

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, OCTOBER 15TH, 2024
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

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

Members Absent: Dennis Loock

Others Present: Matt Jacobson, Brian Melton, Erika Franck, Rita Rueckert, Jody Stetz, Darrin Myogeto, Pete Nelson, Kent Severson

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

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES OF SEPTEMBER 17TH, 2024:

On motion by Tim Brendemuhl, seconded by Travis Bouton, and unanimously carried, the Board approved the Minutes from September 17th, 2024.

PUBLIC HEARING(S):

PETER AND DEBRA NELSON – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the Ordinary High-Water Level (OHWL) setback of the Buffalo River for a residence at 20666 28th Ave S Hawley, MN 56549, Parcel ID: 13.016.4300, in part of the SE1/4 of the SW1/4 of the SE1/4, Section 16, 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, stated this is a request to vary from the Ordinary High-Water Level setback of the Buffalo River for a residence. The base zoning is Agricultural General (AG), Shoreland: Special Protection – Rivers and Streams; and there is a small amount of Floodplain Fringe which barely impacts the parcel.

The request is to reduce the 200-foot OHWL to 127 feet which is a 36.5% decrease. The practical difficulty provided by the Applicant is that this is the same location as a previous residence on the parcel that was permitted in 1997 and has access to power, water and septic. The Applicant does not wish to encroach into the road setback. Aerial images were reviewed showing the existing structures and all setbacks.

The Buffalo River is known for bank instability due to erosion and slumping and Director Jacobson has discussed this fact with the Applicant. Director Jacobson has reviewed historical aerial imagery of this

portion of the Buffalo River and it doesn't appear that there has been much if any movement of the bend in the river at this particular point.

Goals and Objectives reviewed from the 2045 Comprehensive & Transportation Plan includes:

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.
 - e. Continue to enforce shoreland regulations on Clay County lakes, rivers and streams.

Chair Baer asked if the Township has made any comments on this request; Director Jacobson advised that they have been notified but have not presented any feedback. Hawley Township does have their own zoning.

Travis Bouton asked if there would be any requirements to flood proof this residence. Director Jacobson advised that the house will not be in the flood plain fringe and, together with the fact that the elevation is higher, flood proofing would not be required.

Pete Nelson advised he purchased the property approximately 6 years ago. He advised there was an older trailer house on this property that has been removed. All infrastructure is present, including: electric, water, septic/drainfield.

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 Variance.

Minimum staff recommended Conditions include:

1. Structure may be no closer than 127 feet from the Ordinary High-Water Level of the Buffalo River.
2. Septic system compliance check is required. Upgrade required if the system is found to be out of compliance.

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

1. Structure may be no closer than 127 feet from the Ordinary High-Water Level of the Buffalo River.
2. Septic system compliance check is required. Upgrade required if the system is found to be out of compliance.

PETER AND DEBRA NELSON – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the Ordinary High-Water Level (OHWL) setback of the Buffalo River for a garage at 20666 28th Ave S Hawley, MN 56549, Parcel ID: 13.016.4300, in part of the SE1/4 of the SW1/4 of the SE1/4, Section 16, Township 139N, Range 45W, Hawley Township.

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

Matt Jacobson, Planning & Zoning Director advised this after-the-fact request is for the same parcel as the previous hearing but is for a garage structure. The request is seeking a reduction of the 200-foot OHWL setback 68.5% to 63 feet. The garage was permitted in 1999. At that time the OHWL setback was indicated on the building permit application to be 1,320 feet. The garage was permitted in 1999 and at that time the request for setback was one-quarter mile. The Applicant did not construct the garage as it was built by the prior owner. Due to the current status as an illegal non-conforming structure, the Applicant would not be allowed to repair or replace if it was substantially damaged. Granting this Variance would allow the structure to be repaired or replaced with same footprint if it was substantially damaged.

The Shore Impact Zone is land located between the OHWL of a public water and a line parallel to it at a setback of fifty percent of the structure setback. Shore Impact Zone is 100 feet from the OHWL.

Goals and Objectives reviewed from the 2045 Comprehensive & 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.
- c. Continue to enforce shoreland regulations on Clay County lakes, rivers and streams.

The instability of the Buffalo River was again discussed and that information can be found in the previous hearing.

Because this is an after-the-fact request, the following items can be applied:

1. Whether the construction was complete: *Construction has been complete since 1999.*
2. Whether there are similar structures in the area: *There are similar structures in the area.*
3. The benefit to the municipality of enforcement, compared to the burden on the Applicant if compliance was required: *The County had an opportunity to take enforcement action when the permitted structure was inspected in 1999.*
4. Whether the violation was intentional or unintentional: *The violation was likely intentional by the prior owner as the OHWL setback was grossly misrepresented on the building permit. However, the Applicant is not responsible as the structure existed when the property was acquired.*

Kent Severson joined the hearing by telephone. He advised that he has inspected this septic system and it is currently compliant for a 3-bedroom residence.

