

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, December 7, 2018, with Chairperson Carol Schlueter with members Emily Geertz and Tom Harper present, Bill Tharp and Carl Kleppe Jr. were absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator were also in attendance.

Present for this hearing: Chris Ales, Chuck Coulter and Lisa Ales.

Carol Schlueter: It is 10 o'clock, I guess we will get started. I will open the public hearing and 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. Today we only have three members present, so we have to have a unanimous vote. You have the opportunity to have the appeal delayed until the next meeting. This request must be made prior to Board deliberation of that 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. Board members, I take it you all have had a chance to read the minutes that Dixie emailed to all of us. If so, is there any changes or corrections? If not, is there a motion to approve the minutes as written and the resolution?

Tom Harper: I will make a motion to approve the minutes and resolution as written.

Emily Geertz: I will second the motion.

Carol Schlueter: There has been a motion and it has been seconded to approve the minutes and resolution as written. All those in favor please say Aye (3) Opposed (0) Absent (Kleppe & Tharp). The motion has passed. Okay, we only have three members present today, two members are absent. The vote would need to be unanimous in order to pass. You can request us to table this request if you would like to, you would need to request that prior to the motion and vote. Eric, would you please read the first request?

Eric Furnas: Case #18-12-01. An application has been filed by Joseph L. Lobdell, Record Owner and Chris Ales, Proposed Buyer and Builder. This property is located in Montpelier Township, Lobdell 2nd Addition, Lot 2, in the SW $\frac{1}{4}$ of Sec. 16 and the SE $\frac{1}{4}$ of Sec. 17, all in T77N-R1E, containing approximately 20.79 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. Chris Ales to build a rural residence on this property.

Carol Schlueter: Was there any correspondence?

Eric Furnas: No correspondence.

Carol Schlueter: Okay, would the spokesperson please state their name and tell the committee a little more about this request?

Chuck Coulter: My name is Chuck Coulter, 119 Sycamore Street, Muscatine, Iowa. This property is in Lobdell's 2nd Addition, Lot 2. They are wanting approval to build a one family dwelling on this property. We worked through the application and the requirements. We feel that this is a fairly simple thing to approve. But if you have any questions, Chris is here and I am here.

Carol Schlueter: Okay, thank you.

Tom Harper: So this is a request is to build on a rural ag subdivision, is that right?

Eric Furnas: Yes this subdivision had to go before the Zoning Commission and Board of Supervisors a number of years ago to get approved. The property was divided amongst the children. This subdivision is an agricultural subdivision and would need to have a Special Use Permit approved to build a rural residence.

Carol Schlueter: Okay so this is 20 acres, correct?

Emily Geertz: Yeah, 20.79.

Carol Schlueter: So this property is all in the blue line, is that correct?

Eric Furnas: That's correct.

Carol Schlueter: Okay what is the road that goes to it? Is it a road or like a lane?

Eric Furnas: Umm... yes. There is a portion of 186th Street, you can kind of see on the aerial where it ends. The portion after it ends does not receive county maintenance. It's where the yellow bordering lines are, it would be privately maintained the rest of the way out. That is also the easement for those lots, they are attached at different lines. I don't think that the easement for these lots are in question by any of the proposed owners or current owners.

Carol Schlueter: Okay, so it also has accessibility for ambulance and fire trucks and all of that?

Eric Furnas: Using the term accessibility loosely, yes it does. But there's no buildings there yet. But yes, I drove on it yesterday. It has gravel on it, it's not much different than a gravel road in the county.

Carol Schlueter: Okay, does anyone on the board have any questions, comments or concerns?

Emily Geertz: It looks like the CSR is very low.

Carol Schlueter: The CSR is what?

Emily Geertz: It's 38.

Carol Schlueter: Yeah that's below the 55.

Eric Furnas: And right down the road about two years ago there was a Special Use Permit that was approved for Mr. Robert Tyler to build a home, it hasn't been built yet. The location was GPS'd at that time and this proposed dwelling is over 900 feet from that approved location. It is well over the minimum from existing livestock locations and farm operations.

Carol Schlueter: Is there anyone in the room that wishes to speak for or against this request? Does the board members have any questions, comments or concerns on this request?

Tom Harper: I have no concerns on this. It meets or exceeds all the minimums.

Carol Schlueter: Does someone care to make a motion on this request?

