

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, October 4, 2019, with Chairperson Carol Schlueter and members Emily Geertz, Bill Tharp and Barry McManus present, Charles Clark was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Julie Smith.

Carol Schlueter: It is 10:01 a.m. I am going to open this public hearing and we have an opening statement and Emily is going to read it. Bill arrived at 10:01 a.m.

Emily Geertz: 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.

Carol Schlueter: Thank you. Okay so today you see that there are only four members here, so a tie vote would be a no vote. It would have to be at least a 3 to 1 vote in order to pass. At any time during our deliberations, up until we vote, you have the option to ask us to table this until the next month if you want to do that. But that would be your choice. Alright so everyone received a copy of the minutes from the last month. Are there any changes or corrections? If not, I would entertain a motion to approve the minutes from the previous month.

Bill Tharp: I move to approve the minutes as written.

Carol Schlueter: Is there a second?

Barry McManus: I'll second it.

Carol Schlueter: Okay, it's been moved and seconded that we approve the minutes as written. All in favor please say Aye (4) Opposed (0) Absent (Clark). The motion is approved. Okay, Eric would you read the first request please?

Eric Furnas: Case #19-10-01. An application has been filed by Harold L. and Julie A. Smith, Record Owners. This property is located in Moscow, Lots 3-8, Block 2 & Alley Adjacent, 1578 Cedar Street, containing approximately 1.22 acres and is zoned R-2 Residential District. This request, if approved, would allow the Zoning Administrator to issue a Special Use Permit in order to allow them to place a mobile home on their property for Mrs. Smith's elderly parents to live in.

Carol Schlueter: Any correspondence?

Eric Furnas: No ma'am.

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

Julie Smith: My name is Julie Smith. We would like ... we had a mobile home in the backyard prior... my daughter had lived in it a few years. So we have all

the utilities already there. My parents are 82 and 86. My dad has macular degeneration so he is going to be limited on driving. He likes to garden at my house. I just feel that at this point in their lives... they were managers of the mobile home park in Wilton, which that has gotten to be too much for them and that has been taken away. So their expenses are going to increase because they won't get that monthly check plus they will have to start paying lot rent and they are on a limited income. So we thought financially it would also be cheaper for them to be in our backyard.

Carol Schlueter: Okay, and there is septic there and everything for this?

Julie Smith: Yeah, everything is there.

Carol Schlueter: So it would be in the same place as the other one was?

Julie Smith: Yeah it would be set in the same pillar things there. Yeah we have water and sewer. The sewer would have to be inspected in order to get approved. We have steps at our house so that's not real usable for them and they have some health issues with their hearts and eyes. So we just thought it would be easier. I am going to retire at the end of the year so I will be there to help them. I will have to take them to all doctor appointment, either to Iowa City or the Quad Cities.

Carol Schlueter: Okay, is there any questions from any board members?

Bill Tharp: I have a few comments, this is an unfortunate situation and I think it's going to be one that this board is going to see for many years in the future because of people having parents that are of an advanced age. But with the zoning regulations that we have, it shows that this is for someone that is... you know, it's for the protection of property or the care of a person with a severe physical handicap. Now to me that is something that, you know, I interpret as, this is something that has come up... there is an existing disability that exists. Which would be... a severe physical handicap, I would equate that with a disability. So we are going to see... or this board is going to see over the years coming up that people are going to have parents that are going to be elderly and they are going to need to make a plan for what to do with them. That's unfortunate but it is a fact of life, I guess. But this is something where we have zoning regulations that say what we are supposed to do in these different situations. It can't be a plan to say that we are going to put... you know, if our parents get older and we need to take care of them, the way to do it is to put a mobile home on the property. There are other things that maybe... you know, maybe people need to be moved to assisted living or to other things like that. You know, there are a lot of different scenarios ... you know they will be less cost efficient of course, but as a planning type of... this can't be turned into a planning device to say when my parents become elderly I will put a mobile home on the property and then we'll be able to do it that way, or else this board is going to be inundated with requests of people living in the country saying my parents are getting older and so I want to have them next to me. I see the regulations that we have, well the zoning regulations that say the existents for the protection of property, which this definitely doesn't have anything to do with protection of property. The other is the care of a person with a severe or physical handicap. I see... although there is macular degeneration, that's a part of ... you know, for many, even in my family... that is something that has happened with advanced years, as opposed to something that someone would be able to get social security or disability for, or some type of recognized disability under the ADA, or anything like that. So I wish that I... you know, as we sit we don't sit like the king or the queen, you know where we can just say that this feels right and this is what we ought to do. But we are bound by the zoning regulations and the zoning regulations say that there is no protection of property issue and as for a severe physical handicap disability, there is not

