

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on September 2, 2016, with Chairperson Tom Harper and members, Carol Schlueter, Mike Birkinbine and Bill Tharp present, Martha Peterson was absent. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator were also in attendance.

Others present for this hearing: Roy Rickey and Kenneth John Shoultz.

Tom Harper: I will open the Board of Adjustment meeting. I have an opening statement to read here. 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 only have four of the five members present, so the applicants will have their choice of either continuing this today or have us table it until the next month. I can't guarantee that we'd have five members next month. 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. And before we begin the cases, we have some business to take care of. We had the minutes from the last month's meeting. We've all received them and everyone should have had a chance to review those. If there are no changes, I would entertain a motion to approve them.

Bill Tharp: I will make a motion to approve the minutes as written.

Carol Schlueter: I'll second.

Tom Harper: A motion has been made and seconded to approve the minutes of the August meeting as written. Any discussion? Hearing none, all those in favor please signify by saying Aye (4) Opposed (0) Absent (Peterson). The motion carries. Eric, would you like to read the first case?

Eric Furnas: Case #16-09-01. An application has been filed by Kenneth J. or Providence Shoultz, Record Owners and David Roy Rickey Jr., Proposed Buyer. This property is located in Fruitland Township, 2620 Stewart Road, West of Stewart Road in Sec. 28-T76N-R2W NW¼, containing approximately 10.14 acres and is zoned R-1 Residential District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order to allow the existing detached structure to remain in the front yard after a one family dwelling will be built behind it.

Tom Harper: Okay and is the applicant here?

Kenneth John Shoultz: Yes, Kenneth John Shoultz. What I am looking for is to sell three or four acres on the north end of this property. At present I have a daughter and son-in-law that is looking to buy it, but I'm not wanting to say that that's going to happen at this point. I just want to bring this up so that I can sell for a one house dwelling to somebody. I don't know for sure if they are going to be able to get financing.

Tom Harper: Can we get a little more explanation?

Eric Furnas: Sure, at this point ... although you have a proposed lot configuration, that's not for consideration here. Obviously that would be a subdivision down the road and that would go before the Zoning Commission. However, that is the area that is being proposed for a building site and there is an existing accessory structure that would be in the front of that lot. According to Article

XII, 4.3 of the Muscatine County Zoning Ordinance, No detached accessory structure is permitted within the limits of a front yard. So in anticipation of this potentially becoming a subdivision lot with a house behind, a Variance is required that would allow that existing structure to be in front of that house. He wanted to clear that hurdle before he got any further down the road just in case it wasn't allowed, he didn't want to sell it with it. This existing structure was there when Mr. Shoultz purchased the property. We actually can't find a permit on file; we're not quite sure how it came to be there.

Tom Harper: So what is this parcel that's right to the north of it?

Eric Furnas: That is actually a separate parcel. That is where Matt Grosjean has his repair shop.

Tom Harper: Okay, so the only access to the back of this property than is Stewart Road?

Eric Furnas: Yes.

Bill Tharp: So isn't this an end around to the subdivision process?

Eric Furnas: Well this would not okay the lot. This would just give the person permission to build a house somewhere west of that structure, if that subdivision were to be approved.

Bill Tharp: But the reason for the subdivision would be to allow for another lot to exist that would contain some of this area, right?

Eric Furnas: Correct.

Bill Tharp: And so instead of taking it to the zoning board and having that lot created and it being their decision, we are being asked to just go ahead and allow it to happen? So he doesn't need to go before the zoning board because he has already achieved what he wants to achieve?

Eric Furnas: Well this would only grant the Variance for the accessory structure to stay if there was a lot approved. It would all be contingent upon the lot being approved by the Zoning Commission. This would just allow a house to be built behind the existing accessory structure.

Tom Harper: So even if this was subdivided and platted, he still would have to have the Variance to allow the structure to stay.

Mike Birkinbine: So he's just trying to get the Variance first.

Eric Furnas: I think what Bill is getting at is would it have been more appropriate for the lot to have been created first? However he didn't want to go through all the surveying and subdivision approval if the Variance wouldn't be approved. So I wasn't really sure how to direct him, other than to see if the Variance would be granted and then propose the subdivision lot. But either way he would end up in front of you.

Bill Tharp: I think he would do first things first. I mean, I'm sorry there's a process but that's what the ordinance says there is a process for doing this. I have worked with lot of people as an attorney and yeah, it's a headache, but it's part of it.

Mike Birkinbine: But is there a clear process for this though? It doesn't sound like there is a clear process. Because they are able to come in front of us to approve this and then they can go back and have a survey done potentially to subdivide it. Or they could do it the other way. Is there any clear direction?

Eric Furnas: In my mind, I thought it could be done either way.

Mike Birkinbine: That's my point.

Bill Tharp: Yeah, I guess that's a good question. The people that I've worked with, the other lawyers, it always seemed like a streamlined process, in my opinion. But hey – I'm just one guy. I mean, I'm a country lawyer. (laughter)

Carol Schlueter: Okay, so if this Variance is approved we are just saying that this detached accessory structure can stay where it's at? But they can't build a house on it, because it's not zoned for that?

Eric Furnas: No, he would not be able to build another structure until it is properly subdivided.

Mike Birkinbine: So the only question is whether he can build a house behind the structure. Isn't that the determination?

Carol Schlueter: Yes.

Mike Birkinbine: So we can say no, you have to tear that building down or say yes and allow it to stay.

Carol Schlueter: Yes, so all we are allowing is to keep that building here so if he ever gets it rezoned and subdivided...

Eric Furnas: It is already zoned residential. He would just need to subdivide it because his house is on the other end of this current parcel. So he could not build another house until it is subdivided.

