

**MINUTES  
CLAY COUNTY BOARD OF ADJUSTMENT  
5:30 PM, TUESDAY, NOVEMBER 16, 2021  
3<sup>RD</sup> FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

**Members Present:** Bill Davis, Ezra Baer, Paul Krabbenhoft

**Members Absent:** Tim Brendemuhl

**Others Present:** Matt Jacobson, Erika Franck, Scott Grani, Hunter Grani, Marcus Lewis, Kent Severson

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

**APPROVAL OF AGENDA:**

**On motion by Paul Krabbenhoft, seconded by Ezra Baer, and unanimously carried, the Board approved the meeting Agenda.**

**APPROVAL OF MINUTES OCTOBER 19, 2021:**

**On motion by Ezra Baer, seconded by Paul Krabbenhoft, and unanimously carried, the Board approved the Minutes from October 19, 2021.**

**PUBLIC HEARING(S):**

**MARK LEWIS – REQUEST FOR VARIANCE**

The applicant is seeking approval of an after-the-fact variance to the interim use standards for a second dwelling on a parcel and an after-the-fact variance to the Ordinary High Water Level setback standards for a septic system in the Clay County Development Code in the S1/2 S1/2 of the NW1/4 and N1/2 N1/2 of the SW 1/4, Section 17, Township 139N, Range 45W, Hawley Township, 1706 190<sup>th</sup> St. S, Hawley, MN 56549, Parcel ID 13.017.0201

**On motion by Ezra Baer, seconded by Paul Krabbenhoft, and unanimously carried, the public hearing was opened.**

Matt Jacobson, Planning & Zoning Director, stated that this is an after-the-fact Variance request for the standards of a second dwelling on a parcel, as well as a Variance for the 200-foot septic setback from Ordinary High-Water Level (OHWL) on this 80-acre parcel.

Policy considerations from the Comprehensive Plan include:

- **General Goal #1:** Maximize the potential of Clay County as a thriving center for agriculture, business, and recreation, while maintaining and enhancing its livability.
- **Natural Resources Goal #1:** Identify, protect, and preserve the County's high quality natural, scenic, cultural and open space areas.

- Policy #13: Continue to enforce shoreland regulations on the County's lakes, rivers and streams.

This property is zoned Agricultural General (AG), Resource Protection-Aggregate (RP-Agg) and Shoreland-Special Protection Rivers and Streams. The property is currently used for residential and agricultural purposes.

The Variance being requested is from Section 8-5-6E2 which provides for conditions on the uses that will be considered for Interim Use Permits and states:

2. A second dwelling on the parcel to be used by parent(s), grandparent(s), children, sibling(s) by blood, marriage, adoption, or other special relationships consistent with the purpose that meets the following standards:

- Said dwelling must be a manufactured home (single or double-wide)**
- Dwelling must not be placed on a permanent foundation**
- Dwelling must have a septic system that meets County Health requirements.
- Dwelling must share a common well with the principal dwelling.
- No more than one (1) dwelling shall be allowed on a parcel.
- Parcel must be at least five (5) acres in size.

There is a 200-foot setback from rivers and streams for on-site septic systems.

The second dwelling wasn't constructed as a dwelling; it was previously used as an Ag building that was converted to living quarters.

Aerial photos were provided showing the placement of the structures and the drainfield. It was pointed out that the drainfield slopes away from the river due to the topography.

After-the-fact Variance standards were reviewed:

- Whether the construction is complete.
- Whether there are similar structures in the area.
- The benefit to the municipality of enforcement, compared to the burden on the applicant if compliance was required.
- Whether the violation was intentional or unintentional.

Director Jacobson advised that the current trend with other counties is that they are starting to allow more accessory dwelling units on parcels. This seems to be more common in Shoreland areas.

There was discussion regarding what is considered a permanent foundation, especially relative to mobile homes.

According to Kent Severson, Director of Clay County Environmental Health, he does not show a permit for the secondary septic system for this secondary dwelling. There is record from 2003 for the original house but there was no permit issued for the secondary system and he has no knowledge when this was installed. Paul Krabbenhoft verified that this system would need to be inspected if this Variance were to be granted. Mr. Severson feels the greatest concern at this point would be that the location is less than 200 feet from the Shoreland.

Ezra Baer asked about the setbacks for Streams and Shoreland and they do differ between different lakes and streams. In particular, the septic setbacks for Lee Lake, Turtle Lake and rivers were discussed.

Marcus Lewis advised that due to the contour of the ground and the location of the barn, there is no ability to be at 200 feet. He advised that his neighbor Larry Henry assisted in installing the septic system. Marcus Lewis advised that he lives in the secondary dwelling which is located on his father's land. He assists with the farm work. Mr. Lewis states that the septic system was installed in 2012 and he has lived there since then. The secondary home was previously a 16x24 granary.

Ezra Baer inquired when Larry Henry was no longer certified for septic installation and Kent Severson advised it was last year or the year before that he quit.

