

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, NOVEMBER 21, 2023
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

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

Members Absent: None

Others Present: Matt Jacobson, Michael Leeser, Erika Franck, Justin Sorum, Rita Rueckert, Trent Seter, Craig Seter, Scott Wirtjes, Mike Stock, Mark Ciernia, Jeff Eberhardt, Dave Grausum

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

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES OF OCTOBER 17, 2023:

On motion by Travis Bouton, seconded by Dennis Loock, and unanimously carried, the Board approved the Minutes from October 17, 2023.

PUBLIC HEARING(S):

CRAIG SETER – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance for an outbuilding within the 200-foot property setback of a public watercourse at 3185 170th St N, Glyndon, MN 56547, Parcel ID: 27.032.0300, within the NE1/4 of the SE1/4 of Section 26, Township 140N, Range 46W, Spring Prairie Township.

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

Matt Jacobson, Planning & Zoning Director, stated the request is for setback from Ordinary High-Water Level (OHWL) from a natural stream for rebuilding of a destroyed building. Minimum setback from the stream for structures is 200 feet.

The following standards were reviewed from the 2045 Comprehensive Plan:

- **Natural Resources and the Environment – 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.
 - c. Continue to enforce shoreland regulations on Clay County lakes, rivers, and streams.

This property meets the dimensional standards for properties in the Special Protection – Rivers and Streams (SP) Zoning District. The property has one residential dwelling and two outbuildings. The property and surrounding properties are zoned Agricultural General (AG), Resource Protection-Aggregate (RP-Agg), and Special Protection – Rivers and Streams (SP). Outbuildings are a permitted use in these zoning districts. Minimum setback for all structures from public water is 200 feet.

Ordinance 8-2-4: Nonconforming Uses and Structures in Shoreland Districts, subsection A.2 was reviewed and states: Variance is required if setbacks are not met: If a proposed structure does not meet the setback requirements for the Shoreland District where the lot of record is located, a variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued. In evaluating the variance, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

The Applicant is seeking an after-the-fact variance from the 8-5B5: Dimension Standards for SP, RD and SP-LD zoning districts, Table 8-5-1, and is requesting an 82.5% reduction from the 200-foot OHWL setback.

The outbuilding was constructed in the mid-70's and was recently rebuilt after the roof collapsed from snow load. There was an addition added in 1972 but that portion was not affected in the collapse. The building is located within the shore impact zone (SIZ) of the stream. The unnamed stream is a public water listed as impaired for aquatic life-fish and invertebrates. The likely cause of impairment is high total suspended solid (i.e. excess sediment). This is typically caused by erosion and runoff and not due to structures. The Shore Impact Zone (SIZ) is 100-feet from the top of bank of the stream. Development is typically highly restricted within the SIZ in order to protect water resources and also to protect development from flooding, streambank erosion and other issues as streams are prone to meander.

Applicant has stated that the structure has never been threatened by flooding or erosion. Staff recommends a condition of the Variance be that if the structure is damaged due to erosion or flooding, it must only be rebuilt at the 200-foot setback or greater. Applicant indicates they were not aware that a Building Permit was required to reconstruct the damaged building.

Photos of the building, stream and surrounding area were reviewed.

Chair Baer asked if any of the buildings on the property meet the 200-foot setback. Director Jacobson advised that it did not appear they were setback 200 feet or more; however, the house appears to meet setbacks. Leo Splonskowski asked what the percentage of destruction involved compares a rebuild to a new structure. Director Jacobson advised that the original footprint was not changed in the reconstruction and the building was over 50% damaged.

Applicant Craig Seter states that he did not change the footprint of the building and reconstructed the building on the same foundation of the previous structure and did not realize that they were doing anything wrong.

On motion by Leo Splonskowski, seconded by Tim Brendemuhl, 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.

Minimum Staff recommended conditions:

- If structure is damaged in the future from flooding or erosion, this variance will be rendered null and void. The structure must adhere to the setback standards of the Clay County Development Code if it is rebuilt.

