

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, March 6, 2015, with Chairperson Tom Harper and members, Martha Peterson, Mike Birkinbine, and Bill Tharp present, Carol Schlueter was absent. Steve Boka, Interim Zoning Administrator and Dixie Seitz, Office Administrator was also in attendance.

Others present for this hearing: Andrew Willey.

Tom Harper: I will call this public hearing to order. We were all emailed copies of the minutes from the last meeting. Everyone should have had a chance to review them. Are there any changes or questions on the minutes? If not, does anyone care to make a motion to approve?

Mike Birkinbine: I will make a motion to approve.

Tom Harper: Second?

Martha Peterson: I'll second.

Tom Harper: A motion has been and seconded to approve the minutes from the last meeting as printed. Any questions? Hearing none, all those in favor signify by saying Aye (4) Opposed (0) Absent (Carol Schlueter). The motion carried. Alright before we get started here, I have a statement to read to the applicants. The Zoning Board of Adjustment is a quasi-judicial board appointed by the Muscatine County Board of Supervisors. The Board's purpose is to interpret the Zoning Ordinance and to allow certain limited exceptions and variances where special conditions or hardships exist. We are an independent volunteer board of citizens and not part of the county administration. There are five members on the Board. State law requires three affirmative votes to approve any appeal under consideration, no matter how many members are present. Today we have four of the five members present; the fifth member could not attend. So any motion must be approved by at least three members. All applicants have the choice of either tabling their request until next month when we may have five members present, but I can't guarantee that we will have five members present, or you can proceed today with the four members. With that being said, I will have the Interim Zoning Administrator read the first request.

Steve Boka: Thank you. Case #15-03-01. An application has been filed by Thomas R. or Connie S. Peterson, Record Owners and Proposed Lessee, Night Owl Wireless by Andrew Willey. This property is located in Montpelier Township, 1761 Ziegler Avenue, Blue Grass, in the SE¼ of Sec. 12-T77N-R1E, East of Ziegler Avenue, containing approximately 9.75 acres, and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance for Night Owl Wireless to erect a 50' tower on the Peterson's property in order to provide wireless internet access. On November 7, 2014, the Board of Adjustment granted a Special Use Permit in order for Night Owl Wireless to erect a 45' tall tower.

Tom Harper: Okay, you have heard the opening statement. Are you agreeable to proceeding or would you like to table until next month?

Andrew Willey: I will proceed.

Tom Harper: Is there any correspondence?

Steve Boka: We didn't receive anything.

Tom Harper: Okay, if you would like to state what your request is?

Andrew Willey: My name is Andrew Willey. After we received the approval for a Special Use Permit on Peterson's property for a 45 foot tower, I went over with engineering for the equipment that I was going to be using, and they changed some of the load that could be on the tower. So for safety purposes, they got me into a different tower and it only comes in 10 foot increments. So I needed that 45 foot mark to get to south Ziegler for connections, so now I need to increase the height. So I am asking for a Variance to increase the height of the tower to 50 feet.

Tom Harper: Okay, is there anyone present that wishes to speak either for or against this request? Does the Zoning Administrator have any comments?

Steve Boka: We don't. At this point we have no objections to the request. It is a reasonable request. There is room there, that's not an issue from that perspective.

Tom Harper: Are there any questions, concerns or comments from the board?

Mike Birkinbine: I don't remember what the layout was, but I remember the concern was whether or not that was going to... if it fell, that it wouldn't fall on the road. Do you have a new drawing? I can't get it to open.

Dixie Seitz: Yeah, right here.

Tom Harper: So this is the same as the second location?

Andrew Willey: Yes. So everything that we wanted before was modified to fit this time also.

Tom Harper: Okay, is there anything else? Does anyone care to make a motion on this?

Bill Tharp: I will make a motion to approve the Variance for Night Owl Wireless to erect a 50 foot tower on the Peterson's property in order to provide wireless internet access.

Mike Birkinbine: I will second that motion.

Tom Harper: A motion has been made and seconded to approve the request as stated. Any further discussion or questions? Hearing none, all those in favor of the motion signify by saying Aye (4) Opposed (0) Absent (Carol Schlueter). The motion carried.

