

WRIGHT COUNTY BOARD OF ADJUSTMENT

Meeting of: February 5, 2010

(Rescheduled to February 12, 2010 due to weather)

MINUTES – (Informational)

The Wright County Board of Adjustment met February 12, 2010 in the County Commissioner's Board Room at the Wright County Government Center, Buffalo, Minnesota. Chairman, Bob Schermann, called the meeting to order at 8:30 a.m. with all Board members present. Assistant Planner, Barry Rhineberger, represented the Planning & Zoning Office. Sean Riley, Environmental Health Specialist, arrived at 9:00 a.m. for discussion on upcoming sewer ordinance amendments.

MINUTES

Wagner moved to approve the minutes for the January 8, 2010, noting Staff did a great job on them. Motion was seconded by Bauman. Carried Unanimously.

1. **MARK ALLAN OPSAL** – Cont. from 1/08/10

LOCATION: 2102 - 70TH Street SW – E 660 feet of the SE 1/4 of SE 1/4, except ..., Section 3, Township 118, Range 26, Wright County, Minnesota. (Woodland Twp.) Tax #220-000-034110

Requests a variance of Section 302. (1) & 604.5(4) of the Wright County Zoning Ordinance to extend the roof on the north side of existing pole barn 42.5' from the rear property line. Expansion exceeds maximum outbuildings allowed (4080 sq. ft. including the proposal).

Present: Applicant not present

- A. Rhineberger explained the applicant was in town for last week's scheduled meeting; however, his work took him out-of- state this Friday. Schermann noted the Board had discussed with the applicant how they could handle the decision under the circumstances. Rhineberger stated the Board had continued the matter for Town Board consideration. Rhineberger summarized the Township response and requirement that all the small accessory buildings be removed to meet the 4,000 sq. ft. maximum. Rhineberger indicated with removal of the smaller accessory structures, the proposed lean-to would still exceed the maximum allowed by 80 sq. ft. Schermann asked if they should send this back to the Town Board for clarification. Rhineberger did not think it was necessary; the applicant had planned on removal of the small structures.

- B. Discussion on what is included in the building size. Rhineberger explained a building that has more than a 2' overhang is included in the size and must meet the setback. In this case, the proposed 4' is counted in the building size, where on the other side of the building he did not count a narrower over hang. He displayed pictures of the project that was started.

- C. Schmidt wondered if the question of the overhang is making a big issue out of nothing. He asked how many square feet they were talking about. Rhineberger stated the overhang is 200 sq. ft. Schmidt did not feel exceeding the size by 80 sq. ft. on a five-acre lot is excessive. Schermann indicated he was not concerned about removal of the small existing structures. Rhineberger indicated the applicant was not looking at keeping those small structures anyway. Schermann agreed and because the Town Board action includes removal of those structures that should be included in this action.
- D. Kopff moved to approve an “after-the-fact” variance for a 10’ x 40’ lean-to addition to the existing pole building, 42.5 feet from the rear property line. The Board also approves the 80 square foot overage of the total accessory structure square footage with the condition that all existing garden sheds are to be removed and no additional accessory structures are allowed on the property. Justification: The lean-to addition to the building is not going to be enclosed and is why the Board is allowing 80 sq. ft. over the allowable accessory structure size. Also, because of the configuration of the lot, the setback from the property line could also be considered a side line which has a lesser setback. Schmidt seconded the motion.

VOTE: CARRIED UNANIMOUSLY

2. **MAYNARD H. ROEPKE** –Cont. from 1/0810

LOCATION: 1467 – 48th Street NE – Lot 3, Oak Shore Terrace, according to plat of record, Section 8, Township 120, Range 25, Wright County, Minnesota. (Lake Constance – Buffalo Twp.) Tax # 202-017-000030

Requests a variance 404.2, 502.2, 605.5(2)(3), 612 & 716.4 of the Wright County Zoning Ordinance to allow construction of a 12' x 29' attached garage to dwelling that is 75' from the ordinary high-water mark of lake on an undersized lot. The new garage will be 6.5' from the east side lot line, 53' from centerline of town road (20' to right of way), 10' to septic treatment area.

