

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, JULY 16TH, 2024
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

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

Members Absent: Travis Bouton

Others Present: Matt Jacobson, Michael Leaser, Ericka Franck, Rita Rueckert, Barry Oberg, Curt Stubstad, Jenny Mongeau, Anna Sather

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

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES OF JUNE 25TH, 2024:

On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the Board approved the Minutes from June 25th, 2024.

PUBLIC HEARING(S):

BARRY OBERG – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance to allow a residence within the Ordinary High Water Level setback of the Buffalo River on Parcel ID: 20.020.4601 in part of the SW1/4 SE1/4, Section 20, Township 140N, Range 47W, Moland 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 the request is regarding Ordinary High-Water Level setbacks to Buffalo River for two additions placed on the residence.

Pertinent Goals and Objectives 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 regulation on Clay County lakes, rivers and streams.

This is a residential lot within the Shoreland Zoning District. The property is zoned Special Protection-Shoreland with a single-family residence, Quonset, storage sheds and above ground pool with deck. There is also Floodway and Flood Fringe zoning on this parcel.

The original house, built in 1941, was approximately 210 feet from the Ordinary High-Water Level (OHWL) of the Buffalo River. In 2017, the applicant submitted an after-the-fact Building Permit to raise/elevate and add onto existing house. The building permit application stated the house was 220 feet from the Buffalo River and a Permit was granted. Applicant believed that the house could be expanded closer to the river as the outbuildings were located 120 feet and 135 feet from the river.

In 2024 Planning & Zoning Staff reviewed a separate after-the-fact build on the property and noticed an addition of a roof constructed over the deck. A new after-the-fact Permit and elevation certificate was requested. An elevation certificate was completed in 2021. Planning and Zoning staff noted that the original After-The-Fact permit approved in 2017 was never inspected otherwise the setback issue would have been caught at that time.

Applicant is seeking a variance from 8-5B-5: Dimensional Standards for SP, RD and SP-LD Districts, Table 8-5-1 to:

1. Reduce the 200-foot structure setback from the Ordinary High-Water Level (OHWL) of the Buffalo River to 150 feet.

Per the Development Code Table 8-5-1 for OHWL setback:

8-2-4-B Nonconforming Uses and Structures in Shoreland Districts – Additions/Expansions to Nonconforming Structures

- Structures can be expanded
- Additions and expansions must meet setback requirements
- Variance is required if setbacks cannot be met

Applicant removed the original garage which was closer to the river and replaced it with a new attached garage further from the river. The electrical, sewer and water remain the same. Applicant states the practical difficulty as: It would be hard to move home and attached garage.

Past and present aerial photographs were reviewed of the property.

Concerns include:

- Bank slumping and stream erosion common along this stretch of the Buffalo River;
- 80th Street is at risk of erosion; and
- Several nearby residential properties are experiencing erosion, leading to expensive mitigation projects and pursuit of property buyouts.

Septic Conformance was reviewed. Per 8-2-4: NONCONFORMING USES AND STRUCTURES IN SHORELAND DISTRICT:

- Upgrade Required: A sewage treatment system not meeting the Clay County requirements for individual sewage treatment systems must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high-water level.
- Septic compliance is required for all development in Shoreland Zoning Districts. Noncompliant systems must be upgraded.
- A permit was issued in 1995 for 2 bedroom-1 bathroom septic system for this property. No certification history exists for the system, despite multiple sales of the property in question.

Standards were reviewed for After-The-Fact Variances:

- Whether the construction was complete: *construction has been complete since 2021*
- Whether there are similar structures in the area: *There are similar residential structures in the area*
- The benefit to the municipality of enforcement, compared to the burden on the applicant if compliance was required: *Continued granting of variances for after-the-fact violations weaken the ability of the County to enforce standards. However, the structure is not in the shore impact zone and the new structure is further setback than the original structure.*
- Whether the violation was intentional or unintentional: *Unknown at this time.*

Chair Baer clarified that the garage addition was built in 2017.

Barry Oberg stated that Director Jacobson explained the situation well. He indicated that today the distance from the river to the structure was 165 feet. He states that they had previously measured from the center of the river as the surveyor had measured from the center of the river. He states the house was framed in the fall of 2016 and the structure on the south side of the house (roof over the patio) was framed in 2017. He also stated that he felt his septic installer had done everything required regarding the septic; however, there is no information on this property that there was no septic certification, although it may have been looked at and never documented. Applicant has owned the property since 2016.

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 Variance.

Minimum staff recommended Conditions include:

- Septic System compliance check required. Upgrade is required if the system is found to be out of compliance.

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

- **Septic System compliance check is required. Upgrade is required if the system is found to be out of compliance.**

BARRY OBERG – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance to allow a pool and deck within the Ordinary High Water Level setback of the Buffalo River on Parcel ID: 20.020.4601 in part of the SW1/4 SE1/4, Section 20, Township 140N, Range 47W, Moland Township.

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

Matt Jacobson, Planning & Zoning Director, advised this request is for the same parcel as the previous hearing. Goals and Objectives from the 2045 Comprehensive and Transportation Plan, Zoning and other relevant information such as lot and description would remain the same.

Background information shows in 2024 there was an above ground pool with surrounding deck observed on the property. The Applicant completed an after-the-fact building permit application. Upon review of the application, it was noted that the pool was within the 200-foot OHWL setback at approximately 145 feet.

Applicant is seeking variances from 8-5B-B: Dimensional Standards for SP, RD and SP-LD Districts, Table 8-5-1 to:

- Reduce the 200-foot structure setback from the Ordinary High-Water Level (OHWL) of the Buffalo River to 145 feet.