Andrew Willey: Thank you.

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Others present for this hearing: Rosy Eichelberger, Paul Neff, Dennis D. Kresin, Dave Dvorak and Lisa Dvorak.

Tom Harper: Okay, Steve would you like to read the next request?

Steve Boka: The next request is Case #15-03-02. An application has been filed by Paul A. Neff, Record Owner. This property is located in Sweetland Township, in the NE¼ of Sec. 36-T77N-R1W, South of Water Street in Fairport, 3370 Water Street, containing approximately 0.61 acres, and is zoned R-2 Residential District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order to build a dwelling 18 feet from the rear lot line, rather than the required 40 foot rear setback.

Tom Harper: Alright, is the applicant here?

Paul Neff: Yes.

Tom Harper: Okay, you have heard the disclaimer concerning the four members, would you like to table this or would you like to proceed?

Rosy Eichelberger: We'll proceed.

Tom Harper: Any correspondence?

Steve Boka: We had no correspondence.

Tom Harper: Okay, if you would like to tell us about the request.

Rosy Eichelberger: I am Rosy Eichelberger here on behalf of Mr. Neff. Mr. Neff has inherited this property from his father. His father used to have a residence here back in the 60's. All he is trying to do is under the R-2 Residential zoning, it fits all the requirements for a cabin on this property, except for the rear setback, which is currently 45 feet. The rear setback that he is asking for is actually to the river on this property. I will give you a picture of it. So the rear lot line is actually in the river. On what MAGIC shows, his property line, which moves because of how the river moves, would actually be 45 feet. But of course the waterline has taken part of that away. There is no risk to any of the neighbors. The only risk to not having more of a setback to anyone else is really just river wide. Mr. Neff already knows that it's going to be in a flood zone. He is going to have to have flood insurance. He is going to have to build it above the 100 year flood zone, so all of that is going into his building plans. He meets every other setback except for the rear lot line and that is what we are asking for a Variance on. Based on our best guess, using the measurement tool in MAGIC, we think that the placement of where we are putting this house or this cabin will be 18 feet from the waterline. So that is why we are asking for a Variance to allow us to be 18 feet instead of the 45 foot.

Tom Harper: So you've got the front setback fine?

Paul Neff: Uh huh.

Rosy Eichelberger: Yes.

Mike Birkinbine: Which is the front?

Tom Harper: The road would be the front. We are not getting into that one again.
(laughter)

Mike Birkinbine: That was a long discussion in the past, that's why I brought it up.

Tom Harper: Yeah, the front would be facing the road.

Martha Peterson: Or would there be two fronts?

Tom Harper: Yeah we had a previous case that the property was facing the other direction.

Mike Birkinbine: So how big of a cabin was on it before?

Paul Neff: Oh it's been years ago, I mean there's been so much stuff on it. So I've torn everything down over the years. I just have a camper for now. But I would like to just retire up there. I'm just asking to build a small... I mean it's 24 by 38, small cabin. I will put it up on a foundation. I just want to retire there. I grew up there and that's where I want to die. I grew up on a river and I just love it there.

Martha Peterson: Where is the footprint of the former home?

Paul Neff: Oh, I wouldn't know.

Martha Peterson: Is it where you want to build again?

Paul Neff: No, we don't have one.

Martha Peterson: You don't know where the other house was?

Paul Neff: There was one there years ago that I tore down. There was all kinds of stuff up there over the years. So we are just putting it kind of in the middle, so everyone can still see the river, and so I'm not in anyone's way.

Rosy Eichelberger: This property actually... as you are looking at it, the wider part of that triangle was the lot that his father owned. The skinny part of that triangle actually used to belong to a neighbor. What year did you buy that part?

Paul Neff: Probably the late 90's.

Rosy Eichelberger: So he bought the adjacent property which widened the lot that he now owns, which is what you are seeing. So the old house used to sit closer to the river and it sat closer to the west or ... well I'm trying to see...

Paul Neff: Down river, it sat closer to down river.

