

Applicants

Fred and Karin Bock
18255 568th Ave
Mankato, MN 56001

Request and Location

Request for a variance to increase the allowable square footage of a proposed care giving unit for elder care / dependent care to more than 40% of the habitable area of the existing principal single family dwelling. The proposal also includes increasing the number of allowable amenities to accommodate the caregiver unit as a single family dwelling that will be occupied by the applicant's son and his family. The property is located in the NW Quarter of the NW Quarter of Section 18, Decoria Township and is zoned conservation.

Legal Description

The property is located in part of the NW Quarter of the NW Quarter of Section 18, Decoria Township.

Zoning

The property is located in the Conservative Zoned District.

General Site Description and Project Proposal

The property includes a single family dwelling occupied by the applicants and consists of 27 acres. The existing dwelling is 1,568 square feet according to the County Assessor's information. The site also includes a modest sized storage shed and another structure used to kennel their dogs.

Earlier this year, Mr. Bock met with staff to discuss the situation involving his property. He indicated that he and his wife are at a point in their lives where they are not ready to move from their existing home, but admittedly have a need for some supervision. His inquiry at the time was to see if a second dwelling could be constructed on the site. This second dwelling would be occupied by his son and daughter-in-law and they would oversee their needs. Staff advised Mr. Bock that a second dwelling on a parcel is not allowed in the conservation zoned district. The option of applying for a conditional use permit for an elder care / dependent care unit was discussed. However due to the living space limitations placed on such units, Mr. Bock determined that was not a viable option. At a later date Mr. Bock, his son and daughter-in-law met again with staff to discuss their intentions. During this meeting the possibility of a variance was brought up. Staff has attended a number of zoning workshops relating to both area and use variances. The presenters, whom have generally been attorneys, do not encourage use variances. This lead to the option of applying for an area variance to allow the applicants to exceed the 40% of the habitable area of the existing principal single family dwelling to be allowed for elder care / dependent care units. Forty percent of the existing dwellings habitable space equates to 627 square feet for the caregiver unit.

The applicant's son and daughter-in-law have indicated that the proposed single family dwelling will not exceed 2,400 square feet for the upper two levels.

If the variance is approved, the applicant's son and daughter-in-law will submit an application for a conditional use permit to establish an elder care / dependent care unit.

Existing Land Use within 500 Feet

- North:** A wooded hillside, crop land and the Le Sueur River valley
South: Crop land and a wooded hillside and ravine system leading to the confluence of the Le Sueur and Cobb rivers.
East: A wooded hillside and ravine system leading to the confluence of the Le Sueur and Cobb rivers.
West: CSAH 16 and multiple residences.

Access

No change in access is proposed. Existing access is to and from CSAH 16.

NATURAL RESOURCES INFORMATION

Topography

The topography of the buildable area of the property is fairly flat. However, a steep bluff system surrounds the buildable area to the north, east and west sides.

Floodplain

The property does include some areas of floodplain of the Le Sueur and Cobb rivers. However, the buildable area of the property is located approximately 170 feet in elevation above the floodplain areas. See attachment A-3

Shoreland

The property is within the shoreland district of the Cobb River, an agricultural river. The proposed location of the eldercare / dependent care unit will not be within the shoreland district. See attachment A-4

Township Review

The applicants met with the township at their November 4th meeting. The township has expressed no issue with the request.

Environmental Health Review – See attachment A-5.

Applicable Sections of the County Land Use Ordinance

Sec. 24-324. Elder Care/Dependent Care Units

(c) *Performance Standards*

- (1) Not more than one (1) elder care/dependent care unit shall be allowed on a lot.
- (2) Occupancy of the elder care/dependent care unit is limited to family members related by blood, marriage, or adoption and/or their care giver(s). There shall be an annual verification that the persons living in the elder care/dependent care unit are family members or the care giver(s) as defined herein.

(3) **Size.** In no case shall the total square footage of an accessory dwelling unit be more than 40 percent of the habitable area of the principal single family dwelling, and it shall not exceed more than 800 square feet. For the purposes of elder care/dependent care units within or attached to a garage; only the habitable portion shall be calculated for elder care/dependent care unit size requirements.

(4) **Amenities.** An elder care/dependent care unit shall not contain more than one (1) bathroom, one (1) kitchen (with or without eating area), one (1) utility room, two (2) bedrooms, and one (1) living/multi-purpose room.

(5) Sewage treatment shall be provided for the elder care/dependent care unit in accordance with the Blue Earth County Subsurface Sewage Treatment System Ordinance.

(6) **Off-Street Parking.** In addition to the parking spaces required for the principal single family dwelling on the lot, one (1) off-street parking space shall be provided for the elder care/dependent care unit.

(7) **Driveway.** An elder care/dependent care unit and its supporting parking area shall be served by the same driveway and access that serves the principal single family dwelling.

(8) **Detached Elder Care/Dependant Care Unit Setbacks.** In addition to meeting principal building setbacks, the detached elder care/dependent care unit shall be located in the side or rear yard of the principal single family dwelling and be separated by at least 10 feet from the principal single family dwelling, but not more than 150 feet.

(9) An elder care/dependent care unit shall not be subdivided nor otherwise segregated in ownership from the principal single family dwelling.

(10) All kitchen appliances and/or plumbing equipment shall be removed within 90 days once the elder care/dependent care unit is no longer occupied by a family member or care giver(s).

(11) **Other Regulations.** The elder care/dependent care unit shall comply with all other local and state regulations.

(12) Additional conditions may be imposed to ensure that the proposed use is compatible with the surrounding land uses.

Sec. 24-48. Board of Adjustment.

