

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, August 2, 2019, with Chairperson Carol Schlueter and members Emily Geertz, Bill Tharp and Charles Clark present, Barry McManus was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Tammy Shipp.

Carol Schlueter: It's 10 o'clock and I am going to open this meeting by 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, here he comes. Mr. Tharp has arrived at 10:01 a.m.

Bill Tharp: Thank you and I apologize.

Carol Schlueter: Okay did all board members receive the minutes by email from Dixie? (Yes) And did everyone check them over? (Yes). Okay, if there are no corrections or changes, is there a motion to approve?

Charles Clark: So moved.

Carol Schlueter: Is there a second?

Emily Geertz: Second.

Carol Schlueter: Okay a motion has been made to approve the minutes from last meeting. All in favor of the motion please say Aye-4; Opposed-0; Absent-McManus. Okay so today we have four members present, we are usually a board of five members. So if it's a tie vote it's a no vote. It is your choice to decide if you want to table it before we vote on it.

Eric Furnas: Yes and you can make that request right up until they vote on it.

Carol Schlueter: Okay, Eric would you read the first request?

Eric Furnas: Case #19-08-01. An application has been filed by Pamela P. Kaska, Record Owner. This property is located in Cedar Township, in the NW¼ of Sec. 11-T76N-R4W, Parcel A, 2320 Echo Avenue, containing approximately 13.28 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 a mobile home to be placed on this property for Ms. Pamela Kaska to live in. Ms. Kaska's granddaughter, Marlee Staley, will purchase the property and live in the existing one family dwelling.

Carol Schlueter: Any correspondence?

Eric Furnas: No ma'am.

Carol Schlueter: Thank you Eric. Would the applicant please state your name and tell the board members what you are asking for today.

Tammy Shipp: My name is Tammy Shipp, I am Pam's daughter. She is at work today.

Charles Clark: Could she go to the podium? I'm not quite the hearing aid stage yet but I'm getting close.

Eric Furnas: Yes.

Tammy Shipp: Oh sure. Tammy Shipp. My address is 2322 Echo Avenue, Letts, Iowa. My property is just adjacent to my mother's property. My mother has gotten a divorce and she is selling this property to my daughter. So what she would like to do...she still wants to stay independent so there is a natural place on the property where there was a trailer placed on here for her mother-in-law and there is a garage type structure there for her to use. It would just be establishing the trailer in the same place where the other one was. She is financially having problems due to her divorce. She is elderly, she has had breast cancer and is diabetic. She would like to stay on the property. That's what we are asking for.

Carol Schlueter: Okay, so Pamela would move into the trailer and then the granddaughter is going to buy the house and all the ground, the 13 acres?

Tammy Shipp: Yes.

Carol Schlueter: Okay is there any questions or comments from any of the board members or anyone else here that would like to speak in regards to this case?

Bill Tharp: Yes I have a question, with the normal way that this proceeds... and I guess not the normal way but the more frequent way that this proceeds is that someone is living at a property and then they become...you know, they have a physical ailment or some type of disability and then someone comes in and moves in a trailer on the edge of the property, somewhat, to be able to administer to the need of the person that is there inside the house. I'm not sure if... what it sounds like is going on, from what you described is that's not what is exactly happening here. That instead she's not going to be staying inside the house but that someone else is going to be moving into the house and then she will ... you know the person that allegedly needs the help is going to be moved to the trailer. Is that right?

Tammy Shipp: Yes and that is what she prefers so she doesn't have the financial problems on the property.

Bill Tharp: Okay so it's a financial situation as opposed to someone needing to go in and check on her.

Tammy Shipp: Well it's both.

Bill Tharp: What are the things, you know, the physical concerns as opposed to the financial restraints that are out there? You know, what does she need everyday care with? Can you describe that situation?

Tammy Shipp: She doesn't always need everyday care. She wants to have somebody close to her just in case she has an issue like if she falls or if her blood sugar runs too low.

Bill Tharp: In the past what did the family do, or what did you do to check up on her?

Tammy Shipp: Well for a while she had chemo and we had to change her dressing everyday.

Bill Tharp: And how did that happen? I mean, who did that for her?

Tammy Shipp: We took turns. We round robined between whoever could do it.

Bill Tharp: Okay.

Tammy Shipp: Well she has episodes where her blood sugar will drop and she needs to quick come in and check on it and help her check her blood sugar. She also, you know, can't see very well when things like that happen. She's working now and she's physically doing pretty good at this point, it's more of a financial burden for her. But she's not being able to do the things around the house, you know like cut the grass, do the bushes. And she is just struggling to maintain the house and property.

