

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, JUNE 23, 2020
MTG ROOM B, CLAY COUNTY COURTHOUSE

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

Members Absent: None

Others Present: Matt Jacobson, Emma Notermann, Tony Weigel, Katie Stock, Rita Rueckert, Rachel Meske of Bell Bank, Dave Stumbo, Duane Walker, Tim McLean, Kent Severson,

The meeting was called to order at 5:30 PM by Chair William Davis. Roll call was taken for this meeting that was held virtually. Director Matt Jacobson went over the rules for participating in a virtual platform meeting.

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

On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board approved the Minutes from May 19, 2020.

PUBLIC HEARING(S):

TIM AND STACY MCLEAN – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the impervious surface standards of the Clay County Development Code to allow more than 25% impervious surface coverage in the shoreland area of Turtle Lake in the NE1/4 of Section 12, Township 138N, Range 044W, parcel 24.012.1209, Parke Township.

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

Matt Jacobson, Planning & Zoning Director, shared his screen regarding this impervious surface request to allow greater than 25% of the lot size of impervious surface in Shoreland district by adding 1256 sq. ft driveway. He went through the state and county standards to allow granting a Variance due to practical difficulties.

In relation to the Comprehensive Plan, the focus with this request would be relative to Natural Resource Goal #1: Identify, protect and preserve the County's high quality natural, scenic, cultural and open space areas; as well as the Policy #13 to Continue to enforce shoreland regulations on the County's lakes, rivers and streams. This property is zoned Ag General with Special Protection Aggregate and Shoreland Protection Residential District overlays. It is a non-riparian lot on the west end of Turtle Lake in Parke Township currently used for residential purposes. The Applicant is wishing to add a 1200+ sq. ft driveway to access a 43 x 50 personal storage building on the non-riparian lot. The applicant worked with the Planning office last fall to build this storage building and a 572 sq. ft concrete apron. The building construction is complete, but the Applicant wishes to increase the size of the driveway. The original 2150 sq. ft building with the proposed 572 sq. ft apron put the impervious surface coverage just under 25%. With the expansion, this would put the impervious surface of the lot over 31% surface.

Based on the grade of the lot, most of the runoff would drain toward the road and the lake.

The applicant wishes to vary from the 25% impervious surface maximum to accommodate easier movement of trailers loading and unloading, parking for guests and eliminating mud from the roadway. The topography of the lot would run water from the lot onto the road and toward the lake. There is a very shallow road-side ditch that drains to the south along the west side of the road. A large rain event could put water across Turtle Lake Road.

Director Jacobson's initial recommendation is to deny this request due interpretation of State Statute and having trouble identifying what the practical difficulty would be. The plight of the landowner can't be due to his or her own creation. In this case the size of the building constructed by the Applicant constricted the amount of pervious surface coverage available for the driveway. There are also many pervious alternatives available for construction of the driveway such as pervious pavers, porous asphalt. Gravel driveways are considered as both the State and the County as impervious surfaces.

However, if the Board is able to establish a practical difficulty and approve the request, Director Jacobson does recommend the following conditions: Impervious surface coverage must not exceed 31% of the lot area; and runoff mitigation measures must be installed such as improvements to the landscape drainage, vegetation, etc.

Photos were shared of the site, the proposed driveway expansion and the building. Photos were also shared of neighboring properties after a recent rain event.

Questions were asked about what areas were included in the impervious surface calculations at the time of the Building Permit Application. There were questions and discussion regarding if the right of way area of the driveway should be included in the impervious surface coverage calculations. Applicant McLean was asked what the original 572 sq. ft of driveway was planned, where the original plan asked for an 8 x 51 concrete driveway. Applicant states at that time they were thinking to put in just an 8' driveway to the end stall and then just 2' of cement apron just in front of the building. After getting the building done they thought to redesign it to the current request. Applicant states that none of the dirt work in front of the road has been graded and if cement goes in there it would need to be graded and smoothed to allow for drainage to the south.

Greg Anderson asked Applicant what their intentions were for managing the water running from the proposed driveway. Applicant McLean indicated the driveway would be approximately 12 feet and taper in toward the road. Greg Anderson then inquired what type of soil is under the storage structure. Applicant McLean states that when they were digging they got down into some clay that was thick. Perry Bushaw, Board of Adjustment member, lives behind this property and he states that this is a fairly dense soil that is not sandy. Bill Davis asked if there were any culverts to prevent water from running across the neighbor's driveway; there is a culvert under the neighbor's driveway. Applicant intends to create a swill on the end of the driveway to move the water coming from the driveway. Greg Anderson inquired if the Applicant would consider rain gutters on the building to assist in directing water runoff. They currently have no plans for gutters. There was discussion about placing rain gutters to direct water to the back side of the shed and then give the water more surface travel for absorption to mitigate runoff.

There were no concerns or comments received from neighbors.

Perry Bushaw inquired about the amount of areas available on each side of the Applicant's property to determine which side would provide the best advantage for drainage. There may

be an option for the Applicant to gather the water on the back side of the shed and then run it toward the road along the side of the property.

