

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, AUGUST 16, 2022
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Tim Brendemuhl, Leo Splonskowski, Dennis Loock

Members Absent: Ezra Baer

Others Present: Matt Jacobson, Erika Franck, Justin Sorum, Michael Leeser, Rita Rueckert, Kevin Harder, Larry Dugan, JoNell DeJong, Travis DeJong, Leigh Ann Skurupey

The meeting was called to order at 5:30 PM. Due to the absence of Chair Ezra Baer, Tim Brendemuhl was acting chair for this meeting.

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES OF JUNE 28, 2022:

On motion by Dennis Loock, seconded by Leo Splonskowski, and unanimously carried, the Board approved the Minutes from June 28, 2022.

PUBLIC HEARING(S):

KEVIN HARDER – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance from the Clay County Development Code to the structure setbacks for an animal feedlot at 20371 180th Ave N, Ulen, MN 56585, on parcel 12.022.2001, part of the N1/2 of the NW1/4 of Section 22, Township 142N, Range 45W, Hagen 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 for a setback Variance for a structure from a feedlot. There are six structures on this 59-acre parcel; the owner's residence, two outbuildings and three animal related structures. The property is used as agricultural and residential. The Zoning is Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg). Mr. Jacobson noted feedlots that require a Use Permit in Clay County is 50 animal units or larger.

The criteria for granting a variance were reviewed, including Intent of Ordinance, Consistent with Comprehensive Plan, Practical Difficulty, Extraordinary Circumstances, Literal Interpretation Unfair, Minimum Variance Necessary, Prohibited Variances.

Policy Considerations include:

- **Land Use: Agricultural**

Recognize and Protect the agricultural character of Clay County.

- a. Support agricultural operations against nuisance complaints when such operations are being conducted according to generally accepted farming practices through “right-to-farm” provisions.

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 throughout the County.
 - b. Recognize and support the agricultural character of the county in all planning efforts.
 - c. Ensure that all new development is compatible with the character and quality of the county’s agricultural areas.

The request is for a variance to the setback standards of Table 8-6-1 for a non-total confinement feedlot (67 AU – animal units) to 830’ from a residence and all other structure instead of the required 1320’ from a residence and 2000’ from all other structures.

The subject property is zoned Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg). All immediately adjacent properties are zoned Agricultural General, Resource Protection-Aggregate and Resource Protection-Biological. A feedlot may be allowed as a Conditional Use in the Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg) districts if it meets specific requirements related to setbacks from other uses.

No location on the 59-acre parcel meets the 2,000 foot all other structure setback. There is an area in the southeast corner of the parcel that would meet the 1,320’ residential setback. This area outside the residential setback is currently used for tilled agricultural

Hagen Township does not have an issue with the request. Hagen Township requires a permit for operations of 400 animal units or greater. No other public comments were received for this request.

The 2009 Minnesota Supreme Court findings set out 4 additional criteria for after-the-fact Variance requests, and these 4 criteria information were reviewed. The following criteria were reviewed:

1. Whether the construction was complete: Construction is complete
2. Whether there are similar structures in the area – Outbuildings are similar in form and design to other structures in the area.
3. The benefit to the municipality of enforcement, compared to the burden on the applicant if compliance is required – the burden of compliance with the Code on the applicant far outweighs the benefit of enforcement.
4. Whether the violation was intentional or unintentional – applicant did not believe that this small of an operation required additional permits and setback standards applied.

There have been no comments received from neighboring properties.

Applicant Kevin Harder advised he was licensed with the Clay County Feedlot officer and thought that was the end of what was required of him. He states there is another 37 acres to the west that is connected to his property.

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

Staff advised of these potential conditions:

- Setbacks to the neighboring property's structures (residential and accessory) shall be no closer than 830 feet.
- Any additional conditions the Board of Adjustment deems necessary.

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.

