

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on January 11, 2019, with Vice Chairperson Carl Kleppe Jr. and members Emily Geertz, Tom Harper, and Bill Tharp present, Chairperson Carol Schlueter was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator were also in attendance.

Present for this hearing: Michael Proctor and Karol Proctor.

Carl Kleppe Jr.: I will open the public hearing. 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. Currently we only have three members present. 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. You have the option of asking for us to table this request until next month when we may or may not have a full board. Okay, the minutes from last month were sent out to the members and you should have had a chance to read them. If there are no changes to the minutes, is there a motion to approve them?

Tom Harper: I'll make a motion to approve the minutes as written.

Emily Geertz: I'll second it.

Carl Kleppe Jr.: All in favor of the motion, please say Aye (3) Opposed (0) Absent (Tharp & Schlueter). The motion has passed. Okay, Eric will you read the request?

Eric Furnas: Case #19-01-01. An application has been filed by Violet C. Proctor, Record Owner by Brent A. Proctor, POA and Michael Proctor, Applicant & Owner of Buildings on Leased Land. This property is located in Moscow Township, in the SW¼ of Sec. 4-T78N-R2W, West of Moscow Road, Lot 2, Gov. Lot 1, West of Moscow Road, containing approximately 72.76 acres, and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order for Michael Proctor to place a detached accessory structure at 1092 Moscow Road that would be approximately eight (8) feet from the front lot line, instead of the required 50 foot setback.

Carl Kleppe Jr.: Was there any correspondence?

Eric Furnas: No correspondence.

Carl Kleppe Jr.: I want to add that Bill Tharp, the fourth member of the Board of Adjustment has arrived. Now if the applicant wishes to continue, please stand, say their name and tell us about your request.

Michael Proctor: My name is Michael Proctor, 1092 Moscow Road. The reason why I can't go back the full amount is because if we do we will be over the hill and in a big pond and it floods all the time. So being on top of the water watching it go around me, it doesn't make a lot of sense to me. So that's the reason why we have to file for a Variance.

Carl Kleppe Jr.: Okay, does the board have any questions?

Emily Geertz: So I guess... I understand the flood plain issue. But I think the other issue though would be that, the container can't be used without structural changes. Correct?

Karol Proctor: Yeah we are putting a library in. So we would need electrical and something for temperature.

Carl Kleppe Jr.: A library for yourselves?

Karol & Michael Proctor: Yeah.

Eric Furnas: They would like to make some improvements... there is actually two containers that they have been placed on concrete pads. So this is really going to be to a permanent structure because they want to improve them. But that is more so on the building permit code side, but the Variance issue is the zoning part of it. They want to permanently place two containers eight feet from the front property line instead of the required 50 feet.

Bill Tharp: So this is a good time, I guess, at the beginning of the year... but I've been on the board now for a number of years. There is the Zoning Commission, they decide where different things are going to happen inside of the county. And, you know, it is set up by them to decide where certain things should happen. And then this board is the Board of Adjustment that is only for if there is a compelling reason why the decision of the zoning board to have things in a certain way, why that would be unjust. Or there is certain words that you see depending upon what it is, like unnecessary hardship, you know, unique property limitations, things that are compelling. You know it would say, like we shouldn't use the rules that everybody else has to live by and that they need to use, but there's a compelling reason on this particular piece of property for this particular situation that says we should deviate from whatever the board decided what the laws are and where things should be. So when I look at these requests and I look at each one and I say, okay what is compelling about this that makes it different so that these people don't have to abide by the same rules that others have to abide by. Because when they purchased the property they have the ability to see where they can do things and where they can't, and what they can do and what they can't. And so when I look at this request, you know, it's not going in front of the king or the queen and saying can we have something done, but you know, there needs to be certain amounts of proof to show why something should happen or why it shouldn't. And these are two shipping containers and it's not going to... and if they want it for what they are going to do, they are not going to get it within the lot line. What is compelling about this that makes it so that, in my opinion, and I'm just asking not rhetorical but to the board, you know, without requesting an answer... or that what I am thinking, is that... Okay so there are some detached accessory structures... and when they bought this land they knew that was the deal, that that was the score. Now what's compelling about this to allow this to happen? Because everybody else has the same rules and if we just allow requests to come by just because somebody wants it, than that cuts the zoning board out at the knees. So what's compelling about your request? What makes your request different than others?