Ezra Baer inquired as to what types of pervious asphalt would be best to use to not count toward impervious surface. Applicant's plan was to use concrete and does not want to use asphalt as it breaks up and requires more maintenance. Applicant shared that they are also open to installing less concrete.

Greg Anderson shared that the pervious asphalt installation requires excavation up to 36 inches which is filled with a gravel bed and then the asphalt product laid. This would be a costly installation.

Paul Krabbenhoft inquired as to the additional square foot requested. It was determined that the request would be an additional 684 square feet of impervious surface, which would bring impervious surface to 31%.

Applicant was asked the distance from the back wall of the structure to the back-property line. Applicant was unsure the exact number but estimated it to be approximately 30 feet. Rough calculations show that approximately 240 square feet of concrete would be within the road right of way. County Attorney Tony Weigel indicates that the road right of way is not included in the impervious surface calculation of the landowner's property.

Matt Jacobson stated that the focus should be going through the Findings of Fact and Order and determining if there is a practical difficulty. Director Jacobson stated that if a practical difficulty is identified, the landowner could then work with the Planning Office or Soil & Water Conservation District to determine the best methods of water runoff mitigation. The project is significantly smaller than an acre and would not meet the criteria for providing a permanent stormwater mitigation plan. Several board members acknowledged the difficulty of discussing stormwater mitigation without more information about the property.

Paul Krabbenhoft asked how the Board as a whole can get around the question 7B of the Findings of Fact and Order which asks if the hardship was not due to conditions created by the landowner. He wonders how the Board could ever change their answer for that question. Others expressed the same concern for that issue. Matt Jacobson stated that the Applicant has brought up potential safety issues with the narrow roadway and having vehicles parked along the roadway, and those safety issues could be utilized to address items on the Findings of Fact and Order.

Applicant states that the entire interior of the building has been poured with concrete and gravel has been put up in front of the center door for access.

On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the public hearing was continued to July 21, 2020 at 5:30.

DONALD STUMBO RLT- REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the shoreland setback standards in the Clay County Development Code to upgrade an existing septic system closer than 200 feet from the OHWL of an unnamed Special Protection- Low Development lake in the N1/2 SE1/4 of Section 17, Township 141N, Range 44W, parcel 11.017.4100, Goose Prairie Township.

On motion by Greg Anderson, seconded by Ezra Baer, and unanimously carried, the

Board opened the public hearing.

Matt Jacobson, Planning & Zoning Director, states this is a variance request to the Ordinary High-Water Level (OHWL) setback in the shoreland district allowing an upgrade to an existing septic system to allow setback closer than 200 feet to a private lake known by DNR as Stumbo Lake. Reminders were stated regarding establishing practical difficulties for granting Variances. This property is zoned Ag General with a Special Protection Low Development overlay, essentially a Shoreland overlay. Applicant is seeking to upgrade his non-conforming septic system in a Shoreland area. The residence is approximately 142 feet from OHWL of Stumbo Lake. Existing septic tank and drainfield is approximately 18 feet north of the residence and about 124 feet from the OHWL of Stumbo Lake. Current system is operational but in need of an upgrade. Drainfield may need to be expanded but would not be closer than it currently is located. The practical difficulty request from the Applicant is two-fold: Current system is functional but requires an upgrade. It would be impractical to relocate the system for the sole purpose of meeting that setback; and the topography of the lot, placement of structures and driveway, and mature trees make this the best suited location for the septic system.

These practical difficulties were confirmed by the Applicant's septic company Larry Wold, as well as by the Clay County Environmental Health Director Kent Severson. Director Jacobson's recommendation would be to approve the request to not be closer than 120 feet from the Ordinary High-Water Level (OHWL) of Stumbo Lake.

Applicant's son Dave Stumbo represented the Applicant and confirmed the facts as presented. He states that the current system was installed when the house was built in the 1960s.

Kent Severson stated that the new tank will be approximately the same vicinity as it currently is located and includes new tank and new drainfield and to get as great of a setback as they can. Anything south of the residence is gravel and driveway and the other direction would be topography and trees. The tank setback from the house would be 10 feet and this would system upgrade would not require a variance from the house.

Paul Krabbenhoft asked Kent Severson if any variance permitted tonight would encompass compliance for the entire system and Kent Severson confirmed that this is correct.

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 of the items can be addressed without conditions and none of them warranted further discussion.

On motion by Ezra Baer, seconded by Greg Anderson, and unanimously carried, the Board of Adjustment approved the Variance for septic system installation no closer than 120 feet from the Ordinary High-Water Level of Stumbo Lake.

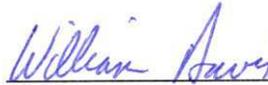
UNFINISHED BUSINESS:

None

NEW BUSINESS:

- Ezra Baer has been appointed to serve on the Planning Commission. Ezra will continue also serving on the Board of Adjustment
- Katie Stock will be the new representative from the Clay County Attorney's Office. She will be assuming the duties previously provided by Tony Weigel. Tony Weigel will be assuming new duties within the County Attorney's Office.

On motion by Greg Anderson, and seconded by Ezra Baer, the meeting was adjourned at 6:53 PM.



William Davis, Chair
Clay County Board of Adjustment