



City Hall, 215 Sycamore St.
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COMMUNITY DEVELOPMENT

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

MEMORANDUM

To: Zoning Board of Adjustments
From: April Limburg, Planner
Date: July 21, 2021
Re: Appeal Case No. 46

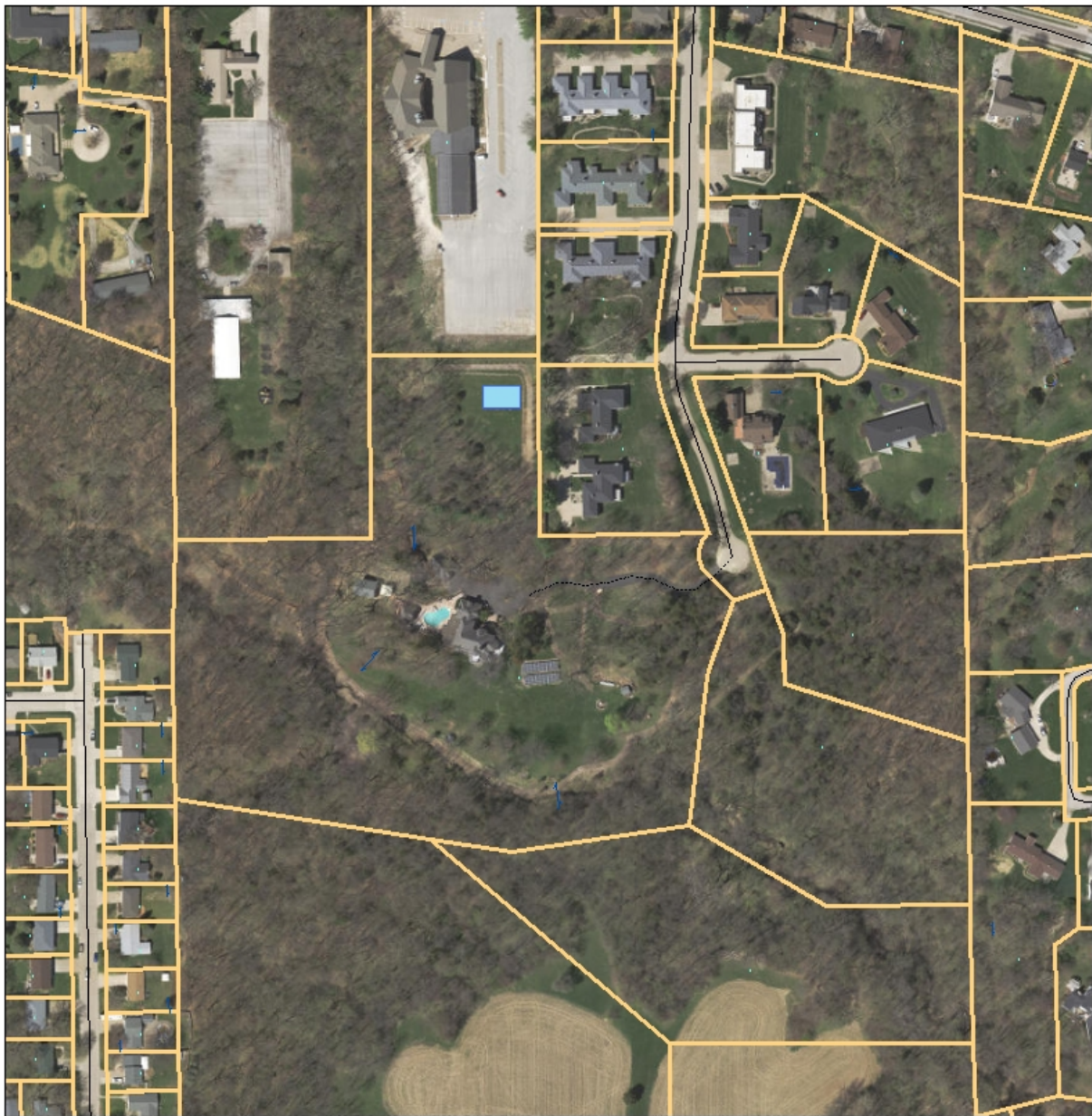
INTRODUCTION: A request to construct a metal building exceeding the maximum cumulative square footage of all accessory buildings and attached garages allowed by Section 10-20-2 (B) (1) of City Code.