**On motion by Ezra Baer, seconded by Paul Krabbenhoft, 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 issues can be addressed through Conditions.

**On motion by Paul Krabbenhoft, seconded by Ezra Baer, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with the following conditions:**

- **Septic system must be certified for compliance by Clay County Health Department Environmental Services.**

#### **HUNTER GRANI – REQUEST FOR VARIANCE**

The applicant is seeking approval of an after-the-fact variance to the Resource Protection – Aggregate Overlay Zoning District residential density standards in the Clay County Development Code to allow for the placement of a second residential dwelling in a quarter-quarter in part of the SE1/4 of the NE1/4, Section 5, Township 139N, Range 44W, Eglon Township, 599 Hwy 32 N, Hawley, MN 56549, Parcel ID 04.005.1453.

**On motion by Ezra Baer, seconded by Paul Krabbenhoft, and unanimously carried, the Board opened the public hearing.**

Director Matt Jacobson presented the information, advising that this is an after-the-fact Variance from the Resource Protection-Aggregate (RP-Agg) overlay zoning district for residential density standards to allow for the placement of a second residential dwelling within a quarter-quarter.

Policy Considerations from the Clay County Comprehensive Plan include:

**Land Use Goal #2:** Support the long-term protection of agriculture in the County

- **Policy #1:** Recognize and support the agricultural character of the County in all planning efforts.
- **Policy #2:** Establish clear and distinct zoning districts outside Planned Urban Growth Areas that provide for long-term agriculture and limit residential density in the agricultural areas of the County.

**Land Use Goal #5:** Plan land uses and implement standards to minimize land use conflicts.

- **Policy #5:** Protect the County's aggregate resources from encroachment of incompatible residential and urban development through appropriate zoning and buffering requirements.

This 9-acre parcel is zoned Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg), as are the other properties in the area. It is currently used for Ag and will be used for residential purposes. There is currently a shop with living quarters being constructed on the property.

There is currently a residence within this quarter-quarter. Clay County has an Aggregate Resource Inventory which identifies areas in the County for their sand, gravel and stone resources. There are three categories: high, moderate and limited. This property is in the limited category so the likelihood of aggregate development in this area would be minimal. There is also a platted subdivision across the street which would further limit the likelihood of aggregate mining.

After-the-fact Variance considerations were reviewed:

1. Whether the construction is complete.
2. Whether 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.
4. Whether the violation was intentional or unintentional.

The Applicant worked through the City of Hawley as this parcel is within the City of Hawley extra-territorial area for the subdivision of this original parcel. Applicant originally intended to build a shop at this time and also build a house later. However, after starting the process, he changed his mind and included living quarters in the shop building.

Hunter Grani advised he went through the city of Hawley. He previously contacted the MNDOT to get approval of the access onto Highway 32. He felt there was confusion on the part of the City of Hawley regarding the process he has gone through. He advises the living quarters within the shop are only temporary and he will be building a home in about 5 years.

Ezra Baer inquired about the ability for Applicant to build a home in 5 years, would he need to come back for another hearing. Director Jacobson advised that as long as nobody was residing in the living quarters within the shop, the Variance will run with the property and that will allow the new residence to be built in the future. Bill Davis inquired if the septic was separate or if the new house would have its own new septic, and Applicant Grani advised that the house would have its own new septic and drainfield.

**On motion by Ezra Baer, seconded by Paul Krabbenhoft, 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 Ezra Baer, seconded by Paul Krabbenhoft, and unanimously carried, the Board of Adjustment *GRANTED* the Variance as requested.**

### **UNFINISHED BUSINESS:**

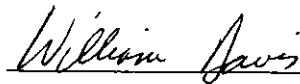
- **Matt Jacobson: Clay County Comprehensive Plan update**  
There was another Study Review Committee. He has had some talks with MetroCOG to attempt to pare down some of the policies, which are currently over 100 of them, and they want to look for opportunities to be more concise. A draft plan is expected by the end of the year, and it will then be reviewed by the Planning Commission, a review by the Public and then review by the Board of Commissioners. It is hoped that the final will be reviewed before the end of February 2022. The typical time for developing these plans is usually 18 months, but there have been delays due to Covid and additional outreach to key stakeholders.

### **NEW BUSINESS:**

- **Review of Applications for Board of Adjustment vacancy**  
There have been no applications received. There will be an ad in The Extra newspaper that will be mailed to the County residences on Thursday, November 25<sup>th</sup>. There was also an announcement made to the Association of County Township Officers on Monday, November 15<sup>th</sup>, where Director Jacobson also reached out looking for interested individuals or someone the Township Officers may know. Previous applicants have also been reached out to, particularly in the southeast area of the County.

### **ADJOURNMENT:**

On motion by Ezra Baer, and seconded by Paul Krabbenhoft, and unanimously approved, the meeting was adjourned at 6:17 PM.



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William Davis, Chair  
Clay County Board of Adjustment