

**WINONA COUNTY BOARD OF ADJUSTMENT MINUTES
RING CENTRAL VIRTUAL MEETING
MAY 20, 2021 – 1:00 PM**

1. **Call to Order:** Chair R. Redig called the meeting to order at 1:00 p.m.

Board Members Present: Robert Redig, Philip Schwantz, Elizabeth Heublein, Jordan Potter and Kelsey Fitzgerald

Absent: None

Others Present: Kay Qualley, Planning & Environmental Services Director; Lew Overhaug, Planner; Stephanie Nuttall, Assistant Winona County Attorney; Eric Johnson, Zoning Administrator; Megan Kabele, Planner, and Anne Schwertel, Administrative Assistant

2. **Pledge of Allegiance:** The Pledge of Allegiance was recited.

3. **Approval of Agenda:** On motion of E. Heublein and seconded by J. Potter, the Board of Adjustment voted to approve the agenda. Vote: Yes – All.

4. **Approval of the January 21, 2021 Minutes:** On motion of P. Schwantz and seconded by J. Potter, the Board of Adjustment voted to approve the minutes. Vote: Yes – All.

5. **Petitions**

Docket # BOA 05-20-21-01

To consider the petition of Ronald & Jane Shritz in regards to the following:

- A variance to allow a new dwelling 48 ft. from the centerline of Riverview Drive instead of the required 112 ft. and 5 ft. from a side yard setback instead of the required 10 ft. pursuant to Chapter 10.7.7(2)(b) and 10.7.7(3) of the Winona County Zoning Ordinance.

Chair R. Redig read the petition request aloud.

Staff member L. Overhaug gave a PowerPoint presentation which included overview mapping exhibits of the parcel and proposed dwelling footprint, project details, township acknowledgement form, criteria, and considerations for the petition.

The Board of Adjustment and staff discussed road width and right-of-way, proximity of buildings and a the challenge of a new septic system on the property.

On motion of J. Potter and seconded by E. Heublein, the Board of Adjustment voted to open the public hearing. Vote: Yes – All.

Chair R. Redig asked if anyone wished to speak for or against the petition.

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Chair R. Redig asked if the petitioner wanted to give a presentation or share any information; no response.

Chair R. Redig asked two more times if anyone wished to speak for or against the petition; no response.

On motion of P. Schwantz and seconded by J. Potter, the Board of Adjustment voted to close the public hearing. Vote: Yes – All.

Chair R. Redig asked if there was any discussion amongst the Board of Adjustment member or if there were any questions about the approval criteria. No discussion or questions raised by the members.

On motion of P. Schwantz and seconded by E. Heublein, the Board of Adjustment voted to adopt the Findings of Fact as presented and to approve the variance with the presented conditions. Vote: Yes – All.

Chair R. Redig read aloud the appeal of Board of Adjustment criteria.

Findings of Fact:

1. The variance request is in harmony with the intent and purpose of the ordinance.

The Community Development Zoning District recognizes the “mixture of land uses that existed in the area prior to the adoption of the ordinance and provides for maximum flexibility within standards related to public health and safety.” This proposal would mix multi-family and single-family residential uses on the same parcel. The setbacks in the area vary significantly, and the requested setback would not be abnormal further north along Riverview Drive, which has a reduced speed limit and calmer traffic in this area.

2. The variance request is consistent with the comprehensive plan.

The Comprehensive Plan recommends rural communities like Dresbach “be designated as mixed use zones and that development be allowed to continue on existing lots in order to facilitate the development of service nodes for the rural community. As rural communities expand, they should be encouraged to utilize central wells and septic systems.” This proposal would expand residential use of the property, which can only happen if sewer or well capacity can support such expansion. Dresbach does not have a centralized sewer system, so wastewater treatment and drinking water must be provided on the property itself. If this can be accomplished, the request will be consistent with the Comprehensive Plan.

3. The applicant has established that there are practical difficulties in complying with the official control and proposes to use the property in a reasonable manner.

In order to manage the property the parcel will need to be split and the owners will need to be able to live on the property. The new dwelling would allow this to happen in a reasonable manner. The location of the new dwelling cannot be anywhere else on the parcel due to lot size, configuration, and the existing development on the parcel.

