

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, MARCH 19TH, 2024
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, Erika Franck, Lorene Mathern, Tim Mathern, Ian Severson, Loren Richards

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 FEBRUARY 20TH, 2024:

On motion by Dennis Loock, seconded by Travis Bouton, and unanimously carried, the Board approved the Minutes from February 20th, 2024.

PUBLIC HEARING(S):

TIM AND LORENE MATHERN – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to place a sauna within the Ordinary High-Water Level (OHWL) setback of Lake 15 at 27532 88th Ave S, Hawley, MN 56549 on Parcel ID: 24.040.0117 in Lot 17-19 of DMZ Subdivision, Section 15, Township 138N, Range 44W, Parke 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 place a sauna within the Ordinary High-Water Level (OHWL) setback of Lake 15. The lot is .91-acres in the DMZ Subdivision in Parke Township. The Applicant would like to construct an 8x12-foot sauna.

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

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 environment lakes in Clay County.
 - c. Continue to enforce shoreland regulations on Clay County lakes, rivers and streams.

Lake Fifteen is a Natural Environment Lake but is classified in the Residential Zoning District. Director Jacobson described the three different lake classifications within Minnesota and the differences of those three classifications. This unique situation for Lake Fifteen puts the OHWL setback to 150 feet, rather than the 100-foot setback for Residential Development lakes. This setback applies to all structures.

The cabin onsite was built in 2014 and the use is seasonal recreation. The Applicant has requested two prior Variances in 2012:

- The first was to place the cabin as close as 110 feet from the OHWL of Lake 15, and 5 feet from the road right-of-way.
- The second was to place the septic system as close as 110 feet from the OHWL and not to encroach on any part of the existing road right-of-way or adjoining property line setbacks.

The Applicant's request is to place an 8x12 (96 sq ft) sauna as close as 130 feet from the OHWL of Lake 15. The sauna would be placed on the northeast side of the existing cabin to allow for easy access between the two structures. The Applicant states the sauna would be obscured from 88th Avenue South, as well as obscured from the lake. The proposed location does meet the 10-foot property line setbacks.

The subject property and surrounding properties are zoned Residential District -Shoreland and General Floodplain. The proposed sauna would not be placed in the General Floodplain.

The Applicant has identified the following Practical Difficulty:

The Variance is necessary as it is not practical for cabin users to have a sauna at another location on the property. Other locations would also make the sauna visible to the public. Not trees or shrubs would need removal at the requested location/placement.

Photos were reviewed of the property as well as the sauna location.

Chair Baer asked if there were any comments from the DNR; Director Jacobson advised there was no comment from the DNR.

Applicant Tim Mathern and his wife Lorene advised he had talked to the neighbors regarding the sauna placement. Mr. Mathern stated they would be using water from the lake. They have not determined if the sauna will be wood fire or electric.

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 Variance.

Director Jacobson advised that any Variance considered within Shoreland must also address the Shoreland District Variance criteria: Is there a conforming sewage treatment system present for the intended use of the property? The Variance, as issued must require reconstruction of a nonconforming sewage treatment system. Director Jacobson advised that any Building Permit granted within Shoreland requires that, per Code, the Applicant would be required to have a septic compliance check within the past 5 years.

On motion by Tim Brendemuhl, seconded by Travis Bouton, and unanimously carried, the Board of Adjustment *GRANTED* the Variance as requested.

RICHARDS FAMILY PARTNERSHIP LLP – REQUEST FOR VARIANCE

The applicant is seeking approval of variance to the property line setback share with Parcel ID: 08.025.4000 and the road centerline setback of 170th St. N. for gravel mining activities on Parcel ID: 08.025.0400 in part of the NE 1/4 and NE 1/4SE 1/4 of Township 141N, Range 46W, Section 25, Flowing Township.

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

Matt Jacobson, Planning & Zoning Director, advised this after-the-fact Variance request is to mine up to property line and within the 200-foot road Right-Of-Way (ROW) setback.

Policy considerations reviewed from the 2045 Clay County Comprehensive Plan include:

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 zoning on the parcel is Agricultural General (AG) with an overlay of Resource Protection-Aggregate (RP-Agg). All adjacent parcels have the same zoning.

The property is currently used for agricultural and aggregate mining purposes. There are no structures on the property.

Director Jacobson gave the following background on this property:

The pit was granted an Interim Use Permit (IUP) from Clay County on May 21, 2013 for a 40-acre gravel mine consisting of 30 acres of excavation and 10 acres for topsoil storage, screening, stockpiling, etc. The pit was granted an after-the fact IUP Amendment from Clay County on April 19, 2022 for a 70-acre gravel mine, consisting of 62 acres of excavation and 8 acres for topsoil storage, screening and stockpiling with a mean depth of less than 10 feet. A request to amend the IUP to extend its duration for another year was approved April 11, 2023. In the summer of 2023, the mine was expanded to a total of 101.7 acres. Currently there are 76.8 open acres and 24.9 reclaimed acres within the mine. The County made a decision of no need for an Environment Impact Statement (EIS) based on the Applicant submittal of an Environmental Assessment Worksheet (EAW) at the February 20, 2024 Planning Commission meeting. Applicant is looking to increase the mine ap

Director Jacobson advised that the Applicant would be pursuing the Variances as set out, and additionally the Applicant would be requesting a new Interim Use Permit at the Planning Commission following this meeting tonight.