Rosy Eichelberger: Right, it was closer to the next door neighbor's house.

Tom Harper: Is there a minimum building size?

Dixie Seitz: It has to be at least 20 feet wide and a total of 640 square feet.

Paul Neff: So what I am proposing is over 800 square feet.

Rosy Eichelberger: I think that we had sent you the actually plan with the appeal.

Tom Harper: Yes.

Martha Peterson: Yes we have it.

Tom Harper: Okay, is there anyone here either for or against this request? If so, please state your name.

Lisa Dvorak: My name is Lisa Dvorak and my father owns the property that is adjacent to that. We are fine with it.

Tom Harper: Now is that the property upriver on the same side of the street?

Lisa Dvorak: Yes, yes. The foundations of the other houses were just rock and stone, and they just deteriorated, you know, once the building was torn down. The house where his property is and the property that he bought, there was a house there also and that was all just rock foundations, so that's why they deteriorated. There's no evidence of foundations anymore, just because they were river rock foundations.

Paul Neff: Yeah, I tore them down because they were just a safety hazard, so I just got rid of them and that also opened up the view for everybody too.

Lisa Dvorak: Basically it was destroyed in the flood of '88 or '98, whenever it was. It was the first major flood that happened down there. That house was destroyed, well it wasn't destroyed, it was still there, but it was ... it needed to be torn down. But that's what I was going to say, that's why there is no concrete foundation area for evidence of how big the house was and where it was located then.

Tom Harper: Okay, are there any other comments or questions by anyone here in the room? Are there any questions or comments by the board?

Bill Tharp: Well I think it's oddly shaped and I agree with the application. I also think that some of the reasons for the setbacks being what they are is so that it doesn't set fire or fall down onto another property. If it falls into the river, it's really not my concern right now. So I'm fine with it.

Mike Birkinbine: Yeah, I'm ready to make a motion.

Tom Harper: I'm ready.

Mike Birkinbine: I will make a motion to approve the Variance as stated.

Tom Harper: Okay, is there a second to that motion?

Martha Peterson: I'll second.

Tom Harper: The motion has been made and seconded to approve the Variance request as stated. Any other discussion or questions, concerns? Hearing none, all those in favor of the motion please signify by saying Aye (4) Opposed (0) Absent (Carol Schlueter). The motion has been approved.

Rosy Eichelberger: Thank you so much.

Paul Neff: Thank you.

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The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, March 6, 2015, with Chairperson Tom Harper and members, Martha Peterson, Mike Birkinbine, and Bill Tharp present, Carol Schlueter was absent. Steve Boka, Interim Zoning Administrator and Dixie Seitz, Office Administrator was also in attendance.

Others present for this hearing: Joseph E. Conaway.

Tom Harper: The next case and I noticed that this is the same applicant. Do we want to run these together or do we need to run these concurrently?

Steve Boka: Well that's up to the chair and if the consensus is to do that, we can. They are kind of interwoven.

Tom Harper: Well is one in case the other one fails or what?

Steve Boka: No, they are two separate requests. But I think that they are dovetailed together, so if you want to discuss them together that would be fine.

Tom Harper: Yeah, so let's discuss them together but we'll have separate motions. Go ahead and read both requests.

Steve Boka: Okay, the first one is Case #15-03-03. An application has been filed by Joseph E. or Brenda D. Conaway, Record Owners. This property is located in Cedar Township, Parcel A, Plat of Survey, in the SE $\frac{1}{4}$ of Sec. 14-T76N-R4W, East of Oak Grove Road, 1459 Oak Grove Road, containing approximately 0.86 acres, and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Special Use Permit in order for the Record Owners to place a rural residence on this property. That is the first request, a Special Use Permit for a rural residence.

The second part of this is Case #15-03-04. An application has been filed by Joseph E. or Brenda D. Conaway, Record Owners. This property is located in Cedar Township, Parcel A, Plat of Survey, in the SE $\frac{1}{4}$ of Sec. 14-T76N-R4W, East of Oak Grove Road, 1459 Oak Grove Road, containing approximately 0.86 acres, and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance from the minimum one acre requirement in order to place a rural residence on this property.

