

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

Members Present: Ezra Baer, Tim Brendemuhl, Bill Davis (via Teams Meeting)

Members Absent: Paul Krabbenhoft

Others Present: Andrew Kava, Ryan Vossen, Dennis Loock, Amos Baer, Josh Holmes, Emily Holmes

The meeting was called to order at 5:30 PM by Acting Chair Ezra Baer.

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES NOVEMBER 16, 2021:

On motion by Tim Brendemuhl, seconded by Bill Davis, and unanimously carried, the Board approved the Minutes from November 16, 2021.

PUBLIC HEARING(S):

RYAN AND ELIZABETH VOSSEN – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance to the road setback standards in the Clay County Development Code to allow for the placement of a building within the road setback in Lot 4 Block 1 of Riverview Country Estates Subdivision, 116 249th Street North, Hawley, MN 56549, Parcel 04.073.0040, Section 6, Township 139N, Range 44W in Eglon Township.

On motion by Tim Brendemuhl, seconded by Bill Davis, and unanimously carried, the public hearing was opened.

Matt Jacobson, Planning & Zoning Director, stated that this after-the-fact Variance request is for a structure closer than the 90-foot centerline road setback within the Riverview Country Estates Subdivision. Applicant wished to decrease the setback to 75.5 feet. This parcel is 1.31 acres, zoning is Agricultural General (AG) and Resource Protection – Biological (RP-Bio). Current land use is single family residential with a storage shed.

The Applicant stated the following Practical Difficulties and/or Hardships:

- Current location of storage shed was chosen due to land restrictions, and the factors considered were:
- The site was the most unobtrusive for the neighbors or themselves

- The site was the flattest area that would require the least amount of land adjustment. A flat site north of the garden has a large tree that would need to have large limbs removed. Terrain would require considerable backfill to create a level pad for the shed. Further north of the proposed site has even steeper terrain that would require a large amount of backfill and ultimately a retaining wall, which would change the character of that area of the development.
- The chosen spot does not interfere with septic drain fields or access to freshwater wells. It also does not interfere with the natural drainage of the land.

Aerial photo showed images of the 90-foot centerline setback, the 75.5-foot centerline setback, the contours of the topography and the drainage of the property.

Director Jacobson spoke with the Clay County Highway Department, and they had no issues with the placement of the shed. They did share concern about the run-off from the steep ditch down toward the shed.

The following Policy Considerations were reviewed:

- 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 Considerations were addressed:

- 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 use**
- 2) The plight of the landowner is due to circumstances unique to the property not created by the landowner; **The property owner states terrain requiring excessive backfill and an existing tree as reasons for placing the shed in this location.**
- 3) The variance, if granted, will not alter the essential character of the locality; **there are 7 other detached storage structures in the area, all meet setback requirements.**

After-the-Fact Variance Considerations:

1. Whether the construction was complete. **The prefabricated storage shed is on site.**
2. Whether there are similar structures in the area. **There are 7 similar detached storage sheds in the area, all meeting required setbacks.**
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 16% of the road centerline setback.**
4. Whether the violation was intentional or unintentional. **The Applicant was unaware of the need for a building permit, or the required setbacks from the road centerline.**

Director Jacobson has not received any comments in opposition to the request. There was a comment received through the Applicant that the Township had written a letter supporting the Applicant in their request.

Ezra Baer clarified that buildings without foundations still required building permits.

Applicant Ryan Vossen acknowledged that snow had been a concern but the recent snow was collecting at the bottom of the ditch and the shed does not seem to have an affect on snow collection. Bill Davis asked about water run-off and Mr. Vossen stated that the soils are very sandy and water does not pool in this neighborhood, and the drainage in the area is rapid.

Egdon Township Chair Amos Baer spoke in favor of the Variance request. He stated that all three of the Township officials had looked at the shed and all were in favor of the location of the shed being the best place for it to be.

On motion by Tim Brendemuhl, seconded by Bill Davis, 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.

On motion by Tim Brendemuhl, seconded by Bill Davis, and unanimously carried, the Board of Adjustment *GRANTED* the request for the Variance.