one that's shown, other than advanced years. And if the board doesn't identify this as an issue that will... we've had issues that have started to occur like cell phone towers early in 2010's, different things like that. This is going to be one that is also going to come up over time. So it's very unfortunate because it would be very convenient for them to have a mobile home on the property to be able to have their folks live in and to be able to check up on them. But our zoning regulations don't permit it. So since they don't permit it, there is going to have to be an alternative plan used to take care of family that become elderly. Sometimes that may be downsizing and living in a condo or something like that. I wouldn't even make any suggestions as to what it is, but just looking at the law and looking at what the law says and what we are ... that's what limits us here, that there is no severe physical handicap and there is no protection of property. I take zero, zero pleasure in saying that. It's painful because this is a bad situation but we are... I feel like, and this is just my opinion as one person on the board, is that our hands are tied because we can't change the zoning regulations because of a particular situation. This is the way that they wrote it and they wrote it so that people couldn't just a mobile home on there to help somebody out, unless there was a dire situation, meaning you know protection of property or someone with a severe physical handicap, it doesn't even just say a physical handicap, it actually says a severe physical handicap. And so unfortunately that's the way that I see it. I wish there were different scenarios but there just isn't in my opinion. And that's just my opinion, I could be all wet.

Carol Schlueter: Okay, thank you Bill. Eric do you have any comments in regards to this case?

Eric Furnas: I would tend to agree with Mr. Tharp's qualifying language of severe physical handicap, however... and kind of summarizing also, that's been used throughout the years in this way but it doesn't necessarily make it right. I mean, in my opinion, you folks are challenged with interpreting what is a severe physical handicap. Probably the wording should be changed and have the Zoning Commission clarify this. But I think I would agree that whenever we talk about unique and substance hardships... it's basically the same language that I used in my one and only comment, it states that approval should be made based on the applicant proving that there is a unique and substantial hardship.

Emily Geertz: I would agree that this wording needs to be discussed. It's hard for us to define a severe physical handicap. But that's looking forward and I do think someone needs to address that. But I tend to side with the family that wants to take care of a parent or whoever it is. I think historically this is not uncommon, it's just been mobile homes now instead of an in-law suite or an addition or second home on the property.

Carol Schlueter: I agree, I think we need to take care of our parents and I think it's so nice that children want to do that. I don't know... I mean, to me when they say severe physical handicap... to me I might look at it differently that what they do on the parent that they are looking at. I mean, they see the parent everyday - I don't see that parent every day and see what they go through and how they struggle with everything. And to me too, we need to take care of our elderly people. If we approve this Special Use Permit it is for a trailer that will be brought in just for these parents to live in. And when they are no longer living in this mobile home, like if they go to a nursing home or something like that, then that mobile home has to be taken off the property. Is that correct, Eric?

Eric Furnas: That is correct. It is for one year with renewals based on whether the hardship still exists.

Barry McManus: I tend to agree with the ladies here, that's it's a very very noble thing of you to take care of your parents like this. Obviously you don't have any neighbors here to complain that they are worried about this depreciating their property. I'm much for favorable of your parents being in your backyard than running up and down the highway coming to visit you or working on your garden or going to their own doctor appointments, or whatever. So I see everybody's point but I don't know that we actually know what is a severe physical handicap and I don't know if anyone can put a label on that.

Eric Furnas: Well I think this may be a topic that you folks should think about and I do believe that Mr. Tharp is correct in the interpretation of the law and his fear of you folks making capricious and arbitrary decisions because of ... or by ignoring something that may be contrary to that language. But it seems like that there is a sense that there should be a little bit different language. Or maybe just say care for or aging parents in general is a good enough reason. But he is correct in pointing out that you are charged with interpreting the code as written.

