

**MINUTES**  
**CLAY COUNTY BOARD OF ADJUSTMENT**  
**5:30 PM, TUESDAY, SEPTEMBER 20, 2022**  
**3<sup>RD</sup> FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

**Members Present:** Ezra Baer, Leo Splonskowski, Randy Loock, Travis Bouton

**Members Absent:** Tim Brendemuhl

**Others Present:** Matt Jacobson, Michael Leeser, Erika Franck, Rita Rueckert, Justin Sorum, Chad Murray, Ray Johnson, Jolyn Johnson, Marcus Lewis, Mark Lewis, Hannah Stoneburner, Tom Stoneburner

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

**APPROVAL OF AGENDA:**

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

**APPROVAL OF MINUTES OF AUGUST 16, 2022:**

**On motion by Dennis Loock, seconded by Travis Bouton, and unanimously carried, the Board approved the Minutes from August 16, 2022.**

**PUBLIC HEARING(S):**

**RAYMOND AND JOLYN JOHNSON – REQUEST FOR VARIANCE**

The applicant is seeking approval of a variance from the Clay County Development Code to the structure setback to the ordinary high-water level of the Buffalo River at 7333 70<sup>th</sup> St N Glyndon, MN 56537 on parcel 20.008.3601, part of the NW1/4 of the SW1/4 of Section 8, Township 140N, Range 47W, Moland Township.

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

Matt Jacobson, Planning & Zoning Director, stated this request is for a reduction in the setback for a pool and deck from the ordinary high-water level (OHWL) of the Buffalo River from 200 feet to 180 feet.

2045 Comprehensive Plan Policy Considerations:

**Natural Resources and the Environment – 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 current conditions on this approximately 3-acre lot including the subject property and surrounding properties are zoned Agricultural General, Floodway, Flood Fringe, and Special Protection-Rivers and Streams due to its proximity to the Buffalo River. Swimming pools are now a permitted use in these

zoning districts except the Floodway. The request meets the standards for the lot dimensions/size. The Code treats in-ground pools and above-ground pools the same and they are viewed as a structure, subjecting them to setback rules. The residence currently sits at 203 feet from the Buffalo River.

The pool size is proposed at 17'x30'. The deck structure will not be attached to the existing residence. The request is to reduce the setback of an above-ground pool and deck to the Ordinary High-Water Level (OHWL) of the Buffalo River from 200 feet to 180 feet. The practical difficulty is identified as: the backyard is the most practical area for a pool and deck and virtually all of the backyard is within the 200-foot setback. The deck and the house itself are outside of the 200-foot setback. The parcel in question meets the standards for lot size for Special Protection-River and Stream zoning district.

Raymond Johnson, the applicant, stated he was not concerned about water from the river getting near the pool and deck. He feels the top of the riverbank is approximately 16 feet high and the 2009 flood did not reach that. Mapping was reviewed showing 100-year flood, floodway and the river itself in relation to the parcel and its existing structures.

**On motion by Travis Bouton, seconded by Leo Splonskowski, and unanimously carried, the public hearing was closed.**

Staff recommended minimum conditions include:

1. Setback from the Ordinary High-Water Level (OHWL) of the Buffalo River not to exceed 180 feet.
2. Any other 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 accepted the proposed Practical Difficulty Considerations as drafted by Director Matt Jacobson.

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

1. Setback from the Ordinary High-Water Level (OHWL) of the Buffalo River not to exceed 180 feet.

#### **MARK LEWIS – REQUEST FOR VARIANCE**

The applicant is seeking approval of a variance from the Clay County Development Code to the residential feedlot setbacks and residential density standards in the Resource Protection – Aggregate Zoning District at 1706 190<sup>th</sup> St S, Hawley, MN 56549, on parcel 13.017.0201, the S1/2S1/2 of the NW1/4 and the N1/2N1/2 SW1/4 of Section 17, Township 139N, Range 45W, Hawley Township.