Emily Geertz: Well I think it would be the property limitation, which is the flood plain.

Bill Tharp: And the thing about that is that, you know if it is a self-imposed limitation and... is there a necessity that that detached accessory structure be on there? I mean, it is required that there be another accessory structure there? For example, you know, when I bought my house I know that I only

have a certain amount of space. So I can't build certain things in different areas. You know, my dad has a camper and he would love to go ahead and have his camper be right next to his house but he's not able to do that because the zoning board said that it makes things look unsightly or unseemly. So he needs to rent someplace else to go and store his camper for when he's not camping. Which he understood because when he bought it he knew that was the situation. So I guess I am putting an eye on these requests and saying instead of, you know, being permissive like this shall happen unless no one can prove otherwise. I feel like there is a burden on the applicant to show that this should happen. Because there is a zoning structure that is put into place and if we want to have different lot lines then it's up to the zoning board, in my opinion, to change those. But that's just me, and I don't see anything compelling.

Karol Proctor: The house, the tool shed and the garage are also within 50 feet and they have been there since 1980's.

Carl Kleppe Jr.: Is there anywhere else that you can place these? Maybe towards the north end of the property?

Michael Proctor: Well if you go up to the north you have a big ditch. So I suppose that would be illegal to put one end of the trailer over one end of the ditch and the other end over the other ditch? So as far as I can tell ... and as you go towards Moscow it gets narrower. I mean ...

Bill Tharp: Well still a 50 foot setback and asking for eight? I mean, it's not like it's a couple of inches or a few feet. We are talking a 42 foot difference. I mean, it's quite a difference.

Karol Proctor: If we were the honor the 50 foot setback we would have to remove the trailer house.

Emily Geertz: Well it is in line with all other existing buildings there. I mean, it's not closer than the others, at least from what I'm looking at. I mean, they aren't asking for anything being closer to the front line.

Michael Proctor: I mean we turned it on its side to try to get as much room as we could. And if I went right to the edge of the hill and I put rock in there and got it braced and everything... but still there is a possibility that the rock could give away.

Tom Harper: So this is A-1 zoning?

Eric Furnas: Yes.

Tom Harper: So legally, it is a farm?

Eric Furnas: Not all agriculturally zoned properties are farm exempt. If they had a farm exemption, they wouldn't be here.

Emily Geertz: Well personally I don't have a problem with this. I think there is property limitations with the ditch and the flood plain.

Tom Harper: Yeah I'm not seeing anything different than what we have done in the past, you know constrains like this. I mean a large portion of this area is in the zone plan and buildable, at least for this purpose. I mean, if it was a loafing shed or something it wouldn't be a problem with putting that in a flood plain.

Eric Furnas: To Bill's point, the state or more specific, the courts have ruled that it is the burden of the applicant to prove whether a Variance should be allowed.

I mean, you have to really check the boxes on those things. You have to show that there is a unique limitation for it. I think one of the big things and I think is why it's listed under number 1, can the land not yield a reasonable return without approving this Variance? At the end of the day the board is charged with making sure there is protection of the public interest.

Bill Tharp: You summarized it well.

Eric Furnas: Those are the items that you are charged with wrestling over. There are guidelines that need to be followed.

Carl Kleppe Jr.: So are you guy's planning on anchoring this to the concrete that you guys poured? Is that where it is becoming a permanent structure?

Karol Proctor: From what I understand just because there's concrete, it's specifically permanent.

Eric Furnas: Well you are detailing... and those would be construction issues, you know? We are dealing with somewhat unconventional construction.