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. If structure is damaged in the future from flooding or erosion, this variance will be rendered null and void. The structure must adhere to the setback standards of the Clay County Development Code if it is rebuilt.**

DIRT DYNAMICS – 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 shared with Parcel ID: 08.025.0400, for Parcel ID: 08.025.4000, the SE1/4 less the NE1/4 of the SE1/4 of Section 25, Township 141N, Range 46W, Flowing Township.

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

Matt Jacobson, Planning & Zoning Director, stated the Applicant is requesting a Variance to allow mining activities within the 100-foot property line setback.

The following standards were reviewed from the 2045 Clay County Comprehensive Plan:

- **Natural Resources and the Environment: Aggregate Resources**
 - #1: Recognize the importance of aggregate resources to Clay County and the region.**
 - a. Implement policies and standards to ensure sound stewardship of aggregate resources and natural biotic 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.

This parcel is located right on the edge of Keene and Flowing Township and is predominantly industrial with gravel mining and agricultural. There was an (Interim Use Permit) IUP granted in 2012 for a 30-acre mining operation. The permit was amended in 2015 after an Environmental Assessment Worksheet (EAW) was completed to expand the mining to 88 acres. A new IUP was issued after an ownership change occurred in 2020. There are no structures on the property. The current zoning on this property is Agricultural General (AG) and RP-Aggregate (RP-Agg). All immediately adjacent parcels are zoned AG and RP-Agg.

The request is to mine within one hundred (100') from the boundary of adjoining property line. Permission has been given by the adjacent property owner. This request would be permissible if a Variance is granted and written consent is secured from the adjoining property owner. The request is an after-the-fact request and is relevant to the shared property line with Parcel 08.025.0400. Applicant has received written consent from that adjacent property owner.

Practical difficulty has been identified by the Applicant that strict interpretation of the existing setback requirement would limit access to a vein of material that runs through the property line. There is Resource Protection – Bio (RP-BIO) zoning on the properties to the south and west, and mining has encroached upon the property line setbacks. Director Jacobson recommends a condition that these areas on the south and the west areas of the property be reclaimed. Photographs of the area were reviewed.

Mike Stock of Dirt Dynamics understood the need to reclaim disturbed areas within the west and south property line setbacks and stated that they have started reclamation of the west and south property lines.

On motion by Leo Splonskowski, seconded by Travis Bouton, 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.

Staff recommends the following minimal conditions be applied to the Permit:

- Mining activity resulting from the Variance can occur up to the north and east property lines.
- Operator must reclaim all mining activities occurring within the west and south property line setbacks by October 1, 2024.

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

- Mining activity resulting from the Variance can occur up to the north and east property lines.
- Operator must reclaim all mining activities occurring within the west and south property line setbacks by October 1, 2024.

ALEXANDRIA GRAVEL PRODUCTS, LLC – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance for a portable truck scale facility within the 125-foot road centerline setback for Parcel ID: 12.024.2600, part of the W1/2 of the NW1/4 of Section 24, Township 142N, Range 45W, Hagen Township.

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

Matt Jacobson, Planning & Zoning Director, stated the request is to allow for continued placement of a portable truck scale within the road centerline setback. The standards reviewed from the 2045 Clay County Comprehensive Plan included:

- **Natural Resources and the Environment: Aggregate Resources**
 - #1 Recognize the importance of aggregate resources to Clay County and the region**
 - a. Implement policies and standards to ensure sound stewardship of aggregate resources and natural biotic 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.

This parcel is predominantly industrial with gravel mining and agricultural. There was a Conditional Use Permit (CUP) granted for gravel mining in 1990 and an amendment permitting mining within 150 feet of the main channel of the Wild Rice River that was granted in 1998. There are no structures on the property. Current zoning on the parcel is Agricultural General (AG), Resource Protection-Aggregate (RP-Agg), Special Protection: Shoreland (SP), and Floodplain Fringe (FF). All immediately adjacent parcels are zoned AG, RP-Agg, SP and FF.

Clay County Development Code 8-6-16-B-3-1: (2), Setbacks: Structures, storage of excavated materials and the excavation edge shall be setback the following distances:

Two hundred feet (200') from the right of way of existing roads and highways.

Applicant is requesting an After-The-Fact Variance to allow for an existing portable truck scale within the 200-foot road right-of-way setback.

