

MINUTES

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

**Monday, November 19, 2018
7:30 pm**

**Courthouse Plaza East
Commission Meeting Room
115 North 4th Street**

Members Present: Dr. Tom Taul, Chair
Diane Hoobler, Vice-Chair
John Wienck
Joe Gelroth

Members Absent: Nathan Larson

Staff Present: Monty Wedel – Director, Bob Isaac – Planner and Lisa Daily -
Administrative Assistant

Others Present: Dale Graves, Robert Shaw, Kelly Briggs, Bob Mortimer, Carol Mortimer
and Neil Horton.

OPEN PUBLIC COMMENTS

None.

CONSENT AGENDA

The minutes of the October 8, 2018 meeting were presented and Joe Gelroth noted that on Page 8, the motion to approve the Residential Use Designator and Plat did not include who seconded the motion and carried information. The Report of Fees for the month of October (\$3,668.00) was presented.

John Wienck moved to approve the consent agenda with noted correction to Page 8 of the minutes. Diane Hoobler seconded. Carried 4-0.

Joe Gelroth moved to adjourn the joint meeting of the Riley County Planning Board/Board of Zoning Appeals and reconvene as the Board of Zoning Appeals. John Wienck seconded. Carried 4-0.

BOARD OF ZONING APPEALS

Shaw – Variance

Chairman Taul opened the public hearing at the request of Robert L. and Kris L. Shaw, petitioners and owners, for a variance authorization to reduce the front yard (setback) requirement from 25 feet to four (4) feet for Lot, Terra Heights Addition, No. 2 in Section 14, Township 9 South Range 7 East; Grant Township.

Bob Isaac presented the request stating the subject site consists of Lot 1 Terra Heights Addition, No. 2 platted in September 1960, developed with a single family home built in April 1999. He said the applicant wishes to build a garage onto his existing home, but due to the close proximity of the existing home and proposed garage in relation to Tuttle Cove Road, a variance

authorization is required. Mr. Isaac said that if approved, the variance will also bring the home into compliance, as it currently encroaches slightly into the existing 25-foot front yard setback. Mr. Isaac said the applicant is seeking a reduction of the front yard requirement from 25 feet to 4 feet.

Staff recommended approval of the requested variance based on the criteria listed in the staff report.

Chairman Taul asked if the Applicant wanted to speak.

Rob Shaw stated he simply needs more space for three vehicles, boat and Jet Ski.

There were no proponents or opponents.

John Wienck moved to close the public hearing. Diane Hoobler seconded. Carried 4-0.

Diane Hoobler moved to approve the request for a variance authorization to reduce the front yard (setback) requirement from 25 feet to four (4) feet for Lot, Terra Heights Addition, No. 2.

John Wienck seconded. Carried 4-0.

Bayer Construction Co., Inc. – Conditional Use

Chairman Taul opened the public hearing at the request of Leslie K. Briggs DBA Bayer Construction Co., Inc., petitioner, and Bayer Construction Co., Inc., owner for a Conditional Use Authorization to permit the operation of a limestone quarry in the "AG" (Agricultural District) zoning designation.

Bob Isaac stated that Kelly Briggs and Neal Horton were present and representing the applicant. He explained that Bayer Construction owns and operates Steven's Quarry, contiguously situated north and west of the subject site. Mr. Isaac said the area for the proposed quarrying operation will primarily be the west third and north third of the subject site.

Mr. Isaac reviewed the site and reclamation plans which will blend with the neighboring tract to allow a gentler slope, less abrupt topographical change between the subject site and the neighboring property to the north and west. He said this will provide less chance of extreme erosion, better storm water drainage and provide for safer topographical relief and management.

Mr. Isaac said the subject site is currently served by a driveway that extends to Tuttle Creek Boulevard; however, Bayer Construction is choosing not to use the existing driveway. Mr. Isaac said that since the quarrying operation is underway on the neighboring parcel and will be migrating east and south to claim the benefit laying under the subject site, the entrance to Steven's Quarry will be used for heavy equipment and truck traffic.

Mr. Isaac went over the list of conditions:

1. This Conditional Use Authorization shall apply to the legally described 5-acre parent tract and shall be subject to the minimum requirements of the Riley County Zoning Regulations regarding quarrying and mining;
2. Limestone extraction shall be limited to the specific area shown on the submitted site plan.

