

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, March 4, 2022, with Chairperson Janelle Spies and board members Carol Schlueter, Emily Geertz and Tom Harper present, Charles Clark was absent. Eric S. Furnas, Planning, Zoning & Environmental Administrator and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Heather Kahl.

Janelle Spies: I will open the public hearing and read 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. Minutes from the last meeting were sent out to everybody. Does anybody have any corrections or comments? If not, I'd like a motion to approve the minutes as read.

Tom Harper: So moved.

Janelle Spies: Is there a second?

Carol Schlueter: I'll second it.

Janelle Spies: A motion has been made to approve the minutes and it has been seconded. All those in favor please say Aye (4) Opposed (0) Absent (Clark). The motion is granted. Is the applicant or their representative present?

Heather Kahl: Yes.

Janelle Spies: Okay, we are normally a board of five members and we have one absent today. You would need to get three yes votes in order for your motion to pass. You have the option to continue with us this morning or we can table the request until the next meeting.

Heather Kahl: Yes, I will go ahead.

Janelle Spies: Eric please read the request.

Eric Furnas: Case #22-03-01. An application has been filed by Heather R. Kahl, Record Owner. This property is located in Cedar Township, in the NE¼ of Sec. 1-T76N-R4W, East of Estle Avenue, 2239 Estle Avenue, containing approximately 4.79 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. Kahl to build a one family dwelling on this property for herself to live in.

Janelle Spies: Is there any correspondence?

Eric Furnas: No ma'am.

Janelle Spies: Can the applicant or spokesperson please state their name and tell the board about their request?

Heather Kahl: My name is Heather Kahl. And I am requesting to build a home on one of the pieces of my property, which is 4.79 acres. This has been in my family for many years. My sister and I inherited my grandfather's home and property. She has the house and about nine acres and I have the other 30 some acres. It's been something that I've always wanted to do as a child. I grew up out there, you know, we have a creek that runs through it. My grandfather and I spent... I don't know how many summers... twenty some years ago planting seedlings and now we have thousands of well-established sycamores and walnuts now. It's in L & M school district. And my sister and I are close and it's just... my husband died two years ago and it's kind of prompted me to decide what I wanted to do with the rest of my life. And this is what I want to do. I want to build a home here and then pass it down to my children.

Janelle Spies: Okay. Board members, do you have any questions or comments for the applicant?

Carol Schlueter: On here there is an "x" where you want to build... and you say your sister lives out here someplace?

Heather Kahl: Yes.

Carol Schlueter: Where is that at?

Heather Kahl: She is off of G28.

Carol Schlueter: Can you show me on this map?

Heather Kahl: So this is her home.

Carol Schlueter: So this is all of your property here? Or was it your grandparents?

Heather Kahl: Yeah, so my grandpa owned... let's see... from here to here (showing on the map) down over to this corner. And Hafner's own right here. So what she has is this line section right here and it goes to here.

Carol Schlueter: So this was the original property that your grandfather owned. So you own this?

Heather Kahl: And this... it's actually two parcels. I'm not sure why they are parceled separately. So yeah, I also own this.

Carol Schlueter: But it's all timber ground, right?

Heather Kahl: Yes.

Carol Schlueter: It's not really what I call farm ground.

Heather Kahl: Right, right, the soil quality is terrible. I do ... I guess in terms of that, I have Kevin... he is one of the state's land biologists, he is set up to come out on March 17th and to help me develop a wildlife restoration plan. It's to help me with some of the stuff that I have difficulty keeping up on. I work full-time and obviously my grandfather didn't so he was able to keep up on it. We do have horses and presently they are stabled at my sister's house, but ideally then our horses will be moved to our property with us. They are hobby horses, they are my daughters. She goes onto college this summer or this fall, so they will become my horses. Then I am also wanting to get a small herd of work goats also out there. So we do have quite the array of wildlife out there. We have cameras out there, we had a bobcat family.

Carol Schlueter: Eric, this property that she is talking about, is that in the flood plain?

Heather Kahl: No.

Eric Furnas: There is some flood plain that rolls through parts of the property, yeah. But her proposed location for the dwelling is not in the flood plain.

Heather Kahl: Yeah there is a creek that runs through the entire property.

Janelle Spies: So this does state that you are going to be less than 750 feet from a resident?

Eric Furnas: Well yes, from the area that she indicated the proposed building site has probably two residential structures that would be less than 750 feet and three would be within 1,250 feet. I do want to clarify something in my notes, the ordinance actually says may be denied if there are residents within ... but you have been consistent on those. It's to avoid the concentration of development or the clustering of residential dwellings that are less than 750 feet separation. I do want to bring you to point number 2 on the staff recommendations. It concerns an animal feeding operation that is directly north of this site. It is fairly large. On the rural residence Special Use Permit questionnaire under Letter A., it's one of the first questions, it's about Livestock Operations. It states: Applications which concern property closer than the current specified setback requirements set forth by the Iowa code from the nearest livestock operation required under state law to submit and implement manure management plans shall be denied. The stated separation distance by my estimation is 1,825 feet and I'm not claiming accuracy there. But that facility is required to maintain 1,875 feet separation.

Carol Schlueter: That building is?

Eric Furnas: Yes, the separation distance for that facility. And so to look at it from a reverse angle, that facility would not be allowed to be built if it couldn't meet that separation. So I think that's why our ordinance says shall deny petitions that are less than what the livestock operation has to maintain. If he was to build this facility he has to maintain 1,875 feet in order to build it.

Carol Schlueter: But since it's there now... I mean it's going to stay, he can't move it.

Eric Furnas: Right, you would be doing away with and putting him in violation of the separation distance.

Carol Schlueter: Yes, we would be putting him in violation.