Applicant states that strict interpretation of the existing setback requirement would not be possible as the scale is already in use, access has been established and power run to the scale facility. Hagen Township has approved the scale placement and has no issue with the location.

Scott Wirtjes of Alexandra Gravel stated that the scale is 70 feet plus ramp length.

Mark Ciernia from Hagen Township Board advised that Mr. Wirtjes approached him regarding placement of the scale and he hadn't thought about setbacks. The Township approval was an informal conversation between Mr. Ciernia and Mr. Wirtjes. Mr. Wirtjes has not applied to the Township for a formal variance. Mr. Ciernia stated that the Township approved the location of the existing scale. Leo Splonskowski confirmed with Director Jacobson that the setback from the road right-of-way is 200-feet; Mr. Ciernia confirmed that the Township setback is also 200 feet.

On motion by Tim Brendemuhl, seconded by Travis Bouton, 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.

Minimum staff recommended conditions include:

- Any conditions that the Board of Adjustment deem necessary

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

- **Scale must not be any closer than 70 feet from centerline of roadway.**

ALEXANDRIA GRAVEL PRODUCTS, LLC – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance for gravel mining activities occurring within the 125-foot road centerline setback for Parcel ID: 12.023.1100, the NE1/4 of the NE1/4 of Section 23, Township 142N, Range 45W, Hagen Township and for gravel mining activities within the 125-foot road centerline setback and 500-foot residential setback for Parcel ID: 12.014.4400, the SE1/4 of the SE1/4 of Section 14, Township 142N, Range 45W, Hagen Township.

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

Matt Jacobson, Planning & Zoning Director, stated that there are 2 requests associated to the application: one is for mining up to 50 feet from the road centerline and the second is to mine within the 500-foot residential setback.

The following standards were reviewed from the 2045 Clay County Comprehensive Plan:

- **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**
 - #1: Recognize the importance of aggregate resources to Clay County and the region.**
 - a. Implement policies and standards to ensure sound stewardship of aggregate resources and natural biotic 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 two parcels are predominantly used for aggregate mining. The Hutton/Duckwitz parcel to the north was primarily rural vacant/agricultural land before mining commenced in 2020. The Lomsdalen property has a Conditional Use Permit (CUP) for mining that was granted in 1995 and issued in 1997. The parcel has been used for aggregate extraction since that time. There are no structures on the property. Current Zoning on the property includes Agricultural General (AG), Resource Protection-Aggregate (RP-Agg), Floodplain Fringe (FF) and Special Protection: Shoreland (SP). All adjacent parcels contain the same zoning.

The Applicant is requesting an After-The-Fact (ATF) variance from the following Clay County standards:

Clay County Development Code 8-6-16-B-3-a: (2), Setbacks:

Structures, storage of excavated materials and the excavation edge shall be setback the following distances:

- (2) Two hundred feet (200') from the right of way of existing roads and highways.
- (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.

Applicants request is for an ATF Variance to allow mining activities up to 50 feet from the Township road centerline and within the 500-foot residential setback.

Applicant was granted a Variance in 2020 to allow mining activities up to 50 feet of the road ROW. The Applicant followed the Township variance as opposed to the County variance and also has mined within 50-feet from the road centerline, and in some locations are as close as 25 feet from the road centerline. The Applicant also mined within the 50-foot from centerline setback granted by Hagen Township.

Chair Baer asked for clarification for the setback difference between the Township issuing from road right of way and the County issuing for centerline of roadway.

The Applicant identifies hardship as strict interpretation of the existing setback requirement would limit access to aggregate materials on the property. Ms. Hutton and Ms. Duckwitz have provided written permission for the Applicant to mine within the 500-foot residential setback.

Applicant has done some reclamation near the river area and also some to 50 feet from centerline of 220th Street North. Applicant wants to get in and reclaim everything back and slope appropriately so that this Variance will match with the Township Variance, which would take the mining to 50 feet of the road centerline. . Within the next year, mining will essentially be completed and reclamation will be the predominant activity and moving existing stockpiles down to the Lomsdalen parcel. Reclamation will start on the Lomsdalen parcel once those stockpiles are removed. Drone imagery taken November 17, 2023 were reviewed. Portions of the area within the Shoreland Zoning have been reclaimed and topsoil stockpiles have been pushed back from 33 feet from centerline to 50 feet from roadway centerline.

