

MOWER COUNTY

AUSTIN, MINNESOTA

55912

November 1, 1984



MINUTES OF THE 73rd MEETING OF THE MOWER COUNTY BOARD OF ADJUSTMENT

Members Present: Merrill Chesebrough, Conrad Stemson, Kenneth Trom, William Milbrath

Members Absent: None

Others Present: Craig Eliason, Julie Lewon

The 73rd meeting of the Mower County Board of Adjustment was called to order by Chairman Trom on Thursday, November 1, 1984 at 4:00 p.m. in the Jury Room of the Mower County Courthouse. This was a special meeting.

Thomas Nessa - Variance from the Required 90 foot setback from a Trunk Highway Right-of-Way: The staff report on Mr. Nessa's request for a 77 foot variance to allow a building to be 13 feet from the right-of-way was read to the Board. Mr. Nessa is asking for the variance so he won't have a long uphill driveway. The property in question is the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, except 13.5 acres in the N $\frac{1}{2}$, Section 2, Racine Township, along trunk highway 63.

Mr. Chesebrough explained that the board had been out to the site and he told the location of the right-of-way line and the proposed building site. He also explained that Mr. Nessa had dug out an area for an earth home approximately two years ago to the south and east of the proposed building site. If the building were moved straight back to the east to meet the 90 foot setback, part of this would have to be filled in. However, Mr. Chesebrough said, this is something Mr. Nessa has done, not anything inherent with the land. It was done by the property owner. He felt there were no practical difficulties in constructing the building 90 feet back because the whole area to the east is flat. Ms. Lewon said that if the building site were moved a bit to the north, there would be no need to fill in part of the area previously excavated.

Mr. Chesebrough added that the angle of the driveway would not be changed by moving the building back. Ms. Lewon reported to the Board that at the October 30 county planning commission meeting, Ray Capelle, chairman of the planning commission, brought to the attention of the commission that he had received notice of this variance request. Mr. Capelle was opposed to the variance being granted. His reason was that if someone were allowed to build that close to the right-of-way, there was no reason to even have the ordinance and he felt it would set a bad precedent for other buildings out in the county.

The board then reviewed the criteria for the granting of a variance and it was determined as follows:

- 1) The variance is not in harmony with the ordinance intent and general purpose as the intent is to have buildings set back ninety (90) feet from a trunk highway and the requested variance is not in keeping with this.

Page two
Mower County Board of Adjustment Minutes
November 1, 1984

- 2) The variance is not consistent with the Comprehensive Plan.
- 3) There are no practical difficulties shown of building anywhere in the area while maintaining the ninety (90) foot setback requirement.

Particular hardship is not shown in the following areas:

- a) Property can be put to a reasonable use under the conditions allowed by the official controls. The area is level and the building could be moved back to meet the required setback.
- b) The plight of the landowner is not due to circumstances that are unique to the property, not created by the landowner. The fact that an area has been excavated for an earth home cannot be used as a reason for granting the variance as this circumstance was created by the landowner.
- c) There are no homes, except the home on the property, in the immediate neighborhood. The existing home on the property is approximately one-quarter of a mile back from the road. The requested variance would therefore be a change to the immediate neighborhood.
- d) Economic consideration alone cannot constitute a hardship if a reasonable use of the property exists under the terms of the ordinance. As it had been established that a reasonable use of the property does exist, the fact that forms had been put up for the building cannot be used as a basis for granting the variance.

Mr. Milbrath asked what the sequence of events were that led up to Mr. Nessa applying for the variance. Ms. Lewon said that someone representing Mr. Nessa had come to the planning office for a building permit. The building permit was filled out and the setback from the right-of-way was put down as 100 feet. Mr. Nessa has said that there was a misunderstanding of what was meant by road right-of-way. He thought he had to be 90 feet from the edge of the trunk highway. When Mr. Nessa started to put up the forms only 13 feet from the right-of-way, a township official stopped him. The township official explained that the building was to be 90 feet from the right-of-way. At this point, Mr. Nessa came in to apply for a variance.

After further discussion, a motion was made by Mr. Milbrath to deny the variance request for the reasons given above. The motion was seconded by Mr. Stemson and passed unanimously.

There being no other business, a motion to adjourn was made by Mr. Chesebrough, seconded by Mr. Milbrath and passed unanimously. The meeting adjourned at 4:31 p.m.

Respectfully submitted,



Julie Lewon, Secretary