

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, July 9, 2021, with Vice Chairperson Tom Harper and board members Carol Schlueter, Emily Geertz and Charles Clark present, Janelle Spies was absent. Eric S. Furnas, Planning, Zoning & Environmental Administrator and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Terry Becker and Randy Kline.

Tom Harper: Okay, since Janelle Spies is not here, I will open the Board of Adjustment meeting this morning. I will start with reading 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. If fewer than five members are present, the appellant has 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. Okay, so the minutes from the last month were sent out to everybody. Is there any discussion or changes on those? If not, I'd like a motion to approve the minutes as read.

Carol Schlueter: So moved.

Tom Harper: Is there a second?

Charles Clark: Second.

Tom Harper: Okay a motion has been made to approve the minutes as read and it has been seconded. Any further discussion? Not hearing any, all those in favor of approving the minutes as read please say Aye (4) Opposed (0) Absent (Spies). The motion is granted. So since we are a board of only four today, if we vote and it's a tie vote, it would be a no vote. You have the option on continuing with us this morning or we can table the request until the next meeting when we may or may not have a full board. Do you wish to continue?

Terry Becker: Yes.

Tom Harper: Okay, Eric would you please read the first request?

Eric Furnas: Case #21-07-01. An application has been filed by Evelyn Hinkhouse, Record Owner and Terry Becker, Applicant and Cottage Owner. This property is located in Moscow Township, in the NE $\frac{1}{4}$ of Sec. 6-T78N-R2W, Hinkhouse, Lot 1, Buildings on Leased Land, 1134 W. Hinkeyville, and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order for Mr. Becker to place a 400 sq. ft. detached accessory structure in front of the cottage and only eight (8') feet from the front lot line, instead of the required 35 feet. This request was tabled from the May and June, 2021 meetings.

Tom Harper: Was there any correspondence?

Eric Furnas: Yes, you should have in your packet a letter that we received, it was signed by Evelyn Hinkhouse. She owns the property. That's the only correspondence that we received.

Tom Harper: Do I need to read it or anything? I'll read this into the record. In regards to the building permit that Terry Becker is attempting to get for a carport at 1134 Hinkeyville West, Atalissa, that is on my property. The property line is on the south side of the existing private road. I also would prefer the carport to be built on Mr. Becker's proposed site, the property will look more neat and clean vs. any other site on the property. Evelyn Hinkhouse 06/19/21. Okay, if the applicant could state your name and tell us about your request?

Terry Becker: My name is Terry Becker. I am wanting to put a carport up on my existing property. There is concrete there, so it ... you know. I guess at the last meeting it was mentioned that ... I've got room to put it someplace else because it didn't sound like anyone was in favor of the Variance. But after we checked, Eric had someone come with the GPS and marked my well and I don't have room right there either, is what I am getting at. So no matter what I do, basically I have to have a Variance. I mean, I just think it would look better. So now we know that there's not really room there without a Variance on each side, right Eric?

Eric Furnas: Well correct. I mean there is physical room to accommodate the physical structure, but a Variance would be required on the side lot line setback, as opposed to you allowing a Variance from the front lot line.

Terry Becker: Also, I don't know if you are interested, but I took several pictures of other properties down there. Some of the properties are actually over that line. So I don't see how I am setting a bad precedence. Do you want to see some of the pictures?

Tom Harper: I don't. Does anybody want to see them?

Carol Schlueter: No, I don't.

Emily Geertz: What is the orange lines here?

Eric Furnas: That is the drainfields for the septic system.

Carol Schlueter: The septic system is on the other side of the road?

Eric Furnas: Yes, the drainfields are because there is no room on this lot for them.

Terry Becker: It's the leach field, not the septic tank. Yes, that's the Hinkhouse property too.

Carol Schlueter: So if you were to put this to the west... Isn't there room for it there? Or you would still need to have a Variance there too?

