

# **BUCHANAN COUNTY BOARD OF ADJUSTMENT**

**7:00 PM Monday, February 8, 2016**

**Buchanan County Public Health Meeting Room**

Chairman Price called the meeting to order at 7:04 PM.

Jim Price, Alan Wulfekuhle, Deb Ehlers, Louis Wendling, and Karen Stephenson were in attendance along with Matthew Even, Environmental Health & Zoning Administrator.

Public guests (4) included: Dave Lynch, Marc Cabalka, Mike Cabalka, and Becky Hurst

**The first item on the agenda was the election of officers.**

Price asked for nominations for the offices of Chairman and Vice-Chairman. Stephenson nominated Jim Price for Chairman and Al Wulfekuhle for Vice-Chairman. Wendling seconded the motion. With a vote of 4-0, the motion carried with Al Wulfekuhle being absent.

**The second item on the agenda was the approval of the minutes from the previous meeting.**

Ehlers made a motion to accept the minutes of the last meeting. Wendling seconded the motion. With a vote of 4-0, the motion carried with Al Wulfekuhle being absent.

**The third item on the agenda was a request by Michael Cabalka for a variance to the Code of Ordinances, Chapter 50 Zoning, Section 9, Paragraph 1.j.iii to allow the use of land for a single family dwelling with lot that only has approximately 20 percent of land with CSR less than 55. The property is located in the SW ¼, NE ¼, Sec 21, T88N, R9W at 1940 252<sup>nd</sup> St, Independence, IA.**

Even displayed a map showing where the variance was being requested for in relation to Independence. Even then showed an aerial image of the site including Michael Cabalka's house along with his father's house and the land in between the houses where Cabalka would like to build a new home. Even then played a video showing the area where the variance is being requested along with the surrounding area. Even showed a map of the soils on the site pointing out the areas with high and low CSRs. Even then explained that the variance is needed because only 21.6 % of the site has a CSR less than 55.

Wendling asked how the boundary lines for the area being requested compared to those that exist today. Even outlined on the map that the northern, eastern, and southern boundary lines would be the same as Cabalka's current boundary lines and that the western boundary line would be about 12 rows of crops east of his fathers' current yard. Wendling clarified that the intent would

be to create a straight line with the other lot and yard. Cabalka confirmed this statement and added that this would prevent the farmer from having to jog up into the current area that exists between the homes.

Wendling asked Cabalka if he currently lived in the trailer. Cabalka responded that he did. Cabalka added that his grandpa used to farm the entire area on both sides of the road in 1965. Cabalka continued to state that he bought two acres where he lives now and that his brother bought two acres on the other side of the road and his dad farmed the rest of the land. Cabalka stated that he had to go to the Zoning Commission at that time to buy the land where his house was. Even clarified that if you have more than 35 acres you can build houses for immediate family or people that work on the farm, but in order to sell those houses individually, they have to get rezoned to stay in compliance.

Ehlers asked if the property did not meet the requirement for CSR and Even confirmed that the property only had 21.6 % with a CSR less than 55. Stephenson asked why Cabalka did not want to build south of his place and Cabalka responded that they did not own the land. Even asked for clarification on Stephenson's question when she referred to south and she responded that she had meant south of where he currently lives where it has a low CSR. A definitive response was not given.

Wendling asked Even if they should review the suggested variance questions and Even encouraged them to review the questions as they should be used to give guidance to their decision. At that time Cabalka introduced Dave Lynch as the farmer who is currently leasing the farm land in the area of question. Lynch stated that he would rather be able to just farm just south of all the houses in a straight line instead of having to maneuver in between them. Cabalka added that this is a reason why they didn't want to build where the soils were poorer.

Wendling asked if Cabalka was going to tear down the trailer. Cabalka responded that he was going to after his house was built. Wendling continued to ask if he was going to use the same driveway as he currently does. Cabalka responded that he was and that he would build his new house in the NE corner of the area the variance is being requested for. Ehlers asked how big his current lot was. Cabalka responded that it was two acres. Cabalka then pointed out on the aerial imagery what the layout of the property would be.

