

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, JUNE 28, 2022
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE**

Members Present: Ezra Baer, Dennis Loock, Leo Splonskowski

Members Absent: Tim Brendemuhl

Others Present: Matt Jacobson, Brian Melton, Erika Franck, Rita Rueckert, Justin Sorum, phone #651-335-9389 (unidentified), Rick Larson, Elaine Larson, Jesse Johansen, Travis Bouton, Gregg Larson, Steve Westlund

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 meeting Agenda was approved.

APPROVAL OF MINUTES OF MAY 17, 2022:

On motion by Dennis Loock, seconded by Leo Splonskowski, and unanimously carried, the Board approved the Minutes from May 17, 2022.

PUBLIC HEARING(S):

WESTLUND EXCAVATING – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance from the Clay County Development Code to the residential structure, road centerline, and property line setbacks for aggregate mining on parcel 17.012.4000, the SW1/4 of Section 12, Township 141N, Range 45W, Keene Township.

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

Matt Jacobson, Planning & Zoning Director advised that this was s a request for a Variance from the property line setback, the residential structure setback and the roadway setback per the Clay County Development Code. Current zoning on this 159-acre parcel includes: Agricultural General (AG), Resource Protection-Aggregate (RP-Agg), Resource Protection-Biological (RP-Bio), General Floodplain, Shoreland: Special Protection Rivers and Streams. Most of the activity will occur on the south side of the parcel.

Policy Considerations include:

- Land Use: Agricultural
 - #1 Recognize and Protect the agricultural character of Clay County.

- B. Protect prime agricultural soils from commercial, industrial and residential development.
- Transportation: Freight
 - #1: Support the movement of freight across Clay County roadways.
 - A. Coordinate with local jurisdictions and use proper planning and zoning methods to locate industrial and commercial developments on or near roadways that can handle heavy commercial truck traffic.
 - B. Monitor season freight traffic, commodity movement, FM Diversion construction traffic, and associated transportation infrastructure to ensure safe and efficient operation of the system. Prepare for increased maintenance along roadways with heavy commercial truck traffic.
- Natural Resources and the Environment: Aggregate Resources
 - #1 Recognize the importance of aggregate resources to Clay County and the Region
 - A. Implement policies and standards to ensure sound stewardship of aggregate resources and natural biotic resources.
 - #2 Foster a balanced approach to aggregate resource extraction that is compatible with the natural resources and the rural character of Clay County.
 - A. Consider the cumulative impacts of existing nearby mining operations for new or expanding operations on the environment, agricultural lands, residential areas and transportation infrastructure.

The applicant is requesting:

- permission to mine within the 100-foot property line setback;
- permission to mine within the 500-foot residential structure setback; and
- permission to allow mining to take place as close as 110' from the centerline of the adjacent right of way of the public road of Clay County Highway 33.

Clay County Code Section 8-6-16B-3L1: One hundred feet (100') from the boundary of adjoining property lines unless written consent from the adjoining property owner is secured and a variance is granted from the Board of Adjustment. *Request is for a 100% reduction from 100 feet to zero-foot setback.*

Clay County Code Section 8-6-16B-3L-2: Two hundred feet (200') from the right of way of existing roads and highways. *Request is for 58% reduction from 200' plus 120' wide right-of-way (ROW) to 110 feet.*

Clay County Code Section 8-6-16B-3L-3:Minimum of five hundred feet (500') from any structure used as a residence, school, church, public or commercial establishment. *Request is 52% reduction from 500' to 240' residence setback.*

This request is similar to a recent request made and heard by Aggregate Industries for their mining operations across the road from this mine and on the adjoining property to the south.

Applicant identified practical difficulty and hardship as: Strict interpretation of the existing setback requirement at the project area results in valuable reserves being left behind. A majority of the aggregate material on the property is located within these setbacks.