Emily Geertz: I will make a motion that we allow this Special Use Permit for Mr. Ales to build a rural residence on this property.

Carol Schlueter: Is there a second?

Tom Harper: I'll second it.

Carol Schlueter: It has been moved and seconded that we allow this Special Use Permit in order for Mr. Ales to build a rural residence on this property. Is there any other discussion? If not, everyone if favor please say Aye (3) Opposed (0) Absent (Kleppe & Tharp). The motion has passed, the request is approved.

Chris Ales: Thank you very much.

Carol Schlueter: You are welcome.

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

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, December 7, 2018, with Chairperson Carol Schlueter with members Emily Geertz and Tom Harper present, Bill Tharp and Carl Kleppe Jr. were absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator were also in attendance.

Present for this hearing: Hart Larew.

Carol Schlueter: Okay, next request. You were here at the last meeting where I said that normally we have five members present but today we only have three. The vote would need to be unanimous order to pass. You can ask to have us table it prior to the vote. It's up to you.

Hart Larew: Okay.

Carol Schlueter: Eric would you read it please?

Eric Furnas: Case #18-12-02. An application has been filed by Hart A. Larew, Record Owner. This property is located in Wapsie Township, Sacred Savanna, Lot 1, in the NE¹/₄ of Sec. 6-T78N-R4W, West of Bancroft Avenue, containing approximately 41.96 acres, and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to release the restrictive covenant that was placed on this property in 1999. I can kind of elaborate a bit, because this is not a typical case that the board normally hears. We haven't had something like this for years.

Carol Schlueter: Sure can you please give us some background on this request?

Eric Furnas: Yes, I'm sure that all of you are probably aware that it was a commonplace, I believe prior to 2015 our ordinance allowed in the A-1 Agricultural District for existing farmhouses to be split from the farm ground if the owner would attach a restrictive covenant to the remaining property. In 2015 the Zoning Commission recommended to the Board of Supervisors to drop that requirement to attach that covenant to the property. They felt this was just another governmental layer that wasn't necessary. Our zoning district regulations afforded extra protection against unchecked development in the ag area. Essentially there are two ways that you can build a house on A-1 property in the county. There is a Special Use Permit, that this board is well aware of, or if you can file a farm exemption with my office. We are also seeing once or twice a year the old restrictive covenants that have been in effect and people are needing to apply for a Special Use Permit in order to build. All of the restrictive covenants contain language that state the covenant must remain in place until such time that they are released by the appropriate zoning authority. Now the code does not really clarify who that is. Some counties believe that the zoning authority is the Zoning Administrator. I feel more comfortable with the Board of Adjustment being that authority and that we should notify the adjacent homeowners just like other Special Use Permit's and Variances. There should be discussion about whether this is in harmony with our development plans and Comprehensive Plan. So that's how we got to where we are. So people are no longer required to attach a restrictive covenant to split off an existing farmhouse. You see this happening all the time. As farms get bigger, properties are purchased with farmhouses on them and farmers don't necessarily need another house, so they are allowed to split off that house. We did add the requirement that the house being split off must be at least five years old, and that was to safeguard the abuse of the farm exemption where farmers would build a house without a building permit, sell it and move over to another 40 acres and do it again. So we wrestled with whether five years or ten years, and we felt that five years would be sufficient to safeguard someone from abusing the farm exemption. That brings us to this current case, in 1999 Harold and Dorothy Spencer signed a restrictive covenant in order to sell the house off at 1075 Hwy. 6. It's

on the north side of Hwy. 6 and near the Johnson County line. So this restrictive covenant has remained attached to the ground even since dividing it up and being sold to different owners. But a large part of this property that is in crop production belongs to Hart Larew. He is selling hay off the property and he is planning on planting fruit trees on this property. He wanted to submit a farm exemption on this property. So prior to this meeting I told him that I couldn't even consider the farm exemption with this covenant on it. I believe that... and in addition ... Mr. Larew actually owns and manages another portion as a trustee for a special needs sibling, I believe. So he is asking for the restrictive covenant not to be dropped on that and has no interest on dropping the covenant on that portion of the property. He actually manages the ag activity on that other portion, he does not own it. So he is just asking for the restrictive covenant to be dropped on Lot 1 of Sacred Savanna. Our Comprehensive Plan does speak to preserving ag properties for farm activity. And that would continue even if this restrictive covenant was dropped. I don't know that I would be supportive of a Special Use Permit application after the request that you drop the farm exemption. I think that would be a case that I think we would be better served to keep it on there, if he asked for a Special Use Permit. But in this case where he is actively involved in farming and perhaps to build his house there, I think that is still in the spirit of and in harmony with the Comprehensive Plan.

