

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on August 5, 2016, with Chairperson Tom Harper and members, Carol Schlueter, Martha Peterson, Mike Birkinbine and Bill Tharp present. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator were also in attendance.

Others present for this hearing: Lowell Bass, Julia Bass, Adam Parson, Ryan Smith, Susan Smith, Tracy Koenig, Les Wegter and Kelly Wegter.

Tom Harper: Okay, it is 9 o'clock and this is the scheduled time for our Board of Adjustment hearing for Muscatine County. I will call this public hearing to order. We have some business to take care of first, before we get into the applications. We were emailed the minutes of the last meeting, which was on July 8, 2016. We were to review the minutes. Does anybody have any questions, comments, concerns, changes? Hearing none, I would like a motion to approve the minutes as submitted.

Bill Tharp: I will make that motion.

Tom Harper: Is there a second?

Carol Schlueter: I will second it.

Tom Harper: The motion has been made and seconded to approve the minutes of the last meeting on July 8th. Any discussion? Hearing none, all those in favor signify by saying Aye (5) Opposed (0). The motion carried. Okay, I will read the opening statement. 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. As a Board of the County, we welcome all testimony. We make our decision based on the facts and evidence under county code, presented in open meeting. We ask that if you wish to speak, please give your name and address. Okay, Eric can you read the first request?

Eric Furnas: Well I don't see the applicant for the first case here, so I didn't know if you just wanted me to go to the second case?

Tom Harper: Yeah, if he shows up before we adjourn we can discuss it then. Let's move onto the second case then. (the Board of Adjustment went on to the next two cases) Well that is all the cases that we have, right?

Eric Furnas: Well there are people here for the Eichelberger request, however, Mr. Eichelberger is not present or a spokesperson doesn't appear to be here. We have a request that was tabled last month, so that is up to you folks to go forward with the request or...

Bill Tharp: Are you talking about Eichelberger?

Eric Furnas: Yeah, it's your decision.

Bill Tharp: Well the applicant isn't here.

Eric Furnas: We actually have another one that's on the list that I don't see here either.

Bill Tharp: Well if the applicant isn't here, doesn't he just waive his rights to be heard?

Carol Schlueter: Or do we table it?

Eric Furnas: Generally the board, I think, does not entertain a motion to table unless the applicant requests.

Carol Schlueter: Oh okay.

Tom Harper: Yeah, we can choose to table it at their request. We can table it if we feel we need more information. But if they are not here, I believe, they have forfeited their right to the hearing.

Bill Tharp: This reminds me... there was this real pretty girl when I was 16 or 17 years old and you know, we were going to go out to dinner and I was going to take her to a movie and everything. And then she wasn't there. (laughter)

Mike Birkinbine: So how was dinner and a movie? (laughter)

Bill Tharp: It was okay. But things like that just happen.

Tom Harper: Okay, just for the record, go ahead and read the request.

Eric Furnas: Case #16-08-01. An application has been filed by Chad D. Eichelberger, Record Owner. This property is located in Lake Township, South of 205th Street, in the SE¹/₄ of Sec. 28-T77N-R3W, 1878 205th Street, containing approximately 43.34 acres and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order for Mr. Eichelberger to continue his trucking business, Thompson Trucking, at this location. On July 8, 2016, the applicant requested to have this case tabled due to not having a full board.

Tom Harper: Okay, is the applicant here? Okay, hearing nobody I would say the applicant is not here.

Bill Tharp: May I make a record Mr. Chair?

Tom Harper: Yes you may.

Bill Tharp: For the applicant, Chad Eichelberger, he is requesting a Variance to continue the operation of a trucking company after being notified that his property is not properly zoned for such a use. For this Variance to be granted the applicant or someone on his behalf would need to show the following: first that an unnecessary exists, second that there is a unique property limitation, and then also the protection we have to take into consideration of protection of the public interest. Seeing that there has been no evidence presented by the applicant or anyone on his behalf to show that any of those things exist, that there is an unnecessary hardship, a unique property limitation or anything to insure us of the protection of public interest, I would request that we deny this request or application because he hasn't submitted the required proof to be able to have us approve it. I was just making a record in case the applicant makes a complaint later. He was properly notified of the time and place of the hearing and he isn't here.