Carl Kleppe Jr.: Well that's what I am trying to figure out.

Eric Furnas: The owner placed very substantial footings under these already.

Carl Kleppe Jr.: Yeah I seen that, I went by it.

Eric Furnas: And if they are planning on using this building that humans can come in and out of, than it would be a permanent structure. Our office would work through any building codes with them, as far as valuation, structural engineers, electrical, that type of thing.

Bill Tharp: I believe there is no unnecessary hardship here personally, but that's just my vote, but I respect everybody else's opinion. I could be wrong.

Carl Kleppe Jr.: I just wish they could go up more north. I mean, you own quite a bit north of this, don't you?

Michael Proctor: Yeah at my mother's place. She is in a nursing home now, but yeah we go quite a ways up there further but it's occupied with other buildings. If I go up there I would be hugging something else.

Karol Proctor: But to put the library a significant distance away from the home would kind of defeat the propose.

Michael Proctor: I agree, because I do have right around 1,000 books and I'm running out of room and I look like a horder.

Bill Tharp: It's great to have books, I mean we have 2,500 books in our house and you know my wife is a teacher in the elementary school, my mom was a teacher, my wife's mom was and then one of her friends mom was.

Michael Proctor: So you accumulate them don't you?

Bill Tharp: Yeah and I put them in book cases and we've got them in our house, that's what I did with them. So you know, it's not that I don't like books but it's the building structure.

Michael Proctor: It's your prerogative.

Carl Kleppe Jr.: Were there buildings behind that that you said you had cleaned up?

Michael Proctor: Yeah behind the trailer itself I had a building, I tore that down. Then the red garage there or the tool house right there, it had a bunch of stuff in it and I tore all of that down completely.

Carl Kleppe Jr.: Yeah I was trying to remember. And that wasn't rebuildable at that point?

Michael Proctor: As far as I was concerned it wasn't. I was amused, I received a letter that said that I had to have a building permit in which case I called back up and said do you have to have a permit to tear it down? No response.

Karol Proctor: And shortly after that we took them down. They were lean-to's.

Carl Kleppe Jr.: Do you have any other comments Eric?

Eric Furnas: No, not beyond what I have in the development report.

Karol Proctor: To your point though, I'd rather add onto the house ... it's a mobile home. I mean, I'd rather have it in the house.

Bill Tharp: I understand.

Carl Kleppe Jr.: Any concerns or comments from anyone else in the room?

Bill Tharp: Yeah I wish I felt like I could do it, but with the rules... at least the way that I interpret them, it would be incorrect. You know, and I may be on my own, but it's just that I feel like I could not vote for it.

Carl Kleppe Jr.: Yeah to me, I think that it could be moved, you know what I mean?

Bill Tharp: So I could be wrong and I could definitely be out voted.

Michael Proctor: Well there could be a dozen people in a room and everybody is going to look at it a little different.

Bill Tharp: Right. I will make a motion to approve the Variance in order for Michael Proctor to place a detached accessory structure at 1092 Moscow Road that would be approximately eight (8) feet from the front lot line, instead of the required 50 foot setback.

Tom Harper: I'll second the motion.

Carl Kleppe Jr.: All in favor of the motion to approve please say Aye (Harper & Geertz) Opposed (Kleppe & Tharp) Absent (Schlueter). The vote is a two to two vote, which is a tie vote, a no vote. I just think that there has got to be some other room up here for this outbuilding. We are just too congested right here and I think, you know, what happens with the time that you guys decide to replace the mobile home that you are currently living in? Now you have that structure that is going to be sitting there all by itself, eventually. I mean, if you are going to make that a permanent structure...

Karol Proctor: You mean to place it north of the mobile home?

Carl Kleppe Jr.: You live in the next building up, right?

Karol Proctor: Right, and north of the mobile home is a septic system.

Carl Kleppe Jr.: Okay, but what I am saying is what are you going to do when you eventually need to replace that? Now we are going to have this permanent structure or a structure sitting right here that's not... I mean you are going to

have to get Variances and stuff because you aren't going to be able to rebuild there either.