Eric Furnas: Yeah, he'd still have to have a Variance there too. It would only be about two feet from the property line. He'd have to stay at least 10 feet away from his well that is west of his house.

Terry Becker: Yeah and that's another issue, on both sides I have utilities underground that I can't cover up or get too close to.

Tom Harper: So the well is on one side of the house and the septic tank is on the other side?

Terry Becker: Correct.

Carol Schlueter: Okay, if you could explain... you've got a garage there now, correct?

Terry Becker: Yes.

Carol Schlueter: So why do you want a carport in front of that?

Terry Becker: Because I do a lot of woodworking and stuff and a lot of the garage is my shop and I've got two vehicles. So I'm just going to park my truck inside because I don't use it all the time and have my car, which I use all the time, have it under the carport.

Carol Schlueter: So you just want it to park your car under it?

Terry Becker: Yes. And if I were to move it over I actually wouldn't want to walk over there every time, you know, out in the weather to get in and out of my car. So I'd put my truck in there and the proposed building right now isn't really long enough to get that one under.

Randy Kline: I am Randy Kline from down there too. I've never had a carport, but it's a nice place to wash your vehicle underneath so you are not in the sun. I had one and I'd like another one. But it's just really nice. I'm the one that talked him into it. I said you need a carport out here so you can stay out of the sun and be in the shade. We're not as young as we used to be and the sun affects us.

Tom Harper: Eric, do you have any comments on this?

Eric Furnas: Well I would just reiterate ... because one of the things that we need to look at from last month was, was there viable space on the side or not. There is space that would accommodate it, but it would require a Variance also. It looks like approximately about 1½ to 2 feet from the side lot line, as opposed to a Variance being granted on the front. Now just the other day I sent you that court case that I was just recently made aware. The Iowa Supreme Court made a ruling on Variances for structures like this... that they must find a unique and substantial hardship in order to grant a Variance. The county attorney made me aware of that ruling, so I provided that information to you.

Tom Harper: I really don't see a hardship being shown in order to place this on the front like this, like the request states.

Carol Schlueter: Yeah, I don't either. You want to use it just for parking and washing your car, is what I heard. I can't either, I can't see the hardship here.

Tom Harper: I can see putting it on the side, but I'm still kind of torn about that. But on the front of your place, we have the road. You put it on the side, you are not going to have any issue with the road there. But I also can't see a difference in the hardship either on the front or the side. That's my impute. I mean, there's a hardship to you because you've got no other place to build it. But I don't know that that rises to the level of granting this Variance.

Terry Becker: And it doesn't matter to you ... I don't know how many properties there are down there that the structures are actually built over the line? I'm not even close to it.

Tom Harper: I know that, that's happened in the past and we can't correct the past.

Terry Becker: Well we can try to. That's why I bought the place... So you are trying to improve the past or make sure it doesn't happen again, or whatever. But I'm not proposing to go anywhere near as close or as bad as what those are. If you would take notice, the gravel road out in front of me is probably twice as wide as the gravel road is down on the other end. So I'm still way back further from the gravel than anybody else is... well I shouldn't say anybody else... but the majority.

Tom Harper: Are these lots lines even really platted?

Eric Furnas: So there's not individual lot lines platted, like between the lots. It's a separate parcel where all the cottages are. There is a roadway right-of-way that is excepted out and then it's a separate parcel that is a farm field that is south of the road. So where all the buildings are is one big tax parcel. Mrs. Hinkhouse maintains some sort of hand written map that no one really knows where the lot lines are between the cottages, but we do know where the front lot line is because that's where the roadway starts.

Tom Harper: So what is the front lot line setback then?

Eric Furnas: On a Seasonal Recreational Cottage in an A-1 Agricultural District it is 35 feet from the front lot line.

Tom Harper: So the house isn't even in?