Present: Doris & Maynard Roepke and Scott Enter, representing Wright Lumber

- A. Rhineberger summarized the previous discussion. The Board was not willing to approve the proposed plan and setbacks for an attached garage. Some members indicated they were willing to consider continuation if the applicant wanted to pursue a feasible garage design. Indication was that they would not consider anything closer than an 8' side setback and it must be kept 10' from the sewer. A revised plan was displayed to show a detached garage that is 8' from the line and 10.4' from the sewer and 20' from the road right of way. The size is the bare minimum for width and depth and still get a car in side. Rhineberger indicated 10' is still not enough to get access to the well with a well rig. Currently there is 15' around the house but he questioned accessibility because of the slope.
- B. Enter stated they had taken the Board's recommendations and reduced the dimensions. He felt they could get an additional 4" from the sewer, if necessary. They are asking for the same 8' side setback variance given the neighbor. Rhineberger explained the difference between a garage allowed next door was that the Hardy home is sitting forward, closer to the lake and that owner did not need a road setback variance.
- C. Kopff asked what the lot coverage is with the garage. Rhineberger indicated that is not an issue. He had talked with Novacek about the side wall height and questioned if it would be 8' or 10'? Kopff indicated she was also interested in how this fits in with structures in the neighborhood. Rhineberger stated the garage next door approved in 2007, just built last year, has 12' side walls, has a 6:12 roof pitch and storage area above with a 6.5' ceiling height. He felt that has maximized what can be done on the lot. Kopff indicated the problem she is having with the request is a previous decision was made based on the owners dropping the garage to get a larger home. She would be reluctant to approve future year-around homes unless room for a garage is provided for. It is not practical in this climate to think that owners will not want a garage in the future. Currently, the well access is now questionable and in this case, she would go along with the garage as plans were revised. She would attach conditions that the side wall be limited to 8', no second story and everything possible be done to protect the sewer.

- D. Enter asked if a 10' side wall could be considered, noting where the steps go down and to get the size over-head door they need. Kopff agreed.
- E. Wagner concurred he would agree with Kopff that future homes must provide for a garage. The 8' side setback is consistent with past Board action. He noted the lot is substantially undersized and is not in favor of putting too much on lakeshore lots. There were three variances in 2006 and now they are looking at three more. This is substantial. He is very concerned with the sewer in a shoreland district and would not vote for something that could put the system at risk. He cannot support the proposal.
- F. Rhineberger calculated lot coverage at 13.48% with the proposed garage.
- G. Bauman also expressed concern for the sewer and the fact this is a small lot. He would go along with the garage if they can avoid the sewer more.
- H. Schmidt also shared the concern about forcing too much on small lots. He felt the Board would have to address the garage needs when it first comes before them and keep the square footage down. He understands the needs, especially with a winter like this year. He could support a 10' sidewall height if the roof pitch is limited to 4:12.
- I. Discussion on the well location. Enter indicated the well is deep and put in when the house was built. Rhineberger noted another option the Board has in their policies is to get a written easement from the neighbor to gain access to the well, if needed. The site plan and pictures were viewed to see where access might be. Enter indicated they are willing to pursue a written agreement. These owners' would not blame the County for granting the variance. Schermann pointed out that ownership changes and he was concerned with the County's liability. He would want to see a written easement in place. Kopff noted the easement from the neighbor may not need to be a full 12' in width. Rhineberger reviewed options that provide access. Schermann noted a pick-up truck could get back there to provide some service needs. Enter indicated they could move the well in front if they had to. Rhineberger stated that is not possible, there is no location to meet the 50' separation from the sewer.
- J. Schermann moved to allow a 12' x 24' detached garage, with an 8-10' side wall height and a roof pitch not to exceed 4:12. Condition: The owners submit a written easement that provides a minimum of 12' wide to access and service the well. Kopff seconded the motion.

DISCUSSION: Wagner – felt they are making a mistake in that they have not addressed practical difficulty. There are specific guidelines from the Supreme Court and criteria and we have thrown out cases for other requests that are a “desire”. The precedent set may be that the applicant comes in makes a reasonable argument, they reach a compromise like building a dwelling without the garage; and then come back in a couple years and ask for it. He is wondering if his decisions will pass the test of time. Schermann indicated he agrees Wagner makes a good point, but things

sometimes change and plans have to be altered. He remembers the previous hearing. He agrees with the point that in the future they should not allow permanent homes without a garage. Kopff – stated in this case, her basis for approving it is the garage approved on the adjacent property and trying to be fair in this neighborhood. She is not sure in some other location she would reach the same decision. This might be a learning experience and policy can be set from here forward. This is a very small garage, limited in height and the coverage is well within 15%, but agrees something has to be changed going forward.

Rhineberger indicated the road setback variance should be included in the motion.

Schermann moved to amend his motion to allow the garage 20' from the edge of the road right of way. Kopff amended her second.

DISCUSSION: Schmidt stated after this case and discussion, he would not agree to allow a new dwelling without room for a garage. As one member, he will dig in his heels. Schermann noted the Board learns as they go and do not have all the answers can only do the best they can.

