

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, MAY 18, 2021
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

Members Present: Bill Davis, Ezra Baer, Perry Bushaw, Paul Krabbenhoft

Members Absent: Tim Brendemuhl

Others Present: Matthew Jacobson, Erika Franck, Caitlyn Hurlock, Rita Rueckert, Kim Braseth, Derek Braseth, Eric Braseth, Troy Nelson, Kevin Hayer, Jean Fuchs

The meeting was called to order at 5:30 PM by Chair William Davis. Roll call was taken for this meeting. Some of the committee members were in person while others were virtual.

APPROVAL OF AGENDA:

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board approved the meeting Agenda.

APPROVAL OF MINUTES:

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board approved the Minutes from January 26, 2021.

PUBLIC HEARING(S):

TROY NELSON – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the property line setback for aggregate mining of the Clay County Development Code in the NE1/4 of the SW ¼ of Section 6, Township 139N, Range 44W, parcel: 04.006.3004 in Eglon Township.

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.

Matt Jacobson, Planning & Zoning Director, advised the Variance request pertains to the 100-foot property line setback for mining. Planning Commission heard the Interim Use Permit request last month and the permit was granted. The following Policy Considerations were reviewed:

Land Use Goal #2 – Support the long-term protection of agriculture in the County.

- Policy #1 – Recognize and support the agricultural character of the County in all planning efforts.

Land Use Goal #5 – Plan land uses and implement standards to minimize land use conflicts.

- Policy #1: Prepare and adopt a land use plan that designates land use areas to ensure desirable land use patterns and minimize conflicts.

- Policy #2: Require adequate transitions between different land uses through appropriate land use planning and zoning standards.
- Policy #3: Require adequate buffering and landscaping for new-mining operations when adjacent to existing residential areas as well as when an existing operation expands or is substantially modified and would negatively impact existing land uses in the surrounding area.
- Policy #4: Require phased end-use reclamation plans as a condition for a gravel-mining permit so that areas are reclaimed as they are done being mined.

Natural Resources Goal #1: Identify, protect, and preserve the County's high quality natural, scenic, cultural and open space areas.

- Policy #19: Balance the preservation of native prairie areas with mining of the County's gravel resources.

The property is a 73-acre parcel east of Hawley and zoned Agriculture General (AG), Resource Protection Aggregate (RP-Agg) Special Protection Shoreland and Flood Fringe. The setback in question is 100-foot east property line. All other setbacks can be met. There is a wetland on the west side of the property that they do not intend to mine into.

Considerations of the Variances include:

- Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties", as used in connection with the granting of a variance, means:
 - 1) That the property owner proposes to use the property in a reasonable manner not permitted by an official control;
 - 2) The plight of the landowner is due to circumstances unique to the property not created by the landowner;
 - 3) And the variance, if granted, will not alter the essential character of the locality.
- Economic considerations alone do not constitute practical difficulties.
- Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
- The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

The Development Code considerations include the 100-foot property line setback. It is allowable to mine within that setback with written consent from the adjoining property owner and a Variance from the Board of Adjustment. The pit was mined in 1980's and intermittently since then. It has not been reclaimed. There is about 40,000-50,000 cubic yards of material remaining in the pit. The pit would be operated by Turner Sand & Gravel and the owner has received written consent from the adjoining property owner to mine within the property line setback.. The practical difficulty identified is that much of the remaining material on the site is within the 100-foot setback. Staff recommendation is to approve the request with the condition that it is for property line setback of the east property line and excludes shoreland and road right-of-way setbacks.

Applicant appeared in person and did not have anything to add to the request as it was presented by Director Jacobson but was opened to questions if anyone had them.

On motion by Ezra Baer, seconded by Perry Bushaw, 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. All of the items can be addressed with conditions.

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board of Adjustment *GRANTED* a Variance for mining within the property line setback and to avoid the road right-of-way setbacks and Special Protection – Rivers and Streams Zoning District.

ERIC AND KIMBERLY BRASETH – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to place a feedlot within the residential setback of the Clay County Development Code in part of the SE1/4 of Section 13, Township 138N, Range 44W, parcel: 24.013.4700 in Parke Township.

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.

Matt Jacobson, Planning & Zoning Director, stated that the Applicant is requesting to reduce the setback for placement of a feedlot from a residence from 1,320 feet to 485 feet. This proposal is for a small feedlot operation with 90 cow/calf pairs (108 animal units). Two-pen feedlot used only for confinement during calf weaning. The approximate time of confinement would be between October through April and grazing would occur during the other months. The applicant and operator of the feedlot live on a separate parcel that is centrally located within the parent parcel.