Price proceeded to ask some of the suggested variance questions. It was determined that the variance would not be in harmony with the general intent of the zoning ordinance as that is why everyone is here. Secondly, it was determined that the neighbors and adjoining landowners would be adequately safeguarded in regard to health if the variance is being requested. Even added that Dan Crawford had contacted him and stated that he did not have a problem with the variance. It was also determined that this variance would not impair adequate supply of light and

air to neighbors, would not increase traffic congestion, would not increase public danger of fire or safety, would increase established property values in surrounding areas, wouldn't affect public interest, and is not unique from other situations in the county. Price asked the next question: Can the variance be granted without changing the intent of the zoning ordinance or comprehensive plan? Even responded that it is the intent of the Zoning Ordinance and Comprehensive Plan to maintain as much Prime Agricultural land as possible by limiting development in high producing agricultural soils. There was no further discussion on the matter.

Al Wulfekuhle arrived at the meeting. Cabalka and Even brought Wulfekuhle up on Cabalka's plans for the land. Wulfekuhle asked if there were any livestock in the area within a mile. Cabalka responded that there were not except smaller producers. Wulfekuhle explained that as the livestock producer, it is his job to make sure that their rights are protected and that there are setbacks in zoning for this reason. Wulfekuhle asked if anyone had any concerns. Price responded that there weren't any. Price stated that even though the CSR is high at the site, it is a family farm and they are not restricting anybody.

Wulfekuhle made a motion to grant the requested variance. Ehlers seconded the motion. With a vote of 5-0, the motion passed.

**The fourth item on the agenda was adjournment.**

Stephenson made the motion to adjourn and Wendling seconded the motion. With a vote of 5-0, the motion carried.

The meeting adjourned at 7:24 PM

Submitted on 3/3/2016 by Matthew Even

# **BUCHANAN COUNTY BOARD OF ADJUSTMENT**

**7:00 PM Monday, April 18, 2016**

**Buchanan County Public Health Meeting Room**

Chairman Price called the meeting to order at 7:00 PM.

Price introduced himself and then led the Pledge of Allegiance.

Jim Price, Deb Ehlers, Louis Wendling, and Karen Stephenson were in attendance along with Matthew Even, Environmental Health & Zoning Administrator.

Public guests (6) included: Brian Ott, Dorothy Ott, Laura Lee, Lorne Lee, Jon Kopecky, and Sharyl Kopecky

**The first item on the agenda was the approval of the minutes from the previous meeting.**

Ehlers made a motion to accept the minutes of the last meeting. Stephenson seconded the motion. With a vote of 4-0, the motion carried with Al Wulfekuhle being absent.

**The second item on the agenda was a request by Brian and Dorothy Ott for a variance from Code of Ordinances, Chapter 50 Zoning, Section 19, paragraph 4a to allow for the conversion of their deck to a sun room on their nonconforming structure. The property is located in the SW ¼, SW ¼, Sec 19, T90N, R10W at 1378 Black Hawk – Buchanan Ave, Fairbank, IA 50629.**

Even showed a map depicting the location of the property that the variance was being requested for. Even stated that the parcel was purchased and the house was built prior to the enactment of the Zoning Ordinance. The lot is a legal nonconforming lot of record since its size is less than what is required under the zoning ordinance and the house is a legal nonconforming structure since it does not meet current setbacks under the Zoning Ordinance. Even stated that they are seeking a variance to allow for the existing deck to be converted into a sunroom. Even then showed an aerial image depicting their house, deck, and property lines. Brian Ott stated that the deck needed some work and his wife, Dorothy Ott, wanted to convert it to a sunroom instead. Even then played a video depicting a view of the property. Even asked B. and D. Ott if they wanted to add anything else. They stated that they did not and that they were thankful for the images which made the request easier for them to explain.

Price confirmed that they were just going to replace the deck with a sunroom of the same size. B. Ott confirmed that it would be the same size of 12 by 14 feet and that the roof would be built into the existing roof since they have to shingle their roof.

Price asked if the lot line ran right along the eastern edge of the machine shed and B. Ott confirmed that indeed it was about one foot from it. B. Ott continued that they have had a mutual agreement with the farmer for the last 30 years and that is why their yard is so much bigger than that.

Wendling asked Even what the legal requirement is for the setbacks. Even stated that for the "A-1" district, the minimum rear yard requirement is 50 feet. Even continued that since this is a nonconforming structure, therefore it is not allowed to be enlarged or altered in a way which increases its nonconformity and this is what the variance is being used for.

