

CARVER COUNTY BOARD OF ADJUSTMENT
Regular Meeting – April 3, 2019
Minutes

Members Present: Scott Hoese, Richard Kvitek, Virgil Stender, Mark Willems, Robin Bielefeldt, Doug Weber

Members Absent: None

Members Late: None

Staff Present: Steve Just, Kathleen Russell

Pursuant to due call and published notice thereof, the April 3, 2019, meeting of the Carver County Board of Adjustment was called to order by Chairman Hoese at 7:00 p.m.

Minutes – A motion was made by Kvitek and seconded by Buetow to approve the minutes of the March 6, 2019, meeting as written. All voted aye. Motion carried.

Public Hearing - File # 20190013 – Troy Williams –Chairman Hoese called the public hearing to order at 7:01 p.m. to consider the application of Troy Williams pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request for lot requirements regarding reasonable use pursuant to Chapter 152 of the County Code. The property is located in Section 35 of Waconia Township.

The following were present: Troy Williams, Todd Williams, Scott Williams

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated February 27, 2019

Exhibit F – Letter to the Board of Adjustment and Waconia Township dated March 26, 2019, and all attachments.

Russell explained the applicant’s request to subdivide an approximate 20 acre parcel into two parcels, a 3.5 acre residential parcel with the existing house and the remaining 16.5 acres of tillable ground. She used an aerial map to illustrate the proposed subdivision. The 16.5 acre parcel would not meet the requirements for an agricultural parcel (minimum of 20 acres in size). The 16.5 acre parcel, because of its size, is also regarded as not having a reasonable use (building eligibility). The applicants maintain a practical difficulty in that they would like to maintain the tillable land and sell the residence, which does not meet the Zoning Code standards, and therefore, a variance has been requested. Russell stated the Board may want to discuss the future uses of the 16.5 acre parcel, or determine future structure potential if the variance is granted.

Waconia Township reviewed the request and recommended approval at their February meeting. She read one condition relating to the Minor Subdivision process if the request is approved.

Mr. Williams stated this property belonged to his father who has passed away. He explained that a relative is interested in purchasing the house and residential acreage only, and the family would like to retain the tillable acreage, which has been farmed in conjunction with the adjacent 20 acre parcel, which is also run by a relative. He stated that the subdivision of the residential parcel would meet all of the lot requirements, and the variance is for the tillable acreage which leaves a parcel of less than 20 acres. He noted the proposed subdivision on the aerial map and indicated that the south line may be adjusted slightly to accommodate the rear yard setback of 30 feet.

Just confirmed the rear yard setback is 30 feet and also mentioned that there would need to be adequate area for the septic system and an alternate site to meet all setbacks.

Mr. Williams stated that they have begun the process to get a design for the replacement of the septic system and also identify an alternate site.

Hoese asked about the access location for the 16.5 acre parcel.

Mr. Williams stated that currently the field is accessed from the existing driveway, but is also accessed from the adjacent field, since it is being farmed by the same person. It would also be possible to get a field access from the road.

Just confirmed that field accesses are not regulated and if the access is from a Township road, the Township would have the authority on it.

Kvitek stated the 16.5 acre parcel would still be used as agricultural, but would not qualify as agricultural by the Zoning Code definition.

Just replied this would be the discussion and decision made by the board. The 16.5-acre parcel does not meet the 20 acre minimum requirement to be considered an agricultural parcel, but the only land use is agricultural production land because there is no building eligibility on the parcel. If the variance is approved, and the board determines that this would be the same as a 20-acre agricultural parcel, then further discussion is necessary to determine if it is also eligible for agricultural buildings and what the future land use might be. By definition, the parcel has no reasonable use because it is less than 20 acres and has no building eligibility.

Kvitek asked the applicant if they intend to construct agricultural buildings on the 16.5-acre parcel.

Mr. Williams replied that they do not intend to put any ag buildings on the parcel but continue to have their cousin farm it with the adjacent parcel. At such time when their cousin would not longer be farming, they would rent it out for agricultural production land. He mentioned that the parcel currently has feedlot status also, which would be removed when the parcel is subdivided. They do not plan to have any animals on the parcel or construct any building for animals. He

also stated that the parcel is hardly large enough to build a machine shed to store equipment for running the land either.

Kvitek concluded that maintaining the farmland as ag production land and determining that no buildings could be constructed on the land would not impact their intended use of the property.

Mr. Williams noted the entire 16.5 acres is tillable ground and asked how it would be different if the land was swamp or tree-covered or something other than tilled.

Just replied that the 20-acre minimum requirement assumes that the majority of the land is tillable, but there might be wetland area or other non-tillable acres. There have been parcels that have been denied agricultural status if the land was minimally tillable. He stated this parcel is all prime ag land and does not violate the Comp Plan with respect to long-term ag land use and primarily good farmland. The key term is the 20 acre size.

Hoese asked if there is the possibility of moving a building eligibility to the parcel.

Mr. Williams replied that there are regulations limiting tillable acres included in a residential parcel, which would require another subdivision and he didn't envision this happening. He noted the location of the parcel in relation to the City of Waconia and also mentioned possible future changes to 102nd Street as a route to the southwest side of Waconia and the high school. It was stated that this is all speculation at this time.

