

Decatur County Board of Zoning Appeals Minutes
Decatur County Courthouse
150 Courthouse Square
Meeting Room

The regular scheduled meeting of the Decatur County Board of Zoning Appeals was convened at 6:30 p.m. on Wednesday, July 5, 2023 at the Decatur County Courthouse. The meeting was called to order by Brad Schutte. There were 5 board members present, also attending the meeting was Melissa Scholl – BZA Attorney, Krista Duvall – Decatur County Area Plan Director and Debbie Martin – Administrative Assistant.

Brad Schutte opened the meeting and read the following; *To comply with Title VI of the Civil Rights Act of 1964, Decatur County requests that participants in this meeting complete a voluntary, anonymous survey that is available on the table in the back of the room.*

* **Approval of Minutes: June 7, 2023.** Joyce Brindley made a motion to approve the minutes as mailed; Janey Livingston seconded the motion with all present signifying by saying aye.

* **BZA Petition 2023-10 – Marshall Cameron** is requesting a “**Variance**” from the required front setback of 30’ to a front setback of approx. 0’ to build a garage. The request falls under Decatur County Ordinance #1155. The property is currently owned by the petitioner and is located just East of 6644 N CR 700 E, Rushville in **Fugit Township**.

Marshall Cameron: I live in Clarksburg and I was wanting to build a garage. I would like to have a variance there by the alley to build a garage. I want to build it on high ground and I don’t want it in my backyard. It is a blacktop alley back there, it is considered an alley. There is not that much traffic on it. I need a variance, some folks tell me it is 20’ from the edge of the road, some folks tell me its 30’ from the edge of the road. At any rate, I would be approximately 16’ from the road at the south side. **Brad;** you are in the SE corner? **Marshall;** yes sir. **Brad;** how close to the east property line will you be? **Marshall;** there is a public alley through there, that would probably be 25-30 feet. **Janey;** is it a 1 or 2 story garage? **Marshall;** 1, that east alley there is a dead end down through there too. **Janey;** so it will drive out into the alley? **Marshall;** yes, I want to put my garage doors to the east, and also (inaudible) the property to the east of that, my wife and I own it also. **Rick;** is the garage just for personal use? **Marshall;** yes. **Brad;** due to this having a B2 zoning there, it is an oddity, I would say it was done many years ago, but if you were to ever do anything different with that garage besides personal use, you would have to come back and get an exception. **Marshall;** I never intend to do anything with it other than personal use stuff. **Brad;** just wanted to make that clear. If it was ever used for a business you would have to come back and see us.

Joyce Brindley made a motion to vote on APC 2023-10; Rick Hoeing seconded the motion. All members present voted yes. **Brad;** your petition passes, thanks for coming in and going through the process.

* **BZA Petition 2023-11 – Brian Blanton** is requesting a “**Special Exception**” to build a pond and a “**Variance**” from the required 150’ setback from a roadway to a setback of approx. 40’ from a roadway to build a pond. The request falls under Decatur County Ordinance #330 (1). The property is currently owned by the petitioner and is located just North of 7160 S CR 1100 W. Hartsville, in **Jackson Township**.