JOSHUA & EMILY HOLMES – REQUEST FOR VARIANCE

The applicant is seeking approval of a 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 NW ¼ & W ½ SW ¼, Section 36, Township 137N, Range 46W, Parcel 02.036.2000 & part of the E ½ E ½ E ½ NE ¼, Section 35, Township 137N, Range 46W, Parcel 02.035.1400 in Barnesville Township.

On motion by Tim Brendemuhl, seconded by Bill Davis, and unanimously carried, the public hearing was opened.

Erika Franck, Planning Technician, presented the Staff Report and stated that the Applicants are Joshua and Emily Holmes, and the owners are Andrew and Ruth Kava. The Applicants are seeking a Variance from Section 8-5C-7A for maximum allowed density of dwellings with the Resource Protection-Aggregate Resources zoning overlay district that states that there shall be one (1) residence allowed per quarter quarter section. The Applicant is requesting the Variance to allow for the construction of a single-family residence and state that this is the best location on the property due to its dry soil and higher elevation. Their intention is to build a slab-on-grade home on a level lot to accommodate their special needs daughter.

There are three separate parcels totaling 232 acres which would be split and combined to create a new 5-acre parcel. The zoning is Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg). Current land use is agricultural and there currently are no structures on the proposed parcel. There is currently a residence on the parcel to the north within this quarter quarter. There is high potential for aggregate within a limited portion of the parcel on the west side. The site of the proposed parcel and residence is not within the areas currently identified as prime farmland.

Policy Considerations were reviewed:

- **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.

Practical difficulties considerations identified by the Applicant included:

- 1) That the property owner proposes to use the property in a reasonable manner not permitted by an official control; The property owner proposes to use the property for a residential use by building a slab on grade residence, which is a common use in the area with 14 nearby residences in the one-half mile area. The density restriction was to protect the aggregate resource which is considered slight in the area proposed for residential use. The area considered high for aggregate resource would be too close to property lines, right-of-way and other nearby residential structures.
- 2) The plight of the landowner is due to circumstances unique to the property and not created by the landowner; The property is zoned Resource Protection-Aggregate. The proposed use is adjacent to another residential parcel. Most of the parcel does not have high aggregate potential and the portion that does is in the road right of way.
- 3) The Variance, if granted, will not alter the essential character of the locality; There are 14 residences in the half-mile radius of the proposed parcel.

Ezra Baer clarified that, if there was not an aggregate overly on this parcel, there would be no requirement for the Applicant to request a Variance. Bill Davis feels that the potential for aggregate on the proposed building site is not high and the area already has several residences. Director Matt Jacobson advised that he feels the aggregate in this area has probably already been considerably mined out.

Emily Holmes and Joshua Holmes, Applicants, state they wish to build a new home on the proposed parcel. Emily Holmes' parents are the current owners of this property. Joshua Holmes states that their daughter has special needs and she will have a hard time walking so they are trying to make their home the most level and accessible as possible for her future use. He states that this proposed location is also dry.

On motion by Tim Brendemuhl, seconded by Bill Davis, 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.

On motion by Tim Brendemuhl, seconded by Bill Davis, and unanimously carried, the Board of Adjustment *GRANTED* the Variance to allow a second residence within the quarter quarter.

UNFINISHED BUSINESS:

- Matt Jacobson: Clay County Comprehensive Plan update
Director Jacobson advises there is a draft plan and it is hoped to have this wrapped up early February 2022.

NEW BUSINESS:

- **Review of Applications for Board of Adjustment vacancy** - Director Jacobson introduced Dennis Loock, a resident of Turtle Lake. Mr. Loock has submitted his Interest Form and wishes to be considered for the current Board of Adjustment opening.

On motion by Tim Brendemuhl, and seconded by Ezra Baer, and unanimously carried, the Board of Adjustment approved the recommendation of Dennis Loock as Board of Adjustment member to the County Board of Commissioners.

ADJOURNMENT:

On motion by Tim Brendemuhl, and seconded by Ezra Baer, and unanimously carried, the meeting was adjourned at 6:06 PM.

A handwritten signature in cursive script, reading "William Davis", is written over a horizontal line.

William Davis, Chair
Clay County Board of Adjustment