

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT - SPECIAL MEETING
5:30 PM, WEDNESDAY, OCTOBER 3, 2018
MTG ROOM B, CLAY COUNTY COURTHOUSE

Members Present: Amos Baer, Perry Bushaw, Ezra Baer, Paul Krabbenhoft, Greg Anderson

Members Absent: None

Others Present: Ben Oleson, Steven Beitelspacher, Rita Rueckert, Nolan Braseth, Frank Gross, Brad Rutter

The meeting was called to order at 5:30 p.m. by Amos Baer.

Amos Baer chaired the meeting and read the meeting agenda.

On motion by Perry Bushaw, seconded by Paul Krabbenhoft, and unanimously carried, the Board approved the meeting agenda.

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board approved the minutes from September 18, 2018.

Citizens To Be Heard:

No citizens requested to be heard.

NOLAN BRASETH - REQUEST FOR VARIANCE

The applicants are seeking approval for the construction of a dwelling and associated accessory buildings as well as related grading and vegetation removal. Approvals required include a variance to allow such activities closer to an identified biologically significant area than allowed under Section 8-5C-6 of the Clay County Development Code (min. 100 ft setback required). The affected property is in the Agricultural General zoning district and RP-BIO Resource Protection overlay district and is located in part of the NE4 SE4 Section 7, Township 142, Range 44 (Ulen Twp.). Parcel ID 29.007.1400 (approx. 7-acre split from this parcel).

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

Ben Oleson discussed the one home per 40 acres which this request complies with. The resource in question is the wooded area. Oleson did research back to 2005 when the Ordinance went into effect. The applicant is wanting to build within the wooded area and wouldn't necessarily require a tree clearing. A Variance is required due to the 100-foot setback in the County Code.

Paul Krabbenhoft requested clarification on how many feet the setback is and Oleson stated it is about 50 feet. Krabbenhoft inquired why there would need to be a 100-foot setback from the trees and Oleson was unable to find the regulations on that. Greg Anderson was part of the committee drafting the Ordinance at that time and recalled that they were trying to protect native grasses from activity of gravel mining and wind towers. Anderson feels the intent of the Ordinance was to create protection for native grasses or removal of complete wooded areas. Photographs were shown of the intended building site showing there would be no tree removal required. There was discussion about removing the Protection Overlay District for this 7-acre parcel after the Variance is granted.

Nolan Braseth advised that he intends to build the road for access to the home on the field land and to cut in between 2 existing trees. He does not intend to move any trees. The land was originally owned by his grandfather and was purchased by his father from the grandfather. The land has been in the family since essentially land-grant times. He would also like to build a shop/garage in the future but does not want to lose the view to the east or north. Placement of a well and septic was discussed. Ezra Baer suggested putting the variance on the entire 7-acre piece of land. Perry Bushaw asked what language would need to be put in the Variance to approve it on this date. Stephen Beitelspacher clarified the language of the current Ordinance.

Frank Gross, Clay County Commissioner, spoke on behalf of the applicant and urged diligence to resolve this matter for this resident. He feels that the overlay needs to be removed.

On motion by Ezra, seconded by Perry, and unanimously carried, the public hearing was closed.

Anderson suggested a motion that the Variance be applied to the entire 7-acres and not require any setback for the entire 7-acres with minimal tree removal if needed, given that this land has been in the family for multiple generations. Bushaw clarified that any buildings would need to stay over 100 feet from all property lines. Anderson made Motion for a Variance to grant construction of a dwelling and accessory buildings including grading and vegetation removal on the 7-acre parcel with the zero-foot setback to the RP BIO requirement, with minimal tree removal. Seconded by Ezra Baer.

On motion by Greg Anderson, seconded by Ezra Baer, and unanimously carried, the Board approved the request for a variance to grant construction of a dwelling and accessory buildings including grading and vegetation removal on the I-acre parcel with the zero-foot setback to the RP BIO with minimum tree removal.

BRAD RUTTER - REQUEST FOR VARIANCE

The applicant is seeking approval for the construction of an accessory structure. Approvals required include a variance to allow an accessory structure closer than allowed under Section 8-5B-5 of the Clay County Development Code (approx. 120 feet where min. 200 feet is required). The affected property is in the Shoreland-Special Protection zoning

district and is a 4.3-acre parcel located in part of Section 1 1, Township 138, Range 44 (Parke Township). Parcel ID 24.011.2301.

On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board opened the public hearing.

Ben Oleson showed a photo that the land in question is essentially on a heavily-wooded peninsula. There is a requirement of a 200-foot setback from the water and the variance is needed to bring construction within 110 feet. Perry Bushaw asked if the current structures on the land meet the 200-foot setback and Oleson states he does not believe they do. There is a slope to the land and the applicant is trying to work around the slope, the trees and the setback requirements.

Brad Rutter states he had originally intended to build west of the geo-thermal but discovered that would be difficult. He changed the setback request from 120 feet to 110 feet to allow room for the contractor. He would need to remove some apple trees, box elder trees and 2 dead trees. Construction would require fill. Greg Anderson states that the setback on a Natural Environment Lake was changed from 150 feet to 200 feet in 2005. Paul Krabbenhoft clarified some questions on grading in the area.

Perry Bushaw stated that he had visited the property recently and noticed that there was a wellhead. Rutter states that he will need to pull the wellhead and move it, incurring a significant cost. Propane tanks will also be moved. Rutter states that he plans to make this his retirement home. Bushaw asked about future buildings and Rutter states that he will also want a future garden shed.

Rutter was asked how many feet he is requesting. He indicates he would like 110 feet. He states that he had the 110-foot setback approved on October 2, 2018 by the Township Board. Rutter was also looking at other options that would allow him to retain the current well. Amos Baer advised him that he is locked into the 110 feet by the Township approval. He is looking for the best option of placement that would do minimal tree disruption.

Additional discussion included OHWL (Ordinary High-Water Level) and there were questions about measuring to the actual OHWL.

On motion by Ezra Baer, seconded by Paul Krabbenhoft, and unanimously carried, the public hearing was closed.

Greg Anderson gave history on the Ordinance and how it was intended for the impact to the Natural Environment Lakes. Perry Bushaw asked how many buildings this would include, and it was determined that the 15% limitation of property to structures would govern. A Variance does not have a time limitation and the Variance would run with the land.

On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board unanimously approved the request for a variance for IOU-foot setback of buildings structures.

On motion by Greg Anderson and seconded by Ezra Baer, the meeting was adjourned at

6:42 PM. _____

Amos Baer, Chair
Clay County Board of Adjustment