3. The subject site shall be served by an existing entrance to Tuttle Creek Boulevard, located at the intersection of Tuttle Creek Boulevard and the East line of Section 11, Township 9 South, Range 6 East;
4. Vehicles and equipment involved with the operation shall access the site via the aforementioned entrance and utilize the customer haul route (as shown on the site plan and which also serves the existing quarry west of the subject site), along with the proposed haul route (as shown on the site plan), which crosses the existing quarry site west of the subject site;
5. The house located on the property (7296 Tuttle Creek Boulevard), shall be converted to offices for the duration of the quarrying operation and used only in association with the quarrying operation. The structure shall not revert to or be used as a residence until the quarrying operation has ceased and reclamation of the site has been completed and the site is inspected and approved by Riley County Planning and Development;
6. Prior to commencing excavation operations, the applicant shall obtain an Excavation License from Riley County Planning and Development;
7. Prior to commencing excavation operations, a Reclamation Plan shall be submitted to and approved by the Riley County Board of Zoning Appeals;
8. When said quarry operation is abandoned or discontinued, the land shall be reclaimed within 30 days, as set forth in the Surface Mining Land Conservation and Reclamation Act (K.S.A. 49-601 through 624);
9. Upon reclamation of the site, County staff shall inspect the site to confirm that it has been satisfactorily reclaimed as per the approved Reclamation Plan; and
10. Hours of operation shall be limited to daylight hours; Monday through Friday, closed on weekends.

Staff recommended approval of the request as per the conditions listed in the staff report.

Chairman Taul asked if the Applicant wanted to speak.

Kelly Briggs stated the quarry (Stevens) has been there since the 70's and most of the property that was previously quarried was zoned heavy industrial. He said the property neighboring the subject site has been quarried for the last 18 years per a Conditional Use Authorization granted on September 25, 2000. Mr. Briggs stated the conditions for the current request are basically the same as the one received in 2000.

Mr. Briggs stated the house located on the subject site will remain vacant and explained that due to the 300-ft. separation distance requirement from a residence, they have been unable to quarry the rock along the west and north property lines of the subject property.

Mr. Briggs said they allowed the previous owner of the subject site to use their property for their horses. He explained when it came time to ask the property owner to remove the horses, the property owner asked if Bayer Construction would be willing to purchase her property. Bayer Construction did purchase the property and part of the plan was to extract some of the rock located on the subject 5-acre tract.

Mr. Briggs stated they have some very minimal reserves left in the far northwest corner of the industrial zone site which is owned by Barbara Flores. He said they have been a little poor at getting it quarried up and closed out. He said that one the characteristics of the geological formation is that clay is embedded in the seams of the ledge called the Towanda limestone. He

explained the clay has to be removed out of the ledge so it doesn't end up in the final product. He said this particular corner has been a bit of a challenge and with the industrial zoning there isn't a time frame like the current site with the conditional use. He said they started working this site again this year with the hopes of getting it reclaimed sometime next spring. Mr. Briggs said they also have a little bit of reclamation to do just north of the home owned by Barbara Flores. He said for quite some time, she asked them not to do anything since she was using the area for cattle. Mr. Briggs stated they are obligated to clean up that area by the reclamation laws.

Robert Mortimer stated he owns land that abuts the quarrying site in two places. He said Mr. Briggs just got done talking about Barbara Flores property that hasn't been reclaimed and they are about to run out of quarry land. Mr. Mortimer said he wanted to ask Mr. Briggs what the future plans are for obtaining more land to quarry.

Mr. Briggs asked the Board is this an item for discussion at this meeting or the 5-acre application request.

Chairman Taul explained the application is for the 5-acres and that is what is being considered by the Board this evening.

Mr. Briggs stated he would be willing to visit one on one with the Mortimers on future plans.

Mr. Mortimer said he was referring to Mr. Briggs' description of explanation of property sites outside the 5-acre tract.

Chairman Taul stated he was providing a history of the quarrying operation.

Carol Mortimer stated she also lives on property adjoining the 5-acre tract and said the driveway that Bayer Construction won't use is the driveway they use to get to their house. She stated it seems like an insignificant request for a 5-acre tract as the tract has a fairly new house and a building and the mining company is required to leave 10 feet from the adjoining property untouched on two sides due to the house. She concluded that this leaves very little to mine.