BACKGROUND: Johnathon Estabrook has submitted a request to build a metal building located at 10 Byron Ln at the back of the property. The property is currently 524,462 SF (12.04 acres). He currently has a 1020 SF, attached garage along with a detached garage of 1020 SF along with a 720 SF detached frame with a basement. The dimensions of the proposed metal building is 40'x64'. Per Section 10-20-1 (B)(2) of City Code, the building exceeds the allotted square footage by 2560 SF.

The metal building would be used for indoor recreation. The building will be setback 40 ft. of each property line. It was suggested the homeowner work to obtain a letter from the Muscatine School District to be able to access the property via the parking lot of the school for the project.

Attached is the application, site plan, and aerial of the property.





Legend

- Building
- Parcels

Appeal Case No. 38, has been filed by Johnathon Estabrook to allow for the construction of a metal 40'x64' building on the back of the property located at 10 Byron Ln.

The proposed garage would cause the property to exceed by 2,560 square feet, the maximum cumulative square footage of all accessory buildings and attached garages allowed by Section 10-20-2 (B) (2) of City Code.

0 130 260 520 Feet





APPEAL FOR VARIANCE APPLICATION

Community Development Department • Planning and Zoning • Zoning Board of Adjustment

215 Sycamore St Muscatine, IA 52761 • PH 563.262.4141 • FAX 563.262.4142

www.muscatineiowa.gov/26/Community-Development

PROPERTY INFORMATION

Property Address: _____

Owner Name: _____ Business Name: _____

Address: _____

Phone: _____ Email: _____

APPEAL INFORMATION

Proposed Variance Description for Appeal: _____

SUBMISSION REQUIREMENTS

APPLICANT, OR REPRESENTATIVE, MUST BE PRESENT AT THE MEETING FOR ACTION TO BE TAKEN.

Application must be submitted two weeks prior to meeting date. Board meets the first Tuesday of each month.

If applicable, a Site Plan must be submitted with the application.

FILING FEE IS \$150.00

SIGNATURE

I hereby certify all the information submitted above is correct, I acknowledge that I reviewed this application and provided all required documents if necessitated.

Appellant Signature: _____ Date: _____

OFFICE USE ONLY

Date Filed: _____ Date Fee Paid: _____ Receipt No.: _____

Appeal Case No.: _____ Meeting Date: _____

Property is located on Lot _____ Block _____ Addition _____ in the _____ Zoning District.

Appeal for Variance Requirement Explanation: _____

Approved by: _____ Date Approved: _____ Date Notice Sent: _____

JAMIE A. BOSTEN
DAVID R. CHANEZ¹
STEVEN J. HAVERCAMP¹
STEVEN T. HUNTER
NATHAN R. MATHER¹
DAVID J. MELOY¹
CURT A. OPPEL

OF COUNSEL
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WWW.SLHLAW.COM

July 21, 2021

Writer's E-mail Address:
nmather@slhlaw.com

VIA EMAIL: ALIMBURG@MUSCATINEIOWA.GOV

Ms. April Limburg
City Planner
City of Muscatine
215 Sycamore Street
Muscatine, IA 52761

Dear Ms. Limburg:

RE: ESTABROOK VARIANCE APPEAL – 10 BYRON LANE

Jonathan and Becky Estabrook have retained our firm in connection with their variance appeal concerning a building they wish to construct for indoor recreational use. Please accept this letter and the enclosed documentation as the "Proposed Variance Description" for their appeal.

Jonathan Estabrook is a Muscatine native who, along with his wife, Becky, has significantly invested in Muscatine and created a successful small business, Winning Solutions, Inc. In 2015, Jonathan and Becky further invested in Muscatine by purchasing the home of business magnate and former Muscatine resident, Marty Carver, located at 10 Byron Lane. Since purchasing the property, the Estabrook family has continued to grow. They have four extremely active children and would like to construct a building for indoor recreation. The Estabrooks seek a variance from Chapter 10-20-2(B) as the proposed building would exceed the cumulative 2,500 square foot limitation for accessory structures.

