

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, June 5, 2015, with Vice Chairperson Bill Tharp and members, Martha Peterson and Carol Schlueter present, Tom Harper and Mike Birkinbine were absent. Steve Boka, Interim Zoning Administrator and Dixie Seitz, Office Administrator was also in attendance.

Others present for this hearing: Bob and Cyndi Eagle.

Bill Tharp: Today is June 5<sup>th</sup> and it is 9:59 – 10 a.m. We are in the Muscatine County Administration Building and we are the Muscatine County Board of Adjustment. To begin, 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 this Board, but as you see today there are three here. State law requires three affirmative votes to approve any appeal under consideration, no matter how many members are present. So if fewer than five members are present, like today, the appellant has the opportunity to have the appeal delayed until the next meeting. This request must be made prior to the Board's deliberation of that case. As a Board of the County, we welcome all testimony. We make our decisions based on the facts and evidence under county code, presented in open meeting. We ask that if you wish to speak, please come to the podium and give your name and address. Okay, I have in front of me the minutes of the last meeting. Has everyone had an opportunity to review the minutes? (yes) Is there a motion to approve or to make any deletions; additions or modifications to the minutes?

Carol Schlueter: I will make a motion to approve the minutes as written.

Martha Peterson: I second it.

Bill Tharp: All in favor of approving the minutes from last meeting, please say Aye (3); Opposed (0); Absent (Harper & Birkinbine). The motion is declared approved. We will move onto to the first request, Mr. Boka can you read the first case?

Steve Boka: Case #15-06-01. An application has been filed by Robert D. and Cynthia L. Eagle, Record Owners and Sheila K. Eagle, Life Estate. This property is located in Lake Township, 1833 205<sup>th</sup> Street, in the NW<sup>1</sup>/<sub>4</sub> of Sec. 28-T77N-R3W, containing approximately nine (9) acres and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order to allow the remodeled outbuilding to be the Eagle family's permanent residence on this property.

Bill Tharp: Has there been any correspondence on this issue?

Steve Boka: No.

Bill Tharp: Whoever is here to represent this case or who has made the application or their attorney, can they come forward and go to the podium?

Martha Peterson: Did they want to go ahead with this today?

Bill Tharp: Yes, first let me ask, do you want to go forward with this request as we said earlier, this is a five member board it takes three affirmative votes and we have three people here. You could table it until the next meeting when there might be more members present. It's up to you.

Bob Eagle: We'll go ahead.

Bill Tharp: Okay, so please continue. Thank you Martha.

Bob Eagle: Me and my wife would like to reside at this address. We've gone through the office and we've gotten all the permits and done everything that they've asked us to do. We've brought it up to code on the electric. We brought it up to code on the septic tank. We pretty much did everything that we think, or have possibly been told to do on the property to bring it up to code and make it our living area. Thank you.

Bill Tharp: Steve, what is the opinion of the office staff?

Steve Boka: Well there has been some history with this property, and some of that information is in your material. Originally the building was built as an outbuilding. There was a request made along the way to the board, the dates are in the file, for the owners to live in the outbuilding while they build a new house. That kind of went back and forth a little bit and then they began to remodel the garage into a dwelling and then kind of backed into the permits necessary. But bottom line on this is that the garage has been converted to a permanent dwelling. The permits have all been attained, after the fact in some cases, but it has been inspecting. It does comply with the minimum requirements for occupancy as a single family dwelling. So I think the Eagle's are requesting that the board consider permanent occupancy as opposed to temporary occupancy of this remodeled outbuilding.

Bill Tharp: And this is still on the same parcel of land?

Steve Boka: It is.

Bill Tharp: So we have two dwellings on the same parcel of land that people are using?

Steve Boka: No, there is no other dwelling. This was original an outbuilding and they remodeled into their dwelling.

Bill Tharp: So there will only be one dwelling, which is this remodeled outbuilding on this parcel?

Steve Boka: That's correct.

Carol Schlueter: And you are living there now?

Bob Eagle: Yes ma'am.

Bill Tharp: Does anyone have any questions or discussion?

Martha Peterson: I will make a motion to approve this Variance in order to allow the remodeled outbuilding to be the Eagle's permanent residence on this property.

Bill Tharp: Is there a second?

Carol Schlueter: I will second it.

Bill Tharp: All in favor of this request please say Aye (3); Opposed (0); Absent (Harper & Birkinbine). I will declare the motion as approved. Any construction or use allowed by the board must begin within six months from the date of this decision or the permission will be void.

MUSCATINE COUNTY BOARD OF ADJUSTMENT  
By Steve Boka, Interim Zoning Administrator

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, June 5, 2015, with Vice Chairperson Bill Tharp and members, Martha Peterson and Carol Schlueter present, Tom Harper and Mike Birkinbine were absent. Steve Boka, Interim Zoning Administrator and Dixie Seitz, Office Administrator was also in attendance.