Mrs. Mortimer said wouldn't one already have a plan in place for reclamation with the 160 acres currently being quarried, which was started long before the 5-acres was even purchased? She asked is the 160 acres not enough property for this? She continued now that they do have a large pile of dirt sitting on site to accomplish this task? She then handed pictures to the Board members for review.

Mrs. Mortimer said Bayer Construction knew the 5-acre tract was not zoned for mining when they purchased it. She asked why do they want to make the change now? She said there is a row of cedars that tends to buffer and assumes it will be removed if the request is grant. She said this will increase the noise level and visibility of the site. She wanted to know if mining close to the house would impact the structure. She said she wonders why the previous owner wanted to sell the property; was it the proximity to the quarry - she was sure it was. She asked was it due to noise? She said we can hear it plain and clear with cedar trees on both sides of the fence. She asked was it the dust they produce? She said we have pasture that adjoins that road. She said during the hot, dry summer months, the dust drifts 50 yards into their pasture. She said on windy days, we would get dust swirls at our farm.

Mrs. Mortimer asked was it a lack of privacy, disturbance to family and pets? She said the rock quarry and mining operation were right at her door step. She asked did the quarry devalue her property? Would you purchase property adjoining a rock quarry, especially an active one? She said think of what the view looks like. She said the previous owner of the site probably could have not sold the property to anyone else for a reasonable price.

Carol Mortimer stated she and her husband purchased their property back in 1978, when it was all agricultural. She said this was a factor, as both of them were raised on farms. She said they are not asking the quarry to move but not move any closer to them. She asked that they give them some peace and privacy. Mrs. Mortimer said they are retired and home during the day time operation hours which affects their outdoor enjoyment with their grandkids. She stated she is concerned about the value of their property which could limit potential buyers. She said the mining also impacts wildlife. She asked wouldn't it make more sense to go west where there are not any houses.

Mrs. Mortimer stated she knows for a fact that Bayer Construction has been in discussions with two neighbors, both of which have property adjoining theirs. She said should both of these properties be given conditional uses, we will basically be living in a rock quarry. She asked great retirement, wouldn't you say.

John Wienck stated he lives at the north end of the county. He said back in the late 60's there were no reclamation requirements and a rock quarry started near where he lived. He said they did nothing to reclaim the land and in the 80's, the owners leased the site to another mining company which also did nothing to reclaim the land. He said he drives by Steven's quarry all the time and Bayer Construction is doing things to reclaim the land.

Carol Mortimer stated she is concerned there is no time limit for the proposed quarrying of the subject site.

Mr. Wienck replied this is not something the Board can take care of.

Kelly Briggs said reclamation is a big concern and wasn't sure if the Board understood. The quarry has to go through a yearly audit with the State of Kansas. He said in the 1980's, reclamation laws were enacted because of situations Mr. Wienck described. He explained Bayer Construction places a bond on disturbed acreage every year and they do not want that to go on forever.

Mr. Briggs said the buffer of cedar trees will be retained and the operation will be 50 feet north of the south boundary line of the subject property. He showed the Board where they will be removing volunteer cedars. Mr. Briggs explained Bayer Construction originally sold the 5-acre tract to the lady they bought it back from. He said they did an attachment to the deed that stated there would be quarry activity next door. He said as part of the negotiations, the loafing shed will be dismantled by her son and moved to another property further north and reassembled.

Mr. Briggs said they are planning to mine three acres which is equivalent to 100,000 ton of rock per year. He said it is a pretty substantial amount of rock. He said what is more important is we are not able to take all the rock on the current site due to the county adopting borrow pit regulations. He said this means we can't excavate within 300 feet from a residential home.

Diane Hoobler asked if you can't excavate within 300 feet from a residential house, how can you excavate on the 5-acre tract?

Joe Gelroth said the house will not be residential use.

Kelly Briggs replied because we are requesting a conditional use.

Bob Isaac replied the house is being converted to a non-residential use, which is stipulated in the list of conditions of the authorization.

Diane Hoobler asked how long do you expected it will take to excavate the three acres.

Kelly Briggs replied three years or less. He said they would be willing to include a time frame in the conditional use.

