

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on June 2, 2017 with Chairperson Tom Harper and members Carol Schlueter and Bill Tharp present, Emily Geertz and Mike Birkinbine were absent. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator were also in attendance.

Also present for this hearing: Dean Maurer and Kirk Latta.

Tom Harper: I will call this hearing of the Muscatine County Board of Adjustment to order. I have an opening statement to read. 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. We have fewer than five members present today so the appellant has the opportunity to have the appeal delayed until the next meeting, which will be next month. This request must be made prior to Board deliberation of the case. 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. First order of business is to approve the minutes from the last meeting last month. Those have been sent out to you for your review. Was there any questions on those, or any changes? If not, can someone make a motion to approve the minutes as written?

Carol Schlueter: So moved.

Bill Tharp: Second.

Tom Harper: A motion has been made and seconded to approve the minutes from the last meeting, all those in favor signify by saying Aye (3) Opposed (0) Absent (Emily Geertz & Mike Birkinbine). The motion carried. Eric if you could read the first case?

Eric Furnas: Case #17-06-01. An application has been filed by Kay Y. Maurer, Record Owner and Dean W. Maurer, Contract Holder and Applicant. This property is located in Moscow Township in the SW<sup>1</sup>/<sub>4</sub> of Sec. 11-T78N-R2W, East of N. Isett Avenue, containing approximately 19.27 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 Mr. Dean Maurer to build a dwelling for himself on this property. This request was tabled from last month.

Tom Harper: Okay and is the applicant here?

Dean Maurer: Yes.

Tom Harper: You heard the spiel last time and it's the same this time. There is five on our board and today we only have three present so we have to be unanimous on our decision. You have the choice of either proceeding the way we are or tabling it for next month, and as you know, we may or may not have a full board then. It's up to you. What would you like to do?

Dean Maurer: We just as well get it over with then and I will go from there.

Tom Harper: Alright. Can you tell us about your application?

Dean Maurer: I recently purchased that from my mother; well we haven't gotten it transferred over into my name yet. But I just want to put something up so that I can live out there. That's basically about what it is.

Tom Harper: Okay, I'm not sure where you are wanting to place this.

Carol Schlueter: Yeah can you show us where you are wanting to place the house?

Eric Furnas: The map that has the different green lines on it, where they all come to a point, that's basically where he wants to place something. (everyone looking at the map)

Carol Schlueter: And how many acres here?

Dean Maurer: Nineteen and some.

Carol Schlueter: And this is what you are purchasing from your mom?

Dean Maurer: Yeah. I'm wanting to put something in...I want to put something up in this area here. This is a creek bottom right through here and this is kind of up a little bit... something up in that area is where I'd like to go.

Carol Schlueter: And a house has never been on this property?

Dean Maurer: No.

Carol Schlueter: But there are some buildings?

Dean Maurer: Yeah there is just a couple of small outbuildings there that I use for some storage.

Carol Schlueter: Okay but where you want to build is that where I call farm ground right now that's getting farmed in either hay, corn or beans?

Dean Maurer: There's grass on there that I don't cut and once in a great while I might cut it and someone will come in and bale it. But they don't use it actually for hay ground. I mean I just mow a little bit just around the edges and every once in a while I'll cut that off and then somebody will say, hey can I bale that? Other than that, I don't really use it for hay ground.

Carol Schlueter: So the CSR is on the whole parcel Eric?

Eric Furnas: Yes it is the parcel average, which is what we always use.

Carol Schlueter: And it's above the 55, which is what we generally do not allow.

Eric Furnas: Yeah the average for the entire parcel is 67.

Bill Tharp: Mr. Maurer, I think the issue that we see here today is that we have two hard and fast rules. One is that the property be at least 1,250 feet away from the closest existing residence. The second one is that the CSR, corn suitability rating, is 55 or under. The reason why is because the idea ... our ordinances are made by the Board of Supervisors and then we just have to follow up with the requests. But the Board of Supervisors have said that they need to have the corn suitability rating, or just the value of how good the land is if you can grow stuff on it, because Muscatine County sees the land as being a soluble resource in the county and something to be protected. So if the property is not good for growing crops on, then it's not an issue, you know you could built a house on it and that would be fine. But the thing is, the CSR that we have here is 67 which is 12 points above what it needs to be in order for us to look at it. So you know, one thing that we have dealt with in

