

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, JULY 18, 2023
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Ezra Baer, Dennis Loock, Tim Brendemuhl, Leo Splonskowski, Travis Bouton

Members Absent: None

Others Present: Matt Jacobson, Ericka Franck, Rita Rueckert, Justin Sorum, Derek Crompton, Stacie Olson, Myrna Nelson, Merlin Nelson, Matt Kremer, Luke Hvidston, Brady Olson

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

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES OF MAY 16, 2023:

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the Board approved the Minutes from May 16, 2023.

PUBLIC HEARING(S):

DEREK CROMPTON – REQUEST FOR VARIANCE

The applicant is seeking approval of variance to build an accessory structure within the road setback at 8701 210th St N, Hawley, MN 56549, Parcel 03.004.1401 in part of the SE1/4 of the NE1/4 of Section 4, Township 140N, Range 45W, Cromwell Township.

Matt Jacobson, Planning & Zoning Director, advised that the Applicant wishes to build a structure and reduce the setback on County Road 114 from 125 feet from centerline to 100 feet, which is a 20% reduction.

Relevant goals from the 2045 Comprehensive Plan were reviewed, including:

Transportation – System:

1. Maintain and operate an accessible, safe and efficient transportation system for the movement of people and goods throughout Clay County.

Applicant wishes to build a 1620-sq foot building with septic that does not contain living quarters. Planning and Zoning issued a Permit in May 2023 for construction of the building orientated to north-south on the parcel. The original request barely met the setback. After consulting with septic installer onsite, it was determined that the orientation of the building should be east-west in order to provide adequate placement of the septic system. Applicant's placement is constrained by wetlands on the south end of the property and they are also attempting to avoid relocation of a large garden plot. There is a row of established conifers between the proposed building site and the road.

Director Jacobson has spoken with the County Engineer regarding the request, and they do not see any problems or issues with this request.

Applicant Derek Crompton advised there will be a 10-foot setback for the Wild Rice Electric power lines.

Chair Baer asked if this will be a second driveway or just the main driveway used. Applicant Crompton advised they will be using the main driveway.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the public hearing was closed.

Minimum conditions recommended by Staff include:

1. Structure may be placed no closer than 100 feet from the road centerline.

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested permit. Any items of concern may be addressed through Conditions.

On motion by Leo Splonskowski, seconded by Travis Bouton, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with the following condition(s):

1. Structure may be placed no closer than 100 feet from the road centerline.

LUKE AND CHRISTINE HVIDSTON – REQUEST FOR VARIANCE

The applicant is seeking approval of variance to the Ordinary High Water Level Setback at 842 264th ST S, Hawley, MN 56549, Parcel 04.085.0190, Lot 019, Block 001 of Timber Shores Subdivision in Section 8, Township 139N, Range 44W, Eglon Township.

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

Matt Jacobson, Planning & Zoning Director, stated that there are 2 requests with this Variance application: the first is for a deck addition with cold storage underneath, and the second is for placement of a septic system as close as 150 feet from the Ordinary High-Water Level (OHWL) of Lee Lake in the Timber Shores Subdivision.

The following goals from the 2045 Comprehensive Plan were reviewed:

Natural Resources – Shoreland and Stormwater

1. Protect and enhance the health and vitality of Clay County surface waters including lakes, rivers, and streams for the benefit and enjoyment of Clay County residents and visitors.
 - a. Reduce development pressure on natural environmental lakes in Clay County.
 - b. Continue to enforce shoreland regulations on Clay County lakes, rivers and streams.

This 2-acre parcel meets the dimensional standards of the Development Code Table 8-5-1 for Special Protection. The setback for all structures in this zoning is 200 feet for all structures and septic systems.

Applicant is wishing to build a bedroom addition that has cold storage beneath it. The addition of the bedroom will possibly require the septic system to be expanded and relocated. The current residence is very close to the 200' setback, as measured by the contractor. The topography of the lot was reviewed and it does have sharp slopes; photographs of the property were also viewed. Applicant identified

practical difficulties as lot topography, proximity of the road to the current residential structure, and lot shape limiting suitable buildable areas of the lot.

Chair Baer asked if there was anything received from DNR and Director Jacobson advised there was no response from them. State Shoreland rules for Natural Environment lakes is 150 feet; Clay County Ordinance is currently at 200 feet.

Luke Hvidston, the Applicant, clarified that the deck is right at the 200-foot line, but the high-water line is hard to determine at the shoreline area. The septic installer advised they felt they would need to clear-cut some trees to extend the septic site. The Applicant is also desiring to build a gazebo within the 200-foot setback; however, this structure could be considered a water-oriented accessory structure, which can be located as close as 100-feet from the OHWL of Lee Lake.

