

# Board of Appeals & Adjustment City of Wabasha

Minutes of the September 1, 2010, Meeting:

BOARD MEMBERS: Rollin Hall, Chair  
Ron Benson  
John Friedmeyer  
Brian Wodele  
Claire Abbott

STAFF: Molly Patterson-Lundgren, City Planner  
Phil Rosendale, Zoning Administrator  
Patty Heraty, Administrative Assistant

A Meeting of Board of Appeals and Adjustment was held on Wednesday, September 1, 2010.

Roll call found all members present except Brian Wodele.

David Wodele submitted an application for variance for his property located at 1102 Church Avenue. City Planner Molly Patterson Lundgren provided board members with a copy of the application, staff report and checklist of variance criteria. Adjoining property owners were notified. Mr. Wodele is requesting variances to the side setback, lot size and lot width standards, allowing him to split the property between the existing buildings to sell the new parcels to separate businesses.

The side setback variance would allow a new lot line to be created between the two existing buildings, a variance of 6 ft from the zoning standard would be required as the current width between the buildings is 8 feet and a new lot line would create a setback of 4 feet.

The lot size variance is requested because the minimum lot size in the district is .5 acres and the lot split creates a lot size of .22 acres, therefore requiring a variance of .28 acres.

The lot width variance is needed in order to allow the lot split. The proposed lot width is 70 feet; therefore a 20 foot variance is requested.

At 10:04 Chairman Hall opened the public hearing to consider a variance application submitted by David Wodele. The applicant was present and there was 1 person in the audience.

Mr. Wodele addressed the commission and stated that he is requesting the variance because the buildings already exist and that he is trying to make it economically possible for 2 small business owners to purchase property.

Greg Hoffman, adjacent property owner, requested clarification of the project, wanted to know if any new buildings were going to be built. Mr. Wodele stated that there were not any new buildings being built and that the proposal was to split the property between the two existing buildings only.

Hearing no other public comments, the public hearing was closed at 10:13 am.

Board Discussion:

Board member Friedmeyer brought forward for discussion the possibility of forming a co-op, which was suggested to Mr. Wodele at a previous Planning Commission meeting. Mr. Wodele stated that he had looked into the possibility but that his tenants were not interested and that his lawyers had advised him to apply for the variance. Member Friedmeyer also stated that one of the variance criteria is that it must pose a hardship and he cannot see how it poses a hardship because the property can be used as it is now, other board members agreed. Board member discussion also included setting precedence. Mr. Wodele agreed that the property poses no hardship as it stands now and that he does not believe the board would be setting precedence because there is no other situation such as his in the area.

Board discussion also included whether the variance would pass on to new owners if the property would be sold or if the current building would be demolished. Staff stated that the variance would not pass on to new owners and that if the current building were demolished; new buildings would need to comply with current setback requirements.

Board members discussed the following variance criteria and findings of facts provided by staff.

Variance Criteria	Findings for approval	Findings for denial
<p>1.The property in question cannot be put to a reasonable use if used under conditions allowed by the official controls because of the particular physical surroundings, shape, or topographical conditions of the specific <b>property</b> involved, a particular hardship to the owner as distinguished from mere inconvenience.</p>	<ul style="list-style-type: none"> <li>○ The proposed use of “Industrial Service” (electric contractor) and “Industrial Storage” (contractor yard) are permitted uses in the Industrial Zone and are therefore both reasonable uses.</li> </ul>	<ul style="list-style-type: none"> <li>○ A recent Minnesota State Supreme Court decision indicated that “the municipality does not have the authority to grant a variance unless the applicant can show that [the] property cannot be put to a reasonable use without the variance”.</li> <li>○ No evidence has been provided that the <i>physical surroundings, shape, or topographical conditions</i> of the property present a hardship</li> </ul>
<p>2.The conditions upon which a petition for a variance is based are unique to the property for which the variance is sought, were not created by the landowner, and are not applicable, generally, to other property within the same zoning classification</p>	<ul style="list-style-type: none"> <li>○ The existing buildings on site make this a unique situation in that if new construction were to be done, side setbacks could be met.</li> </ul>	<ul style="list-style-type: none"> <li>○ The size of this lot is similar to others in the area also zoned Industrial. The average size of lots in this Industrial zoned district is over 3 acres. This is the smallest at 1.22 acres (followed by 1.42, 1.45, and 1.86).</li> <li>○ This property (along with that adjacent to the southwest) was 1.86 acres prior to this property owner splitting this parcel in 2008.</li> <li>○ If split evenly, the lot size (1/2 acre) and width (90 feet) standards could be made (but the existing buildings would be on only one of these new lots).</li> </ul>
<p>3.Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.</p>		<ul style="list-style-type: none"> <li>○ The purpose of the proposed lot split is to facilitate a sale of part of the property</li> </ul>

