

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, OCTOBER 17, 2023
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

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

Members Absent: Tim Brendemuhl

Others Present: Matt Jacobson, Michael Leeser, Erika Franck, Rita Rueckert, Ben Asplin, Ron Ekre, Sarah Asplin

Call to Order:

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

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES OF SEPTEMBER 19, 2023:

On motion by Dennis Loock, seconded by Leo Splonskowski, and unanimously carried, the Board approved the Minutes from September 19th, 2023.

PUBLIC HEARING(S):

ASPLIN, INC. – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance for existing gravel mining activities within the 100-foot property line setback of Parcel ID: 26.032.0300, Section 32, Township 138N, Range 45W, Skree Township.

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

Matt Jacobson, Planning & Zoning Director, advised the request is to mine within 100 feet of a property line. Policy Considerations reviewed from the 2045 Comprehensive Plan include:

Land Use: Agricultural

- #1 Recognize and Protect the agricultural character of Clay County
 - b. Protect prime agricultural soils from commercial, industrial and residential development.

Natural Resources and the Environment: Aggregate Resources

- #2 Foster a balanced approach to aggregate resource extraction that is compatible with the natural resources and the rural character of Clay County.

- a. Consider the cumulative impacts of existing nearby mining operations for new or expanding operations on the environment, agricultural lands, residential areas and transportation infrastructure.

The subject property is zoned Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg) and all adjacent parcels are zoned the same. The parcel is predominately industrial with gravel mining and agriculture. The parcel was originally two distinct separate parcels that were combined in 2019 and are now both owned by the Applicant. The north half of the parcel was used by Clay County as a gravel pit since the 1940s and received a Conditional Use Permit in 1990. An Interim Use Permit for a 39.5-acre gravel pit was approved in 2019 for the parcel that now comprises the south half of the current parcel.

The Applicant is requesting an after-the-fact Variance from the following:

Clay County Code Section 8-6-16B-3I-1: One hundred feet (100') from the boundary of adjoining property lines, unless written consent from the adjoining property owner is secured and a Variance is granted from the Board of Adjustment.

The Applicant is requesting an after-the-fact Variance to allow for an existing topsoil stockpile to encroach within the 100-foot property line setback.

The Applicant has received written approval from the adjacent property owner.

Since this request is an after-the-fact application, the after-the-fact Variance criteria were reviewed as follows:

1. Whether the construction was complete: *Mining activity has occurred within the 100-foot setback*
2. Are there similar structures in the area: *There are several active gravel pits in the area*
3. Does the benefit to the municipality of enforcement outweigh the burden on the applicant if compliance is required? *The purpose of the setback is to protect adjacent property owners. The owner of the adjacent property does not have an issue with the encroachment.*
4. Was the violation intentional or unintentional: *There is no evidence that the violation was intentional. The Applicant did not contact Planning and Zoning about setbacks before commencing mining activities.*

Applicant has identified the hardship that if the strict interpretation of the existing setback requirement would be followed, it would be costly and resource intensive to relocate. The placement of the berm also serves as a stormwater buffer to control runoff and erosion. The berm is approximately 35-45 feet from the property line.

Ben Asplin of Asplin Excavating advised they use this portion of the property for storm water retention as they had water run off onto the neighboring farm flooding them out and they ended up buying out the destroyed crop from the farmer. They have no plans for further work at this area.

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

Staff recommends the following minimum conditions:

- Mining activity resulting from this Variance should not encroach further into the property line setback.

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 Dennis Loock, seconded by Travis Bouton, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with the following condition(s):

- 1. Mining activity resulting from this Variance should not encroach further into the property line setback.**

ASPLIN, INC. – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance for existing gravel mining activities within the 500-foot residence setback of Parcel ID: 13.020.3000, within the SW1/4 of Section 20, Township 139N, Range 45W, Hawley Township.

On motion by Leo Splonskowski, seconded by Travis Bouton, and unanimously carried, the public hearing was opened.

Matt Jacobson, Planning & Zoning Director, advised that this after-the-fact request is for mining within the 500-foot residential setback. The area encroaching that setback is in the northwest corner of the mining area.

Policy Considerations reviewed from the 2045 Comprehensive and Transportation Plan include:

Natural Resources and the Environment: Aggregate Resources

#2 Foster a balanced approach to aggregate resource extraction that is compatible with the Natural resources and the rural character of Clay County.

- a. Consider the cumulative impacts of existing nearby mining operations for new or expanding operations on the environment, agricultural lands, residential areas and transportation infrastructure.

Zoning on the property is Agricultural General (AG), and Resource Protection-Aggregate (RP-Agg). All immediately adjacent parcels are zoned the same. The parcel is predominately industrial (gravel mining) with residential and agricultural uses. There is one residence in the NW1/41/4. The septic and drainfield are south of the residence and the well is to the northwest.

The Variance requested is from the Clay County Extractive Use Standard which states:

- I. Setbacks: Structures, storage of excavated materials, and the excavation edge shall be setback the following distances:
 - (3) One hundred feet (100') from the boundary of adjoining property upon which a residence, school, church, public or commercial establishment is located and a minimum of five hundred feet (500') from any structure used as a residence, school, church, public or commercial establishment.

Applicant states the strict interpretation of the existing setback requirement would be costly to correct. However, the mined area would need to be reclaimed eventually. It is quite likely that valuable materials remain to be extracted from the area within the setback. A Conditional Use Permit was granted for this mining operation in 1991. The landowner has granted written approval to mine within the 500-foot residential dwelling setback.

After-the-fact Variance criteria reviewed:

1. Whether the construction was complete:
2. Are there similar structures in the area:
3. Does the benefit to the municipality of enforcement outweigh the burden on the applicant
If compliance was required
4. Was the violation intentional or unintentional:

Ron Ekre, landowner, resides in the residence being encroached. He states he has given the Applicant permission to come as close to his residence as they have.

Minimum staff recommended conditions include:

1. Mining activity resulting from this variance should not come closer than 200-feet from the residence and 100-feet from the septic system.
2. Obtain a variance from the Hawley Township, if applicable.

Director Jacobson advised that the expected future mining expansion on this parcel would be to the north/northeast. Director Jacobson advises he has not heard anything from the Township. The 200-foot setback from the residence is approximately where the mining setback is currently located.

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

1. Mining activity resulting from this Variance should not come closer than 200-feet from the residence and 100-feet from the septic system.
2. Obtain a Variance from the Hawley Township, if applicable

UNFINISHED BUSINESS:

None.

NEW BUSINESS:

Director Jacobson went over some training on situations encountered by the Board of Adjustment, how to apply Variance principles and applying facts and ordinances.

ADJOURNMENT:

On motion by Dennis Loock, seconded by Travis Bouton, and unanimously carried, the meeting was adjourned at 6:45 PM.



Ezra Baer, Chair
Clay County Board of Adjustment