Price asked if there was anyone in disagreement. No one responded affirmatively. Ehlers asked if there were any objections from neighbors. B. Ott stated that he was not aware of any and that he had two of his neighbors stop in and talk to him about it. He then asked how many letters were sent out and Even stated that there were four letters. Even added that his office did not receive any complaints.

Price started to make a motion, but Ehlers asked if they should go through the questionnaire first. Price read the questionnaire and the group responded. Please see the attached questionnaire.

Wendling made a motion to grant the requested variance. Ehlers seconded the motion. With a vote of 4-0, the motion carried with Al Wulfekuhle being absent.

**The fourth item on the agenda was a request by Laura Lee for a variance from Code of Ordinances, Chapter 50 Zoning, Section 9 to allow for the conversion of a garage to a second dwelling that would not meet the yard setbacks. The property is located in the SE ¼, NE ¼, Sec 14, T87N, R10W at 1562 305<sup>th</sup> St, Brandon, IA 52210.**

Price asked Laura Lee if she wanted this second residence for her parents to reside in and she responded affirmatively. Price asked what you were told you could and couldn't do. Lee stated that she met with Chad Beatty for over an hour and a half and Kris Holle confirmed this. Beatty gave her three things she could and could not do with her property. She could move a house in unto her property and attach it to the existing sewer and water, build a steel building with an apartment that she could attach to the existing sewer and water, and put a double-wide mobile home on the property and she would have to survey out two acres and put in separate sewer and water. Lee has 12.5 acres where she lives and after talking with her family, they decided to add on to the garage to turn it into an apartment for her folks. Lee's folks are in their 80's and they have always lived in the country and they do not want to go to a nursing home. Lee's family has always cared for each other. Lee said that when talking with Chad a year ago in March, she would just be rolled over into an R-2 when that was done. Lee did not know he was leaving his

position and there was nothing put in her file that she had even talked with Beatty. Lee stated that this is why she is here for a variance from the code.

Even stated that Lee has plenty of land with 12.5 acres of taxable land and most of which has poor soils so that is not restricting her from adding another dwelling on the land. The sideyard setbacks between the garage and the house do not meet the requirements even if converted to R-2. The variance is asking for the allowance of the two houses to be closer than allowed.

Even then showed a map depicting the location of the property that the variance is being requested for. Even then showed an aerial image of the cabin and the converted garage. Even stated that it is approximately 18 feet between the two buildings there. Lee stated that it is 28 feet and Price and Wendling added that they measured it yesterday with Lee and it was 28 feet. Even asked where they measured from and Price responded that they went door to door. Even replied that it depends where you measured from and yard setbacks are not measured diagonally, but perpendicular to structures. Even then showed a video showing the front yard of the property. Price added that Lee has the garage about 80 to 90 percent done for her parents to move into.

Ehlers asked how far apart they are supposed to be and Even replied that the sideyards are supposed to be 25 feet. Price stated that that should make no concern, look at the Amish they build houses connected to each other and the County has given them a deal to do that. Even stated that he would not say that the County has given them a deal to do that. Price responded that he was saying that then. Price asked if the Amish can do it why cannot anybody else. Even stated that if you have a farm which is 35 or more acres, you can build as many houses in a row as you wanted to as long as they are family members or work on the farm. That is why you see Amish homes like this.

Lorne Lee stated he was Laura Lee's brother. Lorne described how his family has historically taken care of each other as they got older. Lorne stated that he had questioned her a lot about this project and that he kept drilling her that Chad said this was okay and she kept saying that Chad said it was. He asked why we were back to this and backing up to something when it was okay originally. Price asked Even what he had to say about that. Even replied that it was not made official and that the Board is the one that would make that decision. Even added that he was not disagreeing on what Chad had said and Laura replied that she should have been told that from the beginning. She stated that she was told that when it was done, it would just be switched over to R-2. Even replied that if anyone came to him, he would have advised them to take care of everything beforehand because in situations like this, it is a whole different story now than what it would have been a year ago. Even added that he would never tell anyone to come in after the fact. Ehlers added that it is much more difficult when there has already been this much money spent. Even added that he is not saying he disagrees with the variance, but that he is just

trying to tell you why you have to have a variance and that the attorney's office has agreed with this ruling on similar properties.