The following criteria were reviewed from the 2012 Clay County Development Code:

Section 8-6-16B-3I: Setbacks: Structures, storage of excavated materials, and the Excavation edge shall be setback the following distances:

- (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 seeking an After-The-Fact (ATF) Variance to allow for mining operations up to the property line shared with Parcel 08.025.4000, which is a 100% reduction. The adjacent landowner has granted written approval to mine within the one hundred-foot (100') setback. The adjoining property owner has received a Variance from the Board of Adjustment to mine up to this same property line.

The second Variance request from the Applicant applies to mining operations up to 100-feet of the centerline of 70th Avenue North, or 77 feet from the Right-of-Way (ROW), a 61.5 reduction. This is not a very well-traveled road. Per the 2012 Clay County Development Code:

Section 8-6-16B-3I: 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

The Applicant states that strict interpretation of the existing setback requirements would limit areas able to be mined, more tillable acreage would result for reclamation, and the flow of staging reclamation would be improved. The Applicant is reclaiming to its former use of tillage acreage.

The EAW was conducted for 159 acres. Any mining, stockpiling, storage and related activities on a footprint of 160 acres or greater would trigger an EIS. The operator cannot exceed 159 acres. If the operator were to utilize all the acreage granted by the requested Variances, the total acreage would be 171 acres. Granting the Variances would allow for the operator to encroach into these setbacks but the entire setback areas cannot be fully utilized for mining purposes. The applicant does not intend to exceed the 159 acres.

Because these Variance requests are after-the-fact, the Stads vold Decision standards were reviewed:

- Whether the construction was 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

Leo Splonskowski asked if there was any comments or feedback from the Township; Director Jacobson indicated he has not received anything from the Township but he is aware that the Applicant did have discussions with the Township regarding the ROW encroachment.

Travis Bouton clarified the acreage restrictions and how it applies to the requested Variances. Director Jacobson recommended that if the Board of Adjustment grants the requested Variances, a Condition may be included to indicate that the 159 acres cannot be exceeded.

Ian Severson attended on Loren Richards' behalf and discussed future mining intentions. Mr. Severson states that 70th Avenue North is right on the Township line between Flowing and Keene Township. He states they spoke with Mr. Menholt of Flowing Township, and also spoke with Mr. Warren Dunham of Keene Township but doesn't feel either Township has any problems with the ROW request.

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 Variance.

Staff recommends the following minimum Conditions be included for any Variance granted:

- Mining activity resulting from this Variance can occur up to the property line shared with parcel 08.025.4000. All other property line setbacks must be maintained.
- Operator must stay under the 159-acres limit for mining and related mining activities.

On motion by Leo Splonskowski, seconded by Travis Bouton, and unanimously carried, the Board of Adjustment *GRANTED* the Variances as requested and with the following Conditions:

1. Mining activity resulting from this Variance can occur up to the property line shared with parcel 08.025.4000. All other property line setbacks must be maintained.
2. Operator must stay under the 159-acres limit for mining and related mining activities.

UNFINISHED BUSINESS:

None.

NEW BUSINESS:

- Director Jacobson attended the Clay County Township Officers Meeting on Monday, March 18, 2024 and he gave an update on the Development Code and solicited any input and shared other activities within the County. He received some questions about adding additions to recreational vehicles, campers and park models within a campground. There were many questions regarding demolition of structures, which falls under the Environmental Health Department.
- Next week there will be a Study Review Committee meeting for the Development Code update on Monday, April 25th from 4:00-6:00.
- Technician Erika Franck and Director Jacobson have been looking at scenarios from other Counties and also Clay County regarding Board of Adjustment requests. Director

Jacobson states that there have been some court cases that did go to court, including some from Clay County. There was one situation from Stearns County where a landowner built a water-oriented structure, but it was not built according to Code for water-oriented structures which limits size to 250 sq ft and can't be higher than 10 feet. Their structure was 12 feet high (due to the roof) and the structure itself was exactly 250 sq ft but the eaves were 2-feet long, so according to Stearns County the eaves put them over the allotted size. This Variance was denied 3-2, with given reason stated that they thought it altered the essential character of the locality as no one else on the lake has anything like that. Since the owner feels they are unable to bring the structure into compliance, they are going to tear it down.

The landowner put themselves as general contractor but hired someone else to do it. The Board of Adjustment argued that it puts the landowner responsible. The landowner felt that the contractor they hired would build according to the information the landowners supplied.

Director Jacobson stated there will be future scenarios as these brought to the Board of Adjustment for training purposes.

Director Jacobson reminded the Board of Adjustment members that if he ever makes an administrative decision, all his decisions are able to be appealed. These administrative decision appeals go to the Board of Adjustment, who can either affirm or overturn the Director's decision.

ADJOURNMENT:

On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the meeting was adjourned at 6:12 PM.

A handwritten signature in blue ink, appearing to read 'LS', is written over a horizontal line.

Leo Splonskowski, Acting Chair
Clay County Board of Adjustment