

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, AUGUST 21, 2018
MEETING ROOM B, CLAY COUNTY COURTHOUSE**

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

Members Absent: None

Others Present: Ben Oleson, Leonard Jeral, Allen Otterson, Barry Oberg, Justin Berg, Steve Beitelspacher, Steve Larson, Colleen Eck, Kathy Ihle

APPROVAL OF AGENDA:

On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board approved the agenda.

APPROVAL OF MINUTES:

On motion by Ezra Baer, seconded by Perry Bushaw, and unanimously carried, the Board approved the July 17, 2018 minutes as presented.

JUST INVEST IN REAL ESTATE, LLC – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance that would allow an increase in the residential density allowed within 40 acres from three existing homes to four. Currently the Development Code allows one residential site within 40 acres. The property affected by this request is in Section 20, T140, R47 (Moland Twp.) in the Agricultural General (AG) Zoning District and the Shoreland Protection (SP) District (PID 20.020.4600).

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

Ben Oleson, Interim Planning Director, stated the AG zoning district has a density limit of one residence per quarter/quarter section (40 acres). The area is mostly agricultural with the Buffalo River running through it. The land within 300 feet of the river also falls in the shoreland protection district. A map was also shown depicting the portion of property that is in the flood plain. The intent is to build outside the flood plain area. This parcel does not have direct road access, but reportedly an access easement for the parcel exists. If a variance is granted, the applicant would still need to apply for a building permit and a septic system permit. The Board reviewed the need for setbacks for a septic system, setbacks for any wetlands on the site, and floodplain requirements. The size of the lot does not appear large enough to produce much crop. The density limit is to protect prime agricultural land from being developed. A soils survey map would show if these soils are marginal or prime.

The applicant, Justin Berg, stated he lives on the adjacent property and the nearest residence is owned by Barry Oberg. Berg noted he is trying to respect the codes for being near the river. The

property is currently in alfalfa, but a portion of it is difficult to get farm equipment to. He reported it is poor farmland and has an area that floods each year. The plan is to build a slab-on-grade residence without a basement for his in-laws. He has had an engineering firm and surveyor look at the land and plans to have it surveyed. He is checking into requirements for the septic systems. He also plans to install geothermal heat and would develop it from a sustainability standpoint. He added there is an easement according to the abstract, but he is not in possession of it. The County GIS mapping appears to be a little off with property lines and location of the access road. Berg was told by the surveyor that the access road is his, but he would need to obtain clarification and documentation.

Oleson stated if any outbuildings are constructed in the flood plain they need to be flood-proofed. Chair Baer stated if this variance gets approved it should have a condition to have a survey completed and a proper access easement recorded. The tentative location for the residence appears to be close to Oberg's residence. Berg was asked by the Board if he would consider building further back, behind the tree line, out of privacy and respect for his neighbor, Barry Oberg. Berg noted the area the County had cleared for access is the best location for the residence.

The Board further discussed property access, shared access, and 66-foot wide easements for new lots. There was some history shared on what has been allowed at other sites. The setback is based on the length of the easement. Oleson stated there are some existing easements of 15-20 feet, but they are generally 33 feet.

Barry Oberg came forward and pointed out where his residence is located, just west of the proposed location for a new residence. He stated a permit was not previously issued for the land in question. The driveway is owned half and half by Justin and Darren. There are two more lots with a barn on one and a house on the other. There are several sites in the 40 acres already. The last flood cut a 10-foot ravine behind Oberg's barn. Oberg has an easement from the hedge-line out, for use of the driveway. The pins are in the center of the road and in the ditch to the south. It is unknown who did the survey or when it was done. The easement is not very wide and was farming access for the previous owner's farmland.

Greg Anderson commented there are a lot of unknowns and he would be reluctant to grant a variance without knowing how the request is going to impact the land. It's conceivable that a variance could be granted but would could create a hardship. Attorney Beitelspacher stated the easement would seem to run with the tree-line. The primary question is whether another building site should be allowed on the 40 acres. The Board mentioned postponing their decision until the easement documentation can be found. Their 60-day rule to act on applications could be extended if needed. Ezra Baer asked if the applicant could choose to put access thru his own residential property for the new residential site.

Angelee Gillette introduced herself and pointed out her two parcels and her residence west of Oberg's property. She has been there for 20 years. She noted there has not been an issue with density, but the proposed lot has been farmland as long as she could remember. She stated she is worried about too many homes in the area and likes the private feel of the area. She has sprayed the road for dust and noted more people leads to more cars.