Stephenson stated that the property owner is going to change eventually and that she was concerned with the dangers of having two houses so close. Lee asked why she wouldn't sell it as 12.5 acres. Stephenson asked if it would always stay together and Lee replied that it would always stay 12.5 acres. Lee stated that she suffers a health issue and that the converted garage is handicap accessible and she plans moving into this house. Lorne added that his parents are moving in and that his sister plans on moving next. He stated that the other dwelling is just a cabin and who knows how long that will last for. Lorne described the work he has personally done on both of the dwellings.

Jon Kopecky introduced himself and asked if there were any stipulations in regard to renting out the unit in the future when Laura moves into the garage? Kopecky added that he supports what Laura is trying to do. Stephenson added that that was what she was trying to get at earlier and that the same two people might not own the property in the future. Price said the other house will eventually be torn down if it is older. Wendling stated that he did not think it would be a problem to rent it out if she rented it out to family. Laura stated that her youngest son wants to buy her property and that he would probably be the one to care for her when she got to that point. Laura stated that she sees it staying in the family and the only way she sees it not is if she filed for bankruptcy but she doesn't see that happening any time soon.

Even stated that if the Board granted a variance for the setbacks, in the future if it was sold it could be parceled out after a survey or it could be used as a summer cabin as well. Kopecky added that if the property is split up then you have two buildings too close together and against fire code. Kopecky added that all buildings have to be so far apart even outhouses according to fire code. There was further discussion about fire code and its applicability.

Kopecky inquired about the difference between a provisional permit and a variance. Even replied that a provisional permit would be guided under the provisions of the Zoning Ordinance and are uses that are allowed upon approval of Board of Adjustment. Provisional permits are wrote into the ordinance and variances are not.

Ehlers asked if any of the property owners are opposed. Kopechy stated that he was still wondering about the possibility of renting the cabin out and how that would go with the close distance. Price replied that it could be written into the variance that renting is allowed to family members. Laura added that there would only be one address for the dwellings. Ehlers inquired if Even had received any objections. Even replied that he did not receive any objections, but he did have one neighbor call and say that he supported Laura's efforts.

Price made a motion to grant the variance with the stipulation that it must stay in the family. Wendling added that that means if it was rented out, it had to be to a family member. Lorne Lee inquired why it could only be rented to family. Price responded that they are too close together and that you can only have that if it is a family member living there or a hired worker living there. Even clarified that it was only a farm where that situation would be applied. Lorne Lee stated his concern that he did not know what family would live there and he doesn't understand why someone else couldn't rent it. Price stated that if they wanted the variance then they should do what he suggests and that is the way it is. Lorne replied that he is just asking a question and he would like an answer. Price replied that that is his answer. Price stated that it must be rented to a family member due to the houses being too close together and if it was a different situation, he wouldn't advise that variance. Kopecky stated that he is not against her, but he asked how it would work if it was rented to another family and if that would cause a septic problem. Price replied that it probably would cause a septic problem. Price stated that with the three people currently living there, he can't see it being a problem for one septic to handle. Laura Lee stated that hers is a one bedroom and that the converted garage is a two bedroom. Even replied that it was allowed by Chad for both dwellings to use the existing system, but traditionally it would not be allowed and you would have to go to x amount of feet of seepage lines for x bedrooms. Even stated that it was confirmed by Rick Ratchford that Chad had allowed this. Laura Lee stated that even if she did rent out her cabin to another family, it is only a one bedroom cabin so why would a family of five move in. She doesn't want a whole bunch of people living out there when she is old and in a wheel chair. If she rented the cabin out to somebody, it would probably be to someone who would help her and take care of me.

Ehlers stated that she liked what Even had mentioned that they could add a stipulation that if it was sold, it would have to be split up and surveyed. Laura Lee said that it would be sold as one piece and if it is sold as two pieces, then they would have to reproach you guys and deal with it then. Ehlers commented that no one knows what is going to happen in fifty years and none of us are going to be around then. If they stipulate in approving this variance that if the property is sold down the road and split into two pieces of land, it would have to be surveyed and follow the zoning ordinance. This would not affect any one here and they are trying to follow rules and procedures too. Even verified Ehlers idea of a motion. Laura Lee agreed and thought that made sense.

