

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, OCTOBER 19, 2021
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

Members Present: Bill Davis, Tim Brendemuhl, Ezra Baer

Members Absent: Paul Krabbenhoft

Others Present: Matt Jacobson, Brian Melton, Erika Franck, Rita Rueckert, Lynette Nelson, Terry Nelson

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 SEPTEMBER 21, 2021:

On motion by Tim Brendemuhl, seconded by Ezra Baer, and unanimously carried, the Board approved the Minutes from September 21, 2021.

PUBLIC HEARING(S):

TERRY & LYNETTE NELSON – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the road setback standards in the Clay County Development Code to allow for a placement of a building within the road setback in part of the NE1/4 of the NE1/4, 16051 50th St S, Moorhead, MN 56560, Parcel ID 15.026.1001, Section 26, Township 137N, Range 48W in Holy Cross Township.

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

Matt Jacobson, Planning & Zoning Director, stated that the request is to reduce the road setback for an accessory structure from 125 feet to 100 feet from County Road 52. The property is located east of Comstock off of County Highway 2. It is zoned Agricultural General (AG). There currently is a single-family residence, shop, horse pasture and a barn on the parcel right now. The slab for the storage building has already been poured. Applicant thought that the road setback for this was 90 feet, but since this is a Township Road, the setback is 125 feet.

Policy Considerations from the Comprehensive Plan include:

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 #5: Plan land uses and implement standards to minimize land use conflicts.

Practical difficulties when considering this request:

1. That the property owner proposes to use the property in a reasonable manner not permitted by an official control;
 - The intent is to continue to use the property for residential and agricultural purposes. A road setback decrease from 125 feet to 100 feet is a reasonable request. The County Highway Department is fine with the request as Co. Rd. 52 is not well-traveled.
2. The plight of the landowner is due to circumstances unique to the property not created by the landowner;
 - The property owner claims that the location of an existing building and a drainage ditch running west to east along the north side of the proposed building location are factors in the placement of the building within the road setback.
3. And the Variance, if granted, will not alter the essential character of the locality
 - Other structures in the area are within the 125-foot road centerline setback.

Since the slab has already been poured, there are other After-The-Fact Variance Considerations:

1. Whether the construction was complete.
 - A concrete slab has been poured. Construction of the building is not complete.
2. Whether there are similar structures in the area.
 - There are similar structures in the area.
3. The benefit to the municipality of enforcement, compared to the burden on the applicant if Compliance was required.
 - If enforcement is required and voluntary compliance is not achieved, court action would be necessary. The decrease requested is 20% of the road centerline setback.
4. Whether the violation was intentional or unintentional
 - The Applicant believed that the road centerline setback was 90 feet and not 125 feet. The 90-foot setback applies to subdivision roads and local roads. The 125-foot setback applies to collector roads and minor arterials. The applicant discovered the setback issue when seeking a building permit.

The problem was discovered when the Applicant applied for an after-the-fact building permit. Pouring a slab is allowed without a building permit if there is no construction being considered.

Discussions with the Highway Department have resulted in them stating that the 100-foot setback should not be a problem.

Terry Nelson indicated that part of the reason he did not request a building permit is that they were in the process of securing an additional 2-acre parcel. He indicated the traffic to the south of him is very limited and is mostly farm traffic.

Director Jacobson advised that the Applicant did make the move for securing additional land so that they would remedy the 10-foot setback from the adjacent property line.

On motion by Tim Brendemuhl, seconded by Ezra Baer, 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. No conditions were considered.

On motion by Tim Brendemuhl, seconded by Ezra Baer, and unanimously carried, the Board of Adjustment **GRANTED** the Variance to reduce the road setback from 125-feet to 100-feet from centerline of roadway.

UNFINISHED BUSINESS:

- Matt Jacobson: Clay County Comprehensive Plan update
There was a meeting last week. There are a few newly rough-drafted sections. The Transportation portion of the plan appears well developed, and the Land-Use portion is also coming along well.
Current focus is on goals and there will be another meeting on that approximately the first week in November.

NEW BUSINESS:

- **Review of Applications for Board of Adjustment vacancy** There have been no applications received at this time. Director Jacobson has reached out to a few people to assist locating potential applicants. Letters have been sent to Township officials to request their engagement in locating interested individuals. The opening has also been placed on the County website, as well as the Planning & Zoning web page, and notices have been posted within customer lobbies of our building.

ADJOURNMENT:

On motion by Ezra Baer, and seconded by Tim Brendemuhl, and unanimously approved, the meeting was adjourned at 6:08 PM.



William Davis, Chair
Clay County Board of Adjustment