D. Roepke – their contractor came up with the original plan which the Township indicated was too big. The contractor came up with something smaller. She did not realize they could not come back and ask to have a garage.

VOTE: CARRIED Schermann, Bauman, Schmidt and Kopff voted in favor; Wagner opposed

K. Rhineberger explained the Board can set conditions, but the fact is that applicants have the right to come back for future review or appeal of Staff decisions. The discussions are good and makes for a better Board. Kopff felt if it were part of the original motion the future buyers are on notice what the Board has decided. Schermann noted policies can change as they learn. He agreed with Wagner there are reasons it should not be allowed, but in his mind there is more justification to allow this. Rhineberger stated his job is to lay out what he feels is legally defensible. The Board makes the decisions and the Staff's job is to enforce the decision. Bauman noted the reason this Board exists is to allow adjustments and variances, however, they cannot agree with everything that comes before them.

3. DISCUSSION – Ordinance Amendments

A. Travel trailers

Rhineberger explained Staff are currently reviewing the entire Ordinance for changes needed. The Board of Adjustment had wanted some discussion on issues that come before them. That portion that deals with travel trailers, after a recent spike in hearings, is one matter. The hearings were a result of complaints and it was felt better policies on how they are dealt with is necessary. Rhineberger provided the portion of the Ordinance that regulates their use.

Wagner felt it could be a reasonable use for property when people make an investment in property. However, a recent request where nine people were sharing use on an undersized lot is not “reasonable” in his opinion. He is going to be tough on protecting shoreland areas, maintaining a natural shoreland and natural view from the lake. A tin unit will not look natural and the placement, should meet the minimum setbacks required for the principle structure; or he would not allow it.

Schermann agreed it should meet setbacks, but asked if the answer is to declare the lot “unbuildable” and take it off the tax rolls.

Kopff questioned a lot that cannot be built on or get a sewer in, yet they allow some travel trailers that could be almost as large as a cabin sit on the lot year around. If it is an unbuildable lot, the trailer should not be sitting there year around. She can see both sides of this issue but did not feel the Ordinance adequately addresses either side of the issue.

Schermann noted a small lot declared unbuildable on Little Waverly was then incorporated into the City and was allowed a new house. He felt they cannot prevent everything and have to look at each individual case. Rhineberger knew a well was put in, and a garage/structure of some sort built. (*For clarification – a licensed travel trailer is parked on the lot, along with new deck and garage construction.*)

Rhineberger indicated the Board will be faced with unique situations. The cases before them a few weeks earlier is one. The one lot had old variances allowing construction of a cabin closer to the lake if they could get a sewer in. Variances granted prior to 1994 are still valid. Schmidt felt that is a rare situation.

Wagner suggested they limit the number of days the unit can sit there. This would be similar to what some cities have and would avoid having them sit there year around. Bauman agreed that would avoid a small lot becoming a parking place. Rhineberger noted the problem is there is no way to Pneighbor can report it.

Discussion followed on how other areas regulate travel trailers.

It was suggested they limit the time the travel trailer can sit on the lot so it does not become permanent. Kopff suggested rather than occupancy days, set a season May to November 1, at which time it has to be removed.

Charlotte Quiggle – in the audience – asked if the County could not issue a permit with a nominal fee for this use on a lot for specified days to control this. Rhineberger indicated that would not solve the problem. They need to put a policy in affect. Kopff indicated she would not want to turn the Planning Office into a reservation center.

Schermann suggested the best policing is the neighbors.

Riley noted the complaints will come when there are personality conflicts between neighbors. Rhineberger agreed it would likely not be an issue unless someone did not get along with a neighbor.

Board members suggested there should be a season and limit the days rather than just allowing “90 day occupancy” in a year. This would avoid becoming permanent, eventually having decks and porches, etc. Riley suggested allowing placement from May 1, to Sept. 15. Kopff set the season or weekend by weekend and after that, pull them off. Licensing was discussed. Wagner liked Quiggle’s idea to permit them for five days, etc. Kopff noted they would need to add a staff member to keep track of that.

Rhineberger – asked how they address non-riparian lots. A complaint from Southside Township was received about a trailer on a back lot near Lake Sylvia. Kopff stated the 90 day occupancy limit might be as much regulation that is needed. Schermann indicated he would not agree. Quiggle stated the location on the water should not be the limiting factor. They have large subdivisions on lakes that have 2-3 tiers of lots. Kopff indicated if they stated within a shoreland area that would include backlots. Rhineberger explained how the terminology could address it.

Schermann stated Staff have heard their comments and suggested they put the Ordinance together. He would like a chance to review and comment on it prior to adoption.

