

BOARD OF ADJUSTMENT MINUTES  
Regular Meeting  
Stanly County Commons Meeting Room  
April 14, 2009

**Call to Order**

Chairman Steve Watson called the Board meeting to order at 7:30 p.m. on Tuesday, April 14, 2009, at Stanly County Commons.

**Roll Call**

***Board Members Presiding***

Steve Watson, Chairman  
Grover Stewart, Vice Chairman  
Andrew Eades  
Dr. John Eckman  
Benton Payne  
Todd Swaringen  
Richard Cosgrove, Alternate

***Absent***

Cathy Bennett, Secretary

**Staff Attending**

Linda Evans, CZO, Planner II, Clerk to the Board  
Tim Swaringen, Code Enforcement Officer

**Others Present:** List filed with April 14, 2009 minutes.

**Approval of Minutes**

Chairman Watson asked if there were any corrections to the minutes of February 10, 2009. Hearing none, Chairman Watson asked for a motion to approve the minutes of February 10, 2009.

**Motion:** Andrew Eades made a Motion to approve the minutes of February 10, 2009.

**Second:** Grover Stewart seconded the motion.

**Action:** The Board voted unanimously to approve the minutes of February 10, 2009, as written.

Chairman Watson announced that it is required by law that each person speaking at this public hearing be sworn in and requested that everyone who intends to speak on the first case stand and be sworn in. Virginia Austin, Shane Greene, Ann McElheny, Butch McElheny, Tim Swaringen, and Linda Evans were sworn in by Chairman Watson.

Chairman Watson called the first case, SUP 09-03, and asked the Clerk to present the case.

The Clerk stated that Virginia Austin and B H Greene request a Special Use Permit to allow up to five (5) horses/mules on their 3.396 acre tract of land. Applicants normally have three (3) animals on the property but would like to, from time to time, have up to five (5) animals on the property while the animals are nursed back to health or until a home can be found for them. Mrs. Greene also owns an adjoining parcel of land totaling 0.451 acres. Property is zoned RA-Residential Agricultural which allows horses with a minimum of one horse per

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acre of pasture. Section 603 of the zoning ordinance states that a Special Use Permit is required for raising of domestic animals that exceed density as specified in Section 601 of the zoning ordinance.

Chairman Watson called on the applicant to come forward and present her case to the Board.

Virginia Austin came forward and stated that she and her sister are the owners of their parents' home place. She stated that there has always been a horse on the property since she was a child. She stated that when the zoning office contacted her about the requirements for horses they began to clear the property, fence and sow grass. She stated that the animals are grain fed twice a day and hay is available for them at all times. She stated that the stables are cleaned daily and manure is hauled off at least monthly. She stated that they normally have three animals on the property but, from time to time have two more. Her nephew nurses the extra horses back to health or tames them for riding and they are returned to their owners.

Chairman Watson asked for questions from the Board.

Grover Stewart asked Ms. Austin how many horses are on the property at one time. Ms. Austin answered that they own three animals but that five are occasionally on the property. They occasionally keep one or two more animals while they are being nursed back to health or being tamed for riding or if the owner is on vacation.

Chairman Watson asked how long more than three horses are on the property at one given time. Ms. Austin answered that it occurs more in the summer than winter and the longest time has been three months.

Benton Payne asked if Mrs. Greene's adjacent property is available for the animals and Ms. Austin answered no. She stated that her sister lives on the adjacent property.

Todd Swaringen asked how many stalls are in the barn and what the animals are fed. Ms. Austin answered that there are five stalls in the barn and the animals are fed grain and hay.

Richard Cosgrove asked Ms. Austin if the number of animals would ever exceed five and Ms. Austin answered no.

Chairman Watson asked if anyone else wished to speak for this case.

Shane Greene came forward and stated that he loves taking care of horses and mules. He stated that he takes in sick horses, fattens them up and finds homes for them. He likes to work with them and train them for riding. He stated that he would have no more than five horses or mules at one time on the property.

Chairman Watson asked if anyone wished to speak against this case.

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Ann McElhaney came forward and stated that they built their home on adjacent property in good faith that the zoning ordinance would protect them from situations that are unpleasant to live next to. She stated that she believes the ordinance is written with much thought and study and it should be enforced. She stated that they have already had to deal with additional horses last summer and the animals had caused a fly and insect infestation. She stated that she is an environmentally friendly person and likes to hang her clothes on the line but is unable to do this because of the insects. She also stated that they are unable to cook outside because of the odor and insects. She stated that she did not believe the humane society would approve of the conditions on the property. She stated that there is no vegetation on the property and it is very rocky. She read the definition of pasture from the dictionary and stated that this property did not meet that definition.

Andrew Eades asked how close Mrs. McElhaney's house is to the property line and she answered approximately fifty feet. She then showed some of the Board members the location of the house on an aerial photograph.

Chairman Watson said to Mr. McElhaney that he looked as if he was anxious to speak and asked him to come forward.

Mr. McElhaney stated that he appreciates the Board's time and restated some of the same things Mrs. McElhaney had stated about the flies and the odor. He invited the Board to come down for a cookout and experience the flies and the odor. He also stated that three acres are not left for pasture because of the outbuildings on the property.

Chairman Watson called for discussion from the Board.

Richard Cosgrove stated that at the beginning of this case he thought it would be an easy decision but after hearing all the evidence he realized that it was going to be a very difficult decision. On the one hand, you have a group of people who truly love animals and want to take care of them. On the other hand, you have someone who lives nearby and is not happy with all the animals being next door. He remembered a similar case in January when there was no opposition and it was much easier to make a decision on that case. He stated that he became unsure about how he wanted to vote when he heard all the evidence in this case. He suggested that possibly the Board could consider allowing four horses instead of five.