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

1. **Setbacks to the neighboring property's structures (residential and accessory) shall be no closer than 830 feet.**

Due to a conflict of interest, Tim Brendemuhl recused himself for the next meeting. Mr. Brendemuhl made a motion to nominate Leo Splonskowski to be acting Chair. Motion was seconded by Dennis Loock and unanimously carried. Mr. Brendemuhl then left the room.

TRAVIS & JONELL DEJONG – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance from the Clay County Development Code to the residential and access setbacks for an agricultural service establishment at 7755 2nd St. N, Moorhead, MN 56560, on parcel 23.007.1402, part of the SE1/4 of the NE1/4 of Section 7, Township 140N, Range 48W, Oakport Township.

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

Matt Jacobson, Planning & Zoning Director, advised this is a 12.5-acre parcel in Oakport Township for an after-the-fact variance from the 500-foot residential dwelling setback to 300 feet and the 300-foot access setback to 65 feet for an existing horse boarding and training facility. The current use is Agricultural and Commercial. The zoning is Agricultural General (AG); there is also Special Protection – Rivers and Streams (shoreland zoning district) and regulatory floodway as well. Proposed use of a horse boarding and training facility is permitted as a conditional use in the AG zoning district; however, it is not permitted in the Special Protection – Rivers and Streams nor the Floodway zoning districts.

The following Policy Considerations 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.

Land Use: Commercial and Industrial

1. Encourage commercial and industrial development that is in harmony with the agricultural and rural character of Clay County.
- c. Avoid or mitigate against commercial and industrial development in and near environmentally sensitive areas.
- d. Avoid or mitigate against commercial and industrial development that increases the potential for land use conflicts with rural residential or agricultural uses.

Agriculture:

1. Support the long-term protection of the County's strong and diverse agricultural economy.
 - a. Maintain an environment that supports agriculture of all scales throughout the County.
 - b. Recognize and support the agricultural character of the County in all planning efforts.
 - c. Ensure that all new development is compatible with the character and quality of the County's agricultural areas.

This parcel was subdivided by the City of Moorhead from a larger agricultural parcel and sold in 2019. The facility was permitted by Clay County in June of 2019 as a residence and horse barn. It was advertised through social media as a horse boarding and training facility in August 2019. North River Performance Horses LLC filed with the Minnesota Secretary of State on August 16, 2018. The building itself was stated to be used as personal use or living quarters but, as commercial horse boarding and training facility, it does not meet the residential dwelling and access setback standards for an agricultural service establishment per the Clay County Development Code.

The Applicant is requesting an After-The-Fact variance to reduce the Agricultural Service Establishment setback standard of 500 feet from a dwelling to 300 feet. They are also requesting the setback standards of 300 feet from any driveway affecting access to a dwelling or farm field other than the owner to 65 feet. This is approximately a 40% reduction for dwelling setback and 79% reduction for access standards.

AGRICULTURAL SERVICE CENTER ESTABLISHMENT: (definition from Code) Any service establishment primarily engaged in performing animal husbandry or horticultural services, including businesses performing agricultural milling and processing, harvesting or agricultural land preparation, farm equipment sales and service, veterinary services, **boarding or training of horses** and agricultural produce stands.

8-6-12: STANDARDS FOR AGRICULTURAL SERVICE ESTABLISHMENTS:

- A. Setbacks: All establishments shall be located to allow at least three hundred feet (300') between its driveway and any driveway affecting access to a dwelling or farm field, other

than that of the owner. All structures and activities (outdoor storage, corrals, etc.) associated with the Agricultural Service Establishment shall be located at least five hundred (500) feet from any dwelling.

- B. Related to Agriculture: All establishments shall be necessary to the conduct of agriculture within the district.
- C. Compatible with Agriculture: The use shall not be one to which the noise, odor, dust or chemical residues of commercial agriculture or horticulture might result in creation or establishment of a nuisance or trespass.

SETBACKS: The structure is about 389 feet from the nearest dwelling and the horse pen is approximately 300' to the nearest dwelling. There is approximately 65 feet from access to neighboring access across the road. There is approximately 150 feet from access to nearest adjacent access (same side of road).