(d) *Powers.*

(1) **Powers.** The Board of Adjustment shall have power to grant a variance or an appeal to any of the provisions of this chapter to the extent of the following and no further:

a. To vary or modify the strict application of any of the regulations or provisions contained in this chapter in cases in which there are practical difficulties in the way of such strict applications; no variance or modification of the uses permitted within a district shall be allowed, except as otherwise provided in this chapter.

(f) **Findings required.**

(1) **Enumeration.** The Board of Adjustment shall not grant an appeal or a variance unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:

a. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.

- b. That the granting of the application will not result in any material adverse effect on the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.
- c. The application for a variance which, in the opinion of the Board of Adjustment, may result in a material adverse effect on the environment may be requested to demonstrate the nature and extent of the effect.
- d. The variance is in harmony with the general purposes and intent of the official controls in cases when there are practical difficulties in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the comprehensive plan.
- e. The property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls.
- f. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- g. The variance will not alter the essential character of the locality.
- h. Economic considerations alone do not constitute practical difficulties.

Applicant's Statement of Practical Difficulty

Please see attachment A-6: Letter of Practical Difficulty

The applicant provided a listing of a number of reasons justifying the variance request which included the following statements:

1. Land use ordinance limit us to one dwelling on the tract on which our home is located.
2. Carl and Beth (the applicant's son and daughter-in-law) could move into our current home with us. This is not practical since our home is a one bedroom house on 3 ½ levels with a finished basement. In addition, this house was designed for us and although we enjoy it very much it has definite limitations. For example there is literally no storage space and few closets. We have agreed with them that once we no longer can stay in it, we will remove the house and utilities and return the site to its original condition.
3. To conform to the Elder Care Ordinance, we could demolish our house and Carl and Beth could build a house with a small apartment in which we would live. That means they would be building a larger more costly house than they need for just a few years use. Also that would not meet our goal of staying in our home.
4. We could demolish our present home and move a manufactured home onto the same site and they could build their house adjacent to ours. Again this would be a costly process, using our resources, not improving the neighborhood and not meeting our goal of staying in our home.

Opinions

Staff has developed the following opinions:

The provision of elder care / dependent care was officially added to the county code in February of 2012. Prior to that staff had received requests for such use but were unable to accommodate these requests due to the limit of one dwelling per parcel in most zoning districts. Since the addition of elder care / dependent care to the code, this is the first request received by staff. Of the findings required for the granting of a variance, item (e) states the property in question

cannot be put to a reasonable use if used under the conditions allowed by the official controls. An argument could be made that the property is currently being put to reasonable use and therefore a variance is not warranted. In their statement of practical difficulty, the applicants make a good case to allow their son and daughter-in-law to construct a single family dwelling to provide living quarters for them as care givers. In addition, the applicants and their son and daughter-in-law have emphatically stated that the existing home will be properly removed from the property once the applicants no longer reside in the structure at which time the property would then be in full compliance with the code allowing for only one single family dwelling on this property. The possibility of creating an escrow account to ensure that funds are available for the removal of the existing home has been discussed with the applicants.

If the Board of Adjustment believes it is appropriate to grant the requested variance, the following findings could be used in support of **APPROVAL** of the variance:

1. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity. The applicants are in need of some level of supervision and assistance with day to day matters. Allowing a larger care giver living space with additional amenities beyond what is allowed by Section 24-324 to accommodate a single family dwelling is necessary in this situation.
2. That the granting of the application will not result in any material adverse effect on the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.
3. The application for a variance which, in the opinion of the Board of Adjustment, may result in a material adverse effect on the environment may be requested to demonstrate the nature and extent of the effect. Allowing the construction of a larger care giver unit should not create any adverse environmental effect provided the required setback to the bluff system is maintained and a code complying septic system is installed.
4. The variance is in harmony with the general purposes and intent of the official controls in cases when there are practical difficulties in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the comprehensive plan.
5. The variance will not alter the essential character of the locality.
6. There are other considerations than economic considerations alone that constitute practical difficulties.

If the Board of Adjustment believes it is not appropriate to grant the requested variance, the following findings could be used in support of **DENIAL** of the variance:

1. That there are **NOT** special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity. Other property owners would be in a similar situation.

2. The variance is NOT in harmony with the general purposes and intent of the official controls in cases when there are practical difficulties in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the comprehensive plan.
3. The property in question CAN be put to a reasonable use if used under the conditions allowed by the official controls. Use of the property for one single family dwelling is a reasonable use.
4. The plight of the landowner is NOT due to circumstances unique to the property and has been created by the landowner.
5. The variance WILL alter the essential character of the locality. Other properties in the immediate area include only one single family dwelling.
6. Economic considerations alone do not constitute practical difficulties.

Recommendation

Staff has no formal recommendation of the request to increase the allowable square footage of a proposed care giving unit for elder care / dependent care to more than 40% of the habitable area of the existing principal single family dwelling and to increase the number of allowable amenities to accommodate the caregiver unit as a single family dwelling that will be occupied by the applicant's son and his family.

If approved, staff recommends the following conditions:

1. That the applicants apply for and obtain approval of a conditional use permit for an elder care / dependent care unit. And that a construction permit is obtained prior to commencement of any construction activities.
2. That if the applicants proceed with a request for a conditional use permit to allow for the elder care / dependent care caregiver unit, that an escrow account, or similar arrangement, in the amount of \$5,000 be established to ensure funds are available for demolition or removal of the existing single family dwelling and that the existing dwelling shall be removed from the property within 90 days after the applicants no longer reside in the home.

Attachments

- A-1 General Location Map
- A-2 Site Map
- A-3 Topography Map
- A-4 Floodplain Map
- A-5 Shoreland Map
- A-6 Environmental Health Comments
- A-7 Applicants Letter of Practical Difficulty
- A-8 Variance Findings of Fact Checklist