Even reminded the Board that Price still had a motion and it needs a second to go to a vote. Wendling seconded Price's motion. Stephenson requested that the stipulations of Price's motion be reviewed. Price confirmed his motion stipulates that it has to be kept in her family. Wendling stated that it would be the way to go since if you wanted to rent it, you could split it off and rent to someone else and skip the family requirement. Lorne Lee stated that that was his point. Stephenson stated that it doesn't matter if you sell it off or not, the County Auditor will require a survey. Lorne add that he doesn't see the difference between having family living there and

having the same number of people living there if you sold it. Kopecky stated that it is a problem to sell the cabins because you have to have a certain lot size and stay away from the boundaries and Even replied that this variance would grant the exemption to allow for this to be done. Even added that with selling, there would be a time of transfer inspection at which time the septic would need to be upgraded.

Laura Lee stated that she understands that it is confusing on both sides. Her situation is different than Kopecky's because their cabin is not right next to their house like hers is. Sharyl Kopecky asked for confirmation that she could theoretically sell her cabin with two acres, but if she wanted to rent it, it could only be to family members and Price confirmed. Wendling added that if she did then it would have to be rezoned and get another septic system put in. Price stated that if they gave this variance, it would give her a good option to sell the two acres. Laura Lee replied that she does not want the two acres, but what she is asking is years down the road if she has to move into the converted garage and no one in the family wants to be a care taker, she can't rent it out to somebody who would? Lorne restated that it doesn't make a difference if she is renting or if they sold it off and either way it is still the same situation. Even stated that he thinks the basis for the family member requirement is that farms are only allowed additional houses for family members or hired workers. Laura Lee stated her concern that if she can't find family to take care of her and that she doesn't want to go to a nursing home.

Lorne Lee stated that he doesn't want to see a stipulation that it can only be rented to family members because she might need someone else to care for her. Price responded that if they don't put it in the stipulations, then what are you going to do when it is sold. Wendling asked if it would still have to be fifty feet away and Even replied not if they grant the variance. Even again stated that he is not aware of what the fire Code is. Laura Lee stated that the Amish are in violation of this rule then since their houses are so close. Price stated that if you had the fire code person out there, then he won't allow it so what would you say then. Lorne stated that it was another building already and was that close then so what difference does it make if it is a home or a garage or if they are connected? Price added that you are back to health reasons again because the buildings are too close and a fire could spread easily. Price reaffirmed that he is not against what Laura Lee is saying, but there are rules and laws that have to be followed and he thinks they are getting by pretty good with the way things are.

Lorne Lee stated that they did everything they could and talked to the person at charge at the time so they went ahead because they thought it was okay and now they are back to this. Lorne added that this isn't the first time he has been down this road. Laura Lee stated that she is not here to argue anything and Price replied that they are not here to argue, they just need to find out what things are. Laura Lee stated that all that she wants are for the two places to be there and that if she sells it, she understands they would have to have it surveyed for two separate lots.

Price asked for opinions from the rest of the board. Lorne Lee stated that it sounds like everyone is in agreement with the variance except for the family aspect. Wendling stated he did not know what difference it would make with selling versus renting to family.

Stephenson pointed out that Hank's motion was still alive and that we needed a vote. Even called for a vote. Ehler's asked if it made a difference if family lived there or not. Even Stated that that was their decision, but there could be problems in the future if you had larger families move in. Currently there are three people and a two bedroom house is sized for four people so the septic should not be a problem currently. Stephenson inquired about putting it into the variance that there could only be x amount of people living there. Kopecky stated that it would not matter because if it was sold, the septic would have to be inspected. Even responded that that is not always true and it would not have to be if it's an estate sale or sold down through the family. Price did not think his variance would be needed given Ehler's suggested variance. Wendling thought they should open it up to nonfamily members. Price withdrew his motion.

Ehlers made a motion to grant the variance for the setback requirement and be on one parcel with the requirements that if the land is split and sold, then it needs to be surveyed and parceled out along with a new septic installed. Even inquired if the number of people living in the houses was going to be limited. Ehlers stated that she doesn't think it would be a problem if there are only three bedrooms. Even asked for clarification on the number of bedrooms. Laura stated that there is another room where people could stay, but it is currently a storage room. Price stated that they are not here to be homary or cruel to anybody and that they are here to do the best they can do. Wendling seconded the motion. With a vote of 4-0, the motion passed with Alan Wulfekuhle being absent.

**The fifth item on the agenda was adjournment.**

Price made the motion to adjourn and Wendling seconded the motion. With a vote of 4-0, the motion carried with Alan Wulfekuhle being absent.

The meeting adjourned at 7:54 PM

Submitted on 3/3/2016 by Matthew Even