Hoese asked how the board could proceed on this request.

Just replied that the request could be approved or denied. He asked that that the board would provide directions for the conditions on the future use of the 16.5-acre parcel regarding ag buildings or other uses or restrictions if the request is approved. If a building eligibility would be transferred to the parcel, it would no longer be considered an agricultural parcel and the parcel would be limited to residential accessory structures. The current concern is clarifying the agricultural status and the future uses and/or restrictions.

Willems asked about the building eligibility transfer process.

Just explained the process and stated it is allowed in Waconia Township's chapter of the Comp Plan. He reiterated the need for specific clarification on the future uses of this parcel.

Willems confirmed that by granting this subdivision, a non-conforming parcel will be created.

Discussion ensued with various possibilities of conditions to limit or restrict buildings on the parcel.

Mr. Williams stated that there is little likelihood of transferring a residential building eligibility to the parcel. He confirmed that the subdivision would create a non-conforming agricultural parcel at this time and they would be amenable to the restriction of no agricultural buildings

allowed on the parcel.

Discussion continued about the possibility of a building eligibility and construction of a house and outbuildings on a 16.5-acre parcel, which would exceed the maximum of 2 acres of prime ag soils in a residential lot.

Just declared it would be difficult to deny construction of a house if there was a building eligibility on the parcel, however, the restriction prohibiting agricultural buildings could be stipulated.

Weber confirmed that residential accessory structures could still be allowed if a house was constructed.

Just stated that would be possible, if that is what the conditions specify.

Williams confirmed that the property will continue to be owned by his brothers and himself and they have no intention of constructing any ag buildings on the land, so they would be agreeable with a condition for no ag buildings. He did state he felt it unfair to restrict the possibility of transferring a building eligibility to the parcel, even though this is not their intent. He said a minor subdivision to create a conforming residential lot could be possible and he did not want to restrict that opportunity. Williams also clarified the amount of road frontage on this parcel, referencing a previous discussion about gaining access to this parcel from 102nd Street.

A motion was made by Stender and seconded by Willems to conclude the public hearing. All voted aye. Motion carried. The public hearing was concluded at 7:27 p.m.

A motion was made by Stender and seconded by Weber to approve the request with the staff recommendations and also including the stipulation prohibiting ag structures on the 16.5-acre parcel.

Willems clarified that this stipulation would restrict construction of any ag buildings on the parcel, whether there was a building eligibility on the property or not. He also struggled with the future possibility of an eligibility and having a residential lot with more than 2 acres of prime ag soils.

Just stated a future subdivision would address the prime ag issue. It is a part of this record that if the variance is approved, the property is considered an agricultural parcel and the reasonable use issue has been addressed. There would be no ag buildings allowed, but if an eligibility was obtained, a house could be constructed, unless the board would require another variance for reconsideration.

Willems stated he was still uncomfortable with creating a non-conforming parcel and wanted to clearly address the possibility of exceeding prime ag soils in a potentially residential lot to remove any opportunity for future complications. His concern was not for the immediate subdivision, but for the future of the 16.5-acre parcel.

Weber agreed that large residential parcels can offer potential for unwanted activities. He referred to discussions at a previous meeting with similar circumstances.

Just stated that with this variance, the minor subdivision process would be completed and the 16.5-acre parcel would be created and have no requirement for a future subdivision even with a building eligibility. He indicated a condition could be added to address potential for a future building eligibility or construction of a house.

Mr. Williams stated that it is impossible to know what might happen in the future. He stated that he speculated that if the land would be removed from agricultural production, it would likely be developed at that time, which would be regulated by a subdivision process. He reiterated that transferring a building eligibility to the parcel would be highly unlikely.

Willems offered to friendly amend the previous motion to also include a condition requiring that if a future building eligibility is granted to the parcel, it would have to meet all of the Zoning Code requirements or return to the Board of Adjustment for a variance.

Williams asked if the buyer of the 3.5-acre parcel would be able to purchase the 16.5-acre parcel, would the restriction of agricultural buildings be removed.

Just stated language could be written to allow for agricultural buildings if the property becomes a conforming agricultural parcel.

Chairman Hoese called for a vote on the motion including the friendly amendment. All voted aye. Motion carried.

The motion was made to **approve and issue Order PZ20190013** allowing for a minor subdivision and lot requirements concerning reasonable use and the following conditions:

1. A Minor Subdivision application shall be submitted and approved prior to the recording of any deed(s). The parcels shall be subdivided in accordance with the County Zoning Code requirements including but not limited to, a completed Minor Subdivision application, septic system compliance, and survey.
2. Agricultural structures shall not be permitted on the 16.5±-acre parcel unless the property is brought into conformity of the zoning code.
3. If a building eligibility is transferred to the 16.5±-acre parcel, the owner must return to the Board of Adjustment to be permitted unless the parcel is in conformance with the zoning code.

Adjournment

Having completed the agenda items and seeing no other business, Chairman Hoese deemed the meeting adjourned at 7:38 p.m.