variance. Motion carried 4:1.
- ¹³ ADJOURN the September 26, 2016 Board of Adjustment meeting. Motion carried 5:0.