the past is that we look at the entire parcel, you know as for the CSR. Now if you were to survey off a certain portion so that it would be a subdivision... maybe a real estate lawyer could be able to tell you if it could be done and be able to make it into a parcel that was under 55, if that's what it is, you know, so it's not good ground for growing crops, then we could look at the request. That real estate lawyer would be able to tell you ... hey with what we surveyed out, you know, now the area that you have is under 55 and the place where you want to put it is more than 1,250 feet away. Then you get past the hurdles that we've got. We really as a board, historically... Tom you can correct me if you see it differently because you have been on the board longer than I have, but we pretty freely grant these requests if the CSR is below 55 and it's the right distance away, unless there are certain circumstances like it's going to really increase the traffic on the roads or something like that, but that doesn't happen very often. We pretty freely grant those requests in the past. But the situation that we have here is the parcel that you have is over 55 and that makes it so that we just can't grant the request. Now if you could take to the a real estate lawyer and find a way so that it could be parceled off so that specific parcel would be under 55 and where you want to build the house is going to be more than 1,250 feet away... If you bring that before the board and you know, I'm not going to say that we will or will not, but I will tell you that it's going to be much much more likely to be approved. I wouldn't say it's guaranteed but those are the main things that we look at.

Dean Maurer: Well that piece of ground where I want to put that is some that really has never been farmed. It's just been basically used for pasture. My dad owned the property for as long as I have been alive, longer than that actually. The only thing he ever really used it for was pasture ground. So I can't understand why that would make such a big difference because the CSR is 67 when it's never ever really been farm ground.

Bill Tharp: Well those are the rules that we were given by the Muscatine County Board of Supervisors.

Tom Harper: Right and this is the average of the entire 19 acres. If you take the front part, you know, parcel that off... it may not be... it may be less than 55. I don't know. But this is the rating and that has to be the average of the entire parcel. So where the creek goes through, you know that's way low but in the back part it probably is higher. Another thing, was there any correspondence?

Eric Furnas: No correspondence.

Tom Harper: Eric did you have anything to add?

Eric Furnas: Well just that I wanted to respectfully remind the Board of Adjustment that the rural residence special use permit guidelines include many different factors, there are five, six seven... different factors that are to be considered as a totality when considering a specific site. Some are listed as high importance and some are of moderate importance. The CSR2 rating is one of the first ones listed as a factor of high importance, however ... and as Bill touched on, separation distances is always been very strongly considered. The rest of those factors are in there for a reason to help the board look at the totality of the circumstances. In this area there are four existing residences that are less than 1,250 feet which is the recommended minimum. The reason we ask for the separation distances is to take an overall look at residential density to try to avoid developing dense residential uses in A-1 Agricultural Districts. There are also pretty significant agricultural uses in this immediate vicinity. There's a hog confinement directly to the east approximately... that's one of those green arrows on the map that runs to the east, it's about 2,200 feet away and much of the surrounding land is used for manure application. In the recent past there has been a large chicken facility to the south, so that's

one of those things that we need to consider too, is the agricultural impact and that's why we look at those issues. So my big concerns are obviously as noted by Bill, the CSR2 rating of the parcel and also the residential density that is starting to appear in this area and the agricultural uses in the area. I would be a little concerned with encouraging someone to split something off just to get around the CSR average that we have tried to apply in the past. But that is just one of the criteria's that we need to apply.

Bill Tharp: Thank you Eric and that brings up also that we are not just talking about the CSR2 rating being under 55 and then also the distance of 1,250 feet, but there's also the extraordinary circumstances that can come up and it sounds like Eric is discussing some of the possible extraordinary circumstances that a full board with five people would discourage them even if your CSR and distance is correct. The board still may not grant your request. Of course, I am not giving you advice as to what you should or should not do. I guess I would ... the best advice I can give is to talk with a real estate attorney about the situation and have them give you an opinion as to how you should proceed. As it looks right now if we start changing the requirements of 1,250 feet and have the CSR allowed to be over 55, we open ourselves up to litigation because then we look arbitrary and capricious where we have definitely held the line before. So that's why Mr. Chairman, I think that we should make a motion to approve and then decline to pass that motion.

Tom Harper: Alright, is there any further discussion? Does anyone else here have anything to add?

Bill Tharp: Yeah, I just feel like our hands are tied.

Tom Harper: Does anyone care to make a motion?

Bill Tharp: I will make a motion to approve the application for a Special Use Permit for Mr. Dean Maurer to build a dwelling for himself on the subject property in this Board of Adjustment Case #17-06-01.

Tom Harper: Is there a second?

Carol Schlueter: I will second the motion.

Tom Harper: The motion has been made and seconded to grant the Special Use Permit as stated in the application. Any other discussion? Hearing none, all those in favor of the motion signify by saying Aye (0) Opposed (3) Absent (Emily Geertz & Mike Birkinbine). The motion has been denied.