Eric Furnas: Probably not... but there's a lot of houses, sheds, structures all throughout the county that are considered non-conforming that were built prior to building setbacks. The setbacks have changed with zoning over the years and some are grandfathered too, so I don't believe that your duty or your obligation is to provide a Variance for everyone to match what the non-conforming uses are or to use up every inch of their space. The challenge here is whether there is a hardship here or not, is there a unique and substantial hardship. Just because you want a garage, doesn't necessarily mean that there is a hardship there if it can't be placed within the stated setbacks. The lot is what it is, just like this lot can't accommodate a 5,000 sq. ft. house on it...

Emily Geertz: So the yellow line here isn't technically a correct lot line?

Eric Furnas: That west line is accurate, that is a separate parcel, that is a separate property. And I do want to point out – if you are considering that side lot line Variance at all... nothing will ever be built on that lot, there will never be a neighbor there. That property was purchased by Muscatine County. There used to be a dwelling there and it was purchased through flood buy-out funds. The deed restrictions state that nothing would ever be allowed be built there. It is perpetual green space there. But I think Carol and Tom have it right, the hardship burden is still the same whether it be side or front lot lines in order to determine a hardship.

Terry Becker: Is there any... I mean, I don't know how you guys would feel if this is your property but health wise, I'm not doing the best. I should be dead. I've been on dialysis for 15 years. I don't want to be walking out in the snow and rain and stuff all the time to get to my car. I have to go to dialysis three times a week. So I view that as a little bit of a hardship. And also, if you put it on the side... you are still putting it over by my utilities and that's a hardship. But I guess you guys don't...

Eric Furnas: Do you live at this cottage?

Terry Becker: Yes.

Eric Furnas: Well it's a Seasonal Recreational Cottage so you are not to live there year round, full time.

Terry Becker: Well I don't live there fulltime, I mean I get my mail there.

Eric Furnas: Well that's what they would wrestle with ... was there really a hardship if you have to go to dialysis three times a week and you are to have a primary residence elsewhere.

Terry Becker: No, I would just stay at my daughters.

Eric Furnas: Right, because by law you are required to maintain a permanent residence elsewhere. You can't live full time here in this Seasonal Recreational Cottage.

Terry Becker: Well whether I own it or not... I mean, right? I mean, you don't want me to get my mail there or what?

Eric Furnas: I'm just trying to help them explain the issue that they are wrestling with to you about showing a hardship. I mean, if you want to stipulate that the hardship is that you are coming or going from the dialysis because of your health... I'm not arguing that you don't have that condition, but that shouldn't be your residence, it should be a recreational property.

Terry Becker: Well I was always ... I mean, if you have to have a full time residence, I do.

Eric Furnas: Actually it's six months you can stay there and have a fulltime residence elsewhere.

Tom Harper: Yeah, a full time residency is more than six months total time.

Eric Furnas: We don't police how many days a person uses their cottage. The law or the code states no more than six months out of the total year. They can split that up with every other day, three months at a time... but it does say that you must maintain a full time residence elsewhere. So just from a particle standpoint ... a hardship for something that you would need a Variance on... I mean, if this isn't your full time residency ... and this building isn't allowed to be your fulltime residence.

Tom Harper: Alright, is there any other discussion or comments? And again, there are only four members here today. So if it's a tie vote, it's a no vote. You have a choice of trying it again next month or going ahead with it today.

Terry Becker: I don't know what else I can do, I mean... I've tried to be straight forward with you, unlike many people down there that just go ahead and do it and no one has ever been made to move anything. So I don't know, I feel like I'm being penalized because I am trying to do everything right.

Tom Harper: Does anybody care to make a motion?

Eric Furnas: For the record, there really should be a positive motion and then vote however you would like to.

Carol Schlueter: Yes, I will make a motion that we allow this request for a Variance in order for Mr. Becker to place 400 sq. ft. detached accessory structure in front of his cottage and only eight feet from the front lot line, instead of the required 35 foot setback.

Tom Harper: Is there a second to that motion?

Emily Geertz: I'll second it.

