

WINONA COUNTY BOARD OF ADJUSTMENT MINUTES
MARCH 16, 2023 – 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, Kelsey Fitzgerald and Ed Walsh

Board Members Absent: Jordan Potter

Others Present: Kay Qualley, Planning & Environmental Services Director; Eric Johnson, Zoning Administrator; Olivia Luther, Planner; Stephanie Nuttall, Assistant Winona County Attorney (remote) and Anne Schwertel, Administrative Specialist

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

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

4. **Approval of the February 16, 2023, Minutes:** Ed Walsh requested the sentence “*Ed Walsh asked Lew Overhaug if there was a specific provision in the zoning ordinance allowing for an accessory structure in existence when there is no primary structure; Lew stated there is not.*”

Elizabeth Heublein made a motion to amend the minutes as suggested by Ed Walsh and to approve the minutes; seconded by Kelsey Fitzgerald. Vote: Yes – All.

5. **Petitions**

Docket # BOA 03-16-23-01

To consider the petition of Joe and Lucy Bontrager, who seek a Variance regarding the following:

- To allow a private schoolhouse to be located within the required 500-foot setback of an existing feedlot, pursuant to Section 8.5.1(2)(d)(II) of the Winona County Zoning Ordinance.

Planner Olivia Luther gave a PowerPoint presentation which included overview mapping exhibits of the parcel showing the building location in relation to the neighboring feedlot, applicant site plans, general site considerations, and site photos. It was pointed out that the applicants attended the February 9, 2023 Saratoga Township meeting regarding their project but the township chose not to sign or act upon the acknowledgement form.

The Board of Adjustment asked questions including an inquiry to staff the impact of an unsigned township acknowledgement form. K. Qualley stated that not signing the acknowledgement form prevents the BOA from receiving public input from the township about projects in their area, but does not prevent

49 the decision-makers from acting upon the petition using public testimony and the staff
50 presentation/report.

51
52 Additionally, E. Walsh asked questions about timeline of events and communications between the
53 applicants and Planning staff in relation to the schoolhouse construction to clarify whether procedural or
54 mail delays contributed to the schoolhouse construction moving forward without the permit being issued.
55

56 Chair Robert Redig asked if the petitioners wished to speak on behalf of their project.
57

58 Joe Bontrager, of Winona County, spoke about the schoolhouse being built on his land that he gave to the
59 community. Ed Walsh asked the applicant the timeline of events and communications with Planning staff
60 in relation to the schoolhouse construction. Joe Bontrager said he moved along with the schoolhouse
61 construction as he was under the impression he was okay to proceed. He clarified that he did not parcel
62 off the school land, that he was still the owner, but had facilitated it for community use.
63

64 The Board of Adjustment asked questions about the construction of the schoolhouse needing a feedlot
65 setback variance.
66

67 On motion of Elizabeth Heublein and seconded by Ed Walsh, the Board of Adjustment voted to open the
68 public hearing. Vote: Yes – All.
69

70 Chair Robert Redig asked if anyone wished to speak for or against the petition.
71

72 Allen Miller, of Winona County, spoke in favor of the petition. He explained the process of adding the
73 driveway and working with the township and contractors to accomplish that. Additionally, he explained
74 that he thought they received the proper permission to proceed and apologized for the misunderstanding.
75

76 Chair Robert Redig asked two more times if anyone wished to speak for or against the petition; no
77 response.
78

79 On motion of Ed Walsh and seconded by Elizabeth Heublein, the Board of Adjustment voted to close the
80 public hearing. Vote: Yes – All.
81

82 E. Walsh shared some process suggestions toward reducing after the fact permit applications for in-
83 process builds for the Planning Department, such as work-stoppage flagging, where needed. Robert
84 Redig related that it is possible for members of the public to build on their property without knowing
85 they'd need a variance if they did. He emphasized the importance of having a Board of Adjustment that
86 listens. It is important to look at each petition individually, review the totality of the project and also
87 decide whether it is reasonable to have landowners destroy structures worth thousands of dollars.
88