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 June 2, 2017 with Chairperson Tom Harper and members Carol Schlueter and Bill Tharp present, Emily Geertz and Mike Birkinbine were absent. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator were also in attendance.

Also present for this hearing: Lee. T. Maxwell.

Tom Harper: Okay, next case?

Eric Furnas: Case #17-06-02. An application has been filed by Hafner Land Ltd, by Dean Hafner Record Owner, and Lee T. Maxwell, Proposed Builder. This property is located in Moscow Township, in the NE¼ of Sec. 35-T78N-R2W, at the corner of Hwy. 38 and 150<sup>th</sup> Street, containing approximately 37 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 to allow Mr. Maxwell to build a one family dwelling on this property after two acres have been split from the property.

Tom Harper: Is the applicant or Record Owner here?

Lee Maxwell: Yes.

Tom Harper: Was there any correspondence?

Eric Furnas: No correspondence.

Tom Harper: Can you please state your name and a little background on your request?

Lee Maxwell: My name is Lee Maxwell. I currently live at 1444 North Isett. I wish to build a single family on a parcel of two acres approximately right exactly in this location.

Carol Schlueter: Right here?

Lee Maxwell: Right, right, essentially right in the middle. Previously there has been a house in this location and it was torn down in the mid-80's. As you can see on the GPS, there is two grain bins, a pole barn, we'll say, and there is also a small garage and the foundation from a previous shed or barn of some sort. So the ground has never been farmed before. Essentially I would utilize the old well and put the house where the old house used to exist.

Tom Harper: Eric, do you have any comments?

Eric Furnas: Well as stated in my comments on the development report, I think the main issues here again is residential density, there are three existing residences, three rural residences that are less than 750 feet from this proposed site. It is my belief that this type of density really starts to erode the intent of the Comprehensive Plan that is in place to prevent that type of residential density. The CSR2 rating of the parcel average is 87. So this is similar to the last case, this has two very strong considerations there. Also a lot of intensive agricultural use in that area, that is also one of the factors that we look at.

Carol Schlueter: Okay, what is the obligation about the house that he said was there? What... did it just get torn down because it was old?

Lee Maxwell: Yeah it got torn down because it was an old house, it was torn down in the mid-80's.

Carol Schlueter: So can they just replace it?

Eric Furnas: Replacement of a non-conforming use must occur within one year of the discontinuance of that non-conforming use. So once the year has gone by the permitted uses of the land would fall back to the ones that are spelled out in the Zoning Ordinance. And in this case it is zoned A-1 Agricultural District, so therefore farm exemptions, rezoning, or Special Use Permits are your options.

Carol Schlueter: Okay.

Bill Tharp: Mr. Chairman if I may, unfortunately for the applicant, this is a very very similar situation to the one that Mr. Maurer presented in our last case. We have an ordinance and the first two rules that we look at are the distance of being more than 1,250 feet away and then also having a CSR2 rating of 55 or less, or less than 55. In this case we have a CSR2 of 87, which is well above the 55. Which as I'm sure that you heard earlier, you know, the point is to keep the ground in the county that is available to be used for farming, that it is supposed to be used as farming, because the soil in the county... the Board of Supervisors has told us, as a guide and principal that the ground in the county is a valuable resource to the county and it's our responsibility to protect it. So that's why they give us certain guidelines and one of them is the corn suitability rating and the area that you are making the application is well above what it says that is available for you to do it. Also the distance away is much closer than we can allow. Although a house was there in the 80's, as Mr. Furnas had discussed earlier, that was back in the 80's and there would have been a certain time to rebuild it if there had been a disaster. So then since that time there have been other buildings that have been built, so now you need to look at the distance that you are from those other buildings or whatever the situation was at the time. Also with the other issues of, you know, having a lot of construction of residences in a close area, you know, is against what the county plans are. You know, in short, the county wants to say we build houses in cities and then we use the ground out in the county for farmland. (changed tapes)

Tom Harper: Okay, are there any other comments? If not, I will entertain a motion.

Bill Tharp: Mr. Chairman I will make a motion to approve the Special Use Permit request in order for Mr. Maxwell to build a rural residence on this property after two acres has been split off.

Tom Harper: Is there a second?

Carol Schlueter: I will second it.

Tom Harper: There has been a motion and it has been seconded to allow this Special Use Permit in order for Mr. Maxwell to build a rural residence on this property after two acres have been split. Any further questions? Not hearing any, all those in favor of the motion signify by saying Aye (0) Opposed (3) and Absent (Emily Geertz & Mike Birkinbine). The motion has been denied, the request has been denied.

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