Michael Proctor: What would happen if I were to tear down that red building? Would that gain me some?

Bill Tharp: Well there is an appeal process, Eric what is that?

Eric Furnas: District court... or excuse me Bill, I need to correct myself. Variances are reviewed by the Board of Supervisors and they can choose to remand this back to you for reconsideration but that's not really an appeal, that's an automatic review. If they choose not to remand it back, they would have to challenge this decision in district court.

Bill Tharp: You can talk to the Board of Supervisors and if they tell us to do something different than we will.

Karol Proctor: No I'm just trying to understand the reasoning.

Carl Kleppe Jr.: Well that's basically where I am at on it.

Michael Proctor: And if I tear that red building down, does that gain enough?

Carl Kleppe Jr.: Well you would have to bring it back to us at that point.

Karol Proctor: Let me ask this... because I don't know the sheet that they are looking at, but we talked about making it ... and on the original sheets we thought about making these containers... to maybe possibly making them into a home with the distance between them being stick built. That is where our mind is going. Then the thought is that we would live in the trailer house until we get this home built.

Eric Furnas: Well the structures would have to be built to residential...

Karol Proctor: Well that's building permit, not zoning.

Carl Kleppe Jr.: Right, we are trying to decide the distance off of the lot line, that's what we are trying to decide here today.

Tom Harper: But even if you decided to build a new house north of there or wherever, you are still going to run into... I mean, you can replace the dwelling that's on there, right? But you are going to run into problems with setbacks and the flood plain with that too.

Eric Furnas: I would say no there is not an automatic right to replace the mobile home, I would have to research the old records. That was granted by the Board of Adjustment under a Special Use Permit years ago to place that mobile home there. It's like how we approve the mobile homes for a certain need, for a limited amount of time, then they must be removed and cannot be split off and made permanent. So I think to replace that mobile home with a permanent dwelling they would have to ask to split the property off, and ask for a Special Use Permit for a rural residence in order to build a permanent structure there. After that you'd be wrestling with the flood plain, because it's a pretty massive area there.

Tom Harper: So there would be a possibility of replacing this but you would have to go through the whole permitting process and you'd run into the setbacks then too.

Eric Furnas: The Variance would have to meet the same burden as today.

Karol Proctor: So we could not even replace the mobile home?

Eric Furnas: Not without going before the Board of Adjustment. Like I said, I would have to check into the old records.

Bill Tharp: I'm sorry folks, I wish I could have say yes.

Karol Proctor: Can I talk to you later on?

Eric Furnas: Yes, after the meetings today.

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 January 11, 2019, with Vice Chairperson Carl Kleppe Jr. and members Emily Geertz, Tom Harper, and Bill Tharp present, Chairperson Carol Schlueter was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator were also in attendance.

Present for this hearing: Todd Buck and Will Mathis.

Carl Kleppe Jr.: Eric, can you please read the next request?

Eric Furnas: Case #19-01-02. An application has been filed with the Board of Adjustment by Todd Buck, Record Owner. This property is located in Moscow Township, Lots 6-10, North Part of Lots 1-3 & Alley, Block 6 & E½ S½ 6th Street Adjacent, 1163 6th Street, Moscow, containing approximately 1.99 acres and is zoned R-2 Residential District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order for Mr. Buck to construct a 30' x 40' addition onto an existing 30' x 50' detached accessory structure to house his semi-tractor.

Carl Kleppe Jr.: Any correspondence?

Eric Furnas: No sir.

Carl Kleppe Jr.: Okay, you heard about the tie vote since we only have four members present. If you wish to have us table it, you need to ask before we vote. Can the spokesperson please state their name and tell us what you are asking today?