4. The variance request is due to special conditions or circumstances unique to the property not created by owners of the property since enactment of the Ordinance.

The lot size, long and narrow parcel configuration, and existing development on the property are all circumstances unique to the property that were not created by the owners since enactment of the Ordinance.

- 94 5. The variance will not alter the essential character of the locality nor substantially impair property
95 values, or the public health, safety, or welfare in the vicinity.

96 *The area consists of an old, platted area with small residential lots and a few commercial entities.*
97 *This parcel is on the southern end of the platted area and has no direct neighbors to the south. The*
98 *setback is not inconsistent with other structures in the area and the speed limit is already reduced*
99 *due to the residential nature of the area.*

- 100 6. Economic considerations alone do not constitute practical difficulties.

101 *Although economic considerations are part of the reason for the request, they are not the sole*
102 *consideration. This is a request to allow the petitioners to be able to manage their property and move*
103 *into retirement.*

- 104 7. The variance cannot be alleviated by a reasonable method other than a variance and is the minimum
105 variance which would alleviate the practical difficulty.

106 *There are no other locations on the property that a new dwelling could be built.*

- 107 8. The request is not a use variance and does not have the effect of allowing any use that is not allowed
108 in the zoning district, permit a lower degree of flood protection than the regulatory flood protection
109 elevation or permit standards lower than those required by State Law.

110 *The proposed use is permitted in the zoning district in which it is located, and it would not be in a*
111 *floodplain. The request does not lower the degree of flood protection established by the Regulatory*
112 *Flood Protection Elevation or lessen State Law standards.*

113 **With the following conditions:**

- 114 1. *The owner(s) of the property to which this variance is issued will abide by all representations and*
115 *commitments made during the permitting process as well as before the Board of Adjustment, in*
116 *accordance with all conditions to the variance.*
- 117 2. *The owner(s) obtain the required Development Certificate and Septic Permit and comply with all*
118 *relevant regulations and standards of Winona County and the State of Minnesota, to include meeting*
119 *the State Electrical Code, and obtaining the required permit and inspection if applicable.*

120 **Docket # BOA 05-20-21-02**

121 To consider the petition of Mark Daley in regards to the following:

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- 125 • A variance to allow a building site established on a Class II soil type, instead of the required
126 Class IV through Class VIII soil types pursuant to Chapter 10.4.7 (6) of the Winona County
127 Zoning Ordinance.

128 Chair R. Redig read the petition request aloud.

129 Staff member E. Johnson explained the petitioner has 2 separate variance requests for the Board of
130 Adjustment to consider and gave a PowerPoint presentation for the prime soils variance request which
131 included mapping exhibits of the parcel and prime soils, photos of the property, and lidar map showing
132 elevation. The township acknowledgement form had been submitted and as Mr. Daley is chair of the
133 township, it was signed by another Supervisor. Approval criteria and considerations for the petition were
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139 also presented.

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141 Chair R. Redig asked if the petitioner wished to speak on behalf of their application.

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143 Petitioner Mark Daley, of Winona County, shared his reasoning for asking for variances for a homestead.

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145 The Board of Adjustment discussed placement of the dwelling in relation to the prime soils and varying
146 elevation on the parcel. Also was discussed was potential further construction on the site other than just
147 the house; petitioner Mark Daley said there would only be construction of the house.

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149 On motion of E. Heublein and seconded by J. Potter, the Board of Adjustment voted to open the public
150 hearing. Vote: Yes – All.

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152 Chair R. Redig asked if anyone wished to speak for or against the petition.

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154 Brian Sanders, of Winona County, spoke as the neighboring feedlot operator in opposition of the petition
155 citing other potential building sites could be available on the acreage and the fact that Mark Daley’s
156 variance requests affect his feedlot.

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158 Chair R. Redig asked two more times if anyone wished to speak for or against the petition; no response.

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160 On motion of P. Schwantz and seconded by J. Potter, the Board of Adjustment voted to close public
161 hearing. Vote: Yes – All.

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163 The Board of Adjustment discussed prime soils and road access on town roads.