Tom Harper: I guess this is new territory, I don't remember having this.

Eric Furnas: I am just going to check out front to make sure that someone isn't sitting there thinking there are other hearings. But I would have expected he would have checked in by now. (Eric walked up the front of the Administration Building)

Tom Harper: Nobody there?

Eric Furnas: No.

Carol Schlueter: Okay, I have one question. I mean, if this is denied and he wants to try again to get this, does he have to wait six months?

Eric Furnas: Yeah, he would have to wait. However, given the determination by my office that's already been made, we would proceed with enforcement action and require compliance with the direction that we've already issued him. We would request him to cease the industrial use on that property. Then it would be up to the County Attorney's Office to proceed. He can't apply for six months after it is denied. My decision would be to notify the applicant of this public hearing and then proceed with the enforcement action.

Bill Tharp: We are a quasi-judicial board and you know, if over across the street at the court house if someone didn't show up for their hearing they would be either... their case would either be dismissed outright, if it were a civil case, or if it was a criminal case, a warrant would be issued for their arrest. So this isn't a court action but it is an application and the notice says that we will not consider any request unless the applicant, or their representative is present. So I think the proper thing to do is since there is no evidence presented and someone defaults and doesn't show up, the proper remedy is to deny the application. Then he can come next time if he wants to. I can't get into his head. He may have decided not to go forward with this request and maybe that's why he's not here this morning.

Martha Peterson: Well there is a motion on the floor and I will second the motion.

Tom Harper: Okay, right, wrong or indifferent, I will allow the motion

Les Wegter: What is the motion?

Bill Tharp: The motion is to approve the Variance to continue the operation.

Martha Peterson: No, you said deny.

Bill Tharp: Oh, okay, yeah I'm sorry. Thanks for keeping me straight.

Eric Furnas: Maybe you want to restate your position and restate your motion, maybe using the positive motion format.

Mike Birkinbine: I just want to understand a little bit more. I mean, we do have evidence, right? (changed tapes)

Eric Furnas: Well at 8:47 a.m. I received an email from him asking about if he had to sit through all of the other hearings.

Carol Schlueter: Well he received the same notice that all of these people did and they are here.

Eric Furnas: Yeah, everyone here received the same notice.

Tom Harper: So the applicant by applying for a Variance or a Special Use Permit is requesting a hearing and if they have not shown up for the hearing, than they are basically nullifying their request.

Lowell Bass: Well if you deny this than you are going to put 10 people out of a job. I mean, this don't make no sense.

Bill Tharp: We aren't putting anyone out of business.

Lowell Bass: What do you mean?

Bill Tharp: Well what we are doing is entertaining a motion for an application. As to what happens in that business, that has nothing to do with us.

Tom Harper: Can you please state your name for the record?

Lowell Bass: My name is Lowell Bass and I am a neighbor. I'll speak for Chad, if you want me to.

Tom Harper: I would allow you to speak and these other people to speak, but since the applicant isn't here to state his case...

Lowell Bass: (he said something inaudible)

Tom Harper: Yeah I appreciate you showing up here and your concern and that you want to voice your opinion, but since the applicant is not here to state his case, than we've kind of come to a mutt point here. But I still have a motion on the floor and it needs to be restated.