Will Mathis: Hi, I am Will Mathis from the Eichelberger Law Office and I am representing Todd Buck in this matter. It is his request to construct a 30' x 40' addition onto an existing 30' x 50' detached accessory structure to store his semi. The first page that I gave to you shows that the property is on the east side of Moscow, so it is not that it is in the middle of town. And he can access this property without going through that many residential areas of Moscow. The second page of the handout shows you were the addition will be located on the property. And he currently parks his semi there occasionally without any complaints from his neighbors. Then on the third page it shows that there is about 64 feet between the existing outbuilding and the side lot line. So if he built the addition it would leave about 25 feet for the side yard, which is allowable under the R-2 Residential District, Public, Semi-Public and Public Service Buildings, under Section 4.3. Mr. Buck's semi-tractor is under contract with Robinson Trucking out of Muscatine. He is out of town about 95 percent of the time. He wants to build his truck addition in order to store his semi about one or two times a week. He wants to avoid paying monthly storage fees to pay to store the semi. The Variance would not alter the character of the area. The Variance would not impair other properties. Mr. Buck owns the property adjacent to the east, there is railroad to the south and other residences to the north and west. Since he owns the adjacent property the addition would not impair the light and air of other properties in the area. The addition would not alter the character of the property because the outbuilding is already being used for storage by Mr. Buck. Mr. Buck occasionally parks his semi in the driveway already so by allowing this addition the semi will be in the building and out of sight. This addition would not create additional traffic because he would only store the semi one or two times a week. He will not be operating a business from this site, he's merely storing the semi one or two times a week. There will be no trailer attached to the semi when he stores it. And when he does store it there, he will not be leaving it running or idling while on site. There will be no offensive odors or noise from the semi. Mr. Buck will not be working on the semi on site and does not personally maintain or repair the semi. He will be taking it to a semi repair shop for maintenance. He is not conducting any commercial business

from the site, he just wants to store his semi on the site. It is not much different than storing an RV on site. R-2 District allows the same uses as R-1 and under R-1 Section 2.6 it states that accessory buildings are allowed if not for business purposes. Again Mr. Buck does own his semi but he would not be conducting business from this property. Mr. Buck, do you have anything to add to that?

Todd Buck: Well the only thing that I would like to add is the road out in front of the property, Cedar Street, is supposed to be 80 feet wide, which I can't ever see Moscow opening a road up to 80 feet wide, you know? If the county was to ... and I know that this is a totally different deal... but if the road was narrowed down, like to say the width of the hard surface now in front of the house, that property... as you can see by that map that it's really screwed up the way it is laid out from east to west... and if I had more room, if the county would shorten that up because they don't use it anyway... I mean they don't maintain it all that great, you know. It's not traveled a whole lot. The lot line would be a lot better off. I mean, yeah, it would still be close but I mean I would have more room. I wouldn't be so close to the lot line, you know. Then too, like Will said, the shed was to store the semi in inclement weather, you know to get it out of the cold. I mean, it sits there now and it never runs. I have an "APU" it is a tri-pack unit that lets it run periodically to charge the battery and stuff. The neighborhoods have never said anything about it. I have made a lot of improvements to the property since I first moved there. And I don't do any work to the equipment there anyway.

Emily Geertz: And you don't live there?

Todd Buck: No, I own the property. My mother-in-law currently lives there and I live at 1169 Moscow Road, which is the old... well you guys might know it as the old gas station. That's where my wife and I reside.

Emily Geertz: Well I guess one of my concerns with this, and you just heard at the last hearing, that it doesn't seem to meet unnecessary hardship criteria or a unique property limitation, which is vital in order to check the boxes, so to speak. I'm just not... I think it is just not there.

Todd Buck: Well I think so. I rented a place here in town for five years and it cost me over \$40,000 and that \$40,000 I spent on renting could have been well spent there. One, making the overall value of the property worth more money and saving me money to house it there. I mean, it sits there anyway. The only time it is going to be under the roof of the shed of the new building structure is probably two or three months a year, the time that I'm home or when it snows, something like that. Any other time it is just going to set out in my driveway like it always does.