Brian Blanton: I want to build a pond, nothing huge there on the top part. I would like to build it, it is pretty flat ground so there will be a lot of dirt. I will put a berm starting at the driveway and run south with all the dirt. A berm running east with remainder of the dirt, therefore it will be pretty protected from anything. The road is not highly traveled, it is the county line road. The berm will be pretty tall, two reasons, one is to keep people out and the other is for privacy. It is strictly a recreational piece of property right now. There were two ponds down below (referencing overhead map) but those have been washed away due to all of the drainage that flows, our property sits pretty low compared to the 1600 acres around. Basically everything is tiled or flows that way. I have natural drainage to the north towards the driveway, that is where we are thinking of putting in the first dam, would be the main dam, the second one would be about where the driveway ends, that would be the overflow dam. That has a natural ravine that is dropping, straight in the middle of the woods. I have a septic approved and I would build back in this area (referencing overhead map). Right now I will use it mostly for recreation. **Brad;** is that driveway and easement on your property Brian? **Brian;** no, I think that is, Tony probably knows more about this than me. **Brad;** is there a culvert pipe in that driveway? **Brian;** yes. **Brad;** the drive going back to that house? **Brian;** yes, there is a 3' culvert pipe there. I have another 3' culvert pipe on the overflow already put in, there where the driveway ends. **Brad;** what about this driveway (referencing overhead map). **Brian;** there is nothing, there might be a culvert pipe (referencing overhead map) down in here. This land flows gradually towards me. **Brad;** so we are showing 9 acres of drainage running that direction. I'm pulling off of some TOPO maps and that seems pretty accurate. Do you know, is there is any drain tile that goes through there? **Brian;** no, there is nothing to my knowledge. **Brad;** so with your surface drainage though, you are pulling a lot of water off of the farm field. That is something to be fully aware of, I have always had a recommendation to do a buffer strip on your side, a grass strip. I don't know how far up you will come with the shore line. **Brian;** I would like to run it as close as I can to gain as much as I can. I will be putting in a berm so that will do a lot and I need to be able to mow it. **Brad;** you can't berm to block any water that is running at you. **Brian;** I see what you are saying, leave this open right here (referencing overhead map). **Brad;** would you divert the water around it or try to run it into it? **Brian;** I would try to make a berm and run it into the back side. I can make a swale down this driveway and run it this way (referencing overhead map). **Brad;** that would be my recommendation. We would want to make sure that the surface water continued to drain the way it always did. That berm will limit your proximity to the drive, it is going to keep it away regardless. You would need to maintain positive drainage all the way around that berm. It's there, it's able to be done. **Brian;** on the west side, I don't have to worry about that because there is already a natural.... **Brad;** yes, that drops down the hill there. **Brian;** basically right here (referencing overhead map) at the corner of the driveway. **Brad;** the low spot in the driveway is about here (referencing overhead map), I would say the bulk of the water will cross right here. If you can shed that around the east side that would be my only.... **Rick;** and you are talking about bringing the water around the pond rather than to the pond? **Brad;** yes, that way he doesn't have to worry about any runoff at all. **Rick;** and to go to the east it will limit your impact on the current county ditch. **Brad;** I don't want to take it to the west, I think that would be our recommendations for sure at a minimum, and we would definitely want to confirm that there is no tile going through there. **Brian;** I don't believe there has been any tile since.... **Brad;** I have some aerials that look like they tell me something but I don't know where your outlet runs. **Gary;** who is across the road to the west? **Brian;** Scott Stam.

Audience: Robert Wickens, I represent TJ Marsh Farms LLC. They have asked me to be here to express an objection to this, first of all in coming here and reading the petition, it is a little bit unclear. They have to ask for two exceptions or easements on both the west side, which requires 150 feet from it and on the south side is a private right-of-way easement that is on the Marsh property. **Brad;** that is a written easement? **Robert;** yes. The ordinance requires 150 feet from that as well. It is not clear on my reading of the petition that they knew what it was required for both of those or that there are two specific easements. I would just point out that it is also a