Bill Tharp: Yeah, so it will give him a little more time to get here, because I am windy. (laughter) I was told that a long time ago and that's why I became a lawyer. In order for a Variance to be granted the applicant needs to show certain things. The applicant, Chad Eichelberger, is asking for a Variance to continue the operation of a trucking company after being notified that his property is not properly zoned for such a use. So when that happens we need to look at the standards and the ordinances to say what do we need to look at for a Variance to be granted and to allow him to have this Variance. For a Variance to be granted he needs to show the following: That the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone. Lack of a reasonable return may be shown by proof that the owner has been deprived of all beneficial use of his land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance. Or that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the zoning ordinance itself. Or that the use to be authorized by the Variance will not alter the essential character of the locality. So the unique property limitations or the unique physical characteristics of the property, not the desires of, or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. Such limitations may arise due to steep slopes, wetlands, or parcel shape that limits the reasonable use of property. The last thing that would need to be considered is the protection of the public interest. Granting a Variance must neither harm the public interest nor undermine the purposes of the ordinance. In granting a Variance, the Board may attach special conditions to ensure that the public welfare will not be damaged. Such conditions must relate reasonably to the purpose and intent of the ordinance. Also, any Variance granted should include only the minimum relief necessary to allow reasonable use of the property. Some things that are not grounds for hardship that have been established in the county and through precedence is just that loss of profit or financial hardship is not a ground for a Variance. Or a self-imposed hardship when conditions giving rise to the need for a Variance were created by the property owner or a former owner, that is when a hardship is self-imposed. So those are the things that we as a board need to consider. And we are duty bound to follow that ordinance. And since the applicant is not here, he has not presented evidence that the Variance should be granted. And it is his burden or responsibility to do that. He hasn't shown that an unnecessary hardship exists, that there is a unique property limitation or has satisfied us that the public interest is protected. So that is my rationale for making a motion... I won't make a motion, Carol will make a motion. Or if I can say it correctly, than I will make

a motion to approve the Variance to continue the operation of this trucking company of Chad Eichelberger's after being notified that his property is not properly zoned for such a use, and it is under Board of Adjustment Case #16-08-01.

Martha Peterson: And I seconded the motion.

Tom Harper: Okay, so you seconded the motion. And just so everybody understands this under Roberts Rules of Order, it is advised to always make a motion in the positive. So in this case the request was to approve the Variance so the motion needs to be made to approve the Variance. Then we can deny it by voting it down. Okay? So that's why it looks a little strange. So in this case the motion was to grant the Variance as stated and it has been seconded. Is there any other discussion? Hearing none, all those in favor of the motion as stated signify by saying Aye (0) and those opposed say Nay (5). The motion is denied, the request is denied.

Lowell Bass: That is just crazy.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Planning & Zoning Administrator

Note: A few minutes after the motion was made, it was noted that Chad Eichelberger came into the board meeting at 9:32 a.m. He stated that he thought the meeting started at 10 o'clock. Tom Harper told him that his notice said that he needed to be here at 9 a.m. and he was the first meeting. That the board had gone onto the other hearings and then came back to this one and he wasn't present so it was denied.

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on August 5, 2016, with Chairperson Tom Harper and members, Carol Schlueter, Martha Peterson, Mike Birkinbine and Bill Tharp present. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator were also in attendance.

Others present for this hearing: Beth Hora and Jim Hora.

Tom Harper: We will move onto the second case. Eric, can you please read that request?

Eric Furnas: Case #16-08-02. An application has been filed by Mildred M. Hora, Record Owner. This property is located in Orono Township, 2222 Blue Heron Avenue, West of Blue Heron Avenue, Part of Parcel A, in the NW¼ of Sec. 5-T76N-R4W, containing approximately 2.42 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 Jimmy Hora and his family to place a rural residence (modular/ manufactured home) on this property. On July 8, 2016, the applicant's representative asked to have this case tabled due to not having a full board. I will report one change since that application was filed by Mildred Hora, Mr. Jimmy Hora the applicant has actually taken ownership himself of that parcel. So the request remains the same, but only that Mr. Jimmy Hora is the applicant and now the owner.

Tom Harper: Okay, is the applicant here?

Jim & Beth Hora: Yes.

Tom Harper: Okay, could you please state your name and tell us about your request?

Beth Hora: My name is Beth Hora and we are petitioning to ask to place a home and a shed on this property.

Tom Harper: Okay, was there any correspondence?

Eric Furnas: No, I don't believe so.

Tom Harper: Okay, Eric would you like to state anything on this request?

Eric Furnas: I would just add that there has been a mobile home on the property and it was allowed years ago because they took care of the livestock. So after the livestock was no longer there, the Board of Adjustment took action to allow Mr. Hora to remain in the existing mobile home on this property until either the property would transfer to someone else or if Mr. Hora no longer lived in the mobile home. So now Mr. Hora owns this property and he is requesting a Special Use Permit in order to place a rural residence on this property in order for them to live there. The CSR2 is very low, it is only 37. There is adequate separation distance, it is over 750 feet to the next nearest neighbor and it has been split off years ago from the adjacent ag ground. There is an existing drive to this residence and there is adequate space to accommodate a well and septic system.