Tom Harper: Okay, so you are the applicant?

Joe Conaway: Yes.

Tom Harper: Please state your name?

Joe Conaway: Joe Conaway.

Tom Harper: Okay and you heard the disclaimer. Do you want to proceed or have us table this until next month?

Joe Conaway: I will proceed.

Tom Harper: Okay, if you would tell us what we are doing here.

Joe Conaway: Okay, well we have 0.86 acres. There's always been a house there. It's never been agricultural. I'd like to build a house on it, if not me, my daughter would like to build a house on it. So we'd like to get permission from you folks to be able to take this grassy knoll, that has always had a house on it and... We burned the house down in 2010 or 2011, because it was unfit to live in and now it's been a big flat lot ever since.

Tom Harper: Do you have an aerial of this, Dixie?

Dixie Seitz: Yes, here it is.

Steve Boka: Right, that little cut out in that aerial is the property that we are actually talking about. The surrounding property that is shaded is also owned by the appellant. So it is all surrounded by the property that he also owns.

Tom Harper: So this would have been a former farmstead?

Joe Conaway: Yes, it was a former farmstead. It was originally a Brenneman farmstead. My father-in-law bought the property, the whole farm, sold off the 0.86 acres to Ed Lewis. Ed tried to fix the house up and lived in it for about 13 years and then him and his wife got a divorce and he wanted to sell the property. So we had first right because that's how it was written up when my father-in-law sold it to him, if it would come up for sale in the next 15 years. So we inherited the farm when my father-in-law passed away, and we went ahead and bought it back so that we wouldn't have somebody in the middle of our farm.

Mike Birkinbine: So everything else around it is yours?

Joe Conaway: Yes.

Tom Harper: So if the right-of-way was included in this, we'd probably have an acre?

Steve Boka: Yeah and I think that's what happened when the division occurred. It looks to me like if you included half of that right-of-way, you would have the one acre minimum. But as you know, it's not the property line and that's what we are using. So I can see why it happened, but that's why I think it appears to be deficient.

Tom Harper: Okay, so they need a Special Use Permit to allow a rural residence on this property, which is allowable. But then they would need a Variance to grant this on less than one acre.

Steve Boka: Yes, that is correct.

Tom Harper: Alright.

Bill Tharp: I think the CSR looks good, it is 53.6, the distance looks right, it's over 1,250 feet, there used to be a house there...it looks good to me.

Tom Harper: Right, the right to have a house there for residential use expired when they tore it down.

Joe Conaway: Yeah and if I would have known that I would have left it there, but it would have been an eyesore to the community and the surrounding people.

Tom Harper: Right and this way you are back away from everything else. (changed tapes) Is there any other questions or discussion on this? Does anybody care to make a motion on Case #15-03-03 for a Special Use Permit?

Bill Tharp: I will make a motion to issue the Special Use Permit in order for the Record Owners to place a rural residence on this property.

Tom Harper: Is there a second?

Martha Peterson: I'll second it.

Tom Harper: The motion has been made and seconded to grant the Special Use Permit for the rural residence on this property. Any other questions, comments or discussion? Hearing none, all those in favor signify by saying Aye (4) Opposed (0) Absent (Carol Schlueter). The motion carried. Now we'll go on to Case #15-03-04. This request is for a Variance from the minimum one acre requirement. Does anybody have any questions or is there any comments? Is there any concerns? Does anybody care to make a motion?

Bill Tharp: I will make a motion to approve the Variance as stated by the chair.

Tom Harper: Alright, the motion has been made, is there a second?

Mike Birkinbine: I'll second.

Tom Harper: The motion has been made and seconded to grant the Variance to deviate from the minimum one acre requirement for this property for a rural residence. Any other questions, concerns? Hearing none, all those in favor signify by saying Aye (4) Opposed (0) Absent (Carol Schlueter). The motion is carried. I also need to read you one additional disclaimer, if you are going to build something out there you need to start within six months or else you have to come back for further permission.

Joe Conaway: Okay. Thank you.

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