Bill Tharp: Okay, thank you. That is the conclusion of my questions but before we vote I would just like to have discussion with the board. But I want everyone else to have their time for questions.

Carol Schlueter: Okay, is there any other questions? Eric do you have any comments?

Eric Furnas: I just would like to clarify, we have had cases where the party in need of care would be in the mobile home, I mean, we've had them both ways in the past. I don't know if the code is really clear as to which ... it doesn't appear to be clear or to stipulate clearly which party has to reside in the mobile home and which party has to reside in the dwelling. It's the circumstances that the board has to find that there is unique circumstances and it can also provide care of the property.

Carol Schlueter: Okay but has there been in the past... I believe that she stated that there was a mobile home on there?

Tammy Shipp: There was.

Eric Furnas: Yes there had been a similar circumstance, I think, for another elderly person. Then it was removed when that need was no longer there, as per code. Now they are proposing that there is a similar circumstance with a different family member.

Carol Schlueter: But did different people own it then when the mobile home was there?

Tammy Shipp: It was owned by my mother and her then husband and it was for his parents to live in.

Carol Schlueter: Oh and how long ago has that been? Has it been a while?

Tammy Shipp: I don't know maybe five years ago or so?

Eric Furnas: I'd have to look it up, I'm not sure.

Carol Schlueter: Okay but there is a place there for this trailer?

Tammy Shipp: Yes, there is a septic system and a garage for them to use. All the electrical was just capped off. You know everything was there, the trailer was just moved out.

Carol Schlueter: What about septic?

Eric Furnas: I think there is an existing septic system there but that would have to be verified by our office. But there is adequate space on 13 acres to install a

septic system. But that's more of a building and code question. If you decide to grant this petition than it would be our job to make sure that all proper building and sanitary codes are followed.

Carol Schlueter: Okay so then if the mother ever moves away or something happens to her than the trailer has to go, right?

Eric Furnas: Yes these Special Use Permits are for a one year period and they are renewable. It's the owners responsibility to contact us on the anniversary date and inform us that the circumstances have not changed.

Carol Schlueter: Is there any other questions or concerns from the board members?

Bill Tharp: This is just my... you know, I could be completely wrong and I'm just one vote but the way ... some of the things that I am looking at on this, you know, in the description of unique property limitation is one of them. And the largest one that I'm hearing is a financial limitation and I can definitely say that that's far from unique. Because I think that just about everyone is going through a financial limitation of some sorts. So than that makes me look deeper into what exactly are we doing and what is the purpose. So if the purpose is... you know, looking over the top and this is just for the record so if later on... just so there is a complete record for my thought process, is that if it is to be able to split bills and to be able to split the payment of bills, that's just not enough. We have granted this many times in the past to people that this is a caregiver that they need somebody on site, that there's not enough room in the house for them to be living there and to be an extra resident, so they are right there to attend to those needs. That's the way I see this classically is that type of a situation. It's sounding like that's not the situation but instead it is so that someone can split the bills. Although that would be helpful to be on site and to be able to see a family member, but in the past, you know, there's been things as extreme as chemotherapy and there have been ways that they figured it out to get there. So it's not that this is the only child that's there to take care of the situation. So I have concerns about just the actual ... meeting the different elements to get this Special Use Permit, but also the message it sends that, you know, when things get difficult... You know, instead of... you know there are different possibilities of things that could happen. One would be to sell the property to this other person outright and then they would be able to have the money to live in the property. There could be some type of an arrangement if it's a care facility, or whatever. But an actual transfer of property, because it seems very important to me that the property owner is the one that is being benefitted completely. So the property owner is the one living in the house and also is the one that needs the help desperately. So that's why it's going on. The person that is coming in as the applicant or is helping out, they are there for ... but for the physical problems or the disabilities that exist, they would not need to be there. Just my opinion, and I could be completely wrong, is that it's not only for the constant 24 hours supervision but instead it is ... you know, that there is going to be a financial benefit, that they will be splitting finances. And unfortunately people face situations everyday where their finances don't allow them to live in the same place or at the same standard of living, so they need to downsize. Sometimes people have much better jobs when they are younger and generate a lot more income and then after a certain amount of time they can't afford to live there so they downsize and go to someplace else that might be in town or something. I mean, it's not good but it's the facts of life, unfortunately. So I have real reservations about this because it doesn't meet the actual law, the actual words on the page and then there's the reason behind the law. And the reason behind the law seems to be... you know, if Mom or Dad are sick we have a Special Use Permit that is out of mercy in Muscatine County with the zoning board to be able to say, you know, we are going to allow a mobile home to be there just so that we can help out our elderly or people with disabilities. And this isn't fitting nicely into that