Others present for this hearing: Gary Allison and Mike Riggan.

Bill Tharp: We will move onto to the next case. Steve can you please read the next request which is Case #15-06-02, filed by Michael J. Riggan.

Steve Boka: Sure. Case #15-06-02. An application has been filed by Michael J. Riggan, Record Owner. This property is located in Fruitland Township, 2540 Stewart Road, in the NW¼ of Sec. 21-T76N-R2W containing approximately 28 acres and is zoned I-2 Heavy Industrial District. The Board of Adjustment will consider a request submitted by the Record Owner to divide this property which will separate two existing dwelling uses from the balance of the industrial property. A Variance is requested since residential uses are not permitted in the I-2 Heavy Industrial District.

Bill Tharp: And who is here, for the record, for the appellant?

Gary Allison: I am Gary Allison, attorney for Mike Riggan. My address is 710 W. 2<sup>nd</sup> Street in Muscatine, Iowa.

Bill Tharp: Okay, and would you like to go forward today even though we only have three members present?

Gary Allison: Yes we would.

Bill Tharp: Okay, if you would go ahead and tell us a little about the property?

Gary Allison: This property has kind of an interesting history. It was owned by Mernon Peck many years ago. They built a house on it and then in 1980 they put a double wide manufactured home on the same parcel that was occupied by their son and then he passed away and was then lived in by his widow. That home has been on the real estate rolls since 1980 and has been occupied as a residence since 1980. The Peck's last year went to assisted living and Mike bought the property. What he really wants to do is just continue the existing use of these two residential uses, which would be the house and then this manufactured home. Obviously we have a problem with the Zoning Ordinance, so what we are asking for is approval to have two residences on the property and then Mike intends to subdivide the property. He would like to create a three lot subdivision, two lots would be the residential and then the third would be the rest of the property which he intends on continuing to farm. The manufactured home has its own well and its own septic system, the yard and the garage. It's been there for over 35 years. Mike thinks that it makes no sense to remove that perfectly good home from the housing inventory, which is already short, and to take it off the tax rolls. So we are asking you for permission to be allowed to continue this use and to go ahead and subdivide. He understands that he will have to comply with the septic system, you know, and if it doesn't pass then he has to fix it. Are there any questions?

Carol Schlueter: So one home is on lot 1 and the other one would be lot 2?

Gary Allison: Correct.

Carol Schlueter: And then what would lot 3 be?

Gary Allison: Well lot 3 is the farm property.

Carol Schlueter: Now, does Mike live in one of these homes?

Gary Allison: No.

Carol Schlueter: So these are rental properties for him?

Gary Allison: Yes.

Bill Tharp: How did this start? I mean, did this start off by somebody wanting to be close to their parents?

Gary Allison: Yes, their son had some health issues and so they put the double wide there. Their son and his wife moved there until he passed away, I'm not sure exactly when that was, but it's been some time ago. Then his widow lived there until recently. Then when they decided to move to assisted living and Mike bought it and then she moved out.

Bill Tharp: Steve, you might be able to tell me, does this revert back once that use no longer exists or stops being used for that reason? I mean, we had a case about three years ago where someone was trying to do something similar to this. Do you remember that? I know you don't, but do you remember that Dixie?

Dixie Seitz: Well if it would have been approved by the Board of Adjustment, that's how it is set up, that once that use no longer exists that the mobile home must be removed from the property. When the Peck's put this on this property they didn't go before the Board of Adjustment to ask for a Special Use Permit, they just placed it there without any permits.

Bill Tharp: Oh, okay.

Steve Boka: Not the current owner, the prior owner's, the Peck's.

Bill Tharp: The prior owner, yeah.

Martha Peterson: How would these houses be zoned then? Are they still zoned industrial?

Steve Boka: Yes, it would be I-2 Heavy Industrial District. They are not asking for the zoning to change, it would remain the same. Now that's part of the issue here. A residential use is not allowed in an I-2 Heavy Industrial District. So if you want to look at it now, it would be nonconforming. It's not conforming because you have a residence in an I-2 Heavy Industrial District, and it's nonconforming because you have two of them on one lot.

Bill Tharp: So how can we do that?

Steve Boka: How can we do what?

Bill Tharp: How can we approve it if there is a zoning problem before hand?