Pete Nelson advised that the red-roofed storage building has been moved at this time. He had put this storage building in the same spot as the previous structure but it was not meeting setback requirements so they decided to move it instead of requesting a Variance for it. Mr. Nelson advised that his future residence would not be larger than a 3-bedroom house.

On motion by Travis Bouton, seconded by Leo Splonskowki, 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:

1. Structure may be no closer than 63 feet from the OHWL of the Buffalo River.

2. Septic system compliance check required. Upgrade required if system found to be out of compliance.

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

1. Structure may be no closer than 63 feet from the Ordinary High-Water Level of the Buffalo River.
2. Septic system compliance check is required. Upgrade required if the system is found to be out of compliance.

DARRIN MYOGETO – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the residential density standards of the Resource Protection – Aggregate Overlay Zoning District to place a second residence in a quarter-quarter in part of the NE1/4 of the SE1/4, Section 13, Township 137N, Range 44W, Tansem Township.

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

Matt Jacobson, Planning & Zoning Director advised this is a request to place a second dwelling in a quarter-quarter in the Resource Protection – Aggregate (RP-Agg) Overlay Zoning District. The base zoning is Agricultural General (AG) and an overlay zoning is Resource Protection – Aggregate. Factors to be considered: Does the proposal meet the conditions of Section 8-4-5 found in Title 8 of the Clay County Land Development Ordinance. All of the criteria from Section D: Criteria For Granting Variances must be met before a Variance may be granted.

Applicant is seeking a Variance from 8-5C-7-A of the Clay County Development Code which sets the residential density at a maximum of 1 residence per quarter-quarter in the RP-Agg overlay district. The Applicant has identified the following Practical Difficulty: Age and health complications from injuries sustained while in service, he would like children to live close to help with activities of daily living.

Per the Minnesota Aggregate Resources Inventory, there is estimated to be approximately 6.75 acres of high gravel potential within the proposed parcel to be created if the variance is granted. The National Wetland Inventory indicates wetlands in the southern portion of the quarter-quarter section but nothing to the north. The tract is heavily wooded.

The soils on this parcel can either be really good or difficult to sustain a septic system. Discussions have been had with the Environmental Health staff regarding this.

Goals and Objectives reviewed from the 2045 Comprehensive and Transportation Plan include:

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.

The residential density standard of one dwelling per ¼ ¼ in the RP-Agg Overlay Zoning District is to ensure continued availability of finite aggregate resources and to reduce the potential for land use conflicts between aggregate extraction and transportation and rural residential uses. There is a high potential for aggregate resources on this parcel, but it is unclear if these resources would ever be extracted

due to the heavily wooded nature of the property and the limited potential acreage (6.75 acres of high aggregate potential.)

2. Provide opportunities for quality rural residential development in Clay County.
 - c. Permit large lot nonfarm residential development if a portion of the property is preserved or converted to a use that retains the rural character of the land.
This request would meet this objective if most of the property is preserved in its current state.
 - d. Avoid or mitigate residential development on or near environmentally sensitive lands or lands with high-quality natural resources.
There is a high potential for aggregate material on a portion of the proposed tract to be subdivided.
3. Recognize the diversity of living and working arrangements in the unincorporated areas of Clay County.
Family circumstances and situations may necessitate living arrangements not currently permitted by right in the Clay County Development Code. In this case, the need to protect aggregate resources from residential development should be balanced with the need to recognize family living circumstances due to age, health (mental and physical) and other unique situations. Clay County does recognize these familial situations by allowing for a temporary second dwelling used by a relative to be placed on a residential parcel. This would be permitted as an Interim Use in the RP – Agg District. The variance request would create a permanent residential parcel that could eventually be sold to a non-family member.

Director Jacobson advised that he has reviewed the soils in this parcel and it is primarily clay and sand and not much for aggregate, according to the well logs in this area.

Chair Baer pointed out that with the property line setback and the road setback, the potential of mining would be severely limited. The lot is also heavily wooded. Of the 40 acres on the parcel, 6.75 acres have been identified as high gravel potential; however, most of that is located within the road right of way and would not be able to be mined.

Darrin Mygeto advised his kids are very helpful to him as he is a disabled vet. Otherwise, he would not have any interest in dividing off 5 acres of his property.

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 Variance.

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

UNFINISHED BUSINESS:

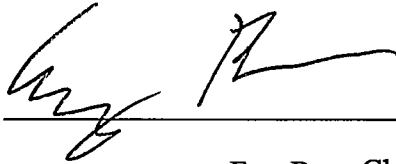
None.

NEW BUSINESS:

None.

ADJOURNMENT:

On motion by Tim Brendemuhl, seconded by Travis Bouton, and unanimously carried, the meeting was adjourned at 6:08 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