substantial difference from what the ordinance requirements are, from 150 feet to 40 feet on two different boundaries. I think that is a rather exceptional request on their part. The board has kind of expressed, the main concern about all of this water that would lead into this pond would come from an agricultural source and create problems down the road. It would be wise for probably everyone in the area to avoid future problems, therefore we would just ask the board to enforce the typical ordinance and not grant a special exception or a variance. **Brad**; thank you. **Joyce**; is there any way at all that they can make the variance by doing something different? **Brad**; no, it would require a variance, regardless. **Joyce**; as far as not making it quite so big. **Brad**; no. **Rick**; so 150 feet from both the roadway and easement, to maintain those in tact you would end up with a water hole, there is not sufficient room there, based off of my measurements, with the ordinance intact to put a proper pond, is that accurate? **Brad**; yes. **Gary**; Mr. Wickens, the property to the south, that is the farm that you are representing, is that correct? **Robert**; yes. **Gary**; and that drive is an easement across that same property, so that is not on Brians property? **Brad**; no, that is just the visual that was overlaid, it is actually an easement. **Gary**; so where the house is, is that a different property then? **Brad**; yes. **Gary**; and is that associated with your client? **Robert**; no. My client owns the property to the south and that house can exercise the easement for access. **Gary**; is there any representation for the house property here this evening? **Brad**; it doesn't appear so. **Janey**; if you do the swale the direction you are talking about, is this home (referencing overhead map) any lower? **Brad**; no, its higher. **Krista**; do you have any idea how far it will be? **Brad**; no, not directly, we would probably be at a 30-foot minimum just to get, if there was a berm and a swale in there. **Krista**; if it is 30 feet, I would need to re-advertise. If it is 40 feet then our legal ad works. **Melissa**; I don't think Krista was aware of it being an actual easement, we advertised from 150 down to 40 so if it would go below that I would want to re-advertise. **Brad**; my bare minimum on the situation, if you were to go for this, we can't have any water from the field going into that pond, it is just inviting trouble. To maintain that we would have to state that in this exception, would have to be maintained for proper drainage. **Janey**; who is the person we ask if there is any drainage in that field? **Robert**; I don't have any facts. **Brad**; no tile outlets through there? **Robert**; no but to go with the advertisement, the adjoining property owners were given notice, I don't think that the advertisement of the petition made it clear on requestion special exceptions on two different roadways, one public and the other a private right of way easement. **Brad**; that is a good point. **Melissa**; it didn't define is as two separate, it just said 40 feet from the roadway. Our pond ordinance specifies that a roadway or easement are handled the same way. **Krista**; I'm not sure who has the easement. **Brad**; it is on the property that he is representing. **Krista**; so there is a written easement there? **Janey**; that is what he is saying. **Melissa**; is it an ingress and egress easement? **Robert**; yes. **Rick**; is that an intermittent stream to the north? **Brad**; it has got a blue line. **Gary**; it runs all the time? **Brad**; yes. **Brian**; there used to be two ponds on that stream, they have been washed in over the years. **Gary**; how does the property to the south lay, where is the ingress and egress to that field? **Brian**; that driveway is narrow, can't put farm equipment on it. **Brad**; do you have a recommendation as far as the advertisement goes? **Melissa**; do we know yet what the request is from the ingress and egress easement? **Brad**; I'm assuming 40 feet but that would be another stipulation that you would require at a bare minimum. If it has to be advertised, it has to be. **Melissa**; are all of the adjoining property owners provided notice here tonight? **Brad**; no. **Brian**; all except one and she personally called me. **Melissa**; we can readvertise, I think the issues are going to remain the same with the one property owner who is here, represented. I think we need to try to figure out all of the questions, I'm sure the property owner is wanting to move as soon as possible with the weather, for installation, just to try to get the issues on the table or information that we need so that we don't have to delay it another meeting as well. **Janey**; so their main concern, if I understand, is that it wasn't advertised correctly or they just don't want a pond there, what is the issue? **Robert**; I think the issue with the advertisement and they are not really sure what they were requesting a variation from. Second, yes, they do think is it a bad idea for a pond that will receive all of its water from agricultural use and the runoff from agricultural use will likely create problems in the future. Yes, they are opposed for that reason but also just a matter of