Steve Boka: Well the zoning isn't changing. What would happen here is you would be allowing two existing residential uses to be divided off of the existing real estate. These aren't new homes, they are existing homes to be divided off. In order for that to happen, it would have to be a subdivision, which would require further review by the County Board of Supervisors. But in order to have the homes as proposed, they need a Variance from the Zoning Board of Adjustment to allow the existing uses to be divided from the current real estate and they would be nearer to being in compliance than they are now, beings there are two houses on one lot. So yes they are in an I-2 zoning, and yes they have two houses on one lot, but this would essentially create a lot that would be conforming if it were in an A-1 classification. Both houses

would be done with the appropriate setbacks and dimensional requirements to support a single family dwelling, except it would be in industrial.

Bill Tharp: So if we say the housing is okay, there are still not through the woods, right?

Steve Boka: They still have to subdivide but they would not get passed the Zoning Commission unless they have dealt with this particular matter. So it was my suggestion to come here and see if the Zoning Board of Adjustment concurs that this is a better complying use than what it is now. That way they can move forward with the subdivision and then they would have to meet the statutory requirements of a subdivision.

Martha Peterson: So it would be a subdivision with two homes.

Steve Boka: They actually would end up with three lots, the existing farmland and then the two homes. So it would be three parcels there.

Carol Schlueter: Is there any other residential uses around there?

Steve Boka: There is, down Stewart Road there are a number of houses down along that side.

Carol Schlueter: But that's not in industrial zoning, right?

Steve Boka: I don't know about that. There is also the Kammerer's mobile home park.

Carol Schlueter: Oh, right there? But that's zoned residential.

Steve Boka: That's residential uses.

Martha Peterson: And you say that these homes have been there for 35 years?

Gary Allison: Well the first house was built in 1958, and then the double wide was placed there in 1980. So the whole point is that we are not changing any existing uses. This is what's been there for 35 years. They were not compliant to begin with, it was just placed there. Now we want to try to bring it into compliance so it's more acceptable. It makes no sense to require that this double wide be taken off, because it's a perfectly good house and it can be used. It's been on the tax rolls and it will shrink the housing around this area.

Martha Peterson: Is there industry around this?

Gary Allison: Not close, no.

Martha Peterson: So why is it zoned industrial?

Gary Allison: A lot of the island is zoned industrial.

Steve Boka: I'm just speculating a bit, but the Comprehensive Plan calls for that corridor down Stewart Road and Pettibone Avenue to the river is generally an industrial area. It's more apt to be developed industrially than residential. I would have more of an issue with this if it was a proposal for a new home in this area, but it's not. It's just creating a boundary and splitting off the uses that are existing. So that's why we are here.

Dixie Seitz: I have a question. If they were to replace that mobile home would they have to go back before the Board of Adjustment because it is a nonconforming use in I-2 Heavy Industrial?

Steve Boka: I don't know that, I would have to look at it. I don't think that there is any proposal to do that right now. The home is in pretty good condition. I don't know if the pictures were in there of the homes or not.

Carol Schlueter: Yes, they are.

Steve Boka: Yeah, they are well maintained.

Carol Schlueter: But they are rental properties, so if we allow this it is for residential use and it doesn't make any difference if they are rentals or not, right?

Steve Boka: It doesn't, residential is residential without respect to whether it is rental or owner occupied.

Carol Schlueter: Okay.

Martha Peterson: Well I will make a motion to approve this Variance as requested to allow these homes to remain in the I-2 Heavy Industrial District.

Bill Tharp: Is there a second?

Carol Schlueter: Well I have a question first, if this is approved today, this Variance, they still have to get it approved for the subdivision?

Steve Boka: Yes by the Board of Supervisors and the Zoning Commission.

Carol Schlueter: Okay, but it will stay I-2 Heavy Industrial District?

Steve Boka: That's correct.

Carol Schlueter: Alright, I will second it.

Bill Tharp: All in favor say Aye (3) Opposed (0) Absent (Harper & Birkinbine). The motion is declared approved. Any construction or use allowed by the Board of Adjustment must begin within six months from the date of the decision or the permission will be void. Thank you.

Gary Allison: Thank you very much.

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Others present for this hearing: Mark Fenner.

Bill Tharp: We will move on to the next meeting, it will be #15-06-03. Steve, could you please read the request?

Steve Boka: Sure. This is Case #15-06-03. An application has been filed by Mark D. and Renae J. Fenner, Record Owners. This property is located in Montpelier Township, 1645 Zachary Avenue, in the SW¼ of Sec. 1-T77N-R1E, containing approximately 5.65 acres and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order to allow a detached accessory structure to be placed in front of and to the side of the existing dwelling.

Bill Tharp: Okay, please state your name and your address.

Mark Fenner: Hello, I am Mark Fenner, 1645 Zachary Avenue.

Bill Tharp: And would you like to go forward today even though there are only three people here instead of five?

Mark Fenner: Yes.

Bill Tharp: Okay, please go ahead and tell us a little about your request.