Eric Furnas: Our Special Use Permit Ordinance does say shall be denied if it can't meet the minimum separation distance that that producer would be required to maintain.

Tom Harper: So is this feeding operation in existence ... it is in operation now?

Heather Kahl: Yeah, actually it's up for auction right now.

Tom Harper: Yeah, it's the Virjo property.

Eric Furnas: Yeah, I didn't know if he was selling the hog operation.

Carol Schlueter: Who's ground is it?

Heather Kahl: It's Virgil Eichelberger's.

Carol Schlueter: And it's all for sale?

Heather Kahl: Yeah.

Tom Harper: Yeah it's incorporated, it's Virjo incorporated, he has other properties too that are up for auction.

Heather Kahl: Yeah, they have rented it to TriOaks until January 1, 2025.

Tom Harper: But even if it wasn't in operation, they would still have the permit on it so it could be used.

Eric Furnas: Yeah, it's currently permitted.

Emily Geertz: Yeah because it looks closer to several houses.

Heather Kahl: Yeah.

Carol Schlueter: Okay, so within the 750 feet of the houses, is one of them her sister's house?

Eric Furnas: Yes, I believe so.

Heather Kahl: It would be the Hafner's and that's actually through timber.

Carol Schlueter: To the south?

Heather Kahl: Well it towards G28. I'm terrible with directions, I apologize. They are on the corner of Estle Avenue and G28.

Carol Schlueter: Okay, that's where the Hafner's live?

Heather Kahl: Yeah and you can't even see their home from where I am wanting to build. There is a creek that divides us as well as some gulley's and a lot of timber that will remain standing.

Carol Schlueter: But then there is one closer across the road from you.

Heather Kahl: That was Kundel's property, that one I can see from my property.

Carol Schlueter: Yeah I have a problem if it's closer than the minimum 750 feet. I always have.

Janelle Spies: Is there anyway on your property that you can move it so it would meet the minimum separation distances?

Heather Kahl: I mean, I can but this is the preferred spot because I have a walnut grove and another sycamore grove. I don't want to disrupt all that we have restored already.

Janelle Spies: But it is possible to meet all of the requirements?

Heather Kahl: Yeah.

Eric Furnas: I just would caution the board about disregarding the separation distance from a state managed livestock facility. We have that in the ordinance and it states, it shall be denied. Now if there is a site that we can verify with a great deal of accuracy for the separation distance, that issue would then be resolved. But I think there is potentially serious liability if we disregard an adopted ordinance and then if a future owner has this facility and they can't do what they were granted to do because we disregarded a written ordinance. Everything else about the property screams low ag value, but I mean, what is best for the county as a whole, I have strong concerns about disregarding a written ordinance.

Emily Geertz: Yeah, that would be my biggest concern too. Because like you say it's not high CSR2, it's only 14. I appreciate everything that you are doing on the property but I just think that to be able to do this you might have to sacrifice to get the distance. We can't go in violation of the state law.

Carol Schlueter: I couldn't vote for it, I know. Would you like to have us table this and go and see where you could move the location? To see if you could get it to meet those requirements? I mean, that's your decision, I'm just suggesting. But it's totally your decision.

Heather Kahl: Well it doesn't sound like I have an option.

Carol Schlueter: I mean, if you want us to go ahead and vote, we can. But I mean, that's up to you.

Heather Kahl: I guess specifically what is it that I have to do?

Carol Schlueter: Eric?

Eric Furnas: Well I think she's asking what distance you are looking at.

Janelle Spies: Well I'm looking at the hog confinement operation for sure.

Carol Schlueter: Yeah, I think that one too. I mean, I think I could maybe agree on less than the 750 feet to the house. I'm more concerned with the hog confinement restrictions.

Eric Furnas: Yeah, we can certainly work with her to try to identify areas that would meet the minimum, including digging in with some more accuracy. I mean, what they are struggling with is parts of the ordinance that says, it shall be denied for the potential liability.

Heather Kahl: So I don't understand because there are other houses that seem to be in close proximity to it.

Eric Furnas: Well the confinement animal feeding operations and their separation distances from other property owners... that may have gotten separation waivers on the houses. But I believe we would be very short sided in assuming that for a future owner that has not meet the minimum distances... I don't believe that that is within their authority. I'm just speculating that maybe one of them may have been the owner at the time of the facility. A lot of the houses that are closer are the houses that belong to the facility owner too. Or they could have been pre-existing.

Heather Kahl: Okay, so...

Eric Furnas: Well it's up to you, they are giving you options to either go ahead today, or table it and maybe drill down on maybe some other potential areas and see?

Carol Schlueter: Table it for a month and get some more information.

Eric Furnas: Or even for the proposed site itself, I am measuring on a screen with a limited amount of accuracy. But it was fairly close to what you had stated. But I am more than willing to come out and see.

Heather Kahl: To stake it?

Eric Furnas: Yeah, and use a GPS to see. I mean, it sounds like if it was at least 1,876 feet they wouldn't be struggling. That's what I am hearing.

Heather Kahl: Yeah, that's fine. I just want to be able to build there.

Carol Schlueter: And we want to work with you too. So you want us to table it and give you a month to get some more information then?

Heather Kahl: Yeah.

Carol Schlueter: Okay, I will make a motion that we table this until our next meeting in April.

Janelle Spies: Is there a second?

Emily Geertz: Second.

Janelle Spies: Okay, a motion has been made and seconded to table this meeting until the next month when we meet. All those in favor Aye (4) Opposed (0) Absent (Clark). The motion has passed. The meeting is adjourned.

Eric Furnas: So let's start with... you need to flag the area and I can bring out the GPS.

Heather Kahl: Can I call you later?

Eric Furnas: Yes and we can measure.

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