Policy Considerations from the County Comprehensive Plan include:

Land use Goal #2: Support the long-term protection of agriculture in the County.

- Policy #1: Recognize and support the agricultural character of the County in all planning efforts.

Land Use Goal #5: Plan land uses and implement standards to minimize land use conflicts.

- Policy #1: Prepare and adopt a land use plan that designates land use areas to ensure desirable land use patterns and minimize conflicts.
- Policy #2: Require adequate transitions between different land uses through appropriate land use planning and zoning standards.
- Policy #3: Require adequate buffering and landscaping for new mining operations when adjacent to existing residential areas as well as when an existing operation expands or is substantially modified and would negatively impact land uses in the surrounding area.
- Policy #4: Require phased end-use-reclamation plans as a condition for a gravel-mining permit so that areas are reclaimed as they are done being mined.

Natural Resources Goal #1: Identify, protect and preserve the County's high quality natural, scenic, cultural and open space areas:

- Policy #19: Balance the preservation of native prairie areas with mining of the County's gravel resources.

This is a 152-acre parcel in Parke Township on the Clay-Becker county line. Current land uses are agricultural and aggregate mining. An aerial photo showed all setbacks from shoreland, property lines, road right of way and residences. The proposed feedlot would be located east and south of the existing residence.

Development Code Considerations are currently written that total-confinement feedlot setbacks are 1000 feet from residence; 1320 feet from all other structures; and 1320-foot residential setback from all other animal feedlots and 2000-foot setback for all other structures.

Additional setbacks for new feedlots include:

- a. Two (2) miles from any incorporated community or one-half (1/2) mile from any platted subdivision.
- b. One-hundred feet (100') from property lines, right of way and ditches (to include a 2-rod grass buffer strip adjacent to ditch).

The unique part of this request is that if the owner were on the same parcel as the feedlot, there would be no need for a Variance request. Recently the County has seen a significant increase in banks requiring that ag land be separated from residential property when refinancing home mortgages and Director Jacobson feels the Planning Office will see more requests with these circumstances.

The feedlot is 2,400 feet from the next nearest residence, which is approximately 1000 feet greater than code requirements. Since the Applicant owns and operates the feedlot and the property, Staff recommendation is to approve the request for the Variance for the placement of the feedlot within the residential setback with total confinement and to include the following conditions:

1. The Variance to the residential setback shall be no closer than 485 feet.

There were questions about the permanence of a permitted feedlot. The feedlots are registered with MPCA (Minnesota Pollution Control Agency) every 5 years so if there is no current registration the feedlot would no longer be able to exist.

Derek Braseth was present at the Variance hearing. He advises he is 4th generation to raise cattle and he and his family occupy the residence and operate the feedlot.

Jean Fuchs, a neighbor, stated that her property abuts to the northwest and is concerned about 110 cattle being grazed right up to her front yard. Since the Board of Adjustment is currently hearing a Variance for the setback of the feedlot to the residence, Ms. Fuchs' was advised that her concerns would be appropriate to be heard at the Planning Commission hearing later this evening.

On motion by Ezra Baer, seconded by Paul Krabbenhoft, 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. All items can be addressed with conditions.

Perry Bushaw reiterated that the setback of this feedlot does not encompass any of the neighbor's property.

On motion by Paul Krabbenhoft, seconded by Ezra Baer, and unanimously carried, the Board of Adjustment *GRANTED* a Variance for the residence setback from the cattle feedlot to a distance of 485 feet.

Practical difficulties were identified as:

- **the owner and operator of the feedlot and residence are the same individual**
- **parcel was split due to bank requirements to separate residential land from agricultural land**
- **topography of land contributes to the best placement of the feedlot**

UNFINISHED BUSINESS:

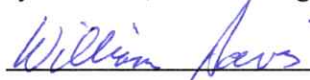
- **Matt Jacobson – Clay County Comprehensive Plan Update:** Adam Altenburg was unable to attend this meeting. Work is ongoing on the Plan update. There was a public input survey which closed in approximately mid-April which received about 380 responses. There were 2 public input meetings in late March. Feedback has also been received from some of the Townships and Cities, as well as State Agencies. There have been focus group meetings with local natural resources groups and gravel/aggregate operators. Focus groups work is split between currently identifying issues and later identifying goals and policies. There is hope for meeting with agricultural groups around early August. It is hoped to have this update completed by the end of 2021, and then proceed to updating parts of the Development Code. The Study Review Committee is hoping to meet again in June.

NEW BUSINESS:

There is no new business.

ADJOURNMENT:

On motion by Ezra Baer, and seconded by Perry Bushaw, the meeting was adjourned at 6:22 PM.



William Davis, Chair
Clay County Board of Adjustment