Tom Harper: Is there anyone here to speak for or against this request?

Carol Schlueter: So the trailer will be removed then?

Beth Hora: Yes, once the house is move-in ready, than it will be removed. We would just like to stay there while we are in the process of doing this.

Carol Schlueter: And they will have to have a new septic?

Beth Hora: Yeah, there is a new septic system being put in.

Carol Schlueter: Okay.

Martha Peterson: Since you came up with this plan and they built the new hog confinement not too far away, how close is that to you now or where you propose to build?

Beth Hora: It depends upon how you would measure.

Martha Peterson: As the crow flies, how far?

Beth Hora: I would say maybe two miles... I honestly do not know.

Martha Peterson: But you have that in mind? You are going to build knowing that there is a hog confinement right there?

Beth Hora: Yeah, yeah. Yeah where the house is now, we are just going to go south of that.

Martha Peterson: Okay.

Tom Harper: Is there anything else by anyone here? Does anybody care to make a motion?

Bill Tharp: Well the CSR2 looks okay, the distance looks okay. I will make a motion to approve the Special Use Permit in order for Jimmy Hora and his family to place a rural residence on this property.

Martha Peterson: I'll second it.

Tom Harper: Okay, a motion has been made and seconded to grant this request for a Special Use Permit to place a rural residence on this property. Is there any other comment or discussion? Hearing none, all those in favor of the motion signify by saying Aye (5) Opposed (0). Motion carried.

Beth Hora: So we can go ahead with the house?

Tom Harper: Yes, the request is approved. Any construction or use allowed by this Board must begin within two years from the date of this decision, or the permission will be void.

Eric Furnas: You would need to get your permits from our office.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Planning & Zoning Administrator

PUBLIC HEARING

The Muscatine County Board of Adjustment will conduct a public hearing on Friday, August 5, 2016, starting at 9 a.m. in the Board of Supervisors Office, Muscatine County Administration Building, 414 E. 3rd St., Muscatine, Iowa, to discuss the following:

Case #16-08-03. An application has been filed by Richard T. or Susan K. Jones, Record Owners and Cynthia Johnson, Applicant. This property is located in Pike Township, at the corner of Hwy. 22 and Iron City Avenue, in the NE¼ of Sec. 20-T77N-R3W, containing approximately 4.16 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 Ms. Cynthia Johnson to place an RV camper on property for use as a Seasonal Recreational Cottage.

Note: No one was in attendance concerning this request, therefore the Board of Adjustment denied the Special Use Permit.

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on August 5, 2016, with Chairperson Tom Harper and members, Carol Schlueter, Martha Peterson, Mike Birkinbine and Bill Tharp present. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator were also in attendance.

Others present for this hearing: Denny Boorn and Sue Boorn.

Tom Harper: Okay, we will go on to the next case and if they show up before we adjourn the meeting we will hear that case. Eric, can you please read the next request?

Eric Furnas: Case #16-08-04. An application has been filed by Dennis P. or Susan K. Boorn, Record Owners. This property is located in Moscow Township, in the NE¼ of Sec. 9-T78N-R2W at the end of E. Hinkeyville Drive, zoned A-1 Agricultural District, containing approximately 45 acres. This request, if approved, would allow the Zoning Administrator to issue a Special Use Permit in order to build a year round rural residence on this property.

Tom Harper: Any correspondence?

Eric Furnas: We received a letter from Evelyn Hinkhouse. She states: I give my approval of Dennis and Susan Boorn to build a resident located in Moscow Township, at the end of East Hinkeyville Drive, and also, to use the private road. That's all we received.

Tom Harper: Okay, could the applicant please state your name and tell us about your request?

Dennis Boorn: Dennis Boorn, 501 S. Cherry Street, Wilton.

Tom Harper: Can you tell us about your request?

Dennis Boorn: Well we want to build a... I guess my wife and I call it a cabin, but basically we'd like to be able to live there whenever we want to. It's poor ground and it's on the river and we just want to be able to retire and watch the river go by, I guess. It's going to be small.

Tom Harper: So is this going to be occupied full time?