County Engineer input and recommendation advise there are no issues with allowing mining in the 500-foot setback from the residences as the residences are owned by the mining operators; the top edge of the excavation should not be closer than 100 feet from centerline of CSAH 33 and must maintain a 1:1 slope as to prevent collapsing or sliding of the banks. Traffic safety becomes a concern by allowing the pit edge and berms to be close to the road. Stockpiling of topsoil and overburden within the setback is not permitted except for a 2-3 foot safety berm. The closer the stockpiles are allowed to the road, the greater chance for snow tunnel effect. There should also be a clause that reclamation will need to occur within the 100' setback of centerline prior to any grade widening projects of CSAH 33.

Director Jacobson advised that there would still need to be written consent from the adjacent landowner. Chair Ezra Baer confirmed that the safety berm will need to be seeded and maintained.

Steve Westlund of Westlund Excavating indicated the written consent from Aggregate was included with the Variance Application. The onsite septic system has been abandoned and signed off by Clay County Environmental Health Department and the well is in the process of being abandoned. The Fire Department will be burning down the onsite house in approximately two weeks.

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

- 1. Mining and mining activities can occur within the 500-foot setback of the residential structures on Parcel 17.013.1000 (owned by mining operator) but no closer than 240 feet.**
- 2. Mining and mining activities can occur within the 100-foot setback of the southern property line up to zero (0) feet.**
- 3. The top edge of the excavation should not be closer than 100 feet from centerline of CSAH 33 and mining must maintain a 1:1 slope as to prevent collapsing or sliding of the banks.**
- 4. No stockpiling within the road centerline setback with the exception of a 2-3 foot safety berm.**
- 5. Reclamation will need to occur within the 100-foot setback of centerline prior to any grade widening projects of CSAH 33.**
- 6. Submit letter of consent from adjacent landowner (Aggregate Industries – 17.013.1000 and 17.013.1500) to mine up to the property line.**

STRATA CORPORATION – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance from the Clay County Development Code to the property line setback for aggregate mining on parcel 12.029.4000, the SE1/4 of Section 29, Township 142N, Range 45W, Hagen Township.

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

Matt Jacobson, Planning & Zoning Director indicated this is an after-the-fact request on a parcel of approximately 160 acres in Hagen Township with Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg) zoning.

Policy Considerations include:

- Land Use: Agricultural
 - #1 Recognize and Protect the agricultural character of Clay County.
 - B. Protect prime agricultural soils from commercial, industrial and residential development.
- Transportation: Freight
 - #1: Support the movement of freight across Clay County roadways.
 - C. Coordinate with local jurisdictions and use proper planning and zoning methods to locate industrial and commercial developments on or near roadways that can handle heavy commercial truck traffic.
 - D. Monitor season freight traffic, commodity movement, FM Diversion construction traffic, and associated transportation infrastructure to ensure safe and efficient operation of the system. Prepare for increased maintenance along roadways with heavy commercial truck traffic.
- Natural Resources and the Environment: Aggregate Resources
 - #1 Recognize the importance of aggregate resources to Clay County and the Region
 - A. Implement policies and standards to ensure sound stewardship of aggregate resources and natural biotic resources.
 - #2 Foster a balanced approach to aggregate resource extraction that is compatible with the natural resources and the rural character of Clay County.
 - B. Consider the cumulative impacts of existing nearby mining operations for new or expanding operations on the environment, agricultural lands, residential areas and transportation infrastructure.

The request is to mine and stockpile to the western property line within the 100-foot property line setback, to mine to zero feet (0') of the property line.

Applicant identified practical difficulty and hardship as: Strict interpretation of the existing setback requirement at the project area results in valuable reserves being left behind. A majority of the aggregate material is located within these setbacks.

There has been an encroachment within the 100-foot property line setback to the north and also to the 200' road right of way (ROW) setback to the east side. They are currently working with

the Planning & Zoning Office to bring this situation into compliance. They have received written consent from the landowners to the west.

