

Board of Adjustment and Appeals Staff Report
Duininck, Inc.
Variance Application Hearing (Mining Area)
August 27, 2015

Duininck, Inc., Prinsburg, Minnesota, has requested a Variance to Chapter Seven (Mining Regulations), Section 2.7.B, of the Renville County Land Use Ordinance to allow mining, extraction, and processing of minerals on a parcel of land located in the Agricultural District that does not comply with the minimum 20-acre parcel size required for a new or existing mining operation.

Duininck Bros, Inc. (DBI) purchased an 11.98-acre tract of land located in a portion of Government Lot 3, Section 8, Township 114 North (Sacred Heart South Township), Range 37 West, to be used for mining, extraction, and processing of minerals in September 1998 (Document # 304476). The proposed site was part of a larger tract of land on which a Conditional Use Permit was last issued in March 1991 to operate a commercial gravel mining operation and a hot mix plant. The permit expired in December 1991.

In September 1998, DBI was granted a permanent easement (Document # 306110) for a five-acre tract of land adjacent to the proposed 11.98-acre mining site. The easement agreement allows DBI to stockpile gravel and other materials on the site and store equipment to be used in excavation of gravel and other materials on the adjacent proposed mining site.

The total acreage of land, including real property owned by Duininck Bros, Inc. (11.98 acres) proposed to be mined and the permanent easement held by Duininck Bros, Inc. (five acres) to be used for staging, mining, stockpiling, and equipment storage, is 16.98 acres.

The proposed mining area is located entirely within the Minnesota Scenic River Land Use District. The majority of the proposed site is also located within the Flood Fringe District with a small portion of the site located in the Floodway District.

Chapter Seven (Mining Regulations), Section 2.7, of the Renville County Land Use Ordinance states that:

7. An Interim Use Permit for a new mining operation or the expansion or change in use of an existing mining operation, whether under permit or not, must meet the following criteria:
 - A. The mining and extraction operation must be located in an agricultural or commercial/industrial land use district.
 - B. The property must be at least 20 acres in size.
 - C. The mining and extraction operation must comply with all standards for approval of an Interim Use Permit as contained in this Ordinance.

- D. The mining and extraction operation is consistent with the Renville County Comprehensive Plan (Resource Extraction – Goals and Policies) and is in compliance with all provisions of this Ordinance.

It should be noted that the minimum 20-acre parcel area requirement for a new or existing mining operation was in effect prior to the 1998 land purchase.

A Variance would, therefore, be required to allow a mining operation on a 16.98-acre site as it does not meet the minimum 20-acre size requirement outlined in Section 2.7.B.

A Variance may be granted by the Board of Adjustment and Appeals when it is found that strict enforcement of the Land Use Ordinance will result in “practical difficulties.” The Board of Adjustment and Appeals will consider each of the following questions to determine if the applicant has established that there are “practical difficulties” in complying with regulations and standards set forth in the Land Use Ordinance. The Board of Adjustment and Appeals should weigh each of the criteria when deciding whether a practical difficulty exists and the Variance Application should be granted:

1. Is the property owner proposing to use the property in a reasonable manner not permitted by the Land Use Ordinance?
2. Is the need for a Variance due to circumstances unique to the property and not created by the property owner?
3. Will the issuance of a Variance maintain the essential character of the locality?
4. Does the need for a Variance involve more than economic considerations?

The applicant or his/her representative is required to appear before the Board of Adjustment and Appeals in order to address questions regarding the proposed application. It is the responsibility of the applicant to present facts to the Board of Adjustment and Appeals sufficient to prove that the criteria for the approval of a Variance have been satisfied. The Board of Adjustment and Appeals has the authority to request additional information from the applicant that is declared necessary to verify information or establish performance conditions. Failure of the applicant to supply all necessary supportive information may be grounds for the denial of the Variance request.

If the Board denies the Variance request, it must draft written Findings of Fact that state the reasons for denial for the record. The Board must also provide the applicant a written statement of the reasons for the denial. If the written statement is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial of the request but before the expiration of the time allowed for making a decision under Minnesota Statutes, Chapter 15.99. The written statement must be consistent with the reasons stated in the record at the time of the denial. The written statement must be provided to the applicant upon adoption.

To approve a Variance, the Board of Adjustment and Appeals must legally incorporate the reasons for the decision for the record in its written Findings of Fact. The Board may also

impose conditions in the granting of a Variance to ensure compliance and protect adjacent properties and the public interest. If the Board finds that the applicant has proved the existence of a practical difficulty and votes to grant the request, staff recommends the following two conditions:

- 1) Duininck, Inc. must have clear title to the property to be mined.
- 2) The Variance shall expire and be considered null and void one year after the Board of Adjustment and Appeals' final decision to grant the Variance if the use or construction for which the Variance was granted has not begun.

Public notice of the scheduled hearing was published in the Renville County Register (official County paper for 2015) within the required legal time frame. Affected property owners and the Sacred Heart (South) Township Board were also properly notified by mail.