Dennis Boorn: Well we'd like to, after we retire and everything.

Tom Harper: Is there anyone else here to speak for or against? Does anyone on the board have any comments, questions?

Bill Tharp: You can't build year round rural residences in the flood plain.

Martha Peterson: Yeah, since it's in the flood plain.

Bill Tharp: Yeah, I mean there is a plan and people get together every few years to have a Comprehensive Use Plan to say how they are supposed to use the land. That's what they said, that this type of area is not meant for that type of residence.

Dennis Boorn: Well we know that it floods and so forth, we have an apartment in town that we can always go to whenever we can't be there. That's why we actually called it a cabin. But we just thought that we could live there year round and if weather permits, we would be there.

Bill Tharp: Yeah, there are reasons why we have a Comprehensive Plan, because you could need emergency personnel to be able to get to you, especially if

there is an emergency, especially in your retirement years. But we are not a board that can make law or make any of those types of decisions, as to what the law should be. They meet every few years and set the rules as to what we need to follow, so we just follow through. They give us our marching orders of what we need to do and what our standards are. By the standards, in my opinion, the way it looks here, is that we wouldn't be able to allow a year round residence. The best thing to do and in my personal opinion, the next time they have a Comprehensive Plan meeting, is to go to that meeting and try to change their opinion or change the opinion of the zoning board. Because right now I feel like we are hamstrung, that we really don't have the ability to approve this under the laws that we have in Muscatine County. I'm sorry for that.

Dennis Boorn: Can we get a cabin permit?

Eric Furnas: Well your request was for a year round residence. I guess I would have to get an opinion on whether we would be allowed to entertain a separate request without notification to adjoining property owners. There is a process that we need to go by to notify people and place it in the paper.

Sue Boorn: So do what we did before?

Eric Furnas: Yeah, it would be a Seasonal Recreational Cottage request that you could apply for. Those are commonly allowed in the flood plain with flood resistant construction. The Comprehensive Plan speaks strongly against allowing a year round rural residence in the flood plain.

Dennis Boorn: Sure, I'm not trying to fight any of that. I just want to put a cabin down there basically.

Carol Schlueter: So it's bare ground now? There is nothing there?

Dennis Boorn: Well sand.

Carol Schlueter: Yeah, but I mean there are no cabins, nothing there?

Dennis Boorn: No.

Carol Schlueter: How long have you owned this property?

Dennis Boorn: Oh boy... I don't know.

Sue Boorn: A long time, maybe 20 years? We bought it thinking we'd build a cabin someday. That's basically why we bought it because it doesn't produce much at all. It's just a beautiful place.

Carol Schlueter: Yeah, I'm sure that it is.

Tom Harper: Yeah, this is a designated flood plain and to place a year round dwelling on this property is against the Comprehensive Plan, seasonal is a different thing or a pad with an RV pulled in. I just don't see this going ahead.

Carol Schlueter: No, not for a year round residence. But Eric if they put a cabin there, what are the rules for how many days they can be there?

Martha Peterson: Well on this it says 180 days.

Dixie Seitz: It's attached to your packet.

Carol Schlueter: Okay.

Eric Furnas: And you have to maintain a fulltime residence someplace else, which is also one of the criteria for granting a Seasonal Recreational Cottage.

Tom Harper: So do you want us to put this to a vote or should they pull their application?

Eric Furnas: I would be a little hesitant to entertain a separate request without sending out corrected notices.

Tom Harper: Yeah, but I meant should we take a vote on this request?

Eric Furnas: Yes.

Carol Schlueter: But if we table this, can they change their request? They have to start with a whole new one?

Eric Furnas: Right.

Carol Schlueter: Okay.

Bill Tharp: I will make a motion to approve the Special Use Permit in order to build a year round rural residence on the property.

Tom Harper: Alright, is there a second?

Carol Schlueter: I'll second it.

Tom Harper: The motion has been made and seconded to approve the request for a Special Use Permit to allow a year round rural residence on this property. Is there any other discussion? Hearing none, all those in favor of the motion please say Aye (0) and opposed Nay (5). The motion is denied. Now you can start over again and reapply for a seasonal.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Planning & Zoning Administrator