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165 On motion by J. Potter and seconded by P. Schwantz, the Board of Adjustment voted to adopt the
166 Findings of Fact as presented and to approve the variance with the presented conditions.

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168 Vote: Yes – All.

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170 Chair R. Redig read aloud the appeal of Board of Adjustment criteria.

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172 **Findings of Fact:**

173 1. The variance request is in harmony with the intent and purpose of the ordinance.

174 *The Agriculture and Resource Conservation Zoning District is established for the purpose of*
175 *protecting the “working agricultural landscape of Winona County as a means to ensure the*
176 *continued viability of this resource.” A variance would allow the owner to homestead an existing*
177 *farm parcel and place the new dwelling in a location that would be best suited geographically on the*
178 *acreage. The parcel contains a mature stand of trees that has not been cultivated or tilled.*

179 2. The variance request is consistent with the comprehensive plan.

180 *The Comprehensive Plan supports locally owned farming operations in order to maintain the vitality*
181 *of family farms in the agricultural economy. Although soils on the site will be converted into a*
182 *housing site, the owner is proposing to build a home on the farm to increase efficiency for the*
183 *operation, which is consistent with the Comprehensive Plan priorities of “maintaining and sustaining*
184 *the vitality of family farms, promoting policies that support Winona County’s strong tradition of*
185 *locally owned agricultural operations, and the administration of best management practices that*
186 *consider the conservation of soil, water quality, economic viability, and innovative practices.”*

187 3. The applicant has established that there are practical difficulties in complying with the official control
188 and proposes to use the property in a reasonable manner.

189 *There is no site on the 80-acre parcel that would meet the soil standards in the Zoning Ordinance.*
190 *The site selected would remove the fewest acres from crop production and avoid limitations with soil*
191 *conditions in other areas. The site would be accessible from County Road 18 and would take*
192 *advantage of the existing woods as a natural buffer between the house and the nearby feedlot.*

193 4. The variance request is due to special conditions or circumstances unique to the property not created
194 by owners of the property since enactment of the Ordinance.

195 *The soils on the property were not created by the owner, and there are no sites on the property that*
196 *would not require a variance. The site is the best location for the most compliance with regulations*
197 *as to prime soils.*

198 5. The variance will not alter the essential character of the locality nor substantially impair property
199 values, or the public health, safety, or welfare in the vicinity.

200 *The variance would allow a farm dwelling and farmstead that will be similar in character to other*
201 *agricultural farmsteads in the vicinity.*

202 6. Economic considerations alone do not constitute practical difficulties.

203 *Economic considerations have not been mentioned as the focus or featured consideration in*
204 *requesting the variance. The request is made to allow a new dwelling for family farm operation.*

205 7. The variance cannot be alleviated by a reasonable method other than a variance and is the minimum
206 variance which would alleviate the practical difficulty.

207 *Other locations on the property were considered, but are not as well suited for the dwelling because*
208 *they are cropped areas and soils that hold moisture. Therefore a reasonable alternative does not*
209 *appear available.*

210 8. The request is not a use variance and does not have the effect of allowing any use that is not allowed
211 in the zoning district, permit a lower degree of flood protection than the regulatory flood protection
212 elevation or permit standards lower than those required by State Law.

213 *The Agriculture and Resource Conservation District permits the construction of agricultural*
214 *buildings and accessory uses on the parcel. The proposed location is not located in a floodplain and*
215 *the request does not lower the degree of flood protection established by the Regulatory Flood*
216 *Protection Elevation or lessen State Law standards.*

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218 **With the following conditions:**

219 1. *The owner(s) of the property to which this variance is issued will abide by all representations and*
220 *commitments made during the permitting process as well as before the Board of Adjustment, in*
221 *accordance with all conditions to the variance.*

222 2. *The owner shall obtain the required Development Certificate and Septic Permit, and shall comply*
223 *with all relevant regulations and standards of Winona County and the State of Minnesota.*

224 3. *The proposed new driveway shall adhere to the standards described in Chapter 9.7 of the Winona*
225 *County Zoning Ordinance, and the owner shall obtain the required Driveway Access Permit from the*
226 *Winona County Highway Department.*

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Docket # BOA 05-20-21-03

To consider the petition of Mark Daley in regards to the following:

- A variance to allow a building site to be established from a registered feedlot consisting of more than 50 animal units, a six hundred fifty (650) foot distance from a feedlot, instead of the required one-thousand (1,000) feet, pursuant to Chapter 10.4.4(5)(c) and Chapter 8.5.1(1)(c) of the Winona County Zoning Ordinance.