Berg noted he does not have horses, but he does have an orchard, chickens, and a garden. He believes the big concern for traffic has to do with the number of people who come to the Gillette property to take care of horses. Berg added he would consider installing a new driveway if he does not have easement access to the road. Gillette noted the traffic that comes to her property are people who work for her.

The Chair asked if anyone else wanted to speak for or against the proposal.

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

Bushaw said he doesn't have a problem with that land being converted into a lot for a home but he does not like being party to neighbors being antagonistic with each other. He asked if this plan is worth the chaos it could cause. He said if it is truly a density issue, Berg needs to figure out if he can get access to where he wants to build. Anderson mentioned all the extenuating circumstances regarding access, location, and neighbors. Oleson said if the variance was granted and there was no easement, the question would be how he would get the equipment back to build the house legally. Beitelspacher noted the biggest concern is to be sure they are not creating another difficulty.

A motion was made by Ezra Baer, seconded by Perry Bushaw, opposed by Paul Krabbenhoft, and supported by Chair Amos Baer to approve the requested variance. The vote was 3 ayes, 1 nay, and one abstaining vote by Greg Anderson. The variance is to allow for a fourth residence on property located in the W¹/₂ SE¹/₄ Section 20, Moland Twp. with the following condition: Applicant must submit proof of legal access to the property.

ALLEN OTTERSON – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow a structure to be built as close as ten (10) feet from an adjoining side east property line. The Clay County Land Development Code requires a setback of at least thirty (30) feet from an adjoining lot in the UED zoning district (Art G. 8-3G-3B4). The applicant is also seeking a variance to construct a building as close as 90 feet from the centerline of an adjacent County Road. The Clay County Land Development Code requires a setback of at least one hundred and twenty-five (125) feet from the centerline of a road (Chap 3 8-3-3, Local Rd.). Affected property is a 3.12-acre parcel located in the SW Quarter, SE Quarter, Section 29, T139, R48W (Moorhead Twp.) and is in the Highway Commercial (HC) Zoning District (PID 21.029.4308).

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

Ben Oleson, Interim Planning Director, stated he received this application last month and has been researching it. He confirmed the Highway Commercial zoning and has more information about this property that has been taken out of the Urban Expansion zoning. The Urban Expansion zoning district does not allow for mini-storage or commercial use. This request is related to setbacks. The applicant has increased the setback from three feet to nine feet but needs a variance. The Highway Department reiterated they are satisfied with a 65-foot setback. Last month they sent a letter expressing opposition. The ordinance states the setbacks required for different types of roads. He recommended the more conservative setback.

The Chair asked if anyone wanted to speak for or against the proposal.

The applicant, Allen Otterson, stated he recently applied for a building permit and was advised that he would need a variance to the setback for where he planned to build. Bushaw asked the applicant if he had any opportunity to investigate other areas of his property where the side setbacks would be met, and the neighbors would not be impacted. Otterson has not spoken to the neighbors. Subsequently, the Board noted there appears to be other options on the property where a variance would not be needed.

On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board denied the request for the variance because there is available land for the applicant to build on without the need to vary from the required setbacks in the Land Development Code.

JERAL CONSTRUCTION, LLC – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow a structure to be built as close as 47 feet from the centerline of a roadway. The Clay County Land Development Code requires a setback of at least ninety (90) feet from the centerline of a road. Affected property is located on Lots 17 and 18, Block 3 in the Townsite of Downer (Elkton Twp.) and is in the Ag Service Center (ASC) Zoning District (PID 05.050.0317).

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

Ben Oleson, Interim Planning Director, informed the Board the request is to build an addition to existing house for an attached garage.

The Chair asked if anyone wanted to speak for or against the proposal. Anderson thought the GIS lines were off a bit and had questions regarding snow plowing on this road. Oleson did not receive any comments from the neighbors.

The applicant said the circle drive is actually grass leading to where they want to build. There is a well about 50' on the west side of the house. The applicant agreed with Anderson that the GIS lines may be skewed. Her property line is a shared roadway.

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

On motion by Perry Bushaw, and seconded by Greg Anderson, and unanimously carried, the Board of Adjustment approved the request from Jeral Construction for a variance allowing construction of a garage to be as close as 47 feet (rather than the required 90 feet) from the centerline of the roadway.

On motion Ezra Baer, the meeting was adjourned at 7:16 p.m.

Amos Baer, Chair
Clay County Planning Commission