Mark Fenner: We moved in as rental tenants back in 1990, at that point in time the owner was Bob Bancks and I mentioned to him that we would like to purchase it, and that happened in 1995. Since then, in 2000 we brought down the old farm house we were in and built a new dwelling that was basically centered, I don't know if you have an aerial view there .... Basically the yard and the dwelling are in the front two acres of the 5.65 acres. We actually with permits, we built behind the original 24' x 24' garage. My goal has been to have a larger storage/pole building or garage constructed adjacent to the property. I would bring down the old garage and clean up the property. However, I have three creeks and ravines and it's mostly timber in the back. The only flat location for a pole building is adjacent to the house but the pole building would actually be in the front yard on the side of the house. So that is why I have to ask for this Variance.

Bill Tharp: Has there been any correspondence?

Steve Boka: No.

Bill Tharp: I know one of the possible reasons for granting one of these requests is the unique nature of the property.

Mark Fenner: Yeah the backyard, if I may interject, we have a compliant septic field there and there might be sufficient grade for that structure back there, but it can't be within 10 feet of the septic system. (changed tapes)

Steve Boka: It's a really long lane going back there. There aren't any sight distance problems with it.

Carol Schlueter: Right, so you would be the only one to look at it, nobody else, right?

Mark Fenner: Right.

Martha Peterson: So it doesn't obstruct any vision for traffic?

Mark Fenner: No, it's tucked in between two fields, to the south and north. We are nice and secluded. And again, if I could move it literally to the back of the house, but there would be a pretty steep drop off right there.

Carol Schlueter: What is the size of the building?

Mark Fenner: It will be 40' x 64'.

Carol Schlueter: And it's going to be used for cars and lawnmowers?

Mark Fenner: Yeah, a wood shop and I have a small truck.

Martha Peterson: An open pole building or closed?

Mark Fenner: Closed and we will get it to match the house.

Martha Peterson: And you are going to tear down the old garage?

Mark Fenner: Yes.

Carol Schlueter: The one that is sitting here?

Mark Fenner: Yes, the older garage.

Carol Schlueter: That one is coming down there?

Mark Fenner: Yes.

Martha Peterson: Okay.

Bill Tharp: Is there any further discussion or questions? I would entertain a motion.

Carol Schlueter: I will make a motion that we allow this Variance in order to allow a detached accessory structure to be placed in front and to the side of the existing dwelling.

Bill Tharp: Is there a second?

Martha Peterson: I'll second it.

Bill Tharp: All in favor of this motion please say Aye (3) Opposed (0) Absent (Harper & Birkinbine). The motion is declared approved. Any construction or use allowed by this board must begin within six months from the date of this decision or the permission will be void.

Mark Fenner: Okay, thank you.

Carol Schlueter: You bet, go for it.

Bill Tharp: A motion to adjourn?

Steve Boka: Well if you would wait on that.

Bill Tharp: To quick on the draw there.

Steve Boka: Well that's alright, I just have some business to discuss with you. Next month's meeting ... there's a couple of things going on, number one July 3<sup>rd</sup> is a holiday for county employees, so they will not be working that day. It is very

likely, I almost guarantee you that they will not yet have appointed a Zoning Administrator, and we do not currently have any cases on the agenda for July, so we would like you to request that the board consider cancelling the July meeting and holding it in August. We are hoping that somebody will be here and of course, if somebody comes in and there is an urgent matter that needs to be addressed, we will have to react to that. But if there isn't we'd suggest that we wait until the August meeting. If you agree with that, we'd like you to put that in form of a motion that there won't be a July meeting.

Bill Tharp: Okay, I will make a motion that we will not have a meeting in July unless there is extenuating circumstances.

Martha Peterson: I will second that.

Bill Tharp: All in favor? Ayes (3) Opposed (0) Absent (Harper & Birkinbine). The motion carried.

Martha Peterson: So if there was an emergency situation it would be on the 10<sup>th</sup>?

Steve Boka: Well it would be at the call of the chair and probably what would happen is we would get in contact with the chair, Dixie would, and see whether or not they are agreeable to a meeting. If so, we would have to query the board members and see when they might be able to get it together, in addition to complying with the state law for the publication of a meeting. So it's kind of a moving target. That was the only thing that I had for the agenda, other than to thank you for your patience and I know that we had some difficult ones today but we wanted to talk about those today while I'm still here.

Bill Tharp: Well thank you for being here.

Carol Schlueter: Yes, thank you for your help and giving us all the information.

Martha Peterson: Thank you for stepping in.

Steve Boka: I appreciate the time that you give being on this board.

MUSCATINE COUNTY BOARD OF ADJUSTMENT  
By Steve Boka, Interim Zoning Administrator