<p>4.The granting of the variance will not alter the essential character of the locality and will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.</p>	<p>o No physical changes are proposed to the property at this time other than the lot split itself. Additional construction or other changes could be made now under the current situation therefore the variance in itself will not be the cause of altering the character of the locality</p>	
<p>5.The variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.</p>	<p>o No physical changes are proposed to the property at this time other than the lot split itself. A condition that both existing buildings must be brought to current fire/ building code standards would protect future property owners and the public from fire hazards.</p>	<p>o Providing a variance to the side setback, therefore allowing the property to be split between the existing buildings, would give two different property owners (where there is now only one) only 4 feet (approximately) between their building and the lot line. Each new property owner would have little control over supply of light and air along this property line due to the proximity of the neighboring building.</p>

Board members Abbott and Friedmeyer offered the following resolution and moved for its approval. The motion failed with the following vote: Ayes: Abbott Nays: Hall, Friedmeyer, Benson

**Whereas,** The property in question cannot be put to a reasonable use if used under conditions allowed by the official controls because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner as distinguished from mere inconvenience because  
The proposed use of “Industrial Service” (electric contractor) and “Industrial Storage” (contractor yard) are permitted uses in the Industrial Zone and are therefore both reasonable uses; and

**Whereas,** The conditions upon which a petition for a variance is based are unique to the property for which the variance is sought, were not created by the landowner, and are not applicable, generally, to other property within the same zoning classification because  
The existing buildings on site make this a unique situation in that if new construction were to be done, side setbacks could be met; and

**Whereas,** Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance because  
and

**Whereas,** The granting of the variance will not alter the essential character of the locality and will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located because  
No physical changes are proposed to the property at this time other than the lot split itself. Additional construction or other changes could be made now under the current situation, therefore the variance in itself will not be the cause of altering the character of the locality; and

**Whereas**, The variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood because  
No physical changes are proposed to the property at this time other than the lot split itself. A condition that both existing buildings are brought to current fire/building code standards would protect future property owners and the public from fire hazards.

**Now therefore** the Wabasha Board of Adjustment finds that the circumstance are unique to the individual property under consideration and it has been demonstrated that issuing the variance will be in keeping with the spirit and intent of the ordinance maintaining public safety and welfare. The Board of Adjustment hereby approves the requested variance for side setback of approximately 6 feet (to be determined based on mid point between the two existing buildings), variance to lot size of .3 acres, allowing a lot as small as .22 acres in this location, and a variance to lot width of 20 feet, allowing a lot to be configured with a width of 70 feet (at a minimum) **With the following condition('s):**

1. **The existing structures will be brought up to current building/fire code with modifications providing necessary fire walls as determined by the City of Wabasha Building Inspector.**
2. **Minimum street frontage of 60 feet will be maintained for any and all new lots created from this parcel in the future.**
3. **The precise side setback for the existing buildings between each of them and a new lot line will be determined and recorded on a certificate of survey, with a copy of this provided to the City.**
4. **Any future splitting of lots (utilizing these variances) shall be done in accordance with the required procedures of Section 310 of City Code, the Subdivision Ordinance.**
5. **This variance will be valid for a period of no longer than 6 months.**

Board Members Benson and Friedmeyer offered the following resolution and moved for its approval. The motion passed with the following vote: Ayes: Abbott, Hall, Friedmeyer, Benson. Nays: None

**Board of Adjustment  
Resolution #2010-001**

Resolution Denying Wodele Variance Request

**Whereas**, The property in question can be put to a reasonable use if used under conditions allowed by the official controls, there is no particular hardship because:

As indicated in a recent Minnesota State Supreme Court decision the municipality does not have the authority to grant a variance unless the applicant can show that the property cannot be put to a reasonable use without the variance and no evidence has been provided that the physical surroundings, shape, or topographical conditions of the property present a hardship; and

**Whereas**, The conditions upon which a petition for this variance is based are not unique to the property for which the variance is sought, some of which were created by the landowner, and are applicable, generally, to other property within the same zoning classification because

The size of this lot is similar to others in the area also zoned Industrial. The average size of lots in this Industrial zoned district is over 3 acres. This is the smallest at 1.22 acres (followed by 1.42, 1.45, and 1.86) and this property (along with that adjacent to the southwest) was 1.86 acres prior to this property owner splitting this parcel in 2008. Also, If split evenly, the lot size (1/2 acre) and width (90 feet) standards could be made; and

**Whereas**, Economic considerations are cited as the hardship and/or reasonable use for the property because The application indicates that the purpose of the proposed lot split is to facilitate a sale of part of the property; and

**Whereas**, The granting of the variance will not immediately or in itself alter the essential character of the locality nor be detrimental to the public welfare or injurious to other property or improvements in the

neighborhood in which the property is located. However, this is only one of five variance criteria cited in by ordinance that is being met; and

**Whereas**, The variation will impair an adequate supply of light and air between two adjacent properties which, if lot split according to the proposal occurs may be owned under separate ownership, leaving future owners unable to modify the others structure to rectify the situation

**Now therefore** the Wabasha Board of Adjustment hereby denies the requested variances for side setback, lot size, and lot width as defined and required in the Wabasha Zoning & Shoreland Ordinance

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Rollin Hall, Chair

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Patty Heraty, Administrative Assistant (Witness)

Having no other business, Board Members Abbott and Benson moved to adjourn the meeting at 11:00 am. Adopted unanimously.

Respectively submitted by:

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Patty Heraty, Administrative Assistant