The proposed building would be approximately 64' x 40' in size with a height of approximately 16'. Although metal in construction, the Estabrooks are committed to creating a building that is in keeping with the atmosphere of the surrounding area. To that end, the proposed structure would not be a typical "pole barn." The builder engaged by the Estabrooks has provided the enclosed photograph as a representative example of the building's appearance. (Exhibit A.) As can be seen, the construction can be tailored to residential needs and, in fact,

appears similar in nature to the nearby condominiums located off of Termini Drive (Exhibit B). The Estabrooks are further willing to install siding and other external features to make the building as pleasing to the eye as possible. Finally, the Estabrooks have already planted privacy vegetation that will shield the building from view by any neighbors.

Some nearby residents of the Termini Drive condominiums appeared before the Board of Adjustment (ZBA) in April 2021 to express concern with the proposed construction. The undersigned has contacted each of those residents and has addressed many of their concerns.

- Mike Nelson (2801 Termini Drive) wrote the undersigned to withdraw his opposition and stated that “the Estabrooks have the right to build whatever structure they desire on their own property.” (Exhibit C.)
- Patricia Konrad (2807 Termini Drive) informed the undersigned in a telephone conversation that she had no objection to the Estabrooks building the proposed recreation building for their children.
- Bob and Ann Bahn (2805 Termini Drive) informed the undersigned in a telephone conversation that they were selling their condominium and had no further concern with the matter.
- Jo Ann Allbee (2617 Termini Drive), president of the residents’ condominium association, emailed the undersigned to indicate that the residents’ objection was based on the assumed appearance and location of the building and asked for further information. (Exhibit D.)

We intend to meet with all interested neighbors prior to the August 2021 ZBA meeting to share further information and answer any questions that may arise. We believe that many or all of the concerns raised in April 2021 will be resolved at that meeting. The primary concerns raised were:

- Appearance of the structure:
 - See discussion above and exhibits demonstrating the residential appearance of the proposed building and its appropriateness for the neighborhood.
- Whether the building could be placed elsewhere on the property:
 - Although the property comprises some 8.2 acres, the majority of the land is dominated by a ravine and hilly terrain. A topographical map of the area with the property indicated is enclosed herewith. (Exhibit E.) The only flat area capable of accommodating the building is toward the northern end of the property.

- Whether the building would offend the neighbors' views from their homes:
 - As noted above, the proposed building would be very similar in appearance to the condominiums themselves.
 - The Estabrooks have planted privacy vegetation that will hide their proposed building from sight.
 - Additionally, the condominiums about the Board Office of the Muscatine Community School District, which already includes a more industrial-appearing metal building measuring 100' x 50'. The enclosed photographs demonstrate that the school system's metal structure is plainly visible to the condominium residents and that it is far less attractive than the Estabrooks' proposed building (See Exhibit B.)
 - The Estabrooks have consulted with real estate experts who advise that their proposed building will not diminish property values in the neighborhood, but may well increase them. The Estabrooks intend to have those experts and/or their statements available at the ZBA meeting.

Chapter 10-4-9 of the City Code provides that the ZBA shall grant variances that "will not be contrary to the public interest where, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship." The ZBA is to apply the following standards:

(i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.

Chapter 10-4-9(A).

Our review of ZBA decisions over the last several years reveals that it has granted the majority of area variance appeals (as opposed to "use variances," which seek approval of uses not permitted by the applicable zoning) where the proposed construction enables greater personal or economic enjoyment of the applicant's property. Appeals granted include:

- Construction of a 64' x 36' metal building at 3322 Mulberry Avenue for use as a personal workshop for restoring automobiles. Appeal Case #ZBAV-36, March 2021.
- Construction of an addition in excess of the 2,500 square foot maximum to expand garage space and enlarge a master bedroom. Appeal Case #ZBAV-35, March 2021.