The applicant stated practical difficulty was, while the pool and deck are movable, they are located on the most level place on the lot. Construction has been complete since 2021.

After-The-Fact Variance issues addressed include:

- Whether the construction was complete: *Construction has been complete since 2021*
- Whether there are similar structures in the area: *There are not many residential pools in the area, but they are an allowed use.*
- The benefit to the municipality of enforcement, compared to the burden on the applicant if compliance was required: *Continued granting of variances for after-the-fact setback violations weaken the ability of the County to enforce standards. However, the structure is not in the shore impact zone.*
- Whether the violation was intentional or unintentional: *The applicant did not believe that a permit was required for an above-ground pool and deck.*

There was discussion as to what type of pools require building permits. If an above-ground pool is set up during the summer months and taken down to be stored during the winter, a permit would not be required. This pool is an above-ground pool that stays up year-round and has a large permanent deck surrounding it and would therefore require a permit.

Barry Oberg was asked by Chair Baer where the septic system is located. Mr. Oberg stated that the septic is located directly between the pool and the house and drains north. He constructed the pool/deck in 2023.

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 Variance.

Minimum staff recommended Conditions include:

- Septic System compliance check required. Upgrade is required if the system is found to be out of compliance.

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

- **Septic System compliance check is required. Upgrade is required if the system is found to be out of compliance.**

FARM IN THE DELL OF THE RED RIVER VALLEY – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance to the Retreat Center setbacks on Parcel ID: 23.011.3601 in part of the NW1/4 SW1/4, Section 11, Township 140N, Range 48W, Oakport Township.

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

Matt Jacobson, Planning & Zoning Director, advised that this hearing is for an after-the fact Variance for a structure that is used for events.

Objectives reviewed from the 2045 Comprehensive and Transportation Plan include:

COMMUNITY AND RESILIENCE:

1. Promote personal and community health for all residents.
- c. Encourage practices and activities to achieve healthy food access for all residents.

AGRICULTURE:

1. Support the long-term protection of the County's strong and diverse agricultural economy.
 - a. Maintain an environment that supports agriculture at all scales throughout the County.

The property is north of Moorhead on County Highway 9/40th Street North. There is an approximately 12,000 square foot agricultural building on the property, bathroom/utility building currently under construction, a hoop house and a market stand. The property and surrounding properties are zoned Agricultural General (AG).

The Farm In the Dell is a working farm that gives people with disability to volunteer, employment and skill development opportunities. They have recently expanded their mission to host occasional events ranging from farm-to-table events to a fall festival. Although they are not a formal event center, the events hosted on the property are similar to those held at other event or retreat centers and are subject to the same permitting and regulatory standards.

The variance from the following performance standard for a retreat center is:

Setbacks: Any structures associated with a Retreat Center must be located at least 500 feet from a residential structure located on an adjacent property.

The residence in question was previously owned by Farm In the Dell and was split off and sold 3 years ago.

The Applicant states the practical difficulty in complying with the residential structure setback is that the buildings used for the events are already in place.

Photos were reviewed of the subject residence as well as a site plan for the property that is the subject of this hearing.

Ater-The-Fact Variance considerations:

- Whether the construction was complete: *Construction has been complete for some years*
- Whether there are similar structures in the area: *There are similar barns in the area*

- The benefit to the municipality of enforcement, compared to the burden on the applicant if compliance was required: *The burden of relocating the structure or building a new structure outweighs any benefit to enforcement.*
- Whether the violation was intentional or unintentional: *The violation was not intentional. The applicant was not aware of the regulations.*

Director Jacobson advised that later this evening at the Planning Commission meeting, the Applicant will be having a hearing for a Conditional Use Permit.

Anna Sather, director of Farm In the Dell, stated that there are about 5 days this year that they will be opening their structure for public events, but the barn building is used for agriculture for 365 days a year. She spoke with the neighbors that own the nearby residence and they state they are very supportive of the Farm In The Dell operations and events. Chair Baer asked when Farm In The Dell moved to that location and Dave Sigler advised that the property was acquired in 2015. The first time the events started being held back by the barn was in 2018 due to inclement weather and found out it worked out very well and have continued. Mr. Sigler feels that the neighborhood is very welcoming of the Farm In The Dell. Leo Splonskowski asked if they have had any comments from neighbors and they only feedback they have received is positive comments and reinforcement of the desire for Farm In The Dell to continue operating at that location.

Tim Brendemuhl is the Chairman of Oakport Township and advised they have not received any complaints or concerns regarding Farm In The Dell.

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 Variance.

Minimum Staff recommendation is to work through the Findings of Fact and Order.

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

UNFINISHED BUSINESS:

None.

NEW BUSINESS:

- Director Jacobson advised there is another MCIT training the end of August. However, it doesn't appear to have agenda items that would be pertinent to Board of Adjustment, but geared more toward Planning Commission and County Commissioners. He did state if anyone is interested in attending that training to let him know.

- Leo Splonskowski inquired if there is any language being worked on regarding pools for the new Ordinance, specifically in-ground vs. above-ground. Director Jacobson stated they would be considered an accessory to a principal use. Floodplain regulations do not address pools in depth other than possibility of personal property damages caused or situations involving flooding.

ADJOURNMENT:

On motion by Tim Brendemuhl, seconded by Dennis Loock, and unanimously carried, the meeting was adjourned at 6:17 PM.



Ezra Baer, Chair
Clay County Board of Adjustment