

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, SEPTEMBER 21, 2021
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

Members Present: Bill Davis, Perry Bushaw, Paul Krabbenhoft, Ezra Baer, Tim Brendemuhl

Members Absent: None

Others Present: Brian Melton, Matt Jacobson, Erika Franck, Rita Rueckert, Brian Cyr, Trini Cyr

The meeting was called to order at 5:30 PM by Chair William Davis.

APPROVAL OF AGENDA:

On motion by Ezra Baer, seconded by Tim Brendemuhl, and unanimously carried, the Board approved the meeting Agenda.

APPROVAL OF MINUTES JULY 20, 2021:

On motion by Paul Krabbenhoft, seconded by Ezra Baer, and unanimously carried, the Board approved the Minutes from July 20, 2021.

PUBLIC HEARING(S):

CYR LLC. – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance to the conditional use home occupation standards for platted subdivisions in the Clay County Development Code to allow the continuation of an existing business in Lot 3 Block 1 of Jepsons 1st Subdivision, 643 Hwy 9 S, Glyndon, MN 56547, Parcel ID 25.060.0103, Section 8, Township 139N, Range 46W in Riverton Township.

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.

Matt Jacobson, Planning & Zoning Director, presented this hearing that is for a variance to the Conditional Use Home Occupation standards in a platted subdivision. The following Policy Considerations from the County Development Code were reviewed:

- General Goal #1: Maximize the potential of Clay County as a thriving center for agriculture, business and recreation, while maintaining and enhancing its livability.
- Land Use Goal #1: Establish a comprehensive growth management strategy for Clay County that promotes orderly and efficient growth of residential, commercial and industrial development while preserving the County's rural character.
- Land Use Goal #4: Plan for the orderly, efficient growth of commercial and industrial development in the county through the application of appropriate zoning districts and regulation.

- Policy #3: Allow for home occupations in agricultural areas and small, community-based retail in the County's unincorporated rural communities.

The subject property is zoned Agricultural General. The use is permitted as an Interim Use in this zoning district. An aerial photo was displayed of the parcel showing it is approximately in the middle of the county. The property is a little over 3.5 acres. There is a residence and two outbuildings on the site. Buildings for the business total approximately 10,800 square feet. There is approximately one acre of parking space available.

Jepson's Subdivision is a 3-lot plat established in 1981 which fronts Highway 9. The business is being operated on the southern-most portion of the lot. There are two neighbors to the north and none in any other direction. The property is well screened by trees. This business has been operating on this property since 1997. In 2012 the County adopted a new Development Code for Conditional Home Occupation, and Standard C.3 states:

- Where Located: Conditional Home Occupations shall be located on lots not located in platted subdivisions. Conditional home occupations may be located within the dwelling or in a separate nonresidential or farm building.

The expansion of one of this business's buildings and the large, paved parking lot occurred after the adoption of the 2012 Development Code.

With after-the-fact Variances, there was a MN Supreme Court ruling in 2009 stating that after-the-fact requests should be treated differently than requests that are not after-the-fact and the following standards must be reviewed:

- Whether the construction was complete (*this construction was complete*)
- Whether there are similar structures in the area (*outbuildings are similar in form and design to other structures in the area*)
- The benefit for the municipality of enforcement, compared to the burden on the Applicant if compliance was required (*the burden of compliance with the Code on the applicant far outweighs the benefit of enforcement*)
- Whether the violation was intentional or unintentional (*Because this business has operated on the property for 20+ years, the applicant was more than likely unaware of the 2012 updates to the Development Code*)

It is relevant to note that, had the business not expanded after the 2012 updates to the Development Code, it would have been considered grandfathered in and this hearing would not be required. This business use appears to fit well within the County and creates some value-added agricultural services.

There are additional standards to be considered when reviewing a request for a Variance.

Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties", as used in connection with the granting of a variance, means;

- 1) that the property owner proposes to use the property in a reasonable manner not permitted by an official control;
- 2) the plight of the landowner is due to circumstances unique to the property not created by the landowner;
- 3) and the variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties but may be included in the decision-making process.

Ezra Baer asked about the number of employees which would require a Home Occupation Permit. The number of non-family employees is 5 but there are exceptions to this.

Paul Krabbenhoft asked what brought this situation to the attention of the Planning office; Director Jacobson stated that there was a public comment received but does not appear to have come from any neighbor.

Director Jacobson stated there was only one comment received since posting the public hearing notice, and that was a positive comment.

Brian Cyr advised that he has been there since 1997 and the only change has been that an additional building was constructed. They currently have 3 employees.

Paul Krabbenhoft inquired if there is a penalty for after-the-fact requests. Matt Jacobson feels the landowner should not be penalized as most of the time they are unaware of their activities being outside of the Ordinance. Director Jacobson advised that these Ordinance changes are noticed to the public and usually have approximately 3 public hearings before being adopted.

The County Attorney's office stated that because this use is permitted in the Agricultural General Zoning District, the variance request is not for a use variance, which is illegal in the state of Minnesota.

On motion by Ezra Baer, seconded by Tim Brendemuhl, and unanimously carried, the public hearing was closed.

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested permit. All items can be addressed through conditions.

On motion by Tim Brendemuhl, seconded by Paul Krabbenhoft, and unanimously carried, the Board of Adjustment *GRANTED* a Variance to allow an Interim Use Home Occupation Permit within a platted subdivision.

UNFINISHED BUSINESS:

- Matt Jacobson: Clay County Comprehensive Plan update – Additional meetings have taken place with ag producers within the County. Tax policies and being more accommodating to the expanding agricultural producers and equipment were top discussions. There were also discussions about being more flexible with farmers having temporary housing onsite for seasonal work, which will be looked at.

There was also a meeting with the Economic Development Group. Many of these members work toward bringing in added-value business to the community. Paul Krabbenhoft inquired about the Right to Farm law legislation and a matter of informing the public about this bill.

The next Study Review Group meeting will be October 12th. There will also be a meeting of the Clay County cities on October 12th.

NEW BUSINESS:

- Perry Bushaw is ending his three 3-year terms on the Board of Adjustment and tonight is his last meeting. He was thanked by the Board of Adjustment members for his service and presented with a plaque of Recognition and Appreciation.

The Board of Adjustment is currently looking for a citizen to fill the opening by Mr. Bushaw's departure. Paul Krabbenhoft stressed finding someone with knowledge of the lakes area as this Board has lost significant resources with the departure of both Greg Anderson and Perry Bushaw. The east side of the County has significant activity for Variances as that is where the majority of shoreland areas are located.

ADJOURNMENT:

On motion by Perry Bushaw, and seconded by Ezra Baer, and unanimously approved, the meeting was adjourned at 6:03 PM.



William Davis, Chair
Clay County Board of Adjustment