Scott Wirtjes of Alexandria Gravel Products pointed out on the photograph that there is stockpile on the east side and they are currently working on moving this out, with completion next year and reclamation completed after that. He estimates there is approximately 30,000 tons remaining to mine in the northeast corner.

Mark Ciernia, of Hagen Township Board advised that the Township approved the Variance. Their primary concern is snow accumulation and drifting onto the roadway.

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.

Staff recommends the following minimum conditions:

1. Mining activities are not to occur closer than 50-feet from the road centerline. All mining activities within 50-feet from the centerline must cease and reclamation must occur immediately.
2. Mining activities are not to occur closer than 200 feet from the residence on the property.

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

1. **Mining activities are not to occur closer than 50-feet from the road centerline. All mining activities within 50-feet from the centerline must cease and reclamation must occur immediately**
2. **Mining activities are not to occur closer than 100 feet from the septic system on the property.**

There was a 15-minute break. Meeting was called back to order at 6:30 PM.

KOST MATERIALS – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the 200-foot road right-of-way setback for a gravel mining operation for Parcel ID: 12.027.1600, the W1/2 of the NE1/4, Section 27, Township 142N, Range 45W, Hagen Township.

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

Matt Jacobson, Planning & Zoning Director, stated the request is for mining activities within a road right of way setback of Township road 170th Avenue.

Standards from the 2045 Clay County Comprehensive Plan were pointed out that they are the same as the previous hearings.

This is an 80-acre parcel, predominantly agricultural/rural vacant land with no structures on the property. Property is zoned Agricultural General (AG), Resource Protection - Aggregate (RP-Agg), and Resource Protection-Biological (RP-Bio)

The Applicant, Kost Materials, is requesting a setback Variance from the 200-foot right-of-way to existing roads and highways. The Applicant is requesting to mine within the 200-foot road right-of-way setback, up to 50 feet from the centerline of 170th Avenue North. A map was reviewed relative to the current mining area and roadway are.

There was an Interim Use Permit (IUP) for gravel mining in 2016. There has been a period of over a year between 2016 and now with no mining activity occurring on the site and property ownership has changed. The new IUP due to the ownership change and inactivity will be heard at the Planning Commission later this evening. The Applicant has stated the practical difficulty is that much of the remaining aggregate reserves on the property are within the 200-foot road right-of-way setback.

The Highway Department would not support placement of a berm within the right-of-way setback due to drifting/blowing snow which could cause impacts to the road and related traffic due to prevailing north winds.

County Engineer Justin Sorum expressed concern about blowing and drifting snow. Ordinarily they ask for a 100-foot setback for berms. Chair Baer stated that the top of the berm is approximately eye level height when driving by in a pick up.

Director Jacobson indicated that there have been other conditions on excavation areas that included a 3-foot berm. Engineer Sorum stated that he would prefer not to see a berm near the road but may not be opposed to a 3-foot berm.

Jeff Eberhardt of Kost Materials stated he would be willing to work with the County on what they would like to see for berm height or to put up a snow fence. He stated that this is a shallow pit and may not even need a berm.

Mark Ciernia of Hagen Township Board stated the Township Board had concerns about the berm and collecting snow. The Township would also require a Variance for the mining within the 200-foot right of way.

On motion by Dennis Loock, seconded by Tim Brendemuhl, 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.

Staff recommends the following minimum conditions:

- Mining activity resulting from this Variance are not to occur closer than 50-feet from the road centerline

- Applicant must obtain approval/Variance from Hagen Township

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

- Mining activity resulting from this Variance are not to occur closer than 50-feet from the road centerline
- Applicant must obtain approval/Variance from Hagen Township.

UNFINISHED BUSINESS:

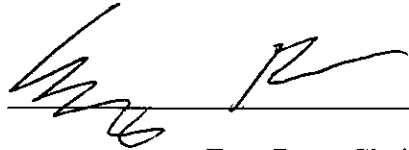
None

NEW BUSINESS:

None

ADJOURNMENT:

On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the meeting was adjourned at 6:42 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