Staff recommended conditions include:

1. Additions and septic must be no closer than 150 feet from the OHWL of Lee Lake.

On motion by Travis Bouton, seconded by Dennis Loock, 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. Any items of concern may be addressed through Conditions.

On motion by Tim Brendemuhl, seconded by Travis Bouton, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with the following condition(s):

1. Additions and septic must be no closer than 150 feet from the OHWL of Lee Lake.
2. Gazebo cannot be any closer than 100 feet from the OHWL of Lee Lake.

TM ELECTRIC – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance for an existing accessory solar array within the road setback at 7758 40th St N, Moorhead, MN 56560, Parcel 23.087.0010 Lot 001, Block 001 of Red Rock Estates Subdivision in Section 11, Township 140N, Range 48W, Oakport Township.

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

Matt Jacobson, Planning & Zoning Director, advised this is an after-the-fact request for a reduced setback from centerline of CSAH 9 for an accessory solar array structure from 125 feet to 100 feet.

Relevant goals from the 2045 Comprehensive Plan were reviewed, including:

Transportation – System:

1. Maintain and operate an accessible, safe and efficient transportation system for the movement of people and goods throughout Clay County.

Accessory solar is treated as a structure in terms of setbacks and permitting. Setback from the centerline would be 125 feet for the front yard. There were 4 arrays installed without a building permit. The western-most array is the one which encroaches on the centerline setback. The Applicant stated that the practical difficulty would require a complete removal and reconfiguration of the entire solar system,

including the three arrays that meet the setback. Aerial and land surface photographs were reviewed of existing solar array structures.

The County Engineer has advised that the 110-foot setback isn't ideal but is workable. There have been comments received from the neighbors regarding the panels obstructing their views. Various photographs were reviewed showing the panels and the resulting obstructed views from the neighbor's perspective.

When the building permit was issued for the residence, it was stated that there would need to be additional permits required for any future solar installation. It appears there may have been some miscommunication between the general contractor and the solar contractor. Prior to 2018 solar structures were permitted via Building Permit Applications. After the Solar Ordinance was passed, a separate Solar Building Permit was created.

Matt Kremer of TM Electric advised that Director Jacobson did a good job explaining the situation. If one array is moved, all 4 of them would need to be moved, including trenching underground to move the underground lines. The units were installed January 2023, which required heating and thawing the ground for installation. He states the height is no taller than 11 feet and he understands that the maximum allowable height for solar arrays is 15 feet.

Stacy Olson is a neighbor to the north of the Nelsons. She feels the solar array is an extreme eyesore for their view as their family gathers on the south side of their house and now the view is of these solar arrays. She is wondering if there is another way to solve this problem without her neighbors incurring expense, such as putting in mature trees for screening or something similar.

Owner Merlin Nelson advised they intend to place additional trees along the property line to improve the view for the neighbors.

Brady Olson, neighbor and husband of Stacy, states he has had many conversations with neighbor Merlin Nelson. While he feels that it would be better to have the solar panels installed further east, he does share the same thoughts of green earth and planet preservation practices with his neighbor, the Nelsons.

The Minnesota 2009 Stadsvold decision pertaining to After-The-Fact Variances was reviewed.

There was discussion regarding the setbacks for trees and tree lines from roadway centerline. County Engineer Justin Sorum indicated he feels that trees should not be planted within the road right of way. Technician Erika Franck advised the Development Code does have setbacks and that north/west roads have a 125-foot setback, and south/east roads have a 75-foot center-of-road setback. This road in question runs east and west.

On motion by Tim Brendemuhl, seconded by Dennis Loock, 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. Any items of concern may be addressed through Conditions.

Director Jacobson pointed out the 3 criteria regarding practical difficulty:

- The plight of the landowner is due to circumstances unique to the property and not created by the landowner.
- The Variance will not alter the essential character of the locality.
- Economic considerations alone do not constitute practical difficulties.

On motion by Travis Bouton, seconded by Tim Brendemuhl, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with the following condition(s):

- 1. Additional screening and landscaping are required so that the accessory solar system does not alter the essential character of the locality.**

UNFINISHED BUSINESS:

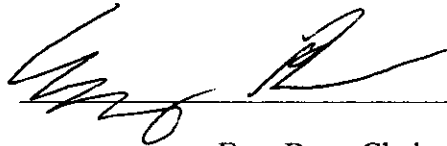
None

NEW BUSINESS:

The Development Code update SRC meeting will be August 16th from 4:00-6:00. First items to be reviewed will be non-conformities, shoreland and flood plain.

ADJOURNMENT:

On motion by Leo Splonskowski, seconded by Travis Bouton, and unanimously carried, the meeting was adjourned at 6:32 PM.

A handwritten signature in black ink, appearing to read 'Ezra Baer', is written over a horizontal line.

Ezra Baer, Chair
Clay County Board of Adjustment