

**Board of Adjustment  
MINUTES  
April 21<sup>st</sup>, 2022**

PRESENT: Dan Gottwalt, Jane DeAustin, Mark Kaschmitter, Marvin Neubert

Staff: Roxanne Achman, Karen Loehrer

1. Mark called the meeting to order followed by the Pledge of Allegiance.
2. Election of Officers. Jane nominated Dan as Chair. Marvin seconded. The nomination ceased. Dan took over as Chair. Mark nominated Jane as Vice-chair. Marvin seconded. The nominations ceased.
3. Jane moved to approve the agenda. Mark seconded and the motion carried.
4. Mark moved to approve the minutes from the November 18<sup>th</sup>, 2021. Marvin seconded and the motion carried.
5. Roxanne read the notice for the Vannurden Feedyard LLC feedlot expansion.
6. File #22-068, Allan Stay, landowner and Minnesota Paving and Materials, applicant, requesting a variance to mine 180ft from a residential structure (300ft required) in the Agricultural District. Pursuant to Sections 9.16.6(F)(1) and 11.5.1 of the Development Code. The affected property is described as follows: part of the S1/2 SE1/4, Section 11, Glendorado Township.

The site visit was done today at 1:10 pm by all four members.

Roxanne stated that this variance request is from Minnesota Paving & Materials. The property owner is Allen Stay. She showed an aerial photo of the site. The pit was originally permitted in 2002 and renewed in subsequent years. The most recent renewal was November 2019 on 32 acres. The site is being mined in phases. In order to obtain the materials available on the west side of the pit the applicants will need to mine/process material within 300ft of the dwelling to the west. The applicants have received written approval from the owner of the residential dwelling to mine closer than 300ft but not more than 50ft to

the property line. This would create a distance of approximately 180ft between the residential structure and the area being mined/processed. There is a potential for a house to be constructed to the north of the residential site. Since the pit exits prior to that home being built there are no setback issues. Marvin asked about the berm along the property line. He stated that with the berm the mining area is further than 180ft. He felt the application should reflect the actual setback.

Mike Callahan, Environmental Land Manager for Minnesota Paving and Materials, was present. Marvin asked if the distance should be increased for a lessor variance. Mark asked for the width of the berm and how close to the berm they can mine. Mike stated that they would mine as close as safely possible to the berm. He said that they are requesting to mine within 300ft from a residence up to 50ft from the property line. Roxanne stated that at 180ft from the house to the property line adding 50ft from the property line to the mining/processing would make the distance from the house to the mining/processing around 230ft. Marvin asked about the berm height. Greg Tischbirek, Minnesota Paving and Materials stated that the berm is 6ft as requested by the homeowner. He suggested a 200ft setback from the dwelling. Mark Bulter, Minnesota Paving and Materials was present remotely, stated that the measurement listed was taken digitally. He felt confident that a 240ft setback would work. Greg stated that he would be comfortable with 200ft. A 210ft setback was agreed upon.

Gene and Jerry Reiersen, 18365 35<sup>th</sup> St NE, stated that they are the residents to the east. Jerry stated their concern with setting a precedence by granting this variance and other mining operations requesting variances. Marvin stated that each variance request is looked at individually. Jerry stated that they are concerned with the dust and noise. Roxanne showed an aerial of the site pointing out the Reiersen's house. Allan Stay stated that the mining operation started in 2002.

Mark asked if the mining operation could meet the 300ft setback. Greg stated that the nearest property signed off in approval. This meeting is to inform people of what they want to do and why they're requesting a variance. He stated that they will take measures to control dust. Is the dust coming from their pit or a neighboring pit. Roxanne stated that there are 3 pits in this area.

Marvin moved to close the public hearing. Jane seconded and the motion carried.

In reviewing Section 11.5.1 the vote was as follows

- A. Jane stated that mining is permitted in the Agricultural District in accordance with Section 9.16. Mining may occur closer than 300ft from a residential dwelling with written consent from the property owner of the residential dwelling. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- B. Marvin cited A and C under Section 2.1.1. Jane added B. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.

- C. Mark cited Land Use Goal #3: Commercial and Industrial Development. Policy #2: Aggregate Resources and Environment & Natural Resources Goal #2 Policy #3: Land Use Compatibility. The vote was unanimous that the variance is consistent with the comprehensive plan.
- D. 1) Dan stated that typical mining and processing practices and procedures will occur within the area that a variance is needed. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.  
 2) Jane stated that the resources extend to an area that is closer to a residential dwelling than is permitted by the development code. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.  
 3) Marvin stated that this area has several mining operations. Allowing for mining/processing to be conducted closer to a residential dwelling until the resources are depleted will not alter the character of the locality. The vote was unanimous that variance, if granted, will not alter the essential character of the locality.  
 4) Mark stated that the resources extend into a setback area. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to include the development conditions to File #22-068. Dan seconded and the motion carried.

Roxanne read the findings and conditions

#### Findings

- A) The proposed use is not prohibited in the zoning district in which the subject property is located.

*Mining is permitted in the Agricultural District in accordance with Section 9.16. Mining may occur closer than 300ft from a residential dwelling with written consent from the property owner of the residential dwelling.*

- B) The variance must be in harmony with the general purposes and intent of the official controls. In accordance with:

In accordance with the following items in Section 2.1.1:

(A) To promote and protect the public health, safety, comfort, convenience, and general welfare of the people.

(B) To divide the unincorporated areas of the county into zones and districts restricting and regulating therein the location, construction, reconstruction, alteration, and the use of structures and land.

(C) To promote the orderly development of residential, business, industrial, recreational and public areas.

C) The variance must be consistent with the comprehensive plan.

**Land Use**

Goal #3: Commercial and Industrial Development

**Policy #2: Aggregate Resources:** Allow a very low density of rural, non-farm housing development in areas of mapped sand and gravel (aggregate) resources. Require adequate buffering, landscaping, and end use plans.

**Environment & Natural Resources**

Goal #2

**Policy #3. Land Use Compatibility:** Minimize land use conflicts adjacent to mining operations.

D) The variance may be granted if there are Practical difficulties in complying with the official control:

1) Property Owner proposes to use the property in a reasonable manner not permitted by an official control.

*Typical mining and processing practices and procedures will occur within the area that a variance is needed.*

2) The plight of the landowner is due to circumstances unique to the property not created by the landowner.

*The resources extend to an area that is closer to a residential dwelling than is permitted by the development code.*

3) The variance, if granted, will not alter the essential character of the locality.

*This area has several mining operations. Allowing for mining/processing to be conducted closer to a residential dwelling until the resources are depleted will not alter the character of the locality.*

4) The need for the variance involves more than economic considerations.

*The resources extend into a setback area.*

*Development Conditions for file no. 22-068 are adopted.*

Conditions:

1. This variance is approved for the location shown on the plans submitted with this

application and is not transferable to other land.

2. The area within the variance (180ft – 300ft) shall be reclaimed within 90 days after mining commences in that area.
3. All other conditions of IUP No. 17-461 shall remain effective.
4. Pursuant to Section 11.5.2 of the Development Code, this variance shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work. To proceed substantially means to make visible improvements to the property and to have had applied to the property at least 40% of the people hours which it is reasonably estimated will be necessary for completion of the project. The Board of Adjustment may grant an extension of six months to complete the project if a written request for additional time is filed with the Board of Adjustment prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.
5. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to ensure that the permit holder is in compliance with the conditions of approval and all other applicable statutes, rules and ordinances

Jane moved to accept the findings and conditions and grant File #22-068. Mark seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

7. Jane moved to adjourn at 7:56 p.m. Mark seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer  
Administrative Assistant