Andrew Eades asked Shane Greene when he placed the animals on the property and he stated about five years ago.

Chairman Watson asked Shane Greene if he accepted any money for the care of the extra horses and he answered that he did not.

Chairman Watson asked Tim Swaringen, Enforcement Officer, if he had anything to add to the case.

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Mr. Swaringen came forward and stated that he has visited the property nine different times over the past three months. He has noted on each visit that the pasture is progressing, the rack is filled with hay and there is grain in the stable. The horses are in excellent condition and there is no evidence of mistreatment. He stated that the property owners have met all the requirements in a timely manner and have been very cooperative in every step. He stated that this property is zoned RA and allows animals.

Grover Stewart made the comment that there is not going to be a whole lot of pastureland on this property, they will have a hard time keeping grass. Chairman Watson stated that he tends to agree.

Chairman Watson stated that he feels like saying that three animals are the maximum on this property.

Chairman Watson stated that if there is no further discussion he would request the Clerk to read the findings of fact.

Ms. Evans read as follows:

That the use shall not adversely affect the health or safety of persons residing or working the neighborhood.

That the use shall not be detrimental to public welfare or be injurious to property or public improvements in the neighborhood.

**Motion:** Grover Stewart made a motion to find these facts false based on the fact that due to the testimony given and after seeing pictures of the property, it is obvious that the property should be limited to only three animals.

**Second:** Benton Payne seconded the motion.

**Action:** The Board voted unanimously to approve the motion to find these facts false and to deny the request to increase the density to five animals on the property.

Chairman Watson called the second case, ZV 09-02, and asked the Clerk to present the case.

Applicants are requesting a variance to construct an accessory structure (barn for horses) in their front yard. The property is approximately 5.5 acres and is zoned RA-Residential Agricultural.

Staff investigation shows that the house is located at the far northwestern corner of the 5.5 acre tract of land, which creates approximately 4.5 to 5 acres of yard that is considered front yard as defined by Section 1302.40 of the zoning ordinance. Section 601.1 of the ordinance states that accessory structures are "permitted only in a side or rear yard." During the investigation staff observed that the property is large enough that the accessory structure will not cause a negative visual impact on neighboring property or to motorists on Frick or Wildwood Roads.

Chairman Watson called on the applicant to come forward and present the case to the Board.

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Joy Heimann came forward and stated that they had purchased the property last year and it was exactly what they were looking for. She stated that the house was located in one corner of the property with a major portion of the property between the house and Frick Road, which they have cleared for pasture. She stated that they did not realize that so much of the property would be considered front yard. She stated that they had left a row of trees all along the perimeter of the property so that the barn and horses would not be a bother to the neighbors.

Richard Cosgrove stated that he would like to point out that everything she said is true and he sees no problem with granting this variance.

Benton Payne asked Mrs. Heimann if he understood correctly that the property in front of the house where the barn will be located has been cleared for pasture and she stated that is correct. Mrs. Heimann also stated that they had been told not to sow the grass until September.

Chairman Watson called on anyone else who would like to speak for or against this case to come forward.

No one came forward.

Chairman Watson stated that, if there were no other questions or comments, he would have the Clerk read the findings of fact. The Clerk read and the Board found each fact as follows:

***That applicant cannot secure a reasonable return from this property without the variance.***

**Motion:** Andrew Eades made a motion to find this fact true based on the fact that applicant wishes to place a barn on the property for horses. The location of the house and the septic system severely limit the side and rear yard remaining to place an accessory structure. Applicants have approximately 4.5 to 5 acres which, for zoning purposes, is considered front yard. This variance will represent the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land.

**Second:** Richard Cosgrove seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

***That a hardship exists resulting from unique circumstances related to applicant's land.***

**Motion:** Todd Swaringen made a motion to find this fact true based on the fact that the location of the house creates a 4.5 to 5 acre front yard which is prohibited from having accessory structures. The location of the septic system also limits the available side and rear yard for an accessory structure.

**Second:** Grover Stewart seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

***That the existing hardship is not the result of applicant's own actions.***

**Motion:** Andrew Eades made a motion to find this fact true based on the fact that applicants

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were unaware that placing the home in its location would create a front yard that would be considered unusable for accessory structures.

**Second:** Stephen Watson seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

*That, if granted, the variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit.*

**Motion:** Richard Cosgrove made a motion to find this fact true based on the fact that the property is large enough that the accessory structure will not cause a negative visual impact on neighboring property or to motorists on Frick Road or Wildwood Road; it will not substantially detract from the character of the neighborhood and it will meet all required setbacks.

**Second:** Dr. John Eckman seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

*That, if granted, the variance will secure the public safety and welfare and will do substantial justice.*

**Motion:** Grover Stewart made a motion to find this fact true based on the fact that the accessory structure will not influence public safety and welfare and will do substantial justice in that the benefit to the applicant will substantially outweigh the harm to neighboring property.

**Second:** Todd Swaringen seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

Chairman Stephen Watson called for a motion to either grant or deny ZV 09-02.

**Motion:** Todd Swaringen made a motion to grant ZV 09-02.

**Second:** Benton Payne seconded the motion.

**Action:** The Board voted to unanimously approve the motion.

Chairman Watson called for a motion to adjourn. Andrew Eades made a motion to adjourn. Todd Swaringen seconded the motion and Chairman Watson declared the meeting adjourned at 8:30 P.M.

\_\_\_\_\_  
Date

\_\_\_\_\_  
E. Stephen Watson, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk to the Board