scenario, instead it's being clouded by finances and things like. People don't have an absolute right to live in the same house that they have always lived in because of the zoning restrictions. Seeing that she's not living in the house... I understand that it's not completely necessary for the person to be living in the house or the mobile home and who's living where... But the purpose behind it gives me an insight into the purchase behind it that this is sharing. But one thing that could be done possibly is that, you know, she could possibly sell half of the house and then become a joint owner with this other person to be able to help the finances. There are a lot of ... it's like we want to be the last resort, you know, like I tried all of these other things and then it didn't work and so now we need help in that situation. I don't see the exhaustion of remedies. You know, that they've tried to exhaust ever possible scenario to be able to make it without asking for ... you know, asking for an exemption from the zoning ordinance. This is just me, of course, you know, I will take no offense if I'm outvoted because I have not claimed the wisdom. So if it is 3-1, that is completely understood. But I felt that it is my responsibility for the record to say what I am thinking... it just has to be that way.

Carol Schlueter: Okay, so the granddaughter Marlee, she is purchasing all the ground, right?

Tammy Shipp: Yes she is purchasing the entire property.

Carol Schlueter: Does she have a family?

Tammy Shipp: She has a child, yes.

Carol Schlueter: Couldn't they all live in the same house?

Tammy Shipp: Yes they would live in the new house.

Carol Schlueter: But I mean, couldn't Pamela live there with them and you wouldn't have to move a trailer in?

Emily Geertz: Well I don't think it's up to us to figure out their financial situation.

Bill Tharp: That's true, agreed.

Emily Geertz: As far as I'm concerned that is none of my business. It sounds like there are health issues, I think. I have elderly parents and I understand the concerns. There is that concern of when they fall and no one is around. I deal with this probably every week. And it would be more convenient if my parents were on the same site. But I think...I don't have a problem with this at all, that's what I am saying.

Carol Schlueter: Yeah but like more in the past the parents have stayed in the house and they moved a trailer on for...

Emily Geertz: It's been both situations.

Carol Schlueter: But you said Eric, it's been both ways?

Eric Furnas: Right, but I don't think that that's the issue. And I'd like to comment on Mr. Tharp's comments. He is exactly right that the burden that you all have to wrestle with still is whether there a unique and substantial physical condition and requirement for care. The application didn't state anything about helping the financial state of Ms. Kaska. And on that alone I think that that would be an error. So clarification as to what Mr. Tharp had commented, yes that is something that we don't want to start doing. So you still have to wrestle with is there a unique and substantial health issue or hardship here that you've heard. That's probably what you should be considering and not

whether they would benefit financially from it or not. Because that alone shouldn't be considered, according to code.

Carol Schlueter: Okay, is there anyone else here that has any comments on this request? Any other questions?

Charles Clark: Not a question but I appreciate what Emily said. I believe that we have a health issue here that we have to be aware of. I think we should try to help out since we do have the power to do so. So I am definitely in favor of it. I have an elderly parent that lives where I manage the farm and I help out with the care as well and I know where you folks are... we know where you are at. So I am in favor of this.

Carol Schlueter: Okay, so if there are no more comments from the board I would ask for a motion for this request.

Emily Geertz: I would make a motion that we allow this Special Use Permit in order for Ms. Kaska to place a mobile home on this property for herself to live in.

Charles Clark: I would second that.

Carol Schlueter: Okay there has been a motion to approve this Special Use Permit and it has been seconded that we allow Ms. Kaska to place a mobile home on this property for herself to live in with the previously mentioned stipulations. All those in favor of that motion please say Aye-4; Opposed-1; Absent-McManus. The motion has passed, the request is approved.

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

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, August 2, 2019, with Chairperson Carol Schlueter and members Emily Geertz, Bill Tharp and Charles Clark present, Barry McManus was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Rob Smith, Bob Hesseltine and Vanessa Hesseltine.

Carol Schlueter: Eric, would you please read the next request?

Eric Furnas: Case #19-08-02. An application has been filed by Robert O. Smith, Record Owner and Vanessa M. Hesseltine, Proposed Buyer/Builder. This property is located in Goshen Township, in the SE¼ of Sec. 12-T78N-R3W, at the corner of Hwy. 6 and Lange Avenue, containing approximately 35.93 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 Ms. Hesseltine to bring an existing dwelling onto this property for her and her family to live in after Mr. Smith has split at least one acre off in the Northwest corner of the property. So essentially this would be for a rural residence but it would be ultimately transporting an existing dwelling to this property as opposed to a stick built home on this property. But it's still a request for a Special Use Permit for a rural residence on this property, like we typically see.