89 On motion of Elizabeth Heublein and seconded by Ed Walsh, the Board of Adjustment voted to adopt the
90 Findings of Fact and to approve the variance with the conditions as presented. Vote: Yes – All.
91

92 Chair Robert Redig read aloud the Board of Adjustment Appeal to District Court.
93

94 **Findings of Fact:**

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

96 *The Winona County Zoning Ordinance states that the intent of the Feedlot Chapter (Chapter 8) is “to*
97 *allow for the continued production of agricultural commodities and to maintain a healthy*
98 *agricultural community within the County while ensuring that farmers properly manage animal*
99 *feedlots and animal wastes to protect the health of the public and the natural resources of Winona*
100 *County.” The schoolhouse’s location within an existing feedlot setback was requested as the*
101 *schoolhouse serves children of the nearby farms and feedlots. The schoolhouse provides education to*
102 *children of the community who also contribute to the agricultural operations of their properties.*
103 *Keeping children of the community closer to home and providing educational opportunities serves to*
104 *maintain a healthy agricultural community.*

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

106 *The Comprehensive Plan recommends that local decisions should “support maintaining and*
107 *sustaining the vitality of family farms”. Locating the school in an area with farm-children nearby*
108 *serves to keep children closer to home. The school is closed during harvest times so that children*
109 *can contribute to sustaining their family farms.*

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

112 *Practical difficulties related to this request arise from the schoolhouse’s need for road access for*
113 *the students and teacher and utilizing the existing access in order minimize development impacts.*
114 *The school and outbuilding are a low-impact development on a parcel with an existing dwelling and*
115 *agricultural buildings. The development seeks to utilize the flattest area of the parcel closest to the*
116 *roadway, while siting the structures in a previously low-producing agricultural field as compared to*
117 *the other fields on the property.*

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

120 *The variance request is due to the location of the feedlot across Keller Drive and the setback*
121 *requirement associated with the number of animal units. The applicants have sited the school to use*
122 *the least amount of available land including siting the structures off an existing access drive from the*
123 *roadway.*

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

126 *A school at this location is a minimal development in an existing rural residential area. The school*
127 *has a tree buffer between the buildings and the roadway and is located on a roadway that has*
128 *minimal traffic. The schoolhouse would not substantially impair property values or the public health,*
129 *safety, or welfare in the vicinity. The feedlot operator, who would have to abide by setback*
130 *requirements should they propose an expansion to their operations, was in favor of the proposed*
131 *location and was a primary contributor to the planning and construction of the site.*

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

133 *Economic considerations have not been the primary focus of the applicant or the analysis of*
134 *practical difficulties in this case. The schoolhouse was sited in its location due to the existing access*
135 *off Keller Drive and flat area on the property.*

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

138 *The schoolhouse location being 300 feet away from the existing feedlot instead of the required 500*
139 *feet has been considered the minimum variance to alleviate the practical difficulty. The applicants*
140 *have chosen the location closest to existing access, flattest, and low-impact area on the property.*

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

144 *The schoolhouse is a legal use in the Agriculture/Resource Conservation District and is not in a*
145 *floodplain. The request does not lower the degree of flood protection established by the Regulatory*
146 *Flood Protection Elevation or lessen State Law standards.*

147

148 **With the following conditions:**

- 149 1. *The owner(s) of the property to which this variance is issued will abide by all representations and*
150 *commitments made during the permitting process as well as before the Board of Adjustment, in*
151 *accordance with all conditions to the variance.*
152 2. *The petitioners obtain the required Development Certificate, Septic Permit, and Driveway Access*
153 *Permit (if applicable) and complies with all relevant regulations and standards of Winona County*
154 *and the State of Minnesota, to include meeting the State Electrical Code, and obtaining the required*
155 *permits and inspection if applicable.*

156

157 **6. Adjourn**

158 On motion of Kelsey Fitzgerald and seconded by Elizabeth Heublein, the Board of Adjustment voted to
159 adjourn at 2:01 p.m. Vote: Yes – All.

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162 Respectfully submitted by,
163 Anne Schwertel
164 Administrative Specialist

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Signed by  _____ Date 4/20/23

Board of Adjustment Chair/Vice Chair