Bill Tharp: I would suggest that the Zoning Commission would have it amended to say... because there is a lot of law that can interpret if it says... instead of severe physical handicap if it just says disability, then we have all kinds of law that's out there that can be interpreted by other people in order to determine what is and isn't a disability. But a severe physical handicap is ... that's pre-1991 language. So they wouldn't have had the kind of interpretation of that law that they've had since then. So if they wanted to interpret it so that it says a disability as opposed to a severe physical handicap or if they want to go another way and say somebody of advancing years. But the way that it seems to be written, and this is just my opinion, is that if it's a year to year and it's a severe physical handicap is something that is a disability and then also from year to year... it's kind of an expectation that this person will not survive through the year. And then there is going to have to be a renewal if they happen to have survived another year. That's kind of the thought behind it. Because otherwise why would they have them in one year increments. It's because these people think that is a severe enough handicap or disability that the person will not live for that year and if it happens to go beyond that year then they will reapply. But there would be no expectation that there would be a reason to renew it. So that's just my opinion and I would not be upset if I was overruled.

Carol Schlueter: Eric, where they are wanting to place it on their property, they are meeting all the requirements, right?

Eric Furnas: It would appear so. This is a little different than what would be a setback for a detached accessory structure.

Carol Schlueter: But the setbacks are met?

Eric Furnas: Yeah if you look at it as somewhat an accessory structure, which I guess that it somewhat is, it appears that it would meet the building codes.

Carol Schlueter: When did she have the trailer removed when she was there?

Julie Smith: I thought when we came her to ask to place it on our property for our daughter, I thought it was a ten year and my daughter thought it was forever. But anyway... she moved out... I'm going to guess that it's been moved out for about five years maybe.

Carol Schlueter: Alright. Is there any other questions or comments from any one on the board? Any other comments from anyone in the audience? If not, I would entertain a motion for this request.

Bill Tharp: I will move to approve the Special Use Permit in order to allow Harold and Julie Smith to place a mobile home on their property for Mrs. Smith's elderly parents to live in.

Carol Schlueter: Okay, is there a second to that motion?

Emily Geertz: I'll second it.

Carol Schlueter: Okay, it has been moved and seconded that we approve this Special Use Permit for the Smith's to place a mobile home on their property for their elderly parents to live in. All in favor, please say Aye (3) Opposed (1) Absent (Clark). That's three to one, you are good to go.

Eric Furnas: For the record, is there a desire that I present this issue for discussion with the Zoning Commission for clarification?

Emily Geertz: Yes.

Carol Schlueter: Yes.

Bill Tharp: And if we move to give them a recommendation of changing the word, disability, that would be very helpful.

Eric Furnas: Okay, so any thoughts of that just send them to me so when I take it in front of the Zoning Commission they can take a look at it. I can see where you heart and head is at, maybe we can get the law to match that.

Barry McManus: And you are right, this is going to be a growing issue with the baby boomers coming up.

Carol Schlueter: Right and at the cost of what it takes to put parents in assisted living and that... it's tremendous.

Julie Smith: Thank you so much, I really appreciate it.

Bill Tharp: Yes it's a bad situation. Good luck.

Julie Smith: Thanks.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
Eric Furnas, Eric Furnas, Planning & Zoning Administrator

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, October 4, 2019, with Chairperson Carol Schlueter and members Emily Geertz, Bill Tharp and Barry McManus present, Charles Clark was absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Stan Price.

Carol Schlueter: Okay, we will move onto the second request. Eric, can you please read that?

Eric Furnas: Case #19-10-02. An application has been filed by Joel R. and Shirley A. Rock, Record Owners and Stan Price of Price Oil, Proposed Lessee. This property is located in Wapsie Township, in the NE¼ of Sec. 18-T78N-R3W, South of Hwy. 6, 1674 Hwy. 6, containing approximately 1.50 acres and is zoned I-2 Heavy Industrial District. This request, if approved, would allow the Zoning Administrator to issue a Special Use Permit in order for Mr. Price to place a bulk LP storage tank on site.