Applicant has identified Practical Difficulty as: Flood concerns – the Applicant could have located the building further to the south and been outside the 500-foot residential setback. The applicant's main concern was the proximity to the regulatory floodway, which extends up a portion of the southeastern extent of the parcel. Water availability – the applicant claims that only a 40-foot band running southwest to northeast had available water and was advised to locate the building based on proximity to potable water supply. Lot Dimensions - The applicant purchased marginal hay land and did not have the ability to locate the building further west on more productive agricultural land as it was not for sale. The applicant also sited the building to limit impacts on westerly views of closest neighbor. Changing circumstances - The applicant claims the intent of the building was to eventually serve as a residence as a residence and as a personal, family facility for the boarding and training of horses owned by the family. The commercial business grew organically, and inquiries were received even before construction was completed. The applicant did not think that horse boarding and training required additional permitting in an agricultural area.

There are living quarters framed out within the structure but is currently not completed and is not being used as a residence.

Aerial map of Zoning Districts and Past Flood Extents were reviewed showing Shoreland zoning district, floodway and past flooding extent maps of 2009 and 1997.

There is a Special Protection-Rivers & Streams setback, which requires 300-foot shoreland setback from the centerline of a public water course. Oakport Coulee Ordinary High-Water Level (OHWL) covers a considerable area of the property. Agricultural Service Establishments are not allowed in this zoning district.

The zoning office was made aware of this facility due to complaints from neighbors, stating the following:

- Odor from manure (especially in the spring and during extended wet periods)
- Excess traffic and traffic after 10 PM
- Dust generated from access road
- Increased pest activity (mainly flies)

Applicant has been working to address complaints in the following manner:

- Manure management (access to 700 acres to spread manure within 24-48 hours)
- Limiting hours of operation
- Working on procuring dust control for access road

Staff has conducted four visits to the site and did not observe nuisance level odors, noise, pests or traffic during any of the site visits. Staff has received letters of support from the Oakport Township Board and two neighboring property owners. The Clay County feedlot officer and agricultural inspector visited the facility and did not observe any nuisance-creating conditions.

There are permitted horse boarding facilities in Oakport Township. Permit Conditions range from 6-30 boarded horses permitted. Hours of operation vary but are typically from 6-8AM to 9-11 PM. Some permits require more strict manure management than others. Other facilities in the area (including 2 in the city limits of Moorhead) are grandfathered operations.

The 2009 Minnesota Supreme Court findings set out 4 additional criteria for after-the-fact Variance requests, and these 4 criteria information were reviewed. The following criteria were reviewed:

1. Whether the construction was complete: Construction is complete
2. Whether there are similar structures in the area: Structure is large for the area, likely due to the indoor riding arena. There are similar pole buildings/barns in the area.
3. The benefit to the municipality of enforcement, compared to the burden on the applicant if compliance was required: The applicant could apply for an interim use permit for horse stables but would have to have a residence as the principal use on the property. The number of boarders would likely be limited to residential parcel limits (11 total for this property).
4. Whether the violation was intentional or unintentional: Applicant did not believe that additional permitting was needed. However, did state that the facility would be for family/personal use after having formed an LLC in August 2018 and then advertised for commercial horse

Standards for number of horses allowed on a residential parcel were reviewed. Travis Bouton clarified the questions that the Board of Adjustment would need to address and Director Jacobson clarified they were only looking at the setbacks for access and structure as that is the request in front of the Board of Adjustment at this time. The horse boarding and training facility would need to be permitted by an Interim Use Permit and cannot be the primary use of the parcel – the primary use would need to be a residence. Standards for allowed number of horses boarded as an accessory use would be limited to the maximum that you could keep on a residential parcel, which in this case would be 11 horses.

