

WINONA COUNTY BOARD OF ADJUSTMENT MINUTES
FEBRUARY 17, 2022 – 1:00 PM

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

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

Absent: None

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

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

3. **Election of Chair and Vice Chair**

A. Chair

Planning Director, Kay Qualley, called for nominations for the Board of Adjustment Chair. Jordan Potter nominated Robert Redig; seconded by Kelsey Fitzgerald. Hearing no other nominations, Kay Qualley called for a vote on Robert Redig as the 2022 Board of Adjustment Chair. Vote: Yes – 3; No – 1 (RR). Robert Redig said he would accept the Chair position of the Board of Adjustment.

B. Vice-Chair

Chair Robert Redig called for nominations for the Board of Adjustment Vice-Chair. Kelsey Fitzgerald nominated Jordan Potter; seconded by Elizabeth Heublein. Hearing no other nominations, Chair Robert Redig called for a vote on Jordan Potter as the 2022 Board of Adjustment Vice-Chair. Vote: Yes – All.

The Board of Adjustment and Planning Director, Kay Qualley, discussed the Secretary role and responsibility. The Board of Adjustment members agreed it would be appropriate for Kay Qualley to continue in that role. Vote: Yes – All.

4. **Approval of Agenda:** On motion of Jordan Potter and seconded Elizabeth Heublein, the Board of Adjustment voted to approve the agenda. Vote: Yes – All.

5. **Approval of the December 2, 2021 Minutes:** On motion of Jordan Potter and seconded by Kelsey Fitzgerald, the Board of Adjustment voted to approve the minutes. Vote: Yes – All.

6. **Approval of the December 16, 2021 Minutes:** On motion of Jordan Potter and seconded by Elizabeth Heublein, the Board of Adjustment voted to approve the minutes. Vote: Yes – All.

7. **Rules of Procedure: Annual Review and Adoption**

Planning Director, Kay Qualley, addressed the Board of Adjustment and explained the process of reviewing and adopting the Rules of Procedures annually. No changes were recommended by staff or the

50 BOA to the current Rules of Procedures. On motion by Jordan Potter and seconded by Elizabeth
51 Heublein, the Board of Adjustment voted to re-adopt the Rules of Procedures. Vote: Yes – All.

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53 **8. Recommendation to the County Board: Planning Commission Liaison**

54 Kelsey Fitzgerald nominated Jordan Potter as the Planning Commission Liaison; seconded by Elizabeth
55 Heublein. Hearing no further nominations, the Board of Adjustment voted on the recommendation to the
56 County Board of Jordan Potter as the Liaison to the Planning Commission. Vote: Yes – All.

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58 **9. Petitions**

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60 **Docket # BOA 2-17-22-01**

61 To consider the petition of Robert and Marilyn Hurt in regard to the following:

- 62 • Consideration of a variance to allow a subsurface sewage treatment system (SSTS) two (2) feet from
63 the front yard property line / right of way instead of the required ten (10) feet, five (5) feet from the
64 side yard property line / right of way instead of the required ten (10) feet, and seven (7) feet from a
65 structure (dwelling) instead of the required twenty (20) feet pursuant to Chapter 13 of the Winona
66 County Zoning Ordinance and MN Rules Chapter 7080.2150 subpart 2 (F) Table VII.

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68 Chair Robert Redig read the petition request aloud.

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70 Planning Director, Kay Qualley, gave a PowerPoint presentation which included overview mapping
71 exhibits of the parcel and proposed SSTS installation location, and other project details. The City of
72 Dakota vacated the Rogers Street right-of-way in order to accommodate the project. Additional
73 information from Zoning Administrator Eric Johnson was shared additional regarding the Class Four
74 high performance SSTS treatment system.

75
76 Elizabeth Heublein asked questions about the vacated right-of-way.

77
78 Chair Robert Redig asked if the petitioner or representative of the petitioner wanted to speak on behalf of
79 the application.

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81 Representative Chance Nelson, septic contractor, explained the need for the variance request and went
82 into detail about the treatment system.

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84 The Board of Adjustment asked questions of Chance Nelson regarding the use of electricity for the
85 system, how long the system should last and whether the system will be located all underground.

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87 On motion of Jordan Potter and seconded by Elizabeth Heublein, the Board of Adjustment voted to open
88 the public hearing. Vote: Yes – All.

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90 Chair Robert Redig asked three times if any members of the public wished to speak for or against the
91 petition; no response.

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93 On motion of Jordan Potter and seconded by Elizabeth Heublein, the Board of Adjustment voted to close
94 the public hearing. Vote: Yes – All.

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

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On motion of Jordan Potter and seconded by Elizabeth Heublein, the Board of Adjustment voted to adopt the Findings of Fact as presented and to approve the variance with the conditions as presented.

Vote: Yes – All.

Findings of Fact:

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

The request will allow for a new subsurface sewage treatment system (SSTS) to replace a system that currently fails to protect groundwater. An upgraded system will provide for the health, safety, and general welfare of the public, protect and conserve natural resources, and minimize pollution and improve water quality.

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

The Comprehensive Plan recommends protection of natural resources. A non-compliant SSTS system can impact water resources. The technical requirements that help ensure that there is a properly functioning SSTS on the site, which in turn protects water resources and the health, safety, and general welfare of the public.

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.

Practical difficulties related to this request arise from the parcel's small size and location within an old, platted municipality that does not have public infrastructure to collect and treat wastewater. The location and layout of the house, accessory structure and well locations do not provide any other suitable locations where an SSTS can be installed and meet required setbacks per State standards.

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 house was built and the property was developed during a time when on-site wastewater treatment and disposal was not given as much thought and consideration as it should have been and is now. This was not a situation created by the property owner but just reflected the general lack of knowledge and technical expertise as well as adequate regulatory framework to plan for future wastewater needs on the property. The lot is small and the proposed system cannot be built within the usual setback parameters.

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

SSTS are primarily subsurface and are part of the residential landscape in rural areas. Functioning wastewater treatment systems are essential for maintaining property values and fixing systems that are failing to protect groundwater will improve public health, safety, and general welfare, not impair it.

6. Economic considerations alone do not constitute practical difficulties.

Economic considerations have not been the primary focus of the applicant or the analysis of practical difficulties in this case.

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

140 *The contractor hired by the property owner looked at the entire site and determined the most*
141 *reasonable method of accommodating a functioning wastewater treatment system. No other area on*
142 *the property has been identified which can accommodate an SSTS that utilizes an on-site soil-based*
143 *treatment. The requested setbacks are the minimums for construction of the new compliant SSTS*
144 *system.*

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

148 *The variance is from a dimensional standard (setback) which does not constitute a use variance. The*
149 *site is not located within a regulated flood zone and is located above the regulatory flood protection*
150 *elevation for the area.*

151 **With the following conditions:**
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153 1. The owner(s) of the property to which this Variance is issued, will abide by all representations and
154 commitments made during the permitting process as well as before the Board of Adjustment to the
155 extent, they are not inconsistent with the spirit or letter of explicit conditions to the variance.

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157 2. The petitioners obtain the required Septic Permit and comply with all relevant regulations and
158 standards of Winona County and the State of Minnesota.

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160 **10. Adjourn**

161 On motion of Jordan Potter and seconded by Kelsey Fitzgerald, the Board of Adjustment voted to
162 adjourn at 1:27p.m. Vote: Yes – All.

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165 Respectfully submitted by,
166 Anne Schwertel
167 Administrative Specialist

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171 Signed by 
172 Board of Adjustment Chair


Date