B. Wind Chargers

Rhineberger reviewed the recent Ordinance adopted to regulate the chargers. The Board may see setback variances. They are prohibited in R-1 & R-2 residential districts and Shoreland areas.

C. Sewer Systems

Riley, Environmental Health Specialist – reviewed the history of the sewer ordinance and technology changes since the first official sewer Ordinance adopted in 1978. Sewers are an important consideration for a Board that reviews development projects on undersized lots. The newest technology is “performance” systems, formerly known as “experimental” systems.

A map was provided to show the location of 160-170 “pre-treatment” (performance) systems which are the most recent application used in areas of poor soils and where space is limited. They have been primarily used in shoreland areas, like Mink, Sommers, Sugar and Maple lakes. He summarized the four categories and the types of sewers that fall under each. The two primary systems being installed under Category IV were noted. Riley explained the “pre-treatment” design and performance systems do not have a different way of distributing waste water, but include another component. These require monitoring which is reported to the County. On some lots, this is the only choice other than a holding tank. He feels the next code; possibly in 10-15 years will require pre-treatment systems in shoreland areas.

Kopff asked if Riley is saying these systems are acceptable and the Board should not be as concerned about number of bedrooms with these systems. Riley stated there is still the same spatial concerns, but there are separate tables for these systems. Rhineberger indicated he will be asking the same questions of Environmental Health when variance applications come in. Riley stated he would advise people to make the best choice for their lot. Rhineberger noted the applicant has the right to make requests for variances, but Staff would lay out the best option.

Schermann asked if the Board can assume, if not mentioned in the Staff Report; the proposed sewer is acceptable on a specific project before them. Rhineberger indicated that is right, but the Board can always ask for clarification. Riley felt that the majority of cases will have the sewer figured out by the time they reach the Board. Rhineberger added, that in those cases where it has not been, he would explain Staff are still working on resolving the sewer plans.

Riley explained how they judged the “buildability” of lots regarding the sewer has changed since the 1980’s due to changes in technology. He had earlier referenced “mound” sewers when they were new and there was not a history of how they would perform. In most cases, it is not what they are doing to the house that dictates the performance system.

Rhineberger noted the State Statute has changed on how they deal with undersized lots that have an existing cabin. He felt some of these situations could make decisions difficult. When the request involves replacement with an enlargement and is on a holding tank, the Board can still use the same criteria to justify variances or whether the lot should be built on. If setbacks cannot be met for the sewer, the Board can apply the same criteria as to whether the sewer can go. He could provide the new Statute again to the Board. Many changes are affected by this new Statute just passed in May and is affecting the entire Ordinance. Wagner asked if this Board would be seeing some of these proposals. Rhineberger explained that if an owner has two lots. The owner has to prove the sewer up before they split the lots. The County has dealt with one case on Lake Francis. Most smaller lots need setback variances.

Kopff asked how the Board should look at a request that has a Type I sewer and another request that might agree to a pre-treatment system to get more bedroom space. Riley explained they have to meet the same treatment standards. He would not be judging the proposal on whether it is a two or three bedroom home. Kopff asked then, the Board should not base their judgment on the sewer type.

Riley stated a mound takes a large area, but at the time it was the best choice. He does not want someone to make a worse choice on the type of sewer treatment in order to get one more bedroom. Rhineberger indicated the Board will have to make a determination on whether the house fits the general guidelines they want to see; and the sewer meets all the setbacks. On the other hand, if they are trying to force everything and need variances for the sewer to get that house, that is different and is something the owner is causing.

Wagner – asked about the case before them today where he was concerned about impact to the sewer. Would it have been better to see the site before making a decision? Rhineberger stated the design was very close. Because of the snow cover they would not have seen where it is. Wagner stated he is not an expert and would rely on Riley for his expertise. Rhineberger noted the 10' setback from the garage is permissible; the problem is access to the well. Riley stated regardless of regulations, it is hard to keep people from doing things that could impact the sewer. In this case, if the Roepke have to replace their well they would be looking at applying to the State Health Department for a variance from the well/sewer separation.

Rhineberger noted any dimensional standard can be varied. The County sewer code is stricter than the State. Riley explained how they look at an upgrade of a sewer for existing house to make a non-conforming situation better then a proposal to build new.

Schermann thanked Riley for taking the time to come before the Board

Rhineberger indicated he would provide the Board with a copy of the Ordinance amendments when a draft is ready.

Meeting adjourned at 10:35 a.m.

Respectfully submitted,

Barry J. Rhineberger
Assistant Planner

BJR:tp

Cc: Board of Adjustment
County Board
Zins/
Twp. Clerks