Carol Mortimer said if the regulations state you can't do this within 300 feet of a residential house there must be a logical reason for this. She asked is it because of the impact on the structure?

Bob Isaac said the original intent of the regulation is for homes located on property other than the site being mined. He said the regulation also has to do with the mitigation of impacts caused by dust, noise and vibration. He said the house on the subject site will be converted to a non-residential use. He said the owners don't want to tear down the home because it is in good condition. He said once the site is reclaimed, they can convert it back to a residential use and the entire site can be returned to residential property.

Chairman Taul asked Mrs. Mortimer if that answered her question.

Carol Mortimer said her concern is with the structural integrity of the house once it will be converted back to residential use.

Chairman Taul stated the 300 feet distance separation was more for dust and noise as opposed to the structural integrity of the building. When it is converted back to residential use, the structure will have to be inspected.

Kelly Briggs said he wanted to address Mrs. Mortimer's question about the quarry moving west. He said the original plans were to move west onto some property that is currently pasture, however, that property was sold and the current owner is not interested in having it quarried.

Joe Gelroth asked when the land is reclaimed, what is used to reclaim the land.

Kelly Briggs said some area was put back into brome; one area local farmer has planted corn. He said another area has been reclaimed with finish grade and that top soil is very important in the reclamation process. He said the top soil has to be stock piled so it is available at the time of reclamation. Mr. Briggs said unfortunately, we have to dig a hole to disturb the ground to get to what the community needs, which is rock used for the secondary road surfacing, which happens to be is the most popular product to come out of this quarry.

Chairman Taul wanted to know where the boundary was for the original 160-acre tract.

Kelly Briggs explained that the original quarry was owned by Bill Stevens; then he and Barbara Flores purchased another property, while Bayer Construction purchased 80 acres on which the

plant site currently occupies. He said the quarry then moved south to Highway 24. He said Bayer Construction then purchased 160 acres, for which they received a conditional use in 2000.

Diane Hoobler moved to close the public hearing. Joe Gelroth seconded. Carried 4-0.

John Wienck said there are laws and regulations that have to be followed to be quarry. He said the house will be used by the quarry and he is fine with that and has no problem giving them a conditional use.

Diane Hoobler stated she lives by a rock quarry out by Zeandale and have never had any problems with it. She said you might hear the dynamite go off and see a puff of dust. She is not aware of any structure damage to houses that are closer to the quarry.

Mrs. Hoobler stated she really likes that Bayer Construction is going use the haul route and not the driveway used by the Mortimers. She said as far as reclamation, she wanted to commend Bayer Construction. She did state she does sympathize with the Mortimers but at least the row of cedars will be left in place.

Joe Gelroth stated he has an old quarry located on his property which was never reclaimed and likes to see the land reclaimed. He would also second that the row of cedars be left in place.

Chairman Taul thanked Mrs. Mortimer for thoughts and concerns. He stated he understood her concerns about living near a quarry and that it is not the ideal situation. Chairman Taul said for the request presented, the 5-acres was for sale and Bayer Construction purchased it. He said it is not a factor in the Board's decision to know why they sold it. He said Mr. Briggs explained that approval of the proposed conditional use will also give them the opportunity to eliminate the 300-foot setback requirement so they can mine the remaining portion of the current operation. He said in the betterment of the community, the quarry is needed and the company has shown they are very reliable in reclaiming land. Chairman Taul said he doesn't have an issue with granting the conditional use request.

John Wienck moved to approve the request for a Conditional Use Authorization to permit the operation of a limestone quarry with the conditions and reasons stated in the staff report.

Diane Hoobler seconded. Carried 4-0.

John Wienck moved to adjourn the Board of Zoning Appeals meeting and reconvene as the Riley County Planning Board. Diane Hoobler seconded. Carried 4-0.

RILEY COUNTY PLANNING BOARD

Update on Zoning and Subdivision Regulations Re-write

Monty Wedel said Article 3: Development Review Procedures and Article 7: Subdivision Regulations are completed. Staff is meeting with the Public Works Department this week on Article 7. He said they should be ready to meet with the Board of County Commissioners sometime in December. He said staff is currently working on Article 4: Zone Districts.

John Wienck moved to adjourn. Diane Hoobler seconded. Carried 4-0.

The meeting was adjourned at 8:55 P.M.