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

Matt Jacobson, Planning & Zoning Director, advised there are 2 separate requests with this Variance. The first request is for a setback reduction for a feedlot from a residence. The second request is for

residential density limits of one residence per quarter-quarter in the Resource Protection – Aggregate Zoning District.

The reviewed Policy Considerations from the 2045 Comprehensive Plan include:

**Land Use – Agricultural**

1. 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.

**Land Use – Residential**

2. Provide opportunities for quality rural residential development in Clay County.
  - a. Implement residential density standards that allow for rural residential development while retaining the rural character of Clay County.

**Natural Resources and the Environment – Aggregate Resources**

1. Recognize the importance of aggregate resources to Clay County and the region.
  - a. Continue to protect quality aggregate resources from encroachment of incompatible residential, commercial, and industrial development.

The Clay County Development Code, Table 8-6-1 Required Structure Setbacks from Animal Feedlots states that the setback of a residence from a total confinement animal feedlot is 1000 feet and required setback for all other animal feedlots is 1320 feet. The required structure setback for all other structures is 1320 feet from total confinement animal feedlots, and 2000 feet for all other animal feedlots.

Maximum allowed density of dwellings in the Resource Protection-Aggregate (RP-Agg) overlay district is one dwelling allowed per quarter-quarter section, provided that the dimensional standards of minimum lot size of 2-acres is met. This parcel is approximately 80 acres. Zoning is Agricultural General (AG), Resource Protection-Aggregate (RP-Agg), and Shoreland: Special Protection Rivers and Streams. Most adjacent properties are zoned AG and/or Shoreland: Special Protection-Rivers and Streams and RP-Agg.

The request is for a reduction to the setback of a residence to an animal feedlot and to allow for a second dwelling in a quarter-quarter in the Resource Protection-Aggregate Overlay Zoning District. Practical Difficulty has been identified as: the need to live in close proximity to the feedlot operation. The Development Code Standards for RP-Agg Residential Density are:

- **Maximum Allowed Density of Dwellings:** The maximum number of dwellings allowed per quarter-quarter section in the RP-Agg Resource Protection Overlay Zoning district shall be one (1) provided that the following dimensional standards are met:
  - **Minimum Lot Size:** The minimum lot size shall be two (2) acres of which twenty thousand (20,000) square feet, exclusive of road frontage right-of-way, shall be above the base flood elevation (for 100-year flood).

This request involves a family farming operation and the Applicant wishes to break off a part of the existing parcel for his son to build a house. There was a Variance and Interim Use Permit heard last year that allowed a second residence on this parcel. This request would replace the previous residence allowed on the property from last year’s hearings.

The DNR Aggregate Potential map on this parcel and surrounding parcels shows the potential of aggregate as low to minimal.

Applicant Marcus Lewis stated he is looking to break off a portion of the parcel and add a residence to it. Mr. Lewis is working on his family’s farm and looking for close proximity to his work. The current residence he is living in was approved last year with a Variance and Interim Use Permit and was a

converted granary. He states he will probably be using his current residence as an office and it will not be used as a residence in the future.

**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.**

Chair Baer pointed out that most all livestock owners live near the livestock they care for and feels that these circumstances should not require a Variance. Director Jacobson advised this may be something that the Planning Commission may want to address in a review to update the existing Development Code.

Practical Difficulty Considerations include:

- The Applicant's proposed use for the new parcel as a residential use is common in the area, with multiple subdivisions in the area.
- Although the property is 80 acres, the only suitable location for a new residence is within the same quarter-quarter as the existing residence due to access to a public road.
- There are many residential subdivisions in the area and another residence will not alter the essential character of the locality.

**On motion by Dennis Loock, seconded by Travis Bouton, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with no conditions.**

#### **THOMAS AND HANNAH STONEBURNER – REQUEST FOR VARIANCE**

The applicant is seeking approval of a variance from the Clay County Development Code to the conditional use home occupation standards for platted subdivisions at 27674 90<sup>th</sup> Ave S, Hawley, MN 56549, on parcel 24.060.0101, Lot 001, Block 001 of Nelsons Subdivision, Section 15, Township 138N, Range 44W, Parke Township.