Carol Schlueter: Okay, thank you Eric. So what is in blue, that's the 40 acres?

Eric Furnas: That is Lot 1 of Sacred Savanna that Mr. Larew owns. The more narrow portion that is directly south of that is Lot 2 that Mr. Larew is a trustee of, it's his brother that he manages for. He is not requesting that the restrictive covenant be dropped on that. So we are to the point now that only one house under a farm exemption could be built on that and this property. So I'm thinking that that's all this subdivision would allow.

Carol Schlueter: But this ground is all farm ground?

Eric Furnas: Yes, out of the 47 acres, approximately 15 acres is in alfalfa hay that he sells and then he leases the balance to a neighbor that has it in annual crop rotation and he will be planting fruit trees.

Emily Geertz: So if I get this right... and correct me now if not, but you are suggesting that we grant the release of the restrictive covenant for farm exemption purposes?

Eric Furnas: I am.

Emily Geertz: I just want to make sure that I word this right before making a motion.

Eric Furnas: Yes because you are not considering a request for a Special Use Permit in order for Mr. Larew to build a dwelling. He would still have to submit the farm exemption application and he would have the burden to meet that requirement of a farm exemption. From what I've heard and from what I've known already, I believe that he would qualify. For the record we did receive two correspondences for this case and they are attached in your packets. I believe they are from the people that still retain a portion of this property and the restrictive covenant would still remain on their property.

Carol Schlueter: Okay, so we as this board can remove this restrictive covenant?

Eric Furnas: Sure, because I believe that you are the appropriate authority. I just think that this is an extra layer of protection and certainly the Board of Adjustment has more authority than what I have. I just like the idea of having a public hearing and notifying surrounding neighbors and Record

Owners. So I don't think there is a question on whether the Board of Adjustment would be the appropriate authority.

Carol Schlueter: Okay. I guess we haven't heard from the applicant. I guess we kind of know what you want, but do you want to explain anymore?

Hart Larew: I am Hart Larew and yeah... my grandparents had the restrictive covenant placed on this property in 1999 when they sold the farmhouse off. But yeah, I recently bought out my two sisters and now own Lot 1 of Sacred Savanna. I have been farming it about a year now. I live in Iowa City right now.

Tom Harper: Not that it matters, but are you a relative of the original Spencers?

Hart Larew: Yes, they were my grandparents.

Tom Harper: Okay, so it's a continuation of ownership.

Emily Geertz: I have no problem with it and I think we should grant it.

Carol Schlueter: Okay, if there are no other comments or questions, is there a motion?

Tom Harper: I think that this is ... it looks like this is pure farmland. We've had other cases in the previous years with older farms and restrictive covenants being removed.

Carol Schlueter: Well like I said, all we are doing is releasing the restrictive covenant. He still has to apply for a rural residence.

Eric Furnas: No.

Carol Schlueter: No?

Emily Geertz: No, farm exemption.

Eric Furnas: Farm exemption or rural residence, however, I would not be supportive necessarily if he were to ask for a Special Use Permit to build a rural residence. I think to justify that we are still in the spirit of our Comprehensive Plan a farm exemption would keep it ... he is living on the ground and farming that property. I would anticipate in very short order he would submit the farm exemption application, which is submitted to my office for approval.

Carol Schlueter: Okay. No other comments or questions?

Tom Harper: I don't have a problem with this.

Carol Schlueter: I would entertain a motion.

Tom Harper: I will make a motion that we approve the request to grant the release of this restrictive covenant on Lot 1 of Sacred Savanna and that the restrictive covenant remain on the rest of the property.

Carol Schlueter: Is there a second?

Emily Geertz: I'll second it.

Carol Schlueter: There has been a motion to approve this request to release the restrictive covenant on Lot 1 of Sacred Savanna and for the restrictive covenant to remain on the rest of the property, and it's been seconded. Any further discussion? If not, all those in favor of the motion please say Aye (3) Opposed (0) Absent (Kleppe & Tharp). The motion has passed, the request is approved.

Hart Larew: Thank you.

Carol Schlueter: No problem. Good luck.

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