Carol Schlueter: Was there any correspondence?

Eric Furnas: No ma'am.

Carol Schlueter: Okay, would the applicant please state your name and tell the board about what you are requesting?

Stan Price: I am Stan Price, owner of Price Oil Company. Just to give you a little history, Price Oil Company has been around for 57 years. What we need to do in the propane industry is we need to get more storage. We can't rely on a pipeline, we can't rely on companies to keep and supply LP. So what we want to propose is to go and put a tank in over by West Liberty. It's going to cut my ... because we've grown a little over a million gallons and to get back from Iowa City and to Durant, it's just costing me way too much money in diesel and truck wear and stuff like that. So we want to put a tank in over on the Joel Rock property. We are going to rent it. Now this was an old LP property, it's been around for years. So it's not going to be a problem. So I just wanted to give you a picture of what we are looking at. I wish to put in a 30,000 gallon skid tanks. (showing pictures) I don't have to put pillars on this piece of property because first thing, it's rented and I don't want to put, and Joel didn't want me to put, pillars down and I don't want to do anything on a rented piece of ground. I'm hoping that within the next five years that I'm going to have a chance to buy the piece of property. They just didn't want to do it at this time. So this is what I'm looking at right now. This is a blue print of the dimensions. But the fire marshal has said that we would be approved. This is basically what I gave to the state fire marshal. The buildings and everything is okay.

Carol Schlueter: Okay, is there any questions from the board?

Barry McManus: Are you going to put in one tank or two?

Stan Price: One, just one.

Bill Tharp: Madam Chair, for this record I need to recuse myself from this case because I represent Joel and Shirley Rock, they are clients of mine. So I can't be a part of this decision. I just wanted to put that on record.

Carol Schlueter: Okay, so then with only three people here today, it would have to be a unanimous decision in order to pass. Isn't that correct, Eric?

Eric Furnas: Yes that would be correct.

Carol Schlueter: Okay, Eric do you have any comments?

Eric Furnas: Just kind of a quick refresher on the Special Use Permit process. A Special Use Permit are those permits that we deem as typically acceptable in any given zoning district, bulk storage plants are a permitted use in the I-2 Heavy Industrial District. Special Use Permits allows us to take a zoomed in look at the proposed property and use. Again, it is listed as a Special Use Permit so we have already acknowledged that this sort of use is generally acceptable in this zoning district. We kind of look at the layout and the surrounding uses are similar, they are heavy industrial. As he pointed out it's exactly the same thing and probably even more intensive in the past. I would just comment so that there is ... he is proposing a single 30,000 at this time. If approved, you are actually approving this site to be used as a bulk storage site, not just a single 30,000. He would very well have the ability to grow. And a lot of that is going to be regulated by separation distances and the fire marshal. So I just want that to be clear that he does have the right to grow within the approval of the state fire marshal. So what you are approving is this site to be used. So it probably is expected that there could be growth there. Between the state fire marshal and our building codes, fuel gas, electrical... all that is taken care of. This is a fairly non-controversial case, in my opinion. The zoning of it is heavy industrial. There is adequate safeguards from all of the other regulations that he has to follow.

Carol Schlueter: And coming off of Hwy. 6 there, that's adequate?

Eric Furnas: Yeah, there are industrial sized entrances already there. No development is really going to have to take place as far as soil stripping, hauling of... you know you might have to haul in gravel, but we are talking about minimal impact in disturbance of the actual site.

Carol Schlueter: Okay, are there any other questions? If not, would somebody like to make a motion in regards to this request?

Barry McManus: I move that we go ahead and approve and vote on the approval of the motion ... to approve this Special Use Permit site.

Carol Schlueter: Okay, is there a second?

Emily Geertz: I'll second it.

Carol Schlueter: I have a motion and it is been seconded to approve this Special Use Permit in order for Mr. Price to place a bulk LP storage tank on this site. All in favor of the motion please say Aye (3) Opposed (0) Absent (Clark) Abstained (Tharp). The motion has passed.

Stan Price: Thank you very much guys.

Carol Schlueter: You're welcome.

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