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

Matt Jacobson, Planning & Zoning Director, stated this is a Variance to the Conditional Home Occupational standards requirement that would not allow this use in a subdivision.

Policy Considerations from the 2045 Clay County Comprehensive Plan include:

**Land Use: Residential**

2. Recognize the diversity of living and working arrangements in the unincorporated areas of Clay County.
  - a. Allow for home occupations in unincorporated areas that are in harmony with the rural character of Clay County.

Zoning: The subject property and all the surrounding properties are zoned Agricultural General (AG) and Shoreland: Residential District (RD).

A Home Occupation-Conditional Use Permit is an allowed use with an Interim Use Permit in this zoning district.

This is a 3-acre parcel. The after-the-fact proposal is for a lawncare business with four (4) seasonal employees other than the owner, and one (1) off-season employee other than the owner.



The requested use is allowed in the zoning district but not within a subdivision. The residence is located in Nelsons Subdivision and was platted in 1977. There are 3 lots within this subdivision with 2 fronting onto County 10 and one fronting 88<sup>th</sup> Ave S. The subject lot is the southeasternmost lot. This subdivision is not a cluster subdivision served by an internal road. The County Attorney's office has stated that because this use is permitted in the Shoreland: Residential District, the variance request is not for a use variance, which is illegal in the State of Minnesota. The practical difficulty identified in this case is that the Nelson subdivision is not platted like a neighborhood subdivision. The intent of not permitting conditional home occupants in platted subdivisions is to prevent nuisance impacts to neighboring residential properties. The lot is on a busy county highway and is well distanced and buffered from the closest neighboring homes. The business would use 500 square feet of the home residence garage and 1040 square feet of the detached garage. There is adequate parking for employee cars by the detached garage.

The business has been filed with the Secretary of State since March 2017. The 2012 Development Code Conditional Home Occupation Standard C.3 states:

- 3. Where Located: Conditional Home Occupants shall be located on lots not located in platted subdivisions. Conditional Home Occupations may be located within the dwelling or in a separate non-residential or farm building.

The detached garage was constructed in 2018 by the current owners.

After-the-fact Variance Considerations 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

Hannah Stoneburner states that she and her husband Tom live on the property and operate their lawn care and tree service business from there. She advised she was not aware of requiring a permit. They have lived on the property since 2016. Ms. Stoneburner advised they have not received any complaints from any neighbors.

Director Jacobson discussed the reasoning for having a home occupation permit for a business versus a person working from home. The issue of Covenants was asked by Travis Bouton and attorney Michael Leeser addressed the response required from the County regarding Covenants. Director Jacobson also advised that certified letters are sent to the property owners to be sure they do receive the notice.

**On motion by Leo Splonskowski, 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.**

**On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with no conditions.**

**REVIEW OF PUBLIC HEARING MEETING PROTOCOLS:**

Meeting procedures were discussed and the order in which the procedure should be followed. Board of Adjustment Members were requested to review a Meeting Procedure handout provided, which comes straight from the by-laws. Director Jacobson addressed the procedures for amending a Motion. These by-laws are based on the Roberts Rules of Order. Director Jacobson welcomed any questions.

**UNFINISHED BUSINESS:**

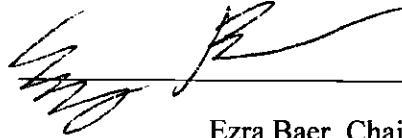
None

**NEW BUSINESS:**

None

**ADJOURNMENT:**

On motion by Dennis Loock, seconded by Travis Bouton, and unanimously carried, the meeting was adjourned at 6:22 PM.



---

Ezra Baer, Chair  
Clay County Board of Adjustment