- Construction of a 56' x 34' garage in excess of the applicable square footage maximum on a 0.61 acre lot for equipment storage, including storage of business-related equipment. Appeal Case #ZBAV-32, January 2021.
- Construction of a garage in violation of setback regulations because "a 3-car garage has always been part of [the applicant's] idea of his dream home." Appeal Case #ZBAV-31, October 2020.
- Construction of a 3-season room in violation of setback regulations. Appeal Case #ZBAV-23
- Construction of numerous garages throughout an entire subdivision in violation of setback regulations where the subdivided lots permitted construction only in certain areas. Appeal Case #ZBAV-25, March 2020.
- Installation of a business sign in an R-3 zone in violation of City Code. Appeal Case No. #ZBAV16-071919, September 2019.
- Construction of a garage in excess of the applicable square footage maximum for equipment storage. Appeal Case No. #ZBAV17-072319, August 2019.
- Construction of an enclosed porch in violation of setback regulations because other nearby residences already had porches that violated the regulations. Appeal Case No. #ZBAV13-040519, May 2019.
- Construction of 42' x 32' garage in violation of setback regulations because that was the only possible location due to the presence of a septic tank. Appeal Case No. #ZBAV14-042219, May 2019.
- Construction of a garage in violation of setback regulations (extending all the way to the property line) for storage space. Appeal Case No. #ZBAV15-042319, May 2019.
- Construction of a garage in violation of setback regulations because the existing garage was too small to hold applicant's ATV and motorcycle. Appeal Case #ZBA10, March 2018.

Ms. April Limburg

July 21, 2021

In these and other appeal decisions, the ZBA has focused on the reactions of neighbors. The Estabrooks believe they are able to address and allay all of their neighbors' concerns. For this and all of the foregoing reasons, the Estabrooks respectfully request that the ZBA approve this variance appeal.

Very truly yours,

STANLEY, LANDE & HUNTER

By 

Nathan R. Mather

NRM/khk
10403-7
Encs.

cc: Jonathan and Becky Estabrook (via email) (w/encs.)
Robert Estabrook (via email) (w/encs.)

EXHIBIT A

REPRESENTATIVE PHOTOGRAPH OF PROPOSED BUILDING

(scale not identical)



EXHIBIT B

PHOTOGRAPHS OF SCHOOL DISTRICT'S METAL BUILDING

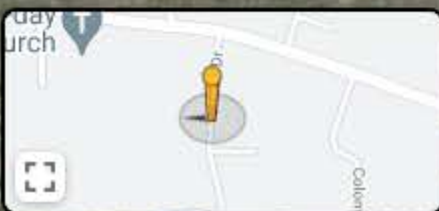
(from Termini Drive and Mulberry Avenue)

2813 Termini Dr
Muscatine, Iowa



Google

Street View



Google



2813 Termini Dr

Muscataine, Iowa



Google

Street View



Google



2901 County Hwy X54
Muscatine, Iowa

Google

Street View



Funeral & Cremation...

nth-day Church

Map inset showing the current location on a street map.

Navigation controls including a compass, zoom in (+) and zoom out (-) buttons, and a full-screen button.

Google

Exhibit C - Email from Michael Nelson

Nathan R. Mather

From: Michael Nelson <mknelson@machlink.com>
Sent: Sunday, June 13, 2021 4:17 PM
To: Nathan R. Mather
Subject: Estabrook application for variance letter

Hello Mr. Mather,

I received your letter in regards to the "Estabrook application for variance". I do understand that you probably contacted me because my name was on a document presented to the Muscatine Board of Adjustment. I am only willing to say that from my standpoint, I have changed my mind. I believe the Estabrooks have the right to build whatever structure they desire on their own property. Therefore I do not feel a need to attend your meeting. Thank you for your concern and diligence in this matter.

Mike Nelson

Exhibit D - Email from Jo Ann Allbee

Nathan R. Mather

From: Jo Ann Allbee <joharv@machlink.com>
Sent: Saturday, June 12, 2021 2:32 PM
To: Nathan R. Mather
Cc: Gears; Becky&Tim Whitmore; Julie Hansen Gasway; Joni Hansen
Subject: Estabrook Application

Dear Nathan,

We received your letter regarding the Estabrook application for variance.

On April 4, 2021 we were objecting to a large building (metal 40x64) at the corner of the lot in front of our condos, NOT a playhouse.

Please let us know what exactly is being requested now, the exact location, the exact dimensions and exact materials.

Your answers will determine if we feel the need to have a meeting.

Thank you,

Jo Ann Allbee
President, Condo Association

EXHIBIT E

TOPOGRAPHICAL MAP CENTERED ON 10 BYRON LANE

(ESTABROOK PROPERTIES OUTLINED ROUGHLY IN RED, ORANGE)