whether all of the requirements were met and also whether it is clear. It is a substantial request to go from 150 feet on two different roads to either 40 or 30 feet, I'm not sure exactly what the request is. **Gary**; my thought would be to respect the property owners' rights to the south if that is what they want to use and to use the ordinance as it is written, to their benefit at some point and time and future use may be something different than a farm field. We need to protect their rights too. Whether we give up the county's rights on the road, I think that is a different discussion. **Brad**; you are saying as far as setback, not necessarily the pond. **Gary**; yes, the setback on the road is a different discussion than on the setback on the easements next to that field. **Brad**; I guess you need to dive into that a little more, what difference would that be if drainage is always maintained. **Gary**; as we talk about being 150 feet away at previous pond meetings where people were on a curve and you need to be far enough away from that, not to have a public hazard along the road, where that particular discussion was at, is something that Mr. Wickens' client might want to do later that might impede what they want to do. What if they want to develop that and they were told they had to push their houses back and have less houses because of the pond. **Rick**; I do think you bring up a good aspect, what I was thinking is, is 40 feet sufficient for public safety on the road ways with a body of water that close. We can talk about drainage all day long. **Brad**; there are a lot of those that are existing. Granted, it is existing so this would be a different situation, 40 feet is close. **Gary**; if I am driving along the road for example, could I just drive off of the road and drive right into (inaudible.). **Brad**; you have to remember Gary, this isn't the shoreline, the toe of the dam is 40 feet. **Gary**; is there a berm there, do I launch up the berm and then drive into the pond. **Janey**; my understanding is they are going to put a berm both ways, the road and the driveway access. Now, but to your point about the runoff, the same thing that you were speaking to is to have to put a swale to divert that away. **Brad**; another dilemma that you are going to run into here Brian is as you build this dam and you keep the toe of that dam 40 feet away, as you go to the north, as your elevation increases your pond is getting smaller because you are building the dam higher. So you are going to shrink it. **Brian**; that is what I am envisioning there, at the longest part of the driveway, that's going to be the majority of the dam. Then a large berm and eventually trees and a fence put up all along that. It will be fenced in, on the south side I can drop it back 50, 60 or 100 feet, whatever it is that needs to be done. Put the swell in about ¼ of the way down that driveway and then I will make a slight snake bend around and drop it right back into the stream that is to the north of me where all of the farm fields from that 1600 acres comes from. I'm used to having a lot of water come towards us. It's a place, I think it can be done safely, there are a lot of ponds in the county that are like that. I know several that have been built recently that have berms. It will be runoff from the agricultural land to the south of me but the easement there, I am a little confused on that, didn't know that was an easement. I would like to see if that really is an easement. **Brad**; it is still an access to the property so it's going to be considered that regardless. **Brian**; the way it read when I was applying for the pond was 30 feet from the property line. Any adjoining property is 150 feet from the pond, which of course, going back to the west from the home I'm keeping it 150 feet from that, that will be no problem. **Janey**; I just wish he would re-dig his old ponds. I'm a great believer in having the right to do, you bought the property, you own it and you should be able to do what you do but you have got to always consider what impact... **Joyce**; would the highway department require a guard rail? **Brian**; if they want me to put one up, I wouldn't have any problem. **Joyce**; there is a lot of things that could happen. **Brian**; look at Walt's Pond down there on highway 3, there is a lot of what ifs at that pond, if it was to go you would lose the whole highway. There south of Sardinia, that is a 100-foot dam built right on the highway. **Rick**; Brad, in your experience a 25-50-year water event, what... **Brad**; your emergency spillway would have to be built under the dam. **Rick**; I'm worried about the water coming from the field around the pond. **Brad**; here's my biggest thing with all of this, it is a very unique site and it's very tight to do. I'm not saying that you can't do everything and actually meet all of our requests but we have run into this issue many times on these pond constructions, if we don't have a benchmark to work off of and a set of plans that we can hold something to, we run into trouble. This can be designed and work fine to appease the entire situation, your pond may be a little bit smaller than what you wanted but