Tom Harper: In other words, it was cheaper to make the application to see if we would approve this before he pays for the surveying and platting and then not being able to keep the structure in front.

Eric Furnas: Right.

Mike Birkinbine: So the choice is that either he can leave the building there and build behind it or no he needs to remove the building.

Carol Schlueter: Is it obstructing any views or anything for driving or pulling out on Stewart Road?

Eric Furnas: No it really wouldn't be because of the way the access is laid out. That parcel runs along Stewart Road and the access is actually considerably to the north where you pull onto Stewart Road. So as far as any site issues, no there really wouldn't be.

Carol Schlueter: Okay.

Mike Birkinbine: So would there be a new proposed driveway into this?

Kenneth John Shoultz: No.

Mike Birkinbine: So right now the access is from...

Kenneth John Shoultz: Can I show you?

Mike Birkinbine: Yeah absolutely – please do.

Kenneth John Shoultz: The access is right here for both properties.

Carol Schlueter: Oh, it's way up here?

Kenneth John Shoultz: Yeah and you come right along down here. And this is where we are proposing that a house will be built, right in this area here.

Bill Tharp: Was there any correspondence or anything like that?

Eric Furnas: No correspondence.

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

Eric Furnas: I just want to say for the record, you are not really considering this lot or configuration. The applicant could change the proposed lot, however, the required Variance must be very similar to this request. If the proposed entrance were to be changed at some point, I would strongly urge the Zoning Commission to take a look at the impact of the existing shed. However, if it remains similar to what they are proposing here and if you agree with it, then it should be very similar to the proposal. That's just something that they need to consider for the layout.

Mike Birkinbine: So if we approve it, it has to be based on exactly what we have discussed here today?

Eric Furnas: Well it wouldn't have to be exact.

Mike Birkinbine: Well what I am saying is that if he came back and we have given him approval and he decided that he wanted to put another driveway in, again back to your point, that's a different discussion.

Eric Furnas: Yeah and one of the issues there is that you are approving this based on this entrance, not a different one.

Mike Birkinbine: Okay, yeah I just wanted to clarify that.

Tom Harper: Okay, are there any other questions, comments or concerns? If not, does anyone want to make a motion?

Mike Birkinbine: I will make a motion to allow this Variance as stated.

Tom Harper: Is there a second?

Carol Schlueter: I'll second it.

Tom Harper: A motion has been made and seconded to allow this Variance as stated. Any other discussion? Hearing none, all those in favor of the motion please signify by saying Aye (4) Opposed (0) Absent (Peterson). The motion carries.

Kenneth John Shoultz: Thank you.

Tom Harper: Eric will fill you in on what the next steps are.

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

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on September 2, 2016, with Chairperson Tom Harper and members, Carol Schlueter, Mike Birkinbine and Bill Tharp present, Martha Peterson was absent. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator were also in attendance.

Others present for this hearing: Dennis Boorn and Susan Boorn.

Tom Harper: Eric, can you please read the next request?

Eric Furnas: Case #16-09-02. 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 Seasonal Recreational Cottage on this property.

Tom Harper: Any correspondence?

Eric Furnas: No correspondence.

Tom Harper: Okay, and are the applicants here? You are the only ones left in the room, so I assume you are the applicants?

Susan Boorn: Yes.

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

Dennis Boorn: Dennis Boorn. I am requesting to build a cabin.

Tom Harper: Okay, so this is basically the same request that we had last month only this time instead of a rural residence, it will be a Seasonal Recreational Cottage?

Eric Furnas: Yes and no. Yes it's the same property, but no, it's not at all a similar structure.

Tom Harper: Okay, but same location?

Eric Furnas: Yes, it's the same property, the same location. The request is for a Seasonal Recreational Cottage. So I just wanted to be clear on that.

Tom Harper: Okay, does anybody have any questions or comments? Eric, do you want to go over your development report?

Eric Furnas: I think everything in the development report states my position on it. You were the board that denied the Special Use Permit for a rural residence to be built here, under the guidance of the Comprehensive Plan. The Comprehensive Plan does not speak strongly for development in the flood plain. So after that was denied they filed for a Special Use Permit for a Seasonal Recreational Cottage. This area is commonly used for cottages. Our Zoning Ordinance specifies Seasonal Recreational Cottage being located along lakes, streams, rivers or other similar recreational areas. I just added a positive recommendation of this request. Clearly the Seasonal Recreational Cottage definition does not allow for a year round residence. It is subject to limitation of a Seasonal Recreational Cottage, as defined in our Zoning Ordinance.

Tom Harper: And seasonal has a limitation of 180 days?

Eric Furnas: Yeah, it's less than six months out of the year and they must maintain a fulltime residence someplace else. Then it goes onto say residential type structure ... that all building codes, septic codes and flood plain management codes all apply.

Tom Harper: Does anybody have anything to add? Are there any comments or questions, concerns? If not, would someone like to make a motion?

Bill Tharp: I move to approve the Special Use Permit in order for the Boorn's to build a Seasonal Recreational Cottage on this property with the stipulations that the structure is designed and used for seasonal or temporary use only and not as a year round family residence. The occupants must maintain a permanent legal residence elsewhere, all flood plain management, and private water well, onsite water treatment systems and Muscatine County construction code standards will be strictly adhered to. And the applicants are responsible for acquiring the necessary access easements as well as any local or state entrance permits.

Mike Birkinbine: I will second that.

Bill Tharp: Without saying it all again? (laughter)

Tom Harper: Alright the motion has been made and seconded to approve this request. Is there any other discussion? Hearing none, all those in favor of the motion please say Aye (4) Opposed (0) Absent (Peterson). The motion carries. And we are adjourned.

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