Carol Schlueter: Okay, any correspondence on this one?

Eric Furnas: No ma'am.

Carol Schlueter: Would the applicant please state your name and tell us what you are asking for?

Rob Smith: I'm Rob Smith, I live at 1293 Moscow Road. What we'd like to do is... this house was purchased by our family back in the 50's and we moved into it in 1981 I believe, it was my daughters first home. I lived in it with my wife and kids and then my mother moved into it and my son was living in it until about a month ago. We sold the ground to Wendling Quarries and they told us that the house was going to stand forever and then when I talked to them about maybe my daughter and son-in-law moving into it and renting it, then said no they were just going to tear it down. And we would like to see the house not torn down. I have... we have five acres that we could develop into a house site and we'd like to move it down the road, maybe a mile or less, so that my daughter and her husband can live there. Bob has worked on a farm and you can tell I'm not a young guy anymore, I'm in my 60's and we have irrigators to run. I've got a dryer just down the road and I worry that when I'm down there around midnight by myself ... that it would be nice if I had somebody a little closer. And possibly we can start to work Bob into the farming operation because he would be close enough. Right now they are living up north off Interstate 80, I don't know the exactly miles but it's probably about 15 miles. It would be nice to have my daughter and her husband live close by for when we need help and things like that. I also would hate to see the house burned down and destroyed. I don't know if you have a map... (yes) We are open for suggestions, I think that Eric told me after we submitted this that we were supposed to have like 150 feet off the road for an access or something and I only put 40. We're open to suggestions from you guys. If you go... well we kind of wanted to see you do this or do that... whatever, we'd like to try to get it done. If I messed up somewhere on how many feet off the road coming in, we can adjust that. Other than that, the big thing is to get some help there. I don't know if I said but we have irrigators that run in the summer, we have four of them in that area. It's hard to travel when you've got to be around irrigators all the time. I mean, you don't mind asking a neighbor once in a while but it's kind of hard to say, hey I'm going to be gone for a month, can you run my irrigators for half the

summer? So to my son-in-law, I don't mind doing that. So do you have any questions?

Carol Schlueter: Are wanting to move a house onto this property from another location?

Rob Smith: Yes, you can't see it but it's just up around the gravel road. It's along Lange Avenue and that's where my son has been living until July. He moved, he bought a house in LeClaire. He's been the one that's been around. But he bought a house in LeClaire because he has kids up in the Quad Cities and they are getting older and there's a lot of driving, he was driving 45 minutes to an hour some days. So he thought it was better for him to move up to LeClaire to be close to his kids as they grow up. So that's when we found out that the quarry was going to tear the house down probably.

Carol Schlueter: So the house is on property that the quarry bought from you?

Rob Smith: Yes my parents bought it back in the 50's, I can't say exactly the year. Then when the quarry came to us, they bought all of the ground and of course, we got the right to live there. And at that time my Mom was living there and then she got older and she moved to Heath Manor, it's a place in West Liberty, it's independent living. That's when my son moved in and we didn't know he was going to move until all of a sudden he said he's going to buy a house in LeClaire and then we found out that they were going to tear it down. So it just happens to work that they are looking for a place and this would work really good for us.

Emily Geertz: Well I just appreciate that you are reusing a house and moving it instead of letting them tear it down.

Rob Smith: Yeah and it's sentimental, like I said, just about everyone in my family has lived in it at one time or the other.

Carol Schlueter: Does anybody else have any questions on the board?

Charles Clark: Mr. Smith, on this map where is... can you come up and show me where ...

Rob Smith: Yeah, what we'd like to do is ... we have these trees here and we'd like to build back in this area somewhere.

Charles Clark: Build, by build you mean...

Rob Smith: Well I shouldn't say build, it's to put in a new foundation and move the house back in here somewhere.

Charles Clark: On this timber ground?

Rob Smith: No, no ... we are going to keep it over here. There is a ditch right here and so we were going to put it somewhere right up in here. And it's like I said, we can take more ground or less ground, you know... I think when I did it, I figured this was like 1.2 acres, the timber is. Yeah we were going to try and build it... or move it, put a new foundation in about here.

Charles Clark: Okay and then the rest of the ground?

Rob Smith: Well probably what's going to happen is that we are going to probably put a road in.

Charles Clark: Oh a driveway?