Will Mathis: I will add that it was initially denied because they said he was conducting a business there and he's not going to be running a business out of the site. If he were to store an RV in there, it would be allowed to build this under R-1.

Todd Buck: I mean, I've never really had anybody complain about the truck being there and I have a 45 foot RV that sits out there by my barn and it is not all junk or trashed out. I mean, I would say it is an organized mess.

Tom Harper: Well the very nature of you parking the tractor there outside of the garage now is in violation, right?

Eric Furnas: Yes that is my opinion. I want to draw a distinction between... I believe, between parking an RV and a commercial vehicle... and they are called a commercial vehicle for a reason... but the commercial vehicle is for hire. This is my interpretation. The site where you park, store, leave and

return to your commercial vehicle is where you are operating that commercial business out of. That is my position, and I could be wrong and you as the Board of Adjustment have the authority to tell me that I am misinterpreting the code. That is why the application to build a structure was denied. And to answer your question, yes I believe that parking it outside or inside of a building, because it is a commercial motor vehicle, is conducting a commercial business at its base of operation. So yes I believe he would be in violation already for parking there now.

Tom Harper: The other side of the question is, would be able to add onto that building right now for personal storage uses, not business related?

Eric Furnas: Yes, we are here today because of my interpretation that this constitutes a commercial operation, a commercial enterprise. If he were to come in and ask for an addition to add onto to that structure for personal storage, I don't believe that there would be a problem. I don't believe to store an active commercial vehicle... if this were a collector of an antique semi and wasn't for hire that's personal storage, and meet all the setbacks, we could issue the building permit. But that is why we are here and that is my position.

Todd Buck: I would like to add something. I understand what you are saying Eric but I am only under those guidelines when I am hooked to Robertson's trailer. So that operation ... they operate out of Muscatine, Iowa. So when I drop their trailer and I head out to Moscow, Iowa, that is my own personal vehicle. It has relinquished its duties at Robinson's lot when it is disconnected from the trailer. And I suppose that we could argue about that and you can go ask a DOT officer, but as long as I am hooked to their trailer that I would agree with what you are saying. But once I disconnect from that trailer I am in my own personal vehicle. And I carry the insurance on the semi itself and it don't go into say... operating until I hook onto their trailer. When I am under their trailer than they pretty much take responsibility of the cargo insurance. Basically they are responsible for the vehicle as well when it is hooked to their trailer. I mean, I see what you are saying but I believe that once I drop off that trailer than it is no longer a commercial vehicle.

Eric Furnas: May I ask the applicant a question?

Carl Kleppe Jr.: Yes.

Eric Furnas: Does the tractor have ICC or any IDOT certification numbers?

Todd Buck: Yes, the base plate is plated to me and I run under Robinson's authority. I have their MC number on the side of the truck. It says operated by Robinson Trucking on the side of the truck.

Eric Furnas: Given that information I believe my position remains the same, that it is a commercial vehicle.

Bill Tharp: Mr. Mathis, I feel for you because it sounds like your client came to you and said that this is very inconvenient for him and that he needs to store the truck here because it will save him a lot of money if he didn't have to do that and he could have it here, as opposed to renting a space to store it. But that does not make it a hardship. It makes it more convenient but there is no unnecessary hardship or a property limitation. So you are being asked, in my opinion, to do the impossible. So your client is asking you to do something that the code just does not allow us to do. You made a lot of great arguments with it and the structure of how it could be put one way or the other, but... and I respect that and that's working hard, but it's hard to get past the unnecessary hardship. So you have dotted your I's and crossed your T's but it is just something that ... I mean, I wish I could say yes every single time but

I just can't. But again, that's just my opinion. I will make a motion to approve the Variance for Mr. Buck to construct a 30' x 40' addition onto an existing 30' x 50' detached accessory structure to house a semi-tractor.

Tom Harper: I'll second it.

Carl Kleppe Jr.: All in favor of the motion please say Aye (0) Opposed (4) Absent (Schlueter). So the request is denied, the Variance is denied.

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