Applicant Travis DeJong advised he lives at 3 70th Ave N which is near the parcel in question. He advised that he has been spreading manure about every 3rd or 4th day on a 4-acre parcel, which is about 230 bushels. He built the facility for their own use. He states that they have a waiting list and turn people down every day. He advises that 3 area horse facilities have closed down in the past 6 months and the demand right now is great. He has identified several parcels

to have available for spreading the manure. He advised that they received the first complaint approximately 2 months after purchase, as there were neighbors complaining about the back up beepers on his skid steer. He disconnected the back-up beeper but was advised by his insurance agent that he is not able to do that so he reconnected it and surrounded it with foam. He states he has tried to assist the neighbor with drainage in hopes to build a better relationship. He currently has 24 horses on the property right now with 18 horses in the building and the remainder outside.

Larry Dugan lives at 7703 2nd Street North in Moorhead. He states this spring was very wet and the ditch that Mr. DeJong spoke of was a cesspool from him pushing the manure and snow out of the stalls. Mr. Dugan stated that the odor prevents them from being outdoors and they need to close their windows. He stated it has been a bit better for the past month or so. Most of the horses are onsite 24/7 and they are confined near his home. He feels the pens on the east side of the barn and the ones on the north side are the primary problem areas. He states when he first confronted Mr. DeJong about the odor, Mr. DeJong advised him there was not anything he could do about it.

Kurt Skjerven spoke on behalf of Oakport Township. He states the Township has not received any comments from the public and was not aware of Mr. Dugan's concerns. There are other horse boarding facilities within Oakport Township

LeeAnn Skurupey, 844 10th Ave East, West Fargo, advised the applicant is new to boarding and states that it is difficult to locate a good facility. She feels that the manure management is very good at this facility. She has a background in horse training, equine nutrition, and horse judging and works in Extension. She feels that the applicant is very particular about the facility and very attentive to the needs of the horses. She does have her horse boarded at this facility. She is also impressed with the work that is being done for youth at the facility.

Dennis Loock asked who would be residing at the facility once the residential portion is completed and JoNell DeJong advised she and her husband would be living at the facility once the residential portion is completed but they do not have a date as to when that may occur.

On motion by Dennis Loock, 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.

Acting Chair Leo Splonskowski requested what the recommendations were from Staff. Director Jacobson advised that they could recommend the pens were moved, or they could table the matter for more discussion at the next month's hearing. Potential conditions include:

- All outdoor horse pens and shelters must be setback a minimum of 389' or greater from nearby dwellings on separate parcels.
- Landowner must plant a windbreak along eastern property line that extends the length of the facility.
- Limit number of boarded horses to 15 (or another number) to reduce potential nuisance issues.

- Control dust on access road and post directional signage.
- Any combination of above or additional conditions deemed necessary by the Board of Adjustment.

Findings A through F were reviewed and discussed in detail. Director Jacobson indicated the Applicant's intention is to do crushed asphalt on the access road to better control dust.

On motion by Dennis Loock, seconded by Travis Bouton, and unanimously carried, the Board of Adjustment GRANTED the request for a Variance with the following conditions:

- 1. All outdoor horse pens and shelters must be set back a minimum of 389 feet or greater from nearby dwellings on separate parcels.**
- 2. Dust must be controlled on the access road.**

UNFINISHED BUSINESS:

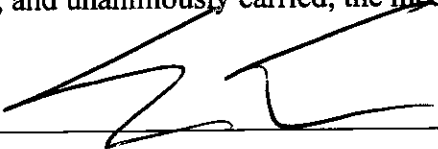
None

NEW BUSINESS:

On September 14, 2022 there is a training opportunity in St. Cloud relating to land issues. Director Jacobson highly recommends and encouraged members to participate. There is money available in the budget for attendance. Leo Splonskowski showed interest and requested additional information.

ADJOURNMENT:

On motion by Dennis Loock, seconded by Travis Bouton, and unanimously carried, the meeting was adjourned at 7:32 PM.



Leo Splonskowski, Acting Chair
Clay County Board of Adjustment