Tom Harper: A motion has been made and seconded to grant the request for Variance in order to place a detached accessory structure in front of the cottage and only eight feet from the front lot line, instead of the required 35 foot setback. Is there any other discussion? Hearing none, I will take a roll call vote. Charles?

Charles Clark: No.

Tom Harper: Carol?

Carol Schlueter: No, because I don't think that it shows hardship.

Tom Harper: Emily?

Emily Geertz: No.

Tom Harper: I vote no. I'm sorry it's has been denied.

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By Eric S. Furnas, Planning, Zoning & Environmental Administrator

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, July 9, 2021, with Vice Chairperson Tom Harper and board members Carol Schlueter, Emily Geertz and Charles Clark present, Janelle Spies was absent. Eric S. Furnas, Planning, Zoning & Environmental Administrator and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Rick Smith and LeAnn Smith

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

Eric Furnas: Case #21-07-02. An application has been filed for the David W. Johnson Trust, Record Owner by Barbara & Richard Kaalberg and LeAnn Smith. This property is located in Wapsie Township, in the SE¼ of Sec. 18-T78N-R3W, Parcel A, 1689 130th Street, containing approximately 22.97 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 an existing detached accessory structure to be only seven inches (7") from the side property line, instead of the required five feet, after it has been split from the property. This request will be reheard due to the fact that on June 14, 2021, the Board of Supervisors voted to remand the Board of Adjustment's decision.

Tom Harper: Was there any correspondence, other than what the Board of Supervisors gave to us?

Eric Furnas: No additional correspondence from the public, no. You have an updated memo from me based on the recommendation of the county attorney when the Board of Supervisors made their decision. The county attorney is just seeking that you clarify that the Variance that you granted. He's trying to avoid a precedence here, that the Variance that you granted back in June would only apply to the existing buildings, like the buildings that were talked about during that meeting, that they wouldn't automatically apply to any new buildings that would be constructed. So to just make that recommendation.

Tom Harper: Do we need to have the applicant make any additional statements?

Eric Furnas: No, there request is still the same. He just feels that it is up to you folks to clarify, as part of your hearings. That this Variance only applies to the buildings that are currently there now and any new buildings, if the existing buildings were to be substantially damaged by a tornado, wind or whatever, that they would need to be built to current building codes. I think that you all understand that.

LeAnn Smith: And that's language that we would put in our deed?

Eric Furnas: Well you could but you wouldn't necessarily need to. If the owner of that property came to me asking for a building permit, I could only issue a building permit if the site plan showed that it was in accordance with the appropriate setback. So it just clarifies it.

LeeAnn Smith: A copy of Variance would be recorded with it?

Eric Furnas: Well typically... any resolution or action by this board we do typically record a resolution, but I don't think that it would go along with your deed.

Tom Harper: So basically we just need a new motion stating the stipulations?

Eric Furnas: Yes if that's what you are wanting to do. They remanded it back for further consideration. You could say we are fine without it. My recommendation is based on the county attorney's opinion, that if you are still wishing to grant the Variance just add a stipulation that it applies to the existing buildings only and then I think everyone will be satisfied.

Tom Harper: Okay, is there any discussion or comments? Not hearing any, is there a motion?

Carol Schlueter: Yeah, I will make a motion to approve this Variance in order to allow an existing detached accessory structure to be only seven inches (7") from the side property line, instead of the required five feet, after it has been split from the property, with the stipulation to this Variance that clarifies that it only applies to the existing building and that all new construction or repairs to a substantially damaged structure would be required to meet applicable setbacks.

Tom Harper: Is there a second?

Emily Geertz: I will second that.

Tom Harper: A motion has been made and seconded to grant the Variance in order to allow the existing grain bins remain seven (7") inches from the lot line with the stipulation that if they are destroyed the Variance is null and void and any new buildings would need to be built to applicable setbacks. All those in favor please signify by saying Aye (4) Opposed (0) Absent (Spies). The motion is approved, the request is approved with the stipulation.

LeAnn Smith: Thank you.

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