Jesse Johanson of the Strata Corporation advised they have done soil borings. He states they entered that pit in approximately 2018 and they will be moving equipment into that mine this summer. They will be working on reclamation for the two encroachments pointed out by Director Jacobson.

On motion by Dennis Loock, seconded by Leo Splonskowski, 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 the following additional condition:

- 1. Mining and mining activities can occur within the 100-foot setback of the western property line up to zero (0) feet from the property line.**

R&G DEVELOPMENT LLC/RICHARD LARSON – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance from the Clay County Development Code to the Ordinary High-Water Level (OHWL) setback at 954 264th St S, Hawley, MN 56549, parcel 04.085.0170, Lot 17, Block 001, Timber Shore Subdivision, Section 16, Township 139N, Range 44W, Eglon Township.

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

Matt Jacobson, Planning & Zoning Director advised this is a request to reduce the Ordinary High-Water Level (OHWL) setback from 200 feet to 150 feet. Parcel is located within the Timber Shores Subdivision on the north side of Lee Lake. This subdivision was platted in 2007-2008. There are 5.7 acres with over 1100 feet of shoreline. It is currently vacant and zoning is Shoreland: Special Protection.

Policy Considerations from the Comprehensive Plan include:

- **Natural Resources and the Environment – Shoreland and Stormwater Goal and Objectives**
 - 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.
 - a. Reduce development pressure on natural environment lakes in Clay County.
 - b. Maintain and enhance riparian areas of public waters, especially within shore impact zones.
 - c. Continue to enforce shoreland regulations on Clay County lakes, rivers and streams.

- d. Require new development to comply with applicable storm water management regulations, plans and policies, with an emphasis on the urbanizing areas of Clay County.

Practical difficulties have been identified as lot topography and shape due to steep slopes and bluffs, the peninsular shape of the lot and the presence of bluffs which cannot be altered. The Applicant wishes to build on the highest, flattest area of the parcel. Applicant could build closer to the cul-de-sac but would lose 100% visibility of the lake.

Director Jacobson inspected this property and gave detailed information as to the slopes on the parcel.

Considerations include: The Minnesota Shoreland Rules 6120.3300 OHWL Setback on Natural Environment Lakes is 150 feet. No public comments have been received for this request.

Chair Baer asked if it may be possible for Clay County to adopt the Minnesota Shoreland Rules. Director Jacobson agreed that it may be a good idea to look at that in a future update.

Applicant Gregg Larson stated they originally tried to meet the 200-foot setback but there would be an enormous amount of dirt that would be required to be moved, in addition to a large loss of trees on the property. Applicant's goal is to preserve the largest quantity of trees possible. Director Jacobson echoed that this lot contains several mature oaks and those trees would be one of the biggest amenities of this parcel.

Chair Baer questioned if there was an accessory structure to be placed on the property in the drawing and if the Variance is being requested is to include the shop or is just for the residence. Mr. Larson indicated that they just placed the shop where it is as a place holder but they would want it below the house. Chair Baer advised he felt the Variance should apply to the entire parcel and not just to the residential structure.

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

- 1. Must maintain a minimum 150-foot Ordinary High-Water Level structure setback.**
- 2. Avoid development and vegetation removal on steep slopes.**
- 3. Minimize tree removal beyond what is required for driveway and structures.**

UNFINISHED BUSINESS:

None

NEW BUSINESS:

- Review Board of Adjustment Interest Form for Travis Bouton: Travis Bouton introduced himself, stated he has lived most of his life in Clay County. He works in automotive shop equipment.

On motion by Dennis Loock, seconded by Leo Splonskowi, and unanimously carried, the Board of Adjustment *APPROVED RECOMMENDATION* of Travis Bouton to the Board of Commissioners.

ADJOURNMENT:

On motion by Dennis Loock, seconded by Leo Splonskowski, and unanimously carried, the meeting was adjourned at 6:25 PM.



Ezra Baer, Chair
Clay County Board of Adjustment