what we need, and I do this every day, I need a set of plans. **Brian**; I can get you a set of plans. **Brad**; in other words, for us to be comfortable, with all of the concerns I am hearing from the entire row of people, and every time we have ever had a dilemma on a pond it was because we didn't have anything to refer back to. We lay out stipulations and may not have something to enforce. Something else that I will ask Melissa about, our special exception, in other words in order to have enforcement, in order to allow a pond to be built, can we put a time frame on that special exception so that it could come back and be looked at and critiqued? **Melissa**; like through the construction phase? **Brad**; no, just as our special exception in general. In other words we do limit special exceptions on time frames on other instances... **Krista**; conditional uses. **Melissa**; those are conditional uses, they are not special exceptions. Time frames tag with our conditional uses. **Brad**; I thought we have done some on special exceptions where we give it a restriction and review it in five years. **Melissa**; usually we just lay the criteria out and make sure that ... **Brad**; I'm just thinking of a reason that we could review the situation, that's been the problem depending on who builds it how the construction goes, we have no way to verify anything that we... **Melissa**; if there are plans and all of the requirements listed, then it is being granted based on that happening, it comes out that the plans and requirements are not met, it would have to disappear. **Brad**; I guess that is where we are sitting as a board is we have been through this enough times that if we have a concrete set of plans that we can review and say ok, this is what it will look like and you can prove with distances, here is the start to a berm, here is the swale that has this much width to it that will take that water. We have been down this road and taking a pond out is not much fun either when you have trouble down the road. **Joyce**; I agree with you. **Brad**; with the multiple concerns around... **Brian**; basically with the distance from the road to the top of the berm, to the edge of the water. **Brad**; I need a water level, we would need benchmarks off of existing culvert inlets to be verified as far as what elevation, it could be a simple shot on that elevation. That would be our benchmark to maintain anything in the future as far as, you would need cross sections of that drive that goes back, or at least the edge of the drive, in other words we need to know what that line looks like. At your property line I need to know the elevations, say every 25 feet all the way down that property line. **Joyce**; have you had a site plan reviewer, an engineer or anything... **Brad**; no because the (inaudible). **Janey**; and it would have to meet the 40-foot setback advertised. **Brad**; yes, and that would actually be with construction. **Gary**; Mr. Wickens, is there any room for compromise in the future with Brian, I'm not a mediator but that may be something to set down in a room and talk about before he comes back with a set of plans at 40 feet and somebody may not like. **Robert**; I would certainly recommend that my clients be open to meeting and looking to see if there is a compromise. That is a little bit where the notice came in, not really sure but both roadways, private and public and... **Brad**; I think that would clarify that as well. **Robert**; we would have some time (inaudible) **Brad**; I mean in other words if we can get something that we can look at and confirm and something that can be maintained and hold Brian accountable to as well, this needs to be maintained, that we maintain drainage to not impede any of the drainage off of your client's field, and that none of that drainage would enter his pond. If we can have the verifications of all of those, it would be more inclined but I think this board can go to that. **Robert**; I think my clients would be willing to talk but reserve the right to object to anything that happens. **Brad**; I think if we have something that we can point to and object for sure, but we are all on the same page, that will help us out. **Gary**; 40 foot concerns me. **Brad**; your distance from the road, those are the things to take into consideration Brian, as far as a shoreline of 40 foot, that is really close, now granted if you have got your berm there, then I can say ok, your shoreline is 80 feet in, your berm is here, you can't encroach on that ditch so you have to maintain about 12-15 feet, is what they typically... **Brian**; you are looking at the light blue line (referencing overhead map) and the dark blue, where it says 16 your berm would basically be almost in the middle of that. By the time you pile the dirt up, that is a lot farther. **Brad**; that is what we need, is a depiction. **Joyce**; I agree. **Gary**; have we made a decision to re-advertise and coming back or **Krista**; I will re-advertise it when I get the plans. **Brad**; we will table Petition 2023-11. **Melissa**; just make sure that the plans come in time for us to make publication for the next month. **Brian**; I can't get someone that quick, it will be a

month or two. Now that I can't start now, this project will be pushed to next year. I needed approval today because of dry weather. **Brad**; this will make for a better outcome.

Joyce Brindley made a motion to adjourn the meeting at 7:20 p.m. with a second from Janey Livingston, all members present signified by saying aye.

Decatur County Board of Zoning Appeal

Secretary, Rick Hoeing

ATTEST:

Brad Schutte, President, Decatur County Board of Zoning Appeals