Chair R. Redig read the petition request aloud.

Staff member E. Johnson gave a PowerPoint presentation for the feedlot setback variance request which included mapping exhibits of the proposed building site in relation to the neighboring feedlot, and proposed project information. An acknowledgement of support from Richmond Township was received, signed by a supervisor as Mr. Daley is township chair. E. Johnson also mentioned a comment received from the neighboring feedlot owner, Brian Sanders, that was sent to all Board of Adjustment members.

The Board of Adjustment discussed how the 1000-foot setback was determined and the potential need for the feedlot owner to apply for a variance in order to expand his existing farm in the future, should the feedlot setback variance be approved for Mark Daley. The Board of Adjustment asked if there was any way for a condition to be included so as to not restrict the feedlot owner, such as not requiring a variance for an expansion closer to Mark Daley's dwelling. Per staff and legal, there is not a way to place a condition which would allow the feedlot operator to expand closer to the new dwelling without ever needing a variance. Conditions cannot be made for events that have not occurred and the Zoning Ordinance is the guiding control.

Chair R. Redig asked if the petitioner wished to speak on behalf of the application.

Petitioner Mark Daley, of Winona County, stated it did not bother him to be next to a feedlot and would not mind if the feedlot operator expanded closer to his dwelling.

On motion of J. Potter and seconded by E. Heublein, the Board of Adjustment voted to open the public hearing. Vote: Yes – All.

Chair R. Redig asked if anyone wished to speak for or against the petition.

Brian Sanders, of Winona County, spoke as the neighboring feedlot operator. He shared that he is an established feedlot operator and questioned why he should be required to apply for a variance because someone built a house within 1,000 ft of his operating feedlot, which is a setback outlined in the Zoning Ordinance. Feedlot setbacks are intended to reduce conflicts. He was concerned that he would be fighting the rest of his life to be able to grow his farm should the variance be approved. He stated that there is other acreage available for Mr. Daley's house that would not impact his ability for future expansion.

Chair R. Redig asked two more times if anyone wished to speak for or against the petition; no response.

On motion of E. Heublein and seconded by P. Schwantz, the Board of Adjustment voted to close public hearing. Vote: Yes – All.

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The Board of Adjustment and staff discussed whether or not all building sites have been exhausted before asking for a variance to build within the 1,000 setback of the feedlot. The chosen building site was the best building site but not all options had been exhausted and the approved prime soils variance allows for the applicant to build anywhere on the parcel. Discussion ensued about the 1,000 foot feedlot setback, courts upholding Board of Adjustment decisions, other building sites on the parcel and supporting agriculture.

Chair R. Redig read through Finding of Fact #1 and staff analysis.

Discussion ensued again about the 1,000-foot setback, easements and restricting future rights, restricting the feedlot operator's ability to expand and the fact that all criteria need to be met to approve a variance request.

K. Fitzgerald made a motion to accept Finding of Fact #1 as written; seconded by E. Heublein.

The Board of Adjustment discussed what would trigger a variance and potentially tabling the petition to allow the applicant to reach out to the feedlot operator to come up with a solution to the 1,000 foot feedlot setback, as stated in the Zoning Ordinance.

K. Fitzgerald and E. Heublein withdrew their motion.

On motion by E. Heublein and seconded by K. Fitzgerald, the Board of Adjustment tabled the petition until the June 2021 Board of Adjustment meeting. The petition was tabled to allow the applicant and feedlot owner time to work together to find a solution.

Vote: Yes – All.

6. Adjourn

The Board of Adjustment adjourned at 3:06p.m. Vote: Yes – All.

Respectfully submitted by,
Anne Schwertel
Administrative Specialist

Signed by  17 JUNE 2021.
Board of Adjustment Chair Date