Rob Smith: Yeah a driveway off of the road. Then depending upon how much driveway we need I might end up farming some of it, you know. It will be their ground but, you know, depending upon how wide we have to do that. I mean if you guy's need 150 feet, I may farm a little bit of it. I mean, obviously we will put some grass along the gravel, things like that. But like I said, we are open to suggestions. If you feel like they should have more ground back there, or whatever... we are just looking for suggestions from you guys. We didn't want to spend the money to have it surveyed until we knew that we could get it done. But we could always come back and get your approval for after the survey is done too.

Charles Clark: So your daughter, might I ask them a question? (Yes) You folks are going to buy this ground, correct?

Rob Smith: Well kind of... it's all in how you want to look at it. We are going to give it to them.

Bill Tharp: It would be transferred.

Charles Clark: So it's going to be in their name?

Rob Smith: Yes.

Charles Clark: Okay so you folks are going to take responsibility of it, taxes and everything... maintaining the property?

Vanessa Hesseltine: Yes.

Charles Clark: Okay.

Bill Tharp: You may not have seen, but it wasn't lost on my, Mr. Tom Harper is in the back row and I saw him cringe when he saw the request because these are so facts intensive. I want to start out just by saying that I will agree...that I agree with this but since it's so facts intensive I need to say some things into the record to show how this is different than other cases that we've had before so that we don't open ourselves up to any litigation in the future. What has happened that we've seen before is that with the CSR2 level over a certain amount... you know, it would be a high CSR2 in a large area of the section and then there will be a really low CSR2 on one area and to try and balance it out so that's it just under 55 and we worked with those cases a lot. But in this... and we've said before generally you can't balance things out. Now this situation is different in my opinion because it is something where we are balancing everything out but there is a specific area that is definitely with a smaller CSR2 and it's not being put together so that it will minimize it to just under the limit. But these are pretty much separate lands and if you were to take the CSR2 in one and the other, there isn't a balancing act that's being... you know just tried to slip it past or to just make the requirements. I believe that these are two different, two really distinctly different areas. And because of that I don't think it's done for the purpose of balancing out and so I would view this as almost two separate parcels and I believe that it should be approved because that area is so different in characteristics than the other area. I would agree with it. But I felt like I had to add that in just so if ten or twenty years from now someone tries to say that their case is different one way or the other... I'm a lawyer and I can't help it. (laughter)

Carol Schlueter: We know, we know. Eric, do you have any comments?

Eric Furnas: Yeah I would just comment and you will see that I noted as well that the CSR2 is above the 55 that historically the Board of Adjustment has taken a pretty hard line on to approve a Special Use Permit for a rural residence. In the rural residence ordinance it states that the CSR2 rating is of high

importance. However, I think that it is important to bear in mind that when you consider a rural residence under a Special Use Permit you are considering all the factors in the totality. So you are not necessarily bound to say 55 ... it's a good stance that you have taken for consistency. But like Bill mentioned, if you can articulate differences on the other factors, like we have well over a 1,250 feet separation distance that add up to make this an overall good candidate for the Special Use Permit, then you avoid that claim of arbitrary and capricious decisions by granting one where it is slightly above the 55. So you can still grant those if you find other areas that are more favorable than what you typically see as well. This is more separation distance than what we normally get. It is slightly above 55, we're not talking an 87 or a 90 CSR2, it's 58. But I think that you can strengthen your concerns that you are not setting a precedence by using some of those other factors that you are to consider in its totality. As far as ... he did mention the lot width, our standard lot width normally requires 150 foot of frontage. But I think that they would like to propose a slightly more narrow one and I can approve those administratively when they do a parcel letter, you know, a parcel split. Because the whole effort was to minimize the ground that they would take out of production. If we hold them to 150 foot they have a large lot that they have no interest in using. So they are proposing taking the minimal amount ground out of production to accommodate a driveway getting back to where the house would be. So that there would be very little ag production in that tree area. And I have to problem with approving a flag lot basically.

Carol Schlueter: Okay. Is there anyone else here that has anything to add on this request? If there are no other questions or comments, I would entertain a motion for this request.

Bill Tharp: I will make a motion to approve the Special Use Permit in order for Ms. Hesseltine to bring an existing dwelling onto the property for her and her family to live in after Mr. Smith has split at least one acre off of the Northeast corner of the property.

Carol Schlueter: Is there a second?

Charles Clark: Second.

Carol Schlueter: It's been moved and seconded that we allow this request as stated. All in favor of approving this request please say Aye-4; Opposed-0; Absent-Barry McManus. The motion has passed, the request is approved.

Rob Smith: Thank you.

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